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Texas Register

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Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

Secretary of State
John Hannah, Jr.

Director
Dan Procter

Assistant Director
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Typographers
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How to Use the Texas Register

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

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

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

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

Proposed Sections - sections proposed for adoption.

Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Sections - sections adopted following a 30-day public comment period

Open Meetings - notices of open meetings.

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

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

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 18 (1993) is cited as follows: 18 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 "18 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 18 TexReg 3."

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

Texas Administrative Code

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

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

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

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

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

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

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

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 22, April 16, July 13, and October 12, 1993). 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.

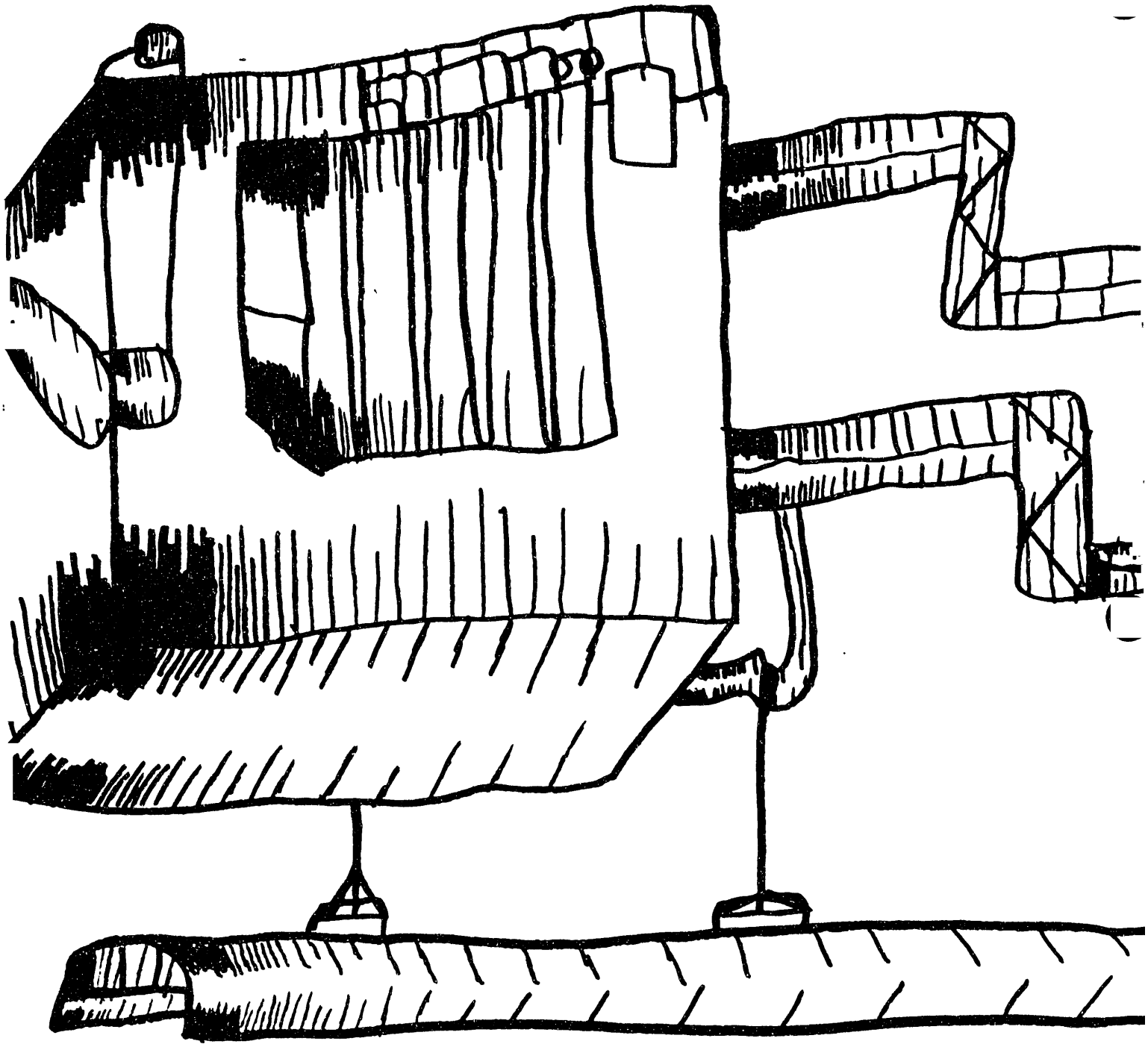
Contour 10-1-93

Name: Jarod Frannea
Grade: 11
School: Skyline High School, Dallas ISD

Friday Oct 9, 1998 Contour: Plant (value - Hatches)

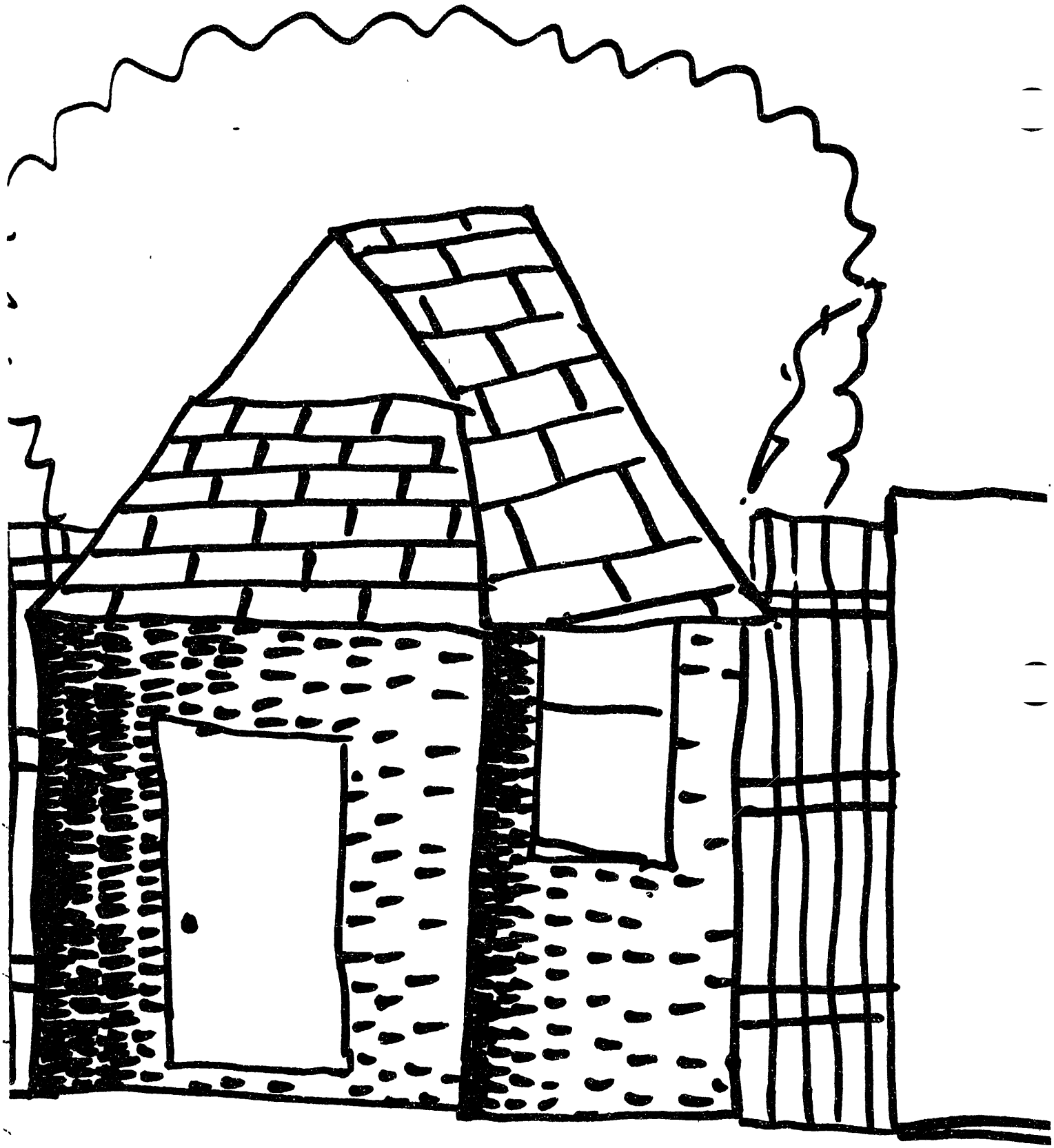
Name: John Jothish
Grade: 9
School: Skyline High School, Dallas ISD

Contour: AIR & HEAT UNIT
(small viewfinder
value hatching)



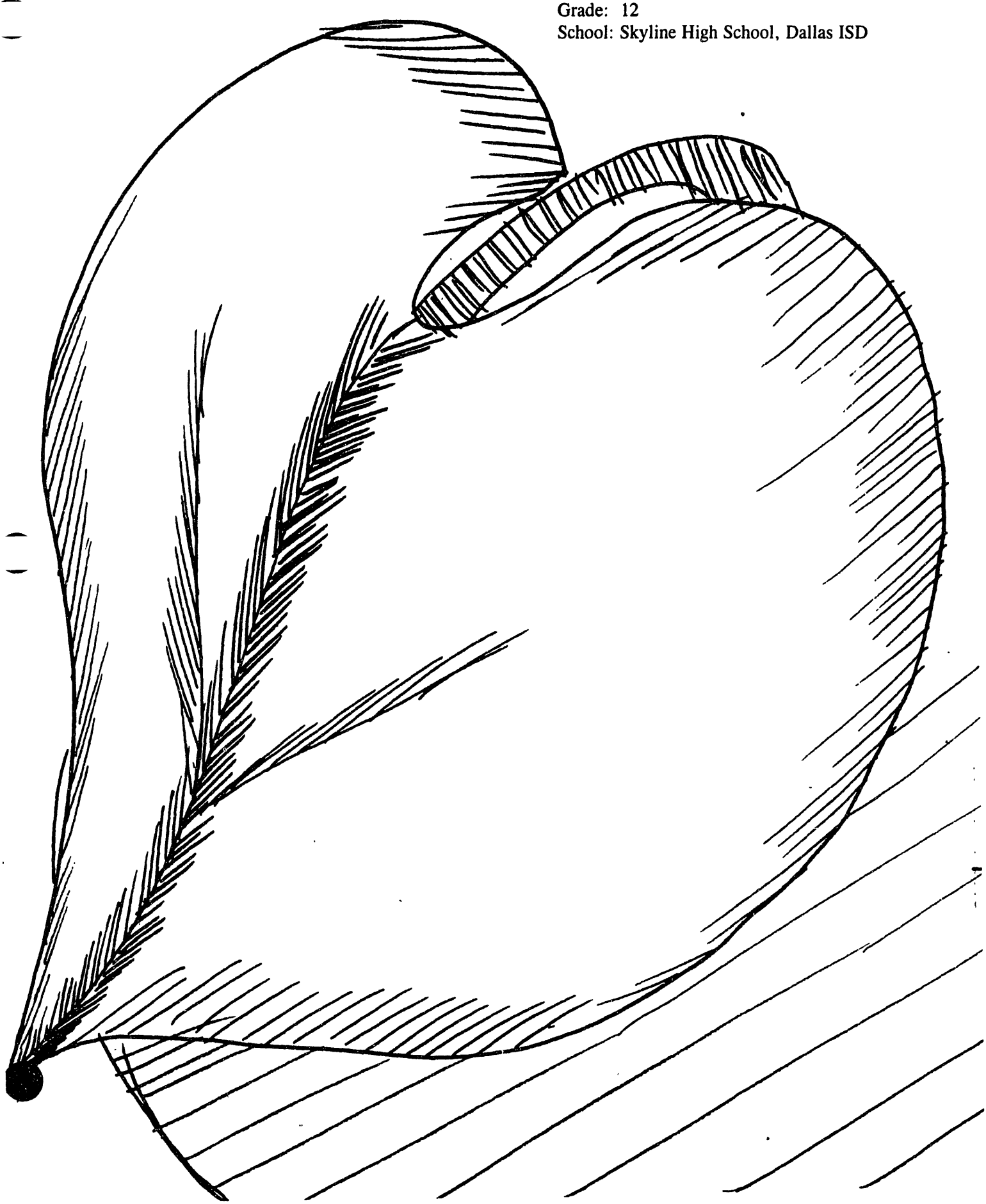
Name: Marcia Wooten
Grade: 9
School: Skyline High School, Dallas ISD

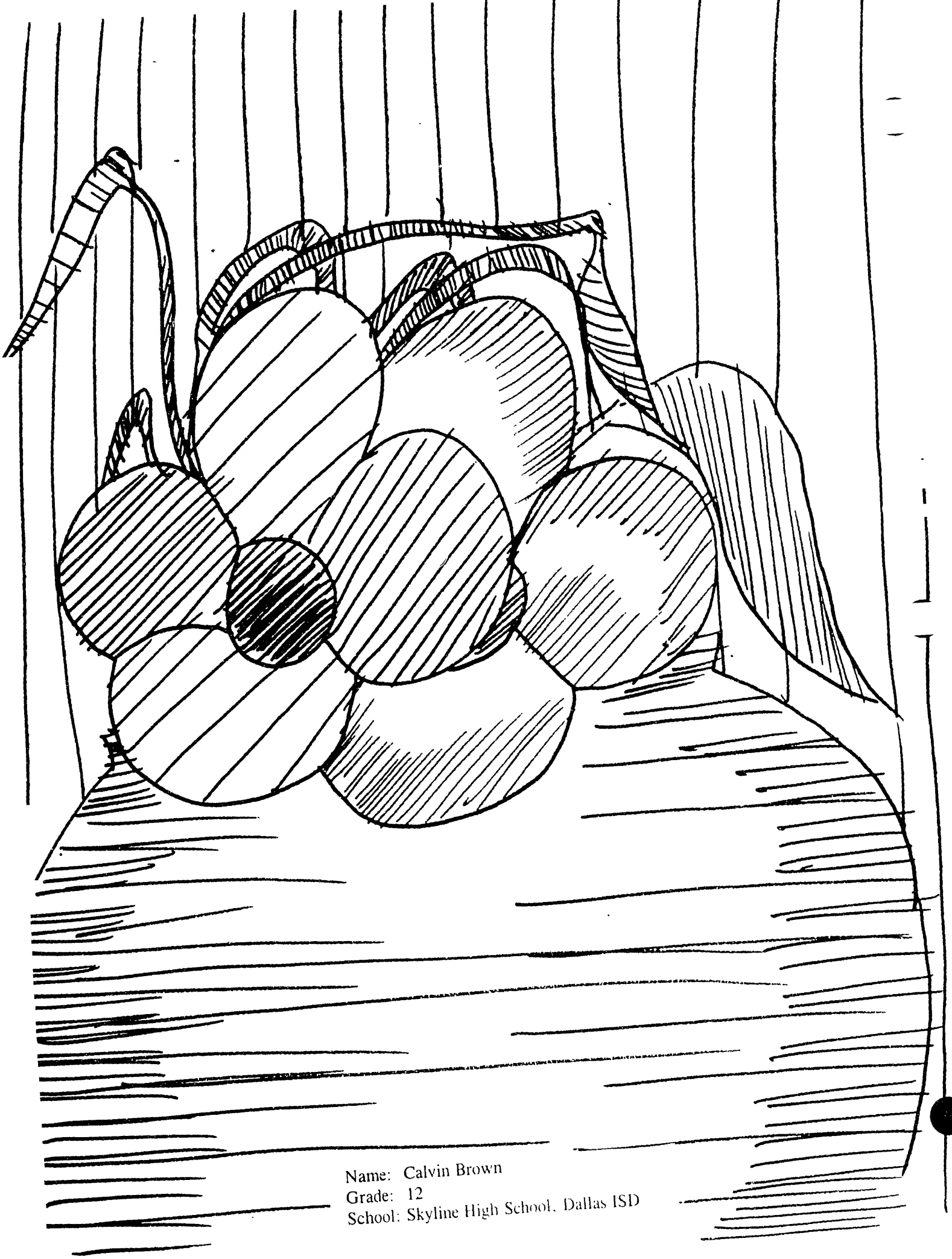
Name: Richard Johnson
Grade: 12
School: Skyline High School, Dallas ISD



Name: Richard Johnson
Grade: 12
School: Skyline High School, Dallas ISD

Name: Calvin Brown
Grade: 12
School: Skyline High School, Dallas ISD





Name: Calvin Brown
Grade: 12
School: Skyline High School, Dallas ISD

Emergency Sections

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

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

TITLE 22. EXAMINING BOARDS

Part V. Texas State Board of Dental Examiners

Chapter 109. Conduct

Infection Control

• 22 TAC §109.222

The Texas State Board of Dental Examiners adopts on an emergency basis an amendment to §109.222(i), concerning infection control.

The Board finds that there is an imminent peril to the public health safety or welfare due to the threat of infection, especially of hepatitis A, B and C, tuberculosis and HIV, being passed from infected dental laboratory workers to dental health care workers and dental patients through the dental prostheses manufactured, repaired, or handled in unsanitary conditions or by infectious laboratory workers. Currently, dental laboratories are subject to regulations have largely minimized this threat to the public. The imminent effect of the North American Free Trade Agreement (NAFTA) will result in commerce with many dental laboratories not subject to OSHA regulation and not in compliance with such regulation Further, Mexico has a much higher rate of infection for Hepatitis A, B, and C and tuberculosis than does the State of Texas. Transmission of dental prostheses in an manner not in compliance with OSHA regulations which have been manufactured, repaired, or handled under conditions not in compliance with OSHA guidelines represents a significant risk of infection to dental health care workers and their patients. Under the terms of NAFTA, failure to enact regulation by January 1, 1994, may preclude new regulations on this subject. The Board was unaware of and did not anticipate such a regulatory deadline applicable to State licensing and regulatory agencies, nor is the Board aware of any reason it should have aware of such an aspect of the NAFTA. The Board was made aware of this deadline at its meeting on November 20, 1993 In order to reduce this threat and to ensure the existence of regulatory measures to reduce this threat it was necessary for the Board to adopt an emergency rule

The amendment is adopted on an emergency basis under the Texas Government Code, §2001.034; Texas Civil Statutes, Article 4551d(c), and Article 4551f, which the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties, and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety

§109.222 Required Sterilization and Disinfection.

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

(i) When it is necessary to return items (including, but not limited to, impressions, bites, working casts, prosthetic appliances or devices) to a dental office from a dental laboratory which item has been fabricated or repaired, those items that have been potentially contaminated shall be rendered non-biohazardous. Before return to the dentist by the dental laboratory or technician, the item must be rendered non-biohazardous according to established OSHA guidelines.

Issued in Austin, Texas, on November 23, 1993

TRD-9332594

C Thomas Camp
Executive Director
Texas State Board of Dental Examiners

Effective date November 23, 1993

Expiration date. March 23, 1994

For further information, please call. (512) 463-6400

♦ ♦ ♦

Contour Entry 10-5-93

Name: Jarod Frannea
Grade: 11
School: Skyline High School, Dallas ISD

Proposed Sections

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 any action may be taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive sections, 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 13. CULTURAL RESOURCES

Part IV. Texas Antiquities Committee

Chapter 41. Practice and Procedure

Memoranda of Understanding

• 13 TAC §41.15

The Texas Antiquities Committee (committee) proposes an amendment to §41.15, concerning Memoranda of Understanding. The amendment is necessary to ensure that fiscal implications are consistently addressed by permit-specific MOU agreements and to adopt a new Memorandum of Understanding (MOU) into agency rules.

The proposed amendment is needed to ensure that cost-effective methods are used during archeological data recovery excavations conducted under the provisions of the Antiquities Code of Texas. The amendment as proposed provides for the adoption of a written memorandum of understanding pertaining to the scope and estimated cost of data recovery excavations before such work commences.

The proposed amendment also adopts by rule a Memorandum of Understanding between the committee and the Texas Water Development Board. Under the provisions of the MOU, one annual antiquities permit is issued by the committee for each calendar year that the agreement is in effect. The agreement allows multiple archaeological surveys to be conducted under one antiquities permit per year for projects constructed with financial assistance from the Texas Water Development Board.

Dr. James E. Bruseth, deputy state historic preservation officer, has determined that for the first five-year period the rule is in effect there will be fiscal implications for state government, but not for local government as a result of enforcing or administering the sections. The fiscal impact to state government will be cost savings recovered from the reduced number of administrative reviews necessary for permit applications submitted on a project by project basis. An average of 30 projects per year may be conducted by state agencies under antiquities permit at the approximate cost of $200 per permit. The issuance of one annual antiquities permit for the Texas Water Development Board effects an approximate savings of $5,800 per year.

Dr. Bruseth also has determined that for each year of the first five year period the section is in effect the public benefit anticipated as a result of administering the rule will be the adoption of cost-effective methods for archeological excavations located on public property conducted under permits issued by the committee. Moreover, the proposed section will help all parties to agree on the scope and cost of archeological data recovery excavations. The proposed adoption of an MOU between the committee and the Texas Water Development Board benefits the public by eliminating duplicative antiquities permit application procedures and reducing agency administrative review costs approximately $5,800 per year. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Dr. James E. Bruseth, Deputy State Historic Preservation Officer, Texas Historical Commission, Department of Antiquities Protection, P. O. Box 12276, Austin, Texas 78711.

The amendment is proposed under the Natural Resources Code, Title 9, Chapter 191 (revised by Senate Bill 231, 68th Legislature, 1983, and by House Bill 2056, 70th Legislature, 1987), §191.02, which provides the Texas Antiquities Committee with authority to promulgate rules and require contract or permit conditions to reasonably effect the purposes of Chapter 191.

Cross Reference-Title 9, Natural Resources Code, Texas Water Code, Chapter 6, §6.104.

§41.15. Memoranda of Understanding.

(a) (No change.)

(b) **Primary Considerations and Stipulations. All agreements are subject to §§41.17, 41.20, and 41.21 of this title (relating to Issuance of Permits, Archeological Permit Categories, and Application for Archeological Permit). Primary considerations in the development of permit specific memoranda shall include: the significance of the cultural resource(s); the nature of the impact of the project on the cultural resource(s); and fiscally appropriate and cost-effective means to mitigate the effect of the project on the cultural resource(s). The memoranda will stipulate basic information related to the data recovery program for each permitted project, including but not limited to: the significance of the area to be excavated; the extent of the investigation; the methods and techniques to be employed; the coordination of the excavation with project construction schedules; and the estimated budget for all phases of work related to the investigation, including artifact analysis and report production. The committee may also require a performance bond to be posted prior to issuance of an antiquities permit. Memoranda of Understanding between the Texas Antiquities Committee and the Texas Department of Transportation and the Texas Water Development Board follow.** [Memoranda of Understanding. Memoranda of understanding are mutual agreements entered into in order to better implement programs and policies for the preservation of historical and archeological resources. A memorandum of understanding (MOU) is a formal mechanism which fosters the joint review of the impact of public projects and the improved management of State Archeological Landmarks (SALs). Increased coordination and communication between agencies, and political subdivisions, ensures that historical properties and archeological sites are given full consideration in a uniform and timely manner.]

(1) (No change.)

(2) **Texas Water Development Board (TWDB)** [Future adoption of memoranda of understanding. The committee may, at a later date, adopt by rule memoranda of understanding with additional state agencies, federal agencies, and/or political subdivisions of the State of Texas to better implement programs and policies for the preservation of historic properties and archeological resources situated on public lands].

(A) Responsibilities. In a systematic manner, TWDB will conduct surveys for all types of archeological sites on lands belonging to or controlled by any county, city or other political subdivision of the State of Texas which may be impacted by proposed development projects that are funded in whole or in part by TWDB. Where appropriate, all surveys shall consist of pedestrian surveys and sample subsurface probing (either

shovel or mechanical testing, as appropriate) of proposed construction or development areas that may yield evidence of cultural resources (both historic and prehistoric), including areas that may receive direct impact from construction traffic.

(i) TWDB shall comply with requirements for a principal investigator as listed in §41.5 of this title (related to Definitions). Each individual, as principal investigator, shall be involved in at least 25% of the field investigation performed under the agreement.

(ii) TWDB's staff archeologists will send the Department of Antiquities Protection (DAP) advance written notification of the following activities: proposed reconnaissance, 100% pedestrian surveys and/or sample subsurface probing investigations. The notification letters shall include information on the type of project development proposed to receive TWDB financial assistance, the kind of archeological investigation proposed, the principal investigator or co-principal investigators intending to conduct the investigation, and the expected dates of the field work.

(iii) TWDB staff archeologists will send DAP a report within 30 days of the completion of each investigation, notifying DAP of the findings of the investigation. The report shall contain information on the basic scope of the work, findings, a project map showing any cultural site locations recorded, copies of all State Site Survey forms, a project development clearance request where appropriate, and any recommendations for further work. The report should conform with the guidelines for report preparation of the Council of Texas Archeologists. In cases where the scope and/or results of a particular investigation warrant a comparatively lengthy report requiring more than 30 days to prepare, TWDB staff archeologists will send a brief interim report notifying DAP of the findings of the investigation and proposed dates for the completion and submittal of the final report to DAP.

(iv) DAP is responsible for responding to the report or the interim report, as appropriate, within 30 days of receipt of such report.

(v) For projects involving federal funds, TWDB field investigations will be conducted, where applicable, in a manner consistent with the National Historic Preservation Act, §106, the Secretary of the Interior's Guidelines on Archeology and Historic Preservation; the Regulations of the Advisory Council on Historic Preservation (36 Code of Federal Regulations Part 800), and the Antiquities Code of Texas.

(vi) A draft annual report summarizing the past calendar year's investigations under each yearly permit will be submitted to DAP by April 1 of the following year. Each project investigation report within the annual report will be concise, but informative, and include the same levels of data required under the provisions of §41.24 of this title (related to Reports Relating to Archeological Permits).

(vii) Once the draft annual report is approved by DAP, TWDB will submit 20 copies of the final annual report to DAP no later than 90 days after TWDB has received DAP's approval of the draft report. The final annual report should be in a form that conforms to §41.24(a) of this title (related to Reports Relating to Archeological Permits).

(viii) Copies of field notes, maps, sketches, and daily logs, as appropriate, will be submitted to DAP along with the annual report. Where duplicates are impractical, originals may be submitted for microfilming. Upon completion of microfilming, originals will be returned to TWDB.

(ix) During preservation, analysis, and report preparation or until further notice by DAP, artifacts, field notes, and other data gathered during investigations will be kept temporarily at the TWDB. Upon completion of annual reports, the same artifacts, field notes, and other data will be placed in a permanent curatorial repository at the Texas Archeological Research Laboratory, The University of Texas at Austin, or other DAP-approved repository, at no cost to the TWDB.

(x) Should the staff archaeologist positions at the TWDB be eliminated, TWDB remains responsible for contracting with an individual who meets the requirements of §41.15(2)(A)(1) of this title (related to Memoranda of Understanding Responsibilities), to serve as principal investigator to complete the year-end report to the DAP.

(xi) The TWDB and/or its applicants for financial assistance may find that a particular project is so extensive or under such constraints of time and need that it is more efficient and effective for the archeological or related investigations to be conducted by a qualified archeologist under contract to the applicant. In such instances, the investigations will require a project specific Antiquities Permit to be obtained by the contracting archeologist.

(xii) The following general procedures shall apply for investigation of all projects, including but not limited to the construction of water treatment and storage facilities, wastewater and sludge treatment and disposal facilities, water distribution and wastewater collection facilities, flood control modifications, municipal solid waste facilities, and reservoirs proposed to receive financial assistance from TWDB. Subject to those exceptions outlined below, the complete project will be investigated.

(I) Archival research will be conducted at the Texas Archeological Research Laboratory, The University of Texas at Austin, and other facilities, as appropriate, to determine what cultural resources have been previously recorded in the vicinity of all proposed project construction areas. If the project can be shown to be in areas which have been extensively disturbed by previous development and/or unlikely to contain intact or significant cultural resources, then, based upon this initial review and information provided by the applicant for financial assistance, TWDB may request the DAP to allow the project to proceed to construction without further investigation.

(II) When field investigations are determined to be necessary by TWDB or stipulated by DAP review, the field methodology shall include pedestrian survey of all project areas unless preliminary inspection determines that a particular project area has been substantially altered or is physiographically situated such that it appears highly unlikely that significant cultural resources occur in the area. Appropriate to the type of project and location, TWDB archeologists may undertake limited subsurface probing in the form of mechanical or shovel testing in order to identify and/or evaluate buried cultural remains. When field investigations reveal that no significant cultural resources are located in the proposed project areas and, in the opinion of the principal investigator, no damage to significant cultural resources is anticipated, as reflected in a written report to DAP, the project implementation will be allowed to proceed, subject to DAP concurrence with the recommendation under §41.15(2)(A)(iv) of this title (related to Memoranda of Understanding Responsibilities). In cases where historic and/or prehistoric cultural resources are found in the vicinity of proposed construction areas, the principal investigator will assess the significance of the resources and make recommendations for avoidance, testing, or mitigation of potentially significant resources, as appropriate, in the reports on the investigations. Decisions will be based upon the need to conserve cultural resources without unduly delaying the progress of project implementation.

(xiii) TWDB will ensure that it does not release funds for political subdivision construction prior to disposition, or formally agreed to disposition, of archeological and/or historical resources in accordance with DAP-approved reports referenced in §41.15(2)(A)(iii), (iv), (v) and (xi) of this title (relating to Memoranda of Understanding Responsibilities). Conditions of the TWDB financial assistance will provide, consistent with §41.11 of this title (related to Discovery of Potential Landmark During Construction), that if an archeological site is discovered during project implementation, work will cease in the area of the discovery, the site will be protected, and the discovery will be reported immediately to the Texas Historical Commission.

(xiv) Any member or agent of DAP may, with timely notice to TWDB, inspect TWDB investigations in progress subject to the provisions of the MOU and the yearly permit issued to TWDB by DAP.

(xv) Said yearly permit is authorization for reconnaissance and 100% pedestrian survey and/or limited subsurface probing of areas of less than 300 acres when one TWDB staff archeologist is to conduct the investigation. When investigations of areas greater than 300 acres are proposed, TWDB shall consult with DAP regarding the need for a project specific permit. The investigation of tracts larger than specified above may require project-specific Antiquities Permits regardless of whether the TWDB has them performed by staff archeologists or by contract with other qualified archeologists. The above limitations do not apply to proposed pipeline or other linear construction projects wherein the total area to be examined may cumulatively exceed the acreage limitations.

(xvi) Advanced archeological investigations such as archeological testing or mitigative archeological excavations are not covered under the yearly permits, and any such investigation deemed necessary by DAP will require a project specific Antiquities Permit.

(xvii) All conditions listed in the permit form remain unaltered by these guidelines.

(B) Permits. An Antiquities Permit is to be issued for each calendar year that this agreement is in effect with the stipulation that the responsibilities as outlined above are to be observed. Failure to comply with the provisions of this MOU could result in cancellation of the yearly permits at the discretion of DAP. The results of the investigations will be evaluated at the end of each permit period. A new permit will be automatically issued to TWDB by DAP by January 15 of each calendar year, assuming all conditions of the previous permit and this MOU have been met.

(C) Term. This Memorandum of Understanding will remain in full force and effect until canceled by the written notice of either party. The MOU may be amended by mutual written agreement between TWDB and DAP.

(3) Future adoption of memoranda of understanding. The committee may, at a later date, adopt by rule memoranda of understanding with additional state agencies, federal agencies, and/or political subdivisions of the State of Texas to better implement programs and policies for the preservation of historic properties and archeological resources situated on public lands.

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

Issued in Austin, Texas, on November 23, 1993

TRD-9332667 Mark H Denton
Certifying Official
Texas Antiquities Committee

Proposed date of adoption January 18, 1994

For further information, please call (512) 463-6096

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter DD. Vehicle Storage Facilities

- **16 TAC §5.907**

The Railroad Commission of Texas proposes an amendment to §5 907 concerning responsibilities of a vehicle storage facility licensee with respect to storage requirements The proposed amendment clarifies generally the responsibilities of a vehicle storage facility operator The proposed amendment clearly defines storage requirements of a vehicle storage facility operator, which include reasonable efforts to prevent theft of the vehicle or its contents, and distinguishes such efforts from conduct that constitutes preservation of a stored vehicle, as defined in §5 902 of this title (relating to Definitions)

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

Barbara H Owens, hearings examiner, has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of administering the rule as proposed will be clarification of the distinction between conduct which is included in the fee for storage of a vehicle, as specified in §5 919(c) of this title (relating to Technical Requirements-Storage Fees/Charges), and what conduct may be included in any fee charged for "preservation," as specified in §5 919(b) of this title (relating to Technical Requirements-Storage Fees/Charges). There will be no effect on small businesses There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Barbara H. Owens, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967 Comments will be accepted for 30 days after publication in the *Texas Register*

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

The following article is affected by this rule: §5 907-Texas Civil Statutes, Article 6687-9a

§5.907. Responsibilities of the Licensee-Storage Requirements.

(a) No vehicle may be stored or kept at any licensed storage facility unless it is kept inside the fenced or enclosed area at all times For purposes of this subsection, enclosed shall mean inside a building. **A vehicle accepted for storage in a facility must be secured to prevent theft of the vehicle or its contents, including but not limited to locking doors, closing windows and hatchbacks, and raising or covering convertible tops.**

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

(d) **A one-time fee of $10 may be charged for preservation of a stored vehicle, as defined in §5.902 of this title (relating to definitions).** If doors or windows are broken or inoperative and require the use of materials such as plastic or canvas tarpaulins, such materials must be used to ensure the preservation of the stored vehicle. **If the vehicle storage facility operator charges a fee for preservation, the written bill for services must specify the exact conduct included in that fee and the date(s) when such conduct occurred.**

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and

found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 23, 1993.

TRD-9332606 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas
Railroad Commission of Texas

Earliest possible date of adoption: January 3, 1994

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

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TITLE 22. EXAMINING BOARDS

Part V. Texas State Board of Dental Examiners

Chapter 101. Dental Licensure

• 22 TAC §101.7

The Texas State Board of Dental Examiners (TSBDE) proposes an amendment to §101.7, concerning Licensure by Credential-Dentists Rule 101.7 states that the TSBDE may license applicants by credentials, without examination, who meet all TSBDE and State of Texas minimum applicant requirements and general licensure qualifications and all criteria as stated.

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

Mr. Camp 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 to allow increased access to dental licensure thereby increasing access to dental care to the people of Texas. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed

Comments on the proposal may be submitted to Mei Ling Clendennen, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 3800, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 4545a, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties; and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

The articles affected by this proposed amendment are: Articles 4545, 4544, and 4547a.

§101.7. Licensure by Credentials-Dentists. The Texas State Board of Dental Examiners (TSBDE) may license applicants by credentials in its discretion, on a case-by-case basis, without examination, who meet all TSBDE and State of Texas minimum applicant requirements and general licensure qualifications and all of the following criteria and requirements, which shall include, but shall not be limited in all instances to, the following criteria.

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

(8) is not involved in litigation, pending of otherwise, against the Texas State Board of Dental Examiners. Each candidate for licensure by credentials must submit to the credentials review committee of the Board the document and information as required by this section, and other documents or information that may be requested, to enable the committee to appropriately evaluate an application and make a recommendation to the Board **for Board action on the application.** [The applicant shall appear before the full Board prior to the Board's action on the application.] An application for licensure by credentials must be accompanied by a $200 application fee.

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

Issued in Austin, Texas, on November 23, 1993.

TRD-9332598 C. Thomas Camp
Executive Director
Texas State Board of Dental Examiners

Earliest possible date of adoption: January 3, 1994

For further information, please call: (512) 463-6400

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Chapter 115. Extension of Duties of Auxiliary Personnel-Dental Hygiene

Dental Hygiene Advisory Committee-Purpose and Composition

• 22 TAC §115.20

The Texas State Board of Dental Examiners (TSBDE) proposes new §115.20, concerning Dental Hygiene Advisory Committee-Purpose and Composition. Rule 115.20 states the Dental Hygiene Advisory Committee is established pursuant to Texas Civil Statutes, Article 4551e, for the purpose of advising TSBDE on matters relating to dental hygiene. That TSBDE shall annually evaluate the Committee's work; that the Committee shall elect from among its members a presiding officer who shall report to TSBDE. The Committee shall be composed of a balanced representation of members of the dental hygiene profession and consumers of services provided by the profession pursuant to Texas Civil Statutes, Article 6252-33.

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

Mr. Camp 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 to bring the agency into compliance with Senate Bill 383 as passed by the Legislature and identified in Texas Civil Statutes, Article 6252-33. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Mei Ling Clendennen, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 3800, Austin, Texas 78711, (512) 463-6400.

The new section is proposed under Texas Civil Statutes, Article 4551e and Article 6252-33, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties; and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

The article affected by this proposed new section is: Article 4551e.

§115.20. Dental Hygiene Advisory Committee-Purpose and Composition.

(a) The Dental Hygiene Advisory Committee is established pursuant to Texas Civil Statutes, Article 4551e, §4A, for the purpose of advising the Board on matters relating to dental hygiene. The Committee shall be comprised of a balanced representation between members of the dental hygiene profession and consumers of services provided by the profession, pursuant to Texas Civil Statutes, Article 6252-33. This balance shall be achieved through voluntary action of current members of through Board action in order to achieve the required representation.

(b) The Board shall annually evaluate the Committee's work, its usefulness, and the costs related to the Committee's work to include agency staff time in support of the Committee's activities. Reimbursement of costs shall be determined as set out in the General Appropriations Act and under Texas Civil Statutes, Article 4551e, §4A.

(c) The Committee shall elect from among its members a presiding officer who shall report to the Board on Committee activities as may be required, but no less often than annually at or following the May schedule for Committee appointments and review. This report shall coincide with the

Board's annual evaluation of the Committee's work.

(d) The Committee is abolished on May 1 of the third year following adoption of these rules unless the Board affirmatively votes prior to that date to continue the existence of the Committee.

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

Issued in Austin, Texas, on November 23, 1993

TRD-9332593 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption: January 3, 1994

For further information, please call: (512) 463-6400

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Part XI. Board of Nurse Examiners

Chapter 213. Practice and Procedure

• 22 TAC §213.32

The Board of Nurse Examiners proposes new §213.32 concerning instructions and cross references for use with Section 213. At the November 17, 1993, meeting of the Board of Nurse Examiners, the repeal and new section of 213 was adopted. However, the Board felt that comments made during their discussion of the adoption of this section did necessitate the addition of a new rule to assist the petitioner and/or licensee. The new section is being proposed as a result of those comments received.

Louise Waddill, Ph.D., R.N., executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Waddill 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 to provide the petitioner or licensee with information regarding their opportunities for access and exercise to options available to facilitate their use with the nursing practice act and Board's rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Louise Waddill, Ph.D., R.N., Executive Director, Board of Nurse Examiners, Box 140466, Austin, Texas 78714.

The new section is proposed under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

§213.32. Instructions and Cross References for Use with Section 213. Sections 213.1-213.31 of this title (relating to Definitions, Construction, Pleading, Representation, Appearance, Agreements in Writing, Final Disposition, Filing of Documents, Computation of Time, Notice and Service, Motion for Continuance, Witness Fees and Expenses, Complaint Investigation and Disposition, Preliminary Notice to Respondent in Disciplinary Matters, Commencement of Disciplinary Proceedings, Respondent's Answer in a Disciplinary Matter, Discovery, Depositions, Subpoenas, Informal Proceedings, Agreed Disposition, Hearing Procedure, Decision of the Board, Rescission of Probation, Administrative Hearings, Schedule of Sanctions, Monitoring, Reissuance of a License, Licensure of Persons with Criminal Convictions, Licensure of Persons with Disability/Illness or Intemperate Use, and Declaratory Order of Eligibility for Licensure), set forth the mechanisms for the eligibility petitioner or the licensee to use in making or defending a complaint or request or obtaining information in relation to a complaint or request before the Board of Nurse Examiners. For example, petitioners or licensees have the right to request information in the Board's possession, including information favorable to petitioner or licensee, and the option to be represented by an attorney at their own expense. The following list of references sets out these rights and options in more detail. Persons with matters before the Board should familiarize themselves with the following provisions:

(1) Article 4524A-Records of Complaints;

(2) Article 4524B-Complaint Investigation and Disposition;

(3) Article 4524C-Informal Proceedings;

(4) Article 4524D-Monitoring of Licensees;

(5) Article 4525-Disciplinary Proceedings, including Grounds for Discipline;

(6) Article 4525.1-Penalties and Sanctions;

(7) Article 4525.2-Complaint and Investigation,

(8) Article 4525.3-Agreed Disposition;

(9) Article 4525.4-Rights of a Registered Nurse,

(10) Article 4525.5-Initiation of Formal Charges,

(11) Article 4525.6-Hearings,

(12) Article 4525e-Temporary Suspension of License;

(13) Rule 217.11-Standards of Professional Nursing;

(14) Rule 217.13-Unprofessional Conduct Rules, and

(15) Rule 213-Practice and Procedure Rules.

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

Issued in Austin, Texas, on November 23, 1993

TRD-9332678 Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Proposed date of adoption January 11, 1994

For further information, please call: (512) 835-8650

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Part XXII. Texas State Board of Public Accountancy

Chapter 501. Professional Conduct

General Provisions

• 22 TAC §501.2

The Texas State Board of Public Accountancy proposes an amendment to §501.2 (relating to Definitions) concerning advertising and the practice of accounting.

The proposed amendment redefines advertisement to comply with Edenfield, et al v. Fane, 113 Supreme Court 1792 (1933) and clarifies what constitutes the practice of public accountancy.

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

Mr. Treacy also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a rule in conformity with a United States Supreme Court opinion, and a better understanding of the term "practice of accounting." There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe Street, Tower III, Suite 900, Austin, Texas 78701-3942

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provides the Texas State Board of Public Accountancy with the authority to make such

rules as may be necessary to carry in effect the purposes of the law, and §21, which states the reasons for disciplinary action by the Board.

Cross reference to statute: Texas Civil Statutes, Article 41a-1, §6 and §21.

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

Advertisement-A message which is transmitted to multiple persons by, or at the direction of, a certificate or registration holder and which has reference to the availability of the certificate or license holder to perform professional services. If messages are transmitted orally or by any written or electronic medium, they must be recorded, transcribed, or otherwise **retained for a period of at least 36 months from the date of the last transmission or use. Advertising that is informative and objective is permitted. Such advertising shall be in good taste and be professionally dignified.** [preserved. The message must be in identical form. In the case of transmissions in written form (letter or postcard), salutations are considered a part of the message and must be in identical form.]

Practice of public accountancy-The offer to perform or performance by a person holding himself out to the public as a certificate or registration holder for a client or potential client, or the performance by a certificate or registration holder for a client of a service involving the use of accounting, attesting, or auditing skills. The phrase "service involving the use of accounting, attesting, or auditing skills" includes:

(A) the issuance of reports on, or the preparation of, financial statements-**including historical or prospective financial statements or any element thereof;**

(B) the furnishing of management or financial advisory or consulting services[; and]-**professional services involving some combination of activities, which are financial in nature, relating to the determination of client objectives, fact-finding, designation of problems or opportunities, evaluation of alternatives, formulation of proposed action, communication of results, implementation, and follow-up which employ the certificate or registration holder's technical skills, education, and experiences. Such services include, but are not limited to:**

(i) **compiling and/or recording financial data;**

(ii) **litigation support, including testifying in a court of law or in a public hearing;**

(iii) **computer system design, selection, installation, implementation, and training;**

(iv) **sale, advice, or management of computer software;**

(C) the preparation of tax returns or the furnishing of advice or consultation on tax matters; or

(D) when performed by a person or practice unit licensed under the [this] Act, the preparation of, or reporting on, a financial statement when the financial statement or report is to be used by an investor[,] (except for a report prepared for internal use by the management of an organization), a third party, or a financial institution, or the preparation of a tax return if the tax return is filed with a taxing authority, as well as the supervision of those activities.

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

Issued in Austin, Texas, on November 23, 1993.

TRD-9332683 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 3, 1994

For further information, please call: (512) 505-7066

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Other Responsibilities and Practices

• 22 TAC §501.40

The Texas State Board of Public Accountancy proposes an amendment to §501.40 (relating to Professional Conduct) concerning licensing and registration requirements.

The proposed amendment clarifies the meaning of the practice of public accountancy as it affects licensing and registration requirements.

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

Mr Treacy also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the amendment will be a clearer understanding of public accounting rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law, and §21, which states the reasons for disciplinary action by the Board.

Cross reference to statute: Texas Civil Statutes, Article 41a-1, §6 and §21.

§501.40. Licensing/Registration Requirements. A certificate or registration holder must **practice public accountancy as defined in §501.2 of this title (relating to Definitions)** [perform accounting functions] through an entity registered with the board pursuant to the Public Accountancy Act, §10. [Accounting functions include, but are not limited to, the preparation of tax returns or the furnishing of advice on tax matters, bookkeeping services, the issuance of reports on financial statements, the furnishing of management advisory or consulting services and the sale, advice, or management of computer software which includes or implies an expertise in accounting.] Not included, however, is a certificate **or registration** holder performing [accounting services [as an employee, partner, or shareholder of, and exclusively for:] **involving the use of accounting, attesting, or auditing skills:**

(1) **in his official capacity as an employee of** federal, state, or local governmental entities; or

(2) **as an employee, member, partner, or shareholder of an entity** [an employer or firm] not offering **such** [accounting] services to the public.

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

Issued in Austin, Texas, on November 23, 1993.

TRD-9332684 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 3, 1994

For further information, please call: (512) 505-7066

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• 22 TAC §501.43

The Texas State Board of Public Accountancy proposes an amendment to §501.43, concerning Advertising.

The proposed amendment expands the types of actions which are prohibited by this rule.

William Treacy, Executive Director, has determined that for the first five-year period the

rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that the public benefit anticipated as a result of enforcing the amendment will be increased protection of the public by prohibiting certain types of statements that may mislead or deceive the consumers. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law, and §21, which states the reasons for disciplinary action by the Board.

Cross reference to statute: Texas Civil Statutes, Article 41a-1, §6 and §21.

§501.43. Advertising.

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

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

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

(b) A false, fraudulent, misleading, deceptive, or unfair statement or claim includes, but is not limited to, a statement or claim which:

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

(5) represents that professional services can or will be completely performed for a stated fee when this is not the case, or makes representations with respect to fees for professional services that do not disclose all variables that may reasonably be expected to affect the fees that will in fact be charged; [or]

(6) contains other representations or implications that in reasonable probability will cause a person of ordinary prudence to misunderstand or be deceived; [.]

(7) implies the ability to influence any court, tribunal, regulatory agency or similar body or official;

(8) consists of self-laudatory statements that are not based on verifiable facts;

(9) makes comparisons with other accountants; or

(10) contains testimonials or endorsements.

(c) Definitions. For purposes of this section and §501.44 of this title (relating to Advertising), the following definitions apply.

(1) Broadcast-Any transmission over the airwaves or over a cable or wireline system, whether or not the broadcaster received any consideration or compensation for such transmission.

(2) Coercion-Compelling by force so that one is constrained to do what his free will would otherwise refuse.

(3) Compulsion-Driving or urging by force or by physical or mental constraint to perform or forbear from performing an act.

(4) Direct personal communication-either a face-to-face meeting or a conversation by telephone.

(5) Duress-any conduct which overpowers the will of another.

(6) Harassing-Any word, gesture or action which tends to annoy, alarm, and verbally abuse another person.

(7) Intimidation-Willfully to take, or attempt to take, by putting in fear of bodily harm.

(8) Overreaching-Tricking, outwitting, or cheating a person into doing an act which he would not otherwise do.

(9) Targeted direct mail-A mailing to those whose unique circumstances are the basis for the solicitation.

(10) Threats-Any menace of such a nature and extent as to unsettle the mind of the person on whom it operates, and to take away from his acts that free and voluntary action which alone constitutes consent.

(11) Unique circumstances-Exist when the potential client is in need of specific services and may be overwhelmed by the basic situation which caused the need, such as having a tax lien filed by a governmental agency, and which may seriously impair the capacity for good judgment and sound reasoning.

(12) Vexatious-Without reasonable or probable cause or excuse.

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

Issued in Austin, Texas, on November 23, 1993.

TRD-9332698 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption. January 3, 1994

For further information, please call: (512) 505-7066

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Other Responsibilities and Practices

• 22 TAC §501.44

The Texas State Board of Public Accountancy proposes an amendment to §501 44, concerning Soliciting.

The rule has been re-written to comply with a recent United States Supreme Court opinion, *Edenfield, et al v. Fane,* 113 Supreme Court 1792 (1933)

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

Mr Treacy also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a board rule compatible with federal case law which affords protection to consumers. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed

Comments on the proposal may be submitted to J Randel (Jerry) Hill, General Counsel, 333 Guadalupe Street, Tower III, Suite 900, Austin, Texas 78701-3942

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law, and §21, which states the reasons for disciplinary action by the Board

Cross reference to statute Texas Civil Statutes, Article 41a-1, §6 and §21.

§501.44. Soliciting

(a) A certificate or registration holder shall not by any direct personal communication, solicit an engagement to perform professional services by the use of coercion, dures, compulsion, intimidation, threats, or overreaching, or vexatious or harassing conduct.

(b) It shall be a violation of these rules for a certificate or registration holder to persist in soliciting or contacting a prospective client when the pro-

spective client has made known to the certificate or registration holder or the certificate or registration holder should have known the prospective client's desire not to be solicited. Any attempt to continue a solicitation, which the certificate or registration holder knows or should know is unwanted, is not permitted.

(c) Any targeted direct mail solicitation (i.e., a mailing to those whose unique circumstances are the basis for the solicitations, distributed by or on behalf of a certificate or registration holder) shall contain the following language with the minimum type size of ten-point boldface capital letters at the top of the first page of such mailing.
"THIS IS A SOLICITATION AND INACCURATE OR MISLEADING STATEMENTS CONTAINED HEREIN SHOULD BE REPORTED TO THE TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY, 333 GUADALUPE STREET, TOWER III, SUITE 900, AUSTIN, TEXAS 78701-3942."

(d) In the case of direct mail communication, the certificate or registration holder shall retain a copy of the actual mailing along with a list or other description of persons to whom the communication was mailed or otherwise distributed. Such copy shall be retained by the certificate or registration holder for a period of at least 36 months from the date of the last transmission or use.

(e) In the case of radio and television broadcasting, the broadcast shall be recorded and the certificate or registration holder shall retain a recording of the actual transmission.

(f) Subsections (c) and (d) of this section do not apply to persons when:

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

(2) the solicitation is invited by the person to whom it was made; or

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

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

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

[(2) the solicitation is invited by the person to whom it was made; or

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

[(b) A certificate or registration holder making a solicitation shall have the burden of ascertaining and proving that such solicitation meets the criteria of one or more parts is subsection (a) of this section.

[(c) An uninvited solicitation is a violation of these rules. A certificate or registration holder will be presumed to be making an uninvited solicitation in violation of these rules if a specific person or title holder is being addressed on the letterhead.]

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

Issued in Austin, Texas, on November 23, 1993.

TRD-9332685 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 3, 1994

For further information, please call. (512) 505-7066

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Chapter 511. Certification as CPA

Certification

• 22 TAC §511.168

The Texas State Board of Public Accountancy proposes an amendment to §511.168 (relating to Certification as a CPA) concerning applicants for reinstatement.

The amendment clarifies that applicants for reinstatement must pay all due fees and become current on Continuing Professional Education prior to issuance of a new Certificate

William Treacy, executive director, has determined that for the first five-year period the rule is in effect here will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr Treacy also has determined that the public benefit anticipated as a result of enforcing the amendment will be recertified licensees who are current on all fees and have completed Continuing Professional Education prior to offering their services to the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed

Comments on the proposal may be submitted to J Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law, §15, which allows the board to charge fees, and §15A, which requires continuing professional education.

Cross reference to statute: Texas Civil Statutes, Article 41a-1, §15 and §15A.

§511.168. Reinstatement of a Certificate.

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

(c) Prior to reinstatement of the certificate all previous and current fees and penalties must be paid in full and the applicant must show proof of completion of all required continuing professional education courses.

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

Issued in Austin, Texas, on November 23, 1993.

TRD-9332695 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 3, 1994

For further information, please call: (512) 505-7066

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Certification

• 22 TAC §511.169

The Texas State Board of Public Accountancy proposes an amendment to §511.169 (relating to Certification as a CPA) concerning applicants for reinstatement.

The amendment clarifies that applicants for reinstatement must pay all due fees and become current on Continuing Professional Education prior to issuance of a new Registration.

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

Mr. Treacy 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 recertified licensees who are current on all fees and have completed Continuing Professional Education prior to offering their services to the public There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to J Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to make such

rules as may be necessary to carry in effect the purposes of the law, §15, which allows the board to charge fees and §15A, which requires continuing professional education.

Cross reference to statute: Texas Civil Statutes, Article 41a-1, §15 and §15A.

§511.169. Reinstatement of a Registration.

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

(c) Prior to reinstatement of the registration all current and previous fees and penalties must be paid in full and the applicant must show proof of completion of all required continuing professional education courses.

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

Issued in Austin, Texas, on November 23, 1993.

TRD-9332696 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 3, 1994

For further information, please call: (512) 505-7066

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Chapter 519. Practice and Procedure

• 22 TAC §519.26

The Texas State Board of Public Accountancy proposes an amendment to §519.26 concerning Informal Conferences.

The proposed amendment makes it clear that the executive director or the committee may decide whether an informal settlement conference should be held, and places the conduct and proceedings of the informal conference under the control of the committee chair.

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

Mr. Treacy also has determined that the public benefit anticipated as a result of enforcing the amendment will be shorter, crisper, and more efficient informal conferences. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to make such rules also may be necessary to carry in effect the purposes of the law, cases and §2001.054 of the Administrative Procedure Act which addresses hearing and procedure of contested cases.

Cross reference to statute: Texas Civil Statutes, Article 41a-1, §6 and §22, and §2001.054, Administrative Procedure Act, Government Code.

§519.26. Informal Conferences.

(a) (No change.)

(b) Procedure.

(1) The executive director or committee[, on his or its own motion or on the motion of any party,] may request the parties, their attorneys, or representatives to appear at a specified time and place for an informal conference.

(2) Notice of an informal conference shall state the nature of the charge or charges against the respondent and shall be served on the respondent no less than ten days prior to the date of said conference either personally or by mailing a copy thereof by certified mail to the last known address of the respondent.

(3) Complainant shall be notified and given opportunity to appear at the informal conference.

(c) Rights of respondent. At any informal conference, the respondent may appear in person and by counsel[,] and may produce evidence and witnesses on his own behalf[, cross-examine witnesses, and examine such evidence as may be produced against him].

(d)-(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 November 23, 1993.

TRD-9332697 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption. January 3, 1994

For further information, please call: (512) 505-7066

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Chapter 523. Continuing Professional Education

Continuing Professional Education Standards

• 22 TAC §523.32

The Texas State Board of Public Accountancy proposes new §523.32 (relating to Continuing Professional Education Standards) concerning ethics courses.

The proposed new rule requires licensees to complete at least four hours of ethics study every three years as part of their mandatory 120 hours of continuing professional education.

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

Mr. Treacy also has determined that the public benefit anticipated as a result of enforcing the amendment will be a licensed population more aware of their ethical standards and consumers better served by Certified Public Accountants. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill,, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law, and §15A which requires licensees to complete 120 hours of continuing professional education every three years but leaves it to the board to define the requirements.

Cross reference to statute: Texas Civil Statutes, Article 41a-1, §6 and §15A.

§523.32. Ethics Course. Effective January 1, 1995, each certificate or registration holder, unless granted retired or permanent disability status or other exemption, is required every three years to successfully complete a minimum of four hours of ethics study, a part of which shall include the Rules of Professional Conduct of the board, offered through a board-registered provider of continuing professional education. The course may be claimed as a non-technical course when reporting continuing professional education hours.

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

Issued in Austin, Texas, on November 23, 1993.

TRD-9332700 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 3, 1994

For further information, please call: (512) 505-7066

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Part XXV. Texas Structural Pest Control Board

Chapter 593. Licensing

• 22 TAC §593.22

The Texas Structural Pest Control Board proposes an amendment to §593. 22, concerning Technician License Standards. The proposed

amendment clarifies that there is only one technician training course and extends the period of time for meeting technician licensure requirements from six months to one year.

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

Roger B. Borgelt, general counsel, 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 sections will be greater ability of commercial and noncommercial technicians to achieve required training. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Roger B. Borgelt, General Counsel, 9101 FM 1325, Suite 201, Austin, Texas 78758-5280.

The amendment is proposed under Texas Civil Statutes, Article 135b-6, which provide the Texas Structural Pest Control Board with the authority to license and regulate persons who perform structural pest control.

The following is the (statute, articles or code) that are affected by this rule. §595 11-Texas Civil Statutes, Article 134b-6.

§593.22. Technician License Standards.

(a) A technician-apprentice **must** [may] become a licensed technician by taking the approved technician training course for the General Category [and the category of licensure desired] and passing the technician examination. The technician examination application must be accompanied by a fee of $30 per category. A technician-apprentice may take the technician examination as many times as necessary, but shall maintain a technician-apprentice license for a maximum of **12 months out of any 18 month period. The technician-apprentice must take a training course and pass the examination during this time** [six months out of any 12 month period]. Technicians who were licensed on or before September 1, 1991, must verify that they have completed the Board-approved technician training course before September 1, 1996. Failure of a licensed technician to complete the technician training courses shall be a violation of this section.

(b)-(h) (No change.)

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

Issued in Austin, Texas, on November 23, 1993.

TRD-9332671 Benny M Mathis, Jr
Executive Director
Texas Structural Pest
Control Board

Earliest possible date of adoption. January 3, 1994

For further information, please call: (512) 835-4066

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Chapter 595. Compliance and Enforcement

• 22 TAC §595.11

The Texas Structural Pest Control Board proposes an amendment to §595 11 concerning schools. The proposed amendment clarifies that no treatments can be performed in buildings or on grounds if students are expected to be in those buildings or in those grounds.

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

Roger B Borgelt, general counsel, 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 less exposure to pesticide or herbicide volatilization and drift to students There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed

Comments on the proposal may be submitted to Roger B Borgelt, General Counsel, 9101 FM 1325, Suite 201, Austin, Texas 78758-5280

The amendment is proposed under Texas Civil Statutes, Article 135b-6, which provide the Texas Structural Pest Control Board with the authority to license and regulate persons who perform structural pest control

The following is the (statute, articles or code) that are affected by this rule §595 11-Texas Civil Statutes, Article 134b-6.

§595.11 Schools

(a) A pesticide may be applied to a school building only during periods in which students are not expected to be in the school building for normal academic instruction or organized extra curricular activities for at least 12 hours after the application is made.

(b) A pesticide may be applied to school grounds only during periods in which students are not expected to be in the building or on school grounds for normal academic instruction or organized extracurricular activities for at least 12 hours after the application is made [Pesticide applications shall not be made to an area within or outside a school building if students are expected to be present in the area treated within the next 12-hour period immediately following treatment] Emergency treatments will be permitted in the localized area of infestation when there is an imminent threat to health or property or an infestation is imminent. Records of the reasons for emergency treatments shall be kept in the pest control use records of the business or certified noncommercial applicator performing the treatment.

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

Issued in Austin, Texas, on November 23, 1993.

TRD-9332668 Benny M. Mathis, Jr
Executive Director
Texas Structural Pest
Control Board

Earliest possible date of adoption: January 3, 1994

For further information, please call: (512) 835-4066

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 125. Special Care Facilities

• 25 TAC §§125. 1-125.8

The Texas Department of Health (department) proposes amendments to §§125.1-125 7 and new §125 8 concerning special care facilities. The amendments cover definitions; application and issuance of license for first time applicants; inspections, renewal of license; licensing application, construction plan review, and construction inspection fees; standards; and license denial, suspension, or revocation and criminal penalties. The new section covers Time Periods for Processing and Issuing a Special Care Facility License. The department is amending the existing sections and creating the new section for the purposes of implementing legislation passed during the 73rd Legislature, Regular Session, 1993, specifically, House Bills (HB) 944 and 1551 which amend the Special Care Facility Licensing Act, Health and Safety Code, Chapter 248; and for the purpose of updating and clarifying existing language.

The proposed amendments clarify and update existing language and add new language to implement HB 944 and HB 1551. In implementing the new legislation, the new language adds definitions for AIDS, bereavement, bereavement services, hospice services, palliative care, residential AIDS hospice care, support services, and terminal illness (HB 1551); language relating to the residential AIDS hospice designation for a special care facility (HB 1551); and language which reflects the exemption from special care facility licensure of a child care institution, foster group home, foster family home, and child-placing agency, and children in foster care or other residential care who are under the conservatorship of the Texas De-

partment of Protective and Regulatory Services (HB 944). HB 1551 prohibits a facility from using the word "hospice" in a title or description of a facility, organization, program, service provider, or services, or use any other words, letters, abbreviations, or insignia indicating or implying the person holds a license under the Health and Safety Code, Chapter 142 (relating to Home and Community Support Services Act) to provide hospice services. The residential AIDS hospice designation will allow a special care facility to use the term "residential AIDS hospice" without receiving an additional license issued under the Health and Safety Code, Chapter 142.

In clarifying existing language, the amendments clarify the meaning of the term "special residential care facility" which appears in the definition of "special care facility" by adding a definition of "special residential care facility." In updating existing rule language, the amendments require a facility to adopt and enforce a policy for disaster preparedness. The new section adds language relating to time periods in which the department processes initial, renewal and change of ownership applications for special care facilities. The language relating to disaster preparedness and time frames for processing a license mirror language presently in other health care facility rules adopted by the department

Maurice B. Shaw, Acting Associate Commissioner for Special Health Services has determined that for the first five years the amendments and new section are in effect, there will be no fiscal impact on state and local governments, or persons as a result of administering and enforcing the amendments and new section. The department currently licenses 16 special care facilities, one which is known to represent itself as providing hospice services; and has received one request for a license to operate an "AIDS hospice" under a special care facility license. A special care facility is not required to and will not be required to provide hospice services or to represent itself as a hospice; therefore, the residential AIDS hospice designation is a voluntary designation. There will be no additional fee or physical plant requirements for the residential AIDS hospice designation and the services provided in a facility with a residential AIDS hospice designation may be provided through the use of volunteers which hold a license to provide the required services.

Mr. Shaw has also determined that for the first five years the amendments and new section are in effect, the public benefit will be a better understanding of the services available in a special care facility; a special care facility's obligation to its residents; and the department's responsibilities in processing an application for an initial license, renewal license, and change of ownership. There will no impact on local employment.

Comments on the proposed amendments and new section may be submitted to Nance Stearman, R.N., M.S.N., Director, Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 834-6650 Comments will be accepted for 30 days after publication of the amendments and new section in the Texas Register.

The amendments and new section are proposed under the Health and Safety Code, §248.026, which provides the Texas Board of Health (board) with the authority to adopt rules to establish and enforce minimum standards for the licensing of special care facilities; and §12.001, that provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health. The amendments affect the Health and Safety Code, Chapter 248

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

AIDS-Acquired immune deficiency syndrome.

Bereavement-The process by which a survivor of a deceased person mourns and experiences grief.

Bereavement services-Support services offered to a family during bereavement.

Hospice services-Services, including services provided by unlicensed personnel under the delegation of a registered nurse or physical therapist, provided to a resident or resident's family as part of a coordinated program which includes palliative care for terminally ill residents and support services for a resident and a resident's family that are available 24 hours a day, seven days a week, during the last stages of illness, during death, and during bereavement; and are provided by a medically directed interdisciplinary team; and may be provided in a home, nursing home, residential unit, or inpatient unit according to need. These services do not include inpatient care normally provided in a licensed hospital to a terminally ill person who has not elected to be a hospice recipient.

Nursing personnel-All persons responsible for giving nursing care to residents. Such personnel includes registered nurses, licensed vocational nurses, [therapists,] nurses aides, and orderlies.

Palliative care-Intervention services that focus primarily on the reduction or abatement of physical, psychosocial, and spiritual symptoms of a terminal illness.

Residential AIDS hospice-A special care facility licensed and designated as a residential AIDS hospice in accordance with §125.6(f)(12) of this title (relating to Standards).

Residential AIDS hospice care-Hospice services provided in a residential AIDS hospice.

Special residential care facility-A residential facility required to obtain a special care facility license under the Act.

Support services-Social, spiritual, and emotional care provided to a resident and a resident's family by a hospice.

Terminal illness-An illness for which there is limited prognosis if the illness runs its usual course.

§125.2. Application and Issuance of License for First Time Applicants.

(a) Upon written request, the **department** [director] shall furnish a person with an application form for a special care facility license The applicant shall be at least 18 years of age, and shall submit to the **department** [director] a separate and accurate application form for each license, required documentation, and the license application fee. The applicant shall retain a copy of all documentation that is submitted to the **department** [director] The address provided on the application must be the address from which the facility will be operating The applicant shall submit the following documents with the application for the license:

(1) (No change)

(2) if an applicant is a corporation;[,]

(A) a certificate from the State Comptroller's office which states that the corporation that operates the facility is not delinquent in tax owed to the state under the Tax Code, Texas Codes Annotated, Chapter 171, or that the corporation is exempt from the payment of the tax and is not subject to the Tax Code, Chapter 171, or

(B) a notarized certification on the license application form that the tax owed to the state under the Tax, Texas Codes Annotated, Chapter 171, is not delinquent or that the corporation is exempt from the payment of the tax and is not subject to the Tax Code, Texas Codes Annotated, Chapter 171;

(3)-(11) (No change)

(12) documentation regarding volunteer orientation to the facility, which include at a minimum location of fire alarm system; emergency procedures, including emergency phone numbers; evacuation plan, availability of counseling programs, support groups, and advocacy information, the facility's policy on confidentiality of medical records and information pertaining to patients' diagnosis, treatment, and identification; and the general mission statement of the facility; [and]

(13) written approval by the local fire marshal and a copy of the certificate of occupancy granted by the local building official;[ ]

(14) a written policy for publicly known natural disaster preparedness for facility residents. The written policy shall include a plan for a reasonable mechanism for triaging residents, the notification of appropriate personnel and family members or significant other in the event of a disaster, the identification of appropriate community resources, and the identification of evacuation procedures. The plan need not require the facility actually evacuate, transport or triage the residents; and

(15) if the facility requests designation as a residential AIDS hospice, the facility shall request the designation on the initial application and provide the following as evidence that it meets the minimum standards described in §125.6(f)(12) of this title (relating to Standards):

(A) a written policy relating to the facility's organized program for the provision of support, counseling and bereavement services; and

(B) documentation relating to the establishment and responsibilities of the facility's interdisciplinary team.

(b) Upon receipt of the application, including the required documentation and the fee, the **department** [director] shall review the material to determine whether it is complete **in accordance with §125.8 of this title (relating to Time Periods for Processing and Issuing a Special Care Facility License)**. All documents submitted with the original application shall be certified copies **or** [and/or] originals.

(c) Once the application is complete and correct, a presurvey conference **shall** [may] be held at the **survey** office designated by the department. **An applicant is** [All applicants are] required to attend a presurvey conference unless the designated survey office waives the requirement. The **designated survey office** [surveyor] shall verify compliance with the applicable provisions of this chapter and may recommend that the facility be issued a license or that the application be denied pursuant to §125.7 of this title (relating to License Denial, Suspension, or Revocation and Criminal Penalties).

(d) (No change.)

(e) If the facility is approved for occupancy by local authorities, a license may be issued if the facility submits a plan of correction acceptable to the **department** [director] to bring the facility into full compliance with the provisions of this chapter. The plan may reflect dates for compliance occurring after issuance of the license if approved by the **department** [director].

(f) If the **department** [director] determines that compliance with the provisions of this chapter is not substantiated, the **department** [director] may propose to deny the license and shall notify the applicant of a license denial as provided in <*>125.7 of this title (relating to License Denial, Suspension, or Revocation and Criminal Penalties).

(g) The **department** [director] shall mail the license to the licensee. A license shall not be materially altered. Continuing compliance with the minimum standards and the provisions of this chapter is required during the licensing period.

(h) The change of ownership of a special care facility requires the submittal of an application as a first time applicant. A request for a change of ownership application for a special care facility shall be submitted 60 days prior to the desired change of licensure and in accordance with subsection (a) of this section. A change of ownership application shall be reviewed by the department in accordance with subsection (b) of this section.

§125.3. Inspections.

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

(c) After an inspection is completed, the surveyor shall submit a compliance record to the department which contains the following:

[(1) a citation of all standards that were evaluated;]

(1)[(2)] a citation of **each standard** [all standards] with which the facility was **not** in **compliance** [noncompliance] and **the** specifics of [any] noncompliance, if applicable; **and**

(2)[(3) if the facility is in noncompliance,] a plan of correction proposed by the facility **for each deficient standard cited** and the date(s) by which correction(s) must be made. [; and]

[(4) a statement that not all standards were evaluated, if applicable.]

(d) The surveyor shall request the owner or person in charge to sign the compliance record as an acknowledgment of receipt of a copy of the record at the completion of the on-site survey. Signing the record does not indicate agreement with any part of the compliance record. If a person declines to sign the record, the surveyor shall note the declination and the name of the person in charge on the compliance record. Any written comments of the owner or person in charge concerning the compliance record shall be attached to and become a permanent part of the record. The surveyor shall leave a copy of the compliance record at the facility, and, if the person in charge is not the owner, shall mail a copy to the owner. If at the time of inspection the person in charge declines to provide a plan of correction, the **department** [director] will notify the facility by certified mail, return receipt requested, that a plan of correction must be submitted by the facility within 30 **calendar** days of receipt of the notice.

(e) The surveyor shall prepare a summary report of each inspection and submit it to the **department** [director] for evaluation and decision. If the **department** [director] determines the facility is not meeting minimum standards, the **department** [director] shall notify the facility in writing of the standards that are not met and request that the facility prepare the plan of correction necessary for compliance if a plan has not been submitted at the time of inspection. If the plan of correction is not acceptable, the **department** [director] will notify the applicant in writing within 20 **calendar** days of receipt of the plan and request that an acceptable plan of correction be resubmitted within a specified period of time, but no later than 30 **calendar** days from the date of the **department's written notification** [director's letter].

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

§125.4. Renewal of License.

(a) (No change.)

(b) The department will send notice of expiration to a facility at least 45 **calendar** days before the expiration date of the facility's license. If the facility has not received notice of expiration from the department 30 **calendar** days prior to the expiration date, it is the duty of the facility to notify the department and request a renewal application for a license. The facility shall submit to the department **a complete, correct, and notarized** [an] application renewal form and the license renewal fee postmarked no later than ten **calendar** days prior to the expiration date of the license. [The department shall issue an annual license to a facility which meets the minimum standards for a license.]

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

(e) If an applicant is a corporation, the facility shall provide:

(1) a certificate from the state comptroller's office which states that the corporation that operates the facility is not delinquent in tax owed to the state under the Tax Code, Texas Codes Annotated, Chapter 171, or that the corporation is exempt from the payment of the tax and is not subject to the Tax Code, Chapter 171; or

(2) a notarized certification on the license application form that the tax owed to the state under the Tax, Texas

Codes Annotated, Chapter 171, is not delinquent or that the corporation is exempt from the payment of the tax and is not subject to the Tax Code, Texas Codes Annotated, Chapter 171;

(f)[(e)] If a licensee fails to timely renew his or her license [on or after August 1, 1990,] because the licensee is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the licensee may renew the license pursuant to this subsection.

(1) Renewal of the license may be requested by the licensee, the licensee's spouse, or an individual having power of attorney from the licensee. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after the expiration of the license.

(3) A copy of the official orders or other official military documentation showing that the licensee is or was on active military duty serving outside the State of Texas should be filed with the department along with the renewal form.

(4) A copy of the power of attorney from the licensee shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this section.

(5) A licensee renewing under this subsection shall pay the applicable renewal fee.

(6) A licensee is not authorized to operate the facility for which the license was obtained after the expiration of the license unless and until the licensee actually renews the license.

(7) This subsection applies to a licensee who is a sole practitioner or a partnership with only individuals as partners where all of the partners were on active duty with the armed forces of the United States serving outside the State of Texas.

(g) The department shall conduct a review of the renewal application and accompanying documents described in subsections (d) and (e) of this section in accordance to §125.8 of this title (relating to Time Period for Processing and Issuing a Special Care Facility License). The department shall issue an annual license to the facility which meets the minimum standards for a license.

§125.5. Licensing Application, Construction Plan Review, and Construction Inspection Fees.

(a) The schedule of fees are as follows:

(1) (No change.)

(2) Construction plan review fees are based on the estimated construction costs. If an estimated cost cannot be established, the estimated cost shall be based on $105 per square foot. The **plan review** fee schedule, **based upon the estimated cost of construction,** is **as follows:**

[Cost of Construction Fee]

(A) [$] Less than $150,000 - $100;
(B) $150,001 - $600,000 - $250;
(C) $600,001 - $2,000,000 - $500;
(D) $2,000,001 - $5,000,000 - $750;
(E) $5,000,001 - $10,000,000 - $1,000; **and**
(F) $10,000,001 [-] and over - $1,500.

(3) (No change.)

(b) (No change.)

(c) Any remittance submitted to the department in payment of a required fee must be in the form of a certified check, money order, or personal check made payable [out] to the Texas Department of Health.

§125.6. Standards.

(a) Administrative management.

(1) General requirements.

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

(C) A special care facility license is not a license to provide day care services to children or adults; it allows the facility to provide only the services defined in the Special Care Facility Licensing Act (Act).

(D) Each resident receiving services in a special care facility must be admitted for 24-hour residential care.

(E)[(C)] Copies of this chapter shall be available to the personnel and residents of the facility upon request.

(F)[(D)] The facility management upon request shall make available to the department representatives copies of pertinent facility documents or records which in the opinion of the representatives contain evidence of conditions that threaten the health and safety of residents. Such documents and records are residents' medical records including health care notes, pharmacy records, medication records, physicians' orders, and incident/accident reports concerning residents.

(G)[(E)] Each facility shall conspicuously and prominently post the facility license.

(H)[(F)] All accidents, whether resulting in injury, and any unusual incidents or abnormal events, including allegations of mistreatment of residents by staff, personnel, or visitors, shall be described in separate administrative records filed in the director's office. Certain procedures regarding accidents, unusual incidents, and abnormal events shall be observed as directed by the department.

(I) [(G)] Within 72 hours of admission, the facility must prepare a written inventory of the personal property a resident brings to the facility. The facility does not have to inventory the resident's clothing. If requested by the resident or responsible party, the inventory shall be updated. The facility should have a mechanism to protect resident clothing.

(J)[(H)] Grounds for denial, revocation, or suspension of the license in accordance with §125.7 of this title (relating to License Denial, Suspension, or Revocation and Criminal Penalties) may exist when there is substantiated evidence of the owner, director, or any employee willfully inflicting injury, physical suffering, or mental anguish on any resident in a facility; the failure of management, who is knowledgeable of a substantiated case of physical or mental abuse or neglect, to take corrective action; or the failure of management, who has cause to believe that a resident's physical or mental health or welfare has been or may be adversely affected by abuse or neglect caused by another person, to report it to the department.

(K)[(I)] A license may not be transferred or assigned.

(2) Operating policies and procedures. The facility shall comply with its own written policies and procedures. All policies shall be reviewed and updated annually.

(A) (No change.)

(B) A facility shall adopt, implement, and enforce a written policy for publicly known natural disaster preparedness for residents. The written policy shall include a plan for the reasonable mechanism for triaging residents, the notification of appropriate personnel, family members and significant other in the event of a disaster, the identification of appropriate communuity resources; and the identification of possible evacuation procedures. The policy need not require the facility to actually evacuate, transport or triage residents.

(C)[(B)] A facility shall adopt, implement, and enforce a written policy to ensure compliance of the facility [agency] and its employees, volunteers and contractors with the Health and Safety Code, §161.091, concerning the prohibition of illegal remuneration for securing or soliciting patients or patronage.

(D)[(C)] The facility shall have written personnel policies and procedures. These policies and procedures must be explained to employees when first employed and be made available to them.

(E) [(D)] In accordance with personnel policies, the facility may hire and retain employees with certain communicable diseases based on their abilities to perform on the job adequately and safely and on their willingness to follow prescribed measures to prevent the transmission of infections. Questions of employee infectious status and ability to perform duties should be resolved by consultation with a physician and/or local health authorities.

(F)[(E)] The requirements of subparagraph (E)[(D)] of this paragraph shall apply to staff from outside resources and to volunteers.

(G)[(F)] The facility shall ensure that personnel records are correct and contain sufficient information to support placement in the assigned position (including a resume of training and experience). Where applicable, a current copy of the person's license or permit shall be in the file. If copying of a license is prohibited, the file shall include a notation of when the license was verified.

(H)[(G)] If the resident or the resident's responsible party entrusts the handling of cash to the facility, simple accounting records of receipts and expenditures of such cash shall be maintained. These funds must be separate from the facility's operating accounts.

(I) [(H)] The facility is encouraged to provide assistance to the residents in their securing or arranging for transportation to meet the residents' transportation needs.

(J)[(I)] In the case of an acute episode, a serious change in the resident's condition, or death, the resident's responsible party shall be notified as soon as possible.

(K)[(J)] If a facility does not employ a person qualified to provide a required or needed service, it shall have arrangements with an outside resource that has the necessary qualifications to provide the service directly to residents or to act as a consultant to the facility. Facility policies shall state the methods used to provide required or needed services. The facility may employ personnel or use appropriate volunteer services or arrange with outside resources to provide services to residents or to act as consultants to the facility. Regardless of the method or combinations of methods used, staff performing services must be appropriately qualified or supervised.

(3)-(7) (No change.)

(b) Minimum construction standards.

(1) A facility that is classified as an institutional occupancy shall comply with the requirements found in National Fire Protection Association (NFPA) [101], Life Safety Code **(NFPA 101)**, Chapter 12 (concerning to new construction) and Chapter 13 (concerning existing facilities), and building codes applicable to institutional use. New construction shall be subject to applicable local codes covering construction and electrical and mechanical systems for the occupancy. In the absence of, or absence of enforcement of the local codes, the department shall require conformance to the fundamentals of the following codes:

(A) the appropriate sections of NFPA 101, [Life Safety Code];

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

(2) (No change.)

(3) A facility that is classified by an occupancy other than institutional or **which will house 16 or less residents** shall comply with **NFPA 101, Chapter 22, relating to residential board and care facilities** [the applicable requirements found in NFPA 101, Chapter 4, concerning classification of occupancy and hazards of contents; and with the sections found in NFPA 101 which apply to the occupancy in question and with applicable building codes].

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

(8) When a common wall exists between a facility and another occupancy, the common wall between the facility and the other occupancy shall be not less than a two-hour noncombustible fire rated partition as is defined in NFPA 101, [Life Safety Code], Chapter 6 (concerning features of fire protection), unless approved otherwise by the department. A licensed hospital, nursing home, custodial care home, or personal care home is not considered another occupancy for this purpose.

(9) Planning, construction, procedures, and approvals shall be done in conformance with the following provisions.

(A) A facility shall submit construction documents to the department if it is anticipated the facility is classified as institutional by the local building authority or will house 17 or more residents. [A facility may request the approval of the department of its construction plans unless approval is required under subparagraph (B) of this paragraph.]

(B) The construction documents shall be drawn to scale; include a plot plan; and indicate the usages of all spaces, sizes of areas and rooms, and the kind and location of fixed equipment.

[(B) A facility shall submit construction documents to the director for approval if it is anticipated that the facility will fall under the institutional occupancy or if sixteen or more residents will occupy the facility. The plans that are submitted shall be drawn to scale; include a plot plan; and indicate the usages of all spaces, sizes of areas and rooms, and the kind and location of fixed equipment.]

(i) -(ii) (No change.)

(C) (No change.)

(11) [(10)] Facility location shall be determined using the following considerations.

(A) The facility shall be located so as to promote at all times the health, comfort, safety, and well-being of the residents.

(B) The facility shall be serviced by a paid or volunteer fire fighting unit as approved by the department. Water supply for fire fighting purposes shall be as required or approved in writing by the fire fighting unit serving the area.

(C) Any site conditions that can be considered a fire hazard, health hazard, or physical hazard shall be corrected by the facility as determined by the department.

(c)-(e) (No change.)

(f) Care and services.

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

(7) Medications.

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

(G) Medications that are administered to a resident shall be administered only by a registered professional nurse, licensed vocational nurse, practitioner or individual under direct delegation orders by a physician and in conformance with all laws, rules, and recognized professional standards of practice. A home health agency who is providing services within a special care facility may use a home health medication aide [only] in accordance with §115.62(c) [§115.19(c)] of this title (relating to Home Health Medication Aides).

(i)-(vi) (No change.)

(H)-(O) (No change.)

(8)-(11) (No change.)

(12) Residential AIDS hospice designation.

(A) General. A special care facility designated as a residential AIDS hospice shall meet the standards of this paragraph. These standards are in addition to the other standards described in this chapter which apply to special care facilities.

(B) Provision of hospice services. Hospice services shall include palliative care and the availability of counseling, support and bereavement services which are available 24 hours a day, seven days a week, during the last stages of illness, during death, and during bereavement; and are provided by a medically directed interdisciplinary team which develops a plan of care for each resident receiving hospice services.

(i) **Palliative care. The facility shall provide care and services which are reasonable and necessary to meet the needs of a resident and which provide exclusively palliative care and management of the resident's terminal illness and related conditions.**

(ii) **Support services. Support services shall be available to both the resident and the family.**

(I) There shall be an organized program for the provision of support services under the supervision of a qualified individual.

(II) Support services shall include social, spiritual and emotional care provided to a resident and the family.

(iii) **Counseling services. Counseling services shall be available to the resident and the family. If provided, counseling services shall be identified as a need in the resident's plan of care described in clause (v) of this subparagraph.**

(iv) **Bereavement services. Bereavement services shall be available to the family. The provision of bereavement services shall be:**

(I) provided in an organized program under the supervision of a qualified person;

(II) available to families for up to one year following the death of the resident; and

(III) identified as a need for the family in the resident's plan of care described in clause (v) of this subparagraph.

(v) **Plan of care. The facility shall develop a plan of care for each resident receiving hospice services.**

(I) A registered nurse shall participate in developing the initial plan of care for each resident receiving hospice services.

(II) The facility shall use an interdisciplinary team in implementing and reviewing the plan of care.

(-a-) The interdisciplinary team shall consist of a physician, a registered nurse and other appropriate members who are involved with the resident's care.

(-b-) A member of the interdisciplinary team may be a volunteer, an employee of the facility, an individual under contract with facility, or an employee or representative of a home and community support services agency employed by the resident to provide services.

(-c-) The interdisciplinary team shall review and revise the resident's plan of care periodically as necessary in providing hospice services to the resident.

(III) The plan of care shall identify the need for counseling and bereavement services, as appropriate.

(vi) **Clinical and medical review. A physican shall conduct a clinical and medical review of the care and services provided to a resident receiving hospice services. The physician conducting the review may serve as a member of the interdisciplinary team described in clause (v)(II) of this subparagraph, a volunteer, or a contracted consultant to the facility.**

(C) A special care facility's designation as a residential AIDS hospice must be approved by the department prior to the implementation of hospice services.

(i) **A special care facility may request designation as a residential AIDS hospice at the submission of the initial application by completing the applicable section on the initial application; or by submitting a written request to the department for the designation at any time during the renewal period.**

(ii) **A written request for designation as a residential AIDS hospice submitted during a renewal period shall include the evidence described in §125.2(a)(15) of this title (relating to Application and Issuance of License for First Time Applicants).**

(iii) **The department shall send written notice approving or disapproving the designation to the facility. If disapproved, the written notice shall state the reasons for the disapproval and the facility may submit additional information to department supporting the request for the designation.**

(iv) The facility may withdraw the residential AIDS hospice designation by submitting to the department a written request to withdraw. The written request to withdraw shall include the effective date of withdrawal. A facility which withdraws the designation must resubmit the request as described in clause (ii) of this subparagraph in order to re- establish hospice services.

(13) Laboratory services. A facility which provides laboratory services must meet the requirements of Federal Public Law 100-578, Clinical Laboratory Improvement Amendments of 1988 (CLIA 1988). CLIA 1988 applies to all facilities with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(g) (No change.)

§125.7. License Denial, Suspension, or Revocation and Criminal Penalties.

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

(e) If the **department** [director] proposes to deny, suspend, or revoke a license, the director shall notify the applicant or the facility by certified mail, return receipt requested, of the reasons for the proposed action and offer the applicant or facility an opportunity for a hearing. The applicant or facility must request a hearing within 30 **calendar** days of receipt of the notice. The request must be in writing and submitted to the Director, Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. A hearing shall be conducted pursuant to the **Administrative Procedure Act, Government Code, Chapter 2001** [Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a], and the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health). If the applicant or facility does not request a hearing, in writing, within 30 **calendar** days of receipt of the notice or does not appear at a scheduled hearing, the applicant or facility is deemed to have waived the opportunity for a hearing and the proposed action shall be taken. Receipt of the notice is presumed to occur on the tenth day after the notice is mailed to the last address known to the department unless another date is reflected on a United States Postal Service return receipt.

(f) The department may suspend or revoke a license to be effective immediately when the department has reasonable cause to believe the health and safety of persons are threatened. The department shall notify the facility of the emergency action by certified mail, return receipt requested, or personal delivery of the notice. If requested by the license holder, the department shall conduct a hearing, which shall be not earlier than ten **calendar** days from the effective date of the suspension or revocation. The effective date of the emergency action shall be stated in the notice. The hearing shall be conducted pursuant to the **Administrative Procedure Act, Government Code, Chapter 2001** [Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a] and the department's formal hearing procedures in Chapter 1 of this title (relating to the Texas Board of Health).

(g)-(i) (No change.)

(j) A license holder or person may not use the word "hospice" in a title or description of a facility, organization, program, service provider, or services, or use any other words, letters, abbreviations, or insignia indicating or implying the person holds a license to provide hospice services. A license holder or person shall meet §125.6(f)(12) of this title (relating to Standards) if the license holder or person provides hospice services.

§125.8. Time Periods for Processing and Issuing a Special Care Facility License.

(a) General.

(1) The date an application for an initial license, renewal license, or change of ownership is received is the date the application reaches the department.

(2) An application for an initial license is complete when the department has received, reviewed, and found acceptable the information described in §125. 2(a)-(c) of this title (relating to Application and Issuance of License for First-Time Applicants).

(3) An application for a renewal license is complete when the department has received, reviewed and found acceptable the information described in §125.4(b)-(e) of this title (relating to Renewal of License).

(4) An application for change of ownership is complete when the department has received, reviewed and found acceptable the information described in §125.2(a)-(c) of this title.

(b) Time periods. An application from a special care facility shall be processed in accordance with the following time periods.

(1) The first time period begins on the date the application is received. The first time period ends on the date the special care facility license is issued, or, if the application is received incomplete, the period ends on the date the special care facility is issued a written notice that the application is incomplete. The written notice shall describe the specific information that is required before the application is considered complete. The time period is 20 calendar days for each of the following categories: application for an initial license; application for change of ownership; and application for renewal of license.

(2) The second time period begins on the date the last item necessary to complete the application is received and ends on the date the special care facility license is issued. The time period is 20 calendar days for each of the following categories:

(A) application for an initial license;

(B) application for change of ownership, and

(C) application for renewal of license.

(c) Reimbursement of fees.

(1) In the event the application is not processed in the time periods as stated in subsection (b) of this section, the applicant has the right to request the department reimburse in full all filing fees paid in that particular application process. If the department does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(2) Good cause for exceeding the period established is considered to exist if:

(A) the number of applications for licenses to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(B) another public or private entity utilized in the application process caused the delay; or

(C) other conditions existed giving good cause for exceeding the established periods.

(d) Appeal. If the request for full reimbursement authorized by subsection (c) of 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 requesting full reimbursement of all filing fees paid because the application was not processed within the adopted time period. The department 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 make the final decision and provide written notification of the decision to the applicant and the department.

(e) Contested case hearing. If at any time during the processing of the application during the second time period, a contested case hearing becomes involved, the time periods in §1.34 of this title (relating to Time Periods for Conducting Contested Case Hearing) are applicable.

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

Issued in Austin, Texas, on November 23, 1993.

TRD-9332580 Susan K Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Proposed date of adoption. February 27, 1994

For further information, please call: (512) 834-6647

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Part II. Texas Department of Mental Health and Mental Retardation

Chapter 405. Client (Patient) Care

Subchapter FF. Consent to Treatment with Psychoactive Medication

• 25 TAC §405.803, §405.808

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes amendments to §405.803 and §405.808 of Chapter 405, Subchapter FF, concerning consent to treatment with psychoactive medication.

The amendments would clarify the process for administering psychoactive medication to patients committed to state facilities under provisions other than those found in the Texas Mental Health Code (i.e., Code of Criminal Procedure, Family Code). Although Senate Bill 207 (73rd Legislature) created a process for petitioning the court for an order authorizing administration of psychoactive medication, its provisions do not apply to patients committed under the Code of Criminal Procedure or the Family Code.

Section 405.803 is revised to include a new definition for "TXMHMR facility." The definition of "mental health facility" is revised to reflect the new term.

Section 405.808 is revised to outline procedures for providing due process to individuals committed to TXMHMR facilities under provisions of the Code of Criminal Procedures or Family Code who refuse treatment with psychoactive medication.

Leilani Rose, director, Office of Financial Services, has determined that there are no significant fiscal implications to state or local government as a result of administering the sections as proposed.

Dr. Steven Shon, deputy commissioner, Mental Health Services, has determined that the public benefit of the amendments and new sections is the clarification of procedures ensuring due process for individuals committed to TXMHMR facilities who refuse treatment with psychoactive medication. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Written comments on the proposal may be submitted to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P O Box 12668, Austin, Texas 78711-2668, within 30 days of publication

The amendments are proposed under Texas Health and Safety Code, §532 015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers

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

Mental health facility–All **TXMHMR facilities** [state hospitals, state centers, and other facilities] which provide inpatient mental health services.

TXMHMR facilities–All state hospitals and state centers.

§405.808 Patients Committed Under Texas Statutes

(a) **Patients committed to mental health facilities under provisions of the Texas Mental Health Code.** Psychoactive medications will not be administered to patients committed to a mental health facility under a temporary or extended order for mental health services without the informed consent of the patient except.

(1)-(3) (no change)

(b) **Patients Committed to TXMHMR facilities under provisions other than those found in the Texas Mental Health Code (i.e., Code of Criminal Procedures, Family Code). The decision to administer medications to a patient committed to a TXMHMR facility under provisions other than those found in the Texas Mental Health Code is within the discretion of the treating physician during the first 14 days of the patient's commitment. If, following the initial 14-day period, a committed patient or the patient's legally authorized representative objects to the administration of psychoactive medication, the following review procedure will be initiated.**

(1) **The chief physician of the mental health facility or chief physician designee who does not work on the patient's unit will, within six calendar days of the patient's objection or that of his or her legally authorized representative, personally examine the patient; interview the patient and the patient's legally authorized representative, if the representative is available; review the patient's records; discuss the case with the treating physician; and make a determination concerning the appropriateness of treatment with psychoactive medication.**

(2) **Except as limited by paragraphs (6) and (7) of this section, psychoactive medications may be administered if the chief physician or chief physician designee determines that the administration of such medication is medically appropriate treatment. In making this determination, the chief physician or chief physician designee will consider the following factors:**

(A) the accuracy of the diagnosis;

(B) indications for the medication;

(C) probable benefits and risks of the medication; and

(D) the existence and value of alternative forms of treatment, if any.

(3) **In addition, the chief physician or chief physician designee will make a determination as to whether the patient's ability to understand the consequences of the decision to object to the administration of such medication is impaired as a result of the patient's mental illness.**

(4) **If, at any time, the chief physician or chief physician designee determines that the administration of a psychoactive medication is not medically appropriate treatment, the administration of such medication will be discontinued within a reasonable period of time following that determination if the client or his legally authorized representative continues to object. The period of time**

within which the medication must be discontinued will be based on the condition of the patient and the type and dosage of medication being administered.

(5) If psychoactive medication is administered pursuant to a determination under paragraph (2) of this subsection, the clinical director or physician designee will personally monitor the patient's progress on a monthly basis to determine whether the administration of psychoactive medication continues to be medically appropriate treatment.

(6) If the chief physician or chief physician designee determines that the administration of psychoactive medication is medically appropriate treatment but also determines that the patient's ability to understand the consequences of the decision to object to the administration of such medication has not been impaired as a result of the patient's mental illness, the head of the mental health facility will ensure that a consultant psychiatrist not employed by the TDMHMR will, within six calendar days, personally examine the patient; interview the patient and the patient's legally authorized representative, if the representative is available; review the patient's records; discuss the case with the treating physician and with the chief physician or chief physician designee; and make a determination concerning the appropriateness of treatment with psychoactive medication. The provisions of this section will also apply to those situations in which the decision to object was made by the committed patient's legally authorized representative.

(7) If the consultant psychiatrist determines that treatment with psychoactive medication is medically appropriate treatment, such medication may be administered, but the chief physician or chief physician designee will monitor the client's progress as described in paragraph (5) of this subsection.

(8) No patient committed under provisions of the Code of Criminal Procedure who objects to the administration of psychoactive medication after the first 14 days of the commitment, shall be so medicated without consent until the appropriate review procedures set out in this section have been completed and documented. For those patients who have received psychoactive medication and later object to the administration of this medication, psychoactive medication shall be discontinued pursuant to the procedures set out in paragraph (4) of this subsection until the review procedures have been completed and documented.

(9) Nothing in this section is intended to preclude the administration of psychoactive medication to any patient in an emergency situation as provided for in §405.812 of this title (relating to Emergencies).

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

Issued in Austin, Texas, on November 22, 1993

TRD-9332536 Anne K Utley
Chair, Texas Board of Mental Health and Mental Retardation
Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption. January 3, 1994

For further information, please call (512) 206-4516

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 7. Corporate and Financial Regulation

Subchapter A. Examination and Corporate Custodian and Tax

• 28 TAC §7.63

(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 Department of Insurance or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin)

The Texas Department of Insurance proposes the repeal of §7 63, concerning the annual statement blanks, instructions, and other forms used by insurers and certain other entities regulated by the Texas Department of Insurance to report their financial condition and business operations and activities for calendar year 1984 The repeal of this section is necessary to eliminate unnecessary provisions and to enable the Texas Department of Insurance simultaneously to adopt new §7 63, which replaces the repealed section with other provisions concerning the filing requirements for annual and quarterly statements and other reporting forms for calendar year 1993. Notification of the proposed new section which replaces this repealed section appears elsewhere in this issue of the *Texas Register*

Sandra Autry, associate commissioner for the financial program, 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 the repeal There will be no effect on local employment or local economy

Ms Autry also has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be more efficient administrative regulation of insurance There will be no effect on small businesses There is no anticipated economic cost to persons who are required to comply with the repeal as proposed

Comments on the proposal, to be considered by the commissioner of insurance, must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Linda K von Quintus-Dorn, Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Betty Patterson, Manager-Financial Analysis, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, Austin, Texas 78714-9099. Request for a public hearing on this proposal should be submitted separately to the Chief Clerk's Office.

The repeal is proposed under the Insurance Code, Articles 1.11, 1 10, 3.07, 6.11, 6 12, 8.07, 8 08, 8 21, 8 24, 9.22, 9 47, 10.30, 11 06, 11 19, 14.15, 14. 39, 15.15, 15 16, 16 18, 16 24, 17 22, 17 25, 18.12, 19.08, 20 02, 20A.10, 20A 22, 21.43, 21.54, 22 06, 23.02 23.26, 1.03A, and Texas Government Code, §§2001 004-2001 038 Article 1.11, authorizes the commissioner to change the form of the statement blanks and other reporting forms as shall seem best adapted to elicit a true exhibit of the financial condition and the methods of transacting the business of insurers and/or other regulated entities and requires certain insurers and/or other regulated entities to make filings with the National Association of Insurance Commissioners Article 1.10(9), requires the department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements Articles 3 07, 6 11, 6 12, 8 07, 8.08, 8.21, 8.24, 9.22, 9 47, 10 30, 11 06, 11 19, 14 15, 14. 39, 15.15, 15 16, 16 18, 16 24, 17 22, 17 25, 18.12, 19 08, 20 02, 20A 10, 20A 22, 21 54, 22.06, 23 02, and 23 26, require the filing of financial reports and other information by insurers and other regulated entities, and specify particular rulemaking authority of the commissioner relating to those insurers and other regulated entities. Article 21 43, provides the conditions under which foreign insurers are permitted to do business in this state and requires foreign insurers to comply with the provisions of the Insurance Code Article 1 03A, authorizes the commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the department only as authorized by statute for general and uniform application The Texas Government Code, §§2001.004-2001.038, authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures, and prescribe the procedures for adoption of rules by a state administrative agency

Cross Reference To Statute The following are the articles of the Insurance Code that are affected by this rule §7 63-The Insurance Code, Articles 1 11, 1.10, 3 07, 6 11, 6 12, 8.07, 8 08, 8 21, 8 24, 9 22, 9 47, 10 30, 11 06, 11 19, 14 15, 14 39, 15 15, 15 16, 16 18, 16 24, 17 22, 17 25, 18 12, 19 08, 20 02, 20A 10, 20A 22, 21 43, 21 54, 22 06, 23 02, and 23 26

§7 63 Annual Statement Blanks, Instructions, and Other Forms, 1984 Operations.

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

Issued in Austin, Texas on November 24, 1993.

TRD-9332713 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: January 3, 1994

For further information, please call: (512) 463-6327

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The Texas Department of Insurance (department) proposes new §7 63 concerning annual and quarterly statement blanks, other reporting forms, diskettes and instructions to be used by insurers and certain other entities regulated by the Texas Department of Insurance when reporting their financial condition and business operations and activities, and the requirement to file such completed statement blanks and other reporting forms, including diskettes. These statement blanks, other reporting forms and diskettes are required for reporting in 1994, the financial condition and business operations and activities of insurers and certain other regulated entities conducted during the 1993 and 1994 calendar years. The proposal of new §7.63 is simultaneous with the proposed repeal of present §7 63. Notice of the proposed repeal appears elsewhere in this issue of the *Texas Register*. The new section defines terms relevant to the statement blanks and reporting forms, provides the dates by which certain reports are to be filed; adopts by reference the annual and quarterly statement blanks, other reporting forms, and instructions for reporting the financial condition and business operations and activities; and requires insurance companies and certain other regulated entities to file such annual and quarterly statements and other reporting forms with the department and/or the National Association of Insurance Commissioners as directed The department has filed with the Office of the Secretary of State, Texas Register Division, copies of the annual and quarterly statement blanks, other reporting forms, and manuals proposed for adoption by reference Other copies are available for inspection in the office of the Financial Analysis Unit of the Texas Department of Insurance, William P Hobby State Office Building, 333 Guadalupe, Building 3, Third Floor, Austin.

Sandra Autry, associate commissioner for the financial program, has determined that there will be fiscal implications as a result of enforcing or administering this section. The effect on state government for the first five-year period the rule will be in effect will be fees paid by the state government to the National Association of Insurance Commissioners for filing requirements of this section when those fees are not paid by such insurers There will be no effect on local government for the first five-year period the rule will be in effect For small businesses and larger businesses, the cost of compliance with this section will be the administrative expense in completing the statement blanks, other reporting forms, and diskette filings. The cost of completing the diskette filings depends on the method of compliance the regulated entity selects. If a regulated entity elects to purchase electronic data processing equipment and to prepare diskettes internally, the anticipated maximum cost of compliance would be $7,500 for the first year, and $1,200 for each of the next four years. If a regulated entity chooses to use an independent consultant or vendor to prepare diskettes adequate to comply with the requirements of this section, the anticipated possible economic cost of compliance would be between $600 and $3,500 for each year of the first five years that the proposed section is in effect, with the exact cost depending on the fee schedule of the independent consultant or vendor whom the regulated entity chooses to utilize. On the basis of cost per hour of labor, there is no expected difference in cost of compliance between small businesses and larger businesses affected by this section

Ms. Autry has also determined that for each year of the first five years this section as proposed is in effect, the public benefits anticipated as a result of enforcing this section are the ability of the department to provide financial information to the public and other regulatory bodies as requested, and to monitor the financial condition of insurers and other regulated entities licensed in Texas to better assure financial solvency. The anticipated economic cost to insurers and other regulated entities required to comply with this proposed section will be the administrative expense in completing the statement blanks, other reporting forms, and diskette filings. The cost will depend on each company's record-keeping practices, type of operations, and the method of complying with diskette filing requirements selected by the regulated entity as described in the Fiscal Note.

Comments on the proposal, to be considered by the commissioner of insurance, must be submitted in writing within 30 days after publication of the proposed section in the Texas Register to Linda K von Quintus-Dorn, Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P O Box 149104, Austin, Texas 78714-9104 An additional copy of the comments should be submitted to Betty Patterson, Manager - Financial Analysis Unit, Mail Code 303-1A, Texas Department of Insurance, P O Box 149099, Austin, Texas 78714-9099 Request for a public hearing on this proposal should be submitted separately to the Chief Clerk's Office

The new section is proposed under the Insurance Code, Articles 1.11, 1 10, 3 07, 3 20-1, 3.27-2, 6.11, 6 12, 8.07, 8 08, 8.21, 8.24, 9 22, 9 47, 10 30, 11.06, 11 19, 14.15, 14 39, 15 15, 15 16, 16 18, 16 24, 17.22, 17 25, 18 12, 19 08, 20.02, 20A 10, 20A 22, 21 43, 21 54, 22 06, 23 02, 23.26, 1 03A, and Texas Government Code, §§2001 004-2001 038 The Insurance Code, Article 1. 11, authorizes the commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business, and requires certain insurers to make filings with the National Association of Insurance Commissioners. Article 1.10(9), requires the department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements. Articles 3.07, 3.20-1, 3. 27-2, 6.11, 6.12, 8.07, 8.08, 8 21, 8 24, 9 22, 9.47, 10 30, 11.06, 11.19, 14. 15, 14.39, 15 15, 15.16, 16.18, 16 24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A. 10, 20A.22, 21.54, 22.06, 23 02, and 23.26, require the filing of financial reports and other information by insurers and other regulated entities, and specify particular rulemaking authority of the commissioner relating to those insurers and other regulated entities. Article 21.43, provides the conditions under which foreign insurers are permitted to do business in this state and requires foreign insurers to comply with the provisions of the Insurance Code Article 1.03A, authorizes the commissioner to adopt rules for the conduct and execution of the duties and functions of the department only as authorized by statute for general and uniform application Texas Government Code, §§2001. 004-2001.038, authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures, and prescribe the procedures for adoption of rules by a state administrative agency. The proposed section affects the filing of the annual statement, other reporting forms, and diskettes to elicit the financial condition of insurers under the Insurance Code, Article 1.11.

The following are the articles of the Insurance Code that are affected by this rule: § 7.63-The Insurance Code, Articles 1.11, 1.10, 3.07, 3. 20-1, 3 27-2, 6.11, 6 12, 8 07, 8.08, 8.21, 8.24, 9 22, 9.47, 10.30, 11.06, 11 19, 14.15, 14 39, 15.15, 15.16, 16.18, 16.24, 17 22, 17.25, 18 12, 19.08, 20. 02, 20A 10, 20A.22, 21.43, 21.54, 22.06, 23.02, and 23.26

§7.63. Requirements for filing the 1993 Annual and 1994 Quarterly Statements, Other Reporting Forms and Diskettes.

(a) Scope. This section provides insurers and other regulated entities with the filing requirements for the 1993 annual statement, 1994 quarterly statements, other reporting forms, and diskettes necessary to report information concerning the financial condition and business operations and activities of insurers. This section applies to all insurers and other regulated entities authorized to do the business of insurance in this state and includes, but is not limited to, life insurers; accident insurers; life and accident insurers, life and health insurers; accident and health insurers, life, accident and health insurers, mutual life insurers, stipulated pre-

mium insurers; group hospital service corporations; fire insurers; fire and marine insurers; general casualty insurers; fire and casualty insurers; mutual insurers other than life; county mutual insurers; Lloyd's plans; reciprocal and inter-insurance exchanges; domestic risk retention groups; domestic joint underwriting associations; title insurers; fraternal benefit societies; local mutual aid associations; statewide mutual assessment companies; mutual burial associations; exempt associations; farm mutual insurers; health maintenance organizations; and nonprofit legal services corporations. The commissioner of insurance adopts by reference the 1993 annual and 1994 quarterly statement blanks, instruction manuals, and other reporting forms specified in this section The annual and quarterly statement blanks and other reporting forms are available from the Texas Department of Insurance, Financial Analysis, Mail Code 303-1A, P. O. Box 149099, Austin, Texas 78714-9099 Insurers and other regulated entities shall properly report to the Texas Department of Insurance and the National Association of Insurance Commissioners (NAIC), using the appropriate annual and quarterly statement blanks, other reporting forms and machine-readable diskettes and following the applicable instructions as outlined in subsections (c)-(l) of this section.

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

(1) Association edition-Blanks and forms promulgated by the National Association of Insurance Commissioners

(2) Commissioner-The commissioner of insurance appointed under the Insurance Code, Article 1 09.

(3) Department-The Texas Department of Insurance

(4) Insurer-A person or business entity legally organized in and authorized by its domiciliary jurisdiction to do the business of insurance.

(5) NAIC-The National Association of Insurance Commissioners

(6) Texas edition-Blanks and forms promulgated by the commissioner of insurance

(c) Filing requirements for life, accident and health insurers Each life, life and accident, life and health, accident and health, mutual life, or life, accident and health insurance company, stipulated premium insurance company, and group hospital services corporation shall complete and file the following blanks, forms, and diskettes for the 1993 calendar year and the first three quarters of the 1994 calendar year The forms, reports and diskettes identified in paragraphs (1)(A)-(G), (2)(A)-(D), and (3)(A)-(D) of this subsection shall be completed in accordance with the current NAIC *Accounting Practices and Procedures Manual for Life, Accident and Health Insurance Companies*, and the current NAIC *Annual Statement Instructions, Life, Accident and Health*, except as otherwise provided by this section. The diskettes identified in paragraphs (3)(C) and (D) shall be completed in accordance with the current NAIC *Annual Statement Diskette Filing Specifications-Life/Health*. Since Texas domestic companies have historically not been required to establish a Mandatory Securities Valuation Reserve (MSVR), they are not required at the present time to establish an Asset Valuation Reserve (AVR) or Interest Maintenance Reserve (IMR) unless the company is licensed in a state that requires an AVR or IMR, in which case the reserve must be calculated in accordance with the instructions established by the NAIC. Goodwill shall not be allowed as an admitted asset of an insurer or an insurer's insurance subsidiaries on any filing with the department or the NAIC by Texas domestic insurers or on any filing with the department by insurers domiciled outside the State of Texas. In the event of a conflict between the Insurance Code, any currently existing department rule, form or instruction, or any specific requirement of this subsection and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form or instruction, or the specific requirement of this subsection shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code

(1) Reports to be filed with the department and the NAIC include the following

(A) Annual Statement (association edition, Form 1, Form 1A, or Form 11), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before March 1, 1994 (stipulated premium insurance companies, April 1, 1994);

(B) Annual Statement of the Separate Accounts (association edition, Form 1-S) (required of companies maintaining separate accounts), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before March 1, 1994 (stipulated premium insurance companies, April 1, 1994),

(C) Long-Term Care Insurance Exhibit (association edition) (required of companies writing long-term care business), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before March 1, 1994 (stipulated premium insurance companies, April 1, 1994), in addition to the Long-Term Care Experience Reporting Form included in the annual statement required by paragraph (1)(A) of this subsection;

(D) Schedule DS (association edition) (required of companies that have included equity in the undistributed income of consolidated subsidiaries in its net gain/(loss) from operations), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before March 1, 1994 (stipulated premium insurance companies, April 1, 1994);

(E) Interest Sensitive Life Insurance Products Report (association edition) (required of companies writing interest sensitive products), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before April 1, 1994 (stipulated premium insurance companies, April 1, 1994),

(F) Life, Health and Annuity Guaranty Association Model Act Assessment Base Reconciliation Exhibit (association edition), 8 1/2 inch by 14 inch size, to be filed on or before June 30, 1994, and

(G) Life and Accident and Health Quarterly Statement (association edition) (required of companies filing Form 1), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before May 15, August 15, and November 15, 1994. However, a Texas stipulated premium company, unless specifically requested to do so by the department, is not required to file quarterly statements with the department or the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its Certificate of Authority,

(ii) it collected premiums in the prior calendar year of less than $1 million, and

(iii) it had a profit from operations in the prior two calendar years

(2) Reports to be filed only with the department.

(A) Management's Discussion and Analysis (prepared pursuant to the NAIC *Annual Statement Instructions, Life, Accident and Health*), to be filed on or before March 1, 1994 (stipulated premium insurance companies, April 1, 1994),

(B) Schedule SIS, Stockholder Information Supplement (association

edition) (required of domestic stock companies which have 100 or more stockholders), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before March 1, 1994 (stipulated premium insurance companies, April 1, 1994);

(C) Schedule DM (association edition) (shows statement value and fair market value of all bonds and preferred stock owned), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before March 1, 1994 (stipulated premium insurance companies, April 1, 1994) ;

(D) Accident and Health Policy Experience Exhibit, (association edition) (required of companies writing accident and/or health business), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before June 30, 1994;

(E) Annual Statement (Texas edition, green) (required of companies writing prepaid legal business in 1993), 8 1/2 inch by 14 inch size, to be filed on or before March 1, 1994 (stipulated premium insurance companies, April 1, 1994);

(F) Affidavit in Lieu of Annual Statement (Texas edition, green) (required of companies authorized to write prepaid legal business that did not write such business in 1993), to be filed on or before March 1, 1994;

(G) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1994 (stipulated premium insurance companies, April 1, 1994);

(H) Analysis of Surplus, for life, accident and health insurers, to be filed on or before March 1, 1994 (stipulated premium insurance companies, April 1, 1994);

(I) Texas Disclosure Form (reports whether the annual or quarterly statement filing with the department differs from the annual or quarterly statement filing with the NAIC or the insurer's state of domicile and reports any individual treatment of assets, liabilities, operations, or capital and surplus accounts granted by an insurer's state of domicile or any other state insurance regulatory department), to be filed on or before March 1, May 15, August 15, and November 15, 1994 (stipulated premium companies, April 1, 1994 and, for those stipulated premium companies subject to quarterly reporting in accordance with paragraph (1)(G) of this subsection, May 15, August 15, and November 15, 1994);

(J) Supplemental Investment Income Exhibit (shows percent of net investment income by type of investment, as an attachment to page ten of the annual statement as required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 1994 (stipulated premium companies, April 1, 1994); and

(K) Policy Count Exhibit (shows number of insurance policies written or certificates issued by the insurer and in force on December 31, 1993), to be filed on or before March 1, 1994 (stipulated premium companies, April 1, 1994).

(3) Reports and diskettes to be filed only with the NAIC:

(A) Officers and Directors Information (association edition) (required of companies upon their initial filing with the NAIC and to report any changes in previously filed information), to be filed on or before March 1, 1994 (stipulated premium insurance companies, April 1, 1994);

(B) Credit Insurance Experience Exhibit (association edition) (required of companies writing credit business), 9 inch by 14 inch size, to be filed on or before May 1, 1994;

(C) machine-readable diskettes containing computerized annual statement data, (required of companies filing annual statement Form 1), to be filed on or before March 1, 1994 (stipulated premium insurance companies, April 1, 1994) ; and

(D) machine-readable diskettes containing computerized quarterly statement data, (required of companies filing annual statement Form 1), to be filed on or before May 15, August 15, and November 15, 1994. However, a Texas stipulated premium company, unless specifically requested to do so by the department, is not required to file diskettes with the NAIC if it meets all three of the following conditions.

(i) it is authorized to write only life insurance on its Certificate of Authority;

(ii) it collected premiums in the prior calendar year of less than $1 million; and

(iii) it had a profit from operations in the prior two calendar years.

(d) Requirements for property and casualty insurers. Each fire, fire and marine, general casualty, fire and casualty, county mutual insurance company, mutual insurance company other than life, Lloyd's plan, reciprocal or inter-insurance exchange, domestic risk retention group, life insurance company that is licensed to write workers' compensation, any farm mutual insurance company that filed on a Form 2 for the 1992 calendar year, and domestic joint underwriting association shall complete and file the following blanks, forms, and diskettes for the 1993 calendar year and the first three quarters of the 1994 calendar year. The forms, reports, and diskettes identified in paragraphs (1)(A)-(G), (2)(A)-(D), and (3)(A)-(D) of this subsection shall be completed in accordance with the current NAIC *Accounting Practices and Procedures Manual for Fire and Casualty Insurance Companies*, and the current NAIC *Annual Statement Instructions, Property and Casualty*, except as otherwise provided by this section. No loss reserve discounts, other than as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims for which specific segregated investments have been established, shall be allowed; provided, however, any company that claimed loss reserve discounts, other than as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims, as of December 31, 1991, shall be allowed to claim such reserve discounts at the applicable percentage. The applicable percentage for claiming such loss reserve discounts shall be 100% for 1992, 75% for 1993, 50% for 1994, 25% for 1995, 0% for 1996, and subsequent years. In no event shall the dollar amount of discounts, other than as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims, claimed as of December 31, 1991, and subject to the applicable percentage, be increased as of December 31, 1992 and thereafter. The commissioner shall have the authority to determine the appropriateness of, and may disapprove, discounts taken as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims. The commissioner shall also have the authority to determine the appropriateness of and may disapprove anticipated salvage and subrogation. Goodwill shall not be allowed as an admitted asset of an insurer or an insurer's insurance subsidiary on any filing with the department or the NAIC by Texas domestic insurers or on any filing with the department by insurers domiciled outside the State of Texas. The diskettes identified in paragraphs (3)(C) and (D) of this subsection shall be completed in accordance with the current NAIC *Annual Statement Diskette Filing*

Specifications-Property/Casualty In the event of a conflict between the Insurance Code, any currently existing department rule, form or instruction, or any specific requirement of this section and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form or instruction, or the specific requirement of this section shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code.

(1) Reports to be filed with the department and the NAIC:

(A) Annual Statement (association edition, Form 2), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before March 1, 1994,

(B) Long-Term Care Insurance Exhibit (association edition) (required of companies writing long-term care business), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before March 1, 1994, in addition to the Long-Term Care Reporting Form required by subparagraph (1)(C) of this subsection,

(C) Long-Term Care Experience Reporting Form (association edition) (required of companies writing long-term care business), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before May 1, 1994,

(D) Financial Guaranty Insurance Exhibit (association edition) (required of companies writing financial guaranty business), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before March 1, 1994,

(E) Supplement "A" to Schedule T, Exhibit of Medical Malpractice Premiums Written (association edition) (required of companies writing medical malpractice business), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before March 1, 1994;

(F) Insurance Expense Exhibit (association edition), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed in duplicate on or before April 1, 1994; and

(G) Fire and Casualty Quarterly Statement (association edition), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before May 15, August 15, and November 15, 1994.

(2) Reports to be filed only with the department

(A) Management's Discussion and Analysis (prepared pursuant to the NAIC *Annual Statement Instructions, Property and Casualty*), to be filed on or before March 1, 1994,

(B) Schedule SIS, Stockholder Information Supplement (association edition) (required of domestic stock companies which have 100 or more stockholders), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before March 1, 1994;

(C) Schedule DM (association edition) (shows statement value and fair market value of all bonds and preferred stock owned), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before March 1, 1994;

(D) Accident and Health Policy Eperience Exhibit (association edition) (required of companies writing accident and/or health business), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before June 30, 1994;

(E) Annual Statement (Texas edition, green) (required of companies writing prepaid legal business), 8 1/2 inch by 14 inch size, to be filed on or before March 1, 1994,

(F) Affidavit in Lieu of Annual Statement (Texas edition, green) (required of companies authorized to write prepaid legal business that did not write such business in 1993), to be filed on or before March 1, 1994,

(G) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1994,

(H) Analysis of Surplus, for property and casualty insurers (required of all licensed companies, except Texas domestic county mutual companies), to be filed on or before March 1, 1994,

(I) Supplement for County Mutuals (required of Texas domestic county mutual companies, as an attachment to page 16 of the annual statement as required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 1994,

(J) Supplement A for County Mutuals (required of Texas domestic county mutual companies, as an attachment to page 8 of the annual statement as required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 1994;

(K) Texas Disclosure Form (reports whether the annual or quarterly statement filing with the department differs from the annual or quarterly statement filing with the NAIC or the insurer's state of domicile and reports any individual treatment of assets, liabilities, operations, or capital and surplus accounts granted by an insurer's state of domicile or any other state insurance regulatory department), to be filed on or before March 1, May 15, August 15, and November 15, 1994,

(L) Supplemental Investment Income Exhibit (shows percent of net investment income by type of investment, as an attachment to page 6 of the annual statement as required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 1994, and

(M) Policy Count Exhibit (shows number of insurance policies written or certificates issued and in force on December 31, 1993), to be filed on or before March 1, 1994.

(3) Reports and diskettes to be filed only with the NAIC.

(A) Officers and Directors Information (association edition) (required of companies upon their initial filing with the NAIC and to report any changes in previously filed information), to be filed on or before March 1, 1994,

(B) Credit Insurance Experience Exhibit (association edition) (required of companies writing credit accident and/or health business), 9 inch by 14 inch size, to be filed on or before May 1, 1994,

(C) machine-readable diskettes containing computerized annual statement data, to be filed on or before March 1, 1994, and

(D) machine-readable diskettes containing computerized quarterly statement data, to be filed on or before May 15, August 15, and November 15, 1994

(e) Requirements for fraternal benefit societies. Each fraternal benefit society shall complete and file the following blanks, forms, and diskettes for the 1993 calendar year and the first three quarters of the 1994 calendar year. The forms, reports, and diskettes identified in subparagraphs (1)(A)-(D); (2)(A)-(D); and (3)(A) and (B) of this subsection shall be completed in accordance with the current NAIC *Accounting Practices and Procedures Manual for Life, Accident and Health Insurance Companies*, and the current NAIC *Annual Statement Instructions, Fraternal*, except as otherwise provided by this section. The diskettes identified in paragraph (3) (B) of this subsection shall be completed in accordance with the current NAIC *Annual Statement Diskette Filing Specifications-Fraternal*. Goodwill shall not be allowed as an admitted asset of an insurer or an insurer's insurance subsidiaries on any filing with the department or the NAIC by Texas domestic insurers or on any filing with the department by insurers domiciled outside the State of Texas. In the event of a conflict between the Insurance Code, any currently ebyisting department rule, form or instruction, or any specific requirement of this subsection and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code or the department's promulgated rule, form or instruction, or the specific requirement of this subsection shall take precedence and in all respects control. It is the ebypress intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code.

(1) Reports to be filed with the department and the NAIC:

(A) Annual Statement (association edition, Form 4), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before March 1, 1994;

(B) Annual Statement of the Separate Accounts (association edition, Form 1-S) (required of companies maintaining separate accounts) either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before March 1, 1994;

(C) Long-Term Care Insurance Exhibit (association edition) (required of companies writing long-term care business), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before March 1, 1994, in addition to the Long-Term Care Experience Reporting Form included in the annual statement required in paragraph (1)(A) of this subsection; and

(D) Interest Sensitive Life Insurance Products Report (association edition) (required of companies writing interest sensitive products), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before April 1, 1994.

(2) Reports to be filed only with the department:

(A) Management's Discussion and Analysis (prepared pursuant to the NAIC *Annual Statement Instructions, Fraternal*), to be filed on or before March 1, 1994;

(B) Schedule DM (association edition) (shows statement value and fair market value of all bonds and preferred stock owned), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before March 1, 1994;

(C) Accident and Health Policy Experience Exhibit, (association edition) (required of companies writing accident and/or health business), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before June 30, 1994,

(D) Fraternal Quarterly Statement (association edition), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before May 15, August 15, and November 15, 1994;

(E) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1994;

(F) Analysis of Surplus, for fraternal benefit societies, to be filed on or before March 1, 1994; and

(G) Fraternal Benefit Societies-Supplement to Valuation Report, to be filed on or before June 30, 1994.

(H) Texas Disclosure Form (reports whether the annual or quarterly statement filing with the department differs from the annual or quarterly statement filing with the NAIC or the insurer's state of domicile and reports any individual treatment of assets, liabilities, operations, or capital and surplus accounts granted by an insurer's state of domicile or any other state insurance regulatory department), to be filed on or before March 1, May 15, August 15, and November 15, 1994;

(I) Supplemental Investment Income Exhibit (shows percent of net investment income by•type of investment, as an attachment to page nine of the annual statement as required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 1994; and

(J) Policy Count Exhibit (shows number of insurance policies written and certificates issued and in force on December 31, 1993), to be filed on or before March 1, 1994.

(3) Reports and diskettes to be filed only with the NAIC.

(A) Officers and Directors Information (association edition) (required of companies upon their initial filing with the NAIC and to report any changes in previously filed information), to be filed on or before March 1, 1994; and

(B) machine-readable diskettes containing computerized annual statement data, to be filed on or before March 1, 1994

(f) Requirements for title insurers. Each title insurance company shall complete and file the following blanks and forms for the 1993 calendar year and the first three quarters of the 1994 calendar year. The reports and forms identified in paragraphs (1); (2)(A)-(C), and (3) of this subsection shall be completed in accordance with the *Title Insurance Accounting Principles Supplement* section of the current NAIC *Accounting Practices and Procedures Manual for Fire and Casualty Insurance Companies*, and the current NAIC *Annual Statement Instructions, Title*, ebycept as otherwise provided by this section. Goodwill shall not be allowed as an admitted asset of an insurer or an insurer's insurance subsidiary on any filing with the department and the NAIC by Texas domestic insurers or on any filing with the department by insurers domiciled outside the State of Texas. In the event of a conflict between the Insurance Code, any currently existing department rule, form or instruction, or any specific requirement of this subsection and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form or instruction, or the specific requirement of this subsection shall take precedence and in all respects control. It is the ebypress intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code.

(1) Reports to be filed with the department and the NAIC: Annual Statement (association edition, Form 9), either

the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before March 1, 1994.

(2) Reports to be filed only with the department:

(A) Management's Discussion and Analysis, (prepared pursuant to the NAIC *Annual Statement Instructions, Title*), to be filed on or before March 1, 1994;

(B) Schedule DM (association edition) (shows statement value and fair market value of all bonds and preferred stock owned), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before each March 1, 1994;

(C) Title Quarterly Statement (association edition), either the 12 inch by 19 inch size, 11 inch by 17 inch size, or 9 inch by 14 inch size, to be filed on or before May 15, August 15, and November 15, 1994;

(D) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1994; and

(E) Analysis of Surplus, for title insurers, to be filed on or before March 1, 1994.

(F) Texas Disclosure Form (reports whether the annual or quarterly statement filing with the department differs from the annual or quarterly statement filing with the NAIC or the insurer's state of domicile and reports any individual treatment of assets, liabilities, operations, or capital and surplus accounts granted by an insurer's state of domicile or any other state insurance regulatory department), to be filed on or before March 1, May 15, August 15, and November 15, 1994.

(G) Supplemental Investment Income Exhibit (shows percent of net investment income by type of investment, as an attachment to page five of the annual statement as required in paragraph (1)(A) of this subsection), to be filed on or before March 1, 1994; and

(H) Policy Count Exhibit (shows number of insurance policies written and certificates issued and in force December 31, 1993), to be filed on or before March 1, 1994.

(3) Reports to be filed only with the NAIC: Officers and Directors Information (association edition) (required of companies upon their initial filing with the NAIC and to report any changes in previously filed information) , to be filed on or before March 1, 1994.

(g) Requirements for health maintenance organizations. Each health maintenance organization shall complete and file the following blanks and forms for the 1993 calendar year and the first three quarters of the 1994 calendar year with the department only. The forms or reports identified in paragraphs (1)-(3) of this subsection shall be completed in accordance with the current NAIC *Accounting Practices and Procedures Manual for Health Maintenance Organizations*, and the current NAIC *Annual Statements Instructions, Health Maintenance Organizations*, except as otherwise provided by this section. Goodwill shall not be allowed as an admitted asset of an insurer or an insurer's insurance subsidiaries on any filing with the department and the NAIC by Texas domestic insurers and any filing with the department by insurers domiciled outside the State of Texas. In the event of a conflict between the Insurance Code, any currently existing department rule, form or instruction, or any specific requirement of this subsection and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form or instruction, or the specific requirement of this subsection shall take precedence and in all respects control. It is the ebypress intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code.

(1) Annual Statement (association edition, HMO), 8 1/2 inch by 14 inch size, to be filed on or before March 1, 1994; The forms or reports are as follows:

(2) Management's Discussion and Analysis, (prepared pursuant to the NAIC *Annual Statement Instructions, Health Maintenance Organizations*), to be filed on or before March 1, 1994;

(3) HMO Quarterly Statement (association edition), 8 1/2 inch by 14 inch size, to be filed on or before May 15, August 15 and November 15, 1994;

(4) HMO Supplement, 8 1/2 inch by 14 inch size, to be filed on or before March 1, 1994;

(5) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1994; and

(6) Exhibit Z, 8 1/2 inch by 14 inch size, to be filed on or before May 15, August 15, and November 15, 1994;

(7) Texas Disclosure Form (reports whether the annual or quarterly statement filing with the department differs from the annual or quarterly statement filing with the insurer's state of domicile and reports any individual treatment of assets, liabilities, operations, or capital and surplus accounts granted by an insurer's state of domicile or any other state insurance regulatory department), to be filed on or before March 1, May 15, August 15, and November 15, 1994;

(8) Policy Count Exhibit (shows number of insurance policies written and certificates issued and in force as of December 31, 1993), to be filed on or before March 1, 1994.

(h) Requirements for farm mutual insurers not subject to the provisions of subsection (d) of this section. Each farm mutual insurance company shall file the following completed blanks and forms for the 1993 calendar year with the department only:

(1) Annual Statement (Texas edition, tan), 8 1/2 inch by 14 inch size, to be filed on or before March 1, 1994;

(2) Texas Overhead Assessment Form, to be filed on or before March 1, 1994, and

(3) Policy Count Exhibit (shows number of insurance policies written and certificates issued and in force December 31, 1993), to be filed on or before March 1, 1994.

(i) Requirements for mutual assessment companies, mutual aid and mutual burial associations, and exempt companies. Each statewide mutual assessment company, local mutual aid association, local mutual burial association, and exempt company shall file the following completed blanks and forms for the 1993 calendar year with the department only.

(1) Annual Statement (Texas edition, orange), 8 1/2 inch by 14 inch size, to be filed on or before April 1, 1994, provided, however, exempt companies are not required to complete lines 22, 23, 24, 25, and 26 on page 3, the special instructions at the bottom of page 3, and pages 4, 5, 6, 7, and 19. All other pages are required,

(2) Texas Overhead Assessment Form, to be filed on or before April 1, 1994;

(3) Release of Contribution Form, to be filed on or before April 1, 1994,

(4) 3 1/2% Chamberlain Reserve Table (Reserve Valuation), to be filed on or before April 1, 1994;

(5) Reserve Summary (1956 Chamberlain Table 3 1/2%), to be filed on or before April 1, 1994;

(6) Inventory of Insurance in Force by Age of Issue or Reserving Year, to be filed on or before April 1, 1994;

(7) Summary of Inventory of Insurance In Force by Age and Calculation of Net Premiums, to be filed on or before April 1, 1994; and

(8) Policy Count Exhibit (shows number of insurance policies written and certificates issued and in force December 31, 1993), to be filed on or before April 1, 1994.

(j) Requirements for nonprofit legal service corporations. Each nonprofit legal service corporation shall file the following completed blanks and forms for the 1993 calendar year with the department only:

(1) Annual Statement (Texas edition, green), 8 1/2 inch by 14 inch size, to be filed on or before March 1, 1994; and

(2) Texas Overhead Assessment Form, to be filed on or before March 1, 1994; and

(3) Policy Count Exhibit (shows number of insurance policies written and certificates issued and in force December 31, 1993), to be filed on or before March 1, 1994.

(k) Requirements for Mexican casualty companies. Each Mexican casualty company shall complete and file the following blanks and forms for the 1993 calendar year with the department only. The form identified in paragraph (1) of this subsection shall be completed in accordance with the current NAIC *Accounting Practices and Procedures Manual for Fire and Casualty Insurance Companies*, and the current NAIC *Annual Statement Instructions, Property and Casualty*, ebycept as provided by this section. An actuarial opinion is not required. All submissions shall be printed or typed in English and all monetary values shall be clearly designated in United States dollars. In the event of a conflict between the Insurance Code, any currently ebyisting department rule, form or instruction, or any specific requirement of this subsection and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form or instruction, or the specific requirement of this subsection shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code. The blanks or forms are as follows:

(1) Annual Statement (association edition, Form 2), 12 inch by 19 inch size, provided, however, only pages one-four, 14, 18, and 97 are required to be completed, to be filed on or before March 1, 1994;

(2) a copy of the balance sheet and the statement of profit and loss from the Mexican financial statement (printed or typed in English), to be filed on or before March 1, 1994;

(3) a copy of the official documents issued by the COMISION NACIONAL DE SEGUROS Y FIANZAS approving the current year's annual statement, to be filed on or before June 30, 1994;

(4) a copy of the current license to operate in the Republic of Mexico, to be filed on or before March 1, 1994; and

(5) Policy Count Exhibit (shows number of insurance policies written and certificates issued and in force December 31, 1993), to be filed on or before March 1, 1994.

(l) Other financial reports. Nothing in this section prohibits the department from requiring any insurer or other regulated entity from filing other financial reports with the department.

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

Issued in Austin, Texas, on November 24, 1993.

TRD-9332714 Linda K von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: January 3, 1994

For further information, please call (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 330. Municipal Solid Waste

(Editor's Note: In the November 23, 1993, issue of the Texas Register (18 TexReg 8652), the preamble to the repeal of and new §330 65 was inadvertently left out of the issue The preamble is being published here in its entirety)

The Texas Water Commission (TWC) proposes the repeal of §330.65 and new §330.65, concerning municipal solid waste management. The new sections will apply to the municipal solid waste rules which were published in the June 18, 1993, issue of the *Texas Register* (18 TexReg 4030). The June 18, 1993, rules as indicated in the adoption preamble, have a delayed effective date of October 9, 1993 The new sections are intended to replace the June 18, 1993, rules on their October 9, 1993, effective date.

The proposed changes are in response to House Bill 2043, Regular Session, 73rd Legislature (1993). On May 30, 1993, House Bill 2043 was passed by the Legislature and became effective June 20, 1993 The bill exempts certain municipal solid waste management facilities involved in the transfer of municipal solid waste from TWC municipal solid waste permit requirements. In order to qualify for one of the delineated exemptions, the facility must comply with design and operational requirements established by TWC and must hold a public meeting regarding the siting of the facility in the municipality or county where the facility is to be located

Section 330 4(d) relating to permit requirement, which was published in November 26, 1993, issue of the *Texas Register* (18 TexReg 8766), is proposed to be amended and replaced with new language which states that a permit is not required for a municipal solid waste management facility that is used in the transfer of municipal solid waste from one of the following. a municipality with a population of less than 50,000; a county with a population of less than 85,000, a facility used in the transfer of municipal solid waste that will transfer 125 tons per day or less House Bill 2043 also provides certain exemptions for material recovery facilities, which will be the subject of a separate rulemaking

Section 330 65 relating to requirements for an application for registration of solid waste facilities (Type V) is proposed to be repealed in its entirety and replaced with a new §330.65, which delineates operation and design criteria which must be met by transfer facilities exempted from permit requirements under §330.4(d). TWC will register those facilities which the Executive Director determines have met the operation and design requirements in §330.65.

Stephen Minick, Division of Budget and Planning, has determined that for the first five-year period the section and repeal in are in effect there will be fiscal implications as a result of administration and enforcement of the sections. The costs to the state of processing municipal solid waste permits will be reduced. The actual savings are prospective and cannot be determined at this time but will be reflected by the number of registrations for transfer stations sought by local governments Cost savings will potentially be realized by local governments of between 5,000 and 85,000 in population. These savings also cannot be estimated but will depend on the individual circumstances in each jurisdiction and the potential savings from avoiding the costs of permit application and approval No impacts are anticipated to small businesses

Mr Minick also has determined that for the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcement of and compliance with the sections will be improvements in the management and control of municipal solid waste, the processing of municipal solid waste permits and compliance with commission rules relating to municipal solid waste There are no known costs to persons required to comply with the sections as proposed

Comments on the proposal may be submitted to Ronald L. Bond, P.E., Director, Municipal

Solid Waste Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted for a period of 30 days following the date of this publication.

A public hearing to receive comments has also been scheduled for December 6, 1993, at 1:30 p.m. in Room 564 of Building F, 12015 IH-35 North, Austin.

The repeal and new section are proposed under the authority of the Texas Water Code (Vernon 1992), §5.103, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and under House Bill 2043, as passed by the 73rd Legislature. Additionally, they are promulgated pursuant to the Texas Solid Waste Disposal Act, §361.024 (the Act), Texas Health and Safety Code, (Vernon 1992), which provides the Texas Water Commission with the authority to regulate municipal solid waste and adopt rules as necessary to regulate the operation, management and control of solid waste under its jurisdiction.

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Chapter 334. Aboveground and Underground Storage Tanks

The Texas Natural Resource Conservation Commission (commission) proposes new §§334.501-334.506, and amendments to §334.2, concerning overpayment prevention in the petroleum storage tank reimbursement program.

The amended and new rules are proposed to enhance the implementation of certain provisions of House Bill 1588 passed by the 71st Texas Legislature and Senate Bill 1243 passed by the 73rd Texas Legislature. House Bill 1588 created the petroleum storage tank remediation fund for the purpose of cleaning up contamination resulting from leaking under and aboveground storage tanks. Senate Bill 1243 requires the Texas Natural Resource Conservation Commission to audit claims paid from the petroleum storage tank remediation fund.

House Bill 1588 allows owners of petroleum storage tanks to hire their own contractors for the purpose of cleaning up contamination from leaking tanks. After the contractor, or corrective action specialist, has performed the cleanup work and has been paid, the owner of the tank may submit an application for reimbursement of cleanup costs to the commission. Most applications have been reviewed prior to payment, in order to assure that requested reimbursement does in fact reflect only reasonable and allowable costs. The commission has allowed an owner or operator to sign a subrogation agreement with the commission to facilitate faster reimbursement while providing a mechanism for overpayment recovery directly from the contractor. Today's proposed sections will enhance the procedure to allow faster payment and provide the framework for recovery of overpayment. A post-payment audit is authorized by the subchapter If upon completion of an audit, the staff determines that the commission paid costs that were excessive, unnecessary, unreasonable, or otherwise not allowable, then the commission will have the mechanism for recovery of such overpayments

Because reimbursements are only made after the owner/operator has paid the contractor, it is often appropriate for the commission to look directly to the contractor for recovery of overpayments. In other situations, the commission may choose to seek recovery of the overpayment from the owner/operator. If the commission notifies a contractor or owner/operator that an overpayment has been made, the contractor or owner/operator will have 30 days to respond to the notice. The recipient of the notice may either submit a check to the agency for the amount of the overpayment, or in the alternative, the recipient may file a written protest to the notice of overpayment and request a hearing. If the contractor or owner/operator neither returns the overpayment, nor files a written petition objecting to the notice, the executive director shall file a petition with the commission seeking an order compelling payment. If an order is issued pursuant to executive director's petition, it shall be enforceable by all authorities available in Chapter 26 of the Texas Water Code The commissioners may levy an administrative penalty of up to $10,000 per day of delinquent payment. The commissioners also may refer the matter to the Attorney General of Texas for collection by means of a civil suit. The costs of a hearing in this matter may also be charged to a contractor or owner/operator who has been found to unlawfully withhold an overpayment

Anyone who wishes to perform corrective action services and be eligible to receive monies from the petroleum storage tank remediation fund must be registered with the commission, once the program promulgated by subchapter J is in place For corrective action services commenced on or after August 6, 1993, the agency may exercise the option to revoke or suspend registration certificates of individuals who fail to comply with the requirements of this subchapter. An individual whose certificate has been revoked or suspended will no longer be eligible to perform corrective action services for money from the petroleum storage tank remediation fund

The new sections provide that owners/operators and contractors must cooperate fully with the executive director whenever an audit or other investigation is conducted If an individual refuses to cooperate with an audit or investigation, the executive director may seek an order from the commission compelling such cooperation. Such an order would be enforceable by any of the means available to the executive director under Chapter 26 of the Texas Water Code.

Section 334 2 (relating to Definitions) has been amended to include definitions for "Good Quality Work," "Reimbursable Cost," "Allowable Cost," "Necessary cost/necessary work," and "Cost effective work " A clear understanding of each of the aforementioned words or phrases is essential for understanding of and compliance with the provisions Chapter 334, subchapter L

Section 334.501 (relating to Purpose and Applicability) lays out the purpose of these new sections and establishes that the Subchapter applies to all applications for reimbursement and other costs paid from the petroleum storage tank remediation fund.

Section 334.502 (relating to Duty of Persons Paid by Recipients of Reimbursement Money from the Petroleum Storage Tank Remediation Fund) establishes that each person who is paid with money reimbursed to owners from the petroleum storage tank remediation fund has a duty to perform good quality work and charge only reasonable costs for that work. All terms are defined in subchapter A of this title, relating to definitions. The thrust of this section is that corrective action specialists shall not perform unnecessary work, that all work that is performed shall be done at a fair cost in light of technical demands and market prices. A person who receives money from a payee from the fund must also cooperate with any audit or investigation conducted by the executive director. Section 334.503 (relating to Significance of Payment) clearly establishes that just because the executive director has reimbursed someone pursuant to an application, does not mean that all costs in the reimbursement application are allowable or reasonable. This section also provides that all applications for reimbursement are subject to post-payment audits.

Section 334.504 (relating to Audits) states that the executive director will conduct a sufficient number of audits of reimbursements claimed and payments made to effectuate the purposes of this subchapter and House Bill 1588. Audits may be conducted either post- or pre-payment

Section 334.505 (relating to Notice of Overpayment) authorizes the executive director to issue a notice of overpayment if he determines as the result of an audit or investigation that an overpayment has been made. The notice of overpayment may go directly to the contractor who performed the work, or to the owner/operator who received the overpayment A recipient of a notice of overpayment must remit a check in the amount of the overpayment, plus interest, to the Texas Natural Resource Conservation Commission within 30 days.

Section 334.506 (relating to Failure to Return Overpayment or Cooperate with Audit or Investigation) allows a person to contest or object to a notice of overpayment by requesting a hearing on the notice accompanied by a written assertion of which funds the person is entitled to retain and why. If a person does not object to a notice of overpayment within 30 days, all objections are deemed waived. Furthermore, if a person does not return the overpayment, or object within 30 days the executive director shall seek an order compelling payment. The commission may also order a person to cooperate with any audit or investigation Any orders issued pursuant to this subchapter may be enforced by any of the mechanisms available through the Texas Water Code, Chapter 26.

Stephen Minick, has determined that for the first five-years these sections as proposed are in effect there will be fiscal implications as a result of administration and enforcement of

the sections. The approved budget for fiscal year 1994 is $384,572. If an increase in the number of audits is desired, a commensurate increase in funding will be warranted.

Additionally, program expansion of $1.2 Million was provided for in Senate Bill 1243 This expanded funding is available to be spent in the current biennium (fiscal years 1994 and 1995) It should be noted that the investment (funds) spent to operate the audit program will result in at minimum breakeven recoupment for the state, because the cost will be offset by the amounts detected by the audits It should also be noted that the number of audits conducted pursuant to funding from Senate Bill 1243 will diminish, if this funding is not provided at the expiration of the current biennium

To the extent that enforcement of these sections will prevent overpayment of reimbursable expenses from the Petroleum Storage Tank Remediation Fund, a cost savings to state government will be realized The exact amount of potential cost savings from this effect cannot be determined at this time. Also, any cost savings from reductions in overpayments would increase the funds available for other corrective actions reimbursement requests In other words, collected audit findings will be deposited into the petroleum storage tank fund (Fund 655) to be used to perform corrective action work The costs to the responsible party will be related to document retrieval time and cost, staff time to meet with auditors, and other minimal general and administrative operating costs Owner/operators or contractors from whom the commission seeks recovery of overpayments will realize increased costs that will not be reimbursed by the state. These unreimbursed expenses will vary with each individual reimbursement request and contractor and cannot be determined at this time Likewise, contractors and owner/operators against whom claims for repayment are made may incur costs related to the administrative processes of repayment, appeal, hearing, or related actions There are no direct fiscal implications anticipated for local governments Costs to small businesses should not be different than those of any other contractor or owner/operator

For the first five years these sections are in effect the public benefit anticipated as a result of enforcement of or compliance with the sections will be improvements in the management and disbursement of state funds, the availability of financial resources dedicated to pollution remediation efforts, and enforcement of the provisions of the Water Code and regulations of the commission regarding the petroleum storage tank remediation program There are no known costs anticipated in individuals required to comply with these sections not identified previously relating to contractors or owner/operators

Comments on the proposal may be submitted to Ray Winter, Staff Attorney, Legal Division, Park 35, Texas Natural Resource Conservation Commission, P O Box 13087, Austin, Texas 78711-3087 Comments will be accepted until 5 00 p m , 30 days after the date of this publication

Subchapter A. General Provisions

- **30 TAC §§334.2**

The amendment is proposed under the Texas Water Code, §5.103 and §5 105, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission

House Bill 1588, which requires the Texas Natural Resource Conservation Commission to establish a Groundwater Protection Program and to implement a reimbursement program to responsible parties who clean-up sites on their own initiative, Senate Bill 1243 requires the Texas Natural Resource Conservation Commission to implement an audit program and audit claims paid from the petroleum storage tank remediation fund

§334 2 Definitions The following words and terms, when used in this chapter, shall have the following meanings, unless context clearly indicates otherwise

Allowable cost–

(A) Only those costs which are allowable costs pursuant to the terms of this section shall be subject to reimbursement under this subchapter.

(B) Allowable costs are those costs and expenses which arise directly from the performance of necessary corrective action in accordance with the requirements of the commission, subject to the limitations prescribed by this section.

(C) Allowable costs shall include, but not be limited to the following:

(i) abatement of impacts and immediate threats of impact to human health, safety, and the environment, including measures necessary to prevent further releases and to identify and mitigate all fire, explosion, and human exposure hazards associated with a release;

(ii) removal of free product;

(iii) temporary provision of an alternate water supply, provided that in order to be allowable, any water supplied on or after January 17, 1990, must be approved in advance by the commission or must be supplied in response to a written directive from the executive director issued before January 17, 1990. The executive shall determine the length of time during which the cost of water supply will be allowable, the amounts of water which may be allowable, the uses for which water supply may be allowable, and other conditions of approval;

(iv) collection and analysis of surface and subsurface soil and water, free product, and vapor samples;

(v) emplacement of observation and monitor wells;

(vi) removal, storage, treatment, recycling, transport, and disposal of free product, sludges, vapors, contaminated soils, contaminated water and other wastes and contaminated articles, in accordance with applicable laws;

(vii) removal, disposal, and replacement (including transport) of soils and pavement where removal is necessary to the performance of corrective action;

(viii) tank system integrity testing in accordance with the methods prescribed by this chapter when such testing:

(I) is necessary to the performance of corrective action;

(II) has been specifically requested by the executive director on or after May 31, 1989; or

(III) has been specifically ordered by the commission on or after May 31, 1989;

(ix) identification and testing of affected or potentially affected drinking water sources;

(x) design of plans for site assessment and remediation;

(xi) acquisition, installation, startup, operation, and maintenance of site assessment and remediation systems, including monitoring;

(xii) removal, transport, and disposal of the components of the underground or aboveground tank, excluding associated piping, pumps, and dispensers, in accordance with applicable law when connected with a corrective action measure and conducted prior to October 1, 1992;

(xiii) removal, transport, and disposal of the underground or aboveground tank, including associated piping, pumps, and dispensers, in accordance with applicable law when connected with a corrective action measure and conducted on or after October 1, 1992;

(xiv) permanent abandonment in place of a tank system where abandonment in place rather than tank system removal is deemed by the execu-

tive director to be necessary to avoid destruction of substantial or significant surface improvements;

(xv) temporary relocation of utility structures when necessary to the performance of corrective action;

(xvi) preparation of technical reports required pursuant to the requirements of subchapter D of this chapter (relating to Reporting of Releases and Corrective Action);

(xvii) the fair market value of access to property outside of the facility boundaries where such access is necessary for the performance of corrective action;

(xviii) the reasonable value of necessary time spent by the applicant in planning and administering his own corrective action plan;

(xvi) performance of any corrective action measure which is specifically required by an order of the commission or a written request or confirmation of the executive director on or after September 1, 1987;

(xx) state and federal sales taxes applicable to items which are otherwise allowable costs under this section;

(xxi) interest on the monies expended for an item of corrective action, provided that:

(I) the interest costs were incurred on expenses which themselves are allowable costs under this section;

(II) the interest costs were incurred on expenses which themselves are reasonable costs under §334.309 of this title (relating to Reasonable Costs-Interim Period);

(III) the rate of interest which may be reimbursed shall be the lesser of:

(-a-) the actual rate of interest incurred; or,

(-b-) a rate which does not exceed an amount that is 2.0% higher than the New York prime rate on the date which the corrective action item for which interest is claimed is approved for payment under §334.314 of this title (relating to Executive Director's Fund Payment Report-Interim Period);

(IV) the only interest allowable is the interest which accrues on a corrective action item on or after the day on which the item itself is approved for payment under §334.314 of this title (relating to Executive Director's Fund Payment Report-Interim Period); and

(V) any interest claim for an item under this subsection shall be in lieu of all interest which may be claimed under the Texas Water Code, §26.3573, and Texas Civil Statues, Article 601f, on that same item; and

(xxii) any other costs determined by the executive director to be allowable in accordance with the provisions of this subchapter.

(D) The following types of costs are those which will not be considered allowable costs under this subchapter:

(i) the cost of replacement, repair, and maintenance of affected tanks and associated piping;

(ii) the cost of upgrading existing affected tanks and associated piping, including but not limited to the costs of corrosion protection, release detection, spill and overfill protection, or any other upgrading required by Subchapter C of this chapter (relating to Technical Standards);

(iii) removal, transport, and disposal of the piping, pumps, and dispensers associated with the underground or aboveground tank when removed prior to October 1, 1992;

(iv) loss of income or profits, including without limitation, the loss of business income arising out of the review, processing, or payment of an application or request for assistance under this subchapter;

(v) decreased property values;

(vi) bodily injury or property damage;

(vii) attorney's fees;

(viii) any costs associated with preparing, filing, and prosecuting an application for reimbursement or assistance under this subchapter;

(ix) the costs of making improvements to the facility beyond those that are required for corrective action;

(x) costs associated with contamination assessments performed for any purpose where no release of petroleum is discovered, except when the contamination assessment has been ordered by the commission;

(xi) costs of compiling and storing records relating to costs of corrective action;

(xii) costs of corrective action taken in response to the release of a substance which is not a petroleum product as defined in §334. 322 of this title (relating to Subchapter H Definitions);

(xiii) costs of tank integrity testing when it is not specifically required by this chapter, requested by the executive director, or ordered by the commission;

(xiv) costs of any corrective action incurred by an owner or operator on or after the date that the executive director commences corrective action at the owner's or the operator's facility pursuant to §334.321 of this title (relating to Corrective Action by the Commission-Interim Period.); unless authorized in writing by the executive director;

(xv) costs incurred as a result of a release from a storage tank system owned, operated, or maintained by a common carrier railroad; and

(xvi) any activities, including those required by this chapter, which are not conducted in compliance with applicable state and federal environmental laws or laws relating to the transport and disposal of waste.

(E) The costs of abating the release from the petroleum storage tank and the costs of removal, transport and disposal of the petroleum storage tank, excluding associated piping, pumps and dispensers, are the only allowable costs in situations where:

(i) a release of a petroleum product from a petroleum storage tank occurs near the location of a release of any other substance other than hydraulic oil from a hydraulic lift system or spent oil from a motor vehicle, located at a vehicle service and fueling facility; and

(ii) the contamination from the substance which is a petroleum product could not reasonably be remediated under a separate and distinct corrective action plan from the substance which is not a petroleum product.

(F) The costs of abating the release from the hydraulic lift system and the costs of removal, transport and disposal of the tank, excluding associated piping and equipment, are the only allowable costs in situations where:

(i) a release of hydraulic fluid occurs near the location of a release of any other substance other than:

(I) petroleum products from a petroleum storage tank;

(II) spent oil from a tank located at a vehicle service and fueling facility; or

(III) another substance which the claimant can prove was contained in the hydraulic lift system; and

(ii) the contamination from the substance which is a hydraulic fluid could not reasonably be remediated under a separate and distinct corrective action plan from the substance which is not a hydraulic fluid.

(G) The costs of abating the release from the spent oil tank and the costs of removal, transport and disposal of the tank, including (on or after October 1, 1992) associated piping and equipment, are the only allowable costs in situations where:

(i) a release of spent oil occurs near the location of a release of any other substance other than:

(I) petroleum products from a petroleum storage tank;

(II) hydraulic fluid from a hydraulic lift system; or

(III) another substance which the claimant can prove was contained in the spent oil tank; and

(ii) the contamination from the substance which is a spent oil could not reasonably be remediated under a separate and distinct corrective action plan from the substance which is not a spent oil.

(II) In addition to other requirements, no corrective action costs connected with the release of spent oil shall be allowable unless the spent oil was released from a tank located at a vehicle service and fueling facility, nor shall any costs connected with the release of hydraulic fluid be allowable unless the hydraulic fluid was released from a hydraulic lift system located at a vehicle service and fueling facility. The spent oil tank and/or hydraulic lift system must have been used in conjunction with and contemporaneously with a vehicle service and fueling facility.

Cost effective work-Work of a type which is both effective in achieving the desired remediation result, and which, of alternative types of effective work, is the least costly.

Good quality work-Work which is consistent with standard industry practice of persons regularly engaged in the business of petroleum storage tank corrective action and consistent with the recommended guidelines published by the Texas Natural Resource Conservation Commission, and conducted in accordance with applicable federal, state, and local regulations.

Necessary cost/necessary work-Work which is required by the Texas Natural Resource Conservation Commission to remediate a LPST site when contamination reaches levels in excess of the threshold action levels for BTEX and TPH (and/or any other constituent) as defined by the commission.

Reimbursable cost-

(A) For purposes of this subchapter, "Reimbursable Cost" means that amount or range which is commensurate with the level of corrective action necessary to assess and remediate a site, as determined by the executive director, based on an evaluation of technical effectiveness and cost effectiveness as well as typical costs expected for the particular corrective action under review, with respect to the necessary or required scope and complexity of the action.

(B) No cost is reimbursable unless it is also an allowable cost pursuant to §334.308 of this title (relating to Allowable Costs-Interim Period).

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

Issued in Austin, Texas, on November 23, 1993

TRD-9332585 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption January 3, 1994

For further information, please call (512) 463-8069

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Subchapter L. Overpayment Provision

- **30 TAC §§334.501-334.506**

The new sections are proposed under House Bill 1588, which requires the Texas Natural Resource Conservation Commission to establish a Groundwater Protection Program, and to implement a reimbursement program to responsible parties who clean-up sites on their own initiative, Senate Bill 1243 which requires the Texas Natural Resource Conservation Commission to implement an audit program and audit claims paid from the petroleum storage tank remediation fund; and the Texas Water Code, §5.103 and §5.105, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission

§334.501 Purpose and Applicability of this Subchapter

(a) Purpose-The purpose of this subchapter is to establish procedures regarding the reimbursement of money expended from the petroleum storage tank remediation fund, to assure the most efficient use of the money available and to provide the most effective protection to the environment, public health and safety.

(b) Applicability-This subchapter applies to all claims paid for reimbursement and/or payment for money under Chapter 334, Subchapter H of this title (relating to the Interim Reimbursement Program).

§334.502 Duty of Persons Paid by Recipients of Reimbursement Money from the Petroleum Storage Tank Remediation Fund

(a) Each person who performs work at an underground storage tank or aboveground storage tank, who is paid by a person who anticipates being, or actually is, reimbursed from the petroleum storage tank remediation fund, shall perform "good quality work" and submit charges only for "reimbursable costs," as those terms are defined in Subchapter A of this Chapter

(b) Each person to whom the performance standard established by subsection (a) of this section applies shall cooperate fully with any audit or investigation by the executive director regarding the quality of work performed or the reasonableness of costs charged

§334.503 Significance of Payment by the Executive Director

(a) Payment by the executive director of a reimbursement claim means that the claim is potentially subject to post-payment audit

(b) By making payment of reimbursement claims, the executive director makes no statement or admission that the payments are for necessary, reasonable or allowable costs, as those terms are defined by Subchapter A of this Chapter, nor that the remedial action taken was not in excess of Texas Natural Resource Conservation Commission clean-up standards for effective protection of the environment, public health and safety

§334.504. Audits. The executive director's staff shall conduct a sufficient number of audits of reimbursements claimed and payments made to assure achievements of the purposes of this chapter. Such audits may occur prior to or after claims for reimbursement have been paid. Such audits shall include at a minimum an investigation into whether the amounts were:

(1) allowable;

(2) technically necessary,

(3) reasonable; and

(4) cost effective as these terms are defined in Subchapter A, of this Chapter.

§334.505. Notice of Overpayment.

(a) If the executive director conducts an audit or investigation and concludes that reimbursement of a claim was for an amount which exceeded the necessary, allowable or reasonable cost of corrective action a notice of overpayment may be delivered to the persons who were paid by the reimbursement recipient, or to the reimbursement recipient himself.

(b) Upon receipt of a notice of overpayment, a person shall submit a check returning the amount of overpayment plus interest, calculated at New York Prime, plus two points, dating from the date of overpayment by the Texas Natural Resource Conservation Commission, to the date of repayment to the Texas Natural Resource Conservation Commission.

(c) All checks rendered to return overpayments shall be made out to "The State of Texas-Petroleum Storage Tank Remediation Fund," and mailed to the Director of the Administrative Audits and Financial Assurance Division, Audit and Program Coordination Section, Texas Natural Resource Conservation Commission, P O. Box 13087, Austin, Texas 78711-3087 with the notation "LPST #_____, Application #_____, overpayment return."

§334.506 Failure to Return Overpayment or Cooperate with Audit or Investigation

(a) If the party receiving the notice of overpayment disputes any of the amount to be repaid to the Commission, he or she must within 30 days of receipt of the notice of overpayment, request a hearing and assert which funds the party is entitled to retain, and why such funds represent reimbursement for necessary, reasonable and allowable costs If a person does not object to a notice of overpayment, in whole or in part, within 30 days of receipt, then all objections to the notice are waived

(b) If the overpayment has not been returned to the commission, or objected to by the recipient, by the thirtieth calendar day after receipt, the executive director shall file a petition seeking an order from the commission to compel payment.

(c) If, upon hearing, the commission issues an order compelling return of overpayment in any amount, the person found responsible for returning overpayment may also be required to reimburse the commission for all hearing costs, including the costs of preparation.

(d) All commission orders issued pursuant to this subchapter shall be enforceable in the same manner as any order issued pursuant the Texas Water Code, Chapter 26.

(e) The executive director may seek an order from the commission to compel cooperation with an audit or investigation at any time.

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

Issued in Austin, Texas, on November 23, 1993

TRD-9332584 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption January 3, 1994

For further information, please call (512) 463-8069

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 47. Primary Home Care

Service Requirements

• 40 TAC §47.2914

The Texas Department of Human Services (DHS) proposes an amendment to §47 2914, concerning service requirements, in its Primary Home Care chapter The purpose of the amendment is to allow the provider agency to formally suspend and the Community Care for Aged and Disabled (CCAD) worker to terminate primary home care when anyone in the client's home racially discriminates against the attendant or sexually harasses the attendant. The amendment will also allow the client to appeal the worker's decision before termination of services Previously services to those clients were simply stopped because the provider agency could not find attendants to serve the client, leaving the client without services or the right to appeal

Burton F Raiford, commissioner, 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. Raiford 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 that the client will be able to continue receiving services pending the hearing, if he appeals the worker's decision to terminate services. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Frances Barraza at (512) 450-3216 in DHS's Community Care Section. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-290, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs, and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds The amendment implements the Human Resources Code, §§22 001-22 024 and 32 001-32 041

§47 2914. Suspension of Services

(a) (No change)

(b) The provider agency may suspend services if one or more of the following circumstances occurs

(1) The client or someone in the client's home racially discriminates against the attendant or the RN supervisor in the client's home.

(2) The client or someone in the client's home sexually harasses the attendant in the client's home

(c) (No change.)

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

Issued in Austin, Texas, on November 29, 1993

TRD-9332758 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption February 15, 1994

For further information, please call (512) 450-3765

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Chapter 48. Community Care for Aged and Disabled

Case Management

• 40 TAC §48.3903

The Texas Department of Human Services (DHS) proposes an amendment to §48.3903, concerning case management, in its Community Care for Aged and Disabled chapter. The purpose of the amendment is to allow the provider agency to formally suspend and the Community Care for Aged and Disabled (CCAD) worker to terminate all CCAD services when anyone in the client's home racially discriminates against the attendant or sexually harasses the attendant The amendment will also allow the client to appeal the worker's decision before termination of services. Previously services to those clients were simply stopped because the provider agency could not find attendants to serve the client, leaving the client without services or the right to appeal

Burton F Raiford, commissioner, 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 Raiford 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 that the client will be able to continue receiving services pending the hearing, if he appeals the worker's decision to terminate services There will be no effect on small businesses There is no anticipated economic cost to persons who are required to comply with the proposed section

Questions about the content of the proposal may be directed to Frances Barraza at (512) 450-3216 in DHS's Community Care Section Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-290, Texas Department of Human Services W-402, P O Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds The amendment implements §22 001-22 024 and 32 001-32 041 of the Human Resources Code

§48 3903 Denial, Reduction, and Termination of Benefits

(a) -(e) (No change)

(f) If a client refuses to comply with his service plan, the caseworker and the client may adjust it within the CCAD service requirement limitations. If the client repeatedly refuses to comply with his service plan, the caseworker may terminate services Refusal to comply with a service plan includes actions by the client or someone in the client's home that prevent carrying out the service plan. Before services are terminated, the client is entitled to receive written notification that his services will be terminated if he does not comply with his service plan If an applicant's services were terminated in the past 12 months because of his failure to comply with his service plan, the applicant must agree to the proposed service plan developed when he reapplies

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

Issued in Austin, Texas, on November 29, 1993

TRD-9332757 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption February 15, 1994

For further information, please call (512) 450-3765

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Chapter 53. Family Care Program

Service Delivery Requirements

• 40 TAC §53.404

The Texas Department of Human Services (DHS) proposes an amendment to §53 404, concerning suspension of services, in its Family Care Program chapter The purpose of the amendment is to allow the provider agency to formally suspend and the Community Care for Aged and Disabled (CCAD) worker to terminate family care when anyone in the client's home racially discriminates against the attendant or sexually harasses the attendant The amendment will also allow the client to appeal the worker's decision before termination of services Previously services to those clients were simply stopped because the provider agency could not find attendants to serve the client, leaving the client without services or the right to appeal

Burton F Raiford, commissioner, 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 Raiford 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 that the client will be able to continue receiving services pending the hearing, if he appeals the worker's decision to terminate services. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Frances Barraza at (512) 450-3216 in DHS's Community Care Section. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-290, Texas Department of Human Services W-402, P.O Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs, and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds The amendment implements the Human Resources Code, §§22 001-22 024 and 32 001-32 041

§53 404 Suspension of Services

(a) (No change)

(b) The provider agency may suspend services before the end of the authorization coverage period under either of the following circumstances

(1) The client or someone in the client's home racially discriminates against the attendant or supervisor

(2) The client or someone in the client's home sexually harasses the attendant

(c)-(e) (No change)

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

Issued in Austin, Texas, on November 29, 1993

TRD 9332756 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption February 15, 1994

For further information, please call (512) 450-3765

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Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's Note As required by the Insurance Code, Article 5 96 and 5 97, the Texas Register publishes notice of proposed actions by the Texas Board of Insurance Notice of action proposed under Article 5 96 must be published in the Texas Register not later than the 30th day before the board adopts the proposal Notice of action proposed under Article 5 97 must be published in the Texas Register not later than the 10th day before the Board of Insurance adopts the proposal The Administrative Procedure Act, the Texas Government Code, Title 10, Chapter 2001, does not apply to board action under Articles 5 96 and 5 97

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104)

The Texas Department of Insurance, at a public meeting scheduled for 2 00 p.m on December 13, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider a surety bond form filed by the Texas Department of Health on behalf of the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.

The surety bond form is entitled "Fitting and Dispensing of Hearing Instruments Surety Bond," form number FDHI-1193. The bond is required for licensure of fitters and dispensers of hearing instruments, in accordance with Senate Bill 953 passed in the 73rd Legislative Session. A licensed hearing instrument dispenser is required to file the $10,000 bond to cover state taxes and judgments against the dispenser for negligently or improperly dispensing hearing instruments

Copies of the full text of the proposed form for the Texas Department of Health filed on behalf of the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the text, please contact Angie Arizpe at (512) 322-4147, please (refer to Reference Number O-1193-30).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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

Issued in Austin, Texas, on November 24, 1993

TRD-9332710

Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

For further information, please call. (512) 463-6328

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1993 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the October-December 1993 issues of the *Texas Register* Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on July 30, November 5, November 30, and December 28. A asterisk beside a publication date indicates that the deadlines have been moved because of state holidays

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A M	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
81 Tuesday, October 26	Wednesday, October 20	Thursday, October 21
82 Friday, October 29	Monday, October 25	Tuesday, October 26
83 Tuesday, November 2	Wednesday, October 27	Thursday, October 28
Friday, November 5	NO ISSUE PUBLISHED	
84 Tuesday, November 9	Wednesday, November 3	Thursday, November 4
85 Friday, November 12	Monday, November 8	Tuesday, November 9
86 Tuesday, November 16	Wednesday, November 10	Thursday, November 11
87 Friday, November 19	Monday, November 15	Tuesday, November 16
88 Tuesday, November 23	Wednesday, Novmber 17	Thursday, November 18
89 Friday, November 26	Monday, November 22	Tuesday, November 23
Tuesday, November 30	NO ISSUE PUBLISHED	
90 Friday, December 3	Monday, November 29	Tuesday, November 30
91 Tuesday, December 7	Wednesday, December 1	Thursday, December 2
92 Friday, December 10	Monday, December 6	Tuesday, December 7
93 Tuesday, December 14	Wednesday, December 8	Thursday, December 9
94 Friday, December 17	Monday December 13	Tuesday, December 14
95 Tuesday, December 21	Wednesday, December 15	Thursday, December 16
96 Friday, December 24	Monday, December 20	Tuesday, December 21
Tuesday, December 28	NO ISSUE PUBLISHED	

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