Seafood

Why regulation is needed

Regulation is necessary to protect consumers of seafood products from potential illnesses resulting from chemical, biological, or physical hazards.

Statutory or other requirements for regulating the entity

Health and Safety Code, Chapter 436, Aquatic Life.

Title 25, Texas Administrative Code sections 241.1 - 241.29, Texas Crab Meat Rules.

Title 25, Texas Administrative Code sections 241.50 - 241.100, Texas Molluscan Shellfish Rules.

National Shellfish Sanitation Program Manual of Operations, Parts I and II, Classification of Shellfish Growing Areas and Sanitation of the Harvesting, Processing and Distribution of Shellfish.

Scope of and procedures for inspections or audits

The Seafood Safety Division (SSD) conducts surveillance and warning activities to assure aquatic life (sport fishing, for example) taken for human consumption are safe and not contaminated or diseased.
SSD surveys and classifies all coastal water designated by the Texas Parks and Wildlife Department (TPWD) for the taking of molluscan shellfish for human consumption. Pollution source surveys, hydrographic and meteorological surveys, and bacteriological surveys are conducted at selected sample locations, and classified into one of five categories established in the National Shellfish Sanitation Program manual. Patrols of harvest areas are conducted by TPWD commissioned Game Wardens.

TDH licenses and inspects facilities and operations handling or processing molluscan shellfish or picking, packing, and/or pasteurizing crab meat. Facilities are inspected for compliance with structural, sanitary, and labeling requirements and for maintenance of adequate records. Administrative, civil, or criminal penalties are instituted as necessary.

SSD conducted 700 inspections in FY 1996 at 68 facilities resulting in a 100% inspection rate for regulated facilities.

Follow-up activities when non-compliance is identified

Written inspection forms are provided to licensed operations at conclusion of inspection. In cases of imminent hazard to health and/or product adulteration, suspect product is detained pending determination of situation. If product is hazardous, voluntary destruction is requested. If voluntary compliance is not forthcoming, a court order is requested. For repeated or significant violation of requirements, written notice is provided to a licensed person of intent to initiate administrative, civil, or criminal action. Opportunity for hearing and/or settlement conference is provided.

Sanctions available to ensure compliance

Available sanctions include:

- Emergency Order, mandating or prohibiting taking, processing, or sale of molluscan shellfish or crab meat;
- Temporary Restraining Order in district court;
- Administrative penalty not to exceed $25,000, per violation, per day;
- Civil penalty not to exceed $25,000, per violation, per day;
- Criminal penalty: prohibited action 1, 2, or 3, Parks and Wildlife Code, Class B misdemeanor with escalation clauses for repeat violations; prohibited actions 4 through 15, Class A misdemeanor.

Procedures for handling complaints against regulated entities

This program does not deal directly with consumers or the general public; therefore, SSD does not routinely receive complaints regarding these regulated products. Complaints regarding products or regulated entities are received by TDH's Retail Foods Division or local health departments. Occasionally, the SSD will informally assist in investigating a complaint with one of these jurisdictions and the complaint is documented by that jurisdiction.

Bureau of Radiation Control

Radioactive material
Radiation-producing machines
Sources of nonionizing radiation
Industrial radiographer certification

Why regulation is needed

The diversity and number of uses of radiation in Texas present potential opportunities for public exposure to radiation. Paralleling the growth in industry and medicine in Texas, the use of radiation has increased significantly. Radiation also is used at industrial and educational facilities, and virtually every industry in Texas makes some use of radioactive material, either directly or indirectly. Additionally, the state has two nuclear utilities serving a large component of the Texas population. The growth boom in the use of lasers in medicine and industry, including the entertainment field, has resulted in increased possibilities for public exposure to nonionizing radiation. Excessive exposure to radiation presents a public and occupational health hazard; biological effects of ionizing radiation are believed to be significant even at low levels of exposure. In addition, no federal program exists to protect the public from impacts associated with all types and origins of radiation exposure. The Bureau of Radiation Control (BRC) permits and inspects radiation facilities and users as well as conducts radiological emergency response activities to minimize unnecessary public and occupational exposure to radiation, radiological incidents and accidents, and potential adverse radiological impacts on the environment.

Statutory or other requirements for regulating entity

Chapter 401, Health and Safety Code (Texas Radiation Control Act).

Pursuant to the U.S. Atomic Energy Act of 1954, as amended, agreement between the U.S. Atomic Energy Commission and the State of Texas dated January 10, 1963, amended March 12, 1982, by agreement between

the U.S. Nuclear Regulatory Commission and the State of Texas.

Scope of and procedures for inspections or audits

The Bureau of Radiation Control's Division of Compliance and Inspection (DCI) regulates the use of ionizing and nonionizing radiation using the Texas Regulations for Control of Radiation (TRCR). Through its inspection program, it monitors compliance with the TRCR utilizing review of records and facility operating and safety procedures, surveys of radiation areas, and independent tests on radiation producing equipment. Division personnel investigate accidents and incidents involving radiation sources and respond to the scene when needed.

BRC currently regulates 16,361 permits (general and specific licenses for radioactive material use, x-ray machine and laser registrations, and mammographic certifications) at 19,733 sites of use, which are set on a schedule with varying intervals based on type of use and hazard. During calendar year 1996, BRC inspectors performed 4,580 inspections, which represents inspection of 27.99% of the permits.

Follow-up activities when non-compliance is identified

Field inspection reports are reviewed and the findings compared with requirements of the license, registration, and/or rules. Notices indicating compliance status are mailed to the inspected party. In the case of non-compliance, the inspected party is directed to provide a written response within 30 days indicating corrective actions taken. If no response is received, second and third notices are sent requesting prompt response. If the deadlines are still not met, the case is referred for escalated enforcement. If special problems are revealed during this process, the case may be referred for escalated enforcement early in this process. Notices also are sent for violations found during incident and complaint investigations. Corrective actions are verified during the next inspection or, in some cases, during a special follow-up inspection.

Sanctions available to ensure compliance

When routine enforcement efforts fail to bring a licensee/registrant into compliance, the agency has several types of escalated enforcement remedies available. These range from face-to-face meetings between DCI personnel and the licensee/registrant, to monetary (administrative) penalties. Administrative penalties can range from $250 to $10,000 for each day of violation.

The issue can be referred to a departmental hearing, if a remedy cannot be found or if the licensee/registrant requests such a hearing. When an egregious act occurs or if compliance cannot be obtained by other means, escalated enforcement actions are referred to the Texas Attorney General for resolution in the civil or criminal court systems.

Whenever a situation represents an immediate threat to the citizens and/or the environment of Texas, TDH can issue emergency orders. These include Cease and Desist Orders, Impoundment Orders, and a combined order (Cease and Desist and Impoundment Order).

Procedures for handling complaints against regulated entities

Complaints are received in writing or by telephone from employees of licensees or registrants, general public, and other federal and state agencies. Complaints received by the Bureau of Radiation Control include allegations of regulation violations, suspected releases of radioactive material, unsafe use of radioactive material or radiation producing equipment, unnecessary exposure to radiation, use by unqualified individuals, and improper storage or disposal of radioactive material. A response to each complaint is initiated within 72 hours. For each complaint received, an unannounced investigation/inspection is conducted. An investigation may be coordinated with other state or federal agencies. Investigations may be performed immediately or deferred based on BRC guidelines or administrative review. The primary emphasis of an investigation is to assure that health and safety issues are resolved. After complaints are resolved and closed, the information collected and reports of TDH actions are filed in the Austin headquarters and are available as open records.

Bureau of Environmental Health

General Sanitation Division

Youth camps
Swimming pools
Migrant labor housing facilities
Certified public health pesticide applicators
Code enforcement officers
Registered sanitarians
Public health nuisances
Public schools
Public lodging
Field sanitation

Why regulation is needed

Youth camps The public puts their trust and children in the hands of youth camp operators and their employees. The camps provide a wide range of activities for campers including hazardous activities such as archery, canoeing, horseback riding, riflery, and swimming. Children also drink from the camp water supply, eat food prepared in the camp kitchen, and use the camp restroom facilities. Additionally, campers are placed under the guidance and supervision of adults whose training and character needs checking to limit the risks to the camper's safety.

Swimming pools The regulation of public swimming pools ensures the protection of user's health and safety by requiring adherence to approved design and construction standards as well as maintenance standards and operational procedures. Poorly designed, constructed, maintained, and/or operated swimming pools contribute to the risk of injuries and deaths by users, particularly young swimmers.

Migrant labor housing facility The provision of safe, clean, sanitary housing to the state's migrant farm workers is the goal of the division's inspection and licensing program. Inspection and licensing of migrant labor camps assures that farm workers are furnished with housing meeting

a minimum standard for health and safety. The activity also allows for identification and correction of unsafe conditions or facilities such as water supply, sewage disposal, toilet facilities, hand washing facilities, proper storage of farm machinery, farm implements, and chemicals.

Certified public health pesticide applicators Federal Environmental Protection Agency requires states to have a plan for certification of pesticide applicators. Under Texas law, TDH is responsible for certifying applicators involved in public health and health-related pest control and who are also employees of the state or its political subdivisions. The regulation of these applicators protects the public's health by ensuring that applicators are educated and trained in the latest technology and science of pest control, the use and calibration of spray equipment, and application of the pesticides used.

Code enforcement officers Registration of professional code enforcement officers safeguards the life, health, safety, and general welfare of the public. The program has set minimum standards and education requirements for the state's code enforcement officers and officers-in-training. Minimum standards and education requirements ensure that only qualified, knowledgeable, and trained persons will enforce the ordinances adopted by the state's political subdivisions.

Registered sanitarians The registration of professional sanitarians safeguards life, health, and property and protects the general welfare of the public. The program has established minimum standards and education requirements for the state's professional sanitarian and professional sanitarian-in-training. Minimum standards and education requirements ensure that only qualified, knowledgeable, and trained persons will enforce the local and state health and safety codes.

Public Health Nuisances The abatement of public health nuisances is a tenet of good public health. The public health and safety depends on controlling nuisances such as fly breeding; the retailing of spoiled or diseased meats for human consumption; unsanitary conditions at establishments where food is prepared, packed, stored, transported, sold, or served to the public; the discharge of sewage, human excreta, wastewater, and garbage in such a way as to be a potential medium in disease transmission to a person or between persons; mosquito breeding; and rodent breeding.

Public schools. The inspection of schools is designed to ensure and protect the health and safety of school children. Standards for environmental hygiene of schools have been developed and include inspection of the water supply and drinking facilities, food handling, and excreta and refuse disposal. Schools hold an important place in health work because 1) children between the ages of 6 and 14 spend half their waking hours in school; 2) the school is in the strategic position for

teaching the tenets of personal and community hygiene, and 3) close contact of the children makes it necessary to take all possible hygienic precautions against the spread of epidemic diseases.

Public lodging The provision of clean, sanitary temporary lodging to travelers protects the public health and safety. The inspection of lodging establishments involves reviewing the water supply, excreta and refuse disposal, food handling and potential public health nuisances associated with the operation and maintenance of the establishment. Additionally, the regulation of public lodging establishments controls the spread of ectoparasite between subsequent occupants of lodging rooms.

Field sanitation The provision of safe, potable drinking water, as well as sanitary hand washing and toilet facilities to workers at temporary places of employment is essential for the protection of the worker's health and safety. Regulating these temporary places of employment assures the provision of these basic needs to all workers but especially to agricultural field workers who traditionally work long, hot hours in the sun with access to few, if any, public accommodation.

Statutory or other requirements for regulating entity

Chapter 42, Human Resources Code: Sanitation inspections of child care facilities for the Texas Department of Regulatory and Protective Services.

Chapter 76, Agriculture Code (Pesticide Regulation): Licensing of certified public health pesticide applicators.

Chapter 141, Health and Safety Code: Licensing and inspection of summer youth camps.

Chapter 147, Health and Safety Code: Licensing and inspection of migrant labor housing facilities

Chapter 341, Health and Safety Code: Regulation of the following conditions or entities: public health nuisances; toilet facilities; public buildings; swimming pools and bathhouses; school buildings and grounds; tourist courts, hotels, inns, and rooming houses; field sanitation.

Chapter 751, Health and Safety Code: Regulation of mass gatherings.

Article 4447bb, V.T.C.S.: Licensing of code enforcement officers and code enforcement officers-in-training.

Article 4477-3, V.T.C.S.: Licensing of professional sanitarians and sanitarians-in-training.

Scope of and procedures for inspections or audits

The scope of the General Sanitation Division (GSD) inspections is comprehensive. GSD reviews basic hygiene and sanitation, water supply, sewage disposal, solid waste disposal, food preparation and sanitation,

rodent and vector control, site location, surrounding environment, recreational facilities (playground equipment, swimming pools); as well as operational and maintenance procedures. GSD procedures for inspections are standard and follow well established inspection processes. Inspectors are required to identify themselves and explain the purpose of the inspection, i.e., complaint investigation, licensing inspection or follow-up inspection, etc. before beginning their reviews. Entity operators are asked to accompany the inspector during the review. Marginal and substantive items of non-compliance are identified to the operator and marked on the inspection sheet. During a review, suggestions are offered to the operator for the correction of or abatement of non-compliant items.

After the review is completed, the inspection conducts an exit conference with the operator. During the exit conference, the inspector goes over the inspection sheet with the operator and discusses all items of non-compliance. Suggestions for the abatement of marginal and substantive items of non-compliance are again discussed. A compliance schedule is given to the operators detailing by what date we expect corrective action to have taken place. Depending on the severity of the item of non-compliance the operator is given a reasonable amount of time to initiate and complete corrective action. A copy of the inspection sheet and compliance schedule is given to the operator which is followed up with an official letter of inspection outlining the inspection, items of non-compliance, discussion of corrective action, and compliance schedule. Entities with substantive items of non-compliance are scheduled for reinspection to insure the necessary, required corrective action is performed.

Number of inspections or audits in FY 1996: 6,399

Percentage of the total number of persons/businesses inspected or audited in FY 1996: 83%

Follow-up activities when non-compliance is identified

Depending on whether the item of non-compliance is identified as being marginal or substantive in nature, the entity operator is given a reasonable amount of time to take corrective action. Since substantive items of non-compliance by definition place the public health and safety at risk, identified entities are scheduled for reinspection as soon as possible according to the compliance schedule issued to the operator. If the entity is found to be non-compliant upon reinspection, a complaint is filed with the appropriate court of law; an injunction secured ceasing operation of the entity, or administrative hearings are initiated by TDH to assess penalties against the violator.

Sanctions available to ensure compliance

Sanctions currently available to TDH to ensure compliance are civil penalties, criminal penalties, administrative penalties, and license revocation.

Procedures for handling complaints against regulated entities

When the Austin headquarters receives a complaint against a regulated entity, the appropriate regional office is given the complaint information. The regional office calls the complainant to verify allegations in the complaint and to make the complainant aware the complaint is being investigated. Investigations of complaints are a high priority and thus are worked into an inspector's itinerary as early as possible. An unannounced investigation of the regulated entity is performed to check the validity of the complaint. If the investigation confirms the allegations, the violator is given a reasonable period of time to make corrections or repairs. The complainant is notified of the investigation findings and actions taken. A re-inspection of the regulated entity is scheduled. If the re-inspection finds the conditions continue to exist, the inspector may choose to file against the violator in an appropriate court or seek to revoke their license, if applicable. If license revocation action is taken, the violator is given an opportunity to contest the proposed action at a hearing in front of a hearing examiner. The hearing examiner will collect the facts of the case and share them with the Commissioner of Health who will rule on the case. At that time, the case will be considered closed and the complainant advised of the final action taken on his/her complaint.

Product Safety Program

Hazardous consumer products
Abusable glues and aerosol paint retail permits
Bedding products

Why regulation is needed

The regulation is needed to protect the public from hazardous consumer products that have the potential to cause injury, illness, and death. Regulation of consumer product manufacturers helps to ensure that design and flammability standards are followed; hazard warnings, proper use, and first aid information is placed on the product label; and corrective actions are taken when defective products are found. Regulation of bedding product manufacturers, importers, renovators, and suppliers assures that these consumer products are sanitary, meet flammability standards; accurately labeled to inform them of the contents and chemical treatments; whether the materials are new or used; and that used materials are clean and sanitized by approved methods. Regulation of retailers of certain abusable chemical products to prohibit sales to minors helps to reduce the incidence of inhalant abuse by children and provides funds for educational programs regarding the dangers associated with abuse of these dangerous products.

Statutory or other requirements for regulating the entity

Chapter 501, Health and Safety Code (Texas Hazardous Substances Act): Establishes authority to regulate and license manufacturers and importers of certain consumer products that may be hazardous, especially to children (i.e. flammability standards for children's clothing; hazardous substances in children's toys, etc.)

Chapter 484, Health and Safety Code (Volatile Chemicals)

Chapter 485, Health and Safety Code (Abusable Glues and Aerosol Paints): Licensing and inspection of retailers who sell abusable glues and aerosol paints

Chapter 345, Health and Safety Code (Bedding): Licensing and inspection of manufacturers, importers and renovators of new and renovated bedding and certain upholstered furniture products to ensure that their products comply with TDH's labeling, flammability and sanitation regulations.

Scope of and procedures for inspections or audits

Consumer products are inspected for compliance with TDH and federal regulations during unannounced inspections of retail establishments throughout the state. The inspections also include checks for products that have been voluntarily recalled by the manufacturer or by the U.S. Consumer Product Safety Commission. Reports describing the results of each retail inspection, including product samples, are submitted to the Austin headquarters office for appropriate action. In cases where a significant health risk is found during an inspection, the inspector may call the Austin headquarters office for immediate guidance while at the retail establishment. Violations of federal regulations which cannot be enforced under state law are referred to the U.S. Consumer Product Safety Commission. In FY 1996, 1272 manufacturers of hazardous consumer products registered by TDH to sell their products in Texas, and 3,491 (274.5%) inspections of their products were conducted at retail establishments throughout the state.

Retail establishments that sell abusable glues and aerosol paints are inspected throughout the state for compliance with Chapter 485 and TDH regulations. This includes checking for sales without the required permit, warning sign posting and the availability of their permit, or copy, for public inspection. Technical assistance is also provided in regard to the products that should not be sold to minors. Effective September 1,1997, the inspections were expanded to include compliance with the customer access restrictions imposed by Senate Bill 758, 75th Legislature. A report of each inspection is forwarded to the Austin headquarters office for appropriate action. In some cases it may be necessary for the inspector to call the central program office for guidance while at the inspection site. In fiscal year 1996, 10,417 retailers were licensed by TDH to sell abusable glues and aerosol paints, and 3,148 (30.2%) were inspected for compliance with department regulations.

Bedding product inspections include unannounced site inspections of permittees located in Texas and retail inspections of products manufactured or renovated outside the state and shipped in for sale. A report of each inspection is submitted to the Austin headquarters office for appropriate action. Permittees located within the state are provided a copy of the inspection report when violations or suspected violations are found. In some cases, it may be necessary for the inspector to call the

Austin headquarters office for guidance while at the inspection site. In FY 1996, 2,631 manufacturers, importers, renovators, suppliers, and sanitizers were licensed by TDH and 1,807 (68.7%) on-site and retail inspections were conducted for compliance with department regulations.

Follow-up activities when non-compliance is identified

In cases of hazardous consumer products, where the identified non-compliance does not pose an imminent health hazard to consumers, the Austin headquarters office will send a violation letter to the product manufacturer or importer describing the non-compliance and corrective actions to be taken. A deadline is given for contacting the Austin headquarters office with a timetable for implementing the proposed corrective plan. A second notice of violation is sent to non-respondents, including reference to TDH authority to detain products when found offered for sale. Where non-compliance presents an imminent health hazard, products may be detained, the retailer instructed to stop sale of the product, and the manufacturer contacted regarding the violation.

For abusable glues and aerosol paints, violation letters are sent to the retail business corporate headquarters or owner stating the non-compliance and necessary corrective actions. A deadline is given for contacting the Austin headquarters with a timetable for implementing the corrective actions. A follow-up inspection may be conducted to confirm implementation of corrective actions. In cases of refusal to obtain the required sales permit or to stop selling the regulated products, an undercover inspector is sent to the location and purchases one of the regulated products and obtains a receipt for the purchase. Then a complaint is filed with the local prosecutor along with the evidence of the violation (product and receipt).

Businesses located in the state found to be in non-compliance regarding bedding products during an inspection are given a copy of the inspection report describing the violations. The Austin headquarters office mails a violation letter to the business corporate headquarters or to the owner stating the nature of the violation and corrective actions necessary. A deadline is given for contacting the Austin headquarters office with a timetable for implementing the corrective actions. In extreme cases, the violative products may be detained at the inspection site and may not be removed or sold until released by the inspector. A follow-up inspection to confirm implementation of corrective actions is normally conducted.

Non-compliance by businesses located outside the state is determined by inspection of their products at retail establishments. The Austin headquarters office sends a violation letter to the business corporate headquarters or owner which describes the non-compliance and the corrective actions necessary to comply with TDH regulations. A deadline is given for contacting the Austin headquarters office with a timetable for implementing the corrective actions. In some cases, non-complying products are detained at the retail establishment where found. Second

notice letters of violation are sent to non-respondents. Failure to respond results in product detention and initiation of appropriate legal proceedings.

Sanctions available to ensure compliance

Chapter 501, Health and Safety Code (Hazardous Consumer Products):
Product detention, seizure, and destruction if the product is banned or improperly labeled.
Class B misdemeanor.
Class A misdemeanor if the person's intent was to defraud another.

Chapter 485, Health and Safety Code (Abusable Glues and Aerosol Paints): state jail felony for the sale of an abusable glue or aerosol paint to a minor.
Class C misdemeanor for failure to post warning sign.
Class B misdemeanor for sale without a permit.

Chapter 345, Health and Safety Code (Bedding Products):
Class A misdemeanor.
Administrative penalties of up to $25,000 per violation.
Injunction.
Product detention, condemnation, recall, or destruction.

Procedures for handling complaints against regulated entities

All consumer complaints are considered a high priority and investigated as soon as possible. When a complaint is received, a determination is made regarding applicability to the program's jurisdiction whether it should be handled by the Product Safety Program or be referred to another TDH program or another government agency. If the complaint is telephoned in, this is typically done while speaking with the complainant. If the complaint is applicable, a report with all the details concerning the complaint is prepared. A copy of the complaint is then assigned to a regional or Austin headquarters office inspector for investigation. The investigation may involve interviews with the complainant, inspection and testing of the product, purchase of additional product samples for inspection and testing, unannounced on-site inspection of the applicable retailer on manufacturer, or telephone discussions with establishments located outside the state regarding the complaint. If a violation is confirmed, then routine procedures are followed and a violation letter is prepared and mailed. Refusal to correct the violation results in the initiation of legal proceedings.

Toxic Substances Control Division

Asbestos

Why regulation is needed

Asbestos regulations are needed to control and minimize public exposure to airborne asbestos, a known carcinogen and dangerous health hazard. The regulations control asbestos disturbance activities in buildings that afford public access or occupancy and other facilities.

These regulations are also necessary to administer and comply with both Texas state and federal laws. The Texas Asbestos Health Protection Act (TAHPA) establish rules of the procedures and means to implement the provisions of TAHPA, which regulates asbestos disturbance activities in public buildings. The administration of the regulations of the federal Environmental Protection Agency National Emissions Standards Hazardous Air Pollutants (NESHAP) program is also the responsibility of TDH. The NESHAP program regulates asbestos disturbance activities in and around facilities, as that term is defined in applicable federal regulations.

Prudent management of asbestos in both public buildings and facilities is vital to protect the public and workers. The health of Texas residents would suffer due to an increased incidence of adverse asbestos-related health effects, and death without these regulations and the authority to protect the public and workers from exposure to disturbed airborne asbestos fibers.

Statutory or other requirements for regulating the entity

Article 4477-3a, V.T.C.S, as amended (Texas Asbestos Health Protection Act): Regulates persons in the asbestos abatement industry
EPA National Emission Standard for Asbestos 40 CFR Part 61, Subpart M.

Scope of and procedures for inspections or audits

The Asbestos Programs Branch performs unscheduled inspections of asbestos abatement projects based on notification and complaints received by TDH. Annual audits of training providers and asbestos licensees are required by law.

Under the rules and regulations enforced by the Asbestos Programs Branch (TAHPR & NESHAP), 2,451 inspections were performed in fiscal year 1996. Of those, 299 inspections resulted from complaints. The Asbestos Programs Branch regulates every Texas public building and facility, including military installations. The regulated community includes most of the population of Texas, all public buildings and approximately 250,000 facilities within the State of Texas. The number of asbestos inspections interfaces with less than 1% of the persons or businesses regulated; however, it is estimated TDH receives notifications of only 50% of work that disturbs asbestos in public buildings, and facilities. Scheduling of inspections are based on complaints received, and the details on the notifications concerning planned disturbances of asbestos.

There are certain exclusions to each of the rules and regulations enforced. In TAHPR, the following are excluded under the definition of a public building: 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; a federal building or installation (civilian or military); a private residence; an apartment building with no

more than four dwelling units; and a manufacturing facility or building that is limited to workers and invited guests under controlled conditions. In EPA NESHAP: residential buildings having four or fewer dwelling units are excluded.

Follow-up activities when non-compliance is identified

Entities are notified in writing of alleged violations identified and if sufficient evidence to support that violation is documented, a notice of violation is issued. This is followed by a settlement conference or hearing with administrative penalties as appropriate.

Sanctions available to ensure compliance

Civil Penalty - not to exceed $10,000 per day for each violation and/or injunctive relief.
Administrative Penalty - not to exceed $10,000 per day for each violation.
Criminal Penalty - not to exceed $20,000, for first offense, for working without an asbestos license or failing to keep required records. $25,000 and/or jail for not more than two years for 2nd or subsequent offense.

Procedures for handling complaints against regulated entities

The addressing and handling of consumer/public asbestos complaints are considered the top priority in scheduling work activities and tasks. When a complaint is received, whether in writing, via phone, or by facsimile, the information is transferred to a Texas Department of Health Environmental and Consumer Health Complaint/Technical Assistance Request Form. Investigation of a complaint is a top priority in the Asbestos Programs. The target time, for investigating complaints, is within 24 hours of the time that a complaint is received at TDH. Virtually all complaints concerning adverse asbestos health hazards to workers or the public, or concerning asbestos contamination of the environment, are investigated within 24 hours of receipt of the complaint. As required in Section 12, subsection (e) of the TAHPA, all complaints are investigated within 48 hours of receipt by TDH.

Processing a complaint is performed two ways, depending upon the origin of the complaint. If the complaint originates in the Austin headquarters, the completed complaint/technical assistance form is faxed to the appropriate regional or local program and then is filed in a central complaint file at the Austin headquarters which is organized by year and regional/local program. If the complaint originates in a regional or local program office, the completed complaint/technical assistance request form is mailed to the Enforcement Program of the Austin headquarters after the complaint has been investigated. Appropriate personnel may follow up with the complainant or region personnel as needed. The complaint form is filed in a central complaint file which is organized by year and region/local program. A copy is maintained by the regional or local program for their records.

The investigator(s) of the complaint will contact the complainant (unless the complainant has chosen to remain anonymous) and interview that person to obtain additional information and legal statements as needed.

The investigator(s) of the complaint will perform an unannounced compliance inspection of the facility or site. This inspection may include conferences with facility representatives, reviewing appropriate documents, a physical inspection of the site related to the complaint, and physical inspections of other related facility areas and employee interviews, as appropriate to the complaint and the regulations under which the investigation is being conducted.

The Asbestos Branch will review the investigator's inspection results and determine if a Notice of Violation, in which administrative penalties would be assessed or registrations/licenses may be revoked, should be issued. In FY 1996, the Asbestos Programs Branch received about 500 requests for notices of violations from regional or local program field inspectors. This number is based on both complaints and routine compliance inspections. A copy of the complaint forms is retained in the investigation case files with a copy of the inspection report.

Hazard Communication

Why regulation is needed

Worker right-to-know regulations (the Texas Hazard Communication Act, THCA) are needed to protect Texas public employees from hazardous chemicals in their work places by ensuring access to chemical information, training, and personal protective equipment. Texas' private employees receive this protection under the federal Occupational Safety and Health Administration (OSHA); however, OSHA regulations do not apply to public employers in Texas.

The Texas Community Right-to-Know Acts [TCRAs, the Manufacturing Facility Community Right-to-Know Act (MFCRA), the Public Employer Community Right-to-Know Act (PECRA), and the Nonmanufacturing Facilities Community Right-to-Know Act (NFCRA)] are needed to ensure that Texas facilities which store or use hazardous chemicals above certain thresholds will provide information on these chemicals to the state (which can then be provided to citizens, upon request), Local Emergency Planning Committees (LEPCs), and local fire departments. In addition, the TCRAs are needed to provide filing fees which support the Branch's activities under both the THCA and TCRAs, including the funding of grants to the LEPCs. The TCRAs are also needed to provide additional hazardous chemical information to firefighters and LEPCs on an as needed basis for emergency planning.

Statutory or other requirements for regulating the entity

Chapter 502, Health and Safety Code (Texas Hazard Communication Act): Requires public employers to provide information, training, and appropriate personal protective equipment to employees who may be exposed to hazardous chemicals in the workplaces. The Hazard Communication Branch (HCB) provides consultative and enforcement-related evaluations of public workplaces to ensure that public employees are protected from hazardous chemicals in their workplaces.

Chapters 505-507, Health and Safety Code (Texas Community Right-to-Know Acts): HCB maintains state repository for emergency planning letters (one-time notifications to the state from facilities which have certain extremely hazardous chemicals in specified amounts), and annual hazardous chemical inventory reports called Texas Tier Two Forms. Emergency response personnel, such as fire fighters, can use Texas Tier Two Forms to plan response strategies in the event that an emergency situation arises. Private citizens in the community may request and receive copies of the Texas Tier Two.

Scope of and procedures for inspections or audits

The scope of routine Texas Hazard Communication Act (THCA) inspections is very broad; investigations are conducted to determine compliance with all requirements of the Act. The scope of routine Texas Community Right-to-Know Act (TCRA) inspections is more narrow; investigations under these laws are normally limited to determining whether the facility has exceeded the reporting thresholds and failed to submit the required annual Tier Two reports. Investigations under the HCA and TCRAs follow a written Branch Enforcement Policy and standard inspection checklists. For random compliance inspections, facility representatives are notified by the inspector at least one but no earlier than two working days prior to the date of the inspection. Complaint investigations are unannounced.

Upon arrival at the facility, inspectors are required to identify themselves and explain the specific purpose (complaint or random compliance inspection) and scope of the inspection. They are also required to provide a written Notice of Inspection (NOI) form which documents the date of the inspection; general purpose and scope of the inspection; and the name, agency, address, and signatures of the inspector and the representative of the inspected facility. The inspector provides a copy of the signed NOI form to the facility representative. The inspector then holds an opening conference with all interested facility representatives to discuss the Acts' standards and to review facility records which relate to the scope of the inspection. For THCA inspections, the inspector will review files of Material Safety Data Sheets (MSDSs), employee training records, the workplace chemical list, and the written compliance program. For TCRAs inspections, the inspector will review files of annual chemical inventory (Tier Two) reports, MSDSs, and chemical inventory records. The inspector performs a physical inspection of the facility, accompanied by facility representatives. For THCA inspections, the inspector randomly selects hazardous chemicals in the workplace and determines whether the chemicals are adequately labeled and have current MSDSs. These inspections also entail private interviews with randomly selected employees and observations on personal protective equipment provided to employees, conditions of chemical use and storage, and posting of a required employee notice. For TCRAs inspections, the inspector surveys the facility for hazardous chemicals exceeding the Tier Two reporting thresholds.

After the physical inspection, the inspector holds a closing conference with all interested facility representatives. The inspector explains all potential violations which were observed during the inspection and explains that other violations may be identified during the case review of the records submitted by the inspector. The inspector also provides recommendations to assist the facility in achieving compliance as soon as possible. Facility representatives are informed that they will receive a written notice [Notice of Violation (NOV) letter] of all violations which are determined during the inspection case development, which is carried out by the Branch's Enforcement Program staff at headquarters. For inspections conducted under the THCA, the inspector will explain that the facility will be guaranteed a "grace period" of 15 days to demonstrate compliance following the receipt of the NOV letter. For inspections conducted under the TCRAs, the inspector will explain that the 15-day grace period may be offered, depending on the demonstrated compliance efforts of the facility at the time of the inspection.

Under all the laws enforced by the Branch, 202 compliance inspections and approximately 3 audits were conducted in FY 1996. Of the compliance inspections, 181 were selected from Neutral scheme lists provided to the Public Health Regions and Hazard Branch staff, 16 were from complaints, 4 were from referrals, and 1 was targeted by a regional inspector. Under the MFCRA, 62 inspections were performed. Under the THCA and PECRA, 47 joint inspections were performed (covering both laws in each investigation). Under the NFCRA, 93 inspections were performed. The Hazard Communication Branch has been unable to obtain the additional information needed from the Texas Workforce Commission to be able to list the total number of facilities regulated under these laws; however, the Branch estimates that at least 100,000 facilities are covered by these laws.

Follow-up activities when non-compliance is identified

Under the THCA, TDH must provide a written notice of the documented violations to the inspected facility. This NOV letter is issued to the violating facility, notifying the facility representatives of their options to respond to the NOV: They may request an informal conference to dispute the validity of the violations, request a formal hearing, or correct the violations and certify to TDH (within 15 days of their receipt of the NOV letter) that the corrections have been made. Following an informal conference, TDH must provide a written notice to the facility, stating whether TDH will withdraw or pursue the NOV letter. The facility must either request a hearing or certify that the corrections of the violations have been made. The facility's response option to TDH's written notice must be made within 10 days of receipt of TDH's correspondence.

Under the TCRAs, TDH may opt to provide a 15-day grace period to the violating facility by providing an NOV letter and the same options as allowed in the paragraph above. However, TDH may also opt to automatically assess a penalty against a facility which has not

demonstrated a good faith effort to comply with the TCRAs. In this latter case, the facility's only options in response to the NOV will be to request a hearing or an informal conference.

Facilities which receive an automatic assessment of penalty, do not respond to the NOV letter, or do not demonstrate correction of all identified violations within an allowed grace period will receive a default order from TDH, assessing fines for the violations.

Sanctions available to ensure compliance

Sanctions currently available to TDH to ensure compliance with the THCA and TCRAs are administrative, civil, and criminal penalties.

Procedures for handling complaints against regulated entities

The complaint is received and recorded on a complaint form by one of the Hazard Communication Branch staff or a regional staff member. The complaint form is then forwarded, as appropriate to the regional or headquarters staff member who will investigate the complaint. Complainants may choose anonymity. The investigator will contact the complainant (unless the complainant has chosen to remain anonymous) and interview them in person or on the telephone to obtain additional information and legal statements as needed. The investigator will perform an unannounced compliance inspection of the facility. This inspection entails holding opening and closing conferences with facility representatives, reviewing appropriate documents, a physical inspection of the site related to the complaint, and physical inspections of other related facility areas and employee interviews, as appropriate to the complaint and the laws under which the investigation is being conducted. The Hazard Communication Branch will review the investigator's inspection results and will issue either a Notice of Violation or a Case Closure Letter to the facility, as appropriate. Complainants will receive a copy of the enforcement correspondence (unless they have chosen anonymity). The complaint forms are retained in the investigation case files. Key information about the complaint, the investigation, and the outcome are recorded in a complaint database.

Industrial Hygiene

Why regulation is needed

The regulation Title 25 Texas Administrative Code (TAC) §§1.131-1.137, concerning the Definition, Treatment, & Disposition of Special Waste from Health-Care Related Facilities (more commonly known as the medical waste rules) are rules to assist businesses and medical waste treatment providers with an updated method for providing their products and services, and to provide a more coordinated state agency approach to regulating medical waste.

Statutory or other requirements for regulating the entity

Chapter 341.016, Health and Safety Code (Sanitation of Businesses, Occupational Health and Safety): Perform occupational health and safety consultations and investigations upon request.

Scope of and procedures for inspections or audits

Occupational health and safety consultations and inspections are performed upon request. Challenge tests to the waste treatment technology are performed in the field by representatives of the Texas Natural Resources Conservation Commission (TNRCC). The number of inspections in the FY 1996 is 122 for Industrial Hygiene. Inspections for Industrial Hygiene are done for public entities only. There are approximately 2,580 public locations in Texas (1,044 ISD, 256 County Government, 1,186 City Government., 94 colleges/universities, state agencies for a total of 1.2 million/people.

Follow-up activities when non-compliance is identified

Follow-up occupational health and safety inspections are done to see if control measures are working. TDH does not perform compliance checks of medical waste technologies.

Sanctions available to ensure compliance

TNRCC is responsible for sanctions regarding medical waste technology.

Procedures for handling complaints against regulated entities

Complaints received at the Austin headquarters are recorded on a complaint form and routed to the appropriate person for action. The person handling the complaint notes the date of inspection in the "Description of Action Taken" section, and returns the completed form to Austin when the inspection report is submitted. Complaints received in each region are recorded on the same forms. A copy of the complaint is forwarded to the Austin headquarters for inclusion in the "complaints pending file", and the original complaint form is forwarded with the final report on the investigation.

Environmental Lead

Why regulation is needed

Texas Environmental Lead Reduction Rules and Regulations are needed for state and local governments to remain eligible to receive present and future federal funding of lead abatement and lead poisoning prevention programs. Also, these regulations will ensure proper precautions are being taken to reduce lead poisoning risks to Texas children and workers by requiring training and certification of individuals performing lead-based paint activities in target housing (constructed before 1978) and child-occupied facilities (subject to rule amendment per HB 729)

Statutory or other requirements for regulating the entity

Article 9029, V.T.C.S.: Requires training and certification of persons involved in lead-based paint activities in target housing and child-occupied facilities and accreditation of training providers in compliance with 25 TAC §295.21 et seq.

Scope of and procedures for inspections or audits

TDH conducts audits of accredited lead training providers on an unscheduled but periodic basis. Compliance inspections of lead abatement projects are conducted upon receiving a TDH notification form from the abatement firm. In FY 1996, no inspections or audits were conducted since the program was new.

Follow-up activities when non-compliance is identified

TDH notifies entities in writing of inspection results and requests that deficiencies must be corrected within a certain timeframe. Major violations or uncorrected deficiencies may result in administrative penalties.

Sanctions available to ensure compliance

Civil Penalty not to exceed $2,000 for the first violation or $10,000 for a second or subsequent violation.

Administrative Penalty not to exceed $5,000 for each day of a violation.

Criminal Penalty - An offense is punishable by fine of not more than $10,000, not more than six months imprisonment or both.

Procedures for handling complaints against regulated entities

When a complaint is received by the Enforcement and Compliance Section, a Complaint/Technical Assistance Request Form is completed. This form includes the complainant's identification (optional), location and description of the complaint, the name of the TDH personnel receiving the complaint and final disposition.

The Lead Enforcement and Compliance Section responds within 24 hours of receiving the complaint (usually the response time is within an hour). A response is deemed to be either referral of the complaint (to appropriate TDH regional office or other state agency) or initiation of an investigation by the Enforcement and Compliance personnel. Upon conclusion or resolution of the complaint, the complainant (if known) is contacted and provided TDH's finding and action taken, if any. The Section maintains control and possession of the complaint files.

Associateship for Health Care Quality and Standards

Bureau of Licensing and Compliance

Professional Licensing Division

Athletic Trainer Licensing Program

Why regulation is needed

The regulation of athletic trainers (Texas Civil Statutes, Article 4512d) was prompted to promote the safety of athletes who participate in high school, collegiate, and professional athletic events. Prevention of injuries through proper exercise and conditioning is emphasized. Through this legislation licensees must meet minimum academic and internship requirements, plus submit themselves to a competency evaluation prior to being licensed.

Statutory or other requirement for regulating the entity	Act: Texas Civil Statutes, Article 4512d Rules: Title 25, Texas Administrative Code, Chapter 313
Scope of and procedures for inspections or audits	None required.
Follow-up activities when non-compliance is identified	Complaint investigations conducted when non-compliance is identified and determined to be jurisdictional.
Sanctions available to ensure compliance	License denial, revocation, and suspension.
Procedures for handling complaints against regulated entities	The administrator and Executive Secretary (ES) review to determine if sufficient grounds exist to support a complaint and if the complaint is jurisdictional. If yes, refer to investigation. If no, complaint is closed and complainant notified of the reason for closure. Complainant is referred at this time to other governmental agencies or jurisdictions if applicable. When investigation is complete, the ES recommends to the board either the complaint be closed (no violation exists), the violation exists but is not serious and should be resolved informally, or disciplinary action be taken. The board is authorized to revoke, suspend, deny, or probate licenses or issue formal reprimands. If disciplinary action is proposed by the board, the licensee is advised of the proposal and offered the opportunity for a formal hearing. Hearings are conducted in accordance with the Administrative Procedure Act. The recommendations of the hearing officer are presented to the board for final action.

Dietitian Licensing Program

Why regulation is needed	The regulation of dietitians (Texas Civil Statutes, Article 4512h) is needed to ensure that dietary requirements in institutional and private practice settings are followed. Dietary counseling, education, and dietary planning must meet national accreditation standards. Licensees must meet educational and experience requirements and pass a national certification examination in order to be qualified for licensure.
Statutory or other requirement for regulating the entity	Act: Texas Civil Statutes, Article 4512h Rules: Title 22, Texas Administrative Code, Chapter 711.
Scope of and procedures for inspections or audits	None required.

Follow-up activities when non-compliance is identified	Complaint investigations conducted when non-compliance is identified and determined to be jurisdictional.
Sanctions available to ensure compliance	Reprimands, license denial, license revocation, and license suspension. May also probate suspension of license.
Procedures for handling complaints against regulated entities	Executive Secretary reviews to determine if sufficient grounds exist to support a complaint and if complaint is jurisdictional. If yes, complaint is investigated. If no, the complaint is closed, and the complainant is notified of reason for closure. Complainant is referred at this time to other governmental agencies or jurisdictions if applicable. When investigation is complete, the Executive Secretary alone or with concurrence of the Complaints Committee recommends to the board either the complaint be closed (no violation exists), violation exists but is not serious and should be resolved informally, or disciplinary action be taken. The board is authorized to revoke, suspend, deny, or probate licenses or issue formal reprimands. If disciplinary action is proposed by the board, the licensee is advised of proposal and offered the opportunity for a formal hearing. Hearings are conducted in accordance with the Administrative Procedure Act. Recommendations of the hearing officer are presented to the board for final action.

Fitting and Dispensing of Hearing Instruments

Why regulation is needed	The regulation of fitters and dispensers of hearing instruments (Article 4566-1.01 et seq.) was designed to provide acceptable standards for the testing of individuals prior to being fitted with proper hearing aids. The development of various ambient noise levels is needed so that proper determination of hearing loss is achieved. Minimum training standards, including an internship, and a competency evaluation must be successfully achieved in order for an applicant to be licensed.
Statutory or other requirement for regulating entity	Act: Texas Civil Statues, Article 4566-1.01 et seq. Rules: Title 22, Texas Administrative Code, Chapter 141
Scope of and procedures for inspections or audits	None required.
Follow-up activities when non-compliance is identified	Complaint investigations are conducted when non-compliance is identified and found to be jurisdictional.
Sanctions available to ensure compliance	Administrative penalties. Licenses can be denied, revoked, or suspended.

Procedures for handling complaints against regulated entities	Title 22, Texas Administrative Code, Chapter 141, §141.17. Complaints and Violations.

Health-Related Services Registry Program

Why regulation is needed	Individuals on the health-related registry (Health and Safety Code, Section 12.014) are members of a health-related occupation that is not otherwise licensed, registered, or certified by any agency, board, or commission. Through this legislation individuals are placed on a list which is available to any citizen of the state of Texas.
Statutory or other requirement for regulating entity	Act: Health and Safety Code, Section 12.014 Rules: Title 25, Texas Administrative Code, Chapter 127
Scope of and procedures for inspections or audits	None required.
Follow-up activities when non-compliance is identified	None.
Sanctions available to ensure compliance	None.
Procedures for handling complaints against regulated entities	Not applicable. Inclusion of an occupation of providers of a specific health-related service on the registry does not constitute an evaluation of a provider's training or competency or a regulation of the scope of practice of the provider. There is no requirement that a provider within the included occupation actually register.

Licensed Marriage and Family Therapists

Why regulation is needed	The marriage and family therapy community feel that their practice required separate legislation (Texas Civil Statutes, Article 4512c-1) to delineate those counseling modalities that are intrinsic to marriage and family therapy. Although many individuals performing counseling to families are licensed under other legislation, an individual who desires to be a licensed marriage and family therapist must comply with the requirements in this Act for educational training, supervised experience documentation, and a competency evaluation.
Statutory or other requirement for regulating the entity	Act: Texas Civil Statutes, Article 4512c-1 Rules: Title 22, Texas Administrative Code, Chapter 801

Scope of and procedures for inspections or audits	None required.
Follow-up activities when non-compliance is identified	Complaint investigations are conducted when non-compliance is required and found to be jurisdictional.
Sanctions available to ensure compliance	Administrative penalties. Licenses can be denied, suspended, or revoked. Licensee may be issued letter of reprimand or placed on probation.
Procedures for handling complaints against regulated entities	Title 22, Texas Administrative Code, Chapter 801, §801.296. Complaint Procedures.

Texas Board of Licensure for Professional Medical Physicists

Why regulation is needed	With the goal of protecting individuals from the harmful effects of excessive radiation exposure, this Act (Texas Civil Statues, Article 4512n) was passed to license individuals who could provide safe and exacting information regarding the benefits and/or harm resulting from radiation. Licensed individuals carefully monitor radiation levels, provide testing on radiation equipment, and determine if radiation equipment is safe for diagnostic and therapeutic medical use.
Statutory or other requirement for regulating the entity	Act: Texas Civil Statute, Article 4512n Rules: Title 22, Texas Administrative Code, Chapter 601
Scope of and procedures for inspections or audits	None required.
Follow-up activities when non-compliance is identified	Complaint investigations are conducted when non-compliance is identified and found to be jurisdictional.
Sanctions available to ensure compliance	Licenses may be denied, revoked or suspended. Licensee may be reprimanded or placed on probation.
Procedures for handling complaints against regulated entities	Section 601.16 of the rules. Violations, Complaints, and Subsequent Actions

Massage Therapy Registration Program

Why regulation is needed

Texas Civil Statues, Article 4512k, was created to foster the safe practice of massage techniques by registering only qualified individuals who have completed educational and internship requirements, followed by a written and practical competency evaluation. The legislation requires that schools provide a state mandated curriculum, utilize certified instructors and meet other minimum education requirements. The Act incorporates approval and spot inspections of massage establishments and schools.

Statutory or other requirement for regulating the entity

Act: Texas Civil Statutes, Article 4512k
Rules: Title 25, Texas Administrative Code, Chapter 141

Scope of and procedures for inspections or audits

Approved schools are subject to annual unannounced inspections. All approved massage therapy schools and independent instructors are subject to school and financial audits. There were 48 inspections of massage schools/independent instructors in FY 1996 which is 86% of the total establishments regulated.

Follow-up activities when non-compliance is identified

Complaint investigations conducted when non-compliance is identified and determined to be jurisdictional.

Sanctions available to ensure compliance

Administrative penalties. Registration may be denied, revoked or suspended.

Procedures for handling complaints against regulated entities

The administrator reviews the complaint to determine if sufficient grounds exist to support an investigation and if the complaint is jurisdictional. If yes, an investigation convenes. If no, the complaint is closed and complainant notified of the reason for closure. The complainant is referred at this time to other governmental agencies or jurisdictions, if applicable. When the investigation is complete, the administrator closes the complaint (no violation exists), or determines that the violation exists but is not serious and should be resolved informally, determines that disciplinary action should be taken. TDH is authorized to revoke, suspend, deny, or probate registrations or issue formal reprimands. If disciplinary action is proposed by TDH, the registrant is advised of the proposal and offered the opportunity for a formal hearing. Hearings are conducted in accordance with TDH's formal hearing procedures. The recommendations of the hearing officer are presented to the Commissioner of Health for final action.

Opticians Registration Program

Why regulation is needed

Texas Civil Statues, Article 4551-1, was created to provide a means by which the public can readily identify those providers of ophthalmic dispensing services and products who have competed education

requirements and passed a national certifying examination. Through this program, citizens have a means of expressing their concerns over providers of either contact lenses or eye glasses with respect to proper fitting and adjustments as well as false and misleading advertising.

Statutory or other requirement for regulating the entity

Act: Texas Civil Statutes, Article 4551-1
Rules: Title 25, Texas Administrative Code, Chapter 129

Scope of and procedures for inspections or audits

None required.

Follow-up activities when non-compliance is identified

Complaint investigations conducted when non-compliance is identified and determined to be jurisdictional.

Sanctions available to ensure compliance

Administrative penalties. Registration can be denied, revoked or suspended.

Procedures for handling complaints against regulated entities

The administrator reviews for sufficient grounds to support a complaint and if complaint is jurisdictional. If yes an investigation is convened. If no, complaint is closed and complainant notified of reason. The complainant is referred to other governmental agencies or jurisdictions, if applicable. When the investigation is complete, the administrator closes complaint (no violation), determines violation exists but is not serious and should be resolved informally, or determines disciplinary action should be taken. TDH is authorized to revoke, suspend, deny, or probate registrations or issue formal reprimands. If disciplinary action is proposed, the registrant is advised of the proposal and offered the opportunity for a formal hearing. Hearings are conducted in accordance with TDH's formal hearing procedures the recommendations of hearing officer are presented to the Commissioner of Health for final action.

Licensed Professional Counselors

Why regulation is needed

The practice of counseling requires individuals to meet demanding and extensive educational training and testing. Texas Civil Statues, Article 4512g, sets forth requirements that must be met in order to be a licensed professional counselor. Through rules that outline the various facets of counseling, individuals who previously may not have realized that their activities constitute the practice of counseling are required to come under the provisions of this Act.

Statutory or other requirement for regulating the entity

Act: Texas Civil Statutes, Article 4512g,
Rules: Title 22, Texas Administrative Code, Chapter 681

Scope of and procedures for inspections or audits	None required.
Follow-up activities when non-compliance is identified	Complaint investigations are conducted when non-compliance is identified and found to be jurisdictional.
Sanctions available to ensure compliance	Licenses can be denied, revoked or suspended.
Procedures for handling complaints against regulated entities	Complaint is received by Professional Counselors board staff. Program staff review to determine whether sufficient grounds exist to support a complaint. If yes, an investigation convenes. If no, the complaint is submitted to the Complaints Committee at following meeting to dismiss. In some cases, additional information from the complainant may be needed to make this determination. Prior to or during an investigation, the licensee is requested to submit a notarized response to the allegations. The Complaints Committee reviews the complaint, the licensee's response, and the report of investigation once the investigation is complete. IF the report of investigation provides evidence that a violation(s) exists, the Complaints Committee at that time may propose disciplinary action to be taken. The Professional Counselors board is authorized to revoke, suspend, suspend on an emergency basis, probate a suspended license, refuse to renew license, or issue a formal reprimand. If the committee determines that a violation exists, and that the violation is not serious, the committee may resolve the complaint by informal methods. These methods could include cease and desist orders or informal agreements. If formal disciplinary action is proposed, the Complaints Committee will send a notice letter to the licensee setting out the allegations and basis for the committee's decision. This letter also offers the licensee an opportunity to request a formal hearing on the proposed action. If the licensee does not request a formal hearing within 10 days following receipt of the letter, the licensee is considered to have waived his or her right to the hearings and the Professional Counselors Board shall consider an order taking disciplinary action as described in written notice to the licensee or applicant. Upon majority vote, the Professional Counselors Board shall enter an order imposing appropriate disciplinary action. If a formal hearing is requested, the complaint file and all information

relating to the complaint and the investigation is forwarded to the TDH Office of General Counsel (OGC), Texas Department of Health. OGC assigns an attorney to represent the board at the formal hearing. That attorney notifies the State Office of Administrative Hearings and an Administrative Law Judge is assigned. An administrative hearing is held in accordance with the Administrative Procedure Act (APA) and the board's hearing procedures in Subchapter M of the board rules.

After the hearing, the Administrative Law Judge prepares a proposal for decision and provides copies to all parties. Each party has the right to file exceptions and briefs in a time frame established by the Administrative Law Judge. The proposal for decision and any exceptions and briefs are submitted to the Professional Counselors Board of final order or decision. The Professional Counselors Board may deny, suspend, probate or revoke a license as it deems appropriate and lawful. The Professional Counselors Board may under certain circumstances change a finding of fact or conclusion of law or modify a proposed order of an Administrative Law Judge.

Title 22 Texas Administrative Code, Chapter 681 (board rules) §681.220 sets out the process for actions taken after an administrative hearing.

Perfusionists Licensing Program

Why regulation is needed

The health care team that performs open heart surgery consists of professionals, one of which is a perfusionist. Texas Civil Statues, Article 4529e, considers anyone who practices perfusion in an unauthorized, unqualified, and unprofessional manner as a serious threat to the public. In order to become a licensed perfusionist, a candidate must complete a nationally accredited education program, followed by successful completion of a competency examination.

Statutory or other requirement for regulating the entity

Act: Texas Civil Statutes, Article 4529e
Rules: Title 22, Texas Administrative Code, Chapter 761

Scope of and procedures for inspections or audits

None required.

Follow-up activities when non-compliance is identified

Complaint investigations conducted when non-compliance is determined to be valid and jurisdictional.

Sanctions available to ensure compliance

License may be denied, revoked or suspended.

Procedures for handling complaints against regulated entities

The Executive Secretary reviews to determine if sufficient grounds exist to support a complaint and if complaint is jurisdictional. If yes, an investigation is convened. If no, complaint is closed and complainant notified of reason for closure. Complainant is referred to other governmental agencies or jurisdictions, if applicable. When the investigation is complete, the Executive Secretary alone or with the concurrence of the Complaints Committee, recommends to the Perfusionists Licensing Board that the complaint be closed (no violation exists), that the violation exists but is not serious and should be resolved informally, or that disciplinary action should be taken. The board is authorized to revoke, suspend, deny, or probate licenses or issue formal reprimands. If disciplinary action is proposed by the board, the licensee is advised of the proposal and offered the opportunity for a formal hearing. Hearings are conducted in accordance with the Administrative Procedure Act. Recommendations of the hearing officer are presented to the Perfusionists Board for final action.

Respiratory Care Practitioners Certification Program

Why regulation is needed

Medical technology has enabled lives to be extended and quality of life to be improved for a multitude of persons with cardiorespiratory injuries, diseases, and conditions. Environmental causes and the aging population have also placed increased importance and demand on specialty health care. The role of the respiratory care practitioner certification program (Texas Civil Statues, Article 45121) is to ensure qualified individuals provide respiratory care. Successful completion of an educational program, training, and an examination are required.

Statutory or other requirement for regulating the entity

Act: Texas Civil Statutes, Article 4512l,
Rules: Title 25, Texas Administrative Code, Chapter 123

Scope of and procedures for inspections or audits

None required.

Follow-up activities when non-compliance is identified

Complaint investigations are conducted when non-compliance is identified and found to be jurisdictional.

Sanctions available to ensure compliance

Administrative penalties. Certificates can be denied, revoked or suspended.

Procedures for handling complaints against regulated entities

Section 123.14 of the rules. Violations, Complaints, and Subsequent Actions.