

Texas Register

Volume 17, Number 76, October 6, 1992

Page 6823-6953

In This Issue...

Office of the Attorney General

Letter Opinions

LO-92-34 (RQ-213)	6833
LO-92-35 (RQ-240)	6833
LO-92-36 (ID-17053)	6833
LO-92-37 (ID-155534)	6833
LO-92-38 (ID-16593)	6833
LO-92-39 (RQ-349)	6833
LO-92-40 (RQ-308)	6833
LO-92-41 (RQ-327)	6833
LO-92-42 (RQ-314)	6834
LO-92-43 (ID-15752)	6834
LO-92-44 (RQ-13)	6834
LO-92-45 (ID-16646)	6834
LO-92-46 (RQ-242)	6834
LO-92-47 (RQ-229)	6834
LO-92-48 (ID-15641)	6834
LO-92-49 (RQ-391)	6834
LO-92-50 (ID-17039)	6834
LO-92-51 (ID-17155)	6834

Open Records

ORD-600 (RQ-103)	6835
ORD-601 (RQ-2168)	6835
ORD-602 (RQ-228)	6835
ORD-603 (RQ-91)	6835
ORD-604 (RQ-192)	6835
ORD-605 (RQ-366)	6835
ORD-606 (RQ-376)	6835
ORD-607 (RQ-389)	6836

Opinions

DM-143 (RQ-309)	6836
DM-144 (RQ-97)	6836
DM-145 (RQ-180)	6836
DM-149 (RQ-249)	6836
DM-150 (RQ-294)	6836
DM-151 (RQ-343)	6836
DM-152 (RQ-304)	6836
DM-153 (RQ-322)	6837
DM-154 (RQ-371)	6837
DM-155 (RQ-384)	6837

CONTENTS CONTINUED INSIDE

Texas Register, ISSN 0362-4781, is published semi-weekly 100 times a year except February 28, November 6, December 1, December 29, 1992. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78711. Subscriptions costs: one year - printed, \$95 and electronic, \$90; six-month - printed, \$75 and electronic, \$70. Single copies of most issues are available at \$5 per copy.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person for any purpose whatsoever without permission of the *Texas Register* director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director. The *Texas Register* is published under Texas Civil Statutes, Article 6252-13a. Second class postage is paid at Austin, Texas.

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

Information Available: The ten 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 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 accumulative quarterly and annual indexes to aid in researching material published.

The Office of the Secretary of State does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 17 (1992) is cited as follows: 17 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: "17 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 17 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, Austin. Material can be found using *Texas Register* indexes, the *Texas Administration Code*, section numbers, or TRD number.

Texas Administrative Code

The *Texas Administrative Code* (TAC) is the approved, collected volumes of Texas administrative rules.

How to Cite: Under the TAC scheme, each agency 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 rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

Texas Register Art Project

This program is sponsored by the *Texas Register* to promote the artistic abilities of Texas students, grades K-12, and to help students gain an insight into Texas government. The artwork is used to fill otherwise blank pages in the *Texas Register*. The blank pages are a result of the production process used to create the *Texas Register*. The artwork does not add additional pages and does not increase the cost of the *Texas Register*.

Texas Register Publications



a section of the
Office of the Secretary of State
P. O. Box 13824
Austin, Texas 78711-3824
(512) 463-5561
Fax (512) 463-5569

Secretary of State
John Hannah, Jr.

Director
Dan Procter

Assistant Director
Dee Wright

Circulation/Marketing
Jill S. Dahnert
Roberta Knight

TAC Editor
Dana Blanton

TAC Typographer
Madeline Chriner

Documents Section Supervisor
Patty Moore

Documents Editors
Lisa Martin
Janlene Allen

Open Meetings Clerk

Production Section Supervisor
Ann Franklin

Production Editors/Typographers
Janice Rhea
Carla Carter

Irma "Mimi" Sanchez

DM-156 (RQ-290).....	6837	RQ-429.....	6839
DM-157 (RQ-306).....	6837	RQ-430.....	6839
DM-158 (RQ-121).....	6837	RQ-431.....	6839
DM-159 (RQ-385).....	6837	RQ-432.....	6839
DM-160 (RQ-310).....	6838	RQ-433.....	6839
DM-161 (RQ-186).....	6838	RQ-434.....	6839
DM-162 (RQ-352).....	6838	RQ-435.....	6840
DM-164 (RQ-133).....	6838	RQ-436.....	6840
DM-165 (RQ-98).....	6838	RQ-437.....	6840
DM-166 (RQ-183).....	6838	Texas Ethics Commission	
DM-167 (RQ-404).....	6838	Notice to Ethics Advisors.....6841	
<i>Requests for Opinions</i>		Emergency Sections	
RQ-405.....	6838	<i>Texas Department of Health</i>	
RQ-406.....	6838	Food and Drug	
RQ-407.....	6839	25 TAC §229.252.....6843	
RQ-408.....	6839	Proposed Sections	
RQ-409.....	6839	<i>General Services Commission</i>	
RQ-410.....	6839	Executive Administration Division	
RQ-411.....	6839	1 TAC §111.4.....6845	
RQ-412.....	6839	<i>Railroad Commission of Texas</i>	
RQ-413.....	6839	Surface Mining and Reclamation Division	
RQ-414.....	6839	16 TAC §11.221.....6846	
RQ-415.....	6839	<i>Texas Alcoholic Beverage Commission</i>	
RQ-416.....	6839	Enforcement	
RQ-417.....	6839	16 TAC §35.31.....6846	
RQ-418.....	6839	16 TAC §35.41.....6847	
RQ-419.....	6839	<i>Texas Education Agency</i>	
RQ-420.....	6839	Budgeting, Accounting, and Auditing	
RQ-421.....	6839	19 TAC §109.61.....6847	
RQ-422.....	6839	Teacher Certification	
RQ-423.....	6839	19 TAC §141.26.....6847	
RQ-424.....	6839	<i>Board of Nurse Examiners</i>	
RQ-425.....	6839	Licensure and Practice	
RQ-426.....	6839	22 TAC §217.11.....6848	
RQ-427.....	6839	22 TAC §217.13.....6849	

Delegation of Selected Nursing Tasks by Registered Nurses to Unlicensed Personnel

22 TAC §§218.1-218.12 6850

22 TAC §§218.1-218.11 6851

Texas Department of Health

Chronically Ill and Disabled Children's Services

25 TAC §38.3..... 6854

Veterinary Public Health

25 TAC §§169.22-169.24, 169.26-169.31, 169.33... 6873

25 TAC §§169.62-169.65 6874

25 TAC §169.82, §169.83..... 6875

Food and Drug

25 TAC §229.252..... 6879

Shellfish Sanitation

25 TAC §241.53..... 6879

General Sanitation

25 TAC §265.25..... 6881

Water Hygiene

25 TAC §337.71-337.96 6882

25 TAC §§337.71-337.82 6882

Texas Water Commission

Municipal Solid Waste

31 TAC §§330.1200-330.1205 6886

Withdrawn Sections

Texas Education Agency

Teacher Certification

19 TAC §141.26..... 6891

Adopted Sections

Texas Ethics Commission

Registration and Regulation of Lobbyists

1 TAC §40.5, §40.7..... 6893

General Services Commission

Executive Administration Division

1 TAC §111.1, §111.2 6894

1 TAC §111.1, §111.3 6894

1 TAC §§111.11-111.19 6894

1 TAC §§111.31-111.46 6894

Texas Incentive and Productivity Commission

Productivity Bonus Program

1 TAC §§275.1, 275.7, 275.9, 275.11, 275.13, 275.15, 275.17, 275.19, 275.21 6895

Railroad Commission of Texas

Transportation Division

16 TAC §5.173 6896

Texas Department of Licensing and Regulation

Boiler Division

16 TAC §§65.1, 65.10, 65.20, 65.30, 65.50, 65.60, 65.70, 65.80, 65.90, 69.100 6896

State Board of Pharmacy

Code of Conduct

22 TAC §311.2 6896

Texas Department of Health

Food and Drug

25 TAC §229.172 6897

25 TAC §229.182 6900

Occupational Health and Radiation Control

25 TAC §§289.141-289.144, 289.147-289.151, 289.156, 289.157 6901

Occupational Health

25 TAC §295.21 6907

Volunteer Services and Public Information

25 TAC §§295.31-295.40, 295.42-295.52, 295.54-295.56, 295.58-295.62, 295.64-295.65, 295.67, 295.70.. 6908

*Texas Department of Mental Health and
Mental Retardation*

Client (Patient) Care

25 TAC §§405.551-405.561..... 6929

25 TAC §§407.71-407.102..... 6930

Volunteer Services and Public Information

25 TAC §§410.51-410.76..... 6930

Open Meetings

Texas Department of Agriculture..... 6941

Credit Union Department..... 6941

Texas Planning Council for Developmental Disabilities

..... 6941

Texas Diabetes Council..... 6941

Texans' War on Drugs, Inc..... 6941

Texas Employment Commission..... 6943

Texas Commission on Fire Protection..... 6943

Texas Department of Health..... 6943

Texas Higher Education Coordinating Board..... 6944

Texas Department of Human Services..... 6944

Texas State Board of Medical Examiners..... 6944

Texas Board of Licensure for Nursing Home Administrators..... 6945

Public Utility Commission of Texas..... 6945

Railroad Commission of Texas..... 6945

Stephen F. Austin State University..... 6946

Regional Meetings..... 6946

In Addition

Texas Air Control Board

Notice of Opportunity to Comment on Administrative Actions..... 6947

Brazos Valley Development Council

Consultant Proposal Request.....6948

Comptroller of Public Accounts

Lottery Broadcast Rights.....6948

Office of Consumer Credit Commissioner

Notice of Rate Ceilings.....6949

Employees Retirement System of Texas

Consultant Contract Award.....6949

Texas Department of Human Services

Notice of Consultant Contract Extension and Amendment

.....6949

Texas Department of Public Safety

Regulations Governing Parking and Traffic Administration

.....6949

Senate Committee on Health and Human Services

Public Notice of Hearing.....6950

Texas Department of Transportation

Public Hearing Notice.....6950

Request for Public Comment.....6951

Texas State Treasury Department

Legal Banking Holidays.....6952

Texas Water Commission

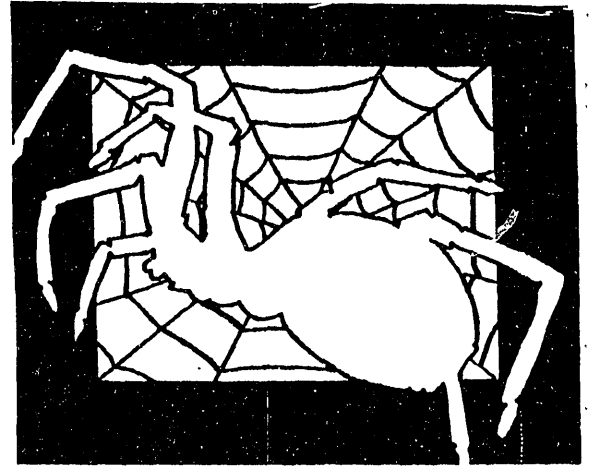
Public Notice.....6952

Texas Workers' Compensation Commission

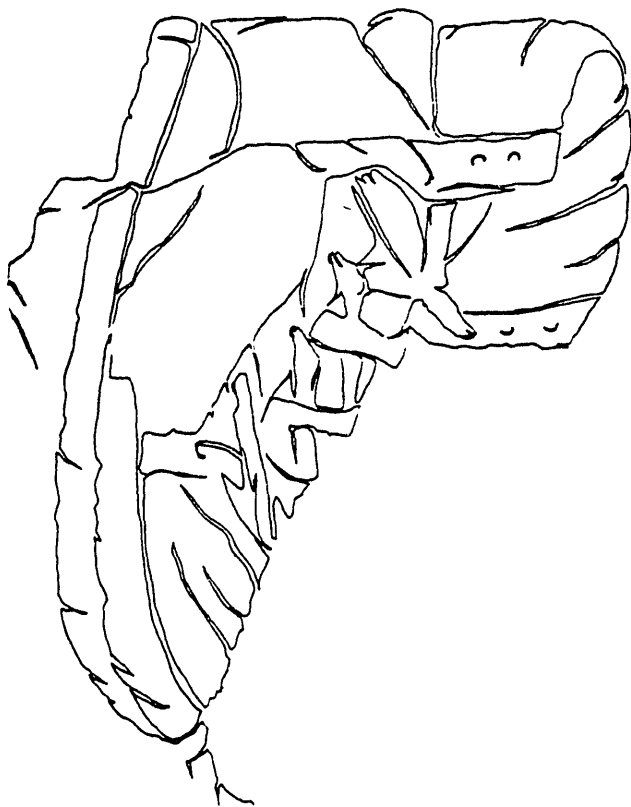
Discount Rate; Interest Rate.....6952



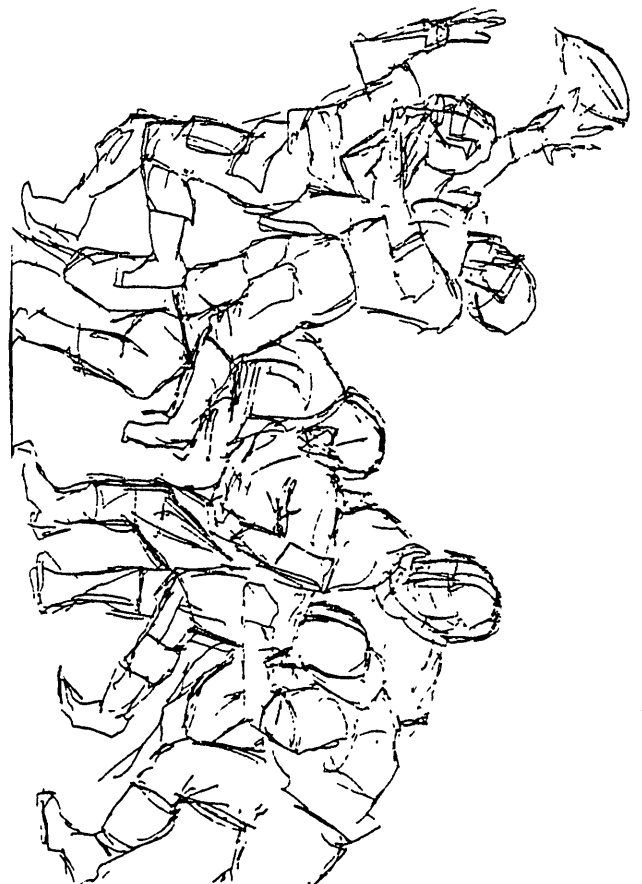
10-1



10-2



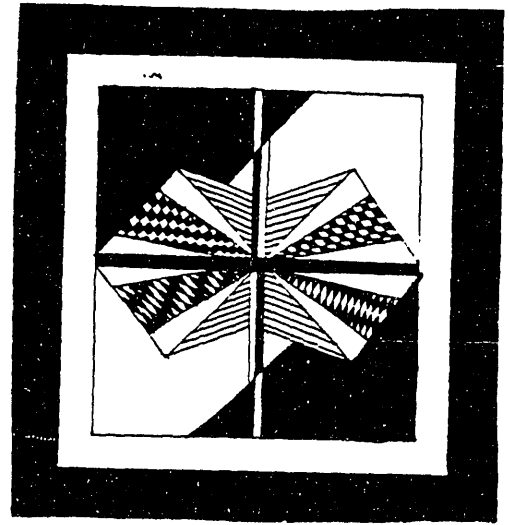
10-3



10-4



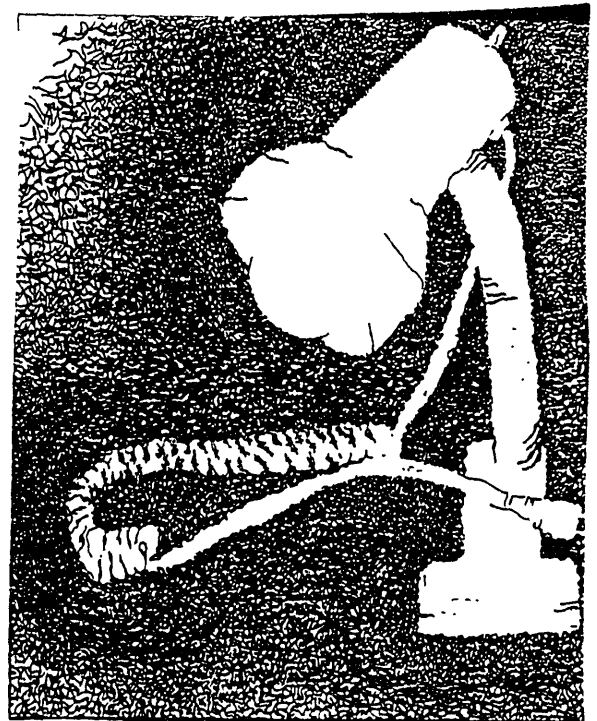
10-5

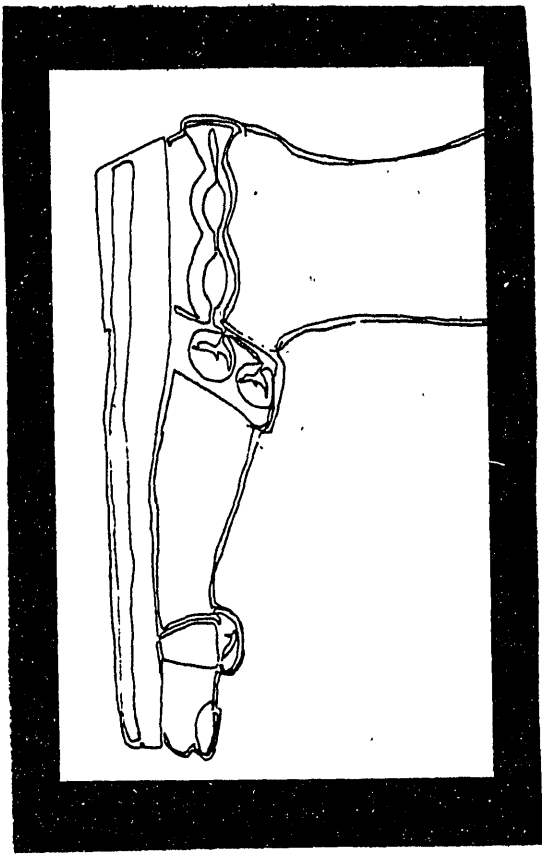


10-6

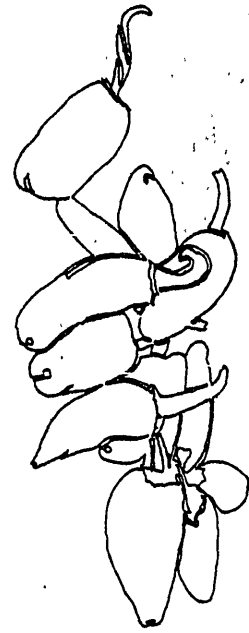
10-7

10-8





10-9

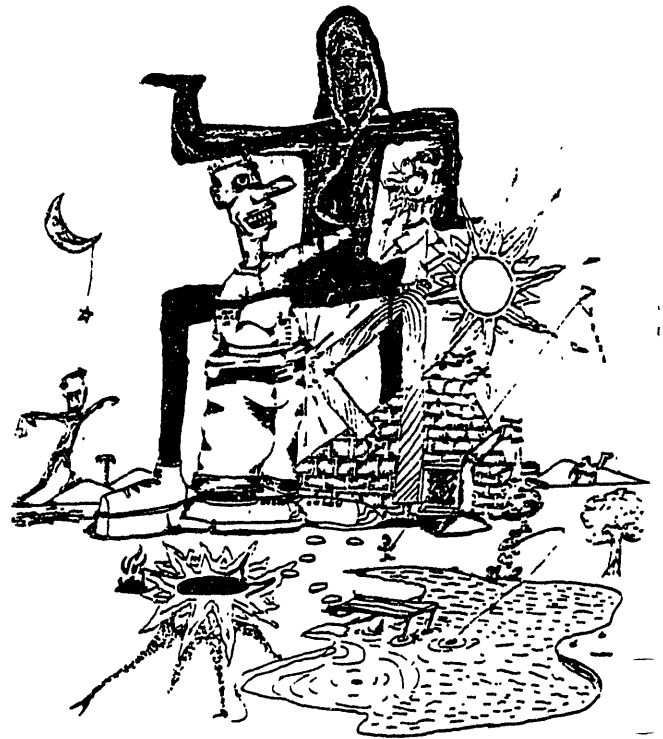


10-10

10-11



10-12

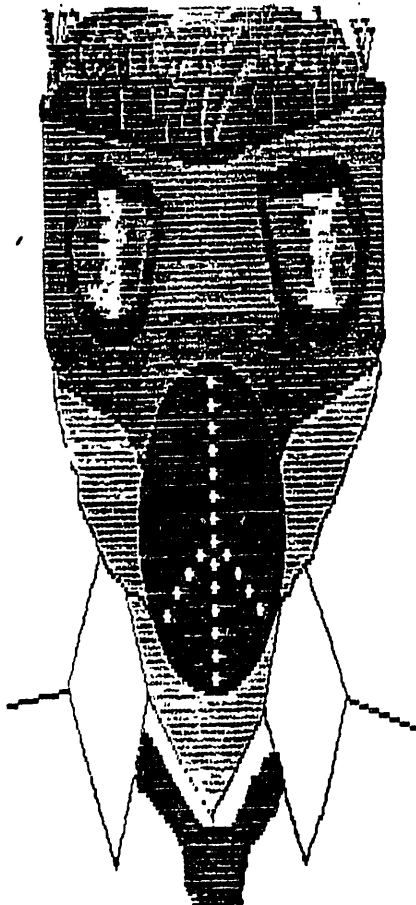




10-13



10-14



10-15



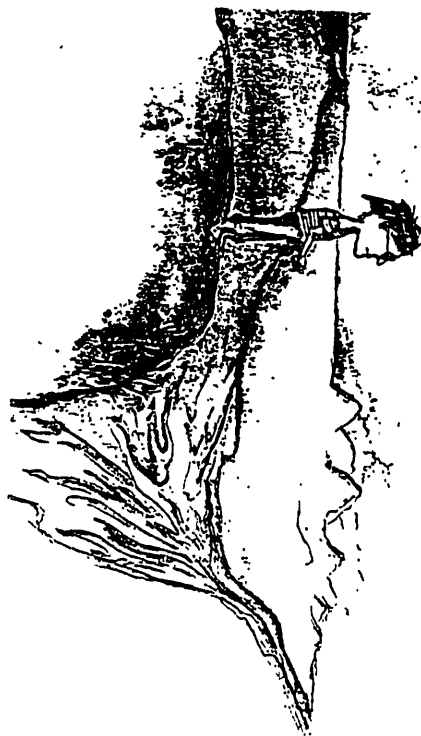
10-16



10-17



10-18



10-19



10-20

Attorney General

Description of Attorney General submissions. Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies maybe held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Texas Register*. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record.

Letter Opinions

LO-92-34 (RQ-213). Request from Rita Horwitz, Executive Director, State Pension Review Board, Austin, concerning question concerning where the board of trustees of the Austin Employees Retirement System should post notice of its meetings.

Summary of Opinion. The board of trustees of the City of Austin Employees Retirement System is an "agency of the city" under §1(c) of Texas Civil Statutes, Article 6252-17, the Open Meetings Act, and, as such, should post notice of its meetings "on a bulletin board to be located at a place convenient to the public in the city hall," pursuant to §3A(c).

TRD-9213167

LO-92-35 (RQ-240). Request from James M. Kuboviak, Brazos County Attorney, County Courthouse, Bryan, concerning whether a justice of the peace may be an unpaid deputy sheriff or deputy constable.

Summary of Opinion. The common-law doctrine of incompatibility prohibits an individual from simultaneously holding the positions of justice of the peace and deputy constable in the same precinct. However, there is no bar to a justice of the peace serving as deputy constable in a different precinct, whether within or without his home county. Likewise, a justice of the peace may hold the position of deputy sheriff in a county other than the county he serves as justice of the peace.

TRD-9213166

LO-92-36 (RQ-17053). Request from Gonzalo Barrientos, Chairman, Nominations Committee, Texas State Senate, Austin, concerning whether Article XVI, §40 of the Texas Constitution precludes a person from simultaneously holding the position of police officer for two different cities and related questions.

Summary of Opinion. Article XVI, §40 of the Texas Constitution, prevents one person from simultaneously holding the position of assistant police chief for the city of Houston and police chief for the city of Austin. An

individual may, however, under the facts presented, act as a "consultant" for the city of Austin without thereby vacating the Houston position, so long as the individual is not a "peace officer" in the city of Austin. A person may prospectively accept a second office without thereby vacating the first, so long as the terms of the offer and acceptance specify a future "effective date."

TRD-9213165

LO-92-37 (RQ-15534). Request from Helen L. Campbell, Commissioner, Office of Fire Fighters', Pension Commissioner, Austin, concerning whether the board of trustees of a fire fighters' relief and retirement fund organized under Texas Civil Statutes, Article 6243e, may delegate all of its authority over investments to investment managers.

Summary of Opinion. The board of trustees of a fire fighters' relief and retirement fund organized under Texas Civil Statutes, Article 6243e, is not empowered to delegate its entire discretionary authority over investment decisions to an investment manager.

TRD-9213164

LO-92-38 (RQ-16593). Request from Joe Darnall, General Counsel, Texas Alcoholic Beverage Commission, Austin, concerning whether the proposed reorganization of the Alcoholic Beverage Commission comports with provisions of the Bingo Enabling Act.

Summary of Opinion. Based on the information provided, the proposed reorganization of the operating structure of the Texas Alcoholic Beverage Commission is at least in substantial compliance with the provisions of the Bingo Enabling Act.

TRD-9213163

LO-92-39 (RQ-349). Request from Patricia S. Tweedy, M.P.A., Executive Director, Texas State Board of Examiners of Psychologists, Austin, concerning whether privileged information relevant to the parent-child relationship that a psychologist gained during a voluntary psychological evaluation of a person involved in, or associated with, court proceedings involving the parent-child relationship are excepted from disclosure

under Texas Rule of Civil Evidence, §510(d)(6).

Summary of Opinion. Pursuant to Texas Rule of Civil Evidence, §510(d)(6), a licensed psychologist may disclose privileged information if the information is relevant in any suit affecting the parent-child relationship. The Opinion Committee will not issue an opinion that effectively overrules a judicial decision.

TRD-9213162

LO-92-40 (RQ-308). Request from R. Smith, M.D., Commissioner, Texas Department of Health, Austin, concerning whether the Department of Health or a county clerk has the authority to rescind a marriage license.

Summary of Opinion. Neither the Department of Health nor a county clerk has the power to rescind or cancel an application for a marriage license, or a license itself, at the request of an affiant who asserts, *inter alia*, that he is not subject to the Family Code. Any residing in any county of Texas is subject to the laws of Texas, including the Family Code.

TRD-9213158

LO-92-41 (RQ-327). Request from Ray Farabee, Vice Chancellor and General Counsel, The University of Texas System, Austin, concerning whether the board of regents of the University of Texas System has the legal authority to provide prepaid legal services coverage to its employees as part of the university's cafeteria plan.

Summary of Opinion. Under the Insurance Code, Article 3.50-3, The University of Texas System may include in its cafeteria plan prepaid legal services coverage so long as federal law permits the inclusion of the prepaid legal services coverage in a cafeteria plan. Whether federal law permits the inclusion of prepaid legal services coverage in a cafeteria plan is a question involving the resolution of issues of federal law, a task that is beyond the purview of this committee. The university's inclusion of prepaid legal services coverage in the employee benefit package does not violate, the Texas Constitution, Article III, §51 if the university decides in the first instance

that such an expenditure serves a "public purpose."

TRD-9213157

LO-92-42 (RQ-314). Request from Ernestine V. Glossbrenner, Chair, Committee on Public Education, Texas House of Representatives, Austin, concerning whether the Education Code, §4.03(d), supersedes the rules the Structural Pest Control Board promulgated (22 TAC Chapters 593, 595) pursuant to House Bill 853, Acts 1991, 72nd Legislative Chapter 771, §6, which amended the Texas Structural Pest Control Act, Texas Civil statutes, Article 135b-6.

TRD-9213156

LO-92-43 (RQ-15752). Request from Riley J. Simpson, President, Board of Trustees, Central Texas College, Killeen, concerning whether the hiring of an employee by Central Texas College while the employee's uncle serves on the college board of trustees violates Texas Civil Statutes, Article 5996a; whether re-election of board member cures original nepotism violation.

Summary of Opinion. The hiring of an employee by Central Texas College while the employee's uncle serves on the college's board of trustees violates Texas Civil Statutes, Article 5996a, the Texas nepotism statute. The re-election of the uncle to the board of trustees does not cure the original violation.

TRD-9213155

LO-92-44 (RQ-13). Request from Frank Madden, County Auditor, Cherokee County Courthouse, Rusk, concerning responsibility of the commissioners court with respect to district court order decreeing pay increases for district court personnel.

Summary of Opinion. District judges, acting without commissioners court approval, establish the salaries of the county auditor, the auditor's assistants, and court reporters. The commissioners court must approve salaries for court coordinators and secretaries, and therefore has no duty to order the salary increases for those positions in accordance with a district court administrative order.

TRD-9213154

LO-92-45 (RQ-16646). Request from Layton Black, Chairman, Committee on Government Organization, Texas House of Representatives, Austin, concerning application of the term "grave" in Penal Code, §31.03(e)(4)(B).

Summary of Opinion. The term "grave" as used in Penal Code, §31.03(e)(4)(B), means an excavation for burial of a body. The term is not limited by definition in the Penal Code and applies to any grave, regardless of ethnicity, antiquity, or markings.

TRD-9213153

LO-92-46 (RQ-242). Request from Catherine A. Ghiglieri, Commissioner, Texas Department of Banking, Austin, concerning whether a member of the Finance Commission appointed under Texas Civil Statutes, Article 342-104(4) may continue in office if he becomes a banking executive but has less than five years experience.

TRD-9213152

Summary of Opinion. Part 4 of Texas Civil Statutes, Article 342-104, provides that certain members of the Finance Commission may not be bank executives. Part 1 of Article 342-104, Texas Civil Statutes, provides that "a banking executive is a person who has had five years or more executive experience...in a Federal or State bank," but that definition does not define "banking executive" for purposes of Part 4 of Texas Civil Statutes, Article 342-104. Accordingly, part 4 prohibits the appointment to the Finance Commission of any person who is a banking executive, even if that person has fewer than five years experience in that capacity. A member of the Finance Commission appointed under Part 4 of Article 342-104 will become disqualified for this office and be subject to removal if he becomes a banking executive during his term of office.

LO-92-47 (RQ-229). Request from Wayne Blevins, Ed.D., Executive Secretary, Teacher Retirement System of Texas, Austin, concerning whether the Board of Trustees of the Teacher Retirement System of Texas may contract with an employee to provide incentive pay in addition to a regular salary.

Summary of Opinion. The Board of Trustees of the Teacher Retirement System of Texas may contract with an employee to provide incentive pay in addition to a regular salary without violating Article III, §44 of the Texas Constitution, so long as the contract pre-dates the services being compensated.

TRD-9213151

LO-92-48 (RQ-15641). Request from Bruce Isaacks, Criminal District Attorney, Denton County, Denton, concerning whether employees of the sheriff's department are included in the county civil service system under the Local Government Code, Chapter 158, Subchapter A.

Summary of Opinion. Eligibility for inclusion in a county civil service system created pursuant to the Local Government Code, Chapter 158, Subchapter A, depends upon whether the person occupying the position in question is an "employee" as defined in section §158.001(2). An examination of the specific statute, if any, authorizing the filling of the position in question is required in order to determine whether the legislature

intended to exclude the employee from the county civil service system.

TRD-9213150

LO-92-49 (RQ-391). Request from Roman Martinez, Chairman, Committee on Labor and Employment Relations, Austin, concerning whether the Port of Houston Authority of Harris County may purchase real property and facilities, thereby removing the property from the tax base and related question.

Summary of Opinion. As long as the Port of Houston Authority of Harris County desires to purchase property that will be incidental to or useful in the operation or development of the authority's ports and waterways or to aid navigation and navigation-related commerce, the applicable statutes authorize the authority to purchase the property. The fact that the authority's purchase will take the property out of the tax base is irrelevant. The question of whether the authority may use tax supported funds to purchase the property involves the resolution of fact issues, a task this committee cannot perform.

TRD-9213149

LO-92-50 (RQ-17039). Request from Roy W. Wiesner, Waller County Auditor, Hempstead, concerning authority of a county auditor to prescribe accounting procedures and computerize accounting systems for elected or appointed officials.

Summary of Opinion. A county auditor in a county with a population of less than 25,000 may prescribe accounting procedures for elected or appointed county officials and may prescribe a computerized accounting system, provided such requirements are not inconsistent with law or a rule adopted by the Comptroller of Public Accounts pursuant to the Local Government Code, §112.003, and the auditor does not dictate which equipment shall be used by county officials.

TRD-9213147

LO-92-51 (RQ-17155). Request from Bill Sims, Chairman, Natural Resources Committee, Texas State Senate, Austin, concerning whether the City of Kerrville may expend municipal hotel tax funds for improvements to a visitor information center.

Summary of Opinion. A city may expend municipal hotel tax funds for the improvement of a visitors information center. The city must insure that the expenditure fulfills one or more of the specific purposes authorized by Tax Code, §351.101. Tax Code, §351.103 governs the allocation of tax receipts.

TRD-9213148



Open Records Decisions

ORD-600 (RQ-103). Request from J. Kirk Brown, General Counsel, Texas Department of Criminal Justice, Institutional Division, Huntsville, concerning availability under Open Records Act of personnel records of employees of the Texas Department of Criminal Justice.

Summary of Decision. The Institutional Division of the Texas Department of Criminal Justice receive requests under the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, for information in the personnel files of certain employees. Several categories of information were found to be excepted from public disclosure.

The Open Records Act, §3(a)(17)(B), adopted by House Bill 729 of the 72nd Legislative Session and effective May 8, 1991, excepts from disclosure the home addresses, home telephone number, or social security numbers of employees of the Texas Department of Criminal Justice. It also excepts the home or employment address or telephone numbers or the names or social security numbers of family members of employees of the department. This information is excepted from disclosure wherever it appears in the personnel files.

The result of a personality test given by the Department of Criminal Justice to an employee is excepted from public disclosure by a constitutional right of privacy. The score on an intelligence test given to an employee is excepted from public disclosure by a common-law right of privacy.

Information about on-the-job injuries in medical records created by or under the supervision of a physician or maintained by a physician is excepted from public disclosure by Texas Civil Statutes, Article 4495b, §5.08(b). Whether or not a report by the injured person or a witness to the accident contain private information depends on the nature of the injury and other facts included in the report.

The W-4 forms completed by employees are excepted from disclosure by Title 26, §6103(a), of the United States Code.

TexFlex forms, showing the employee's decision about participation in this benefit program, concern a private financial decision to allocate compensation to optional benefits provided by a third party; thus these forms are excepted from public disclosure by a common-law right of privacy. Forms authorizing the direct deposit of them employee's paycheck also document a private decision as to allocation of compensation to a third party and are excepted from disclosure.

Authorizations for social security leveling include facts about the employee's receipt of compensation from the state as his employer and are not excepted from disclosure by a right of privacy.

The employee's participation in the group insurance program is in part a transaction with the state. Information on his application form relevant to his enrollment for basic and dependent health coverage offered pursuant to Article 3.50-2 of the Insurance Code is not excepted from disclosure by a common-law right of privacy. Certain information on the form is excepted from disclosure by the Open Records Act, §3(a)(17)(B). The remaining information on optional coverages, dependent information, and designation of a beneficiary of his life insurance is excepted from disclosure by a right of privacy.

Employee Services Option forms, which offer the employee laundry services and barber shop services at prison facilities in exchange for a small fee, relate to a transaction between the employee and the governmental body and are therefore not excepted from disclosure by a right of privacy.

Information in personnel evaluation forms that consists of opinion, advice, and recommendation used in the decisional process within the agency is excepted from disclosure by the Open Records Act, §3(a)(11).

TRD-9213139

ORD-601 (RQ-2168). Request from Norman J. Gordon, Attorney At Law, Diamond, Rash, Leslie, Smith and Samaniego, El Paso, concerning whether the El Paso Housing Finance Corporation is a governmental body under the Texas Open Records Act.

Summary of Decision. The El Paso Finance Corporation is a governmental body under the Texas Open Records Act, §2(1)(G).

TRD-9213140

ORD-602 (RQ-228). Request from Laura Peterson House, Locke Purnell Rain Harrell, Dallas, concerning whether the Dallas Museum of Art is a "governmental body" under the Texas Civil Statutes, Article 6252-17a, §2(1)(G), of the Texas Open Records Act, and related questions.

Summary of Decision. The Dallas Museum of Art is a "governmental body" within the meaning of the Texas Open Records Act only to the extent that it receives support from the City of Dallas and the State of Texas. Thus, only documents relating to those sections of the museum that are supported by the city or state are public documents subject to the Open Records Act. Documents related to areas of the DMA that are not supported with public funds are not subject to the Open Records Act.

TRD-9213141

ORD-603 (RQ-91). Request from Robert A. MacLean, M.D., Acting Commissioner, Texas Department of Health, Austin, concerning whether an individual has a right

under the Open Records Act, §3B, to inspect information about himself in the records of a Department of Health investigation of a complaint against a home health services agency.

Summary of Decision. The Open Records Act, §3B, does not affect the availability of information developed in a Department of Health investigation of complaints about a home health agency under Health and Safety Code, §142.009. Such information is confidential under Health and Safety Code, §142.009(d) and excepted from public disclosure under Open Records Act, §3(a)(1).

TRD-9213142

ORD-604 (RQ-192). Request from Karen Johnson, Executive Director, State Bar of Texas, Austin, concerning the list of registrants for Professional Development Programs.

Summary of Decision. A list of registrants for legal education programs of the State Bar of Texas may not be withheld from disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(4).

TRD-9213143

ORD-605 (RQ-366). Request from Jack Skeen, Jr., Criminal District Attorney, Smith County Courthouse, Tyler, concerning whether the Open Meetings Act, §2(g), excepts from required disclosure under the Open Records Act the names of applicants for public employment discussed by the governmental body in an executive session.

Summary of Decision. The Open Meetings Act, §2(g), is not an exception to the Open Records Act, and it does not authorize a governmental body to withhold its records of the names of applicants for public employment who were discussed in an executive session.

TRD-9213144

ORD-606 (RQ-376). Request from Trudi Dill, Deputy City Attorney, City of Temple, Temple, concerning whether information held to be protected from disclosure under the Texas Open Records Act may be re-typed, with ellipses or asterisks indicating omitted information, as opposed to merely excised from existing documents.

Summary of Decision. The Open Records Act, Texas Civil Statutes, Article 6252-17a, requires a governmental body to release to a requestor a copy of the actual requested record, with any confidential or nondisclosable information excised. Unless the parties agree otherwise, the act does not permit a governmental body to provide a requestor with a newly generated document on which only the disclosable information has been consolidated and re-typed.

TRD-9213145

ORD-607 (RQ-389). Request from Earl Bracken, Jr., Waco City Attorney, Waco, concerning whether the subject of an HIV antibody test has a right to a copy of a laboratory report issued under a fictitious name.

Summary of Decision. A laboratory report of the result of a test for HIV antibodies administered under the authority of a physician is made confidential by the Medical Practice Act, Texas Civil Statutes, Article 4495b, §5.08(b). A patient may obtain copies of his or her records in accordance with the provisions of subsections (j) and (k) of §5.08.

TRD-9213146

◆ ◆ ◆
Opinions

DM-143 (RQ-309). Request from Lionel R. Meno, Commissioner of Education, Texas Education Agency, Austin, concerning whether the Proprietary School Tuition Protection Fund as created by the Texas Education Code, §32.91, manifests sufficient characteristics of a trust to require interest from the fund to be credited to the Tuition Protection Fund rather than the General Revenue Fund.

Summary of Opinion. The Proprietary School Tuition Protection Fund, created pursuant to the Education Code, §32.91, is not a trust fund. Consequently, interest that accrues on the fund must be credited to the general revenue fund pursuant to the Government Code, §404.071(a).

TRD-9213115

DM-144 (RQ-97). Request from John Hall, Chairman, Texas Water Commission, Austin, concerning whether a Water Commission hearings examiner in a contested case about issuance of a hazardous waste permit may communicate *ex parte* with the employees of the commission.

Summary of Opinion. The Health and Safety Code, §361.0831 prohibits a hearings examiner in a contested case involving a hazardous waste permit from communicating *ex parte* with any employee of the commission. This provision does not permit *ex parte* communications between hearings examiners and employees of the agency who have not participated in any hearing of the case for the purpose of utilizing their special skills or knowledge, or communications of hearings examiners with supervising attorneys within the Office of Hearings Examiners. Section 361.0831 also prohibits direct and indirect communications between the hearings examiner and the commissioners or the general counsel. If the supervising attorney engages in *ex parte* communications with the hearings examiner in violation of §361.0831 and then relays those

communications to a commissioner or the general counsel, indirect *ex parte* communications between the hearings examiner and the commissioner or general counsel will occur. The restriction on *ex parte* communications applies during the pendency of the contested case. Accordingly, if the commission overturns an examiner's finding of fact or conclusion of law or rejects a proposal for decision on an ultimate finding, the general counsel of the commission may not communicate *ex parte* with the examiner about preparing an explanation of the reasons for the commission's actions.

TRD-9213116

DM-145 (RQ-180). Request from Rick Perry, Commissioner, Texas Department of Agriculture, Austin, concerning interpretation of appropriations act rider regarding funds held by the Texas Federal Inspection Service.

Summary of Opinion. Money that reverted to the Texas Department of Agriculture under a cooperative agreement with the United States Department of Agriculture is to be placed in the state treasury in accordance with section 404.093 of the Government Code. Surplus property that reverted to the Texas Department of Agriculture is subject to the control of the General Services Commission.

TRD-9213117

DM-149 (RQ-249). Request from Michael Hines, Executive Director, Texas Commission on Fire Protection, Austin, concerning whether the Open Meetings Act, §2(g), permits an executive session discussion about persons considered for appointment to advisory committees created pursuant to the Government Code, §419.023 and §419.072.

Summary of Opinion. Members of the Fire Protection Personnel Advisory Committee and the Volunteer Fire Fighter Advisory Committee appointed by the Texas Commission on Fire Protection pursuant to Chapter 419 of the Government Code are not public officers or employees within the Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17, §2(g). Accordingly, the Texas Commission on Fire Protection may not meet in executive session pursuant to the Open Meetings Act, §2(g), to discuss the qualifications of persons under consideration for appointment to either of these advisory committees.

TRD-9213118

DM-150 (RQ-294). Request from Mike Driscoll, Harris County Attorney, Houston, concerning whether Harris County may, for purposes of floodplain management, regulate the building of structures over waterways within the jurisdiction of the Port of Houston Authority.

Summary of Opinion. Harris County is authorized to regulate the building of struc-

tures over waterways within the jurisdiction of the Port of Houston Authority to the extent necessary to comply with the requirements of the National Flood Insurance Program.

TRD-9213121

DM-151 (RQ-343). Request from John Pouland, Executive Director, General Services Commission, Austin, concerning whether pursuant to the General Services Act, Texas Civil Statutes, Article 601b, §2.061(d) a person who is a member of a firm which employs persons who are required to register as lobbyists under Chapter 305 of the Government Code may serve as a commissioner of the General Services Commission, and related questions.

Summary of Opinion. The General Services Act, Texas Civil Statutes, Article 601b, §2.061(d) does not prohibit a person from serving as a commissioner of the General Services Commission when that person is a member of a firm with other employs who are required to register as lobbyists under Chapter 305 of the Government Code. Only the person actually required to register as a lobbyist is ineligible to serve as a commissioner of the General Services Commission under §2.061(d). However, the application of the section is not restricted to lobbyists required to register because of their activities on behalf of professions related to the operation of the General Services Commission or on behalf of business entities that contract with the state through the General Services Commission. A lobbyist also cannot serve as a commissioner of the General Services Commission if he or she works on behalf of a business that contracts with the state in *any* manner, regardless of whether the business contracts through the General Services Commission.

TRD-9213122

DM-152 (RQ-304). Request from Homer R. Goehrs, M.D., F.A.C.P., Executive Director, Texas State Board of Medical Examiners, Austin, concerning whether Title 22 of the Texas Administrative Code, §280.5(g), (h) if consistent with §1.03 of the Texas Optometry Act, Texas Civil Statutes, Articles 4552-1.01-4552-5.20, and related questions.

Summary of Opinion. Neither Texas Civil Statutes, Article 4552-1.03 nor Title 22 of the Texas Administrative Code, §280.5(g), (h) violates Article III, §51-a of the Texas Constitution. To the extent that Title 22 of the Texas Administrative Code, §280.5(g), (h) permits therapeutic optometrists to administer and prescribe an antiviral or antiglaucoma drug, even if for legitimate purposes other than treating a virus or glaucoma, it represents an unreasonable construction of unambiguous language in Texas Civil Statutes, Article 4552-1.03, and, to that extent, it is invalid. However, the

Board of Optometry reasonably construed section 1.03 to permit the board to list by classification or category, rather than by brand or generic name, those topical ocular pharmaceutical agents a therapeutic optometrist may administer and prescribe.

TRD-9213123

DM-153 (RQ-322). Request from David R. Smith, M.D., Commissioner, Texas Department of Health, Austin, concerning whether the Texas Abortion Facility Reporting and Licensing Act, Health and Safety Code, Chapter 245, authorizes the Department of Health to release information relating to physicians and nurses to the State Board of Medical Examiners and Board of Nurse Examiners, or authorizes the department to publicly disclose that an office or clinic is not a licensed abortion facility.

Summary of Opinion. The Texas Abortion Facility Reporting and Licensing Act, Health and Safety Code, Chapter 245, does not permit the Texas Department of Health to release information to the Board of Medical Examiners or the Board of Nurse Examiners for the purpose of disciplining physicians or nurses for "unprofessional or unethical conduct." Nor does the act permit the department to inform a person that an office, clinic, or facility is not licensed as an abortion facility.

TRD-9213124

DM-154 (RQ-371). Request from Wayne Blevins, Executive Secretary, Teacher Retirement System of Texas, Austin, concerning whether the Government Code, §824.304(c), conflicts with the federal Age Discrimination in Employment Act of 1967, as amended by the Older Workers Benefit Protection Act of 1990, and related questions.

Summary of Opinion. The Texas Government Code, §824.304(c) conflicts with the federal Age Discrimination in Employment Act of 1967, as amended by the Older Workers Benefit Protection Act, codified at Title 29 of the United States Code, §621-34, and therefore §824.304(c) is pre-empted by the federal acts and is void.

TRD-9213125

DM-155 (RQ-384). Request from John Sharp, Comptroller of Public Accounts, Austin, concerning whether a county education district must comply with the "truth-in-taxation" provisions in Chapter 26 of the Tax Code by calculating effective and rollback tax rates, publishing notices of hearings, holding hearings, and if it receives a valid petition, calling a rollback election before adopting its tax rate, and related questions.

Summary of Opinion. The county education districts (CEDs) must comply with the notice and hearing requirements of the truth-in-taxation provisions contained in

§§26.04-26.06 of the Tax Code. These requirements are consistent with Senate Bill 351, which creates the CEDs and indicates how they should set their tax rates, levy their taxes, and distribute the tax revenue they collect. For the purpose of satisfying the truth-in-taxation provisions, the CEDs are school districts. Therefore, the CEDs must use the formula contained in §26.08(a) of the Tax Code to calculate their rollback tax rates. In addition, because the Texas Supreme Court has enjoined the CEDs from levying and collecting taxes after the 1992-1993 school year, we do not need to determine whether a CED must call a rollback election if it receives a petition.

TRD-9213126

DM-156 (RQ-290). Request from Mike Driscoll, Harris County Attorney, Houston, concerning whether the Texas Constitution, Article XVI, §40, or the common-law doctrine of incompatibility precludes a deputy constable from simultaneously holding a position as an assistant fire chief with the City of Houston Fire Department.

Summary of Opinion. The position of deputy constable of a county is a civil office of emolument. However, the position of assistant fire chief in the City of Houston Fire Department is not a civil office of emolument. Thus, neither the Texas Constitution, Article XVI, §40, nor the common-law doctrine of incompatibility precludes one person from simultaneously serving as deputy constable for a county and assistant fire chief for the City of Houston Fire Department.

TRD-9213127

DM-157 (RQ-306). Request from John Hannah, Office of the Secretary of State, Executive Division, State of Texas, Austin, concerning whether a health spa exempted from the security deposit requirement by the 1985 version of the Health Spa Act is exempt under the 1989 revision of the act and related questions.

Summary of Opinion. Texas Civil Statutes, Article 5221, the Health Spa Act, as amended in 1989, effective September 1, 1989, requires every health spa in the state to file a surety bond with the secretary of state. The security requirements imposed by the present version of the law applies to a health spa that opens an initial location on or after September 1, 1989, and to each additional location opened after that date by such spas. A health spa in operation before September 1, 1989, and any additional location opened by that health spa on or after September 1, 1989, is subject to the security requirements in effect on August 31, 1989. An exemption for some health spas from all security requirements included in the prior version of the Health Spa Act has been repealed and is not continued in effect by the savings clause in the 1989 amendments.

Health spas that were formerly exempted from the security requirement no longer have the benefit of that exemption.

Health spas that were exempt from all security deposits under the repealed provision are now required to maintain security in the amount of \$5,000 without first filing a security deposit of \$20,000. If a spa in operation on August 31, 1989, opens a new location after September 1, 1989, the new spa location must file an initial security deposit of 20% of the total value of the prepayments it has received, but not less than \$20,000 nor more than \$50,000. It must maintain this amount of security for two years after the date the security deposit is filed, and thereafter, it must continuously maintain security in the amount of \$5,000.

TRD-9213128

DM-158 (RQ-121). Request from Jimmy F. Davis, County-District Attorney, Castro County Courthouse, Dimmitt, concerning whether a county commissioners court may "transfer" county road and bridge employees discharged by an *ex officio* road commissioner to another *ex officio* road commissioner's precinct and continue to pay the employees with funds budgeted for the former precinct, and related questions.

Summary of Opinion. A county commissioners court in a county adopting the *ex officio* road commissioner option for road construction and maintenance responsibilities, Texas Civil Statutes, Article 6702-1, Chapter 3, Subchapter A, lacks authority to overturn an *ex officio* road commissioner's discharge of an employee working in that commissioner's precinct and paid from county road and bridge funds. However, the law would allow another *ex officio* road commissioner to hire such a discharged employee, with authorization by the full commissioners court; and allow the commissioners court to transfer funds originally budgeted for the former precinct to the new precinct of employ to cover the employee's remuneration. Local Government Code, §111.010(d):

TRD-9213129

DM-159 (RQ-385). Request from Tim Curry, Criminal District Attorney, Tarrant County, Fort Worth, concerning constitutionality of the Health and Safety Code, §756.042, which requires outdoor shooting ranges to be constructed according to standards set by the National Rifle Association.

Summary of Opinion. The Health and Safety Code, §756.042, which requires outdoor shooting ranges to be constructed according to standards promulgated by the National Rifle Association, is an invalid attempt to confer legislative authority on a private entity in contravention of the Texas Constitution, Article III, §1.

TRD-9213130

DM-160 (RQ-310). Request from Gerard Swain, Acting Executive Director, Texas Board of Licensure for Nursing Home Administrators, Austin, concerning whether, under Texas Civil Statutes, Article 4442d, the presence of *ex officio* members of the Texas Board of Licensure for Nursing Home Administrators is considered in determining whether a quorum of the board is present, and related questions.

Summary of Opinion. Under the Nursing Home Administrators Licensure Act, §3(1), Texas Civil Statutes, Article 4442d, for purposes of determining the number of members of the Texas Board of Licensure for Nursing Home Administrators sufficient to constitute a quorum, the board must base its calculation only on the total number of appointed, voting board members. *Ex officio*, nonvoting members are not counted for purposes of determining the presence of a quorum. Under §8(a) of the same act, which requires the board to promulgate, alter, or abolish a rule by a two-thirds majority vote, the board calculates the number of votes needed for a majority by multiplying by two-thirds the number of members qualified to vote (provided that a sufficient number of members are present at the meeting to constitute a quorum). For purposes of determining the number of votes necessary to constitute a two-thirds majority, the number of members present at the meeting is irrelevant.

TRD-9213131

DM-161 (RQ-186). Request from Robert H. Norris, Executive Director, Texas Board of Architectural Examiners, Austin, concerning construction of Texas Civil Statutes, Article 249a, §16 the act regulating the practice of architecture.

Summary of Opinion. Texas Civil Statutes, Article 249a, §16 the statute regulating the practice of architecture, does not bar a professional engineer licensed under Texas Civil Statutes, Article 3271a, from preparing plans and specifications, the preparation of which requires the application of engineering principles and the interpretation of engineering data, for "a new building that is to be constructed and owned by a State agency, a political subdivision of this State, or any other public entity in this State if the building will be used for education, assembly, or office occupancy and the construction costs exceed \$100,000."

TRD-9213132

DM-162 (RQ-352). Request from Phyllis Massey, Dewitt County Auditor, Cuero, concerning whether the provisions of the Code of Criminal Procedure, Article 59.06(c), directing that certain forfeited property be deposited in "special funds in the county treasury," require that such funds be deposited with the county treasurer for placement in the county depository.

Summary of Opinion. The provisions of the Code of Criminal Procedure, Article 59.06(c), providing for the deposit in "special funds in the county treasury" of forfeiture funds distributed to the office of "the attorney representing the state" and "county law enforcement agencies," contemplate that those funds will be deposited with the county treasurer for placement in the county depository in the manner in which county funds are generally handled.

TRD-9213133

DM-164 (RQ-133). Request from Mike Driscoll, Harris County Attorney, Houston concerning whether a county constable is under a statutory duty to serve civil process issued by federal courts.

Summary of Opinion. A county constable is not required to serve civil process issued by federal courts in his official capacity under the Local Government Code, §86.021. A constable is not prohibited from performing such services in his private capacity provided such service does not interfere with the constable's official duties.

TRD-9213134

DM-165 (RQ-98). Request from Skip Meno, Commissioner, Texas Education Agency, Austin, concerning whether a school district can require a corporate surety to be sufficiently solvent to issue bid, performance, or payment bonds without reinsurance, and related questions.

Summary of Opinion. Surety companies furnishing bid bonds, performance bonds, and payment bonds under Texas Civil Statutes, Article 5160, must be duly authorized to do business in Texas. Insurance Code, Article 7.19-1(a). School districts may require corporate sureties to obtain reinsurance for any portion of the risk that exceeds ten percent of the surety's capital and surplus. Reinsurers of such bonds must be "duly authorized, accredited, or trustee" to do business in Texas. *Id.* Article 7.19-1(b). A school district may reject a surety bond which does not meet these requirements. School districts may not forbid surety companies from obtaining reinsurance in accordance with Article 7.19-1, or establish minimum financial standards for reinsurers underwriting such bonds beyond those permitted by Article 7.19-1.

TRD-9213135

DM-166 (RQ-183). Request from John Vance, Criminal District Attorney, Dallas County, Dallas, concerning whether charges for uncertified copies of records of judiciary in district clerk's office are set by Texas Civil Statutes, Article 6252-17a, §9(d).

Summary of Opinion. The charges established by the Open Records Act, Texas Civil Statutes, Article 6252-17a, §9(d) for copies made in the district clerk's office do not apply to copies of records of the judi-

ciary held by the district clerk. Rule 76a of the Texas Rules of Civil Procedure, provides that court records, as defined in the rule, are presumed to be open to the public and may be sealed only in accord with the reasons and procedures set out in the rule. Court records not subject to Rule 76a are governed by existing law. There is a common-law right to inspect and copy records of the judiciary, subject to the court's inherent power to control access to its records. The charge for an uncertified copy of a judicial record in the clerk's custody is governed by the Government Code, §51.319(5) which authorizes the district clerk to collect a "reasonable fee" for "performing any other service prescribed or authorized by law for which no fee is set by law." Since the legislature refused to permit the district clerk to collect a fee of one dollar (\$1.00) per page for noncertified records, we believe that amount would be an unreasonable charge as a matter of law.

TRD-9213136

DM-167 (RQ-404). Request from Ron Lewis, Chairman, Natural Resources Committee, Texas House of Representatives, Austin, concerning whether the State of Texas may participate in protesting zoning changes, and related questions.

Summary of Opinion. The Texas Department of Transportation, as an owner of real property in its right-of-way, may if it so chooses be included among the owners of 20% of immediately adjoining property protesting a zoning change under the Local Government Code, §211.006(d)(2). Any such decision must be made by the Texas Transportation Commission. The commission may delegate the purely ministerial act of signing the petition to any person it chooses. The Local Government Code, §211.013, does not abrogate the rights of state or federal agencies to participate in zoning protests.

TRD-9213137

◆ ◆ ◆ Requests for Opinions

(RQ-405). Request from Honorable Steven D. Wolens, Chair, Committee on Business and Commerce, Texas House of Representative, Austin, concerning whether an applicant for a horse racetrack license is barred by the rules of the Racing Commission from amending his or her application after the application has been certified as complete by the executive secretary of the commission.

(RQ-406). Request from Jackee Cox, General Counsel, Texas Department of Criminal Justice, Austin, concerning whether a defendant sentenced under the Penal Code, §12.422 is entitled to credit for time confined in a substance abuse facility toward satisfaction of the term of confinement.

(RQ-407). Request from Rita Horwitz, Executive Director, State Pension Review Board, Austin, concerning whether §2(g) or §2(o) of the Open Meetings Act, Texas Civil Statutes, Article 6252-17, authorize the State Pension Review Board to meet in closed session to consider confidential medical information.

(RQ-408). Request from Fred S. Brinkley, Jr., R.Ph., Executive Director/Secretary, Texas State Board of Pharmacy, Austin, concerning whether a quorum of a licensing board attending a licensee disciplinary hearing conducted by the State Office of Administrative Hearings may make findings of fact, conclusions of law, and vote on discipline without receiving a proposal for decision.

(RQ-409). Request from Georgia D. Flint, Commissioner of Insurance, Austin, concerning whether the Texas Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17, apply to the Texas Health Maintenance Organization Solvency Surveillance Committee.

(RQ-410). Request from Georgia D. Flint, Commissioner of Insurance, Austin, concerning whether the Texas Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17, apply to the Life, Accident, Health and Hospital Service Insurance Guaranty Association.

(RQ-411). Request from Georgia D. Flint, Commissioner of Insurance, Austin, concerning the Texas Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17, apply to the Texas Property and Casualty Insurance Guaranty Association.

(RQ-412). Request from Georgia D. Flint, Commissioner of Insurance, Austin, concerning whether the Texas Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17, apply to the Texas Title Insurance Guaranty Association.

(RQ-413). Request from Georgia D. Flint, Commissioner of Insurance, Austin, concerning whether insurance underwriting guidelines are trade secrets exempt from the Texas Open Records Act.

(RQ-414). Request from Georgia D. Flint, Commissioner of Insurance, Austin, concerning whether Article 1.10D of the Texas Insurance Code renders information collected by the Insurance Fraud Unit under the Texas Open Records Act.

(RQ-415). Request from Helen L. Campbell, Fire Fighter's Pension Commissioner,

Austin, concerning consequences for the Fire Fighter's Pension Fund when a member volunteer fire department ceases to exist.

(RQ-416). Request from Gib Lewis, Speaker, Texas House of Representatives, Austin, concerning whether a teacher returning to work after a leave of absence must be placed on active duty, and, if so, when such service must commence.

(RQ-417). Request from Rick Perry, Commissioner, Department of Agriculture, Austin, concerning whether certain kinds of producer assessments for boll weevil eradication would contravene Article VIII, §1 of the Texas Constitution.

(RQ-418). Request from Todd K. Brown, Executive Director, Texas Workers' Compensation Commission, Austin, concerning whether information related to an employee's "no lost time injuries" must be released by the Texas Workers' Compensation Commission as part of a record check and related questions.

(RQ-419). Request from James R. Wilson, Director, Texas Department of Public Safety, Austin, concerning whether Texas Civil Statutes, Article 6791h, §4A, which provides for, in certain circumstances, the impoundment of motor vehicles not registered in Texas, is constitutional and related questions.

(RQ-420). Request from Clem R. Cannon, Auditor, Karnes County, Karnes County Courthouse, Karnes City, concerning whether a county is responsible for payment of medical bills of an indigent incarcerated in the county jail.

(RQ-421). Request from John B. Ramming, Executive Director, Texas Turnpike Authority, Dallas, concerning whether the Texas Turnpike Authority may transfer the Houston Ship Channel Bridge project to Harris County, and related questions.

(RQ-422). Request from Ron Lewis, Chair, Redistricting Committee, Texas House of Representatives, Austin, concerning annexation of a portion of a municipal utility district by a municipality, and related questions.

(RQ-423). Request from Dick Durbin, Administrator, Texas Alcoholic Beverage Commission, Austin, concerning whether the Alcoholic Beverage Commission, in providing for different tax-reporting periods under Texas Civil Statutes, Article 179d, the Bingo Enabling Act, may require that the tax be paid with each tax report.

(RQ-424). Request from John B. Holmes, Jr., District Attorney, Harris County, Texas, Houston, concerning right of a juvenile in a treasury case to appointed counsel, and related questions.

(RQ-425). Request from Lionel R. Meno, Commission of Education, Texas Education

Agency, Austin, concerning whether Article VII, §5(d) of the Texas Constitution permits the State Board of Education to lend securities owned by the permanent school fund in the manner and for the purpose set forth in the Education Code, §15.14.

(RQ-426). Request from Kenneth H. Ashworth, Commissioner, Texas Higher Education Coordinating Board, Austin, concerning whether the comptroller may withhold state payroll or retirement warrants from recipients who are delinquent in repaying Hinson-Hazelwood College Student Loans.

(RQ-427). Request from Tracey Bright, County Attorney, Ector County Courthouse, Odessa, concerning whether a school district may contract with off-duty police officers and deputy sheriffs for security services, and related questions.

(RQ-428). Request from The Honorable Renee Higginbotham-Brooks, Chairman, Texas Alcoholic Beverages Commission, Austin, concerning whether the Open Meetings Act permits a member of the Alcoholic Beverage Commission who is unable to attend a commission meeting in person to participate by live video transmission.

(RQ-429). Request from The Honorable Ron Wilson, Chairman, Committee on Liquor Regulation, Texas House of Representatives, Austin, concerning whether a county may create a non-profit authority to purchase and operate a racetrack, and to issue bonds therefor.

(RQ-430). Request from Fred S. Brinkley, Jr., R.Ph., Executive Director/Secretary, Texas State Board of Pharmacy, Austin, concerning what kind of information the Board of Pharmacy should release about licensees who are the subject of orders regarding impairment by substance abuse.

(RQ-431). Requested from Honorable O. H. "Tke" Harris, Chairman, Jurisprudence Committee, Texas Senate, Austin, concerning constitutionality of requirement that an applicant for a real estate inspector's license and an inspector-in-training's license perform a minimum number of inspections prior to licensure.

(RQ-432). Request from Gary Compton, Chairman, Texas Youth Commission, Austin, concerning whether Article VII, §9 of the Texas Constitution requires the Parrie Haynes ranch, which was willed "to the State Orphan Home of Texas to help orphan children," to be placed in the asylum fund established by that constitutional provision.

(RQ-433). (Cross-referenced with ID#16873; to be issued as an ORD) .

(RQ-434). Request from Honorable Gonzalo Barrientos, Chairman, Committee on Nominations, Texas Senate, Austin, concerning whether those members of the Texas Ethics Commission who are ap-

pointed by the Governor are subject to confirmation.

(RQ-435). Request from Todd Brown, Executive Director, Texas Workers' Compensation Commission, Austin, concerning whether the Texas Workers' Compensation Commission may release information to the Attorney General's Child Support Enforcement Office.

(RQ-436). Request from Lionel R. Meno, Commissioner of Education, Texas Education Agency, Austin, concerning whether the Texas prekindergarten program is considered part of elementary education under Texas law, and related questions.

(RQ-437). Request from The Honorable John Vance, District Attorney, Frank Crowley Courts Building, Dallas, concerning whether a defendant may receive credit for time served in jail under particular circumstances, and related questions.

TRD-9213138



Texas Ethics Commission

The Texas Ethics Commission is authorized by Texas Civil Statutes, Article 6252-9d.1, §1.29, to issue advisory opinions in regard to the following statutes: Texas Civil Statutes, Article 6252-9b; the Government Code, Chapter 302; the Government Code, Chapter 305; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Notice to Ethics Advisory

The Texas Ethics Commission will present an ethics advisors' seminar for state employees on October 13, 1992, at the William B. Travis Building, Conference Room Number 111 in Austin. This will be the first in a series of ethics training seminars. The purpose of the October 13th seminar is to discuss pertinent laws and to assist individuals in their role as ethics advisory.

Issued in Austin, Texas, on September 14, 1992.

TRD-9213211 John Steiner
 Executive Director
 Texas Ethics Commission

Filed: September 29, 1992

For further information, please call: (512)
463-5800





10-21



10-22



10-23



10-24

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 25. Health Services Part I. Texas Department of Health

Chapter 229. Food and Drug

Licensing of Wholesale Distributors of Drugs-Including Good Manufacturing Practices

• 25 TAC §229.252

The Texas Department of Health (department) adopts on emergency basis an amendment to §229.252, concerning licensing fee and procedures/licensing of wholesale distributors of drugs-including good manufacturing practices.

The section will enable the department to license and regulate wholesale drug distributors of compressed medical gases at a reduced fee. This amendment will not include those distributors of compressed medical gas who also transfill cylinders because these facilities require more inspectional time for operations testing and record review. A reduced fee is also established for small volume businesses that function as wholesale drug distributors at a median level. The majority of medical gas transfillers will be included in this category. Any place of business that is registered with the United States Food and Drug Administration as a manufacturer of compressed medical gases will be required to license with the department.

This amendment is also being proposed for permanent adoption in this issue of the *Texas Register*.

The amendment is adopted on an emergency basis because failure of these facilities to license and provide medical gas to incapacitated or nonambulatory patients would adversely affect the lives and health of these individuals.

The amendment is adopted on an emergency basis under Texas Health and Safety Code, §431.241, which provides the Department with the authority to adopt necessary regulations pursuant to the enforcement of this chapter; and Texas Civil Statutes, Article 6252-13a, §5, which provide the board with authority to adopt emergency rules; and §12.001, which provide the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health and the commissioner of health.

§229.252. *Licensing Fee and Procedures.*

(a) License fee. All wholesale distributors of drugs who sell drugs in Texas shall obtain a license annually on or before September 1 with the Texas Department of Health (department) and shall pay a licensing fee for each wholesale distribution place of business operated as follows:

(1) \$150 per distributor engaged in distribution only of compressed medical gases (no transfilling operations)

having a gross annual volume of \$0-\$20,000;

(2) \$250 per wholesale distributor having a gross annual volume of \$0-\$199,999.99 (includes medical gas transfillers);

(3) [(1)]\$500 per wholesale distributor having a gross annual volume of \$200,000.00 [0]-\$19,999,999.99;

(4) [(2)]\$750 per wholesale distributor having a gross annual volume greater than or equal to \$20 million; and

(5) [(3)]\$750 per out-of-state wholesale distributor, unless an audited statement is provided which demonstrates a gross annual volume of less than \$20 million which would require a licensing fee of \$500.

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

Issued in Austin, Texas, on January 1, 1988.

TRD-9213199

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: September 29, 1992

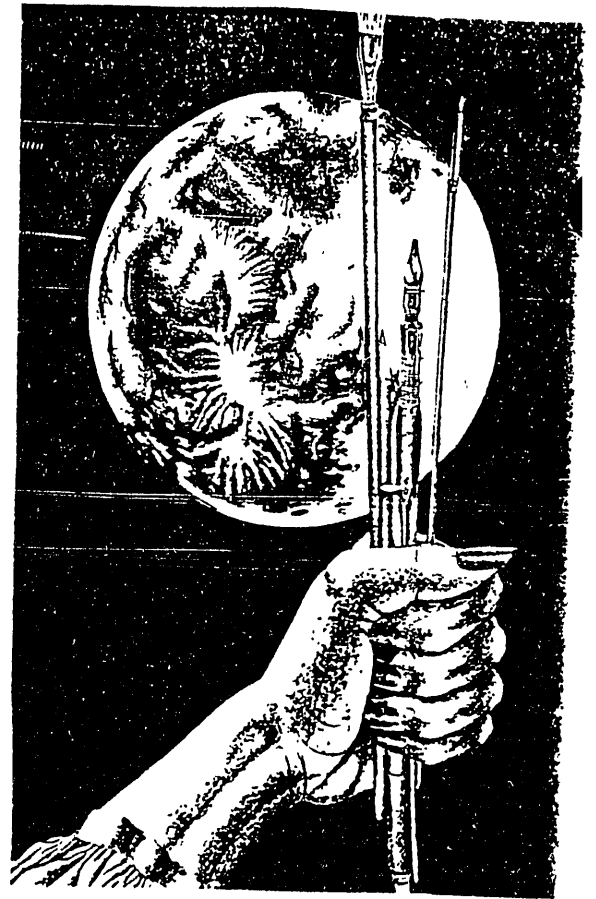
Expiration date: January 27, 1993

For further information, please call: (512) 458-7248

◆ ◆ ◆



10-25



10-26



10-27



10-28

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 1. ADMINISTRATION

Part V. General Services Commission

Chapter 111. Executive Administration Division

Administration

• 1 TAC §111.4

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

The General Services Commission proposes the repeal of §111.4, concerning breach of ethical standards. The section is being repealed and replaced with a new §111.4.

Judith M. Porras, general counsel, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Porras also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of repetitive rules. 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 may be submitted to Judith M. Porras, General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Civil Statutes, Article 601b, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of the Article.

§111.4. Breach of Ethical Standards.

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

Issued in Austin, Texas, on September 28, 1992.

TRD-9213112

Judith M. Porras
General Counsel
General Services
Commission

Earliest possible date of adoption: November 6, 1992

For further information, please call: (512) 463-3446

The General Services Commission proposes new §111.4, concerning ethical standards to set forth standards of conduct required of employees and vendors. The new section is replacing the repealed version of §111.4.

Judith M. Porras, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Porras 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 clearer rules governing employee and vendor conduct. 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 Judith M. Porras, General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

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

§111.4. Ethical Standards.

(a) This section states the ethical standards of conduct required of commission employees, vendors, potential vendors, and employees of other agencies when acting under authority delegated from the commission.

(b) An employee may not:

(1) participate in work on a commission contract knowing that the employee, or member of their immediate family has an actual or potential financial interest in the contract, including prospective employment;

(2) solicit or accept anything of value from an actual or potential vendor;

(3) be employed by, or agree to work for, a vendor or potential vendor;

(4) knowingly disclose confidential information for personal gain; or

(5) be employed at a pay classification of Group 17, Step 1 or higher if the spouse of an officer, manager, or paid consultant of a Texas trade association of businesses that contract with the state.

(c) A former employee who had a pay classification of Group 17, Step 1 or higher may not represent or receive compensation concerning any matter in which the former employee participate during his or her employment with the state.

(d) A vendor or potential vendor may not:

(1) offer, give, or agree to give an employee anything of value; or

(2) retain another to secure a contract for a contingent fee except for bona fide employees or sales representatives.

(e) When an actual or potential violation of subsections (b)-(d) is discovered, the person involved shall promptly file a written statement concerning the matter with an appropriate supervisor. The person may also request written instructions and disposition of the matter.

(f) If an actual violation of subsections (b)-(d) occurs or is not disclosed and remedied, the employee involved may be either reprimanded, suspended, or dismissed. The vendor or potential vendor may be barred from receiving future contracts and an existing contract may be cancelled.

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

Issued in Austin, Texas, on September 28, 1992.

TRD-9213113

Judith M. Porras
General Counsel
General Services
Commission

Earliest possible date of adoption: November 6, 1992

For further information, please call: (512) 483-3446

TITLE 16. ECONOMIC REGULATIONS

Part I. Railroad Commission of Texas

Chapter 11. Surface Mining and Reclamation Division

Subchapter D. Coal Mining

• 16 TAC §11.221

The Railroad Commission of Texas proposes an amendment to §11.221, concerning ownership and control provisions of permit processing requirements.

Ron Reeves, assistant director, legal division-surface mining, 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. Reeves 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 continued compliance with federal requirements for coal programs, thereby allowing federal funding. 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 Ron Reeves, Assistant Director, Legal Division-Surface Mining, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967.

The amendment is proposed under Texas Civil Statutes, Article 5920-11, §8, which provide the Railroad Commission of Texas with the authority to promulgate rules pertaining to surface coal mining operations.

§11.221. State Program Regulations.

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

(c) The Railroad Commission of Texas has published the state program regulations, as amended November 16, 1992, in booklet form titled "Coal Mining Regulations." Copies may be obtained from the Surface Mining and Reclamation Division, P.O. Box [Drawer] 12967, Austin, Texas 78711-2967.

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

Issued in Austin, Texas, on September 28, 1992.

TRD-9213191 Nolan Ward
Hearings Examiner,
General Law-Legal
Division
Railroad Commission of
Texas

Earliest possible date of adoption: November 6, 1992

For further information, please call: (512) 483-6841

Part III. Texas Alcoholic Beverage Commission

Chapter 35. Enforcement

Place or Manner

• 16 TAC §35.31

The Texas Alcoholic Beverage Commission proposes a new §35.31, concerning place or manner violations in the Texas Alcoholic Beverage Code. This new rule adds §35.31 to the existing enforcement rules of the commission and is to be effective on December 14, 1992.

Marc Allen Connelly, legal division chief, has determined that for the first five year period that the section is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering this section. This determination is based upon the nature of the rule in that it is an enforcement tool which does impact taxes or revenues.

Mr. Connelly also has determined that for each of the first five years this section is in effect, the public benefit anticipated as a result of enforcing the section will be increased compliance with the laws of the state and a decrease in the amount of criminal activity which occurs on licensed premises. 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 proposed rule may be submitted to Dick Durbin, Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas, 78711, (512) 208-3200.

The new section is proposed under the Texas Codes Annotated, Subchapter B, §5.31, which provides the commission with the authority to adopt rules relating to the enforcement and administration of the Alcoholic Beverage Code.

§35.31. Offenses Against The General Welfare.

(a) The terms permittee, licensee, applicant, and premises as used in this section include the people and organizations as defined in the Texas Alcoholic Beverage Code, §§1.04, 11.45, and 11.61, and the premises as defined in the Code, §1.04(19) and §11.49.

(b) Any of the following offenses shall be regarded as grounds to suspend, cancel, or deny, permits, licenses, or applications for such, under the Texas Alcoholic Beverage Code, §§11.46(a) (8), 11.61(b)(7), 61.42(a)(3), and 61.71(a)(17), if the offense is shown to have been committed on a

premise by a permittee, licensee or applicant or by a person permitted to be on the premises if the permittee, licensee or applicant knew or should have known that such offense was occurring on the premise and shall be considered offensive to the general welfare, health, peace, and safety of the people of the state:

(1) any preparatory offense included in the Texas Penal Code, §§15.01, 15.02, or 15.03;

(2) any assaultive offense included in the Texas Penal Code, §§22.01, 22.011, 22.02, 22.021, 22.03, 22.04, 22.041, 22.05, 22.06, 22.07, or 22.09;

(3) any theft offense included in the Texas Penal Code, §31.01 or §31.03;

(4) any bribery offense included in the Texas Penal Code, §§36.01, 36.02, 36.03, 36.04, 36.05, 36.06, or 36.09;

(5) any obstruction offense included in the Texas Penal Code, §§38.03, 38.04, 38.05, 38.17, or 38.18;

(6) any disorderly conduct offense included in the Texas Penal Code, §§42.01, 42.02, 42.03, 42.04, 42.06, 42.07, or 42.11;

(7) any weapons offense included in the Texas Penal Code, §§46.01, 46.02, 46.03, 46.05, 46.06, 46.07, 46.09, or 46.10;

(8) any gambling offense included in Chapter 47 of the Texas Penal Code;

(9) any other offense included in any charter, ordinance, law, or regulation of an incorporated municipality or county in which a premise is located if such offense is shown to have occurred on the premise and is detrimental to the general welfare, health, peace, and safety of the people;

(10) any other offense included in any law of the United States or the State of Texas that is shown to have occurred on the premise and have a detrimental effect on the general welfare, health, peace, and safety of the people.

(c) The above list is not inclusive of all offenses which may be detrimental to the general welfare, health, peace, and safety of the people in the State of Texas.

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

Issued in Austin, Texas, on September 29, 1992.

TRD-9213219 Emmitt Roberts
General Counsel
Texas Alcoholic Beverage
Commission

Earliest possible date of adoption: November 6, 1992

For further information, please call: (512) 206-3220

◆ ◆ ◆
Definitions

• 16 TAC §35.41

The Texas Alcoholic Beverage Commission proposes new §35.41, defining terms used in the Texas Alcoholic Beverage Code. This new rule adds §35.41 to the existing enforcement rules of the commission and is to be effective on December 14, 1992.

Marc Allen Connelly, legal division chief, 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. This determination is based upon the nature of the rule in that it is an enforcement tool which does not impact taxes or revenues.

Mr. Connelly also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be increased compliance with the laws of the state and a decrease in the amount of criminal activity which occurs on licensed premises. 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 Dick Durbin, Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711, (512) 206-3200.

The new section is proposed under the Texas Codes Annotated, Subchapter B, §5.31, which provides the commission with the authority to adopt rules relating to the enforcement and administration of the Alcoholic Beverage Code.

§35.41. *Terms Defined.* In the Texas Alcoholic Beverage Code, the following definitions apply.

(1) Lewd and vulgar entertainment or acts—Any Sexual offenses contained in Chapter 21 of the Texas Penal Code or any Public Indecency offenses contained in Chapter 43 of the Texas Penal Code. (See the Texas Alcoholic Beverage Code, §104.01(6)).

(2) Narcotic—Any substance defined in the Texas Controlled Substances Act, §481.002(5), (6), (7), or (26). (See the Texas Alcoholic Beverage Code, §104.01(9)).

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

Issued in Austin, Texas, on September 29, 1992.

TRD-9213200
Emmitt Roberts
General Counsel
Texas Alcoholic Beverage
Commission

Earliest possible date of adoption: November 6, 1992

For further information, please call: (512) 206-3220

◆ ◆ ◆
TITLE 19. EDUCATION
Part II. Texas Education Agency

**Chapter 109. Budgeting,
Accounting, and Auditing**
**Subchapter D. Adoptions by
Reference**

• 19 TAC §109.61

The Texas Education Agency (TEA) proposes an amendment to §109.61, concerning the adoption by reference of Change 27 to the financial accounting manual (Bulletin 679) for school districts and regional education service centers. Change 27 amends Bulletin 679 to restructure fund codes to provide enhanced fiscal information; update federal program rules and regulations; update sections relating to public school accounting procedures; and correct minor technical errors.

Thomas Canby, director of the Audit Division, 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. Canby 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 or administering the section is that schools will have current reference that is in compliance with state and federal laws and current accounting requirements. 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, in that the section enhances the efficiency of the standard accounting systems of public schools.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Evaluation, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed amendment submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §11.29, which directs the commissioner of education to adopt annually a budget for operating the Foundation School Program, the Central Education Agency, and other programs for which the State Board of Education has the responsibility.

§109.61. *Financial Accounting Manual.*

(a) The rules for financial accounting are described in the official Central Education Agency bulletin, Financial Accounting Manual, Bulletin 679, as amended

September 1992 [January 1992], which is adopted by this reference as the agency's official rule. A copy is available for examination during regular office hours, 8 a.m. to 5 p.m., except holidays, Saturdays, and Sundays, at the Central Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

(b) (No change.)

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

Issued in Austin, Texas, on September 30, 1992.

TRD-9213228
Criss Cloudt
Director of Policy Planning
and Evaluation
Texas Education Agency

Earliest possible date of adoption: November 6, 1992

For further information, please call: (512) 463-9701

◆ ◆ ◆
**Chapter 141. Teacher
Certification**

**Subchapter B. Certificate Issu-
ance Procedures**

• 19 TAC §141.26

The Texas Education Agency (TEA) proposes an amendment to §141.26, concerning the schedule of fees for certification services. The amendments increase the fees charged for certification services performed by the central education agency and regional education service centers.

A submission published in the September 22, 1992, issue of the *Texas Register* (17 TexReg 6529) proposing identical amendments to §141.26 is being withdrawn simultaneously in this issue, because the preamble stated erroneously that there would be no fiscal implications as a result of enforcing or administering the section.

Thomas E. Anderson, Jr., executive deputy commissioner for school support services, has determined that for the first five-year period the proposed amendments are in effect, there will be fiscal implications as a result of enforcing or administering the section.

The effect on state government will be an estimated increase in revenue of \$478,250 in fiscal year 1993; \$212,842 in fiscal year 1994; \$57,842 in fiscal year 1995; \$58,998 in fiscal year 1996; and \$60,178 in fiscal year 1997.

The effect on local government cannot be precisely calculated. Local independent school districts utilizing temporary permits to employ staff will be required to increase expenses budgeted for this purpose by 25%.

Mr. Anderson and Criss Cloudt, director of policy planning and evaluation, have deter-

mined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the section will be maintenance of enhanced certification services.

The anticipated cost to persons who are required to comply with the section as proposed cannot be precisely calculated. The cost will vary depending on the number of services requested.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Evaluation, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed amendments submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §13.032(h), which authorizes the State Board of Education to fix and require payment of a fee as a condition to the issuance of a teaching certificate.

§141.26. *Schedule of Fees for Certification Services.* Effective January 1, 1993 [1991], an applicant for a certificate or a school district requesting a permit shall pay whichever fee from the following list is applicable:

(1) paraprofessional certificate-\$20 [\$15];

(2) provisional and professional certificates, additional specialization, teaching field, or endorsement/delivery system, based on recommendation by an approved teacher preparation entity or Central Education Agency Authorization; change of name on certificate, duplicate of certificate, extension or conversion of certificate-\$65 [\$35];

(3) review of credentials requiring analysis and research of test history on the Examination for the Certification of Educators in Texas (ExCET) and eligibility for certification under the provisions of §141.23 of this title (relating to Issuance of Certificates Based on Examination) (nonrefundable)-\$75 [\$40];

(4) review of credentials requiring analysis and research of college transcripts and/or out-of-state certificate programs (nonrefundable)-\$75 [\$60];

(5) addition of certification based on completion of appropriate examination and/or internship requirements as provided by §141.23 of this title (includes the nonrefundable credential review fee of \$75 [\$40]) -\$140 [\$75];

(6) initial certificate based on certificate issued by another state department of education (includes the nonrefundable credential review fee of \$75 [\$60])-\$125 [\$85];

(7) initial permit, initial noncertified instructor's permit, reassignment on permit with a change in level of target certificate, or renewal of permit on a hardship basis (nonrefundable)-\$75 [\$60];

(8) (No change.)

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

Issued in Austin, Texas, on September 30, 1992.

TRD-9213227 Criss Cloudt
Director of Policy Planning
and Evaluation
Texas Department of
Education

Earliest possible date of adoption: November 6, 1992

For further information, please call: (512) 463-9701

◆ ◆ ◆
**TITLE 22. EXAMINING
BOARDS**
**Part XI. Board of Nurse
Examiners**
**Chapter 217. Licensure and
Practice**

• 22 TAC §217.11

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

The Board of Nurse Examiners proposes the repeal of §217.11, concerning the standards of nursing practice. Extensive rewrite of the section is felt necessary, therefore, the section is being repealed with simultaneous proposed new section wording presented.

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

Ms. Waddill also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be clarification by omission. 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 may be submitted to Louise Waddill, R.N., Ph.D., Executive Director, Board of Nurse Examiners, P.O. Box 140466, Austin, Texas 78714. Comments must be received no later than November 6, 1992.

The repeal 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.

§217.11. *Standards of Nursing Practice.*

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

Issued in Austin, Texas, on September 28, 1992.

TRD-9213094 Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Proposed date of adoption: November 17, 1992

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

◆ ◆ ◆
The Board of Nurse Examiners proposes new §217.11, concerning standards of professional nursing practice. The proposed new section provides clarification to RNs as to the board's definition of the current legal standards of nursing practice that would ensure the welfare of the client. These recommendations were made by the task force convened by the Board of Nurse Examiners to review the rule.

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 have a clearer definition of standards of professional nursing practice which addresses current aspects of nursing practice. There will be no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Louise Waddill, R.N., Ph.D., Executive Director, Board of Nurse Examiners, P.O. Box 140466, Austin, Texas 78714. Comments must be received no later than November 6, 1992.

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.

§217.11. *Standards of Professional Nursing Practice.* The responsibility of the Texas Board of Nurse Examiners (board) is to regulate the practice of professional nursing within the State of Texas. The purpose of defining standards of practice is to identify roles and responsibilities of the registered

professional nurse (RN) in any health care setting. The standards for professional nursing practice shall establish a minimum acceptable level of professional nursing practice. The RN shall:

(1) know and conform to the Texas Nurse Practice Act and the board's rules and regulations as well as all federal, state, or local laws, rules or regulations affecting the practice of professional nursing;

(2) provide, without discrimination, nursing services regardless of the age, disability, economic status, gender, national origin, race, religion, or health problems of the client served;

(3) use a systematic approach to provide individualized, goal-directed nursing care by:

(A) performing nursing assessments regarding the health status of the client;

(B) making nursing diagnoses which serve as the basis for the strategy of care;

(C) developing a plan of care based on assessment and nursing diagnosis;

(D) implementing nursing care; and

(E) evaluating the client's responses to nursing interventions;

(4) institute appropriate nursing intervention which might be required to stabilize a client's condition and/or prevent complications;

(5) clarify any order or treatment regimen that the nurse has reason to believe is inaccurate, non-efficacious, or contraindicated by consulting with the appropriate licensed practitioner and notifying the ordering practitioner when the RN makes the decision not to administer the medication or treatment;

(6) know the rationale for and the effects of medications and treatments and shall correctly administer the same;

(7) accurately report and document the client's symptoms, responses, and status;

(8) implement measures to promote a safe environment for clients and others;

(9) implement measures to prevent exposure to infectious pathogens and communicable conditions;

(10) respect the client's right to privacy by protecting confidential information unless obligated or allowed by law to disclose the information;

(11) promote and participate in client education and counseling based on health needs;

(12) collaborate with the client, members of the health care team and, when appropriate, the client's significant other(s) in the interest of the client's health care;

(13) consult with, utilize, and make referrals to appropriate community agencies and health care resources to provide continuity of care;

(14) when acting in the role of nurse administrator, assure that adequate strategies are in place to verify the current Texas licensure and credentials of personnel for whom he/she is responsible;

(15) make assignments to others that take into consideration client safety and which are commensurate with the educational preparation, experience, and knowledge of the persons to whom the assignments are made;

(16) supervise nursing care provided by others for whom the RN is administratively or professionally responsible;

(17) accept only those nursing assignments that are commensurate with one's own educational preparation, experience, and knowledge;

(18) obtain instruction and supervision as necessary when implementing nursing procedures or practices;

(19) be responsible for one's own continuing competence in nursing practice and individual professional growth;

(20) report unsafe nursing practice by an RN which a nurse has reasonable cause to suspect has exposed a client unnecessarily to risk of harm as a result of failing to provide client care that conforms to the minimum standards of acceptable and prevailing professional practice. The RN should report unsafe practice conditions or other practitioners to the appropriate authority or licensing board.

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

Issued in Austin, Texas, on September 28, 1992.

TRD-9213095 Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Proposed date of adoption: November 17, 1992

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

• 22 TAC §217.13

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

The Board of Nurse Examiners proposes the repeal of §217.13, concerning unprofessional conduct. Extensive rewrite of the section is felt necessary. Therefore, repeal with simultaneous proposed new section wording is presented.

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

Ms. Waddill also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be clarification by omission. 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 may be submitted to Louise Waddill, R.N., Ph.D., Executive Director, Board of Nurse Examiners, P.O. Box 140466, Austin, Texas 78714. Comments must be received no later than November 6, 1992.

The repeal 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.

§217.13. Unprofessional Conduct.

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

Issued in Austin, Texas, on September 28, 1992.

TRD-9213097 Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Proposed date of adoption: November 17, 1992

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

The Board of Nurse Examiners proposes new §217.13, concerning unprofessional conduct. This new section is being proposed to provide further clarification of the board's definition of "unprofessional conduct." The language provides a clear list of behaviors which the board deems to be unprofessional and thereby harmful to the public. These recommended changes are the result of the task force convened by the Board of Nurse Examiners to review the rules.

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 greater public protection as a result of a clear definition of "unprofessional conduct" by an RN. 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, R.N., Ph.D., Executive Director, Board of Nurse Examiners, P.O. Box 140466, Austin, Texas 78714. Comments must be received no later than November 6, 1992.

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.

§217.13. Unprofessional Conduct. The unprofessional conduct rules are intended to protect clients and the public from incompetent, unethical, or illegal conduct of licensees. The purpose of these rules is to identify unprofessional or dishonorable behaviors of the registered professional nurse (RN) which the board believes are likely to deceive, defraud, or injure clients or the public. These behaviors include, but are not limited to:

(1) failing to know and conform to the Texas Nurse Practice Act and the board's rules and regulations as well as all federal, state, or local laws, rules or regulations affecting the practice of professional nursing;

(2) failing to assess and evaluate a client's status or failing to institute nursing interventions which might be required to stabilize a client's condition or prevent complications;

(3) failing to administer medications or treatments or both in a responsible manner;

(4) failing to accurately or intelligibly report and/or document a client's status including signs, symptoms, or responses and the nursing care delivered;

(5) failing to make entries, destroying entries, and/or making false entries in records pertaining to care of clients;

(6) causing or permitting physical, emotional or verbal abuse or injury to the client or the public, or failing to report same to the employer, appropriate legal authority and/or licensing board;

(7) disclosing confidential information or knowledge concerning the client except where required or allowed by law;

(8) when acting in the role of nurse administrator, failing to assure that strategies are in place to verify the current Texas licensure/credentials of personnel for whom he/she is administratively responsible;

(9) delegating nursing care functions to a person who lacks the ability, educational preparation or knowledge to perform these functions;

(10) making assignments of nursing care to a person who lacks the ability or knowledge to perform such assignments, or failing to supervise the delivery of nursing care for which the RN is responsible;

(11) accepting an assignment when one's physical or emotional condition prevents the safe and effective delivery of care or accepting an assignment for which one lacks the educational preparation, knowledge, or ability;

(12) failing to obtain instruction or supervision when implementing nursing procedures or practices for which one lacks the educational preparation, ability, knowledge, and/or experience;

(13) leaving a nursing assignment without notifying one's immediate supervisor;

(14) failing to follow the policy and procedure for the wastage of medications at the facility where the RN was employed or working at the time of the incident;

(15) misappropriating, in connection with the practice of nursing, medications, supplies, equipment or personal items of the client, employer, or any other person or entity or failing to take precautions to prevent such misappropriation;

(16) passing, or attempting to pass forged, altered, falsified or unauthorized prescription(s) by electronic, telephonic, written communication, or any other means;

(17) providing information which was false, deceptive, or misleading in connection with the practice of professional nursing or failing to answer specific questions that would have affected the decision to license, employ, certify, or otherwise utilize an RN;

(18) offering, giving, soliciting, or receiving or agreeing to receive, directly or indirectly, any fee or other consideration to or from a third party for the referral of a client in connection with the performance of professional services;

(19) physically, emotionally, or financially exploiting the client or the client's significant other(s);

(20) failing to report to the board or to a board-approved peer assistance program, if applicable, within a reasonable time of the occurrence, any violation or attempted violation of the Nurse Practice Act or duly promulgated rules, regulations or orders;

(21) failing to report the unauthorized practice of professional nursing;

(22) failing to repay a guaranteed student loan, as provided in the Texas Education Code, §57.491.

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

Issued in Austin, Texas, on September 28, 1992.

TRD-9213098

Louise Waddill, Ph.D., R.N.
Executive Director
Texas Board of Nurse
Examiners

Proposed date of adoption: November 17, 1992

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

◆ ◆ ◆
**Chapter 218. Delegation of
Selected Nursing Tasks by
Registered Nurses to
Unlicensed Personnel**

• **22 TAC §§218.1-218.12**

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

The Board of Nurse Examiners proposes the repeal of §§218.1-218.12, concerning delegation of selected nursing tasks by registered nurses to unlicensed personnel. Extensive rewrite of the entire chapter is felt necessary, therefore, repeal with simultaneous proposed new chapter wording is presented.

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

Ms. Waddill also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be clarification by omission. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Louise Waddill, R.N., Ph.D., Executive Director, Board of Nurse Examiners, P.O. Box 140466, Austin, Texas 78714. Comments must be received no later than November 6, 1992.

The repeals are 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.

§218.1. Purpose.

§218.2. Definitions.

§218.3. General Criteria for Delegation.

§218.4. Supervision.

§218.5. Specific Nursing Tasks Which May Be Delegated.

§218.6. Nursing Tasks That May not Be Routinely Delegated.

§218.7. Nursing Tasks That May Not Be Delegated.

§218.8. Nursing Students Working as Unlicensed Personnel.

§218.9. Administration of Medications.

§218.10. Patient/Client Health Teaching and Health Counseling.

§218.11. Supervision of Tasks Delegated to Unlicensed Personnel by Other Licensed Practitioners.

§218.12. Exclusion from 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 September 28, 1992.

TRD-9213099

Louise Waddill, Ph.D., R.N.
Executive Director
Texas Board of Nurse
Examiners

Proposed date of adoption: November 17, 1992

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

◆ ◆ ◆
• 22 TAC §§218.1-218.11

The Board of Nurse Examiners proposes new §§218.1-218.11, concerning delegation of selected nursing tasks by registered professional nurses to unlicensed personnel. This chapter is proposed to provide clear direction to the RN regarding delegation of nursing tasks to unlicensed persons providing service in a variety of settings. The rules provide guidance as to what may and may not be

delegated and under what conditions tasks may be delegated. This new chapter language is the recommendation of the task force convened by the Board of Nurse Examiners.

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

Ms. Waddill, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be better protection of recipients of nursing care by providing guidelines for nursing care that may be safely delegated to unlicensed persons in a variety of settings. 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 Louise Waddill, R.N., Ph.D., Executive Director, Board of Nurse Examiners, Box 140466, Austin, Texas 78714. Comments must be received no later than November 6, 1992.

The new sections are 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.

§218.1. Purpose. The registered professional nurse (RN) is responsible for the nature and quality of all nursing care that a client receives under his/her direction. Assessment of the nursing needs of a client, the plan of nursing actions, implementation of the plan, and evaluation are essential components of professional nursing practice and are the functions of the RN. The full utilization of the services of a RN may require him/her to delegate selected nursing tasks to unlicensed personnel. The accountability for delegation of nursing tasks remains with the RN. The scope of delegation and the intensity of supervision by the RN may vary depending on the setting, the complexity of the task, the skills of the unlicensed person, and the client's condition, ability, and willingness to be involved in the management of his/her own care. Although unlicensed personnel may be used to complement the RN in the performance of nursing functions, such personnel cannot be used as a substitute for the RN. The following sections govern the RN in delegating nursing tasks to unlicensed personnel across a variety of settings where health related nursing care services are delivered.

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

Activities of daily living—Limited to the following activities: bathing, dressing, grooming, routine hair and skin care, meal preparation, feeding, exercising, toileting, transfer/ambulation, and assistance with self administered medications.

Client—Refers to the individual and his/her family or significant others.

Delegation—Authorizing an unlicensed person to provide nursing services while retaining accountability for the outcome. It does not include situations in which an unlicensed person is directly assisting a RN by carrying out nursing tasks in the presence of a RN.

Independent living environment—A client's individual residence which may include a group home or foster home as well as other settings including, but not limited to, school, work, or church where the client participates in activities.

Stable and predictable—A situation where the client's clinical and behavioral status and nursing care needs are determined by the RN to be nonfluctuating and consistent, including hospice settings where the client's deteriorating condition is expected. Excluded from this definition is any situation where the client's clinical and behavioral status is changing and where frequent reassessment by an RN is needed.

Unlicensed person—An individual who is not licensed as a health care provider, who functions in a complementary or assistive role to the RN in providing direct client care or carrying out common nursing functions. The term includes, but is not limited to, nurses' aides, orderlies, assistants, attendants, technicians, home health aides, medication aides permitted by the Texas Department of Health, and other individuals providing personal care/assistance of health related services.

§218.3. General Criteria for Delegation. The registered professional nurse delegating nursing tasks to unlicensed persons shall comply with the following requirements. The RN must practice in accordance with these rules as well as any other regulations related to the RN's specific area or practice setting.

(1) The RN must make an assessment of the client's nursing care needs. The RN should, when the client's condition allows, consult with the client to identify the client's nursing needs prior to delegating nursing tasks.

(2) The nursing task must be one that a reasonable and prudent RN would find is within the scope of sound nursing judgment to delegate.

(3) The nursing task must be one that, in the opinion of the delegating RN, can be properly and safely performed by the unlicensed person involved without jeopardizing the client's welfare. The RN

delegates nursing tasks based on the needs of the client and the knowledge and skills of the individual selected to perform such tasks.

(4) The nursing task must not require the unlicensed person to exercise nursing judgment or intervention except in emergency situations.

(5) The unlicensed person to whom the nursing task is delegated must be adequately identified. The identification may be by individual or, if appropriate, by training, education, and/or certification of the unlicensed person.

(6) The RN shall have either instructed the unlicensed person in the delegated task or verified the unlicensed person's competency to perform the nursing task.

(7) The RN shall adequately supervise the performance of the delegated nursing task in accordance with the requirements of §218.4 of this title (relating to Supervision).

(8) The RN shall be accountable and responsible for the delegated nursing task.

§218.4. Supervision. The registered professional nurse shall provide supervision of all nursing tasks delegated to unlicensed persons in accordance with the following conditions.

(1) The degree of supervision required shall be determined by the RN after an evaluation of appropriate factors involved including, but not limited to, the following:

(A) the stability of the condition of the client;

(B) the training and capability of the unlicensed person to whom the nursing task is delegated;

(C) the nature of the nursing task being delegated; and

(D) the proximity and availability of the RN to the unlicensed person when the nursing task will be performed.

(2) When the RN delegates nursing tasks to unlicensed persons, the RN or another equally qualified RN shall be available in person or by telecommunications, and shall make decisions about appropriate levels of supervision using the following examples as guidelines.

(A) In situations where the RN's regularly scheduled presence is re-

quired to provide nursing services, including assessment, planning, intervention and evaluation of clients whose health conditions are changing and/or to evaluate client's health status, the RN must be readily available to supervise the unlicensed person in the performance of delegated tasks. Settings include, but are not limited to, acute care, long-term care, rehabilitation centers, and/or clinics providing public health services.

(B) In situations where nursing care is provided in the client's residence and the RN is required to assess, plan, intervene, and evaluate the client's unstable and unpredictable condition and need for skilled nursing services, the RN shall be responsible for the nursing care rendered and shall make supervisory visits at least every two weeks. The RN shall assess the relationship between the unlicensed person and the client to determine whether health care goals are being met. Settings include, but are not limited to, group homes, foster homes, and/or the client's residence.

(C) In situations where nursing care is provided in the client's residence or independent living environments and the client has stable and predictable health care needs, the RN shall make supervisory visits when, in consultation with the client, the RN determines it is necessary to assure that safe and effective services are provided. The ability or desire of the client to participate in the supervision of the care provided by the unlicensed person should be considered when establishing the frequency of supervisory visits. Settings include, but are not limited, to hospice care, group homes, foster homes, the client's residence, school, and place of work.

§218.5. Unlicensed Personnel to whom Tasks are Delegated by Other Licensed Practitioners.

(a) If a registered professional nurse practices in a collegial relationship with another licensed practitioner who has delegated tasks to an unlicensed person over whom the RN has supervisory responsibilities, the RN is responsible for the following:

(1) verifying the training of the unlicensed person; and

(2) verifying that the unlicensed person can properly and adequately perform the delegated task without jeopardizing the client's welfare.

(b) If the RN cannot verify the unlicensed person's capability to perform the delegated task, the RN must communicate this fact to the licensee who delegated the task.

§218.6. Nursing Students Working as Unlicensed Personnel. Certain nursing tasks may be delegated to professional nursing students working as unlicensed personnel in agencies, facilities, or institutions provided the students are currently enrolled in accredited professional nursing programs or are on semester breaks from such programs, and their course of study has included appropriate instruction to prepare them to perform the tasks which will be delegated. This delegation must be consistent with §218.9 and §218.10 of this title (relating to Specific Nursing Tasks Which May Be Delegated and Nursing Tasks That May Not Be Routinely Delegated). Section 218.7 of this title (relating to Nursing Tasks That May Not Be Delegated) which prohibits delegation of certain tasks also applies to nursing students working as unlicensed personnel.

§218.7. Nursing Tasks That May Not Be Delegated. By way of example, and not in limitation, the following are nursing tasks that are not within the scope of sound professional nursing judgment to delegate:

(1) physical, psychological, and social assessment which requires professional nursing judgment, intervention, referral, or follow-up;

(2) formulation of the plan of nursing care and evaluation of the client's response to the care rendered;

(3) specific tasks involved in the implementation of the plan of care which require professional nursing judgment or intervention;

(4) the responsibility and accountability for client health teaching and health counseling which promotes client education and involves the client's significant others in accomplishing health goals; and

(5) administration of medications, including intravenous fluids, except as permitted by §218.8 of this title (relating to Administration of Medications).

§218.8. Administration of Medications. The administration of medications may be delegated only in accordance with this section.

(1) In settings where the registered professional nurses' regularly scheduled presence is required to perform ongoing assessment, intervention, and evaluation of the client's health status/stability, the RN may only delegate in compliance with subparagraphs (A) and (B) of this section.

(A) An RN may delegate the administration of medications to unlicensed persons working in a long-term care setting

and holding valid medication aide permits issued by the Texas Department of Health under the Health and Safety Code, Chapter 242, Subchapter F. The RN shall be knowledgeable regarding the rules of the Texas Department of Health governing medication aides and shall assure that the medication aide is in compliance with the statute.

(B) An RN may delegate the administration of medications to unlicensed persons working in a home health setting and holding valid home health medication aide permits issued by the Texas Department of Health under the Health and Safety Code, Chapter 142, Subchapter B. The RN shall be knowledgeable regarding the rules of the Texas Department of Health governing home health medication aides and shall assure that the home health medication aide is in compliance with the statute. The RN shall make a supervisory visit while the medication aide is in the client's residence at least weekly or when any change in medication regimen is ordered.

(2) In independent living environments where the client's clinical and behavioral status is stable and predictable and does not require the regular presence and assessment, intervention and evaluation by an RN, including hospice settings where the client's deteriorating condition is predictable, the RN may delegate the administration of medications after he/she has trained or verified the training of the unlicensed person to administer the medication. The RN may only delegate medications which are administered orally or via permanently placed feeding tubes, sublingually, or topically, including eye, ear and nose drops and vaginal or rectal suppositories.

(3) An RN shall not delegate the following tasks to any medication provider:

(A) calculation of any medication doses except for measuring a prescribed amount of liquid medication and breaking a tablet for administration, provided the RN has calculated the dose;

(B) administration of the initial dose of a medication that has not been previously administered to the client;

(C) administration of medications by any injectable route;

(D) administration of medications used for intermittent positive pressure breathing or other methods involving medication inhalation treatments;

(E) administration of medications by way of a tube inserted in a cavity of the body except as stated in paragraph

(2) of this section (relating to administration of medications);

(F) responsibility for receiving verbal or telephone orders from a physician, dentist, or podiatrist; and

(G) responsibility for ordering a client's medication from the pharmacy.

§218.9. Specific Nursing Tasks Which May Be Delegated.

(a) By way of example, and not in limitation, the following nursing tasks are ones that are within the scope of sound professional nursing practice to be delegated, regardless of the setting, provided the delegation is in compliance with §218.3 of this title (relating to General Criteria for Delegation) and the level of supervision required is determined by the RN:

(1) non-invasive and non-sterile treatments unless otherwise prohibited by §218.10 of this title (relating to Nursing Tasks That May Not Be Routinely Delegated);

(2) the collecting, reporting, and documentation of data including, but not limited to:

(A) vital signs, height, weight, intake and output, clintest, and hematest results;

(B) changes from baseline data established by the RN;

(C) environmental situations;

(D) client or family comments relating to the client's care; and

(E) behaviors related to the plan of care;

(3) ambulation, positioning, and turning;

(4) transportation of the client within a facility;

(5) personal hygiene and elimination, including vaginal irrigations and cleansing enemas;

(6) feeding, cutting up of food, or placing of meal trays;

(7) socialization activities;

(8) activities of daily living; and

(9) reinforcement of health teaching planned and/or provided by the registered nurse.

(b) By way of example, and not in limitation, in independent living environ-

ments, where the client has stable and predictable health care needs, the RN may delegate activities of daily living and nursing tasks required for maintenance of the client's status. These tasks may only be delegated in accordance with §218.3 and §218.4 of this title (relating to General Criteria and Supervision) when the RN has assessed the client's available support systems and the client's ability and willingness to share in the management of his/her care. Delegable tasks, in addition to those identified in subsection (a) of this section include:

(1) medication administration in compliance with §218.8(2) of this title (relating to Administration of Medications);

(2) assistance with feeding, including tube feeding through permanently placed tubes;

(3) assistance with elimination, including intermittent catheterization; and

(4) assistance with other activities necessary to maintain the independence of the client such as maintenance of skin integrity and mobility.

§218.10. Nursing Tasks That May Not Be Routinely Delegated.

(a) By way of example, and not in limitation, the following are nursing tasks that are not usually within the scope of sound professional nursing judgment to delegate and may be delegated only in accordance with subsection (b) of this section. Treatments which include:

(1) sterile procedures—those procedures involving a wound or an anatomical site which could potentially become infected;

(2) non-sterile procedures, such as dressing or cleansing penetrating wounds and deep burns;

(3) invasive procedures—inserting tubes in a body cavity or instilling or inserting substances into an indwelling tube, unless allowed in §§218.8(2), 218.9(a)(5), or 218.9(b) of this title (relating to Administration of Medications and Specific Nursing Tasks Which May be Delegated);

(4) care of broken skin other than minor abrasions or cuts generally classified as requiring only first aid treatment.

(b) The nursing tasks listed in subsection (a) of this section may be delegated to an unlicensed person only:

(1) under circumstances where a reasonably prudent RN would find that the delegation does not jeopardize the client's safety and/or welfare;

(2) if, in the judgment of the RN, the unlicensed person has the appropriate knowledge and skills to perform the

nursing task(s) in a safe and effective manner;

(3) if the delegation is in compliance with §218.3 and §218.9(b) of this title (relating to General Criteria for Delegation and Specific Nursing Tasks Which May Be Delegated) where applicable;

(4) if the RN delegating the task is directly responsible for the nursing care given to the client;

(5) if the agency, facility, or institution employing unlicensed personnel follows a current protocol for the instruction and training of unlicensed personnel performing nursing tasks under this subsection and that said protocol is developed with input by registered nurses currently employed in the facility and includes:

(A) the manner in which the instruction addresses the complexity of the delegated task;

(B) the manner in which the unlicensed person demonstrates competency of the delegated task;

(C) the mechanism for re-evaluation of the competency; and

(D) an established mechanism for identifying those individuals to whom nursing tasks under this subsection may be delegated; and

(6) if the protocol recognizes that the final decision as to what nursing tasks can be safely delegated in any specific situation is within the specific scope of the RN's professional judgment.

§218.11. Exclusion from Rules. These sections shall not be construed to apply to registered professional nurses who:

(1) supervise or instruct others in the gratuitous nursing care of the sick;

(2) are qualified nursing faculty or preceptors directly supervising or instructing nursing students in the performance of nursing tasks while enrolled in accredited nursing programs; and

(3) instruct and/or supervise an unlicensed person in the proper performance of nursing tasks as a part of an

education course designed to prepare persons to obtain a state license, certificate or permit that authorizes the person to perform such tasks.

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

Issued in Austin, Texas, on September 28, 1992.

TRD-9213100

Louise Waddill, Ph.D., R.N.
Executive Director
Texas Board of Nurse
Examiners

Proposed date of adoption: November 17, 1992

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

TITLE 25. Health Services Part I. Texas Department of Health

Chapter 38. Chronically Ill and Disabled Children's Services

• 25 TAC §38.3

The Texas Department of Health (department) proposes an amendment to §38.3, concerning Chronically Ill and Disabled Children's (CIDC Services). The amendment is to paragraph (1)(B) concerning medical eligibility criteria. The amendment will correct oversights; insert International Classification of Diseases (ICD-9) code revisions; move CIDC conditions listed in Priority 1 into full CIDC coverage; and make editorial changes to correct text errors.

The oversights consist of conditions and codes which were unintentionally omitted from the diagnoses listing for medical eligibility criteria that was published in the April 5, 1991, issue of the *Texas Register*. Some of these were omissions where the congenital form of a condition was listed, but the acquired form was not. Once again, these are oversights and not an expansion of coverable conditions.

With the publishing of the Fourth Edition of the ICD-9-CM, many codes for CIDC covered diagnoses have been subdivided into five digits. These changes have been inserted into the text.

The moving of CIDC conditions listed in Priority 1 into full CIDC coverage does not represent an expansion of coverage, as these conditions have been covered under the CIDC program as pilot projects since 1989.

Roy Middleton, Chief Accountant III, has determined that for the first five-year period the section is in effect there will be fiscal implications for state government as a result of en-

forcing or administering the section. The effect on state government will be an estimated additional cost of \$600,000 for CIDC Program services for each year of the first five years that the section as proposed is in effect. There are no anticipated fiscal implications on local government.

Mr. Middleton 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 CIDC Program will be able to remain within budgetary limitations for the next biennium, and have an accurate listing of diagnoses for CIDC medical eligibility coverage. This section as proposed will focus the CIDC Program more closely with the CIDC mission and objectives, and eliminate the inconsistencies with the use of ICD-9 coding within the CIDC Program. There is no anticipated cost to small businesses to comply with the section as proposed. 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 John E. Evans, Chief, Bureau of Chronically Ill and Disabled Children's (CIDC) Services Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7355. Public comments will be accepted for 30 days after the publication of the sections in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, Chapter 35, which provides the Texas Board of Health with the authority to adopt rules concerning the CIDC Services Program; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health. The amendment will affect the Health and Safety Code, Chapter 35.

§38.3. Eligibility for Client Services. In order for an individual to be eligible for the Chronically Ill and Disabled Children's Services (CIDC) Program, the individual must meet the medical, financial, and other criteria in this section.

(1) Medical criteria.

(A) (No change.)

(B) Coverable conditions.

The Texas Department of Health, with approval by the Texas Board of Health, shall use the following medical criteria to determine CIDC Program eligibility.

§38.3(1)(B): MEDICAL ELIGIBILITY CRITERIA

ICD-9 CODES

COVERABLE DIAGNOSES

INFECTIOUS AND PARASITIC DISEASES

Tuberculosis
015.00-015.96

Tuberculosis of bones and joints

Human Immunodeficiency Virus (HIV) Infection
042.0-044.9

Human immunodeficiency virus
(HIV) infection
Positive serological or viral culture
findings for HIV

795.8

Late Effects of Infectious and Parasitic Diseases
137.3

Late effects of tuberculosis of bones
and joints

138

Late effects of acute poliomyelitis

NEOPLASMS

Malignant Neoplasms
140.0-208.9

All malignant neoplasms

Benign Neoplasms
211.0-211.2 [211.4]
212.0,212.1,212.2,212.3
213.0-213.9
216.0-216.9

Polyposis syndrome (only)
Recurrent laryngeal papilloma (only)
Benign neoplasm of bone
Giant blue nevus (only); giant
pigmented nevus (only)
Benign neoplasm of brain and other
parts of nervous system
Benign neoplasm of pituitary gland
and craniopharyngeal duct (pouch)
Benign neoplasm of pineal gland

225.0-225.9

227.3

227.4

228.1

All lymphangiomas (including cystic
hygromas)

Carcinoma In Situ
230.0-234.9

Cancer in situ

Neoplasms of Uncertain Behavior
235.0-238.9

Neoplasms of uncertain behavior

Neoplasms of Unspecified Nature
239.6
239.7

Brain
Endocrine glands and other parts of
nervous system

----- Conditional Diagnoses -----

Benign Neoplasms
228.00-228.09

Hemangioma (only with severe facial
cosmetic disfigurement,
hemorrhage, ulceration, necrosis,
infection or impaired physiologic
functioning)

**ENDOCRINE, NUTRITIONAL, METABOLIC DISEASES,
AND IMMUNITY DISORDERS**

Disorders of Thyroid Gland
243

Congenital hypothyroidism

Diseases of Other Endocrine Glands
250.01, 250.11, 250.21, 250.31,
250.41, 250.51, 250.61, 250.71,
250.81, 250.91
253.2
253.3

Insulin dependent diabetes mellitus

253.7
255.2
255.6

Panhypopituitarism
Pituitary dwarfism (growth hormone
deficiency)
Iatrogenic pituitary disorders
Adrenogenital disorders
Medulloadrenal hyperfunction

Nutritional Deficiencies
268.0-268.1
268.2
268.9

Rickets
Osteomalacia, unspecified
Unspecified Vitamin D deficiency

Other Metabolic and Immunity Disorders
270.1
271.1
275.3
277.00-277.01

P.K.U.
Galactosemia
Disorders of phosphorus metabolism
Cystic fibrosis

277.8	Histiocytosis; Hand-Schuller-Christian Disease; eosinophilic granulomas, familial erythrophagocytic lymphohistiocytosis, virus-associated hemophagocytic syndrome, sinus histiocytosis with massive lymphadenopathy
-------	---

DISEASES OF BLOOD AND BLOOD-FORMING ORGANS

282.4	Sickle-cell thalassemia (only)
282.60-282.69	Sickle cell anemia
286.0	Congenital factor VIII disorder
286.1	Congenital factor IX disorder
286.2	Congenital factor XI deficiency
286.3	Congenital deficiency of other clotting factors
286.4	von Willebrand's disease

DISEASES OF THE NERVOUS SYSTEM

Neoplasms	
191.0-192.9	Malignant neoplasm of the brain and nervous system
225.0-225.9	Benign neoplasm of brain and nervous system
<u>237.70, 237.71, 237.72[237.7]</u>	Neurofibromatosis

Inflammatory Diseases of the Central Nervous System	
324.0-324.9	Intracranial and intraspinal abscess
326.0	Late effects of intracranial and intraspinal abscess

Hereditary and Degenerative Diseases of the Central Nervous System	
331.3	Communicating hydrocephalus
331.4	Obstructive hydrocephalus
331.89	Congenital cerebral ataxia
333.2	Myoclonus (epilepsy)
333.5	Other choreas (paroxysmal)
333.7	Symptomatic torsion dystonia (athetoid cerebral palsy)
334.1	Hereditary spastic paraplegia
336.0	Syringomyelia

336.1	Vascular myelopathies
336.2	Subacute combined degeneration of spinal cord
336.3	Myelopathy in other diseases
336.8	Myelopathy NEC
336.9	Spinal cord diseases NOS
Other Disorders of the Central Nervous System	
342.0-342.9	Hemiplegia
343.0-343.9	Infantile cerebral palsy
344.0-344.5,344.60,344.61,344.8,344.9	Paralytic syndromes
345.00- <u>345.91</u> [345.90]	Epilepsy/seizure disorder
348.0	Cerebral cysts
349.81	Cerebrospinal fluid rhinorrhea
Disorders of the Peripheral Nervous System	
352.6	Multiple cranial nerve palsies
<u>359.0-359.1</u>	<u>Congenital hereditary and hereditary progressive muscular dystrophy</u>
Cerebrovascular Disease (not related to injury)	
430	Subarachnoid hemorrhage; ruptured cerebral aneurysm
431	Intracerebral hemorrhage
432.0	Nontraumatic extradural hemorrhage
432.1	Subdural hemorrhage (nontraumatic)
432.9	Intracranial hemorrhage (unspecified)
434.0	Cerebral thrombosis
434.1	Cerebral embolism
434.9	Cerebral artery occlusion, unspecified (infarction)
436	Cerebrovascular accident
437.3	Cerebral aneurysm, nonruptured (430 is ruptured)
438	Late effects of cerebrovascular disease
Dorsopathies	
720.0	Ankylosing spondylitis (rheumatoid arthritis of spine)
721.0	Cervical spondylosis without myelopathy
721.1	Cervical spondylosis with myelopathy

721.2	Thoracic spondylosis without myelopathy
721.3	Lumbosacral spondylosis without myelopathy
721.41-721.42	Thoracic or lumbar spondylosis with myelopathy
721.5	Kissing spine
721.6	Ankylosing vertebral hyperostosis
721.7	Traumatic spondylopathy
721.8	Other allied disorders of spine
721.90	Spondylosis of unspecified site without mention of myelopathy
721.91	Spondylosis of unspecified site with myelopathy
Congenital Anomalies	
741.00-741.93	Spina Bifida (includes Arnold-Chiari/Chiari II)
742.0	Encephalocele
742.2	Reduction deformities of brain
742.3	Congenital hydrocephalus
742.4	Other specified anomalies of brain; ex. congenital cerebral cysts, porencephaly
742.51-742.59	Other specified anomalies of spinal cord (including diastematomyelia)
747.81	Anomalies of cerebrovascular system
759.6	Other hamartoses
Other Conditions Originating in the Perinatal Period	
767.4	Injury to spine and spinal cord
767.6	Injury to brachial plexus due to birth trauma
Fracture of Neck and Trunk	
805.00-805.9	Fracture of vertebral column, without mention of spinal cord injury
806.00,806.02-806.04,806.05-806.09,806.10,806.12-806.14,806.15-806.19,806.20-806.9	Fracture of vertebral column with spinal cord injury; cervical, closed; cervical, open; dorsal (thoracic), closed; dorsal (thoracic), open; lumbar, closed; lumbar, open; sacrum and coccyx, closed; sacrum and coccyx, open; unspecified, closed; unspecified, open

Injury to Nerves and Spinal Cord
952.00,952.02-952.04;952.05-952.09

952.10-952.19

952.2

952.3

952.4

952.8

952.9

953.0-953.9

955.0,955.1,955.2,955.3

956.0,956.1,956.2,956.3

C1-C4, C5-C7 spinal cord injury
without evidence of spinal bone
injury

T1-T12 complete and incomplete
spinal cord injury without evidence
of spinal bone injury

Lumbar

Sacral

Cauda equina

Multiple sites of spinal cord

Unspecified site of spinal cord

Injury to nerve roots and spinal
plexus (including brachial plexus
injury)

Injury to axillary, median, ulnar or
radial nerves

Injury to sciatic, femoral, posterior
tibial or peroneal nerves

----- Conditional Diagnoses -----

Disorders of the Peripheral Nervous System

357.0

Acute infective polyneuritis;
(Guillain-Barre or postinfectious
polyneuritis) (rehabilitation only)

DISORDERS OF THE EYE AND ADNEXA

365.14

Glaucoma of childhood (open-angle
glaucoma)

365.41

Glaucoma associated with chamber
angle anomalies

365.42

Glaucoma associated with anomalies
of iris

365.43

Glaucoma associated with other
anterior segment anomalies

365.44

Glaucoma associated with systemic
syndromes

365.63

Glaucoma associated with vascular
disorders

366.00-366.09

Infantile, juvenile, and presenile
cataract

366.20-366.23

Traumatic cataract

368.00-368.03

Amblyopia ex anopsia

Congenital Anomalies of the Eye

743.00-743.06

Anophthalmos

743.10-743.12

Microphthalmos

743.20-743.22

Congenital glaucoma (buphthalmos)

743.30-743.39

Congenital cataract

743.45

Aniridia

----- Conditional Diagnoses -----

Disorders of Eye and Adnexa

360.89

Anophthalmos (acquired) (only)

374.30-374.34

Ptosis (surgery only)

378.00-378.9

Strabismus and other disorders of
binocular eye movement (surgery
only)

Congenital Anomalies of the Eye

743.61,743.62

Congenital anomalies of the eyelid
(surgery only)

Injury

951.0

Injury to oculomotor nerve (surgery
only)

951.1

Injury to trochlear nerve (surgery
only)

951.3

Injury to abducens nerve (surgery
only)

951.4

Injury to facial nerve (surgery only)

DISEASES OF THE EAR AND MASTOID PROCESS

Mastoiditis and Related Conditions

383.1

Chronic mastoiditis

383.20-383.22

Petrositis

383.32

Postmastoid cholesteatoma

Other Disorders of Middle Ear and Mastoid

385.02,385.03

Tympanosclerosis involving
tympanic membrane, ear ossicles,
and middle ear

385.21-385.24

Acquired abnormality of ear ossicles
(ankylosis, discontinuity, partial loss)

385.30

Cholesteatoma, unspecified

385.31
385.32,385.33

Cholesteatoma of attic
Cholesteatoma of middle ear/mastoid

Congenital Anomalies of Ear, Face and Neck
744.00-744.09

Anomalies of ear causing impairment
of hearing (includes microtia with
hearing impairment)

----- Conditional Diagnoses -----

Mastoiditis and Related Conditions
383.00-383.02

Acute mastoiditis (surgery only)

DISEASES OF THE CIRCULATORY SYSTEM

Neoplasms
212.7

Benign neoplasm of heart

Acute Rheumatic Fever
391.0-391.9

Rheumatic fever with heart
involvement - acute rheumatic
pericarditis

392.0,392.9
393

Rheumatic chorea

394.0

Chronic rheumatic pericarditis

394.1

Mitral stenosis

394.2

Rheumatic mitral insufficiency

394.9

Mitral stenosis with insufficiency
Other and unspecified mitral valve
diseases

395.0

Rheumatic aortic stenosis

395.1

Rheumatic aortic insufficiency

395.2

Rheumatic aortic stenosis with
insufficiency

395.9

Other and unspecified rheumatic
aortic diseases

396.0-396.8

Diseases of mitral and aortic valves

397.0

Diseases of tricuspid valve

397.1

Rheumatic diseases of pulmonary
valve

397.9

Rheumatic diseases of endocardium,
valve unspecified

398.0-398.99

Other rheumatic heart disease

Ischemic Heart Disease

414.11

Coronary arteriovenous aneurysm

Diseases of Pulmonary Circulation

416.0

Primary pulmonary hypertension

416.1

Kyphoscoliotic heart disease

416.8

Other chronic pulmonary heart disease (secondary pulmonary hypertension)

416.9

Chronic pulmonary heart disease, unspecified

Other Forms of Heart Disease

424.0

Mitral valve disorders - includes mitral valve prolapse

424.1

Aortic valve disorders

424.2

Tricuspid valve disorders, specified as non-rheumatic

424.3

Pulmonary valve disorders

425.1

Hypertrophic obstructive cardiomyopathy/idiopathic hypertropic subaortic stenosis (IHSS)

425.3

Endocardial fibroelastosis

425.4

Primary cardiomyopathies

426.0-426.9

Conduction disorders

427.0

Paroxysmal supraventricular tachycardia

427.1

Paroxysmal ventricular tachycardia

427.2

Paroxysmal tachycardia, unspecified

427.31-427.32

Atrial fibrillation and flutter

427.81

Sinoatrial node dysfunction

Cerebrovascular Disease (Not related to injury)

430

Subarachnoid hemorrhage; ruptured cerebral aneurysm

431

Intracerebral hemorrhage

432.0-432.9

Other and unspecified intracranial hemorrhage

434.0-434.9

Occlusion of cerebral arteries

436

Cerebrovascular accident

437.3

Cerebral aneurysm, nonruptured (430 is ruptured)

438

Diseases of Arteries, Arterioles, and Capillaries
446.1

Congenital Anomalies
745.0-745.7,745.8,745.9

746.00

746.01
746.02

746.09

746.1
746.2
746.3
746.4
746.5
746.6
746.7
746.81
746.82
746.83
746.84

746.85

746.86
746.87

746.89
746.9
747.0
747.10-747.11
747.21
747.22
747.29
747.3

Late effects of cerebrovascular
disease

Acute febrile mucocutaneous lymph
node syndrome (MCL-Kawasaki
disease)

Bulbus cordis anomalies and
anomalies of cardiac septal closure

Pulmonary valve anomaly
unspecified
Congenital pulmonary valve atresia
Congenital stenosis of pulmonary
valve

Congenital insufficiency of
pulmonary valve (Fallot's triad)

Congenital tricuspid atresia/stenosis
Ebstein's anomaly
Congenital aortic valve stenosis
Congenital aortic valve insufficiency
Congenital mitral stenosis
Congenital mitral insufficiency
Hypoplastic left heart syndrome
Subaortic stenosis
Cor triatriatum
Infundibular pulmonic stenosis
Obstructive anomalies of heart not
elsewhere classified
Coronary artery anomalies, including
coronary arteriovenous aneurysm
Congenital heart block
Malposition of the heart and cardiac
apex
Other specified anomalies of heart
Tricuspid insufficiency (only)
Patent ductus arteriosus
Coarctation of aorta
Anomalies of aortic arch
Atresia and stenosis of aorta
Other anomalies of aorta
Anomalies of the pulmonary artery

747.41	Total anomalous pulmonary venous connection
747.42	Partial anomalous pulmonary venous connection
747.49	Other anomalies of great veins
747.81	Anomalies of cerebrovascular system

----- Conditional Diagnoses -----

Other Forms of Heart Disease
421.0;421.1;421.9

Acute and subacute bacterial endocarditis (if other coverable cardiac condition present)

Other Anomalies of Peripheral Vascular System
747.6

Arteriovenous aneurysm (peripheral) (only) - (requires documentation of severity with damage of surrounding muscle, bone, and/or other tissue; medical review required for eligibility determination)

DISEASES OF THE RESPIRATORY SYSTEM

Congenital Anomalies
748.0

Choanal atresia

----- Conditional Diagnoses -----

Congenital Anomalies
748.1

Other anomalies of nose (congenital) (requires documentation demonstrating necessity for repair; medical review required for eligibility determination)

DISEASES OF THE DIGESTIVE SYSTEM

Neoplasms
211.3, 211.4

Colonic polyps

Diseases of Esophagus, Stomach, and Duodenum

530.1
530.3
530.4
530.6
537.3

Esophagitis - gastroesophageal reflux
Stricture and stenosis of esophagus
Perforation of esophagus
Diverticulum of esophagus acquired
Volvulus - midgut

Hernia of Abdominal Cavity

553.1

Omphalocele (only)

Noninfectious Enteritis and Colitis

555.0, 555.1, 555.2, 555.9
556

Crohn's - large and small intestine
Colitis - ulcerative

Other Diseases of Intestines and Peritoneum

560.0
560.2

Intussusception
Volvulus

Congenital Anomalies

750.3

Tracheoesophageal fistula, esophageal
atresia and stenosis (congenital)

750.6

Congenital hiatal hernia

751.0

Meckel's diverticulum

751.1

Atresia and stenosis of small
intestine

751.2

Atresia and stenosis of large
intestine, rectum and anal canal

751.3

Hirschsprung's disease and other
congenital functional disorders of
colon

751.4

Anomalies of intestinal fixation

751.5

Other congenital intestinal anomalies
- intussusception

751.61

Biliary atresia

751.8

Other specified anomalies of the
digestive system

756.6

Anomalies of diaphragm (congenital
diaphragmatic hernia)

756.7

Anomalies of abdominal wall;
gastroschisis/exomphalos/prune belly

Injury

862.22, 862.32, 874.4, 874.5

Perforation of esophagus (traumatic)

DISEASES OF THE GENITOURINARY SYSTEM

Nephritis, Nephrotic Syndrome, Nephrosis
588.0

Renal osteodystrophy

Other Diseases of the Urinary System

591

Hydronephrosis

593.3

Stricture or kinking of ureter

593.4

Other ureteric obstruction

593.5

Hydroureter

593.7

Vesicoureteral reflux

593.82

Ureteral fistula

596.1

Intestinovesical fistula

598.00-598.9

Urethral stricture

599.1

Urethral fistula

Other Disorders of Female Genital Tract

619.0-619.8

Female genital fistula

619.9

Unspecified fistula involving female genital tract

Congenital Anomalies

752.2-752.49

Congenital anomalies of genital organs

752.6

Male hypospadias/epispadias

752.7

Indeterminate sex and pseudohermaphroditism

753.2

Congenital obstructive defects of renal pelvis and ureter

753.4

Other specified anomalies of ureter

753.5

Exstrophy of urinary bladder

753.6

Atresia and stenosis of urethra and bladder neck

753.7

Anomalies of urachus

753.8

Other specified anomalies of bladder and urethra

DISEASES OF THE MUSCULOSKELETAL SYSTEM AND CONNECTIVE TISSUE

Dentofacial anomalies, including malocclusion

524.0

Major anomalies of jaw size

524.1

Anomalies of relationship of jaw to cranial base

Arthropathies and Related Disorders

710.0

710.1

710.3

710.4

710.8

711.00-711.09

713.2

714.0-714.9

715.00-715.98

716.10-716.19

718.20-718.29

718.30-718.39

718.40-718.49

718.50-718.59

719.20-719.29

Dorsopathies

720.0

721.0-721.91

723.5

Rheumatism, excluding the back

726.91

727.81

728.3

Osteopathies, Chondropathies, and Acquired Musculoskeletal Deformities

730.00-730.99

732.0

732.1

Systemic lupus erythematosus

Scleroderma

Dermatomyositis

Polymyositis

Other specified diffuse diseases of connective tissue

Pyogenic arthritis

Arthropathy associated with hematological disorders

Rheumatoid arthritis and other inflammatory polyarthropathies -

includes: polyarticular juvenile rheumatoid arthritis, chronic

(includes Still's disease) and acute juvenile rheumatoid arthritis

(pauciarticular and monoarticular)

Osteoarthrosis and allied disorders

Traumatic arthropathy

Pathological dislocation

Recurrent dislocation of joint

Joint contracture

Ankylosis of joint

Villonodular synovitis

Ankylosing spondylitis

Spondylosis and allied disorders

Torticollis (see also 754.10 and 767.80)

Exostosis of unspecified site

Contracture of tendon (sheath) (short achilles tendon, acquired)

Other specific muscle disorders (arthrogryposis)

Osteomyelitis, periostitis, and other infections involving bone

Juvenile osteochondrosis of spine

Juvenile osteochondrosis of hip and pelvis

732.2	Nontraumatic slipped upper femoral epiphysis
732.3	Juvenile osteochondrosis of upper extremity
732.4	Juvenile osteochondrosis of lower extremity, excluding foot
732.5	Juvenile osteochondrosis of foot
732.6	Other juvenile osteochondrosis
732.7	Osteochondritis dissecans
732.8	Other specified forms of osteochondropathy
732.9	Unspecified osteochondropathy
733.1	Pathological fracture
733.20-733.29	Cyst of Bone
733.40-733.49	Aseptic necrosis of bone
733.81-733.82	Malunion and nonunion of fracture
735.0-735.9	Acquired deformities of toe
736.00-736.89	Other acquired deformities of limbs
737.0-737.9	Curvature of spine
738.4	Acquired spondylolisthesis

Congenital Anomalies

(see also 524.0)

754.0	Certain congenital musculoskeletal deformities of skull, face and jaw
754.1	Congenital torticollis (see also 723.5 and 767.8)
754.2	Congenital curvature of spine
754.30-754.35	Congenital dislocation of hip
754.40	Congenital genu recurvatum
754.41	Congenital knee dislocation (with genu recurvatum)
754.43	Congenital bowing of tibia and fibula
754.50-754.59	Varus deformities of feet
754.60-754.69	Valgus deformities of feet
754.70-754.79	Other congenital foot deformities
754.89	Other specified nonteratogenic anomalies
755.00-755.02	Polydactyly
755.10-755.14	Syndactyly
755.20-755.4	Reduction deformities of limbs
755.50-755.69	Congenital anomalies of limbs
756.0	Anomalies of skull and face bones
756.10-756.19	Anomalies of spine

756.4
756.50-756.59

Chondrodystrophy
Osteodystrophies

Other Conditions Originating in the Perinatal Period
767.8

Other specified birth trauma -
(torticollis only) see also 723.5 and
754.1

Injury
839.00-839.08, 839.10-839.18

Dislocation of cervical vertebra(e) -
closed and open

839.20-839.21; 839.30-839.31;
839.41-839.42, 839.51-839.52

Dislocation of vertebra(e) - thoracic,
lumbar, [and] sacral and coccyx
[vertebra]

885.0-887.7

Traumatic amputation of thumb,
fingers, or arm and hand

895.0-897.7

Traumatic amputation of toes, foot,
or legs

Late Effects of Injuries, Poisonings, Toxic Effects, and other External Causes

905.0

Late effect of fracture of skull and
face bones

905.1

Late effect of fracture of spine and
trunk without mention of spinal cord
lesion

905.2

Late effect of fracture of upper
extremities

905.3

Late effect of fracture of neck of
femur

905.4

Late effect of fracture of lower
extremities

905.5

Late effect of fracture of multiple
and unspecified bones

905.6

Late effect of dislocation

905.8

Late effect of tendon injury

905.9

Late effect of traumatic amputation

906.4

Late effect of crushing

907.0

Late effect of intracranial injury
without mention of skull fracture

907.1

Late effect of injury to cranial nerve

907.2

Late effect of spinal cord injury

907.3

Late effect of injury to nerve root(s),
spinal plexus(es) and other nerves of
trunk

907.4	Late effect of injury to peripheral nerve of shoulder girdle and upper limb
907.5	Late effect of injury to peripheral nerve of pelvic girdle and lower limb
907.9	Late effect of injury to other and unspecified nerve

BURNS

Late Effects of Injuries, Poisoning, Toxic Effects, and other External Causes
906.5-906.9 Late effects of burn (second and third degree)

Burns

940.0-940.9	Burns confined to eye and adnexa
941.30-941.59	Burn of face, head and neck
942.3-942.59	Burn of trunk
943.30-943.59	Burn of upper limb, except wrist and hand
944.30-944.58	Burn of wrist(s) and hand(s)
945.30-945.59	Burn of lower limb(s)
946.3-946.5	Burns of multiple specified sites
947.0-947.9	Burns of internal organs
948.11	Burns classified according to extent of body surface involved
948.21-948.22, 948.31-948.33, 948.41-948.44, 948.51-948.55, 948.61-948.66, 948.71-948.77, 948.81-948.88, 948.91-948.99 (5th digit must be specified - it indicates percent of 3rd degree burn)	
949.3-949.5	Burn, unspecified

OTHER ACQUIRED OR CONGENITAL ANOMALIES
[OTHER CONGENITAL ANOMALIES]

744.83	Macrostomia (congenital)
749.00-749.25	Cleft palate and cleft lip

----- Conditional Diagnoses -----

<u>528.9</u>	<u>Velopharyngeal incompetence, acquired (only)</u>
--------------	---

738.0	<u>Acquired deformity of nose (medical review required - documentation of the extent of deformity and necessity of repair required)</u>
738.1	<u>Other acquired deformity of head (medical review required - documentation of the extent of deformity and necessity of repair required)</u>
750.26	Congenital short palate (only)
750.29	Velopharyngeal incompetence, congenital (only)

PRIORITY LISTING(S) FOR ADDING MEDICAL CONDITIONS

The following priority listing [listings] of medical conditions may be used to guide the program in piloting medical condition coverage. Upon program recommendation and Board of Health action the conditions contained in priority listings will become part of the program's regular medical eligibility criteria. It is recognized that the conditions in this section may be costly and that program payment limitations will need to be instituted.

[PRIORITY 1:

250.01,250.11,250.21,250.31,	Insulin Dependent Diabetes Mellitus
250.41,250.51,250.61,250.71, 250.81,250.91	
555.0;555.1;555.2;555.9	Crohn's - large and small intestine
556	Colitis - ulcerative
359.0-359.1	Congenital hereditary and hereditary progressive muscular dystrophy]

[PRIORITY 2:]

493.00-439.91	Asthma (reactive airway disease)
390	Rheumatic fever - without mention of heart involvement
777.5	Necrotizing enterocolitis - in fetus or newborn (chronic complication only)
770.7	Bronchopulmonary dysplasia
362.21	Retrolental fibroplasia
277.5	Mucopolysaccharidosis - (Types 1-6)
279.2	Severe combined immune deficiency; X-linked agammaglobulinemia
759.5	Tuberous sclerosis

(C) (No change.)

(2)-(9) (No change.)

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

Issued in Austin, Texas, on September 28, 1992.

TRD-9213173

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: November 21, 1992

For further information, please call: (512) 458-7355

Chapter 169. Veterinary Public Health

Rabies Control and Eradication

• 25 TAC §§169.22-169.24,
169.26-169.31, 169. 33

The Texas Department of Health (department) proposes amendments to §§169.22-169.24, 169.26-169.31, and 169.33, concerning rabies control and eradication. The sections cover definitions, pre-exposure rabies immunization, facilities for the quarantining of animals, quarantine method and testing, public and private entities that operate a quarantine facility, vaccination requirement, and disposition of domestic animals exposed to rabies. These amendments add coyotes to the list of high-risk animals, clarify that a 10-day observation period is applicable only to biting dogs and cats, require pre-exposure immunization of personnel at high risk from rabies, prescribe training standards for managers of animal quarantine facilities, prohibit rabies vaccination of animals during quarantine, require written standard operating procedures for quarantine facilities, clarify rabies vaccination certificate requirements, and delineate proper procedures for the management of domestic animals exposed to rabies. In addition, the department is proposing several editorial changes for purposes of clarification.

William W. Rosser, D.V.M., M.A., chief, bureau of veterinary public health, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Dr. Rosser also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be decreased risks of rabies and unnecessary antirabies prophylaxis. There is no cost for compliance to small business. There is no anticipated economic cost to persons who may be required to comply with the sections as proposed. There will be no impact to local employment.

Comments on the proposal may be submitted to Keith A. Clark, D.V.M., Ph. D., Director, Zoonosis Control Division, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7255. Public comments will be accepted for 30 days after publication of these sections in the *Texas Register*.

The amendments are proposed under the Health and Safety Code, §826.011, which provides the Texas Board of Health with the authority to adopt rules concerning rabies control; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health. The amendments will affect the Health and Safety Code, §826.011.

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

High risk animals-Those animals which have a high probability of transmitting rabies; they include skunks, bats, foxes, coyotes, and raccoons.

Observation period-The time [10 days] following a bite incident during which the biting animal's health status must be monitored. The observation period for domestic dogs and cats (only) is 10 days.

§169.23. Information Relating to the Control of Rabies. The Texas Department of Health's Zoonosis Control Division (ZCD) will assume the responsibility of collecting, analyzing, and preparing monthly and annual summations of rabies activity in the state. These reports will be forwarded to national, state, and municipal agencies as required, and selected statistics will be sent to the practitioners of veterinary medicine throughout the state.

§169.24. Preexposure Rabies Immunization. Preexposure rabies immunization shall [should] be administered to all individuals whose activities place them at a significant risk of exposure to rabies, in accordance with the recommendations of the CDC Immunization Practices Advisory Committee (ACIP).

§169.26. Facilities for the Quarantining of Animals.

(a) Generally.

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

(6) **Management.** The manager of a quarantine facility should be either a licensed veterinarian or an animal control officer certified by the department.

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

§169.27. Quarantine Method and Testing.

(a) When a dog or cat which has bitten a human has been identified, the owner or custodian will be required to place the animal in quarantine. Unvaccinated animals should not be vaccinated against rabies during the observation period. The 10-day observation period will begin on the day of the bite incident. The animal must be placed in a Texas Department of Health (department) [TDH] approved facility specified by the local health authority. However, the owner of the animal may request permission from the local health authority for home quarantine if the following criteria can be met.

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

(b) A dog or cat which has bitten a human and has been designated by the local health authority as unclaimed may be humanely killed in such a manner that the brain is not mutilated. The brain shall be submitted to a department [TDH] certified laboratory for rabies diagnosis.

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

§169.28. Public and Private Entities that Operate a Quarantine Facility.

(a) **Quarantine** [Quarantining] procedures.

(1) Quarantine facilities shall have and use written standard operating procedures (SOP) to ensure effective and safe quarantine procedures, and shall produce the SOP upon request by the department.

(2) [(1)] Biting animals and animals suspected of rabies that are placed in confinement for observation must be separated from all other animals in such a manner that there is no possibility of physical contact between animals.

(3) [(2)] Unowned animals may [The unowned animal can] be destroyed for rabies diagnosis prior to the end of the quarantine period.

(4) [(3)] The local health authority may require a written agreement by the owner or the custodian at the time of quarantine and the animal may be disposed of according to terms of this agreement.

(b) **Facilities planning.** Any county, city, town, or incorporated community desiring to construct animal quarantine [control] facilities shall submit plans to the Texas Department of Health (department) [department] for approval.

(c) **Inspection requirements of quarantine facilities.**

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

(3) The quarantine facility manager has the right to [of] appeal the results of the inspection evaluation. [.] If the opinion of management of the quarantine facility is in conflict with the inspection evaluation, he or she may request a review of the inspection by the director of the department's [.] Zoonosis Control Division. In the event points of difference still remain, the supervisor may request a review of the inspection by the chief of the department's [.] Bureau of Veterinary Public Health. Each of the appeals listed in this paragraph, when required, will be made in writing through the public health region director's office in whose area the animal facility is located.

§169.29. Vaccination Requirement [Required].

(a) (No change.)

(b) Official rabies vaccination certificates issued by the vaccinating veterinarian shall contain certain standard information as designated by Texas Department of Health [TDH]. Information required is as follows:

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

(5) rabies tag number if a tag is issued;

(6) veterinarian's signature or signature stamp and license number.

(c) (No change.)

(d) If a veterinarian ceases the practice of veterinary medicine, the duplicate rabies vaccination certificates retained by that practice shall be turned over to the local health authority. This does not apply to the sale or lease of a practice, when the records of the practice are transferred to a new owner.

§169.30. Disposition of Domestic Animals Exposed to Rabies.

(a) Unvaccinated animals which have been bitten or directly exposed by physical contact with a rabid animal or its fresh tissues shall [should] be:

(1) (No change.)

(2) if sufficient justification for preserving the animal exists, the exposed animal shall [should] be immediately vaccinated against rabies, placed in strict isolation for 90 days, and given booster vaccinations during the third and eighth weeks of isolation. If the animal is under three months of age at the time of the second vaccination, an additional booster shall [should] be given when the animal reaches three months of age.

(b) Currently vaccinated animals which have been bitten or otherwise signifi-

cantly exposed to a rabid animal shall [should] be:

(1) (No change.)

(2) if sufficient justification for preserving the animal exists, the exposed vaccinated animal shall [should] be given a booster rabies vaccination immediately and placed in strict isolation for 45 days.

(c) (No change.)

(d) In situations where none of the requirements of this section are applicable, the recommendations contained in the latest edition of the publication titled *The Compendium of Animal Rabies Control, published by the National Association of State Public Health Veterinarians, should be followed.*

§169.31. Interstate Movement of Dogs and Cats into Texas.

(a) (No change.)

(b) Dogs and cats under three months of age may be admitted without rabies vaccination provided they are held in isolation until three months of age, at which time they must be vaccinated against rabies and held in isolation for an additional 30 days. Isolation, vaccination, and reporting the completion of isolation to the Texas Department of Health [TDH] are the responsibility of the importer.

§169.33. Submission of Specimens for Laboratory Examination. Preparation of specimens either for shipment or for personal delivery for rabies diagnosis shall include the following.

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

(6) The certified laboratories in Texas are:

(A) Austin-Bureau of Laboratories, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 (telephone 1-800-252-8163, local telephone: (512) 458-7598) [Telephone: (512) 458-7515];

(B) El Paso-Laboratory, El Paso City-County Health Department, 222 South Campbell, El Paso, Texas 79901 (telephone: (915) 543-3536) [Telephone: (915) 541-4657];

(C) Houston-[Houston City] Bureau of Laboratory Services, City of Houston Health Department, 1115 South Braeswood [North MacGregor], Houston, Texas 77030 (telephone: (713) 794-9613);

(D) San Antonio-Laboratory, San Antonio Metropolitan Health District, 332 West Commerce Street [131 West

Nueva Street], Room 205, San Antonio, Texas 78205 [78204] (telephone: (512) 299-8820) [(Telephone: (512) 299-8822)].

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

Issued in Austin, Texas, on September 28, 1992.

TRD-9213176

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: November 21, 1992

For further information, please call: (512) 458-7255

◆ ◆ ◆
Animal Shelters

• 25 TAC §§169.62-169.65

The Texas Department of Health (department) proposes amendments to §§169.62-169.65, concerning the training of animal shelter personnel. The sections cover definitions, levels of proficiency, prerequisites for certification, and certification of proficiency as an animal control officer. The amendments create a new level of proficiency (instructor), delineate the prerequisites for instructor certification, and prescribe requirements for renewal of an instructor certificate. The amendments also require that basic level animal control officers have the ability to read and write in the English language, that advanced level animal control officers be certified at the basic level for at least one year and provide proof of high school graduation or equivalency, and that administrative level animal control officers' qualifying employment be as a supervisor or administrator. Also, the amendments remove current employment as a requirement for renewal of a certificate. In addition, the department is proposing several editorial changes for purposes of clarification.

William W. Rosser, D.V.M., M.A., chief, bureau of veterinary public health, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Dr. Rosser also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be improved training of animal shelter personnel. There will be no cost for compliance to small business. There is no anticipated economic cost to persons who may be required to comply with the sections as proposed. There will be no impact to local employment.

Comments on the proposal may be submitted to Keith A. Clark, D.V.M., Ph. D., Director, Zoonosis Control Division, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7255. Public comments will be accepted for 30 days after publication of these sections in the *Texas Register*.

The amendments are proposed under the Health and Safety Code, §823.004, which provides the Texas Board of Health with the authority to adopt rules concerning the training of animal shelter personnel; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health. The amendments will affect the Health and Safety Code, §823.004.

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

Course—Any training session administered by the Texas Department of Health for basic animal control officers, advanced animal control officers, [or] administrative animal control officers, or animal control officer instructors for which a certificate is issued.

§169.63. Levels of Proficiency.

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

(c) The administrative level includes the supervisory and management skills necessary to direct [undertake the management of] an animal shelter operation.

(d) The instructor level requires the expertise of an advanced level officer, and the ability to impart those skills and information to others.

§169.64. Prerequisites for Certification. [the Attendance at a TDH Course].

(a) Basic [level]. A person must:

(1) [be currently employed by an animal shelter and] have at least six months' experience in animal shelter work [or have one year prior employment by an animal shelter within the past three years];

(2) have the ability to read and write in the English language;

(3) provide [receive a] written recommendation from [by] the animal control officer's (ACO) supervisor, if employed [of the ACO]; and

(4) (No change.)

(b) Advanced [level]. A person must:

(1) have a current basic certification and have been certified for at least one year;

(2) provide [have a] proof of high school graduation [diploma] or equivalency [GED];

(3) provide [receive a] written recommendation from [by] the ACO's supervisor, if employed [of the ACO]; and

(4) (No change.)

(c) Administrative [level]. A person must:

(1) (No change.)

(2) have completed 30 hours of college credit (each year of full-time employment as a supervisor or administrator in animal control may be substituted for five hours of college credit);

(3) provide [receive a] written recommendation from [by] the ACO's supervisor, if employed [of the ACO]; and

(4) (No change.)

(d) Instructor. A person must:

(1) be currently certified at the advanced or administrative level;

(2) have satisfactorily completed an instructor course approved by the Texas Department of Health;

(3) have satisfactorily instructed in at least two ACO certification courses and have written verification from the involved regional zoonosis veterinarian; and

(4) pay a \$10 fee by check or money order, payable to the Texas Department of Health.

§169.65. Certification of Proficiency.

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

(c) Requirements for the renewal of a certificate are that a person:

[(1) must be employed in animal control or have evidence of pending employment;

[(2) receive a supervisor's written recommendation; and]

(1)[(3)] must complete 30 hours of continuing education which relates to animal control and approved by the director; [, or passing of the appropriate course examinations.]

(2) for basic level only, must pass the appropriate course examinations;

(3) complete for instructor level:

(A) 30 hours of continuing education which relates to animal control and approved by the director;

(B) teach satisfactorily in three animal control officer (ACO) certification courses or other continuing education activities approved by the director, during each triennium; and

(C) deliver a minimum of 12 presentations to the public during

each triennium. Acceptability of the presentations is to be determined by the director.

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

Issued in Austin, Texas, on September 28, 1992.

TRD-9213175

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: November 21, 1992

For further information, please call: (512) 458-7255

Riding Stable Registration Program

• 25 TAC §169.82, §169.83

The Texas Department of Health (department) proposes amendments to §169.82 and §169.83, concerning the registration of riding stables. The sections cover definitions and standards for the housing, health, and disease control, and humane care of rental equines. The amendments add or modify several definitions for the purpose of clarification, recognize natural shelter, and remove the requirements for smoke detectors and certain medical procedures; they prescribe rest periods for working animals, shade for resting animals when the ambient temperature is over 90 degrees Fahrenheit, preventive measures against excessive cold, and weight restrictions for riders. In addition, the department is proposing editorial changes for purposes of clarification.

William W. Rosser, D.V.M., M.A., chief, bureau of veterinary public health, has determined that for the first five-year period the sections will be in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Dr. Rosser also has determined that for the first five-year period that the sections are in effect the public benefits anticipated as a result of the sections will be that humane care of rental equines will be ensured, and risks of injury to riders will be reduced. There will be no cost for compliance to small business. There will be no economic cost to persons who may be required to comply with the sections as proposed. There will be no impact to local employment.

Comments on the proposal may be submitted to Keith A. Clark, D.V.M., Ph. D., Director, Zoonosis Control Division, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7255. Public comments will be accepted for 30 days after publication of these sections in the *Texas Register*.

The amendments are proposed under the Health and Safety Code, §827.004, which provides the Texas Board of Health with the authority to adopt rules and charge fees to

implement a riding stable registration program; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health. The amendments will affect the Health and Safety Code, §827.004.

§169.82. Definitions. The following words and terms, when used in the sections under

this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise.

[Adequate heat—Heat necessary to prevent physical damage to an animal from chilling or freezing.]

Adequate space—An area which is of sufficient length, width, and height to allow the equine to freely and comfortably move about, stand with all four feet on the ground, lie down, and get up without injury.

Adequate ventilation—The provision of fresh air to an enclosure by means of windows, doors, vents, fans, or air-conditioning so as to minimize drafts, odors, and moisture condensation. Body condition score—An assessment of equine body condition in accordance with the following:

Score	Description
1 Poor	Animal extremely emaciated. Spinous processes, ribs, tailhead, tuber coxae and ischii projecting prominently. Bone structure of withers, shoulders and neck easily noticeable. No fatty tissue can be felt.
2 Very thin	Animal emaciated. Slight fat covering over base of spinous processes, transverse processes of lumbar vertebrae feel rounded. Spinous processes, ribs, tailhead, tuber coxae and ischii prominent. Withers, shoulders and neck structures faintly discernible.
3 Thin	Fat build up about halfway on spinous processes, transverse processes cannot be felt. Slight fat cover over ribs. Spinous processes and ribs easily discernible. Tailhead prominent, but individual vertebrae cannot be visually identified. Tuber coxae appear rounded, but easily discernible. Tuber ischii not distinguishable. Withers, shoulders and neck accentuated.
4 Moderately thin	Negative crease along back. Faint outline of ribs discernible. Tailhead prominence depends on conformation, fat can be felt around it. Tuber coxae not discernible. Withers, shoulders and neck not obviously thin.
5 Moderate	Back level. Ribs cannot be visually distinguished but can be easily felt. Fat around tailhead beginning to feel spongy. Withers appear rounded over spinous processes. Shoulders and neck blend smoothly into body.
6 Moderately fleshy	May have slight crease down back. Fat over ribs feels spongy. Fat around tailhead feels soft. Fat beginning to be deposited along the side of the withers, behind the shoulders and along the sides of the neck.
7 Fleshy	May have crease down back. Individual ribs can be felt, but noticeable filling between ribs with fat. Fat around tailhead is soft. Fat deposited along withers, behind shoulders and along the neck.
8 Fat	Crease down back. Difficult to feel ribs. Fat around tailhead very soft. Area along withers filled with fat. Area behind shoulder filled with fat. Noticeable thickening of neck. Fat deposited along inner thighs.
9 Extremely fat	Obvious crease down back. Patchy fat appearing over ribs. Bulging fat around tailhead, along withers, behind shoulders and along neck. Fat along inner thighs may rub together. Flank filled with fat.

Carriage equine—Any equine which is used by its owner or other person to pull any carriage, in exchange for a fee. An equine rented or leased by its owner to another person for any of the foregoing purposes shall be deemed to be a carriage equine for the purposes of this chapter [title].

Free-choice—Available in unlimited quantity for use or consumption by the equine at any time the equine elects.

Humane care—Humane care is, but is not limited to, the provision of adequate [heat,] ventilation, sanitary shelter, and adequate food and water, consistent with the normal requirements and feeding habits of the animal's size, species, and breed.

Identification—Any rental equine must be identified by breed, sex, color, and markings (nomenclature by approved method). Lip tattoos and/or brands may be used in lieu of markings.]

Riding stable—A facility where rental equines are housed, held, or maintained.

Saddle equine—Any equine let for hire to be ridden, either with or without the furnishing of riding instruction.

Shelter—Protection from severe weather conditions and direct hot sun.

Stable—A structure having a permanent roof, stalls, and access ways used for quartering equines.

§169.83. Standards.

(a) Housing.

(1) When not at work equines may be stabled in box stalls or kept outside in pens or pastures provided they have access to adequate free-choice natural or artificial shelter and fresh, clean water. Artificial shelter, at a minimum, shall consist of a roof and at least one wall to afford protection against precipitation and north winds in inclement weather. The structure shall not have sharp, protruding objects which might cause injury to the animal: i.e. nails, broken boards, etc. [A shelter, at a minimum, shall consist of a three-sided building with roofing constructed to afford the utmost protection in inclement weather. The walls shall not have sharp, protruding objects that may cause injury to the animal: i.e., nails, broken boards, etc. Every equine shall be quartered in a clean, dry, well ventilated, but not drafty shelter of not less than 100 square feet per animal.]

(2) (No change.)

(3) A fire or smoke detection device shall be present in all stables, with an alarm audible by human hearing via telephone or loudspeaker.]

(3) [(4)] Equines housed in [shall be adequately quartered. Stables and]

stalls shall be quartered in clean, [and] dry, well ventilated stalls. Stall floors must be reasonably level. Sufficient bedding of straw, shavings, or other suitable material shall be furnished and changed as often as necessary to maintain them in a clean and dry condition. Bedding for concrete floors shall be at least six inches of materials. Bedding for clay, dirt, or rubber base floor shall be at least three inches of materials.

(5) While in stalls, equines shall have continuous access to drinking water. Water shall be kept clean and fresh.]

(4)[(6)] Minimum indoor standards of shelters shall include the following.

(A) The ambient temperature shall be compatible with the health and comfort of the animal.

(B) Indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animals at all times.

(5)[(7)] Minimum outdoor standards of shelters shall include the following.

(A) When sunlight is likely to cause heat exhaustion of an animal tied outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight.

(B) Natural or artificial shelter appropriate to the local climatic conditions shall be provided as necessary for the health of the animal.

(6)[(8)] Minimum [space] requirements for both indoor and outdoor enclosures shall include the following.

(A) The housing facilities shall be structurally sound and maintained in good repair to protect the animals from injury and to contain the animals.

(B) Enclosures shall be constructed and maintained so as to provide adequate [sufficient] space [to allow each animal adequate freedom of movement]. Inadequate space may be indicated by evidence of debility, stress, or abnormal behavior patterns.

(b) (No change.)

(c) Health and disease control.

(1) (No change.)

(2) Any one of the [The] following shall deem an equine unfit for work:

(A) lameness [of any kind, except that of a mechanical nature listed on the health certificate];

(B) untreated [open] sores or wounds;

(C) obvious signs of emaciation, dehydration, or exhaustion; [and]

(D) loose or improperly fitted shoes, or untrimmed hooves; and [.]

(E) body condition score less than five.

(3) All rental equines shall be vaccinated on a yearly basis for rabies, [Venezuelan equine encephalomyelitis,] eastern equine encephalomyelitis, western equine encephalomyelitis, and tetanus. Optional immunizations may also be administered at the owners discretion. [Routine worming must be performed on a quarterly basis.] There must be documentation with adequate equine identification that the vaccinations were performed. Rabies vaccination must be done by or under the supervision of a veterinarian, and National Association of State Public Health Veterinarians Form #50 or its equivalent must be kept on file for each equine.

(4) An internal parasite control program, developed in consultation with a veterinarian knowledgeable in equine practice, shall be implemented and records kept of the date and product used for each equine.

(d) Humane care [and treatment]. Animals not humanely cared for may be considered abused or neglected.

(1) Animals must be provided with adequate food and clean water and while working must have access to clean water at reasonable intervals whether working or at rest.

(2) (No change.)

(3) Animals kept outside will be provided free-choice protection from weather (shade from the sun, shelter from the rain, snow and cold) and will be maintained in an area free from accumulations of waste and unsanitary debris. [Animals not cared for in this manner may be considered abused or neglected.]

(4) Owners are responsible for the acts of any person or persons to whom they rent equines for riding or driving purposes with respect to all acts where unjustified physical pain, suffering, or death is inflicted upon any equine from their establishment.

(5) (No change.)

(6) Working animals shall be given rest periods at reasonable intervals. Special attention must be given to ani-

mals on very hot days to preclude working when signs of heat stress, dehydration, or exhaustion are present.

(7) Rental equines restrained and under saddle or harnessed while awaiting business during the months of May through October, inclusive, must be shaded unless the ambient temperature is less than 90 degrees Fahrenheit.

(8) Reasonable and effective protective measures for sick equines, or those with body condition score less than five, must be taken when the ambient temperature is less than 50 degrees Fahrenheit.

(9) A saddle equine rider's size must be reasonably compatible with the size of the equine. In no case shall an equine be rented to a person whose weight, including clothing, exceeds 20% of the horse's weight as determined by scales or weight tape. Scales must be available for determining riders' weights, if necessary.

(10) Saddle equines must not be rented to obviously intoxicated persons.

(11) If two people ride simultaneously, the weight restriction in paragraph (9) of this subsection must be enforced except when one rider is handicapped. In that instance, the total weight of the riders must not exceed 30% of the equine's weight, and the length of the ride must not exceed 30 minutes, with a 30 minute rest required between rides.

(e) Public notice.

(1) Each facility (and each carriage) shall prominently display a notice consisting of the following information: "This facility is operated in compliance with the Texas Riding Stable Registration Requirements. Any person observing a violation of the requirements may report the violation to: Texas Department of Health, Bureau of Veterinary Public Health, 1100 West 49th Street, Austin, Texas 78756."

(2) (No change.)

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

Issued in Austin, Texas, on September 28, 1992.

TRD-9213174

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: November 21, 1992

For further information, please call: (512) 458-7255

Chapter 229. Food and Drug

Licensing of Wholesale Distributors of Drugs-Including Good Manufacturing Practices

• 25 TAC §229.252

(Editor's Note: The Texas Department of Health proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Department of Health (department) proposes an amendment to §229.252, concerning licensing fee and procedures/licensing of wholesale distributors of drugs-including good manufacturing practices.

The proposed section will enable the department to license and regulate wholesale drug distributors of compressed medical gases at a reduced fee. This amendment will not include those distributors of compressed medical gas who also transfill cylinders, because these facilities require more inspectional time for operations testing and record review. A reduced fee is also being established for small volume businesses that function as wholesale drug distributors at a median level. The majority of medical gas transfillers will be included in this category. Any place of business that is registered with the United States Food and Drug Administration as a manufacturer of compressed medical gases will be required to license with department.

Dennis E. Baker, director, division of food and drugs, has determined that for the first five-year period the section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The effect on state government will be an estimated additional cost of \$614,000 for each year of fiscal years 1993-1997. However, there is an estimated increase in revenue of \$614,000 for each year of fiscal years 1993-1997. There will be no effect on local government.

Mr. Baker 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 the section will be recovery of at least 50% of the costs incurred by the department in the licensing, inspection, implementation, and enforcement of the law and the rules. The possible annual cost to small businesses and persons required to comply with the proposed section for the next five years will be as set forth in the schedule of fees (§229.252(a)). There will be no effect on local employment.

Comments on the proposal rules may be submitted to Dennis E. Baker, Director, Division of Food and Drugs, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7248. Comments will be accepted for 30 days following the date of publication of these proposed rules in the *Texas Register*. In addition, a public hearing on the proposed rules will be held in the Texas Department of Health Auditorium, 1100 West 49th Street, Austin, on Wednesday, October 28, 1992, beginning at 9 a.m.

The amendment is proposed under Texas Health and Safety Code, §431.241, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of this chapter; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health and the commissioner of health. The amendment will affect the Health and Safety Code, §431.241.

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

Issued in Austin, Texas, on September 29, 1992.

TRD-9213198

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: November 21, 1992

For further information, please call: (512) 458-7248

Chapter 241. Shellfish Sanitation

Molluscan Shellfish

• 25 TAC §241.53

The Texas Department of Health (department) proposes new §241.53, concerning molluscan shellfish. The section covers certification and enforcement procedures for the classification of shellfish growing areas and the harvesting, processing, and distribution of shellfish.

The new section will update and clarify existing §241.53 and will implement the requirements and guidelines established in the 1990 National Shellfish Sanitation Program Manual of Operations, Parts I and II, published by the Interstate Shellfish Sanitation Conference and the United States Food and Drug Administration.

The new section is part of the reorganization of all existing shellfish sanitation rules that were published in the October 2, 1992, issue of the *Texas Register*. Due to a computer disk problem this section contained some language omissions and due to the publication deadline this section had to be postponed until this issue of the *Texas Register*.

Richard E. Thompson, director, division of shellfish sanitation control, has determined that for the first five-year period the proposed new section will be in effect there will be no fiscal implications for state or local government.

Mr. Thompson also has determined that for each year of the first five years the new section are in effect the public benefit anticipated as a result of enforcing the new section will be better assurance that shellstock processed in or imported into Texas will be free of disease or other health hazards transmissi-

ble by these products. The effect on small businesses will be the cost to obtain harvester tags, estimated to be a cost of \$0.05 to \$0.10 each. There is no anticipated economic cost to persons who are required to comply with the new section as proposed. There will be no effect on local employment.

Comments on the proposal may be submitted to Richard E. Thompson, R.S., Director, Division of Shellfish Sanitation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7510. Comments will be accepted for 30 days from the date of publication of this proposal. Public hearings to receive comments on the proposed rules will be held at the auditorium in the classroom laboratory building, Pelican Island Campus, Texas A&M University, Galveston, Texas at 7 p.m. on Monday, October 12, 1992; and at the First State Bank, 311 North Virginia, Port Lavaca, at 7 p.m. on Tuesday, October 13, 1992.

The new section is proposed under Texas Codes Annotated, the Parks and Wildlife Code, §76.203, which authorizes the Texas Board of Health to adopt rules concerning the regulation of Texas shellfish; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

§241.53. Certification and Enforcement Procedures.

(a) No shellfish shall be offered for sale for food in the State of Texas unless taken from areas approved by the commissioner, or obtained from sources outside the State which are approved by the Texas Department of Health (TDH). If obtained from sources outside of the state, the shellfish must be from areas approved by the State authorities having jurisdiction and must be obtained from shellfish dealers currently certified by the appropriate state authority. Shellfish obtained from sources other than those outlined in this section shall be considered unfit for human consumption. No person shall engage in the gathering, harvesting, shucking, packing, or repacking of shellfish for sale without having complied with these sections. No person shall engage in any activity requiring a certificate under these sections without having applied for and obtained a numbered certificate of compliance pertaining to the particular activity from the Commissioner. Any shellfish in the possession of a person holding a valid license issued by the Texas Parks and Wildlife Department (TPWD) under Texas Parks and Wildlife Code, Chapters 47 or 76, shall be considered to be offered for sale for food in Texas.

(b) Prior to construction of a new shellfish plant, or major remodeling of an existing shellfish plant (which includes, but is not limited to: any process new to that particular plant; any change of product

flow; or any enlarging of the plant structure) complete, legible plans showing the floor plan of the building, with dimensions drawn to scale, location of equipment, doors, floor drains, etc., and written, complete operational procedures for all phases of the activity, including flow of the product, shall be submitted to the TDH's Division of Shellfish Sanitation Control (DSSC) for review and approval. No operations shall be conducted while any inside plant construction or any other construction which has the potential to contaminate the product is occurring. A legibly written or typed application on forms provided by the TDH must be filed with the DSSC before gathering, harvesting for market, or operation of the plant begins each fiscal year. A certificate of compliance and number shall be issued by the commissioner only after an inspection of the plant by an authorized agent has revealed that the plant and practices are in compliance with these sections.

(c) The inspection of a previously certified plant which has exhibited operational problems or violations of operational requirements of these sections or had a certificate of compliance revoked shall not be conducted until written, complete operational procedures for all phases of the activity, including flow of the product, are submitted to the DSSC for review and approval. An application may be rejected and a certificate of compliance denied based on a history of failure to comply with the requirements of these sections.

(d) Shellfish operations at the plant shall not begin until the shellfish certificate issued by the commissioner has been received and posted at the plant. Each certificate of compliance shall expire automatically at 11: 59 p.m., the 31st day of August, following the date of issue. Certificates of compliance shall not be transferable.

(e) After a certificate of compliance is issued, unannounced inspections shall be conducted at any time the DSSC has reason to believe the business may be in operation and at such frequency as may be necessary to assure that adequate operational and sanitary conditions are maintained and shall be conducted a minimum of three times each six months. A copy of the completed inspection form listing written descriptions of the violations observed along with any necessary explanation shall be provided by an authorized agent of TDH to the most responsible individual present at the firm at the conclusion of the inspection. Any violations of the same requirement found on a consecutive inspection may result in certificate revocation in accordance with subsection (f) of this section. Shellfish inspections and the DSSC forms shall comply with the requirements established in the current National Shellfish Sanitation Program (NSSP) Manual of Operations.

(f) The DSSC may initiate procedures to revoke a certificate of compliance as follows.

(1) The procedures, including the opportunity for a hearing prior to revocation, shall be in accordance with the provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and TDH formal hearing procedures in Chapter 1 of this title (relating to the Board of Health).

(2) The grounds for revocation shall be one or more of the following:

(A) inspection results indicate unsatisfactory conditions in the plant or the existence of a public health hazard; or

(B) the certificate holder or representative refuses to allow an inspection or otherwise interferes with the authorized TDH agent in the performance of his or her duties.

(g) The commissioner of health or his designee may revoke a certificate of compliance prior to a hearing as follows.

(1) The grounds for revocation shall be one or more of the following:

(A) the shellfish create or appear to create an imminent hazard to public health;

(B) the certificate holder or representative refuses to allow an authorized TDH agent to inspect the facilities and premises when the agent has reason to believe that an imminent hazard to public health may exist;

(C) cooling temperatures violate the requirements of these sections;

(D) pathogenic bacteria are isolated in any sample;

(E) sewage becomes accessible to flies or other insects, rodents, or other vermin.

(F) facility operating while flooded;

(G) unsafe water supply, including evidence of bad samples;

(H) unapproved wet storage;

(I) packing into containers without a valid certificate number for that location;

(J) unsanitary ice supply; or

(K) incomplete, inaccurate, or illegible business records not sufficient to validate source of product or permit containers to be traced.

(2) Immediately after a revocation, the commissioner or his designee shall give the certificate holder the opportunity for a hearing in accordance with TDH formal hearing procedures in Chapter 1 of this title (relating to the Board of Health).

(h) A person whose certificate has been revoked may not process any shellfish until the DSSC is satisfied that all necessary corrections have been made. A new certificate will not be issued until an inspection establishes that the firm is in full compliance with all applicable criteria of these sections. A person whose certificate has been revoked shall not apply for a new certificate until 30 days after the date of signing of the final order of revocation.

(i) Should the commissioner deem it reasonably necessary for the enforcement of these sections, he is empowered to require of each person holding a certificate to post and maintain with him a good and sufficient bond, with a corporate surety or two personal sureties approved by the commissioner, or to make a cash deposit in a form acceptable to the commissioner. The bond will be posted or the cash deposited on the condition that the certificate holder will faithfully comply with all legal requirements imposed by virtue of the law and that, failing such, the certificate holder or his surety will pay as forfeiture a sum of at least \$1,000.

(j) By acceptance of a certificate, the holder agrees to save, hold harmless, and indemnify the State of Texas, TDH, and its employees against any and all liability, claims or losses for property damage or personal injury which result in whole or in part from the certificate holder's activities. The State of Texas shall not be held liable for financial losses incurred by the shellfish transplanters, gatherers, harvesters, plant supervisors, or plant owners due to failure of shellfish activity, condemnation of shellfish, loss of shellfish, or other reasons.

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

Issued in Austin, Texas, on September 30, 1992.

TRD-9213237

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: November 21, 1992

For further information, please call: (512) 458-7510

Chapter 265. General Sanitation

Texas Youth Camps Safety and Health

• 25 TAC §265.25

The Texas Department of Health (department) proposes new §265.25, concerning administrative penalties. The section will cover the amount of an administrative penalty which the Commissioner of Health (commissioner) may assess when a person violates the Texas Youth Camp Safety and Health Act or an order or rule or license issued under the Act, the criteria for assessing the penalty, and the hearing procedures available when a penalty is being proposed for assessment.

The new section will implement the provisions of the Health and Safety Code, §141.016, which became effective on September 1, 1991.

Mr. Bobby L. Davis, R.S., B.C.E., director, general sanitation division, has determined that for the first five-year period that the new section is in effect, there will be fiscal implications as a result of administering or enforcing the new section. The cost to state government will range from \$50 to \$3,000 each year for the administrative cost of administering the penalty and for the cost of conducting hearings on proposed penalties, if any. There will be no cost to local government.

Mr. Davis also has determined that for each year of the first five years that the section is in effect the public benefit of the proposed new section will be that the department will have a rule in effect which establishes the criteria for assessing an administrative penalty and the procedures for conducting a hearing in the case of a proposed penalty. The cost to persons who operate youth camps will range from \$100 to \$3,000 for paying the penalty and for participating in a hearing if one is requested. The cost to small businesses which operate youth camps will be the same as for individuals. There will be no impact on local employment.

Comments on the proposed new section may be sent to Travis Mansell, R.S., Chief, Youth Camp and Recreational Sanitation Branch, General Sanitation Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 834-6635. Mr. Mansell will accept comments for 30 days after the publication of the proposed new section in the *Texas Register*.

The new section is being proposed under the Health and Safety Code, §141.016, which provides the commissioner with authority to assess an administrative penalty for a violation of the Youth Camp Safety and Health Act; §141.017, which provides the department with authority to provide an opportunity for a hearing when a penalty is being proposed; and §12.001 which provides the Board of Health (board) with authority to adopt rules

to implement every duty imposed by law on the board, the department and the commissioner. The new section will affect Chapter 141 of the Health and Safety Code.

§265.25. Administrative Penalties.

(a) The Commissioner of Health (commissioner) may assess an administrative penalty if a person violates:

(1) the Texas Youth Camp Safety and Health Act (Act), Health and Safety Code, Chapter 141;

(2) a rule of the Department of Health (department) issued under the Act;

(3) an order of the commissioner issued under the Act; or

(4) a license issued under the Act.

(b) In determining the amount of the penalty, the commissioner shall consider:

(1) the person's previous violations;

(2) the seriousness of the violations;

(3) any hazard to public health and safety;

(4) the person's demonstrated good faith; and

(5) such other matters as justice may require.

(c) The administrative penalty may not exceed \$100 a day for each violation.

(d) Each day a violation continues may be considered a separate violation.

(e) Prior to assessing an administrative penalty, the department must give the person charged with a violation an opportunity for a hearing. The hearing shall be conducted in accordance with the contested case procedures in the Administrative Procedures 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 Board of Health).

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

Issued in Austin, Texas, on September 29, 1992.

TRD-9213200

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: November 21, 1992

For further information, please call: (512) 834-6635

Chapter 337. Water Hygiene Design Standards for Public Swimming Pool Construction

The Texas Department of Health (department) proposes the repeal of existing §§337.71-337.96 concerning swimming pool design construction and new §§337.71-337.82 concerning standards for public swimming pools. The new sections will replace the existing sections and update the requirements concerning public swimming pools in the State of Texas. Specifically, the new sections will adopt by reference the standards for public swimming pools published by the American National Standards Institute (ANSI) with certain modifications as described in the new sections. The main areas covered by the ANSI standards are as follows: scope; materials of construction; structural design; dimensional design; decks and deck equipment; circulation systems; filters; pumps and motors; return inlets and suction outlets; surface skimmer systems; electrical requirements; heaters; water supply; waste water disposal; disinfectant equipment and chemical feeders; specific safety features; dressing facilities for Class A and B public pools; visitor and spectator area; food service for Class A and B public pools; operation and management; and glossary. The areas being modified by the department for the State of Texas are described in the new sections.

Mr. Bobby L. Davis, R.S., B.C.E., director, general sanitation division, has determined that for the first five-year period that the new sections as proposed will be in effect, there will be no fiscal implications to state and local governments.

Mr. Davis also has determined that for each year of the first five years that the sections as proposed are in effect the public benefit anticipated as a result of enforcing the new sections will be to update the requirements for construction and safety of public swimming pools in the State of Texas.

There will be a cost to small businesses who are constructing public swimming pools or having public swimming pools that will range from \$100 to \$5,000 depending upon the size and depth of the pool. The possible economic cost to persons who are required to comply with the sections will be the same as that for small businesses. There will be no impact on local employment.

Comments on the proposal may be sent to Travis Mansell, R.S., Chief, Youth Camp and Recreational Sanitation Branch, General Sanitation Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 834-6635. Mr. Mansell will accept comments for 30 days after publication of the proposal in the *Texas Register*.

• 25 TAC §§337.71-337.96

The repeals are being proposed under the Health and Safety Code, §341.002 and §341.064, which provides the Board of Health (board) with authority to adopt rules concerning public swimming pool construction and safety; and §12.001 which provides the board with authority to adopt rules to imple-

ment every duty imposed by law on the board, the department and the commissioner of health. The repeal affects Chapter 341 of the Health and Safety Code.

§337.71. Definitions.

§337.72. Purpose.

§337.73. Examination and Approval of Plans.

§337.74. Plans and Specifications.

§337.75. Engineering Support.

§337.76. Water Supply.

§337.77. Sewer System.

§337.78. Swimming Pool Construction Materials.

§337.79. Design Detail and Structural Stability.

§337.80. Depth Markings and Lines.

§337.81. Inlets and Outlets.

§337.82. Slope of Bottom.

§337.83. Side Walls.

§337.84. Overflow Gutters.

§337.85. Skimmers.

§337.86. Recirculation Systems.

§337.87. Sand-Type Filters.

§337.88. Diatomaceous Earth-Type Filters.

§337.89. Ladders, Recessed Treads, and Stairs.

§337.90. Decks and Walkways.

§337.91. Diving Areas.

§337.92. Disinfectant and Chemical Feeders.

§337.93. Lighting, Ventilation, and Electrical Requirements.

§337.94. User Loading.

§337.95. Bathhouses, Toilets, and Showers.

§337.96. Safety Requirements-Lifesaving Equipments.

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

Issued in Austin, Texas, on September 29, 1992.

TRD-9213203

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: November 21, 1992

For further information, please call: (512) 834-6635

Standards for Public Swimming Pools

• 25 TAC §§337.71-337.82

The new sections are being proposed under the Health and Safety Code, §341.002 and §341.064, which provides the Board of Health (board) with authority to adopt rules concerning public swimming pool construction and safety; and §12.001 which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health. The new sections affect Chapter 341 of the Health and Safety Code.

§337.71. Purpose and Scope.

(a) Purpose. The purpose of these sections is to establish standards for public swimming pools in the State of Texas. To accomplish this purpose, the Texas Department of Health (department) adopts by reference the publication titled, "American National Standard for Public Swimming Pools", published by the American National Standards Institute (ANSI). Copies are available for public review during regular business hours at the department's General Sanitation Division, Exchange Building, Room S-204, 8407 Wall Street, Austin. In addition, copies may be purchased directly from the National Spa and Pool Institute, 2111 Eisenhower Avenue, Alexandria, Virginia 22314.

(b) Scope. The standards in these sections shall cover public pools to be used for bathing and operated by an owner, licensee, or concessionaire, regardless of whether a fee is charged for use. The standards shall apply to public pools constructed after the effective date of these sections.

(c) Department modifications to the ANSI standards. Even though the department has adopted by reference the ANSI standards for public swimming pools, the department has made certain modifications in the text of these sections to specific articles and sections in the ANSI standards themselves. Accordingly, all references to an "article" or to a "section" in the text of these sections are to an article or section in the ANSI standards.

§337.72. *Structural Design.* In accordance with §337.71(c) of this title (relating to Purpose and Scope), the Texas Department of Health has modified Article III in the American National Standards Institute (ANSI) standards concerning structural design as follows.

(1) The state or local authority approval provision in §3.1 is modified to state that prior to construction, rehabilitation, or alteration of a permanently installed public swimming pool, plans and specifications shall be submitted to the (state or

local) authority for review, approval, and issuance of a permit to construct or rehabilitate as may be required. Regardless of approval of plans by local or state authority, the owner is not absolved of responsibility to assure compliance with all applicable codes.

(2) The freezing temperature provision in §3.4 is modified to state that in climates subject to freezing temperatures, the pool shell and appurtenances, piping, filter system, pump and motor, and other components shall be so designed and constructed to facilitate protection from damage due to freezing. A hydrostatic relief valve or more extensive hydrostatic system shall be installed if necessary to prevent ground water pressure from displacing or otherwise damaging the pool.

(3) The pool interior provision in §3.6 is modified to state that the colors, patterns, or finishes of the pool interior shall not be such as to obscure the existence or presence of objects or surfaces within the pool. All pool interior surfaces shall be

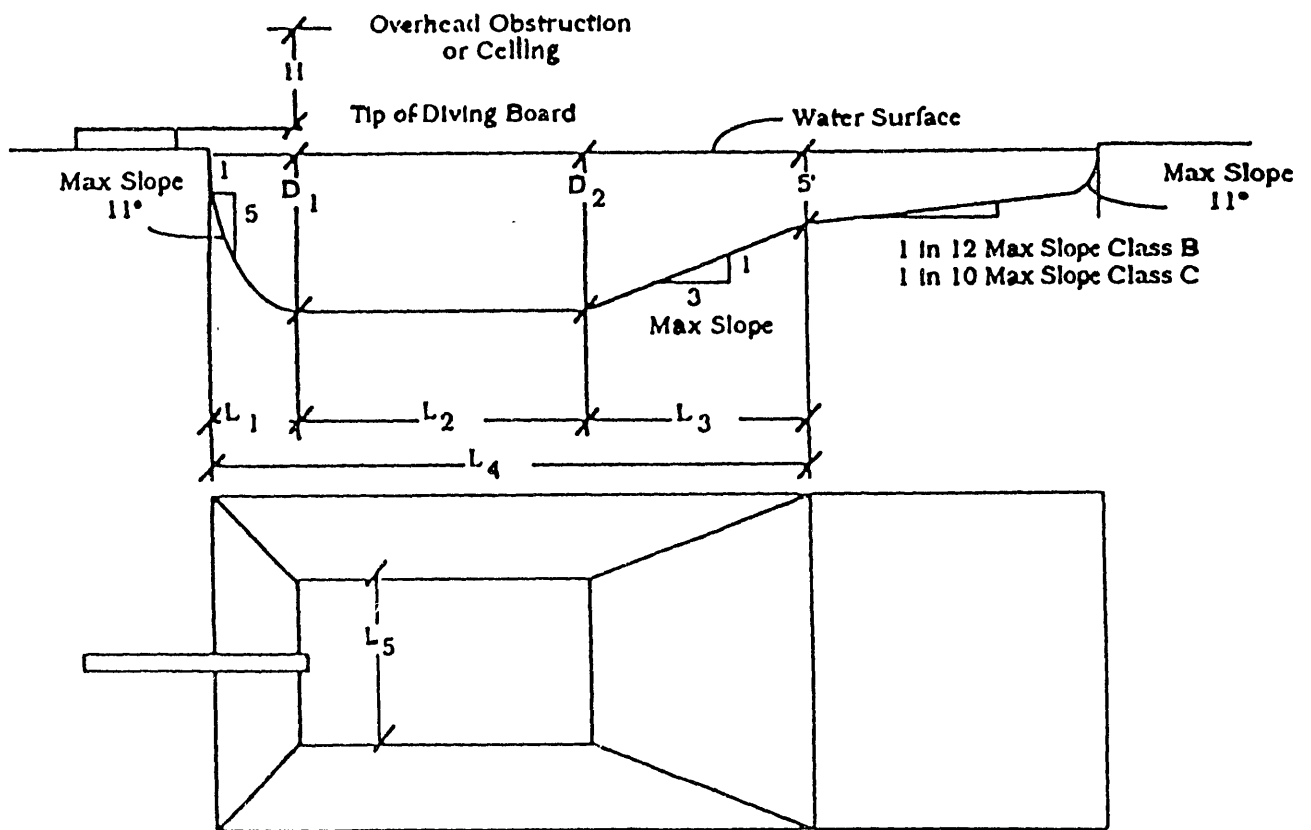
white except for water lines that are tiled, maximum 12 inch wide racing lanes (painted or tiled), turn targets (painted or tiled), and safety markers.

§337.73. *Dimensional Design.* In accordance with §337.71(c) of this title (relating to Purpose and Scope), the Texas Department of Health has modified Article IV in the American National Standards Institute (ANSI) standards concerning dimensional design as follows.

(1) The diving provision in §4.5.3 is modified to state that there shall be a completely unobstructed clear vertical distance of 16 feet above any diving board measured from the center of the front end of the board. This area shall extend horizontally at least 12 feet behind, 12 feet to each side and 16 feet ahead of Point A, as described in §4.5.2 of the standards.

(2) The diagram in §4.6.1 concerning the minimum dimensions for diving portion of Class B and C pools is modified as follows:

Diving Board Height Over Water	3/4 Meter or Less	One Meter	Three Meter
Maximum Diving Board Length	12'	16'	16'
Minimum Diving Board Overhang	4'	6'	6'
D ₁ (Minimum)	8'-6"	11'-0"	12'-0"
D ₂ (Minimum)	9'-0"	10'-10"	11'-10"
L ₁	4'-0"	5'-0"	5'-0"
L ₂ (Minimum)	12'-0"	16'-5"	19'-6"
L ₃ (Minimum)	12'-0"	18'-7"	20'-6"
L ₄ (Minimum)	28'-0"	40'-0"	45'-0"
L ₅ (Minimum)	8'-0"	10'-0"	13'-0"
H (Minimum)	16'	16'	16'
From Plumbet to Pool Wall at Side	9'	10'	11'-6"
From Plumbet to Adjacent Plumbet	10'	10'	10'



(3) The wading pools provision in §4.10 is modified to state that wading pools shall be separate and physically set apart from beginning or shallow water areas of swimming pools by at least 15 feet of deck at Class B and Class C pools. Where a wading pool is adjacent to any deep water area, a minimum four feet high barrier shall be installed separating the two pools.

§337.74. *Decks and Deck Equipment.* In accordance with §337.71(c) of this title (relating to Purpose and Scope), the Texas Department of Health has modified Article V in the American National Standards Institute (ANSI) standards concerning decks and deck equipment as follows.

(1) The provision concerning the minimum slope of deck(s) in §5.1.7 is modified to state that the minimum slope of the deck(s) shall be 1/8 inch per one foot for textured, hand-finished concrete decks; and 1/4 inch per foot (1/4":1') for exposed aggregate concrete decks. Wood decks or indoor/outdoor carpeting shall not be located within the distance specified in §5.1.6.

(2) The provision concerning pool stairs step threads in §5.3.1 is modified to state that step treads shall have a minimum unobstructed horizontal depth of 12 inches and a minimum unobstructed surface area of 240 square inches.

(3) The pool stairs risers provision in §5.3.2 is modified to state that risers at the centerline of the treads shall have a maximum uniform height of 10 inches, with the bottom riser height allowed to vary plus or minus two inches from the uniform riser height.

(4) A new §5.7.8 concerning starting blocks is added to state that starting blocks used at pools shall be designed and installed so that they can be easily and completely removed. Starting blocks shall be located at the deepest end of the racing lanes.

§337.75. *Circulation Systems.* In accordance with §337.71(c) of this title (relating to Purpose and Scope), the Texas Department of Health has modified Article VI in the American National Standards Institute (ANSI) standards concerning circulation systems as follows.

(1) The equipment provision in §6.1.1 is modified to state that the equipment shall be of adequate size to turn over the entire pool water capacity at least once every six hours. This system shall be designed to give the proper turnover rate based on the manufacturer's recommended maximum pressure flow of the filter in clean media condition of the filter. Water clarity shall be maintained. (Clarity is a

function of proper filtration and maintenance of proper chemical operational parameters. See Appendix A.) When standing at the pool's edge at the deep end, the deepest portion of the pool floor shall be visible.

(2) The piping and fittings in §6.3 is modified to state that the circulation system piping and fittings shall be nontoxic, shall be considered to be process piping, and shall be of materials able to withstand operating pressures and operating conditions. Polyvinyl chloride pipe shall bear the NSF seal for potable water and be schedule 40 or stronger.

§337.76. *Filters.* In accordance with §337.71(c) of this title (relating to Purpose and Scope), the Texas Department of Health has modified Article VII in the American National Standards Institute (ANSI) standards concerning filters as follows.

(1) A new §7.1.2 concerning design of filters is added to state that filters must meet testing standards established by the National Sanitation Foundation (NSF). Diatomaceous Earth, pressure and vacuum sand filter models and cartridge filters are acceptable for use with public swimming pools listed by NSF.

(2) A new §7.5 concerning design of sight glasses is added to state that observable free fall or sight glass installed on the waste discharge line in order that the filter washing progress may be determined. Where sight glasses are used, they shall be readily removable for cleaning.

§337.77. *Pumps and Motors.* In accordance with §337.71(c) of this title (relating to Purpose and Scope), the Texas Department of Health has modified Article VIII in the American National Standards Institute (ANSI) standards concerning pumps and motors to state that when the pump is below the waterline, valves shall be installed on permanently connected suction and discharge lines, located in an accessible place outside the walls of the pool, where they shall be readily and easily accessible for maintenance and removal of the pump. Any priming device receiving piped water from a potable water supply must be isolated from the potable supply by means of an AWWA approved pressure type vacuum breaker.

§337.78. *Inlets and Outlets.* In accordance with §337.71(c) of this title (relating to Purpose and Scope), the Texas Department of Health has modified Article IX in the American National Standards Institute (ANSI) standards concerning return inlets and suction outlets as follows.

(1) The suction outlet system provision in §9.4 is modified to state that if the suction outlet system, such as a filtration system, booster system, automatic cleaning system, solar system, etc., has a single suction outlet, or multiple suction outlets which can be isolated by valves, each suction outlet shall protect against user entrapment by either:

(A) an antivortex cover; or

(B) a main drain cover whose outlet openings of the grating in the floor of the pool shall be at least four times the area of the discharge pipe or provide sufficient area so the maximum velocity of the water passing through the grate will not exceed 1 1/2 feet per second.

(2) The vacuum cleaner fitting(s) provision in §9.5 is modified to state that where provided, the vacuum cleaner fitting(s) shall be located in an accessible position(s) at least six inches and no greater than 18 inches below the minimum operating water level or as an attachment to the skimmer(s). Floor outlet drains shall have a drain pipe separate from the skimming system drain pipe carrying recirculation water from the pool, and each drain pipe shall have a separate valve so that water flow from floor drains and skimming systems can be controlled independently. Floor drains must be capable of handling 50% or more of the pool recirculation water.

§337.79. *Wastewater Disposal.* In accordance with §337.71(c) of this title (relating to Purpose and Scope), the Texas Department of Health has modified Article XIV in the American National Standards Institute (ANSI) standards concerning wastewater disposal to state that backwash water, if discharged into a sanitary sewer, must be discharged through an air gap formed by positioning the discharge pipe opening at least two pipe diameters above the overflow level of any confining barriers which could cause flooding and submergence of the discharge opening should the sewer backup. Splash screening barriers are permitted so long as they do not destroy air gap effectiveness.

§337.80. *Safety Features.* In accordance with §337.71(c) of this title (relating to Purpose and Scope), the Texas Department of Health has modified Article XVI in the American National Standards Institute (ANSI) standards concerning specific safety features as follows.

(1) The depth markers provision in §16.3.1 is modified to state that depth of water in feet shall be plainly and conspicuously marked at or above the waterline on

the vertical pool wall and on the top of the coping or edge of the deck or walk next to the pool. Where depth markers cannot be placed on the vertical walls above the water level, other means shall be used, said markings to be plainly visible to persons in the swimming pool.

(2) The depth markers provision in §16.3.7 is modified to state that depth marker numbers and letters shall have a four inch minimum height. Numbers shall be of contrasting color to the background on which they are applied, and the color shall be of a permanent nature. Lettering shall either spell out "Feet" or "Inches" or "Meters" or abbreviate "Ft.", "In." or "M".

(3) A new §16.3.8 concerning no diving areas is added to state that in all areas of the pool where the water depth is five feet or less, the words "no diving" and the International Symbol for no diving shall be clearly marked on the pool deck with an acceptable contrasting color and letters at least four inches in height. The warning shall be placed every 25 feet around the shallow portion of the pool.

(4) The lifesaving equipment provision in §16.5 is modified to state that lifesaving equipment shall conform to Articles 16.5.1 through 16.5.1.4 of the ANSI standards.

(5) The lifesaving equipment provision in §16.5.1.1 is modified to state that the swimming pools covered by §16.5.1 shall have lifesaving equipment consisting of a light, strong pole not less than 12 feet long, including a body hook. One unit shall be required per 2,000 square feet of water surface area.

(6) The lifesaving equipment provision in §16.5.1.2 is modified to state that the swimming pools covered by §16.5.1 shall have lifesaving equipment consisting of a minimum 1/4 inch diameter throwing rope as long as one and one-half times the maximum width of the pool or 50 feet, whichever is less, to which has been firmly attached a ring buoy with an outside diameter of approximately 15 inches or a similar flotation device. One unit shall be required per 2,000 square feet of water surface area.

(7) The barriers provision in §16.6.1 is modified to state that all public swimming pools shall be protected by a fence, wall, building, enclosure, or solid wall of durable material of which the pool itself may be constructed, or any combination thereof. Natural or artificial barriers shall be provided so as to afford no external handholds or footholds, be at least four feet in height, and be equipped with a self-closing and positive self-latching closure mechanism at a height of at least 45 inches above the ground and provided with hardware for locking.

(8) New provisions concerning signs are added to §16 as follows.

(A) Section 16.7 concerning signs is added to state that all signs shall be securely mounted and readily available to the general public.

(B) Section 16.7.1 concerning "No Diving" signs is added to state that "No Diving" signs with International warning symbols for no diving shall be posted in areas where water depth is five feet or less.

(C) Section 16.7.2 concerning lifeguard service is added to state that where no lifeguard service is provided, a warning sign shall be placed in plain view and shall state "Warning-No Lifeguard on Duty" with clearly legible letters at least four inches high. In addition, the sign shall also state "Children Should Not Use Pool Without An Adult In Attendance."

(9) New provisions concerning lighting are added to §16 as follows.

(A) Section 16.8.1 is added which states that underwater lighting of not less than 0.5 watts shall be employed per square foot of swimming pool water surface area. Such lights shall be spaced to provide illumination so that all portions of the pool, including the bottom, may be readily seen without glare.

(B) Section 16.8.2 is added which states that area lighting shall provide at least 0.6 watts per square foot of deck area.

§337.81. *Supervision and Direction.* In accordance with §337.71(c) of this title (relating to Purpose and Scope), the Texas Department of Health has modified Article XX of the American National Standards Institute (ANSI) standards as follows.

(1) The supervision and direction provision in §20.1 is modified to state that public pools should be maintained under the supervision and direction of a properly trained operator who shall be responsible for the sanitation, safety, and proper maintenance of the pool, and all physical and mechanical equipment and records. (Training can be obtained by completion of the National Swimming Pool Foundation's Swimming Pool/Spa Operator's Training Course or state or local training course, if available.)

(2) The operating permits provision in §20.4 is modified to state that the State of Texas neither requires nor issues operating permits.

§337.82. *Definitions and Terms.* In accordance with §337.71(c) of this title (relating to Purpose and Scope), the Texas Department of Health has modified Article XXI of the American National Standards Institute (ANSI) standards concerning National Spa and Pool Institute (NSPI) Glossary of Industry Terms as follows. Under the category of commercial/public pool, the definition of "Class D: Other Pool" is modified to state that it is any pool operated for medical treatment, therapy, exercise, lap swimming, recreational play, and other special purposes, including, but not limited to, wave or surf action pool, activity pools, splash pools, kiddie pools, and play areas.

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

Issued in Austin, Texas, on September 29, 1992.

TRD-9213201

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: November 21, 1992

For further information, please call: (512) 834-6635

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 330. Municipal Solid Waste

Subchapter Z. Waste Minimization and Recyclable Materials-Newsprint Recycling

• 31 TAC §§330.1200-330.1205

The Texas Water Commission proposes new §§330.1200-330.1205, concerning the use of recycled newsprint in Texas. The new sections' primary impact will be to define for both newspaper publishers and newsprint manufacturers the standards by which the state will measure compliance with the voluntary newsprint recycling program as described in Chapter 361. Section 361.430 of the Texas Health and Safety Code establishes a voluntary newsprint recycling program under which Texas newspaper publishers will use increasing amounts of recycled newsprint in their publishing operations from 1993-2000. Section 361.427 and §361.430 direct the Texas Water Commission to define recycled newsprint and to monitor the industry's compliance with the voluntary program. Section 361.430 also authorizes the commission to adopt mandatory enforcement measures if it determines that publishers are not meeting the goals of the voluntary program.

Stephen Mirick, division of budget and planning, has determined that for the first five years these sections will be in effect there will be fiscal implications as a result of enforcement or administration of the sections. The costs to state government are not significant and will be satisfied with existing resources. There are no costs anticipated to local governments. There are costs to newspaper publishers required to comply with recordkeeping and reporting provisions of these sections, however, these costs for most publishers should not be significant. The average annual cost is anticipated to be between \$50-\$100 and should not exceed \$500 per year for the largest publishers. There are no costs anticipated at this time as a result of compliance with the goals for use of recycled newsprint due to similar costs per unit of virgin newsprint. Future cost differences would have fiscal effects, however, these cannot be anticipated or estimated at this time. The effects on publishers which are small businesses would be the same as any other business affected by these sections. Costs would vary with the number of records to be maintained and the amount and frequency of purchases of newsprint.

Mr. Mirick also has determined that for the first five years these sections as proposed will be in effect the public benefit anticipated as a result of enforcement of or compliance with the sections will be an increase in demand for waste newsprint and other papers as raw materials. This demand will divert significant quantities of waste paper from the state's landfills extending the life and useable capacity of these facilities and helping to satisfy statutory goals for reduction in municipal solid waste. Reductions in the amount of virgin wood pulp required for newsprint production will also result in reduced demand for energy and other resources required in the manufacturing process. There are no known costs to any individual required to comply with these sections as proposed.

Comments on the proposal may be submitted to Susan Raleigh Kaderka, Recycling and Waste Minimization Section, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 834-6682. Comments will be accepted until 5 p.m. for a period of 30 days following the date of this publication.

The new sections are proposed under the Health and Safety Code, §361.427 and §361.430, (Vernon), which provide the Texas Water Commission with the authority to define recycled products in terms of postconsumer content and to develop rules governing the newsprint recycling program. The rules are also proposed under the Texas Water Code, §5.103 and §5.105, which grant the Texas Water Commission general rulemaking authority.

§330.1200. Purpose and Definitions.

(a) Purpose. These sections set forth newsprint recycling requirements for newsprint manufacturers and newspaper publishers. The sections contain recordkeeping and reporting procedures with respect to the utilization of recycled-content newsprint in newspaper publishing operations. These sections are applicable to

every newspaper printing and publishing operation in this state that publishes, sells, or distributes newspapers, as well as to those manufacturers and suppliers who provide newsprint for sale in Texas. These guidelines provide maximum flexibility to newspaper publishers in an effort to support the state's goals of encouraging newspaper publishers to purchase newsprint containing recycled postconsumer fiber, encouraging cooperation between and among local community organizations to establish and promote community newsprint collection efforts, and offering an incentive to private companies to build and operate de-inking and recycled newsprint mills in Texas. The overall purpose of these guidelines is to reduce the amount of old newsprint that must be disposed of in solid waste landfills.

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

(1) Aggregate postconsumer recycled content—The total amount of postconsumer recovered material by weight contained in total purchases of newsprint for a specified period. It is arrived at by multiplying the percentage of postconsumer recovered fiber in each shipment of newsprint purchased by the percentage of total newsprint purchases that shipment represents.

(2) Commission—The Texas Water Commission.

(3) De-inked fiber—A fiber which has undergone the de-inking process.

(4) De-inking process—A process by which most of the ink, filler, coating, and other extraneous (non-cellulose) material is removed from printed or unprinted paper.

(5) Metric ton—One thousand kilograms. To convert pounds to metric tons the number of pounds should be divided by 2,204. 6.

(6) Newspaper—A publication that is printed on newsprint and published, sold, and distributed in the state, both daily and non-daily, to disseminate current news and information of general interest to the public.

(7) Newspaper publisher—An individual or corporate group of newspaper publishers which uses newsprint in a newspaper publishing operation.

(8) Newsprint—Paper used for the printing of newspapers.

(9) Newsprint manufacturer—A business which makes newsprint.

(10) Overs also known as "overruns"—Newspapers printed for sale to distributors or the public which remain un-

sold. Overs include inserts such as magazines and advertising supplements.

(11) Postconsumer recovered material—Includes paper, paperboard, and fibrous wastes that have passed through their end usage in a printing or manufacturing process, or that have entered or would enter the waste stream, and are collected from municipal solid waste. Postconsumer recovered material may also include any de-inked fiber, regardless of the source of such fiber. Overs are included within the definition of postconsumer recovered material.

(12) Postconsumer recycled content—That portion of manufactured newsprint that is comprised of postconsumer recovered material, usually expressed as a percentage of the total content.

(13) Recycled newsprint—Any newsprint certified by the manufacturer or supplier as containing at least 25% postconsumer recovered material, by fiber weight.

(14) Virgin newsprint—Newsprint which contains 100% new materials in its formation.

§330.1201. General Guidelines and Requirements.

(a) Target recycling percentages. In order to bring about a significant state-wide increase in newsprint recycling, newspaper publishers are encouraged to take whatever measures may be necessary to ensure that their publishing businesses meet or exceed the target recycling percentages set forth in paragraph (1) of this subsection. In the event a newspaper publisher chooses to purchase newsprint with less than 25% postconsumer recycled content, the commission will consider legislative intent to be achieved if that publisher meets or exceeds the alternative aggregate recycling content standards set forth in paragraph (2) of this subsection.

(1) Newspaper publishers should obtain and utilize newsprint such that the percentage of "recycled newsprint," as defined in §330.1200(b)(13) of this title (relating to Purpose and Definitions), in the overall total amount of newsprint purchased each year is at least:

(A) 10% by the end of calendar year 1993;

(B) 20% by the end of calendar year 1997; and

(C) 30% by the end of calendar year 2000.

(2) In the alternative, newspaper publishers may obtain and utilize newsprint

such that the aggregate postconsumer recycled content, by fiber weight, in the overall total amount of newsprint purchased each year is at least:

(A) 2.5% by the end of calendar year 1993;

(B) 12% by the end of calendar year 1997; and

(C) 18% by the end of calendar year 2000.

(b) Certification. Newsprint manufacturers and suppliers should certify the average percentage, based on annual production, of postconsumer recovered material contained in any newsprint sold and/or delivered to Texas newspaper publishers.

(c) Recordkeeping. Newsprint purchase and delivery records shall be maintained by all newspaper publishers. In addition, mill certification records showing the average percentage of postconsumer recovered material in purchased and/or utilized newsprint should be kept by each publisher. Such records must contain sufficient information to enable the publisher to prepare those reports required under §330.1203 of this title (relating to Reports). An official Texas Daily Newspaper Association (TDNA) Newsprint Order Form may be used to maintain and verify required records. Newspaper publishers shall retain required records for three years.

(d) Notice of postconsumer content and labeling.

(1) Newsprint manufacturers or suppliers shall indicate, on a monthly basis, on invoices provided to newspaper publishers, suppliers, or commercial printers, or through another form of written notice to such consumers, the average postconsumer recycled content of each roll of newsprint which is the subject of such invoice or notice, and the amount of newsprint purchased from such newsprint manufacturer or supplier containing the minimum postconsumer recycled content required to meet the definition of "recycled newsprint" under §330.1200(b)(13) of this title (relating to Purpose and Definitions).

(2) Newsprint which contains less than the minimum percentage of postconsumer recovered material required to qualify it as recycled newsprint under §330.1200(b)(13) may be identified as follows: "this product contains an average of ____% postconsumer recycled fiber, based on annual production" with the percentage indicated.

(e) Comparable price, quality, and availability. Texas newspaper publishers are urged to voluntarily increase utilization of "recycled newsprint" or other newsprint,

that has been certified as containing postconsumer recovered material, beyond the target recycling percentages set forth in subsection (a) of this section in those instances where:

(1) availability of such products exist;

(2) the net cost of utilizing such products is comparable to that of utilizing virgin newsprint; and

(3) the quality of such products (considering such factors as brightness, opacity, and cross machine tear strength) is similar to that of virgin newsprint.

§330.1202. *Requirements of Texas Water Commission.* The commission shall assure easy access of information among all parties affected by these sections and shall establish a data filing system that will allow all parties to easily monitor the progress of the recycling program set forth in these sections. Specifically, the commission shall:

(1) maintain up-to-date listings of, and data from, municipalities, towns, local organizations, and other generators of recyclable paper and newsprint, concerning both present and planned newsprint recycling and collection activities and the overall availability of such recyclable material within the state;

(2) provide, to recyclers of old newspapers and other recyclable paper materials, acceptability requirements and specifications with respect to materials destined for de-inking plants and recycled paper mills;

(3) maintain a roster of current newspaper publishers, wastepaper dealers, commercial printers, as well as paper and paperboard mills who buy, sell, recover or consume wastepaper in Texas and in other states;

(4) in cooperation with various state agencies and officials, publishers, and other parties, assist in the development of those education strategies and market development programs described in the Health and Safety Code, §361.423, which are designed to promote newsprint recycling; and

(5) work closely with Texas Daily Newspaper Association, the Texas Press Association, manufacturers of newsprint containing postconsumer recovered material, and citizen groups concerned with recycling, to monitor problems and issues regarding newsprint quality and the availability of "recycled newsprint."

§330.1203. *Reports.*

(a) Preprinted reports. Newspaper publishers may use standard forms, to be provided by the commission, to submit annual reports required by this section, con-

cerning the publishers' use of recycled newsprint.

(b) Due date. Texas newspaper publishers shall be responsible for returning a completed report to the commission on or before January 31 of each year for the immediately preceding calendar year. The first annual report shall be for calendar year 1993, and is due January 31, 1994.

(c) Report content. The report shall contain the following information:

(1) name, mailing address, physical address, and telephone number of the newspaper manufacturer or supplier or corporate media group from which newsprint purchases were made during the preceding calendar year;

(2) the total amount of newsprint purchased during the calendar year (in metric tons);

(3) the total amount of "recycled newsprint," as defined in §330.1200(b)(13) of this title (relating to Purpose and Definitions), purchased during the calendar year (in metric tons);

(4) the percentage, of the total newsprint purchased during the calendar year, which in accordance with §330.1200(b)(13) qualified as "recycled newsprint;"

(5) if the reporting party chooses to comply with the alternative target recycling percentages in §330.1201(a)(2) of this title (relating to General Guidelines and Requirements), the percentage reflecting the aggregate postconsumer recycled content of the total amount of newsprint purchased during the calendar year; and

(6) in the event the publisher fails during the preceding year to meet the voluntary requirements set forth in §330.1201(a) of this title (relating to General Guidelines and Requirements), the publisher shall indicate the following:

(A) whether or not the publisher was able to obtain sufficient quantities of "recycled newsprint," or other newsprint containing certified minimum percentages of postconsumer recovered material, on a timely basis, at roughly the same net cost, and having satisfactory quality;

(B) whether or not the publisher attempted to obtain "recycled newsprint," or other newsprint containing certified minimum percentages of postconsumer recovered material, from every manufacturer or supplier that offered to sell such newsprint to the publisher; and

(C) such publisher's specific efforts to obtain "recycled newsprint," in-

cluding the name and address of each producer of newsprint that the publisher contacted, as well as the name and telephone number of the contact person representing each of those producers;

(7) annual reports shall be submitted to: Texas Water Commission, Municipal Solid Waste Division, P.O. Box 13087, Austin, Texas 78711-3087, RE: Newspaper Recycling.

§330.1204. Joint Review. The commission shall schedule periodic meetings with representatives from the newsprint manufacturing and newspaper publishing industries to evaluate the effectiveness of the requirements set forth in these sections, to compare the newspaper recycling progress in Texas

with that in other states, and to consider whether revisions to these sections may be warranted.

§330.1205. Enforcement. If the commission finds that, on a state-wide basis, voluntary actions alone on the part of newsprint manufacturers, newsprint suppliers, and newspaper publishers fail to achieve the target recycling percentages set forth in §330.1201(a)(1) or (2) of this title (relating to General Requirements), the commission may, after considering all relevant factors, including but not limited to function, availability and cost, adopt mandatory enforcement measures designed to further increase the amount of newsprint recycling in the state and to ensure that the state-wide goals are achieved.

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

Issued in Austin, Texas, on September 30, 1992.

TRD-8213240

Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: November 6, 1992

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

◆ ◆ ◆



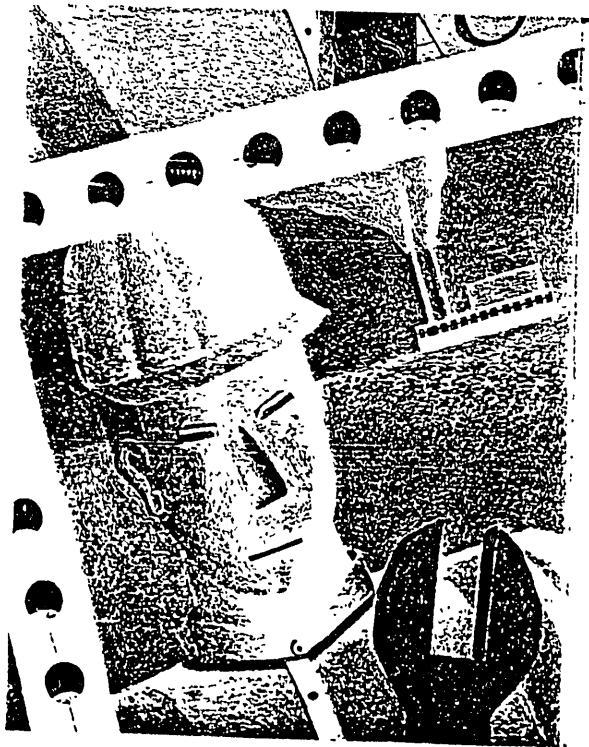
10-29



10-30

10-31

10-32



Withdrawn Sections

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

TITLE 19. EDUCATION
Part II. Texas Education
Agency

Chapter 141. Teacher
Certification

Subchapter B. Certificate Issu-
ance Procedures

= 19 TAC §141.26

The Texas Education Agency has withdrawn from consideration for permanent adoption a proposed amendment to §141.26 which appeared in the September 22, 1992, issue of the *Texas Register* (17 TexReg 6529). The effective date of this withdrawal is September 30, 1992.

Issued in Austin, Texas, on September 30, 1992.

TRD-9213228 Criss Cloudt
Director of Policy Planning
and Evaluation
Texas Education Agency

Effective date: September 30, 1992

For further information, please call: (512)
463-9701



Adopted Sections

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

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

TITLE 1. ADMINISTRATION

Part II. Texas Ethics Commission

Chapter 40. Registration and Regulation of Lobbyists

• 1 TAC §40.5, §40.7

The Texas Ethics Commission adopts new §40.5 and §40.7 concerning registration and regulation of lobbyists, with changes to the proposed text as published in the June 23, 1992, issue of the *Texas Register* (17 TexReg 4505). The changes were as follows. The phrase "on the public record" was deleted from §40.5(a); additionally, the phrase "and is not required to be reported on the registration forms or activity reports" was added to §40.5(a). The phrase ", including communication to show qualification for an exception of general applicability available under existing administrative rules, policies, and procedures" was added to §40.7(a)(8).

These sections set forth the exclusions from administrative action lobbying, and lists activities that do not require persons to register with the commission under the provisions of the Texas Government Code, Chapter 305.

These sections will provide the public and the commission with guidelines and a framework within which to help determine which persons are excluded from having to register with the commission as lobbyists.

Comments were received. The comments supported the rules as a whole, but suggested certain changes. The changes to the text are a result of the comments received. Other suggested changes were as follows: define what "special or extra compensation" is as set out in §40.7(a)(4); and additional language designed to clarify §40.7(a)(1), together with a suggestion to expand §40.7(a)(9).

Comments were received from the Travis County Bar Association, Administrative Law Section; Independent Bankers Association of Texas; and the law firm of Boyle and Freeman. All comments supported the rules, but suggested changes as indicated in Part 4, above.

The agency took the changes into account when adopting amended §40.5 and §40.7. The adoption of these sections with changes reflects the implementation of some of the comments. Some of the requested changes not implemented can be addressed by the issuance of ethics advisory opinions upon request.

The new sections are adopted under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning the administration of Chapter 305 of the Texas Government Code.

§40.5. Exclusions from Administrative Action Lobbying.

(a) For purposes of the compensation threshold of the Government Code, §305.003(a)(2), testimony, an appearance, or any other type of communication in a proceeding of an adjudicative nature of the type authorized by or subject to Texas Civil Statutes, Article 6252-13a (the Administrative Procedure and Texas Register Act or APTRA) is not direct communication to influence administrative action and is not required to be reported on the registration forms or activity reports if the communication is by a party to the proceeding, a party's representative of record, or a witness. One example of this exclusion is testimony, an appearance, or other communication by a witness in a contested case where the communication is documented as part of the public record for that particular contested case, whether or not the proceeding is subject to APTRA, and even if that witness is compensated.

(b) A person required to register by Insurance Code, Article 1.06D, must register notwithstanding this section.

(c) For purposes of the Government Code, Chapter 305, "administrative action" does not include an action which affects only the internal operations of the agency, such as the purchasing decisions of the state agency; and the negotiations over the terms of a contract to provide those services, including, but not limited to, negotiations over payment, delivery and performance of services, compliance with contract terms, and amendments.

§40.7. Activities that Do Not Require Registration.

(a) For the purpose of the Government Code, §305.003(a)(2), the following direct communications do not constitute activities to influence legislation or administrative action and are not required to be reported on registration forms or activity reports:

(1) the mere preparation or submission of an application or other written document providing information required by law, including statute, rule regulation, order, subpoena, or responses to documents prepared by a state agency;

(2) direct communication solely for the purpose of obtaining information if no attempt is made to influence the action of a member of the legislative or executive branch—examples include an inquiry as to when a particular matter has been set for hearing or the location of the hearing or as to what is an agency's official interpretation of a statutory provision;

(3) providing merely clerical assistance in producing direct communication to influence legislation or administrative action, such as typing or hand-delivering a letter or other document;

(4) appearing, submitting public written comments, or testifying at a hearing before a member of the legislative or executive branch in conjunction with official proceedings or rulemaking procedures if the person does not receive special or extra compensation for the preparation, appearance, submission or testimony other than actual expenses incurred for the preparation, appearance, submission, or testimony;

(5) direct communication to the legal representative of a state agency concerning litigation in which the agency is a party or adjudicative proceedings of the agency;

(6) direct communication to the appointing authority made by a person in his or her capacity as a member of an advisory committee or task force appointed by a member or an entity of the legislative or executive branch;

(7) an activity described in the Government Code, §305.004 and §305.003(c), whether or not such activity constitutes the sole activity of the person to influence legislation or administrative action;

(8) direct communication for the purpose of compliance with existing laws, administrative rules, policies, and procedures, including communication to show qualification for an exception of general applicability available under existing administrative rules, policies and procedures;

(9) direct communication in connection with an audit, inspection, or government investigation to interpret and determine compliance with existing laws, regulations, and policies;

(10) direct communication involving a request to a person who is a member of the executive branch for a written opinion interpreting a law, regulation, rule, policy, practice, or procedure administered by the agency or office of which that person is a member; and

(11) direct communication to provide information in response to a specific request for the information from a member of the legislative or executive branch that are unsolicited or otherwise not a subterfuge from compliance with the requirements of these laws.

(b) A person whose only activities to influence legislation or administrative action is one or more of the activities excepted from the lobbyist registration requirement by the Government Code, §305.004 and §305.003(c), or by rules of this commission is not required to register with the commission as a lobbyist.

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

Issued in Austin, Texas, on September 28, 1992.

TRD-9213213 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Effective date: October 20, 1992

Proposal publication date: June 23, 1992

For further information, please call: (512) 463-5800

Part V. General Services Commission

Chapter 111. Executive Administration Division

Administration

• 1 TAC §111.1, §111.2

The General Services Commission adopts the repeal of §111.1 and §111.2, concerning administration and meetings, without changes to the proposed text as published in the June 30, 1992, issue of the *Texas Register* (17 TexReg 4653).

The repeals will benefit the public through simplified regulations.

The repeal of §111.1 and §111.2 eliminate unnecessary, obsolete language.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 601b, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of the article.

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

Issued in Austin, Texas, on September 28, 1992.

TRD-9213114 Judith M. Porras
General Counsel
General Services
Commission

Effective date: October 19, 1992

Proposal publication date: June 30, 1992

For further information, please call: (512) 463-3446

• 1 TAC §111.1, §111.3

The General Services Commission adopts an amendment to §111.3, concerning protest procedures, and new §111.1, concerning administration, without changes to the proposed text as published in the June 30, 1992, issue of the *Texas Register* (17 TexReg 4655).

The amendment and new section will benefit the public by providing clearer regulations.

The amendment to §111.3 clarifies the protest procedure. New §111.1 states the organizational structure of the commission.

No comments were received regarding adoption of the amendment and new section.

The amendment and new section are adopted under Texas Civil Statutes, Article 601b, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 2.

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

Issued in Austin, Texas, on September 28, 1992.

TRD-9213109 Judith M. Porras
General Counsel
General Services
Commission

Effective date: October 19, 1992

Proposal publication date: June 30, 1992

For further information, please call: (512) 463-3446

Security

• 1 TAC §§111.11-111.19

The General Services Commission adopts the repeal of §§111.11-111.19, concerning security, without changes to the proposed text as published in the June 30, 1992, issue of the *Texas Register* (17 TexReg 4655).

The repeals will benefit the public through simplified regulations.

The repeal of §§111.11-111.19 eliminates obsolete language as the security program has been transferred to the Department of Public Safety.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 601b, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of the article.

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

Issued in Austin, Texas, on September 28, 1992.

TRD-9213111 Judith M. Porras
General Counsel
General Services
Commission

Effective date: October 19, 1992

Proposal publication date: June 30, 1992

For further information, please call: (512) 463-3446

Parking

• 1 TAC §§111.31-111.46

The General Services Commission adopts the repeal of §§111.31-111.46, concerning parking, without changes to the proposed text as published in the June 30, 1992, issue of the *Texas Register* (17 TexReg 4655).

The repeals will benefit the public through simplified regulations.

The repeal of §§111.31-111.46 eliminates obsolete language as the security program has been transferred to the Department of Public Safety.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 601b, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of the Article.

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

Issued in Austin, Texas, on September 28, 1992.

TRD-9213110 Judith M. Porras
General Counsel
General Services
Commission

Effective date: October 19, 1992

Proposal publication date: June 30, 1992

For further information, please call: (512) 463-3446

Part XIII. Texas Incentive and Productivity Commission

Chapter 275. Productivity Bonus Program

- 1 TAC §§275.1, 275.7, 275.9, 275.11, 275.13, 275.15, 275.17, 275.19, 275.21

The Texas Incentive and Productivity Commission adopts amendments to §§275.1, 275.7, 275.9, 275.11, 275.13, 275.15, 275.17, 275.19, and 275.21. Sections 275.1, 275.17, and 275.19 are adopted with changes to the proposed text as published in the August 14, 1992, issue of the *Texas Register* (17 TexReg 5659). Sections 275.7, 275.9, 275.11, 275.13, 275.15, and 275.21 are adopted without changes and will not be republished.

The amendments are necessary to further clarify definitions and processes for agencies participating in the Productivity Bonus Program.

The amendments clarify several definitions and clarify the following: the legislative intent of required level of services, agency certification process, agency application process, commission approval of the amount of employee bonuses, and distribution of the remainder of savings.

No comments were received regarding §§275.7, 275.9, 275.11, 275.13, 275.15, and 275.19. Comments were received regarding §§275.1, 275.17(c) and (d), and 275.21(b).

Comments were received that requested clarifying language regarding two definitions in §275.1. The first request was to make a nonsubstantive change to the definition of productivity plan. This change was made to the adopted text. The second request regarded a technical change to the definition of savings measurement account. As a result of the comment, the definition of a savings measurement account was changed from a "cost center" to a "generic appropriation (5108)" that is "transferred from the agency appropriation(s) where the savings occurred," instead of transferred from the agency's other cost centers.

Another commenter suggested that discretionary language be included regarding pro rata shares in §175.17(a) and (d) to establish a reasonable employee tenure or cut off in determining those employees eligible for pro rata bonus distribution. The commenter's primary concern was that if pro rata is taken to an extreme, short tenure employees could receive insignificant bonuses. The commission agreed that the concern was valid and addressed the comment by adding language to specify that an agency may request, and the commission may approve, provisions that an employee be employed for a specified portion of the fiscal year before being eligible for a bonus.

Another commenter regarding §275.21 requested clarifying language that an agency's one-third portion is to be used by that agency in the fiscal year following the fiscal year

during which the plan was approved. This change was made in §275.19.

Office of the Attorney General and Comptroller of Public Accounts requested changes.

No comments were received against the sections.

The Texas Incentive and Productivity Commission did not disagree with any comments and adopted the comments either in full or with some modification as noted previously.

The amendment is adopted under Texas Civil Statutes, Article 6252-29a, §1, which provide the Texas Incentive and Productivity Commission with the authority to promulgate and adopt rules.

§275.1. Definitions for the Productivity Bonus Program. The following words and term, when used in this chapter, shall pertain only to the Productivity Bonus Program and shall have the following meanings, unless the context clearly indicates otherwise.

Fiscal Year—The fiscal year during which the agency or division puts the concepts outlined in the agency's or division's productivity plan into effect.

Productivity Plan—A proposal detailing planned cost reductions and changes in operations that an agency or division intends to make with the goal of improving efficiency while maintaining service levels.

Productivity Bonus Account—An account created by the state treasurer for each state agency or division within the productivity bonus fund.

Productivity bonus fund or Fund 578—A fund created for each agency to transfer savings for the purposes of this program. At the end of the fiscal year the amount of certified savings is transferred to the appropriate accounts within this fund.

Productivity Bonus or productivity bonus award—A cash bonus awarded to an eligible state agency, division of that agency, or employees thereof after a productivity plan has been successfully implemented and proven to save money in recognition of increased productivity.

Savings Measurement Account—A generic appropriation (5108) into which cash, in an amount equal to the projected savings resulting from approved productivity plans, is transferred from the agency's appropriation(s) where the savings occurred.

Verification Period—The period following the submission of the agency's application for approval of a productivity bonus award during which the commission analyzes the nature and the amount of the savings certified by the executive director of the agency and acts on the agency's application

§275.17. Awards to Employees.

(a) Amount. If the commission approves an agency or division for a produc-

tivity bonus award, the commission shall award to the employees of the agency or division an amount not to exceed 25% of the amount in the agency's or division's productivity bonus account. The commission may award an amount less than 25% if the executive director makes such a request when the agency or division plan is submitted, or if the commission believes circumstances warrant.

(b) (No change.)

(c) Pro rata share of bonus. A current employee who has worked for the agency or division for less than the full fiscal year or on a part-time basis is entitled to a pro rata share based on the fraction of the fiscal year and the average fraction of the work week that the employee worked in the agency or division.

(d) Distribution. The awarded amount shall be distributed in equal shares proportionally related to the amount of time worked during the fiscal year to the eligible current employees of the agency or division. If the pro rata share distribution results in a negligible amount of bonus for employees employed during less than the full fiscal year, the agency executive director may request, and the commission may approve, provisions that employees be employed for a specified portion of the fiscal year before being eligible for a bonus.

(e) (No change.)

(f) Timing. Bonuses shall be distributed to eligible employees within 90 days of the agency's receipt of commission notification of approval of a productivity bonus award unless the commission approves an agency's request for alternate timing.

§275.19. Awards to an Agencies/Divisions.

(a) Distribution to agency/division. If the commission approves a productivity bonus award for a division of a state agency, or an entire agency, the balance of the amount in the agency's or division's productivity bonus account remaining after the award to employees, shall be distributed between the state agency and the fund from which the original division appropriation was made.

(b) Amount. One-third of the balance after award to employees shall be appropriated to that agency during the fiscal year following plan approval to be used by the administration of the agency to further agency productivity.

§275.21. Remainder of Savings. Distribution to Appropriate Fund. The amount of savings remaining in the agency or division productivity bonus account after payment of employee bonuses and distribution to the

agency shall be credited to the appropriate fund.

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

Issued in Austin, Texas, on September 25, 1992.

TRD-9213217

M. Elaine Powell
Certifying Official,
Executive Director
Texas Incentive and
Productivity
Commission

Effective date: October 20, 1992

Proposal publication date: August 14, 1992

For further information, please call: (512) 475-2393

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter K. Safety Require- ments

• 16 TAC §5.173

The Railroad Commission of Texas adopts an amendment to §5.173, concerning safety requirements, without changes to the proposed text as published in the August 11, 1992, issue of the *Texas Register* (17 TexReg 5616).

The amendment eliminates duplicative record-keeping requirements of armored contract carriers operating pursuant to armored contract carrier permits by the commission, by exempting them from the requirements of maintaining drivers' daily logs.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, §4(a), which vests the commission with power and authority to prescribe all rules and regulations necessary for the government of motor carriers and for the safety of operations of motor carriers.

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

Issued in Austin, Texas, on September 28, 1992.

TRD-9213190

Nolan F. Ward
Hearings Examiner, Legal
Division-General Law
Railroad Commission of
Texas

Effective date: October 20, 1992

Proposal publication date: August 11, 1992

For further information, please call: (512) 463-7094

Part IV. Texas Department of Licensing and Regulation

Chapter 65. Boiler Division

• 16 TAC §§65.1, 65.10, 65.20, 65.30, 65.50, 65.60, 65.70, 65. 80, 65.90, 65.100

The Texas Department of Licensing and Regulation adopts amendments to §§65.1, 65.10, 65.20, 65.30, 65.50, 65.60, 65.70, 65.80, 65.90, and 65.100, concerning boiler. Section 65.80 is adopted with changes to the proposed text as published in the August 21, 1992, issue of the *Texas Register* (17 TexReg 5718). Sections 65.1, 65.10, 65.20, 65.30, 65.50, 65.60, 65.70, 65.90, and 65.100 are adopted without changes and will not be republished.

The amended sections are adopted in order to incorporate board of boiler rules recommendations and legislative mandates. The adopted section with changes is §65.80(c). Subparagraph (D) becomes subsection (d). The change is made to clarify the intent of the section.

The amended sections will function to reflect technical conformance to adopted codes, clarify the rules, and reflect changes resulting from the passage of House Bill 863 and House Bill 2135 (71st Legislative Session), which renamed the agency and codified the law under the Health and Safety Code.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Codes Annotated, Health and Safety Code, Chapter 755, which provide the Texas Department of Licensing and Regulation with the authority to promulgate rules necessary to effectuate the purpose of the law.

§65.80. Fees.

(a) Certificate/inspection fees.

(1) Inspection by authorized inspector. The owner or operator or his/her agent shall make a \$15 payment for the certificate of operation fee.

(2) Inspection by deputy inspector. The owner or operator shall make payment of the appropriate fee as shown following.

(A) The inspection fees for all boilers other than heating boilers shall be:

(i) (No change.)

(ii) those with a heating surface greater than 50 square feet (4.65 square meters) but not greater than 100 square feet (9.29 square meters)-\$70;

(iii)-(v) (No change.)

(B) The inspection fees for heating boilers shall be:

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

(3) All fees must be paid in full to the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711 before a certificate of operation will be issued.

(b) Special inspections. The fee for a special inspection is \$650. In addition to the fees stated in this section, travel and per diem in accordance with the current rate as established in the current Appropriations Act shall be paid. A prepayment of \$650 shall be received by the department at least five working days before the department can initiate the requested special inspection. Prepayment shall be made by certified check or money order made payable to the Texas Department of Licensing and Regulation.

(c) Commission fees:

(1)-(3) (No change.)

(4) Replacement:

(A)-(C) (No change.)

(d) The fee for the boiler law and rules is \$12.

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

Issued in Austin, Texas, on September 28, 1992.

TRD-9213186

Jack W. Garrison
Acting Executive Director
Texas Department of
Licensing and
Regulation

Effective date: October 20, 1992

Proposal publication date: August 21, 1992

For further information, please call: (512) 463-3127

TITLE 22. Examining Boards

Part XV. Texas State Board of Pharmacy

Chapter 311. Code of Conduct

• 22 TAC §311.2

The Texas State Board of Pharmacy adopts new §311.2 concerning procedures regarding complaints filed against board members with changes to the proposed text as published in the April 7, 1992, issue of the *Texas Register* (17 TexReg 2453). The new section provides procedures to follow in the event that a complaint is filed against a Board Member.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Pharmacy Act, §§6, 16(a), 17(a) (4) and (6), and 27, which provides the Texas State Board of Pharmacy the authority to adopt rules for the proper administration and enforcement of the Act.

§311.2. Procedures regarding complaints filed against Board Members.

(a) The following procedures are applicable with regard to complaints against a board member, if the complaint alleges violations of the laws and rules governing the practice of pharmacy.

(1) The complaint shall be reviewed by the executive director, who may refer the complaint to the appropriate board staff for handling, or if deemed necessary, the executive director may refer the complaint to another agency.

(2) If the complaint is investigated and the investigation produces evidence of a violation of the laws or rules regarding the practice of pharmacy, the board staff shall determine if the complaint merits the institution of disciplinary action. This decision shall be made in consultation with one board member who shall be a pharmacist, but who shall not be the subject of the complaint; the board member shall be the President of the board, unless such person is unable to serve because he or she does not meet the criteria of this paragraph or for some other valid reason. If the President is unable to serve, the order of succession shall be Vice-President, then Treasurer. If none of the pharmacist officers are able to serve, then the board President or designee shall designate another pharmacist board member to serve.

(b) If after consultation with the board member described in subsection (a)(2) of this section, the determination is made that the complaint merits the institution of disciplinary action, the following is applicable.

(1) The complaint shall be directed to the assistant attorney general assigned to the board. The office of the Attorney General should then assign an assistant attorney general to prosecute the complaint in accordance with board rules.

(2) The board's legal counsel shall act as a liaison between the board's staff and the Attorney General's Office. The board's legal counsel shall ensure that the board's staff provides any information or assistance requested by the Attorney General's Office.

(3) The board member shall be sent a preliminary notice letter and offered the opportunity to attend an informal conference for the purpose of settling the matter through an informal conference.

(c) If the board member accepts the opportunity to attend an informal conference, the conference participants shall be as follows:

(1) the assistant attorney general assigned to the case, who shall conduct the informal conference;

(2) the board member who is the subject of the complaint and/or his or her legal counsel;

(3) board staff, as necessary or required; and

(4) one board member, who shall be the same person who was initially consulted about the complaint, as described in subsection (a)(2) of this section, provided, however, if that board member is unable to serve for some valid reason, the board member that shall attend the informal conference shall be a pharmacist, but who shall not be the subject of the complaint; the board member designated to attend the informal conference shall be the President of the board, unless such person is unable to serve because he or she does not meet the criteria of this paragraph or for some other valid reason. If the President is unable to serve, the order of succession shall be Vice-President, then Treasurer. If none of the pharmacist officers are able to serve, then the board President or designee shall designate another pharmacist board member to attend the informal conference.

(d) The case shall proceed to hearing, if the board member who is the subject of the complaint waives his or her right to attend an informal conference, or if after an informal conference is conducted, the case is not dismissed or the board member does not accept the recommendation for settlement.

(e) If the case proceeds to hearing, the following procedures are applicable:

(1) the assistant attorney general assigned to the case shall prosecute the hearing with the hearings officer presiding;

(2) the hearings officer shall then draft an officer's report which discusses the evidence and contains proposed findings of fact and conclusions of law. The hearings officer shall, as authorized by law, recommend a sanction if he or she determines one is necessary; and

(3) At the next scheduled board meeting, after the hearing officer has issued a proposal and all parties have accepted and replied, the following is applicable.

(A) The board, absent the board member who is the subject of the complaint, shall vote to:

(i) accept or reject each proposed finding of fact and conclusion of law; and

(ii) accept or reject the recommended sanction, if applicable.

(B) If the board rejects the recommended sanction, the board shall then vote on the sanction they deem appropriate.

(C) If the board determines that additional evidence is needed, they can vote to remand the case for further hearing, as provided by law.

(f) For the purposes of this section, a board member is defined as any individual who is serving on the board on the date of the receipt of the complaint, or any individual who has previously served on the board, if the complaint is filed within two years from the date the board member's official duties ended.

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

Issued in Austin, Texas, on September 30, 1992.

TRD-9213232

Fred S. Brinkley Jr., R.Ph.,
M.B.A.
Executive
Director/Secretary
State Board of Pharmacy

Effective date: October 21, 1992

Proposal publication date: April 7, 1992

For further information, please call: (512) 832-0661

◆ ◆ ◆
TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 229. Food and Drug

Food Service Sanitation

• 25 TAC §229.172

The Texas Department of Health (department) adopts an amendment to §229.172, concerning accreditation of food protection management programs, with changes to the proposed text as published in the August 7, 1992, issue of the *Texas Register* (17 TexReg 5505).

The section covers accreditation of food protection management programs. The section establishes minimum requirements governing the content and duration of food protection management training programs pursuant to the requirements of Chapter 438, Subchapter D, Texas Health and Safety Code (Code). For clarification, the title of the section has been changed and the amendment revises procedural and administrative requirements for accreditation of programs and institute procedural and administrative criteria for recertification programs authorized during the 72nd legislative session.

The amendment to §229.172 allows the department to discharge its accreditation and auditing duties more efficiently by standardizing educational and administrative program requirements. The auditing procedure revisions facilitate department compliance with the rules. An application fee for the accreditation of certification programs is instituted to offset program costs.

A summary of comments received during the comment period is as follows.

Comment: Concerning proposed §229.172(b)(6)(B), the six-hour length of training required for recertification, a commentor stated that three hours of training would be sufficient.

Response: The department disagrees as six hours was the average of the recommended lengths of time indicated on a survey conducted of local health departments and course sponsors.

Comment: Concerning proposed §229.172(d)(5), a commentor expressed disagreement in limiting class size to 35 students.

Response: This was a misunderstanding on the part of the commentor since this section addresses proctor requirements and not class size; however the student/proctor ratio has been expanded to a maximum of 50/1 and the definition of proctor has been revised to include designated representatives.

Comment: Concerning proposed §229.172(d), two commentors suggested provisions for an oral examination option be provided in the rules to assess knowledge of those unable to read.

Response: The department agrees and has added paragraph (7) to include language concerning special examination accommodations as determined by course sponsors or required by the Americans with Disabilities Act.

Comment: Concerning proposed §229.172(g), a commentor suggested rewriting this section on instructor qualifications more succinctly.

Response: The department has reviewed the verbiage and feels that the instructor qualifications section is clear.

Comment: Concerning proposed §229.172(j), a commentor suggested a clarification of the statement that state-issued Food Protection Management certificates are recognized by local regulatory authorities as the only valid proof of successful completion of training.

Response: The department agrees and has rephrased the statement for clarification.

Comment: A commentor requested that proposed §229.172(k) concerning program and candidate fees be clarified as to fee differences between the certification and the recertification programs.

Response: The department agrees and has changed §229.172(k)(1), §229.172(k)(2), and §229.172(k)(3) to clarify the fee requirements.

Comment: Concerning proposed §229.172(k)(1) and (2), a commentor suggested the status of non-profit organizations be considered in the payment of program application and renewal fees.

Response: The department does not object to this exemption, however, it is not provided for in the statute.

Comment: Concerning proposed §229.172(k)(3), a commentor questioned the need to raise the candidate fees from \$5.00 to \$7.00.

Response: The department has calculated program costs and feels the increase in fees is necessary to cover the cost of accreditation, audit and maintenance of the registry as required in the statute.

Comment: A commentor disagreed with proposed §229.172(m) concerning unannounced examination audits used to assess program compliance because of unexpected scheduling changes and the creation of undue stress on candidates.

Response: The department disagrees because program sponsors are required to advise the department of any schedule changes. Unannounced audits provide the department with a more accurate assessment of course compliance.

Comment: Concerning proposed §229.172(n)(1), a commentor expressed reservations about a quarterly candidate failure rate of 26% or higher on course sponsor examinations as a cause for revocation.

Response: The department feels that a 75% pass requirement is reasonable based on the fact that the current average pass rate is 91.5%.

Comment: Concerning proposed §229.172(n)(2), a commentor suggested basing revocation on a significant difference in pass-fail ratios between the state audit examination and the course sponsor examinations.

Response: The department disagrees since course sponsor testing parameters, conditions and security are not monitored by the department. A comparison of the course test to securely monitored state exams would be meaningless.

Comment: A commentor stated that provisions should allow for both correspondence courses and a challenge certification and recertification examination without mandatory site training.

Response: The department disagrees as these provisions are not provided for in the statute.

Comment: Concerning §229.172(m), state audit examination results, a commentor suggested incorporating the examination results of candidates who receive prearranged oral examinations using the course examination with the examination results of candidates who receive the state examination given by the state audit team.

Response: The department disagrees as this would negate the statistical validity of the state audit examination due to the incorporation of results from two different examinations.

Comment: A commentor stated that the length of time for an examination should be left open to accommodate students with language barriers or learning disabilities.

Response: The department agrees and has clarified the language in the section for consistency with the statute (Chapter 438, Texas Health and Safety Code, Subchapter D.), which states that candidates are allowed at least an hour for an examination. The department has added language to the section allowing special provisions for candidates with language and disabilities by the course sponsors.

Comment: A commentor expressed concern as to the lack of entrance criteria for candidates to the program.

Response: The department disagrees since the intent and scope of the Food Protection Management program is targeted at manager-level personnel and defines manager-level job criteria.

The commentors were Child Inc., Del Mar College, the Texas Restaurant Association, Corpus Christi- Nueces County Department of Public Health, H.E. Butt Grocery Company and Eastfield College. The commentors were not against the rules in their entirety, however they expressed concerns, questions and recommendations.

The amendment is proposed under Chapter 438, Subchapter D, Texas Health and Safety Code, which provides the Department with the authority to adopt necessary regulations to enforce this Chapter; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health and the Commissioner of Health.

§229.172. Accreditation of Food Protection Management Programs.

(a) Intent and scope. This section is intended to provide a framework for accrediting manager-level training programs in food service sanitation, in compliance with Chapter 438, Subchapter D, of the Texas Health and Safety Code. A uniform standard governing the accreditation of sanitation training programs enhances the recognition of reciprocity among regulatory agencies and reduces the duplication and expense of retraining incurred when food service managers cross regulatory jurisdictions. Education of the food service manager provides better qualified personnel, thereby reducing the risk of foodborne illness outbreaks caused by improper food handling and preparation techniques.

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

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

(6) Food Protection Management Program-A program accredited by the Texas Department of Health (department) which trains and certifies food service managers.

(A) Certification Program-A program whose coursework consists of a minimum of 14 hours of classroom instruction and at least a one hour examination meeting the requirements of the Health and Safety Code, Chapter 438, Subchapter D.

(B) Recertification Program-A program whose coursework consists of a minimum of six hours of classroom instruction on food safety and sanitation and a final examination as defined by the department.

(7) Food service establishment-Any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off premises and regardless of whether there is a charge for the food. The term also includes delicatessen-type operations that prepare sandwiches intended for individual portion service. The term does not include private homes where food is prepared or served for individual family consumption, retail food stores, the location of food vending machines, and supply vehicles.

(8) Food service manager-An individual who:

(A) is responsible for identifying hazards in the day-to-day operation of a food preparation, service, or dispensing facility;

(B) develops or implements specific policies, procedures, or standards aimed at preventing foodborne illness;

(C) coordinates training, supervises, or directs food preparation activities and takes corrective action as needed to protect the health of the consumer; and

(D) conducts in-house self-inspection of daily operations on a periodic basis to see that policies and procedures concerning food safety are being followed.

(9) Instructor-An individual whose educational background and work experience meet the requirements for instructor as outlined in this section.

(10) Law-Any federal, state, and local statutes, ordinances, and regulations.

(11) Person-An individual, partnership, corporation, association, or other legal entity.

(12) Proctor-An authorized agent of the Texas Department of Health; a course sponsor, instructor or designated representative; local health department person-

nel; or authorized community college or university personnel.

(13) Regulatory authority-The state and/or local enforcement authority, or authorities, having jurisdiction over the food service establishment, or those determined by the commissioner of health as having jurisdiction.

(14) Retail food store-Any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premise consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include establishments which handle only prepackaged, nonpotentially hazardous foods; roadside markets that offer only fresh fruits and fresh vegetables for sale; food service establishments; farmers markets; or food and beverage vending machines as defined in the Vending of Food and Beverages, 1978, Department of Health, Education and Welfare Publication Number (FDA) 78-2091.

(15) Secure-Access limited to a proctor.

(c) Requirements for accreditation of food protection management programs. All programs must meet the program requirements of the Texas Health and Safety Code, Chapter 438, Subchapter D. Persons sponsoring programs utilizing the state instructor's guide and final examinations shall file an application with the department. Persons wishing to develop their own course guides shall submit:

(1) an application;

(2) an independently-developed course guide including:

(A) a detailed summary of each topic and subtopic area;

(B) a time allotment for each topic and sub-topic totaling:

(i) 14 hours for certification; and

(ii) six hours for recertification;

(C) a copy of all written teaching materials, pamphlets and handouts;

(D) a list of all texts used; and

(E) a list of all audio-visual aids used, describing their content, duration, and location in the program; and

(3) documentation of the use of a national examination or special foreign language examination meeting Food Protec-

tion Management Program examination criteria.

(d) Course examinations. The department shall supply an English language final examination on a bi-annual basis to course sponsors utilizing the state examination. Course sponsors shall be responsible for the security of the state examinations.

(1) The course examination shall be multiple-choice (A,B,C,D) and shall:

(A) contain 75 questions for certification; or

(B) contain 50 questions for recertification.

(2) A candidate passing score shall be 75% or above.

(3) The final examination score or status (incomplete, withdrawal, or retake) of each candidate enrolled in a class shall be submitted to the department on a class roster.

(4) The examination shall be maintained under secure conditions and administered by an approved proctor.

(5) There shall be one proctor for every 50 students taking the examination.

(6) An individual who speaks English as a secondary language may use a dictionary during examinations to translate English into the native language.

(7) Individuals who require special examination arrangements as determined by course sponsors or as required by the Americans with Disabilities Act shall be accommodated by course sponsors.

(e) Retake examinations. Course sponsors may set their retake policy in the event a candidate fails the final examination.

(f) Student identification. The sponsor shall confirm by photo ID the identity of a candidate at the time of the final examination. A candidate's Food Protection Management certificate shall not be issued until such time as a valid photo ID has been presented to a proctor.

(g) Instructor qualifications. The Food Protection Management Program course shall be taught by a department-approved instructor. As a minimum all instructors shall:

(1) have successfully completed a Food Protection Management Certification Program as evidenced by a valid certificate;

(2) possess a high school diploma or its equivalent; and

(A) have worked a minimum of one year inspecting food service establishments; or

(B) have worked a minimum of five years in the food service industry; or

(3) possess an associate's degree or bachelor's degree from an accredited institution; and

(4) provide evidence of attendance of at least one seven-hour training seminar on food safety and sanitation topics every three years following employment as an instructor.

(h) Course scheduling. The course sponsor shall submit in writing to the Department, a bi-annual course schedule. The schedule shall include class times, dates, locations, size, and instructor name. The department shall be notified by telephone or FAX of any changes in previously submitted course schedules at least 24 hours before the initiation of any class.

(i) Food protection management program accreditation certificate. The department shall issue a certificate of accreditation to each course sponsor who has demonstrated compliance with this section. A certificate issued under this rule expires one year from the date of issuance.

(j) Food protection management program candidate certificates. Food Protection Management Program candidate certificates issued by the Department and accredited course sponsors shall be valid for a period of three years from date of issuance. State-issued food protection management training certificates shall be recognized as the only valid proof of successful completion of a state-accredited food protection management training program.

(k) Program and candidate fees. All fees are nonrefundable and payable to the Texas Department of Health. Fees shall be:

(1) \$150 for an initial application for a Food Protection Management Certification or Recertification Program;

(2) \$100 for an annual renewal fee for a Food Protection Management Certification or Recertification Program; and

(3) \$7.00 per candidate enrolled in a Food Protection Management Certification or Recertification Program for the preceding three months:

(A) the candidate fees are due on the first day of January, April, July, and October of each calendar year; and

(B) considered delinquent if not received within 45 days after the due date.

(l) Publication of a program registry. The department shall maintain and publish a current program registry. The registry shall be circulated statewide on a quarterly basis to community colleges, local health departments, public health regions and industry training groups.

(m) Department audits. Examination and classroom audits shall be conducted on an announced and unannounced basis to assess program compliance. Audits will be determined from, but not limited to, course schedules and quarterly examination results submitted by course sponsors.

(n) Revocation of accreditation. The following items are just cause for program review and/or revocation of a certificate of accreditation:

(1) a quarterly candidate failure rate of 26% or higher on course sponsor examinations;

(2) a mean class score of less than 75% on a state audit examination;

(3) failure to notify the department of course schedules and/or scheduling changes;

(4) a sponsor that is delinquent in payment by more than 45 days;

(5) a sponsor that knowingly files a false accounting report, or fails to pay the appropriate fee, as determined through an audit by an agent of the department; and

(6) a sponsor that compromises a secure examination, or fails to comply with or adhere to the rules regulating the Food Protection Management Program.

(o) Revocation procedures. Revocation procedures under this section shall be conducted in accordance with the 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 Board of Health).

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

Issued in Austin, Texas, on September 28, 1992.

TRD-9213171

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: January 1, 1993

Proposal publication date: August 7, 1992

For further information, please call: (512) 458-7248

Registration of Manufacturers of Food-Including Good Manufacturing Practices

• 25 TAC §229.182

The Texas Department of Health (department) adopts an amendment to §229.182, concerning registration fee and procedures, without changes to the proposed text as published in the August 7, 1992, issue of the *Texas Register* (17 TexReg 5508).

Section 229.182 establishes registration requirements and procedures for all manufacturers of food-including good manufacturing practices. In addition, §229.182 enumerates those entities which are exempt from registration requirements. The amendment restructures the gross annual volume dollar amounts of food products manufactured at an establishment that are used to determine the registration fee. The amendment also increases certain registration fees based on the restructured gross annual volume dollar amounts.

The section enables the department to license and regulate manufacturers of food so as to ensure compliance with the regulations entitled "Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food". The increased fees will enable the department to conduct needed inspections of manufacturers of food. Under the previous fee structure, the department was able to conduct only 2,877 inspections per year. The increase in fees will result in 4,712 inspections a year, enabling the department to inspect all high priority establishments at least once a year. The department will be able to identify unknown firms, to follow up on the firms that are delinquent in fee payment, and to audit the firms that are not paying the appropriate fee based on the gross annual volume of earnings for food production. This should, in turn, result in a further increase in inspections by providing additional funds for additional manpower.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Health and Safety Code, §431.241, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of this Chapter; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health and the Commissioner of Health.

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

Issued in Austin, Texas, on September 28, 1992.

TRD-9213172

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: November 1, 1992

Proposal publication date: August 7, 1992

For further information, please call: (512) 458-7248

Chapter 289. Occupational Health and Radiation Control

Asbestos Exposure Abatement in Public Buildings

- 25 TAC §§289.141-289.144, 289.147-289.151, 289.156-289.157

The Texas Department of Health (department) adopts the repeal of §§289.141-289.144, 289.147-289.151, 289.156, and 289.157, concerning asbestos exposure abatement in public buildings.

The sections are replaced by new sections concerning Texas asbestos health protection in Chapter 295, concerning occupational health, which are being adopted in this issue of the Texas Register. The existing sections are being repealed and replaced by new sections in Chapter 295 in order to implement recent amendments in Senate Bill 1341 and House Bill 79, 72nd Legislature, 1991, to Texas Civil Statutes, Article 4477-3a, which is the state law covering asbestos abatement.

There were no comments received regarding the repeal of existing sections; however, the department received numerous comments addressing the proposed new sections which are adopted and published in this issue of the Texas Register under Chapter 295, concerning occupational health\Texas asbestos health protection.

The repeals are adopted under Texas Civil Statutes, Article 4477-3a, §11, which provide the Board of Health with the authority to adopt rules covering asbestos removal or encapsulation, including licensing and regulation; Senate Bill 1341 and House Bill 79, 72nd Legislature, 1991, which amended Article 4477-3a; and Health and Safety Code, §12.001, which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

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

Issued in Austin, Texas, on September 29, 1992.

TRD-9213204 Robert A. MacLean, M.D. Deputy Commissioner Texas Department of Health

Effective date: October 20, 1992

Proposal publication date: May 1, 1992

For further information, please call: (512) 834-6600

Chapter 295. Occupational Health

Fees for Asbestos Services

The Texas Department of Health (department) adopts an amendment to §295.21, and adopts new §§295.31-295.40, §§295.42-295.52, §§295.54-295.56, §§295.58-295.62, §295.64-§295.65, and §§295.67-295.70, concerning fees for asbestos services and Texas Asbestos Health Protection. All sections are adopted with changes with the exception of §295.67, §295.68, and §295.70 to the proposed text published in the May 1, 1992, issue of the Texas Register (17 TexReg 3125). The sections adopted without changes will not be republished in this issue of the Texas Register.

The new sections replace existing rules concerning asbestos exposure abatement in public buildings in Chapter 289 of this title, specifically §§289.141-289.144, §§289.147-289.151, and §289.156, §289.157, which are hereby repealed upon adoption of the new sections. This complete revision of the rules is the result of distribution of copies to more than 1,800 recipients, four public hearings, and more than 100 comments received in response. The revision contains numerous changes to clarify the requirements and provisions in the rules.

The amendment and new sections implement the provisions in Senate Bill 1341 and House Bill 79, 72nd Legislature, 1991, which amended Texas Civil Statutes, Article 4477-3a, concerning asbestos exposure abatement. Section 295.21 concerns fees for asbestos services and the amendments delete the department's authority to charge a fee for analysis of the samples. The major changes in the new sections are as follows: New categories of licenses are added, including building inspectors, management planners, consultants, project managers, air monitoring technicians, laboratories, transporters, and trainers. Fees are assessed to cover the expenses of operating the licensing and enforcement activities. A limited exemption from licensing is provided for persons removing resilient floor covering materials containing asbestos. Provisions for inspections, investigations, and administrative penalties have been added.

A summary of comments received during the comment period is as follows.

Comment: Concerning §295.21, a comment was made that the preamble indicated that the department's authority to receive and charge a fee for analysis of samples was deleted, but that §295.21 still contained language that gives the department that very authority.

Response: The department agrees and has changed all references in this section to fees for asbestos services.

Comment: Concerning §295.21(a), several commenters were uncertain if this section was requiring that all management plans be reviewed and approved by the department. The paragraph should be clear as to whether review and approval is mandatory.

Response: The department agrees. The words "non-mandatory" have been added to the scope in subsection (a)(2).

Comment: Concerning §295.21, some commenters requested clarification on what management plans are.

Response: The department responded that a management plan is not a specification for removal or encapsulation. It is a plan that explains how to maintain your areas of asbestos, when to reinspect and assess the condition of asbestos and what actions to take if asbestos needs to be removed as a result of the assessment or maintenance, renovation or demolition. See §295.32.

Comment: Concerning §295.21, a commenter was concerned that the requirement for a licensed management planner to write management plans would place additional expense on scarce state funds for state agencies.

Response: It is a requirement by law to have only a licensed management planner to write the management plan. See §295.51.

Comment: Concerning §295.31, a commenter suggested that the public be supplied with statistics on asbestos related diseases in Texas and that verification of improvement be determined by some means in order to justify this regulation. Also that verification be made that licensing fees are sufficient to support all related activities.

Response: The department does not keep statistics on asbestos related diseases. Regulations are required under Texas Asbestos Health Act. Licensing fees are currently sufficient to support related activities and can be adjusted as needed.

Comment: Concerning §295.31, a commenter declared that the department has no authority to enforce OSHA regulations. Another commenter suggested that public schools and political subdivisions be exempt from licensing and fees.

Response: The department disagrees. It is well established that the department does have the authority to enforce applicable standards of OSHA regulations. There is no provision in the Act exempting public agencies. Texas Civil Statutes, Article 4477-3a allows for no exemptions from licensing or fees.

Comment: Concerning §295.32, many commenters requested additions to the definitions. It was suggested that asbestos abatement consultant/owner's representative, owner, industrial hygienist, certified industrial hygienist, third party monitor, asbestos inspection, small scale-short duration project, resilient floor covering material, industrial facility and manufacturing facility be added to the definitions. One commenter recommended that AIHA be removed from the list since no other professional organizations were defined.

Response: The department disagrees. Expanding the definitions would not contribute greatly to clarify the rules. The occupational disciplines mentioned and the expertise they provide are all well known in the trade. The other items mentioned are also well known in the industry. The department believes that

the definition of AIHA should remain since it is the only professional organization mentioned in the rules.

Comment: Concerning §295.33, a commenter suggested that the state clarify the issue when state rules are less stringent than federal guidelines.

Response: The department disagrees since state rules cannot ever be less stringent than federal guidelines. If for some reason this did occur, federal guidelines would prevail.

Comment: Concerning §295.34(c), a commenter suggested that a building owner must formulate a comprehensive abatement plan drawn up by a licensed consultant, and the contractor should use the consultant to oversee the contractor in the execution of the plan.

Response: The suggestion that abatement plans be designed by a licensed consultant is already required within the rules for full-scale abatement projects. Not all jobs require overseeing by a licensed consultant, and the Department states it should be left to the discretion of the client as to who is selected to oversee the project (consultant or supervisor).

Comment: Concerning §295.34(b), many commenters suggested that only that portion of a building to be renovated or demolished be inspected for the presence of asbestos products, and not the whole building as currently implied.

Response: The department agrees with this comment, and has added language such that all areas contiguous to the area being renovated or demolished be inspected for the presence of asbestos containing materials.

Comment: In general, a commenter suggested allowing the use of trade contractors to perform O&M work if they employ licensed supervisors and workers.

Response: The department agrees, and has made provisions in §295.43 to accommodate this suggestion.

Comment: Concerning §295.34(e), a commenter suggested that a copy of the management plan be submitted with each required notification form.

Response: The department disagrees, however, a copy of any asbestos management plan required by the department as a result of a mandatory building survey must be submitted to the department.

Comment: Concerning §295.35, a commenter inquired about licensure for those individuals not eligible for employment in the United States.

Response: The department has maintained a careful surveillance of illegal applicants because of widespread issuance of false social security cards. The statement of "not eligible for license or registration" has been added to this section, and as a basis for denial of application in §295.38(c)(2).

Comment: Concerning §295.36(a), it was suggested that those who remove resilient floor coverings not be exempted from the licensing law.

Response: The department disagrees. This comment is in conflict with the provisions of House Bill 79, Regular Session, 1991, which specifically provides for such exemption.

Comment: Concerning §295.36(a)(2), it was suggested to delete the eight hour training requirement for resilient floor covering removers.

Response: The department disagrees. This comment is in conflict with the provisions of House Bill 79, Regular Session, 1991. The exemption for floor coverings is only from the licensing provisions of the law.

Comment: Concerning §295.36(a)(2), a comment was received to exempt those who have taken the 24-hour worker training course from taking the eight hours training required for the removal of resilient floor coverings.

Response: The department disagrees. This comment is in conflict with the provisions of House Bill 79, Regular Session, 1991, which require training on specific work practices:

Comment: Concerning §295.36(a)(3), a commenter stated that this paragraph, stating that school custodial workers must have mandatory training prior to qualifying for the exemption, is a violation of AHERA and should be deleted.

Response: The department disagrees. This comment appears to be a misinterpretation of the regulations. AHERA will not be violated under the terms of this regulation.

Comment: Concerning §295.36(a)(4), a commenter has expressed concern about which methods of floor covering removal are permitted under the exemption.

Response: The department agrees. Only certain methods of removal are exempt. These are published for distribution in the booklet, "Recommended Work Practices for the Removal of Resilient Floor Coverings", by the Resilient Floor Covering Institute. No other removal methods, including infra-red heat devices, are exempt from licensing requirement.

Comment: Concerning §295.36(b), a comment was received to delete the 10-day notification requirement.

Response: The department disagrees. This comment is in conflict with the Act which requires notifications.

Comment: Concerning §295.36(c), a commenter suggested that it is not clearly stated that the floor covering must be carefully removed so as to maintain it in a nonfriable state.

Response: The department agrees that this statement needs to be clarified, and has added this limitation.

Comment: Concerning §295.36(e), a commenter requested information as to the reasons that qualify an asbestos emergency.

Response: The department responds that an asbestos emergency may be declared by the department only if public health or safety are seriously affected. This qualification has been added.

Comment: Concerning §295.37(a), several commenters questioned the application of

these rules concerning the conflict of interest provision of the law with respect to employment of an air monitor technician for an asbestos abatement project.

Response: The department agrees that this needs clarification, and has re-stated the conditions under which the contractor may or may not employ abatement project air monitor technician.

Comment: Concerning §295.37(a) and (b), a commenter suggested that state and local governmental agencies be exempt from these sections.

Response: The department disagrees, as there is no provision for exemption in the Act for state and local governmental agencies.

Comment: Concerning §295.37 (a), a commenter pointed out an impossible situation whereby a building owner/operator, who is licensed as an asbestos abatement contractor to perform tasks in buildings under their purview are unable to hire a third party monitor without being in violation of the rules.

Response: The department agrees. The following language is added to remedy the problem: "Those who are licensed to perform asbestos abatement for their own account shall employ a third party monitor for the purpose of obtaining final clearance."

Comment: Concerning §295.37(b), a commenter suggested that the following language be added: "Such person must not be employed by the abatement contractor, or by any agency affiliated with the abatement contractor."

Response: The department disagrees. The provisions of the regulation restrict persons from being employed by the contractor. Affiliated agencies fall outside the scope of the Act.

Comment: Concerning §295.38(a), several commenters pointed out that the statement of general requirements for applications and renewals did not mention the department's policy, which states that the burden of proof for all qualification requirements is the responsibility of the applicant.

Response: The department agrees, and has added this fundamental part of licensing policy.

Comment: Concerning §295.38(c), a commenter suggested adding the following language: "if a qualified person representing the company or firm requesting a license already represents a company that is licensed."

Response: The department agrees and has added the language in subsection (c) (17).

Comment: Concerning §295.38(e)(1)(A), a commenter suggested to change "of" to "or" in second to the last sentence of the subparagraph.

Response: The department agrees to the clarification.

Comment: Concerning §295.40(a)(1), the Texas Department of Insurance suggested that the third sentence be changed from "and must be written...." to "and must be written by an insurance company authorized to do business in Texas or by an eligible Texas surplus

lines insurer as defined in the Texas Insurance Code, Article 1. 14-2, or by a Texas registered risk retention group or through a Texas registered purchasing group."

Response: The department agrees, and has made this change.

Comment: Concerning §295.40(a), one commenter suggested adding a paragraph (5) stating that the department conduct random inquiries with insurance carriers to verify that the licensed company has insurance.

Response: The department disagrees. No license will be issued until it has been verified that the applicant does have adequate insurance.

Comment: Concerning §295.40(a)(1), one commenter suggested that the department require a certificate of insurance instead of the whole policy as now written.

Response: The department agrees. A certificate of insurance will provide all the information required for licensing.

Comment: Concerning §295.42, a commenter stated that roofing workers should be exempt from licensing.

Response: Roofing workers are exempt from the licensing requirement inasmuch as the department rules cover asbestos removal "within a public building."

Comment: Concerning §295.43, general comments were received from building owners and from agencies representing building owners. Most comments dealt with the ability to engage the services of tradesmen in performing small tasks if they (the building owner) were not a licensed building owner/manager.

Response: The department agrees with the comments and has rewritten the section to accommodate this need. Tradesman may now become licensed O&M contractors, limited to projects of small scale/short duration.

Comment: Concerning §295.44(d)(1), several commenters have mentioned that the amount of classroom hours of training, listed as 36, should be 32 hours.

Response: Mandatory training course requirements must comply with the EPA Model Accreditation Plan, and these requirements are to be changed, including additional hours. Therefore, all references in these rules to the number of classroom hours for training required by EPA are removed, and reference is changed to the published requirements of the Model Accreditation Plan for that particular course.

Comment: Concerning §295.44 (d)(3), a commenter questioned how persons who have received their training from out-of-state training providers can provide the kind of photo identification required of applicants.

Response: The department agrees that this instruction is not provided and has added the following language: "Persons submitting out-of-state training certificates with their applications may obtain the necessary photo identification when attending the mandatory course on Texas asbestos rules required of out-of-state applicants...."

Comment: Concerning §295.44(f)(1), a commenter suggested the addition of the

words "or retained" after the word "employed" in this paragraph.

Response: The department agrees, and these words have been inserted.

Comment: Concerning §295.44(f)(2), a commenter suggested that an O&M supervisor may also seek employment as an air monitoring technician.

Response: The department disagrees. The licensing of air monitoring technicians is an entirely separate license category. An individual may hold more than one license, but there are separate qualifications for each.

Comment: Concerning §295.45(e), a commenter suggested that no asbestos abatement contractor shall have the right to hire or supervise individuals as employees who are actually contract workers.

Response: The department disagrees. The requirement for hiring persons is limited to their eligibility and qualifications as stipulated in the rules. The Act makes no other restrictions.

Comment: Concerning §295.45(e)(10), a commenter points out that air monitoring practices are denied to contractors under the third-party provision of the law.

Response: The department disagrees. Use of air monitoring by contractors is now authorized in §295.37(a), which states that personal samples may be obtained by the contractor for OSHA monitoring requirements.

Comment: Concerning §295.45(f), two commenters proposed that time limits on the temporary storage of asbestos waste be set because of several instances of excessive storage periods in the past.

Response: The department agrees with the above proposal, finding that this is the responsibility of the contractor, and has added a time limitation of 30 days for temporary storage to paragraph (11).

Comment: Concerning §295.46(d)(1), two commenters suggested that the requirement for actual work experience to qualify for licensing as an asbestos abatement supervisor is a means of impeding building services.

Response: The department disagrees. The commenter has failed to distinguish between the full scope of authority of the asbestos abatement supervisor, which makes the experience requirement a practical necessity, and the restricted scope of the operations & maintenance supervisor, who is a master of his trade but must handle asbestos occasionally and in small quantities, for which only training is required.

Comment: Concerning §295.47, a commenter claimed that those who consult only for roofing work need not be licensed under this section.

Response: The department agrees, and has placed the word "within" in §295. 31(c) to further define the scope of the Act.

Comment: Concerning §295.47(a)(1), a commenter questioned why asbestos abatement project design includes the inspection of public buildings.

Response: The department points out that this is a mandatory federal procedure (40 Code of Federal Regulation 61.145) and the determination that this has been completed is required of every consultant designing an abatement project.

Comment: Concerning §295.47(b), a commenter questioned why asbestos management planning has not been included in this subsection.

Response: The department agrees, and has added the words "asbestos management planning" to subsection (b)(2), relating to the scope of consultant duties.

Comment: Concerning §295.47(b), a commenter questioned whether a consultant must be licensed in each license category in order to perform that activity.

Response: The department finds that the scope of an individual consultant license, as listed in §295.47(b), encompasses the asbestos-related activities, eliminating the need for separate licenses, but requiring proficiency of consultants in all aspects.

Comment: Concerning §295.47(b), a commenter suggested that the signing of "asbestos abatement project plans and specifications be added to the scope of the consultant.

Response: The department agrees, but points out that this is already included in adopted subsection (i).

Comment: Concerning §295.47(b), a commenter inquired as to whether those persons performing accident prevention services for insurance carriers, as it would apply to asbestos abatement projects, be required to be licensed.

Response: The department agrees that they must be licensed according to the asbestos tasks they are to perform. Neither state nor federal law provides for an exemption.

Comment: Concerning §295.47(e), two commenters suggested that both engineers and architects, by virtue of their registrations, are not qualified to be asbestos consultants and should be omitted from the list of eligibles for licensing as asbestos consultant.

Response: The department disagrees with these comments, pointing out that there are basic eligibility requirements for the consultant's license and the specific qualification requirements for licensure, which can be met by engineers or architects.

Comment: Concerning §295.47(e)(1), a commenter suggested that this paragraph should read: "current registration in the State of Texas as an architect or engineer."

Response: The department agrees with the limitation to those registered in Texas and has added language.

Comment: Concerning §295.47(e)(2), two commenters requested that a subparagraph be added, citing examples of eligible professional organization.

Response: The department agrees, and has added "examples include American Academy of Industrial Hygiene and Board of Certified Safety Professionals" to subparagraph C.

Comment: Concerning §295.47(e)(4), several commenters complained of this provision, which admits persons with only high school diplomas as also eligible under this section.

Response: The department disagrees. This is a "grandfather" clause admitting for only a limited period of time those who are currently practicing consultants. Also, there is no relationship between the qualification for asbestos consultants and certain safety inspectors employed by the Workers Compensation Commission.

Comment: Concerning §295.47(f)(1), a commenter suggested that the experience time period requirement for qualification within the last three years is too limited a time period.

Response: The department agrees to lengthening the time period to five years, but explains that the time period must not be eliminated entirely.

Comment: Concerning §295.47(f)(3), several commenters have questioned the training requirements for consultants, requesting substitution of courses, etc.

Response: The department agrees, and has combined certain courses of instruction to reduce the burden of cost and time of the applicant.

Comment: Concerning §295.47(f)(3)(D), a commenter has suggested that the requirement for a qualification examination for consultants be eliminated entirely.

Response: The department agrees, and has removed the requirement.

Comment: Concerning §295.47(h), a commenter has suggested the re-wording of the first sentence of the responsibilities for consultant.

Response: The department agrees and has changed the wording to explain more fully the inclusion of this listing of the responsibilities of an asbestos consultant.

Comment: Concerning §295.47(f)(6), two commenters complained about the insurance required of asbestos consultants.

Response: The department responds that there is a specific requirement in the Act §4A.(4)(B) which requires mandatory errors and omissions insurance coverage for consultants, inspectors, or laboratories performing work for hire.

Comment: Concerning §295.48(b), several commenters suggested that there be stated conditions as to when a consultant's office shall be considered an Asbestos Consultant Agency.

Response: The department agrees to this suggestion and has stated these conditions more clearly than the original text.

Comment: Concerning §295.48(b)(1), a commenter suggested re-wording this compliance listing for licensed asbestos consulting agencies to stipulate that those consultant offices which do not conduct asbestos consulting activities are exempt from such compliance.

Response: The department agrees. To become an asbestos consultant agency is a voluntary action, and those who refrain from

doing so are not subject to these provisions. Subsection (b)(1) has been re-worded.

Comment: Concerning §295.48(g), several commenters pointed out that the use of the word "ensure" to enumerate the responsibilities of consultant agencies is to invite serious confusion, as the term is accepted legally as "guarantee of results."

Response: The department agrees and has removed the word "ensure".

Comment: Concerning §295.49(a)(1), two commenters suggested that the words "insure" and "safety" be removed from this paragraph because of the confusion of a word that guarantees results instead of monitors progress of the abatement process.

Response: The department agrees, and has reworded the paragraph.

Comment: Concerning §295.49(a)(3), a commenter suggested that the phrase "advise contractors" in the description of project manager duties would be an inappropriate action on the part of a consultant employee, whereas an inquiry or consultation on behalf of the client would be a normal procedure.

Response: The department agrees, and has substituted the words "consults with contractors on behalf of their clients."

Comment: Concerning §295.50(a), a commenter suggested deleting the words "on a one-time basis" from sample-taking instructions.

Response: The department agrees, but has placed the instructions on sampling in §295.58(h), relating to "Operations: General Requirements," as it applies to asbestos-related activity.

Comment: Concerning §295.50(a), a commenter questioned as to whether an asbestos consultant must have a separate license to conduct asbestos surveys.

Response: The department responds that asbestos surveys/inspections are within the scope of asbestos consultants licensed activities, as listed in §295.47(b)(1) of these sections.

Comment: Concerning §295.50(f), two commenters pointed out that the signatory authority was incorrect.

Response: The department acknowledges that the text was misplaced. The text now reads correctly "All asbestos surveys or inspections must be signed by the licensed inspectors performing the inspection or the consultant."

Comment: Concerning §295.51(b), a commenter suggested that the text of this subsection implies that a licensed asbestos management planner may also do the work of a licensed asbestos inspector.

Response: The department agrees with this interpretation, in that a licensed asbestos management planner must first be accredited as an asbestos inspector.

Comment: Concerning §295.51(e), a commenter suggested that an applicant asbestos management planner should be required to meet the eligibility and qualification

requirements of an individual asbestos consultant.

Response: The department disagrees, noting that responsibilities of management planners are not as broad as those of a consultant.

Comment: Concerning §295.51(g), two commenters suggested that the wording of this subsection be changed to: "All asbestos management plans must be signed by a licensed asbestos management planner or the consultant."

Response: The department agrees, and has corrected the language in this subsection.

Comment: Concerning §295.52(e)(2), several commenters suggested that those who have completed the NIOSH 582 or equivalent course is sufficient to meet the training qualification for air monitoring technician.

Response: The department disagrees. The NIOSH course teaches the technique of "analysis of airborne asbestos dust," and requires no refresher training. Only a minor part of the course is devoted to sampling and the use of sampling instruments and materials. The three-day training that is required is devoted to a wide scope of hands-on sampling techniques, and the use and calibration of instruments, and also requires annual refresher training.

Comment: Concerning §295.52(a), a commenter suggested limiting the air monitoring technician to employment by asbestos consultants and the sample-taking to baseline and clearance samples.

Response: The department disagrees to this limiting concept of an air monitor's duties. The air monitor technician may also be employed by an asbestos laboratory for the abatement project.

Comment: Concerning §295.54(a), a commenter suggested that the phrase "fiber content" be changed to "asbestos fiber content."

Response: The department disagrees, as this change would eliminate the use of phase-contrast microscopy (PCM).

Comment: Concerning §295.54(d), two commenters requested that accreditation by the American Industrial Hygiene Association (AIHA) be included for laboratory accreditation.

Response: The department agrees: (1) This accreditation is extended to those laboratories accredited by AIHA for asbestos fiber counting and may include asbestos bulk analysis, both of which are contingent on continuing acceptable results of the proficiency analytical test sample review and quality assurance of analyses. (2) Voluntary bulk analysis proficiency testing (PAT rounds) offered by AIHA does not of itself constitute laboratory licensing.

Comment: Concerning §295.54(d), a commenter suggested that there is no training for polarized-light microscopy for the analysis of bulk samples.

Response: The department disagrees, pointing out that the two national agencies for laboratory accreditation which are recognized

by these rules have requirements for those employed as analysts.

Comment: Concerning §295.54(d), a commenter stated that AIHA registry for analysts does not use NIOSH 7400 counting rules for asbestos fiber counting (a mandatory method).

Response: The department disagrees. A check with analysts in the registry indicates that the 7400 method is the only method currently in use.

Comment: Concerning §295.55(a), a comment was made that a license is not required to teach the two-hour and 14-hour asbestos awareness courses as required by AHERA.

Response: The department points out that this rule does not require a trainer to be licensed in order to teach these courses. However this section is reworded to reflect that only those courses that are required to obtain a license will need to be offered by a licensed trainer.

Comment: Concerning §295.55(d)(2), a comment was made that principal training facilities need not be described.

Response: The department agrees. This paragraph has been deleted.

Comment: Concerning §295.55(d)(4), a comment was made that this is a violation of the first amendment to the United States Constitution.

Response: The department disagrees. In order to adequately monitor asbestos training courses to determine whether they meet the model accreditation plan, the department must have that information.

Comment: Concerning §295.55(e), a comment was made that a trainer not be allowed to train his own personnel due to conflict of interest.

Response: The department disagrees. Concerns have been expressed on both sides of this issue. Some were concerned that they could not obtain the quality of training elsewhere that they could provide their own people. It would not be possible to prevent all possibilities of wrong-doing by requiring second party intervention. It will be up to the department to police the classes in the same manner regardless of any conflict of interest clause. Also, it is the responsibility of any individual, who feels that they received inadequate training, to report it to the department.

Comment: Concerning §295.55(e)(4), a comment was made that this paragraph has no relevance and should be deleted.

Response: The department disagrees. By delineating these courses as examples it is made clear what is and is not in the areas covered by this license. This subsection clarifies the types of courses not accredited by the department.

Comment: Concerning §295.55(f), a comment was made that there is no provision in the law to require approval of instructors or the notification required if an "approved" instructor is not available for an upcoming class.

Response: The department refers the commenter to the Texas Health Protection Act, §3(b), that empowers the department

with the authority to determine and specify the conditions which the training organization must meet in order to obtain a license. The department agrees about last minute substitutions and has deleted that reference.

Comment: Concerning §295.55(g), a comment was made that the department has no authority to specify the qualifications of an instructor.

Response: The department disagrees. The Texas Asbestos Health Protection Act, §3(b), gives the department the authority to specify the qualifications under licenses required. Without specifications for instructors, it would be possible to put anyone into the position of instructor.

Comment: Concerning §295.55(g)(2), a comment was made that the instructor should have the same level of degree as that of a consultant.

Response: The department disagrees. It is not necessary to possess the same degree as the student in order to teach him something.

Comment: Concerning §295.55(g)(2), a comment was made to include "or physical" before "sciences".

Response: The department agrees and has added the word.

Comment: Concerning §295.56, a comment was made that there is no requirement under this section for a trained and registered worker to load and unload asbestos as required by the Texas Asbestos Health Protection Act, §4B(a).

Response: The department agrees, and is including a reference to the requirement for worker registration for those working for a licensed transporter.

Comment: Concerning §295.56, a comment was made that the requirement for licensing should not be necessary for non-friable material.

Response: The department disagrees. If the removal of the asbestos is covered under these rules, then the transport of that material is also covered. Since House Bill 79, Regular Session, 1991, exempts the removal of floor tile from the requirements of licensing, and roofing and siding are not covered under the rules, then it would follow that transporting such material would not require licensing.

Comment: Concerning §295.56(a), a comment was made to amend this subsection to allow transport to a temporary storage facility by the contractor and require a transporter license for transport to final destination only.

Response: The department disagrees because §295.43(e)(9) specifies that waste must be disposed of within 30 days of project completion or when receiving container is full, whichever is sooner. This rule is now incorporated as well in the contractors section. This is not intended to be more or less stringent than NESHAPS, but an exact definition to base your disposal. However, by law, if asbestos containing material (ACM) is transported off site on public roads, an asbestos transporter license is required.

Comment: Concerning §295.56(d), questions were posed as to what are the specific training requirements for this license.

Response: The department has addressed this issue by requiring employees who handle the waste asbestos to be registered as asbestos workers. Training for this is addressed in §295.42 (relating to Licensure: Asbestos Abatement Workers).

Comment: Concerning proposed §295.56(d)(3), a comment was made that this paragraph be changed to reflect the Act, §4A(4)(d) concerning liability insurance. It was pointed out that auto liability does not cover a spill.

Response: The department agrees because the requirement for auto liability is not relevant to asbestos pollution and therefore will be removed as a requirement leaving only the requirement for liability insurance as noted.

Comment: Concerning proposed §295.56(e), several commenters pointed out that no qualifications for asbestos transport workers are stated in the rules.

Response: The department agrees and has added language stating that those who are some adding new group of individuals to be registered employed by licensed asbestos transporters to handle, load, or to unload asbestos shall be registered as asbestos workers.

Comment: Concerning proposed §295.56(e)(3), a comment was made as to the type of form required for reporting and on what dates the annual reporting period covers.

Response: The current form for manifesting the asbestos shipment to the landfill is the Texas Water Commission Uniform Hazardous Waste Manifest form (TWC-0311). Annual reporting to the department will be by calendar year.

Comment: Concerning proposed §295.56(e)(3), a comment was made that reporting requirements are duplicative to the TWC reporting requirements and should be deleted.

Response: The department disagrees because TWC does not have reporting requirements for transporters of asbestos.

Comment: Concerning §295.56(e)(6), a comment was made to be more specific about the training required under this section. The reference made to 29 Code of Federal Regulations (CFR) 1910.120 is too broad. It is suggested that reference be made to 29 CFR 1910.120(a)(6)(ii) which covers containment and control of the spill to prevent exposures.

Response: The department agrees that the reference is too broad. However, the reference that the commenter makes is too specific. It is more appropriate to cite the requirement that a transporter has to comply with 29 CFR 1910.120(a)(v) as it applies to emergency response actions in case of a spill. Compliance with this part of the regulation requires that the transporter train the workers for a spill as part of the required emergency response plan.

Comment: Concerning §295.58, a comment was made to include a section that no worker will make or be forced to make a fraudulent statement.

Response: The department disagrees because §295.69(c)(3) and (5) cover this already. Section 295.69(c) was reworded to include registrants.

Comment: Concerning §295.58(b)(3), a comment was made to delete this paragraph due to the responsibilities that a supervisor has outside containment, and that it would be unenforceable.

Response: The department disagrees because a supervisor cannot do a proper job if he does not go into containment periodically to personally check on how things are going and get a first hand observation of the conditions of the containment, the asbestos material, and of how the workers are performing. Enforcement can be done by review of entry log, questioning workers and the consultant.

Comment: Concerning §295.58(b)(2) and (3), a commenter questioned what "actual abatement activity" exactly does mean?

Response: The department added the definition of "asbestos abatement activity" to clarify the activities when a supervisor is required.

Comment: Concerning §295.58(c), a comment was made that the requirement for an annual physical be deleted from this section due to workers who might not be in containment for over 30 days and who could wear a positive pressure respirator.

Response: The department responded that this is a requirement by law. (see Texas Civil Statutes, Article 4477-3a, §4(c)(4)).

Comment: Concerning §295.60(a), a comment was made that the requirements of this section do not apply to roofing.

Response: The department agrees because the law was never intended to cover roofing as is evidenced by the use of the words "in public buildings" under the scope of the rules in §295.31(c). Section 295.31(c) will be reworded to say "within public buildings."

Comment: Concerning §295.60(a), a comment was made that this section should make it clear that these methods are not required if you use the methods in House Bill 79, Regular Session, 1991.

Response: The department disagrees because reference to House Bill 79, Regular Session, 1991, in §295.38 is sufficient.

Comment: Concerning §295.60(a), a commenter was concerned that no reference to recommended final clearance levels is made.

Response: The department cites federal regulations which states that the recommended clearance levels as suggested in 29 CFR 1928.58, Appendix F, are sufficient guidelines for this purpose.

Comment: Concerning §295.60(a), a comment was made about the lack of flexibility it allows. The commenter was concerned that the general work practices were to be adhered to regardless of circumstances.

Response: The department disagrees, stating that the first paragraph of this section allows for the unique situations encountered, and allows a designer the leeway to deviate from these recommended work practices as long as the specifications are at least as protective to public health and are approved by a licensed consultant.

Comment: Concerning §295.60(i), a comment was made that the negative pressure should be listed as a minimum and not a maximum.

Response: The department agrees that the sentence is confusing and has reworded it.

Comment: Concerning §295.61(a), a comment was made that the language be modified so that notifications would not be required on projects involving less than three linear or three square feet as in the EPA Worker Protection Rule.

Response: The department disagrees. Provision has been made for notification of O&M activities that are below 160 square feet or 260 linear feet, which are asbestos abatement project minimums. Notification is required by law to the department as set out in subsection (g). Periodic notification is permitted.

Comment: Concerning §295.61(b), a commenter suggested the following language be added: "or abatement contractor, and the name of the consultant/owners representative shall appear on the form as the person responsible for the proper execution of the local, state, federal regulations, and project plans and specifications."

Response: The department disagrees. It is contrary to accepted practice to say that only the consultant is responsible for adherence to the rules. His/her name may be included on the notification, but not as the sole responsible person.

Comment: Concerning §295.61(b), a commenter suggested rewording this subsection to include holding the contractor responsible as well as the owner. NESHAPS holds both contractor and building owner responsible.

Response: The department agrees that the building owner is ultimately responsible for what goes on in his/her building. If he/she chooses to pass on the responsibility of notification to the contractor, it is still up to him/her to insure that notification has been made before he/she allows the contractor to start work. If he/she chooses to, this responsibility must be passed to the licensee in writing. If the contractor allows the building owner to make notification, it is up to the contractor to insure that the owner has made notification before he/she starts work. The responsibility to conform to these regulations by all persons licensed under these regulations or who are required to be licensed under these regulations cannot be abrogated by contract or by any other means.

Comment: Concerning §295.61(c), a comment was made that mail appeared to be the only way to notify and that FAX would no longer be accepted.

Response: The department agrees that this is a correct interpretation as the Federal regulations do not accept FAX as a method of delivery for original notifications. Under

NESHAPS, commercial delivery or hand delivery is an acceptable alternative to mail.

Comment: Concerning §295.61(g), many comments were received on the problems associated with notifying for O&M work which involves removal of asbestos. Some commenters wanted the section deleted while others wanted some change in the reporting timeliness or period.

Response: The requirement for notification cannot be deleted. By Texas law and NESHAPS, notification is required. One of two ways of notification is required for O&M depending on the size of the job. If the job is at least 160 square feet or 260 linear feet then a single notification is required 10 days prior to the start date. If the job is less than these amounts, then it and all other jobs for that month which are each less than these amounts, must be put on a consolidated notification which is due to the department 10 days before the beginning of the month.

Comment: Concerning §295.61(h), a commenter felt that since many O&M jobs could not be predicted in enough time, that a 10-day notification could not be met and that O&M notifications should be included under subsection (h) with the emergency notifications.

Response: The department agrees that the concept of emergency for small scale O&M (less than 160/260) include projects that make the area uninhabitable for health reasons.

Comment: Concerning §295.62, a comment was made that records on roofing should not be required unless action level is exceeded.

Response: The department points out that roofing is not covered by our law. If the roofing is regulated ACM, or becomes such, then NESHAPS requirements would apply toward record-keeping.

Comment: Concerning §295.62, a commenter inquired about a time period for records retention.

Response: The department refers the commenter to subsection (c)(1) wherein 30 years is the stated time for records retention.

Comment: Concerning §295.62(c)(1)(G), a comment was made that contracts are not the department's business, that these are private documents.

Response: The department agrees, and this will be reworded to say specifications, not contracts.

Comment: Concerning §295.62(d) and (e), a commenter said that he/she could provide copies of the required documents, but not the originals.

Response: The department will add to subsection (d) that documents be made available to the department for inspection upon request.

Comment: Concerning §295.64, a comment was made that training offers no benefit to roofers.

Response: The department points out that the law does not apply to roofing.

Comment: Concerning §295.64 (a), a comment was received indicating that the United States Environmental Protection Agency (EPA) will change some of the content and requirements of the asbestos training courses promulgated under their Model Accreditation Plan, which constitute the standards of five of the training courses required by these rules.

Response: In order to accommodate changes in course content, such as the impending EPA changes, the department has re-stated the general provisions for asbestos training courses.

Comment: Concerning §295.64(a)(5), several commenters requested that the student-instructor ratio be increased from 10:1 to 15:1.

Response: The department has found that the requested ratio (15:1) is customary and satisfactory, and has agreed to this request.

Comment: Concerning §295.64(c)(1), a commenter pointed out that, whereas the contractor/supervisor training course is an acceptable substitute for asbestos worker training, the contractor/supervisor annual refresher training is not acceptable to maintain worker registration status.

Response: A review of the examples of training substitution among the applications received by the department indicates that the number of substitutions is small but the need continues. Therefore, the department accepts the suggestion and states that it now applies to refresher training, as well.

Comment: Concerning §295.64(i), a commenter recommended that it be clearly stated in the rules that refresher training cannot be accredited for licensure and registration if the appropriate training course was never completed.

Response: The department agrees, and a statement has been added. This would constitute a basis for denial of application.

Comment: Concerning §295.65(d)(6), a comment was made that standardized exams could be compromised under the open records act. The last sentence should delete reference to a standardized exam.

Response: The department notes the exam would have standardized questions. However, the open records act does not apply to answers of standardized examinations.

Comment: Concerning §295.65(d)(6), a comment was made that these additional exams do nothing to benefit the public. It was also the opinion of the commenter that EPA has more experience in testing individuals and can therefore administer/provide better exams/questions.

Response: The department points out that the standardized tests are not in addition to the tests already required under the courses as specified by the Model Accreditation Plan. As to which agency is better is a moot point. The EPA Model Accreditation Plan gives the states the opportunity to develop their own examinations or use standardized examinations that were developed for purposes of TSCA Title II. The department finds that, since the state is responsible for approving

the courses, that the state should also be responsible for what goes into the courses, and that includes testing.

Comment: Concerning §295.65(f), a commenter points out the necessity of including the name and address of the training provider on every certificate of training issued therefrom.

Response: The department agrees, and has added this stipulation to requirements for issuance of training certificates.

Comment: Concerning §295.68, a commenter suggested that the department inspectors be required to provide copies of their physical, fit test, and proof of training in order to gain access to the actual abatement work area.

Response: The department disagrees. There is no requirement for the contractor to check on the department inspector's background. It is the department's responsibility for the qualifications, training, health status, personal protection equipment, etc., under the law.

Comment: Concerning §295.70, a commenter suggested that there should not be a set limit on any violation below the maximum allowed by the statute.

Response: The department has chosen to set certain limits or values to certain violations under the arena of administrative penalty. Without some set guidelines, trying to enforce the violations under an administrative procedure would be unfair and open to debate. In addition, penalty schedules are established to comply with the cap set on penalties in the Act. Penalty schedules such as the ones set out herein contribute to accelerated enforcement settlements and enhance enforcement activities.

In addition to those changes made as a result of the public responses received, the department has made a number of minor editorial changes for the purpose of clarification. These are to be found in §§295.32; 295.34-40; 295.42-295.52; 295.54-295.56; 295.58-295.62; 295.64-295.65; and 295.69.

The following are commenters who commented on the rules: Ashley Environmental Svc., Houston, TX; Bloxom & Associates, Houston, TX; Board of Certified Safety Professionals, Savoy, IL; Boatright, Mody K. P.E., Corpus Christi, TX; Clean Environments, Inc., San Antonio, TX; Delhi Gas Pipeline Corp., Dallas, TX; Eanes ISD, Austin, TX; El Paso ISD, El Paso, TX; Environmental Technologies, Inc., Magnolia, TX; Enviroseas, Inc., Abilene, TX; Envi test, Inc., Houston, TX; Fort Worth ISD, Fort Worth, TX; Godwin & Carlton, Dallas, TX; Goodwin Engineering, Inc., Clint, TX; Gulf Coast Section, Amer. Industrial, Hygiene Assoc., Houston, TX; In-carnate Word College, San Antonio, TX; Law Engineering, Inc., Dallas, TX; Lewis Environmental Services, Gladewater, TX; Loflin Environmental Services, Inc., Houston, TX; Lower Colorado River Authority, Austin, TX; McElroy & Sullivan, Attorneys, Austin, TX; Merico Abatement Contractors, Inc., Longview, TX; NATEC, Houston, TX; National Roofing Contractors Assoc., Rosemont, IL; Niemann & Niemann, L.L.P., Austin, TX; North Texas Section, Amer. Indust. Hygiene Assoc., Dallas, TX; Occupational Environmental Control,

Inc., Dallas, TX; Occupational Safety Training Inst., Houston, TX; Ramzel-Texas Services, Austin, TX; Resilient Floor Covering Inst., Rockville, MD; Southern Methodist University, Dallas, TX; Specialized Abatement Systems, Inc., Houston, TX; Texas A&M University at Galveston, Galveston, TX; Texas Department of Insurance, Austin, TX; Texas Tech University, Lubbock, TX; Thuro-Care Consulting, Harlingen, TX; Tri-Pro Services, Inc., Kaufman, TX; TU Services (Texas Utilities), Dallas, TX; TX Building Owner & Managers, Assoc., Inc., Austin, TX (with seven letters of confirmation); University of Texas at Arlington, Arlington, TX; University of Texas at Galveston, Galveston, TX; University of Texas Health Ctr., Tyler, TX; University of Texas Health Science, Center, San Antonio, TX; Victoria ISD, Victoria, TX.

• 25 TAC §295.21

The amendment is adopted under Texas Civil Statutes, Article 4477-3a, §11, which provide the Texas Board of Health with the authority to adopt rules covering asbestos removal or encapsulation, including licensing and regulation; Senate Bill 1341 and House Bill 79, 72nd Legislature, 1991, which amended Article 4477-3a; and the Health and Safety Code, §12.001 which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§295.21. Fees for Management Plans.

(a) General provisions.

(1) (No change.)

(2) Scope. This section covers fees for the non-mandatory review and approval of asbestos management plans, as submitted.

(3) Statutory authority. The Texas Board of Health (board) is granted authority under the Health and Safety Code, §12.031 and §12.032 to charge fees to persons who receive public health services from the Texas Department of Health (department), which includes environmental and consumer health services.

(4) (No change.)

(5) Review. The board shall review and approve all changes of the amounts of fees assessed, or any additions to fees for the services set forth in 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)-(3) (No change.)

(c) Fees for plans review.

(1) The department may collect a reasonable fee for the review and approval of plans affecting the control and abatement of asbestos or asbestos containing materials (ACM). The fee determined for the review

process for each asbestos plan, or partial plan, submitted under the provisions of this subsection shall be the greater of \$75 or 1/10 of a cent (\$.001) per square foot of the total building area under review.

(2) Parts of an entire asbestos plan may be submitted separately for facilities in separate locations. Each partial submission shall be subject to the fees set forth in paragraph (1) of this subsection.

(3) The department may refuse or return asbestos plans that are found to be incomplete or not correctly prepared. The department may, at its election, hold documents pending notification to the sender of the required corrections or completions by mail. If the department has not received the required corrections or completions, or any necessary explanation thereof, within 30 days of the date of mailing the letter of requirements to the sender, the department may return or discard the plans or specifications.

(4) The department shall complete the review process within 90 days of the date of acceptance by the department of an asbestos plan in an essentially complete and correct form.

(5) The department shall refuse to accept or review plans submitted without proper provisions for payment. Fees for plans accepted by the department for the review process are not refundable.

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

Issued in Austin, Texas, on September 29, 1992.

TRD-9213205

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: October 20, 1992

Proposal publication date: May 1, 1992

For further information, please call: (512) 834-6600

◆ ◆ ◆
Texas Asbestos Health Protection

- 25 TAC §§295.31-295.40,
295.42-295.52, 295.54-295.56,
295.58-295.62, 295.64, 295.65,
295.67-295.70

The new sections are adopted under Texas Civil Statutes, Article 4477-3a, §11, which provide the Texas Board of Health with the authority to adopt rules covering asbestos removal or encapsulation, including licensing and regulation; Senate Bill 1341 and House Bill 79, 72nd Legislature, 1991, which amended Article 4477-3a; and the Health and Safety Code, §12.001, which provides the

board with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§295.31. General Provisions.

(a) **Problem.** In more than 25 years of research into the relationship between airborne asbestos fibers and the diseases such exposure can cause, the bodily mechanism by which inhaled asbestos fibers initiate cancer or asbestosis is still not understood, no effective treatment has been found, and the only means of preventing asbestos disease depends entirely on limiting the exposure of the individual to asbestos fibers.

(b) **Purpose.** The purpose of these sections is to establish the means of control and minimization of public exposure to airborne asbestos fibers, a known carcinogen and dangerous health hazard, by regulating asbestos disturbance activities in buildings that afford public access or occupancy.

(c) **Scope.** These sections apply to all buildings which are subject to public occupancy or to which the general public has access, and to all individuals or organizations removing asbestos, encapsulating asbestos, or enclosing asbestos within public buildings for any purpose, including repair, renovation, dismantling, demolition, installations or maintenance operations, or any other activity that may involve the disturbance or removal of asbestos containing material (ACM). Also included are the qualifications for accreditation of these individuals and organizations, and for compliance with these sections and all applicable standards of the United States Environmental Protection Agency and the United States Occupational Safety and Health Administration.

(d) **Exclusions.** Industrial or manufacturing facilities, those to which access is controlled and limited principally to employees therein because of processes or functions dangerous to human health and safety are excluded from coverage of these sections. Private residences, federal buildings, military installations, and apartment buildings with no more than four dwelling units are also excluded.

(e) **Severability.** Should any section in these sections be found to be void for any reason, such finding shall not affect all other sections.

(f) **Implementation.** Upon adoption, the department will receive applications and begin issuing licenses. As of January 1, 1993, the department shall enforce the licensing and registration requirements of these sections. Existing licenses shall be valid until they expire, at which time they must be renewed under these sections. Workers registered before January 1, 1993,

must renew their registration in 1993 in the month shown on their original registration certificate, and annually thereafter.

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

Asbestos-containing material (ACM)—Materials or products that contain more than 1.0% of any kind or combination of mineral asbestos, as determined by Environmental Protection Agency (EPA) recommended methods.

Act—The Texas Asbestos Health Protection Act, Texas Civil Statutes, Article 4477-3a, as amended.

Air monitoring—The collection of airborne samples for analysis of asbestos fibers.

AHERA—Asbestos Hazard Emergency Response Act of 1986, Public Law 99-519. The act amends the Federal Toxic Substances Control Act, 15 United States Code, §2641, et seq, by requiring an inspection of all school buildings (Grades K-12), all school administrations to develop plans for controlling asbestos in or removing asbestos from school buildings, and providing penalties for non-compliance.

AIHA—The American Industrial Hygiene Association.

Asbestos—The asbestiform varieties of chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite and all materials containing one percent or more of any of those substances.

Asbestos abatement—The removal, the encapsulation or the enclosure of asbestos for the purpose of, that has the effect of, reducing or eliminating airborne concentrations of asbestos fibers or amounts of ACM.

Asbestos abatement activity—Asbestos abatement or any on-site preparations or clean-up related to the abatement.

Asbestos abatement contractor—A person who undertakes to perform asbestos removal, enclosure, or encapsulation for others under contract or other agreement.

Asbestos abatement supervisor—An individual who is in the direct and responsible charge of the personnel, practices, and procedures of an asbestos abatement operation or project.

Asbestos exposure—Airborne asbestos fiber concentrations resulting from disturbance or deterioration of asbestos or asbestos containing material (ACM).

Asbestos project design—Asbestos abatement project design includes the inspection of public buildings for asbestos containing material (ACM), the evaluation and selection of appropriate asbestos abatement methods, project layout, the preparation of plans, specifications and contract documents, and the review of environmental controls, abatement procedures and personal protection equipment employed during the project.

Asbestos-related activity—The removal, encapsulation, or enclosure of asbestos, including preparations or final clearance, the performance of asbestos surveys, the development of management plans and response actions, asbestos project design, the collection or analysis of asbestos samples, monitoring for airborne asbestos, or any other activity required to be licensed under the Texas Asbestos Health Protection Act.

Asbestos removal—Any action that dislodges, strips, or otherwise takes away asbestos containing material (ACM).

Asbestos survey—A comprehensive inspection of a building or facility to determine the location, quantity, and condition of asbestos containing material (ACM) therein.

Board—The Texas Board of Health.

Building owner—The owner of record of any public building or the agent for operations management thereof, under written contract or similar agreement.

CFR—The Code of Federal Regulations.

Commissioner—The Texas Commissioner of Health.

Competent person—The individual designated as the competent person as required by the United States Occupational and Health Administration regulations in 29 Code of Federal Regulation, §1926.58.

Demolition—Operations in which load-bearing structural members of a building are wrecked or removed.

Department—The Texas Department of Health.

Encapsulation—A method of control of asbestos fibers in which the surface of asbestos containing material (ACM) is penetrated by or covered with a liquid coating prepared for that purpose.

Enclosure—The construction of an airtight, impermeable, permanent barrier surrounding asbestos to prevent the release of asbestos fibers into the air.

EPA—The United States Environmental Protection Agency.

Friable material—Materials that when dry can be crumbled, pulverized, or reduced to powder by hand pressure.

HEPA—A high-efficiency particulate air filter, capable of trapping and retaining 99.97% of mono-dispersed airborne particles 0.3 micron or larger in diameter.

HVAC—Heating, ventilation, and air conditioning systems.

Independent third-party monitor—A person retained to collect air samples to be analyzed by and for the owner of the building or facility being abated. The person must not be employed by the contractor to analyze any area samples collected during the abatement projects.

Individual—A single person acting of and for his or herself.

Licensee—A person who meets all qualifications and has been issued a license

by the Texas Department of Health in accordance with these sections.

Management plan—A written plan describing appropriate actions for surveillance and management of asbestos containing material (ACM).

Model accreditation plan—A United States Environmental Protection Agency plan which provides standards for initial training, examinations, refresher training courses, applicant qualifications, decertification, and reciprocity, as described in Title 40, Code of Federal Regulation, Part 763, Subpart E, Appendix C.

NESHAP—The United States Environmental Protection Agency National Emissions Standards for Hazardous Air Pollutants, as described in Title 40, Code of Federal Regulation, Part 61.

NIOSH—The National Institute of Occupational Safety and Health.

NVLAP—The National Voluntary Laboratory Accreditation Program.

Operations and maintenance (O&M)—Operations and maintenance activities are restricted to small-scale, short-duration work practices and engineering controls for tasks that result in the disturbance, dislodgement, or removal of asbestos in the course of performing repairs, maintenance, renovation, installation, replacement, or cleanup operations (Title 29, Code of Federal Regulation, §1926.58, Appendix G, titled "Work Practices and Engineering Controls for Small-Scale, Short-Duration Asbestos Renovation and Maintenance Activities").

OSHA—The Occupational Safety and Health Administration of the United States Department of Labor.

PAT—Proficiency Analytical Testing.

PCM—Phase-contrast microscopy, a method of analysis for overall airborne fiber counts using an optical microscope.

PLM—Polarized-light microscopy, a method of analysis for detection of the presence and type of asbestos.

Person—A person is defined in the law as:

- (A) an individual;
- (B) an organization such as a corporation, partnership, sole proprietorship, governmental subdivision, or agency;
- (C) any other legal entity recognized by law as the subject of rights and duties.

Public building—A building used or to be used for purposes that provide for public access or occupancy. The term includes any building during a period of vacancy, including during preparations prior to actual demolition. The term does not include:

(A) an industrial facility to which access is limited principally to employees of the facility because of processes or functions that are hazardous to human safety or health;

(B) a federal building or installation;

(C) a private residence;

(D) an apartment building with no more than four dwelling units; or

(E) a manufacturing facility or building that is limited to workers and invited guests under controlled conditions.

Regulated area—The demarcated area in which asbestos abatement activity takes place, and in which the possibility of exceeding the permissible exposure limits (PEL) for concentrations of airborne asbestos exists.

Renovation—Additions to or alterations of the interior surfaces of a public building for purposes of restoration by removal, repairing, and rebuilding.

TEM—Transmission Electron Microscopy.

Transportation of asbestos containing material (ACM)—Moving asbestos materials from one site to another.

Working days—Monday-Friday including holidays which fall on those days.

§295.33. Adoption By Reference of Federal Standards.

(a) Adoption by reference. The Texas Department of Health (department) adopts by reference the following federal requirements in the Code of Federal Regulations (CFR), as amended:

(1) 40 CFR Part 61, Subpart M, titled, "National Emissions Standards for Hazardous Air Pollutants (NESHAP)";

(2) 40 CFR Part 763, Subpart G, §§763.120-763.126, titled, "Asbestos Abatement Projects: Worker Protection Rule";

(3) 40 CFR Part 763, Subpart E, §§763.80-763.99, titled, "Asbestos-Containing Materials in Schools" (AHERA rules);

(4) 40 CFR Part 763, Subpart E, Appendix C, titled, "Model Accreditation Plan";

(5) 40 CFR Part 763, Subpart E, Appendix B, titled, "Work Practices and Engineering Controls for Small-Scale, Short-Duration Operations Maintenance and Repair (O&M) Activities Involving ACM";

(6) 40 CFR Part 763, Subpart E, Appendix D, titled, "Transport and Disposal of Asbestos Waste";

(7) 40 CFR Part 763, Subpart F, Appendix A, Section 1, titled, "Polarized Light Microscopy";

(8) 29 CFR, §1926.58, titled, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite";

(9) 29 CFR §1926.58, Appendix G, titled, "Work Practices and Engineering Controls for Small-Scale, Short-Duration Asbestos Renovation and Maintenance Activities"; and

(10) 29 CFR §1910.134, titled, "Occupational Health Standards for A Respiratory Protection Program".

(b) Availability. Copies of the documents in subsection (a) of this section are available for review at any licensed training provider or the Texas Department of Health, Division of Occupational Health, Austin, and may be reviewed during normal business hours.

(c) State versus federal standards. In certain instances the state requirements in the Texas Health Asbestos Protection Act and/or these sections will be more stringent than the Federal standards listed in subsection (a) of this section. In such cases the state requirements shall prevail.

§295.34. Asbestos Management in Public Buildings.

(a) General. Those whose jobs relate to the physical aspects of a building including carpenters, electricians, plumbers, telephone and maintenance personnel, and those who occupy such buildings, are at great risk of asbestos-related disease unless proper training, personal protection, and/or engineering controls are rigorously employed. Prudent management of asbestos in buildings is vitally necessary for their protection.

(b) Statement of responsibility. The building owner retains the responsibility for the presence, the condition, the disturbance, and the disposal of any asbestos encountered in the construction, operations, maintenance, or furnishing of that building, including:

(1) the responsibility for the periods of building vacancy, and for all preparations prior to actual demolition;

(2) the obligation to inform those who enter the building for purposes of construction, maintenance, installation, repairs, etc., of the presence and location of asbestos that could be disturbed by those activities, and to arrange for proper handling of any asbestos that would be disturbed or dislodged by such activity; and

(3) management by others, including lessees or agents, which does not diminish the responsibility of the building owner for the asbestos or any activity affecting asbestos in that building.

(c) Conditions requiring a mandatory asbestos survey. Prior to any renovation or dismantling within a public building, including preparations for partial or complete demolition, as required by 40 Code of Federal Regulations, §61.145 (EPA), building owners must have the building surveyed by a licensed asbestos inspector. The work area and all immediately surrounding areas must be surveyed prior to partial renovations or demolition.

(d) Asbestos control and abatement. A building owner has the following options for managing the asbestos found in his buildings.

(1) Building owners may hire a licensed asbestos abatement contractor to conduct asbestos abatement.

(2) Building owners may hire or retain an asbestos abatement contractor or asbestos O&M contractor to conduct small-scale, short-duration work activities or cleanup affecting asbestos.

(3) Building owners may conduct asbestos O&M activities for their own account if they obtain an Asbestos Operations and Maintenance Contractor (Restricted) license, according to §295.43 of this title (relating to Licensure: Asbestos Operations and Maintenance Contractor (Restricted)).

(4) Building owners may conduct asbestos abatement projects, including asbestos O&M activities, if they obtain an asbestos abatement contractor's license, as set forth in §295.45 of this title (relating to Licensure: Asbestos Abatement Contractor).

(e) Prohibition. The owner of a public building who contracts with or otherwise permits any individual or organization without appropriate valid license, registration, or approved exemption to perform any asbestos-related activity in that building is subject to administrative or civil penalty under the Texas Asbestos Health Protection Act (Act), not to exceed \$10,000 a day for each violation.

(f) Mandatory notification. A notification of intent to abate asbestos must be submitted to the Texas Department of Health (department) by the building owner or his designated agent at least 10 working days prior to the start date of the abatement project as described in §295.61 of this title (relating to Operations: Notifications).

(g) Mandatory abatement project design. Abatement projects which have a combined amount of asbestos exceeding 160 square feet of surface area, or 260

linear feet of pipe length or one cubic yard of material to be removed from a building shall require that the project be designed by a licensed asbestos consultant.

(h) Requirement for management plan. Where asbestos is found in a public building, as a result of an inspection performed under subsection (i) of this section, a written management plan must be developed by a licensed asbestos management planner that identifies, locates, and assesses the condition of that asbestos. The plan shall include a schedule to periodically reinspect for changes in the condition of the materials containing asbestos and for conducting operations and maintenance activities within the building so as to minimize the potential for release of asbestos fibers. Copies of the plan shall be submitted to the department and shall be on file with the owner, management, and any employee in charge of building operations and maintenance.

(i) Requirement for asbestos in poor condition. If, in the opinion of the department following a site inspection of a public building, there appears to be a danger or potential danger from asbestos materials in poor condition to the occupants of a building, workers in a building, or the general public, the department shall require the building owner or authorized representative to complete an immediate survey for asbestos by a licensed asbestos inspector and to send a copy of the management plan to the department.

§295.35. Licensing and Registration: Conditions.

(a) Licensing requirement. A person must be appropriately licensed or registered in compliance with these sections to engage in asbestos abatement or any asbestos-related activity within the scope of these sections. Individuals not eligible for employment in the United States will not be licensed or registered.

(b) Age requirement. Each individual desiring to be licensed or registered under these sections must be 18 years old prior to submitting an application for such purpose.

(c) Term and expiration. The term of all licenses, including the registration of asbestos workers, is one year and expires on the anniversary of the effective date, unless renewed.

(d) Provision for change. The terms and conditions of all licenses or registration shall be subject at any time to revision, amendment, or modification by rules or orders issued by the Texas Department of Health.

(e) Condition of issuance. No license or worker registration issued under

these sections may be sold, assigned, or transferred.

(f) Responsibilities of licensees. Licensees who become aware of violations of these sections must report these violations to the department if the violations are not immediately corrected by the responsible party.

§295.36. Licensing and Registration: Exemptions; Emergency.

(a) Exemption requirements. Those who remove resilient floor coverings materials in public buildings are exempt from the licensing and registration requirements of these sections, provided that:

(1) floor materials and their adhesive (mastic) are analyzed for asbestos content prior to removal;

(2) all those engaged in removal of resilient floor coverings shall have received training in an eight-hour course which covers the elements described in the document titled, "Recommended Work Practices for the Removal of Resilient Floor Coverings", published by the Resilient Floor Covering Institute;

(3) employees of schools (kindergarten through 12th grade) who elect to use this exempt method must first complete the 16-hour custodial training, as required by federal regulations adopted under authority of the Asbestos Hazard Emergency Response Act of 1986 (AHERA). Possession of a valid worker registration or supervisor license eliminates the individual's need for the 16-hour training; and

(4) the actual removal of floor coverings and adhesive under this exemption is limited to the exempted methods of removal and must be conducted according to the work practices published for distribution by the Resilient Floor Covering Institute, or as directed by the commissioner of health.

(b) Notification required. The Texas Department of Health shall be notified by mail at least 10 working days prior to commencing any removal of floor coverings from public buildings permitted under the terms of this exemption, as required in §295.61 of this title (relating to Operations: Notifications).

(c) Limitations of exemption. The asbestos activity permitted by the exemption under the Texas Asbestos Health Protection Act, §15A, (House Bill 79), relating to the removal of resilient floor covering, does not apply to any other asbestos-related activity, nor does the training or experience gained from such practices qualify for any other asbestos-related activity. The exemption is strictly limited to flooring materials maintained in a non-friable state.

(d) Failure to comply. Persons who intentionally fail to comply with subsection (a)(1)-(4) of this section are subject to a civil penalty of not more than \$5,000. Persons who fail to comply with notification requirements, or other applicable sections of the Act or rules, are subject to administrative, civil, or criminal penalties as provided by the Act.

(e) Abatement emergency. In an abatement emergency affecting public health or safety that results from a sudden, unexpected event that is not a planned renovation or demolition the department, on notification, may waive the requirement for a license. Call (512) 834-6600 for consultation about emergencies.

§295.37. Licensing and Registration: Conflict of Interests.

(a) Independent third-party monitoring. Third-party area monitoring for airborne concentrations of asbestos fibers during an abatement project shall be done by a person retained to collect samples by and for the owner of the building or facility being abated. Such persons must not be employed by the contractor hired to conduct the asbestos abatement project, except that:

(1) this restriction in no way applies to personal samples taken to evaluate worker exposure, as required by OSHA regulations; and

(2) those who are licensed to perform asbestos abatement for their own account in their buildings shall employ a third-party monitor for the purpose of obtaining final clearance.

(b) Licensee conflict of interest. Any person licensed according to these sections to perform asbestos surveys, write management plans, or design asbestos abatement projects under a contract or other hire agreement shall not also engage in the removal of asbestos from those buildings.

§295.38. Licensing and Registration: Applications and Renewals.

(a) General requirements. Applications for a license or worker registration under these sections must be made on forms provided by the Texas Department of Health (department), shall be signed by the applicant, and must be accompanied by a check or money order for the amount of the license or renewal fee. Only applications which are complete shall be considered by the department; the burden of proof for all requirements for licensure rests with the applicant.

(b) Inquiries. Potential applicants who wish to discuss or obtain information concerning qualification requirements may do so by calling the department's Asbestos Programs Branch at (512) 834-6600.

(c) Denials. The department may deny an application for licensing, registration, or renewal to any applicant who fails to meet the standards established by these sections, including, but not limited to:

(1) past history of substantial violations of these sections by the applicant and/or the applicant's employees or agents, as demonstrated by the department's issuance of administrative orders, court judgments, or similar actions by other federal or state agencies;

(2) evidence that the applicant cannot be legally employed in the United States;

(3) fraud or deception in obtaining, attempting to obtain, or renewing a license or registration;

(4) failure to submit the required information and/or documentation within 90 days of a written request by the department;

(5) failure to submit the required fee;

(6) failure at any time to comply with the provisions of these sections;

(7) failure to maintain or to permit inspection of the records required of all licensees;

(8) employing or permitting an unauthorized person or individual to work on any asbestos project or operation;

(9) engaging or attempting to engage in an asbestos-related activity without a valid license;

(10) failure to comply with any rule adopted by the board or order issued by the department;

(11) failure to provide notice of an asbestos project or operation as required by these sections;

(12) conviction within the past five years of a felony or a misdemeanor (involving fraudulent activities relating to construction or the building trades in general);

(13) failure of a licensee to complete their responsibilities during an asbestos project or operation due to insufficient financial resources;

(14) failure to protect workers from asbestos exposures in excess of the current Permissible Exposure Limit (PEL);

(15) failure to prevent asbestos contamination of areas adjacent to the abatement area;

(16) failure to decontaminate any part of a facility or its environment, or any persons inadvertently contaminated with asbestos as a result of their actions while exercising their duties under these sections; or

(17) employing or permitting a qualified person to represent the company or firm applying for a license if the person already represents another company that is licensed.

(d) Administrative penalty. In accordance with §295.70 of this title (relating to Compliance: Administrative Penalty) an administrative penalty may be assessed for fraud or deception in obtaining, attempting to obtain, or renewing a license or registration.

(e) Processing applications and renewals.

(1) Time periods. Applications for licensure as asbestos contractors, abatement supervisors, and abatement workers shall be processed in accordance with the following time periods.

(A) The first period is a time from the receipt of a written application to the date of issuance of a written notice approving the application or outlining the reasons why the application is unacceptable. The time period for each application type is 90 days for the initial contractor or supervisor license; 30 days from the renewal of contractor or supervisor license; and 30 days for the abatement worker certificate.

(B) The second period is a time from receipt of the last item necessary to complete the application to the date of issuance of written notice approving or denying approval of the application. The time period for each application type is 60 days for the initial contractor or supervisor license; 15 days for renewal of the contractor or supervisor license; and 30 days for the abatement worker certification.

(2) Reimbursement of fees. Initial application or renewal fees will be refunded only when the department does not process a completed application in the time period specified, or when fee amounts are incorrect or submitted for the wrong purpose. Otherwise, fees for applications and renewals are not eligible for refund.

(A) Denial of an application, failure to qualify, or abandonment of the application do not constitute grounds for reimbursement. Abandonment is defined as failure to respond to a written request of the department by the applicant for a period of 90 days.

(B) A denial of an application or a request for renewal may be appealed by the applicant. The details for requesting a hearing are included in each letter of denial.

(3) Appeal. If the request for full reimbursement authorized by this section is denied, the applicant may then ap-

peal to the Commissioner of Health for a resolution of the dispute. The applicant shall give written notice to the commissioner that he request full reimbursement of all filing fees paid because his application was not processed within the adopted time period. The program administrator shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner will determine the final action and provide written notification of his decision to the applicant and the program administrator.

(4) Contested case hearing. If at any time during the processing of the permit 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 Hearings) is applicable.

(f) Renewal notices. At least 30 days before a license expires, the department shall send to the licensee, by first-class mail to the last known address of the licensee, a renewal notice that states:

(1) the date on which the current license or registration expires;

(2) the date by which the renewal application must be received by the department for the renewal to be issued and mailed before the license or registration expires; and

(3) the amount of the renewal fee.

(g) Renewal requirements. No sooner than 60 days before the license or registration expires, it may be renewed for an additional one-year term providing that the licensee or worker:

(1) is qualified to be licensed or registered;

(2) pays to the department the proper amount of the non-refundable renewal fee;

(3) submits to the department a renewal application on the prescribed form;

(4) completes successfully the requirements for renewal; and

(5) has complied with all final orders resulting from any violations of these sections.

(h) Prohibition. It is prohibited to practice with lapsed licenses and registrations regardless of when renewal application is received. Also, licenses or registrations which have lapsed for a period exceeding 180 days cannot otherwise be renewed. A new application subject to current qualifications is required.

(i) Replacements. A licensee or registrant may request a replacement certifi-

cate by completion of an appropriate application. The fee for reissuance is \$20.

(j) Retention of control. The department may, at any time after the filing of any application and before the expiration of any license or registration, require:

(1) additional written information and assurances; and

(2) cooperation with any inspections initiated by the department, or the production of any documentary or other evidence that the department considers necessary to determine whether the license or registration should be granted, delayed, denied, modified, suspended or revoked.

§295.39 Licensing and Registration: Out-of-State Applicants.

(a) Terms of reciprocity. Individuals or organizations may enter the state for purposes of asbestos abatement or other asbestos-related activity under the Act provided that they are licensed according to the terms of these sections prior to soliciting business or commencing such activities.

(b) Applicant status. Contractors based in other states seeking an initial or renewal license under these sections must comply with all licensing requirements which would be imposed on a Texas contractor seeking licensure in the out-of-state contractor's base state.

(c) Acceptance of qualifying documents. Out-of-state education, experience, training, and physical examinations can be accepted for the purpose of qualifying for Texas licenses provided that they are valid and are verifiable by the department. The burden of proof in such matters is the responsibility of the applicant; the department must reject unverifiable documentation.

(d) Compulsory training. All out-of-state licensees and registrants must complete a minimum of three hours training by a licensed training provider on Texas law and regulations affecting asbestos prior to applying for licenses or commencement of any such activity. Licensee organizations must have at least one officer complete this training. This requirement shall be enforced as of January 1, 1993.

(e) Required documents. To do business in Texas an out-of-state applicant corporation or other business entity applicant must:

(1) submit a letter or certificate from the Texas Secretary of State authorizing the conduct of business in this state;

(2) submit a sales tax account identification number obtained from the Texas Comptroller of Public Accounts;

(3) submit a certificate of insurance for liability coverage if the applicant is

an asbestos abatement contractor, asbestos consultant, asbestos inspector, asbestos laboratory, or asbestos transporter performing work for hire as required by §295.40 of this title (relating to Licensing and Registration: Insurance Requirements); and

(4) provide workers' compensation insurance issued by a company authorized to do business in Texas and written on the Texas form, or evidence of self insurance, when such insurance is required by contract specification or other agreement.

§295.40. Licensing and Registration: Insurance Requirements. Persons required to have insurance must obtain policies for required coverage as specified in these sections, and in the amounts specified, which meet the following requirements.

(1) Applicants for licenses or renewal of licenses must provide to the department the certificate of insurance required. The policy must be currently in force and must be written by:

(A) an insurance company authorized to do business in Texas;

(B) an eligible Texas surplus lines insurer as defined in the Texas Insurance Code, Article 1. 14-2;

(C) a Texas registered risk retention group; or

(D) a Texas registered purchasing group.

(2) The certificate of insurance must be complete, including all applicable coverage forms and endorsements, and must name the Texas Department of Health, Division of Occupational Health, as a certificate holder with a 10-day notice of cancellation.

(3) In the event of policy cancellation by either the licensee or the insurance company, the licensee shall notify the department not later than 10 days prior to the cancellation effective date.

(4) In the event of policy cancellation or expiration, the policy shall promptly be replaced or renewed without any lapse in coverage. A certificate of the renewal policy must be provided to the department upon receipt by the licensee.

§295.42. Registration: Asbestos Abatement Workers.

(a) Registration requirement. Individuals must be registered as asbestos abatement workers in compliance with these sections to perform asbestos abatement work in a public building, including, but not

limited to, transporting, loading or unloading asbestos, or performing any maintenance, repair, installation, renovation or cleaning that dislodges, breaks, cuts, abrades, or impinges on asbestos material. Registrations are valid for a period of one year from the effective date and are renewable.

(b) Fee. The fee for an initial application for an annual renewal of registration of an asbestos abatement worker shall be \$30.

(c) Applications and renewals. Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-state applicants must comply with §295.39 (a) and (d) of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) Annual renewal. Asbestos workers who were registered on or before the effective date of this rule, may apply for annual renewal of their registration by completing annual worker refresher training and medical re-examination. The renewal must be issued no later than the month shown on the original certificate during the year 1993 and annually thereafter.

(e) Qualifications. Applicants for registration as asbestos abatement workers shall submit evidence of qualifications with their applications which shall include:

(1) a certificate of training indicating successful completion within the past 12 months of the approved training course for abatement workers or the annual refresher training course, as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses). Evidence of successful completion of the contractor/supervisor course may be substituted for the initial worker course;

(2) an acceptable written opinion of a physical examination of the applicant within the past 12 months that was performed by a physician in accordance with Occupational Safety and Health Administration of the United States Department of Labor (OSHA) regulations in 29 CFR, §1926.58(m), or Environmental Protection Agency (EPA) regulations in 40 CFR, Part 763, Subpart G(m), relating to medical surveillance. This opinion must be signed by the doctor and include certification of the following elements:

(A) completion and review of the applicants standardized medical questionnaire and work history with special emphasis directed to the pulmonary, cardiovascular, and gastrointestinal systems per Appendix D in §1926.58;

(B) if applicant is employed, the employer provided, and review was made of, the description of the employee's

duties as they relate to asbestos exposure, the anticipated exposure level, the personal protective and respiratory equipment to be utilized by the employee, and information from previous medical examinations of the affected employee that is not otherwise available to the physician;

(C) a physical examination with emphasis upon the pulmonary, cardiovascular, and gastrointestinal systems;

(D) the pulmonary function tests of forced vital capacity (FVC) and forced expiratory volume at one second (FEV 1) in accordance with NIOSH and ATS standards;

(E) a chest roentgenogram, posterior-anterior, 14 by 17 inches, or current film on file with interpretation in accordance with 29 CFR 1926.58 Appendix E. (Note: According to 29 CFR 1926.58(M)(2)(ii)(C), it is up to the discretion of the physician whether or not a chest X-ray is required.); and

(F) the employee was informed by the physician of the results of the exam and of any medical conditions that may result from asbestos exposure, including the increased risk of lung cancer attributable to the combined effect of smoking and asbestos exposure;

(3) a copy of the wallet-size photo-identification card from the training course, as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). If training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable. Persons submitting out-of-state training certificates with their applications may obtain the necessary photo-identification when attending the mandatory course on Texas asbestos rules, as required; and

(4) a one inch by one inch photograph of the face.

(e) Responsibilities. A registered asbestos abatement worker shall:

(1) comply with standards of operation, including EPA and OSHA regulations, adopted by reference in §295.33 of this title (relating to Adoption by Reference of Federal Standards);

(2) comply with additional work practices, as described in §295.60 of this title (relating to Operations: Abatement Practices and Procedures);

(3) comply with standards and practices for operations and maintenance activities, as described in §295.59 of this

title (relating to Operations: Operations and Maintenance (O&M) Requirements); and

(4) cooperate with department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Compliance: Inspections and Investigations).

(f) Prohibitions. The following specific prohibitions apply to registered asbestos abatement workers.

(1) Asbestos abatement workers are prohibited from performing asbestos abatement or O&M activities affecting asbestos except under the direct supervision of a qualified licensed supervisor.

(2) Asbestos abatement workers are prohibited from engaging in any asbestos-related activity as a supervisor or contractor.

§295.43. Licensure: Asbestos Operations & Maintenance Contractor (Restricted).

(a) Licensing requirement. Persons must be licensed as asbestos abatement contractors or as asbestos operations & maintenance (O&M) contractors (restricted) to conduct building O&M in the presence of asbestos within any public building. Building owners that would have their own employees perform such activities for their buildings shall be licensed according to this section.

(b) Restrictions.

(1) O&M activities are restricted to small-scale, short-duration work practices and engineering controls for tasks that result in the disturbance, dislodgement, or removal of asbestos in the course of performing repairs, maintenance, renovation, installation, replacement, or cleanup operations, as adopted in §295.33(a) of this title (relating to Adoption of Standards).

(2) Whenever asbestos abatement is the primary or principal purpose of any asbestos activity in a public building it must be performed by an asbestos abatement contractor licensed under these sections.

(3) Those who solicit or conduct asbestos operations and maintenance activities within a public building under contract or other hire agreement must be licensed as asbestos abatement contractors or asbestos O&M contractors.

(4) Employees who perform asbestos O&M activities for asbestos abatement contractors or asbestos O&M contractors must be registered as asbestos abatement workers, and under the supervision of employees who are trained and licensed as asbestos O&M supervisors or asbestos abatement supervisors.

(5) EPA regulatory requirements for small-scale, short duration activities affecting asbestos are explained in detail in 40 CFR, Part 763E, Appendix B, as amended. The same regulatory requirements of OSHA for these activities are explained in 29 CFR, §1926.58, Appendix G. The restricted asbestos activities of licensed O&M contractors, O&M supervisors, and asbestos workers shall be confined to the work practices and procedures therein.

(c) Fee. The fee for an initial application or annual renewal shall be \$120. Licenses are valid for a period of one year, and shall be renewable, as prescribed in §295.38 of this title (relating to Applications and Renewals).

(d) Applications and renewals. These are subject to the provisions of §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(e) Qualifications. Applicants for licensing as asbestos operations and maintenance contractors shall submit, as applicable:

(1) a certificate of training from a training provider approved by or acceptable to the department, indicating successful completion within the past 12 months of the approved training course for asbestos abatement contractors and supervisors or the continuing annual refresher training, as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses). An applicant organization shall designate at least one corporate officer, general partner, or proprietor, according to the kind of organization, for the purpose of complying with this training requirement;

(2) a certificate of good standing, issued by the State Comptroller's office, stating that all franchise taxes due from the applicant have been paid;

(3) a State of Texas sales tax account number for the applicant organization;

(4) workers compensation insurance issued by a company authorized and licensed to issue workers compensation insurance in this state and written in the state on the Texas form or evidence of self-insurance, if workers compensation is required by the specifications or owner;

(5) a written respiratory protection plan to be maintained and adhered to during periods of abatement activity;

(6) a description of the protective clothing and respirators which will be used;

(7) a description of the site decontamination procedures;

(8) a description of the procedures for handling waste containing asbestos;

(9) a description of the removal and encapsulation methods;

(10) a description of the air-monitoring procedures;

(11) a description of final cleanup procedures;

(12) a description of the provisions for record-keeping;

(13) a list of operations & maintenance projects completed in the past year;

(14) a copy of all disposal manifests for projects completed in the past year;

(15) a list of inspections performed by other agencies; and

(16) copies of all citations issued.

(f) Responsibilities. O&M contractors who obtain restricted licenses shall be responsible for:

(1) complying with standards of operation, as described in §295.58 of this title (relating to Operations: General Requirements) and §295.59 of this title relating to Operations: Operations and Maintenance Requirements);

(2) complying with federal standards of operation, including EPA and OSHA regulations, which are adopted by reference, as follows:

(A) OSHA regulations in 29 CFR, §1926.58, Appendix G, titled "Work Practices and Engineering Controls for Small-Scale, Short-Duration Asbestos Renovation and Maintenance Activities", or

(B) EPA regulations in 40 CFR, Part 763, Subpart E, Appendix B, titled "Work Practices and Engineering Controls for Small-Scale, Short-Duration Operations, Maintenance and Repair (O&M) Activities Involving ACM";

(3) employment of at least one licensed operations and maintenance (O&M) supervisor (restricted) to supervise or perform operations or maintenance activities. An individual licensed as an asbestos abatement supervisor may be substituted for the O&M supervisor. Employees who are registered asbestos abatement workers shall perform O&M activities only under the direct supervision of either category of supervisors named in this section;

(4) complying with recordkeeping requirements, both the central office and work site locations, as described in §295.62 of this title (relating to Operations: Recordkeeping);

(5) complying with the requirement to notify the department about impending abatement projects, changes requiring re-notification, and emergency notification, as described in §295.61 of this title (relating to Operations: Notification);

(6) complying with the requirement to supply and train employees who perform asbestos-related activities in the use of personal protection equipment, and to maintain the current training status of each employee according to §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(7) acquiring and maintaining in good working condition and free of asbestos contamination the necessary equipment for performing O&M activities, as prescribed by the department;

(8) assisting department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Licensing Operations: Inspection and Investigations); and

(9) providing for the proper temporary storage and for the final disposal of waste asbestos, which must be disposed of within 30 days of project completion or when receiving container is full, whichever is sooner.

(g) Prohibitions. Asbestos O & M licensees shall not engage in any activity for which the primary purpose is asbestos abatement.

§295.44. Licensure: Asbestos Operations & Maintenance Supervisor (Restricted).

(a) Licensing. Individuals employed by licensed operations and maintenance (O&M) or abatement contractors to directly supervise personnel and work practices limited to the conduct of O&M activities affecting asbestos containing materials (ACM) shall be licensed as asbestos O&M supervisors (restricted). Such licenses are valid for a period of one year, and shall be renewable.

(b) Fee. The fee for an initial application or annual renewal license for an asbestos O&M supervisor (restricted) shall be \$90.

(c) Applications and renewals. Applications and renewals shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-State applicants must comply with the applicable provision of §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) Qualifications. The applicant for an O&M license shall submit the following:

(1) a certificate of training indicating successful completion within the past 12 months of the approved training course for abatement contractors and project supervisors, or the annual refresher training as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(2) furnish a physician's statement of the required physical examination done within the past year as described in §295.42(e)(2) of this title (relating to Registration: Asbestos Abatement Workers);

(3) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). If the training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable. Persons submitting out-of-state training certificates with their application may obtain the necessary photo-identification when attending the mandatory course on Texas Asbestos rules, as required; and

(4) a one inch by one inch photograph of the face.

(e) Responsibilities. The asbestos O & M supervisor (restricted) shall:

(1) comply with the Environmental Protection Agency (EPA) and Occupational Safety and Health Administration of the United States Department of Labor (OSHA) regulations for standards of small-scale, short-duration work practices which are adopted by reference in §295.33 of this title (relating to Adoption by Reference of Federal Standards);

(2) comply with the additional work practices, as described in §295.59 of this title (relating to Operations: Operations & Maintenance Requirements);

(3) maintain records at both the central office and work site locations, as described in §295.62 of this title (relating to Operations: Recordkeeping);

(4) supply and maintain personal protection equipment, as specified by the department, and train employees who perform asbestos-related activities in the use of equipment, and to supervise their compliance;

(5) comply with standards and practices for O & M activities as described in §295.59; and

(6) cooperate with department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Compliance: Inspections and Investigations).

(f) Restrictions and prohibitions. Licensing as an asbestos O & M supervisor is specifically restricted, as follows.

(1) The licensee may be employed or retained only by a licensed O&M contractor or by a licensed asbestos abatement contractor to supervise O&M activities within public buildings, or to perform such work.

(2) The licensee may also seek employment as an asbestos abatement worker but may not engage in any other asbestos-related activity for which a license is required.

(3) The licensee shall not supervise asbestos abatement projects or act as a contractor.

(4) The licensee shall not supervise any activity for which the primary purpose is asbestos abatement.

§295.45. Licensure: Asbestos Abatement Contractor.

(a) Licensing requirement. Persons must be licensed as asbestos abatement contractors in compliance with these sections to engage in asbestos abatement in a public building.

(b) Licensee authorization. Asbestos abatement contractor licensees are specifically authorized to employ asbestos abatement supervisors and asbestos abatement workers who are currently licensed under these sections to carry out asbestos abatement procedures. They may employ licensed operations and maintenance (O&M) supervisors for building O&M activities, or as workers. Licensees are cautioned to observe the prohibited acts in §295.37 of this title (relating to Licensing and Registration: Conflict of Interests).

(c) Fee. The fee for an initial application or for an annual renewal of the license for an asbestos abatement contractor shall be \$500.

(d) Applications and renewals. Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(e) Qualifications. Applicants for licensing as asbestos abatement contractors shall submit as applicable:

(1) a certificate of training from a training provider approved by or acceptable to the department, indicating successful completion within the past 12 months of the approved training course for asbestos abatement contractors and project supervisors or the continuing annual refresher training, as

described in §295.64 this title (relating to Training: Required Asbestos Training Courses). An applicant organization shall designate at least one corporate officer, general partner, or proprietor, according to the kind of organization, for the purpose of complying with this training requirement;

(2) a certificate of good standing, issued by the State Comptroller's office, stating that all franchise taxes due from the applicant have been paid;

(3) if the applicant is situated outside the State of Texas, a certificate of authority issued by the Secretary of State, authorizing the corporation to do business in the state;

(4) a State of Texas sales tax account number for the applicant organization;

(5) evidence of asbestos abatement liability insurance as required in §295.40 of this title (relating to Licensing and Registration: Insurance Requirements), in the amount of \$1 million, when doing work for hire;

(6) workers' compensation insurance issued by a company authorized and licensed to issue workers' compensation insurance in this state and written in this state on the Texas form, or evidence of self-insurance if workers' compensation is required by the specifications or owner;

(7) a written respiratory protection plan to be maintained and adhered to during periods of abatement activity;

(8) a description of the protective clothing and respirators which will be used;

(9) a description of the site decontamination procedures;

(10) a description of the procedures for handling waste containing asbestos;

(11) a description of the removal and encapsulation methods;

(12) a description of the air-monitoring procedures;

(13) a description of final cleanup procedures;

(14) a description of the provisions for record-keeping;

(15) a list of abatement projects completed in the past year;

(16) a copy of all disposal manifests for projects completed in the past year;

(17) a list of inspections performed by other agencies; and

(18) copies of all citations issued.

(f) Responsibilities. The asbestos abatement contractor shall be responsible for:

(1) standards of operation, including Environmental Protection Agency (EPA) and Occupational Safety and Health Administration of the United States Department of Labor (OSHA) regulations, referenced in §295.33 of this title (relating to Adoption by Reference of Federal Standards);

(2) additional work practices, as described in §295.60 of this title (relating to Operations: Abatement Practices and Procedures);

(3) recordkeeping requirements, at both central office and work site locations, as found in §295.62 of this title (relating to Operations: Recordkeeping);

(4) required notification to the department about impending abatement projects, changes requiring re-notification, and emergency notifications, as described in §295.61 of this title (relating to Operations: Notifications);

(5) the requirement to supply and train employees who perform asbestos-related activities in the use of personal protection equipment, and to supervise their compliance;

(6) maintenance of the current training status of each employee, as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses), and the annual physical examinations;

(7) standards and practices for O&M activities, as conducted for hire by a contractor, as described in §295.59 of this title (relating to Operations: Operations and Maintenance (O&M) Activities);

(8) assisting department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Compliance: Inspections and Investigations);

(9) maintenance of liability insurance, as described in §295.40 of this title (relating to Licensing and Registration: Insurance Requirements);

(10) maintenance of workers' compensation insurance issued by a company licensed to do business in this state, and written in this state on a form prepared by the Texas Department of Insurance, or evidence of self insurance, if required by contract specifications or a building owner; and

(11) providing for the proper temporary storage and for the final disposal of waste asbestos within 30 days of project completion or when receiving container is full, whichever is sooner.

§295.46. Licensure: Asbestos Abatement Supervisor.

(a) Licensing requirement. An individual must be licensed as an asbestos abatement supervisor in compliance with these sections to engage in the supervision of an asbestos abatement project conducted in a public building. Such licenses are valid for a period of one year from the effective date and shall be renewable.

(b) Fee. The fee for an initial application or for an annual renewal of the license for an asbestos abatement supervisor shall be \$300.

(c) Applications and renewals. Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) Qualifications. Applicants for licensing as asbestos abatement supervisors are required to submit:

(1) work experience—to qualify for an asbestos abatement supervisor license, verifiable written documentation must be provided of at least 90 days of legally qualifiable work experience as a trained worker performed over a period of not less than 12 months and within the past 24 months. Qualifiable experience includes:

(A) project site preparation and establishing the abatement enclosure for friable asbestos containing material (ACM);

(B) use of respirators and protective equipment, personal hygiene, decontamination procedures, interpretation of air sampling results, and methods to reduce airborne fiber levels;

(C) use of engineering controls, abatement work methods and practices, and final cleanup procedures;

(D) handling of waste asbestos as part of an abatement project;

(E) removal, enclosure, or encapsulation of asbestos;

(F) work performed in an administrative capacity relating to asbestos abatement projects such as project manager or advisor, or consultant, may be accepted as qualifying experience. No more than 30 days may be counted as qualifiable work experience under this category;

(G) experience as an asbestos air monitoring technician, which includes personal air sampling, regulated-area airborne asbestos sampling, aggressive sampling for final cleanup, plus on-site project recordkeeping documenting daily operations, controlling entry and exit from this enclosure, etc., may be accepted as qualifying experience, subject to time-period limitations, minimum number of abatement projects five, or work experience. No more than 30 days may be counted as qualifying experience under this category;

(H) work performed as an asbestos project supervisor or worker licensed in another state can qualify as experience; and

(I) the burden of proof for all points of the qualifying experience is on the individual applicant. Applicants for abatement supervisor licenses must furnish contacts or sources that can fully verify the documented experience. Descriptions of abatement projects are not acceptable if the personal involvement of the applicant cannot be determined by the reviewer. If, in the opinion of the reviewing staff members, applicant experience cannot be properly and sufficiently verified, such experience must be rejected;

(2) a certificate of training indicating successful completion within the past 12 months of the approved course for abatement contractors and supervisors, or the current annual refresher training, as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(3) a physician's statement of the required physical examination done within the past year as described in §295.42(e)(2) of these sections;

(4) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). If training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable. Persons submitting out-of-state training certificates with their applications may obtain the necessary photo-identification when attending the mandatory course on Texas asbestos rules, as required; and

(5) a one inch by one inch photograph of the face.

(e) Responsibilities. The asbestos abatement project supervisor shall:

(1) comply with standards of operation, including Environmental Protection Agency (EPA) and Occupational Safety

and Health Administration of the United States Department of Labor (OSHA) regulations, which have been adopted by reference in §295.33 of this title (relating to Adoption by Reference of Federal Standards);

(2) comply with additional work practices, as described in §295.60 of this title (relating to Operations: Abatement Practices and Procedures);

(3) maintain records at both the central office and the work site locations, as described in §295.62 of this title (relating to Operations: Recordkeeping);

(4) supply personal protection equipment and train employees who perform asbestos-related activities in the use of equipment, and to supervise their compliance;

(5) comply with standards and practices for O & M activities, as conducted for hire, according to §295.59 of this title (relating to Operations: Operations and Maintenance (O & M) Activities); and

(6) cooperate with department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Compliance: Inspection and Investigations).

(f) Other duties. Abatement supervisors may also assume the duties of asbestos abatement workers or perform O&M activities affecting asbestos materials.

§295.47. *Licensure: Individual Asbestos Consultant.*

(a) Licensing requirements. An individual must be licensed as an asbestos consultant to design asbestos abatement projects. (Texas Civil Statutes, Article 4477-3a, §4B(g), as amended, 1991).

(1) Asbestos abatement project design includes the inspection of public buildings for asbestos containing material (ACM), the evaluation and selection of appropriate asbestos abatement methods, project layout, the preparation of plans, specifications and contract documents, and the review of environmental controls, abatement procedures and personal protection equipment employed during the project.

(2) If an asbestos abatement project includes alterations to a building's structure, its electrical, mechanical, safety systems, or their components, a registered architect or engineer must prepare the appropriate plans and specifications as required by other state laws in addition to the requirement of paragraph (1) of this subsection.

(b) Scope: Individual licenses. In addition to the design of asbestos abatement

projects, individual asbestos consultants are licensed to provide:

(1) asbestos surveys and assessment of the condition of ACM;

(2) asbestos management planning, including response actions, instructions, and periodic surveillance recommendations for the control of asbestos and the conduct of operations and maintenance (O&M) programs;

(3) the collection of bulk material samples, airborne substance samples, and the planning of sampling strategies;

(4) owner-representative services for asbestos abatement projects or O&M programs, including air monitoring and project management;

(5) consultation regarding compliance with various regulations and standards, recommending abatement options, and preparations for asbestos abatement projects, specifically including technical specifications and contract documents; and

(6) the selection, fit testing, and appropriate use of personal protection equipment, and the development of engineering controls for asbestos-related activities.

(c) Fees. The fee for initial application or for annual renewal of license for asbestos consultant individuals shall be \$300.

(d) Applications and renewals. Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-State applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(e) Eligibility for licensing. Verifiable evidence of current eligibility must be submitted with all applications for licensing as an individual asbestos consultant, which includes any one of the following:

(1) current registration in the State of Texas as an architect or professional engineer;

(2) current highest full-qualification memberships in a national professional organization devoted to technical proficiency in environmental or occupational health protection, which includes:

(A) a published code of ethics;

(B) administration by an active board of directors; and

(C) admission requirements that specify college courses and other train-

ing, a bachelor's or higher degree, at least three years' experience in specified fields, and a qualification examination (examples include the American Academy of Industrial Hygiene and the Board of Certified Safety Professionals);

(3) possession of a bachelor's degree in architecture, engineering, physical or natural science from an accredited four-year college or university, and including four years' experience in areas affecting environmental or occupational health matters; or

(4) for individuals making application before January 1, 1993, only: possession of a high school diploma (or GED) together with a qualifying minimum of four years' abatement experience, including at least two years of full-time practice as an asbestos consultant.

(f) Qualification for licensing. To qualify as an individual asbestos consultant, individuals must:

(1) submit verifiable documentation of their asbestos-related activity in conjunction with at least six asbestos abatement projects covering a period of at least a year within the past five years. (Applicants made eligible under subsection (e) (4) of this section must comply with these experience qualifications);

(2) furnish a physician's statement of the required physical examination done within the past year as described in §295.42(e)(2) of this title (relating to Registration: Asbestos Abatement Workers);

(3) have successfully completed the following training courses or the necessary annual refresher training with the past 12 months at an approved training facility:

(A) the approved training course for abatement project designers, according to §295.64(b) of this title (relating to Asbestos Consultant training), or for applicants prior to June 30, 1993; the contractor/supervisor training, according to §295.64(c) of this title;

(B) a modified two-day training course in sampling techniques and use of monitoring equipment, as required for air monitor technician (this course is not required of certified industrial hygienists) (See §295.64(g)); and

(C) training in asbestos building surveys, as required for both licensed asbestos building inspectors and management planners (see §295.64(e) and (f)); and

(D) an annual refresher training course, consisting of eight hours of

instruction and designed specifically for asbestos consultants;

(4) submit a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). If training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable. Persons submitting out-of-state training certificates with their applications may obtain the necessary photo-identification when attending the mandatory course on Texas Asbestos rules, as required; and

(5) submit a one inch by one inch photograph of the face.

(g) Insurance. A licensed individual asbestos consultant performing work for hire must obtain professional liability coverage in the amount of \$1 million for errors and omissions, or be covered under the consultant's employer's policy, as specified in §295.40 of this title (relating to Licensing and Registration: Insurance Requirements), when doing work for hire.

(h) Responsibilities. The responsibilities of licensed asbestos consultants shall include the following:

(1) preserve public health and diminish or eliminate hazards or potential hazards caused by the presence of ACM in public buildings;

(2) provide professional services to the building owner or management concerning asbestos building surveys, assessment of conditions of materials, planned operations and maintenance, compliance with work practices and standards;

(3) evaluate possible asbestos abatement projects and prepare plans, specifications, schedules, and contract options for abatement projects;

(4) represent the interests of the building owner during the conduct of an asbestos abatement project, including consultation with the abatement contractor personnel, requiring compliance with regulations and specifications, requiring remedy of infractions, providing monitoring services, maintaining progress records and photographs as necessary, waste disposal, and providing the opinion or assurance of the final clearance of the project; and

(5) advise on the selection and use of appropriate personal protective equipment for all asbestos-related activities.

(i) Signature authority. All asbestos abatement plans and specifications must be signed by a licensed asbestos consultant.

§295.48. *Licensure: Asbestos Consultant Agency.*

(a) Scope: Asbestos consultant agency licenses. Consultant organizations desiring to be licensed as asbestos consultant agencies shall designate one or more individuals licensed as asbestos consultants, who shall be either principals or employees, and who shall have responsibility for the organization's asbestos activity.

(b) Authorization and conditions. A licensed asbestos consultant agency is specifically authorized to employ asbestos consultants, asbestos project managers, asbestos inspectors and management planners, and air monitoring technicians who are currently licensed under these sections to assist in the conduct and fulfillment of the agency's asbestos consultation activity, as necessary. As a condition of licensure, an asbestos consultant agency must comply with the following:

(1) any office, established within the state, that conducts asbestos consulting activities must have at least one licensed asbestos consultant in residence who is responsible for such activities. Offices that do not conduct asbestos consulting activities and do not advertise such services are exempt from this requirement;

(2) notify the department in writing of any additions or deletions of designated individual asbestos consultants within 10 days of such occurrences;

(3) refrain entirely from asbestos consulting activity at any office during any period without the active employment of at least one responsible individual licensed asbestos consultant at that location; and

(4) refrain entirely from engaging as an asbestos abatement contractor in abatement or operations and maintenance activities. (Texas Civil Statutes, Article 4477-3a, §4C., amended 1991).

(c) Fee. The fee for an initial application or for an annual renewal of license for an asbestos consultant agency is \$200.

(d) Applications and renewals. Applications and renewals shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(e) Qualification for licensing. Applicants for licensing as an asbestos consultant agency shall submit as applicable:

(1) professional liability insurance coverage for errors and omissions in the amount of \$1 million to cover the asbestos consultants and inspectors in its employ (Texas Civil Statutes, Article 4477-3a., §4A(4), amended 1991); and

(2) evidence of insurance issued by a company authorized and licensed to issue workers compensation insurance in this state and written in this state on the Texas form, or evidence of self-insurance, if workers' compensation is required by the specifications or owner;

(3) a certificate of good standing issued by the State Comptroller's office for the State of Texas for a corporation or other business entity (Texas Civil Statutes, Article 4477-3a., §4A(1), amended 1991); and

(4) if the applicant is situated outside the State of Texas, a certificate of authority issued by the Secretary of State, authorizing the corporation to do business in the state.

(g) Responsibilities. A licensed asbestos consultant agency shall be responsible for:

(1) employing generally accepted principles and practices in designing asbestos abatement projects;

(2) monitoring and observing asbestos abatement projects for general compliance with the contract documents, specifications, and relevant regulations; and

(3) reviewing asbestos disposal documentation to account for and confirm adequate waste disposal.

§295.49. Licensure: Asbestos Project Manager.

(a) Licensing. An individual must be licensed as an asbestos project manager and must be employed by a licensed asbestos consultant agency to perform in the capacity of the owner's representative to evaluate the quality of the work being performed during an asbestos abatement project. The asbestos project manager may:

(1) monitor the project to document the standards designed to protect project personnel and building occupants, and the adequacy of controls;

(2) observe that contractual requirements are being met by the abatement contractor; and

(3) consult with contractors on behalf of their clients on the selection and use of appropriate personal protective equipment related to the asbestos abatement activities.

(b) Fee. The fee for an initial application or for an annual renewal of the license for an asbestos project manager shall be \$150.

(c) Applications and renewals. Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registrations: Applications and Renewals). Out-of-state applicants must comply

with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) Qualifications. To qualify for a license, an applicant must demonstrate, in a manner acceptable to the department, that he/she has:

(1) a high school diploma or a GED certificate;

(2) a certificate of training indicating successful completion within the past 12 months of the approved course for abatement contractors and project supervisors or the annual refresher training as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(3) furnish a physician's statement of the required physical examination done within the past year as described in §295.42(e)(2) of this title (relating to Registration: Asbestos Abatement Workers);

(4) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). If training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable. Persons submitting out-of-state training certificates with their applications may obtain the necessary photo-identification when attending the mandatory course on Texas asbestos rules, as required; and

(5) a one inch by one inch photograph of the face.

(e) Responsibilities. Those responsibilities and duties that shall be assumed by the asbestos project manager include observation and monitoring of compliance with:

(1) licensing standards of operation, as described in §295.58 of this title (relating to Operations: General Requirements);

(2) standards of operation including EPA and OSHA regulations adopted by reference in §295.33 of this title (relating to Adoption by Reference of Federal Standards);

(3) additional work practices, as described in §295.60 of this title (relating to Operations: Abatement Practices and Procedures);

(4) standards covering maintenance of records at both the department central office and work site locations, as described in §295.62 of this title (relating to Operations: Recordkeeping);

(5) standards and practices for operations and maintenance activities, according to §295.59 of this title (relating to Operations: Operations and Maintenance (O & M) Activities); and

(6) assisting department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Compliance: Inspections and Investigations).

§295.50. Licensure: Asbestos Inspector.

(a) Licensing. An individual must be licensed as an asbestos inspector to conduct asbestos surveys in public buildings. An asbestos inspector must be employed by a licensed asbestos consultant agency or licensed asbestos management planner if he/she is to perform asbestos building surveys for hire. The scope of duties include the collection of bulk samples of suspected asbestos-containing material (ACM); determining the location and condition of asbestos in a public building; and documenting survey results.

(b) Fee. The initial licensing fee or the annual license renewal fee for an asbestos inspector is \$60.

(c) Applications and renewals. Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) Qualification. To qualify for a license, an applicant must demonstrate, in a manner acceptable to the department, that he/she has:

(1) a high school diploma or GED certificate;

(2) a certificate of training indicating successful completion of approved three day training course for asbestos inspectors or the annual refresher training as described in §295.64 of the title (relating to Training: Required Asbestos Training Courses);

(3) a physician's statement of the required physical examination done within the past year as described in §295.42(e)(2) of this title (relating to Registration: Asbestos Abatement Workers);

(4) professional liability insurance for errors and omissions in the amount of at least \$100,000 when doing asbestos inspection work for hire, or be covered under his employers policy as required by §295.40 of this title (relating to Licensing and Registration: Insurance Requirements);

(5) work experience. Applicants for licensing as asbestos inspectors are required to submit documentation of prior work experience with their application forms, as follows.

(A) Verifiable written documentation must be submitted as follows:

(i) completion of at least five asbestos surveys; or

(ii) current employment with and doing work under the supervision of a licensed management planner or asbestos consultant.

(B) The burden of proof for all points of the qualifying experience is on the individual applicant. Applicants for asbestos inspector licenses must furnish contacts or sources that can fully verify the documented experience. Descriptions of surveys are not acceptable if the personal involvement of the applicant cannot be determined by the reviewer. If, in the opinion of the reviewing staff members, applicant experience cannot be properly and sufficiently verified, such experience must be rejected;

(6) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). If training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable. Persons submitting out-of-state training certificates with their applications may obtain the necessary photo-identification when attending the mandatory course on Texas asbestos rules, as required; and

(7) a one inch by one inch photograph of the face.

(e) Responsibilities. The asbestos inspector shall:

(1) comply with standards of operation, as described in §295.58 of this title (relating to Operations: General Requirements);

(2) comply with guidelines for sampling schemes as presented in training course materials, or as required by consultant or management planner; and

(3) cooperate with department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Compliance: Inspections and Investigations).

(f) Signature. All asbestos building surveys or inspections must be signed by the licensed inspectors performing the inspections or the consultant.

§295.51. Licensure: Asbestos Management Planner.

(a) Licensing. A person must be licensed under these sections to develop an

asbestos management plan, which shall include a written schedule and procedures to protect occupants from asbestos health hazards in a public building.

(b) Scope. In addition to the development of management plans, a licensed management planner may be licensed to provide surveys and assess the condition of asbestos containing material (ACM), as provided in §295.50 of this title (relating to Licensure: Asbestos Inspectors).

(c) Fee. The initial licensing fee and the annual license renewal fee for an asbestos management planner is \$120.

(d) Applications and renewals. Applications and renewals shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(e) Qualification. To qualify for a license as an asbestos management planner, an applicant must demonstrate in a manner acceptable to the department that he/she meets the following applicable qualifications.

(1) The applicant must:

(A) have completed an Environmental Protection Agency (EPA) or state-approved inspector training courses together with the additional management planner course of instruction within the past 12 months, or has remained certified by completing annual refresher training for management planners and inspectors, as specified in §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(B) have an associates degree or 60 credit hours from a college or university; or

(C) currently be performing management plans and pass a competency test to be administered by the department;

(D) provide a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). If training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable. Persons submitting out-of-state training certificates with their applications may obtain the necessary photo-identification when attending the mandatory course on Texas asbestos rules, as required, in accordance with

§295.64(g) of this title (relating to Training: Required Asbestos Training Courses);

(E) provide a one inch by one inch photograph of the face; and

(F) furnish a physician's statement of the required physical examination done within the past year as described in §294.42(e)(2) of this title (relating to Registration: Asbestos Abatement Workers).

(2) An applicant organization shall designate a corporate officer, general partner, or proprietor, according on the kind of organization, for the purpose of complying with the training and education requirements in paragraph (1) of this subsection.

(f) Responsibilities. The asbestos management planner shall be responsible for:

(1) the interpretation of the field notes and report of an asbestos building survey;

(2) the production of drawings which show the locations of asbestos materials, together with notes as to the extent and the condition of this ACM;

(3) writing an asbestos report which includes information from paragraph (2) of this subsection together with a proposed schedule of actions to be taken from the control of asbestos in the subject building; and

(4) advising clients about options for operations and maintenance or asbestos abatement;

(g) Signature. All asbestos management plans must be signed by the licensed asbestos management planner preparing the plan or the consultant.

§295.52. Licensure: Air Monitoring Technician.

(a) Licensing. An air monitoring technician must be licensed to perform air monitoring services for an asbestos abatement project or related activity in a public building. An air monitoring technician may obtain baseline, area, personal, and clearance samples. For purposes of asbestos abatement, a licensed air monitoring technician shall be an employee of an asbestos laboratory or asbestos consultant.

(b) Authority of air monitoring technicians. Air monitoring technicians may obtain baseline, area, personal and clearance samples, if qualified in accordance with subsection (e)(2) of this section, and may perform the analysis of airborne fibers in the field.

(c) Fee. The fee for an initial application or for an the license for an air monitoring technician shall be \$50.

(d) Applications and renewals. Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(e) Qualifications. To qualify for an air monitoring technician license or for an upgraded license to perform analysis of airborne fibers in the field, an applicant shall submit the following.

(1) For a basic license the following must be submitted:

(A) a high school diploma or GED certificate;

(B) a certificate of training indicating successful completion within the past 12 months of the approved training course for air monitoring technicians or the current annual refresher training as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(C) a physician's statement of the required physical examination done within the past year as described in §295.42(e)(2) of this title (relating to Registration: Asbestos Abatement Workers);

(D) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). If training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable. Persons submitting out-of-state training certificates with their applications may obtain the necessary photo-identification when attending the mandatory course on Texas asbestos rules, as required, in accordance with §295.64(g) of this title (relating to Training: Required Asbestos Training Courses); and

(E) a one inch by one inch photograph of the face.

(2) In addition to the requirements in paragraph (1) of this subsection for the basic license, an air monitoring technician wishing to obtain an upgraded license to perform analysis of airborne fibers in the field, must also submit evidence of successful completion of the NIOSH Number 582 training course, or equivalent, titled "Analy-

sis of Asbestos Dust" (7400 method), and current accreditation by the Asbestos Analyst Registry (AAR) or must comply with §295.54(e)(3) of this title (relating to Licensure: Asbestos Laboratory) if employed by a licensed asbestos laboratory.

(f) Responsibilities. The air monitoring technician shall:

(1) collect air samples as specified by appropriate sampling procedures;

(2) collect air samples in the number, location, and frequency necessary to adequately reflect airborne levels of fibers in compliance with these regulations;

(3) use appropriate sampling techniques during area clearance sampling; and

(4) conduct air monitoring duties in an impartial, unbiased manner, and report monitoring results accurately.

(g) Limitations. An air monitoring technician may perform the analysis of airborne fibers in the field only if he/she has obtained an upgraded license in accordance with subsection (e)(2) of this section and is also employed by a licensed asbestos laboratory or asbestos consultant.

§295.54. Licensure: Asbestos Laboratory.

(a) Licensing requirement. A person must be licensed in compliance with the provisions of this section to provide analysis of samples collected in public buildings for bulk asbestos or for final clearance of asbestos abatement projects.

(b) Fee. The fee for an initial application or for an annual renewal of the license for an asbestos laboratory shall be \$200.

(c) Applications and renewals. Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registrations: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-state Applicants).

(d) Laboratory accreditation. To be eligible for licensure, applicants must submit evidences of accreditation, as follows:

(1) accreditation by the National Voluntary Laboratory Accreditation Program (NVLAP) for bulk analysis by polarized-light microscopy and/or analysis of airborne asbestos by transmission electron microscopy, (both required for AHERA) and enrollment in the NIOSH Proficiency Analytical Testing (PAT) program; or

(2) accreditation as an Industrial Hygiene Laboratory by the American industrial hygiene association, which includes the PAT program; or

(3) accreditation by the Proficiency Analytical Testing (PAT) Program,

which include quarterly sample tests for airborne fibers or bulk materials; or

(4) accreditation by Asbestos Analysts Registry (AAR) listing, which include quarterly sample tests (PAT) for airborne fiber counting.

(e) Limitations. Limits which are placed on the type of services that an asbestos laboratory can perform are as follows.

(1) A laboratory may analyze bulk samples only if so accredited by NVLAP.

(2) A laboratory may analyze clearance samples by transmission electron microscopy (TEM) only if accredited by NVLAP.

(3) A laboratory enrolled in the NIOSH or AIHA PAT program may perform phase-contrast microscopy analysis under controlled laboratory conditions or under field conditions, if quality-control analysis is performed on at least 10% of the samples analyzed in the field. All phase-contrast analysis shall be performed by an analyst who has received NIOSH 582 training. The laboratory must maintain individual records for each analyst to document the individual analyst's coefficient of variation.

(f) Qualifications. Applicants for licensing as an asbestos laboratory shall submit as applicable:

(1) evidence of laboratory accreditation in accordance with subsection (d) of this section;

(2) if the applicant is a Texas corporation, a certificate of good standing, issued by the State Comptroller's office;

(3) if the applicant is situated outside the State of Texas, a certificate of authority issued by the Secretary of State, authorizing the corporation to do business in the state;

(4) evidence of professional liability insurance for errors and omissions in the amount of at least \$1 million when doing work for hire as required by §295.40 of this title (relating to Licensing and Registration: Insurance Requirements).

(5) evidence of workers compensation insurance issued by a company authorized and licensed to issue workers compensation insurance in this state and written in this state on the Texas form, or evidence of self-insurance if workers compensation is required by the specifications or owner.

§295.55. Licensure: Asbestos Training Provider.

(a) Licensing requirement. A person must be licensed as an asbestos training provider in accordance with these sections

to offer and to conduct asbestos training for fulfillment of specific training requirements that are prerequisite to licensing or registration by the Texas Department of Health (department).

(b) Fee. The fee for an initial application or for annual renewal of the asbestos training provider license shall be \$500.

(c) Applications and renewals. Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registrations: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) Qualification. Documentation required of applicants for licensing as asbestos training providers is as follows.

(1) Organization. There shall be a clear written description of the organization, including the address of its central office and the names and addresses of its principals, and a statement of intent concerning the courses and services to be offered. If the organization is affiliated with or the subsidiary of another, a complete description of this arrangement is also required. The organization shall designate a staff member as director in charge of asbestos training.

(2) Equipment. There shall be a description of the items of instructional equipment and accessories available for the conduct of courses. The provider shall furnish adequate equipment in good working order for each training session.

(3) Records. Records shall be maintained, that include: a record of each asbestos course that is conducted, which shall include dates, location, instructors, trainees, etc., for a period of five years.

(4) Advertising. Printed bulletins, brochures, or other promotional literature must specify course prerequisites for admission, the content of the course, and requirements for successful completion.

(5) Refund and cancellation policy. Each training provider must have a written policy concerning refunds and cancellations in both Spanish and English that is made available to applicants prior to acceptance of fees for enrollment, and shall include the procedure for notification by the trainee desiring to cancel.

(6) Information requirements. The training provider shall discuss and inform each prospective trainee of the requirements for the type of license being sought, and of necessary qualifications he/she must have, as follows.

(A) Individuals not eligible for employment in the United States will not be licensed.

(B) Eligibility for refresher training courses is dependent on the effective date of the initial training.

(C) Certain asbestos training courses require the successful completion of other training courses as a condition for admission.

(7) Maximum trainee-instructor ratio. The maximum number of trainees in a lecture session shall be 40. Hands-on training groups shall have no more than 15 trainees and must be so arranged that each trainee is given individual attention.

(8) Attendance and course completion standards. Attendance and course completion standards are as follows.

(A) Attendance records in asbestos training courses shall be taken at the beginning of each four-hour segment of course instruction. Control of exits and entrances shall be maintained. A master attendance record shall be maintained for each session.

(B) A trainee is not eligible to complete a given course if more than 10% of the session has been missed, and the qualifying exam shall not be offered in such instances. The records of that session shall be marked to this effect.

(C) A training provider must certify each examination taken by a trainee as to whether a minimum score of 70% correctly answered questions was achieved. The training provider shall have a written policy concerning re-examinations which shall apply to all such cases of failure of the initial examination. Failure of the re-examination means that the course will have to be repeated.

(e) Conditions of issuance. The following conditions and agreements shall apply to issuance of licenses under this section.

(1) There shall be an agreement to send at least one course instructor to any meeting sponsored by the department for the purpose of ensuring quality training courses in asbestos abatement and related topics. There will be no more than two such meetings per year.

(2) The department shall be furnished a copy of all scheduled courses and shall be advised at least 24 hours in advance of any scheduled course cancellations.

(3) There shall be a description and an example of numbered certificates issued to students who attend the course and pass the examination. The certificate must

be in conformance with 40 CFR, Part 763, Subpart E, Appendix C, and must show the social security number of the individual certified. A uniquely numbered certificate may also be used, providing the social security number is shown.

(4) Trainers may present other courses or seminars relevant to asbestos activities including, but not limited to, courses on respirator training and compliance, airborne sample analysis (NIOSH 582 or equivalent), sample analysis by polarized light microscopy, construction safety (29 CFR, Part 1926), hazard communications (Texas or OSHA), hazardous materials response worker (29 CFR, §1910.120), local education agency-asbestos coordinator, two hour and 16 hour AHERA Awareness Course, or advanced hands-on for worker and supervisor, or floor tile removal. Such courses will not be accredited by the department. Any federal accreditation requirements will be complied with by the provider. Such courses and seminars may not be used for refresher training credit.

(f) Course instructors. The training provider shall submit a resume of each instructor that will participate in the conduct of any asbestos training course to be approved by the department. The training provider will notify the department of additions and deletions to their instructor roster within 15 days of actual occurrence.

(g) Instructor qualifications. Training instructors shall be qualified in any one of the categories in paragraphs (1) - (5) of this subsection. Training qualifications must be fully documented, and verifiable by the department. The categories include:

(1) at least two years of actual hands-on experience in asbestos-related activities (abatement or consulting) with training accreditation from Environmental Protection Agency (EPA) asbestos courses, and a high school diploma and completion of one or more teacher education courses in vocational or industrial teaching;

(2) a college degree in natural or physical sciences or a related field, with one year's hands-on experience in asbestos related activities (abatement or consulting), and current accreditation in at least one EPA asbestos course;

(3) at least three years teaching experience in Hazmat or HazWoper or EPA approved asbestos courses, and completion of one or more teacher education courses in vocational or industrial teaching from an accredited junior college or university;

(4) qualification on an individual basis of professional persons for the purpose of teaching their specialty, such as law, medicine, insurance, etc.; or

(5) a vocational teacher with certification from the Texas Education

Agency with one year's hands-on experience in asbestos related activities (abatement or consulting) and current accreditation in at least one EPA asbestos course.

(h) Professional references. Each instructor application submitted shall be accompanied by professional references attesting to teaching experience and qualification.

(i) Complete applications. The department shall not accept any instructor application until it is complete. The department shall reject any such application that does not contain sufficient references to be fully verifiable.

(j) Responsibilities. The asbestos training provider shall be responsible for:

(1) complying with standards of operation, as described in §295.58 of this title (relating to Operations: General Requirements);

(2) presenting to students all course material as outlined in syllabus and as represented to the department for approval;

(3) providing environment, training, and testing of sufficient quality that student retains required elements of course; and

(4) cooperating with department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Compliance: Inspections and Investigations).

§295.56. Licensure: Asbestos Transporters.

(a) Licensing. A person must be licensed as an asbestos transporter in compliance with these sections to engage in the transport of asbestos in the State of Texas.

(b) Fee. The fee for an initial application or for an annual renewal of the license for an asbestos transporter shall be \$200.

(c) Applications and renewals. Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registrations: Applications and Renewals). Out-of-date applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) Qualifications. To qualify for a license, an applicant must demonstrate, in a manner acceptable to the department, that he/she meets the applicable qualifications. The applicant must submit with the application:

(1) if the applicant is a Texas corporation, a certificate of good standing, issued by the State Comptroller's office must be submitted with the application for licensure;

(2) if the applicant is situated outside the State of Texas, a certificate of authority issued by the Secretary of State authorizing the corporation to do business in the state, must be submitted with the application for licensure;

(3) liability insurance in the amount of \$1 million as required by §295.40 of this title (relating to Licensing and Registration: Insurance Requirements), when transporting asbestos containing material (ACM) for hire;

(4) a copy of his/her emergency response plan in accordance with 29 CFR 1910.120(q)(1); and

(5) evidence of workers compensation insurance issued by a company authorized and licensed to issue workers compensation insurance in this state and written in this state on the Texas form, or evidence of self-insurance if workers' compensation is required by the specifications or owner.

(e) Responsibilities. An asbestos transporter shall:

(1) comply with federal regulations in 40 CFR, Part 61 titled "National Emissions Standards for Hazardous Air Pollutants (NESHAP)", specifically the provisions concerning asbestos transport, and 40 CFR, Part 763, Subpart E, Appendix D, titled "Transport and Disposal of Asbestos Waste";

(2) register all employees who will be handling, loading, and unloading asbestos, as asbestos workers in accordance with §295.42 of this title (relating to Registration: Asbestos Abatement Workers);

(3) train and supply employees who will handle asbestos with personal protective equipment and training for its use, and supervise their compliance;

(4) establish and maintain records of transporting asbestos to disposal sites, and report annually to the department on the quantity transported to each disposal site destination;

(5) comply with department personnel in the discharge of their official duties to conduct inspections and investigations, as set forth in §295.68 of this title (relating to Compliance: Inspections and Investigations); and

(6) train employees in compliance with OSHA regulations in 29 CFR, §1910.120(a)(v), in anticipation of possible spills of asbestos.

§295.58. Operations: General Requirements.

(a) Responsibility. It is the responsibility of owners of public buildings or

their designated agents to engage persons licensed under the provisions of these sections to perform any asbestos-related activity.

(b) Supervision.

(1) Every asbestos abatement project undertaken by a licensed contractor in a public building shall be supervised by at least one licensed asbestos abatement supervisor.

(2) Abatement supervisors shall remain on the job site and in immediate contact with those under their supervision during all periods of asbestos abatement activity.

(3) During any period of actual abatement of asbestos, an abatement supervisor shall be stationed within the containment area at least 25% of the time for the purpose of supervising the progress of the abatement work.

(4) Every small-scale, short-duration maintenance or repair activity that involves asbestos-containing material (ACM) in a public building, shall be supervised by at least one restricted-license operations and maintenance (O&M) supervisor. Restricted-activity Supervisors shall be at the job site during all periods of asbestos disturbance activity.

(5) Abatement contractors or building management licensees may also employ licensed abatement supervisors to supervise small-scale, short-duration operations and maintenance activities.

(6) Supervisors with either restricted or unrestricted licenses may be employed as asbestos abatement workers.

(7) All licensed supervisors are responsible for respirator fit testing, personal protection, security, and control of access at the job site.

(8) Supervisors licensed under these sections shall require that operations at the asbestos job site cease whenever hazardous or unlawful situations are detected, so as to effect a remedy.

(c) Employees. Each employee or agent of any licensee who must intentionally disturb, handle, or otherwise work with ACM, or who shall engage in an asbestos abatement project, asbestos O&M activities or other asbestos-related activity shall have an annual physical examination, respirator fit-test, be properly equipped and trained, and be licensed or registered in accordance with these sections.

(d) Records. Each licensee shall keep a complete record of each asbestos related activity or operation in public buildings to the extent of his or her participation. Such records shall be kept for 30 years. Each licensee shall also keep a copy of all

violations issued against him by the Environmental Protection Agency (EPA), Occupational Safety and Health Administration of the United States Department of Labor (OSHA), or a state agency. All required records shall be made available, upon request, for inspection and review by the department. See §295.62 of this title (relating to Operations: Recordkeeping) for specific requirements.

(e) Compliance inspections. Each licensee shall assist and cooperate with all properly-identified representatives of the department in the conduct of asbestos inspections, surveys, or monitoring procedures at all reasonable or necessary times, with or without prior notice. Such inspections may be made at proposed, actual, or former sites of asbestos-related activities, or of the premises, records, equipment and personnel of licensees or applicants, or of those who have held active licenses previously.

(f) Respirator program. Each employer licensee shall be responsible for establishing and maintaining a written respiratory protection program, as required by OSHA regulations in 29 Code of Federal Regulations, §1910.134, as amended.

(g) Individual respirator fit. The licensee must maintain in safe working condition a sufficient number of respirators of the types and styles approved by National Institute of Occupational Safety and Health to meet all anticipated requirements of his employees; and any employee whose facial characteristics, hair, mustache, or beard preclude a tight fit of a negative-pressure respirator shall not be allowed to enter the containment area of an asbestos operation using this type of respirator.

(h) Sampling for asbestos. Any licensee may obtain a bulk or wipe sample to determine or confirm the presence of asbestos prior to the beginning of an asbestos-related activity or before performing O & M activities wherever suspect material is encountered. (A survey by a licensed asbestos inspector is required for actual abatement.)

§295.59. Operations: Operations and Maintenance (O & M) Requirements

(a) Restrictions. O&M activities involving asbestos-containing materials (ACM) are restricted to small-scale, short-duration activities, according to §295.33(a)(5) and (a)(7) of this title (relating to Adoption by Reference of Federal Standards). Asbestos O&M licensees shall not engage in any activity for which the primary purpose is asbestos abatement.

(b) Work practices. Work practices shall include the following requirements.

(1) Employers shall be responsible for furnishing and requiring the use of

respirators, protective clothing, high-efficiency particulate air filter (HEPA) vacuum machines, glove bags, and other necessary equipment for all who perform O & M activities.

(2) All persons not performing work shall be excluded from the work areas.

(3) Physical barriers shall be used where necessary to limit access to the work area.

(4) Airtight barriers, as described in §295.60 of this title (relating to Operations: Abatement Practices and Procedures), shall be constructed for containment of asbestos fibers, or a glovebag technique may be used for removal or repair of ACM on pipes or ducts.

(5) Asbestos material must be wetted with amended water and remain wet throughout the work operation.

(6) Asbestos exposed as a result of spot repairs shall be suitably enclosed or encapsulated.

(7) HEPA vacuuming or wet cleaning shall be used to decontaminate work areas and equipment until there is no visible debris.

(8) Asbestos shall be bagged and placed in containers, and disposed of in accordance with requirements to be found in §295.60 of this title.

§295.60. Operations: Abatement Practices and Procedures.

(a) General provisions. The following general work practices are minimum requirements for protection of public health, and do not constitute complete or sufficient specifications for an asbestos abatement project. More detailed requirements in plans and specifications for a particular abatement project, or requirements that address the unusual or unique circumstances of a project, may take precedence over the provisions of this section.

(1) Federal work practices for asbestos abatement are referenced in 40 CFR §61.145 Environmental Protection Agency (EPA) titled "Standard for Demolition and Renovation", as amended.

(2) An asbestos abatement project designer who is licensed under §295.47 of this title (relating to Licensure: Individual Asbestos Consultant) may specify work practices that vary from the provisions of this section as long as the work practices specified are at least as protective of public health, and are described in the project notification submitted to the Texas Department of Health.

(3) If asbestos-containing material (ACM) is to be removed or encapsulated, it must be within a regulated area.

(b) Critical barriers. Regulated areas within which asbestos abatement is to be conducted shall be separated from adjacent areas by barriers attached securely in place. All openings between isolated containment areas and adjacent areas, including but not limited to windows, doorways, elevator openings, corridor entrances, ventilation openings, drains, ducts, grills, grates, diffusers and skylights, shall be sealed. All penetrations that could permit air infiltration or air leaks through the plastic sheeting shall be sealed, with exceptions of the make-up air provisions and the means of entry and exit.

(c) Movable objects. All movable objects shall be removed from the work area. Cleaning of contaminated items shall be performed if the items are to be salvaged or reused. Otherwise, they shall be properly disposed of as asbestos waste. All non-movable objects that remain in the work area shall be covered with a minimum of four-mil sheeting, secured in place.

(d) Floor and wall preparation. Floor sheeting shall completely cover all floor surfaces and consist of a minimum of two layers of sheeting of at least six-mil thickness, or equivalent. Floor sheetings shall extend up sidewalls at least 12 inches and be sized to minimize seams. No seams shall be located at wall-to-floor joints. Sealing of all floor penetrations against water leakage is mandatory. Wall sheeting shall completely cover all wall surfaces and consist of a minimum of one layer of four-mil sheeting, or equivalent. It shall be installed so as to minimize joints and shall extend beyond wall/floor joints at least 12 inches. No seams shall be located at wall-to-wall joints.

(e) Decontamination system. A worker decontamination enclosure system consisting of a clean room, shower room, and equipment room, each separated from the other and from the work area by airlocks accessible through doorways. Except for the doorways and the make-up air provisions for the enclosure, the worker decontamination system shall be sealed against leakage of air. All personnel must exit the containment area through the shower before entering the clean room. No asbestos-contaminated individuals or items shall enter the clean room.

(f) Heating, ventilation and air conditioning system equipment (HVAC). All HVAC equipment in or passing through the work area shall be shut down, and preventative measures taken to prevent accidental start-ups. All intake and exhaust openings and any seams in system components shall be sealed with at least six-mil sheeting and/or tape. All old filters shall be disposed of as asbestos waste.

(g) Warning signs. Danger signs in accordance with 29 CFR, §1926.58, shall be displayed, in both the Spanish and English languages, at all entrances to regulated areas, and on the outside of critical barriers.

(h) High-efficiency particulate air (HEPA) cleaning. Except where not feasible, cleaning procedures shall use wet methods and HEPA vacuuming, and visual inspections shall be performed in accordance with American Society for Testing Materials (ASTM) Standard E-1368, "Standard Practice for Visual Inspection of Asbestos Abatement Projects", available from the American Society for Testing Materials, 1916 Race Street Philadelphia, PA 19103.

(i) Containment-area ventilation. Units with HEPA filtration, and in sufficient number to provide a negative pressure of at least of 0.02 inches of water column differential between the containment and outside and a minimum of four containment air changes per hour, shall be operated continuously for the duration of the project. The duration of the asbestos abatement project for the purpose of this requirement shall be considered from the time a regulated area is established through the time acceptable final clean air-monitoring results are obtained. These units shall exhaust filtered air to the outside of the building wherever technically feasible.

(j) Requirements for removal. The requirements for removing ACM are that:

(1) all ACM shall be thoroughly wetted prior to removal or other handling;

(2) asbestos covered components that are going to be removed from the building may either be stripped in place and cleaned (and pass a visual inspection), or the ACM may be thoroughly wetted and the entire component wrapped in two layers of six-mil plastic, labeled and sealed, providing that:

(A) components such as sections of metal lath that cannot be safely lowered to the floor shall be stripped in place;

(B) any component that cannot be lowered or handled without presenting an excessive fiber release or safety hazard shall be stripped in place;

(C) sharp edges of components shall be protected to preclude tearing the plastic wrapping and causing injury; and

(3) ACM shall be removed in small sections and containerized while wet. At no time shall material be allowed to accumulate on the floor or become dry. Structural components and piping shall be thoroughly wetted prior to wrapping in plastic sheeting for disposal.

(k) Requirements for the encapsulation of ACM.

(1) Prior to encapsulation, loose and hanging ACM shall be removed.

(2) Filler material applied to gaps in existing material must contain no asbestos, shall adhere well to the substrate and shall provide an adequate base for the encapsulating agent.

(3) Encapsulant shall be applied using only airless spray equipment with the nozzle pressure and tip size set according to the manufacturer's recommendations.

(4) Encapsulated materials shall be specifically designated by signs, labels, color coding or some other mechanism to warn individuals who may in the future be required to disturb the material.

(l) Requirements for the enclosure of ACM.

(1) Acceptable enclosure shall be airtight and of permanent construction, so that the area behind them is inaccessible.

(2) All areas of ACM shall be wetted if they are to be disturbed during the installation of hangers, brackets, or other portions of the enclosure.

(3) Prior to enclosure, loose and hanging ACM shall be removed.

(4) Filler material applied to gaps in existing materials shall contain no asbestos, and shall adhere well to the substrate.

(5) Enclosures for ACM shall be specifically designated by signs, labels, color coding or some other mechanism to warn individuals who may in the future be required to disturb the material.

(m) Safety requirements. The following safety requirements shall be in effect for an abatement project:

(1) Fire safety. At least one fire extinguisher with a minimum National Fire Protection Association rating of 10BC (dry chemical) shall be placed within each abatement project containment for every 1,000 square feet, or fraction, of containment area.

(2) Electrical safety. Ground-fault circuit interrupter (GFCI) units shall be installed on all electrical circuits used within the regulated and containment areas.

§295.61. Operations: Notifications.

(a) General provision. The Texas Department of Health (department) must be notified of the intent to perform any asbestos abatement, demolition, or operations and maintenance (O & M) activity affecting asbestos containing materials (ACM) in public buildings. Notification shall be made prior to commencement of the activity and

shall be submitted on the form specified by the department. This notification is in addition to any required by Environmental Protection Agency (EPA) (NESHAP), Occupational Safety and Health Administration of the United States Department of Labor (OSHA), or the Texas Air Control Board.

(b) Responsibility. It is the responsibility of the building owner to notify the department under this section. This responsibility may be delegated to a licensed abatement contractor in writing.

(c) Timeliness of notification. Notifications of asbestos activity must be hand delivered, express mailed, or postmarked at least 10 working days before the start of such activity. (Federal regulations require that original notifications are to be sent by mail.) The start date is considered to be the date when actual abatement or O & M begins.

(d) Start-date change to later date. When asbestos abatement, demolition, or O & M will begin later than the date contained in the notice, the licensee shall:

(1) notify the department (Asbestos Programs Branch) of the changed start date by telephone (or FAX) as soon as possible but prior to the original start date; and

(2) provide the department with a written notice of the new start date as soon as possible before, but no later than the original start date. Delivery of the updated notice by the United States Postal Service, commercial delivery service, hand delivery, or telephone facsimile (FAX) is acceptable.

(e) Start-date change to earlier date. When asbestos abatement or O&M covered by these sections will begin on a date earlier than the date specified for the original start, the licensee shall provide the department with a written notice of the new start date at least 10 working days beforehand.

(f) State and federal start-date requirement. In no event shall actual abatement, as covered by this section, begin on a date other than the date contained in the written notice of start date.

(g) Consolidated notifications of small operations. Notifications involving a series of small, separate asbestos O&M or abatement operations (each less than 160 square feet or 260 linear feet or 35 cubic feet in size) may be combined by listing and attaching the information to a single notification form, provided that any listing period does not exceed 31 days in length. All asbestos demolitions must be updated individually, regardless of size.

(h) Provision for emergency. In the event of emergency renovations made nec-

essary by an unexpected or unplanned asbestos incident, notification will be made as soon as practicable, but in no event later than 24 hours after the occurrence of the incident. Initial notification can be made by telephone, followed by formal notification on the department's notification form.

§295.62. Operations: Recordkeeping.

(a) Record retention. Records and documents required by this section shall be retained for a period of 30 years from the date of project completion unless otherwise stated. Organizations or individuals ceasing to do business, shall notify the Texas Department of Health (department) in writing within 30 days of such event. The department, on receipt of such notification may instruct that the records be surrendered and may specify a repository for such records. The organizations or individuals shall comply with the department's instructions within 60 days.

(b) Training providers. Licensed training providers shall establish and maintain attendance records pursuant to the requirements of this section for a period of five years, and shall make such records and documents available to the department upon request.

(c) Asbestos contractors.

(1) Central location. The following records and documents shall be maintained by asbestos contractors at a central location at the principal place of business for a period of 30 years and shall be made available to the department upon request:

(A) records and documents required by 29 CFR §1910, and 29 CFR, §1926.58, as amended;

(B) name, address, and asbestos certificate number of each employee, past and present, including dates of employment, and description of each employee's involvement in each asbestos project while employed by the contractor, including name, address, location and duration of project;

(C) copies of all regulatory agency correspondence including letters, notices, citations received and notifications made by the contractor;

(D) records and documents required to be maintained under any other applicable federal, state, or local law, regulation or ordinance;

(E) receipts and documentation of disposal of asbestos waste showing dates, locations and amounts of asbestos

waste disposed including the identification of the source of the asbestos waste and the transporter (company name or driver name, if an employee of the contractor);

(F) copies of laboratory reports and sample analysis documenting workplace and personal exposure levels, including copies of consultant's reports provided to the contractor regarding employee or clearance level monitoring; and

(G) copies of all specifications of contracts awarded for asbestos abatement projects.

(2) On site. Records and documents shall be maintained on-site at the asbestos project location for the duration of the project. Records and documents with personal references shall be made available to all persons employed at the site upon request. All on-site records and documents shall be made available to the department upon request. The records and documents covered by this paragraph include:

(A) a current copy of the work practice requirements;

(B) a copy of the contract or technical specifications governing the project or if no contract, location and description of operations and description of abatement procedures;

(C) a listing of all employees, by name, social security number, and certificate number working on the project;

(D) a listing of each of the contractors, sub-contractors and consultants on the project;

(E) a daily sign-in/out log which identified persons by name and the length of time each spent at the site;

(F) records of all on-site air monitoring;

(G) a written respirator program which conforms to requirements of 29 CFR, §1910.134(b), as amended;

(H) name and address of the contractor or building owner-operator;

(I) name and address of project supervisor(s);

(J) description of personal safety practices;

(K) name and address of waste disposal site;

(L) dates of participation in the operation; and

(M) a roster of registered asbestos workers employed.

(d) Analytical services. Licensed providers of asbestos analytical services shall maintain copies of all records and documents required by these sections and copies of all analyses performed, including the sample identification number and analytical results, and make such documents available to the department for inspection upon request.

(e) Consultants. Licensed consultants shall maintain client files pertaining to inspection, sampling, assessment, clearance level monitoring and copies of daily construction logs pertaining to contractor work practices and make such documents available to the department for inspection upon request. Logs for completed projects shall be maintained at the consultant's principal place of business. Logs for current projects shall be kept at the asbestos project work site until final cleanup has been certified.

(f) Asbestos O & M contractors (restricted). O & M contractors licensed to perform small-scale, short-duration operations and maintenance (O & M) activities affecting asbestos shall maintain, at the place of business, copies of all documents which constitute the application of each O & M restricted supervisor's license and the registration of each asbestos worker. All such restricted operations performed shall be recorded in chronological order and made available for inspection as requested by the department.

§295.64. Training: Required Asbestos Training Courses.

(a) General provisions. Applicants for licensing or renewal must submit evidence of fulfillment of specific training requirements acceptable to the Texas Department of Health (department) under these sections. Course content, hours of instruction, refresher training, etc., are subject to change or modification.

(1) Training courses shall be conducted by training providers licensed by the department. Training within the confines of this state by unlicensed providers shall not be accepted by the department after January 1, 1993.

(2) Valid training courses performed in other states, in the past 12 months, by Environmental Protection Agency (EPA) approved training providers

shall be accepted by the department provided that applicants have completed an approved course in Texas asbestos law and rules from a training provider licensed by the department. This requirement is effective January 1, 1993.

(3) The one-year period of validity following the effective date of a required asbestos course may be extended by completing the appropriate annual refresher training. Failure to complete annual refresher training within two years of the most recent training shall require that the original course be repeated.

(4) A day of training shall consist of eight hours of actual classroom instruction, hands-on practical training sessions, and field trips in any suitable combination, including break periods.

(5) Courses requiring hands-on practical training must be presented in an environment that permits the trainees individually to have actual experience performing tasks associated with the appropriate asbestos activity studied. Hands-on training sessions shall maintain a student to instructor ratio of not more than 15 to one. Demonstrations and audio-visuals shall not substitute for required hands-on training.

(b) Asbestos consultant training. Persons seeking to be licensed as an asbestos consultant under these sections shall complete the approved project design training course as described in this subsection (see also the other training required for consultants in §295.47(f)(3) of this title (relating to Licensure: Individual Consultant)). Successful completion of the course shall be demonstrated by achieving a score of at least 70% on the course examination. The course shall adequately address:

(1) general information concerning asbestos, including health effects related to exposure;

(2) the role of the asbestos consultant and other consultants;

(3) regulatory, insurance, and legal aspects;

(4) personal hygiene and protective equipment;

(5) work practices and procedures;

(6) abatement project design, including control of airborne fibers, abatement options and evaluation, asbestos activity in occupied buildings, safety, and the preparation of drawings and specifications;

(7) asbestos sampling: description and demonstration of bulk material and air sampling methods and analysis;

(8) sampling for airborne fibers: equipment, calibration, and usage;

(9) compliance sampling: area, personal, clearance, and background sampling;

(10) recordkeeping and reporting: calculations, chain of custody, reports and preparation of records;

(11) hands-on training: including a demonstration and explanation of the procedures of a complete abatement project, respirator fit-testing and maintenance, and sampling calibration and calculations; and

(12) course review and manual.

(c) Contractor/supervisor training.

(1) Persons seeking to be licensed as an asbestos abatement contractor, asbestos abatement supervisor, project manager, asbestos competent person (under Occupational Health and Safety Administration requirements), or operations and maintenance (O & M) (restricted) supervisor, shall successfully complete this approved contractor/supervisor training course as described in this subsection. The course may be substituted for the asbestos abatement worker course; this substitution also applies to annual refresher training.

(2) This training shall include lectures, demonstrations, audio-visuals and hands-on training, including individual respirator fit testing, course review, and a written examination of 100 multiple-choice questions. Each trainee must score at least 70% or better on this exam to successfully complete the course. The course shall adequately address:

(A) physical characteristics of asbestos and asbestos containing material (ACM);

(B) potential health effects related to asbestos exposure;

(C) employee personal protective equipment;

(D) state-of-the-art work practices;

(E) personal hygiene;

(F) additional safety hazards;

(G) medical monitoring;

(H) air monitoring;

(I) relevant federal, state, and local regulatory requirements;

(J) establishment of respiratory protection programs and medical surveillance programs;

(K) hands-on training, including work area preparation, decontamination chamber construction, cleaning and disposal, and respirator fit testing and maintenance;

(L) insurance and liability issues;

(M) recordkeeping for asbestos abatement projects;

(N) supervisory techniques for asbestos abatement activities;

(O) contract specifications; and

(P) course review and manual.

(d) Asbestos abatement worker training. Persons seeking registration as asbestos abatement workers shall successfully complete the approved training course, as described in this subsection. Successful completion of the contractor/supervisor training course shall also be acceptable as qualification for asbestos worker applicants. Worker training courses are recommended to have a classroom student-instructor ratio of not more than 25 to one (25:1). The worker training course shall include lectures, demonstrations, hands-on training including individual respirator fit testing, course review, and a written examination consisting of 50 multiple-choice questions. Successful completion of the course shall be demonstrated by achieving a score of at least 70% on the examination. The course shall adequately address:

(1) physical characteristics of asbestos and ACM;

(2) potential health effects related to asbestos exposure;

(3) employee personal protective equipment;

(4) state-of-the art work practices;

(5) personal hygiene;

(6) additional safety hazards;

(7) medical monitoring;

(8) air monitoring;

(9) relevant federal, state, and local regulatory requirements;

(10) establishment of respiratory protective programs and medical surveillance programs;

(11) hands-on training, including work area preparation, decontamination

chamber construction, cleaning and disposal, and respirator fit testing and maintenance; and

(12) course review and manual.

(e) Asbestos inspectors. Persons seeking to be licensed as asbestos inspectors shall successfully complete the approved training course as described in this subsection. The inspector training course shall include lectures, demonstrations, hands-on individual respirator fit testing, course review, and a written examination consisting of 50 multiple choice questions. Successful completion of the course shall be demonstrated by achieving a score of at least 70% on the examination. The course shall adequately address:

(1) background information of asbestos;

(2) potential health effects related to asbestos exposure;

(3) functions/qualifications and role of inspectors;

(4) legal liabilities and defenses;

(5) understanding of building systems;

(6) public/employee/building occupant relations;

(7) pre-inspection planning, and review of previous inspection records;

(8) inspecting for friable and non-friable ACM;

(9) assessing of the condition of friable ACM;

(10) bulk sampling/documentation of asbestos;

(11) air monitoring;

(12) employee personal protective equipment;

(13) recordkeeping and writing of the inspection report;

(14) regulatory review;

(15) field trip or simulated building walk through inspection; and

(16) course review and manual.

(f) Management planners. Persons seeking to be licensed as management planners shall successfully complete the training program for Inspectors, as described in subsection (d) of this section, plus the approved asbestos management planner training course, as described in this subsection. The management planner course shall include lectures, demonstration, course review and a written examination consisting of 50 multiple choice questions. Successful completion of the course shall be demonstrated by achieving a score of at least 70% on the examination. The course shall adequately address:

(1) course overview;

(2) evaluation and interpretation of survey results;

(3) hazard assessment;

(4) legal implications;

(5) evaluation and selection of control options;

(6) role of other professionals;

(7) developing an operations & maintenance (O & M) plan; and

(8) regulatory review; and

(9) record keeping for the management planner;

(10) assembling and submitting of a management plan;

(11) financing abatement actions; and

(12) course review and manual.

(g) Air monitoring technician. Persons seeking to be licensed as air monitoring technicians shall successfully complete an approved three-day training course as described in this subsection. The air-monitoring technician course shall include lectures, demonstrations, hands-on individual respirator fit testing, course review and a written examination consisting of 50 multiple choice questions. Successful completion of the course shall be demonstrated by achieving a score of at least 70% on the examination. The course shall adequately address the:

(1) health effects of asbestos;

(2) asbestos regulations (state and federal);

(3) asbestos sampling and evaluation methods;

(4) calculating sampling times;

(5) time weighted average calculation;

(6) calibration of air sample pumps;

(7) sample logs and records;

(8) compliance testing;

(9) clearance testing; and

(10) clearance procedures.

(h) Texas law and rules. Persons seeking an asbestos license or worker registration with the department who submit out-of-state training as a means of qualification must successfully complete an approved three-hour course on Texas Asbestos Health Protection law which shall be conducted by a training sponsor licensed by the department. This requirement shall be completed prior to commencing any licensed asbestos activity within the state.

(i) Refresher training. All disciplines shall receive refresher training annually. Satisfactory completion of such training shall be a condition of renewal, and evidence of satisfactory completion shall be included in the annual renewal application. No refresher training can be accredited if the training course for licensure or registration was never completed.

§295.65. Training: Approval of Training Courses.

(a) General provision. Asbestos training courses shall be individually approved only for those training providers currently licensed by the Texas Department of Health (department). Applications for each course shall be made separately. The department shall consider prior teaching of the course applied for as a part of the approval process.

(b) Conditional approval. Conditional approval of an asbestos training course shall be granted to an applicant after all required information and documentation submitted has been found to meet the requirements set forth in these sections for approval of the course by the department.

(c) Complete approval. Complete approval of an asbestos training course shall be granted for a period of two years after the department has granted conditional approval, has conducted an on-site observation and evaluation of the training course, its instructors and its facilities, and has determined that the applicant's asbestos training course meets the requirements set forth in these sections.

(d) Applications. An applicant for approval of an asbestos training course must submit an application in writing to the department. Within 30 working days after receiving an application, the department shall acknowledge receipt of the application and notify the applicant of any deficiency in the application. The department will approve or deny the application only upon receipt of the completed application which shall contain the following information:

(1) the name and address of the licensed training provider who will present the course, and the name and phone number of the responsible individual;

(2) the type of course for which approval is being requested;

(3) a detailed outline of the course curriculum including the amount of time allotted to each topic, the name and qualifications of the individual developing the instruction program for each topic, and copies or written materials to be distributed;

(4) a description of the type of equipment owned which must be used in all full-length courses for demonstrations

and/or "hands-on" exercises, including, but not limited to, types of respirators, negative air units, water spray devices, protective clothing, construction materials, high efficiency particulate air (HEPA) vacuum, air purifying panel, glove bags, shower unit, water filter assembly;

(5) documentation, including photos and details of assurance that the number of instructors, the amount of equipment and the facilities are adequate to provide the students with proper training;

(6) administration of a written multiple choice examination at the conclusion of the course. If copies of the exam are required by the department, measures to protect the confidentiality of the exam as proprietary information will be maintained by the department to the extent authorized by law. No later than July 1, 1993, the department will institute standardized tests questions for all categories requiring testing to be administered by the trainer; and

(7) establishment of the fact that the minimum grade which must be obtained for a trainee to successfully complete the course is 70%.

(e) Re-training (refresher) courses. For all disciplines except inspectors, a state accreditation program shall include a one-day annual refresher training course for re-accreditation. Refresher courses for inspectors shall be a half-day in length. Management planners shall attend the inspector refresher course, plus an additional half-day on management planning. Consultants need attend only a single annual refresher course for the project designer.

(f) Issuance of certificates. All training certificates shall bear the name, address, and telephone number of the licensed training facility. The training provider shall:

(1) issue certificates (with their social security numbers) to students who successfully pass the training course's examination. The certificate shall indicate the name of the student and the course completed, the date of the course and examination;

(2) issue a wallet-size photo-identification card, including a description of the course completed, the effective date, and the social security number of the trainee;

(3) submit the names and social security numbers, and one inch by one inch photo, on a form provided by the department, of students receiving an accreditation to the department within 10 days of the completion date of each course; and

(4) provide student with a one inch by one inch photo attached to a department application for license/registration.

(g) Revocation or suspension of approval. The department may revoke or suspend approval if field site inspections indicate a training course is not providing training that meets the requirements of the Model Accreditation Plan or these sections. Training course sponsors shall permit department representatives to attend, evaluate, and monitor any training course without charge. The inspection staff may not give advance notice of their inspections.

(h) Minimum number of instructors. Each course requiring approval according to the Model Accreditation Plan shall require at least the minimum number of instructors for that course as specified by EPA.

§295.69. Compliance: Reprimand, Suspension, Revocation.

(a) After notice to the licensee of an opportunity for a hearing in accordance with subsection (e) of this section, the Texas Department of Health (department) may reprimand the licensee or modify, suspend, suspend on an emergency basis, or revoke a license under this Texas Asbestos Health Protection Act.

(b) If the department suspends a license on an emergency basis, the suspension is effective immediately. The department shall then provide an opportunity for a hearing in accordance with subsection (e) of this section within 20 days after the date of the emergency suspension.

(c) The department may reprimand any licensee or registrant, or may suspend or revoke a license or registration for:

(1) failure to comply with any provision of the Texas Asbestos Health Protection Act (Act), any rule adopted by the Texas Board of Health, any order issued by the department or a court;

(2) failure to comply with applicable federal or state standards for licensed asbestos activities;

(3) failure to maintain or falsification of records as required by these sections; and

(4) failure to meet the qualifications for which one holds a license; or

(5) fraudulently or deceptively obtaining or attempting to obtain a license or contract for an asbestos-related activity.

(d) If the department receives three validated complaints against a licensed supervisor and finds that the supervisor has, on three separate occasions, violated or has permitted workers under his supervision to violate the Act or these sections, the department shall:

(1) revoke the supervisor's license and issue a worker registration that is valid for six months;

(2) after that period, the individual may re-apply for a supervisor's license; and

(3) such revocation shall provide for a hearing according to the provisions of subsection (e) of this section (relating to contested case hearings).

(e) The contested-case hearing provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a shall apply to any enforcement action proposed to be taken under this section. The formal hearing procedures of the department in Chapter 1 of this title (relating to Texas Board of Health) shall also apply.

(f) If a license issued under these sections has been suspended, the individual(s) and/or organizations named in the suspension are not eligible to reapply for licensing under this section for one year.

(g) If a license issued under these sections has been revoked, the individual(s) and or organizations named in the revocation are not eligible to reapply for licensing under these sections for three years.

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

Issued in Austin, Texas, on September 29, 1992.

TRD-9213208

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: October 20, 1992

Proposal publication date: May 1, 1992

For further information, please call: (512) 834-6600

◆ ◆ ◆
**Part II. Texas Department
of Mental Health and
Mental Retardation**

**Chapter 405. Client (Patient)
Care**

**Subchapter V. Client Volunteer
Program**

• 25 TAC §§405.551-405.561

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts the repeal of §§405.551-405.561, concerning the client volunteer program, without changes to the proposed text as published in the August 4, 1992, issue of the *Texas Register* (17 TexReg 5417). The repeal of the sections is adopted contemporaneously with the adoption of the subchapter which replaces them, Chapter 410, Subchapter B of this title (relating to Community Relations), also in this issue of the *Texas Register*.

The new sections incorporate provisions of the volunteer program at facilities and CMHMRCs.

— No comment were received regarding adoption of the repeals.

— The repeals are adopted under Texas Civil Statutes, Article 5547-202, §2. 11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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

Issued in Austin, Texas, on September 29, 1992.

TRD-9213195

Anne K. Utley
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date: January 1, 1993

Proposal publication date: August 4, 1992

For further information, please call: (512) 465-4516

◆ ◆ ◆ Subchapter D. Volunteer Services

• 25 TAC §§407.71-407.102

— The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts the repeal of §§407.71-407.102, concerning volunteer services, without changes to the proposed text as published in the August 4, 1992, issue of the *Texas Register* (17 TexReg 5418). The repeal of the sections is adopted contemporaneously with the adoption of the subchapter which replaces them, Chapter 410, Subchapter B of this title (relating to Community Relations), also in this issue of the *Texas Register*.

The new sections update provisions for the implementation of volunteer services programs at facilities and CMHMRCs.

— No comments were received regarding adoption of the repeals.

— The repeals are adopted under Texas Civil Statutes, Article 5547-202, §2. 11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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

Issued in Austin, Texas, on September 29, 1992.

TRD-9213196

Ann K. Utley
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date: January 1, 1993

— Proposal publication date: August 4, 1992

— For further information, please call: (512) 465-4516

Chapter 410. Volunteer Services and Public Information

Subchapter B. Community Relations

• 25 TAC §§410.51-410.76

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts new §§410.51-410.76, concerning community relations. Sections 410.52-410.56, 410.58-410.60, 410.62-410.69, 410.71, and 410.73-410.76 are adopted with changes to the proposed text as published in the August 4, 1992, issue of the *Texas Register*. Sections 410.51, 410.57, 410.61, 410.70, and 410.72 are adopted without changes and will not be republished. The new sections are adopted contemporaneously with the adoption of the repeal of existing Chapter 405, Subchapter V (concerning the Client Volunteer Program) and Chapter 407, Subchapter D (concerning volunteer services).

The purpose of the new subchapter is to implement recommendations of the Texas Board of MHMR's Special Ad Hoc Committee on TXMHMR Volunteer Services. Those recommendations include the renaming of the volunteer services function as "community relations" to reflect that the effort includes both recruitment and retention of volunteers and resource generation; the extension of community relations programs to community mental health and mental retardation centers; and the inclusion of a provision for memorandums of understanding between facilities or community centers and any nonprofit organization working on behalf of the facility or community center to generate resources.

Throughout the document, the term "facility or CMHMRC community relations office" is replaced with "facility or CMHMRC community relations staff" to reflect that community centers may elect to refer to the staff coordinating the community relations function as something other than "community relations." Similarly, the term "chief executive officer (CEO)" has replaced "superintendent/director or executive director." The volunteer evaluation has been retermed "volunteer assessment." References to nonprofit organizations existing on behalf of a facility or community mental health and mental retardation center (CMHMRC) have been revised to clarify that the establishment of such a nonprofit organization is optional.

In §410.52, the application is revised to reflect that the provisions of this subchapter are not applicable to community centers until funding for the community relations function is included in the CMHMRC's contract with TXMHMR.

In §410.53, the term "direct care" is replaced with "direct contact" to reflect current terminology. The definition of "facility or CMHMRC community relations staff" is revised to clarify that the parameters of the function at CMHMRCs are defined in the contract. The definition of volunteer services council is revised to reflect that CMHMRCs may or may not elect to call their nonprofit organizations volunteer services councils.

The definition of CMHMRC has been revised to include an updated citation. A definition for "facility or CMHMRC director of community relations" has been added. The definition of "individual served" has been replaced with "person served." The definition of the "Office of Community Relations, Central Office" is revised to clarify that the office is responsible for coordinating the community relations function.

Similarly, §410.54(c) is revised to clarify that the Office of Community Relations, Central Office, is responsible for centrally coordinating the community relations function. In §410.54(d), it is clarified that a memorandum of understanding may be between the nonprofit organization and the department or one of its facilities or CMHMRCs. In §410.55, the one-year prohibition on former facility or CMHMRC community relations employees volunteering has been deleted; any waiting periods shall be determined by facility or CMHMRC policies and procedures.

In §410.55(d), it is clarified that the volunteer assignment of a person served must be coordinated with the treatment team, as opposed to the earlier proposal requiring approval of the treatment team. Section 410.58(a)(4) is revised to clarify that the provision that volunteers assigned to religious education be approved by the chaplain or chaplaincy staff applies only to facilities. Section 410.58(a)(5) is revised to clarify that anti-discriminatory policies apply to CMHMRCs as well as facilities.

It is clarified in §410.59(d) that volunteers may be provided meals or reimbursed for meals if on duty during mealtime, as specified by facility or CMHMRC policies and procedures. Provisions found in §410.60 are delineated for both facilities and CMHMRCs, which may establish their own policies and procedures regarding the issues of transportation. The requirement that the treatment team approve the separation of a person served from a volunteer assignment is deleted from §410.62(c).

A provision is added to §410.63 clarifying that CMHMRCs are responsible for establishing their own policies and procedures addressing the issuance of keys. It is clarified in §410.63(g) that Chapter 404, Subchapter E (concerning rights of persons receiving mental health services) and Chapter 405, Subchapter Y (concerning client rights—mental retardation services) apply solely to facilities.

In §410.64(a)(1) language is added clarifying that the donor determines the value of the donated items for tax purposes; the nonprofit organization uses fair market value for reporting in-kind gifts or merchandise donations. A provision is added to §410.64(b) clarifying that CMHMRCs are responsible for establishing policies and procedures addressing processing of donations made directly to the CMHMRC. Several details relating to acceptance of donations in §410.64(c) are deleted and will be included in the operating instructions which are expected to accompany this document beginning in early 1993.

Section 410.65 is revised to clarify that CMHMRCs are responsible for establishing

their own policies and procedures addressing which staff are authorized to solicit goods and services from the community.

It is clarified in §410.65(d) that provisions regarding redirection of funds received at the facility or CMHMRC to the volunteer services council also apply to CMHMRCs, which may elect to call their nonprofit organizations something other than a volunteer services council. Section 410.66 is revised to clarify that CMHMRCs are responsible for establishing their own policies and procedures addressing the development and naming of capital improvement projects, gifts, memorials, and donated items.

Section 410.68 is revised to clarify that facilities and CMHMRCs are authorized to undertake revenue generating activities, and that, in addition, each facility or CMHMRC may have a nonprofit organization working on its behalf to enhance the function. It is clarified that a CMHMRC may utilize its 501(c)(3) status for fundraising instead of establishing an independent nonprofit organization. It is further clarified that at facilities, the nonprofit organization shall be known as the volunteer services council, and shall be responsible for raising funds on behalf of campus and community services programs.

Section 410.68(c) has been revised to require facility superintendent/directors or CMHMRC executive directors to establish a procedure for approving employee fundraising activities. It is clarified in §410.69(9) that the prohibition on voting and holding office in the nonprofit organization by facility or CMHMRC employees if such activity would create a conflict of interest applies to the spouse and children of the employee as well.

Section 410.71 is revised to clarify that membership in the Volunteer Services State Council is open to one representative from each facility, CMHMRC, and the Texas Foundation for Mental Health and Mental Retardation. Section 410.73 is revised to reflect that volunteers must represent TXMHMR's position if identifying themselves as volunteers for one of its facilities or programs. The title of one of the exhibits listed in §410.74 is revised to reflect the new use of the term "volunteer assessment."

Several pertinent state laws are added to the listing of references in §410.75. Section 410.76(b) is revised to include CEOs.

Public comment on the proposed subchapter was received from seven individuals or organizations, including: Heart of Texas Mental Health Mental Retardation Center, Waco; an individual commenter; MHMR Services for the Concho Valley, San Angelo; Texas Panhandle Mental Health Authority, Amarillo; Humble Alliance for the Mentally Ill, Kingwood; the Texas Council of Community Mental Health and Mental Retardation Centers, Inc., Austin; and the Mental Health and Mental Retardation Authority of Harris County, Houston.

A commenter suggested that the proposed rule will increase paperwork, documentation, and record keeping, and suggested that the subchapter would inhibit the ability to deliver the highest quality services possible to the

individuals served. The department responds that the intent of the subchapter is to enhance and support volunteer activity throughout the system. Much of the record keeping is designed to meet statutory regulations, as well as to meet requirements of the Legislative Budget Board, which reviews the use of funds for volunteer programs.

A commenter noted that use of the term "CMHMRC community relations staff" was inappropriate, since it implies that all centers must have one. The commenter noted that the mandate included in §410.54(c) requires centers to "operate volunteer staff," not a community relations office. The department responds that for the sake of simplicity, the term "community relations staff" has been used throughout the document when referencing a responsibility associated with the functions of volunteer services and fundraising. However, the definition of "community relations staff" includes a recognition that at CMHMRCs, the staff assigned these functions may be referred to by a different title.

Concerning the concept of the nonprofit organization, a commenter requested that it be clarified that CMHMRCs may use their own structures from which to operate volunteer services and to use as a fund-raising vehicle. The commenter noted that it was not clear enough that the nonprofit organization was an optional mechanism. The department responds that it was never the intent to require the establishment of a nonprofit organization. Where appropriate throughout the document, language has been added clarifying the issue.

A commenter suggested that the department consider making this proposed rule applicable only to state facilities, then address the CMHMRC's compliance through the TXMHMR contract rule currently being considered for revisions. The commenter noted that in such a situation, the allocation of funds for volunteer programs would then be tied into the performance contract between TXMHMR and a center, along with acceptable standards (i.e., aspects, expectations, characteristics) and reasonable reporting criteria from the center to the department concerning the utilization of funds. The department responds that application of this subchapter to community centers was among the recommendations of the Special Ad Hoc Committee on TXMHMR Volunteer Services in its effort to create a systemwide approach to volunteer services. Those recommendations were accepted by the Texas Board of MHMR earlier this year.

The same commenter noted that the department needs to clearly state its approach as to what is expected of CMHMRC's volunteer programs. Specifically, the commenter asked three questions: Does Article 6252(11e)'s undefined "volunteer programs" at governmental entities include identical purposes as those at state agencies? If so, what should be considered by a CMHMRC in determining the best methods to fulfill those purposes? And finally, what allocation of funds for TXMHMR will be necessary to encourage the growth and development of volunteer programs/services to meet those purposes cost-effectively? The department interprets Article

6252(11e)'s undefined volunteer programs to include identical purposes as those state agencies. The funding issues will be included in the next legislative request and exact funds to be provided to CMHMRCs will be negotiated during the contract process.

Regarding §410.53, a commenter noted that the definition of "community mental health and mental retardation centers" includes an outdated cite. The department agrees, and the outdated citation has been replaced with the current one.

A commenter suggested that the definition of "community service volunteers" should be revised to include CMHMRCs. The department responds that "community service volunteers" are defined as direct service volunteers who volunteer at a facility's community services program—a description of the location at which the volunteer serves, not the type of service the volunteer provides. Community services volunteers are a subset of direct service volunteers, and, as defined, do not exist at CMHMRCs.

Also regarding §410.53, two commenters noted that the definition of direct service volunteer does not reference or seem to include community center direct service volunteers. The department responds that a direct service volunteer is defined as an "individual who provides time and/or services to individuals served by TXMHMR." For purposes of this subchapter, TXMHMR is defined as the "Texas Department of Mental Health and Mental Retardation, including facilities and CMHMRCs."

A commenter noted that the definition of "individual served" was included in §410.53, but the term "person served" was utilized throughout the document. The department agrees, and "individual served" has been replaced by "person served."

A commenter asked that a definition of MOU be included in §410.53. The department responds that MOU is merely an acronym for "memorandum of understanding." The specifics of the MOU referred to in this document are outlined in §410.69.

Regarding the definition of "Office of Community Relations, Central Office," a commenter noted that boards set policies, and the programs are directed locally. The commenter asked that the definition be revised to reflect that the Office of Community Relations, Central Office, is responsible for "coordinating the statewide community relations program." The same commenter also asked that in §410.54(c), the phrase "shall be centrally overseen" be revised to read, "shall be centrally coordinated by." The department agrees, and the language has been revised.

A commenter noted that the definition of "public responsibility committee" includes a PRC appointed by a "CMHMRC non-profit corporation." The commenter noted that such a PRC has no statutory authority. The department agrees, and language has been revised to clarify the means of appointing a PRC.

A commenter asked that the definition of "TXMHMR" be deleted. The commenter asked that throughout the document, all references to TXMHMR be replaced with "facilities

and CMHMRCs." The department responds that for the purpose of this document, TXMHMR has been defined as "the Texas Department of Mental Health and Mental Retardation, including facilities and CMHMRCs."

A commenter asked if a reference to the value of volunteer service and donors to community MHMR centers was inadvertently omitted from §410.54(a). The department responds that the section makes reference to the value of volunteer service and donors of the Texas Department of Mental Health and Mental Retardation, which is defined in this subchapter to include facilities and community centers.

A commenter noted that the language in §410.54(d) implies that a nonprofit organization exists at all facilities and CMHMRCs. The commenter requested this be revised to reflect that the nonprofit organization is an optional entity. The department agrees, and language has been revised.

Concerning §410.55(b), a commenter noted that at CMHMRCs, the board of trustees was the rightful entity to determine any applicable waiting periods for former employees who wish to volunteer. The department agrees, and language has been revised to reflect that waiting periods will be determined by facility or CMHMRC policies and procedures.

With regard to §410.56, a commenter asked that the phrase "the service does not constitute a job which is or should be the work of a paid employee" be deleted. The commenter noted it might create some difficulty for some programs operated by the agency. The department responds that the requirement is a provision of the Fair Labor Standards Act, and therefore must remain. Additional information regarding the provision will be included in the operating instructions which will be distributed to accompany this subchapter in early 1993.

Another commenter noted that although §410.56(c) includes a prohibition on a person served volunteering on the same unit where he or she resides, it fails to address outpatient, vocational, day program, or other services by which a CMHMRC provides a vast majority of its services. The department responds that there are no similar restrictions on persons served volunteering in outpatient, vocational, day program, or other such services.

Concerning §410.57(a), a commenter noted that families of clients have been wonderful in supplying baked goods, hours of help, and other assistance to staff. The commenter suggested that to disallow family members from helping in the area where a relative is receiving services would certainly have a devastating impact on the clients served and many programs. The department responds that the provision does not prohibit family members from informally helping out in the area where a relative is receiving services. However, if the family member is formally seeking a volunteer placement, then the placement must be in an area away from where the relative is receiving services.

Regarding §410.58(a)(1), a commenter suggested that requiring consultation with "Cen-

tral Office" prior to allowing any exceptions to the requirement that all volunteers sign a confidentiality statement could be seen as a usurpation of the CMHMRC's authority. The department responds that there really is no reason a volunteer should be exempted from signing a confidentiality agreement, and the clause has been deleted.

A commenter noted that the citation included in §410.58(a)(2) was outdated. The department agrees, and the citation has been updated.

Regarding §410.58(c)(2), a commenter noted that the paragraph refers to the "facility or community MHMR center's director of community relations." The commenter noted that the CMHMRC may choose to use a different title for the position. The department responds that for the sake of reference in the document, the term "director" has been used. However, the definition of "director" recognizes that other titles may be used at CMHMRCs.

With regard to §410.58(e), a commenter noted that there was a negative reaction to use of the word "evaluation," and suggested replacing it with "assessment." The department agrees, and language has been revised.

A commenter asked that the provision in §410.59 requiring that volunteers be provided a name tag, badge, or other means of identification be reworded to allow the means of identification to be provided only when necessary or when requested by the volunteer. The department responds that all volunteers must have some form of identification which distinguishes them from other individuals at the facility. The identification does not have to be worn, but should always be available in the event the individual needs to identify himself or herself as a volunteer.

A commenter suggested that allowing the CMHMRC's "director of community relations" to select recipients of "Star" awards, as outlined in §410.61(a), is a usurpation of a CMHMRC's executive director and the board of trustees authority. The department responds that the person working most closely with the volunteer program is the most appropriate person to determine recipients of "Star" awards, which are intended for direct service volunteers. The provision does not, however, preclude additional approval from the CMHMRC's executive director or the board of trustees.

A commenter suggested that the language in §410.61(d) implies that existence of a nonprofit organization. The department responds that this was not the intent, and language has been revised.

With regard to §410.62(b), a commenter noted that it seemed inappropriate to permit a volunteer to be separated without citing a cause for the separation. The commenter noted that volunteers deserve to be treated with openness and honesty, and suggested the statement could discourage persons from volunteering. The department agrees, and the statement has been deleted.

A commenter suggested that the provision in §410.62(c) requiring the treatment team's approval prior to separating a person served

from a volunteer assignment be changed to required notification upon separation. The department agrees, and language has been revised.

Concerning §410.63(d), a commenter noted that the community MHMR center's director of community relations does not have the authority to determine need to access a building. The department agrees, and the provision has been revised to require CMHMRCs to establish policies and procedures addressing the issuance of keys to volunteers.

Also concerning §410.63(d), a commenter noted that volunteers primarily function after hours and on weekends when the building and office are locked, requiring keys to buildings and offices to be issued to volunteer staff. The department responds that the section includes provisions for issuing keys to volunteers when it is determined that a volunteer needs access to a building or office in order to adequately perform a volunteer assignment.

A commenter noted that §410.63(j) refers to volunteers as "representatives of the department." The commenter suggested this reference did not include CMHMRCs. The department responds that for the purpose of this document, "department" has been defined to include facilities and community centers.

Concerning §410.64(A)(1), a commenter suggested that it would be more appropriate for the donor to determine the value of donated items for tax purposes. The department agrees, and language has been revised. In addition, however, language has been added allowing the nonprofit organization to place a value on the items which will be used for internal reporting purposes.

Two commenters noted that §410.65(a) appears to conflict with the authority of the CMHMRC board of trustees and the authority they may designate to the CMHMRC executive director. Another commenter noted that many merchants and individuals throughout the service area donate to individual programs on an "as-needed" basis, and suggested that the CMHMRC has no desire to curtail community involvement in any manner by having to "clear" the contributions through the community relations office. The department agrees, and the provision has been revised to require CMHMRCs to establish policies and procedures addressing which staff are permitted to solicit donations from the community.

Regarding §410.66, a commenter questioned the applicability of Chapter 410, Subchapter C (concerning capital improvements) to CMHMRCs. The department responds that the subchapter does not apply to CMHMRCs, and language has been added requiring CMHMRCs to establish policies and procedures addressing issues related to capital improvements.

Concerning the provision in §410.67(a) stating that the "director of community relations may elect to maintain petty cash funds for non-profit organizations," a commenter noted that a CMHMRC should be advised against doing so for a number of reasons. The

commenter also suggested that TXMHMR Internal Audit does not approve of petty cash funds. The department responds that there is no requirement that petty cash funds be maintained by the director of community relations; CMHMRCs are permitted to choose not to carry out this function. Additionally, TXMHMR Internal Audit is not opposed to maintenance of petty cash funds provided steps are taken to ensure proper control and accounting of the funds.

With regard to §410.69, a commenter suggested the relationship between the nonprofit organization and the facility or CMHMRC may need to be more than at arm's length. The department responds that legal staff has reviewed this section and concurs that it creates adequate distance between the two entities.

Also regarding §410.69, a commenter suggested that volunteer groups operating under a 501(c)(3) can affect the community center because they solicit donations of money and goods and services. In many cases, the commenter noted, this may be in direct conflict with other solicitations being made by the center. The department responds that the purpose of the MOU is to avoid this type of conflict by creating an understanding of the roles and functions of the entities involved.

Regarding §410.69(d)(2), a commenter suggested that a nominating committee appointed by the executive committee with the consensus of the nonprofit organization would be appropriate rather than the election of a nominating committee. The department responds that after careful review of alternatives, the Special Ad Hoc Committee on TXMHMR Volunteer Services recommended the preferred parliamentary approach as outlined in the section.

Concerning §410.71, two commenters suggested that membership in the Volunteer Services State Council should be voluntary, not mandatory. The department agrees, and language has been revised clarifying that membership "is open to" one representative from each facility or CMHMRC.

A commenter suggested that §410.72(a) singles out the CMHMRC's community relations office as being subject to audit by the Internal Audit Department and State Audit. The commenter noted that all center operations are subject to audit including any type of volunteer program. The department responds that the reference to the auditing process is merely an emphasis of existing policy.

A commenter questioned the applicability of §410.73(a) to CMHMRCs, noting that CMHMRCs are not TXMHMR facilities or programs. The department responds that the provision would apply to CMHMRCs as public dollars will be used to fund the community relations program. Another commenter questioned whether Directive 1 should be referenced in §410.75. The department responds that the reference to Directive 1 has been deleted from the subchapter.

§410.52. Application. The provisions of this subchapter shall apply to:

(1) the department and all facilities of the Texas Department of Mental

Health and Mental Retardation, including their community services programs; and

(2) effective upon inclusion in individual contracts, but no earlier than September 1, 1993, all community mental health and mental retardation centers.

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

Cash—Currency, checks, drafts, money orders, and other forms of legal tender.

Chief executive officer (CEO)—The superintendent/director of a state facility or the executive director of a CMHMRC.

Commissioner—The commissioner of the Texas Department of Mental Health and Mental Retardation.

Community mental health and mental retardation center (CMHMRC)—A mental health and mental retardation center established under the Texas Health and Safety Code, Chapter 534.

Department—The Texas Department of Mental Health and Mental Retardation.

Deputy commissioner—The deputy commissioner for Mental Health Services and/or Mental Retardation Services of the Texas Department of Mental Health and Mental Retardation.

Direct contact—An assignment which involves working one-to-one with persons served.

Direct service volunteer—An individual who provides time and/or services to individuals served by TXMHMR. Direct service volunteers are not paid by TXMHMR for assistance and can include community citizens; family members of individuals receiving services when not acting on behalf of the individual receiving services; employees when not acting in the capacity of employment; and individuals receiving services when not acting solely on behalf of himself/herself. Examples of direct service volunteers include:

(A) Advocacy volunteers—Individuals who act in an advocacy capacity for individuals with mental retardation who have no legal guardians. This program is part of the intermediate care facilities for mental retardation (ICF/MR) program requirements.

(B) Community restitution volunteers—Individuals who are required by a court to provide a specified number of hours of volunteer services in lieu of a jail sentence.

(C) Community service volunteers—Individuals who volunteer in programs operated by the facilities' community

services divisions in counties for which they are the mental health or mental retardation authority.

(D) Foster grandparents—A volunteer program operated by the federal government through ACTION. Volunteers are provided a subsidy.

Donation—A contribution of anything of value freely given to benefit persons served by the department.

Donor—An individual who contributes financial or in-kind gifts such as property or goods, or who serves as a volunteer "member" of a nonprofit organization which generates revenue on behalf of TXMHMR.

Employee—A person who is legally employed to perform work and who is paid a salary or wage by the department, a facility, or a CMHMRC.

Facility—A state school, state hospital, or state center, including their respective community services programs, or other facilities of TXMHMR.

Facility or CMHMRC director of community relations—The staff member responsible for coordination of the facility or CMHMRC community relations function. At CMHMRCs, the staff member fulfilling responsibilities assigned to the director of community relations may operate under a different title.

Facility or CMHMRC community relations staff—The staff at a facility or CMHMRC who manage the volunteer programs and oversee volunteer fundraising activities. At community centers, the parameters of this function are defined in the contract. Community relations may include the public information function.

Nonprofit organization or 501(c)(3)—An organization recognized by the Internal Revenue Service as a nonprofit corporation and granted the right to receive tax deductible contributions. The nonprofit organization works on behalf of the agency to generate resources.

Office of Community Relations, Central Office—Under the direct supervision of the commissioner, the central office department responsible for coordinating the statewide community relations program.

Person served—Any individual receiving mental health or mental retardation services, in residence or through community services programs, from a facility or CMHMRC.

Public responsibility committee (PRC)—Volunteers appointed by either the executive committee of a facility volunteer services council or the authorizing body of a community mental health and mental retardation center to provide independent investigation of consumer rights and abuse and neglect issues. The PRC is required by state statute for programs for individuals with mental retardation and authorized by TXMHMR for programs serving individuals

with mental illness.

Texas Foundation for Mental Health and Mental Retardation -A nonprofit organization acting on behalf of TXMHMR to raise funds to enhance the department's programs.

TXMHMR-The Texas Department of Mental Health and Mental Retardation, including facilities and CMHMRCs.

Volunteer services council (VSC)-A nonprofit organization of volunteers who work on behalf of a facility. At CMHMRCs, nonprofit organizations may be called something other than volunteer services councils.

Volunteer Services State Council (VSSC)-A statewide organization representing facility and CMHMRC volunteers and volunteer fundraising efforts.

§410.54. General.

(a) Volunteers and donors of the Texas Department of Mental Health and Mental Retardation are highly valued as an essential component of its functions. Direct service volunteers are recognized and supported in their efforts to provide goods, services, and personal attention for persons served which enhance and enrich the best treatment and habilitation the state can provide. Donors are recognized and supported in their efforts to enhance the fundraising capabilities and revenue development of the department, enabling the department to provide additional services and goods to the people it serves.

(b) By freely contributing their remarkable talents, resources, creativity, and energy in response to human needs, volunteers, both direct service and donors, consistently support the department in its vision of a Texas where:

(1) in partnership with TXMHMR, volunteers assist people with mental illness, mental retardation, and substance abuse to have the skills and opportunities they need to achieve their individual dreams;

(2) volunteers help people enjoy good health, safety, and security from harm, and a quality standard of living; and

(3) volunteers encourage this and future generations to enjoy the bountiful natural beauty and resources of Texas.

(c) In recognition of the talents, resources, creativity, and energy provided by direct service volunteers, TXMHMR has a responsibility to develop and support, through training and funding, volunteer programs which enhance the lives of the people served by the department. To facilitate the execution of this responsibility, every facility and CMHMRC shall operate a volunteer program. These programs shall be funded by the department at its facilities' campus

and community service programs and shall be negotiated through the contracting process at CMHMRCs, and shall be centrally coordinated by the Office of Community Relations, Central Office.

(d) In order to provide the best treatment and habilitation for persons served, it is essential that, in the event a nonprofit organization operates on behalf of a facility or CMHMRC, the nonprofit organization fully coordinate its activities with the facility or CMHMRC administration. The chief executive officer (CEO) retains full authority over all functions and projects concerning the facility or CMHMRC, persons served, and the employees. It is also essential that administration and staff cooperate fully with the volunteer council and the volunteers who provide the services. To facilitate this relationship where it exists, a memorandum of understanding clearly outlining the responsibilities of both the nonprofit organization and the department and or its facility or CMHMRC, which is referenced in §410.74 of this title (relating to Exhibits) as Exhibit A, shall be adopted.

§410.55. Direct Service Volunteers: Current Employees; Former Employees.

(a) Current employees.

(1) Employees may volunteer their services at a facility or CMHMRC if their time is donated willingly without external pressure.

(A) The functional area and geographic location of employees' volunteer assignments must be as far removed as possible from their regular work assignments and duties.

(B) All employees must submit a statement verifying that they are volunteering their time without coercion. Facilities and CMHMRCs may use the standard "Employee Volunteer Statement," which is referred to in §410.74 of this title (relating to Exhibits) as Exhibit B, or they may develop a mechanism of their own. The facility or CMHMRC community relations staff shall keep a signed copy of the employee volunteer's statement, and a copy shall be placed in the employee's personnel record.

(2) Hours of service donated by an employee volunteer are counted and recorded by the facility or CMHMRC community relations staff for volunteer credit, but shall not be counted as part of the employee's regular paid assignment.

(b) Former employees. Former employees may apply to volunteer at the same or at a different facility or CMHMRC after a waiting period specified by facility or CMHMRC policies and procedures.

(c) Requirements. All current and former employees applying for volunteer placement shall be subject to the standard interview, screening, training, and assessment required of other applicants for volunteer placement.

§410.56. Direct Service Volunteers: Persons Served.

(a) A person served has the right to perform services as a volunteer if:

(1) the kinds of activity for which the individual volunteers are those which other volunteers usually and customarily perform in department facilities and CMHMRCs;

(2) the service does not constitute a job which is or should be the work of a paid employee;

(3) the person served understands that the activity is a free-will service and that "voluntarily" means "without pay";

(4) there are no material benefits or privileges available to the individual which are not available to persons served who do not volunteer to provide services, except the possible wearing of a name tag or other means of identification during the performance of volunteer services or special recognition or benefits such as are available to other volunteers for their services (i.e., meals);

(5) appropriate orientation and on-the-job training is provided to enable the individual to understand the requirements of the volunteer assignment;

(6) the individual is able to perform the services and understands the boundaries or risks, if any, of the volunteer assignment; and

(7) the volunteer activities of the individual do not interfere with any regularly scheduled activity.

(b) If the person served is employed by the facility or CMHMRC, volunteer services are to be in activities which are not related to duties in the individual's paid job.

(c) A person served may not be placed in a volunteer assignment on the same unit where the person resides.

(d) A person served may become a volunteer by initiating a request through the facility or CMHMRC community relations staff. The facility or CMHMRC community relations staff shall coordinate the request with the individual's treatment team.

(e) Persons served may be advised that the volunteer program is available but may not be directed to participate in the volunteer program. A person served may offer to perform volunteer services if he or

she so wishes. To the greatest extent possible, the volunteering of a person served for the performance of volunteer services is to be handled in essentially the same manner as the volunteering of any other citizen for the performance of volunteer services.

(f) The facility or CMHMRC community relations staff shall confer with the appropriate facility or CMHMRC staff to work out specific methods of implementing a volunteer program for persons served at that facility or CMHMRC which shall conform with the requirements of this subchapter.

(g) The facility or CMHMRC community relations staff shall obtain from the person served, on a one-time basis, a statement verifying that the individual is volunteering without coercion. Facilities and CMHMRCs may use the standard "Client Volunteer Statement," which is referred to in §410.74 of this title (relating to Exhibits) as Exhibit F, or may develop their own mechanism. A copy of the statement shall be filed with the facility or CMHMRC community relations staff and in the record of the person served. A person served may not begin the performance of a volunteer assignment until the statement has been processed.

(h) Persons served who are engaged in activities for their own benefit as opposed to activities for the common benefit may continue to do so and need not be inducted through the facility or CMHMRC community relations staff by means of the procedures set forth in this subchapter (e.g., gardening/cultivating a plant, as opposed to trimming the shrubs).

§410.58. Direct Service Volunteers: Standard Interview; Basic Orientation and Training; Placement Procedures; Assignment Descriptions; Assessment.

(a) All applicants for volunteer placement, including persons served, shall complete an application for volunteer service as part of the interview process, a copy of which shall be kept on file with other volunteers' applications and records. A sample "Application for Volunteer Service" is referred to in §410.74 of this title (relating to Exhibits) as Exhibit C; facilities and CMHMRCs may use this form or develop their own.

(1) All prospective volunteers must complete a confidentiality agreement. No exception to this rule shall be made. The "Confidentiality Agreement for Volunteers" form, which is referred to in §410.74 of this title as Exhibit D, may be used, although facilities and CMHMRCs may elect to develop their own mechanism.

(2) All prospective volunteers who may be assigned to direct care posi-

tions are subject to a criminal history record check as authorized in the Texas Health and Safety Code, §533.007.

(3) All prospective volunteers are subject to acceptance by the facility or CMHMRC director of community relations.

(4) At facilities, volunteers assigned to religious education shall be approved by the facility chaplain or chaplaincy staff.

(5) No volunteer shall be subject to discrimination under any of the policies or procedures of the department or any of its component facilities or CMHMRCs based on race, color, national origin, religion, sex, handicap, veteran status, or political affiliation.

(b) Volunteers shall be required to complete a basic orientation conducted by the facility or CMHMRC community relations staff prior to placement. In addition, volunteers shall receive training in any areas necessary to successfully perform duties outlined in the volunteer's job description.

(1) Whenever possible, the facility or CMHMRC community relations staff should utilize the resources and consultation available through the facility or CMHMRC office for staff development.

(2) Training shall be offered at times which are convenient to volunteers, including weekends and evenings.

(c) Volunteers shall be placed in assignments only with the agreement of the staff member with whom the volunteer will be placed.

(1) Staff requests for volunteers shall be submitted to the facility or CMHMRC community relations staff. Facilities and CMHMRCs shall develop an appropriate mechanism for submission of requests for volunteers.

(2) The facility or CMHMRC director of community relations shall confer with the staff member who shall be supervising the volunteers before making the placement. An interview between the volunteer and volunteer supervisor shall be conducted prior to placement. A job description shall be provided delineating responsibilities of the volunteer.

(d) A copy of the job description of each volunteer assignment shall be maintained by the facility or CMHMRC community relations staff, and a copy of the job description of volunteer assignments for persons served shall also be placed in the individual's medical record. All job descriptions shall be reviewed periodically and revised as needed to accurately describe the tasks actually being performed by the volunteer.

(e) The facility or CMHMRC community relations staff and facility or CMHMRC staff members who supervise

the volunteer's work assignment shall periodically review and evaluate each volunteer's assigned work duties as delineated on the volunteer's job description using an appropriate mechanism. The "Assessment of Volunteer" form, which is referred to in §410.74 of this title as Exhibit E, may be used for this purpose, although facilities and CMHMRCs may elect to develop a different mechanism.

(f) As part of the assessment process, volunteers shall be given an opportunity to evaluate their volunteer experience.

§410.59. Direct Service Volunteers: Age Requirements; Identification; Meals.

(a) All persons applying for individual volunteer services placements must have had their 14th birthday before their applications shall be considered.

(1) Individual facilities or CMHMRCs may specify a minimum age above 14 years of age on specific assignments for individual volunteers.

(2) The minimum age requirement does not apply to members of volunteer groups which come to the facility or CMHMRC under the supervision of an adult sponsor or leader (i.e., families, school groups) and which are approved by the facility or CMHMRC's director of community relations.

(3) Volunteers age 14-17 shall be considered for placement in individual volunteer assignments only after the facility or CMHMRC community relations staff has obtained the documented permission of the minor's parent or legal guardian. The "Parental Permission Form-For Volunteers Under the Age of 18," which is referred to in §410.74 of this title (relating to Exhibits) as Exhibit G, may be used for this purpose, although facilities and CMHMRCs may elect to develop their own mechanism.

(b) Volunteer assignments for minors should comply with the child labor requirements of the Department of Labor.

(c) A name tag, badge, or some other means of identification shall be provided for all volunteers.

(d) Volunteer workers may receive free meals provided by the facility or CMHMRC when on duty during mealtime, or may be reimbursed for out-of-pocket expenses, as determined by facility or CMHMRC policies and procedures.

§410.60. Volunteers: Insurance Coverage; Transportation.

(a) Insurance coverage. Department funds shall provide coverage for direct service volunteers under volunteer program insurance.

(b) Transportation at facilities.

(1) Volunteers may ride as passengers in facility buses, vans, and other state vehicles in connection with their approved volunteer assignment.

(2) Volunteers may drive state vehicles as permitted by facility policies and procedures.

(3) Volunteers who drive non-state vehicles transporting persons served must have at least the minimum auto liability insurance coverage required by state law. Volunteers who drive non-state vehicles in connection with their volunteer assignment must satisfy the requirements listed in the department's internal rules governing transportation.

(4) A volunteer whose driver's license is from another state may not transport persons served until he or she has obtained a valid Texas drivers' license or a military equivalent accepted by the Department of Public Safety in lieu of a valid Texas license.

(c) Transportation at CMHMRCs. CMHMRCs shall establish policies and procedures addressing transportation issues which are in keeping with local, state, and federal regulations.

§410.62. *Volunteers: Separation Process, Exit Interview.*

(a) The facility or CMHMRC director of community relations may separate a volunteer if it is felt that the volunteer is unsuited to the assignment.

(b) Before a volunteer is separated, consideration should be given to discussion with the volunteer, discussion with the volunteer's staff supervisor, length of satisfactory work done by the volunteer, and reassignment of the volunteer.

(c) If a volunteer who is a person served chooses to stop volunteering, the facility or CMHMRC community relations staff will notify the individual's treatment team.

(d) The facility or CMHMRC community relations staff should make every effort to conduct an exit interview with all volunteers who are leaving the program or terminating their assignment. The "Exit Interview Form-Volunteer Services," which is referred to in §410.74 of this title (relating to Exhibits) as Exhibit H, may be used for this purpose, although facilities and CMHMRCs may elect to develop their own mechanisms.

§410.63. *Direct Service Volunteers: General Guidelines.*

(a) Volunteers shall be subject to all applicable rules, regulations, policies,

and procedures of the department and the facility or CMHMRC where they are participating in the volunteer services program.

(b) A volunteer shall not give money directly to persons served. If a volunteer wishes to donate money to a specific individual, he or she must consult the facility or CMHMRC director of community relations for the procedure to be followed.

(c) Under no circumstances shall volunteers take or accept money from persons served.

(d) At facilities, keys to state buildings, state vehicles, or state equipment shall not be issued to individual volunteers. However, the facility director of community relations may, in some rare instances, determine that a volunteer needs access to a room within a state building for a specific time and purpose in order to adequately perform a volunteer assignment. Under these conditions, the facility director of community relations may elect to request that a key be issued to the volunteer for a limited period of time. Keys shall not be issued to volunteers without the prior approval of the CEO or the person authorized by the CEO to issue keys. Volunteers may use state property only in connection with their assigned duties or in connection with activities of the volunteer services council.

(e) CMHMRCs shall establish policies and procedures addressing issuance of keys to CMHMRC buildings, vehicles, and equipment.

(f) Volunteers are not authorized to use the facility or CMHMRC letterhead.

(g) All volunteers shall be subject to the confidentiality statutes and regulations governing disclosure of information concerning persons served, including Chapter 403, Subchapter K of this title (relating to Disclosure of Client-Identifying Information). At facilities, these regulations also include:

(1) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services); and

(2) Chapter 405, Subchapter Y of this title (relating to Client Rights-Mental Retardation Services).

(h) Volunteers shall not take any photographs of persons served without obtaining clearance through the facility or CMHMRC community relations staff, who shall be responsible for obtaining legally adequate consent from the appropriate person.

(i) All volunteer records which directly or indirectly identify a person served or a person formerly served are confidential. The confidentiality of such records shall be maintained and protected, and the information contained in such records may

not be disclosed to anyone except as authorized by law.

(j) Volunteers are required to observe the rights and responsibilities of identifying themselves as representatives of the department, including the responsibility to represent the department's position on issues when acting in such capacity.

§410.64. *Acceptance of Donations.*

(a) Donations through nonprofit organizations. All goods, services, and funds for persons served donated through the nonprofit organization shall be processed through the nonprofit organization. This is not a function or responsibility of the facility or CMHMRC community relations staff, although the facility or CMHMRC and the nonprofit organization may establish a process for staff assistance and include it in the memorandum of understanding (MOU) between the entities as outlined in §410.69 of this title (relating to Nonprofit Organizations-Relationship to Department and/or Its Facility or CMHMRC).

(1) The donor shall determine the value of the donated items for tax purposes. The nonprofit organization shall use fair market value for reporting in-kind gifts or merchandise donations.

(2) All items shall remain the property of the nonprofit organization until such time as they are turned over to the facility or CMHMRC. Donated items which cannot be used to benefit persons served, directly or indirectly, may be distributed to other 501(c)(3) agencies which have an appropriate use for them.

(3) Upon transfer of donated goods, services, and funds from the nonprofit organization to the facility or CMHMRC, the facility or CMHMRC community relations staff shall place its own value on the goods, services, and funds which are accepted using values recommended by the Internal Revenue Service (IRS). These values shall be used by the facility or CMHMRC in completing its report of donations, as discussed in §410.72 of this title (relating to Auditing Guidelines; Additional Reporting Guidelines).

(b) Donations made directly to facilities or CMHMRCs. Donations made directly to facilities shall be processed in keeping with policies and procedures outlined in department Directive 1, "Standard Operating Procedures." CMHMRCs shall establish their own policies and procedures addressing processing of donations made directly to the CMHMRC.

(c) Acknowledgment of donations. All donations must be acknowledged.

(1) Donations to the nonprofit organization must be acknowledged by the

nonprofit organization. The correspondence must be signed by a council member.

(2) Donations made directly to the facility or CMHMRC must be acknowledged by the facility or CMHMRC.

§410.65. Donations: Community Solicitations; Undesignated Donations.

(a) The facility community relations staff must be the facility's only personnel authorized to solicit goods and services from the community. Other facility staff members and designated personnel in the community services programs may solicit donated goods, services, food, or funds after conferring with and attaining approval from the facility community relations staff.

(b) CMHMRCs shall be responsible for establishing policies and procedures addressing which staff are authorized to solicit goods and services from the community.

(c) Donors often designate items for a particular individual, group, living unit, or section of the facility or CMHMRC. The facility or CMHMRC community relations staff shall make every effort to ensure that designated donations do not contravene standards of care of persons served.

(d) Funds received at the facility or CMHMRC which do not specifically designate the nonprofit organization, shall be directed to the nonprofit organization if:

(1) the funds are received in response to a specific fund appeal made to the community by the nonprofit organization;

(2) the funds refer to a program or activity sponsored, underwritten, or coordinated by the nonprofit organization; or

(3) written authorization is obtained from donors of undesignated funds specifying that those funds be given to the nonprofit organization.

(e) Donated food not designated for a specific activity (e.g., birthday parties, holiday parties, picnics) shall be approved for quality and safety before it is distributed. At facilities' campus-sites this approval shall be obtained from the food service manager; at CMHMRCs and community services' sites, the approval will be obtained from appropriate personnel.

§410.66. Capital Improvements Projects; Naming of Donated Gifts, Memorials, or Items.

(a) Facility guidelines.

(1) Guidelines for capital improvement projects are established in Chapter 410, Subchapter C of this title (relating to Capital Improvements by Citizen Groups).

(2) The naming of any gift, memorial, or donated item which is a capital improvement project must be in accordance

with guidelines established by the General Purchasing Commission and must have the approval of the Texas Board of Mental Health and Mental Retardation.

(3) The naming of any gift, memorial, or donated item which is not a capital improvement project must be in accordance with guidelines established by the General Purchasing Commission and, if the donation is to be referred to or officially known by that name, must have the approval of the commissioner.

(b) CMHMRC guidelines. The development and naming of capital improvement projects, gifts, memorials, and donated items at a CMHMRC shall be in accordance with CMHMRC policies and procedures.

§410.67. Donations: Maintenance of Petty Cash Funds.

(a) Facility and CMHMRC directors of community relations may elect to maintain petty cash funds for nonprofit organizations. Information regarding the need for the maintenance of petty cash funds, the amount of funds to be maintained, and the uses of the funds shall be included in the memorandum of understanding (MOU) between the facility or CMHMRC and the nonprofit organization. A sample copy of the MOU is referred to in §410.74 of this title (relating to Exhibits) as Exhibit A.

(b) The facility or CMHMRC director of community relations shall keep receipts and accurate documentation for all petty cash funds disbursed and shall furnish such records to the treasurer of the local nonprofit organization.

(c) Petty cash disbursements shall be included in the treasurer's reports to the local council and shall be included in the audit of the council's books.

§410.68. Fundraising at Local Level.

(a) Facilities and CMHMRCs are authorized to undertake revenue generating activities. In addition, each facility or CMHMRC may have a nonprofit organization working on its behalf to enhance the facility's or CMHMRC's fundraising abilities. A CMHMRC may utilize its 501(c)(3) status for fundraising or it may establish an independent 501(c)(3) nonprofit organization for this purpose.

(b) At facilities, the nonprofit organization shall be known as the facility volunteer services council (VSC), and shall have responsibility for raising funds on behalf of campus and community service programs for needs of persons served, employee projects, and enhanced operations.

(c) Employees may wish to conduct activities (i.e., bake sales, sales of merchan-

dise) designed to raise money for employee activities. The CEO must establish a procedure for approving such activities.

§410.69. Nonprofit Organizations-Relationship To Department and/or Its Facility or CMHMRC. When a nonprofit organization exists on behalf of a facility or CMHMRC, the following provisions shall apply.

(1) The board of the nonprofit organization shall be cooperatively appointed by the CEO and the nonprofit organization.

(2) The CEO shall have non-voting membership on the board of the nonprofit organization and executive committee.

(3) The facility or CMHMRC director of community relations shall be a non-voting member of the council board and executive committee.

(4) The council bylaws shall outline specific methodology for:

(A) limiting terms of officers;

(B) election of a nominating committee;

(C) joining the nonprofit organization; and

(D) replacing council board members.

(5) The facility or CMHMRC shall provide the following staff services to the nonprofit organization:

(A) fundraising assistance;

(B) clerical and administrative services, such as typing and accounting assistance;

(C) training of volunteers and the officers or board; and

(D) coordination of activities.

(6) The facility or CMHMRC may provide space.

(7) The council shall provide its own:

(A) postage;

(B) printing, including letterhead and newsletters;

- (C) special event insurance;
- (D) recognition of donors;
- (E) recognition event for direct services volunteers; and
- (F) bond for officers.

(8) A memorandum of understanding (MOU) governing the relationship between the agency and/or its facility or CMHMRC and a nonprofit organization acting on its behalf shall be executed. A sample MOU is referred to in §410.74 of this title (relating to Exhibits) as Exhibit A. The MOU should require the nonprofit organization to be in compliance with existing state and federal laws and regulations. The MOU should also:

(A) specify relationships between staff and the nonprofit organization and include a mechanism for conflict resolution;

(B) specify a mechanism to ensure that solicitation:

- (i) meets the mission, vision, and goals of TXMHMR;
- (ii) employs all accepted rules of ethical fundraising;
- (iii) is an appropriate type of fundraising for the nonprofit organization; and
- (iv) all proceeds less legitimate expenses shall be used for the benefit of the agency;

(C) specify that in the event the nonprofit organization is audited by the Internal Revenue Service, a copy of the audit shall be forwarded to the facility or CMHMRC community relations staff for submission to the Office of Community Relations, Central Office;

(D) at facilities, specify a mechanism for receiving input from the nonprofit organization regarding the development of the department's legislative agenda and assert the right of the department to review and approve all donations of real property and any improvements to existing real property.

(9) At facilities where employees are invited to participate in council meetings, employees may attend if their work schedules permit. Facility and CMHMRC employees may vote and hold office in the nonprofit organization unless such activity would create a conflict of interest, i.e., the employee is involved in a management capacity with the facility or CMHMRC that makes decisions concerning the business that is transacted with the board of the nonprofit organization. If a conflict of interest exists, the facility or CMHMRC employee's spouse and children are also prohibited from voting and holding office in the nonprofit organization.

terest, i.e., the employee is involved in a management capacity with the facility or CMHMRC that makes decisions concerning the business that is transacted with the board of the nonprofit organization. If a conflict of interest exists, the facility or CMHMRC employee's spouse and children are also prohibited from voting and holding office in the nonprofit organization.

§410.71. Volunteer Services State Council (VSSC).

(a) The membership of the Volunteer Services State Council (VSSC) shall be open to one representative from each facility and CMHMRC and the Texas Foundation for MHMR.

(b) The commissioner and one member of the Texas Board of Mental Health and Mental Retardation shall be nonvoting members of the board and executive committee.

(c) The director of the Office of Community Relations, Central Office, shall be a nonvoting member of the board and executive committee.

(d) The VSSC's bylaws shall specify a methodology for limiting the terms of officers and electing a nominating committee.

(e) A memorandum of understanding shall be developed specifying the relationship between the VSSC and the Office of Community Relations, Central Office.

(f) The Office of Community Relations, Central Office, shall provide space for VSSC records, and shall also provide:

- (1) clerical and administrative services, such as typing;
- (2) training of members and the officers of the VSSC; and
- (3) coordination of activities.

(g) The VSSC shall provide its own:

- (1) postage;
- (2) printing, including letterhead and meeting materials; and
- (3) bond for officers.

§410.73. Responsibility of Volunteers To Represent TXMHMR.

(a) Volunteers must represent TXMHMR's position if identifying him/herself as a volunteer for the agency or one of its facilities, or programs.

(b) This does not preclude a volunteer from speaking freely about any matter as a private citizen, as long as the volunteer makes it clear that such comments are the individual's opinion and are not made on

behalf of the program for which the individual volunteers, the facility, the CMHMRC, the department, the commissioner, or the state.

§410.74. Exhibits.

(a) The following exhibits are referred to in this subchapter:

- (1) Exhibit A—Sample Memorandum of Understanding (MOU) between the department and a nonprofit organization;
- (2) Exhibit B—Employee Volunteer Statement, TXMHMR Form P-36;
- (3) Exhibit C—Application for Volunteer Service, TXMHMR Form V-9;
- (4) Exhibit D—Confidentiality Agreement for Volunteers, TXMHMR Form V-12;
- (5) Exhibit E—Assessment of Volunteer, Form V-19;
- (6) Exhibit F—Client Volunteer Statement, TXMHMR Form V-15;
- (7) Exhibit G—Parental Permission Form—For Volunteers Under 18 Years of Age, TXMHMR Form V-13;
- (8) Exhibit H—Exit Interview Form, TXMHMR Form V-8.

§410.75. References. Reference is made to the following:

- (1) Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-201, et seq, as amended.
- (2) Chapter 410, Subchapter C of this title (relating to Capital Improvements by Citizens Groups);
- (3) Chapter 403, Subchapter K of this title (relating to Disclosure of Client-Identifying Information);
- (4) Chapter 410, Subchapter A of this title (relating to Public Responsibility Committees);
- (5) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);
- (6) Chapter 405, Subchapter Y of this title (relating to Client Rights—Mental Retardation Services);
- (7) Department of Labor: Child Labor Requirements;
- (8) Texas Civil Statutes, Article 5547-202, §2.13 and §2.14;
- (9) Texas Civil Statutes, Article 6252-11e; and
- (10) Texas Civil Statutes, Article 6252-11f.

§410.76. Distribution.

(a) The provisions of this subchapter shall be distributed to members of the Texas Board of Mental Health and Mental Retardation; deputy commissioners, associate deputy commissioners, assistant deputy commissioners, directors, and section chiefs of central office; CEOs and facility and CMHMRC directors of community relations; professional staff, Office of Community Relations, Central Office; chairpersons of the board of trustees of CMHMRCs; members of the executive committee of the Volunteer Services State Council; chairpersons of the nonprofit organizations working on behalf of department facilities; and CMHMRCs.

(b) The CEO shall be responsible for the dissemination of the information contained in this subchapter to all appropriate staff members.

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

Issued in Austin, Texas, on September 29, 1992.

TRD-9213184 Anne K. Utley
 Chairman
 Texas Board of Mental
 Health and Mental
 Retardation

Effective date: January 1, 1993

Proposal publication date: August 4, 1992

For further information, please call: (512) 465-4670





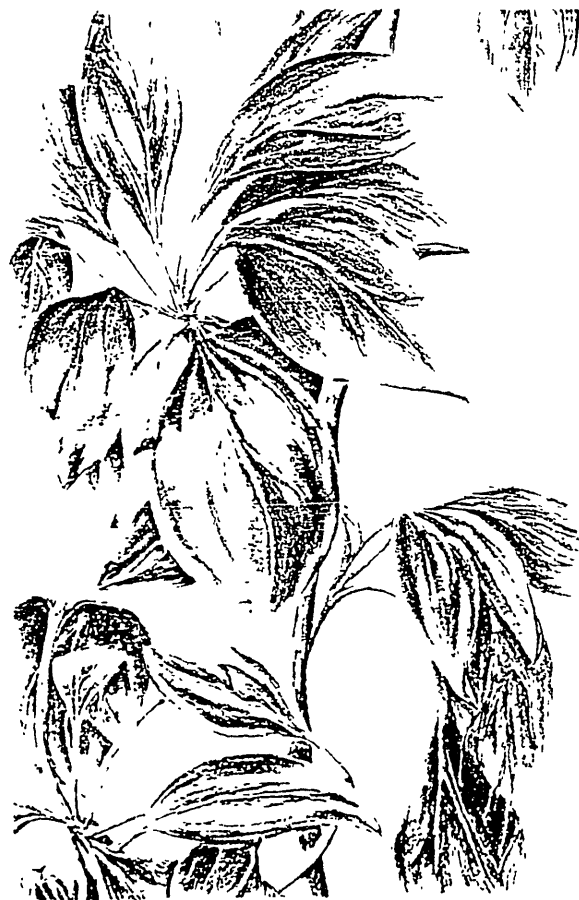
10-33



10-34



10-35



10-36

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department of Agriculture

Tuesday, November 10, 1992, 9 a.m. The Office of Hearings of the Texas Department of Agriculture will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 928B, Austin. According to the complete agenda, the administrative hearing will review alleged violation of Texas Agriculture Code §76.116(a)(1) and 4 Texas Administrative Code §7.22 by Jerry Hunt.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: September 29, 1992, 10:22 a.m.

TRD-9213184

Tuesday, November 10, 1992, 1:30 p.m. The Office of Hearings of the Texas Department of Agriculture will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 928B, Austin. According to the complete agenda, the administrative hearing will review alleged violation of Texas Agriculture Code §76.116(a)(1) and 4 Texas Administrative Code §7.22 by Jerry Hunt.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: September 29, 1992, 10:22 a.m.

TRD-9213185

Credit Union Department

Thursday, October 8, 1992, 1 p.m. Credit Union Commission of the Credit Union Department will meet at the Embassy Suites Market Center Hotel, 2727 Stemmons Freeway, Dallas. According to the complete

agenda, the commission will invite public input for future consideration; receive minutes of September 11, 1992 meeting and communications reported by the commissioner; consider proposed Rule 95.313 (terminating membership in the TSGCU); and conduct an executive session to discuss credit unions and problem cases and consultation with legal counsel regarding contemplated legal action.

Contact: Harry L. Elliot, 914 East Anderson, Austin, Texas 78752, (512) 837-9236.

Filed: September 30, 1992, 9:54 a.m.

TRD-9213238

Texas Planning Council for Developmental Disabilities

Thursday, October 8, 1992, 9 a.m. The Executive Committee of the Texas Planning Council for Developmental Disabilities will meet at 4900 North Lamar Boulevard, Room 6302, Austin. According to the complete agenda, the committee will call the meeting to order; discuss approval of minutes of August 6, 1992; strategic planning activity; review stipends grant applications and associate member applications; budget status report; discuss designated agency; executive director's report; and adjourn.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4081.

Filed: September 29, 1992, 4:20 p.m.

TRD-9213214

Texas Diabetes Council

Friday, October 16, 1992, 10 a.m. The Texas Diabetes Council will meet at Room

M-652, 1100 West 49th Street, Austin. According to the complete agenda, the council will discuss adoption of the minutes of previous meeting; discuss and possibly act on chairman's report on staff expansion; final approval of State Plan to Control Diabetes in Texas, 1993; and 1993 meeting calendar.

Contact: Richard Kropp, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7534. For ADA assistance, call Richard Butler at (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: September 29, 1992, 4:22 p.m.

TRD-9213216

Texans' War on Drugs, Inc.

Monday, October 5, 1992, 10 a.m. Board of Directors of Texans' War on Drugs, Inc. met at 11044-D Research Boulevard, Suite 200, Austin. According to the emergency agenda summary, the directors called the meeting to order; established quorum; discussed approval of minutes; election of officers and directors; suggested by-law amendments; met in executive session; heard president's report; financial report; executive report; set next meeting date; discussed other business; and adjourned. The emergency meeting was necessary due to personnel matters.

Contact: Janis Pittel, 11044-D Research Boulevard, Suite 200, Austin, Texas 78759, (512) 343-6950.

Filed: September 30, 1992, 2:13 p.m.

TRD-9213248

Texas Education Agency

Wednesday, October 7, 1992, 4 p.m. The

Ad Hoc Committee on Textbooks of the Texas Education Agency will meet at Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will discuss proposed amendment to 19 TAC, Chapter 67, Subchapter A, State Textbook Program: comparative costs of electronic instructional media systems and textbooks.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 29, 1992, 1:08 p.m.

TRD-9213198

Thursday, October 8, 1992, 9 a.m. The State Board of Education (SBOE) Committee on Personnel of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-111, Austin. According to the agenda summary, the committee will hear public testimony; schedule of fees for teacher certification; issuance of certificates based on examination; Region XVIII Education Service Center alternative certification program for visually handicapped endorsement program; report on commissioner's tripartnership governance project; report on new accreditation process pilot project; request for approval for funding professional staff development proposals; discuss teacher education rules under sunset review process; status report on accreditation of school districts; update on paperwork reduction initiatives; report on ethnic/gender distribution of Texas Education Agency personnel; and report on Section 504 and the Americans with Disabilities Act in the workplace.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 30, 1992, 3:58 p.m.

TRD-9213267

Thursday, October 8, 1992, 9 a.m. The State Board of Education (SBOE) Committee on Students of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-100, Austin. According to the agenda summary, the committee will hear public testimony; curriculum (phase-out awarding of state graduation credit for business mathematics course after 1992-1993 school year); approval to receive grant from Dwight D. Eisenhower National Science and Mathematics Program; report on the evaluation results of piloting the Science I course; discuss revisions to the 1991 and 1992 textbook proclamations; discuss rules up for sunset review, i.e., hearings and appeals; and relationship with the University Interscholastic League.

Contact: Criss Cloudt, 1701 North Con-

gress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 30, 1992, 3:58 p.m.

TRD-9213268

Thursday, October 8, 1992, 9 a.m. The State Board of Education (SBOE) Committee on School Finance of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the agenda summary, the committee will hear public testimony; discuss school finance issues; proposed legislative recommendations from the division of proprietary schools, veterans education, and driver training for the 73rd Legislature; approval of the 1994-1995 biennial request for legislative appropriations for the Texas Education Agency operating and program budgets; proprietary schools and veterans education; driver training schools; request for approval for funding professional staff development proposals; request for approval to receive a grant from Dwight D. Eisenhower National Science and Mathematics Program; discuss potential funding sources for model alternative education center in Bexar County; discuss rules concerning hearings and appeals.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 30, 1992, 3:58 p.m.

TRD-9213269

Thursday, October 8, 1992, 12:30 p.m. The State Board of Education (SBOE) Committee of the Whole of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the agenda summary, the committee will hear public testimony; overview of October SBOE meeting; SBOE legislative program and appropriations request-major elementary and secondary education legislative initiatives, school finance issues, legislative recommendations from proprietary schools, approval of 1994-1995 biennial request for legislative appropriations for TEA operating and program budgets; impact of Texas assessment of academic skills standards and potential changes in diplomas; report of SBOE task force on high school education; discuss TAC chapters up for sunset review, i.e., advisory groups, rules-the rulemaking process, relationships with the United States Government; hearings and appeals; relationship with the University Interscholastic League; and discuss pending litigation. The discussion of pending litigation will be in executive session in accordance with Article 6252-17, §2(e), Vernon's Texas Civil Statutes, in Room 1-103.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 30, 1992, 3:57 p.m.

TRD-9213266

Friday, October 9, 1992, 8:30 a.m. The State Board of Education (SBOE) Committee on Long-Range Planning of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the agenda summary, the committee will hear public testimony; presentation-"Paying for Public Education: New Evidence on How and Why Money Matters"; presentation on student achievement at Wesley Elementary School in Houston ISD; year-round schools; recommendations for appointment to the Software Advisory Committee; follow-up discussion of interim report on a study of the impact of educational reform on students in at-risk situations in Texas; discuss federal governmental relations activities; and recycling programs in public schools.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 30, 1992, 3:59 p.m.

TRD-9213270

Friday, October 9, 1992, 8:30 a.m. The State Board of Education (SBOE) Committee on the Permanent School Fund (PSF) of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-109, Austin. According to the agenda summary, the committee will hear public testimony; discuss recommended PSF investment program for October and funds available for the program; request for board approval to contract for securities lending; recommended appointments to the Investment Advisory Committee on the PSF; review of PSF securities transactions and the investment portfolio; and report of the PSF manager.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 30, 1992, 3:59 p.m.

TRD-9213271

Friday, October 9, 1992, 1 p.m. The State Board of Education (SBOE) of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the agenda summary, the board will hear public testimony; discuss approval of minutes; resolutions of SBOE; approval of consent agenda; state textbook program; elementary/secondary education legislative initiatives; Texas assessment of academic skills standards and potential changes in diplomas; fees for teacher certification; certificates based on examination; visually handicapped endorsement program at Region XVIII Education Service Center alter-

native certification program; curriculum (phase-out state graduation credit for business mathematics course after 1992-1993 school year); school finance issues; legislative recommendations from Division of Proprietary Schools, Veterans Education and Driver Training; 1994-1995 biennial request for legislative appropriations for TEA operating/program budgets; proprietary schools and veterans education; driver training schools; funding for professional staff development proposals; grant from Dwight D. Eisenhower National Science and Mathematics Program; year-round schools; permanent school fund investment program for October and funds available for program; request to contract for securities lending; and information on agency administration.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 30, 1992, 4 p.m.

TRD-9213272

Texas Employment Commission

Wednesday, October 7, 1992, 8:30 a.m. The Texas Employment Commission will hold an emergency meeting at the TEC Building, Room 644, 101 East 15th Street, Austin. According to the agenda summary, the commission will approve prior meeting notes; hear staff reports: strategic plan; state budget fiscal year 1994-1995; cost accounting; internal procedures of commission appeals; consider and act on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 40; and set date of next meeting. The emergency status is necessary due to need to meet federal time requirements.

Filed: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: October 1, 1992, 9:21 a.m.

TRD-9213292

Texas Commission on Fire Protection

Tuesday, October 13, 1992, 2 p.m. The Fire Protection Personnel Advisory Committee of the Texas Commission on Fire Protection will meet at 3006B Longhorn Drive, Austin. According to the agenda summary, the committee will discuss approval of previous minutes; discuss and possibly act on matters relating to commission approved paid and volunteer fire fighter certification programs under Texas Government Code, Chapter 419, Subchapters B and D; discuss and possibly act on proposed rules and amendments to

37 TAC, Chapter 423, Subchapter A; 427, and Subchapter B; 443; consider and discuss matters brought by committee members, the public, and staff; discuss and possibly act on future meeting dates, times, and agenda items.

Contact: Jack Woods, 3006B Longhorn Drive; Austin, Texas 78759-6735, (512) 873-1700.

Filed: September 30, 1992, 8:17 a.m.

TRD-9213223

Wednesday-Friday, October 14-16, 1992, 9 p.m. The Texas Commission on Fire Protection will meet at 3006B Longhorn Drive, Austin. According to the agenda summary, the commission will meet in executive session under Section 2(g) of Article 6252-17, and under Section 2(e) of Article 6252-17, Vernon Texas Civil Statutes; discuss and possibly act on recommendations for funding from the Funds Allocation Advisory Committee; discuss matters referred from the Volunteer Fire Fighter Advisory Committee, Fire Protection Personnel Advisory Committee, Fire Alarm Advisory Council; discuss and possibly act on Docket Number FM-060, appeal of State Fire Marshal Order Number FM-301; discuss and possibly act on recommendations for new appointments to Fire Protection Personnel, Volunteer Fire Fighter, Fire Extinguisher, Fire Alarm, Fire Protection (Sprinkler), and Fireworks Advisory Committees; and discuss matters from the executive director.

Contact: Jack Woods, 3006B Longhorn Drive; Austin, Texas 78759-6735, (512) 873-1700.

Filed: September 30, 1992, 8:19 a.m.

TRD-9213222

Wednesday-Friday, October 14-16, 1992, 9 a.m. (Revised agenda). The Texas Commission on Fire Protection will meet at 3006B Longhorn Drive, Austin. According to the agenda summary, the commission will discuss and possibly act on amendments to rules under 37 TAC Chapter 591 relating to fireworks rules regulated under Article 5.43-4, Texas Insurance Code.

Contact: Jack Woods, 3006B Longhorn Boulevard, Austin, Texas 78759-6735, (512) 873-1700.

Filed: October 1, 1992, 8:15 a.m.

TRD-9213285

Wednesday-Thursday October 14-15, 1992, 10 a.m. and 9 a.m. respectively. The Volunteer Fire Fighter Advisory Committee of the Texas Commission on Fire Protection will meet at 3006B Longhorn Drive, Austin. According to the agenda summary, the committee will discuss approval of previous minutes; elect officers; discuss and

possibly act on proposed new rules and changes to 37 TAC Chapters 471, 473, 475, 477, 479, 481, 483, 485, 487, and 489; discuss and possibly act on proposed new rule regarding acceptance of certification program of the State Firemen and Fire Marshal's Association as equivalent to the program adopted by the Texas Commission on Fire Protection; discuss and possibly act on recommendation for designation of committee member to represent the Volunteer Fire Fighter Advisory Committee at meetings of the International Fire Service Accreditation Congress; discuss and possibly act on future meeting dates, times, and agenda items.

Contact: Jack Woods, 3006B Longhorn Drive; Austin, Texas 78759-6735, (512) 873-1700.

Filed: September 30, 1992, 8:18 a.m.

TRD-9213221

Texas Department of Health

Monday, October 5, 1992, 8:30 a.m. Texas State Board of Examiners of Marriage and Family Therapists of the Texas Department of Health met at Room S-402, Exchange Building, 8407 Wall Street, Austin. According to the complete agenda, the board discussed approval of minutes of the August 17, 1992 board meeting; discussed and possible acted on executive director's report on application/license update, council on licensure, enforcement and regulation (CLEAR), student loan deferred payment update, Sunset Commission update, and examination update; committee reports; application for licensure; and hear announcements and comments.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, call Richard Butler, (512) 458-7488, or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: September 29, 1992, 4:22 p.m.

TRD-9213215

Thursday, October 8, 1992, 10 a.m. The Ad Hoc Curriculum Advisory Committee of the Advisory Council on Massage Therapy of the Texas Department of Health will meet at the Exchange Building, Room S-402, 8407 Wall Street, Austin. According to the complete agenda, the committee will discuss and possibly act on the report of September 1992 exam; item statistics on September 1992 exam; revisions to internship curriculum; and revisions to skill examiner criteria for practical examination.

Contact: Jim Zukowski, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512)

458-7708 at least two days prior to the meeting.

Filed: September 30, 1992, 3:29 p.m.

TRD-9213264

Texas Higher Education Coordinating Board

Wednesday, October 28, 1992, 3:30 p.m. The Access and Equity Committee of the Texas Higher Education Coordinating Board will meet at the Chevy Chase Office Complex, Building 5, Room 5.211, 7745 Chevy Chase Drive, Austin. According to the complete agenda, the committee will make recommendation on search procedures and guidelines; update on council for women in higher education; and campus visits.

Contact: Dr. Betty James, P.O. Box 12788, Austin, Texas 78711, (512) 483-6140.

Filed: October 1, 1992, 9:13 a.m.

TRD-9213290

Texas Department of Human Services

Friday, October 9, 1992, 10 a.m. The Services to Persons with Disabilities Subcommittee of the Texas Department of Human Services will meet at 701 West 51st Street, First Floor, East Tower, Public Hearing Room, Austin. According to the complete agenda, the subcommittee will welcome and make introductions; give agency LAR update; disability policy and values clarification; discuss values and guiding principles; orientation on the office on services to persons with disabilities; and TDHS video on overview of services.

Contact: Anita Anderson, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3195.

Filed: September 30, 1992, 1:47 p.m.

TRD-9213247

Texas State Board of Medical Examiners

Friday, October 9, 1992, 8:30 a.m. The Reciprocity Committee of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the complete agenda, the committee will discuss administration of the SPEX examination; proposed rule to define "in full force" as relating to Section 5.03(c)(1) of the Medical Practice Act; recommendations of ineligibility; and review applicants for reciprocal endorsement. (Ex-

ecutive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484).

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: September 30, 1992, 3:13 p.m.

TRD-9213260

Friday, October 9, 1992, 8:30 a.m. The Disciplinary Process Review Committee of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the complete agenda, the committee will discuss approval of the minutes from the August meeting; discuss the August and September 1992 enforcement reports; review and discuss guidelines and procedure manual for Compliance Division; malpractice system; and go into executive session to review selected files and cases dismissed by informal settlement conferences. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484).

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: September 30, 1992, 3:13 p.m.

TRD-9213259

Friday, October 9, 1992, 9:30 a.m. The Examination Committee of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the complete agenda, the committee will review examination applicants; review the Texas Medical Jurisprudence Examination; and review proposed teaching fellowship permit rule. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484).

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: September 30, 1992, 3:11 p.m.

TRD-9213256

Friday, October 9, 1992, 11:30 a.m. The Public Information Committee of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the complete agenda, the committee will meet with intern, Murray Richter, and hear a report on UT Public Information Team; discuss public awareness strategy/budget; and discuss press releases. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484).

Contact: Pat Wood, P.O. Box 149134,

Austin, Texas 78714-9134, (512) 834-4502.

Filed: September 30, 1992, 3:14 p.m.

TRD-9213261

Friday-Saturday, October 9-10, 1992, 1 p.m., and 9 a.m. respectively. The Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the agenda summary, the board will consider a request for an ophthalmology fellowship program; meet in executive session to discuss pending litigation; hear proposals for decision; have public hearings on several rule changes; discuss approval of minutes and board orders; have probationary appearances; consider a request for reinstatement; approve 1993 board meeting dates; discuss board functions and committee structure; and hear the executive director's report, which will include a discussion of Sunset Review, budget, SPEX Examination; report on Acupuncturist Advisory Committee meeting; Ethics Programs; AIMS meeting; legal and compliance. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484).

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: September 30, 1992, 3:12 p.m.

TRD-9213258

Friday, October 9, 1992, 4 p.m. The Standing Orders Committee of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the complete agenda, the committee will determine the eligibility of physician assistant applicant, Stephen Roy Sullivan, due to violation of Physician Assistant Board Rules 185.4(5); and discuss the possibility of scheduling public hearings on the issue of electromyographic testing. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484).

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: September 30, 1992, 3:11 p.m.

TRD-9213257

Saturday, October 10, 1992, 7:30 a.m. The Finance Committee of the Texas State Board of Medical Examiners will meet at the Red Lion Hotel, 6121 IH-35 North at U.S. 290, Austin. According to the complete agenda, the committee will review financial statements and discuss appropriations request.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: September 30, 1992, 3:14 p.m.

TRD-9213263

Wednesday, October 14, 1992, 9 a.m. The Hearings Division of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the complete agenda, the division will hold probation appearances by the following physicians: Kenneth Michael Piazza, M.D.; Albert Leon Pulliam, M.D.; Paris Bransford, M.D.; Edward J. Dwyer, M.D.; Kiran Rajen Parikh, M.D.; Luke Elgene Robinson, M.D.; Donald Stanley Chandler, M.D.; Walter Albert Dobson, P.O.; Robert L. Gardner, M.D.; and modification requests by William Justus Head III, M.D.; and Thomas Pierce Starr Sr., M.D. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484).

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: September 30, 1992, 3:14 p.m.

TRD-9213262

◆ ◆ ◆
**Texas Board of Licensure
for Nursing Home Admin-
istrators**

Friday, October 9, 1992, 1 p.m. The Education Committee of the Texas Board of Licensure for Nursing Home Administrators will meet at 4800 North Lamar Boulevard, Suite 310, Austin. According to the complete agenda, the committee will call the meeting to order; discuss advisory committee report; report on the confirmation for starting the NAB, present information regarding university proposals to design, revise and construct the state standards exam; discuss \$10 fee for continuing education; discuss increase in continuing education requirements to 40 hours; discuss waivers; and adjourn.

Contact: Sandy Guyn, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756, (512) 458-1955.

Filed: September 29, 1992, 11:19 a.m.

TRD-9213188

Friday, October 9, 1992, 1 p.m. The Finance Committee of the Texas Board of Licensure for Nursing Home Administrators will meet at 4800 North Lamar Boulevard, Suite 310, Austin. According to the complete agenda, the committee will call the meeting to order; discuss LAR and budget hearings; and adjourn.

Contact: Janet Lacy, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756, (512) 458-1955.

Filed: September 29, 1992, 11:19 a.m.

TRD-9213189

Friday, October 9, 1992, 1 p.m. The Policy Committee of the Texas Board of Licensure for Nursing Home Administrators will meet at 4800 North Lamar Boulevard, Suite 310, Austin. According to the complete agenda, the committee will call the meeting to order; discuss application rules, board policy on public comments, advisory committee report, and \$10 continuing education fee; and adjourn.

Contact: Janet Lacy, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756, (512) 458-1955.

Filed: September 29, 1992, 11:18 a.m.

TRD-9213187

◆ ◆ ◆
**Public Utility Commission of
Texas**

Wednesday, September 30, 1992, 9 a.m. The Public Utility Commission of Texas met at 7800 Shoal Creek Boulevard, Austin. According to the emergency revised complete agenda, the commission considered the Appeal of Examiner's Order Number 34 in Docket Number 10894-application of Gulf States Utilities Company to reconcile fuel costs, establish new fixed fuel factors, and recover its under-recovered fuel expense. The emergency meeting was necessary to preserve jurisdiction over the subject matter of the appeal.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 29, 1992, 2:04 p.m.

TRD-9213208

Wednesday, September 30, 1992, 9 a.m. The Public Utility Commission of Texas met at 7800 Shoal Creek Boulevard, Austin. According to the emergency revised complete agenda, the commission considered Bailey County Electric Cooperative Association's request to waive the annual minimum charge for the cotton gin service tariff Docket Number 11490. The emergency meeting was necessary due to recent developments.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 29, 1992, 2:03 p.m.

TRD-9213207

Thursday, January 7, 1993, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a second prehearing

conference in Docket Number 11336-general counsel's inquiry into the reasonableness of the rates, terms, and conditions of Southwestern Bell Telephone Company's central office-based PBX-Services for which flexible pricing is permitted.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 29, 1992, 2:02 p.m.

TRD-9213202

Wednesday, January 20, 1993, 9 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a hearing on the merits in Docket Number 11288-application of Southwestern Bell Telephone Company for approval of directory assistance call completion service in section 6 of the cellular mobile telephone interconnection tariff.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 29, 1992, 2:01 p.m.

TRD-9213197

◆ ◆ ◆
**Railroad Commission of
Texas**

Monday, October 5, 1992, 9:30 a.m. The Railroad Commission of Texas met at the William B. Travis Building, Room 1-111, 1701 North Congress Avenue, Austin. According to the complete emergency revised agenda, the commission considered a motion for rehearing for Docket Number 2-97,685 for Southern Oil and Gas, Limited, Milburn Kram Unit Lease, Well Number 1 (I.D. Number 075223), Moulton (Jackson) Field, Lavaca County, Texas. Considered a motion for rehearing for Docket Number 3-94,923 for Ziegler Operating Company, Westmoreland (120402) Lease, Well Number 1, Ansley Field, Wharton County, Texas. The emergency status was necessary as of the regular posting deadline, the Hearings Examiner in this docket had not received notice of a motion for rehearing. After the posting deadline, the Hearings Examiner received such notice. Action on the motion for rehearing is required at the next regularly scheduled meeting, October 5, 1992, before the motion for rehearing is overruled by law.

Contact: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78701, (512) 463-6921.

Filed: September 30, 1992, 4:29 p.m.

TRD-9213282

Stephen F. Austin State University

Monday, October 19, 1992, 10 a.m. The Board of Regents of the Stephen F. Austin State University will meet at SFA Campus, Room 307, Austin Building, Nacogdoches. According to the complete agenda, the board will discuss SFA 98 Workshop and have open discussion of Tuesday board items.

Contact: Dr. Dan Angel, P.O. Box 6078 SFA, Nacogdoches, Texas 75962, (409) 568-2201.

Filed: September 31, 1992, 9:26 a.m.

TRD-9213294

Tuesday, October 20, 1992, 9 a.m. The Board of Regents of the Stephen F. Austin State University will meet at SFA Campus, Room 307, Austin Building, Nacogdoches. According to the complete agenda, the board will discuss approval of minutes; personnel; academic and student affairs; financial affairs; buildings and grounds; resolution of the board; reports; and meet in executive session.

Contact: Dr. Dan Angel, P.O. Box 6078 SFA, Nacogdoches, Texas 75962, (409) 568-2201.

Filed: September 31, 1992, 9:25 a.m.

TRD-9213293

Regional Meetings

Meetings Filed September 29, 1992

The Cash Water Supply Corporation will meet at the Administration Office on FM 1564 East, Greenville, October 13, 1992, at 7 p.m. Information may be obtained from Donna Mohon, P.O. Box 8129, Greenville, Texas 75404, (903) 883-3407. TRD-9213210.

Millersview-Doole Water Supply Corporation Board of Directors met at the Corporation's Business Office, 1 block West of FM 765 and FM 2134, Millersview, October 5, 1992, at 8 p.m. Information may be obtained from Glenda M. Hampton, P.O. Box E, Millersview, Texas 76862-1005, (915) 483-5438. TRD-9213209.

Meetings Filed September 30, 1992

The Brazos River Authority Board of Directors, Administrative Policy Committee will meet at the Futura Room, East Tower, Hyatt Regency DFW Airport Hotel, Dallas-Fort Worth Airport, October 6, 1992, at 10 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9213234

The Brazos River Authority Board of Directors, Water Utilization Committee will meet at the Futura Room, East Tower, Hyatt Regency DFW Airport Hotel, Dallas-Fort Worth Airport, October 6, 1992, at Noon. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9213235

The Brazos River Authority Board of Directors, Audit Committee will meet at the Futura Room, East Tower, Hyatt Regency DFW Airport Hotel, Dallas-Fort Worth Airport, October 6, 1992, at 2 p.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9213236

The Dawson County Central Appraisal District Board of Directors will meet at 920 North Dallas Avenue, Lamesa, October 7, 1992, at 7 a.m. (Revised agenda). Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060. TRD-9213281.

The Education Service Center, Region VI Board of Directors will meet at Region VI, Huntsville, October 8, 1992, at 5 p.m. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161. TRD-9213251.

The Garza County Appraisal District Board of Directors will meet at 124 East Main, Post, October 8, 1992, at 9 a.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, (806) 495-3518. TRD-9213249.

The Lavaca County Central Appraisal District Board of Directors will meet at 113 North Main, Hallettsville, October 12, 1992, at 4 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964. (512) 798-4396. TRD-9213250.

Meetings Filed September 31, 1992

The Aqua Water Supply Corporation met at 305 Eskew, Aqua Office, Bastrop, October 5, 1992, at 7:30 p.m. Information may be obtained from Adlinie Rathman, P.O. Box P, Bastrop, Texas 78602, (512) 321-3943. TRD-9213291.

The Dallas Central Appraisal District Board of Directors will meet at 2949 North Stemmons Freeway, Second Floor, Dallas, October 7, 1992, at 7:30 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9213287.

The TML Group Benefits Risk Pool Board of Trustees will meet at the Hyatt Regency Houston, Houston, October 7, 1992, at 9:30 a.m. Information may be obtained from Suzanne Steindorf, 211 East Seventh Street, Austin, Texas 78701, (512) 320-7861. TRD-9213286.

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Air Control Board

Notice of Opportunity to Comment on Administrative Actions

The Texas Air Control Board (TACB) staff is providing an opportunity for written public comment on the listed agreed board orders (ABOs) pursuant to the Texas Clean Air Act, Health and Safety Code, Chapter 382, §382.096. The Act, §382.096, requires that TACB may not approve these ABOs unless the public has been provided an opportunity to submit written comments. Section 382.096 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is November 5, 1992. Section 382.096 also requires that TACB promptly consider any written comments received and that TACB may withhold approval of an ABO if a comment indicates the proposed ABO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Clean Air Act. Additional notice is not required if changes to an ABO are made in response to written comments.

A copy of each of the proposed ABOs is available for public inspection at both the TACB's Central Office, located at 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1000 and at the applicable regional office listed below. Written comments about these ABOs should be sent to the staff attorney designated for each ABO at the TACB's central office in Austin, and must be received by 5 p.m. on November 5, 1992. Written comments may also be sent by facsimile machine to the staff attorney at (512) 908-1850. The TACB staff attorneys are available to discuss the ABOs and/or the comment procedure at the listed phone numbers; however, §382.096 provides that comments on the ABOs should be submitted to TACB in writing.

Company: AAA Cleaners; Location: Garland, Dallas County; Type of Facility: dry cleaning facility; Rule Violated: Board Rule 115.521, failure to vent the entire dryer exhaust through a properly functioning carbon absorption system or other equally effective control device; Penalty: \$500; Staff Attorney: Walt Ehresman, (512) 908-1843; Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531 or (817) 732-5532.

Company: Amoco Chemical Company; Location: Texas City, Galveston County; Type of Facility: synthetic organic chemical manufacturing plant; Rule Violated: Board Rule 101.20(1), failing to repair 28 leaking valves within 15 days of detection; Penalty: \$7,000; Staff Attorney: David Todd (512) 908-1851; Regional Office: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

Company: Atlas Pallet Industries, Incorporated; Location: Burleson, Johnson County; Type of Facility: wooden pal-

let manufacturing plant; Rule Violated: Board Rule 111.101 and Agreed Board Order Number 89-05(b), by causing, suffering, allowing, or permitting outdoor burning without the prior written consent of the board; Penalty: \$1,000; Staff Attorney: Walt Ehresman (512) 908-1843; Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531 or (817) 732-5532.

Company: Austin Turnkey Construction, Inc.; Location: Houston, Harris County; Type of Facility: a building; Rule Violated: Board Rule 101.20(2), by violating national emissions standards for hazardous air pollutants (asbestos); Penalty: \$1,000; Staff Attorney: Rodman C. Johnson, (512) 908-1854, Regional Office: 5555 West Loop, Suite 312, Bellaire, Texas 77401, (713) 666-4964.

Company: Baytank (Houston) Incorporated; Location: Seabrook, Harris County; Type of Facility: methyl acrylate storage terminal; Rule Violated: Board Rule 116.4, by violating a permit condition which requires installed carbon absorption units to be operated, monitored, and maintained such that breakthrough of carbon compounds to the atmosphere does not occur; Penalty: \$11,000; Staff Attorney: David Todd (512) 908-1851, Regional Office: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

Company: Blue Ridge Sign Crafters; Location: Weatherford, Parker County; Type of Facility: wood sign making plant; Rule Violated: Board Rule 116.1, constructing and operating a wooden sign sandblasted operation without first obtaining a permit or qualifying for a standard exemption; Penalty: \$0.00 ("Minor Source"); Staff Attorney: Walt Ehresman (512) 908-1843; Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531 or (817) 732-5532.

Company: Gulf States Utilities Company; Location: Beaumont, Jefferson County; Type of Facility: electric power generation station; Rule Violated: Board Rule 101.20(2), pertaining to asbestos-failing to give proper notification to the board of intention to demolish buildings at least 10 working days prior to the beginning of demolition; Penalty: \$1,000; Staff Attorney: Walt Ehresman (512) 908-1843; Regional Office: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703, (409) 898-3838 or (409) 898-3790.

Company: Hollman, Incorporated; Location: Irving, Dallas County; Type of Facility: woodworking plant; Rule Violated: Board Rule 116.1, constructing and operating a sawdust collection cyclone without first obtaining a permit or qualifying for a standard exemption; Penalty: \$3,425; Staff Attorney: Walt Ehresman (512) 908-1843; Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531 or (817) 732-5532.

Company: Occidental Chemical Company; Location: Pasadena, Harris County; Type of Facility: ammonia terminal; Rule Violated: Board Rule 116.1, modifying and operating

the facility without first obtaining a permit or qualifying for a standard exemption; Penalty: \$5,000; Staff Attorney: Rodman C. Johnson, (512) 908-1854; Regional Office: 5555 West Loop, Suite 312, Bellaire, Texas 777401, (713) 666-4964.

Company: Pearl Cleaners, Inc. (formerly dba Comet One-Hour Cleaners); Location: Garland, Dallas County; Type of Facility: dry cleaning plant; Rule Violated: Board Rule 115.521, failing to vent the entire dryer exhaust through a properly functioning carbon absorption system or other equally effective control device; Penalty: \$500; Staff Attorney: David Todd (512) 908-1851; Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531 or (817) 732-5532.

Company: Rowlett Cleaners; Location: Rowlette, Dallas County; Type of Facility: dry cleaning facility; Rule Violated: Board Rule 115.521, failure to vent the entire dryer exhaust through a properly functioning carbon absorption system or equally effective control device; 115.526, failure to keep the required records; Penalty: \$500; Staff Attorney: Walt Ehresman (512) 908-1843; Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531 or (817) 732-5532.

Company: Total Management, Inc.; Location: Houston, Harris County; Type of Facility: a building; Rule Violated: Board Rule 101.20(2), by violating national emissions standards for hazardous air pollutants (asbestos); Penalty: \$2,500; Staff Attorney: Rodman C. Johnson, (512) 908-1854; Regional Office: 5555 West Loop, Suite 312, Bellaire, Texas 77401, (713) 666-4964.

Company: Total Manufacturing Company, Incorporated; Location: Ennis, Ellis County; Type of Facility: PVC bonding plant; Rule Violated: Board Rule 116.1, constructing and operating a PVC bonding plant without first obtaining a permit or qualifying for a standard exemption; Penalty: \$400; Staff Attorney: Walt Ehresman (512) 908-1843; Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531 or (817) 732-5532.

Company: Town and County Food Stores; Location: Sterling City, Sterling County; Type of Facility: dual-chambered incinerator; Rule Violated: Board Rule 111.121(5), exceeding opacity limits for visible emissions from incinerator; Board Rule 111.129(2), failing to post and follow equipment instruction concerning warm-up, cleaning, and pilot light operation of incinerator; Board Rule 116.4, failing to comply with permit conditions for maintaining incinerator temperatures; Penalty: \$2,500; Staff Attorney: David Todd (512) 908-1851; Regional Office: 1901 East 37th Street, Suite 101, Odessa, Texas 79762, (915) 367-3871 or (915) 367-3872.

Issued in Austin, Texas, on September 30, 1992.

TRD-9213241 Lane Hartscock
Deputy Director, Air Quality Planning
Texas Air Control Board

Filed: September 30, 1992

Brazos Valley Development Council Consultant Proposal Request

The award for consulting services is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

The proposal was published in the June 5, 1992, issue of the *Texas Register* (17 TexReg 4130).

The consultant is to perform a single independent audit in accordance with the Office of Management and Budget (OMB) Circular A-128.

The firm chosen: Pattillo, Brown & Hill, Certified Public Accountants, 200 West Highway 6, Suite, 300, Waco, Texas 76712.

The total value of the contract is \$13,200 for the period October 1, 1992-September 30, 1992, with the option of extending the contract for an additional two years.

The final reports for this audit should be issued by January 31, 1993.

Issued in Bryan, Texas, on September 23, 1992.

TRD-9213218 Glenn J. Cook
Executive Director
Brazos Valley Development Council

Filed: September 30, 1992

Comptroller of Public Accounts Lottery Broadcast Rights

Notice of Request for Proposals. Pursuant to the State Lottery Act, the Lottery Division of the Comptroller of Public Accounts announces its request for proposals (RFP) for lottery broadcast rights. The purpose of the RFP is for the lottery to obtain proposals from stations in the following eight areas of dominant influence (ADI) to provide for the live broadcast of lottery drawings in those markets. The eight ADIs are: Beaumont, Corpus Christi, El Paso, Laredo, Lubbock, Victoria, Waco-Bryan, and Wichita Falls. This notice supplants all previous notices of solicitation of proposals for lottery broadcast rights in the aforementioned ADIs.

Contact. Parties interested in submitting a proposal should contact the General Counsel's Office, Comptroller of Public Accounts, 111 East 17th Street, Room 113, Austin, Texas 78774, (512) 475-0252, for a complete copy of the RFP. The RFP will be available for pickup at the previous address on Tuesday, October 6, 1992, between 1 p.m. and 5 p.m. (CDT), and during normal business hours thereafter.

Closing Date. Proposal must be received in the general counsel's office no later than 2 p.m. (CDT), on October 23, 1992. Proposals received after this date and time will not be considered.

Award Procedure. All proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The committee will determine which proposal best meets these criteria and will make a recommendation to the director, who will make the final decision. A proposer may be asked to clarify its proposal, which may include making an oral presentation or site visit, prior to final selection.

The Lottery Division reserves the right to accept or reject any or all proposals submitted. The Lottery Division is under no legal or other requirements to execute a resulting contract on the basis of this notice or the distribution of the RFP. Neither this notice nor the RFP commits the Lottery Division to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: RFP available—October 6, 1992; letter of intent to propose due—October 13, 1992; proposals due—October 23, 1992, by 2 p.m.; announcement of apparent successful proposer(s)—October 28, 1992, or as soon as possible thereafter.

Issued in Austin, Texas, on September 30, 1992.

TRD-9213224 Arthur F. Lorton
Senior Legal Counsel, General Law
Section
Comptroller of Public Accounts

Filed: September 30, 1992



Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Article 1.04, Title 79, Revised Civil Statutes of Texas, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer (1)/Agricultural/ Commercial (2) thru \$250,000</u>	<u>Commercial(2) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	10/05/92-10/11/92	18.00%	18.00%
Monthly Rate - Art. 1.04 (c)(3)	10/01/92-10/31/92	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose. (3)For variable rate commercial transactions only.

Issued in Austin, Texas, on September 28, 1992.

TRD-9213230 Al Endeley
Consumer Credit Commissioner

Filed: September 30, 1992



Employees Retirement System of Texas Consultant Contract Award

This award for consulting services for the reporting of federal actions affecting public pension plans is being filed pursuant to the provisions of Texas Civil Statutes, Article 6252-11c, §2 and §6. Receipt in a timely fashion of significant actions by the executive and legislative branches of the federal government is necessary to assist the Employees Retirement System of Texas in discharging its fiduciary responsibilities and maintaining a qualified pension plan.

The consultant is Don Kennard; Route 3, Box 229; Charles Town, West Virginia 25414. The term of this contract is from September 1, 1992-August 31, 1993. The total cost for the contract is \$19,800. All reporting under this contract is on an as needed or as requested basis.

Issued in Austin, Texas, on September 28, 1992.

TRD-9213089 Charles D. Travis
Executive Director
Employees Retirement System of Texas

Filed: September 28, 1992



Texas Department of Human Services Notice of Consultant Contract Extension and Amendment

In accordance with Texas Civil Statutes, Article 6252-11c the Texas Department of Human Services

publishes this notice of consultant contract amendment and extension. In the March 9, 1990, issue of the *Texas Register* (15 TexReg 1325), the Texas Department of Human Services gave notice of the award of a consulting contract to Austin Data Management Associates, P.O. Box 4358, Austin, Texas 78765.

The total dollar amount was noted as \$30,000, and the ending date of the contract was noted as August 31, 1991. The contract was subsequently extended for one year without additional cost. The contract has been increased by an additional \$9,900, for a revised total of \$39,900, and extended through August 31, 1993. The services to be delivered remain the same.

The due date for the reports under the extended contract is August 31, 1993.

Issued in Austin, Texas, on September 14, 1992.

TRD-9213226 Nancy Murphy
Agency Liaison, Policy and Document
Support
Texas Department of Human Services

Filed: September 30, 1992



Texas Department of Public Safety Regulations Governing Parking and Traffic Administration

The Texas Department of Public Safety, in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, is holding a public hearing October 13, 1992, at 10 a.m. in Department of Public Safety Headquarters, Conference Room "B," 5805 North Lamar Boulevard, Austin.

The purpose of the hearing is to receive testimony regarding adoption of amendments to the administrative rule regarding parking and traffic administration, §§4.31-4.46, promulgated pursuant to authority of the Texas Government Code, §411.006(4).

Interested parties are invited to submit advanced written notice of their intent to attend the hearing and present, at the time of the hearing, any remarks they wish to make. Written comments should be received by the close of the hearing to be considered. Any written comments and letters of intent to attend the hearing must be addressed to John C. West, Jr., Chief of Legal Services, Texas Department of Public Safety, P.O. Box 4087, Austin, 78773-0001.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact John C. West, Jr. at (512) 465-2250 two work days prior to the meeting so that appropriate arrangements can be made.

This hearing will be conducted in accordance with the Texas Department of Public Safety's general rules of practice and procedures rules, §§29.1-29.49.

Issued in Austin, Texas, on September 28, 1992.

TRD-9213192 John C. West, Jr.
Chief of Legal Services
Texas Department of Public Safety

Filed: September 29, 1992

◆ ◆ ◆
**Senate Committee on Health and
Human Services**

Public Notice of Hearing

The Senate Committee on Health and Human Services will hold a public hearing on adoption policies and conservatorship of children in Texas on Thursday, October 8, 1992, in Houston. The hearing will begin at 10 a.m. in the Houston Room on the Second Floor of the University Center at the University of Houston, Main Campus, 4800 Calhoun. The university recommends using Entrance Number 1 from Calhoun. Visitors will be able to park all day in Lot 1-B for \$2.00 or in underground parking at the Hilton Hotel on campus for \$3.00 (the exact amount will be necessary).

The committee is particularly interested in obtaining public comment on issues relating to foster parents becoming adoptive parents, transracial/transcultural adoptions, and the separation of siblings. Persons concerned about other adoption-related topics also are welcome to testify before the committee.

Witnesses are encouraged to submit a written statement in addition to their oral comments, if possible. Written testimony will ensure the comments are recorded accurately in the committee's official hearing records.

Persons who are unable to attend the hearing but wish to have their comments recorded may forward written testimony to P.O. Box 12068, Austin, Texas 78711.

For more information, please contact the committee staff at (512) 463-0360.

Issued in Austin, Texas, on September 30, 1992.

TRD-9213233 Sandra Bernal-Malone
Committee Clerk
Senate Committee on Health and Human
Services

Filed: September 30, 1992

**Texas Department of Transportation
Public Hearing Notice**

The Texas Department of Transportation (TxDOT) will hold a public hearing on Friday, October 16, 1992, at 9 a.m. in the first floor hearing room of the D. C. Greer State Highway Building at 125 East 11th Street in Austin, to receive public comment on the proposed statewide transportation improvement program. Title 23, United States Code, §134 and §135, as amended by the Intermodal Surface Transportation Efficiency Act of 1991, requires each designated metropolitan planning organization (MPO) and the state, respectively, to develop a transportation improvement program (TIP) as a condition to securing federal funds for the next three fiscal years for transportation projects under either Title 23 or the Federal Transit Act (formerly the Urban Mass Transportation Act of 1991).

Section 134(h) requires an MPO to develop its TIP in cooperation with the state and affected transit operators; to provide citizens, affected public agencies, representatives of transportation agency employees, other affected employee representatives, private providers of transportation, and other interested parties with a reasonable opportunity to comment on the proposed TIP; and further requires the TIP to be updated at least once every two years and to be approved by the MPO and by the governor. Section 135(f) requires the state to develop a statewide transportation improvement program (STIP) for all areas of the state in cooperation with those designated MPOs; and further requires the governor to provide citizens, affected public agencies, representatives of transportation agency employees, other affected employee representatives, private providers of transportation, and other interested parties with a reasonable opportunity to comment on the proposed STIP.

Various TIPs applicable to the designated MPOs as well as to those areas outside designated MPO boundaries have been presented for public comment by means of 70 public meetings conducted by relevant authorities throughout the state. The proposed STIP has been developed and refined through this process.

By letters dated September 9, 1992, addressed to federal transportation officials, the Honorable Ann W. Richards, Governor of Texas, delegated to the Texas Transportation Commission (commission) those powers and responsibilities granted to her by the Intermodal Surface Transportation Efficiency Act of 1991, save and except the Recreational Trails Program.

By Minute Order Number 101512 dated September 29, 1992, the commission found that the requisites of §134 were fully satisfied as they pertain to development of the prescribed TIPs by the MPOs (with the exception that the Austin MPO has not yet signed the required self-certification statement), and that the STIP prepared and recommended by TxDOT fully satisfies the requisites of §135. Pursuant to the authority delegated by the governor, the commission also approved the respective TIPs of each designated MPO (with the exception of Austin) as reflected in the referenced STIP, proposed the STIP for adoption and final approval subject to public comment, and ordered the executive director to conduct or have conducted a public hearing to secure public comment.

A file copy of the draft statewide transportation improvement program is available for review at TxDOT central Austin office of the Division of Transportation Planning

located at Building 1, Room 318, 40th and Jackson, Austin, and in each TxDOT district office. Persons wishing to review complete STIP may secure address and telephone number of the nearest district office from the division at (512) 465-7466. Also, a file copy is available at each metropolitan planning organization office. Local TxDOT district offices may be contacted for information on the appropriate metropolitan planning organization office locations.

Copies of the proposed STIP and documentation consisting of approximately 600 pages are available for purchase by contacting Mr. Eddie Shafie, P.O. Box 5051, Austin, Texas 78763-5051, phone (512) 465-7466, fax (512) 467-3952. Copies of the "Introduction and Summary" are available on request without charge at any of the listed TxDOT offices.

Registration for the hearing will begin at 8 a.m., and speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony.

Further information on the STIP may be obtained from Alvin R. Luedecke, Jr., Division of Transportation Planning, P.O. Box 5051, Austin, Texas 78763-5051, (512) 465-7346. Interested parties who are unable to attend the hearing may submit written comments to Alvin R. Luedecke, at that address. In order to be considered, all comments must be received by TxDOT no later than Friday, October 16, 1992.

Issued in Austin, Texas, on September 30, 1992.

TRD-9213231 Robert E. Shaddock
 General Counsel
 Texas Department of Transportation

Filed: September 30, 1992

◆ ◆ ◆
Request for Public Comment

The Texas Department of Transportation (TxDOT) solicits comments from interested parties about its proposed program framework for policies and procedures being formulated for transportation enhancement activities under 23 United States Code, §133, as added by the Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102-240, 105 Statute 1927, (ISTEA). Details of the proposal are available from TxDOT in a separate document entitled "TxDOT Transportation Enhancement Program-Proposed Program Framework."

Section 133, cited previously, mandates that 10% of the funds apportioned to a state under 23 United States Code, §104(b)(3) may only be used for transportation enhancement activities. Present estimates are that during the six-year term of ISTEA (federal fiscal years 1992-1997) \$180 million would be available to Texas for those purposes. Congressional action will determine actual amounts for each year. Funds apportioned to Texas in any one fiscal year may be committed to transportation enhancements at

any time before the end of the third fiscal year following the apportionment year. For example, \$26 million was made available to Texas for transportation enhancements for fiscal year (FY) 1992. Those funds remain available through FY 1995.

"Transportation enhancement activities," as defined in 23 United States Code, §101(a), "means, with respect to any project or the area to be served by the project, provision of facilities for pedestrians and bicycles, acquisition of scenic easements and scenic or historic sites, scenic or historic highway programs, landscaping and other scenic beautification, historic preservation, rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals), preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails), control and removal of outdoor advertising, archaeological planning and research, and mitigation of water pollution due to highway runoff." Only activities included on this list are eligible under federal guidelines.

The same section of federal law defines "project" as "an undertaking to construct a particular portion of a highway, or if the context so implies, the particular portion of a highway so constructed."

Federal Highway Administration (FHWA) guidelines require that, to be eligible for funding a transportation enhancement must go beyond what is normally provided. TxDOT, FHWA, and the Federal Transit Authority will coordinate in the initial determination whether activities are eligible enhancements or "normal."

Transportation enhancement activities are not required to relate directly to a currently planned highway project. FHWA does require, however, that transportation activities relate directly to the intermodal transportation system by "function, proximity or impact." Some examples: an independent bike path is a functional part of the intermodal transportation system; removal of outdoor advertising within sight of a highway is justified because of its proximity; and retrofitting an existing highway by creating a wetland to filter highway runoff would qualify based on the impact on water quality by the runoff. Once the required relationship is established, transportation enhancements could be carried out in a variety of ways. They may be stand-alone projects or parts of larger, joint development projects. FHWA guidelines also provide that environmental analysis, project planning, design, land acquisition, and construction activities necessary for implementing a qualifying transportation enhancement project are activities eligible for funding.

Transportation enhancement activities are also subject to the project location restrictions of 23 United States Code, §133(c). Thus, except for bicycle transportation and pedestrian walkway projects, they may not be located on local roads or rural minor collectors. They must also comply with federal laws governing environmental processes, accessibility, Davis-Bacon wage rates, competitive bidding, etc.

Federal funds are not disbursed in advance; state funds must first be spent for the eligible activities. Those state funds are then reimbursed to the state by the federal government. Texas's expenditures are by legislative appropriations from the state highway fund and the public transportation fund, special funds in the state treasury. The state highway fund consists of revenues constitutionally and statutorily dedicated to public roads, and expenditures from that fund are statutorily dedicated to carrying out

functions of TxDOT. The public transportation fund is statutorily dedicated to public transportation purposes. Any payments from these special funds are therefore subject to the limitations of state law, including the Texas Constitution, Article VIII, §7-a and §7-b; Texas Civil Statutes, Articles 6674, 6674e, 6694, 6663b and 6663c; and the General Appropriation Bill for the relevant biennium. TxDOT intends to devise a program structure which will meet federal law and guidelines and yet remain within state constitutional and statutory limitations.

Comments may address any or all aspects of the proposed program framework. TxDOT is especially interested in comments or suggestions about the following aspects of that program: whether TxDOT should combine the 10 categories of activities eligible under federal law in any way (give details and rationale); examples of projects, if any, might be proposed in each of the 10 eligible categories; agreement or disagreement with the proposed allocation of funding (give alternatives and rationale); whether transportation enhancements should meet other minimum eligibility criteria beyond those implicit in federal and state law (give details and rationale and if so, what criteria would be proposed and why?); the criteria to be used to select projects for funding within each of the categories and the weight assigned to those criteria; meeting the required non-federal share of transportation enhancements costs, especially the role of local funding in setting project priorities; and structuring of competition and priority criteria for transportation enhancements within the same category or across several different categories.

A copy of the program framework under consideration, including allocation of funding, planning, project nomination, and selection and development, may be obtained from the Division of Planning and Policy, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483, or, as listed in local telephone directories from the TxDOT district office in Abilene, Amarillo, Atlanta, Austin, Beaumont, Brownwood, Bryan, Childress, Corpus Christi, Dallas, El Paso, Fort Worth, Houston, Lubbock, Lufkin, Odessa, Paris, Pharr, San Angelo, San Antonio, Tyler, Waco, Wichita Falls, and Yoakum.

Written comments may be submitted in original copy of by facsimile transmission to Thomas A. Griebel, Director of Planning and Policy, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 (fax 512-475-2951) no later than 5 p.m. c.d.t. on November 5, 1992.

After review and analysis of comments received, TxDOT will develop a transportation enhancement program. Before final action on that program, TxDOT will seek additional public comments through a public hearing process.

Issued in Austin, Texas, on September 30, 1992.

TRD-9213244 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Filed: September 30, 1992

◆ ◆ ◆
Texas State Treasury Department
Legal Banking Holidays

The Texas Tax Code, §§111.053(b) (Vernon Pamphlet 1992), requires that, before January 1 of each year, the

state treasurer publish a list of the legal banking holidays pursuant to Texas Civil Statutes, Article 432-910a (Vernon Supplement 1992), to be observed by commercial banks in the following calendar year. The legal banking holidays for calendar year 1993 are as follows: Friday, January 1-New Year's Day; Monday, January 18-Martin Luther King, Jr. Day; Monday, February 15-Presidents Day; Monday, May 31-Memorial Day; Monday, July 5-Independence Day; Monday, September 6-Labor Day; Monday, October 11-Columbus Day; Thursday, November 11-Veterans Day; Thursday, November 25-Thanksgiving Day; Friday, December 24-Christmas Eve; Saturday, December 25-Christmas Day.

Issued in Austin, Texas, on September 25, 1992.

TRD-9213082 Alicia M. Fechtel
General Counsel
Texas State Treasury Department

Filed: September 28, 1992

◆ ◆ ◆
Texas Water Commission
Public Notice

The Texas Water Commission has announced that it is compiling a list of consultants, including consulting engineers, who are able to assist Texas businesses and industries in developing source reduction and waste minimization plans.

According to the provisions of Senate Bill 1099, Texas businesses and industries which generate hazardous waste or are subject to reporting pollutants or contaminants under the toxic release inventory (SARA §313) program are required to complete source reduction and waste minimization plans. The office of pollution prevention and conservation will assist them in completing these plans by compiling and making available for distribution a list of consultants in source reduction and waste minimization.

Consultants who would like to be included in the list, which will be made available statewide, will be asked to complete a brief questionnaire. To receive a questionnaire, apply in writing to Nancy Worst, Office of Pollution Prevention and Conservation, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087.

Issued in Austin, Texas, on September 30, 1992.

TRD-9213239 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Filed: September 30, 1992

Texas Workers' Compensation
Commission

Discount Rate; Interest Rate

The Texas Workers' Compensation Commission has determined, pursuant to the authority and direction given under the Texas Workers' Compensation Act, Article 8308-1.04(b), that any interest or discount provided for in the Act shall be at the rate of 3.02%, a rate computed by taking the auction rate quoted at a discount basis for 52 week treasury bills, issued by the United States Treasury, as quoted on auction on September 17, 1992. The rate shall be effective October 1, 1992-December 31, 1992.

Issued in Austin, Texas, on September 30, 1992

TRD-9213212

Todd K. Brown
Executive Director
Texas Workers' Compensation Commission

Filed: September 29, 1992



Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues requested. Each copy of a back issue is \$5 including postage. You may use your Mastercard or Visa to purchase back issues or subscription services. To order by credit card, please call the *Texas Register* at (512) 463-5561. All purchases made by credit card will be subject to an additional 1.9% service charge. For more information, please write to the *Texas Register*, P.O. Box 13824, Austin, TX 78711-3824 or call (512) 463-5561.

Change of Address

(Please print)

Back Issues Requested

(Please specify dates)



YES, I want to learn about the latest changes in Texas regulations that may affect the daily operation of my business. Please begin my subscription to the *Texas Register* today.

Name

Organization

Address

City, ST Zip

I would like my subscription to be the printed electronic version.

I'm enclosing payment for 1 year 6 months 7 week trial

7 week trial subscription not available for electronic subscriptions.

Bill me for 1 year 6 months

Cost of a subscription is \$90 yearly or \$70 for six months for the electronic version. Cost for the printed version is \$95 yearly or \$75 for six months. Trial subscriptions cost \$14. Please make checks payable to the Secretary of State. Subscription fees will not be refunded. Do not use this form to renew subscriptions. Return to *Texas Register*, P.O. Box 13824 Austin, TX 78711-3824. For more information, please call (512) 463-5561.

75365212 INTER-AGENCY
TEXAS STATE LIBRARY
PUBLICATIONS CLEARINGHOUSE 307
LIBRARY AND ARCHIVES BLDG
AUSTIN TX 78711

Second Class Postage

PAID

Austin, Texas
and additional entry offices