TEXAS REGISTER

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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

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*, publishes on an annual basis.

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
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

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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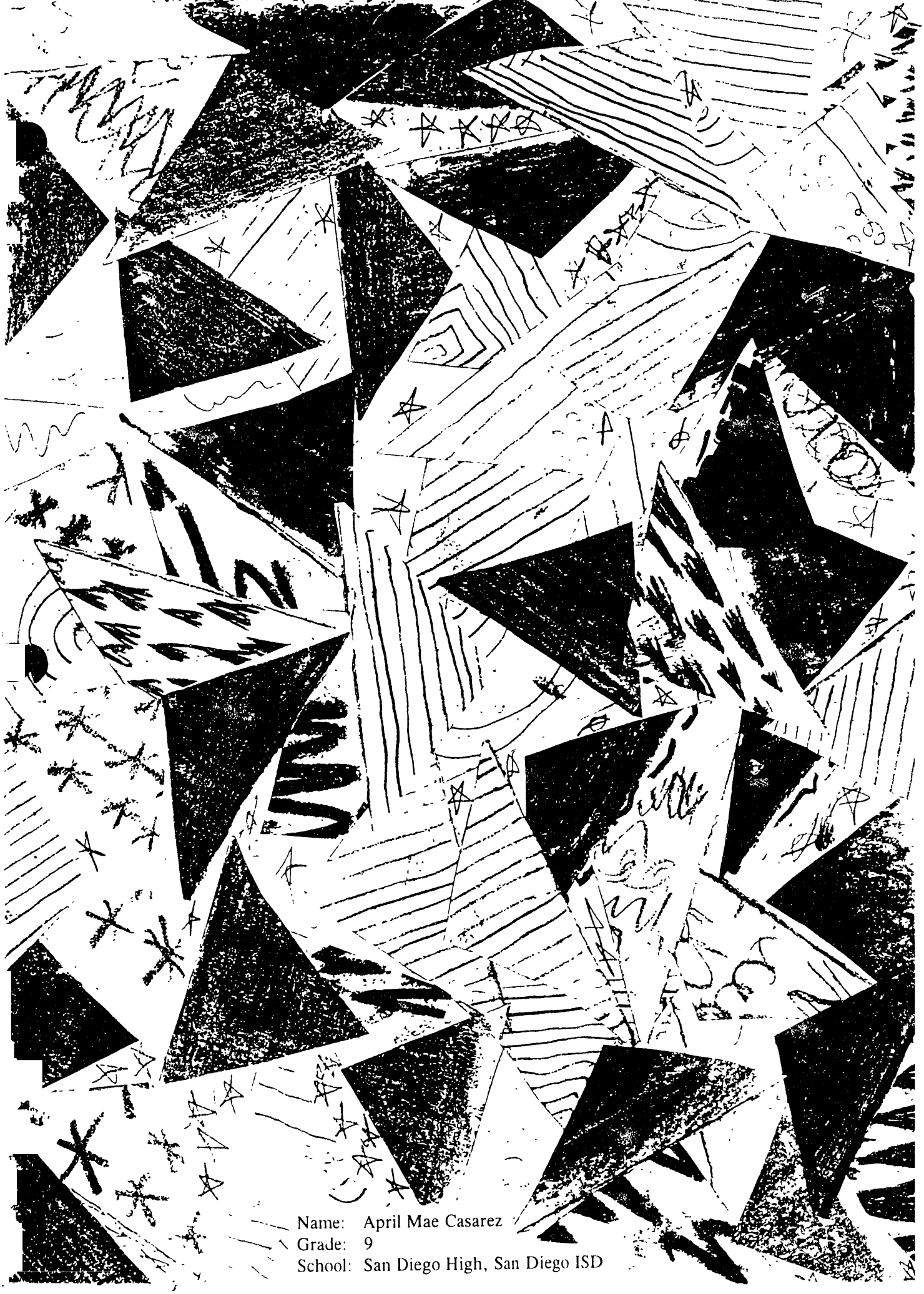

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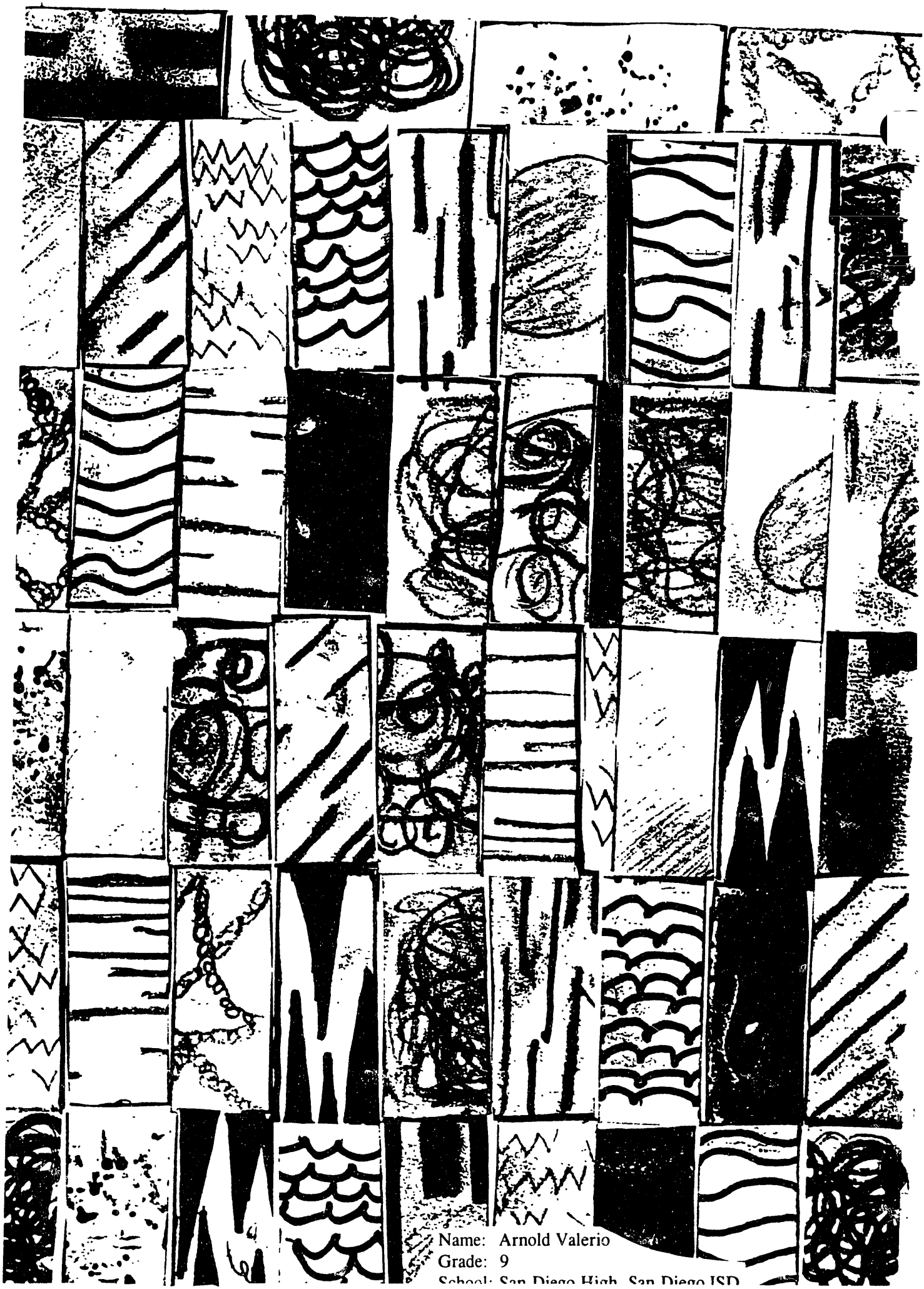

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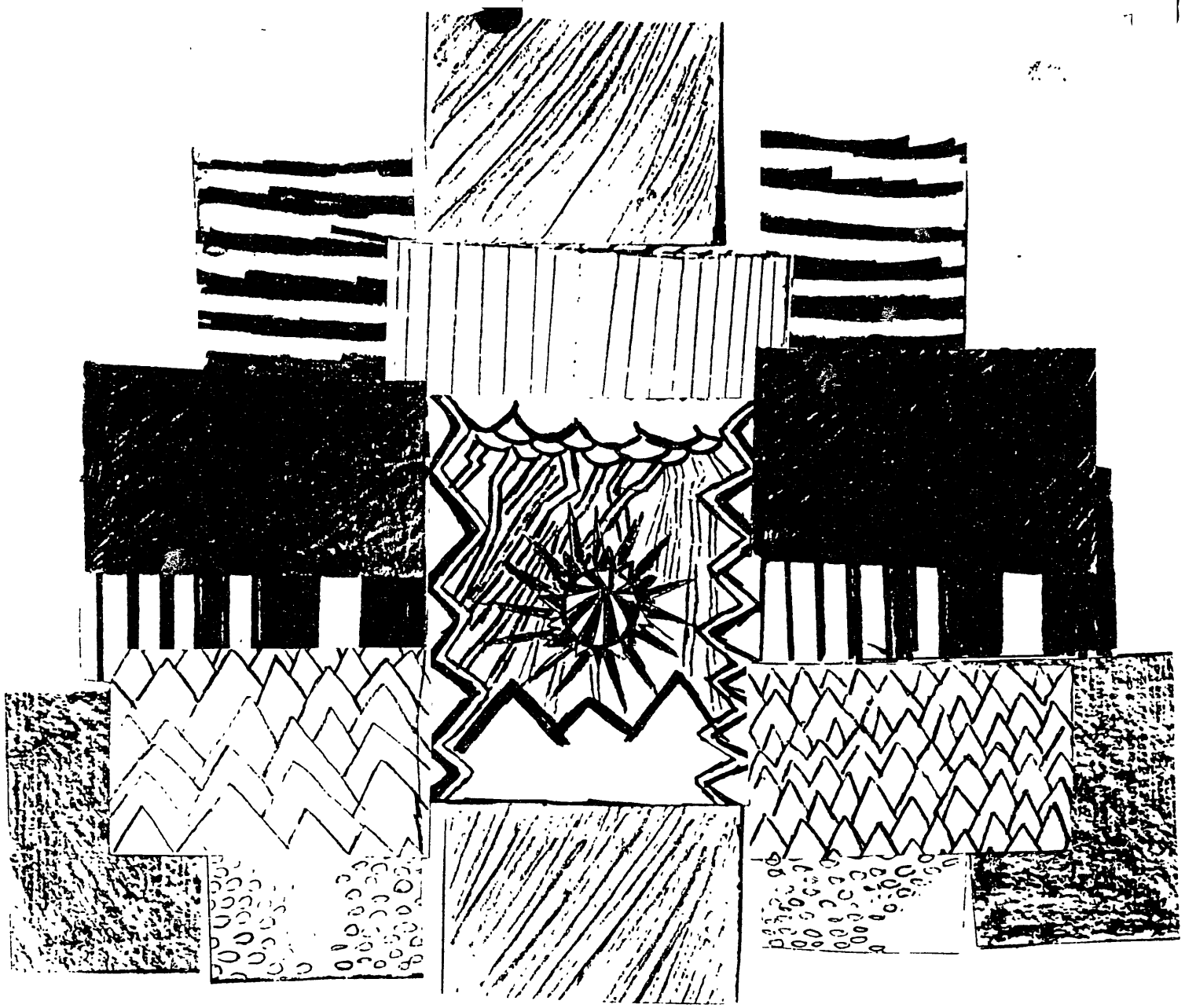

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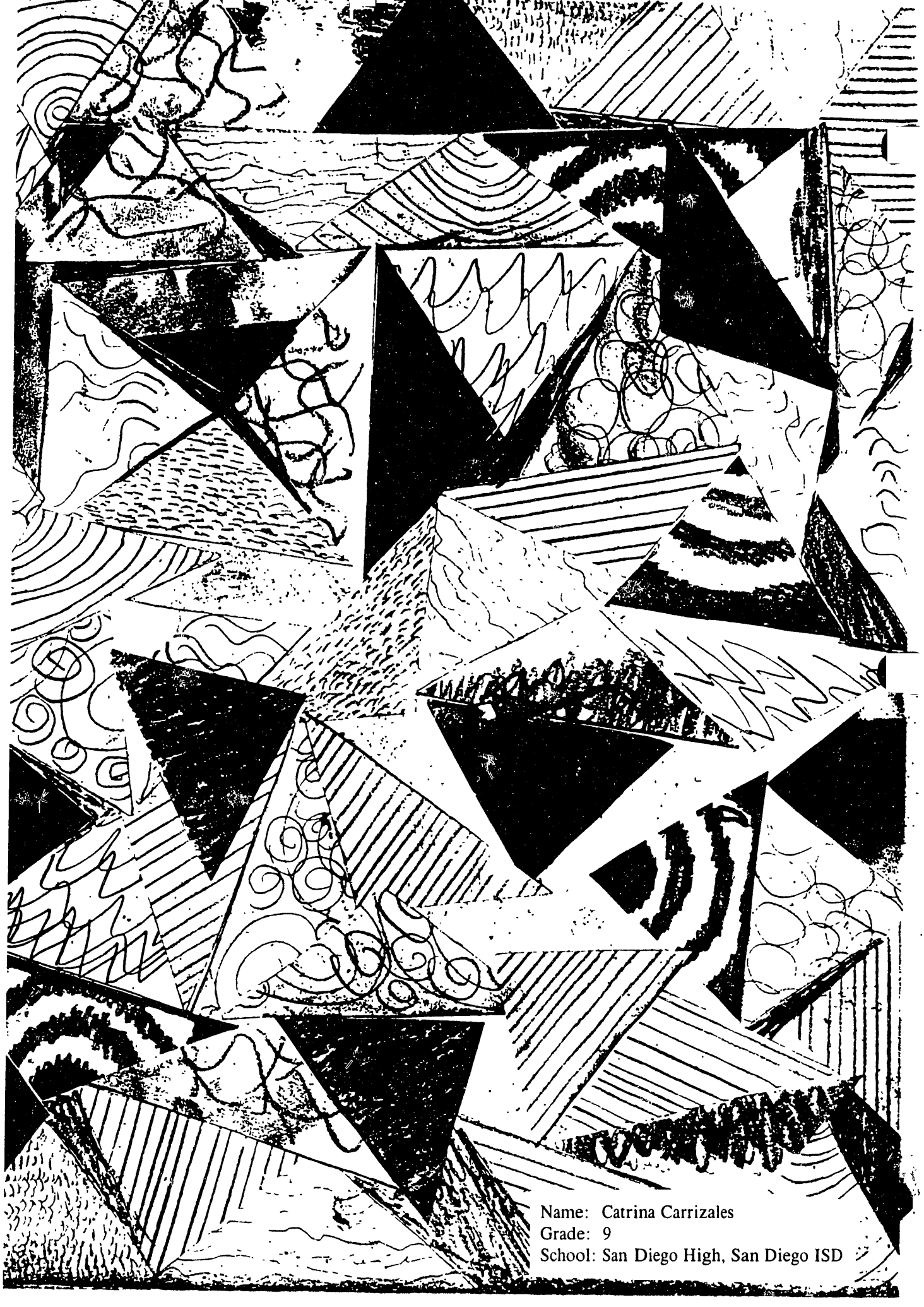

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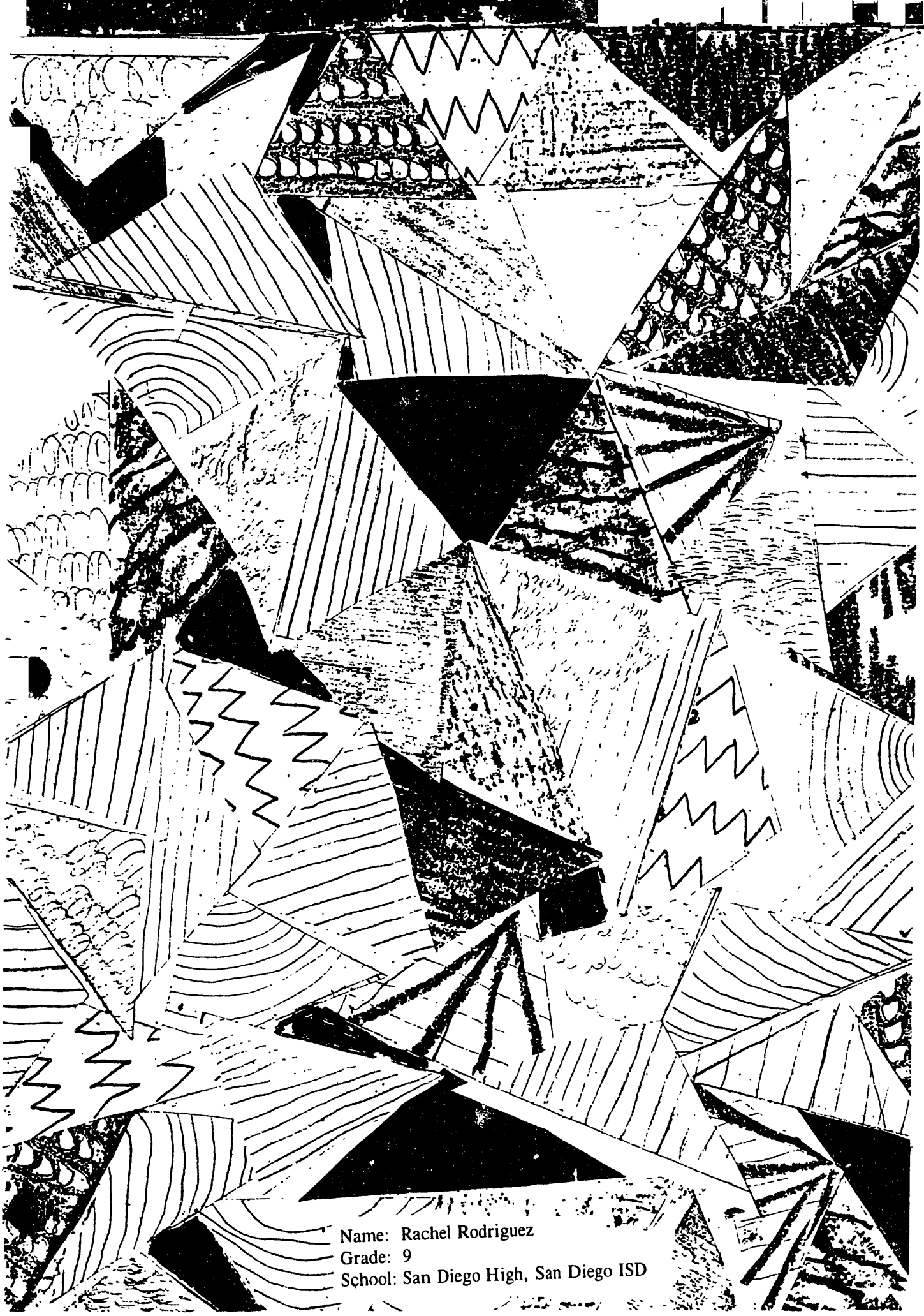

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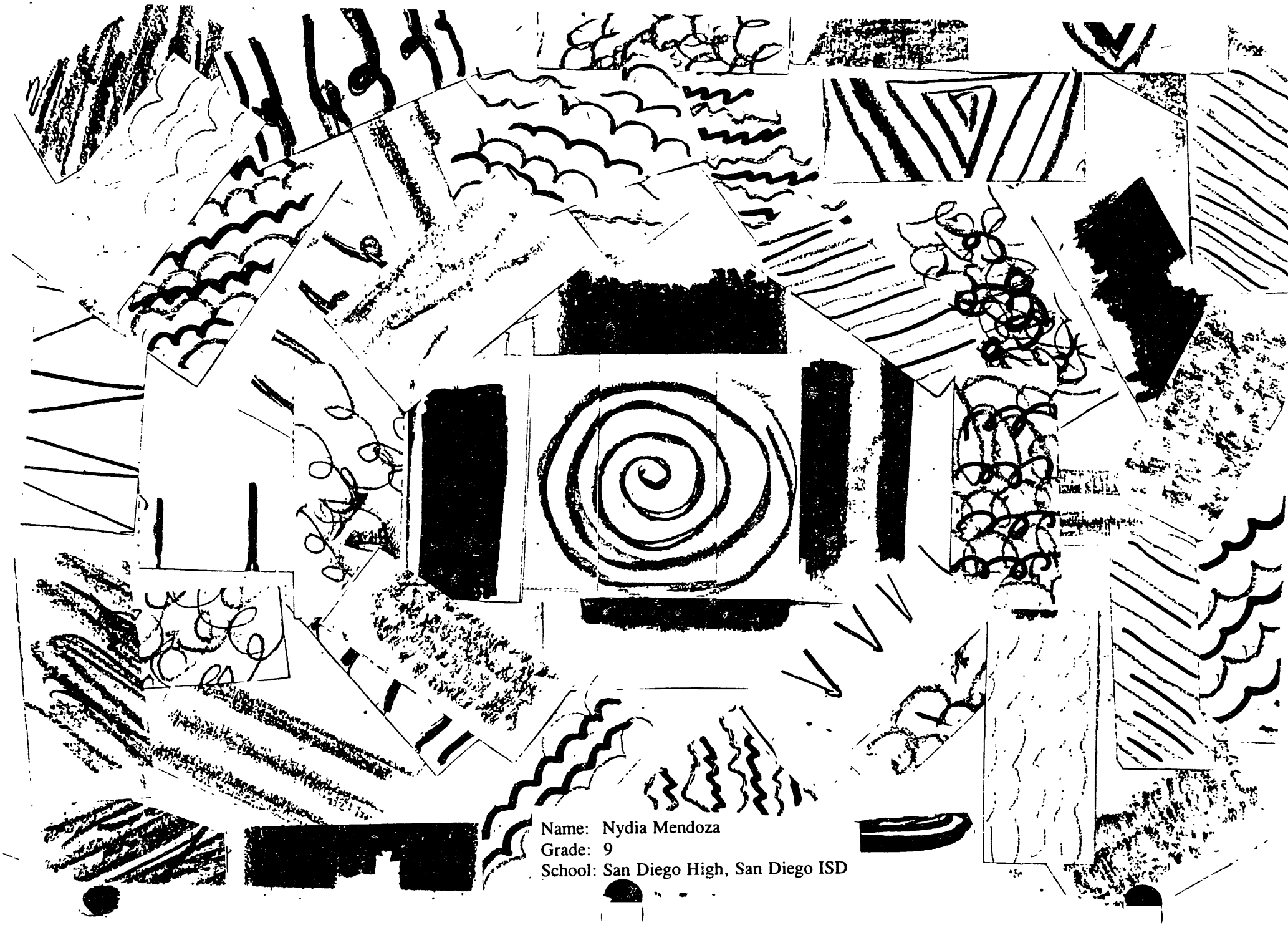

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Grade: 9
School: San Diego High, San Diego ISD

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 81. Elections

• 1 TAC §81.401

The Office of the Secretary of State, Elections Division, proposes new §81.401, concerning the implementation of the National Voter Registration Act. The new rule is necessary because federal law requires that all persons requesting services from certain state agencies be provided a voter registration application unless the applicant declines, in writing, to register to vote, and further requires changes in the maintenance of voter registration lists and qualification of voters at the polls.

Tom Harrison, Deputy Assistant Secretary of State, Elections Division, has determined that for the first five-year period the rule as proposed is in effect there will be fiscal implications for state government; however, those costs cannot be quantified at this time, since there is no data upon which to base such an estimate. There will also be fiscal implications for county government; however, those costs cannot be quantified at this time, since there is no data upon which to base such an estimate.

Mr. Harrison also has determined that during the first five-year period the rule as proposed is in effect, the anticipated public benefit as a result of administering or enforcing the rule as proposed will be a uniform and efficient voter registration program resulting in increased numbers of registered voters and increased voter participation. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rule as proposed.

Comments on the proposed new rule may be directed to Tom Harrison, Deputy Assistant Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060 or fax (512) 475-2811. Comments must be received no later than 30 days following publication of the proposed rule in the *Texas Register.*

The new rule is proposed under the Texas Election Code, §31.003 and §31. 004, which give the Office of the Secretary of State the authority to maintain uniformity in the application, operation, and interpretation of the Election Code and of the election laws outside of the Election Code.

The proposed new rule affects the entire Election Code.

§81.401. Implementation of the National Voter Registration Act (NVRA).

(a) Agency-based registration.

(1) Designation of voter registration agencies. The following state agencies which provide public assistance shall serve as voter registration sites:

(A) Texas Department of Human Services (food stamp program, AFDC program, Medicaid program, and programs for the aged);

(B) Texas Department of Health (Special Supplemental Food Program for Women, Infants, and Children); and

(C) any other programs conducted within the agencies referenced in subparagraphs (A) and (B) of this paragraph which provide public assistance.

(2) The following state agencies which operate state-funded programs primarily engaged in providing services to persons with disabilities shall serve as voter registration sites:

(A) Texas Department of Mental Health and Mental Retardation;

(B) Texas Commission for the Deaf and Hearing Impaired;

(C) Texas Rehabilitation Commission;

(D) Texas School for the Blind and Visually Impaired;

(E) Texas School for the Deaf;

(F) Texas Commission for the Blind; and

(G) any other state agency which is determined to operate state-funded programs engaged in providing services to the disabled.

(3) The following offices are designated by the Secretary of State to serve as additional voter registration sites:

(A) each principal of public or private high schools;

(B) marriage license bureaus; and

(C) public libraries which operate more than 30 hours a week.

(4) Voter Registration Form Used in Agency-Based Registration. The voter registration agencies referenced in paragraphs (1)-(3) of this subsection shall use the official agency mail voter registration application prescribed by the Secretary of State or application form prescribed by the agency if approved by the Secretary of State. The official form will be available no later than September 30, 1994, and the Secretary of State will provide camera-ready copies of the official application form in order that each agency may print as many applications as may be necessary.

(5) Declination Form Used in Agency-Based Registration. The NVRA provides that the voter registration agencies referenced in paragraphs (1)-(2) of this subsection must provide a voter registration application to all persons of voting age who apply for services in their agency UNLESS the applicant declines to register to vote, in writing. The Secretary of State shall prescribe the official declination form to be used by all voter registration agencies and

provide camera-ready copies to all affected agencies. The declination must be retained by the agency for 22 months, and must be kept confidential. Each agency may decide whether to keep the declination with the agency applicant's file or in a separate declination file. The declination will contain the following statements along with the signature of the applicant and the date of signing:

(A) If you are not registered to vote where you live now, would you like to apply to register to vote here today?
_____ YES ____ NO

(B) Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency. (This will appear only on the declinations for public assistance agencies.)

(C) IF YOU HAVE NOT CHECKED EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.

(D) If you would like help filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private.

(E) If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, you may file a complaint with the Elections Division of the Office of the Secretary of State, P.O. Box 12060, Austin, Texas 78711, 1-800-252-8683.

(F) A statement that if the applicant declines to register to vote, that this decision will remain confidential and be used only for voter registration purposes.

(G) A statement that if the applicant does register to vote, information regarding the office to which the application was submitted will remain confidential, again to be used only for voter registration purposes.

(6) Transmittal of voter registration applications. The NVRA provides two methods by which agency voter registration applications may be transmitted to the county voter registrar's office. The agency may transmit the applications to the county voter registrar's office OR the applicant may transmit the application directly.

(7) Transmittal by the agency. If the applicant submits the voter registration application to the agency, then the agency must mail or deliver in person the application to the voter registrar located in the same county as the agency office within five days of the receipt of the application. The county voter registrar must follow the procedures of the Texas Election Code, §13.072, and forward any applications of applicants residing in a different county to the appropriate county voter registrar. The Secretary of State recommends that agencies collect all the voter registration applications received Monday-Friday and then deliver them to the voter registrar on Friday. Any applications received on Friday not included in the Friday delivery to the voter registrar must be delivered to the voter registrar within five days.

(8) Transmittal by the voter. If the voter desires to keep the application and submit it to the voter registrar directly, the voter may do so. On these occasions, the agency must make a notation on the declination form, that the voter was given the opportunity to register to vote, and decided to take the application to complete and submit to the county registrar directly instead of submitting it to the agency.

(9) Administering agency voter registration. Each voter registration agency shall provide a voter registration application or declination form to each person of voting age who applies for initial services, and also with any recertification, renewal, or change of address form. An agency may determine a person's age by reviewing any readily available documents filed by the applicant. If an applicant's age cannot be determined, the agency must offer the applicant the opportunity to register to vote.

(A) In person.

(i) An appropriate agency employee shall routinely inform each applicant for agency services, who applies in person, of the opportunity to complete a voter registration application and on request shall provide nonpartisan voter registration assistance to the applicant. If an agency provides services at a person's home, then the person receiving the service at home must also be given an opportunity to register to vote.

(ii) On receipt of a registration application, the appropriate agency employee shall review it for completeness in the applicant's presence. If the application does not contain all the required information and the required signature, the agency employee shall return the application to the applicant for completion and resubmission. However, under no circumstances may an agency employee make a determination about an applicant's eligibility to register to vote, other than a determination that the voter is not of voting age. If a question arises concerning voter registration that the agency employee cannot answer, the agency employee must give the applicant the toll-free number of the Elections Division of the Office of the Secretary of State (1-800-252-8683) and also the number of the local county voter registrar to whom completed applications are submitted.

(iii) The date of a completed registration application to the agency employee is considered to be the date of submission to the county voter registrar for the purpose of determining the effective date of the registration.

(iv) If the applicant does not wish to register to vote, the agency employee must have the applicant complete and sign the declination form Each agency shall record on the declination form in the appropriate space if the applicant refused to sign the declination or took the voter registration application with them rather than leaving it with the agency.

(v) Agencies must offer the same degree of assistance, including bilingual assistance where necessary, to individuals in completing a voter registration form as they offer to individuals in completing the agency's own forms, unless the applicant refuses such assistance.

(vi) Each voter registration agency must designate a person or persons to coordinate the voter registration program within the agency and must notify the Secretary of State who has been designated. This person or persons will also be required to train agency personnel on voter registration procedures with the assistance of the Secretary of State. Each agency must submit its plan to implement these voter registration procedures to the Secretary of State.

(vii) An agency employee is prohibited from:

(I) seeking to influence an applicant's party preference;

(II) displaying any such political preference or party allegiance;

(III) making any statement or taking any action whose purpose or effect is to discourage the applicant from registering to vote; or

(IV) making any statement or taking any action whose purpose or effect is to lead the applicant to believe that a decision whether or not to register has any bearing on the availability of services or benefits.

(B) By mail or telephone. If a voter registration agency automatically notifies an applicant to renew or recertify a service by sending the applicant a form through the mail, or if an applicant may request services by telephone, then the agency must send the applicant a voter registration application by mail. If a voter registration agency offers initial services through the mail, then the agency must send the applicant a voter registration application when the applicant is approved for services. A voter registration application sent by mail must be accompanied by a notice informing the applicant that the application may be submitted in person or by mail to the voter registrar of the county in which the applicant resides or in person to a volunteer deputy registrar. It is not necessary to mail an applicant a declination form when providing voter registration services through the mail. The employee of the voter registration agency may keep a written record that voter registration applications were included in the mailing to the applicant.

(10) Motor voter registration. Most of the NVRA provisions concerning motor voter registration is current state law and is provided for in §13.051 of the Texas Election Code.

(A) The Texas Department of Public Safety ("the department") shall provide to each person who applies in person at the department's offices or by mail for an original or renewal of a driver's license, a personal identification card, or a duplicate or corrected license or card an opportunity to complete a voter registration application form. In addition, any change of address submitted in person or by mail relating to a person's driver's license or personal identification card will also serve as a change of address for voter registration unless the registrant states that the change of address is not for voter registration purposes.

(B) The department shall prescribe and use a form that combines the department's application form for a license or card with an officially prescribed voter registration application form. The department's voter registration form must be approved by the Secretary of State and must be on card stock quality paper. The department's change of address form must be similarly prescribed as the application form, and must be approved by the Secretary of State and be on card stock quality paper.

(C) The department is not required to follow the declination procedures required in the other mandatory voter registration agencies.

(D) At the end of each day a department office is regularly open for business, the manager of the office shall deliver by mail or in person all completed voter registration applications to the voter registrar of the county in which the office is located.

(E) An appropriate department employee shall routinely inform each applicant for agency services of the opportunity to complete a voter registration application and on request shall provide nonpartisan voter registration assistance to the applicant.

(F) On receipt of a registration application, the appropriate agency employee shall review it for completeness in the applicant's presence. If the application does not contain all the required information and the required signature, the department employee shall return the application to the applicant for completion and resubmission. However, under no circumstances may a department employee make a determination about an applicant's eligibility to register to vote, other than an applicant's age. A department employee may make a determination of applicant's age, if the applicant's age is readily determinable from information filed in connection with the application for services. If a question arises concerning voter registration that the department employee cannot answer, the department employee must give the applicant the toll-free number of the Elections Division of the Office of the Secretary of State (1-800-252-VOTE(8683)) and also the number of the local county voter registrar to whom completed applications are submitted.

(G) The date of a completed registration application to the department employee is considered to be the date of submission to the county voter registrar for the purpose of determining the effective date of the registration.

(H) A department employee is required to follow the same procedures concerning assistance and bilingual assistance as the agency-based voter registration agencies stated in subparagraph (A)(v) of this paragraph and is also subject to the same prohibitions detailed in subparagraph (A)(vi)of this paragraph.

(I) When the department renews a license or card or processes changes of address through the mail, then the department must send the applicant a voter registration application.

(J) The department must designate a person or persons to coordinate the voter registration program within the department and must notify the Secretary of State who has been designated. This person or persons will also be required to train agency personnel on voter registration procedures with the assistance of the Secretary of State.

(K) The department must submit its plan to implement these voter registration procedures to the Secretary of State.

(11) Additionally designated voter registration agencies.

(A) The Secretary of State designates the principals of public and private high schools, the county marriage license bureaus, and the public libraries which operate more than 30 hours a week as additional voter registration agencies. These designated agencies are required to follow the same procedures outlined above for agency-based registration except as otherwise provided in subparagraph (B) of this paragraph.

(B) High school deputy registrars are currently authorized in state law. Texas Election Code, §13.046.

(i) Each principal of a public or private high school or his designee shall serve as a deputy registrar for the county in which the school is located.

(ii) A high school deputy registrar may distribute registration application forms supplied by the Secretary of State to and receive registration applications submitted to him in person from students and employees of the school only.

(iii) During the final month of each school semester, a high school deputy registrar shall distribute an officially prescribed registration application form supplied by the Secretary of State to each student who is or will be 18 years of age or older during that semester.

(iv) Each application form distributed under this section must be accompanied by a notice informing the student or employee that the application may be submitted in person or by mail to the voter registrar of the county in which the applicant resides or in person to a high school deputy registrar or volunteer deputy registrar for delivery to the voter registrar of the county in which the school is located.

(v) A high school deputy registrar may review an application for completeness out of the applicant's presence. A deputy may deliver a group of applications to the registrar by mail in an

envelope or package, and, for the purpose of determining compliance with the delivery deadline, an application delivered by mail is considered to be delivered at the time of its receipt by the registrar. As soon as possible after receipt of a completed application the high school principal or designated representative shall deliver the application and receipt to the voter registrar of the county in which the student or employee resides. Completed applications and corresponding receipts shall be delivered to the voter registrar of the county by the high school principal or designated representative in person, or by mail in an envelope or package. An application shall be delivered to the registrar not later than 5: 00 p.m. of the fifth day after the date of the application is submitted to the deputy registrar, except that an application submitted after the 34th day and before the 29th day before the date of an election in which some or all qualified voters of the county are eligible to vote shall be delivered not later than 5:00 p.m. of the 29th day before election day. An application delivered by mail is considered to be delivered at the time of its receipt by the registrar.

(vi) High school deputy registrars are not required to follow the declination procedures.

(C) Marriage license bureaus.

(i) The county clerk must mail two voter registration applications supplied by the Secretary of State when the original marriage license is filed and recorded in the county and returned to the licensees. The applications must be accompanied by a notice informing the licensees that the application may be submitted in person or by mail to the voter registrar of the county in which they reside or in person to a volunteer deputy registrar.

(ii) It is not necessary to mail an applicant a declination form when providing voter registration services through the mail. The employee of the marriage license bureau may keep a written record that the voter registration applications were included in the information provided to the applicant through the mail.

(D) Public libraries open more than 30 hours a week.

(i) Public libraries that are required to provide voter registration services include all public libraries that are open more than 30 hours a week, including their branches and any other service outlets. A library is a "public library" if it is operated by a single public agency or board, that is freely open to all persons under identical conditions, and receives its financial support in whole or part from public funds.

(ii) All public libraries that are open more than 30 hours a week shall provide to each person of voting age who applies in person for an original or renewal of a library card an opportunity to complete a voter registration application form supplied by the Secretary of State. A library employee may make a determination of an applicant's age, if the applicant's age is readily determinable from information filed in connection with the application for services. If an applicant's age cannot be determined, the library employee must offer the applicant the opportunity to register to vote.

(iii) If the applicant desires to register to vote, the library employee shall give the applicant a voter registration application and on request shall provide nonpartisan voter registration assistance to the applicant.

(iv) The public libraries are not required to follow the declination procedures.

(v) On receipt of a registration application, the appropriate library employee shall review the card for completeness in the applicant's presence. If the application does not contain all the required information and the required signature, the library employee shall return the application to the applicant for completion and resubmission. However, under no circumstances may a library employee make a determination about an applicant's eligibility to register to vote, other than an applicant's age as discussed above. If a question arises concerning voter registration that the library employee cannot answer, the library employee must give the applicant the toll-free number of the Elections Division of the Office of the Secretary of State (1-800-252-VOTE(8683)) and also the number of the local county voter registrar to whom completed applications are submitted.

(vi) The public libraries must transmit completed applications to the voter registrar in the county in which they are located within five days of receipt. An applicant may take an application to complete and submit to the voter registrar independently of the public library.

(vii) The date of a completed registration application to the library employee is considered to be the date of submission to the county voter registrar for the purpose of determining the effective date of the registration.

(viii) A public library employee is required to follow the same procedures concerning assistance and bilingual assistance as the agency-based voter registration agencies stated in paragraph (9)(A)(v) of this subsection and is also subject to the same prohibitions detailed in paragraph (9)(A)(vi) of this subsection.

(ix) The public library must designate a person or persons to coordinate the voter registration program within the department and must notify the Secretary of State who has been designated. This person or persons will also be required to train agency personnel on voter registration procedures with the assistance of the Secretary of State.

(x) The public library must submit its plan to implement these voter registration procedures to the Secretary of State.

(b) List maintenance under the National Voter Registration Act.

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

(A) List of Registered Voters-list of the names of each person who has an effective registration in each election precinct in the county including voters with an "S" or "R" designation.

(B) Return List-voters who are designated with an "R" on the list of registered voters because the renewal certificate was returned after the mass mailing. The return list will exist only in even-numbered years between January 2nd and 30 days after a confirmation notice has been mailed to each voter on the return list. Voters will not be canceled from the return list unless the voter registrar receives notice from the voter that the voter has moved. Voters will move from an "R" status on the list to an "S" status if the voter fails to respond to the confirmation notice.

(C) Suspense List-voters who are designated with an "S" on the original list of registered voters indicating that they have possibly moved, have been mailed a confirmation notice and did not respond in the 30-day time frame.

(D) Confirmation Notice-the notice the voter registrar sends a registered voter any time the registrar has reason to believe that the voter has moved, either because the certificate was returned or for other reasons, such as return of jury summons.

(E) Confirmation Return Response form-the pre-paid, pre-addressed form the voter registrar mails to the voter with the confirmation notice so that the voter can respond to the confirmation notice.

(2) Action on application by registrar (Texas Election Code, Chapter 13,

Subchapter C). There are no additional state procedures required by the NVRA. The Act requires that the voter registrar notify the applicant of the status of the applicant's registration. Current state law requires that the voter registrar send the voter a voter registration certificate if the application is valid and accepted. The voter registrar must also notify the voter if the application was rejected, challenged, or if the application is a duplicate of a current registration.

(3) Application files (Texas Election Code, Chapter 13, Subchapter D). There are no additional state procedures required by the NVRA. State law requires three types of application files to be kept. One file contains the application of each person who has a current voter registration, one file that contains the applications of each person whose registration was canceled, and one file for all rejected applications. For voters whose names are designated with an "S" on the original list of registered voters, the application is maintained in the file with other voters who have current voter registrations.

(4) Initial registration (Texas Election Code, Chapter 13, Subchapter F) . If the initial certificate is delivered to the applicant by mail and it is returned as undeliverable, the voter registrar shall mail a confirmation notice by forwardable mail to the last known address of the applicant. There are no other additional state procedures required by the NVRA for issuing the initial voter registration certificates to registered voters.

(5) Renewal of registration (Texas Election Code, Chapter 14, Subchapter A). Voter registrars shall continue to mail renewal certificates to all voters who have a current registration and are not on a suspense list. The renewal certificates will be mailed during the same time period as provided by state law, that is, on or after November 15 but before December 6 of each odd-numbered year.

(6) Return of renewal certificates (Texas Election Code, Chapter 14, Subchapter B).

(A) The registrar shall maintain a list of the renewal certificates mailed and returned as undeliverable. The registrar shall retain the list for two years after the last day of the mailing of the certificates.

(B) The voter registrar shall send the Secretary of State not later than January 2 following the mailing of the renewal certificates a list of all voters whose certificates were returned. The list shall be in the form prescribed by the Secretary of State.

(C) The registrar shall place an "R" notation, or similar notation approved by the Secretary of State, next to each voter's name on the original list of registered voters whose certificates were returned. The "R" notation shall be designated next to each voter's name by January 1 following the mailing of the renewal certificates. Voters will continue to have an "R" designation next to their name until the voter's registration is corrected, canceled, or until the voter's status is changed from an "R" to an "S", which means the voter failed to respond to a confirmation notice.

(7) Procedure following the return of renewal certificates

(A) When a voter's certificate is returned to the voter registrar, the voter registrar shall mail a confirmation notice to the voter requesting a verification of a change of address. The registrar shall send the notice to the voter at the last known address of the voter by forwardable mail.

(B) The confirmation notice to each voter whose certificate was returned shall be mailed no later than March 1 following the mailing of the renewal certificates. The registrar shall include with the confirmation notice to the voter, a pre-addressed, pre-paid confirmation return notice form so that the voter may respond to the inquiry. The Secretary of State suggests that the voter registrar in each county consult with the local postmaster concerning the feasibility of obtaining a business reply permit to be used for this purpose. The Secretary of State will prescribe the language of the confirmation return notice so that it will fit on a 4" x 6" postcard, but a county may print the notice in a different format.

(C) The voter has 30 days to respond to the confirmation notice. If the voter fails to reply within the 30 days, the voter registrar shall change the "R" notation to an "S" notation on the original list of registered voters and note the date that the voter was placed on the suspense list.

(D) The voter's name shall be removed from the suspense list on November 30 following the passage of two federal general elections, if the voter failed to correct the voter's address either at the polling place or by notifying the voter registrar. The voter's registration is canceled and the voter's application shall be placed in the inactive file for two years following the cancellation The voter's duplicate of the initial voter registration certificate is also filed with other canceled registrations.

(8) Voting on statement of residence (Texas Election Code, Chapter 14, Subchapter C) There are two categories of voters who are entitled to vote by returning to their old precinct after moving as long as the voters still reside in the county and in the political subdivision in which they are offering to vote. Each voter who has moved must first sign a statement of residence prior to being accepted to vote.

(A) The first category of voters who may vote at their old precinct are those who are suspected of moving and have an "R" or "S" notation next to their names on the original list of registered voters.

(B) The second category of voters who are entitled to vote in their old precinct after moving are those who do not have any notation next to their name but have in fact moved. Regardless of how long ago a voter has moved, the voter may go back and vote in the old precinct as long as the voter is on the list of registered voters and resides in the county of registration and the political subdivision in which the voter is offering to vote. The voter must sign a statement of residence before being allowed to vote.

(9) Voter registration certificate (Texas Election Code, Chapter 15, Subchapter A). The instructions on the back of the 1994-1995 voter certificate will need to be changed to reflect the NVRA changes. The Secretary of State will prescribe new language to replace language on the back of the voting certificate. The voter registrars will need to provide the new law to persons who will have an initial registration effective on January 1, 1995, or later, or to any voter who will receive a corrected or replacement certificate during the 1995 calendar year. The voter registrars may choose one of the following three methods to provide the new law:

(A) order new voter registration certificates with the new language printed on the back of the certificate;

(B) order stickers to be placed on the back of the certificates the voter registrar has in stock; or

(C) send a notice which contains the new instructions to the voter when the new or corrected certificate is mailed. When the 1996-97 voter registration certificates are mailed during November/December 1995, the new certificates will reflect the new laws regarding voting.

(10) Correction of registration information (Texas Election Code, Chapter 15, Subchapter B).

(A) State law provides for correcting voter registration records under certain circumstances (Texas Election Code §15.022). Under the NVRA, there will be a

slight procedural change. There will no longer be a procedure for a 60-day challenge based on residence; however, the registrar may remove the voter from the list of registered voters or make the necessary corrections if the voter responds to a confirmation notice and indicates that the voter has moved to a different address. The new procedure to replace the 60-day challenge based on residence will be discussed in subparagraph (B) of this paragraph.

(B) If the voter's name appears on the list of registered voters with an "S" notation and the voter registrar receives a notice from the voter that the voter has moved to a different address within the county, the registrar shall delete the "S" next to the voter's name on the date that the new registration will be effective in the precinct. The voter registrar will correct the address and place the voter in the proper precinct and mail the voter a corrected certificate with an effective date of 30 days from the date of receipt of the change. If the change of address is in the same precinct, the effective date of the certificate remains the same as the current certificate.

(11) Certificate files (Texas Election Code, Chapter 15, Subchapter C). State law is not affected by NVRA. When voters have been designated with an "S", the voters' certificate remains in the active file until the voter has actually been canceled from the list.

(12) Cancellation of registration (Texas Election Code, Chapter 16, Subchapter A and B). There are two new procedures for canceling registered voters under the NVRA in addition to the procedures provided under current state law.

(A) The voter registrar may cancel the registration of a voter if the voter files a written request to have the voter's name removed from the list. The voter's name shall be removed from the list of registered voters on the date that the registrar receives the request. The Secretary of State will prescribe a sample form for this purpose; however, the voter is not required to use the prescribed form.

(B) If the registrar receives a response to the confirmation notice from the voter after the voter is placed on the suspense list and the confirmation notice response indicates a residence address outside the county, the registrar shall cancel the voter's registration. For example, if the voter fails to respond within 30 days after the confirmation mailing has been mailed, the voter registrar will place an "S" notation next to the voter's name on the list of registered voters. Any time that the voter responds to the confirmation mailing after that time, the voter registrar will proceed to either cancel or correct the registration depending on the response.

(13) Cancellation of registration following return of renewal certificate. All voters designated with an "S" because of failure to respond to a confirmation notice mailed because the voter's renewal certificate was returned to the voter registrar, shall be canceled on November 30 following the passage of two federal general elections from the date the voters were designated with an "S".

(14) Cancellation following investigation by registrar.

(A) The voter registrar may use the investigation procedure to determine whether a registered voter is a resident of the county or is currently eligible for registration. There are not any changes in current state law if the voter registrar sends a notice of investigation for any reason other than residence. For example, if the registrar sends a notice of investigation to determine whether a person has been convicted of a felony, the voter has 60 days to respond to the notice or the voter's registration will be canceled.

(B) If the registrar has reason to believe that a voter has moved, the registrar shall mail the voter a confirmation notice to confirm the voter's residence address. The registrar must include the preaddressed, pre-paid confirmation return response form for the voter to use to reply to the voter registrar. The voter has 30 days to respond to the notice. If the registrar does not receive a response within 30 days, the voter registrar shall place an "S" next to the voter's name on the list of registered voters and record the date. The voter shall be canceled from the list of registered voters on November 30 after two federal general elections have passed since the date the voter was designated with an "S" if the voter has not responded to the confirmation notice or voted within this time period.

(C) All suspense voters will be canceled on November 30 following two federal elections after the date the voter is designated as a suspense voter, if the voter fails to vote or respond to the confirmation notice during this time. Why the voter was designated with an "S" does not affect how the cancellation date is calculated. The voter registrar must note the date the voter was designated with an "S" in the voter's file (computer or paper) to determine the proper cancellation date. The cancellation dates for the next several years are as follows:

Voters designated with an "S" between: January 1, 1995 through November 5, 1996

Cancellation Date: November 30, 1998

Voters designated with an "S" between: November 6, 1996 through November 3, 1998

Cancellation Date: November 30, 2000

Voters designated with an "S" between: November 4, 1998 through November 7, 2000

Cancellation Date: November 30, 2002

(15) Notice of cancellation to voter. State law requires a notification to the voter if the registration is canceled under certain circumstances (Section 16.036). It is not necessary to send the voter a notice of cancellation if the voter's registration is being canceled because the voter has been designated with an "S" on the list of registered voters and failed to vote or respond to the voter registrar.

(16) Challenge of cancellation (Texas Election Code, Chapter 16, Subchapter C). NVRA does not affect the challenge of cancellation procedures.

(17) Challenge of registration (Texas Election Code, Chapter 16, Subchapter D).

(A) If the registration of one voter is challenged by the sworn statement of another registered voter, the voter registrar shall follow the procedures in current state law except when a voter is challenged based on residence.

(B) If the voter registrar receives a sworn statement challenging the registration of another registered voter in the county due to residence, the voter registrar shall follow the procedure set forth in paragraph (14) of this subsection (relating to cancellation following an investigation by registrar).

(18) Registration lists (Texas Election Code, Chapter 18, Subchapter A).

(A) Voters designated with an "S" will remain on the original list of registered voters and will be printed on the original list for all elections.

(B) Each original and supplemental list of registered voters must contain the voter's name, residence address, date of birth, and registration number, and be printed with an "R" or "S" notation if applicable to a particular voter.

(C) Persons requesting copies of the list of registered voters may request the list with or without the names of voters with the "R" or "S" notation.

(19) Registration statements (Texas Election Code, Chapter 18,

Subchapter B).

(A) Each voting year the registrar shall prepare a written statement of the number of persons in each county election precinct whose registration will be effective on January 1. The statement shall contain three categories of voters by precinct:

(i) current voters in a precinct (those voters that do not have an "R" or "S" designation);

(ii) voters who have been designated with an "R" in a precinct; and

(iii) voters who have been designated with an "S" in a precinct.

(B) The voter registrar will include in the written statement a sum of the three categories for a total number of eligible voters in a particular precinct. The registrar will also include in the written statement a total number of registered voters in the county.

(C) The preelection statements required to be filed shall include the same information as the annual statement.

(20) Registration service program (Texas Election Code, Chapter 18, Subchapter C). The voter registrar shall provide the Secretary of State five updates during a calendar year. The updates will be made between the 1st and the 16th during the months of January, March, June, September, and December. The voter registrar shall include in the September update the voters that have had the voting status of "R" changed to "S". The Secretary of State will prescribe the format of this report.

(c) Other Texas Election Code sections affected by the NVRA list maintenance.

(1) Texas Election Code, §42.006. The number of registered voters contained in an election precinct as provided for by this section of the Election Code should be determined excluding the number of voters who have been designated with an "S" next to the voters name of the list of registered voters.

(2) Texas Election Code, §51.005. To determine the number of ballots to order for a particular election, the number of voters who have been designated with an "R" or "S" on the list of registered voters shall not be included in the count of registered voters in the precinct.

(3) Texas Election Code, Chapter 277. If a law outside the Election Code requires a petition based on the number of registered voters in a particular territory, the number shall be determined by excluding the number of voters that have an "R" or "S" designation from the total number of registered voters in the particular territory. Registered voters that have an "R" or"S" designation on the list of registered voters may sign a petition if their actual residence address is covered by the territory conducting the election.

(d) Fail-safe voting.

(1) Voting in precinct of former residence.

(A) A registered voter who changes residence to another election precinct in the same county and same political subdivision for which the voter offers to vote may vote a full ballot in the election precinct of former residence, regardless of how long ago the voter moved.

(B) Before being accepted to vote, the voter must execute and submit to an election officer at the polling place a statement of residence which includes:

(i) a statement that the voter is a resident of the county;

(ii) the voter's residence address or, if the residence has no address, the address at which the voter receives mail and a concise description of the voter's residence;

(iii) the month, day, and year of the voter's birth; and

(iv) the date the statement is submitted to the election officer.

(C) The voter registrar shall provide to the general custodian of election records a suitable number of statements of residence for use in each applicable election.

(D) The voter registrar shall retain each statement of residence on file with the voter's registration application.

(2) Qualifying a voter. Before any voter may be accepted for voting, the election officer must ask the voter if the voter has moved within the county. If the voter has moved within the county, the voter must sign the statement of residence before being accepted to vote.

(3) Processing applications for ballot by mail.

(A) If a voter applies for a ballot by mail and the voter has an "R" or "S" designation next to the voter's name on the list of registered voters, the early voting clerk shall mail the voter the statement of residence and follow the procedures stated in subparagraph (B)of this paragraph.

(B) If the early voting clerk receives an application for ballot by mail from a registered voter whose residence address on the application for ballot by mail does not match the residence address on the voter registration list, the early voting clerk shall mail the voter a ballot together with a statement of residence and an explanation to the voter that if the statement is not returned in the carrier envelope or indicates that the voter no longer resides in the political subdivision, the ballot will be rejected by the early voting ballot board. The early voting clerk shall make an indication on the outside of the carrier envelope that a statement of residence is enclosed. Procedures for qualifying these types of ballots and processing the ballots shall be accomplished in accordance with the procedures set forth in the Secretary of State handbook for the early voting ballot board.

(C) If the early voting clerk cannot determine that the applicant is a registered voter in the political subdivision because the residence address does not match and other information on the application fails to identify the applicant as a registered voter, then the clerk shall reject the application and send the voter a notice of rejection. For example, if ten Mike Smiths were registered to vote and the early voting clerk could not determine which Mike Smith had applied for an early ballot because the residence address did not match and the application lacked any other specific identifying information, then the application must be rejected.

(e) Record keeping and reporting. The Secretary of State will be required to make the following report each odd-numbered year to the FEC, which means the following information must be maintained by the counties and filed with the Secretary of State:

(1) The total number of registered voters statewide, including voters designated with an "S", in the federal general election two years prior to the most recent federal general election as shown on the pre-election statement required to be filed not later than 20 days before each general election for state and county officers;

(2) The total number of registered voters statewide, including voters designated with an "S", in the most recent federal election as shown on the pre-election statement;

(3) The total number of new valid registrations accepted statewide between the past two federal general elections, including all registrations that are new to a county, but excluding all applications that are duplicates, rejected, or report only a change of name, or address within the

county.

(4) The total number of registrants statewide that were designated with an "S", at the close of the most recent federal general election as shown on the pre-election statement;

(5) The total number of registrations statewide that were, for whatever reason, deleted from the registration list, including voters designated with an "R" or "S", between the past two federal general elections;

(6) The statewide number of registration applications received statewide (regardless of whether they were valid, rejected, duplicative, or address or name changes) that were received from or generated by each of the following categories, between the past two federal general elections:

(A) All motor vehicle offices statewide;

(B) Mail;

(C) All public assistance agencies that are mandated as registration sites under the Act;

(D) All state-funded agencies primarily serving persons with disabilities;

(E) All Armed Forces recruitment offices;

(F) All other agencies designated by the state;

(G) All other means, including but not limited to, in person, deputy registrars, and organized voter registration drives delivering forms directly to registrars;

(7) The total number of duplicate registration applications statewide that, between the past two federal general elections were received in the appropriate election office and generated by each of the categories described in paragraph (6)(i)-(vii) of this subsection;

(8) The statewide number of confirmation notices mailed out between the past two federal general elections and the statewide number of responses received to these notices during the same period;

(9) Answers to a series of questions with categorical responses for the state to indicate which options or procedures the state has selected in implementing the NVRA or any significant changes to the state's voter registration program; and

(10) Any additional information that would be helpful to the Commission for meeting the reporting requirement under 42 U.S.C. 1973gg-7(a)(3).

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

Issued in Austin, Texas, on September 2, 1994.

TRD-9447545 Machree Garrett Gibson
Assistant Secretary of State
Office of the Secretary of State

Earliest possible date of adoption: October 10, 1994

For further information, please call: (512) 463-5650 or 1-800-252-8683

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Part V. General Services Commission

Chapter 113. Central Purchasing Division

Surplus Property Sales

• 1 TAC §§113.71-113.76

(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 General Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The General Services Commission proposes the repeal of §§113.71-113.76, concerning state surplus property sales. Effective September 1, 1993, the General Services Commission, Intergovernmental Services Division, assumed the responsibilities for state and federal surplus property. New §§126.1-126.5 and §§126.20-126.21 are being proposed concurrently with this repeal to reflect these changes.

Sal Valdez, director, Intergovernmental Programs Division, has determined that for the first five-year period the repeals are in effect there will be no fiscal impact on state or local government as a result of administering or enforcing the repeals.

Mr. Valdez 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 the repeals are a clear delineation of responsibilities for the sale, transfer and disposition of state and federal surplus property. There will be no effect on small businesses. There will be no new anticipated economic cost to persons who are required to comply with the proposed repeals.

Comments on the proposals may be submitted to Judith M. Porras, General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register*.

The repeals are proposed under Texas Civil Statutes, Article 601b, §9.04 and §9.09, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of Article 9.

The following statute is affected by these repeals: Texas Civil Statutes, Article 601b.

§113.71. General.

§113.72. Definitions.

§113.73. Sale and Disposition of Surplus and Salvage Property.

§113.74. Proceeds.

§113.75. Memorandum of Understanding.

§113.76. Purchase of Chairs.

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

Issued in Austin, Texas, on August 30, 1994.

TRD-9447443 Judith Monaco Porras
General Counsel
General Services Commission

Earliest possible date of adoption: October 10, 1994

For further information, please call: (512) 463-3960

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Chapter 121. Telecommunications Services Division

• 1 TAC §§121.1-121.11

(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 General Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The General Services Commission proposes the repeal of §§121.1-121.11, concerning telecommunications services in order to propose new §§121.1-121.9, which provide updated streamlined definitions, guidelines and operating procedures to insure efficient operation of the Texas Agency Network (TEX-AN) and the Capitol Complex Telephone System (CCTS).

Linda Picazo, Director of the Telecommunication Services Division, has determined that for the first five-year period there will be no fiscal impact on state government as a result of repealing these sections.

Ms. Picazo also has determined that for each of the first five years the repeals are in effect users will benefit from improved efficiency in TEX-AN and CCTS operations. There is no anticipated economic cost to persons required to comply with the repeals as proposed. There will be no impact on small

businesses.

Comments on the proposal for repeals may be submitted to Judith Porras, General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of proposal in the *Texas Register*.

The repeals are proposed under the authority of Texas Civil Statutes, Article 601b, §10.03.

The following statute is affected by these repeals: Texas Civil Statutes, Article 601b.

§121.1. General.

§121.2. Definitions.

§121.3. Coverage.

§121.4. Commission Responsibility and Method of Contracting.

§121.5. TEX-AN Billing Process.

§121.6. TEX-AN Usage Requirement; Waiver; TEX-AN Services.

§121.7. Termination of Services.

§121.8. Operations.

§121.9. Centralized Capitol Complex Telephone System.

§121.10. TEX-AN Usage for Student's at Institutions of Higher Education.

§121.11. Capitol Complex Telephone System (CCTS) Equipment Requisition, Payment, Installation and Maintenance.

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

Issued in Austin, Texas, on August 30, 1994.

TRD-9447446 Judith Monaco Porras
General Counsel
General Services Commission

Earliest possible date of adoption: October 10, 1994

For further information, please call: (512) 463-3960

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• 1 TAC §§121.1-121.9

The General Services Commission proposes new §§121.1-121.9, concerning telecommunications services. The new sections provide updated streamlined definitions, guidelines and operating procedures to insure efficient operation of the Texas Agency Network (TEX-AN) and the Capitol Complex Telephone System (CCTS).

Linda Picazo, Director of the Telecommunications Services Division has determined that for the first five-year period there will be no fiscal impact on state government as a result of enforcing or administering the new rules.

Ms. Picazo also has determined for each year of the first five years the new sections are in effect, users will benefit from improved efficiency in TEX-AN and CCTS operations. There is no anticipated economic cost to persons required to comply with the new rules as proposed. There will be no impact on small businesses.

Comments on the proposal may be submitted to Judith Porras, General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Civil Statutes, Article 601b, Article 10, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of that article.

The following statute is affected by these rules: Texas Civil Statutes, Article 601b.

§121.1. General. The Telecommunications Services Division (TSD) of the commission is responsible for:

(1) the management of a system of telecommunications services (TEX-AN) to meet all state agencies intercity telecommunications requirements to the extent possible and to the extent that funds appropriated are available for that purpose;

(2) the provision of centralized telephone service for state agencies, each house of the legislature, and legislative agencies in the capitol complex (CCTS);

(3) the acquisition of any or all of the facilities or equipment necessary to provide TEX-AN and CCTS services;

(4) promulgation and dissemination of appropriate guidelines, and operating procedures, and publication of TEX-AN and CCTS telephone directories to insure efficient operation of TEX-AN and CCTS; and

(5) development of a system of billings and charges for services provided in operating and administering TEX-AN and CCTS.

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

CCTS users-State agencies, each house of the legislature and legislative agencies receiving CCTS services.

Local government-Counties, cities, districts, and other political subdivisions

New telephone equipment-TSD inventory of telephone equipment never used.

Reconditioned telephone equipment-Telephone equipment that has been returned to TSD inventory after use.

State agency-

(A) any department, commission, board, office, or other agency in the executive branch of state government created by the constitution or a statute of this state, except the Texas High Speed Rail Authority;

(B) the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of civil appeals, or the Texas Civil Judicial Council; or

(C) a university system or an institution of higher education as defined in Texas Education Code, §61.003, as amended, other than a public junior college.

Telecommunications equipment-Devices or apparatus which include but are not limited to telephones, teletypewriters, facsimile equipment, cables, and switches, used for various modes of transmission of telecommunications services, such as digital data, audio signals, image and video signals.

Telecommunications service provider-Local exchange carrier or interexchange carrier, that provides the circuit (path of communication) electrically, electromagnetically, by optical fiber or by acoustically coupled means between two given points with both points having sending and receiving capabilities.

Telecommunications service-Any service provided by a telecommunications service provider.

Telecommunications revolving account-An account in the Texas State Treasury into which funds received from TEX-AN users and CCTS users are transferred.

TEX-AN-Texas Agency Network. The network of telecommunications services serving the government of the State of Texas, which includes intercity long distance voice telephone service and intercity digital and/or analog service of dedicated data and special use circuits.

TEX-AN users-State Agencies, each house of the legislature, legislative agencies and Local Governments receiving TEX-AN services.

§121.3. TEX-AN Usage; Requests for TEX-AN Services.

(a) State agencies must use TEX-AN to the fullest extent possible and requests for TEX-AN services must be in writing and addressed to the TSD.

(b) Each house of the legislature and legislative agencies may contract with

the commission for TEX-AN services.

(c) Institutions of higher education authorized to use TEX-AN may allow students, who reside in the institution of higher education housing for which the institution provides telephone service, use of the institution's TEX-AN services.

(d) Local Governments that choose to use TEX-AN services must contract with the commission pursuant to the Interlocal Cooperation Act, Chapter 791, Texas Government Code Annotated.

§121.4. Waivers.

(a) Funds appropriated to State Agencies shall not be expended to enter into or renew contracts with telecommunications service providers of intercity telecommunications services without a determination from the TSD and the Department of Information Resources (DIR) that the state agency intercity telecommunications services requirement cannot be met by TEX-AN. The determination will be issued in writing as a grant of waiver.

(b) A state agency shall make a written request for a waiver to the TSD at least 90 days in advance of the state agency's scheduled date for initiation of non-TEX-AN services. The written request shall include the following information:

(1) the reason for requesting a waiver;

(2) addresses and a description of the type of facility, service and equipment at each state agency location for which a waiver is being requested;

(3) a copy of the specifications, if the contract is to be bid competitively, the lowest and best bid, or copy of the existing service contract(s), whichever is applicable;

(4) copies of all billing detail, including call detail, for the most recent billing period;

(5) a summary of all other costs for ancillary equipment or services, including maintenance services, which the state agency currently pays for or will incur through lease, lease-purchase, or purchase that are directly attributable to providing the service requested in the waiver, regardless of funding sources;

(6) verification of the availability of the ancillary service or equipment to the TSD for providing TEX-AN service and estimated costs the state agency proposes to bill to TSD for use of said services or equipment; and

(7) any other information to demonstrate that the facilities or services are cost effective to Texas state government, not a particular facility or location.

(c) The TSD will evaluate the information provided by the state agency in its waiver request and determine if the intercity telecommunications services cannot be provided by the TEX-AN network at a reasonable cost. If it is determined that it is more cost effective and in the best interest of the State for the requesting state agency to acquire non-TEX-AN services, a waiver will be granted.

(d) If granted, a waiver will be for a specific time period determined by the TSD. A contract for services obtained under waiver may not extend beyond the expiration date of the waiver.

(e) A request for the extension of a waiver must be in writing and made no later than 90 days prior to the waiver's expiration date. The requirement for resubmission of all or part of the documentation listed in subsection (b) of this section is within the TSD's discretion.

§121.5. TEX-AN Billing.

(a) Each TEX-AN user shall be billed for its respective use of TEX-AN services on a monthly basis. TEX-AN users will be billed for the following:

(1) TEX-AN user's actual minute use;

(2) TEX-AN user's actual circuit use;

(3) TEX-AN user's proportionate use (based on minute or circuit use) of common telecommunications services and/or equipment for said services provided to all or some TEX-AN users;

(4) TEX-AN user's total cost for its exclusive use of any telecommunications equipment;

(5) TEX-AN user's nonrecurring charges for any type of service provided by TSD, if applicable; and

(6) TSD's operation charge of an amount not to exceed 15% of the total of the costs listed in paragraphs (1)-(5) of this subsection.

(b) Each TEX-AN user shall make payment in full as billed to the TSD within ten days after receipt of its bill.

(c) Any institution of higher education extending TEX-AN service to students is responsible for payment directly to the commission of the total charges billed, regardless of whether it is able to collect the student's contribution of the payment.

(d) Inquiries, corrections, changes or modifications by TEX-AN users to its bill must be made in writing to the TSD within 30 days of receipt of its bill. Any adjustments to payment will be made in the subsequent billing period.

(e) In order to maintain sufficient amounts in the telecommunications revolving account to make timely payments to the telecommunications service providers, the commission may require any TEX-AN users to make advance payments based on the average of each TEX-AN user's prior three-month billing exclusive of charges described in subsection (a)(5) of this section. Advance payments which are not equal to the actual amount due for the subsequent payment period will be adjusted accordingly.

(f) All TEX-AN call detail records are maintained by the commission for a period of four years.

§121.6. TEX-AN User Responsibilities.

(a) Each TEX-AN user shall provide the TSD with the name, title, mailing address, and all telephone numbers of the employee(s) authorized to initiate, change, modify, amend or terminate TEX-AN service or listings in the TEX-AN Directory.

(b) Each TEX-AN user is responsible for insuring that TEX-AN services are used solely for TEX-AN user business by its respective employees.

(c) Upon request by the commission, an institution of higher education shall limit the hours of access for students using TEX-AN services if it is determined that the TEX-AN network cannot accommodate the student traffic.

(d) A TEX-AN user shall submit a written request to the TSD to change or terminate TEX-AN service. A termination request shall be submitted no later than 30 days prior to the termination date.

§121.7. CCTS Usage.

(a) State agencies located in the Capitol Complex must use the CCTS. Other state agencies may elect to subscribe to the CCTS.

(b) Each house of the legislature and legislative agencies shall use CCTS services at the discretion of the legislature.

(c) Requests for CCTS service may be made by telephone but must be confirmed by written authorization.

(d) Each CCTS user shall provide the TSD with the name, title, mailing address and all telephone numbers of the employee(s) authorized to initiate, change, modify, amend or terminate CCTS service or listings in the CCTS Directory.

(e) CCTS users must submit written requests to change or terminate CCTS services. A termination request shall be submitted no later than 30 days prior to the termination date.

§121.8. CCTS Billing.

(a) Each CCTS user shall be billed monthly its pro rata actual cost for use of CCTS based on the costs for operation of CCTS.

(b) Each CCTS user shall make payment in full as billed by the TSD within ten days after receipt of its bill.

(c) Inquiries, corrections, changes or modifications by CCTS users to its bill must be made in writing to the TSD within 30 days of receipt of its bill. Any adjustments to payment will be made in the subsequent billing period.

(d) In order to maintain sufficient amounts in the telecommunications revolving account to make timely payments to the telecommunications service providers, the commission may require any CCTS users to make advance payments based on the average of each CCTS user's prior three-month equipment, wiring and administrative charges Advance payments which are not equal to the actual amount due for the subsequent payment period will be adjusted accordingly.

(e) Local call detail records are not required for CCTS billing, and no such records are maintained by the commission.

§121 9. CCTS New and Reconditioned Telephone Equipment.

(a) The commission shall maintain an inventory of new and reconditioned telephone equipment for purchase by CCTS users.

(b) CCTS users may procure new and reconditioned telephone equipment by submitting a written request to the TSD.

(c) Payment to the commission for new and reconditioned telephone equipment procured from the commission is due upon installation.

(d) CCTS users may procure its telephone equipment from other sources but the telephone equipment must be compatible with the CCTS.

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

Issued in Austin, Texas, on August 30, 1994

TRD-9447447 Judith Monaco Porras
General Counsel
General Services Commission

Earliest possible date of adoption: October 10, 1994

For further information, please call (512) 463-3960

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Chapter 126. Intergovernmental Programs Division

The General Services Commission proposes new §§126.1-126.5 and §§126. 20-126.21, concerning state and federal surplus and salvage property. The new sections outline procedures for the disposition of state and federal surplus property, facilitate the acquisition of state surplus property by state agencies, political subdivisions and assistance organizations, and continue cost recovery procedures for maintenance of the public bidders list. The new sections are proposed to conform with Article 601b, Article 9, as amended by Senate Bill 381, Acts, 73rd Legislature, Regular Session (1993).

Sal Valdez, Director, Intergovernmental Programs Division, has determined that for the first five-year period the rules are in effect there will be no fiscal implication for state or local governments as a result of enforcing or administering the section

Mr. Valdez 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 sections is a more efficient system for the disposition of state and federal surplus and salvage property. There will be no effect on small business.

There will be an economic cost to persons who are required to comply with the proposed sections. Persons who apply to be on the surplus property bid list will be assessed a fee in an amount required to recover the costs of manufacturing and using the bid list.

Comments on the proposals may be submitted to Judith M. Porras, General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register*.

State Surplus and Salvage Property

• 1 TAC §§ 126.1-126.5

The new rules are proposed under Texas Civil Statutes, Article 601b, §9. 04, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of Article 9.

The following statute is affected by these rules: Texas Civil Statutes, Article 601b.

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

Assistance organization–

(A) a nonprofit organization that provides educational, health, or human services or assistance to homeless individuals;

(B) a nonprofit food bank that solicits, warehouses, and distributes edible but unmarketable food to agencies that feed needy families and individuals, and

(C) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance office of the Agency for International Development.

Personal property affixed to real property may be sold as surplus or salvage property if its removal and disposition is to carry out a lawful objective.

Political subdivision-Each political subdivision of the state and volunteer fire departments.

Property-Personal property, not including real property or any interest in real property.

Salvage property-Any personal property which through use, time, or accident is so depleted, worn out, damaged, used, or consumed that it has no value for the purpose for which it was originally intended.

State agency-Any department, commission, board, office or other agency as defined in Texas Civil Statutes, Article 601b, Article 1, §1.02, but excluding those agencies described in Article 9, §9.14. For purposes of acquiring property under these rules, the term "state agency" shall additionally include the Texas Civil Air Patrol.

Surplus Property-Any personal property which is in excess of the needs of any state agency and which is not required for its foreseeable needs. Surplus property may be used or new, but possesses some usefulness for the purpose for which it was intended or for some other purpose.

§126.2. Disposition of Surplus and Salvage Property to State Agencies, Political Subdivisions and Assistance Organizations.

(a) General. All state agencies that determine they have surplus or salvage property shall inform the commission of the kind, number, location, condition, original cost or value, and date of acquisition of the property in a form prescribed by the commission. The commission shall, in turn, provide this information to other state agencies, political subdivisions, and assistance organizations.

(b) Dissemination of Information. A listing of currently available surplus or salvage property shall be disseminated monthly to state agencies and to those political subdivisions and assistance organizations which have requested this information. The commission will additionally maintain a mailing list, renewable annually, of political subdivisions and assistance organizations. The commission may charge an amount which shall not exceed the actual costs incurred by the commission in maintaining the mail list and in producing and mailing the information on surplus and salvage property.

(c) Offering surplus or salvage property to state agencies, political subdivisions and assistance organizations.

(1) For the first 35 days following dissemination of the monthly surplus listing, the notifying or reporting agency shall establish a price, if any. The first state agency, political subdivision or assistance organization that agrees to the established price before the expiration of 35 days shall be entitled to the property; provided, however, first priority shall be given to a state agency in the event that a competing equivalent request is received from a political subdivision or assistance organization.

(2) If a transfer is made to a state agency, the participating agencies shall report the transaction to the comptroller as provided by law and the comptroller's State Property Accounting System. The comptroller shall then debit and credit the proper appropriations within the systems maintained by the comptroller.

(3) If a transfer or acquisition of the property is not arranged within 35 days after the dissemination of the surplus list as provided in subsection (b) of this section, the commission shall dispose of the surplus or salvage in accordance with §126.3 of this title (relating to Disposition of Surplus).

§126.3. Disposition of Surplus and Salvage Property to the Public.

(a) General. If no state agency, political subdivision, or assistance organization desires to receive any property reported as surplus or salvage, the commission may dispose of the property by sealed bids or auction, or delegate to the state agency having possession of the property the authority to sell the property on a competitive bid basis.

(b) Mailing list of bidders. The commission will maintain a mailing list of companies or individuals who have applied to bid on surplus or salvage property. The commission shall charge an annual subscription fee to recover the costs associated with maintaining and using the bidders list. Names may be deleted from the mailing list for: failure to bid, failure to make payment, failure to remove awarded items, or failure to renew the annual subscription fee. A bidder who has been removed from the bidders list for failure to pay for or remove surplus property may not be reinstated until a written request has been presented to and approved by the Director of the Intergovernmental Programs Division.

(c) Purchaser Fee. The commission or the agency shall assess and collect from the purchaser a 2.5% fee over and above the proceeds from the sale of the property to recover the costs associated with the sale of the property.

(d) Sealed bids. Sealed bids will be handled in accordance with §113. 5 of this title (relating to bid submission, bid opening, and tabulation).

(1) If the value of any property or lot of property, either surplus or salvage, is estimated to be worth over $1,000 of resale value, the sale shall be advertised at least one time in at least one newspaper of general circulation in the vicinity where the property is located.

(2) When a bid deposit is required, the deposit must be in the amount specified in the bid invitation. Only the following will be considered as meeting the bid deposit requirements: a cashier's check, a certified check, a money order, or cash in the amount specified in the bid invitation. Failure to include a bid deposit in the proper amount will automatically disqualify a bid.

(3) The commission will notify the successful bidder or bidders, on a sealed bid sale of surplus or salvage property, that an award has been made to them and specify a period of time for payment. In the event that a successful bidder fails to make payment within the specified time, the commission may retain the bid deposit and consider it forfeited.

(4) When a successful bidder has paid the full amount due for the purchase of surplus or salvage property obtained through a sealed bid sale, the commission shall notify both the successful bidder and the agency holding the title of the surplus or salvage and authorize the transfer of possession. In the case of vehicles or other items which require title transfer, it shall be the responsibility of the agency holding title to complete the transfer of title to the successful bidder.

(e) Auctions. Surplus or salvage sold through the auction method shall be accompanied by an auctioneer's paid receipt. The auctioneer's paid receipt will serve as the authorization of the commission that the purchaser has in good faith complied with the conditions of the sale. In the case of vehicles or other items carrying titles, the agency holding the original title shall be responsible for the transfer to the successful bidder.

(f) Delegation of authority to state agency. If the commission determines that it is in the best interest of the state for an agency to dispose of its own surplus or salvage property to the public, it may authorize the agency to do so; however, an agency authorized to sell its own property to the public shall always seek competitive bids. The agency shall follow procedures provided by the commission at the time the delegation is granted and shall provide a report of the proceeds by assigned sale number no later than September 10 of each year for the prior fiscal year.

(g) Firearms. The purchaser of a surplus firearm must be a licensed firearms dealer.

(h) Rejection of bids. The state reserves the right to reject any bid or part of a bid, or waive minor technicalities.

(i) No resale value. If the commission or agency advertises surplus or salvage property for sale and receives no bids, or if items declared surplus or salvage by an agency have, in the judgment of the agency, no resale value, the agency may delete and dispose of the property in a manner to best serve the interest of the state.

(j) Delegation of deletion authority to the state agencies. The commission hereby delegates to the agency the authority to delete surplus or salvage property on the State Property Accounting System after disposition in accordance with these rules.

§126.4. Proceeds.

(a) The proceeds from the sale of any surplus or salvage property, less the cost of advertising the sale, the cost, if any, of auctioneer services, and the amount of the fee collected under §126.3(c) of this title (relating to Sale and Disposition of Surplus and Salvage Property), shall be deposited to the credit of the item of appropriation to the agency for which the sale was made. The portion of the proceeds from the sale of any surplus or salvage property equal to the costs of advertising the sale and the costs of auctioneer services, if any, shall be deposited in the State Treasury to the credit of the item of appropriation to the Commission from which such costs were expended. The fee collected under §126.3(c) of this title shall be deposited in the State Treasury to the credit of the general revenue fund.

§126.5. Purchase of Chairs.

(a) The commission shall determine the fair market value of the chair which an appointed or elected official or executive head of an executive or legislative agency other than the legislature used during his or her tenure of service and which the official desires to purchase upon vacation of office or termination of service.

(b) The property manager of the state agency shall submit the following information about the chair to the commission:

(1) acquisition date;

(2) original cost;

(3) inventory number;

(4) description of chair including brand and model number;

(5) current condition;

(6) current estimated value; and

(7) name of the appointed or

elected official or executive head of the state agency and the date of vacation of office or termination of service.

(c) The commission will determine the fair market value of the chair and notify in writing the property manager of the state agency requesting the determination. Upon payment of the determined fair market value of the chair, the property manager may transfer the chair to the state official and remove the chair from any inventory of personal property.

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

Issued in Austin, Texas, on August 30, 1994.

TRD-9447444 Judith Monaco Porras
General Counsel
General Services Commission

Earliest possible date of adoption: October 10, 1994

For further information, please call: (512) 463-3960

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Federal Surplus and Salvage Property

• 1 TAC §126.20, §126.21

The new rules are proposed under Texas Civil Statutes, Article 601b, §9. 04, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of Article 9.

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

Donee-An organization certified by the commission as eligible under federal agency regulations to receive and utilize federal surplus property.

General Services Administration-A federal agency having authority for the disposition and donation of federal surplus property.

Nonprofit Organization-An organization that provides educational, health or human services or assistance to individuals.

Political subdivision-Each political subdivision of the state, including counties, municipalities, and public school district.

Property-Personal property, not including real property or any interest in real property.

Surplus Property-Any personal property which is in excess of the needs of any federal agency and which is not required for its foreseeable needs. Surplus property may be used or new, but possesses some usefulness for the purpose for which it was intended or for some other purpose.

Texas State Plan of Operation-A document outlining the methods by which the commission will implement the rules and regulations as set forth by the General Services Administration.

§126.21. Donation.

(a) Donations. The commission will obtain and donate federal surplus property as provided by federal laws and regulation. Donations of the property will be limited to state agencies, political subdivisions, and nonprofit organizations which have been certified as donees meeting federal eligibility requirements.

(b) Cost recovery. Fees may be charged to donees to recover the costs of administering the program. Any fund established by these fees shall only be used for the support of this program.

(c) Public Auction. Property that the commission does not donate may be disposed of by public auction. The commission will be responsible for providing auctioneering services, unless such services are provided by the General Services Administration.

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

Issued in Austin, Texas, on August 30, 1994.

TRD-9447445 Judith Monaco Porras
General Counsel
General Services Commission

Earliest possible date of adoption: October 10, 1994

For further information, please call: (512) 463-3960

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TITLE 22. EXAMINING BOARDS

Part XIV. Texas Board of Veterinary Medical Examiners

Chapter 573. Rules of Professional Conduct

Supervision of Personnel

• 22 TAC §573.10

(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 Texas Board of Veterinary Medical Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin)

The Texas Board of Veterinary Medical Examiners is proposing to repeal the current §573.10, concerning Direct Supervision of Lay Personnel and replace it with a new version which addresses those tasks Animal Technicians and Registered Veterinary Technicians may perform and under what degree of supervision.

Ron Allen, Executive Director of the Board, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Allen also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal is that this rule will allow technicians to provide assistance to veterinarians, and still ensure that they are adequately supervised by licensed veterinarians. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the repeal.

Comments concerning this rule may be addressed to the Texas Board of Veterinary Medical Examiners, 1946 South IH-35, Suite 306, Austin, Texas 78704, (512) 447-1183.

A public hearing concerning the new rule will be held Monday, September 19, 1994, in Room 106 of the John Reagan Building, 105 West 15th Street (15th and Congress Avenue), Austin, Texas. The hearing will begin at 9:00 a.m. and adjourn at noon.

The repeal is proposed under the authority of the Veterinary Licensing Act, §7(a), Texas Civil Statutes, Article 8890, which state "The Board may make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act."

This repeal affects §7(c) of the Veterinary Licensing Act, Texas Civil Statutes, Article 8890, which state "The Board may adopt rules for the use of registered veterinary technicians working under the supervision of a licensee.

§573.10. Direct Supervision of Lay Personnel.

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

Issued in Austin, Texas, on August 31, 1994.

TRD-9447479 Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: October 10, 1994

For further information, please call. (512) 447-1183

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The Texas Board of Veterinary Medical Examiners is proposing new §573. 10, concerning Supervision of Lay Personnel in accordance with §7(c) of the Veterinary Licensing Act, Texas Civil Statutes, Article 8890.

Ron Allen, Executive Director of the Board, states no data is available reflecting the number of Registered Veterinary Technicians

and/or Animal Technicians employed by veterinary clinics throughout the state, or under what degree of supervision. Therefore, the Board cannot project the cost to large or small businesses. This rule will have no effect on state or local government in the first five-year period.

Mr. Allen also has determined that the rule will allow technicians to provide assistance to veterinarians, and still ensure that they are adequately supervised by licensed veterinarians

Comments concerning this rule may be addressed to the Texas Board of Veterinary Medical Examiners, 1946 South IH-35, Suite 306, Austin, Texas 78704, (512) 447-1183.

A public hearing concerning this rule will be held Monday, September 19, 1994, in Room 106 of the John Reagan Building, 105 West 15th Street (15th and Congress Avenue), Austin, Texas. The hearing will begin at 9:00 a.m and adjourn at noon.

The new rule is proposed under the authority of the Veterinary Licensing Act, §7(a), Texas Civil Statutes, Article 8890, which state "The Board may make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act."

This rule affects §7(c) of the Veterinary Licensing Act, Texas Civil Statutes, Article 8890, which state "The Board may adopt rules for the use of registered veterinary technicians working under the supervision of a licensee."

§573.10. Direct Supervision of Lay Personnel.

(a) Official Health Documents. A licensee must personally sign any official health documents issued by the licensee. Rabies Certificates may be personally signed by the veterinarian or he/she may affix a signature by stamp issued by said licensee. The issuance of any pre-signed/stamped official health documents by a licensee is a violation of this rule.

(b) Direct Supervision. Direct Supervision, as defined by the Board, requires the presence of the licensee on the premises and his/her availability for prompt consultation and treatment.

(c) Immediate Supervision. Requires the supervisor to be in audible and visual range of the animal patient and the person treating the animal.

(d) General Supervision. Requires supervision by a responsible veterinarian being readily available to communicate with the person being supervised by the veterinarian.

(e) Veterinary Aide. Veterinary Aide is an employee of a veterinarian who assists a veterinarian in the care and treatment of animals, but is not a registered veterinary technician.

(f) Registered Veterinary Technician. Registered Veterinary Technician is a person who works under the supervision of a veterinarian and who fulfills the requirements established by an organization approved by the State Board of Veterinary Medical Examiners.

(g) Supervisor. Supervisor is a veterinarian or, if a task so provides, a registered veterinary technician.

(h) Duties of Supervising Veterinarian.

(1) The supervising veterinarian shall be responsible for determining the competency of the registered veterinary technician or veterinary aide to perform allowable animal health care tasks not otherwise prohibited by the Act or other Board rules.

(2) The supervising veterinarian of a registered veterinary technician or veterinary aide shall make all decisions relating to the diagnosis, treatment, management, and future disposition of the animal patient.

(3) The supervising veterinarian shall have examined the animal patient and established a veterinarian\client\patient relationship prior to the delegation of any animal health care task to either a registered veterinary technician or veterinary aide. The examination of the animal patient shall be conducted at such time as good veterinary medical practice requires consistent with the particular delegated animal health care task.

(4) Unless specifically so provided by the Act or other Board rules, a supervising veterinarian shall not authorize a registered veterinary technician or a veterinary aide to perform surgery, diagnosis and prognosis of animal diseases or prescription of dugs, medicines or appliances.

(5) The veterinarian may allow the registered veterinary technician, working under general supervision, to supervise veterinary aides on specific tasks as determined by the Board and as listed in subsection (j)(2) and (4) of this section.

(i) Tasks Authorized for Registered Veterinary Technicians.

(1) Immediate Supervision. A registered veterinary technician may perform the following tasks only under the immediate supervision of a veterinarian:

(A) assist veterinarian in surgery;

(B) suturing of existing surgical skin incisions;

(C) initial application of splints.

(2) Direct Supervision. A registered veterinary technician may perform the following tasks only under the direct supervision of a veterinarian:

(A) induce anesthesia by intravenous, intramuscular or subcutaneous injection or by inhalation;

(B) small animal dental prophylaxis including curettage of sulci, extraction of small animal mobile (do not require elevation) teeth, as determined by a veterinarian, and floating equine teeth;

(C) Endotracheal Intubation;

(D) intraperitoneal injections;

(E) monitoring of vital signs of anesthetized patient;

(F) Cystocentesis;

(G) Gavage;

(H) Euthanasia (all circumstances) as otherwise allowed by law;

(I) when the animal is anesthetized, those tasks listed under paragraph (3) of this subsection.

(3) General Supervision. A registered veterinary technician may perform the following tasks under the general supervision of a veterinarian, unless the animal is anesthetized, in which case these tasks require direct supervision by a veterinarian:

(A) Electrocardiography;

(B) application of bandages;

(C) catheterization of the unobstructed bladder;

(D) ear flush;

(E) radiology;

(i) patient positioning;

(ii) operation of X-Ray machines;

(iii) oral and rectal administration of radiopaque materials on medical orders of a veterinarian;

(F) injections of medications and immunological agents not otherwise prohibited by law;

(i) intramuscular;

(ii) subcutaneous;

(iii) intravenous;

(G) placement of indwelling intravenous catheters;

(H) oral medications;

(I) topical medications;

(J) laboratory (specimen collections):

(i) collection of tissue during or after a veterinarian has performed a necropsy;

(ii) urine;

(iii) Hematology;

(iv) Parasitology;

(v) exfoliative cytology;

(vi) Microbiology;

(K) administration of preanesthetic drugs;

(L) oxygen therapy;

(M) placement of nasogastric tube in small animals for nutritional purposes;

(N) fluid administration.

(j) Tasks Authorized for Veterinary Aide. The degree of supervision by a veterinarian over a veterinary aide shall be higher than or equal to the degree of supervision required when a registered veterinary technician performs the same task and shall be consistent with standards of good veterinary medical practices.

(1) Immediate Supervision by a Veterinarian. A veterinary aide may perform the following tasks only under the immediate supervision of a veterinarian:

(A) assist veterinarian in surgery;

(B) Endotracheal intubation;

(C) intraperitoneal injections;

(D) blood administration.

(2) Iimmediate Supervision by a Veterinarian or a registered veterinary technician. A veterinary aide may perform the following tasks only under the immediate supervision of a veterinarian or a registered veterinary technician:

(A) fluid administration, flow rate to be determined by a veterinarian;

(B) catheterization of unobstructed bladder;

(C) gavage.

(3) Direct Supervision by a Veterinarian. A veterinary aide may perform the following tasks only under the direct supervision of a veterinarian:

(A) monitor vital signs of anesthetized patient;

(B) laboratory (specimen collection). Collection of tissues during or after a veterinarian has performed a necropsy;

(C) Euthanasia (all circumstances) as otherwise allowed by law;

(D) small animal teeth cleaning above the gum line and floating equine teeth;

(E) when the animal is anesthetized, those tasks listed under paragraphs (4) and (5) of this subsection "direct supervision by veterinarian or RVT" and "general supervision" of these sections.

(4) Direct Supervision by a Veterinarian or a registered veterinary technician. A veterinary aide may perform the following tasks only under the direct supervision of either a veterinarian or a registered veterinary technician:

(A) initial application of bandages;

(B) ear flush;

(C) Electrocardiography;

(D) Radiology:

(i) patient positioning;

(ii) operation of X-Ray machines;

(iii) oral and rectal administration of radiopaque materials on medical orders of a veterinarian;

(E) intravenous injections of medications not otherwise prohibited;

(F) laboratory (specimen collection):

(i) Hematology;

(ii) exfoliative cytology;

(iii) Microbiology.

(5) General Supervision. A veterinary aide may perform the following tasks under the general supervision of a veterinarian. If the animal is anesthetized, the following tasks require the direct supervision of a veterinarian:

(A) Enema;

(B) intramuscular or subcutaneous injections of medications and immunological agents not otherwise prohibited;

(C) oral medications;

(D) topical medications;

(E) administering medication through an established intravenous catheter;

(F) laboratory (specimen collection):

(i) Collection of voided urine and fecal material;

(ii) Parasitology (except skin scraping);

(G) oxygen therapy;

(H) follow-up bandages changes.

(k) Emergency Care. A licensee, in an emergency situation where prompt treatment is essential for the prevention of death or alleviation of extreme suffering, may, after determining the nature of the emergency, and the condition of the animal, issue treatment directions to an unlicensed person by means of telephone or radio communication. The Board can take action against a veterinarian if, in the Board s sole discretion, the veterinarian uses this privilege to circumvent subsection (b) of this section. The veterinarian assumes full responsibility for such treatment. However, nothing in this rule requires a licensee to accept a case under these circumstances.

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

Issued in Austin, Texas, on August 31, 1994.

TRD-9447478 Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners

Proposed date of adoption: October 10, 1994

For further information, please call: (512) 447-1183

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 33. Early and Periodic Screening, Diagnosis, and Treatment

Subchapter E. Medical Phase

• 25 TAC §33.140

On behalf of the State Medicaid Director, the Texas Department of Health (department) proposes an amendment to §33.140, concerning the Early and Periodic Screening, Diagnosis, and Treatment-Comprehensive Care Program (EPSDT-CCP). The amendment will allow payment for vaccines not covered elsewhere in Medicaid. Currently, Purchased Health Services (Medicaid) covers vaccines for influenza and pneumococcal disease, and EPSDT covers vaccines for childhood immunizations. The proposed amendment will allow the EPSDT-CCP to provide additional special immunizations in certain instances when medically necessary.

Anthony D. Lane, Chief of Staff, Health Care Delivery Associateship, has determined that for the first five-year period the section will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the section as proposed.

Mr. Lane also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section as proposed will be the savings in future program costs by providing immunizations to children who are at risk for preventable diseases. Coverage of these special vaccines will also enhance the quality of life for the children who receive them. There is no anticipated economic cost to small businesses or individuals. There is no impact on local government.

Oral and written comments on the proposal may be submitted to Patti Patterson, M.D., Chief, Bureau of Women and Children, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. Public comments will be accepted for 30 days after the publication of the section in the *Texas Register*.

The amendment is proposed under the Human Resources Code, §32.021(c), and Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted to the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the EPSDT program, and under Chapter 15, §1.07, 72nd Legislature, 1991, First Called Session.

The proposed amendment will affect Human Resources Code, Chapter 32.

§33.140. Early and Periodic Screening, Diagnosis, and Treatment-Comprehensive Care Program Providers (EPSDT-CCP). The following are approved EPSDT-CCP provider types and the approved Texas Medical Assistance (Medicaid) Program reimbursement methodology for each provider type.

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

(14) Vaccines. The department or its designee makes direct payment for the provision of vaccine not covered elsewhere at the lesser of the billed amount or the actual cost of the vaccine.

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

Issued in Austin, Texas, on September 1, 1994.

TRD-9447504 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Proposed date of adoption: October 28, 1994

For further information, please call. (512) 458-7700

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 1. Executive Administration

Vacancies

• 31 TAC §1.3

The General Land Office proposes an amendment to §1.3, regarding Fees. The amendment describes the fees the agency will charge for copies of public records.

Section 1.3 is amended to comply with House Bill 1009, Chapter 428, Acts of the 73rd Legislature, 1993, which requires state agencies to adopt rules setting forth the charges the agency will make for copies of public records.

Judith Dale, senior deputy, has determined that there may be fiscal implications as a result of enforcing or administering the amendment. The agency is unable to determine the costs because such costs will depend on the unknown type and number of requests received by the agency. However, Ms. Dale has determined that the fiscal effect will be minimal because current agency charges for records are consistent with General Services Commission's charges. There will be no effect on local government as a result of enforcing the proposed amendment.

Ms. Dale also has determined that for each year of the first five years that the amendment is in effect the benefit to the public will be clarification of charges and access to public records provided by the agency. The estimated cost to persons required to comply with this amendment will be determined by the number and types of records requested from the General Land Office.

Comments on the proposed amendment may be submitted to Maria Elena Ramon, Texas General Land Office, 1700 North Congress Avenue, Room 630, Austin, Texas 78701, Fax: (512) 463-6311. Comments must be received by 5:00 p.m. on Monday, October 3, 1994.

The amendment is proposed under the Texas Natural Resources Code, §§31. 064, 31.051, and 33.063, which provides the General Land Office with the authority to set and collect fees and make and enforce rules consistent with the law; and Texas Government Code, §552.261, which provides the General Land Office with the authority to adopt rules specifying the charges the agency will make for copies of public records.

The Texas Government Code, Chapter 552, and Texas Natural Resources Code, §31.064, are affected by the proposed amendment.

§1.3. Fees.

(a) (No change.)

(b) General Land Office fees. The commissioner is authorized and required to collect the following fees where applicable.

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

(9) Duplication fees-Archival records:

(A)-(F) (No change.)

[(G) diskette copies:

[(i) 3 1/2-inch diskette (hard): $3. 00;

[(ii) 5 1/4-inch diskette (soft): $1.00;

[(H) all other duplication and information-processing fees: based upon actual cost of duplication, as determined by the General Land Office.]

(10) Duplication fees-Other records:

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

(i) Full Cost–The sum of all direct costs plus a proportional share of overhead, or indirect costs. Full cost will be determined in accordance with generally accepted methodologies. The General Land Office may utilize the cost methodology adopted by the Council on Competitive Government to determine full cost.

(ii) Nonstandard-size copy–A copy of public information that is made available to a requestor in any format other than a standard-size paper copy. Microfiche, microfilm, diskettes, magnetic tapes, CD-ROM, slides and nonstandard-size paper copies are examples of nonstandard-size copies.

(iii) Readily available information–Information that already exists in printed form, or information that is stored electronically and is ready to be printed or copied without requiring any programming, or information that already exists on microfiche or microfilm. Information that requires a substantial amount of time to locate or prepare for release is not readily available information.

(iv) Standard-size copy–A printed impression on one side of a piece of paper that measures up to 8 1/2 by 14 inches. Each side of a piece of paper on which an impression is made is a single copy. A piece of paper that is printed on both sides is counted as two copies.

(v) Archival records–Records maintained in the Archives and Records Division of the Texas General Land Office.

(B) The following is a summary of the charges for copies of public records maintained by the General Land Office other than archival records or other records for which a fee is listed in this subsection:

(i) standard-size paper copy, per page: $.10;

(ii) nonstandard-size copy:

(I) paper copy, per page: $.50;

(II) diskette, each: $1.00;

(III) magnetic tape, each: $10;

(IV) VHS video cassette, each: $2.50;

(V) audio cassette, each: $1.00;

(VI) other: actual cost;

(iii) personnel charge, per hour: $15;

(iv) overhead charge: 20% of personnel charge;

(v) microfiche or microfilm charge:

(I) paper copy, per page: $.25;

(II) fiche or film copy: actual cost;

(vi) remote document retrieval: actual cost;

(vii) computer resources charge:

(I) mainframe, per minute: $17.50;

(II) midsize, per minute: $3. 00;

(III) client/server, per hour: $1.00;

(IV) PC or LAN, per minute: $.50;

(viii) programming time charge, per hour: $26;

(ix) fax charge:

(I) local call, per page: $.10;

(II) long distance, same area code, per page: $.50;

(III) long distance, different area code, per page: $1.00;

(x) miscellaneous supplies: actual cost;

(xi) all other duplication and information-processing fees: based upon actual cost of duplication, as determined by the General Land Office.

(C) The General Land Office will provide the requesting party an estimate of the cost of providing the information requested prior to filling the request. Payment may be required in advance if the estimated cost exceeds $10.

(D) The General Land Office uses the methods and procedures adopted by the General Services Commission in §§111.61-111.70 of this title (relating to Cost of Copies of Open Records) in determining the cost of providing copies of public information.

(E) A personnel charge, overhead charge and remote document retrieval charge will not be charged for requests for copies of 50 pages or less of readily available information in standard-size form.

(F) The General Land Office does not charge for making available for inspection public information maintained in standard-size form.

(G) To the extent possible, the General Land Office will attempt to accommodate a requesting party by providing information in the requested format.

(11)[(10)] Genealogy search:

(A) per name: $3.00;

(B) field notes research, per quarter hour (minimum $10): $10;

(C) other research of the official records of the General Land Office, per hour (minimum 1/2 hour): $25.

(12)[(11)] Mailing fees:

(A) mailing tubes, each: $1.75;

(B) registered mail, each item: $5.50;

(C) handling and preparation for mailing, each item: $1.00.

(13) [(12)] Certification:

(A) individual instruments or maps: $2. 00;

(B) contents of complete files, each file: $25;

(C) copy of official Spanish translations, each: $25;

(14)[(13)] Publications:

(A) abstract volume (on microfiche). $12.50;

(B) abstract volume supplement: $10;

(15)[(14)] Submerged lease data:

(A) annual subscription rate: $300;

(B) monthly rate. $25;

(C) single copy, subscriber: $37 50,

(D) single copy, non-subscriber: $75;

(E) energy information service, per year $180,

(F) magnetic tape, per tape: $165,

(16)[(15)] Geophysical and geochemical exploration:

(A) non-Relinquishment Act lands

(i) permit application filing fee: $100;

(ii) geophysical fees for bays, other tideland areas, and the Gulf of Mexico:

(I) unleased tracts: $200 per each day of the full permit term;

(II) leased tracts: no charge;

(III) combination of unleased and leased tracts: $200 per each day of the full permit term;

(iii) exploration inspection fees for leased and unleased bays, other tideland areas, and the Gulf of Mexico: $100 per each day of the full permit term;

(iv) geochemical surface damage fees for leased and unleased uplands: $200 per crew per each day of the full permit term,

(v) geophysical surface damage fees for leased and unleased uplands

(I) dinoseis, vibrations, and weight drop: $850 per line mile plus, if explosives are used in conjunction with or supplemental to these energy sources, $150 per shot hole;

(II) each shooting crew, regardless of number of shot holes: $900 per line mile;

(III) gravity meter and/or magnetometer: $200 per crew per each day of the full permit term;

(IV) other geophysical exploration techniques: negotiable;

(vi) bottom damages fees.

(I) Gulf of Mexico when bottom damage will occur and in bays and other tideland areas: $100 per each day of the full permit term;

(II) Gulf of Mexico when no bottom damage will occur: no charge; if bottom damage does occur during the permit term, the $100 per each day of the full permit term will be charged;

(B) Relinquishment Act lands:

(i) permit application filing fee: $100;

(ii) all fees for surface damages, if any, are to be negotiated with the surface owner;

(C) permit extension fees: all fees set out herein, except the permit application filing fee.

(17)[(16)] Miscellaneous services and fees:

(A) in-kind contract maintenance fee. Processing and accounting for in-kind oil, gas, and other related product contracts, from purchaser of state-owned products: per barrel delivered: $.05; per MMBTU delivered: $.03;

(B) Relinquishment Act lease processing fee: $100;

(C) highway right-of-way lease processing fee, including preparation of lease: $100;

(D) pooling application processing fee, including preparation and filing of pooling agreements: $100,

(E) oil, gas, and mineral lease application and filing fee, including processing, lease preparation, and filing of any oil, gas, or mineral lease not subject to other processing or nomination fees: $100;

(F) tract nomination fee, oil, gas, or mineral sealed bid lease sale fee: $100;

(G) special sale and lease fee, sealed bid sale, as provided by the Natural Resources Code, §32.110: 1.5% of the bid amount;

(H) prospect permit filing fee: $50;

(I) insufficient check fee (for each check returned): $25;

(J) the Natural Resources Code, Chapter 51, evaluation fee: 1.5% of the appraised value of the subject property, as determined by the Asset Management Division of the General Land Office.

(c) (No change.)

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

Issued in Austin, Texas, on September 2, 1994.

TRD-9447536 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption: October 10, 1994

For further information, please call: (512) 305-9129

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TITLE 34. PUBLIC FINANCE

Part II. Texas State Treasury

Chapter 11. Cigarette and Tobacco Products Tax

Subchapter B. Cigarette Tax

• 34 TAC §§11.53-11.55

The Texas State Treasury proposes new §§11.53-11.55, concerning the issuance of cigarette tax stamps to the Texas Alcoholic Beverage Commission for use at border ports of entry and the disposition of unstamped cigarettes seized by the Texas Alcoholic Beverage Commission at border ports of entry. These rules will specify the duties and responsibilities of the Texas Alcoholic Beverage Commission and the Texas State Treasury with respect to the collection at border ports of entry of the cigarette tax imposed by the Texas Tax Code, §154.021.

John A. Bell, assistant deputy treasurer, 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, which reflect current law, policy, and procedures at border ports of entry.

James R. Howell, general counsel, has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be the equitable and efficient collection of Texas cigarette taxes at border ports of entry. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the rules as proposed will be negligible.

Comments on the proposal may be submitted to James R. Howell, General Counsel, Texas State Treasury, 200 East Tenth Street, Austin, Texas 78701.

The new rules are proposed under the Texas Tax Code, §§154.415, 111.022(a) , and 111.1041, which provides the Texas State Treasury with authority to adopt rules to administer and enforce the purchase of cigarette tax stamps and the disposition of seized cigarettes.

The code affected by this proposal is the Texas Tax Code, Chapters 111 and 154.

§11.53. Issuance of Cigarette Tax Stamps to the Texas Alcoholic Beverage Commission.

(a) The state treasurer shall sell cigarette tax stamps to the Texas Alcoholic Beverage Commission for the purpose of collecting at ports of entry the cigarette tax imposed by the Texas Tax Code, §154.021.

(b) The state treasurer shall sell cigarette tax stamps on consignment to the Texas Alcoholic Beverage Commission when they are requisitioned by that agency. Payment for the stamps sold will be made monthly by report to the state treasurer. Partial payments may be made during the month.

§11.54. Affixing of Cigarette Tax Stamps by Texas Alcoholic Beverage Commission Agents. Cigarette tax stamps affixed by agents of the Texas Alcoholic Beverage Commission must be affixed to the cellophane wrapper on the bottom of each individual package of cigarettes.

§11.55. Disposition of Cigarettes Seized by Texas Alcoholic Beverage Commission Agents.

(a) Texas Alcoholic Beverage Commission agents shall seize all cigarettes upon which payment of the tax imposed by the Texas Tax Code, §154. 021 is refused.

(b) Cigarettes seized shall be released to agents of the state treasurer for ultimate disposition.

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

Issued in Austin, Texas, on August 30, 1994.

TRD-9447353 James R. Howell
General Counsel
Texas State Treasury

Earliest possible date of adoption: October 10, 1994

For further information, please call: (512) 463-5971

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Part IV. Employees Retirement System of Texas

Chapter 63. Board of Trustees

• 34 TAC §63.4

The Employees Retirement System of Texas proposes an amendment to §63.4, concerning the Board of Trustees. The amendment will implement changes necessary to implement and monitor the 1995 trustee election.

William S. Nail, general counsel, has determined that for the first five-year period the proposed amendment 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. Nail has also determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the section will be that the 1995 trustee election will be administered in a more effective manner in regard to ballot distribution and the election process. There will be no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to William S. Nail, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207.

The amendment is proposed under the Government Code, §815.003 and §815. 102, which provides authorization for the board to adopt rules necessary to nominate and elect trustees and to carry out other business of the board.

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

§63.4. Election of Trustees (Ballot).

(a) (No change.)

(b) Qualified candidates must submit within the time frame established by the system the following information for printing on the ballot:

(1) (No change.)

(2) current classification/exempt title and position as a state employee;

(3) name of current employing state agency.

[(2) number of years and months state employment;

[(3) current classification/exempt title and position as a state employee;

[(4) name of current employing state agency.]

(c) In addition to the information required in subsection (b) of this section, the candidate shall provide, within the time frame provided by the system, his or her state agency mailing address and a statement of qualifications **and position on system issues** consisting of **200** [100] words or less. This information, in addition to that which will appear on an election ballot, will be made available to the electorate through a special **system** [Employees Retirement System of Texas (ERS)] newsletter devoted to the trustee election process. This special edition of the newsletter will be made available to the electorate prior to the ballot distribution and will describe restrictions on the use of state funds to influence the outcome of any election.

(d) (No change.)

(e) The system/election administrator will, at least 25 calendar days in advance of the return due date established by the trustees, mail ballots to eligible voters in the manner currently used for annual individual **system** [ERS] statements. Each such ballot will contain the printed name of the eligible voter for whose use it is intended. **The system/election administrator will, simultaneously, mail 200 ballots without preprinted names to each candidate.**

(f) The system/election administrator will provide a 24-hour toll-free telephone line which eligible voters may use to request their individual ballots if they did not receive their ballots pursuant to subsection (e) of this section. **No ballots will be distributed other than as described in this subsection and in subsection (e) of this section.**

(g)-(i) (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 August 31, 1994.

TRD-9447399 Charles D. Travis
Executive Director
Employees Retirement System of Texas

Earliest possible date of adoption: October 10, 1994

For further information, please call: (512) 867-3336

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Chapter 65. Executive Director

• 34 TAC §65.3

The Employees Retirement System of Texas proposes an amendment to §65.3, concerning Records of the System to be in compliance with Acts, 73rd Legislature, 1993, Chapter 428, which require state agencies to adopt rules that specify the charges the agency will make for providing public information.

William S. Nail, general counsel, 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. Nail also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the enhancement of the public's understanding of how costs for public information have been calculated. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will vary according to the amount and type of media requested for copies of public information.

Comments on the proposal may be submitted to William S. Nail, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207.

The amendment is proposed under the Government Code, Title 8, Subtitle C, Chapter 825, §815.102, which provides authorization for the board to adopt rules concerning the administration of the funds of the retirement system and the transaction of the business of the board.

No other statutes, codes, or articles affected by this proposed amendment.

§65.3. Records of the System.

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

(c) **The following guidelines are established for charges to be made for providing public information and copies of public information in the possession of the system.**

(1) Standard-size paper copy-$.10 per page.

(2) Nonstandard-size paper copy-

(A) Diskette-$1.00 each.

(B) Magnetic tape-$10 each.

(C) VHS video cassette-$2.50 each.

(D) Audio cassette-$1.00 each.

(E) Paper copy-$.50 each.

(F) Other-actual cost.

(3) Personnel charge-$15 per hour.

(4) Overhead charge-20% of personnel charge.

(5) Microfiche or microfilm charge-

(A) Paper copy-$.10 per page.

(B) Fiche or film copy-actual cost.

(6) Remote document retrieval charge-actual cost.

(7) Computer resource charge-

(A) Mainframe-$17.50 per minute.

(B) Midsize-$3.00 per minute.

(C) Client/server-$1.00 per minute.

(D) PC or LAN-$.50 per minute.

(8) Programming time charge-$26 per hour.

(9) Miscellaneous supplies-actual cost.

(10) Postage and shipping charge-actual cost.

(11) Fax charge-

(A) Local-$.10 per page.

(B) Long distance, same area code-$. 50 per page.

(C) Long distance, different area code-$1.00 per page.

(12) Access to information in other than standard-size form where no copies are made and the information is not readily available-$15 per hour/personnel cost.

(13) Other costs-actual cost.

[(c) Copies of open records, minutes, and documents shall be made available to any person requesting non-certified photographic reproductions as required by Article 6252-17a, §9, Texas Civil Statutes, and at a charge per page as published in the rules of the General Services Commission (1 TAC §§111. 61-111.63).]

(d) No charge shall be made for one copy of any public record requested by members of the [Texas] legislature in the performance of their duties or if the system [Employees Retirement System of Texas] determines that furnishing the records without cost can be considered as primarily benefiting the general public.

(e) All funds generated from the charges assessed for providing public information and copies of public information shall remain a part of the funds of the system under the administration of the board.

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

Issued in Austin, Texas, on September 1, 1994.

TRD-9447528 Charles D. Travis
Executive Director
Employees Retirement System of Texas

Earliest possible date of adoption: October 10, 1994

For further information, please call: (512) 867-3336

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Chapter 87. Deferred Compensation Plan

• 34 TAC §§87.7, 87.13, 87.15, 87.17, 87.19

The Employees Retirement System of Texas proposes amendments to §§87.7, 87.13, 87.15, 87.17, and 87.19, concerning the deferred compensation plan. These amendments will clarify vendor reporting, disclosure and telephone transfer requirements, add procedures for transferring participant deferrals and investment income to other eligible deferred compensation plans, and make other technical changes to the plan.

William S. Nail, general counsel, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Nail also has determined that for each year of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be that participating members will be better informed with regard to procedures to transfer funds to another eligible deferred compensation plan. Clarification of the reporting and disclosure requirements will provide additional protection for employees participating in the plan. There will be no effect on small businesses. There is no anticipated economic cost to persons who are re-

quired to comply with the amendments as proposed.

Comments on the proposal may be submitted to William S. Nail, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207.

The amendments are proposed under the Government Code, Title 6, Subtitle A, Chapter 609, §609.508, which provides authorization for the board to adopt rules, regulations, plans, and procedures to carry out the purposes of this Act.

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

§87.7. Vendor Participation.

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

(c) Eligibility to become a qualified vendor.

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

(3) Insurance companies.

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

(C) An insurance company shall report its A.M. Best, Standard & Poors, Moody's, and Duff & Phelps rating information to the plan administrator **annually by January 1st** [on an annual basis] and shall immediately report any change in its rating in the interim to the plan administrator.

(D) (No change.)

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

(d)-(m) (No change.)

§87.13. Disclosure.

(a) Approval of a disclosure form.

(1) A vendor or qualified vendor shall complete a disclosure form for each investment product that the vendor is submitting to the plan administrator for approval as a qualified investment product. If a variable annuity product has several investment choices, the plan administrator must receive all disclosures related to those investment choices. **A vendor or qualified vendor shall complete a disclosure on each investment product that has plan participant funds (including those no longer offered).**

(2)-(5) (No change.)

(b) Contents of disclosure forms.

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

(6) A prospectus must be submitted for each of those qualified investment products (if applicable).

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

§87.15. Transfers.

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

(d) Procedures for making a transfer of all deferrals and investment income from a qualified investment product.

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

(3) if a check is used to make a transfer, this paragraph applies.

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

(C) After or before depositing the check in the deferred compensation fund or with the qualified vendor selected by the plan administrator, and receiving a list of affected participants from the qualified vendor, the plan administrator shall direct the agency coordinators for the participants to:

(i) (No change.)

(ii) request that each affected participant submit a change agreement to **the participant's** [his] agency coordinator for the purpose of designating the qualified investment product that will receive the participant's deferrals and investment income.

(D)-(E) (No change.)

(4) If a wire-transfer is used to make a transfer, this paragraph applies

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

(C) After or before the plan administrator receives notice that the State Treasury Department or the qualified vendor chosen by the plan administrator to hold these funds has deposited the wire-transfer and after the plan administrator has received a list of affected participants from the vendor, the plan administrator shall direct the agency coordinators for the participants to

(i) (No change.)

(ii) request that each affected participant submit a change agreement to **the participant's** [his] agency coordinator for the purpose of designating the qualified investment product that will receive the participant's deferrals and investment income.

(D)-(E) (No change.)

(e) Procedures for making a transfer of less than all deferrals and investment income from a qualified investment product

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

(3) If a participant initiates a transfer, this paragraph applies

(A) A participant may initiate a transfer of the participant's deferrals and investment income [only] through the execution of a change agreement and a disclosure form in accordance with §87.5(h) of this title (relating to Participation by Employees) **and also through telephone transfers (if approval has been obtained from the plan administrator) in accordance with §87.15(h) of this title (relating to Telephone Transfers Within Qualified Vendors).** This requirement applies to all transfers, even transfers within the same vendor. A transfer is voidable at the instance of the plan administrator or the participant making the transfer if both a change agreement and a disclosure form are not properly executed and filed. However, a disclosure form is not required when a participant initiates a transfer to an existing account for the same participant, regardless of whether the account is with another qualified vendor

(B)-(F) (No change.)

(f) (No change.)

(g) Transfers into life insurance products.

(1) (No change.)

(2) When a participant chooses to transfer deferrals and investment income to an existing replacement life insurance product within the same vendor, the State of Texas:

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

(C) is not required to transfer the life insurance product to the participant or **the participant's** [his] beneficiary; and

(D) is not required to pass through the proceeds of the product to the participant or **the participant's** [his] beneficiary

(h) Telephone transfers within qualified vendors

(1) (No change.)

(2) When a participant is in distribution, the telephone transfer option may be used. However, deferrals and investment income may not be divided and transferred from one qualified investment product to two or more qualified investment products in accordance with §87.17(i)(6)(C) of this title (relating to Transfers).

(3)[(2)] The vendor and the participant must obtain approval from the plan administrator and must follow all instructions and procedures prescribed by the plan administrator.

§87.17. Distributions.

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

(e) Filing of distribution agreements by participants.

(1)-(7) (No change.)

(8) Notwithstanding any other plan provision, amounts deferred by a former participant of the plan not yet payable or made available to such participant may be transferred to another eligible plan of which the former participant has become a participant, if:

(A) the plan receiving such amounts provides for their acceptance;

(B) a participant separates from service with the participant's agency and accepts employment with another entity maintaining an eligible deferred compensation plan; and

(C) a participant has not yet begun receiving plan distributions.

(f) (No change.)

(g) Minimum distributions during the life of a participant.

(1) (No change.)

(2) The amount distributed to the participant must be calculated so that the distributions:

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

(C) will be distributed over a period not exceeding the life expectancy of the participant or the life expectancy of the participant and **the participant's** [his] named beneficiary; and

(D) (No change.)

(3)-(4) (No change.)

(h) (No change.)

(i) Amendments of distribution agreements.

(1)-(6) (No change.)

(7) Procedures for amending a distribution agreement.

(A) A participant or beneficiary who wants to amend **the participant's** [his] distribution agreement must file an amended distribution agreement with the **participant's** [his] agency coordinator. The amended distribution agreement must contain the word "Amended" at the top of the agreement.

(B)-(E) (No change.)

(8) (No change.)

(j) (No change.)

(k) Emergency withdrawals.

(1)-(6) (No change.)

(7) The plan administrator may rely on the information provided by a participant in connection with **the participant's** [his] request for an emergency withdrawal. The participant is solely responsible for the sufficiency, accuracy, and veracity of the information.

(8)-(10) (No change.)

(l)-(r) (No change.)

(s) Loans to participants.

(1) The plan administrator may not loan or authorize the loan to a participant of all or part of **the participant's** [his] deferrals and investment income.

(2) A qualified vendor may not loan to a participant all or part of **the participant's** [his] deferrals and investment income.

(t) (No change.)

§87.19. Reporting and Recordkeeping by Qualified Vendors.

(a) (No change.)

(b) Reports to participants.

(1) Generally.

(A) A qualified vendor shall issue a report after the end of each calendar quarter to each participant whose deferrals and investment income are invested in a qualified investment product offered by the vendor, except [even] if the investment is in a product that is annuitized.

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

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

(c) (No change.)

(d) Quarterly reports to the plan administrator.

(1) (No change.)

(2) Content of quarterly reports. For each participant whose deferrals and investment income are invested in a qualified investment product offered by the vendor, the report required by this subsection must contain but is not limited to:

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

(F) The current market value of each participant's deferrals and investment income in each qualified investment product, **including annuitized accounts and,** including, if appropriate, the number of shares and per share market value;

(G)-(J) (No change.)

(3) Format of quarterly reports.

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

(C) Before a qualified vendor may use a medium other than a manual form to file a quarterly report with the plan administrator, the vendor must submit a **written request along with a** test tape, cartridge, or diskette to the plan administrator. The test tape, cartridge, or diskette must be in the format and contain the information that the plan administrator requires. Failure to submit data in the specified format will result in the return of the media without processing. If the plan administrator determines that the test tape, cartridge, or diskette is inadequate, the plan administrator shall ensure that the number of participants whose deferrals and investment income are invested at any given time in the vendor's qualified investment products does not exceed 49.

(D)-(G) (No change.)

(4) (No change.)

(e)-(f) (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 August 31, 1994.

TRD-9447400

Charles D. Travis
Executive Director
Employees Retirement System of Texas

Earliest possible date of adoption: October 10, 1994

For further information, please call: (512) 867-3336

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part IX. Texas Department on Aging

Chapter 254. Operation of the Texas Department on Aging

• 40 TAC §254.1

The Texas Department on Aging proposes an amendment to §254.1, concerning the publication of charges for copies of public records held by the Department based on requirements established in House Bill 1009 relating to the recovery of costs of or access to public

records, and the establishment of requirements for Department grantees to comply with provisions of interagency agreements negotiated between the Department and other State agencies to facilitate delivery of services.

The purpose of subsection (f) is to advise entities of the charges that will be assessed when the Department fulfills requests for copies of documents.

The purpose of subsection (g) is to establish a process for concerned persons and agencies to comment upon interagency agreements negotiated by the Department with other State agencies.

Ann Ammons, director of field operations, Texas Department on Aging, has determined that there will not be fiscal implications to State or local government as a result of enforcing or administering the section.

Ms. Ammons also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be a greater understanding of the role, responsibility, and mission of the Department. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Ann Ammons, Director of Field Operations, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The amendment is proposed under Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, relating to the operation of the Texas Department on Aging, is affected by this proposed action.

§254.1. Operation of the Texas Department on Aging

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

(f) Charges for Copies of Public Records.

(1) This rule specifies the charges the Department will make for copies of public records. It also provides information so the public may understand how costs to provide these records have been calculated. It is promulgated in accordance with House Bill 1009, §5, 73rd legislative session.

(2) Charges to persons and/or organizations requesting copies of any public record of the Texas Department on Aging are specified in this paragraph:

(A) Standard-size paper copy-$.10 per page;

(B) Non-standard-size copy:

(i) Diskette-$1.00 each;

(ii) Magnetic tape-$10 each;

(iii) VHS video cassette-$2.50 each;

(iv) Audio cassette-$1.00 each;

(v) Paper copy-$.50 each;

(vi) Other-actual cost;

(C) Personnel Charge-$15 per hour;

(D) Overhead charge-20% of any charge made to cover personnel costs associated with a particular request;

(E) Microfiche or microfilm charge:

(i) paper copy-$.10 per page;

(ii) fiche or film copy-actual cost;

(F) Remote document retrieval charge-actual cost;

(G) Computer resource charge:

(i) mainframe-$17.50 per minute;

(ii) midsize-$3.00 per minute;

(iii) client/server-$1.00 per minute;

(iv) PC or LAN-$.50 per minute;

(H) Programming time charge-$26 per hour;

(I) Miscellaneous supplies-actual cost;

(J) Postage and shipping charge-actual cost;

(K) Fax charge:

(i) local-$.10 per page;

(ii) long distance, same area code-$.50 per page;.

(iii) long distance, different area code-$1.00 per page;

(L) Other costs-actual cost.

(3) The agency will charge the following amounts necessary to recover the costs for items set forth in this paragraph:

(A) Aging Texan Labels-$25.50;

(B) Texas Senior Center Labels-$22.50;

(C) Texas Senior Center List-$26.50.

(4) Copies of public records shall be furnished without charge or at a reduced charge if the agency determines that waiver or reduction of the fees is in the public interest.

(g) Interagency Agreements. When an interagency agreement is needed, including those legislatively mandated, the Department shall provide a 30-day comment period for grantees and service providers affected by the agreement prior to the execution of the agreement. The comment period shall begin five calendar days from the date the agreement is distributed by mail to concerned entities.

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

Issued in Austin, Texas, on August 31, 1994

TRD-9447406 Mary Sapp
Executive Director
Texas Department on Aging

Earliest possible date of adoption October 10, 1994

For further information, please call (512) 444-2727

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• 40 TAC §§254.15, 254.17, 254.19, 254.21, 254.23, 254. 25

The Texas Department on Aging proposes new §§254.15, 254.17, 254.19, 254.21, 254.23, and 254.25, concerning hearing procedures for area agency grantees, hearing procedures for service providers and applicants, hearing procedures for participants in Older Americans Act programs, Americans With Disabilities Act grievance procedures for participants in Title III OAA programs, emergency management responsibilities of the Department, and Department responsibilities for carryover of unexpended funds

The purpose of these new rules is to revise, update and clarify Department responsibilities and to restructure that portion of the Texas Administrative Code which contain the rules of the Texas Department on Aging

Ann Ammons, director of field operations, Texas Department on Aging, has determined

that there will not be fiscal implications to State or local government as a result of enforcing or administering these sections.

Ms. Ammons also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be a greater understanding of the role, responsibility, and mission of the Department. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Ann Ammons, Director of Field Operations, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The new sections are proposed under Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, relating to the operation of the Texas Department on Aging, is affected by this proposed action.

§254.15. Hearing Procedures for Area Agencies on Aging Grantees.

(a) Right to a Hearing An area agency has a right to a hearing under these rules upon official notification by the Department of its intention to.

(1) disapprove an area plan or plan amendment; or

(2) withdraw an area agency designation after a determination that:

(A) the area agency does not meet the requirements set forth in 45 Consolidated Federal Regulation (CFR) Part 1321;

(B) the plan or plan amendment is not approved,

(C) there is substantial failure in the provisions of administration of an approved area plan to comply with any provision of 45 CFR Part 1321 and or §254.13(b) of this title (relating to Contractor/Grantee Responsibilities)

(3) Recover costs as a result of a finding of disallowed costs during an authorized audit by the Department or as may be determined during the course of routine fiscal reviews of the expenditures of grantee agencies.

(b) Notice of Proposed Action by the Texas Department on Aging.

(1) The Department shall issue a written notice to the area agency and all other parties which shall include

(A) a statement of the proposed action;

(B) a short and plain statement of the reasons for the proposed action and the evidence on which the proposed action is based;

(C) a reference to the particular sections of statutes, regulations and rules involved; and

(D) a statement that the grantee has the burden of proof to establish that the findings cited by the Department in the official notification of proposed action are not material.

(E) a notice of the right to request a hearing.

(2) Notice shall be sent by registered or certified mail, return receipt requested.

(c) Request for Hearing. A request for a hearing must be in writing and must state with specificity the grounds upon which the proposed action is appealed and all grounds upon which petitioner refutes the basis of the proposed action. The request must include:

(1) the dates of all relevant actions;

(2) the names of individuals or organizations involved in the proposed action;

(3) specific statements and documentation which disprove the findings made by the Department, and/or that the sections of the Older Americans Act or rules or regulations cited in the letter of notification have not been violated; and

(4) a certified copy of the minutes or resolution in which the petitioner's governing body requests a hearing and authorizes a person or persons to act on behalf of the agency or organization. The minutes or resolution shall indicate adoption by a majority of the quorum of the governing body of the agency or organization;

(5) be received by the Department within 30 calendar days following petitioner's receipt of the notice of the proposed action;

(6) The petitioner may submit written amendments to the request for hearing which must be received by the Department not less than ten calendar days prior to the date set for the hearing.

(d) Department Responses to Requests. Upon receipt of a request for hearing, the Department shall, within ten calendar days following receipt of a request for hearing:

(1) set a date for the hearing; and

(2) issue a written notice to the petitioner and all other parties by registered or certified mail, return receipt requested, which shall provide:

(A) a statement of time, date, and location of the hearing;

(B) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(C) a reference to the particular sections of statutes, regulations, and rules involved; and

(D) a short and plain statement of the reasons for the proposed action that is being appealed and the evidence on which the proposed action is based.

(e) Conduct of Hearing. The Department shall arrange for an impartial hearing examiner to preside at the hearing. The proceedings and conduct of the hearing shall follow the rules promulgated in Title 1, Part VII, State Office of Administrative Hearings, Chapter 155, Rules of Procedure, et seq. The hearing examiner shall issue a decision on behalf of the Department.

(f) Appeal to the Assistant Secretary on Aging, United States Department of Health and Human Services. Any petitioner whose appeal is denied may appeal to the Assistant Secretary on Aging. Such appeal shall be governed by 45 CFR Part 1321.

§254.17. Hearing Procedures for Service Providers and Applicants.

(a) Right to a hearing: Any service provider or applicant has a right to appeal an action by an area agency that:

(1) denies their application under an approved area plan,

(2) terminates or does not renew a contract or subgrant;

(3) issues a notice of noncompliance with federal and state requirements;

(4) issues a notice of action to recover disallowed and/or questioned costs; and/or

(5) issues a notice of noncompliance with contract stipulations mutually agreed upon by the area agency and the subcontractor

(b) Notice of appeal. A petitioner shall give notice of an appeal to both the area agency and the Department within ten calendar days from the date it receives the letter of notification of the area agency's

action. The notice of appeal shall be in writing and must state with specificity the grounds upon which the action by the area agency is appealed. Specific areas shall include, at a minimum;

(1) the grounds upon which the petitioner refutes the basis of the action or the authority of the area agency to take such action;

(2) a copy of the agency's letter of notification of action from the area agency;

(3) the names of individuals and organizations involved in the action appealed from;

(4) a certified copy of the resolution or of the minutes of the meeting where the petitioner's governing body, by majority vote of a quorum, authorized the appeal and designated one or more persons to represent it during the appeal.

(c) Informal disposition.

(1) Upon receipt of a notice of appeal, the area agency and petitioner shall immediately schedule a meeting to attempt to informally resolve the issues in the appeal within 30 calendar days of receipt of the appeal from the appellant.

(2) If the area agency and petitioner resolve their dispute, they shall jointly notify the Department of this fact in writing within five work days following resolution of the dispute.

(3) If the dispute cannot be resolved informally, the area agency and the petitioner shall notify the Department of this fact in writing within ten working days following the end of the informal resolution period, by certified or registered mail return receipt requested.

(4) The area agency and the petitioner shall establish a formal hearing date at least five working days after the petitioner receives the notice for a formal hearing.

(5) the area agency shall furnish petitioner within ten working days of the established date for the formal hearing, the following documentation:

(A) the current approved area plan;

(B) the minutes of the meeting of the area agency's governing body at which the appeal was considered and action taken;

(C) the minutes of the meeting of the area agency's advisory council at which the appeal was considered and action recommended;

(D) area agency memoranda, staff reports, and evaluations relevant to the action;

(E) the criteria used in awarding the contract;

(F) the criteria used in determining that an action was necessary, and

(G) a concise statement identifying each disputed issue.

(d) Formal hearing. If the area agency and the petitioner do not formally resolve their dispute the matter shall be referred to the Texas Department on Aging for conduct of a formal hearing. The request for hearing shall be signed by the executive officer of the grantee agency and be accompanied by the documents specified in subsection (c)(4)(B)-(G) of this section relating to documentation.

(e) Notice of Proposed Action by the Texas Department on Aging.

(1) Upon receipt of a request for hearing, the Department shall, within ten calendar days, set a date for the hearing.

(2) The Department shall, within five workdays following the establishment of the hearing date, issue a written notice to the area agency, the petitioner, and all other parties which shall include:

(A) a statement of time, date, and location of the hearing;

(B) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(C) a reference to the particular sections of statutes, regulations, and rules involved; and

(D) a short and plain statement of the reasons for the proposed action that is being appealed and the evidence on which the proposed action is based.

(E) Notice shall be sent by registered or certified mail, return receipt requested.

(f) Conduct of Hearing. The proceedings and conduct of the hearing shall follow the rules promulgated in Title 1, Part VII, State Office of Administrative Hearings, Chapter 155, Rules of Procedure, et seq. The hearing examiner shall issue a decision on behalf of the Department.

§254.19. Appeal Procedures for Participants in Older Americans Act Programs.

(a) Right to Appeal. Participants in Older Americans Act Programs may submit appeals regarding specific actions or activities affecting their personal participation in the program or the conduct of the program as it relates to all participants at that site or location.

(1) Appeals may be in writing or may be made orally.

(2) An appeal may be presented by an individual on behalf of the participant. If the participant elects this option, he or she must accompany that spokesperson to every meeting at which the appeal is discussed.

(3) An appeal should be resolved at the lowest level of authority to avoid undue paperwork or loss of time. Appeals will be directed as indicated to the following authorities in the order indicated.

(A) site director;

(B) project director;

(C) area agency on aging director;

(D) grantee director;

(E) executive director of the Texas Department on Aging.

(4) Appeals may be made at any time. The site manager, however, should be advised within ten days of the event which created the basis for the appeal of the intent to appeal.

(b) Appeal procedures.

(1) An oral appeal must state in detail the basis for the appeal and the reasons the participant objects to the action or circumstances in question. To facilitate this statement, a written outline should be prepared for the oral appeal which outlines the reasons for the appeal. This outline should contain or refer to the following:

(A) the notice, document, policy or situation being appealed;

(B) the dates that are significant which pertain to the appeal;

(C) the names of individuals and organizations involved in the appeal;

(D) a reference to any provision of the Older Americans Act or regulations believed to have been violated by site

management, grantee, area agency or the Department.

(2) a written appeal may also be made. A written appeal must contain all the elements specified for the oral appeal, as stated in subsection (b)(1) of this section.

(c) Disposition of Appeals.

(1) If the facts support the appeal, the site manager or service provider director shall, within 30 working days of the receipt of the written appeal, make the changes necessary to resolve the issue.

(2) If the site manager's or service provider's director's decision is not acceptable to the participant, he may, within ten working days, appeal to the next higher authority as specified in subsection (a)(3) of this section relating to resolving issues at the lowest possible level of authority. The site manager or service provider director, and each level of authority at which the appeal has been unresolved, shall within ten working days following receipt of a request for continuing appeal, develop a memorandum detailing the circumstances of the appeal, attach all pertinent documentation regarding the findings and actions taken at that level of authority, and forward it to the next level with a request for a meeting of the parties concerned with the issue.

(3) If the appeal is resolved, parties to the appeal shall jointly notify each level of authority involved in the appeal of this fact in writing.

(d) Referral to the Texas Department on Aging. If the appeal cannot be informally or formally resolved and it becomes necessary to refer it to the Texas Department on Aging. The Executive Director shall issue a decision on behalf of the Department.

(e) Rights of Appellant. A copy of this rule will be made available to participants in Older Americans Act programs.

§254.21. Americans with Disabilities Act (ADA) Grievance Procedures for Participants in Older Americans Act Programs.

(a) Scope. These procedures apply to all programs funded by the Department. A copy of the procedures for each level of authority shall be provided to each participant in these programs within 30 calendar days following final adoption of this rule or thereafter upon completion of intake information of a new person.

(1) Use of this grievance procedure is not a prerequisite to the pursuit of other remedies available to the complainant under ADA.

(2) This section shall protect the substantive rights of interested persons to meet appropriate due process standards and assure that the Department, its grantees and their subrecipients comply with the ADA and implementing regulations.

(3) This section shall apply after reasonable requests for accommodation have been made and have not been accomplished to the satisfaction of the complainant.

(b) Standard complaint procedures.

(1) A complaint under this section may begin with any level of authority and may progress to the next level of authority.

(2) The Department and each grantee and subrecipient service provider shall identify its ADA coordinator and post the name, address, and phone number of the coordinator in a prominent place in all facilities which they operate.

(3) A complaint may be filed in writing or verbally with the agency's ADA coordinator.

(c) Service provider, area agency, and grantee complaint procedures. Each agency shall develop written complaint procedures which shall contain at least the following.

(1) The complaint shall be documented in writing by the ADA coordinator and shall contain the name and address of the person filing it, the facility address, the date of the alleged violation, a brief description of the alleged violation, the date of the report and the signatures of the complainant and the ADA coordinator.

(2) The ADA coordinator shall conduct an investigation within 30 calendar days of the receipt of the complaint.

(3) The ADA coordinator shall work with the complainant in an attempt to reach a solution acceptable to both parties in order to allow participation in services, programs, and/or activities. Every effort shall be made to resolve this complaint at the first level of authority at which the complaint was filed.

(4) The ADA coordinator shall send a copy of the complaint and a report outlining the attempts to resolve the complaint and the final result to the chief executive officers of the grantee and the Department within ten working days of the completion of the investigation.

(5) the complaint procedures shall identify the next level of authority in the appeals process.

(d) Department Complaint Procedures. If the area agency ADA coordinator and the complainant cannot reach an adequate and equitable solution, the complainant may file a written or verbal complaint with the ADA coordinator at the Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711 (512) 444-2727. This complaint shall be documented by the ADA coordinator in writing and shall contain the information required in subsection (c)(1) of this section.

(1) An investigation, as may be appropriate, shall be conducted by the Department's ADA coordinator within 30 calendar days after receipt of the complaint. Any investigations shall afford all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a complaint.

(2) The Department's ADA coordinator shall work with the complainant in an attempt to reach a solution acceptable to both parties in order to allow participation in services, programs, and/or activities.

(3) A written determination as to the validity of the complaint and a description of the resolution, if any, shall be issued by the Department's ADA coordinator, in conjunction with the executive director, and a copy forwarded to the complainant and the chief executive officers of the service provider agency, the grantee/area agency and the Department no later than ten working days after the investigation is completed.

(4) In the event the complainant is dissatisfied with the determination made by the Department, a reconsideration by the grievance committee, as appointed by the Chairman of the Texas Board on Aging may be requested. This request shall be documented in writing and shall include information as cited in subsection (c)(1) of this section.

(5) The grievance committee of the Board shall hold a hearing within 30 calendar days of the receipt of the written complaint and shall afford all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a complaint.

(6) The Texas Board on Aging shall be notified in writing of the recommendation of the grievance committee and copies shall be sent to the complainant, the chief executive officers of the service providers, the grantee/area agency on aging and the Department.

(7) The Board shall take action on the grievance committee's recommendation at it's next scheduled meeting. The decision of the Board shall be forwarded to the parties identified in subsection (c)(6) of this section.

(e) Records Maintenance. The ADA Coordinator and the Risk Manager of the Department and the grantee agency shall maintain files and records relating to all complaints filed. These files shall be maintained for a minimum of five years following the end of the grantee's fiscal year, and

until any pending litigation, claim or audit findings, issuance of proposed disallowed costs, or other disputes have been resolved.

§254.23. Emergency Management Responsibilities of the Texas Department on Aging. Department responsibilities. The Department shall consult with the Office of Emergency Management, Department of Public Safety, the Federal Emergency Management Agency (FEMA), the Administration on Aging, grantees, area agencies on aging, other state, county and local government entities, service providers and other activities which have an interest in or role in meeting the needs of the elderly in planning for, during, and after natural, civil defense, and/or man-made disasters. To facilitate this responsibility, the Department shall identify an individual as the Emergency Management specialist for the Department who shall:

(1) represent the Department at meetings and functions pertinent to emergency management and communicate and coordinate with representatives of other agencies and activities concerned with emergency management;

(2) develop all reports resulting from disaster recovery operations;

(3) develop procedures for reimbursement of Title III funds for use by area agencies on aging in disaster recovery operations, including the acquisition of certificates of non-duplication of services from the FEMA on-site director, review such requests for accuracy and validity, and forward these requests to the Administration on Aging for payment.

(4) provide technical assistance to area agencies engaged in planning for services to the elderly prior to disasters and following any natural, man-made or civil defense disaster which impacts the elderly within their PSA; and

(5) assist area agencies in disaster recovery operations.

§254.25. Department Responsibilities for Carryover of Unexpended Funds.

(a) Purpose. This section establishes the responsibilities of the Department for administering the carryover of unexpended funds by the grantee agency and applies to all funds awarded by the Department.

(b) Approval of carryover of Older Americans Act Funds. It is the position of the Department that unexpended grant funds shall be kept to a minimum Approval for carryover of any Older Americans Act issued by the Department shall require adequate justification and shall not exceed 5 0% of the grant funds awarded during the grant period.

(1) Approval shall be based upon timely submission of adequate justification, as defined in §260.2(e) of this title (relating to Area Agency Accountability) and include, but not be limited to, submission of acceptable narrative and financial information as required by the Department.

(2) Approval shall be considered separately for each title of the Older Americans Act and each grant awarded through a funding formula from all other funding sources.

(3) No agency shall be automatically guaranteed any award of unexpended carryover funds.

(4) The format for requests for carryover approval shall be prescribed each year by the Department.

(5) Approval shall be granted for carryover of Older Americans Act funds and any other funds issued by the Department when obligation authority from the funding sources permits.

(c) Approval of carryover of other funds. It is the policy of the Department to approve funds, other than Older Americans Act funds issued by the Department, as carryover with adequate justification.

(1) Approval shall be based upon timely submission of adequate justification. The grantee shall:

(A) submit acceptable narrative and financial information as required by the Department;

(B) have met the preponderance of the program objectives defined by the Department and described by the grantee in the current approved area plan, or approved proposal for those funds awarded through a request for proposal (RFP) process;

(C) have expended not less than:

(i) 90% of the awarded funds, if awarded during the first quarter of the grant period; or

(ii) 70% of the awarded funds, if awarded during the second quarter of the grant period; or

(iii) 50% of the awarded funds, if awarded during the third quarter of the grant period; or

(iv) 30% of the awarded funds, if awarded during the fourth quarter of the grant period.

(2) Approval shall be based upon the criteria in subsection (b)(2)-(5) of this section, relating to criteria for approval of carryover funds.

(d) Funds ineligible for carryover. The Department shall not approve the following for carryover:

(1) disallowed costs;

(2) unexpended adequate proportion funds for eligible in-home services, access services, and legal services, unless the grantee has received a waiver from the requirements in accordance with Department procedures; and/or

(3) unexpended funds to meet maintenance of effort requirements for legal services and Ombudsman activities as contained in the currently approved area plan.

(e) Carryover reallocation pools. The Department shall:

(1) establish separate reallocation pools of unexpended funds from each of the following sources:

(A) Title III of the Older Americans Act;

(B) Title VII-Elderabuse Prevention of the Older Americans Act; and

(C) any other funds issued by the Department through a separate funding formula and not approved for carryover. Funds from each funding source shall become part of a separate reallocation pool

(2) award carryover funds in the same manner as the original funds were awarded, exclusive of consideration from any applicable service and administration bases. Any grantee agency not meeting all the performance measures and financial standards shall not participate in the distribution of funds in the reallocation pools;

(3) award carryover funds in accordance with Human Resources Code, §101.029(d)

(f) Notification of grant award. A notification of grant award for any and all reallocated funds shall be issued by the Department not later than 60 calendar days following the end of the 90 day closeout period. Such notices of grant award shall authorize the use of funds for the specific period of time for which the award is issued

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

Issued in Austin, Texas, on August 31, 1994.

TRD-9447404

Mary Sapp
Executive Director
Texas Department on Aging

Earliest possible date of adoption: October 10, 1994

For further information, please call: (512) 444-2727

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Chapter 260. Area Agency on Aging Administrative Requirements

• 40 TAC §260.1

The Texas Department on Aging proposes an amendment to §260.1, concerning uniform logos for area agencies on aging, uniform telephone listings, listing of the Texas Department on Aging as the primary funding source by area agencies on aging, compliance with interagency agreements at the local level of agreements negotiated by the Department at the State level, and emergency management requirements of area agencies on aging.

The purpose of these amendments is to revise and relocate previously published language into a new structure of the administration code developed by the Department.

Ann Ammons, director of field operations, Texas Department on Aging, has determined that there will not be fiscal implications to state or local government as a result of enforcing or administering the section.

Ms. Ammons also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be a greater understanding of the role, responsibility, and mission of the Department. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with this section.

Comments on the proposal may be submitted to Ann Ammons, Director of Field Operations, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The amendment is proposed under Human Resources Code, §101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, relating to the operation of the Texas Department on Aging, is affected by this proposed action.

§260.1. Area Agency on Aging Administrative Requirements.

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

(h) Uniform logo for area agencies on aging. Each area agency on aging shall use the logo designed by the Department to assure a uniform, statewide symbol for area agencies on aging designation for public information purposes. The following logo shall be used. Figure 1-40 TAC §260.1(h)

(1) The logo shall be used for at least the following:

(A) public service announcements;

(B) pamphlets;

(C) brochures;

(D) signs;

(E) newsletters;

(F) business cards;

(G) stationery;

(H) displays;

(I) reports;

(J) other means of public communication media whenever possible.

(2) Failure to physically demonstrate adherence to this policy shall be considered non-compliance with this rule.

(i) Uniform telephone listings. The telephone number of each area agency on aging, the area agency on aging's information and assistance toll-free or collect number, and the area agency on aging's nursing home ombudsman toll-free or collect number shall appear in each telephone directory that is published by the provider of local telephone service for residents in any geographical area that lies in whole or in part in the planning and service area served by the area agency on aging.

(1) The listings shall appear in the unclassified sections and government sections under the listing "SENIOR CITIZENS SERVICES," "AGING," "SOCIAL SERVICES," or other appropriate sections of the phone book if these listings are not available.

(2) The listings shall appear in the classified section of the telephone directories of the major metropolitan area of the area agency on aging, and to the extent possible, in other areas of the area agency on aging's service area.

(3) The listing in the unclassified section and classified section shall begin with the words "Area Agency on Aging" to position it at or near the top of each heading. The listing shall appear in boldface type, as follows: Area Agency on Aging of (name of area):

(A) Business Office-area code and telephone number;

(B) Information and Assistance-toll-free or collect number;

(C) Nursing Home Ombudsman-toll-free or collect number.

(4) These listings shall be completed by no later than the next printing cycle of the telephone directory of each provider of local telephone service.

(5) These listings shall be used in all other service directories, public service announcements, pamphlets, brochures, reports, newsletters, stationery, and other means of public communication media whenever possible.

(j) Listing of the Texas Department on Aging as primary funding source by Area Agencies on Aging. All area agencies on aging designated under Title III of the Older Americans Act, as amended, shall cite the Texas Department on Aging as its primary funding source.

(1) The phrase "Funded by the Texas Department on Aging" shall appear in all news releases, public service announcements, pamphlets, displays, signs, brochures, reports, stationery, and other means of public communication media.

(2) Use of this phrase in all public communication media is effective upon adoption of this rule. Existing stocks of information items may be expended, and once expended, reorders will fall under this requirement.

(k) Compliance with Interagency Agreements. The area agency shall comply with the terms of all applicable interagency agreements, including, but not limited to, those agreements that are legislatively mandated, entered in to by the Department on behalf of area agency grantees for the purpose of expanding and/or enhancing service delivery.

(l) Emergency Management.

(1) Area agencies shall consult with the Texas Department on Aging, Office of Emergency Management, Department of Public Safety, the Federal Emergency Management Agency (FEMA), the Administration on Aging, grantees, state, county and local government entities, service providers and other activities which have an interest or role in meeting the needs of the elderly in planning for, during, and after natural, civil defense, and/or man-made disasters. To accomplish this, area agencies shall:

(A) appoint an emergency management coordinator;

(B) participate in planning activities with district disaster committees, other human service agencies and other entities and organizations which are charged to meet the needs of disaster victims in emergency situations;

(C) identify the "at risk" elderly in the planning and service area;

(D) require by contract stipulation that service providers develop plans for emergency management;

(E) review annually service providers policies, procedures and capabilities to meet the needs of the elderly in their service areas prior to, during and after emergencies;

(F) provide training to subcontractor staff regarding emergency management activities;

(G) provide information to the Department regarding the impact of emergencies on the elderly population in their PSA;

(H) provide authorized services to the elderly victims of the disaster;

(I) collect pertinent data necessary to submit reimbursement requests for services provided during emergencies as relating to services authorized during emergencies;

(J) participate in initial meetings of the FEMA on- site teams to assist in establishing recovery operations.

(2) Emergency management services. Administration on Aging Regional Office VI, Identical Memorandum Number 47-85, Disaster Response System-Region VI, dated July 30, 1985 authorizes the following services to manage emergency needs of the elderly:

(A) expansion of information and assistance services on a 24-hour emergency basis, including escort;

(B) special outreach in order to encourage elderly disaster victims to make application at FEMA disaster application centers (DACs) as soon as they are established;

(C) special transportation for elderly victims to DACs, doctors, clinics, shopping and such essential travel in the event vehicles are not available. Since FEMA funds may be available to fund this service, the area agency should consult with the on site federal coordinating officer prior to expending OAA funds for this service;

(D) assistance by case managers acting as disaster assistance advocates to older persons in the disaster application centers in the benefits application process, including follow up to assure older victims receive approved grants and services and are protected from unscrupulous repair contractors;

(E) licensed appraiser services to assist elderly disaster victims in arriving at realistic estimates of losses incurred in the disaster;

(F) handyman and chore services, including clean-up, since FEMA may not be able to provide these services in sufficient volume through voluntary agencies or religious organizations;

(G) legal services only when the regular legal service program must be expanded for insurance and disaster assistance grant settlement;

(H) assistance to move elderly disaster victims from temporary housing back to their own places of residence;

(I) other Older Americans Act services when assessments indicate that disaster related needs are unresolved by federal, State or voluntary disaster assistance programs.

(3) Reimbursement procedures. Reimbursement for the services specified in paragraph (2) of this subsection (relating to services which may be provided during disaster recovery) are authorized by the Older Americans Act, §310. Requests for reimbursement shall be forwarded to the Department within 30 working days of the date that disaster recovery operations are completed. Reimbursement requests will be developed as follows.

(A) Services to be documented for reimbursement will be sorted into the categories listed in paragraph (2)(A)-(I) of this subsection (relating to services which may be reimbursed).

(B) A narrative of each of the services, which details the number of units provided and the number of elderly served, will be written as a cover page to each set of reimbursement documentation material.

(C) Billing documentation, such as paid bills and invoices, will be attached to the narrative of each category of service provided.

(D) Other information which detail the cause and the scope of the disaster shall be attached.

(E) If available from the FEMA on-site office, the certificate of non-duplication of services shall be attached.

(F) Upon receipt by the Department, the request for reimbursement will be reviewed. Areas requiring additional information or clarification will be identified and resolved with the AAA and service providers.

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

Issued in Austin, Texas, on August 31, 1994.

TRD-9447405 Mary Sapp
Executive Director
Texas Department on Aging

Earliest possible date of adoption: October 10, 1994

For further information, please call: (512) 444-2727

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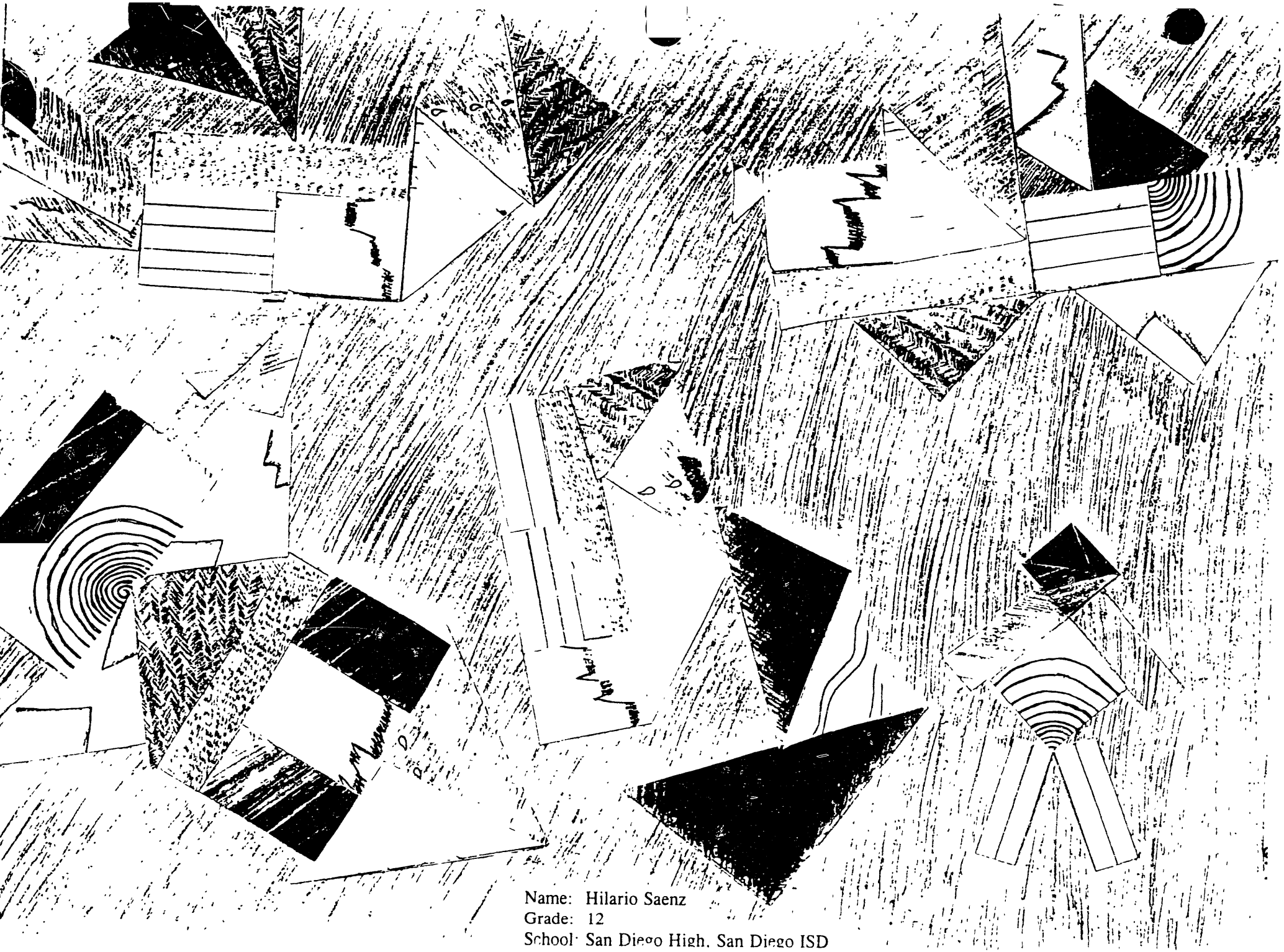

Name: Hilario Saenz
Grade: 12
School: San Diego High, San Diego ISD

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 123. Facilities Construction and Space Management Division

Prevailing Wage Rate Determination

• 1 TAC §123.32

The General Services Commission adopts an amendment to §123.32 concerning prevailing wage rate surveys, without changes to the proposed text as published in the April 5, 1994, issue of the *Texas Register* (19 TexReg 2347).

The amendment provides for the establishment of prevailing wage rates by adoption of rates from United States Department of Labor surveys under the David Bacon Act, in accordance with Texas Civil Statutes, Article 5159a, and clarifies the procedure for using wage rate information from outside survey area when the survey area does not provide sufficient data.

The proposed amendment permits determination of prevailing wage rates in a given area by adoption of a Davis Bacon Act survey that is not more than three years old The proposed amendment permits the entity conducting the survey to look to a larger or adjacent political subdivision for the limited purpose of acquiring information on wage rates for specific classifications of work for which the primary survey area does not provide sufficient data.

The Independent Electrical Contractors of Texas made a comment against the amendment. The comment asserted that the amendment would allow the the political subdivision conducting the survey to look for the survey area that would provide the lowest cost for each class of work. The comment further asserted that the small numbers of certain laborers in rural areas does not mean that there is no prevailing wage rate for such labor in those areas.

The amendment addresses prevailing wage rate surveys conducted by the General Services Commission, not those conducted by political subdivisions. The amendment only permits looking to data outside the relevant political subdivision when the data within the political subdivision is insufficient to establish a prevailing wage rate for a specified class of labor. Even if the pool of data within the relevant political subdivision is small, if it is sufficient to determine the prevailing wage, it is to be used

The amendment is adopted under Texas Civil Statutes, Article 601b, §5. 15(d), which authorize the General Services Commission to promulgate rules necessary to accomplish the purpose of the Article.

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 authority.

Issued in Austin, Texas, on August 31, 1994

TRD-9447420 Judith Monaco Porras
General Counsel
General Services Commission

Effective date: September 21, 1994

Proposal publication date: April 5, 1994

For further information, please call: (512) 463-3960

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TITLE 7. BANKING AND SECURITIES

Part V. Office of Consumer Credit

Chapter 85. Rules of Operation for Pawnshops

• 7 TAC §§85.21, 85.31, 85.41, 85.51, 85.61, 85.71, 85.81

The Office of Consumer Credit Commissioner adopts new §85.21, §85.31, §85.41, §85.51, §85.61, §85.71 and §85.81, concerning the operation of pawnshops, are adopted with changes to the proposed text as published in the June 14, 1994, issue of the *Texas Register* (19 TexReg 4606).

Adoption of the new rules is necessary to provide safeguards for consumers and their property deposited with pawnbrokers; to provide better disclosures of loan terms and applicable law to consumers; to provide better information for law enforcement agencies concerning personal property pledged to pawnbrokers, to provide specific recordkeeping to permit the commissioner to determine whether a pawnbroker is complying with the Texas Pawnshop Act, Texas Civil Statutes, Article 5069-51 01 et seq, to provide that certain procedures be followed in the day to day operation of pawnshops, and to provide for dissemination of consumer credit education information through pawnshops

Comments of a general nature which did not directly address specific proposed rules were received from Bruce and Joyce Parker (Parker), Golden Pawn Shop, Big Spring, Mary Ann and George E "Pete" Dix (Dix), Action Loans, Inc , El Paso, January's Ft Sam Pawn (Ft Sam), San Antonio, Marion E Hallmark (Hallmark), H & F Pawn Inc , Killeen; Johnny Frederick, President, Central Texas Pawnbrokers Association (CTPBA), Killeen, Curt Sutherland, President, Austin Area Pawn Brokers Association (AAPBA), Austin, Larry Atwood (Atwood), Atwood Finance, Inc , Jacksonville, and Agustin Estrada (Estrada), Estrada's Pawn Shop, Lubbock Specific written comments on the proposed rules were received from John Smock (Smock), Houston County Pawn & Jewelry, Crockett, Jeny D Anglin (Anglin), O K Pawn & Salvage Co , Huntsville, Gary P Trial (Trial), Old Fort Trading Post, San Antonio, The Honorable Bill Sims (Sims), State Senator, 25th Senatorial District, San Angelo, Billy G Haley (Haley), Local Loan & Investment Corp of Sweetwater, Sweetwater, Darrell W Logsdon (Logsdon), Alamo Pawn Shops of Texas, Inc., Odessa, Norris Mealer (Mealer), Grand Street Pawn Shop, Amarillo, Leo Wilson (Wilson), Unified Loans, Inc , El Paso, Bob Owens (Owens), Owens Jewelry, Dallas, Carl F Fairchild (Fairchild), Carl's Pawn and Trading Co and Olde Royal Jewelry and Loan, Mesquite; Richard D. Camp, Sr (Camp), Dallas; Kenneth M McGee (McGee), Ken's Pawn & Jewelry, Lufkin, George Dziedzic (Dziedzic), Shaw's Jewelry & Loan, Houston, Robert L Furr (Furr), Cowtown Cash, Inc , Fort Worth, Mary Ann Dix, President, El Paso Pawn Brokers Association (EPPBA), El Paso, Lisa M Walters (Walters), Unigoal Corporation, Ft Worth; Texas Pawn Brokers Association (TPBA), Austin, Terry Charping (Charping), Top Loan Inc., Killeen, Craig A. Langford (Langford), D's Pawn, Killeen, Mac McCommas (McCommas), CJM Enterprises Incorporated, Killeen, Larry E Nuckols (Nuckols), Pawn Management, Inc , San An-

tonio; Eugene Jezek (Jezek), A-1 All-American Pawn Shop, Pasadena, John Wood (Wood), Joe's Pawnshop, El Paso; Hugh Simpson (Simpson), Cash American International, Inc., Ft. Worth; Concho Valley Pawn Brokers Association (CVPBA), San Angelo; Wichita Falls Area Pawn Brokers (WFAPB), Wichita Falls; Kathy Brisbin (Brisbin), Gem Pawn Shop, Temple; Mike Konczak (Konczak), Konczak Pawn and Loan, Baird; Gregory M. Cervenka (Cervenka), Doc Holliday's Pawnbrokers & Jewellers, Austin; Bill French (French), Hines Blvd. Pawn Shop, Inc., Dallas; Kathie Goode (Goode), Goode's Pawn Shop, Alvin; and Matt Pace (Pace), Tricoast Insurance Services, Houston. The following persons appeared and made oral comments at the public hearing on June 27, 1994: The Honorable David Counts (Counts), State Representative, 70th District, Knox City; Roy Santoscoy (Santoscoy), Irving Pawn Brokers Association, Irving, Philip Whitaker (Whitaker), Hugh Whitaker Co., Inc., Paris; Glenna Grisaffi (Grisaffi), Atascosita Jewelry and Loan, Humble; Paul Edge (Edge), Associated Pawn, Inc., Houston, Mark Buchanan (Buchanan), Sonitrol Management Corporation, Austin; Johnny Fredrick (Fredrick), H & F Pawn and Central Texas Pawn Brokers Association, and Cathy Gregory (Gregory), ANCO Insurance, Bryan. The following persons appeared and made oral comments in addition to their written comments: Haley; McCommas; Nuckols; and Dale Huggins, Texas Pawn Brokers Association (TPBA), Austin.

After hearing all oral comments and reading all written comments filed with the commissioner, Al Endsley, Commissioner, Office of Consumer Credit Commissioner, is of the opinion that pledgors, the pawn industry, and the general public would be best served by the adoption of these rules with the changes. Further justification for the rules as adopted are contained in the following paragraphs which set forth the comments and the reasons why the commissioner agrees or disagrees with the comments. These responses should be considered as part of the rules' reasoned justification.

The rules define required documentation of and recordkeeping for regulated transactions; provide for pawnbrokers to assist property crime victims; provide minimum requirements for security of persons and pledged goods; specify procedures and standards to be followed to make the consumer whole when pledged goods are lost or damaged, prohibit false, misleading, or deceptive advertising and provide for examination of advertising; provide for self-examination and corrective action and reporting; and establish standards of conduct relating to various aspects of the daily operations of a pawnshop. The rules provide comprehensive guidance to pawnbrokers in their day to day lending activities supplementing the provisions of the Texas Pawnshop Act, formally delineate many practices, procedures, and policies previously established informally and followed voluntarily, and prescribe other related practices and procedures that the commissioner deems to be in the public interest, many of which are now voluntarily followed by numerous businesslike pawnbrokers.

Section 85.21 BUSINESS RECORDS

(a)MINIMUM RECORDS, LOCATION OF RECORDS

Trial, Mealer, and Konczak requested that the commissioner change ".. records relating to all business transacted in the pawnshop." to "...records relating to all pawn loan business transacted in the pawnshop." These commenters as well as others contend that Texas Civil Statutes, Article 5069-51.17B(r) prohibits the commissioner from adopting rules that deal with any activity of a pawnbroker other than the making of pawn loans. That objection will be abbreviated in the comments that follow as "17B(r)." Wilson opined that the words "relating to all business transacted in the pawnshop" was like a snake in the grass just waiting to strike. He then observed that many independent pawnbrokers engage in check cashing, liquor sales, gun shop, and surplus sales businesses within pawnshops in order to cut down on overhead and better utilize employees. Fairchild observed that the proposal would add at least eight disposition files and then asked if the files were required even when a pawnbroker did not experience a problem or situation for which a particular file was mandated and if so were negative entries required and at what frequency.

Response: The commissioner disagrees with the commenters', interpretation of 17B(r). The commissioner believes it is his duty to adopt rules where the legislature has specifically directed the commissioner to do so such as rules relating to hold periods and to crime victim assistance and that it was not the intent of the legislature to negate such directives with the adoption of 17B(r). There is a general principle of statutory interpretation that when there is apparent conflict between a general provision and a specific or explicit provision, the specific or explicit provision is to be interpreted to prevail over the general. Likewise, the commissioner believes that 17B(r) does not prohibit the commissioner from adopting rules in areas where the legislature has specifically authorized the commissioner to do so such as those mentioned in 17B(n), (o), and (p). In order to avoid legal entanglements of other proposed rules, the commissioner has removed or modified provisions objected to which do not relate to pawn loans. These adopted rules do not mandate the establishment and maintenance of new, separate files. The proposal spoke to certain specific files in order to call attention to information that the rules would require to be retained by the pawnbroker. The information to be retained relative to compliance with the Texas Pawnshop Act will be permitted to be maintained by the pawnbroker in a manner of his or her choosing provided the information is readily identifiable and available for examination.

(1) LOAN TRANSACTIONS

(A) PAWN TICKET

(i) PRESCRIBED FORM AND CONTENT

Mealer objected to the itemization of the amount financed as being unnecessary. He also objected to the disclosure of renewal or extension options or lack thereof suggesting if this disclosure is required many pawnbrokers will issue tickets saying that they may not be renewed or extended. He suggested an alternative statement or disclosure "While we may offer renewal and (or) extension options on this loan we reserve the right to refuse those options at our sole discretion. You assume the risk of forfeiting your pledged goods if you fail to redeem them on or before the Last Day of Grace shown on this ticket."

Owens objected to showing the last day of grace on the pawn ticket and to the notice regarding renewal or extension options, if any, and suggested that any change in pawn ticket format may be opening a can of worms. The commenter also suggested that the size of the space for describing pledged goods may require the making of multiple loans and that multiple loans meant higher charges to the customer. Fairchild declared that the new pawn ticket form proposed was not user friendly primarily in reclarifying the last day of grace. He further asserted that forecasting the last day of grace would require a unique program for each computerized shop. He also questioned the value of the itemization of amount financed and asked how to properly handle disclosure when all or part of the amount finance was used to pay on or start a layaway, make a purchase, or a combination of several transactions. The commenter also stated that renewals or extensions had always been at the option of the pawnbroker and should remain that way. Camp stated that requiring pawnbrokers to compute the last day of grace will require restyling the pawn ticket, the addition of another program to their computers, and to cause others to compute the date on hand written tickets daily. Furr stated that the person providing support for the Pawn-Moore computer system, which commenter uses, told him it would cost $300-$500 for software changes to accommodate the last day of grace on the new ticket form. EPPBA observed that there was a smaller space on the proposed pawn ticket for description of pledged goods and that the commissioner was wanting more information in the descriptions. The commenter asked if pawnbrokers using computers were required to post payments to the fourth part of the pawn ticket and if the pawn ticket form is being changed. TPBA objected to the requirement to show the "last day of grace" on the pawn ticket. The commenter suggested that it be made optional with the pawnbroker, stated that it was spelled out quite clearly in the Pawnshop Act and further defined in Truth in Lending and Regulation Z, and to redefine by rule would contradict existing law. The commenter objected to any change to the front of the original pawn ticket as shown on Appendix A for the following reasons: cost of forms replacement and computer programming, insufficient room to describe pledged goods, placement of redemption signature on back of ticket interfered with signature comparison and customer knowledge of transaction, and lack of space for an itemization of the amount paid by the customer. The commenter also objected to the new disclosures of itemization of amount financed, renewal options or lack thereof, payment schedule, and notice reprepayment as of no benefit, unnecessary, and/or beyond the commissioner's authority. The commenter also suggested that the preprinted text of the front of the pawn ticket not be required on the copy made available to the local law enforce-

ment agency so that any misalignment of a form in a computer printer would not cause data entered on the ticket to be printed on top of the text and thereby made illegible. Charping asserted that the proposed ticket will create confusion, that having the ticket signed on the back at redemption or renewal will prevent signature comparison, and that the person will not know what he or she signed. Langford expressed his feeling that the proposed changes in the pawn ticket will not significantly help the consumer. He cited cost of ticket replacement, difficulty in comparing signatures, limited space for describing pledged goods, last day of grace - time consuming for the pawnbroker and of little help to the consumer, and renewal option needed to be left open to meet changes in the market. McCommas declared that requiring the last day of grace on the pawn ticket will only further the confusion of the customer. He expressed personal confusion due to perceived inconsistencies among §85.21(a)(1)(A)(i), (B)(i), and §85.81(a)(1) and (3)(B). The commenter also expressed the view that the itemization of amount finance served no useful purpose and objected to the pawnbroker being required to determine, when a loan is made, if the loan may be renewed. He suggested that most pawnbrokers will probably mark the box indicating that the loan may not be renewed but actually agree to renew if the customer asks to renew and that the consumer would be further confused by the disclosure. Nuckols objected to the proposed redefinition of the last day of grace to ensure that the date disclosed was a day on which the pawnshop would be open. He expressed belief that it would be confusing to the customer and next to impossible to program computers to compute the date as defined. He also stated that he believed that this final due date has already been defined by Truth in Lending Laws and Regulation Z. He further observed that he had never known a bank to calculate due dates on loans taking into consideration the dates on which the bank would not be open. The commenter objected to any change to the existing pawn ticket citing reasons expressed by others relating to signature comparison, limited space for describing pledged goods, and lack of space to itemize the late charges collected at renewal or redemption suggesting that such information was important to the consumer's understanding of the transaction. He also objected to the disclosures related to itemization of the amount financed and the eligibility of the loan for renewal saying that they serve no useful purpose and use space that could be used for description of pledged goods. Wood stated that the space for description of pledged goods should be larger than on the prescribed form in Appendix A. Simpson stated that the calculation of the alternative date was an unnecessary administrative burden and inconsistent with §85.81(a)(3)(B) The commenter submitted an alternative suggested form for the front of the pawn ticket and indicated strong opposition to the requirement for a "prescribed form." The commenter argued that a pawnbroker should have the flexibility to develop better formats and include contractual language more favorable to the customers Brisbin expressed strong dislike for the proposed pawn ticket form citing customer familiarity with the term "forfeit date" and suggesting that the term "last day of grace" would be less clear and more confusing. Objection to the reduced size of the space for describing pledged goods was stated. Konczak requested that there be no change in the current ticket form citing the itemization of amount financed as unnecessary and providing no information that is not already easily determinable, the last day of grace as being confusing and difficult to compute, the space for description of pledged goods as being inadequate, and the cost to change computer software as being an extreme hardship. Finally, Goode opposed any changes in the pawn ticket. She expressed belief that the new form will confuse customers who have been accustomed to the form now in use.

Response: The commissioner finds that the addition of the itemization of the amount financed, the payment schedule, and the notice regarding prepayment are essential to having a pawn ticket which meets the federal disclosure requirements of Truth in Lending and Regulation Z promulgated by the Board of Governors of the Federal Reserve System. While the disclosure of the itemization of the amount financed may be handled different ways, the proposed format would the simplest and adequate for most loans. A commenter has proposed an alternative ticket format for adoption as the standard. The commissioner finds that ticket to be acceptable but not conducive to completion except by machine and does not adopt that proposed alternative. The commissioner has retained the traditional Texas sized pawn ticket of four inches by six inches to avoid the cost of new filing equipment for pawnbrokers and regrets the resulting crowding or required and necessary information on the front of the ticket. The rule has been revised to authorize pawnbrokers and their printers to modify the spacing on the ticket to best accommodate their equipment and procedures. Spacing modifications may provide more space for the description of pledged goods. Revisionists should be careful to avoid changes which would cause the ticket to fail to comply with Regulation Z. If reduced space for adequate descriptions of pledged goods results in the use of multiple tickets, increased charges to the consumer is not automatically required. The commissioner disagrees with the commenters concerning confusing customers and believes that although some initial confusion may arise, the long term benefits from inclusion of the "last day of grace" on the pawn ticket will be helpful to consumers and to the pawn industry There are two areas of consumer complaints to the commissioner's office that regularly and continually have much larger numbers of complaints than the next most frequent problem. One of the two primary complaint generators is confusion or alleged confusion relative to the last day on which the customer must act to insure retention of a right in his or her pledged goods The commissioner believes disclosure of the last day of grace provides consumers with meaningful information and eliminates the chance that the consumer will not understand or correctly compute that date due to varying numbers of days in months and the common reference to a "two-month" grace period, a three-month loan, etc. The computation of the last day of grace is not burdensome in that pawnbrokers must now compute the date in order to avoid violations of the Act when taking unredeemed goods into their inventory; disclosure of the date to the customer when the loan is made will help reduce conflicts with customers and complaints to the commissioner. The commissioner agrees with commenters who opposed proposed provisions relative to computation of a last day of grace on which the shop would be open and has deleted that requirement. The commissioner disagrees with the commenter who suggested that the term "forfeit date" was more familiar to customers and that the "last day of grace" would be less clear and more confusing. The commissioner disagrees with commenters opposing the notice to consumers as to whether their loan is eligible to be renewed. The notice is being required because the commissioner finds that many pawnbrokers advertise, offer, and promote the renewal or extension of loans while others may not generally permit the renewal of loans. The commissioner also has found that pawnbrokers may permit a customer to renew a loan several times and then when an additional renewal is requested by a consumer who does not have the funds to pay the loan in full the pawnbroker refuses. Where the consumer has complained to the commissioner the circumstances often indicate that the pawnbroker may be attempting to trigger the forfeiture of goods of significant value. The commissioner believes that if this disclosure is given at the time a loan is made the consumer may select a pawnbroker who will renew the loan if that is desired or will have notice that he or she must plan to repay the loan in full on or before the last day of grace or the pledged goods will be lost. The commissioner disagrees with commenters who opposed the signature placed on the pawn ticket at redemption being on the back of the ticket. Placing the signature on the back of the ticket will prevent the pledgor signing in the wrong space when the loan is made and will prevent the person redeeming the goods from being able to look at and copy the signature placed on the ticket at the time the loan is made. The top of the back of the first part is be printed opposite the bottom of the front part. After the second signature is placed on the back of the ticket, a pawnbroker will be able to easily fold over the top of the ticket and position one signature immediately above the other which may make comparisons more accurate. The commissioner agrees with the commenter who suggested that the ticket copy designated for delivery to the local law enforcement agency not have the preprinted text appear on that copy and has added an affirmative statement to that effect. The commissioner does not agree or disagree with a comment asserting that pawn customers rely on a space on pawn tickets currently used for detailing "additional charges." The commissioner believes there is merit in some record systems to having the pawnbroker write the total amount paid by the customer on the ticket. The commissioner chooses not to change the proposed ticket recognizing that pawnbrokers have the option of asking for approval of a modification to the adopted ticket form or of detailing those charges on a

receipt given to the consumer The commissioner disagrees with the commenter who opposed a "prescribed form." The commissioner believes that a prescribed form is desirable in that many pawnbrokers lack the technical and legal expertise to develop and utilize a form that complies with applicable laws and rules. In addition the commissioner believes that consumers will be better served and better able to understand the terms of each pawn loan if all pawnbrokers utilize a prescribed form or approved variation. The commissioner will not stand in opposition to a pawnbroker who develops a better format for his or her specific use or who wants to incorporate contractual language more favorable to the consumer

(ii) DISTRIBUTION OF COPIES

Brisbin expressed confusion as to the distribution and filing of pawn ticket copies in connection with computerized records systems. Specific guidance in the rules for computerized systems was requested

Response: The distribution and filing of ticket copies is to be according to these rules except where a exception has been granted in connection with a specific computerized recordkeeping system. Specific guidance relative to exceptions for computerized systems should be handled through the written approval of each system based on the features and capabilities of that system

(B) MEMORANDUM OF EXTENSION

(i) PRESCRIBED FORM AND CONTENT

Simpson stated opposition to a "prescribed form" for the reasons given relative to the pawn ticket The commenter also opposed mandating the form be the same size as the pawn ticket An alternative suggested form was also submitted which addressed two alleged deficiencies in the proposed form, the blanks in lines (b) and (c) in the Amount Due At Redemption portion cannot be filled in at the time the memorandum is initiated and the footnote about daily charges does not address the possibility of a refund if a loan is extended prior to the original maturity date and is subsequently paid in full prior to the original maturity date Another commenter expressed concern that specifying that the last day of grace was one month plus 60 days after the date of the memorandum could be deemed abusive to the consumer and a hardship on the pawnbroker since the consumer was not required to pay the accrued finance charge up to the date of the memorandum

Response The commissioner's response relative to "prescribed form" is as given relative to the pawn ticket The commissioner does not view the fact that the blanks in lines (b) and (c) of the memorandum cannot be filled in at the time of the memorandum as a problem or deficiency The format proposed was viewed as a "worksheet" the consumer could use or follow to compute the amount the consumer would owe at redemption when the consumer was considering a particular redemption date The commissioner agrees with the comment relative to the footnote and has changed the prescribed form accordingly The commenter's suggested form also provided for the incorporation and disclosure of the last maturity date and the new maturity date in the memorandum. The commissioner does not oppose inclusion of that information in a memorandum but does not believe it is helpful to the consumer. The commissioner has removed language specifying the size of the memorandum. The commissioner believes that the size of the form may be dictated by the filing system utilized and that many pawnbrokers will prefer the memorandum be the same size as the pawn ticket The specification of the last day or grace has been modified based on the comment

(iii) PROCEDURAL DETAILS

Konczak wrote extensively expressing the belief that this subparagraph would interfere with the commenters practice of granting informal and verbal extensions of loans not to exceed ten days when requested by the customer and at no charge to the customer

Response: The clause was not intended to affect the commenter's business practice and has been reworded for clarity

(C) RECORD OF PAYMENTS

Wilson expressed his opinion that the subparagraph and the four clauses were bureaucratic overkill but such was the norm.

Response The commissioner has experienced problems with pawnbrokers who do not make a written record of payments at the time received While the text is somewhat detailed, it authorizes a simple, consistent manner of keeping minimal records under various circumstances without mandating any new forms or procedures

(D) WRITTEN RECEIPT

Sims and Wood stated that receipts should only be required when requested by a customer Haley expressed the view that a receipt was appropriate when a partial payment was made on an ongoing balance, but to require a receipt on every renewal or payment in full would be expensive and time consuming Further, on a renewal the new pawn ticket has been self explanatory for years and if a customer was paying a loan in full the customer's concern was the return of their pledged goods, not a receipt Logsdon asked what information will be required on the receipt Mealer urged dropping the proposed language regarding the receipt or alternatively require the posting of a sign in each pawnshop which reads "This establishment is required by the Consumer Credit Commissioner's Office to provide receipts, upon request, at the time of payment, for any amounts paid in connection with a pawn transaction " Mandating unwanted receipts would be a waste of time and resources and contribute to the litter problem EPPBA requested that the mandatory language concerning giving receipts be changed to "should" and expressed a willingness to give receipts upon request. In addition, the commenter requested clarification as to whether subparagraphs (D)-(J) applied to stores maintaining their records on a computer system TPBA requested that written receipts be required only upon request stating that most customers did not want one and that unwanted receipts were an unnecessary cost and a waste of paper and natural resources In addition to urging that receipts only be required upon request, the Langford stated that receipts are now available on that basis Konczak urged striking the proposal or modifying it to only require receipts upon request of the customer Fredrick stated that he had only had customers ask for receipts on two occasions in the past year.

Response: The commissioner accepts the collective comments of the commenters and revises the language to require receipts upon request with a sign regarding receipts being available, if not given automatically

(E) RECORD OF FORFEITURE AND REDEMPTION OR RENEWAL OPTIONS

Wilson asserted that this section lacks the virtue of common sense and that any contract is expired when the limits have run, and unless extended or renewed and attested thereto it has run and is commonly known in law as an executed contract. The commenter "wondered" if he sent the commissioner a bill for $1,000 and if the commissioner did not reply whether the commissioner created a $1,000 liability The commenter then asserted that "unilateral or mere silence does not create an agreement" and that one does not extend an individual contract by operation of the law EPPBA requested clarification as to whether the proposed language applied to both manual records system shops and to computerized records shops. The commenter observed that computerized systems automatically exercise the pawnbroker's option to take unredeemed goods as the pawnbroker's property. Konczak asserted that the subparagraph was totally unnecessary, the cost tremendous, made obsolete by computers, the information requested is maintained in computer memory, and that there is absolutely no reason for the time, trouble, and expense of additional paper copies

Response The subparagraph formally establishes the operating policy of the commissioner and of Texas pawnbrokers generally that has been in effect for more than 20 years The Act does not provide that the pledged goods automatically become the property of the pawnbroker at the expiration of the grace period on a loan but that such goods "may" become the property of the pawnbroker Pursuant to that statutory language, the commissioner deems a pawn loan to be an open loan until the pawnbroker lawfully exercises his option to take the unredeemed pledged goods to be his property The subparagraph is applicable to pawnshop with manual as well as computerized records The required record of exercise of option may be a computerized record The comment relative to time, trouble, and expense of additional paper copies is based on a misunderstanding of the proposal in that no additional paper copies are required and the subparagraph simply mandates, in a formal rule, procedures that the commissioner has required for many years

(F) ALPHABETICAL INDEX

Wilson wrote "More of the S.O.S." Konczak asserted that the rule is obsolete in today's computer age and that the information on any customer can be looked up alphabetically with the touch of a few computer keys

Response: The first comment does not merit a response. The subparagraph makes formal the informal recordkeeping requirements in existence for over 20 years. The second commenter failed to take into consideration that the proposed subparagraph was written in the context of a manual records system with provisions in the proposal for variations as warranted by particular computerized records systems. Such a system must not only be able to produce the information on a particular pledgor but to produce information on all open loans arranged alphabetically by pledgor's name.

(G) NUMERICAL INDEX OF LOANS

Wilson wrote "More of the S.O.S."

Response. The comment does not merit a response. The subparagraph makes formal the informal recordkeeping requirements in existence for over 20 years.

(H) NUMERICAL FILE OF REDEMPTIONS AND RENEWALS

Wilson wrote "More of the S.O.S."

Response: The comment does not merit a response. The subparagraph makes formal the informal recordkeeping requirements in existence for over 20 years.

(I) NOTICE OF LOST PAWN TICKET

Wilson wrote "More of the S.O.S." TPBA requested that the commissioner provide an example of a standardized form for this purpose.

Response: The first comment does not merit a response. The Act provides that a pawnbroker is bound to refuse to permit redemption of pledged goods upon presentation of a pawn ticket and the appropriate funds when the pawnbroker has received written notice of loss of the pawn ticket from the pledgor. Pledgors often give oral notice of loss of a pawn ticket and pawnbrokers will generally mark their records to indicate the loss. Such a written record has been construed as a record under the Act by the commissioner and the commissioner has bound pawnbrokers who made such a record. The commissioner believes it behooves responsible, ethical pawnbrokers to inform pledgors who have lost their pawn tickets of the appropriate action to protect their pledged goods. The commissioner will provide a suggested form for this purpose.

(J) POWER OF ATTORNEY

Wilson wrote "More of the S.O.S." EPPBA suggested that the subparagraph be changed to provide that a power of attorney may be attached to the fourth part of the pawn ticket. TPBA proposed that filing of powers of attorney be permitted in a manner of the pawnbroker's choosing that made them readily available for inspection. Langford stated that he currently has a file for "miscellaneous items" which works very well. Wood stated that the power of attorney should be stapled to the lost pawn ticket statement

Response: The first comment does not merit a response The commissioner agrees generally with the other commenters and adopts the suggestion of the third commenter which will accommodate all.

(2) TITLED GOODS

Wilson wrote "This one is a short and sweet 'DUPLICITY.'"

Response: The term "duplicity" does not appear to relate to the subject.

(C) TITLED GOODS DOCUMENTS FILE

TPBA requested in lieu of the special file proposed that the pawnbroker be permitted to establish a filing method where documents would be readily available for inspection. Langford asserted that currently his "miscellaneous items" file works very well for this.

Response: The commissioner agrees with the commenters and modifies the language to authorize retention of documents in a manner of the pawnbroker's choice which makes the documents readily identifiable and available for examination.

(D) PROHIBITED FEES

Striking the entire subparagraph was proposed by TPBA as duplicative of the Pawnshop Act, Articles 51.12 and 51.16(a)(6). Langford stated that "This is already covered."

Response: The commissioner agrees with the commenters and struck the entire subparagraph.

(3) STANDARDS FOR DESCRIBING GOODS

Trial, Mealer, and Konczak called for deletion of all references to "purchases."(17B(r)) Wilson wrote "This has been going on for years."

Response: The commissioner deleted references to "purchases" for reasons previously stated. The second comment does not merit a response.

(B) JEWELRY

Konczak suggested that the rule should be redrafted to make it clear that "weight" referred to the entire piece of jewelry including both metal and stone(s).

Response: The commissioner agrees with the commenter and modified the wording accordingly.

(D) REQUIRED SEQUENCE

Trial, Mealer, and Konczak called for deletion of all references to "purchases"(17b(r)) or deletion of the entire subparagraph. EPPBA proposed deletion of the subparagraph asserting that compliance would be difficult especially for pawnbrokers using handwritten records and that the commissioner should not have the right to tell pawnbrokers how to write pawn tickets. TPBA objected to this subparagraph at this time due to the many unanswered questions about electronic reporting to law enforcement agencies. Wood stated that, based on many years experience, a pawnbroker could not get employees to follow a specific sequence due to their different thought processes.

Response: The commissioner determined the subparagraph to be premature and struck it.

(4) LOST OR DAMAGED GOODS DOCUMENTATION FILE

Smock questioned whether lost or damaged goods was a major industry problem and observed that in seven years of doing business he had never lost a pledged item or had one damaged. Anglin expressed the view that the five categories of information required by the proposed rule would be difficult to keep in the "information space" in pawnbroker's computerized record keeping systems and that pawnbrokers maintaining handwritten records would really have a problem recording the required information. Wilson wrote "To this ad infinitum topic, I would say 'if it works, don't fix it;' common sense tells you if there is a disagreement the person would complain to the O.C.C." Owens objected to the record keeping saying we have enough files as it is. EPPBA expressed the view that "the commissioner should not get involved in this ... if a compromise cannot be reached between a customer and a pawnbroker, at that time, the commissioner may be contacted." TPBA proposed the elimination of the paragraph expressing belief that the Act, Article 51.16(a)(5) covered the matter adequately and asserting that expanding the Act with the paragraph would create costly and unnecessary paperwork. Langford stated that he did not see any benefit for this paragraph stating that if the pawnbroker did not make a fair and equitable solution for the customer the customer can then contact the commissioner's office. Jezek asserts that he has satisfied every customer whose goods were lost or damaged during his seven years in business, that having a file will not change that, and the paragraph would only create additional work which small business owners do not have enough time for. Santoscoy asked why the file was needed, why the information was required if the matter was satisfactorily resolved with the customer, and could the information potentially affect the pawnshop license. The commenter also expressed concern about the multiplicity of specific files required by the proposed rules citing the fear of many pawnbrokers that they would make a mistake and fail to comply with all requirements.

Response: Complaints about pawnbrokers who have not satisfactorily replaced lost goods or repaired damaged goods is the second major category of complaints against pawnbrokers. Texas Civil Statutes, Article 5069-51.16(a)(5) makes the commissioner responsible to approve or reject all replacements of goods. While the commissioner has and will continue to permit pawnbrokers to resolve problems with lost or damaged goods without notice to the commissioner and without routine intervention on the part of the commissioner, the statute clearly gives the commissioner certain responsibilities that go beyond responding to consumer complaints of lack of satisfaction with the pawnbroker. The commissioner generally disagrees with the commenters who suggest that the commissioner's position should reflect the status quo and that the commissioner should only be concerned with complaints he receives. The number and nature of losses and damage to pledged goods and the resolution of such losses and damages is clearly and closely associated with the qualifications for license. The commissioner believes it appropriate to require each pawnbroker to maintain, for examination, the nominal records specified on each instance of loss or damage

to pledged goods. The text has been modified to avoid the requirement of a special file for this information. The paragraph does not require any new record per se and only requires the recording of basic facts relative to the incident and retention of same in a readily identifiable and accessible manner

(5) RECORD OF GOODS IDENTIFIED AS STOLEN

Mealer urged insertion of "if reasonably determinable" following "the true owner of the goods." Wilson wrote "You can find these records in the Court House after prosecution." EPPBA stated that the records proposed to be required by the pawnbroker were not necessary, that pawnbrokers usually do not learn the identity of the true owner of stolen goods, that police records should be sufficient, and that the words "terms and conditions" in the proposal were ludicrous as stolen goods were turned over to the police. TPBA stated that information required in the proposed paragraph is often time unavailable to the pawnbroker and suggesting that the only required information be the number of items and the dollar amount of loans seized per year by law enforcement. Jezek asserted that the information is already in his computer and that creation of another file will only create additional work for which small business owners do not have time. Wood declared that to create a log of stolen merchandise is unworkable. The commenter continued saying that the police officer gives the pawnbroker a property receipt whenever an item of stolen property is picked up, that a right-to-possession hearing is scheduled, and a person attending the hearing may or may not learn the identity of the owner of the property The commenter asserted that terms under which the pawnbroker releases the property is always the same, i e an armed individual, representing the city, takes the item away from the pawnbroker Konczak urged insertion of "if reasonably determinable" after "the true owner of the goods " The commenter also requested clarification of the word "determination" and specifically asked if it referred to a conviction or only a charge He also asked the meaning of "terms and conditions " The following comments were referenced to this paragraph and to §85 21(a)(7)(F) Cervenka stated that these provisions relate to law enforcement issues and should be resolved by trained professionals, that communication between the commissioner's office and law enforcement officials was needed, and that these provisions would be overkill He further asserted that less than one-half of one percent of merchandise passing through a pawnshop is stolen

Response. The commissioner believes it is important from a regulatory viewpoint to be able during an examination to identify and review the various circumstances under which a pawnshop was found to be in possession of goods not lawfully possessed by a pledgor. The wording has been modified so that information required is known to the pawnbroker in all instances Comments about standard terms and conditions of relinquishing property reflected specific local police policies and procedures which are not applicable statewide. The wording regarding terms and conditions under which the pawnbroker relinquished the goods have been expanded to show as examples common terms and conditions that may apply in various jurisdictions. The proposed recordkeeping is not contingent on a person being charged on convicted therefore records "in the court house" are not sufficient for the purpose stated. If, as one commenter asserted, the information is already in his computer, the paragraph does not require any additional work by the pawnbroker provided the information is readily identifiable and accessible. The paragraph is not a law enforcement issue per se but an administrative matter relative to the operation of each pawnshop. Pawnbrokers assertions concerning the nominal amount of stolen merchandise identified in pawnshops indicate that the rule will not require any significant effort on the part of the pawnbroker. The examination of the records will permit the commissioner to validate the claims of pawnbrokers as to the insignificance of stolen property and to, if applicable, address situations where particular pawnbrokers are found to receive a volume of stolen property that greatly exceeds the norm.

(6) ACCOUNTING RECORDS AND SYSTEMS

Haley asked: if the accounting control system was for him to look after his business and who sets the rules for accounting principles The commenter then stated that these items are broadly confusing and seemed to be of more interest to the owner rather than the examiner. Mealer asserted that Article 51 09(a) specifies the books and records to be kept by a licensee and that he finds no statutory delegation to the commissioner to amend Article 51.09(a) The commenter asserts a 17B(r) objection and urges deletion of the paragraph or amendment to specify exactly what accounting system, directly related to pawn transactions, would be required. Wilson asserted that this proposal as well as the next paragraph is a redundancy EPPBA opined that the commissioner has no right to tell pawnbrokers how to keep their books and that the commissioner is not entitled to this information. The commenter expressed a lack of understanding of the language "that can be relied upon to produce accurate financial information and to safeguard assets " The commenter then acknowledged that pawnbrokers are required to show that they have enough assets to meet their respective asset requirements, although some have a zero requirement, and that they should not have to do any more than that Alternative language was proposed by commenter TPBA as follows: "Each pawnbroker shall establish and maintain an internal accounting control system that can be relied upon to produce accurate financial information and to safeguard assets." The following comments were referenced to both this paragraph and paragraph (7) on computerized records WFAPB stated that the proposed requirement would impose an undue hardship on pawnbrokers Comments indicated that pawnbrokers believed the proposal would require reports certified by a certified public accountant. They expressed the view that current records were adequate and that some of the information would be a breach of pawnbroker privacy Santoscoy expressed concern that the proposal would require the continuing retention of an accountant preparing monthly financial statements at a cost of perhaps $500 per month.

Response: The commenter referencing Article 51.09(a) is apparently ignoring Article 51.08(b) and apparently other commenters are ignoring that provision which clearly, though indirectly, requires that a pawnbroker maintain books and records "using generally accepted accounting principles" and has done so since 1981 Such principles are established by the Financial Accounting Standards Board. While the paragraph has been changed to remove the reference to such principles, the Act requires adherence. A pawnbroker could conceivably obtain published information on accounting principles and set up a record system without consultation with a certified public accountant, however, for purposes of business management many pawnbrokers already utilize the services of CPA's. It behooves any business person to consult with an accountant to ensure compliance with financial and tax laws and to have records that accurately inform the owner of the financial condition of the business at all times. The paragraph does not impose an undue hardship on pawnbrokers in that it simply supplements the Act. The paragraph does not require continued use of a CPA to produce certified or audited statements. The commissioner disagrees with the commenter who asserts that there is redundancy in paragraphs (6) and (7). The commissioner reminds pawnbrokers that the Act gives the commissioner or his duly authorized representatives unlimited access to all records relating to the regulated business. The commissioner agrees with the commenter suggesting alternative language and adopts same with the retention of the start up period for compliance included in the proposal.

(7) RECORDS MAINTAINED ON ELECTRONIC DATA PROCESSING (EDP) SYSTEMS

Sims asked if the state was really interested in what software a small business utilizes and who would review software for the commissioner's approval. The commenter further stated that if a specific type of software would benefit the state the commissioner might have a case but that the commenter had a problem with spending state dollars on the micro-management of businesses that don't need the state's intervention Wilson asked how many systems have been filed with and approved by the commissioner. Santoscoy expressed concern that although the proposed rules did not require computerization some of his members fear that computerization will be required in the future They like small businesses that know their customers by name and not by numbers.

Response From a regulatory viewpoint the state is reasonably interested in the computer software used to compile and retain records of regulated business transactions. The consumer protection section of the commissioner's office has reviewed and approved computerized recordkeeping systems proposed by licensees and vendors of software to licensees for more than 20 years to ensure that the commissioner's examiners are able to carry out their statutory duty to examine a

licensee's records for compliance with applicable statutes and rules. The commissioner does not believe this review constitutes micro-management of business. The commissioner does not believe this is the appropriate place to discuss systems previously filed with and approved by the commissioner. The third comment does not seem to require a response as it calls for speculation

(B) FILING OF AMENDMENTS

TPBA observed that a pawnbroker may get many little upgrades in a pawnshop system in the course of a year, many of which have no bearing on the pawn loan program, and suggested that the last sentence be changed to read "All substantial changes which constitute upgrades of a system shall be filed within 14 days after the close of each calendar year." Simpson proposed deletion of the second sentence suggesting that if a system is upgraded and continues to provide the information on which the commissioner originally approved the system the administrative burden of filing upgrades was unnecessary

Response. The commissioner agrees with both commenters and adopts the second commenter's proposed deletion

(E) ASSOCIATED HARD COPY RECORDS

EPPBA requested clarification of the meaning of the subparagraph

Response. Upon reconsideration the commissioner concluded that the subparagraph was not essential and struck it

(F) REPORTING PROPERTY TRANSACTIONS TO LAW ENFORCEMENT

Trial stated that he has been working with local law enforcement in this area and has a system working but that compatibility problems with different pawn systems and among law enforcement systems make such report not economically feasible Mealer asserts a 17B(r) objection as to purchased goods Commenter expressed agreement with the commissioner's premise for the proposal but found it to be discriminatory as between pawnbrokers using computers and those who do not because of the potential expense to pawnbrokers to convert or replace existing, approved computer systems in order to accomplish electronic reporting The commenter urged deletion of the proposal until an electronic reporting process can be standardized for every licensed pawnshop and urged continued efforts to develop such a process through voluntary collaboration by the commissioner, pawnbrokers, software vendors, and interested law enforcement agencies Owens asserted that electronic reporting just will not work and that the City of Dallas had told pawnbrokers that they did not have the money or manpower to do programming necessary to be compatible with all the numerous systems just around Dallas TPBA expressed no philosophical opposition to electronic reporting but cited knowledge of abuses by law enforcement agencies or personnel in other states and expressed a desire to protect the rights and privacy of customers The commenter proposed that only descriptions of property acquired by the pawnshop be transmitted to law enforcement agencies who, if they identified stolen property, could then obtain the name and other information on the person from whom the property was obtained Concern was expressed that law enforcement agencies or personnel would treat pawnbrokers differently depending on whether the pawnbroker had handwritten records or computerized records WFAPB does not oppose reporting of purchased property but complained of the lack of mandatory reporting by persons in business as garage sales, flea markets, antique stores, buy and sell shops, auto dealers auto repair shops, welding shops, tire dealers, jewelry stores, coin shops, book shops, etc.

Response. The commissioner has deleted references to purchased goods for reasons previously stated. The commissioner believes that the comments concerning the problems of incompatibility are unfounded based on previous information that the commissioner has received. The commissioner believes that the cost per pawnshop to modify software to produce a standardized report of transactions to law enforcement is not substantial. The information related concerning the City of Dallas is not consistent with previous information received from Dallas Police Department personnel

(G) SYSTEM ACCESS AND CONTROL

TPBA stated that "We feel that this is just common sense We would like this rule stricken on the grounds that common sense cannot be dictated by the rule process."

Response The commissioner believes quite strongly that EDP systems which are not designed with adequate protections against misuse cannot be accepted and the commissioner will hold the licensee responsible for the integrity of data related to regulated transactions The suggestion of the commenter that the subject matter is a common sense issue that cannot the dictated by rule is a trite, oversimplification that suggests a view that common sense is universally held The commissioner does not believe that common sense is universally held by all systems designers and pawnbrokers and that a rule can be effective for its obvious purpose, however, the commissioner strikes the subparagraph

(8) RECORDS RETENTION

EPPBA and Wood objected to the possibility that the commissioner could require books and records be made available for inspection at any time other than normal business hours

Response The commissioner has revised the language to remove the objection

(9) CONSUMER CREDIT COMMISSIONER FILE

Konczak observed that no time limits are established for retention of documents in this or other files established by the proposal and suggested an "audit to audit" limit on retention

Response The commissioner believes the statutory provisions on record retention are applicable to most records required by the proposal, however, information required to be retained in the consumer credit commissioner file will be useful and valuable to pawnbrokers for a period of time that is longer than "audit to audit." The commissioner does not believe it appropriate to establish a retention period for this file at this time and will not object to the discard of documents when they obviously are of no further value to the pawnbroker

SECTION 8531 CRIME VICTIM ASSISTANCE

Mealer objected to the proposal as making unreasonable demands on the resources of a licensee to be made a conscripted branch of law enforcement Commenter points out that the Article 5117B(q) uses the word "permit" rather than "require" and suggests that the legislature did not intend to mandate that the pawnbroker assist crime victims The commenter suggested rejection of the entire section or revision to clearly provide that any action by the pawnbroker was voluntary. The commenter recommended that the commissioner provide pawnbrokers with a pamphlet to be distributed to inquiring victims which included explanation of the importance of timely and accurate reports of thefts to law enforcement agencies, the responsibilities of pawnbrokers to report property transactions to law enforcement agencies, and the legal procedure for recovering stolen property that is found in the possession of a pawnshop. Wilson simply wrote "Let the Police or the Pawn Detail do their jobs." Owens stated that this is really not needed, we have enough files, victims do not usually have any numbers on anything, and this would be a complete waste of time McGee urged the commissioner to let the police handle this. He stated that when victims come into his shop now he does check through his computer to see if he has the stolen item. He asserts that "These people will run you nuts looking for stolen stuff." EPPBA declared "We are not the police!" Commenter asserted that the proposed section created a negative image of pawnbrokers in the eyes of the public. Commenter suggested that the police should continue to do their job and the pawnbrokers would continue to cooperate with the police Charping stated that the law enforcement agency that recorded the crime had the experience to investigate the offense, pawnbroker's records were already open to the police, the victim is not protected by investigating his own crime, and criminal investigations are best left to those who are trained to handle the job Langford stated that he did not feel the section would be of drastic help to a crime victim or the consumer. He also asserted that the section would cost the pawnbroker an astronomical amount of resources and as proven year after year the amount of stolen property (in pawnshops) is minimal. Wood expressed belief that the proposed section could lead to law enforcement personnel sending victims to pawnshops, law enforcement personnel making unwarranted remarks that will lead victims to believe they are likely to find stolen property in pawnshops, and that victims so lead will cause confrontations and disruption of business in pawnshops. The commenter also expressed concern about the term "could be the property of the victim" and what sort of burden would be imposed on a pawnbroker faced with a report of stolen property which was not described sufficiently to identify the item stolen Simpson urged an

additional subsection to read as follows: "A pawnbroker who uses his good faith efforts to comply with the subsections (b) and (c) shall not be subject to fines or penalties under Texas Civil Statutes, Article 5069-51 01 et seq or liable to any third party for a failure to meet all of the technical requirements in those subsections, and evidence of failure shall not be admissible in any subsequent proceeding concerning an alleged owner's right to own or possess the subject property or damages from the loss of such property " CVPBA urged striking the entire section based on pawnbrokers current recordkeeping requirements and close rapport with local law enforcement Brisbin stated that he opposed the section entirely and went into a dissertation covering current reporting to police, lack of similar requirements on others persons and businesses buying and selling used merchandise, inadequate property descriptive information from victims now seeking assistance who the pawnbroker may now try to help, limited extent of stolen property found in pawnshops today, procedures followed now to avoid taking stolen property, and the desire to avoid requiring a sales receipt on everything taken in pawn and making their loan customers feel like the customer must prove that the merchandise is his or hers and is not stolen Konczak urged deletion as an unreasonable demand on the pawnbroker or alternatively making it permissive rather than mandatory Commenter urged some alternative to mandating compliance with law enforcement instructions citing witnessing numerous occasions where police officers gave unlawful and unconstitutional instructions Cervenka asserted that this section may be the most poorly thought through of all the new rules Commenter made general comments about pawnbrokers not being trained to do police work, reports of finding stolen property should only be to the police, and generally that pawnbrokers should cooperate with the police but each should handle their respective jobs French expressed he had no objection to giving victims information upon presentation of a report but felt that it was unnecessary work on the part of the pawnshop except for prompt reporting to police of the finding of stolen property Fredrick stated that pawnbrokers report property transactions to the local police and that it made no sense for the pawnbroker to be doing the job of the police

Response Many of the commenters seem to be unaware of the statutory provisions concerning crime victim assistance and the directive to the commissioner to adopt rules on this subject even though it was cited in the proposal Even more are apparently unaware that the statutory provision was adopted in compromise to avoid legislation that would have required public display of pledged goods so that crime victims could look for their missing property Although the statutory provision uses the term "request" rather than "require", the commissioner was present at the compromise and believes that this was not intended to be a substantive distinction The commissioner further finds that if, as has been suggested by one commenter, the section made crime victim assistance absolutely voluntary on the part of pawnbrokers it would constitute an evasion of the legislative intent and to strike the section would be a dereliction of duty. The commissioner believes the forecast of an avalanche of crime victims upon pawnbrokers is without merit as the statute has been in effect for almost three years with negligible effect on pawnbrokers. Other fears expressed by commenters concerning the possible future actions of police and victims will not be caused by the rule but if they arise they are matters of a local nature to be dealt with locally The commissioner will consider development of a pamphlet for the benefit of victims if future events seem to warrant it This does not inhibit the pawnbrokers from development of such information The commissioner lacks the authority to adopt the broad hold harmless provision suggested by a commenter The commissioner has agreed with the concerns of some commenters as to the specificity of stolen property descriptions, the time within which pawnbrokers are to respond, and recordkeeping and has modified the text to accommodate those concerns

(a) VICTIM'S REQUEST FOR ASSISTANCE

TPBA requested that victim or victim's personal representative be required to present their request in person CVPBA stated that the pawn ticket copy furnished the police department should be adequate proof of property taken in by a pawnshop due to the sufficient description and that the local police are satisfied with the current arrangement Commenter also expressed the belief that 90% of the people that pawn merchandise do not have personal records with serial numbers and other identifying information of the goods

Response The commissioner finds that the first commenter's request is consistent with the proposed legislation that resulted in the related statutory provisions and revises the language accordingly The second comment is inconsistent with the statutory requirements

(b) SEARCH BY PAWNBROKER

Logsdon stated that a specific definition of "second business day" is required, that some specific identification of stolen property must be contained in the crime report, and asked how one determines "property that might be, etc ?" The commenter also suggested that a minimum dollar value should be established

Dziedzic stated that he is concerned that the proposed subsection leaves a loop hole for local police departments to transfer time consuming record searches to pawn shops which could equate to countless man hours TPBA requested that the required search be limited to items with serial numbers or of distinct or unique character stating that a real burden could be forced on pawnbrokers if they were required to such for items commonly found in pawnshops but which have such general descriptions that the victim's item, if in the pawnshop, cannot be distinguished from other like items Commenter also requested that specific time requirements be replace with "in a timely manner " CVPBA asked how a pawnbroker is supposed to identify stolen property without sufficient identification of the property As to subsections (b) and (c), WFAPB stated that pawnbrokers should not have to act as policeman on a one to one basis. Commenter stated that pawnbroker already does more to assist in controlling crime by providing copies of pawn tickets and buy tickets to law enforcement and asked if the pawnbroker is to do police work as well as the commissioner's work while they are getting paid with the pawnbroker's tax dollars. Another commenter expressed concern that pawnbrokers would have difficulty complying with the proposed rule because victims would not be able to provide sufficiently specific descriptions of their stolen property to permit identification.

Response: The commissioner has recognized the validity of the comments relative to descriptions of property and has revised the wording to clarify the responsibility of the pawnbroker. The commissioner does not believe that a dollar value of property should be incorporated in the rule due to the further belief that victims will not pursue property of insignificant value The commissioner disagrees with removing the specificity of the response times for pawnbrokers believing that pawnbrokers will be better served when a specific, reasonable response time is provided by rule and all parties know what that time is Victim's definition of "timely manner" would in all likelihood differ from that of a pawnbroker and create friction which many commenters obviously want to avoid. Response times have been extended due to comments

(c) PAWNBROKER'S REPORTS OF FINDINGS

Logsdon made some general comments about this subsection to the effect that he expected confrontations between victims and pawn brokers and that the rule amounted to rabbit hunting with an elephant rifle Dziedzic expressed the view that this could turn into a paperwork nightmare and that it might be necessary to hire a person specifically to handle stolen reports He expressed that the "90 day hold period on loans" was sufficient for any police agency to identify stolen property in a pawnshop and that he felt he could cope with searches of "buys" if he didn't have to do duplicate work with the police on loans TPBA asserted that the proposed time requirements place an unreasonable burden upon pawnbrokers and they would find it difficult to remain in compliance Commenter also requested that specific time requirements be replaced with "in a timely manner " CVPBA stated that sometimes it is practically impossible during the course of a busy day to comply with the four-hour notification requirement

Response The comments have appeared under preceding sections and have been responded to previously except to observe that there is no such thing as a "90 day hold period on loans "

(d) PAWNBROKER'S RIGHT TO PRIVACY

Commenter asked how a victim would be able to identify his property without looking at pledged goods

Response The purpose of the subsection was to clearly establish that a pawnbroker was not required to permit victims to browse

through pledged goods. The subsection does not prohibit any action permitted by the pawnbroker.

(e) CRIME VICTIM ASSISTANCE FILE; RECORDKEEPING

CVPBA suggested that the requirement was just another unnecessary burden on the pawnbroker. Smock and Anglin asserted that pawnbrokers do not need to maintain a file for this. One observed that the information was available in his computer system as well as those of law enforcement agencies. Haley observed that this subsection plus other files required in the proposal amounted to seven separate files that will be of little benefit because of the low incidence of the activities these files relate to. Dziedzic stated that the proposal to require a file and documentation will surely cost every pawnbroker thousands of dollars. He suggested that pawnbrokers should be able to charge a fee of $20 per hour for searches TPBA requested that the proposed subsection be deleted expressing belief that it would require every pawnshop to have a copy machine in it Commenter asserted that keeping the records does not accomplish anything and that a copy of the police seizure form is sufficient to show that an item was recovered. Jezek asserted that maintaining a file like this would serve no useful purpose. He also expressed the understanding the purpose of the file was for pawnbrokers to check the file when considering making a new loan to see if a proposed pledge had been reported stolen and that such a procedure was too burdensome

Response: The original proposal failed to explicitly indicate that the basic recordkeeping involved the retention of the offense report delivered to the pawnbroker There is obviously no significant cost associated with retention Retention of the records and the information required to be written by the pawnbroker will provide the pawnbroker and the commissioner factual information on which to base any amendments to this section or to recommend any appropriate statutory revision. The records will also provide information to pawnbrokers that they may use to demonstrate the extent of their service to their community in this area and may provide factual evidence regarding the amount of stolen property that is found in pawnshops and deemed by pawnbrokers to be insignificant

SECTION 85 41 SECURITY OF PERSONS AND PLEDGED GOODS

Trial stated that how protection of pledged goods is accomplished must not be mandated by rule or in any particular fashion and that the section must be deleted Charping and Whitaker stated that the insurance proposed to be required would be difficult or impossible to obtain McCommas suggested that the commissioner may be proposing insurance that insurors will not provide or at a premium highly detrimental to the profitability of a pawnshop The commenter further suggested that unless the commissioner could mandate the writing of the proposed insurance at a reasonable premium he should not adopt a rule on insurance WFAPB stated that their insurance carriers have stated that they will not provide the proposed level of coverage. Brisbin objected to subsections (a)-(d) asserting that statutory provisions already establish pawnbroker's responsibility to the pledgor and his pawned items. Counts stated that the commissioner would be denying consumers loans if the commissioner required a pawnbroker to assume a liability of perhaps $100,000 if a person pledged merchandise of such a value on a $2,000 loan Santoscoy stated that most pawnbrokers would like to have insurance but that many insurance companies would refuse to quote a premium when they learned the business was a pawnshop. Commenter also stated that several members were concerned about insurance as it related to safes He stated a belief that the requirements for insurance and for safes should be interrelated and exclusionary Pace suggested that the requirement for insurance to be obtained from "companies authorized to do business in Texas" be changed to "companies with an A. M. Best Rating of A or better " Commenter suggested that a significant amount of insurance is currently being provided to pawnbrokers by financially sound non-admitted carriers and the rule as proposed would severely restrict the market

Response: The commissioner disagrees with the commenters who urged striking the section and insisted that the statutory provisions were adequate The commissioner has specific statutory duties concerning insurance that are appropriately carried out by rulemaking and the other areas are subject to the commissioner's general rulemaking authority. Responses relative to insurance will follow The commissioner agrees with the comment that the proposal restricting insurers to those authorized to do business in Texas will disrupt significant amounts of insurance currently being provided The commissioner agrees with the commenters' suggestion that a surplus lines company with an A M Best Rating of A or better would be a suitable alternative

(a) GENERAL LIABILITY INSURANCE

Smock wrote that he "Approved of" the proposal Logsdon just asked questions whether the coverage applied to any person on the premises, if so, what is the availability and cost, and what total coverage does $500,000 per occurrence relate to and at what cost Owens stated that this may be too costly for some shop owners and may run some of them out of business McGee asked why pawnbrokers need $500,000 liability insurance asserting that he has been in business for 32 years and has never been sued for anything Dziedzic stated that the proposed insurance requirement is obtainable and does not present a problem for his business EPPBA stated opposition to this being a rule Walters submitted a copy of part of her insurance policy showing coverage in excess of that proposed to be required TPBA wrote "We feel that the pawnbroker be given options concerning liability insurance That he has coverage to equal that of his net assets, or be able to show financial responsibility that would allow for the protection of his customers We are aware of instances where the pawnbroker has made a determined effort to obtain liability insurance and was unable to do so Provisions should be made for such cases " Nuckols urged reconsideration of the requirement for $500,000 coverage citing demonstration of fiscal responsibility by proving $150,000 assets when obtaining a license The commenter also suggested authorizing some type of alternate proof of financial responsibility and urged that the commissioner amend the subsection to require liability insurance in an amount equal to the pawnbroker's net asset requirement. CVPBA stated there was no definition of "occurence "

Response The commissioner believes that the proposed coverage represents the minimal financial responsibility in this area and carries out the commissioner's statutory duty to require general liability insurance and to assure that pawnbrokers meet the financial responsibility requirement for licensing Surveys being done as part of the pawnshop examination process indicate many pawnbrokers carry this amount of protection or more although the examiners report pawnbrokers with no coverage as is apparently the case with the fourth commenter Cost figures cited by examiners would not put any pawnbroker out of business Although one commenter stated that he knew of instances where a person could not obtain insurance for a pawnshop, no pawnbroker submitted a comment as to his or her inability to obtain insurance While commenters have suggested that alternative methods of meeting financial responsibility be authorized, no specific proposal has been put forward and the commissioner declines to attempt to develop one in this adoption process The commissioner has been unable to conceive of any basis for correlating the amount of liability insurance required to a pawnbroker's net asset requirement associated with a particular shop The proposal to make the insurance amount equal to the net asset requirement is ludicrous because numerous licenses exist where the net asset requirement is zero and the Act permits the transfer of those licenses without assets to a new owner who receives the license with the zero requirement The commissioner believe that it is not appropriate to define "occurence" in these rules but recognizes the term to mean an incident which gives rise to a financial liability

(b) FIRE INSURANCE

Smock and Anglin stated that the proposed amount of insurance was too much, would be difficult to obtain, and too costly Haley asked such questions as what the insurance would cost, who would provide it, is it to be mandated without compensation to the pawnbroker, and in light of the proposal "what is the purpose of 'financial stability' as provided by that part of our license for?" Logsdon asked from whom and at what cost would this coverage be obtained and declared that there is a definite limit as to the expense load that a shop can handle Owens stated that most of his loans on jewelry are kept in a safe, he does not know of any company that will insure beyond the loan value, and he does not think a company can be found that will provide the amount of coverage proposed McGee expressed doubt that insurance companies would provide the level of insurance proposed and asserted that it is hard to find a company that will write any type of insurance for a pawnshop Dziedzic explained that over

90% of his loans were on jewelry and would, in the event of fire, be protected by safes with a higher rating than is required in the proposed rules. He stated that he has inquired of three named insurance companies about coverage at the level proposed and had been told that they could not provide it. He said that he had been advised that normal fire insurance excludes jewelry. Furr stated that subsection contradicts §85.51(b) last sentence Walters urged consideration of reducing the proposed coverage amount citing her current coverage and referring the commissioner to her agent as a source of information TPBA and Nuckols urged reduction in the amount of insurance to one and one-half times the amount financed on open loans Commenter cites industry statistics that show that unredeemed items generate less than 50% markup. Langford stated that if the commissioner produced insurance as proposed that was not cost prohibitive he would gladly buy it, but that he had been unable to find any insurance with this type of coverage Jezek stated that the proposed amount of insurance was excessive in his circumstances because a large percentage of his loans were secured by jewelry and were protected by a fireproof safe and consideration should be given to such pawnbrokers Simpson stated that the amount of coverage is excessive and should be lowered and suggests an alternative to the second sentence as follows "Notwithstanding the above, a pawnbroker who furnishes the commissioner with credible evidence of available resources other than fire insurance to protect pledgors may carry a lesser amount If the commissioner questions the resources indicated in the information furnished by the pawnbroker, commissioner may require certification by an independent certified public accountant as to the accuracy of such information concerning available resources." CVPBA expressed belief that lack of availability and/or excessive cost made the proposal unreasonable and suggested that a pawnbroker would sometimes loan up to 60% of the value of a gun. Brisbin stated that more research and documentation needs to be done as to whether this insurance can be obtained Cervenka urged fire insurance only be required in an amount equal to the amount financed citing commenter's loan to value ratios and the commissioner's presumption of a total loss including jewelry protected in fire proof safes. French stated that insurance on jewelry is cost prohibitive from most carriers Counts suggested that the common coverage of one and one-half times the amount financed should be adequate unless experience dictates otherwise Santoscoy expressed concern as to the amount of insurance being proposed and stated that on some repeat loans a pawnbroker would loan the full resale value of the pledged goods and never would the value of the goods exceed one and one-half to two times the amount loaned Whitaker stated that based on his experience as an insurance agent that insurance was often unavailable especially in small towns, that insurance companies did not know the pawn business and were therefore leery of liability, but that the rule needed to be more specific to be certain that bailee coverage was included in policies Gregory, who in 1986-1987 put together an insurance program for the Texas Pawn Brokers Association and sells insurance to pawnbrokers, stated that the standard insurance market will not write property insurance for some pawnshops She also stated that her agency represents 40 standard companies who will not write for pawnbrokers and that her only source for property insurance is American Empire, a surplus lines company with an A+ rating In response to questions the commenter indicated that underwriters consider such factors as location, alarm system, and age of building She offered to obtain and provide underwriting guidelines from the carrier (but this was subsequently denied as proprietary information) Commenter also stated that it was harder to place insurance for a pawnbroker in a large city and that the carrier preferred small towns They do not obtain financial information on pawnbrokers who apply for insurance

Responses Based on the various complaints concerning the amount of insurance proposed, the commissioner has reduced the amount to that provided under the insurance program developed for the Texas Pawn Brokers Association The Act mandates fire insurance in an amount determined by the commissioner There are no exceptions in the statute. The commissioner believes this to be a reasonable amount of insurance because the amount is that provided in an insurance program developed by and for pawnbrokers and purchased by large numbers of pawnbrokers. There is no evidence that the required amount of insurance is unobtainable and no evidence that the cost is unreasonable The statute does not provide additional compensation for a pawnbroker who obtains required insurance and does not attempt to correlate "financial stability" (sic) (a licensing requirement) directly with insurance The commissioner adopts commenter's suggested language for showing alternative resources other than fire insurance to protect pledgors which may include safe protection The commissioner disagrees with the comment regarding contradiction. Neither the requirement of an amount of fire insurance which is determined by the amount of the loans secured by insured property nor the amount of any loan is intended to have any direct and absolute correlation with determining the value of pledged goods which have been lost or damaged while in the possession of a pawnbroker

(c) ALARM SYSTEMS

Smock "approved of" the proposed subsection Mealer urged rejection of the subsection noting no authority to amend or expand the statutory provision relating to alarm systems The commenter also makes a broad and general assertion that there are no monitoring facilities for alarm systems to signal via radio waves when no telephone line connection exists Owens suggests that the subsection be amended to provide that the alarm company "calls a person in charge" when wires are cut or power is lost McGee stated that alarm system or not there is no way to completely burglar proof a building and then described his 32 year experience of only "one little breakin" 28 years ago Dziedzic wrote that he switched to armed guards in lieu of a typical alarm system in 1980 and has avoided the expenses associated with burglaries and false alarms that they had suffered previously (there have been no attempted breakins since 1980). Guards do have cellular phones for backup. Furr provided a brief statement of his education in electrical engineering and work experience in telecommunications and then provided cost information that had been quoted to him by two alarm system companies in his city to provide redundant or standby systems as follows:

1 National Guardian-radio-battery package which networks with a Motorola/IBM communication system

$2,000 installed cost

$25/month additional monitoring fee

2 Sonitrol-a cellular radio-battery package which networks with the telephone company.

$2,000-$3,000 to upgrade a system over three years old and add the cellular radio-battery package

$700 to add cellular radio-battery package to a newer system

$30/month additional monitoring fee

$15/month cellular line fee

TPBA requested that the subsection be rejected citing the specificity of Article 51 17B(e) Commenter stated that the type alarm proposed was very expensive, that outdoor alarms were prone to false alarms, and that an adequately fenced outdoor storage area was sufficient because items kept outdoors were not the type items typically taken by burglars Langford observed that he had tried several alarm systems since he had been in the business and updated and improved whenever available but that a telephone connection at all times was cost prohibitive McCommas stated that there are many areas of the state where the proposed type of alarm system is not available and that to require it be obtained from another part of the state is unreasonable and cost prohibitive Simpson urged that the subsection be struck Commenter drew attention to the differences between various sections of Article 51 17B which grant the commissioner express authority for rulemaking and 51 17B(e) which does not authorize rulemaking concerning alarm systems He further suggested, as written, the rule would pose an unwarranted burden on pawnbrokers as to outdoor coverage and the possibility of a third party's unavailability causing a pawnbroker to violate the rule Konczak urged rejection of the subsection citing a lack of authority to amend or expand on the statute Buchanan stated that he was not a consultant but that he was employed by an alarm system company doing business with many pawnshops He indicated that the proposed rule would mean increased revenue to his company but that he wanted to point out that the type of alarm system being proposed was not available in some rural areas and that the requirement was more strict than required of banks and jewelry stores In response to questions he stated that most alarm systems would initiate a local, loud audible alarm when phone wires were cut and that some banks, jewelry stores, and pawnshops in rural areas had no alarm

systems.

Response: The commissioner disagrees with the commenters who challenge the commissioner's authority to adopt a rule relating to alarm systems. The commissioner recognizes the comments relative to cost and some lack of availability of the type of system specified in the proposal and declines to adopt any subsection at this time relative to alarm systems. The commissioner notes that this decision does not affect the statutory provision and pawnbrokers found to lack a minimal alarm system that meets the statutory criteria can expect a disciplinary action. Signaling as used in the Act is deemed to mean transmission of a signal to a place at which a person is always on duty who can immediately go to the pawn shop to investigate the cause of the signal or cause a law enforcement or security officer to go to the pawnshop to investigate the cause of the signal or the signaling may mean the sounding of a loud bell or other noise which would alert persons passing by the pawnshop. The commissioner also recognizes that the self-interest of many large pawnshops would be well served by obtaining a very high quality system. The commissioner also take note of the definition of "pawnshop" in the Act and finds that the alarm system required by the Act for a pawnshop must include exterior storage areas

(d) APPROVED SAFE

Smock "approved of" the proposal Logsdon asked "If, as mentioned above (regarding alarm systems), other resources are available is this necessary?" Mealer and Konczak urged rejection of the subsection on the grounds that it is not necessary in determining compliance with Article 51.17B(f), that there is no authority to expand on or amend this statutory provision, and that it threatens to violate 17B(r) The commenter also makes a broad and general assertion that "the simple fact that an underwriter has issued a policy supports the presumption that they have approved the insured's safe, if a particular type of safe is required." Owens asserted that there are some old safes that are a lot better than any TL-15 safe and asks how the commissioner will determine if such a safe is approved and who will make approval Dziedzic stated he has TL-30 safes EPPBA stated "Problem is with TL-15 or better. Safes in conjunction with alarm systems should be adequate protection Everyone is going to have a problem with this." TPBA urged that the subsection be deleted citing Article 51 17B(f) as requiring an appropriate safe Commenter declared that issuance of an insurance policy is proof of a pawnbroker's safe being in compliance with the statute and that having a pawnbroker stop writing loans on jewelry without due process is in violation of the Pawn Act Langford stated that he had a fireproof safe inside a vault and asked who would approve this arrangement He also stated that if he had to add a safe in the vault the construction cost would be cost prohibitive. McCommas stated that the commissioner is asking for something that is not practical, following some discussion about insurance companies, approval of safes, and insuror's liability after having approved a safe Jezek stated that the insurance industry was having a hard enough time insuring small businesses let alone approving safes. He suggested that the commissioner's examiners approve safes. Wood suggested a combination of a safe or vault with an alarm system should be suitable safeguards for customer pledges. Simpson urged that the subsection be struck because while some provisions of Article 51.17B authorize rulemaking by the commissioner section (d) concerning safes does not CVPBA stated that the larger insurance agencies in his city are not willing or interested in inspecting or approving pawnbroker's safes unless they qualify for jeweler's block insurance, which most do not French expressed the view that many in the business for many years were security poor having enclosed their safes with metal walls Santoscoy and Grisaffi expressed the view that the rule should address safes secured inside vaults and should consider the combined security offered Edge stated that TL-15 and TL-30 safes are not necessary in some circumstances because of the requirement that a pawnbroker replace lost goods

Response. The commissioner disagrees with the commenters who urge that the commissioner lacks authority to make rules relative to safes where pledged goods are secured The commissioner disagrees with the commenters who suggest that issuance of an insurance policy is proof of a pawnbrokers safe being in compliance with the Act The commissioner believes that issuance of a fire insurance policy, the only type of insurance required by the Act, has no bearing on the security of a pawnbroker's safe and that an insurance underwriter who is not writing crime insurance is not concerned with the security of a pawnbroker's safe It appears that virtually every pawnbroker is in violation of Article 51.17B(f) and cannot reasonably achieve compliance, thus it behooves the commissioner to adopt a rule that will attempt to accomplish the intent of the statute The commissioner does not believe that the statutory provision for safes is concerned with the fire protection qualities of safes but with their resistance to unlawful entry The commissioner agrees that there are unrated safes which are more secure than a TL-15 rated safe and that there are vaults that provide better security than a TL-15 rated safe The commissioner also agrees that a combination of a vault and a safe may provide better security than a TL-15 rated safe The commissioner's examiners are not trained in the area of security provided by different types of safes and vaults and cannot be reasonably expected to perform security evaluations and approval of this type The commissioner will rely on experts in the field to provide credible evidence of the security provided by pawnbroker's vaults and unrated safes The commissioner does not believe that any safe in conjunction with an alarm system is adequate having viewed a video showing persons with basic tools opening safes in less than one minute Generally, old safes which only display some sort of fire rating are not difficult to open in very short periods of time The commissioner believes that the fact that a pawnbroker is obligated to replace pledged goods that are lost does not have a direct correlation to the requirement for secure safes The pawnbroker's first obligation is to provide adequate security for pledged goods and secondarily, if that security fails, to provide for replacement.

SECTION 85.51 PLEDGED GOODS LOST/DAMAGED-LIABILITY OF PAWNBROKER

(a) RESPONSIBILITY FOR LOSS OR DAMAGE

Whitaker expressed a desire for some sort of limitation of liability for the pawnbroker for pawned items lost or damaged. He stated that there did not appear to be any limitation in the rules and that if there were it could help pawnbrokers obtain insurance. The commenter stated that Oklahoma pawnbrokers have no liability and that Texas miniwarehouse owners have no liability for tenant's goods Grisaffi expressed concern about dealing with unreasonable customers over lost and damaged goods citing two recent instances where a customer complained about a scratch on an electric lawn blower with a $39.95 new retail price and where a customer refused $2,000 for a lost ring with a $995 new cost at Mission Jewelers and after three months settled for a 27" TV and some electric tools The pawnbroker expressed belief that "little" customers mostly complain because the commissioner's position is that the pawnbroker must satisfy the customer.

Response: The Act establishes a limitation of liability to the extent of replacement with like goods The commissioner has no authority to establish a limitation of the sort apparently desired by the first commenter The commissioner cannot eliminate unreasonable customers. While the commissioner and his staff may speak generally that a pawnbroker must satisfy the customer, that is not the guiding principle in resolving disputes concerning lost or damaged pledged goods. The guiding principle is making the customer whole through repair or replacement with like kind of goods.

(b) COMMUNICATIONS WITH PLEDGORS

EPPBA expressed disagreement with last sentence of the subsection. TPBA proposed an amendment to the second sentence by striking the words "or to renew or extend a loan" and to change "must" to "shall" Commenter urged that the last sentence be deleted Simpson urged striking the last sentence lest it be binding on the parties in any judicial determination. Cervenka stated that he believes loan amount should be considered in determining market value.

Response The commissioner strikes the last sentence in response to commenters. The commissioner disagrees with the commenter's request to strike the reference to renewal or extension in the second sentence The commissioner believes that a pawnbroker who accepts funds to renew or extend a loan when the pawnbroker knows that the pledged goods are lost or damaged would be guilty of violating the state Deceptive Trade Practices Act. Use of the word "must" is in keeping with Texas Register Form and Style Manual governing administrative rules. The commissioner disagrees with the views of commenter number four as being inconsistent with the Act.

(c) NOTICE OF SUBSTANTIAL LOSSES

Cervenka expressed belief that this type of reporting was unwarranted and expressed understanding that if the customer alleged a loss in excess of $1, 000 such would have to be reported. Santoscoy took exception to the rule generally suggesting that no reporting should be required if the customer is satisfied with the settlement citing the new language on the pawn ticket informing the pledgor of his or her rights. He also commented that losses and damage should not be held against the pawnbroker. When questioned the commenter suggested perhaps a requirement to report losses of $5,000 to $10, 000 or more not resolved in 30 to 60 days.

Response: The commissioner viewed the proposal as an "early warning system" that would alert the commissioner's staff to multiple losses before consumers contacted the commissioner's office and would better equip them to respond to the consumers Upon further consideration the commissioner determined that the benefits may not be as great as initially presumed and strikes the subsection.

(d) ACCEPTANCE OF PAYMENTS; ACCRUAL OF PAWN SERVICE CHARGE

Trial asked that a provision be added where a pawnbroker can recoup, from the pledgor, the moneys loaned on property subsequently picked up by the police as stolen. TPBA urged that the subsection be deleted noting that the interest being paid is for the use of the money loaned and that the pawnbroker is required to make the pledgor whole as required by Article 51.16(a)(5). Simpson pointed out that subsections (d) and (e) fail to address the question of time within which settlements must be made.

Response: The commissioner lacks the authority to make a rule concerning a pawnbroker's recouping monies from a person who pledged stolen property. The pawnbroker has a right and a venue to seek such monies at this time. The commissioner does not agree that the "interest" being paid is exclusively for the use of the money loaned. A portion of the pawn service charge is to compensate the pawnbroker for the cost of safekeeping of pledged goods and for compensating the consumer when he fails in that duty. It appears reasonable to the commissioner to stop the accrual of the pawn service charge until the pawnbroker has satisfied his responsibility to the consumer. The commissioner believes it inappropriate to set a time in which settlements must be made as such could work to the detriment of either party Any time the commissioner is involved in a dispute the commissioner will continually urge prompt settlement so that the file may be reflect prompt resolution and disposition.

(e) PLEDGOR DISCLOSURE

Owens wrote "Enough files! This is totally not necessary. ... This would be a waste." EPPBA asked "Why should we provide pledgor with his rights-there is an attorney on every corner ready, willing and able to do this." TPBA urged deletion of the penultimate sentence. Wood suggested that there are plenty of lawyers to advise pledgors of their rights, that Texas is the most litigious state in the union, and asked why create more problems.

Response: The commissioner believes that because lost and damaged goods is one of the top two complaint generators that an informed consumer is better able to reach an equitable settlement with a pawnbroker as provided in the Act than one who has no idea what his or her rights are and who is free to use his or her imagination to conjure up and demand unreasonable settlements. The commissioner also believes that a pawnbroker who communicates responsibly and fully about lost or damaged merchandise will prevent that customer from seeking the assistance of an attorney or the commissioner The commissioner has eliminated the requirement for retention of evidence of delivery and the reference to a "file."

SECTION 85.61 ADVERTISING

Sims declared that regulating advertising was ludicrous and that such a regulation vastly exceeded the regulatory power mandated by the legislature, posed an undue burden on business that was already stressed, and contributed nothing in return for significant regulatory investments. EPPBA declared "We don't agree with this but feel that protesting will have no effect." WFAPB stated that "we know of no other business that has its advertising censored We sure need some more of this."

Response: The proposal was patterned after advertising rules adopted over 21 years ago for consumer loan companies. The proposal clearly does not attempt to censor advertising and censorship has never been an issue with the 21 year old rule.

(a) PROHIBITION-FALSE, MISLEADING OR DECEPTIVE

Walters expressed appreciation for the proposal. TPBA urged that the subsection be amended to permit a person who has applied for a license to advertise so long as no business of any sort is conducted. Commenter specifically suggested that license applicants may desire to contract for yellow page advertising before a license is approved because of the lead time between contract deadline and publication. Simpson asserted that the first sentence is too broad and exceeds the commissioner's authority and thus must be rewritten. WFAPB attached a copy of a page of yellow page advertising for "Pawnbrokers" on which there were three ads by unlicensed persons Commenter stated that this showed how well the rule was being enforced and cited complaints to two members of the commissioner's staff as well as the local police department over the past two years

Response. The commissioner does not believe that under the statute he can grant the request of the second commenter. The commissioner has modified the scope of the subsection to limit it to the pawn loan business. While the fourth commenter may have a legitimate complaint concerning advertising it does not relate to the proposed subsection.

(b) ADVERTISING COPY FILE

Simpson cited his comment in re subsection (a) as applicable to this subsection also. Fredrick asserted that the advertising file was useless because it was not feasible for an examiner to look at and listen to advertising and determine if it was deceptive.

Response: The commissioner has modified the scope of the language in response to the first commenter. The commissioner disagrees with the second commenter

(c) COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS

Simpson urged deletion of this subsection based on lack of authority to adopt.

Response: The commissioner does not agree with the commenter's assertion as to authority but strikes the subsection as unnecessary.

SECTION 85.71 EXAMINATIONS AND INVESTIGATIONS

Simpson urged deletion of the references to federal law and regulations and suggested that due process required a procedure for an appeal such as in Article 51.17(l) and (n).

Response: The commissioner has deleted the references to federal law and regulations in response to the comments, however, the commissioner believes that a pawnbroker who fails to correct violations of federal law and regulations when called to the pawnbroker's attention lacks the character and general fitness to retain a pawnshop license. The commissioner does not agree that an appeal procedure is needed in the section. It appears that the two commenters on this section failed to perceive that the section simply formalizes a procedure that the commissioner has routinely followed for more than twenty five years.

(a) CORRECTIVE ACTIONS REQUIRED

TPBA objected to the subsection stating that the vast majority of corrections are made at the time of the examination and that the proposal created additional paper work that is costly and unnecessary.

Response: The commenter failed to perceive that the purpose of this section is to permit the commissioner or a duly authorized representative of the commissioner to instruct a pawnbroker concerning repetitive and frequent violations and to permit the pawnbroker to save money by locating and correcting those violations rather than paying for an examiner to locate each and every violation and bring each to the pawnbroker's attention for correction. This section has no application where the commissioner's examiner is satisfied with all corrective actions taken by a pawnbroker at the time of an examination.

SECTION 85 81 MISCELLANEOUS OPERATING PROVISIONS

(a) HOURS AND DAYS OF OPERATION

(3) EFFECT OF CLOSING

(B) ALL CLOSINGS

TPBA stated that the last day of grace is spelled out quite clearly in Article 51.13 and that the day cannot be changed by rule

Response: The commissioner does not view the rule as changing the law, however, the commissioner acknowledges that the rule represents a change in the commissioners

interpretation and application of the law. The commissioner has taken note that there are various occasions when legal due dates or deadlines are established in a similar manner as the pawn loan grace period and by chance fall on Saturdays or Sundays when a required filing cannot be made, the due date or deadline is extended to the next business day. It is the commissioner's opinion that the adoption of this subparagraph is reasonable in light of the assertions of many pawnbrokers that they give customers extra time at the end of the grace period to redeem their goods and in light of the fact that the pawnbroker is compensated for the additional time. The commissioner also believes the provision to be appropriate because many pawnshops operate seven days a week while others do not and a customer may be unfamiliar with the limited number of days of operation of the shop holding his or her pledged goods. The commissioner has testified in court that when the 60th day of the grace period fell on a Sunday and the pawnshop was closed, the customer was required to redeem his or her goods on or before the last day the shop was open prior to the 60th day. The commissioner then heard the judge rule in favor of the customer who attempted to redeem on the 61st day. The commissioner has revised the wording of the subparagraph to improve its clarity.

(b) IDENTIFICATION OF PERSONS PRESENTING PAWN TICKETS TO REDEEM PLEDGED GOODS

Mealer and Konczak urged deletion of the subsection or amendment to permit "a person known to the pawnbroker" to be exempt from presentation of identification documents asserting that to not do so would cause borrowers who had misplaced or lost their identification documents to forfeit their pledged goods.

Response. The commissioner does not agree with the assertions of the commenters but revises the language to remove the burden of "carding" known pledgors.

(c) PAWNSHOP PREMISES

Trial, Mealer, McCommas, and Konczak stated that the subsection should be struck or all references not connected with pawn loans must be deleted vis-a-vis 17B(r).

Response. The commissioner disagrees with the commenter in that the Texas attorney general in Opinion No. DM-253 has opined that the commissioner has been given the authority to regulate outdoor signs, displays, and storage.

(1) OUTDOOR DISPLAYS AND STORAGE

Trial asserts that as each pawnshop is unique this should be regulated only by local zoning laws. Simpson urged that the second sentence be struck as contradictory to a recent Texas Attorney General opinion. The commenter also stated that permissibility should be governed by the property lease and not by custom. Cervenka suggested that subject was currently addressed by local zoning laws and best left to the local jurisdictions. Commenter expressed belief that the proposed rule could be more restrictive than local ordinances and that there might be a constitutional problem with enforcing such.

Response: The commissioner does not agree that this subject can be comprehensively addressed by enforceable local zoning laws but does agree that the proposed language may be contradictory of a recent opinion issued by the Texas attorney general. The commissioner finds that a rule lawfully adopted by a state agency which is more restrictive than a local ordinance is enforceable and does not create a constitutional problem. The commissioner has modified the wording of the paragraph in light of the collective comments and opinion DM-253.

(2) SIGNS

Trial asserts that as each pawnshop is unique its choice of signage should also be and that it only be regulated by local zoning laws.

Response: The commissioner believes that it is in the public interest that each pawnshop be readily identifiable by a sign showing the legal, licensed name of the business. That issue is generally not covered by local law.

(3) ANIMALS

Trial asserts that as each pawnshop is unique it should be free in its choice of inhabitants regulated only by local zoning laws. Fairchild stated that he presumed that it would be permissible under the proposed text to keep vicious non-trained dogs or other animals that would not obey commands. He further stated his view that security measures should be left to business owners, that police authorities will verify that dogs are more effective than firearms, and that in his opinion not as many innocent pawnbrokers would have been victims of crime and violence during the last several years, had they employed trained attack dogs on premises.

Response. The commissioner believe that while animals may be of some protection to pawnbrokers they may be a substantial liability. The commissioner had visited pawnshop where the presence of animals was so obnoxious that he would not do business with such an establishment. The commissioner has determined to strike the paragraph and hopes that health and safety ordinances and the marketplace will cure this problem in the near future.

(d) IDENTIFICATION OF SOURCE OF GOODS IN PAWNSHOP

Trial and McCommas urged that the subsection be struck or all references not connected with pawn loans must be deleted vis-a-vis 17B(r). Sims declared that regulation in this area was ludicrous and asserted that such vastly exceeded the regulatory power mandated by the legislature, posed an undue burden on business that was already stressed and contributed nothing in return for significant state regulatory investments. Mealer and Konczak urged rejection of the subsection finding no authority for the commissioner to amend or expand on Article 51.17B(h) and declaring that tagging merchandise is a business practice that does not require a pawnshop license and thus the subsection threatens to violate 17B(r). Konczak also cited the cost as unreasonable to tag several thousand items in several warehouses some of which have been in the possession of the pawnbroker more than 40 years. Owens stated "I can understand this for tracking merchandise out for sale from defaulted loans, but not for 'fixtures/furniture'." EPPBA stated that $10 figure is too low and that subsection should only apply to unredeemed pledged goods and merchandise purchased from individuals and not to purchases from wholesalers and distributors. Commenter asserted that the proposal goes beyond the scope of the law. TPBA declared that there are items such as diamonds that are not capable of being tagged and requested an exemption for new merchandise where the pawnbroker can produce an invoice identifying origin. Commenter also stated that these issues are covered by Article 51.17B(h). Langford stated that the rule would be hard to follow considering the volume of new merchandise purchased. Wood declared the $10 amount is too low and should be $50.

Response. The commissioner has revised the language of the subsection to eliminate the 17B(r) objection. The second commenter is obviously not familiar with the explicit statutory provisions which give rise to this section. The language of 17B(h) is deficient in that it fails to define the nature and purpose of the tag. The adopted subsection cures that deficiency as to unredeemed pledged goods. Commenters speaking relative to the $10 amount and furniture and fixtures have obviously not read the proposal carefully and are not familiar with the statute.

(e) HOLD PERIOD

Trial, Mealer, McCommas, and Konczak urged that the subsection be struck or all references not connected with pawn loans must be deleted vis-a-vis 17B(r). Haley asked for the precedent for the proposed hold period and declared that it seemed unreasonable. He also commented on the lack of regulation of competitors in the business of buying and selling used merchandise. Logsdon requested a detailed accounting of complaints from law enforcement agencies concerning hold periods to include the number of pawnbroker violations and the populations of jurisdictions having such complaints or violations. EPPBA stated that El Paso pawnbrokers have an agreement with the local pawn detail for a 10-day waiting period. Langford stated "With the minimal help this would be to the consumer this rule would be a burden on the pawnbroker." Cervenka declared that a universal 20-day hold period was not necessary or desirable and that local authorities were better suited to determine the appropriate period and the type of goods to be subject to the hold period.

Response. The commissioner has previously commented concerning the express directive of the legislature to adopt a rule of this nature and his belief that such directive supercedes 17B(r). This is not an appropriate forum to respond to comments that are requests for historical information from the commissioner's files. The commissioner has provided that chief law enforcement officers may approve pawnbrokers' requests for shorter hold periods under prescribed circumstances. The commissioner lacks the authority to establish hold periods for other than pawnbrokers.

(f) MODIFICATION OF CHARACTER OF GOODS

Trial, Mealer, and Konczak demanded deletion of all reference to hold period vis-a-vis 17B(r).

Response: The commissioner has deleted reference to the hold period.

(g) REDEMPTIONS BY MAIL

EPPBA stated that subsection "Should be deleted–we never agreed to ship a pawned item when it was pawned."

Response: The commissioner disagrees because the Act requires a pawnbroker to permit redemptions by mail.

(2) SHIPPING, HANDLING, AND INSURANCE CHARGES

Owens stated he had a problem with this concept and then recited a litany of questions as to charges for shipping and insuring goods redeemed by mail which were not directly related to the paragraph.

Response: None required.

(j)[h] MONITORING OF TRANSACTIONS AND CUSTOMERS

Trial demanded that all references not connected with pawn loans must be deleted vis-a-vis 17B(r). Mealer and Konczak urged rejection of the subsection finding no authority for the commissioner to amend or expand on Article 51. 17B(j) and asserting a possible violation of 17B(r).

Response: The commissioner revised the wording to eliminate the 17B(r) objection.

(1) TYPES OF GOODS OFFERED

Haley opined that this would be one of the most outstanding pieces of literature ever written. He then asked rhetorically about the percentage of stolen property turning up in pawn shops and declared that the commissioner should get off the back of the people who are trying to help control this problem and spend the necessary time and energy to provide legislation where it is most needed. Concerning the requirement for a written policy, Owens wrote "Why more policys (sic) or files." EPPBA suggested that the Texas Pawn Brokers Association should come up with a reasonable policy that all pawnbrokers can live with so every one has the same policy on file. TPBA urged striking all except the first sentence asserting that an undue burden was being place on pawnbrokers to produce a written policy which would not infringe on the civil liberties of their customers. Langford stated that writing a policy would open the door to lawsuits for discrimination but that he would use any policy written by the commissioner. McCommas expressed a lack of understanding of the phrase "... unless acting with the effective consent of the owner of the item" and asked if a person signing a pawn ticket, and thereby declaring he or she is the owner of the property, can be assumed to be the owner for this purpose and, if not, how do you determine the identity of the owner. Nuckols urged the commissioner write a policy, stating the small business man did not have the resources to do so and expressing concern of inability to write a policy that was not discriminatory or that violated a customer's civil rights. Wood opined that the commissioner is getting into law enforcement and that the proposed paragraph is clearly overkill as the losses from stolen items coming into a pawnshop is insignificant. Brisbin invited information from the commissioner on a definitive way of identifying stolen property. Cervenka stated that the required policy would burden the pawnbroker to produce it and the commissioner to review it and that such a policy did nothing to control stolen merchandise. French stated that some tools would have serial numbers obliterated through normal use and that others had stick-on labels which would often come off through normal use.

Response: Pursuant to the state Penal Code, possession of goods without the effective consent of the owner and which have their serial numbers defaced, altered, or removed is a criminal offense. The paragraph is intended to inform pawnbrokers and prohibit pawnbrokers from such an offense. The commissioner previously attempted to provide specific guidance to pawnbrokers in avoidance of accepting stolen goods. The commissioner was attacked for so doing and declines to make another attempt believing that he will be attacked by other pawnbrokers for doing so. The commissioner now believes that pawnbrokers who are concerned with avoiding taking stolen property are best equipped to write a statement of their experiences, practices, and procedures followed to avoid taking into pawn goods that they believe may be stolen. This policy should be an essential basic training device for new pawnshop employees. The commissioner's staff will answer questions and provide other assistance to pawnbrokers in the development of such a policy.

(2) ACCEPTANCE OF UNIQUELY MARKED GOODS

Owens stated "Everybody knows that if we take a VCR that is rented, without a 'paid in full' receipt, we lose the vcr. I see no need in this. It is just more useless book work." TPBA urged amendment of the beginning of the first sentence to read "A pawnbroker must take reasonable precautions not to purchase, ..." Langford stated that "I think common or good business sense should take care of this rule." Jezek expressed distress at having to help the police and the rental company industry which he described as sellers disguised as rental companies. He suggested that rental companies should have no more protection than department stores who sell and finance their sales. He further stated "If we allow this to happen the next thing pawn shops will have to do is run a UCC-1 lien search prior to making a loan." French stated that some construction companies sell or otherwise dispose of older tools and equipment while some small companies sometimes borrow on their own tools. He also stated that receipts, after the fact of purchase, are hard to obtain and customers lose them or they are stolen just like pawn tickets. Commenter also observed that keeping the receipt with the merchandise was just one more thing for the pawnbroker to keep up with when the pawn ticket says the merchandise is the property of the pledgor.

Response: The commissioner agrees with the commenter that this matter should be taken care of by common or good business sense, however, the commissioner's experience is that there are pawnbrokers who take uniquely marked goods. The commissioner believes it is important to the general public and to the pawnbroker industry that pawnbrokers be prohibited from taking goods marked to indicate that they do not belong to the person presenting them to the pawnbroker.

(k)[i] OTHER BUSINESS ON PAWNSHOP PREMISES

Trial, Mealer, McCommas, and Konczak urged striking the subsection or paragraph (1) or that all references not connected with pawn loans must be deleted vis-a-vis 17B(r). EPPBA asserted that this subject is none of the business of and beyond the authority of the commissioner. Wood asserted that he should have a constitutional right to rent space to others to engage in any legal business or to engage in any other business "without having to ask the commissioner for permission." He further asserted that he did not believe that the pawn license could be constitutionally tied to other legal business activities in the pawnshop.

Response: The commenters expressed no awareness of Article 51.17B(g) and the correlation of the proposal with the statute. The commissioner strikes the subsection and will rely on the statute for any enforcement actions taken against pawnbrokers. Pawnbrokers should familiarize themselves with all provisions of the Act.

(1) BY THE PAWNBROKER

TPBA urged striking the last sentence stating that Article 51 17B(g) adequately covered the matter.

Response: The commissioner strikes the entire subsection.

(2) BY OTHERS

TPBA urged striking the paragraph citing Article 51.17B(g) as adequately covering the matter.

Response: The commissioner strikes the entire subsection

(m)[k] DUTIES AND RESPONSIBILITIES OF PAWNBROKERS

(2) COMMUNICATIONS

Mealer and Konczak urged rejection of the paragraph vis-a-vis 17B(r) and asserted that sufficient laws exist on this subject. TPBA urged insertion of the words "intentionally or knowingly" following the word "not."

Response: The commissioner modifies the language to eliminate the 17B(r) objection and declines the suggestion of the third commenter.

(3) RESPONSIBILITY FOR ACTS OF OTHERS

Mealer and Konczak urged rejection of the paragraph asserting that this subject is a judicial matter, is beyond the authority of the commissioner, is not consistent with the Act, and does not address a business practice which requires a pawnshop license EPPBA

stated "Should not be responsible for unknown acts of people listed - after all the CCC does issue all of the licenses." TPBA urged that the paragraph be struck because it is already covered by Vernon's Civil Code and numerous other state and federal laws. Wood stated that if an employee participates in any criminal activities without the owner's knowledge the owner cannot be held responsible.

Response: The paragraph uses the word "may" and not "will" and thus does not create liability but serves as a caution to pawnshop license holders of the importance of good management and supervision of the pawnshop business.

(4) ARRESTS

Owens wrote that the commissioner may be stepping on people's rights on this and that he could foresee a lawsuit over this He also stated that he could see convictions, but not arrests. He then asked what would be exempt from reporting and stated that the commissioner should seriously consider dropping this subsection. Cervenka asked "What about old arrests?"

Response: See response to following paragraph.

(5) FEDERAL FIREARMS LICENSE

Mealer and Konczak urged rejection of the paragraph on the grounds that the reports required deal, in part, with a business practice not within the commissioner's authority to regulate vis-a-vis 17B(r) and that it is, in part, inconsistent with the Act and redundant. EPPBA asserted that subject matter has nothing to do with CCC and is beyond the scope of the CCC's authority. TPBA urged that the first sentence in the paragraph be struck and that the words "also" and "proposed or" be struck from the second sentence. Wood stated since ATF governs gun licenses the commissioner is over extending his limits to create the power to fine or revoke a pawn license because of a failure to report. Simpson urged deletion as going beyond the authority of the commissioner referring to Article 51.17B(o). Cervenka stated that routine ATF investigations should be exclude from the proposed paragraph.

Response: Paragraphs (4) and (5) related solely to matters of character and fitness of licensed persons and (5) had nothing to do with firearms or a federal firearms license per se. The two paragraphs have been combined under a caption of "character and fitness." Wording of the two paragraphs have been modified to eliminate any 17B(r) issue and to exclude duplicate reporting. The commissioner disagrees with commenters relative to authority and rejects the commenter's specific suggested modifications in (5)

(6) ELECTRICALLY POWERED PLEDGED GOODS

A total of fifteen persons commented on this paragraph. Anglin made general comments about normal deterioration of stored electrical goods and their procedures to inform customers of this in advance and show them how and where their property will be stored while in pawn thus achieving customer satisfaction. Trial stated that checking the operation of electrical goods should be the sole responsibility of the redeemer and that the pawnbroker should only be responsible for providing the electrical outlet and not for the condition of the inoperable pledged goods just redeemed. Haley made general comments about the deterioration of electrical goods and then stated "you can only dream (nightmare) of the abuse our industry will suffer from this rule when it is made public." Mealer and Konczak urged rejection of the paragraph noting no specific authority to expand upon or amend Article 51.16(a)(5). Camp stated he is agreeable to furnishing an electrical outlet but he objects to any liability regarding pawned electrical goods that are found to be inoperable when redeemed He states that he won a suit pertaining to a video recorder that quit working after it left his store and wrote extensively about deterioration of electrical goods EPPBA stated "If customer request testing merchandise before leaving store-fine-once the customer leaves the store, becomes customer's responsibility." TPBA urged that the paragraph be struck declaring that "We cannot be responsible for electronic merchandise that we have not damaged or abused for an indefinite time." Charping stated that the pawnbroker can not be held responsible for goods that leave his power or control Langford urged that the paragraph be struck saying he cannot be held responsible for ones mistakes or stupidity on the mishandling of their merchandise after it leaves his possession. McCommas agrees to providing a power source for customers but asserts that most are in a hurry and will not let the pawnbroker test the goods. The commenter further states "Some items can not be tested and are so stated on the ticket when taken into pawn." The commenter then asked how one would determine "first use" and declared that the paragraph would create many more problems than it could possibly resolve. Wood stated that bank customers who walk away from the counter without counting their money cannot recover a shortage and that this is exactly the same situation and the customer has no recourse. Commenter declares that problems of inoperability of electrical goods after been in pawn storage is an act of God; is life and experience, that the pawnbroker has no control over it and the commissioner cannot dictate this Simpson urged striking the second sentence of the paragraph as unfairly shifting the balance in favor of the consumer in the event of a dispute over normal deterioration of an electronic device which was not a breach of the pawnbroker's duty of due care Brisbin stated the subsection should be struck and that the pawnbroker should not be held responsible for an item redeemed, accepted, and taken from the shop Commenter further argued that pawnbroker should not be held liable as long as the goods have been protected from harm and use while in the shop French declared that it is unacceptable to make the pawnbroker responsible for goods found to be inoperable after the pledgor left the shop with them. The commenter stated he had witnessed customers drop merchandise like television sets in the parking lot of the shop and expressed concern over normal deterioration and tampering with merchandise after it left the shop Commenter concluded that the pawnbroker should accept responsibility for blatant mishandling of customers' merchandise but no further responsibility. Counts stated that it was a tough rule regarding requiring electronic goods to work when leaving the shop and that the proposed rule was unworkable and needed some escape clauses to level the playing field. Santoscoy expressed concern with the liability associated with electronic goods and commented about normal deterioration of goods such as the belts in video cassette recorders. Fredrick stated that customers take their goods home after redeeming them and do not try to use them.

Response: The commissioner's office has had a longstanding enforcement policy that pledged goods are presumed to operate properly or the pawnbroker would not accept them as collateral on a loan and that such goods must operate when the pawnbroker returns them to the pledgor or other redeemer. That policy extends, for a reasonable time, to goods taken from the pawnshop without being tested The paragraph as proposed would have eliminated liability as to goods tested before leaving the shop The commissioner strikes the paragraph and gives notice that the enforcement policy remains intact

(8) TREATMENT OF CUSTOMERS

Twelve persons commented on this paragraph Trial stated that this is clearly out of the commissioner's realm of authority. Sims declared that regulation in this area was ludicrous and asserted that it exceeded the regulatory power mandated by the legislature, posed undue burdens on business that are already stressed, and contributes nothing in return for significant state regulatory investments Haley stated that the successful pawnshop is dependent on repeat customers and opined that "this regulation made public will open new avenues for abuse previously unheard of." Mealer and Cervenka urged rejection of the paragraph on the grounds that it is extremely subjective. One added that only a licensed psychologist would be qualified in determining compliance/non-compliance. EPPBA asked if pawnbroker has to take abuse from customer and not respond TPBA urged that the paragraph be struck citing competition and economic factors as sufficient to ensure fair treatment of consumers. Charping wrote that ties to the community, Better Business Bureau, and competition insure that consumers will be treated fairly with professionalism. Langford stated that good business sense should take care of this rule and asked who would define abusive and would the definition not depend on the situation McCommas stated that the paragraph was ludicrous, abusive behavior was difficult to define, paragraph was offensive to pawnbrokers, and constituted governmental micromanagement which is historically provable as expensive to taxpayers and incontrovertibly detrimental to the industry so managed. Commenter asserted it would be more beneficial to all if the commissioner concentrated on unfair credit practices and left the running of the business to the pawnbroker. Wood states if a customer becomes abusive toward him he may become abusive also and urged changing "must" to "should." Simpson urged striking the paragraph as overbroad, vague,

ambiguous, and beyond the scope of the commissioner's authority

Response The commissioner strikes the paragraph

(n)[l] CONSUMER EDUCATION

Sims declared that regulation in this area was ludicrous and asserted that it exceeded the regulatory power mandated by the legislature, posed undue burdens on business that are already stressed, and contributed nothing in return for significant state regulatory investments EPPBA declared that pawnbrokers are not employees of the state and should not have to display CCC printed materials "CCC does not have right to do this without our permission -if we don't want it in our stores-there should be no display " Konczak urged rejection of this subsection citing it as a violation of the 10th Amendment to the United States Constitution Cervenka suggested a small brochure display should be sufficient and would eliminate much of the reporting required by various parts of the proposed rules and should assist customers and the commissioner in identifying problem transactions, areas, or pawnbrokers

Response The commissioner believes that two commenters are not knowledgeable of the legislative mandate contained in Article 51 17B(n) The commissioner fails to understand the relevance of the 10th Amendment which reads "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people " The commissioner retains the paragraph unchanged

GENERAL COMMENTS

In addition to the preceding comments on specific proposed provisions, the following is a summary of general comments which were not and could not be attributed to specific proposals

Counts urged the commissioner to consider the effect that the proposed rules would have on consumers and their ability to get loans and suggested that perhaps the commissioner should distinguish between cities and rural areas because "one size does not fit all " The commenter also urged that the commissioner not put in rules beyond those necessary

Smock expressed his thought that the proposal contained some very good rules that should be adopted, but that some put an undue burden on the pawnbroker without much in the way of positive benefit

Parker responded only generally asserting that pawn shop owners feel that "If it is not broke don't fix it " The commenter further opined that pawnbrokers received new proposals about every two years which accomplished nothing except causing pawnbrokers more paperwork and expense and requested that the commissioner reconsider the proposals and help make the business better by supporting the pawnbrokers

Anglin stated that some of the rules are very necessary and good for the industry, however, several would put undue hardship on the pawnbroker

Trial and Mealer commented that the commissioner has only the power to regulate those activities that require a pawnshop license pursuant the Texas Civil Statutes, Article 5069-51 17B(r) and then made specific requests for changes or total deletions of various parts of the proposal. In the interest of brevity the notation "17B(r)" will be used to explain the basis for such requests as they are enumerated herein.

Sims, speaking on behalf of several pawnbrokers, indicated that he questioned both the motivation and rationalization for the implementation of the proposed regulations. He further asserted that several of the proposed regulations address problems that really don't exist stating that with law enforcement already working closely with pawn shops, using computers to inventory pawn items he felt the public's interest was already represented. The commenter expressed the belief that further regulation would unfairly tax financial and human resources that the small businesses could not afford The commenter also stated that another of the proposed regulations was unfair in that resale of used merchandise occurs in a wide range of businesses other than pawnshops and asked if this type of regulation should be mandated among Goodwill stores, too The commenter asserted that the codes approved by the legislature are addressing the needs of both the state and the commission in regulating the pawn industry and that any special considerations that justify such unprecedented interventions in business practices as the proposed rules represent should be addressed by the legislature

After referring to tremendous increases in bureaucratic action by the ATF and many cities, Sims expressed his belief that the proposed rules would cost pawnbrokers a great deal of time and money and that they are, at best, of dubious benefit to the consumers of this state. The commenter then requested a listing, as complete as the commissioner is permitted to give, of the complaints, known violations, convictions or any other reasons used to justify the proposal The commenter then requested delay in the implementation of any rules requiring pawnbrokers to expend additional time and/or money until the Legislature increased the rates allowed to be charged on pawn loans

After a series of specific comments Owens concluded by saying that the commissioner's office has done a very good job in the past of protecting both the consumer and the pawnbroker He also stated that some of the proposed rules are a little too much, but some are good

Fairchild expressed his first impression of the proposed rules as a whole as "if it ain't broke, don't try to fix it " He concluded by urging that the commissioner allow the state and national associations to study the proposed changes and submit written recommendations prior to enactment He urged that the commissioner not enact regulation that hurt business and do not appreciably help the consumer

Dziedzic stated that he had no objection to the rules except for the fire insurance and the crime victim assistance provisions

Furr requested the commissioner consider the cost vs. benefits of each proposed rule.

EPPBA requested information as to the reasons and/or complaints that prompted this latest set of proposed rules and expressed concern about excessive government intervention in private business Commenter declared that some of the rules pertained to information that the commissioner will be able to receive from pawnshops and that the information would ultimately become a public record and commenter opposed that

Dix expressed support for and concurrence with the comments of a local association and attached a copy of same. The commenter then expressed the view that more regulations would adversely effect the pawnshop industry and that they would particularly impact the small, independent pawnbroker to a greater degree than the public companies who operate on their stockholder's money. A request was made for a listing of complaints, violations, convictions, and any other reasons the commissioner was using to justify the proposal The commenter expressed a desire to avoid further problems and urged a compromise in light of the burden on small operations

Walters stated that personally she had no problem with the proposed rules and that she had heard of no pawnbrokers in her area protesting them She then expressed concern only about the amount of fire insurance proposed to be required

Ft Sam expressed the view that the proposal would increase the cost of operation in the long run and that they could be adhered to by the large chains but not by the smaller businesses The commenter then stated "So as for our vote on the proposed new rules, our answer would have to be NO "

TPBA opined that there had existed a proper balance in Texas between the interests of pawnbrokers and consumers since pawnbrokers were first regulated by the commissioner in 1967 but that parts of the proposal would disturb that balance The commenter expressed concern that insufficient time was being allowed for the industry to respond to the proposed rules specifically stating that pawnbrokers were not allowed enough time to determine specific cost amounts related to the proposal and its effect on the industry The commenter stated that before additional rules were adopted, the following questions needed to be adequately answered What problems exist in the industry today and to what extent? How are the existing regulations inadequate to deal with existing problems? Many of these rules are restatements of existing law, what is gained by repeating them as rules

Hallmark spoke only generally and the comments are summarized as follows the pawnshop business is one of the most tightly regulated businesses in Texas, customers are being treated fairly and reliably, government regulation is seldom cost effective and the proposed rules will not be, attempted micro-management through the proposed rules will cause degradation of services to consumers, some proposed language is common sense and questioned whether common

sense should be regulated by the government, cost to implement the rules is believed to be $10,000 per pawnshop and that is an unwarranted burden on a business not shown to be operating to the detriment of the consumers.

Charping expressed belief that any additional rules are unwarranted and expressed support of the position and comments of his local association.

Langford wrote that he felt that a lot of the proposed rules have good intentions but in reality they are not reasonable and that the commissioner had the tools needed to control any shop in violation of the law

The commenter expressed belief that the commissioner should not have any interest in any other business conducted in the pawnshop unless possibly it coincided with the pawn business.

McCommas before making specific comments on parts of the proposal dealing with pawn loans, the commenter cited 17B(r) as prohibiting the commissioner from adopting any language dealing with purchases, merchandise for sale, sale displays, accounting practices, and non-pawn business activities conducted in the pawn shop.

Nuckols expressed general concern over the effect of the proposal on day to day operations of a pawnshop and as well as the cost of implementation He requested that the commissioner research the costs and effects before adoption through use of a task force including commissioner's staff and industry members

CTPBA commented that the proposed rules are basically the same as had been objected to at two previous hearings and requested the commissioner consider written comments made in connection with previous proposals "as being hearwith reiterated." The commenter expressed the belief that the commissioner's examiners examined each and every loan made by every pawnbroker at least every other year and that the commissioner had the tools and power to stop the operations of any pawnshop in violation of the law without additional rules which would increase enforcement costs and not add meaningful value to the consumer. The commenter also submitted a letter from his local police department stating that stolen property was identified on 522 pawn tickets out of 124,688 in 1993 and that only 198 of the 522 involved local area crimes. The letter also stated that the 1994 rate through May was similar to 1993.

AAPBA endorsed the comments of the state pawnbrokers association.

Jezek citing seven years experience in the pawn business expressed the view that the proposed changes in the rules appear to fix problems that do not exist He stated that the changes will create numerous problems and hardships on his shop. After making specific comments on six specific area of the proposal he asserted that as a pawnbroker that owned and operated one store he did not have time to address all the problems the proposed changes would have on his store. The commenter suggested that hours of operation be more limited than in the Act, i e. 9.00 a m. to 6:00 a.m. (apparently intended "6:00 p m.") Monday through Saturday and urged no more rule changes leaving the industry to work for its own improvement.

Wood suggests that if there was an annual report, a number of things in the rules would be redundant and that he did not believe that pawnbrokers needed more rules and so many files to keep track of

Atwood only spoke generally asserting that the proposal was "to the extreme, " extra files, bookwork, and time required would be required that could be better spent with the customers, that the proposal needed a lot of study, and that most parts of the proposal needed to be done away with

Estrada made brief, general comments in opposition of rules that we do not need, insurance that will cost more than what we already got, and stated that he has not experienced any problems whatsoever in dealing with his customers over many years The commenter also expressed opposition to a requirement that his children and grandchildren must have a pawnshop employee license to work in his shop

Before making specific comments on various parts of the proposal, Konczak asserted the meaning and effect of 17B(r) to the extent that he believes enforcement of any regulation, on any act that does not require a pawn license to complete, would be a willful violation of 17B(r)

Cervenka expressed the belief that sometimes rules are written to address minor or nonexistent problems and any rules should be cost effective

Santoscoy expressed concern that the proposed rules indicated that the commissioner did not recognize the contributions that pawnbrokers made to their respective communities

Whitaker advised that his pawn business was conducted in three small towns, that small town operators had tight profit margins and could be forced out of business by excessively burdensome rules, and that would deny access to credit for residents of the small towns whose wealth was tied up in personal property

Edge asserted that some of the proposed rules would go against the consumer and that government was supposed to be by and for the people The commenter also asserted that the proposed rules would create tremendous cost increases for pawnbrokers with the various filing systems being proposed and also possibly computer systems. Commenter expressed hope that the commissioner would work with pawnbrokers before proposing rules, indicated that there was a groundswell of opposition, and urged the commissioner to "reconsider if we need any rules "

Fredrick decried the burden being placed on small pawnbrokers by rules from all federal and state mandates such as ATF, the Texas Comptroller on sales taxes, the TEC, and the proposed pawn rules.

Response The immediately preceding comments address the proposed rules in general rather than focusing on specific proposed language. In large part these comments address the frustration of pawnbrokers being required to abide by legislative restrictions which they do not deem either necessary or wise The commissioner is not unmindful of the philosophical differences between the goals of protecting the interests of the citizens of the state of Texas and the interest of the industry being regulated by these rules, both interests having been expressed in the purpose clause of the Texas Pawnshop Act. The commissioner has determined that each and every rule adopted is necessary to ensure a sound system of making pawn loans, acquiring and disposing of tangible personal property by and through pawnshops and to prevent unlawful property transactions

The new sections are adopted under Texas Civil Statutes, Article 5069-51 09, which provides the commissioner of the Office of Consumer Credit Commissioner with authorization to adopt rules necessary for ensuring compliance with Texas Civil Statutes, Article 5069-51 01 et seq

§85 21 Business Records

(a) Minimum records, location of records. Each pawnbroker must keep adequate books and records relating to all business transacted pursuant to Texas Civil Statutes, Article 5069-51 01 et seq The following records are the minimum required records and must be kept in the pawnshop The commissioner may grant system specific approvals of variations, exceptions, and alternatives for pawnbrokers who maintain equivalent business records on an electronic data processing (EDP) system, as provided in paragraph (7) of this subsection.

(1) Loan transactions

(A) Pawn Ticket

(i) Prescribed form and content In a manual records system, the pawn ticket must be a four-part form, unless otherwise approved by the commissioner, on which entries to the top part are legibly and simultaneously reproduced on the remaining parts The form must measure four inches vertically by six inches wide and in addition must provide a perforated stub to be utilized in tagging pledged goods. All parts of the ticket form must be sequentially numbered by the printer who produces the ticket form The stub shall be simultaneously numbered with the same sequential number The ticket must contain all the information required in Texas Civil Statutes, Article 5069 51 10 and satisfy the requirements of the Truth-in-Lending Act and Regulation Z. The pawn ticket must disclose the date which is 60 days following the maturity date, which shall be captioned "Last Day of Grace " The pawn ticket or the electronic data processing system used to write and store information about pawn transactions must include alphabetical or

numerical characters sufficient to identify the person writing the pawn ticket and handling the renewal or redemption of the loan. The second part of the ticket may, with the approval of the local law enforcement agency receiving it, omit the preprinted text of the ticket. The fourth part of the ticket must provide appropriately designated spaces for posting amounts paid on the loan. See subsection (b) of this section (Appendix A) for the prescribed front of the original pawn ticket. See subsection (b) of this section (Appendix B) for the prescribed back of the original pawn ticket. See subsection (b) of this section (Appendix C) for the prescribed back of the third and fourth parts of the pawn ticket. Any person may modify the spacing of the forms prescribed in Appendixes A and C. Any other modifications to the prescribed forms must be approved, in advance, by the commissioner.

(ii) Distribution of copies. The original must be given to the pledgor when the loan is made. The second part must be made available to a local law enforcement agency and may be retained by the agency. An alternative method of reporting transactions to a local law enforcement agency may be approved by the local law enforcement agency and the commissioner which permits the omission of the "second part" from the pawn ticket form. The third and fourth part must be maintained as provided in subparagraphs (F) and (G) of this paragraph.

(iii) Voided tickets. Voided tickets must be clearly marked "VOID." The original and third parts of voided tickets must be retained and filed with the fourth part of the ticket. The second part must be made available to a local law enforcement agency and may be retained by that agency.

(B) Memorandum of extension

(i) Prescribed form and content. If a pawnbroker makes a charge for an extension of a pawn loan, a written memorandum must be used to document the extension of the maturity date. The extension must be by agreement between the pledgor and the pawnbroker. Acceptance of pawn service charges at the date of the memorandum constitutes evidence of agreement. The memorandum must be at least a two part form on which entries to the top part are legibly and simultaneously reproduced on other part(s). See subsection (b) of this section (Appendix D) for the prescribed memorandum form. "Last Day of Grace" as used in the memorandum means the date no earlier than one month and 60 days after the date to which the finance charge was paid on the date of the memorandum. Modification of the form prescribed in subsection (b) of this section (Appendix D) must be approved in advance, by the commissioner.

(ii) Distribution of copies. The original of the memorandum must be given to the pledgor or must be mailed to the pledgor if the transaction is negotiated by mail. The copy must be retained by the pawnbroker. The memorandum copy may be filed in any systematic manner that permits ready retrieval of all memorandum copies relating to a particular pawn ticket.

(iii) Procedural details. The daily rate of finance charge is 1/30th of the finance charge shown on the pawn ticket. The number of days for which a pledgor pays in connection with an extension is the total amount paid divided by the daily rate. The pledgor and pawnbroker are free to negotiate the payment of any amount of finance charge or the payment of the accrued finance charge to a particular date when negotiating an extension. If a pledgor negotiates an extension and subsequently pays a loan in full prior to the original maturity date, the pawnbroker must compute the earned pawn service charge as if the extension had not been made and must credit the pawn service charge paid for the extension against the earned pawn service charge and may only collect the difference.

(C) Records of payments. A written record of every amount collected in connection with a pawn loan must be made immediately upon receipt. An entry of payment made in the electronic records of the loan may satisfy the requirements of this subparagraph

(i) If a payment is made in connection with the redemption of pledged goods or the renewal of a loan and the original pawn ticket is returned to the pawnbroker, the pawnbroker may satisfy the record of payment requirement if the pawnbroker posts, to the front of the original pawn ticket, the date of the transaction and the amount of money actually received and retained by the pawnbroker. If the amount of money received includes any costs for packing, shipping, or insuring goods redeemed by mail, the amounts of such costs must be itemized.

(ii) If a payment is made in connection with the redemption of pledged goods or the renewal of a loan and the pawnbroker uses a separate Lost Ticket Statement form, the pawnbroker may satisfy the record of payment requirement if the pawnbroker posts, to the front of the Lost Ticket Statement, the date of the transaction and the amount of money actually received by the pawnbroker. The pawnbroker must file the Lost Ticket Statement with the original pawn tickets. If the amount of money received includes any costs for packing, shipping, or insuring goods redeemed by mail, the amounts of such costs must be itemized. As an alternative, the pawnbroker may use the third part of the pawn ticket to record the transaction and then file the third part in the Numerical File of Redemptions and Renewals.

(iii) If a payment is made in connection with the extension of a loan, the pawnbroker may satisfy the record of payment requirement through completion of a memorandum of extension which is filed in accordance with subparagraph (B)(ii) of this paragraph.

(iv) If a payment is made in connection with a pawn loan under circumstances which are not covered in clauses (i)-(iii) of this subparagraph, the record of payment must be made on the back of the fourth part of the pawn ticket. If the amount of money received includes any costs for packing, shipping, or insuring goods redeemed by mail or for a lost ticket statement, the amounts of such costs must be itemized.

(D) Written receipt. A pawnbroker must give a payor a written receipt for any payment on a loan, unless the pawnbroker posts a notice furnished by the commissioner, readily visible to customers, which reads "Notice to Loan Customers: This pawnshop will provide you a receipt for any amount paid on a loan transaction, if you request it at the time of payment. Texas Consumer Credit Commissioner Phone 1 (800) 538-1579." A properly completed memorandum of extension form may serve as a receipt for payment of charges.

(E) Record of forfeiture and redemption or renewal options. When a pawnbroker exercises his option to take pledged goods as his property, the pawnbroker must make a notation of the action and the date of action on the fourth part of the pawn ticket or in the electronic records of the loan. If a notation has not been so made, a loan is considered open even if the grace period has expired. The pledged goods on any open loan may be redeemed by payment of the amount financed and pawn service charges accrued to the actual date of redemption. Any open loan may be renewed by payment of pawn service charges accrued to the date of renewal or may be extended, unless the pawn ticket provides that the loan is not eligible for renewal or extension.

(F) Alphabetical index The third part of each pawn ticket issued must be promptly filed alphabetically by the name of the pledgor. The index must be maintained in alphabetical order and tickets promptly removed when the corresponding loans are closed. The commissioner may approve an index contained in an EDP sys-

tem and permit the omission of the "third part" from the pawn ticket.

(G) Numerical index of loans. The fourth part of each pawn ticket must be promptly filed in numerical sequence by the sequential number on the ticket.

(H) Numerical file of redemptions and renewals. The original of each pawn ticket returned to the pawnbroker must be promptly filed in sequential number sequence. Any separate lost ticket statement forms or third parts of pawn tickets used to document a redemption or renewal when the original ticket is lost must be filed with the original pawn tickets according to the sequential number of the related ticket. This file may be maintained separately or may be merged and combined with the Numerical Index of Loans

(I) Notice of lost pawn ticket. When a pawnbroker receives oral notification from a pledgor that the pledgor's pawn ticket has been lost or stolen, the pawnbroker must instruct the pledgor to put such notice in writing. If the pledgor is present in the pawnshop at the time of giving oral notice, the pawnbroker must provide the pledgor with a form or other materials on which to give written notice.

(J) Power of attorney In the event that the original pledgor desires to designate another person to redeem the pledged goods and the original pledgor has lost the pawn ticket, a proper power of attorney is required from the original pledgor designating the person for redemption. Powers of attorney must be filed in a systematic manner which makes them readily available for examination.

(2) Titled Goods.

(A) Negotiation. A pawnbroker may accept as goods pledged on loans, a motor vehicle and other property having a certificate of title. The pawnbroker must not permit or require the owner to endorse the title to effect transfer to the pawnbroker

(B) Limited power of attorney When a pawn loan involves titled property, the pawnbroker may require the owner sign a power of attorney form appointing the pawnbroker as his attorney-in-fact for the sole purpose of transferring the ownership of the property to the pawnbroker in the event the pledgor fails to pay the loan.

(C) Titled goods documents. The pawnbroker must establish a systematic method for the retention of all powers of attorney, certificates of title, and registration receipts which makes the documents readily available for examination.

(3) Standards for describing goods. Pledged goods and purchases must be accurately and fully described. All serial numbers including vehicle identification numbers and boat hull numbers that are reasonably available must be accurately entered on required documents. Any visible owner applied number or other identifying marks must be recorded. As applicable, the item type, brand, make, model number, engraving, inscriptions, color, size, length, unique markings, and design must be recorded. In addition, the pawnbroker must record the additional descriptors in subparagraphs (A)-(C) of this paragraph, as applicable.

(A) Firearms. Descriptions of firearms must also include caliber, if known, and type of firearm such as handgun or pistol, rifle, shotgun, airgun, black powder weapon, etc.

(B) Jewelry. Descriptions of jewelry must also include weight; type of metal including the purity of gold, if indicated or determined; gender, if determinable; style; and stones, if any. Stones must be described as to type, if determinable including determinations by use of electronic testing devices; color; shape; number; size; and approximate weight. Class ring descriptions must include school name and class year

(C) Motor vehicles. Descriptions of motor vehicles must also include the year model of manufacture, body style, license plate number, and state of registration.

(D) Required sequence. The commissioner may prescribe a required sequence in which primary descriptive information is required to be entered on pawn tickets and on agreements to purchase to facilitate communication of property transaction information to law enforcement agencies

(4) Lost or damaged goods documentation. Each pawnbroker must establish a systematic method for the retention of certain information concerning pledged goods that have been lost or damaged. The information may be recorded on the fourth part of the pawn ticket or in the electronic records of the loan, must be readily identifiable and available for examination, and shall include the following information:

(A) the date of discovery;

(B) the pawn ticket number;

(C) identification of the lost or damaged property;

(D) evidence of delivery of the disclosure required in §85.51(d) of this title (relating to Pledged Personal Property);

(E) the date of resolution;

(F) the manner in which the matter was resolved.

(5) Goods not lawfully possessed by the pledgor. Each pawnbroker must establish a systematic method for the retention of certain information concerning pledged goods that the pledgor did not have the right to possess. The information may be recorded on the fourth part of the pawn ticket or in the electronic records of the loan. Records shall be readily identifiable and available for examination. The record must include:

(A) the pawn ticket number;

(B) the specific goods concerned;

(C) the person to whom released;

(D) the terms and conditions under which the pawnbroker relinquished possession of the goods, e. g. redeemed by owner, voluntarily returned by pawnbroker without compensation, seized by law enforcement officers, awarded to another following a judicial hearing, etc.

(6) Accounting records and systems. Each pawnbroker must establish, within 150 days of the effective date of these rules, and maintain an internal accounting control system that can be relied upon to produce accurate financial information and to safeguard assets.

(7) Records maintained on electronic data processing (EDP) systems.

(A) Filing of description of systems and programs. Records and accounting systems maintained in whole or in part by EDP systems may be used in lieu of the books, files, and records required by these rules if they contain equivalent information. Each system must receive prior written approval from the commissioner. Pawnbrokers seeking approval must file a complete and detailed written description of the system proposed to be utilized, includ-

ing an enumeration of any features that do not meet the requirements of these rules and a full explanation as to how the equivalent information will be maintained in the proposed system. A pawnbroker must specify whether a system will be used in its entirety Filings must include operating manuals and instructions and, if requested, a copy of the software as used by the pawnbroker. Printed user instructions must provide a clear and concise section of procedures which must be followed to operate the system as contemplated by the commissioner in approving the system. Such instructions must clearly inform the user as to any printed reports required by the commissioner to be produced and retained for examination and the frequency at which they must be produced Within 30 days after the effective date of these rules every pawnbroker using an EDP system must file notice of such use with the commissioner on a form provided by the commissioner. All systems in place on the effective date of this rule shall be deemed approved if previously reviewed and approved by the commissioner Notwithstanding this de facto approval, existing systems will require modifications to comply with the new requirements of this section.

(B) Filing of amendments All changes to a pawnbroker's electronic data processing system which cause the system to provide less information must be filed with the commissioner at least 14 days in advance of use by a pawnbroker

(C) Who must file Each pawnbroker is responsible for filings as described in this subsection, however, a vendor may make filings on behalf of pawnbrokers provided such filing identifies each pawnshop represented by the filing.

(D) Withdrawal of approval by the commissioner If, based on examinations and practical experience with an EDP system and its records, the commissioner finds that the system and its records do not function and provide information as anticipated at the time of approval of the system or do not comply with this section, the system shall be deemed unsatisfactory, and approval withdrawn by the commissioner. A pawnbroker may have 90 days to make modifications directed by the commissioner to achieve a satisfactory record system

(E) Reporting property transactions to law enforcement The commissioner may require pawnbrokers who maintain their records by use of an EDP system to report their loan transaction information to an appropriate local law enforcement agency directly or through the commissioner's office The commissioner may do this by publication of a bulletin setting forth the technical criteria and directions developed through consultation with interested pawnbrokers, law enforcement agencies, and vendors of EDP systems.

(8) Records retention. All required books, records, instruments, and papers must be available for inspection during normal business hours by the commissioner or his authorized representative for a minimum of two years from the date of the last recorded transaction.

(9) Consumer credit commissioner file. Each pawnbroker must maintain a separate file for all communications from the commissioner and for copies of correspondence and reports addressed to the commissioner. This file must include, but not be limited to, copies of the Texas Pawnshop Act, examination reports, and any bulletins, orders, or rules issued by the commissioner.

(b) The prescribed front and back of the original pawn ticket are shown in Appendixes A and B. The prescribed back of the third and fourth parts of the pawn ticket is shown in Appendix C. The prescribed memorandum form is shown in Appendix D. Appendixes A-D are as follows. Figure 1: 7 TAC 85.21(b), Figure 2 7 TAC 85 21(b), Figure 3: 7 TAC 85 21(b), and Figure 4. 7 TAC 85. 21(b).

(c) Implementation dates Pawnbrokers must begin using a pawn ticket form prescribed by or approved pursuant to this section no later than six months following the effective date of this section Any pawnbroker who uses any other pawn ticket more than three months following the effective date of this section shall provide each pledgor the information required on the prescribed pawn ticket. Pawnbrokers must begin using a memorandum of extension form prescribed by or approved pursuant to this section no later than three months following the effective date of this section.

§85.31. Crime Victim Assistance

(a) Victim's request for assistance. As required in Texas Civil Statutes, Article 5069-51.17B(q), a crime victim may make inquiry of a pawnbroker to determine if personal property belonging to the victim has come into the possession of the pawnbroker The crime victim or the victim's personal representative may make an inquiry by presenting the pawnbroker a copy of a law enforcement agency offense report which described the stolen property in a manner that would permit identification by the pawnbroker. The loss must have occurred within 30 days prior to presentation of the report. The person requesting assistance shall provide the pawnbroker with a telephone number at which the person can be contacted or shall arrange an appropriate time to contact the pawnbroker to determine the results of the search.

(b) Search by pawnbroker. A pawnbroker who receives a victim's request for assistance must make a search of all records of purchases and loans made on or subsequent to the date of the burglary or theft The search shall determine whether the property described in the offense report had come into the possession of the pawnbroker. The pawnbroker must make the search prior to opening for business on the second business day following receipt of the offense report. From the time of receipt of the request until the pawnbroker completes the records search, the pawnbroker must not release any property of the type described in the offense report without examining the property to determine if it is the property of the victim.

(c) Pawnbroker's reports of findings If the pawnbroker determines that the property has come into the pawnbroker's possession, the pawnbroker must attempt to notify the law enforcement agency which originated the report within one hour after closing the pawnshop on the day of the determination. The pawnbroker must request instructions of the law enforcement agency as to holding the property for their inspection and must comply with the instructions. The pawnbroker shall not be liable to any person for damages relating to holding property pursuant to law enforcement agency instructions The pawnbroker must within twelve hours thereafter attempt to notify the victim or the victim's personal representative that contact should be made with the law enforcement agency or officer handling the stolen property complaint If, after a diligent and thorough search, the pawnbroker finds no evidence that the property has come into the pawnbroker's possession, the pawnbroker must within twelve hours of such determination attempt to notify the victim or the victim's personal representative

(d) Pawnbroker's right to privacy. No pawnbroker may be required to permit a victim or a victim's personal representative to examine the records of the pawnshop, the pledged goods of the pawnshop, or any property purchased by the pawnshop which is not on public display

(e) Crime victim assistance recordkeeping. The pawnbroker must keep each offense report copy delivered to the pawnbroker by a victim or victim's representative. The records must be retained in a systematic manner which makes the reports readily available for examination The pawnbroker must mark on the offense report, or on an attachment to the report, a record of the pawnbroker's reports of findings as required in subsection (c) of this section to include the person to whom the report was given, the date and time of giv-

ing the report or attempting to give the report, and the nature of the report.

§85.41. Security of Persons and Pledged Goods.

(a) General liability insurance. A pawnbroker must obtain and maintain general liability insurance with a company having an A. M. Best Rating of A or better in an amount not less than $500,000 per occurrence.

(b) Fire insurance. A pawnbroker must obtain and maintain fire insurance coverage on pledged goods with a company having an A. M. Best Rating of A or better in an amount not less than two times the amount financed plus the finance charge on open jewelry loans and not less than one and one-half times the amount financed plus the finance charge on all other loans. Alternatively, a pawnbroker who furnishes the commissioner with credible evidence of available resources other than fire insurance to protect pledgors may carry a lesser amount. If the commissioner questions the financial resources indicated in the information furnished by the pawnbroker, the commissioner may require certification by an independent certified public accountant as to the accuracy of such information concerning available resources.

(c) Approved safe. A pawnbroker who has loans on jewelry must have a safe sufficient to provide security for pledged jewelry. A pawnbroker shall within 30 days of the effective date of these rules request, in writing, the written approval of the pawnbroker's safe by the pawnbroker's insurance underwriter. If the insurance underwriter issues a written approval of the pawnbroker's safe, the approval must be placed in the Consumer Credit Commissioner File. If the insurance underwriter fails or refuses to issue a written approval of the pawnbroker's safe within 60 days of the pawnbroker's request for approval, the pawnbroker must possess or must immediately acquire a safe that provides a level of security not less than that provided by a safe with an Underwriters Laboratory rating of TL-15. If a pawnbroker does not have an approved safe or a safe with a TL-15 or better rating, the pawnbroker shall provide credible evidence to the commissioner that the pawnbroker's safe and/or vault provides security for pledged jewelry that is equivalent to or exceeds the security provided by a TL-15 rated safe.

(d) Exterior storage of pledged goods. If a pawnbroker accepts pledged goods that cannot be stored inside the pawnshop, i.e. motor vehicles, boats, trailers, construction equipment, etc., the goods must to be stored within close proximity to the pawnshop and must be securely enclosed by protective fencing.

(e) Use of pledged goods prohibited. A pawnbroker must not use or permit any other person to use pledged goods.

(f) Public display of pledged goods prohibited. A pawnbroker must not place pledged goods in a public area of the pawnshop.

§85.51. Pledge Personal Property Lost or Damaged-Liability of Pawnbroker.

(a) Responsibility for loss or damage. A pawnbroker is liable for any loss or damage to pledged goods to the extent provided in Texas Civil Statutes, Article 5069-51.16(a)(5).

(b) Communications with pledgors. A pawnbroker must not post in a pawnshop and must not make oral statements or do any other acts that would mislead a pledgor as to the liability of the pawnbroker. When a pledgor attempts or offers to redeem pledged goods or to renew or extend a loan and the pawnbroker knows or learns that the pledged goods have been lost or damaged, the pawnbroker must accurately inform the pledgor of the facts of the situation and of the pawnbroker's responsibility under the Texas Pawnshop Act. The pawnbroker must promptly attempt to satisfy the pledgor by repairing or replacing the lost or damaged goods. A pawnbroker shall not advise a pledgor that the replacement of lost or damaged pledged goods will be accomplished in any manner which is more limited than replacement with like kind and quality goods or restoration of damaged goods to their condition at the time pledged. A pawnbroker, who has informed a pledgor of the pawnbroker's liability under the Act, may, at the pawnbroker's option, offer a pledgor a cash settlement as an alternative

(c) Acceptance of payments; accrual of pawn service charge. When a pawnbroker knows that pledged goods have been lost, and not replaced, or damaged, and not restored to their condition at the time pledged, or are unavailable for redemption, the pawnbroker must not accept any payment from the pledgor. A partial, proportionate payment may be negotiated and accepted for redemption of goods pledged on a loan which are not lost or damaged and are available for redemption. No pawn service charge shall be earned by the pawnbroker after a pledgor offers to redeem pledged goods on which the pawnbroker is prohibited from accepting payment and no pawn service charge shall be earned by a pawnbroker after a pledgor requests to renew or extend a loan on which the pawnbroker is prohibited from accepting payment until such time as pledged goods or their equivalent replacements are available for redemption.

(d) Pledgor disclosure. In each instance when a pawnbroker must refuse payment by a person under this rule, the pawnbroker, must, at that time, provide the person with a notice of the rights of the pledgor and of the pawnbroker. The required notice must be in a form prescribed by the commissioner.

§85.61. Advertising.

(a) Prohibition-False, misleading or deceptive. A pawnbroker must not advertise or cause to be advertised, in any manner whatsoever, any false, misleading or deceptive statement or representation relating directly to the making, arranging, or negotiating of a loan subject to Texas Civil Statutes, Article 5069-51.01 et seq. No person may advertise the availability of pawn loans or suggest by use of any sign or other advertisement that a place of business is a pawnshop unless that person holds a pawnshop license for that place of business. Use of the words or phrases "unredeemed merchandise," "loan outlet," or "pawn outlet" or advertising under a heading, category, or title of "pawnbroker" or "pawnshop" or similar words shall constitute prohibited advertising under this section if the person does not hold a pawnshop license for that place of business. No pawnbroker may advertise under any name that is not on that pawnbroker's pawnshop license for the location advertised.

(b) Advertising copy file. A pawnbroker must maintain at the licensed pawnshop, or other location designated in writing to the commissioner, a complete record of all printed and other advertising material used to promote the business of making loans subject to Texas Civil Statutes, Article 5069-51. 01 et seq. If this record is maintained at a site other than a pawnshop, it shall be subject to examination as if in a pawnshop. Printed text or audio cassette recording of any audio advertising and a VHS video tape copy of any television advertising must be included. If any language other than English is used in any advertising material, a true and correct English translation must be made and attached.

(c) Use of state agency name. It shall be permissible for a licensed pawnbroker to publicly display or advertise the following statement: "Licensed and examined by the Texas Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207." In addition, any pawnbroker must include the commissioner's Austin telephone number and each telephone number that provides toll free calling to the commissioner's office from the trade area in which the advertising is used. The authorized statement and telephone numbers must both be used if any reference is made to licensing or regulation.

§85.71. Examinations and Investigations.

(a) Corrective actions required. If the commissioner or the commissioner's

representative determines that a pawnbroker has violated the Texas Pawnshop Act or any rule promulgated thereunder, either may direct the pawnbroker to review his records to determine the extent of the violations and to make appropriate refunds or take other corrective actions.

(b) Report of corrective action. The pawnbroker must prepare a written report documenting the scope and results of the review and related actions. The commissioner or the commissioner's representative may specify the content and format for the report. The pawnbroker must comply with the directive within a reasonable period of time as specified by the commissioner.

§85.81. Miscellaneous Operating Provisions.

(a) Hours and days of operation.

(1) Public posting. Each pawnbroker must post the days and the hours of each day that the shop will normally be open for business. Normal hours may include regular periods of closing during a day such as a lunch time closing. The pawnshop must be open for business during the posted hours. Any pawnshop may be closed on New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and Christmas Day without notice. A pawnbroker may close a pawnshop for other state, national, and religious holidays after posting notice of the intended closing for five calendar days prior to the closing. If a pawnshop is closed during regular posted hours due to an emergency, a notice of closing must be posted. The notice must include the date and the time that the pawnshop will reopen for business. All postings must be easily visible to a person outside all public entrances.

(2) Temporary, non-emergency closings. All pledgors must be adequately advised through use of posted notices prior to the planned date of the temporary closing. Any closing in excess of three business days require notification of the commissioner in advance. A notice shall be posted as in paragraph (1) of this subsection.

(3) Effect of Closing.

(A) Non-holiday closings. The amount of pawn service charge scheduled to accrue on each pawn loan, during emergency or non-emergency closings of one or more full days, must be waived for any person who states that he or she made an unsuccessful effort to redeem goods during the closing.

(B) All closings. If a pawnshop is closed on the Last Day of Grace of any pawn loan, the pledgor or holder of the pawn ticket shall have until the close of business on the next business day the pawnshop is open during its regular hours to redeem the pledged goods or renew or extend the loan.

(b) Identification of persons presenting pawn tickets to redeem pledged goods. Texas Civil Statutes, Article 5069-51.14, requires that the person presenting a pawn ticket to the pawnbroker for redemption properly identify himself. The pawnbroker must identify the person by requiring the person to produce an acceptable form of identification. A pawnbroker must record on the original pawn ticket the type of identification and the identifying number presented by any person other than the pledgor. A person who is known and recognized as the pledgor, by the pawnbroker transacting the redemption, is not required to present identification.

(c) Pawnshop Premises.

(1) Outdoor displays and storage. All outdoor displays of merchandise for sale and outdoor storage of personal property must be compatible with surrounding properties. Outdoor displays and storage must not be established unless permitted by local ordinances for dealers in used merchandise of the types customarily found in pawnshops.

(2) Signs. Each pawnshop must have at least one readily visible, permanent, exterior sign clearly stating the trade name of the business as shown on the pawnshop license issued by the commissioner. All signs must be in compliance with local ordinances.

(d) Identification of source of goods in pawnshop. Every item of forfeited pledged goods located in a pawnshop must be tagged or otherwise marked to identify the pawn loan on which the item was forfeited. This section applies to all goods forfeited to the pawnbroker on and after its effective date and which have a retail value of or are offered for sale at a price in excess of $10.

(e) Hold period. Each item of personal property purchased or otherwise acquired from the general public by a pawnbroker, other than forfeited goods, must be held at the pawnshop by the pawnbroker for a period of at least 20 calendar days from the date of acquisition before being modified, changed, sold, or disposed of in any manner. Upon application to and investigation by the commissioner, the commissioner may reduce the hold period requirement for a particular pawnshop in a specific jurisdiction. Such reduction may only be granted when a pawnbroker and the chief law enforcement officer who receives reports of property transactions from the pawnshop have adopted a reporting system that minimizes the elapsed time between the recording of property transactions by the pawnbroker and access by the law enforcement agency to the transaction data in a useable, machine readable form. The application for a reduced hold period must be approved in writing by and submitted through the chief law enforcement officer.

(f) Modification of character of goods. A pawnbroker must not modify or change the characteristics of any goods in his possession in connection with any open pawn loan.

(g) Redemptions by mail.

(1) Persons authorized. As mandated in Texas Civil Statutes, Article 5069-51.17B(i), any pledgor must be permitted to redeem by mail. A pledgor may do so by mailing to the pawnbroker the pawn ticket, a photocopy of the identification used in making the loan or, if not available, a photocopy of any identification acceptable for redeeming pledged goods, and a request to redeem by mail. Provided the pawnbroker has not received prior written notice that the pawn ticket has been lost, destroyed or stolen, the pawnbroker must honor the request within five business days. The pawnbroker may require payment by cashier's check, certified check, or money order of all principal and pawn service charges due on the loan and the charges authorized in paragraph (2) of this subsection. A pawnbroker may ship goods collect, i.e. the recipient pays the carrier for shipping and insurance charges. Shipments of firearms may only be made to a holder of a federal firearms license.

(2) Shipping, handling and insurance charges. The pawnbroker shall be entitled to recover the reasonable and necessary expenses involved in the packaging and shipping of the goods and any additional charge to insure the goods. Goods must be insured during shipment for an amount determined by the pledgor. Shipment must be by United States mail, any authorized parcel delivery service, or any common carrier.

(h) Monitoring of transactions and customers.

(1) Type of goods offered. A pawnbroker must not accept in pawn any item on which the serial number has been defaced, altered or removed unless acting with the effective consent of the owner of the item. A pawnbroker must establish a written policy to be followed when accepting pledged goods. The policy must describe the types of situations which may be indicative of goods being stolen and shall define the procedures to be followed to avoid acceptance of stolen goods. The policy must be established in written form, communicated to all persons working in the pawnshop, and a copy filed in the Consumer Credit Commissioner File within 60 days of the effective date of this rule.

(2) Acceptance of uniquely marked goods. A pawnbroker must not accept in pawn any item that is marked in a manner that indicates ownership by a rental company, motel, training school, construction company, governmental body, or any other person or firm other than the person offering the item to the pawnbroker, unless the pledgor produces a valid receipt or other evidence of ownership of the item, which must be attached to and retained with the goods while pledged

(i) Unclaimed funds A pawnbroker must maintain a record of any amounts due a pledgor and not paid

(1) Proof of attempt to pay refund. Evidence of a bona fide attempt to pay monies due a pledgor must be maintained. The minimum acceptable evidence is an unopened envelope addressed to the last known address of the pledgor and returned as undeliverable by the United States Post Office

(2) Use of unclaimed monies. Use of unclaimed monies within the business until such time as paid to the pledgor, the estate of the pledgor, or to the State of Texas is not prohibited

(3) Payment of unclaimed funds to treasurer. A pawnbroker must pay the unclaimed funds to the state treasurer, as required by the Property Code

(4) Preservation of records The records shall be preserved according to applicable law or rule of the state treasurer

(j) Duties and responsibilities of pawnbrokers.

(1) Examinations When a representative of the commissioner appears at a pawnshop to make an examination, the pawnbroker must provide the examiner with a desk or table providing adequate working space. The pawnbroker must also provide a suitable chair, adequate lighting, and convenient access to a 110 volt electrical outlet in an area reasonably suited to the type of work to be performed

(2) Communications. A pawnbroker must not misrepresent to any examiner or peace officer any information regarding activities in or about the pawnshop relating to the status of any pledged goods which may have come into the pawnbroker's possession

(3) Responsibility for acts of others Any person who holds a pawnshop license may be held responsible for the acts of its officers, directors, employees, and agents in the conduct of the pawnshop business

(4) Character and fitness A pawnbroker must report to the commissioner within three business days after having knowledge of any arrest, charge, indictment, or conviction of any person named on a pawnshop or pawnshop employee license or application filed with the commissioner. Any action previously reported to the commissioner or that would not require reporting on a pawnshop employee license application form in use at that date is excepted from this reporting requirement. A pawnbroker must report to the commissioner any known special investigation of alleged violations of the federal laws or rules relating to firearms A pawnbroker must also report any adverse action proposed in writing or taken by the Bureau of Alcohol, Tobacco and Firearms against the federal firearms license held by the pawnbroker or used in the pawnshop Reports must be made within three business days of the pawnbroker's knowledge of information or action

(5) Alcoholic beverages and other drugs A pawnbroker must not use or possess or permit the use or possession of any drugs or other chemicals in or around the pawnshop if use or possession violates any law or ordinance A pawnbroker must not operate the pawnshop while under the influence of alcohol or other drugs A pawnbroker may operate the pawnshop while taking medication or drugs prescribed by an authorized medical practitioner if his ability to operate the pawnshop properly is not impaired

(6) Consumer education Every pawnbroker must provide a suitable space in a public area of each pawnshop for a display of printed materials designed to educate and inform customers of their duties, rights, and responsibilities in pawn loan transactions The display and printed materials will be furnished by the commissioner The pawnbroker must assist the commissioner by refilling the display as necessary

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 authority

Issued in Austin, Texas, on August 31, 1994

TRD-9447448 Al Endsley
Consumer Credit Commissioner
Office of Consumer Credit

Effective date Octobe 1, 1994

Proposal publication date June 14, 1994

For further information, please call (512) 479-1280

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TITLE 10. COMMUNITY DEVELOPMENT

Part IV. Texas Department of Housing and Community Affairs

Chapter 49. Low Income Housing Tax Credit Rules

• **10 TAC §§49.1-49.14**

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of §§49.1-49.14 without changes to the proposed text published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3859).

The repeal of §§49.1-49 14 are adopted in order to enact new sections conforming to the requirements of new regulations enacted under the Internal Revnue Code for 1986, as amended, which provide for credits against federal income taxes for owners of qualified low-inome rental housing

The activities formerly performed under this section are now performed under new §§49 1-49 14, which was adopted by the Department's governing board on July 7, 1994, and published in final form in the *Texas Register* on August 19, 1994, (19 TexReg 6558) The effective date of the adopted new rule was September 1, 1994

No comments were received regarding adopion of the repeals

The repeals are adopted pursuant to the Texas Government Code, Chapter 2306, Acts of the 73rd Legislature Senate Bill 45, Chapter 141, effective May 16, 1993; and Acts of the 73rd Legislature Senate Bill 1356, Chapter 725, effective September 1, 1993, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs and Executive Order AWR-91-4 (June 17, 1991), which provides this Department with the authority to make housing credit allocations in the State of Texas

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

Issued in Austin, Texas, on September 1, 1994

TRD-9447491 Henry Flores
Executive Director
Texas Department of Housing and Community Affairs

Effective date September 22, 1994

Proposal publication date May 20, 1994

For further information, please call (512) 475-3800

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TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 78. Talent Agencies

• **16 TAC §§78.10, 78.70, 78.71, 78.75**

The Texas Department of Licensing and Regulation adopts amendments to §§78 10, 78 70, 78 71, and new §78 75, concerning

talent agencies without changes to the proposed text published in the July 19, 1994 issue of the *Texas Register* (19 TexReg 5574).

The new definitions clarify terms used in the profession, the amendment to §78.70 defines the way in which a talent agency may act in concert with an out-of-state agency, the amendment to §78.71 clarifies requirements for schedule of fees or commissions and adds a requirement to give a signed copy of the contract to the artist, and the new §78.75 simplifies and clarifies acts prohibited to the registrant.

The justification for the new section and amendments is that the profession and the public need clarification of requirements and acts that are prohibited.

The amendments and new section will function by increasing program integrity and consumer protection.

No comments were received regarding adoption of the sections.

The new section and amendments are adopted under Texas Civil Statutes, Article 5221a-9, which authorize the Texas Department of Licensing and Regulation to license 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 authority.

Issued in Austin, Texas, on August 31, 1994.

TRD-9447439 Jack W Garrison
Executive Director
Texas Department of Licensing and Regulation

Effective date September 21, 1994

Proposal publication date: July 19, 1994

For further information, please call (512) 463-7357

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• 16 TAC §78.75

The Texas Department of Licensing and Regulation adopts the repeal of §78 75, concerning talent agencies, without changes to the proposed text as published in the July 15, 1994, issue of the *Texas Register* (19 TexReg 5443) The rule is repealed to adopt a new section covering the same subject matter in order to clarify and edit the rule The adopted repeal will allow the adoption of a new rule which will increase understanding of the rules and clarify acts prohibited to the registrant

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 license 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 authority.

Issued in Austin, Texas, on August 31, 1994.

TRD-9447440 Jack W Garrison
Executive Director
Texas Department of Licensing and Regulation

Effective date: September 21, 1994

Proposal publication date· July 19, 1994

For further information, please call (512) 463-7357

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 295. Occupational Health

Texas Asbestos Health Protection

• 25 TAC §§295.31-295.56, 295.58-295.62, 295.64, 295.65, 295.67-295. 71

The Texas Department of Health (department) adopts 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) Sections 295.31-295.34, 295 36-295 38, 295. 40-295 42, 295.44-295 47, 295.49-295.56, 295.58, 295 60-295 62, 295.64-295 65, 295.68, and 295.70 are adopted with changes to the proposed text as published in the May 3, 1994, issue of the *Texas Register* (19 TexReg 3336). The remaining sections are adopted without changes and will not be republished.

The 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

These amendments and new sections implement the provision of the Texas Asbestos Health Protection Act and cover· general provisions; definitions, federal standards, asbestos management in facilities and public building, licensing and registration (conditions, exemptions, abatement emergencies, conflicts of interests, applications and renewals, out-of-state applicants, insurance requirements); licensure/state accreditation examinations, registration of asbestos abatement workers; licensure requirements (asbestos operations and maintenance (O&M) contractor (restricted), asbestos O&M supervisor (restricted), asbestos abatement contractor, asbestos abatement supervisor, individual asbestos consultant, asbestos consultant agency, asbestos project manager, asbestos inspector, individual asbestos management planner, air monitoring technician, asbestos management planner agency, asbestos laboratory, asbestos training provider, and asbestos transporters), operations (general, O&M requirements, abatement practices and procedures, notifications, and recordkeeping), required asbestos training courses, approval of training courses; voluntary compliance; compliance inspections and investigations; reprimand, suspension and revocation, administrative penalties; and National Emission Standards for Hazardous Air Pollutants (NESHAP) compliance.

The Department of Health is appreciative of everyone who took the time to attend the public hearings, who took the time to testify, and those who wrote to express their concerns. The recommendations have helped the department to better define requirements as well as the effects on the regulated community and the general public health. We have attempted to use all the recommendations, whether for these revised asbestos rules or for future revisions. Some comments received did not address the changes in the rules nor recommend changes. These were concerned with procedures within the asbestos programs and will be carefully considered for possible procedural changes

Several comments were received which did not address the revision of the rules. The following are addressed·

COMMENT: Some commenters disagreed with the makeup of the membership of the advisory committee, stating that they are only special interests

RESPONSE. The advisory committee composition will be reviewed by the Board of Health at their September 1994 meeting, in accordance Texas Civil Statutes, Article 6252-33.

COMMENT One commenter stated that several sections conflict with the Miranda Act and the due process of law It brings criminal rules into the civil arena

RESPONSE· House Bill 1680 specifically granted the authority for the department to enter any work site to inspect for violations of NESHAP and TAHPA Civil authorities are separate from criminal authorities and therefore, there is no conflict as stated in the comment

Editorial comments regarding punctuation and grammar were made throughout the rules

The following comments were received concerning the proposed revised rules

COMMENT Concerning §295 31(c) one commenter suggested the title in subsection (c)(1) be changed from "For the purposes of the Texas Asbestos Health Protection Act" to "For the purposes of Licensure and Procedures in Public Buildings." Another recommended that subsection (c)(1)(B) be deleted and subsection (c)(2) be revised to "(2) Federal National Emissions for Hazardous Air Pollutants (NESHAP) regulations in 40 CFR 61, Subpart M shall apply to all affected facilities". One commenter submitted language for subsection (c)(2) regarding the title of the sub-

section and additional sentences which would make this subsection more clear. Two commenters recommended wording for clarification of subsections (c)(1)(A) and (B) and for paragraph (2). The recommendation would not change the meaning and make the intent clearer.

RESPONSE: The department has revised the subsection to provide a clarification which addresses the commenter's concerns.

COMMENT: Concerning §295 31(c)(1)(A), several commenters stated that the use of the term "whether intentional or unintentional" is too broad and would require many persons to become licensed regardless of whether they will work with asbestos-containing materials or not. The result will be an increase in costs for all building owners. It also implies that any maintenance or custodial persons would be subject to licensing.

RESPONSE: The intent is to impress upon the building owners the responsibility they have and to enforce the provisions of the state law as it affects public health Building owners must become aware of asbestos in their buildings and plan for appropriate exposure control. The building owners have two possibilities available They can arrange to manage their own asbestos materials or hire appropriately licensed persons to manage it for them No change was made as a result to the comments

COMMENT: Concerning §295 31(c)(1)(B), a commenter thought the wording of this subsection meant that even NESHAP facilities were subject to the rules and stated that a clarification is needed

RESPONSE· The department agrees and has added wording to indicate that NESHAP facilities are exempt as listed in subsection (c)(2)

COMMENT: Concerning §295 31(c)(2), a number of commenters stated that there is a conflict in the wording of subsection (c)(2) and §295.34 It appears that the Texas law applies to NESHAP facilities as well

RESPONSE. The department concurs and has revised all references in cases where clarity is in question. Some sections of the rules apply to both the Texas and the Federal asbestos requirements Most sections of the rules only apply to public buildings where licensing is required The referenced §295 34(a), (b)(1)-(3), and (d) were revised to §295 34(a), (b)(1)-(3), (c), and (f)

COMMENT Concerning §295 31(e), one commenter suggested that the wording "asbestos work" should be changed to "asbestos-related activities." This will make the wording of the rules consistent

RESPONSE The recommended change has been made.

COMMENT Concerning §295 31, a commenter stated that there appears to be a grace period for training and medical requirements

RESPONSE· A licensed person retains the responsibility of keeping their license current by getting the required training or physical whenever either is about to expire

COMMENT. Concerning §295 31, one commenter stated that an exemption should be added for an asbestos notification and mandatory survey if there is adequate documentation to indicate there is no asbestos in the building.

RESPONSE: The NESHAP does not contain a provision for this These rules must be in compliance with the current federal regulations

COMMENT Concerning §295 32, specifically relating to the definition of asbestos-containing material (ACM), several commenters stated that the requirement to perform transmission electronic microscopy (TEM) analysis on floor tile which has been previously analyzed by polarized-light microscopy (PLM) would be extremely expensive and time consuming, would delay completion of projects which are being performed during periods of building vacancy, would result in redundant testing, and there is no established methodology for the performance of these tests One suggestion was to eliminate the TEM requirement and substitute the scanning-electron microscope (SEM), which would provide a cost effective means of verification

RESPONSE The department agrees, however, more research is required to substantiate the intent Close coordination will be maintained with the Environmental Protection Agency (EPA) to ensure the state will be consistent with the federal regulations The TEM requirement has been deleted

COMMENT Concerning §295 32, specifically relating to the definition of asbestos-containing material (ACM), several commenters thought the definition should be modified or may need clarification Another felt the term "unintentional" should be deleted because it would make someone in violation if they accidentally and unknowingly removed or disturbed ACM and whether this applies to storm damage, fire, or "Act of God?" Others recommended that the NESHAP definition be retained without change

RESPONSE The term unintentional is to be kept due to the responsibility of the building owner to determine if there is asbestos in his/her building Under the federal and state laws there is a requirement for the building owner to notify anyone who is to work in the building of the presence of asbestos There is also the need for work practices in the vicinity of asbestos-containing materials which will not disturb them. If this responsibility is carelessly carried out, workers or the general public will then be needlessly exposed to asbestos This is a direct impact on public health No change was made

COMMENT Concerning §295 32, specifically relating to the definition for asbestos-containing material, two commenters stated that the definitions including any one material component of a structure does not take into account the National Emission Standards for Hazardous Air Pollutants (NESHAP) criteria The definition should clarify the department position regarding whether joint compound falls under this definition

RESPONSE EPA and the department recognize that tape and joint compounds become an integral part of the wall. However, if this material delaminates from the wall, then it must be tested as a separate material The definition was not changed.

COMMENT: Concerning §295.32, specifically relating to the definition of asbestos abatement activity, one commenter believes the definition for asbestos abatement activity is redundant with asbestos-related activity.

RESPONSE: Asbestos abatement is one of the asbestos-related activities. Therefore, both definitions are needed. No change was made as a result of the comment.

COMMENT: Concerning §295.32, specifically relating to the definition for asbestos consulting activities, commenters recommended this addition to define the various activities for which the consultant is responsible.

RESPONSE: The definition was included in the rules as a means of defining the various activities of the licensed asbestos consultant.

COMMENT: Concerning §295.32, specifically relating to the definition of asbestos-related activity, three commenters questioned the need for bidding to be an asbestos-related activity. Did this mean individuals in business development/marketing need to be licensed, and if so which license? Also, is the owner required to comply with the 10 working day notification before securing bids? One commented that bidding does not represent a health hazard and recommended that the rules be changed.

RESPONSE: The intent is to prevent someone from getting an asbestos project without having become properly licensed If someone bids and gets this contract without having the license previously, there may be delays in the start of the project while awaiting the license application to be processed and properly investigated before granting of the license. The pressure is then present to begin without receiving the license or meeting the requirements of state and federal laws The definition was not changed.

COMMENT· Concerning §295 32, specifically relating to the definition of asbestos survey, a commenter recommended that "taking samples for analysis and visual inspection" be added to the definition for inspection. The definition as written could add costs and delays to projects The original definition should be retained. Another commenter stated that the definition of asbestos survey should read "An [A comprehensive] inspection ...by taking samples for analysis "or" (not and) by visual inspection."

RESPONSE. There currently is no definition in the rules for inspection, however, this will be considered for future action. The recommended word change of the second commenter was made to this definition.

COMMENT· Concerning §295 32, specifically relating to the definition for "designated person," a commenter recommended that the definition for "designated person" include minimum qualifications and that enclosure include requirements for labeling

RESPONSE. The requirements for the qualifications are too long to be included, but are included in other applicable sections.

COMMENT: Concerning §295.32, specifically relating to the definition of EPA Regulations, some commenters recommended the format of references to federal regulations be changed from "40 Code of Federal Regulations" to "Title 40 code of Federal Regulations" and others be changed accordingly.

RESPONSE: The accepted convention, which is also legally binding, is as currently listed in the rules. No changes were made.

COMMENT: Concerning §295.32, specifically relating to the definition for "facility," a commenter suggested the definition of "facility" should be changed to delete "industrial", which would clearly indicate that such facilities are not regulated by the department's asbestos program. Another commenter stated that the definition for facility is confusing and recommended that the federal definitions for facility, public building, and commercial building be used.

RESPONSE: The department concurs that the definition may be confusing even though it is the definition used in NESHAP. Currently the Texas Asbestos Health Protection Act (TAHPA) applies to some facilities also regulated by NESHAP, for instance, public buildings and apartments. Where the term "facility" is used in these sections, the provisions apply to those installations which are covered by NESHAP The "facility" definition is revised to keep the same wording, but the sentences were reorganized to avoid confusion.

COMMENT. Concerning §295.32, specifically relating to the definition of a facility owner, a commenter recommended the addition of this definition to explain who is considered the owner.

RESPONSE: The department agrees the definition is needed in conjunction with the definition of facility A definition was added.

COMMENT. Concerning §295.32, specifically relating to the definition for independent third-party monitor, three commenters recommended that the definition be changed from a building to a facility and that this person must be a licensed air monitoring technician. Additionally he/she recommended that the definition for third-party air monitor be deleted as it is redundant with independent third-party air monitor One commenter thought that the wording indicated that the air monitor could collect samples but not analyze final clearance samples or personal samples. They could only collect samples before or after abatement

RESPONSE Other sections of the rules explain the requirement that this person must be licensed to work in a public building. Work practices are listed elsewhere in the rules. The definition for third-party air monitor will be combined with the definition of independent third-party monitor.

COMMENT· Concerning §295 32, specifically relating to a recommendation to add new definitions, commenters recommended that definitions for approved acceptable/accepted, asbestos workers, and asbestos consultant activities be added

RESPONSE· Asbestos consultant activities was added The other recommended definitions were not added and will be considered for future action.

COMMENT: Concerning §295.32, specifically relating to operations and maintenance (O&M) contractor, one commenter stated that the definition for O&M activities was replaced by the definition for O&M contractor and that the definition for asbestos abatement was replaced by asbestos abatement activity. The commenter recommended that the original definitions be retained.

RESPONSE: The other definitions are still valid. This additional definition is to define who the O&M contractor is and basic responsibilities The new definition is retained

COMMENT: Concerning §295.32, specifically relating to the definition of an operations & maintenance manual, a commenter recommended the addition of this definition to explain the requirements as listed in various sections of the rules

RESPONSE. The department agrees and has included a definition as recommended

COMMENT. Concerning §295 32, relating to OSHA Regulations, a commenter recommended that the reference for 29 Code of Federal Regulations, §1926.58 be deleted as other regulations apply Included was a recommendation that if the permissible exposure limit (PEL) is defined, that the Short Term Exposure Limit (STEL) of 29 CFR, §1926 58 be added.

RESPONSE. The definition was revised accordingly to delete the reference The STEL definition is included in the reference only, as the department does not enforce OSHA regulations, only those OSHA procedures which are a part of these rules

COMMENT. Concerning §295 32, specifically relating to "public building, subparagraph (F)," Two commenters state that the need for a professional engineer (P.E) to assess the soundness of a building in danger of imminent collapse is in conflict with NESHAP and could allow demolition without the removal of the asbestos.

Commenters also stated the sentence should be deleted, because if the building is structurally unsound the asbestos does not have to be removed Requiring a P.E to make that determination is inconsistent with §295 61 which also allows a registered architect to make that determination

RESPONSE The department agrees that this requirement may be too restrictive and that an inconsistency has been identified A need exists to define who can determine the building to be in danger of imminent collapse, not just a danger to health and safety The rule was modified to contain the NESHAP provision for the determination to also be made by a city or state agency Buildings from which the asbestos has not been removed in these cases require special handling in compliance with 40 CFR Part 763, Subpart M

COMMENT Concerning §295 32, concerning the definition of regulated area, a commenter recommended that a definition for "regulated area" be used in the amended rules

RESPONSE The suggested definition has been included in the final adoption of the rules

COMMENT: Concerning §295.32, regarding the definition of start date/stop date (completion date), one commenter stated the definition for start and stop dates were confusing and asked what the trigger activities would be

Another commenter recommended that "whichever is later" be added to the stop date definition. One commenter stated that a completion date cannot be accurately predicted and that it would lead to numerous amendments It was suggested that a change in the wording would read "the date upon which the scope of work is completed and the first visuals are conducted "

RESPONSE The definitions were revised to specify what constitutes a start or stop date for abatement, renovation and demolition.

COMMENT: Concerning §295 32, specifically relating to the definition of "working days," several commenters recommended that the definition of working days be left as it is defined in NESHAP.

RESPONSE: The department concurs and will retain the original definition

COMMENT Concerning §295.33(a), one commenter felt that the department should not list any references it will not enforce Another commenter stated a concern about adopting references from a regulatory program which can be incorrectly applied to other programs, such as the reference to Asbestos Hazard Emergency Response Act (AHERA)

RESPONSE The department lists references which are closely associated with activities regulated under Texas Asbestos Health Protection Act (TAHPA) and the National Emission Standards for Hazardous Air Pollutants (NESHAP) They constitute regulations applying to those who work with asbestos The department will enforce those laws of the state and those for which it has received delegation, such as NESHAP In addition, it will enforce those provisions of other regulations which are applicable to its licensees as authorized by TAHPA

COMMENT Concerning §295 33(a)(1), a commenter noted that under NESHAP, notification is required for renovation as well as demolition

RESPONSE Notification is not required for buildings in which the asbestos-containing materials will not be disturbed

COMMENT Concerning §295 33(a)(4), a commenter stated that it appears a licensed person is required for all asbestos abatement control options This does not allow for an option of using accredited personnel located in manufacturing sites The commenter recommended the following of the Model Accreditation Plan (MAP)

RESPONSE The department has listed the MAP as a reference and is following it. The required training for accreditation of asbestos workers, supervisors, etc are listed in the MAP These requirements exist for anyone working in all buildings in Texas Licenses are

required only in public buildings as listed in the TAHPA.

COMMENT: Concerning §295.33(a)(10), commenters stated that 29 CFR §1910. 134 is incorrectly titled "Occupational Exposure to Asbestos, Tremolite, Anthophylitte, and Actinolite." The title should be "Respiratory Protection."

RESPONSE: The department disagrees as the reference is correctly titled.

COMMENT: Concerning §295.33(a)(8)-(10), a commenter stated that the Occupational Safety and Health Administration has issued new regulations. The commenter suggested that the new references should be used.

RESPONSE: Paragraph (8) has been changed to use the new number of the reference and the effective date. Paragraph (9) has been deleted since OSHA has deleted the referenced appendix. The date of paragraph (10) has been changed to use the new reference, and paragraphs (10)-(13) have been renumbered accordingly.

COMMENT: Concerning §295.33(a)(11), a commenter stated that if the TEM requirement remains, that an analytical protocol should also be specified

RESPONSE: The department disagrees as the requirements for TEM are contained in the reference.

COMMENT: Concerning §295.33(b), a commenter recommended that the subparagraph for on-site enforcement activities be reworded. The recommended language is "(d) a complete and legible copy of these regulations is available to any licensee during normal business hours at the office of the department; and (e) a compliance official of the department will have a reference copy of all applicable regulations in his possession during any compliance investigation."

RESPONSE: The comment was compared to other sections in the rules for inclusion, but no other applicable location was found Copies of all referenced documents are not available to be given to any licensee, however, reference copies are available for review as stated. The recommended language will be taken into account in defining departmental inspection procedures.

COMMENT: Concerning §295 34(b), a commenter suggested the addition of the word "facility" to better explain who is responsible.

RESPONSE: The department concurs and has made the addition to the subsection.

COMMENT. Concerning §295.34(b)(1), one commenter recommended the language read "Title 40 CFR Part 61." A commenter stated that the requirement be changed to read NESHAP "and" comply with §295.60 of this title. The wording presented implies this is a choice, not a requirement

RESPONSE: The department agrees the subsection is confusing and revised the language to indicate the different requirements for facilities and public buildings. All subsections in this section were revised to make this consistent throughout. The department concurs and added the word "and" in place of "or" as recommended. The title of the federal reference will be kept as it is the accepted legal convention.

COMMENT: Concerning §295 34(b)(4), one commenter asked if the department can enforce a requirement that is in conflict with state law? Specifically, there are more options for worker protection insurance than "Workers' Compensation" or "Self Insured " Proof of coverage equal to or better than the statutory limits should be accepted. Another commenter recommended a change to ..."if required by the specifications." and that the state does not require employers to carry workers' compensation insurance. One commenter stated that the state should not be able to require a building owner to have worker's compensation insurance.

RESPONSE: The wording was revised to conform with TAHPA. The Texas Asbestos Health Protection Act directs the requirement for Workers' Compensation Insurance issued by a company authorized to do business in Texas, written on the Texas form, when such insurance is required by contract specification or other agreement The department does not have the legal authority to accept an equivalent.

COMMENT Concerning §295 34(c), commenters recommended the wording "This survey must be produced upon request by the department and must be conducted in accordance with the procedures specified in Title 40 CFR 763, subpart E, AHERA" be added. AHERA is currently the only nationally accepted protocol A commenter noted that subsection (c) does not provide for an exception to the requirement for a mandatory asbestos survey if it can be proven the building does not have any asbestos An exemption should be provided. The commenter also stated that the requirement for notification and surveys needs some clarification, such as are they required for painting a wall with asbestos-containing materials contained in it? Several commenters mentioned the required survey is not being done for renovation and demolition projects in most communities. Other commenters suggested that the requirement for response to a request from the department be 60 to 150 days. One commenter suggested an explanation of the requirement for accreditation of inspectors in a facility

RESPONSE· TAHPA requires an inspection to be performed and does not provide an exemption The only protocol which exists for an inspection is AHERA The department does not have the authority to allow an exemption to the inspection requirement but will discuss this with EPA to see if it can be incorporated later in other revisions of the rules or policy if EPA changes their requirements The department agrees the accreditation reference is needed and has changed it to explain the requirements.

COMMENT Concerning §295.34(d)(2), commenters stated that the subsection needs clarification They noted that the requirement for utility contractors to be licensed as Operations and Maintenance (O&M) contractors (restricted) conflicts with §295 35(a) One statement was that a license should not be required if asbestos will not be disturbed Another commenter stated that the subsection would mean that any repair activity must be done by a licensed O&M contractor to avoid unintentional disturbance One commenter inquired as to the requirement for a license to inspect or sample The commenter also asked if building owners/management firms are exempt from the requirement for Errors and Omissions Insurance and if the department has considered licensing firms involved in abatement/O&M activities. A commenter stated that building owners should not be allowed to conduct their own asbestos inspections, that should be performed by licensed inspectors and consultants whose livelihood depends upon their experience

RESPONSE. The department feels that a public building owner has two options First, they may hire a licensed person to remove the asbestos prior to a utility contractor performing their work The other option is that a licensed utility contractor removes the asbestos materials which affect its utility work The rules were revised to ensure consistency between sections Building owners are required to obtain an O&M contractor's (restricted) license

COMMENT· Concerning §295 34(d)(4), a commenter recommended that a prohibition be added against "designing and abating" the same project. One commenter stated that the use of an independent licensed consultant would prohibit the use of organizational personnel to perform consulting services for organization owned buildings

RESPONSE Subsection (d)(4) has been changed to clarify the concern of both commenters The prohibition has been added as well as the removal of the word "independent" so that the intent will be clearer

COMMENT Concerning §295 34(d)(5), one commenter suggested that the regulations for inspection, management, and lab analysis is unclear if it extends to industrial facilities Licensing in this case would be overwhelming Another commenter believes that there would be less confusion if the department removed the term "facilities" and used the EPA for public and commercial buildings

RESPONSE The department has deleted subsection (d)(5)

COMMENT Concerning §295 34(e), a commenter stated that the requirement in subsection (e) puts a burden on building owners to use licensed persons in performing asbestos work The person may have a suspended license, which the building owner would not know about

RESPONSE The owner of a public building is only required to use due diligence in asking to see the license of the contractor They are not required to do any research to ensure the license is current Anyone may call the department on its 800 number and inquire about the current license status of the person and whether there are any violations which have been assessed

COMMENT Concerning §295 34(f), several commenters were concerned about an inconsistency with NESHAP in the ten-day notification and exclusion of economic concerns, and

the inconsistencies with the Occupational Safety and Health Administration (OSHA), which has a more flexible rule.

RESPONSE: The department revised its notification requirements to use the NESHAP requirements in §295.61.

COMMENT: Concerning §295.34(f), a commenter suggested that the notification responsibility be given only to the lead agency.

RESPONSE: This has already occurred as of April 1, 1994. The only asbestos notification requirement is to the health.

COMMENT: Concerning §295.34(f), one commenter suggested language which would separately address the notification requirements associated with public buildings and facilities.

RESPONSE: The wording was modified to better explain the requirements. Enforcement of both the TAHPA and NESHAP requirements are met by the department. The notification requirements are the same except for the licensing requirement. One form which meets all requirements became effective on April 1, 1994.

COMMENT: Concerning §295.34(f)(2), a commenter felt the requirement for notification of any amount of asbestos is excessive and that the department should use the reporting threshold in NESHAP. One commenter recommended that someone other than the building owner should be allowed to sign the notification form as that person is not always available. Another commenter stated that floor tile removal will create many emergency notifications. One commenter noted that NESHAP requires notification for renovation as well as demolition.

RESPONSE: The TAHPA requirement for notification may be met with an annual O&M notification. NESHAP requirements were added to this subsection for clarity. The building owner may delegate the signature responsibility to a person within the organization or to a consultant, but not to the abatement contractor.

COMMENT: Concerning §295.34(h), a commenter felt this gives the department considerable subjective judgment. Criteria should be based on federal action levels and also provide an appeal process for building owners. The requirement for management plans to be in the possession of employees in charge of building O&M is ambiguous. Another commenter stated that the O&M annual should be in the possession of anyone doing O&M work. One commenter felt that persons performing O&M for their employers in employer-owned industrial settings should be required to be licensed. A commenter recommended the addition of a sentence after the first sentence which would state "The asbestos survey and management plans are to be completed and submitted to the department within 90 days of notification by the department." Another commenter asked about the requirement for the management plan to be in the possession of the employee in charge of building O&M. It was unclear to the commenter as to who the specific person was for which the requirement exists.

RESPONSE: The recommended sentence was added. This subsection was reworded to specify the supervisor as the one who must have the O&M manual in his possession. If a person disagrees with the direction to perform a survey and produce a management plan, he/she may request a hearing from the director, Occupational Health Division, Texas Department of Health.

COMMENT: Concerning §295.34(i), one commenter recommended the addition of subsection "(i) Mandatory Project Design. Anytime RACM are anticipated to be disturbed in a project designed by a licensed asbestos consultant, the building owner shall employ a licensed project manager (§295.49) to be present at all times such activities are underway." Since most abatement projects fail because of poor supervision, it is imperative that this person be on-site during abatement activities.

RESPONSE: The department is unable to incorporate this suggestion in this revision of the rules at this time, but will consider it as part of the next revision.

COMMENT: Concerning §295.35(h), a commenter thought that penalties should be listed for a state employee threatening a member of the regulated community if penalties are listed for the threatening of a state employee.

RESPONSE: The department has procedures to respond to complaints from the public regarding the conduct of its employees. The inclusion of the penalties for the regulated public is to make them aware of other laws which affect the enforcement and other regulated activities.

COMMENT: Concerning §295.35(i), one commenter felt that the only reason to have a state examination is to generate funds.

RESPONSE: The examination proposed by the department is intended as a check on the quality of the instruction of the training providers and to ensure the regulated persons who are licensed are proficient in the requirements of TAHPA.

COMMENT: Concerning §295.36(a), a few commenters agreed that outside contractors who might come into contact with ACM be licensed. One commenter expressed a concern this would greatly increase costs. Another commenter questioned how the commissioner could let the legislature pass the exemption for floor tile. One commenter thought that the exemption should also extend to roofing material.

RESPONSE: The Commissioner of Health provides the best advice possible to the legislature when it is considering a bill which could affect the public health. A final determination is made by the legislature that directs the Commissioner to develop regulations in compliance with the applicable law which has been signed by the governor. The Texas law only addresses the interior of public buildings. NESHAP covers all buildings not private residences, to include the exterior. The management of asbestos must be addressed. There will be no difference in costs with good planning.

COMMENT: Concerning §295.36(a)(1), two commenters stated that the subsection should be modified with the addition of "or assumed to contain asbestos."

RESPONSE: This section was not open for comment; however, the department will consider it with the next revision.

COMMENT: Concerning §295.36(a)(2), several commenters stated that the department should recognize the 1992 Resilient Floor Covering Institute (RFCI) work practices.

RESPONSE: The reference was added.

COMMENT: Concerning §295.36(a)(5), several commenters thought requiring TEM would be very costly and time consuming without an increase of protection for the public health. Many felt the breakage requirement is in conflict with the provisions of House Bill 79. The breakage of floor tile as stated is ambiguous and would be difficult for all to properly interpret. It might require dedicated persons to maintain an extensive record keeping process in order to ensure they were not in violation. The commenters recommended that the department retain the NESHAP definition. Some commenters thought that the use of infra-red heat should be investigated and approved for use. Also, there are no real physical parameters. Many commenters suggested that the rules should be revised to prohibit powder-creating activities which have been identified by EPA. One commenter recommended that after the words "floor covering" to add the words "and adhesives." A concern was expressed that TEM would result in greater costs and encourage illegal activity. One commenter suggested that after the requirement for TEM that a sentence should be added. "The resilient flooring cannot be subjected to sanding, grinding, cutting, or abrading or become friable as those terms are defined in 40 CFR, Part 61, Subpart M." Further, a commenter suggested deleting the sentences referring to the size of floor tile pieces. One commenter stated that the PEL must be changed to the action level (.1 f/cc) and that floor tile found to be less than 1.0% asbestos could be assumed to be ACM or analyzed by TEM. Several commenters did not believe that TEM analysis is appropriate for floor tile. It would be both costly and time consuming.

RESPONSE: The department agrees that some additional research is needed and has deleted this requirement. Wording in this subsection was revised to address the comments.

COMMENT: Concerning §295.36(b), several commenters stated a concern as to how a building owner would know if the department had received the notification form. There are few options available, one being the use of certified mail. Some commenters thought the wording implied that a building owner would have to verify receipt. It was also suggested that the use of FAX should be allowed as it would be faster. One commenter stated that the notification requirement could delay the start of asbestos projects.

RESPONSE: The ten working day notification requirement is required under NESHAP. Since the state is enforcing both the state and

federal law, the notification requirement is consistent between both sets of regulations. NESHAP specifies that the postmarking of the notification 10 working days before the start of any asbestos activities provides ample notification and permits the planning of enforcement activities. FAX has not been determined to be reliable enough at this time as often the copies are illegible There is also a need for an original signature on the form to make it an official document. The rule will be modified to state the postmark

COMMENT Concerning §295 36(c), a commenter suggested that all penalties should be listed in §295 70

RESPONSE The department concurs and will work to incorporate this in the next revision

COMMENT Concerning §295 36(d), a commenter wanted to know how to get an emergency approved when the department is closed Two commenters stated that all should be licensed and that there should be no provision for waiving the license requirement and that there should be a definition for abatement emergency.

RESPONSE The rules are being modified to state that the department must be notified within 24 hours or the next work day, whichever is sooner In the case of a natural or manmade disaster, there may not be sufficiently licensed persons to respond immediately to resolve a major health hazard This situation could follow a hurricane, flood, tornado, or major explosion at a refinery The department will develop guidance to better explain what constitutes an emergency

COMMENT Concerning §295 37(a), one commenter sees a problem if owners are allowed to perform their own background air sampling for asbestos projects The results might be arranged to show the area to be cleaner than it is This supports the reason to have third party air monitoring Other commenters thought that organizations should still be allowed to do area and personal samples and to do clearance outside containment There would be a cost savings if allowed to perform this way One commenter suggested the addition of the word air in the title of this subsection so as to be consistent with the definitions in §295 32

RESPONSE Third-party air monitoring helps to provide integrity to asbestos projects by supplying a disinterested check on the reliability of the project and its procedures The title changes were made throughout the section as recommended

COMMENT Concerning §295 37(a)(3), two commenters stated that under this requirement they can no longer collect air samples for analysis during abatement It will cause a significant increase of in-house abatement projects Another commenter stated that persons holding restricted licenses are limited to small scale-short duration projects and therefore are exempt from air monitoring Therefore, this subsection is not needed One commenter supported the third-party air monitoring requirement

RESPONSE A building owner doing his own abatement is required to use an independent third-party air monitor for area and clearance sampling in order to avoid a conflict of interest Persons performing small scale-short duration O&M work might be required to perform personal sampling or other air monitoring.

COMMENT: Concerning §295 37(b), several commenters recommended that this subsection should be expanded to state that a contractor and a consultant on any project can not have a financial connection in any way. The commneters also disagree with the state interpretation which allows a university to not be in conflict if the design and abatement functions are handled in two separate departments. Some commenters thought it inappropriate for a qualified trainer to be required to be trained by a competitor One commenter thought a trainer should not also train their own employees.

RESPONSE: A trainer training his/her own personnel have a vested interest in the quality of the training as they are the ones who would face administrative penalties if work is being done improperly The department agrees that an instructor may attend a class taught by another instructor, however, he/she must meet the same requirements as any student. Wording will be added to specify no financial interest between a consultant and an abatement contractor.

COMMENT Concerning §295.37(c), a number of commenters stated that the municipal exemption should also be extended to schools, counties and state agencies, or that the exemption should be deleted for everyone One commenter thought the rule was unclear in that it if a consultant cannot design and abate the same project then the reverse should also be true

RESPONSE. The exemption being added into the rules is that which was in House Bill 1826 No other exemptions were authorized The health hazard of asbestos requires a careful check and balance to ensure proper handling Any change in the exemption will need to be in a change to the asbestos law as passed by the legislature.

COMMENT· Concerning §295.37(d), one commenter recommended that a new subsection (d) be added. This would state "A person contracted to perform an asbestos-related activity for a building owner shall not take any bulk or wipe samples of any material within the facility without the written permission of the building owner, and under the observation of the building owner's representative Any material suspected of containing asbestos should be brought to the attention of the building owner." The involvement of the building owner will aid in the integrity of the advice received.

RESPONSE· This is a requirement which may be placed into a contract between the parties. Anyone hired to perform an inspection should be allowed to perform according to the applicable regulations An owner placing severe restrictions on an inspector, whom they have hired, is risking improper handling of asbestos-containing materials, thus possibly harming the public health. The addition will not be included.

COMMENT: Concerning §295.38(e)(1), several commenters stated that they are extremely concerned with the 30 days allowed by the rules to process applications, particularly for workers. All requested that this time limit be changed to one to five days.

RESPONSE: The time periods to process license/registration applications, provided for by the rules are reasonable, particularly considering the complexity of verifying the documentation and information required to qualify for some of the licensing categories.

COMMENT: Concerning §295.38(e)(2), a commenter stated that all fees should be reimbursed when applications are not processed within five working days.

RESPONSE: Fees will only be reimbursed if applications are not processed within the time constraints provided by §295.38(e)(1), when payments exceed the actual required fee, or in the case of a double payment.

COMMENT: Concerning §295.38(f), one commenter stated a concern regarding renewal notices Concern was expressed regarding the requirement that workers must notify the department each time they change employers.

RESPONSE. This is a reasonable requirement since the Asbestos Professional Licensing staff has only two ways of knowing how to contact licensees/registrants regarding renewal of their registrations; one is by the current address of their employer, the other is by their home address.

COMMENT. Concerning §295.38(g)(6), several commenters questioned the requirement that the same training certificate used to qualify for a previous year's application cannot be used again for the current year's renewal application. Commenters interpreted this to mean that the same training certificate could not be used to qualify for multiple licenses. For example, an air monitor training certificate could not be used to qualify for both an upgraded air monitor license and an individual consultant license The commenters thought that in this case the applicant would have to take the same air monitor course twice in the same year and submit two separate training certificates, one for the air monitor application and a different one for the individual consultant application.

RESPONSE: If a training certificate has not expired, it will be accepted to qualify for licensure/registration. The same training certificate can be used to qualify for multiple licenses. For example, a photocopy of a current air monitor technician training certificate can be submitted to qualify for both an individual consultant and upgraded air monitor technician original or renewal license applications. The rules do not require an applicant to take two separate air monitor technician courses in the same year to qualify for two different licensing categories.

COMMENT. Concerning §295.40(4), a commenter stated that the addition contradicts a previous statement in this same paragraph. This paragraph first states, "without any lapse in coverage," but later goes on to state that no licensea will be uninsured for more than 30 days.

RESPONSE: The statement, "In no event shall a licensee be uninsured for more than 30 days," was deleted as it contradicts the previous statement that "the policy shall promptly be replaced or renewed without any lapse in coverage."

COMMENT: Concerning §295.41(a), several commenters were confused with regard to the purpose of the state accreditation examination and others expressed that the examination is redundant and there are other less costly and burdensome ways to achieve the purpose of the examination, such as: having the training providers administer the examination; increasing the audit presence and enforcement activities; and levying fines on counterfeiters.

RESPONSE: The state examination is proposed for the following reasons: to promote and protect public health and the environment by ensuring asbestos professionals are properly trained and prepared to work in the asbestos industry; ensure that asbestos training courses are being conducted in compliance with applicable state and federal regulations, strengthen and improve asbestos-related training programs; and minimize the number of fraudulent certificates in circulation. The department has not seen these objectives achieved through the current process of having only the training providers administer the examinations. The department believes it will be beneficial to the public and the environment if a pro-active approach (prevention) is adopted to minimize fraudulent activities rather than a reactive approach (cure) as suggested by several commenters. Furthermore, the level of on-site audits of asbestos training courses will increase even with the implementation of a state examination.

COMMENT Concerning §295 41(a), one commenter suggested that the state examination be studied in-depth, especially since having to wait 30, 60, or 90 days to take it will cause a high failure rate

RESPONSE Once an individual successfully completes and passes an asbestos training course, he/she can register for the state accreditation examination. The department has not established any length of time that an individual is required to wait before he/she can take the examination

COMMENT. Concerning §295.41(a), several commenters stated that providing the registration form for the state examination and assisting the students in completing this form should not be the responsibility of the training providers.

RESPONSE The student should have the registration and schedule forms for the state accreditation examination readily available following a training course The department intends to provide training providers with all necessary information that a student will need in order to make a comfortable transition from the training process to the licensing and examination processes. Through a cooperative effort between the department and training providers, this objective can be achieved.

COMMENT. Concerning §295.41(b), two commenters stated that training providers should not be held responsible if a student is incapable of learning or has a problem with his/her level of comprehension.

RESPONSE: If a training provider feels a student is incapable of learning or has a poor level of comprehension, then there is the possibility that the student could have difficulty with his/her attempt to successfully pass the examination administered in the asbestos training course and therefore would probably not be eligible to take the state examination. The department intends to use questions similar to those contained in examinations administered by training providers. If an individual successfully passes the examination administered by a provider then he/she should similarly pass the state accreditation examination.

COMMENT: Concerning §295.40(b), many commenters suggested that asbestos abatement workers be excluded altogether from taking the state examination.

RESPONSE: There has been opposition to the requirement that asbestos abatement workers take a state accreditation examination. One of the main concerns has been that many of these individuals are non-English speaking and/or illiterate and an extensive effort would be necessary in order to test them orally. After taking this and various other factors into consideration, the department has decided to exempt asbestos abatement workers from taking the state accreditation examination and increase the efforts to audit worker courses.

COMMENT: Concerning §295.41(b), one commenter requested clarification where the proposed rules state that "no examinations will be required for persons licensed before September 1, 1994, until September 1, 1997."

RESPONSE The department shall require an individual applying for an asbestos license (except worker) on or after September 1, 1994, to take and pass the state accreditation examination. If an individual is issued an asbestos license by the department before September 1, 1994, he/she will be required to take and pass the state accreditation examination on or before September 1, 1997.

COMMENT· Concerning §295.41(c), several commenters stated examination fees, travel costs and time constraints associated with the state examination would be burdensome to employees and companies. These commenters also felt that the state examination would deny many individuals the right to work and/or would frustrate those who do not test well.

RESPONSE· The cost of the examination should be minimal compared to costs which could result from inadequately prepared workers, such as: increased health risks to employees and the public; fines due to state and federal violations, and the threat of liability. Moreover, the cost of the examination over a three-year period for one individual is less than 0.70 cents per month. The department accepts that financial burdens and time constraints are important and intends to consider utilizing the Texas Department of Health regional offices located throughout the state as testing sites. Time constraints should be minimal since the state accreditation examination is not directly linked to licensing and therefore individuals will not be denied the right to continue working. After an asbestos license has been issued, individuals will be given three opportunities within a one-year period to take and pass the examination. As for those who do not test well, the state examination is not designed to frustrate anyone, but instead test individuals on topics they have already learned and, hopefully, been tested on in order to ensure that they are adequately prepared to safely perform in the asbestos industry.

COMMENT: Concerning §295.41(c), a commenter felt that the department should allow for examination fees to be paid at test sites.

RESPONSE: The department shall require a processing period to determine whether or not an individual is eligible to take the state examination, therefore fees cannot be accepted at test sites.

COMMENT: Concerning §295.41(d), a commenter suggested that there has been no validation process for the exam.

RESPONSE: The department will have a validation period of one year, in which the test will be evaluated to ensure it is fair and effective. During this validation period, beginning September 1, 1994, the examination will be offered with state level accreditation contingent on its validation.

COMMENT: Concerning §295.41(d), several commenters stated that the state examination is an excellent idea that should raise the level of professionalism in this industry; however there was concern that the examination schedule and testing locations may be insufficient in accommodating all individuals.

RESPONSE: The department intends to maintain a flexible schedule for the examination (quite similar to those offered by training providers) in order to reasonably accommodate as many individuals as possible. Furthermore, the department intends to consider utilizing the Texas Department of Health regional offices located throughout the state as testing sites.

COMMENT: Concerning §295.41(f), a commenter asked how long the waiting period is between re-examinations

RESPONSE: The department has not implemented a waiting period for those requiring re-examinations.

COMMENT: Concerning §295.42(d), many commenters questioned whether the rules are referring to accreditation or registration regarding the required documentation for worker registration renewal. They noted an error regarding the statement "the required license fee" is required for worker registration; it should state, "the required registration fee." The commenters recommended deletion of the first reference to the "department" and stated that it should read, "current physician's written statement on the specified department form. "

RESPONSE: The rules are referring to the registration certificate in this reference. However, this referenced portion is being deleted from the rules, and by definition in Section

295.32, the term, "license," is "any license or registration issued under this chapter." The first reference to "department" will be deleted from the sentence as recommended by one commenter.

COMMENT: Concerning §295.42(e)(1)-(2), a commenter questioned the requirement that the same training certificate used to qualify for a previous year's application cannot be used again for the current year's renewal application Several commenters interpreted this to mean that the same training certificate could not be used to qualify for multiple licenses. For example, an air monitor training certificate could not be used to qualify for both an upgraded air monitor license and an individual consultant license The commenters thought that in this case the applicant would have to take the same air monitor course twice in the same year and submit two separate training certificates, one for the air monitor application and a different one for the individual consultant application.

RESPONSE: If a training certificate has not expired, it will be accepted to qualify for licensure/registration The same training certificate can be used to qualify for multiple licenses For example, a photocopy of a current air monitor technician training certificate can be submitted to qualify for both an individual consultant and upgraded air monitor technician original or renewal license applications The rules do not require an applicant to take two separate air monitor technician courses in the same year to qualify for two different licensing categories.

COMMENT: Concerning §295.42(e)(2)(5), should be deleted as there will be no examination for workers

RESPONSE: The department deleted this subsection following the decision to delete the examination requirement based on the comments received for §41

COMMENT: Concerning §295.43, one commenter questioned what the state considers O&M activities? For example, do cable pulling contractors need O&M licenses when performing work in return air plenums? It should be a policy that if a subcontractor is performing any type of renovation or general maintenance activities in a building containing asbestos, they must possess an O&M contractor license

RESPONSE: According to §295.32 (relating to Definitions), "operations and maintenance" (O&M) activities are defined as activities that "are restricted to small-scale, short-duration work practices and engineering controls for tasks that result in the disturbance, dislodgment, or removal of asbestos in the course of performing repairs, maintenance, renovation, installation, replacement, or cleanup operations (Title 29, CFR, §1926.58, Appendix G, titled "Work Practices and Engineering Controls for Small-Scale, Short-Duration Asbestos Renovation and Maintenance Activities")" Subcontractors do not necessarily need operations and maintenance licenses since, before any O&M work can be performed, the building owner must have inspected and documented the location of any asbestos in a building. The building owner is responsible for notifying any person who is going to conduct O&M activities that asbestos is present, and this notification must be prior to commencement of any O&M activities. If the building owner or contractor determine, prior to commencing any O&M-type activities, that no asbestos will be disturbed, the rules do not require the person conducting such activities to be licensed.

COMMENT: Concerning §295.43(e)(1), a commenter requested that the last sentence of this paragraph be changed to read, "This person must be in charge of asbestos operations and compliance with the asbestos regulations contained in this chapter at the applicant organization " The commenter suggests that it is redundant for the department to enforce all regulations it has incorporated by reference. One commenter questioned the need for the requirement for training not used for a previous license application

RESPONSE. The rule provides specific guidance regarding the responsibility of this licensed person. The requirement for training not used for a previous application has been deleted as only current training is required

COMMENT Concerning §295 44(f)(3), a commenter requested that the term "full-scale" should be defined or replaced with "large-scale "

RESPONSE The term "full-scale" was removed as it doesn't provide specific guidance.

COMMENT Concerning §295 45(a), two commenters recommended that the proposed change be revised to read, " to engage in asbestos abatement in a public building or facility This requirement does not apply to the collection of sample materials suspected of containing asbestos taken during an inspection or survey by someone licensed to inspect."

RESPONSE. The department disagrees since the requested revision doesn't significantly change the meaning of this referenced section

COMMENT Concerning §295 45(a), a commenter recommended that because of restrictions placed on an asbestos consultant by §295.48(b)(4), that §295 45 should delineate that a licensed contractor cannot perform consulting, inspecting, management planning, project designing, area or clearance air monitoring, or employing anyone licensed to perform these activities

RESPONSE The department agrees that the same restrictions should be delineated in the asbestos contractor section that an asbestos contractor cannot perform any consultation or employ anyone licensed to perform any activities related to asbestos consultation The rules have been checked for consistency

COMMENT Concerning §295 45(e)(1), commenters questioned whether or not the "designated" individual can hold other licenses? Also, commenters expressed concern over not being able to use one training certificate to qualify for more than one license. Because of this interpretation, a licensed supervisor can no longer be the "designated" individual

RESPONSE If a training certificate has not expired, it will be accepted to qualify for licensure/registration The same training certificate can be used to qualify for multiple licenses. For example, a photocopy of a current air monitor technician training certificate can be submitted to qualify for both an individual consultant and upgraded air monitor technician original or renewal license applications The rules do not require an applicant to take two separate air monitor technician courses in the same year to qualify for two different licensing categories

COMMENT Concerning §295 47(a), two commenters request clarification on whether or not institutions will now need consultant agency licenses if institutions hire independent contractors, or will institutions only need individual consultant licenses if in-house staff is employed? Also, commenters suggest that individual consultants should be able to hire inspectors for in-house work on a temporary basis.

RESPONSE Institutions, acting as building owners, can hire contractors, individual consultants, etc , without being licensed The rules don't require building owners to be licensed to hire other licensees The rules do, however, require that any licensed individual consultant hiring inspectors must also hold a consultant agency license

COMMENT Concerning §295 47(b)(3), several commenters expressed concern that the "only true NIOSH 582 training course is offered in Cincinnati, OH " They suggested that the wording be changed to " health (NIOSH) 582 course or equivalent, submit " There was an objection to new requirements for individual consultants to perform field analysis air monitoring The commenters also had an objection with the requirement to submit a comprehensive quality control/quality assurance program This requirement is much too expensive to have to be enrolled in both the AAR and PAT Will individual consultants and air monitors now need to be licensed as a lab since PAT participation is now required to perform field analysis?

RESPONSE There are many NIOSH courses which are valid and follow the guidelines An individual should not be required to be in both programs The quality control/quality assurance requirement was deleted from this subsection

COMMENT Concerning §295 47(e)(1), one commenter objects to the elimination of exemption for PEs, AIAs, CIHs, etc , to submit asbestos-related experience to qualify for individual consultant licensure

RESPONSE The requirement has not been eliminated, because of legislative intent

COMMENT Concerning §295 47(f)(1), a commenter requested clarification on what documentation is needed to show that all asbestos work was performed under the applicable rules and regulations

RESPONSE Documentation consists of a letter from the applicant which lists work he/she has performed, dates, addresses, and supervisor information with which the department may verify the experience

COMMENT Concerning §295 47(f)(3)(B),

one commenter requested that the exemption that CIHs not having to take the modified three-day air monitoring course not be deleted.

RESPONSE: The department will not require a CIH to attend the initial air monitoring course. However, he/she will be required to attend the air monitor refresher course. This is the only way he/she will become aware of changes in the law or new air monitoring procedures

COMMENT. Concerning §295 47(f)(3)(D), one commenter stated that this subsection was in conflict with the refresher requirements as listed in §295. 64

RESPONSE: This subsection was deleted as it does not comply with the Model Accreditation Plan delegation from the Environmental Protection Agency

COMMENT Concerning §295 47(g), one commenter thought the term "performing work for hire" should be retained This was because of the requirement as stated in the Texas Asbestos Health Protection Act

RESPONSE: The department concurs and has retained the wording in the first sentence It has been deleted elsewhere in the paragraph as it was redundant

COMMENT Concerning §295 48(b)(4), commenters recommended that this provision should be enforced as the rules state that consultants must not engage in contractor activities The policy of exception that an individual can be licensed as both a consultant and contractor, but not perform both functions on the same project should be abolished Additionally, the rules should stipulate in the contractor section that contractors may not engage in asbestos consulting

RESPONSE The conflict of interest which prohibits the same person from performing as a consultant and the abatement contractor in the same building is a provision in TAHPA

COMMENT Concerning §295 50(a), commenters object to the wording, "for hire," being removed Why can't an inspector work under contract for a building owner without being in the employ of an asbestos consultant agency or management planner agency?

RESPONSE The wording, "for hire" was removed to enforce the requirement that an inspector must be employed under an agency license whether for hire or in-house work

COMMENT Concerning §295 50(d)(5), one commenter requested that "(A) and (B)" be changed to "(A) or (B)," so that the meaning is parallel

RESPONSE This correction was made

COMMENT Concerning §295 50(d)(5)(A), a commenter contends that this requirement will eliminate any possibility of school personnel conducting their own inspections Even if school personnel had performed inspections in the past, they wouldn't have performed them under the supervision of a licensed inspector or management planner since these licensing categories didn't exist prior to 1/93

RESPONSE A school with an licensed inspector, should consider having that inspector licensed as a management planner instead The other option is to license the school as a management planner agency. Either of these options will give credit for experience and education.

COMMENT. Concerning §295 51(b), a commenter questioned whether or not this licensing category is allowed to assess the condition of asbestos without an inspector license?

RESPONSE A licensed management planner is a combination license of both management planner and inspector To qualify for licensure, management planner applicants will now be required to submit proof of professional liability insurance in the amount of $100,000 and a Physician's Written Statement Form completed by an occupational health physician

COMMENT Concerning §295 52, a commenter mentioned a conflict in the rules and the requirements for qualification of an air monitor and a laboratory as regards the quality control procedures The suggestion was to remove the air monitoring technician (upgrade) since only a person working for a laboratory could meet the required qualifications

RESPONSE The department agrees and has deleted the reference in all locations of this title

COMMENT Concerning §295 52(a), one commenter requested that the wording be changed so that an AMT can take personnel samples under the supervision of a consultant

RESPONSE The wording was changed to read, " or when employed by a contractor an AMT, is restricted to performing only personal sampling "

COMMENT Concerning §295 52(e)(2), a commenter requested that the phrase, " . or must comply with 295 54(e)(3) " not be deleted If an AMT is employed by a lab, then AAR shouldn't be a requirement This AAR alternative should be only for those AMTs working for consultants or contractors Another commenter makes comments referring to AMTs being required to be enrolled in the AAR

RESPONSE The subsection was deleted as it was in conflict with other provisions

COMMENT Concerning §295 54(a), a commenter suggested that each lab (branch offices included) should be individually licensed and requests that a distinction be made as to what capabilities each lab has or what type of testing each lab is licensed to conduct

RESPONSE The subsection was changed to indicate that all laboratories, including branch laboratories, will be required to be individually licensed Currently, all asbestos laboratory licenses indicate what type of analysis each is licensed to perform

COMMENT Concerning §295 54(d)(2), one commenter suggested that this reference be changed to reflect that the lab must participate in the fiber component of the PAT program and be rated proficient in these analyses.

RESPONSE The current requirements are appropriate for laboratories to be able to provide the level of quality needed

COMMENT. Concerning §295.54(d)(3), a few commenters suggested that asbestos bulk sample program participation be required of all labs performing such analysis They suggested the addition of NIOSH to the PAT program requirement

RESPONSE The change was made as suggested

COMMENT Concerning §295 54(d)(4), a commenter suggested that AAR enrollment should be required for each person performing fiber counting outside of the laboratory facility

RESPONSE The current requirements are appropriate for laboratories to be able to provide the level of quality needed

COMMENT Concerning §295.55(d)(9), one commenter requested clarification regarding any requirement for the location of sanitary facilities (restrooms)

RESPONSE The only requirement is that they be readily accessible to the student

COMMENT Concerning §295 55(d)(10)(A), several commenters mentioned that EPA allows the combining of some courses and that the department should audit one of these to determine how well it is working

RESPONSE. The department has had several conversations with EPA and has concluded that the level of instruction for the various disciplines is different enough that the combining of courses should not be allowed.

COMMENT Concerning §295 55(d)(10)(C), a few commenters stated that the approved courses should follow the Model Accreditation Plan

RESPONSE The subparagraph has been revised to prohibit the combining of hands-on training

COMMENT Concerning §295 55(d)(11)(A), a commenter suggested that the rule be modified to state that "at least 50% of the classroom instruction will be conducted with instructors presenting the material " This was suggested because of the amount of hands-on training in the supervisor and worker courses One commenter claims the department has not demonstrated that the use of a video is better or worse than an instructor providing the material

RESPONSE The section was revised to include that 100% of the hands-on training will be conducted by the instructor Audits of courses with considerable use of videos show the student loses interest when there is not an opportunity to ask questions without interrupting the video, or having the instructor talking while the video is in progress

COMMENT Concerning §295 55(d)(11)(B), a commenter recommended a rewording of this subsection as it pertains to "interactive" videos The recommended wording is "Training films and video tapes may be used to enhance understanding, but may not be used as a substitute for the formal class conducted by

a certified instructor or the Model Accreditation Plan required hands-on training. Any of these materials must support and convey the understanding of the subject to the student."

RESPONSE: The recommended change was made

COMMENT: Concerning §295.55(d)(12), commenters suggested that the department allow more flexible training hours beyond the Monday-Friday, 8:00 a. m.-5:00 p.m. time span

RESPONSE. Some flexibility was added in response to the comments Generally, most of the courses are taught Monday-Friday in the 8:00 a.m.-5:00 p.m. time frame. The department is willing to allow training at other time periods Notification is needed in order to plan the audit of courses, however, short notice courses are approved when the department is consulted.

COMMENT Concerning §295.55(e)(2), several commenters had several comments about the notification to the department prior to the teaching of courses Many felt the 14-day advance notification is not practical and presents a hardship on training providers, contractors, and students. Some commenters were also concerned about the proposed penalty in §295.70(f)(3)(D) if they did not comply

RESPONSE The department requires sufficient notice in order to plan its enforcement audits A 14-day notification has proven to be workable (in the past) The department intends to work with the training providers to allow as much flexibility as possible.

COMMENT Concerning §295.55(f), a commenter requested clarification on the requirement for the addition and deletion of instructors

RESPONSE The instructor list aids the department in determining the competency of the licensed training provider to continue to provide courses which are in compliance with the Model Accreditation Plan.

COMMENT Concerning §295.55(g), a few commenters queried if an instructor is accredited for the supervisor course if he/she can teach the worker course? One commenter also suggested the adding of an instructors license

RESPONSE The instructor may teach both the initial and refresher worker courses The instructor license may be valid, however, the department cannot address that in the current revision of the rules This will be researched for any future revisions

COMMENT Concerning §295.55(g)(1), several commenters asked why an instructor must be trained by a competitor

RESPONSE The department agrees and has deleted the restriction

COMMENT Concerning §295.55(h), commenters asked why an instructor must get references from peers in another company if those persons have never attended a course taught by the instructor

RESPONSE The department began requesting no more than one reference from the current employer and requiring the other two to be from those who could attest to the applicant's teaching or technical expertise. This has not proven to be a problem based on the number of new training providers and instructors accredited in the past few months

COMMENT: Concerning §295.56(e)(7), one commenter requested that the referenced section should be amended to read, "deliver all asbestos-containing waste material for disposal to a facility from the approved list provided by the Texas Natural Resource Conservation Commission, P.O Box 13087, Austin, Texas 78711-3087."

RESPONSE This statement was amended to read as requested.

COMMENT: Concerning §295.58(b), a commenter stated that the decision to perform clearance monitoring should be based on professional judgement. The specified clearance would be very costly and time consuming.

RESPONSE: The comment was in reference to subsections which are not open for comment

COMMENT: Concerning §295.58(b)(7), one commenter concurred with the recommended change.

RESPONSE. No action is required

COMMENT Concerning §295.58(e), a commenter stated that inspections in some sensitive areas may disrupt business and upset some tenants in various buildings Reasonable notice should be given for former work sites

RESPONSE The department is sensitive to disruption in former work sites. Prior coordination to the maximum extent possible will be made and reasonable accommodation provided On-going projects will be inspected without notice. The building owner or contractor is expected to ensure rapid entrance of the inspector and not delay them Department personnel desire to make inspections as much of an assistance as possible, but must enforce the state and federal laws

COMMENT Concerning §295.58(f), a commenter suggested the addition of "during asbestos abatement activity," to the end of the sentence

RESPONSE: The change was made as suggested

COMMENT Concerning §295.58(g), a commenter stated that the department should specify the facial hair and other requirements for respirator wear

RESPONSE The department feels the OSHA requirements suffice for this purpose

COMMENT Concerning §295.58(h), several commenters stated that previously any licensee could take a bulk sample In the revised rules this is restricted. Why can't a worker take a sample? One commenter stated that under EPA regulations only an accredited inspector can take bulk samples from a school or public building Another commenter stated this should be accomplished by anyone authorized by these rules The subsection does not specify who can perform the visual clearance.

RESPONSE: Workers are not trained in the taking of samples nor the specified handling of these samples Supervisors and licensed inspectors are properly trained and have a higher level of responsibility.

COMMENT. Concerning §295.58(i)(1)(A), many commenters suggested that there not be a minimum number of baseline samples required and that the project supervisor should be able to make the judgement as to how many samples are required and where to take them One commenter stated that the volume should be at least 1200 liters. Another commenter suggested the air volume should be 1250 liters Additionally, the correct size of the filter is 0.8 microns

RESPONSE The filter size and the upper air volume limit have been incorporated as it complies with the published protocol A licensed consultant may specify other than these requirements if it better serves to clear the project and continues to protect the public health

COMMENT Concerning §295.58(i)(2), several commenters stated that to require ambient samples inside containment is not consistent with the normally accepted definition and that this should be retitled area monitoring

RESPONSE The requirement will remain, however, a consultant may design an air monitoring scheme which is different, based upon his/her knowledge of the specific project

COMMENT Concerning §295.58(i)(2)(B), some commenters recommended that this be changed to area samples

RESPONSE The suggested change was not made A licensed consultant may specify a different protocol based upon his/her judgement

COMMENT Concerning §295.58(i)(3)(A), a commenter stated that glove bag operations currently do not require air clearance Why are they now required? Another commenter felt that the wording in this paragraph would require air monitoring in all operations and maintenance activities

RESPONSE There will be no requirement for air monitoring of glovebag operations, unless there is an unusual situation and it is specified by the consultant The wording "except Operations & Maintenance" was added to the paragraph to explain that this section of the rules does not apply

COMMENT Concerning §295.58(i)(3)(C), several commenters stated that currently air monitoring technicians with an upgrade can do a final clearance on a small project It would be much more costly if the requirement is for this clearance to be issued by a laboratory as proposed If TEM is specified the lower limit should be the small scale-short duration requirements A commenter noted that the filter size is incorrect and should be 0.8 microns One commenter suggested rewording of this subsection and provided the wording Some commenters thought subparagraphs (C) and (D) were very similar and should be combined into one paragraph

RESPONSE. The filter size was changed as recommended An AMT working for a laboratory will be able to perform on-site clearance The air monitoring requirements were consolidated into subparagraph (C).

COMMENT Concerning §295 58(i)(3)(D), several commenters state that this requirement will add cost and delay projects. A commenter asked if a project manager would be able to do a visual inspection One commenter noted that "foundation component" should be "facility component " Some commenters thought subparagraphs (C) and (D) were very similar and should be combined into one paragraph

RESPONSE The word "foundation" was changed as recommended The air monitoring requirements were combined into subparagraph (C) A licensed consultant may designate a project manager to perform the visual clearance

COMMENT Concerning §295 58(i)(3)(E), several commenters stated that the requirement for TEM analysis of a floor tile project is overly expensive and time consuming and conflicts with House Bill 79 A few commenters recommended testing for greater than 160 square feet

RESPONSE This subsection was deleted as it conflicts with the exemption allowed in §295 36 of this title

COMMENT Concerning §295 58(j), several commenters recommended that the requirement for the posting of documents on the bulletin board be deleted or include those specified in House Bill 79 One commenter asked when the department poster will be issued and if any posters in Spanish will be provided

RESPONSE Workers and other persons on a project must have information available to them which will protect their health and safety as well as to inform them of the applicable laws The department requirement is consistent with those of the federal agencies which also enforce various regulations and penalties in the safety and environmental areas Spanish language posters will also be required

COMMENT Concerning §295 (k), a commenter recommended the addition of a copy of the "Recommended Work Practices for the Removal of Resilient Floor Coverings," published by the Resilient Floor Covering Institute (1992)

RESPONSE The department agrees and has added this requirement as subsection (k)(3) for any floor covering removal which is performed in compliance with exemption for licensing under §295 36 of the title (relating to Licensing and Registration Exemptions, Emergency)

COMMENT Concerning §295 60(a)(4), several commenters recommended the addition of emergency personnel responding to an emergency and specialists the consultant needs for technical advice

RESPONSE the department agrees and has made the recommended addition

COMMENT Concerning §295 61(a), several commenters stated that a provision should be made to allow the designation of "To be determined by bid" to be provided in the abatement contractor, the waste transporter and the disposal site sections. This would allow the owner to file a ten-day notification and later submit the name of the contractor, transporter or waste site on an amended notification form

RESPONSE All notifications are targeted (Top, High, Low) for inspections The contractor, transporter and disposal site information are a key part of the targeting and must be included The ability to verify whether a contractor or transporter is licensed and has had significant violations before the start of a project prevents unintentional and intentional violations Also, stating the contractor, transporter and waste site in the notification is a NESHAP requirement and the form is used to notify in accordance with NESHAP

COMMENT Concerning §295 61(a), some commenters stated that requiring that the fees be submitted with all notifications creates an accounting problem for agencies that use purchase orders

RESPONSE The department agrees and has decided it will send an invoice for the fees after the notification has been received. The burden that would have been imposed on notifying entities persuaded a re-evaluation by the department

COMMENT Concerning §295 61(a), several commenters stated that the paragraph is confusing as to the differing notification requirements of TAHPA and NESHAP and whether more than one notification is required

RESPONSE· The department agrees and the notification requirements of public buildings have been delineated from those of facilities. The paragraph has been rewritten to clarify that only one notification is required

COMMENT. Concerning §295 61(a), a commenter asked whether an owner has to notify when he/she is taking bids, since the definitions list the taking of bids as an asbestos abatement activity?

RESPONSE The owner does not have to notify when taking bids. The ten-day notification should be submitted ten working days before any activity which may disturb asbestos

COMMENT Concerning §295.61(a), a commenter recommended that the notification of renovation or demolition should be improper unless it contains an original signature

RESPONSE The department agrees. A statement has been added to the subsection to that effect

COMMENT Concerning §295 61(a), a commenter recommended that there be a minimum threshold for notifications that is consistent with NESHAP

RESPONSE. The state chose to be more stringent than NESHAP when the TAHPA was first passed An inspection to determine compliance may be performed on any project. An O&M plan should be developed for buildings in which small abatement projects are often being performed. The annual O&M notification will replace the individual or monthly notifications, as addressed in §295.61(g).

COMMENT: Concerning §295 61(f), several commenters stated that the requirement to notify of a change in the stop date will be difficult to comply with because of unforeseen events that occur during an abatement project. Additional notifications will increase paperwork and cost

RESPONSE. This requirement is necessary because of the frequency that inspections have been attempted on projects that were completed early without an amended notification Some flexibility has been allowed by only requiring notification for stop dates which change by more than 1 work day for each week. The contractor or consultant may submit the notification if he/she has been delegated in writing by the owner

COMMENT Concerning §295.61(f), a commenter stated that it is unclear as to when is the exact completion (stop) date

RESPONSE The "abatement" stop date is the date on which the containment is removed This will correspond to the definition of the abatement start date A demolition stop date and abatement stop date will be defined in the list of definitions as well as an abatement start date and demolition start date

COMMENT Concerning §295.61(f), a commenter suggested that rather than amending the stop date to prevent inspectors from arriving on projects that were completed early, the inspectors should schedule the inspection on the start date or early in the project and call before arrival

RESPONSE. The inspectors often have so many projects to inspect that it is impossible to always inspect on the start date. Unannounced inspections are the only way to observe the true work practices of a contracting company

COMMENT· Concerning §295 61(g), several commenters stated that the requirement for a single, estimated, annual notification for O&M work is acceptable, but the section is confusing

RESPONSE. The department has edited the section. Clarification will be made in regard to amending the notification if the amount of asbestos that is abated exceeds the amount in the annual notification Building owners will keep records of the O&M projects in an O&M manual, which will be reviewed during an inspection.

COMMENT Concerning §295 61(g), a commenter suggested deleting the portion of the section which mandates that all demolitions be updated because no such requirement is imposed by NESHAP

RESPONSE This portion has been deleted Demolitions are addressed in §295 61(j) NESHAP requires that notification be submitted for all demolitions, regardless of whether or not the building contains asbestos.

COMMENT. Concerning §295 61(h), some commenters stated that economic concerns should be classified as an emergency. Incidents which involve a piece of equipment or

process area that is crucial to the production of a facility should be considered as an emergency.

RESPONSE: The section was rewritten to include economic concerns. Economic concerns will be considered for an emergency waiver of the ten-day if an unreasonable financial burden would be imposed and any prior planning and inspection, which could have been done, was in fact completed. Wording was added to include the protection of equipment, the structure or for the health, safety and well being of people in the building

COMMENT: Concerning §295 61(h), a commenter asked whether the department will have staffing on holidays, week-ends and after normal business hours to allow compliance with the 24-hour notification?

RESPONSE: As proposed, the subsection requires that the notification be submitted no later than the following working day.

COMMENT Concerning §295 61(i), a commenter stated that notification and removal of RACM is also required under NESHAP for renovations

RESPONSE This subsection was proposed only to clarify the notification requirements of demolitions Renovations are discussed in other sections The word "renovations" has been added to subsection of this section for clarification purposes

COMMENT Concerning §295 61(i), one commenter requested to include economic and expediency concerns as criteria for emergency demolitions, and to retain the NESHAP definition and provisions of emergencies

RESPONSE The section was changed to include economic concerns as a basis for granting a waiver from the 10-day notification requirement Reasons of expediency will not be considered. The department believes that better planning and foresight will prevent the need for an emergency waiver based upon time constraints. States have the right by law to impose regulations which are more stringent than federal regulations However, the department has determined that it would be appropriate to be consistent with NESHAP in the requirement that a governmental official be allowed to make the judgement that a structure is in danger of imminent collapse

COMMENT Concerning §295 61(j)(2), several commenters stated that many agencies and school districts have billing procedures which would make them unable to comply with the requirement of sending the fee with the notification

RESPONSE The wording was changed to reflect that invoice will be sent after the notification has been received The invoice will be sent to the building owner

COMMENT Concerning §295 61(j)(3), many commenters stated that the increase of fees from $20 per asbestos reporting unit (ARU) to $300 per ARU is extreme and will be a burden to building owners The increase in fees will reduce a building owner's ability to abate asbestos The commenter suggested that the fees should remain the same

RESPONSE: The section was changed to reflect an increase to $25 per ARU, instead of $30 per ARU. The department appreciates the concern over the increase in fees, but has determined that additional staff is needed to adequately enforce the requirements of TAHPA. The funds earned from the increase in fees will be spent in an increase in staffing, which will enable the department to increase the number of inspections, increase the speed and efficiency of the notification process, and increase the enforcement activity.

COMMENT: Concerning §295.61(j)(3), several commenters stated that the subsection is confusing in regard to the minimum fee and whether a fee is required for the amount of asbestos less than one ARU. One commenter suggested the notification fee waived for less than one ARU.

RESPONSE: An invoice for a minimum of $50 will be sent for each original notification that is submitted or any amendments that were not preceded by an original. This amount is an administrative fee. TAHPA, unlike NESHAP does not exempt abatement projects for less than one ARU All costs associated with processing a notification will apply; therefore, the administrative fee will not be waived. Additional fee amounts will be added to the $50 for amounts of asbestos exceeding two ARUs

COMMENT Concerning §295 61(j)(3), a commenter recommended that the request for fee refund be provided 15 days following completion of the project

RESPONSE. The fee will not be sent with the notification, so there should not be a need for a refund. New language has been added to paragraph (3) to reflect that if the amount of asbestos actually removed is less than the amount stated in the original notification, an amendment should be submitted no later than five working days after the completion of the project A new invoice will be sent to the building owner that reflects the changed amount of asbestos

COMMENT Concerning §295 61(j)(3), one commenter stated that fees should not be required for speculative O&M projects or if the fees are required, it should be on a flat rate rather than based upon ARUs

RESPONSE The extensive amount of O&M work performed in a large building often results in a large quantity of asbestos that may be abated over a year's time The amount is sufficient to be based upon ARU's Also, basing the fee upon the amount of asbestos that is managed over a year will discourage renovation by the process of abating the asbestos in amounts less than one ARU O&M work is not renovation Provisions are made to amend the notification if the amount of asbestos is either overestimated or underestimated

COMMENT Concerning §295 61(j)(4), a commenter recommended that the fees should be billed to the building owner

RESPONSE The section was changed to reflect that an invoice for the fees will be sent to the building owner

COMMENT Concerning §295 64(a), several commenters thought that training providers should not be required to provide or assist the student in completing the application form for the state examination.

RESPONSE: The department considered the assistance necessary primarily if workers were to be tested This will not be a requirement. However, the application forms will be provided to the training providers to give to the students. This is not considered to be a major burden to them

COMMENT. Concerning §295 64(a)(4), a commenter stated that the requirement for training accreditation which may not have been used for a previous license application is unclear

RESPONSE: Any valid training certificate may be used with a license application

COMMENT: Concerning §295.64(a)(6), several commenters recommended that the department reconsider specifying the number and length of breaks and that the one-hour luncn break be included as a part of the required eight hours of training.

RESPONSE The break policy was changed to 20 minutes of break time in each four-hour training period, and the timing will be left to the instructor Most initial training courses last from 8 00 a m to 5 00 p m There is a considerable amount of material to be covered in each course The lunch hour is not considered a part of the training period, as it would take away from the time needed to effectively cover the required material

COMMENT Concerning §295 64(b)(5), a commenter suggested that it is impractical to have a field trip as a part of the three-day project designer course

RESPONSE: The field trip is a requirement in the Model Accreditation Plan delegation from EPA

COMMENT Concerning §295.64(b)(15), a commenter suggested that the word "replacement" be changed to "non-asbestos-containing replacement materials."

RESPONSE The proposed revised rule complies with the requirements of the Model Accreditation Plan delegation from EPA

COMMENT Concerning §295 64(f), one commenter suggested that the phrase "following the completion of the three day inspector course" be changed to "and has as a prerequisite, the three day asbestos inspector course."

RESPONSE The department concurs and the change was made

COMMENT Concerning §295 65(f), several commenters suggested that the requirement to have the instructors signature on the training certificate is unnecessarily burdensome and does not add to the validity of the certificate They suggested this requirement be deleted

RESPONSE The trainers signature is an important requirement as it helps to prevent the fraudulent training certificates which are routinely found in certain specialties It takes very little time for an instructor to sign a few certificates as the class is not that large Many other types of courses have the instruc-

tors signature, so that it is routine in the training industry.

COMMENT: Concerning §295 68(c), two commenters suggested the addition of documentation of current medical examination related to asbestos exposure, and current respirator fit test and training.

RESPONSE: The department is responsible for the training and qualifications of its personnel. The persons inspected may assume that these requirements have already been met and regulated by the department. The only documentation which will be required for an inspector to present is the department identification card.

COMMENT: Concerning §295 68(d), two commenters recommended the addition of "It is a violation ... to interfere with, deny, or delay an inspection.. by a department representative after the representative provides identification, documentation of current medical examination related to asbestos exposure, and current respirator fit testing and training."

RESPONSE: The department is responsible for the medical examinations and the qualifications of its inspectors. An inspector is only required to show his/her identification to begin an inspection. The inspected can assume that all other documentation is current.

COMMENT: Concerning §295 68(d), the commenters also recommended the deletion of "Neither the building owner, consultant, nor the contractor are responsible for the actions of the inspector nor his exposure to asbestos as long as the correct procedures are in use as specified in the appropriate reference."

RESPONSE: The sentence has been deleted as suggested.

COMMENT: Concerning §295 68(d), a commenter suggested the addition of "Prior to entry into an industrial facility the department representative will be provided site-specific training and information."

RESPONSE: Inspectors may receive briefings on any special hazards to which they may be exposed They will not be required to attend any training sessions which will delay their entry to an inspection site. Inspectors when available will welcome the opportunity to attend any sessions which a company may have at a time other than when an inspector is attempting to fulfill his/her legal obligation

The following organizations provided comment Northside Independent School District (ISD), Texas A&M University-Safety and Health; Deal Enterprises, Inc , Agroch Industries, Inc , Natural Applied Sciences; University of Texas System; Resilient Floor Covering Institute, Industrial Hygiene and Safety Institute, General Services Administration, Texas Utilities; City of Fort Worth, UT Arlington, UTHC at Tyler, UTA/CERT, Teleion; Envorosess Consulting, Inc , Dallas Building Owners and Managers Association, Mesquite ISD, TRIPRO Services, Inc, Telecon, Inc , NATEC, EAG & AES, Enviro/Con, Environmental Advisory Group, UTHC Tyler, TTU Lubbock, TECI, Texas Chemical Council, St Joseph Hospital, K&T Safety; Houston ISD, Asbestos Advisory Committee; Fugro-McClelland Environmental, Inc.; Astemp, Inc.; Micro Air of Texas, Inc.; HIH Laboratory, Inc ; RJ Lee Group, Inc.; The University of Texas MD Anderson Cancer Center; Envirotest, Inc., AsTeCo, Inc.; CONOCO; US Department of Veteran Affairs, North East Independent School District; Industrial Hygiene and Safety Technology, Inc , Environmental Compliance Group, Inc.; Parkland Memorial Hospital; The University of Texas at Arlington; Wichita Falls Independent School District; Natural and Applied Sciences; Scientific Investigation & Instruction Institute; Environmental Technologies, Inc ; Texas Utility Services; Enviro/Con Services Inc.; Fullbonght & Jaworski, Texas Department of Criminal Justice, Texas Association of Counties; City of Austin; Seagull Environmental Management Services, Inc.; Steve Moody Micro Services, Inc , Phillips Petroleum Company, Telion, Inc , Houston Lighting & Power, TU Services, El Paso Electric Company, Envirotest, Inc ; Bell Helicopter, Exxon; Dallas Market Center, Shell Oil Company

The amendments and new sections are adopted under Texas Civil Statutes, Article 4477-3a, §12, which provide 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 licensure and procedures in public buildings

(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 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 of persons, 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 as adopted

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

(2) For the purposes of Federal National Emission Standards for Hazardous Air Pollutants (NESHAP) enforcement only §§295 32, 295 34 (a), (b)(1)-(3), (c), and (f), 295.61, 295 67-68, 295 70, and 295 71 of this title (relating to Texas Asbestos Health Protection) apply to all facilities These sections shall apply to the extent necessary to allow the department to adopt and enforce the federal NESHAP For facilities which are not otherwise subject to this title as public buildings, the department will apply and enforce these sections in a manner consistent with the NESHAP

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

(e) License possession requirements Anyone engaged in asbestos-related activities in a public building 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

§295 32 Definitions The following words and terms, when used with these sections, shall have the following meanings, unless the context clearly indicates otherwise

Asbestos-containing material (ACM)-Materials or products that contain more than 1 0% of any kind or combination of 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

Asbestos abatement activity Asbestos abatement, any on-site preparations or clean-up related to the abatement Asbestos consulting activities-consulting activities in public buildings include the designing of asbestos abatement projects, the inspection for asbestos-containing materials (ACM), the evaluation and selection of appropriate asbestos abatement methods and project layout, the preparation of plans, specifications and contract documents, the review of environmental controls, abatement procedures for personal protection employed dur

ing the project; the design of area and clearance air monitoring of the project; any inspection, management planning, air monitoring, or project management performed by or for the consultant or consulting agency; consultation regarding compliance with various regulations and standards, recommending abatement options; and representing the consultant agency or consultant in obtaining consulting 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 inspection of a building or facility to determine the location, quantity, and condition of asbestos-containing material (ACM) therein by taking samples for analysis or by visual inspection

Building owner-The owner of record of any public building 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

Facility owner-The owner of record of any facility or public building or any person who exercises control over a facility or public building to the extent that said person contracts for or permits renovation to or demolition of said facility or pubic building

Independent third-party air 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 abatement contractor to analyze any area samples collected during the abatement projects being monitored 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 & 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

Operations and maintenance (O&M) manual-A record of O&M activities in a public building The building owner shall record each individual O&M activity in the manual, including the date of activity, the persons performing the activity, complete description of the activity, including methods used to prevent the emission of asbestos fibers, and the amount of asbestos removed An updated total of the amount of asbestos abated shall be kept as a comparison to the amount estimated in the annual O&M notification The manual will be made available to the department upon request.

OSHA-The Occupational Safety and Health Administration of the United States Department of Labor.

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:

(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, registered architect, or a city, county, or state government official.

Regulated area-The demarcated area in which asbestos abatement activity takes place, and in which the possibility of exceeding the permissible exposure limits (PEL) for the concentrations of airborne asbestos exists.

Start date-The dates defined as:

(A) asbestos abatement activity start date-The date on which the removal of asbestos begins or any other asbestos abatement activity begins, such as site preparation which would break up, dislodge, or similarly disturb asbestos;

(B) demolition/renovation start date-The date on which the demolition or renovation process begins

Stop date-The dates defined as.

(A) asbestos abatement activity stop date (completion date)-The date upon which visual and/or air monitoring clearance of asbestos abatement activities has been completed or containment materials have been removed,

(B) demolition/renovation stop date-The date on which the demolition or renovation is complete

Working days–Monday through Friday 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 §1926.1101, titled, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite", October 11, 1994,

(9) 29 CFR §1910.134, titled, "Occupational Health Standards for A Respiratory Protection Program", October 11, 1994,

(10) 40 CFR Part 763, Subpart E, Appendix A, titled, "Transmission Electron Microscopy Analytical Methods", July 1, 1992,

(11) 49 CFR Chapter 1, Part 172, Appendix A, Subchapter C, October 1, 1992, and

(12) 49 CFR Chapter 1, Part 172, Appendix A, Subpart H, October 1, 1992

(b) Availability. Copies of the documents in subsection (a) f 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 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 or facility, including:

(1) the responsibility for the periods of 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), and in a public building, comply with §295.60 of this title (relating to Operations: Abatement Practices and Procedures);

(2) the obligation to inform those who enter the building or facility 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,

(3) the responsibility for periods when the building or facility is under management by others; and

(4) the responsibility for assuring that his/her contracts with licensees provide for workers compensation insurance as required under §295 39(e)(4) of this title (relating to Licensing and Registration: Out-of-State Applicants) and the licensing sections of these rules.

(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), owners must have the building surveyed by a licensed asbestos inspector, facility owners must have the facility surveyed by an accredited inspector if the facility is a public or commercial building as defined in the Asbestos School Hazard Abatement Reauthorization Act, 1990 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 asbestos abatement contractor or a licensed asbestos Operations and Maintenance (O&M) contractor to conduct small-scale, short-duration work activities or cleanup affecting asbestos. When utility work is to be performed, the building owner shall either have the affected asbestos-containing material removed prior to the work of a utility contractor, or require the utility contractor to be licensed to handle asbestos-containing materials.

(3) Building owners may conduct asbestos O&M activities within public buildings 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). Any projects larger than 160 square feet or 260 linear feet must be designed by a licensed asbestos consultant;

(e) Prohibition The owner of a public building and any other person who contracts with or otherwise permits any person without appropriate valid license, registration, accreditation, or approved exemption to perform any asbestos-related activity 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 or public building, whether or not asbestos has been identified

(2) A notification to abate any amount of asbestos must be submitted to the Texas Department of Health (department) by the building owner, or amounts described in NESHAP for the facility owner, at least 10 working days (not calendar days) prior to the start date of the abatement project, disturbance, renovation, or demolition in accordance with §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 inspection and management plan. 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 within 90 days of receipt of order. Copies of the plan shall be on file with the owner or management agency, and in the possession of the supervisor in charge of building operations and maintenance.

§295.36. Licensing and Registration: Exemptions; Emergency.

(a) Exemption. 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 1992;

(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;

(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 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 adhesives, 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 nonfriable state. 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 that has been postmarked or hand delivered at least 10 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) 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) 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 he/sheath division or (512) 834-6600 for consultation about emergencies.

§295.37. Licensing and Registration. Conflict of Interests

(a) Independent third-party air monitoring. Third-party area monitoring and project clearance monitoring for airborne concentrations of asbestos fibers during an abatement project shall be performed by a person under contract to the building owner 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 and 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) those who are licensed to perform asbestos abatement for their own account in their buildings shall employ an independent third-party air 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 individual instructor to train himself/herself in order to qualify for a license, or for an individual 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 who fail 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-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 to maintain or to permit inspection of the records required of all

licensees–one year;

(7) employing or permitting an unauthorized person or individual to work on any asbestos project or operation–one year;

(8) engaging in or attempting to engage in an asbestos-related activity without a valid license–three years;

(9) failure to comply with any rule adopted by the board or order issued by the department–three years;

(10) failure to provide notice of an asbestos project or operation as required by these sections–two years;

(11) conviction within the past five years of a felony or a misdemeanor related to conditions for which a person engaged in asbestos activities–three years;

(12) failure of a licensee to complete their responsibilities during an asbestos project or operation due to insufficient financial resources–three years;

(13) failure to protect workers from asbestos exposures in excess of the current permissible exposure limit (PEL)–three years;

(14) failure to prevent asbestos contamination of areas adjacent to the abatement area–three years;

(15) failure to decontaminate any part of a facility or its environment, or any persons inadvertently contaminated with asbestos as a result of the persons' actions while exercising their duties under these sections–three years; or

(16) 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 in obtaining, attempting to obtain, or renewing a license or registration.

(e) Processing applications and renewals.

(1) Time periods. Applications for licensure shall be processed in accordance with the following time periods: the time from the receipt of a written application to the date of issuance of a written notice outlining the reasons why the application is unacceptable is 30 days; 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.

(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. 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 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 he/shearing. If at any time during the processing of the application, a contested case proceeding arises, the time periods in the department's formal he/shearing procedures §1.34 of this title (relating to Time Periods for Conducting Contested Case Hearings) are 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. It remains the responsibility of the licensee to keep the department informed of their current address, or change of address 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;

(2) the time period allowed for renewal; 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;

(5) has complied with all final orders resulting from any violations of theses sections; and

(6) submits the required current training certificates.

(h) Prohibition. 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 a replacement certificate by submitting such request in writing along with the reissuance fee of $20.

(j) (No change.) p>

§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 certificate 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 fail to have the required coverage at the time of engaging in asbestos activities. Failure to become reinsured when required may result in the impo sition 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 individuals seeking asbestos accreditation and who have successfully completed the required training from a training provider licensed or approved by the department. A copy of the training certificate shall be submitted with the application. All individuals, except workers, seeking accreditation in a specific category shall pass the examination for that

category. For example, an individual seeking accreditation as an asbestos inspector must pass the department's inspector accreditation examination. Individuals 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 a state examination. Individuals licensed prior to September 1, 1994, shall take and pass the examination prior to September 1, 1995. 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 an individual has applied. The applicant shall be required to take the test within 60 days of applying for that license. If they fail the 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 individual scheduled, will constitute grounds for the issuance of a failing grade and revocation or denial of a 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 re-examination 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 monthly testing. 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. Walk-ins will be tested at any time at Department of Health regional offices listed in the examination schedule. Examinees will be required to call for an appointment to ensure availability of the examination and persons to administer it. 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. Assistance is available by calling the department's asbestos training section. Companies with 30 or more individuals 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 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:

(1) current workers refresher training certificate;

(2) current physicians written statement on the specified Texas Department of Health (department) form; and

(3) the required license fee.

(e) Qualifications. Applicants for registration as asbestos abatement workers shall provide:

(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 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 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), 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). 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.

(f)-(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:

(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 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) a physician's statement of the required physical examination submitted on the department "Physicians Written Statement" form only done within the past year 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) 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;

(4) a one-inch by one-inch photograph of the face; and

(5) proof of successfully passing the department examination, if required.

(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 asbestos abatement projects, which are larger than small scale or which have the sole purpose of removing ACM, 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:

(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 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 shall designate at least one individual 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, 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;

(18) copies of all citations issued; and

(19) proof of successfully passing the department examination for asbestos contractors, if required.

(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:

(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 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 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). 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,

(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, if required.

(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.

(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)-(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.

(f) Qualification for licensing. To qualify as an individual asbestos consultant, individuals shall provide:

(1) 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;

(2) 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) and submitted on the Texas Department of Health (department) "Physician's Written Statement" form only;

(3) proof of having successfully completed the following training courses or the necessary annual refresher training within the past 12 months at an approved training facility:

(A) the approved training course for abatement project designers, or the current annual refresher, according to §295.64(b) of this title (relating to Training: Required Asbestos Training Courses), or for applications received prior to December 31, 1993, the contractor/supervisor training, according to §295.64(c) of this title (relating to Training: Required Asbestos Training Courses);

(B) a modified three-day training course in sampling techniques and use of monitoring equipment, as required for air monitor technician, or the current annual refresher training according to §295.64(g) of this title (relating to Training: Required Asbestos Training Courses). The initial course is not required of certified industrial hygienists, however the refresher is required for license renewal; and

(C) training in asbestos surveys, as required for both licensed asbestos building inspectors and management planners, or the current annual refresher, according to §295.64(e) and (f) of this title (relating to Training: Required Asbestos Training Courses);

(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). 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);

(5) a one-inch by one-inch photograph of the face; and

(6) proof of successfully passing the department examination for consultant/project designer, if required.

(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).

(h)-(i) (No change.)

§295.49. Licensure: Asbestos Project Manager.

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

(d) Qualifications. To qualify for a license, an applicant must 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 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) 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) 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). 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;

(5) a one-inch by one-inch photograph of the face; and

(6) proof of successfully passing the department examination for asbestos management planner, if required.

(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 must be employed by a licensed asbestos consultant agency or licensed asbestos management planner agency. 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 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 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 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) or (B) of this paragraph, with their application forms, as follows:

(A) participation in at least five asbestos surveys performed under the direct supervision of a licensed management planner working for a licensed management planner agency or licensed asbestos consultant working for a licensed asbestos consultant agency;

(B) current employment with and doing work under the supervision of a licensed management planner agency or asbestos consultant agency;

(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). 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;

(7) a one-inch by one-inch photograph of the face; and

(8) proof of successfully passing the department examination for asbestos inspector, if required.

(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 is licensed to perform 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) that they meet the following applicable qualifications. The applicant must:

(1) have completed an Environmental Protection Agency (EPA) or state-approved inspector training course 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, as specified in §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(2) have an associates degree from an accredited college or university or successfully complete a minimum of 60 credit hours from an accredited college or university;

(3) have participated in at least five management plans under the direction of a licensed management planner working for a licensed management planner agency or licensed asbestos consultant working for a licensed asbestos consultant agency;

(4) 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). 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);

(5) provide a one-inch by one-inch photograph of the face;

(6) provide proof of successfully passing the department examination for an individual management planner, if required; and

(7) if the applicant is an asbestos management planner working for hire, provide proof of professional liability insurance coverage in the amount of $1 million for errors and omissions, or be covered under an employer's policy as required by §295.40 of this title (relating to Licensing and Registration: Insurance Requirements).

(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.

§295.52. Licensure: Air Monitoring Technician.

(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) of this section, and may perform the analysis of airborne fibers in the field if employed by a laboratory. 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 an air monitoring technician license shall submit the following:

(1) a high school diploma or GED certificate;

(2) a certificate of training indicating successful completion within the past 12 months 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), (The initial course is not required of certified industrial hygienists, however the refresher is required for license renewal);

(3) 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) and submitted on the Texas Department of Health (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 Trainir.g: Approval of Training Courses). 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);

(5) a one-inch by one-inch photograph of the face; and

(6) proof of successfully passing the department examination for air monitoring technician, if required.

(f) (No change.)

(g) Limitations. Only a laboratory technician may perform the analysis of airborne fibers in the field in accordance with §295.54(e)(3) of this title (relating to Licensure: Asbestos Laboratory) and must also be employed by a licensed asbestos laboratory.

§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; 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; and

(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; 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 this state.

(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, which perform laboratory analysis, 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:

(1) (No change.)

(2) accreditation as an industrial hygiene laboratory by the American Industrial Hygiene Association, which includes the National Institute for Occupational Safety and Health (NIOSH) PAT program; or

(3) proficiency according to the standards of the NIOSH PAT Program, which includes quarterly sample tests for airborne fibers or bulk materials and a quality assurance/quality control program.

(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. 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 restrooms available for the students. Unacceptable classrooms 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 or refresher 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.

(11) Methods of instruction. Standard methods of instruction are as follows.

(A) At least 50% of the classroom instruction and 100% of the hands-on instruction will be conducted with instructors presenting the material.

(B) Training films and video tapes 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 scheduled hours as noted in subsection (e)(2) of this section. 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 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 teacher education course in vocational or industrial teaching.

(2) graduation from an accredited college or university with a Bachelor's 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 shall include three professional references attesting to teaching experience and asbestos-related qualifications. 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;

(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:

(1) 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;

(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 all employees who will be transporting, loading and unloading asbestos, in accordance with 49 CFR Parts 171-177;

(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);

(6) train employees in compliance with OSHA regulations in 29 CFR, §1910.120(a)(v), in anticipation of possible spills of asbestos; and

(7) in Texas, deliver all asbestos-containing waste material for disposal to a facility from the approved list provided by the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087. If transporting out-of-state, follow the regulations of the receiving state.

§295.58. Operation: General Requirements.

(a) (No change.)

(b) Supervision.

(1)-(6) (No change.)

(7) All licensed supervisors are responsible for respirator fit testing, 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 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 during asbestos abatement activity.

(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/she, 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 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 0.8 micron mixed cellulose ester (MCE) filters loaded in conducting cassettes with extension cowls. Sampling and analysis will be in accordance with the latest edition of NIOSH 7400 protocol, counting rules A. The minimum sample volume will be 1250 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, except O&M, shall be cleared by using aggressive air sampling. The maximum levels of residual fibers shall be as cited in subparagraph (C) 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 with the specifications and with applicable state and federal regulations and all ACM has been properly removed, encapsulated, or maintained.

(C) For all projects samples may be collected and analyzed by the latest edition of the NIOSH 7400 protocol, counting rules A, Phase-contrast Microscopy (PCM). Clearance samples shall be collected at a rate of one to less than (10) liters per minute on 0.8 micron mce filters in conducting cassettes with extension cowls. Minimum sample volume will be 1250 liters. Clearance will be achieved if no sample is reported greater than 0.01 f/cc by the analysis report from the licensed laboratory. Asbestos Hazard Emergency Response Act (AHERA) protocol will be used in schools. A licensed consultant shall design the air monitoring scheme and may deviate from this subsection if appropriate.

(D) The visual inspection must be conducted by a properly licensed or accredited consultant. The consultant may delegate the visual inspection responsibility to a project manager considered experienced enough to properly perform this duty.

(E) 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 onsite 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.

(3) a copy of the "Recommended Work Practices for the Removal of Resilient Floor Coverings," published by the Resilient Floor Covering Institute, if removing floor coverings using this method.

§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), §61.145, Environmental Protection Agency (EPA) titled "Standard for Demolition and Renovation", as amended.

(2) An asbestos project consultant 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, responding emergency personnel (police, fire, EMS, etc.), specialists required for assistance as determined by the consultant, 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 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 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 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 area shall be covered with a minimum of four-mil plastic sheeting, secured in place.

(d) Floor and wall preparation. Floor she/sheeting shall completely cover all floor surfaces and consist of a minimum of two layers of she/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 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, 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). 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 be notified on a form specified by the department of any asbestos abatement activity, renovation or operations and maintenance (O&M) activity affecting asbestos-containing materials (ACM), or any demolition 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. It is a requirement that the department notification form 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. An original signature is required on each notification form. A copied signature is not acceptable. Beginning September 1, 1994, an invoice for the required fee for notifications will be sent from the department to the building owner. The notification shall be improper unless it contains an original signature. A separate notification will no longer be made to Texas Natural Resource Conservation Commission (TNRCC).

(1) Public buildings. The department shall be notified of any demolition of a public building whether or not asbestos has been identified. The department shall be notified of other abatement projects, disturbances, or renovations involving the abatement of any amount of asbestos within a public building.

(2) Facilities. For all facilities which are not otherwise subject to this title as public buildings, the department shall be notified of any demolition of a facility, whether or not asbestos has been identified. The department shall be notified of any abatement project, disturbance, or renovation involving the abatement of asbestos within a facility, as required by and in accordance with NESHAP.

(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 a licensed asbestos abatement contractor or consultant in writing, however, this does not relieve the building owner of responsibility nor the payment of the required notification fee. In a demolition where a licensed abatement contractor or consultant are not required, the task may be delegated to the demolition contractor. 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 abatement 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. Notifications must be delivered by United States Postal Service, commercial delivery service, or by hand delivery. Telephone facsimile (FAX) is not permitted. The start date for asbestos activity is considered to be the date when operations which might disturb asbestos begin.

(d) Start-date change to later date. When asbestos abatement activity, demolition, renovation or O&M will begin later than the date contained in the notice, the department shall:

(1) be notified (Asbestos Programs Branch or Regional Office) of the changed start date by telephone 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 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 is acceptable.

(e) Start-date change to earlier date. When asbestos abatement, demolition, reno-

vation, or O&M will begin on a date earlier than the date contained in the notice, the department shall be provided with a written notice of the new start date at least ten-working days before the start of work.

(f) Start-date/stop-date (completion date) requirement. In no event shall asbestos abatement activity, demolition, Operations & Maintenance (O&M), or renovation, as covered by this section, begin or be completed on a date other than the date contained in the written notice. 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, or his/her delegated agent, 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 with 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 the information on a single notification form. Predict the combined additive amount of asbestos to be removed or stripped during a calendar year of January 1 through December 31. If the total amount is less than one asbestos reporting unit per subsection (j), and the facility is not a public building, a notification is not required If the facility is a public building, a notification is required for any amount. The department shall be notified at least 10-working days (not calendar days) before the end of the calendar year preceding the year for which notice is being given.

(1) The building owner shall keep records of the individual O&M projects in an O&M manual. An amendment of the annual notification shall be submitted if the amount of asbestos that is abated surpasses that amount of asbestos that was predicted in the original notification by 20%. Fees will be based upon the annual notification and any amendments. The fee that is calculated for the amended notification will only be for the amount of asbestos (number of ARUs) that increased from the original notification. The $50 administrative fee will not be reassessed.

(2) The department during a routine inspection shall review the O&M manual for the amount of asbestos that has been abated and compare the amount to the amount estimated on the annual notification. If the amount of asbestos that has been abated exceeds the amount estimated in the annual notification by more than 20%, the notification will be improper.

(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 later than the following work day 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. An emergency renovation operation means a renovation operation that was not planned, but results from a sudden, unexpected event. This event if not immediately attended to, presents a public health or safety hazard, and is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden This term includes operations necessitated by non-routine failures of equipment This term does not include immediate renovations resulting solely from a lack of adequate planning for foreseeable asbestos abatement activity

(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 structure is in danger of imminent collapse or that it is unsafe for anyone to enter shall be made by a professional engineer, registered architect, or government official Emergencies shall be documented to the extent that the need for the emergency is evident. Public health and safety or unavoidable economic concerns are the qualifications for an emergency rather than expediency

(j) Asbestos notification fees

(1) Applicability The building owner shall remit to the department a fee that is based upon the amount of asbestos removed.

(2) Payment An invoice for the required fee will be sent to the building owner after the notification has been received by 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 $25 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 and adding these individual results. The sum of this addition, minus any fraction, shall then be multiplied by the $25 rate to calculate the notification fee. The minimum fee shall be $50 per original notification and the maximum fee shall be $10,000 per notification. The fee 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 two ARUs, only the minimum administrative fee shall be assessed. Annual notifications of maintenance activities subject to 40 CFR, Part 61, Subpart M, are included in the fee requirement. If less than the reported amount will be removed, a notification amendment should be provided to the department no later than five working days following the completion of the project A refund request must be sent with the amended notification. A new invoice will be sent to the building owner which will reflect a new fee based upon the actual amount of asbestos that was removed If the fee has been paid, refunds will be made, when appropriate, minus a $50 administrative fee. 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 after an invoice has been sent shall be considered a violation 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 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 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.)

§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 accreditation 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) 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.

(4) Valid training courses performed in other states, in the past 12 months, by 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.

(5) 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) 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. A total of 20 minutes in breaks are authorized in each four-hour period of training as determined by the instructor. 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 calendar day.

(7) 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 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;

(2) potential health effects related to asbestos exposure;

(3) overview of abatement construction projects to include clearance of the project area;

(4) safety system design specifications, including written sampling rationale for air clearance;

(5) field trip;

(6) employee personal protective equipment;

(7) additional safety hazards;

(8) fiber aerodynamics and control;

(9) designing abatement solutions and written project design;

(10) budgeting/cost estimation;

(11) writing abatement specifications;

(12) preparing abatement drawings;

(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 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 examina-

tion. 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 three 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, and has as a prerequisite, the three-day asbestos 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 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 approval. Contingent 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 approval . Full approval of an asbestos training course and the training provider license shall be granted for a period of one year after the department has granted contingent approval, has had the opportunity to conduct 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; 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. 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.)

§295.68. 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) A department representative, upon presenting the department identification (ID) card, 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) A department representative in pursuance of his/her 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.

(e) Authority and responsibility for the qualifications, health status, and per-

sonal 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.

§295.70. Compliance: Administrative Penalty.

(a) (No change.)

(b) The penalty shall not exceed $10,000 a day per violation. Each day a violation continues will 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 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;

(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 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;

(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 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;"

(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 (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 he/shearing conducted in accordance with the applicable provisions of the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the department's formal he/shearing procedures in Chapter 1 of this title (relating to the Board of Health).

(h)-(i) (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 authority.

Issued in Austin, Texas, on September 1, 1994.

TRD-9447505 Susan K Steeg
General Counsel
Texas Department of Health

Effective date: September 22, 1994

Proposal publication date: May 3, 1994

For further information, please call: (512) 834-6610

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 117. Control of Air Pollution From Nitrogen Compounds

The Texas Natural Resource Conservation Commission (TNRCC) adopts amendments to §§117.451, 117.510, 117.520, 117.530, and 117.601, concerning Control of Air Pollution From Nitrogen Compounds. Section 117.510 is adopted with changes to the proposed text as published in the June 10, 1994 *Texas Register* (19 TexReg 4487). Sections 117.451, 117.520, 117.530, and 117.601 are adopted without changes and will not be republished.

The changes have been adopted in order to extend the final compliance date of the Chapter 117 rule, which was previously adopted in response to a requirement by the United States Environmental Protection Agency (EPA) and the 1990 Federal Clean Air Act (FCAA) Amendments for states to apply reasonably available control technology (RACT) requirements to major sources of nitrogen oxides (NO_x) by May 31, 1995. This extension delays the implementation of NO_x RACT until May 31, 1997 in the following ozone nonattainment counties affected by Chapter 117: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller (Houston/Galveston area); and Hardin, Jefferson, and Orange (Beaumont/Port Arthur area)

For the Houston/Galveston and Beaumont/Port Arthur areas, the State Implementation Plan (SIP) for demonstration of attainment of the ozone national ambient air quality standard (NAAQS) will be developed

in two stages. The first stage, to be completed by November 15, 1994, will be based on Urban Airshed Model (UAM) modeling using historical episodes. The second stage, now underway, will be completed between November 1995, and May 1996, using the UAM with the results of the Coastal Oxidant Assessment for Southeast Texas (COAST), an intensive 1993 field study. Preliminary results of base case UAM modeling indicate that, until large reductions in volatile organic compounds (VOC) have been made, NO_x reductions do not contribute to ozone attainment in portions of the modeled ozone nonattainment areas and will actually increase ozone levels in portions of these areas. The TNRCC intends to make the implementation of NO_x RACT contingent on the results of UAM modeling using data from the COAST study.

Revisions are made to §§117.451 (relating to Applicability, Nitric Acid Manufacturing-1General), 117.510 (Compliance Schedule for Utility Electric Generation), 117.520 (Compliance Schedule for Commercial, Institutional, and Industrial Combustion Sources), 117.530 (Compliance Schedule for Nitric Acid and Adipic Acid Manufacturing Sources), and 117.601 (relating to Gas-Fired Steam Generation). References to the final compliance date of May 31, 1995 have been changed to May 31, 1997 in these sections. In addition, references to July 31, 1995 have been changed to July 31, 1997 in §117.510(5) and §117.520(4). Section 117.510 is adopted with language consistent with the previous adoption of Chapter 117 on May 25, 1994.

A public hearing on this proposal was held July 6, 1994 at the TNRCC Austin offices. No oral comments were received at the public hearing, and written comments were received from 11 commenters.

Amoco Oil Company, Exxon Chemical Company, Exxon Company, U.S.A., Houston Lighting & Power (HL&P), Pennzoil Company, and the Texas Chemical Council supported the proposed two-year extension of the Chapter 117 final compliance date to May 31, 1997, and recommended that UAM modeling using the COAST data be relied upon to guide the ozone control strategy.

The staff acknowledges the support expressed by the commenters.

The Galveston-Houston Association for Smog Prevention (GHASP) protested the delay of VOC and NO_x controls and stated that a plan detailing the required reductions must be submitted by November 15, 1994 as required by the FCAA.

The FCAA requires states to develop, adopt, and submit a Post-1996 Rate-of-Progress (ROP) SIP and accompanying rules to EPA by November 15, 1994. This submittal must demonstrate how the Houston/Galveston and Beaumont/Port Arthur areas will achieve continuing reductions in VOC and/or NO_x emissions of 3.0% per year until 1999 for Beaumont/Port Arthur and 2007 for Houston/Galveston, or until attainment status is reached. The plan must also include an additional 3.0% of contingency measures to be implemented if the nonattainment area fails to meet a deadline. The TNRCC currently plans to submit to EPA by November 15, 1994 a SIP which will identify rules to achieve all or a portion of the first three years' VOC reductions (or 9.0% net-of-growth) and a commitment to submit any needed rules by January 15, 1995. This "down payment" approach is designed to meet the requirements for the years 1997-1999. The final SIP will be based on UAM modeling using the COAST study data. The TNRCC plans to complete this modeling in 1996, at which time the state will develop any further rules necessary to reach attainment as evidenced by the model.

The TNRCC's planned strategy does not dismiss the potential effectiveness of NO_x reductions, since the next round of UAM modeling using the COAST data may confirm the ozone benefits of NO_x control. However, the present strategy does acknowledge that the timing of NO_x reductions may be crucial. The modeling does not support the effectiveness of NO_x controls if implemented by 1995; however, it does suggest that there may be ozone benefits from NO_x reductions implemented as late as 2005, after further large VOC reductions have been made. The current rulemaking, being an interim measure, does not abandon the concept of NO_x control as an effective element of the long-term ozone control strategy.

The EPA Region 6 Office in Dallas commented that the 1990 FCAA amendments require implementation of NO_x RACT by May 31, 1995, and suggested that the state consider submitting a NO_x exemption petition as allowed under the FCAA, §182(f), in order to waive or delay this implementation deadline.

The FCAA, §182(f) requires that RACT rules for major stationary sources of NO_x in certain ozone nonattainment areas be implemented by May 31, 1995. In addition, federal rules developed in accordance with the FCAA, §176(c)(4) require that federally funded transportation projects must conform with the SIP regarding attainment of all NAAQS (transportation conformity). The FCAA, §182(f)(1)(A) provides that the requirement to implement NO_x RACT, and, by extension, transportation conformity, shall not apply in an ozone nonattainment area if the Administrator of the EPA determines that additional NO_x reductions would not contribute to attainment of the NAAQS for ozone in the area. The TNRCC is requesting a temporary exemption from NO_x RACT and transportation conformity requirements until May 31, 1997 when the results of more detailed UAM modeling using the COAST study data are available to guide the ozone control strategy. The TNRCC's §182(f) temporary exemption petition for the Houston/Galveston and Beaumont/Port Arthur areas will be submitted to EPA by mid-August, 1994. The petition contains results of base case modeling for the Houston and Beaumont areas and documents the state's position that NO_x reductions by 1995 do not contribute to ozone attainment in these areas.

The HL&P commented that §117.510(2)(A) and (B), concerning Compliance Schedule for Utility Electric Generation, should be revised to remain consistent with the corresponding sections of the adopted rule by substituting "equipment and software required pursuant to" in place of "units required to install CEMS pursuant to the requirements of" in the referenced paragraphs.

The proposal to extend the Chapter 117 compliance date was published in the same issue (June 10, 1994, 19 TexReg 4487) of the *Texas Register* as the May 25, 1994 adoption of revised Chapter 117. As a result, some language which changed in the adopted version was not reflected in the current proposal. The commenter's suggested language for §117.510(2)(A) and (B) is already contained in the version of Chapter 117 adopted May 25, 1994 and, therefore, is incorporated in the present adoption of Chapter 117.

An individual commented that delaying implementation of NO_x RACT would be detrimental to air quality and human health. Another individual commented that adding highway capacity would lead to more NO_x pollution, urban sprawl, water pollution, and ultimately, more injuries from automotive accidents.

The impact upon public health has been an important element in the decision to delay NO_x RACT. Preliminary UAM modeling indicates that reducing NO_x could increase ozone levels in portions of the modeled areas. This means that NO_x reductions could lead to increased population exposure to ozone. Therefore, delaying the implementation of NO_x RACT may protect against elevated levels of ozone in populated areas. With regard to other environmental and safety factors which may be indirectly related to air quality issues, the rulemaking presently under consideration does not impact transportation projects. The TNRCC's requested temporary §182(f) exemption from NO_x transportation conformity requirements only affects air quality considerations of the planned highway projects, and does not address the other factors listed by the commenter.

The GHASP commented that, due to inaccuracies in the TNRCC emissions inventory for NO_x and VOC, it is premature to draw conclusions about the effect of minor NO_x reductions in the 10-15% range.

The accuracy of emissions inventories has been the subject of considerable discussion. In its December 1992 report, "Rethinking the Ozone Problem in Urban and Regional Air Pollution," the National Research Council concluded that emissions inventories tended to underestimate VOC emissions and overestimate NO_x emissions. This may be supported by the observation that some ambient measurements of VOC/NO_x ratios are larger than would be expected from VOC and NO_x emissions reported in the inventories.

However, definitive conclusions cannot be drawn on the basis of this circumstantial evidence, especially if temporal and spatial distributions of emissions have not been taken into account. The COAST study will provide a refined profile of how VOC emissions vary over time and space. Another improved source of input data to the model will be the NO_x testing results submitted by sources in their NO_x RACT initial control plans. The UAM modeling with the COAST data may show that a site-dependent control strategy, with NO_x reductions varying across the area, is the appropriate means to achieve the standard. Until these modeling data are available,

the current preliminary UAM results are the best information upon which to base the short-term control strategy. For these reasons, the TNRCC believes that it is premature to implement NO_x RACT until such a decision can be based on sound science.

The Lone Star Chapter of the Sierra Club (Sierra Club) commented that there are indications that, while NO_x reductions may result in increased ozone levels in the urban core, outlying areas might experience decreased ozone levels, thus justifying NO_x controls now.

The controlling day is of prime importance in determining the appropriate ozone control strategy for the modeled area. This is the day in a modeled ozone episode requiring the most stringent VOC or NO_x reductions in order to attain the NAAQS. Therefore, results from a noncontrolling day should not be used to determine the control strategy for an area, since such a strategy would not move as expeditiously toward ozone attainment. On the controlling days for both Houston/Galveston and Beaumont/Port Arthur, the best evidence currently available indicates that NO_x reductions do not create a corresponding ozone benefit until considerable VOC reductions have been implemented.

The UAM results show that modeled NO_x reductions slightly decreased ozone concentrations at two outlying ozone monitoring stations, Northwest Harris County and Mauriceville (located in the Houston and Beaumont areas, respectively) on one or more days leading up to the controlling day for each modeled episode. On the controlling days for both these sites, UAM results show that NO_x reductions have less impact in lowering ozone levels than comparable VOC reductions. Furthermore, the modeling for controlling days shows that NO_x reductions either have no impact or are counterproductive in lowering the highest ozone levels in the area

Sierra Club and GHASP commented that, in addition to the role of NO_x in ozone formation, NO_x's contribution to visible haze, acidic particulate, and acid rain is further reason to implement NO_x RACT now.

Although NO_x emissions do play a minor role in the formation of visible haze, fine acid particulate matter, and acid rain, these effects have not been adequately quantified to the extent that would warrant NO_x reductions independent of the ozone control strategy. For this reason, it is difficult to weigh these contributions against prematurely implementing a NO_x control program which possibly would increase ozone levels, based on currently available air quality modeling data

Subchapter C. Acid Manufacturing

Nitric Acid Manufacturing-General

• 30 TAC §117.451

The amendment is adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382 017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

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

Issued in Austin, Texas, on August 31, 1994.

TRD-9447510 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date: September 22, 1994

Proposal publication date: June 10, 1994

For further information, please call: (512) 239-1970

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Subchapter D. Administrative Provisions

• 30 TAC §§117.510, 117.520, 117.530

The amendments are adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§117.510. Compliance Schedule For Utility Electric Generation. All persons affected by the provisions of the undesignated head (relating to Utility Electric Generation) in Subchapter B of this chapter shall be in compliance as soon as practicable, but no later than May 31, 1997 (final compliance date). Additionally, all affected persons shall meet the following compliance schedules and submit written notification to the Executive Director:

(1) (No change.)

(2) conduct applicable continuous emissions monitoring system (CEMS) or predictive emissions monitoring systems (PEMS) evaluations and quality assurance procedures as specified in §117.113 of this title (relating to Continuous Demonstration of Compliance) according to the following schedules:

(A) (No change.)

(B) for equipment and software not required pursuant to 40 CFR 75, no later than May 31, 1997;

(3) install all nitrogen oxides (NO_x) abatement equipment, implement all NO_x control techniques, and submit the results of the CEMS or PEMS performance evaluation and quality assurance procedures to the Texas Natural Resource Conservation Commission no later than May 31, 1997;

(4) for units operating without CEMS or PEMS, conduct applicable tests for initial demonstration of compliance as specified in §117.111 of this title (relating to Initial Demonstration of Compliance); and submit the results by April 1, 1994, or as early as practicable, but in no case later than May 31, 1997;

(5) for units operating with CEMS or PEMS and complying with the NO_x emission limit on a rolling 30-day average, conduct the applicable tests for the initial demonstration of compliance as specified in §117.111 of this title and submit the results of the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.113 of this title (relating to Continuous Demonstration of Compliance) no later than July 31, 1997;

(6) for units operating with CEMS or PEMS and complying with the NO_x emission limit in pounds per hour on a block one-hour average, conduct the applicable tests for the initial demonstration of compliance as specified in §117.111 of this title and submit the results of the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.113 of this title by May 31, 1997;

(7) (No change.)

(8) no later than May 31, 1997, submit a final control plan for compliance in accordance with §117.115 of this title (relating to Final Control Plan Procedures).

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

Issued in Austin, Texas, on August 31, 1994.

TRD-9447511 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date: September 22, 1994

Proposal publication date: June 10, 1994

For further information, please call: (512) 239-1970

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Subchapter E. Gas-Fired Steam Generation

• 30 TAC §117.601

The amendment is adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

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

Issued in Austin, Texas, on August 31, 1994.

TRD-9447512 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource

Conservation Commission

Effective date: September 22, 1994

Proposal publication date: June 10, 1994

For further information, please call: (512) 239-1970

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 72. Memoranda of Understanding with Other State Agencies

Memorandum of Understanding with the Texas Department of Commerce Regarding Economic Development

• 40 TAC §72.3001

The Texas Department of Human Services (DHS) adopts new §72.3001, concerning the memorandum of understanding with the Texas Department of Commerce regarding economic development, in its Memoranda of Understanding with Other State Agencies rule chapter, without changes to the proposed text as published in the July 26, 1994, issue of the *Texas Register* (19 TexReg 5698).

The justification for the new section is to adopt by reference Texas Administrative Code Title 10, Community Development; Part V, Texas Department of Commerce; Chapter 195, Memoranda of Understanding; §195.3, which was proposed in the April 22, 1994, issue of the *Texas Register* (19 TexReg 3046) and was adopted without change in the June 17, 1994, issue of the *Texas Register* (19 TexReg 4748). This memorandum of understanding implements the requirement in the Texas Government Code, §481.028, enacted by the 73rd Legislature that the Texas Department of Commerce enter into memoranda of understanding with other state agencies involved in economic development to cooperate in program planning and budgeting.

The new section will function by coordinating the workforce and economic development activities with involved state agencies in program and budget planning.

No comments were received regarding adoption of the new section.

The new section is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

The new section implements the Human Resources Code §§22.001-22.024.

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 authority.

Issued in Austin, Texas, on August 31, 1994.

TRD-9447421

Nancy Murphy
Section Manager (Media and Policy Support)
Texas Department of Human Services

Effective date: October 1, 1994

Proposal publication date: July 26, 1994

For further information, please call: (512) 450-3765

Part IV. Texas Commission for the Blind

Chapter 159. Administrative Rules and Procedures

• 40 TAC §159.12

The Texas Commission for the Blind adopts new §159.12, concerning public access to agency documents and records and the charges, if any, the agency makes for copies of public records, with changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5932).

The Commission adopts the rule to comply with actions taken by the 73rd Legislature in House Bill 1009 in relation to Government Code, Chapter 552, which requires agencies to adopt rules specifying charges for copies of open records. Changes were made in subparagraph (b), paragraph (2) of the proposed text to correct cross references to the agency's rules on confidentiality and the Government Code.

The rule provides the framework within which the Commission will recover the cost to provide copies of open records to persons requesting the copies and contains the charges persons must pay for copies. The rule also provides the public with the primary location where procedural documents may be viewed.

The Commission received no comments regarding the proposed rule.

The rule is adopted under the Human Resources Code, Title 5, Chapter 91, Subchapter B, §90.011, which provides the Texas Commission for the Blind with the authority to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

§159.12. Public Access to Documents and Records.

(a) Copies of the state plan, which is submitted by the state and approved by the federal government, internal procedural documents, manuals, guidelines of programs, and policies of the Board are maintained for public view and inspection at the central office on working days between the hours of 8:00 a.m. and 5:00 p.m.

(b) Charges for Copies of Public Records.

(1) General. Chapter 428, Acts, 73rd Legislature, Regular Session (1993), requires state agencies to adopt rules that specify the charges the Commission will make for copies of public records. State agencies are authorized to establish charges up to the full cost to the agency of providing the copies, unless the request is for 50 pages or less of readily available information in standard-size form.

(2) Legal compliance. In the provision of records, the Commission complies with Government Code, Chapter 552, 34 Code of Federal Regulations, §361.59, and Texas Human Resources Code, Title 5, §91.059. Additional information on confidentiality of records is addressed in §161.5 of this title (relating to Confidentiality of Records).

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

(A) Full cost–The sum of all direct costs plus a proportional share of overhead, or indirect costs. Full cost will be determined in accordance with generally accepted methodologies.

(B) Nonstandard-size copy–A copy of public information that is made available to a requestor in any format other than a standard-size paper copy. Microfiche, microfilm, diskettes, magnetic tapes, CD-ROM, and nonstandard-size paper copies are examples of nonstandard-size copies.

(C) Readily available information–Information that already exists in printed form, or information that is stored electronically and is ready to be printed or copied without requiring any programming, or information that already exists on microfiche or microfilm. Information that requires a substantial amount of time to locate or prepare for release is not readily available information.

(D) Standard-size copy–A printed impression on one side of piece of paper that measures up to 8-1/2 by 14 inches. Each side of a piece of paper on which an impression is made is counted as a single-copy. A piece of paper that is printed on both sides is counted as two copies.

(4) Copy charge. The charges in this paragraph are to cover the cost of materials onto which information is copied and do not reflect any additional charges that may be associated with a particular request.

(A) Standard-size copy–The charge for standard-size paper copies reproduced by means of an office machine copier or a computer printer is $.10 per page.

(B) Nonstandard-size copy–The charges for nonstandard copies

are:

(i) Diskette-$2.00;

(ii) Computer magnetic tape-$15;

(iii) VHS video cassette-$2.50;

(iv) Audio cassette-$1.00; and

(v) Paper copy-$.50.

(5) Personnel charge.

(A) The charge for personnel costs incurred in processing a request for public information is $15 an hour.

(B) Where applicable, the personnel charge will be prorated to recover the cost for personnel time spent to take requests, locate documents, and reproduce requested information.

(C) A personnel charge will not be billed in connection with complying with requests that are for 50 or fewer pages of readily available information.

(D) A personnel charge will not be billed in connection with time spent by an agency attorney, legal assistant, or other employee who reviews the requested information:

(i) to determine whether the governmental body will raise any exceptions to disclosure of the requested information under the Open Records Act, Subchapter C;

(ii) to research or prepare a request for a ruling by the Attorney General's Office pursuant to the Open Records Act, Subchapter G; or

(iii) to research or prepare a request for a ruling from the agency's federal oversight authorities.

(6) Overhead charge.

(A) An overhead charge will not be billed for requests for copies of 50 pages or less of readily available information in standard-size form.

(B) In response to a request for information that is not readily available or for in excess of 50 pages of readily available information, an overhead charge will be billed in the amount equal to 20% of the personnel charge for the request.

(7) Microfiche and microfilm charge.

(A) A charge of $.10 per page for standard size paper plus a charge to cover any personnel time spent in making the paper copy will be billed for making copies from information that exists on microfiche or microfilm.

(B) If the requestor prefers to have a copy of the microfiche or microfilm itself, a charge equivalent to the actual cost of having the copy made will be billed.

(8) Remote document retrieval charge.

(A) To the extent that the retrieval of more than 50 pages of readily available information in standard-size form stored in remote storage locations results in a charge to the agency to meet a request, the charge will be passed on to the requestor.

(B) No additional personnel charge will be factored in for time spent locating documents.

(9) Computer resource charge.

(A) The computer resource charge is a utilization charge for computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources, which might include, but is not limited to, some or all of the following: central processing units (CPUs), servers, disk drives, local area networks (LANs), printers, tape drives, other peripheral devices, communications devices, software, and system utilities.

(B) According to the type of system from which information is requested, the following computer resource charges will be billed to the requestor:

(i) Mainframe-$17.50 per minute;

(ii) Midrange-$3.00 per minute;

(iii) Client/Server-$1.00 per minute; and

(iv) PC or LAN-$.50 per minute.

(C) The charge made to recover the computer utilization cost is the actual time the computer takes to execute a particular program times the applicable rate. The CPU charge is not meant to apply to programming or printing time, rather, it is solely to recover costs associated with the actual time required by the computer to execute a program. This time frame most frequently will be a matter of seconds. If programming is required to comply with a particular request, the appropriate charge that may be recovered for programming time is set forth in paragraph (10) if this subsection. No charge will be made for computer printout time. For example, the computer resource charge for a request that takes 20 seconds to execute on a mainframe system would be $5.83.

(10) Charges for programming time. If a particular request requires a programmer to enter data in order to execute an existing program or to create a new program so that requested information may be accessed, a charge of $26 an hour will be billed to the requestor for the programmer's time.

(11) Miscellaneous supplies. The actual cost of miscellaneous supplies, such as labels, boxes, and other supplies used to produce the requested information will be added to the total charge for public information.

(12) Postal and shipping charges. Any related postal or shipping expenses which are necessary to transmit the reproduced information will be added to the total charge.

(13) Fax charge. A charge of $.10 per page will be billed for a fax transmitted locally. A charge of $.50 per page will be billed for a fax sent within the agency's area code, and $1.00 per page for a fax transmitted to a different code.

(14) Sales tax. Sales tax will not be charged for public information.

(c) Access to information where copies are not requested.

(1) Access to information in standard-size form. There is no charge for making available for inspection information maintained in standard form.

(2) Access to information in other than standard-size form. In response to requests for access, for purposes of inspection only, to information that is maintained in other than standard-size form, the requestor will be billed for the cost of preparing and making available such information, unless the information is readily available. Preparation might involve retrieval of information from a database and deletion of confidential information. In such a case, the requestor will be billed the cost of personnel as set forth in subsection (d)(5) of this section.

(d) Format for copies of public records.

(1) To the extent possible, information will be provided in the format requested. The extent to which a requestor can be accommodated will depend largely on the technological capability of the agency and the medium in which the information is stored. For example, if the requestor asks for information on a diskette, and the requested information is electronically stored, the information will be provided on diskette.

(2) To accommodate requests for public information from persons who

are blind, copies of information will be provided in braille if the information is readily available in standard-size paper or stored on diskette. All provisions included in subsection (b) of this section apply when requests are made for information in braille.

(c) Estimates and waivers of public information charges.

(1) Where a particular request will involve considerable time and resources to process, the agency will provide an estimate of date of completion and the charges that may result.

(2) Full disclosure will be made to the requesting party as to how charges are calculated.

(3) The agency will furnish public records without charge if it determines that waiver or reduction of the fees is in the public interest.

(4) A deposit may be required in the amount of the estimated charges if such charges exceed $100.

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

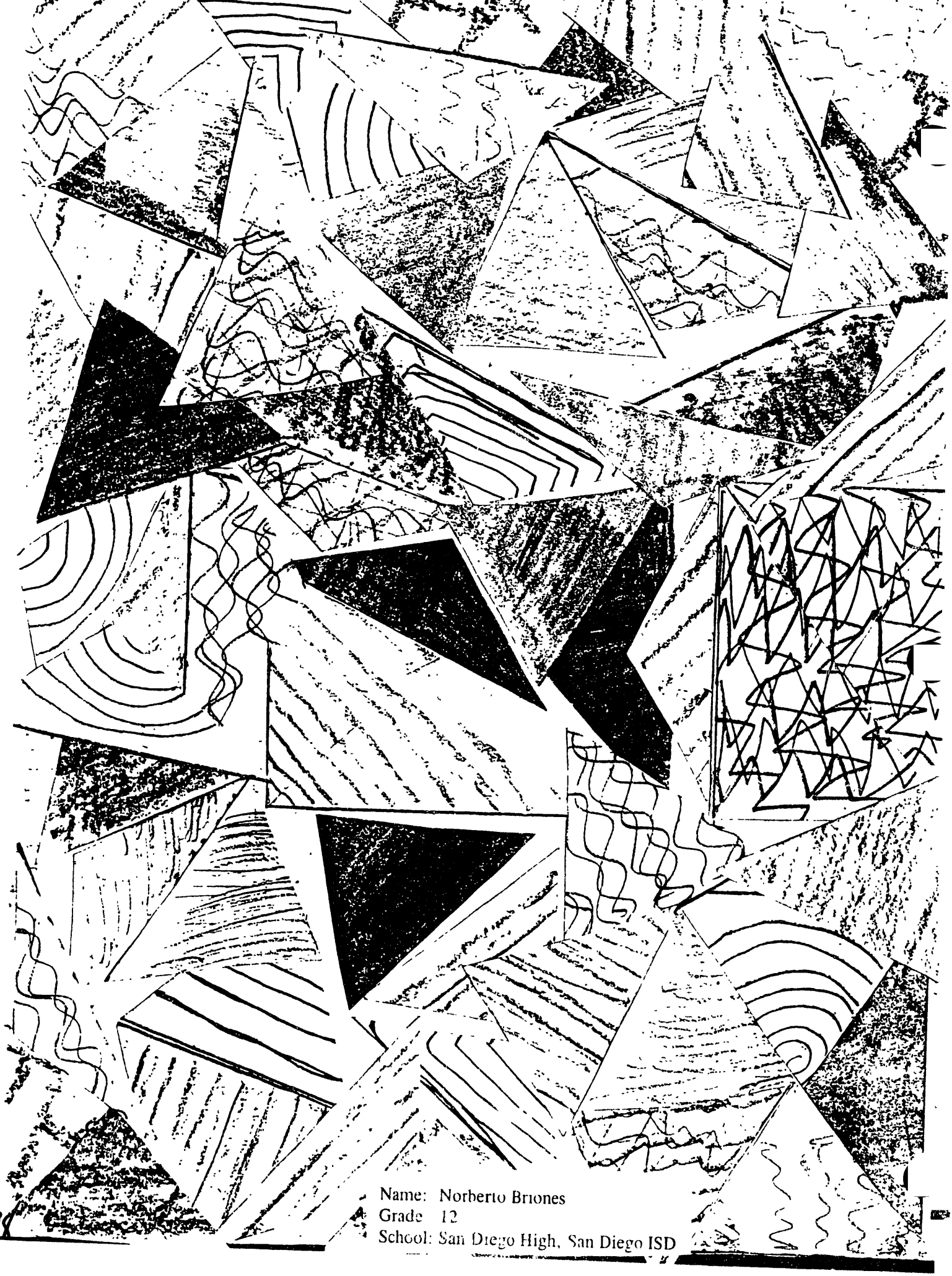
Issued in Austin, Texas, on September 2, 1994.

TRD-9447537 Pat D. Westbrook
Executive Director
Texas Commission for the Blind

Effective date: September 23, 1994

Proposal publication date: August 2, 1994

For further information, please call: (512) 459-2611



Name: Norberto Briones
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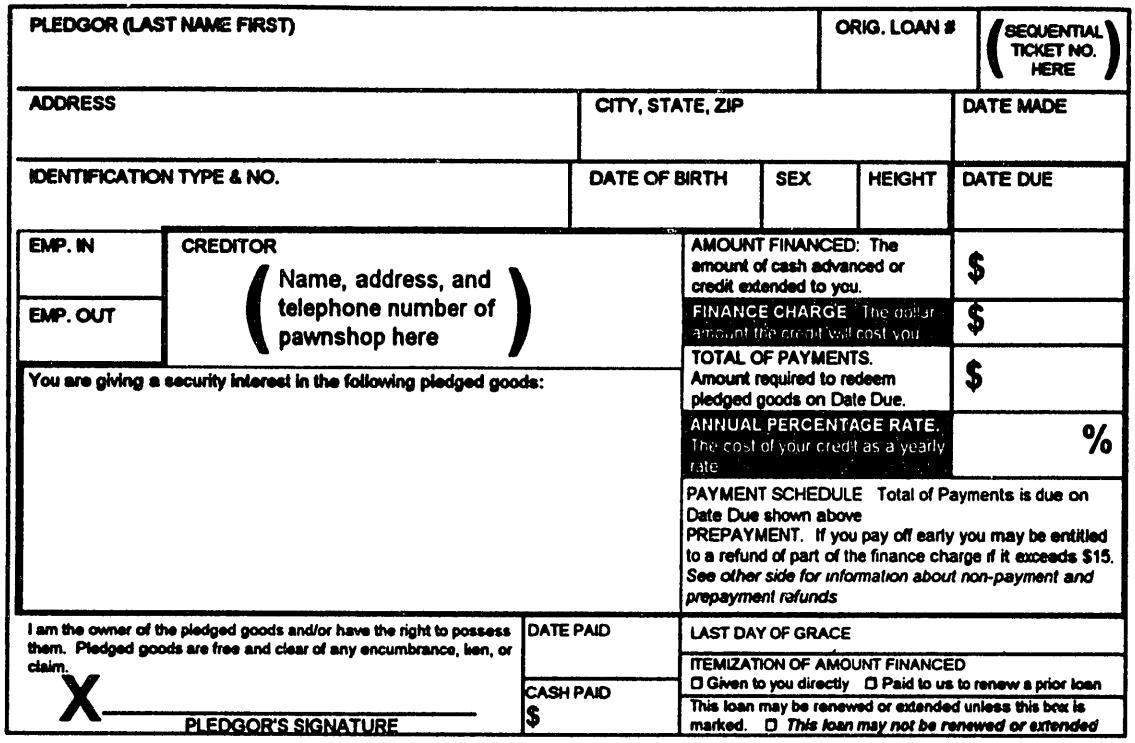
TABLES AND GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Printer's Note: *The top of Appendix A is to be printed opposite the bottom of Appendix B, providing easy comparison of the signatures by folding the ticket to align the signature lines.*

Figure 1: 7 TAC 85.21(b) — Appendix A



PLEDGOR (LAST NAME FIRST)			ORIG. LOAN #	(SEQUENTIAL TICKET NO. HERE)
ADDRESS	CITY, STATE, ZIP			DATE MADE
IDENTIFICATION TYPE & NO.	DATE OF BIRTH	SEX	HEIGHT	DATE DUE

EMP. IN / EMP. OUT	CREDITOR (Name, address, and telephone number of pawnshop here)	AMOUNT FINANCED: The amount of cash advanced or credit extended to you.	$
		FINANCE CHARGE The dollar amount the credit will cost you	$
		TOTAL OF PAYMENTS. Amount required to redeem pledged goods on Date Due.	$
You are giving a security interest in the following pledged goods:		ANNUAL PERCENTAGE RATE. The cost of your credit as a yearly rate	%
		PAYMENT SCHEDULE Total of Payments is due on Date Due shown above PREPAYMENT. If you pay off early you may be entitled to a refund of part of the finance charge if it exceeds $15. *See other side for information about non-payment and prepayment refunds*	

I am the owner of the pledged goods and/or have the right to possess them. Pledged goods are free and clear of any encumbrance, lien, or claim.	DATE PAID	LAST DAY OF GRACE
		ITEMIZATION OF AMOUNT FINANCED ☐ Given to you directly ☐ Paid to us to renew a prior loan
X_____ PLEDGOR'S SIGNATURE	CASH PAID $	This loan may be renewed or extended unless this box is marked. ☐ *This loan may not be renewed or extended*

Figure 2: 7 TAC 85.21(b) — Appendix B

We have made you a loan of the Amount Financed that is secured by the pledged goods you have deposited with us as listed on the front of this ticket. You do not have to pay this loan. If you want to recover the pledged goods you must pay us the Amount Financed plus the Finance Charges we have earned. If the Finance Charge shown on the front is $15 or less we earn all the Finance Charge when the loan is made. If the Finance Charge is greater than $15 and you pay the loan in full or renew it before the Date Due, we will reduce the Finance Charge by 1/30th for each day from the day you pay or renew the loan to the Date Due but the Finance Charge will never be reduced below $15. The Total of Payments is the amount you owe on the Date Due. If you pay the loan after the Date Due, we will add 1/30th of the Finance Charge for each day from the Date Due until the date you pay. If you do not pay the loan on or before the Last Day of Grace your pledged goods may become our property if we so choose. If your pledged goods become our property we may sell it to you or any other person at a price determined by us and the buyer must pay sales tax. IF YOU NEED ADDITIONAL TIME TO PAY YOUR LOAN, YOU MUST GET OUR AGREEMENT IN WRITING. VERBAL AGREEMENTS FOR ADDITIONAL TIME ARE NOT BINDING. You have certain rights to extend or pay this loan by mail. If you redeem by mail, you must pay us the amount due on the loan plus reasonable and necessary expenses of packaging and shipping and the expense of insuring the goods in an amount specified by you. Payment for mail transactions may be required to be made by cashier's or certified check or money order.

If you pay the loan we will return the property to you in the same condition we received it. If we lose your property or if it is damaged while in our possession, we will replace it with identical or similar property of the same kind and quality or have your property restored to its condition at the time you deposited it with us. All replacements are subject to approval by the Consumer Credit Commissioner.

Any person who possesses this pawn ticket may pay us the amount due and we must give that person the pledged goods if we have not been notified in writing that this ticket has been lost or stolen. IF THIS TICKET IS LOST OR STOLEN YOU MUST NOTIFY US IN WRITING TO PROTECT YOUR PLEDGED GOODS. Fee for lost ticket and statement: $1.00.

TEXAS PAWNBROKERS ARE LICENSED AND REGULATED BY THE TEXAS CONSUMER CREDIT COMMISSIONER. FOR INFORMATION OR ASSISTANCE WITH ANY PAWN OR OTHER CREDIT PROBLEM CALL 1-800-538-1579.

ID Type and No._____ **Name**_____

_____ **ID Type and No.**_____

Signature on Redemption or Renewal **is authorized to renew or extend this loan in my name.**

Optional: **"NO GOODS SENT C.O.D.; NO GOODS SHOWN FOR REDEMPTION UNTIL PAID; NO PERSONAL CHECKS OR CREDIT CARDS ACCEPTED FOR PAYMENT."**

Note: *Pawnbroker may choose any of the optional items (immediately above) to be added at the bottom of Appendix B.*

Figure 3: 7 TAC 85.21(b) — Appendix C

CASH RECEIVED				EXTENSIONS	
DATE	Amount Financed	Finance Charges	Other Charges	Date Due	Amount Due

LOST PAWN TICKET STATEMENT — FEE: $1.00 Date _____

I have verified ID, and description as on other side. My ticket was lost, destroyed, stolen. *(Circle proper word)*

Employee/PS _____ Pledgor X _____

PICKED UP		FORFEITED	
	ID Type and Number _____		Date Pulled _____
	X _____ Signature on Redemption		By _____

Figure 4: 7 TAC 85.21(b) — Appendix D

MEMORANDUM OF EXTENSION

Date: _____ Pawn Ticket No. _____

(Name, address, and telephone number of pawn shop here)

1. Finance Charge (Pawn Service Charge) Paid Today ..... $ _____
2. Daily Amount of Finance Charge (Pawn Service Charge) ..... $ _____
3. Finance Charge (Pawn Service Charge) Paid to (Date) ..... _____
4. New Last Day of Grace ..... _____

AMOUNT DUE AT REDEMPTION:

a. Amount Financed (shown on pawn ticket) ..... $ _____
PLUS

b. Finance Charge: *
Number of days from date in Line 3 to date paid _____ X _____ = ... $ _____
(Daily Amount)
(Line 2)

c. Total Amount Due (Line a. amount + Line b. amount) ..... $ _____

* If daily amount is less than 50¢, a minimum of 30 daily charges may be charged. If daily amount is 50¢ or more, a minimum of $15 may be charged on Line b. No minimum charge for additional extensions. If this loan is paid in full prior to the date due shown on the pawn ticket, finance charges shall be earned according to the terms of the ticket, and the amount shown on Line 1 shall be credited to the amount due.

YOU ARE NOT OBLIGATED TO PAY THIS LOAN, HOWEVER, TO PREVENT LOSS OF YOUR GOODS DUE TO NON-PAYMENT, YOU MUST EXTEND OR RENEW YOUR LOAN OR PAY YOUR LOAN IN FULL ON OR BEFORE THE LAST DAY OF GRACE.

KEEP THIS MEMORANDUM WITH YOUR PAWN TICKET. BRING YOUR PAWN TICKET TO REDEEM YOUR PLEDGED GOODS.

Figure 1 40 TAC §260.1(h)

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).

State Banking Board

Monday, September 12, 1994, 2:00 p.m.

2601 North Lamar Boulevard

Austin

AGENDA:

Review and approval of minutes of previous meeting; consideration of conversion application for Antoine National Bank, Houston, Texas; consideration of conversion application to limited banking association for American National Bank, Corpus Christi, Texas; consideration of interim charter applications; review of the status of other pending applications; policy discussion of applications that have been approved and amendments thereto; and the Board may convene into executive session for consideration of matters pertaining to applications as required by Articles 342-115(6)(a) of the Texas Banking Code.

Contact: Lynda A. Drake, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1300.

Filed: September 2, 1994, 2:04 p.m.

TRD-9447575

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State Board of Barber Examiners

Tuesday, September 13, 1994, 8:00 a.m.

9101 Burnet Road, Suite 103

Austin

Board Members

AGENDA:

Call the meeting to order with roll call, read and possibly approve minutes from July 12, 1994 meeting, sign letters; then the Board will go into executive session to consider hiring, employment, evaluation, and possible selection of an Inspector I, pursuant to Texas Government Code, §551.074; return to open session for further discussion and possible action involving the hiring, employment, evaluation and possible selection of an Inspector I, pursuant to Texas Government Code, §551.074; read, discuss and possibly act on communication to or from the Board; old business; new business; appearances of Randy Power, Manuel Flores, Leslie Mitchell, Minerva Hall, B. Michael Rice, before the Board; then the board will go into executive session to consider and discuss the evaluation, performance and duties of the executive director, Mike Rice, pursuant to Texas Government Code, §551.074; return to open session for further consideration and discussion, and possible action involving the evaluation, performance and duties of the executive director, Mike Rice, pursuant to Texas Government Code, §551.074; appearance of Gus Edelman before the Board; and adjournment.

Contact: B. Michael Rice, 9101 Burnet Road, Suite 103, Austin, Texas 78758, (512) 835-2040.

Filed: September 1, 1994, 4:04 p.m.

TRD-9447513

♦ ♦ ♦

Texas Bond Review Board

Tuesday, September 13, 1994, 10:00 a.m.

1711 San Jacinto, Central Services Building, Room 402

Austin

Staff Planning Meeting

AGENDA:

I. Call to order

II. Approval of minutes

III. Discussion of proposed issues:

A. University of Houston System-Higher Education Assistance Fund Anticipation Notes, Series 1994

B. Veterans Land Board-Veterans' Housing Assistance Refunding Bonds, Series 1994B

C. Veterans Land Board-Veterans' Housing Assistance Fund II Bonds, Series 1994C

D. Veterans Land Board-Veterans' Housing Assistance Fund II Taxable Bonds, Series 1994D

E. Texas Water Development Board-Agricultural Water Conservation Bonds, Series 1994-B

F. Texas Department of Housing and Community Affairs-Single Family Mortgage Revenue Bonds (Collateralized Home Mortgage Revenue Bond Program) Series 1994

G. Texas Department of Housing and Community Affairs-Single Family Mortgage Revenue Commercial Paper Notes, Series 1994

IV. Other business

V. Adjourn

Contact: Albert L. Bacarisse, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: September 2, 1994, 5:07 p.m.

TRD-9447615

Tuesday, September 13, 1994, 2:00 p.m.

300 West 15th Street, Clements Building, Room 409

Austin

College Opportunity Act Committee

AGENDA:

I. Call to order

II. Approval of minutes

III. Discussion of proposed issues:

A. Veterans Land Board-Veterans' Housing Assistance Refunding Bonds, Series 1994B

B. Veterans Land Board-Veterans' Housing Assistance Bonds, Fund II, Series 1994C

C. Veterans Land Board-Veterans' Housing Assistance Taxable Bonds, Fund II, Series 1994D

IV. Other business

V. Adjourn

Contact: Albert L. Bacarisse, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: September 2, 1994, 5:07 p.m.

TRD-9447616

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Texas Catastrophe Property Insurance Association

Wednesday, September 7, 1994, 8:30 a.m.

Via Conference Call at TCPIA Offices, 2801 South Interregional

Austin

Emergency Meeting

Board of Directors

AGENDA:

1. Discuss petition by City of Seabrook

Reason for emergency: Unexpected filing of petition with Texas Department of Insurance.

Contact: Vernie Staton, P.O. Box 2930, Austin, Texas 78768, (512) 444-9612.

Filed: September 2, 1994, 9:12 a.m.

TRD-9447535

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Texas Commission on Children and Youth

Friday, September 9, 1994, 9:00 a.m.

1400 Congress Avenue, Capitol Extension, Room E1.036, Senate Finance Room

Austin

AGENDA:

I. Commission work session

II. Lunch

III. Commission work session continues

IV. Service delivery work group meeting immediately following Commission meeting

Contact: Ginny McKay, P.O. Box 12068, Austin, Texas 78711, (512) 305-9056.

Filed: September 1, 1994, 4:05 p.m.

TRD-9447517

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Texas Cosmetology Commission

Saturday, September 17, 1994, 3:00 p.m.

Texas Cosmetology Commission, 5717 Balcones Drive

Austin

Curriculum Committee Meeting

AGENDA:

Call to order

Introductions

Discussion of Operator, Instructor, Facial Instructor, Manicure Instructor, and Specialists curricula

Adjourn

Contact: Alicia C. Ayers, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: September 2, 1994, 11:45 a.m.

TRD-9447594

Saturday, September 17, 1994, 3:00 p.m.

Texas Cosmetology Commission, 5717 Balcones Drive

Austin

Risk-Ranking Committee Meeting

AGENDA:

Call to order

Introductions

Discussion of risk-ranking inspections and complaints

Adjourn

Contact: Alicia C. Ayers, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: September 2, 1994, 11:45 a.m.

TRD-9447596

Saturday, September 17, 1994, 3:00 p.m.

Texas Cosmetology Commission, 5717 Balcones Drive

Austin

Rules Revision Committee Meeting

AGENDA:

Call to order

Introductions

Discussion of rules revision proposals, §§89.1-89.76

Discussion of rules revision proposals, §§83.1-83.30

Adjourn

Contact: Alicia C. Ayers, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: September 2, 1994, 11:45 a.m.

TRD-9447595

Sunday, September 18, 1994, 9:00 a.m.

Doubletree Hotel, 6505 I.H. 35 North

Austin

Commission Meeting

AGENDA:

Call to order; introductions; recognition of guests; minutes; staff reports; inter-agency contract with the Attorney General's office; George Orsatti-newsletter proposal; agreed orders; presentation of requests for approval of hours accrued over 48 months ago (reheard from July 10, 1994); Kay Daniel on behalf of Cuong Nguyen; presentation of requests for approval of hours accrued over 48 months ago (17); Shutona Vaughan regarding time clock regulations; Aquanetta Greer (Diamond Hill-Jarvis High School) regarding student instructors in public schools; Jeffrey Berns regarding grandfather clause for Facial Instructor's license, operator review book as it pertains to facials, and TCC interpretation of §39; Commission committee reports; (a) Risk-Ranking, (b) Curriculum, (c) Rules Revision-(1) discussion of rules revisions proposals-§§89.1-89.76 and possible votes on proposals (2) discussion of Sanitary Rules revision proposals-§§83.1-83.30 and possible votes on proposals; executive session-litigation and personnel; open meeting for vote on executive session; and adjourn.

Contact: Alicia C. Ayers, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: September 2, 1994, 11:45 a.m.

TRD-9447593

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Texas Office for Prevention of Developmental Disabilitie

hursday, September 22, 1994, 10:00 .m.

4900 North Lamar Boulevard, Room 3501

Austin

Bicycle Helmet Coalition

AGENDA:

Call to order

Introductions

Legislation review

City coalition/grant reports

Bicycle safety grant

Texas Pediatric Society auxiliary

DPS Education Project

Texas Head Injury Association

Texas Children's Hospital Association

Texas Nurses Association

Other reports

Meeting schedule

Adjournment

Contact: Jerry Ann Robinson, 4900 North Lamar Boulevard, Austin, Texas 78756, (512) 483-5042.

iled: September 2, 1994, 3:11 p.m.

TRD-9447600

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State Employee Charitable Campaign

Monday, September 19, 1994, 4:00 p.m.

4000 Southpark Drive #1200

Tyler

Local Employee Committee-Tyler

AGENDA:

Organizational meeting to finalize plans for local kick-off and discuss distribution process of campaign material.

Contact: John Anderson, P.O. Box 2003, Tyler, Texas 75710, (903) 877-7734.

Filed: September 6, 1994, 9:53 a.m.

TRD-9447620

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Texas Ethics Commission

Friday, September 9, 1994, 9:30 a.m.

1101 Camino La Costa, Room 235

Austin

AGENDA:

The commission will take roll call; hear comments by the commissioners and the executive director, and communications from the public; approve the minutes of the August 12, 1994, meeting; conduct a briefing, discussion, and possible action regarding the project to establish an electronic database under Government Code, §571.066; conduct briefing, discussion, and possible action to waive certain fines assessed for late filing of a report; public discussion and possible action to propose an amendment to 1 TAC §§32.51, 32. 53, and 32.55 concerning how a lobbyist reports the place of an expenditure; discussion and possible action in response to the following Advisory Opinions Requests Numbers 247-253; under Government Code, §551.074, the commission will meet in executive session to discuss personnel matters; specifically, compensation for the position of the executive director during the 1996-1997 biennium. Adjournment.

Contact: John Steiner, 1101 Camino La Costa, Austin, Texas 78752, (512) 463-5800.

Filed: September 1, 1994, 3:27 p.m.

TRD-9447501

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Texas Commission on Fire Protection

Sunday-Wednesday, October 4-7, 1994, 9:00 a.m.

12675 North Research

Austin

Funds Allocation Advisory Committee

AGENDA:

Approval of minutes of previous meeting.

Discussion of monitoring reports.

Discussion and possible action regarding contract number 92-0105.

Discussion and possible action on applications for assistance submitted by August 20, 1994.

Discussion and recommendation on the interest rate to be used for loans under the Fire Department Emergency Board.

Discussion and possible action on changes to the rules of the Fire Department Emergency Program.

Discussion and possible action regarding changes to the instructions, application, and contract forms used in the Fire Department Emergency Program.

Discussion of report on acquisition of resources and distribution of same.

Contact: Carol Menchu, 12675 North Research, Austin, Texas 78759, (512) 918-7100.

Filed: September 1, 1994, 3:51 p.m.

TRD-9447508

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Funds Review Advisory Committee

Wednesday, September 14, 1994, 9:00 a.m.

111 East 17th Street, Room 114

Austin

Funds Review Advisory Committee

AGENDA:

I. Call meeting to order

II. Update on notice to state agencies

III. Subcommittee recommendation on questionnaire and alternatives

IV. Discussion on loss of dedication and related issues

V. Other items

VI. Adjournment

Contact: George Tamayo, 111 East 17th Street, Room 902, Austin, Texas 78774, (512) 463-4595.

Filed: September 6, 1994, 8:51 a.m.

TRD-9447618

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Texas Funeral Service Commission

Wednesday, September 14, 1994, 9:00 a.m.

Howard Johnson North Plaza, 7800 North IH-35

Austin

Revised Agenda

Board Meeting

AGENDA:

9:00 a.m.-meeting called to order

Public comment period; committee reports

Request by James R. Clemons for waiver of special requirements for licensing as embalmer

Consideration of proposed adoption of rules; publication of proposed rules

Consideration of proposed changes to employee grievance and disciplinary policies

Presentation of proposed agreed orders

Presentation of proposals for decision in Case Numbers 94-49, 94-68, 94-69

Consideration of cases to be closed and penalties to be assessed

Executive session

Executive director's report; election of vice chair and secretary; adjourn

Contact: Wayne L.. Goodrum, 8100 Cameron Road, Suite 550, Austin, Texas 78753, (512) 834-9992, Fax: (512) 834-1607.

Filed: September 2, 1994, 9:23 a.m.

TRD-9447540

♦ ♦ ♦

Texas General Land Office

Monday, September 12, 1994, 3:00 p.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room #831

Austin

Revised Agenda

Veterans Land Board

AGENDA:

42. Approval of the July 14, 1994, minutes of the VLB Board meeting.

43. Consideration to lease forfeited tracts.

44. Consideration of all steps necessary for issuance of bonds.

45. Consideration of all steps for issuance of bonds for Veteran Housing Assistance Program.

46. Consideration of designation of an amount not to exceed $10 million of an issue of State of Texas general obligation bonds for Veterans Assistance Program.

47. Consideration of the selection of underwriter(s) for Housing Program transaction.

48. Consideration of a Request for Information for suggestions on obtaining additional funds to serve the unrestricted pool of veterans.

49. Consideration of loan rates in the Housing Assistance Program.

50. Consideration to increase the maximum amount of a land loan.

51. Consideration of the issuance of taxable bonds to fund loans in amounts not to exceed $40,000 in the Veterans Land Program.

52. Consideration of all steps for issuance of bonds of Texas Veterans Taxable Land Bonds, Series 1994, in an amount not to exceed $35 million.

53. Consideration of the selection of underwriter(s) for Land Program transaction.

54. Consideration of adopting rules for expanded land loan.

55. Consideration of a resolution authorizing return by the Board of excess monies received as interest on veterans' land sale contracts.

56. Consideration of amending the State of Texas Housing Bonds, Series 1984 Resolution to permit expanded investment authority.

Contact: Karen Pratt, 1700 North Congress Avenue, Room 700, Austin, Texas 78701, (512) 463-5171.

Filed: September 1, 1994, 11:31 a.m.

TRD-9447488

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Texas Department of Human Services

Tuesday, September 13, 1994, 9:30 a.m.

701 West 51st Street, Sixth Floor Conference Room, West Tower

Austin

Religious Community Advisory Committee Meeting

AGENDA:

According to the complete agenda, the Religious Community Advisory Committee Meeting will welcome everyone; make introductions; hear update on 1995 legislative agenda; hear DHS public image campaign; hear update on 1995 PRS legislative agenda; discuss national welfare reform proposals features and issues; discuss long-term care services issues; hear work in subcommittees on legislative and general information; share subcommittee work; and adjourn.

Contact: Clif Martin, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3072.

Filed: September 2, 1994, 3:11 p.m.

TRD-9447597

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Texas Municipal Retirement System

Thursday, September 15, 1994, 9:00 a.m.

Marriott Hotel, Capitol, 701 East 11th

Austin

Workshop Meeting, Board of Trustees

AGENDA:

Workshop meeting for Board of Trustees and staff to discuss goals, objectives, and strategies for the system and receive reports from staff and consultants on current issues. No action will be taken on any item discussed during this meeting.

Contact: Gary W. Anderson, P.O. Box 149153, Austin, Texas 78714-9153, (512) 476-7577.

Filed: September 1, 1994, 3:51 p.m.

TRD-9447506

Friday, September 16, '994, 8:30 a.m.

Texas Municipal Retirement System, 120 North IH-35

Austin

Regular Meeting, Board of Trustees

AGENDA:

To hear and approve minutes of the regular June 10, 1994, meeting and special August 26, 1994, meeting; review and approve service retirements, disability retirements; review and approve extended supplemental death benefits coverage; supplemental death benefits payments; consider, review and act on financial statements; consider and act on resolution regarding check signing procedures and designating persons to sign checks on various system accounts; consider and act on resolution authorizing individuals to sign for the system on certain Federal Reserve transactions; consider and act on proposal for audit services for year-ending December 31, 1994; consider and act on proposals for Investment Performance Study; receive and possibly take action on report entitled "Texas Municipal Retirement System-Study of Retiree Health Coverage," pursuant to Senate Bill 404, Acts 1993; consider establishment of "Joint Retirement Committee on Retirement Matters"; discuss possible amendments to the TMRS Act; director and staff reports; repo by actuary; report by legal counsel.

Contact: Gary W. Anderson, P.O. Box 149153, Austin, Texas 78714-9153, (512) 476-7577.

Filed: September 1, 1994, 3:51 p.m.

TRD-9447507

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Texas Natural Resource Conservation Commission

Wednesday, September 7, 1994, 9:30 a.m.

12118 Park 35 Circle, Room 201S, Building E

Austin

40% Task Force

AGENDA:

The 40% Task Force, as required by Senate Bill 1051 of the 73rd Legislature, will meet to research and discuss the implications of a statewide phased-in yard trimmings disposal ban on the environment and economy of Texas, to consider other waste reduction initiatives that could help Texas reach the 40% waste reduction goal, and to make recommendations to the TNRCC and the state legislature based upon their findings. Open files consisting of meeting notes and

any additional associated material will be maintained at the Colonnade Building, 12015 Park 35 Circle, Room 1927, Austin, Texas 78753. These files will be listed as "[illegible]% Task Force."

tember 7: Discussion of the implications of a statewide phased-in yard trimmings disposal ban and consideration of other waste reduction initiatives.

Contact: Wendy Audette, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6757.

Filed: September 2, 1994, 8:37 a.m.

TRD-9447527

Wednesday, September 14, 1994, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin State Building, Room 118

Austin

AGENDA:

The Commission will consider approving the following matters on the agenda: Class 2 modification to WDW permit; district matters; water quality enforcement; water utility matter; state implementation plans; petroleum storage tank enforcement; examiner's proposal for decision; executive session; in addition, the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

Registration begins at 8:30 a.m. until 9:00 a.m.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3317.

Filed: September 2, 1994, 2:06 p.m.

TRD-9447586

Wednesday, September 14, 1994, 10:00 a.m.

12118 North IH-35, Park 35 Complex, Building E, Room 201-S

Austin

Petroleum Storage Tank Advisory Committee

AGENDA:

(Wednesday) September 14, 1994 at 10:00 a.m.

Call to order. Approval of previous meeting minutes.

Listen to discussion of lender liability by representatives of banking industry and legal profession.

Listen to report from Chet Clark on TNRCC Risk-Based LPST Corrective Action.

Develop recommendations pertaining to the above topics.

Schedule future meetings.

Contact: Dwight C. Russell, P.E., 7801 North Lamar Boulevard, Suite D-77, Austin, Texas 78752, (512) 452-8834.

Filed: September 2, 1994, 3:11 p.m.

TRD-9447598

Thursday, September 15, 1994, 10:00 a.m.

Stephen F. Austin, State Office Building, Room 119, 1700 North Congress Avenue

Austin

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on Southwest Utilities, Inc.'s Certificate of Convenience and Necessity Numbers 11740 and 20581 in Brazoria, Harris, Liberty, Matagorda and Montgomery Counties, Texas. The hearing is being held in order to re-establish Commission jurisdiction and enter a settlement agreement arising from Docket Number 9296-R.

Contact: Alexandre Bourgeois, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: September 2, 1994, 1:30 p.m.

TRD-9447572

Thursday, September 22, 1994, 10:00 a.m. (Rescheduled From September 15, 1994.)

Stephen F. Austin State Office Building, Room 119, 1700 North Congress Avenue

Austin

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on water and sewer rate increases by Evelyn Freeman Farhood doing business as Abraxas (Hilltop) Utility in Parker County, Texas. Docket Number 30431-G.

Contact: Cecile Hanna, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: September 2, 1994, 1:29 p.m.

TRD-9447571

Thursday, September 22, 1994, 10:00 a.m.

Building B, Room 1014A, 12124 Park 35 Circle

Austin

Office of Hearings Examiners

AGENDA:

Notice of public hearing on request for reimbursement from petroleum storage tank remediation fund by William Biscamp, TNRCC Docket Number 94-0269-PST-E.

Contact: Jim Bateman, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: September 2, 1994, 4:05 p.m.

TRD-9447611

Monday, September 26, 1994, 10:00 a.m.

TNRCC, 12118 I.H. 35 North, Building E, Room 202S

Austin

AGENDA:

On an application by Holnam Texas L.P. to amend Air Quality Permit Number 8996. The facility is located in Midlothian in Ellis County, Texas.

Contact: Mike Coldiron, P.O. 13087, Austin, Texas 78711, (512) 239-1260.

Filed: September 2, 1994, 1:29 p.m.

TRD-9447570

Wednesday, September 28, 1994, 10:00 a.m.

TNRCC, 12118 I.H. 35 North, Building E, Room 202S

Austin

AGENDA:

On an application by Ingram Readymix, Inc., Proposed Air Quality Permit Number 15645C, to construct and operate a concrete batch plant under a standard exemption. The facility is to be located 0.6 miles west of County Road 164 on the south side of Highway 290 in Dripping Springs, Hays County, Texas.

Contact: Kelly Brown, P.O. Box 13087, Austin, Texas 78711, (512) 239-1086.

Filed: September 2, 1994, 1:29 p.m.

TRD-9447569

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Texas Board of Nursing Facility Administrators

Thursday, September 15, 1994, 1:00 p.m.

Room S-402, the Exchange Building, 8407 Wall Street

Austin

Complaints Committee

AGENDA:

The committee will discuss and possibly act on: complaints from January, 1994 to present; other outstanding complaints; and proposed rules.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: September 1, 1994, 4:05 p.m.

TRD-9447523

Friday, September 16, 1994, 9:00 a.m.

Room S-402, the Exchange Building, 8407 Wall Street

Austin

AGENDA:

The board will discuss approval of the minutes from the July 22, 1994 meeting; and discuss and possibly act on: committee reports and recommendations for proposed rules (complaints; education and policies and procedures); proposed rules; board chairman report/comments; executive secretary's report (ad hoc committee for state standards examination; nursing facility administrator role delineation survey; travels and talks; report on Health Professions Council; National Association of Boards for Nursing Home Administrators disciplinary reporting system; and preceptor seminar update); and next board and committee meetings–December 8-9, 1994.

Filed: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: September 1, 1994, 4:05 p.m.

TRD-9447522

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State Pension Review Board

Thursday, September 15, 1994, 10:00 a.m.

300 West 15th, William P. Clements Building, Fourth Floor, Room 406

Austin

AGENDA:

1. Meeting Called to Order

2. Roll Call

3. Reading and Adoption of Minutes of Previous Meeting

4. Executive Director's Report

5. Official Adoption of 1996-1997 Budget Request

6. Presentation of Report on Actuarial Audit of Dallas Police and Fire Pension Plan

7. Discussion and Possible Action on Old Business

8. Announcement and Invitation for Audience Participation

9. Adjournment-Announce Date of Next Meeting

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: September 2, 1994, 10:53 a.m.

TRD-9447556

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Texas State Board of Examiners of Psychologists

Tuesday, September 20, 1994, 1:00 p.m.

9101 Burnet Road, Suite 212

Austin

Complaints Review Committee

The Complaints Review Committee will meet to review and determine whether to recommend dismissal of complaint cases.

Contact: Rebecca E. Forkner, 9101 Burnet Road, Suite 212, Austin, Texas 78758, (512) 835-2036.

Filed: September 1, 1994, 11:46 a.m.

TRD-9447490

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Texas State Board of Public Accountancy

Wednesday, September 14, 1994, 9:00 a.m.

333 Guadalupe, Tower III, Suite 900

Austin

Board Meeting

AGENDA:

Discussion of pending litigation (executive session), committee reports from the Technical Standards Review Committee, Behavioral Enforcement Committee, Qualifications Committee, Licensing Committee; consideration of the adoption of the following Board Rules 501.2-501.4, 501.40, 511.167; agreed consent orders and proposals for decision.

Contact: J. Randel (Jerry) Hill, 333 Guadalupe, Tower III, Room 900, Austin, Texas 78701-3942, (512) 505-5542.

Filed: September 2, 1994, 5:07 p.m.

TRD-9447614

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Public Utility Commission of Texas

Friday, September 9, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Administrative

AGENDA:

There will be an administrative meeting for discussion, consideration, and possible action on staff's evaluation of earnings reports submitted by telephone utilities; project on video teleconferencing as a training tool; report from Quality Steering Committee; interaction with legislative committees and/or Sunset Commission; investigation into impact of open access comparability transmission terms and conditions accepted by C&SW; Capital for a Day in Wichita Falls; budget and fiscal matters; adjournment for executive session to consider litigation and personnel matters; reconvene for discussion and decisions on matters considered in executive session; set time and place for next meeting; and final adjournment.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 1, 1994, 2:40 p.m.

TRD-9447499

Monday, September 19, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A prehearing conference will be held at the above date and time in Docket Number 13376–complaint of SMR Systems, Inc., against Lufkin-Conroe telephone company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 1, 1994, 11:30 a.m.

TRD-9447480

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Railroad Commission of Texas

Monday, September 12, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The Commission will consider and act on the agency budget, fiscal and administrative matters and the Administrative Services Division Director's report on division administration, budget, procedures and personnel matters.

Contact: Roger Dillion, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7257.

Filed: September 2, 1994, 10:08 a.m.

TRD-9447546

Monday, September 12, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

According to the complete agenda, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified in the agenda. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The Commission may meet in Executive Session on any items listed above as authorized by the Open Meetings Act.

Contact: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6921.

Filed: September 2, 1994, 10:10 a.m.

TRD-9447553

Monday, September 12, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The Commission will consider and act on the Personnel Division Director's report on division administrations, budget, procedures, and personnel matters. The Commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel. The following matters will be taken up for consideration and/or decision by the commission: commission budget, fiscal, administrative or procedural matters, strategic planning, personnel and staffing, including restructuring or transferring the Oil Field Theft Division.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6981.

Filed: September 2, 1994, 10:10 a.m.

TRD-9447552

Monday, September 12, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The Commission will consider and act on the Automatic Data Processing Division Director's report on division administration, budget, procedures, equipment acquisitions and personnel matters. The Commission will consider and act on the Information Resource Manager's report on information resource planning documents.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7251.

Filed: September 2, 1994, 10:10 a.m.

TRD-9447551

Monday, September 12, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The Commission will consider and act on the Office of Information Services Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6710.

Filed: September 2, 1994, 10:09 a.m.

TRD-9447550

Monday, September 12, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

Revised Agenda

AGENDA:

Add on: the Commission will consider and act on the division director's report on budget, personnel, policy and program matters related to operation of the Alternative Fuels Research and Education Division.

Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

Filed: September 2, 1994, 2:04 p.m.

TRD-9447579

Monday, September 12, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

Revised Agenda

AGENDA:

Add on: Oil and Gas Docket Number 08-0204120; application of Marathon Oil Company for designation of its Reservoir Management Plan on the Yates Field Unit as a commission approved co-production project, Yates Field, Pecos and Crockett Counties, Texas.

Contact: Jamie Neilson, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6924.

Filed: September 2, 1994, 4:24 p.m.

TRD-9447612

Tuesday, September 13, 1994, 9:30 a.m.

Sheraton Fiesta, 37 Northeast Loop 410

San Antonio

AGENDA:

The Railroad Commission of Texas will hold a briefing on new proposals for oil and gas incentives.

Contact: Brenda Loudermilk, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7155.

Filed: September 2, 1994, 10:09 a.m.

TRD-9447548

Tuesday, September 13, 1994, 1:30 p.m.

Marriott Bayfront Hotel, 900 North Shoreline Boulevard, Aransas Room

Corpus Christi

AGENDA:

The Railroad Commission of Texas will hold a briefing on new proposals for oil and gas incentives.

Contact: Brenda Loudermilk, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7155.

Filed: September 2, 1994, 10:09 a.m.

TRD-9447547

Thursday, September 22, 1994, 2:00 p.m.

1701 North Congress Avenue, 12th Floor Conference Room 12-126

Austin

AGENDA:

The Commission will hold its monthly statewide hearing on oil and gas to determine the lawful market demand for oil and gas and to consider and/or take action on matters listed on the agenda posted with the Secretary of State's Office.

Contact: Paula Middleton, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6729.

Filed: September 2, 1994, 10:09 a.m.

TRD-9447549

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Texas County and District Retirement System

Thursday-Friday, September 15-16, 1994, 10:00 a.m. and 9:00 a.m. respectively.

302 East Main

Post

Board of Trustees

AGENDA:

Chairman will open meeting. Approve minutes of June 23-24, 1994, regular Board meeting. Consider and pass on applications for service and disability retirement benefits. Escheatment of terminated accounts. Approve financial statements. Approve applications for TCDRS participation. Consider and act on proposal for decision in regard to claim of Lillie Houston from denial of Disability Retirement Benefits. Receive reports from legal counsel, investment counsel, actuary, chairman, and director.

Consider and act on investment policies, practices and personnel. Consider and approve budget amendments and expense fund transfers. Consider and act on proposals for legislation. Adjourn meeting.

Contact: Terry Horton, 400 West 14th Sheet, Austin, Texas 78701, (512) 476-6651.

Filed: September 2, 1994, 2:38 p.m.

TRD-9447592

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Texas Savings and Loan Department

Thursday, October 6, 1994, 9:00 a.m.

300 West 15th Street, Room 502

Austin

AGENDA:

The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application of Archer McWhorter to acquire control of Life Savings Bank, SSB, Austin, Travis County, Texas from which record the Commissioner will determine whether to grant or deny the application.

Contact: Teresa Scarborough, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: September 2, 1994, 2:06 p.m.

TRD-9447584

Thursday, October 6, 1994, 10:00 a.m.

300 West 15th Street, Room 502

Austin

AGENDA:

The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application of North Texas Savings and Loan Association, Denton, Texas to operate a branch office at intersection of McDermott Lane and U.S. Highway 75, Allen, Collin County, Texas from which record the Commissioner will determine whether to grant or deny the application.

Contact: Teresa Scarborough, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: September 2, 1994, 2:06 p.m.

TRD-9447585

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Texas Senate

Monday, September 12, 1994, 10:00 a.m.

1100 Congress Avenue, State Capitol, Senate Chamber

Austin

Natural Resources Committee

AGENDA:

I. Call to order

II. Opening remarks

III. Invited testimony

IV. Closing remarks

Contact: Carol McGarah, P.O. Box 12068, Austin, Texas 78711, (512) 463-0390.

Filed: September 1, 1994, 2:40 p.m.

TRD-9447498

Monday, September 12, 1994, 10:00 a.m.

801 South Bowie Street, Institute of Texan Cultures

Austin

Interim Committee on Domestic Violence

AGENDA:

I. Call to order

II. Roll call and opening remarks

III. Approval of minutes

IV. Address committee charge: invited testimony

V. Public testimony

VI. Other business

VII. Adjourn

Contact: Allen Horne, P.O. Box 12068, Austin, Texas 78711, (512) 463-0112.

Filed: September 1, 1994, 2:40 p.m.

TRD-9447497

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Council on Sex Offender Treatment

Friday, September 9, 1994, 9:00 a.m.

1711 San Jacinto, Room 401F, Central Services Building

Austin

Council on Sex Offender Treatment and Interagency Advisory Committee

AGENDA:

I. Convene, Collier Cole

II. Strategic planning work session

III. Adjourn

Contact: Eliza May, LMSW, P.O. Box 12546, Austin, Texas 78711, (512) 463-2323.

Filed: September 1, 1994, 1:20 p.m.

TRD-9447493

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Texas Guaranteed Student Loan Corporation

Friday, September 9, 1994, 1:30 p.m.

13809 North Highway 183, Suite 301

Austin

Budget/Finance/Audit Committee

AGENDA:

1. Action on minutes of June 24, 1994

2. Action on minutes of August 12, 1994

3. Review of fiscal year 1995 budget

4. Committee action on fiscal year 1995 budget

5. Adjourn

Contact: Peggy Irby, 13809 North Highway 183, Austin, Texas 78750-1240, (512) 219-5700.

Filed: September 1, 1994, 11:32 a.m.

TRD-9447489

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Teacher Retirement System of Texas

Friday, September 9, 1994, 8:00 a.m.

1000 Red River, Fifth Floor Board Room

Austin

Board of Trustees

AGENDA:

Roll call of board members; report of Nominations Committee and election of chairman and vice chairman; public comments; approval of minutes of June 10, 1994 meeting; report of Audit Committee; report of General Policy Committee; report of Ethics Policy Committee; report of Investment Committee; report of Real Estate Committee; consideration of Board Committee appointments; election of trustee representative to Texas Growth Fund; consideration of frequency of board meetings; certification to State Comptroller of estimate of state contributions for the 1996-1997 biennium; certification to the Legislative Budget Board and the Governor's Office of estimate of state contributions for the Retired School Employees Group Insurance Fund for the 1996-1997 biennium; report of Texas Public School Retired Employees Group Insurance Program; review of Sunset Commission Activities; consideration of resolution authorizing certain TRS staff members to approve retirement, death, and survivor benefit settlements; consideration of signature authorization to approve and sign vouchers; report of Benefit Division; consideration of proposed rule change relating to nomination for appointment to the Board of Trustees, 34 TAC, §23.5; report of executive director;

comments by board members; report of general counsel on litigation; update on forensic analysis of real estate portfolio being conducted by Coopers and Lybrand and potential resulting litigation.

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6400.

Filed: September 1, 1994, 4:04 p.m.

TRD-9447514

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Texas Turnpike Authority

Monday, September 12, 1994, 7:30 p.m.

Dallas Marriott Quorum, 14901 Dallas Parkway

Dallas

Legislative Committee

AGENDA:

Roll call of committee members

Recognition of other directors present

1. Discussion with staff and general counsel of legislative mission.

2. Executive session-pursuant to Article 6252-17, Vernon's Revised Civil Statutes §2(c) and §2(r)-discussions among Texas Turnpike Authority Directors, staff, consultants, and attorneys concerning application and effect of state laws to future contracts related to the construction, operation, and maintenance of existing and proposed Turnpike projects.

3. Consider recommendations of committee concerning legislation for presentation to Board of Directors, possible action.

Adjournment.

Contact: Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522-6200.

Filed: September 1, 1994, 11:31 a.m.

TRD-9447486

Tuesday, September 13, 1994, 9:45 a.m.

Dallas Marriott Quorum, 14901 Dallas Parkway

Dallas

Board of Directors

AGENDA:

The agenda includes consideration of the following. approval of minutes of prior Board and Committee meetings, consider acceptance of the following: NCTCOG's MPO's schedule of potential turnpike projects, Two Nations Turnpike Traffic and Revenue Study, and DFW Airport East/West Connector Turnpike Feasibility Study, reports from committee chairpersons and comments from other board members and, in connection with these reports, consider sponsorship of public/private Infrastructure Symposium. Interlocal agreement with University Park, adoption of DNT Sound Mitigation Policy, approval of Supplemental Agreement Number 13 to Contract DNT 78A; consider interagency cooperation contracts with TxDOT for 1994/1995 quality assurance services, 1994/1995 material procurement, federal reimbursement for alternative fueled vehicles, and development of Laredo Toll Bridge Number Four; consider interagency cooperation contract with Texas Attorney General; opening ceremonies: DNT Phase Two; executive session; consider approval of Supplemental Agreement Number Three to Contract DNT-201; consider adoption of new By Laws; consider approval of DNT right-of-way purchases; consider interlocal agreement with City of Dallas and City of Plano for NPDES Co-Permit; consider adjustment of tolltag fees; consider capitalization of Revolving Fund; consider amendment to Addison Airport Toll Tunnel General Consultant Engineering contract; consider interlocal agreement with City of Plano for DNT corridor maintenance; and receive public comments.

Contact: Jimmie G Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522-6200.

Filed: September 1, 1994, 11:31 a.m.

TRD-9447487

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Texas Workers' Compensation Insurance Facility

Wednesday, September 14, 1994, 9:45 a.m.

Guest Quarters Hotel, 303 West 15th

Austin

Governing Committee Meeting

AGENDA:

Approval of minutes of August 15, 1994; consideration and possible action on: servicing company request for reimbursements; amendment of rules and regulations governing the Employers Rejected Risk Fund; recommendations from the Appeals Committee; executive director's report; and executive session(s) regarding personnel matters and pending legal matters. Following the closed executive session(s), the Governing Committee will reconvene in open and public session and take any action as may be desirable or necessary as a result of the closed deliberations, including possible approval of settlements or potential or existing litigation, possible approval of facility transition plans and personnel policies.

Contact: Peter Potemkin, 8303 MoPac Expressway North, Suite 310, Austin, Texas 78759, (512) 345-1222.

Filed: September 2, 1994, 3:47 p.m.

TRD-9447602

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Texas Youth Commission

Friday, September 9, 1994, 10:00 a.m.

Brown Heatley Building, 4900 North Lamar Boulevard, Public Hearing Room, 1420-1430

Austin

Board Meeting

AGENDA:

Construction change order and design modification of Golden Triangle Facility

Contact: Steve Robinson, 4900 North Lamar Boulevard, Austin, Texas 78765, (512) 483-5001.

Filed: September 1, 1994, 3:26 p.m

TRD-9447502

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Regional Meetings

Meetings Filed September 1, 1994

The Aqua Water Supply Corporation Board of Directors will meet at 305 Eskew (Aqua Office), Bastrop, September 12, 1994, at 7:30 p.m. Information may be obtained from Adlinie Rathman, P.O. Drawer P, Bastrop, Texas, (512) 303-3943. TRD-9447485.

The Austin-Travis County MHMR Center Public Relations Committee met at 1430 Collier Street, Board Room, Austin, September 6, 1994, at 12:30 p. m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9447509.

The Brazos Valley Development Council Board of Directors met in the Council Conference Room, 1706 East 29th Street, Bryan, September 8, 1994, at 1:30 p.m. Information may be obtained from Tom Wilkinson, Jr., P.O. Drawer 4128, Bryan Texas 77805-4128, (409) 775-4244. TRD-9447496.

The Hunt County Appraisal District Board of Directors met at 4801 King Street, Greenville, September 8, 1994, at 6:30 p.m Information may be obtained from Shirley Smith, P.O Box 1339, Greenville, Texas 75403, (903) 454-3510 TRD-9447484.

The Hunt County Appraisal District Board of Directors met at 4801 King Street, Greenville, September 8, 1994, at 6:55 p.m. Information may be obtained from Shirley Smith, P.O. Box 1339, Greenville, Texas 75403, (903) 454-3510. TRD-9447483.

The Hunt County Appraisal District Board of Directors met at 4801 King Street, Greenville, September 8, 1994, at 7:00 p.m. Information may be obtained from Shirley Smith, P.O. Box 1339, Greenville, Texas 75403, (903) 454-3510. TRD-9447482.

The Mason County Appraisal District Board of Directors met at 202 Westmoreland, Mason, September 7, 1994, at Noon. Information may be obtained from Deborah Geistweidt, Box 1119, Mason, Texas 76856, (915) 347-5989. TRD-9447516.

The Nortex Regional Planning Commission General Membership Committee will meet at 4309 Jacksboro Highway, The Galaxy Center, Suite 200, Wichita Falls, September 15, 1994, at Noon. Information may be obtained from Dennis Wilde, P.O. Box 5144, Wichita Falls, Texas 76307-5144, (817) 322-5281. TRD-9447481.

The Sabine Valley Center Finance Committee met at 107 Woodbine Place, Judson Road, Longview, September 8, 1994, at 6:00 p.m. Information may be obtained from Mack Blackwell or LaVerne Moore, 107 Woodbine Place, Judson Road, Longview, Texas 75601, (903) 758-2471. TRD-9447519.

The Sabine Valley Center Personnel Committee met at 107 Woodbine Place, Judson Road, Longview, September 8, 1994, at 6:30 p.m. Information may be obtained from Mack Blackwell or LaVerne Moore, 107 Woodbine Place, Judson Road, Longview, Texas 75601, (903) 758-2471. TRD-9447520.

The Sabine Valley Center Care and Treatment Committee met at 107 Woodbine Place, Judson Road, Longview, September 8, 1994, at 6:30 p.m. Information may be obtained from Mack Blackwell or LaVerne Moore, 107 Woodbine Place, Judson Road, Longview, Texas 75601, (903) 758-2471. TRD-9447521.

The Sabine Valley Center Board met at 107 Woodbine Place, Judson Road, Longview, September 8, 1994, at 7:00 p.m. Information may be obtained from Mack Blackwell or LaVerne Moore, 107 Woodbine Place, Judson Road, Longview, Texas 75601, (903) 758-2471. TRD-9447518.

The Tyler County Appraisal District (Revised Agenda.) Board of Directors met at 806 West Bluff, Woodville, September 8, 1994, at 5:00 p.m. Information may be obtained from Mollie M. Parker, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9447494.

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Meetings Filed September 2, 1994

The Bastrop Central Appraisal District Appraisal Review Board met at 1200 Cedar Street, Bastrop, September 8, 1994, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 321-3925. TRD-9447530.

The Bell-Milam-Falls WSC Board met at the Office-FM 485 West, Cameron, September 8, 1994, at 8:30 a.m. Information may be obtained from Dwayne Jekel, P.O. Box 150, Cameron, Texas 76520, (817) 697-4016. TRD-9447533.

The Brazos Higher Education Authority, Inc. Executive Committee met at 2600 Washington Avenue, Waco, September 8, 1994, at 11:00 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9447609.

The Brazos Higher Education Service Corporation Executive Committee met at 2600 Washington Avenue, Waco, September 8, 1994, at 10:30 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9447608.

The Brazos Higher Education Service Corporation Board of Directors met at 510 North Valley Mills Drive, Waco, September 8, 1994, at Noon. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9447607.

The Brazos Student Finance Corporation Board of Directors met at 510 North Valley Mills Drive, Waco, September 8, 1994, at 11:30 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9447610.

The Brazos Valley Development Council Personnel Committee met at the Council Offices, 1706 East 29th Street, Bryan, September 8, 1994, at 3:30 p.m. Information may be obtained from Tom Wilkinson, Jr., P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9447555.

The Creedmoor Maha Water Corporation (Monthly Meeting) will met at 1699 Laws Road, Mustang Ridge, September 7, 1994, at 7:30 p.m. Information may be obtained from Charles Laws, 1699 Laws Road, Buda, Texas 78610, (512) 243-2113. TRD-9447529.

The Dallas Area Rapid Transit Committee-of-the-Whole met in Conference Room C, 1401 Pacific Avenue, Dallas, September 6, 1994, at 1:00 p.m. Information may be obtained from Vanessa Knight, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9447604.

The Dallas Area Rapid Transit (Special Meeting.) Board of Directors met in Conference Room C, First Floor, 1401 Pacific Avenue, Dallas, September 6, 1994, at 5:00 p.m. Information may be obtained from Vanessa Knight, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9447603.

The Education Service Center, Regi VII (Revised Agenda.) Board of Directors met at 2344 Old Longview Road, Henderson, September 8, 1994, at Noon. Information may be obtained from Eddie J. Little, 818 East Main Street, Kilgore, Texas 75662, (903) 984-3071. TRD-9447599.

The Falls County Appraisal District Board of Directors will meet at the Interstate of Highway 6 and 7, Falls County Courthouse, First Floor, Marlin, September 12, 1994, at 5:30 p.m. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661, (817) 883-2543. TRD-9447539.

The Grand Parkway Association met at 5757 Woodway, Suite 140 East Wing, Houston, September 8, 1994, at 8:15 a.m. Information may be obtained from Jerry L. Coffman, 5757 Woodway, 140 East Wing, Houston, Texas 77057, (713) 782-9350. TRD-9447587.

The Guadalupe-Blanco River Authority Legal Committee met at 933 East Court Street, Seguin, September 7, 1994, at 1:30 p.m. Information may be obtained from W.E. West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9447589.

The Harris County Appraisal Distr Appraisal Review Board will meet at 2800 North Loop West, Houston, September 9, 1994, at 8:00 a.m. Information may be obtained from Susan Jordan, 2800 North Loop West, Houston, Texas 77092, (713) 957-5222. TRD-9447601.

The Hays County Appraisal District Appraisal Review Board will meet at 21001 North IH-35, Kyle, September 13, 1994, at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 21001 North IH-35, Kyle, Texas 78640, (512) 268-2522. TRD-9447531.

The Hood County Appraisal District Board of Directors will meet at 1902 West Pearl Street, District Office, Granbury, September 13, 1994, at 7: 30 p.m. Information may be obtained from Harold Chestnut, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471. TRD-9447532.

The Johnson County Rural Water Corporation (Special Called Meeting.) met at the Corporation Office, Highway 171 South, Cleburne, September 8, 1994, at 6:00 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9447591.

The Appraisal District of Jones Coun Board of Directors will meet at 1137 East

Court Plaza, Anson, September 15, 1994, at 8:30 a.m. Information may be obtained from Susan Holloway, P.O. Box 348, Anson, Texas 79501, (915) 823-2422. TRD-9447581.

The Appraisal District of Jones County Board of Directors will meet at 1137 East Court Plaza, Anson, September 15, 1994, at 8:45 a.m. Information may be obtained from Susan Holloway, P.O. Box 348, Anson, Texas 79501, (915) 823-2422. TRD-9447582.

The Kempner Water Supply Corporation Board of Directors met at Highway 190, Kempner, September 8, 1994, at 7:00 p.m. Information may be obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9447554.

The Manville Water Supply Corporation Board met in the Board Room, Spur 277, Coupland, September 8, 1994, at 7:00 p.m. Information may be obtained from Tony Graf, P.O. Box 248, Coupland, Texas 78615, (512) 272-4044. TRD-9447578.

The Texas Municipal Power Agency (TMPA) Board of Directors met at the Fletcher Warren Civic Center, 5501 Highway 69 South, Greenville, September 8, 1994, at 3:00 p.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9447576.

The Texas Municipal Power Agency (TMPA) (Annual Meeting.) Board of Directors met at the Fletcher Warren Civic Center, 5501 Highway 69 South, Greenville, September 8, 1994, at 6:30 p.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9447577.

The North Central Texas Council of Governments (NCTCOG) Transportation Department will meet at NCTCOG, 616 Six Flags Drive, Centerpoint Two, Third Floor, Arlington, September 12, 1994, at 4:00 p.m. Information may be obtained from Michael Morris, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 695-9240. TRD-9447613.

The San Antonio-Bexar County Metropolitan Planning Organization Bicycle Mobility Plan Oversight Committee will meet in the Conference Room, Bexar County Public Works, Suite 420, 233 North Pecos, Vista Verde Building, San Antonio, September 16, 1994, at 9:00 a.m. Information may be obtained from Charlotte A. Roszelle, 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9447583.

The Shackelford Water Supply Corporation Regular Monthly Directors met at the Fort Griffin Restaurant, Albany, September 7, 1994, at Noon. Information may be obtained from Buddy Fincher, Box 1295, Albany, Texas 76430, (915) 762-2519. TRD-9447558.

The South Plains Association of Governments General Assembly met at the Science Spectrum, 2579 South Loop 289, Lubbock, September 8, 1994, at 6: 00 p.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9447538.

The Sulphur-Cypress Soil and Water Conservation District Number 419 met at 1809 West Ferguson, Suite B, Mt. Pleasant, September 8, 1994, at 8:30 a.m. Information may be obtained from Beverly Amerson, 1809 West Ferguson, Suite B, Mt. Pleasant, Texas 75455-2921, (903) 572-5411. TRD-9447573.

The Upshur County Appraisal District Board of Directors will meet at the Upshur County Appraisal District Office, Warren and Trinity Streets, Gilmer, September 12, 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-9447580.

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Meetings Filed September 6, 1994

The South East Texas Regional Planning Commission Executive Committee will meet at the City of Beaumont Council Chambers, Beaumont, September 14, 1994, at 7:00 p.m. Information may be obtained from Jackie Vice, P.O. Drawer 1387, Nederland, Texas 77627, (409) 727-2384. TRD-9447619.

The Tyler County Appraisal District Appraisal Review Board will meet at 806 West Bluff, Woodville, September 15, 1994, at 4:00 p.m. Information may be obtained from Mollie Parker, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9447624.

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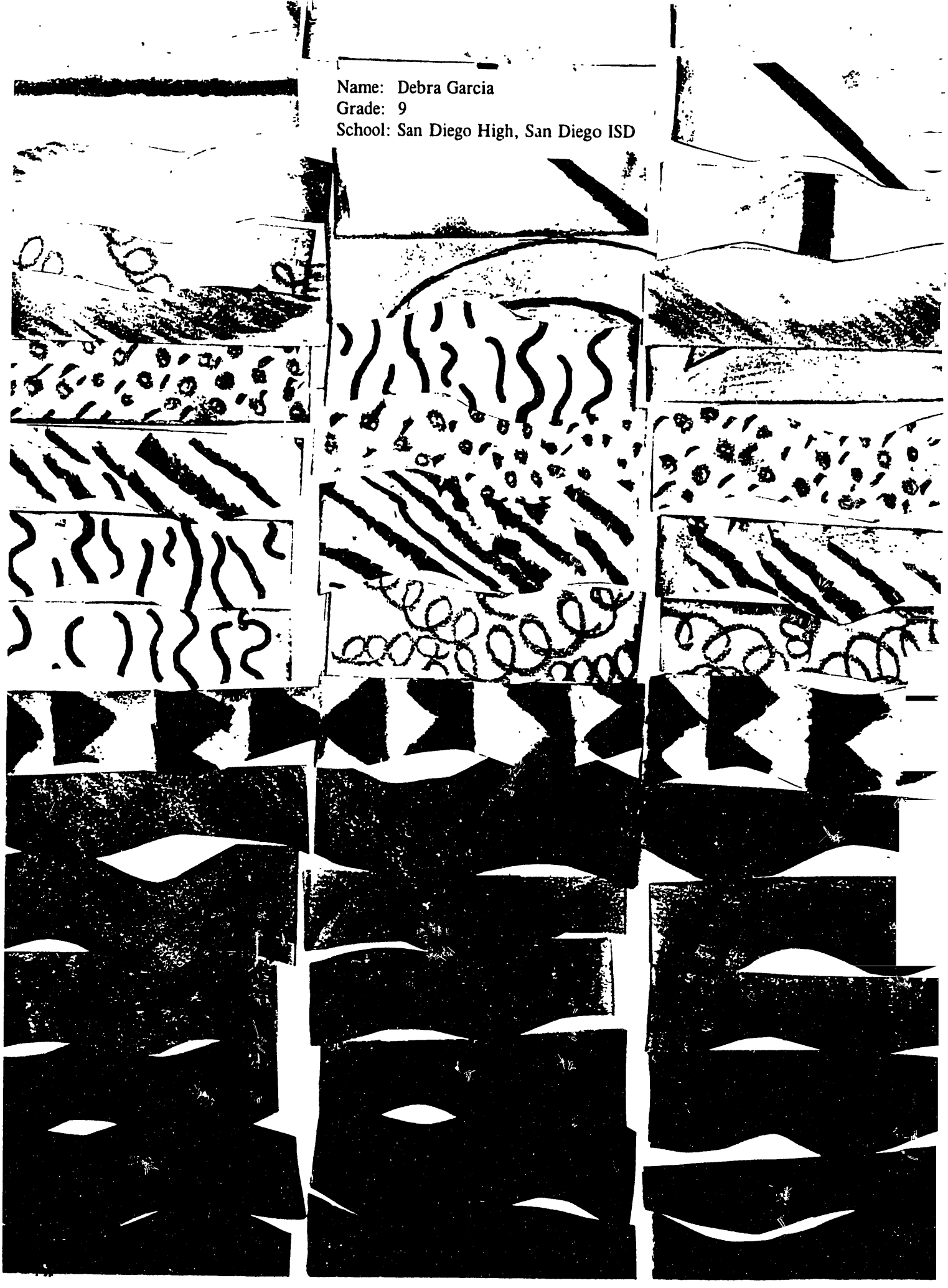
Name: Debra Garcia
Grade: 9
School: San Diego High, San Diego ISD



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 Banking

Notice of Application

The State Banking Board has accepted a trust charter application for Smith Barney Shearson Trust Company of Texas. The proposed site of the trust company is 1999 Bryan Street, Dallas, Texas.

The Hearing Officer of the Board will conduct a public hearing on this application on October 27, 1994, at 9:00 a.m., at 2601 North Lamar Boulevard, Austin, Texas. Upon reasonable notice, the public may inspect and copy all portions of the application, other than those made confidential by law, at the Texas Department of Banking, Third Floor, 2601 North Lamar Boulevard, Austin, Texas 78705, during regular business hours, Monday through Friday, excluding holidays, 8:00 a.m. to 5:00 p.m.

Anyone wishing to speak at the hearing, to make written comments, or to protest the application, should file any written comments or protests or given written notice of their intention to speak on or before October 17, 1994. Copies of written comments, protests, and written notice of intention to speak at the hearing should be sent United States mail, postage prepaid, to the applicant's representative: William T. Wells, Jr., 461 Fifth Avenue 12th Floor, New York, New York, 10017.

The Board may postpone or otherwise reschedule the hearing without further public notice. Therefore, anyone planning to attend should first verify scheduling information. Anyone planning to attend who may need special accommodations due to disabilities should notify the Board at least three days prior to the hearing so that appropriate arrangements may be made. The Texas Department of Banking may be reached by telephone at (512) 475-1300 or by mail at the address given previously.

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

TRD-9447281 Lynda A. Drake
Director of Corporate Activities
Texas Department of Banking

Filed: August 29, 1994

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the market competitive rate ceilings by use of the formulas and methods described in Article 6.03(6), Title 79, Texas Civil Statutes, as amended (Article 5069-6. 03(6), Texas Civil Statutes). The market competitive rate ceiling for the period October 1, 1994, through September 30, 1995, is 21%.

Issued in Austin, Texas, on August 30, 1994.

TRD-9447423 Al Endsley
Consumer Credit Commissioner

Filed: August 31, 1994

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Criminal Justice Division, Office of the Governor

Correction on Request for Applications Under the Juvenile Justice and Delinquency Prevention Act

In the August 23, 1994, edition of the *Texas Register*, pages 18-19, the closing date for receipt of applications read: the original and five copies of the application must be received by mail or hand delivered to the appropriate regional COG before 5:00 p.m. on November 1, 1994. The date originally stated was incorrect. The closing date for receipt of applications should be December 1, 1994.

Issued in Austin, Texas, on August 30, 1994.

TRD-9447352 David A. Talbot, Jr.
General Counsel
Criminal Justice Division, Office of the Governor

Filed: August 30, 1994

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Texas Environmental Awareness Network

Notice of Monthly Meeting

The Texas Environmental Awareness Network, an association of state agencies and environmental and educational organizations, will meet Wednesday, September 14, 1994, at 9:00 a.m. at Texas Parks and Wildlife Department, Wild Basin Preserve Offices, 805 South Capital of Texas Highway, Austin, Texas 78746.

For information about the meeting, or to place an item on the agenda, contact Bob Murphy, TEAN Chair, by mail at 4200 Smith School Road, Austin, Texas 78744; by phone at (512) 389-4360; or by fax at (512) 389-4394.

Issued in Austin, Texas, on August 22, 1994.

TRD-9447348 John Williams
Secretary
Texas Environmental Awareness Network

Filed: August 30, 1994

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Office of the Governor, Budget and Planning

Legislative Budget Board-Budget Execution Proposals

Pursuant to Texas Government Code, §317.002, this budget execution order is hereby proposed for the following actions affecting items of appropriation made in Senate Bill 5, 73rd Legislature, Regular Session, 1993.

We find that the backlog of offenders confined in the county jails awaiting transfer to state prisons creates an emergency requiring additional funding, including funding for additional payments to counties.

We therefore propose that appropriations made to the Comptroller of Public Accounts in Rider 16, page I-63 of the General Appropriations Act for the 1994-95 biennium, and transferred to the Texas Lottery Commission pursuant to House Bill 1587, 73rd Legislature, Regular Session, 1993, in the amount of $25, 500,000 be transferred to the Texas Department of Criminal Justice for the fiscal biennium ending August 31, 1995, this order shall be in addition to amounts previously transferred from the Rider 16 appropriation to the Texas Department of Criminal Justice pursuant to Chapter 317 of the Government Code.

We also propose, in order to facilitate the administration of the Lottery Commission, that appropriations made to the Comptroller of Public Accounts in Rider 16, page I-63 of the General Appropriations Act for the 1994-95 biennium, and transferred to the Texas Lottery Commission pursuant to House Bill 1587, 73rd Legislature, Regular Session, 1993, in an amount not to exceed $400,000, may be expended by the Lottery Commission during the fiscal biennium ending August 31, 1995 to provide for the implementation of §28(a), Chapter 286, Acts of the 73rd Legislature, Regular Session, 1993.

Bob Bullock

Lieutenant Governor

Chairman

Legislative Budget Board

Pete Laney

Speaker of the House

Vice-Chairman

Legislative Budget Board

I certify that this Budget Execution Proposal was adopted by the Legislative Budget Board on August 25, 1994, by the following vote.

On the part of the Senate: Yeas: 5 Nays: 0

On the part of the House: Yeas: 4 Nays: 0

John Keel

Director

Legislative Budget Board

Issued in Austin, Texas, on August 30, 1994.

TRD-9447470 Ann W. Richards
Governor of Texas
Office of the Governor

Filed: August 31, 1994

♦ ♦ ♦

Pursuant to Texas Government Code, §317.002, this budget execution order is hereby proposed for the following actions affecting items of appropriation made in Senate Bill 5, 73rd Legislature, Regular Session, 1993.

We find that the need to provide payment of deferred retirement contribution costs and to avoid the payment of additional interest charge creates an emergency requiring additional funding.

We therefore propose that appropriations made for Higher Education Employees Group Insurance Contributions for fiscal year 1994, in the various items of appropriation in Objective "A.2: State Contributions, Other Institutions", pages I-104 and I-105, in the amount of $13,528,793 and which the agency was prohibited from expending pursuant to our order executed July 7, 1994, be transferred to the Employees Retirement System for fiscal year 1995 for the purposes necessary to meet this emergency. Appropriations transferred pursuant to this provision may not be expended unless such expenditure is authorized by law.

We also propose that appropriations made to the agencies listed below for fiscal year 1994, in the amounts listed below, be transferred to the Employees Retirement System for fiscal year 1995 for the purposes necessary to meet this emergency. Appropriations transferred pursuant to this provision shall not be expended unless such expenditure is authorized by law.

Agency-Amount

Board of Public Accountancy-$100,000

Alcoholic Beverage Commission-$50,000

Board of Architectural Examiners-$5,000

Bond Review Board-$80,000

Commerce, Department of-$29,000

Criminal Justice Policy Council-$185,000

General Services Commission, State-$180,000

Licensing and Regulation, Department of-$5,000

Board of Nurse Examiners-$395,000

Board of Podiatry Examiners-$8,000

Real Estate Commission-$53,000

Rio Grande Compact Commission-$11,000

Treasury Department-$300,000

Board of Veterinary Medical Examiners-$3,000

Water Development Board-$10,000

Workers' Compensation Research Center-$62,000

The University of Texas at Austin-$457,000

The University of Texas of the Permian Basin-$50,000

The University of Texas Southwestern Medical Center at Dallas-$125,000

The University of Texas Medical Branch at Galveston-$500,000

Office of the State Prosecuting Attorney-$5,000

The agencies listed previously may allocate the necessary reductions among the various items of appropriations and appropriated funds to achieve the indicated amounts for transfer for fiscal year 1994. The Comptroller of Public Accounts, the Director of the Legislative Budget Board,

and the Governor's Budget Director may establish notification and other implementing requirements as necessary, and resolve any issues that may arise relating to the various items of appropriations and appropriated funds to achieve the indicated amounts for transfer pursuant to this order.

Bob Bullock

Lieutenant Governor

Chairman

Legislative Budget Board

Pete Laney

Speaker of the House

Vice-Chairman

Legislative Budget Board

I certify that this Budget Execution Proposal was adopted by the Legislative Budget Board on August 25, 1994, by the following vote.

On the part of the Senate: Yeas: 5 Nays: 0

On the part of the House: Yeas: 4 Nays: 0

John Keel

Director

Legislative Budget Board

Issued in Austin, Texas, on August 30, 1994.

TRD-9447470 Ann W. Richards
Governor of Texas
Office of the Governor

Filed: August 31, 1994

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Texas Department of Housing and Community Affairs

Low Income Housing Tax Credits

This is notice of the current state housing credit ceiling available to the Texas Department of Housing and Community Affairs (the Department), in accordance with 10 TAC §49.3(b) of the Low Income Housing Tax Credit Rules (the Rules).

As of September 1, 1994, the Department has $25,464,777 in housing credit availability for the low income housing tax credit program year 1994.

Further, in accordance with §49.9(b) of the Rules, the Department has not at this time issued a reservation, commitment, carryover or any other for of housing credit allocation.

Questions concerning the low income housing tax credit program should be directed to Robert Johnston, Manager of Multifamily Programs at (512)475-3342.

Issued in Austin, Texas, on September 1, 1994.

TRD-9447500 Henry Flores
Executive Director
Texas Department of Housing and Community Affairs

Filed: September 1, 1994

♦ ♦ ♦

Legislative Budget Board

Legislative Budget Board–Budget Execution Proposals

Pursuant to Texas Government Code, §317.002, this budget execution order is hereby proposed for the following actions affecting items of appropriation made in Senate Bill 5, 73rd Legislature, Regular Session, 1993.

We find that the backlog of offenders confined in the county jails awaiting transfer to state prisons creates an emergency requiring additional funding, including funding for additional payments to counties.

We therefore propose that appropriations made to the Comptroller of Public Accounts in Rider 16, page I-63 of the General Appropriations Act for the 1994-95 biennium, and transferred to the Texas Lottery Commission pursuant to House Bill 1587, 73rd Legislature, Regular Session, 1993, in the amount of $25, 500,000 be transferred to the Texas Department of Criminal Justice for the fiscal biennium ending August 31, 1995, this order shall be in addition to amounts previously transferred from the Rider 16 appropriation to the Texas Department of Criminal Justice pursuant to Chapter 317 of the Government Code.

We also propose, in order to facilitate the administration of the Lottery Commission, that appropriations made to the Comptroller of Public Accounts in Rider 16, page I-63 of the General Appropriations Act for the 1994-95 biennium, and transferred to the Texas Lottery Commission pursuant to House Bill 1587, 73rd Legislature, Regular Session, 1993, in an amount not to exceed $400,000, may be expended by the Lottery Commission during the fiscal biennium ending August 31, 1995 to provide for the implementation of §28(a), Chapter 286, Acts of the 73rd Legislature, Regular Session, 1993.

Bob Bullock

Lieutenant Governor

Chairman

Legislative Budget Board

Pete Laney

Speaker of the House

Vice-Chairman

Legislative Budget Board

I certify that this Budget Execution Proposal was adopted by the Legislative Budget Board on August 25, 1994, by the following vote.

On the part of the Senate: Yeas: 5 Nays: 0

On the part of the House: Yeas: 4 Nays: 0

John Keel

Director

Legislative Budget Board

Issued in Austin, Texas, on August 30, 1994.

TRD-9447164

Filed: August 31, 1994

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Pursuant to Texas Government Code, §317.002, this budget execution order is hereby proposed for the following

actions affecting items of appropriation made in Senate Bill 5, 73rd Legislature, Regular Session, 1993.

We find that the need to provide payment of deferred retirement contribution costs and to avoid the payment of additional interest charge creates an emergency requiring additional funding.

We therefore propose that appropriations made for Higher Education Employees Group Insurance Contributions for fiscal year 1994, in the various items of appropriation in Objective "A.2: State Contributions, Other Institutions", pages I-104 and I-105, in the amount of $13,528,793 and which the agency was prohibited from expending pursuant to our order executed July 7, 1994, be transferred to the Employees Retirement System for fiscal year 1995 for the purposes necessary to meet this emergency. Appropriations transferred pursuant to this provision may not be expended unless such expenditure is authorized by law.

We also propose that appropriations made to the agencies listed below for fiscal year 1994, in the amounts listed below, be transferred to the Employees Retirement System for fiscal year 1995 for the purposes necessary to meet this emergency. Appropriations transferred pursuant to this provision shall not be expended unless such expenditure is authorized by law.

Agency-Amount

Board of Public Accountancy-$100,000

Alcoholic Beverage Commission-$50,000

Board of Architectural Examiners-$5,000

Bond Review Board-$80,000

Commerce, Department of-$29,000

Criminal Justice Policy Council-$185,000

General Services Commission, State-$180,000

Licensing and Regulation, Department of-$5,000

Board of Nurse Examiners-$395,000

Board of Podiatry Examiners-$8,000

Real Estate Commission-$53,000

Rio Grande Compact Commission-$11,000

Treasury Department-$300,000

Board of Veterinary Medical Examiners-$3,000

Water Development Board-$10,000

Workers' Compensation Research Center-$62,000

The University of Texas at Austin-$457,000

The University of Texas of the Permian Basin-$50,000

The University of Texas Southwestern Medical Center at Dallas-$125,000

The University of Texas Medical Branch at Galveston-$500,000

Office of the State Prosecuting Attorney-$5,000

The agencies listed previously may allocate the necessary reductions among the various items of appropriations and appropriated funds to achieve the indicated amounts for transfer for fiscal year 1994. The Comptroller of Public Accounts, the Director of the Legislative Budget Board, and the Governor's Budget Director may establish notification and other implementing requirements as necessary, and resolve any issues that may arise relating to the various items of appropriations and appropriated funds to achieve the indicated amounts for transfer pursuant to this order.

Bob Bullock

Lieutenant Governor

Chairman

Legislative Budget Board

Pete Laney

Speaker of the House

Vice-Chairman

Legislative Budget Board

I certify that this Budget Execution Proposal was adopted by the Legislative Budget Board on August 25, 1994, by the following vote.

On the part of the Senate: Yeas: 5 Nays: 0

On the part of the House: Yeas: 4 Nays: 0

John Keel

Director

Legislative Budget Board

Issued in Austin, Texas, on August 30, 1994.

TRD-9447165

Filed: August 31, 1994

Executive and Legislative Budget Office-Joint Budget Hearing Schedule-Appropriations Requests for the 1996-1997 Biennium-(For the Period of September 12-16, 1994)

Comptroller of Public Accounts, September 12, 1994, 9:00 a.m., Room 106, John H. Reagan Building, 105 West 15th Street, Austin; Department of Commerce, September 12, 1994, 10:00 a.m., Room 109, John H. Reagan Building, 105 West 15th Street, Austin; State Securities Board; September 12, 1994, 2:00 p.m., Capitol Extension, State Capitol Building, Room E2.016, Austin; Parks and Wildlife Department, September 13, 1994, 9:00 a.m., Room 109, John H. Reagan Building, 105 West 15th Street, Austin; Employees Retirement System, September 13, 1994, 9:30 a.m., Room 103, John H. Reagan Building, 105 West 15th Street, Austin; Department of Licensing and Regulation, September 13, 1994, 10:00 a.m., Room 101, John H. Reagan Building, 105 West 15th Street, Austin; Department of Information Resources, September 13, 1994, 10:00 a.m., Room 104, John H. Reagan Building, 105 West 15th Street, Austin; School for the Blind and Visually Impaired, September 13, 1994, 1:30 p.m., Room 101, John H. Reagan Building, 105 West 15th Street, Austin; Council on Workforce and Economic Competitiveness, September 13, 1994, 2:00 p.m., Room 106, John H. Reagan Building, 105 West 15th Street, Austin; General Services Commission, September 14, 1994, 9:00 a.m., Room 101, John H. Reagan Building, 105 West 15th Street, Austin; Texas Youth Commission, September 14, 1994, 9:00 a.m., Room 104, John H. Reagan Building, 105 West 15th Street, Austin; Department of Banking Finance Commission, September 14, 1994, 9:00 a.m., Room 103, John H. Reagan Building, 105 West 15th Street, Austin;

Advisory Commission on State Emergency Communications, September 14, 1994, 2:00 p.m., Room 103, John H. Reagan Building, 105 West 15th Street, Austin; Department of Mental Health and Mental Retardation, September 15, 1994, 9:00 a.m., Department of Mental Health and Mental Retardation, Central Office Board Room, 909 West 45th Street, Austin; Stephen F. Austin University, September 15, 1994, 9:00 a.m., Room 106, John H. Reagan Building, 105 West 15th Street, Austin; General Land Office, September 15, 1994, 9:30 a.m., Room 104, John H. Reagan Building, 105 West 15th Street, Austin; Department of Insurance, September 15, 1994, 10:00 a.m., Room 101, John H. Reagan Building, 105 West 15th Street, Austin; Office of the Attorney General, September 15, 1994, 10:00 a.m., Room 103, John H. Reagan Building, 105 West 15th Street, Austin; Natural Resource Conservation Commission, September 15, 1994, 1:30 p.m., Natural Resources Conservation Commission, 12100 Park 35 Circle, Building B, Room 201-A, Austin; Office of Public Insurance Counsel, September 15, 1994, 2:00 p.m. Room 101, John H. Reagan Building, 105 West 15th Street, Austin; Lamar University System, Lamar University-Beaumont, Lamar University-Orange, Lamar University-Port Arthur, Texas Tech University Health Sciences Center, Texas Tech University, September 16, 1994, 8:30 a.m., Room 106, John H. Reagan Building, 105 West 15th Street, Austin; Department of Housing and Community Affairs, September 16, 1994, 9:00 a.m., Room 104, John H. Reagan Building, 105 West 15th Street, Austin; School for the Deaf, September 16, 1994, 2:00 p.m., Room 103, John H. Reagan Building, 105 West 15th Street, Austin.

Issued in Austin, Texas, on September 2, 1994.

TRD-9447534 Don Green
Special Assistant
Legislative Budget Board

Filed: September 2, 1994

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Managed Health Care Advisory Committee

Request for Consultant Services

Pursuant to authority of Texas Government Code, §501.059, the Managed Health Care Advisory Committee (MHCAC) acting on behalf of the Texas Department of Criminal Justice (TDCJ), hereby requests all interested parties to submit a proposal for consulting services to assist the Committee in conducting an in-depth review of the TDCJ, Health Services Division's Quality Assurance Program.

The consultant will be expected to conduct a thorough review of quality assurance activities within the TDCJ Health Services Division. Such a review would clarify the quality assurance roles and responsibilities of TDCJ and participating health science centers under the managed health care structure established by Senate Bill 378, 73rd Legislature, Regular Session 1993. The consultant will be asked to provide written recommendations to the Executive Director of the Managed Health Care Advisory Committee regarding organizational and functional realignment. It is expected that the consultant will be extensively involved in the review process and will act as a facilitator on behalf of the MHCAC.

To be considered for the requested consultant services, interested parties must submit eight copies of their proposals containing statements of interest, listing of qualifications and past experience related to correctional health care standards and quality assurance initiatives. The MHCAC is particularly interested in firms with a demonstrated history of conducting quality assurance evaluations in the correctional health care field.

Proposals must be received no later than 3:00 p.m. September 23, 1994, at the following address: James E. Riley, Executive Director, Correctional Managed Health Care, P.O. Box 99, Huntsville, Texas 77342-0099. All proposals must be sealed and clearly marked Health Care Quality Assurance Services. Questions relating to this RFP should be addressed to Mr. Riley at (409) 294-2972.

Proposals will be reviewed by the MHCAC who will select the consultant whom they deem most qualified to provide the requested services. Factors serving as the basis for selection will include the firm's qualifications, expertise and past experience in conducting quality assurance reviews. A contract will then be negotiated with the selected consultant. The determination of the most qualified consultant shall be the sole discretion of the MHCAC.

Issued in Austin, Texas, on September 1, 1994

TRD-9447495 Carl Reynolds
General Counsel
Managed Health Care Advisory Committee

Filed: September 1, 1994

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Texas Natural Resource Conservation Commission

Notices of Availability and Request for Comment

The Texas Natural Resource Conservation Commission (TNRCC) announces notice and availability of a regional solid waste management plan proposed by the Permian Basin Regional Planning Commission (PBRPC) and a 30-day period for public comment on the plan.

Notice is hereby given that the document entitled, Solid Waste Management Plan-Permian Basin Regional Planning Commission, 1994 to 2014, is available for public review and comment. Regional solid waste management plans are required by the Texas Health and Safety Code, Chapter 363 (Comprehensive Municipal Solid Waste Management, Recovery, and Conservation Act, 1990) for each of the established regional planning agencies (COGs) in the state, which have been officially designated as solid waste management planning regions. The PBRPC region includes the counties of Andrews, Borden, Crane, Dawson, Ector, Gaines, Glasscock, Howard, Loving, Martin, Midland, Pecos, Reeves, Terrell, Upton, Ward, and Winkler. The plan describes current solid waste management efforts in the region, assesses problems and needs, and provides recommendations for future action. The plan was developed with the input of a solid waste advisory committee composed of various public and private interests; meetings of this advisory committee were open to the general public. In addition, four public meetings concerning the plan were held in various locations in the region. A formal public hearing was conducted by PBRPC, in accordance with guidelines of TNRCC. Immediately upon adoption by TNRCC, the plan will have rule status Subchapter O of Municipal Solid Waste Regulations (§330.568) will be amended at a later date to include, by reference, all adopted regional solid waste management plans in the state.

The interested public is invited to submit written comments on the proposed regional plan to the Texas Natural Resources Conservation Commission. Written comments must be received by no later than 30 days from the publication date of this notice. Please address comments to: Daniel J. Eden, Director, Waste Policy Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

Copies of the regional plan document are available for public review at the following two locations: Permian Basin Regional, Planning Commission, 2910 LaForce, Midland, Texas 79711, (915) 563-1061; Texas Natural Resource Conservation Commission, Library, 12100 Park 35 Circle, Building A, First Floor, Austin, Texas 78753, (512) 239-0020.

The Texas Natural Resource Conservation Commission will consider formal adoption of this regional plan at a regular agenda meeting, after the close of the comment period.

Issued in Austin, Texas, on September 2, 1994.

TRD-9447524 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: September 2, 1994

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The Texas Natural Resource Conservation Commission (TNRCC) announces notice and availability of a regional solid waste management plan proposed by the South Plains Association of Governments (SPAG) and a 30-day period for public comment on the plan.

Notice is hereby given that the document entitled, Solid Waste Management Plan-South Plains Association of Governments, 1991 to 2015, is available for public review and comment. Regional solid waste management plans are required by the Texas Health and Safety Code, Chapter 363 (Comprehensive Municipal Solid Waste Management, Recovery, and Conservation Act, 1990) for each of the established regional planning agencies (COGs) in the state, which have been officially designated as solid waste management planning regions. The SPAG region includes the counties of Bailey, Lamb, Cochran, Hockley, Floyd, Hale, Motley, Crosby, Dickens, King, Lubbock, Garza, Lynn, Terry, and Yoakum. The plan describes current solid waste management efforts in the region, assesses problems and needs, and provides recommendations for future action. The plan was developed with the input of a solid waste advisory committee composed of various public and private interests; meetings of this advisory committee were open to the general public. In addition, fourteen public meetings concerning the plan were held in various locations in the region. A formal public hearing was conducted by SPAG, in accordance with guidelines of TNRCC. Immediately upon adoption by TNRCC, the plan will have rule status. Subchapter O of Municipal Solid Waste Regulations (§330.568) will be amended at a later date to include, by reference, all adopted regional solid waste management plans in the state.

The interested public is invited to submit written comments on the proposed regional plan to the Texas Natural Resources Conservation Commission. Written comments must be received by no later than 30 days from the publication date of this notice. Please address comments to: Daniel J. Eden, Director, Waste Policy Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

Copies of the regional plan document are available for public review at the following two locations: South Plains Association of Governments, 1323 58th Street, Lubbock, Texas 79412, (806) 762-8721; Texas Natural Resource Conservation Commission, Library, 12100 Park 35 Circle, Building A, First Floor Austin, Texas 78753, (512) 239-0020.

The Texas Natural Resource Conservation Commission will consider formal adoption of this regional plan at a regular agenda meeting, after the close of the comment period.

Issued in Austin, Texas, on September 2, 1994.

TRD-9447525 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: September 2, 1994

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Public Notice

The Executive Director (E.D.) of the Texas Natural Resource Conservation Commission (TNRCC) has issued a public notice of the proposed remedial action for a portion of a State Superfund site. This portion of the site constitutes an imminent and substantial endangerment due to a release or threatened release of hazardous substances into the environment. The notice is being published in the Commerce Journal Newspaper and the *Texas Register*.

In accordance with 31 Texas Administrative Code (TAC) §335.349(a) and the Texas Health and Safety Code, Chapter 361.187, Solid Waste Disposal Act (Act), a public meeting regarding the proposed remedial action for arsenic in soils at the Hi-Yield site must be held no sooner than 45 days after publishing a notice in the *Texas Register* and a local newspaper. The public meeting will be held in the Council Chambers at City Hall, 1119 Alamo Street, in Commerce, Texas, on October 25, 1994, at 7:00 p.m.

The area for which a remedial action is being proposed is a portion of the Hi-Yield site. The Hi-Yield site was originally proposed for listing on the State Superfund list in September 21, 1993, issue of the *Texas Register* (18 TexReg 6486). It is located in northeast Texas in and near the Norris community, a section of the City of Commerce, Hunt County, Texas. The site lies in the vicinity of Ross, Sycamore, and Johnson Streets. This portion of the Hi-Yield Superfund site to which this notice refers has elevated levels of arsenic in soils on approximately 200 acres of residential and commercial property that surrounds the former Hi-Yield Chemical plant. Nearby Sayle creek has also been impacted by arsenic.

A risk evaluation was conducted for each of the remedial alternatives considered for this portion of the Hi-Yield site. Five remedial action alternatives were developed, along with the associated risks. As a result of those evaluations, the TNRCC is proposing excavation and offsite disposal for the remedial action, specifically alternative #4 as set out in the Hi-Yield State Superfund Site Remedial Action which can be examined in the following records described.

The TNRCC previously has authorized the E.D. to conduct an immediate removal pursuant to the Act, §361.191. An

immediate removal includes taking necessary action to monitor, assess, and evaluate a release or threat of release. Pursuant to this authorization, the E.D. has conducted over 3,300 laboratory analyses on approximately 2,000 samples taken from the site. These analyses have provided guidance of the extent to which removal and disposal of contaminated soil is necessary for purposes of the immediate removal. Coincidentally, these samples also have provided information relating to this proposed remedial action.

The TNRCC has determined that the immediate removal and remedial action for soils at this portion of the site should proceed simultaneously so as to avoid duplicate actions which would result in greater costs, continued exposure to hazardous substances and multiple disturbances of residents. Therefore, the TNRCC is utilizing its immediate removal investigation as a remedial investigation/feasibility study or similar study for the purpose of this proposed remedial action.

The public meeting will be legislative in nature and not a contested case hearing under the Administrative Procedure Act (Texas Government Code, Chapter 2001). Persons desiring to make comments on the proposed remedial action may do so in writing prior to the public meeting or orally or in writing at the public meeting All comments concerning the proposed remedial action and requests for information (copy of the Proposed Remedial Action) should be submitted to Alonzo G. Arredondo, Superfund Investigation Section, Pollution Cleanup Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2145.

The public records for this site are available for inspection and copying from 8:00 a.m. to 5:00 p.m., Monday-Friday. The records are located in the TNRCC Central Records Center, Building D, Room 190, 12118 North Interstate 35, Austin, Texas 78753, (512) 239-2920. Copying of file information is subject to payment of a fee The Proposed Remedial Action Document also will be available for review at the local repository on September 8, 1994. The repository is in the Public Library, 1210 Park Street, Commerce, Texas, (903) 886-6858.

Issued in Austin, Texas, on September 2, 1994.

TRD-9447526 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: September 2, 1994

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Public Utility Commission of Texas

Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on August 25, 1994, to amend a certificate of convenience and necessity pursuant to §§16(a), 18(b), 50, 52, and 54 of the Public Utility Regulatory Act A summary of the application follows.

Docket Title and Number Application of Southwestern Bell Telephone Company to Amend Certificate of Convenience and Necessity Within Johnson County, Docket Number 13370, before the Public Utility Commission of Texas

The Application. In Docket Number 13370, Southwestern Bell Telephone Company seeks approval of the application to expand its Cleburne exchange to include a portion of uncertificated territory between the Cleburne exchange and GTE Southwest, Inc.'s Glen Rose exchange.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 teletypewriter for the deaf on or before October 7, 1994.

Issued in Austin, Texas, on September 1, 1994.

TRD-9447492 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: September 1, 1994

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Notices 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 a customer-specific contract for the Dallas/Fort Worth Airport Board.

Tariff Title and Number. Application of GTE Southwest Incorporated for approval of a Customer-Specific Contract for the Dallas/Fort Worth Airport Board pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 13382.

The Application. GTE Southwest Incorporated is requesting approval of a customer-specific contract to provide CentraNet Service to the Dallas/Fort Worth Airport Board. The CentraNet Service is a central office-based PBX-type service of over 200 lines. GTE-SW proposes to offer these services within its DFW Airport exchange to the business operations of the Dallas/Fort Worth Airport Board, 3200 East Airfield Drive, DFW Airport, Texas 75261.

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 September 2, 1994

TRD-9447544 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: September 2, 1994

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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 a customer-specific contract.

Tariff Title and Number. Application of Lufkin-Conroe Telephone Exchanges, Inc. Notice of Intent to file an application for Approval of a Customer-Specific Contract for General Service arrangement pursuant to Public Utility

Commission Substantive Rule 23.27. Tariff Control Number 13385.

The Application. The customer specific contract, requested by General Services Arrangement (GSA), incorporates a Centrex-Custom Service Arrangement whereby 200 or more stations are involved. This is a central office-based service operating in the Lufkin-exchanges in order to provide telecommunications through the use of Unrestricted Access Lines, Intercom Access Lines and features.

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 September 2, 1994.

TRD-9447543 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: September 2, 1994

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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 Shell Oil, Houston, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of an Addition to the Existing Plexar-Custom Service for Shell Oil pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 13378.

The Application. Southwestern Bell Telephone Company is requesting approval of an addition to the existing Plexar-Custom Service for Shell Oil. The geographic service market for this specific service is the Houston, 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) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on September 2, 1994.

TRD-9447542 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: September 2, 1994

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Texas Department of Transportation

Public Notice

Introduction: The Texas Department of Transportation gives notice of its intent to amend a consulting service contract entered into on January 14, 1994, pursuant to the provisions of the Texas Government Code, §2254.021 et seq, otherwise known as the Consulting Services Act. The value of the amendment will exceed $10,000. The original contract was entered into between the Texas Department of Transportation and Deloitte and Touche, 1010 Grand Avenue, Suite 400, Kansas City, Missouri, 64106-2232. The original contract amount was $1, 003,988. This original contract related to the development of a Business Information and Systems Plan for the Texas Department of Transportation. Deloitte and Touche was originally selected as the contractor under the above cited contract by a process consisting of a request for proposals, review of those proposals by selection committee and selection of the highest ranked proposal based on criteria set out at the Texas Government Code, §2254.027 et seq, and after an appropriate notice was published in the August 3, 1993, issue of the *Texas Register* (18 TexReg 5150).

Invitation and Disclosure: As required by the Consulting Services Act, an invitation for private consultants to provide offers of consulting services is hereby given. However, as required by the Consulting Services Act, it is hereby disclosed that the consulting services desired pursuant to the amendment relates to the service previously performed pursuant to the contract to be amended and that the Texas Department of Transportation intends to award the amendment to the contractor with whom the contract to be amended was awarded (Deloitte and Touche) unless a better offer is submitted.

Services Rendered under the Original Contract: The original contract provides for a joint effort between the Texas Department of Transportation and the consultant to develop a Business Information and Systems Plan; perform analysis of a pilot business activity using a proposed planning and analysis methodology; develop and implement an application for the pilot business activity using a proposed development methodology which is fully integrated with the planning and analysis methodology; and provide follow up consulting to assist in implementing the Business Information and Systems Plan.

Description of Services under Proposed Amendment: Additional tasks related to the pilot will include providing assistance in organizational change management and changing business processes. The additional tasks must be incorporated into a customized methodology for use by the department in implementing the Business Information and Systems Plan. The proposed amendment describes the additional tasks in Phases I through III.

Agency Contact: Contact Linda Clark, Texas Department of Transportation, Information Resources Management Office, Worthen Bank Building, 919 Congress Avenue, Suite 470, Austin, Texas 78701, (512) 305-9174, for copies of the proposed amendment, instructions for submitting offers and selection procedures.

Closing Date for Receipt of Offers: The Texas Department of Transportation will accept offers until 4:50 p.m. the 19th day following the date of this issue of the *Texas Register*. Offers must be in writing, comply with the written submission instructions and be delivered to the Texas Department of Transportation, Information Resources Management Office, Attention: Linda Clark, Worthen Bank Building, 919 Congress Avenue, Suite 470, Austin, Texas 78701. No other method of transmission is permissible.

Procedure for Awarding Amendment: The Texas Department of Transportation intends to award the amendment to its current contractor unless a better offer is submitted. In determining whether an offer is better, the Texas Department of Transportation will consider (in accordance with the Consulting Services Act) the competence, knowledge and qualifications of the offeror to perform the services described by this notice and the reasonableness of the fee proposed for such services as such competence, knowl-

edge, qualifications, and fee reasonableness are demonstrated by the offers submitted. These offers will be subjected to essentially the same process as was applied to the selection of the original contractor. Details of the selection procedure accompany the instructions for submitting offers. In the event all considerations are equal, preference will be given to a private consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state, pursuant to the provisions of the Texas Government Code, §2254.027.

If an offer other than that proposed by the original contractor is selected, then the offeror selected must execute a contract with the Texas Department of Transportation specifying substantially the same performances described by this notice and subject to substantially the same terms and conditions as specified in the proposed amendment.

Issued in Austin, Texas, on September 2, 1994.

TRD-9447541 Diane L. Northam
Legal Executive Assistant
Texas Department of Transportation

Filed: September 2, 1994

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Request for Proposals, Aviation Division

The Texas Department of Transportation, Aviation Division publishes the following requests for qualifications for providing professional engineering services which are filed under the provisions of Texas Civil Statutes, Article 664-4. The Aviation Division will solicit and receive qualifications for professional services for the design and construction administrative phases for each individual project listed as follows:

TxDOT Project Number: 96-10-041. Airport Sponsor: County of Angelina. Project Scope: At Angelina County Airport, the design and construction phases for improvements to the runway, taxiways, apron and entrance road pavements including: rehabilitate and mark runway 7-25; overlay and mark taxiways; reconstruct taxiways and apron; replace lighting system regulators and rotating beacon; install taxiway signage, medium intensity runway lights radio control system, taxiway reflectors, segmented circle, and erosion and sedimentation controls; clear and grub primary surface runway 25; repair entrance road and improve drainage; and associated appurtenances. Estimated total cost of the project is: $1,586,000. Project Manager: John Wepryk.

TxDOT Project Number: 96-15-031. Airport Sponsor: City of Caddo Mills. Project Scope: At the Caddo Mills Municipal Airport, the design and construction phases for improvements including: pavement repairs, clean and seal Portland cement concrete joints, stripe and mark Runway 17R-35L; install medium intensity runway lights on runway 17R-35L; install lighted windcone and segmented circle; drainage improvements; install erosion and sedimentation controls; and associated appurtenances. Estimated total cost of the project is $843,000. Project Manager: Ed Oshinski.

TxDOT Project Number: 96-05-031. Airport Sponsor: City of Cleburne. Project Scope: At the Cleburne Municipal Airport, the design and construction phases for improvements to: extend runway, taxiway and medium intensity runway lights; rehabilitate and mark runway, apron and taxiway; reconstruct taxiway; relocate threshold lights, glideslope indicator, wind cone and segmented circle; grade primary surface; install drainage improvements; lower powerline; install erosion and sedimentation controls; and associated appurtenances. Estimated total cost of the project is $1,587,000. Project Manager: Alan Schmidt.

TxDOT Project Number: 96-07-081. Airport Sponsor: City of Granbury. Project Scope: At the Granbury Municipal Airport, the design and construction phases for improvements to: rehabilitate and mark runway, taxiways and apron; overlay taxiway; install reflectors; install glideslope indicator; install fencing; improve apron drainage; lower powerlines; and associated appurtenances. Estimated total cost for the project is $347,000. Project Manager: Alan Schmidt.

TxDOT Project Number: 96-01-031. Airport Sponsor: County of Wilbarger. Project Scope: At the Wilbarger County Airport, the design and construction phases for improvements to: construct aprons; rehabilitate and mark runways and taxiway; reconstruct apron; install reflectors; install erosion and sedimentation controls; and associated appurtenances. Estimated total cost for the project is $899,000. Project Manager: Alan Schmidt.

TxDOT Project Number: 96-03-021. Airport Sponsor: County of Hutchinson. Project Scope: At the Hutchinson County Airport, the design and construction phases for improvements to: reconstruct and mark taxiways; reconstruct hangar aprons; reconstruct runway turnaround; enlarge runway turnaround; repair and fill cracks in concrete apron; rehabilitate and mark portion of runway 17; rehabilitate terminal apron; install precision approach path indicator for runway 35; install taxiway hold signs and runway exit signs; install taxiway edge reflectors; install windcone and segmented circle; relocate perimeter fencing; construct drainage improvements; install erosion and sedimentation controls and associated appurtenances. Estimated total cost for the project is $1,024,000. Project Manager: Ronnie Moore.

TxDOT Project Number: 96-17-061. Airport Sponsor: City of Hereford. Project Scope: At the Hereford Municipal Airport, the design and construction phases for improvements to: reconstruct, widen and mark taxiway; reconstruct T-hangar access taxiway and apron; replace visual approach slope indicator with precision approach path indicator; install taxiway edge reflectors; install segmented circle; replace rotating beacon; install erosion and sedimentation controls; and prepare Airport Layout Plan and associated appurtenances. Estimated total cost for the project is $1,834,000. Project Manager: Ronnie Moore.

TxDOT Project Number: 95-15-031. Airport Sponsor: City of Memphis. Project Scope: At the Memphis Municipal Airport, the design and construction phases for improvements to: extend, widen, reconstruct, stripe and mark runway; construct turnarounds for runway; construct hangar access taxiway; reconstruct hangar access taxiway; expand and reconstruct apron; reconstruct and widen stub taxiway; replace low intensity runway lights with medium intensity runway lights; extend medium intensity runway lights; install lighted windcone, segmented circle, rotating beacon, tower, and fencing; bury power line; rehabilitate and reconstruct entrance road; prepare Airport Layout Plan; and install erosion and sedimentation controls; and associated appurtenances. Estimated total cost of the project is $ 1,580,000. Project Manager: Ronnie Moore.

Those interested consulting engineers should submit for each individual project two unfolded copies of pages 1-3 of TxDOT, Aviation Division Form 439 (dated August, 1993) to the: Texas Department of Transportation,

Aviation Division, Attention: Grant Administration, Mailing Address: P.O. Box 12607, Austin, Texas 78711, Hand Delivery Address: 410 East Fifth Street, Austin, Texas 78701, (512) 476-9262, 1-800-68-PILOT.

Those firms which do not already have a copy of Form 439 (dated August, 1993) should request one from the above address. Qualifications will not be accepted in any other format. Two completed unfolded copies of Form 439 (dated August 1993) for each individual project must be received by 4:00 p.m. (CDT), September 23, 1994, in the offices of the Aviation Division. The three pages of instructions should not be forwarded with the completed questionnaires. Electronic facsimiles will not be accepted.

The airport sponsor(s) duly appointed committee will review all professional qualifications and select three to five engineering firms for proposals. Those firms selected will be required to provide more detailed, project-specific proposals which address the project team, technical approach, Disadvantaged Business Enterprise (DBE) participation, design schedule, and other matters, prior to the final selection process. The final consultant selection by the sponsor's selection committee will be made following the completion of the review of proposals and/or interviews. Procedures for award will be in accordance with FAA Advisory Circular AC 150/5100-14C.

The airport sponsor reserves the right to reject any or all statements of qualifications, and to conduct new consulting engineer selection procedures for future projects.

If there are any questions, please contact Karon Wiedemann, Director, Grant Administration, Aviation Division, Texas Department of Transportation, or the Aviation Division project manager at (512) 476-9262 or 1-800-68-PILOT.

Issued in Austin, Texas, on September 2, 1994.

TRD-9447590 Diane L. Northam
Legal Executive Assistant
Texas Department of Transportation

Filed: September 2, 1994