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Office of the
Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569

Secretary of State
Antonio O. Garza, Jr.

Director
Dan Procter

Assistant Director
Dee Wright

Circulation/Marketing
Tamara Joiner
Jill S. Ledbetter

Texas Administrative Code Section
Dana Blanton
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Daneane Jarzombek

Documents Section
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Jamie McCormack
Patty Webster

Open Meetings Clerk
Jamie McCormack

Production Section
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Ann Franklin
Mimi Sanchez

Receptionist
Roy Felps

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How to Use the Texas Register

Information Available: The 11 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

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

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

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

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

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

Open Meetings - notices of open meetings.

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

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

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 20 (1995) is cited as follows: 20 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 "20 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 20 TexReg 3."

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

Texas Administrative Code

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

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

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

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

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

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

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

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

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

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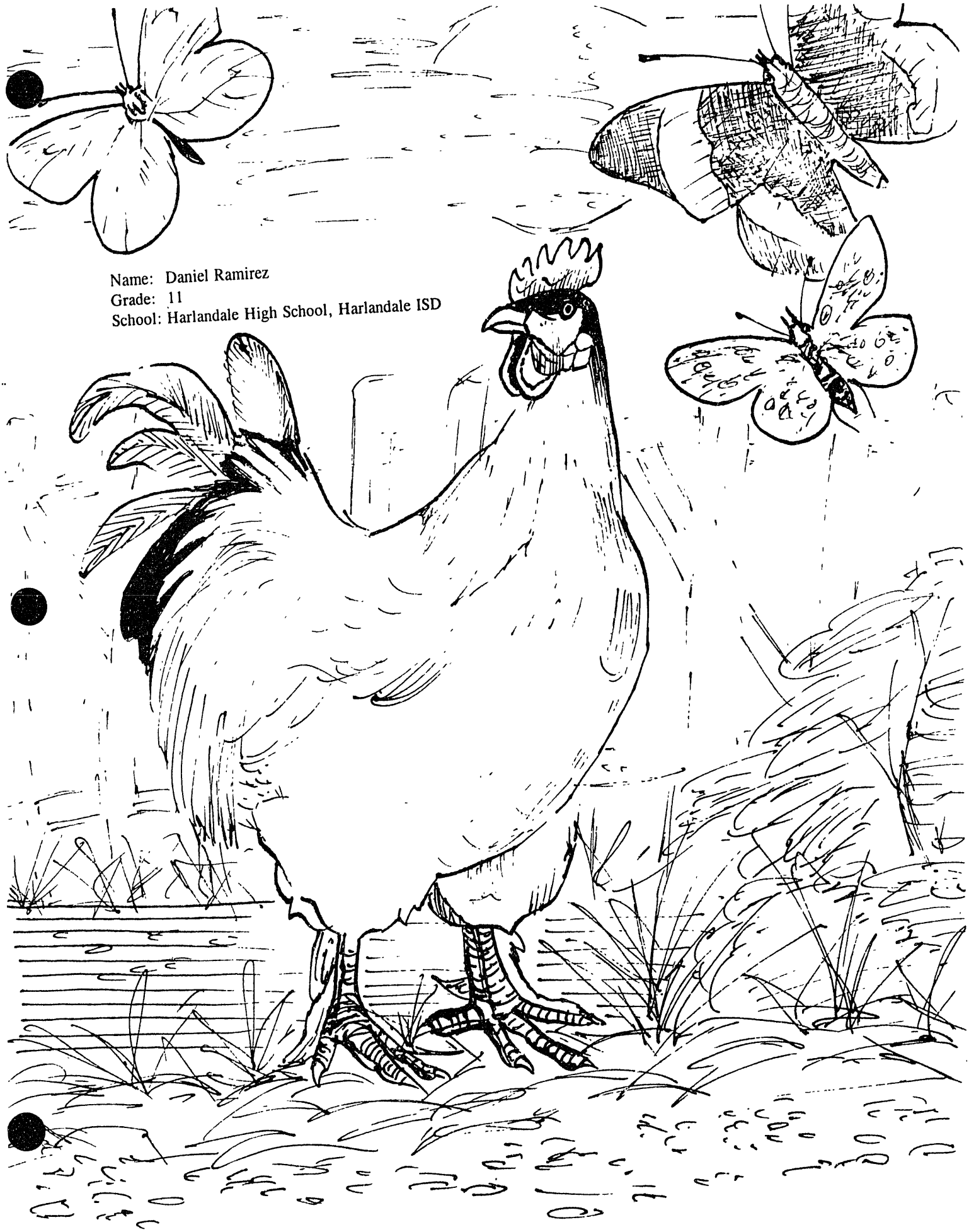
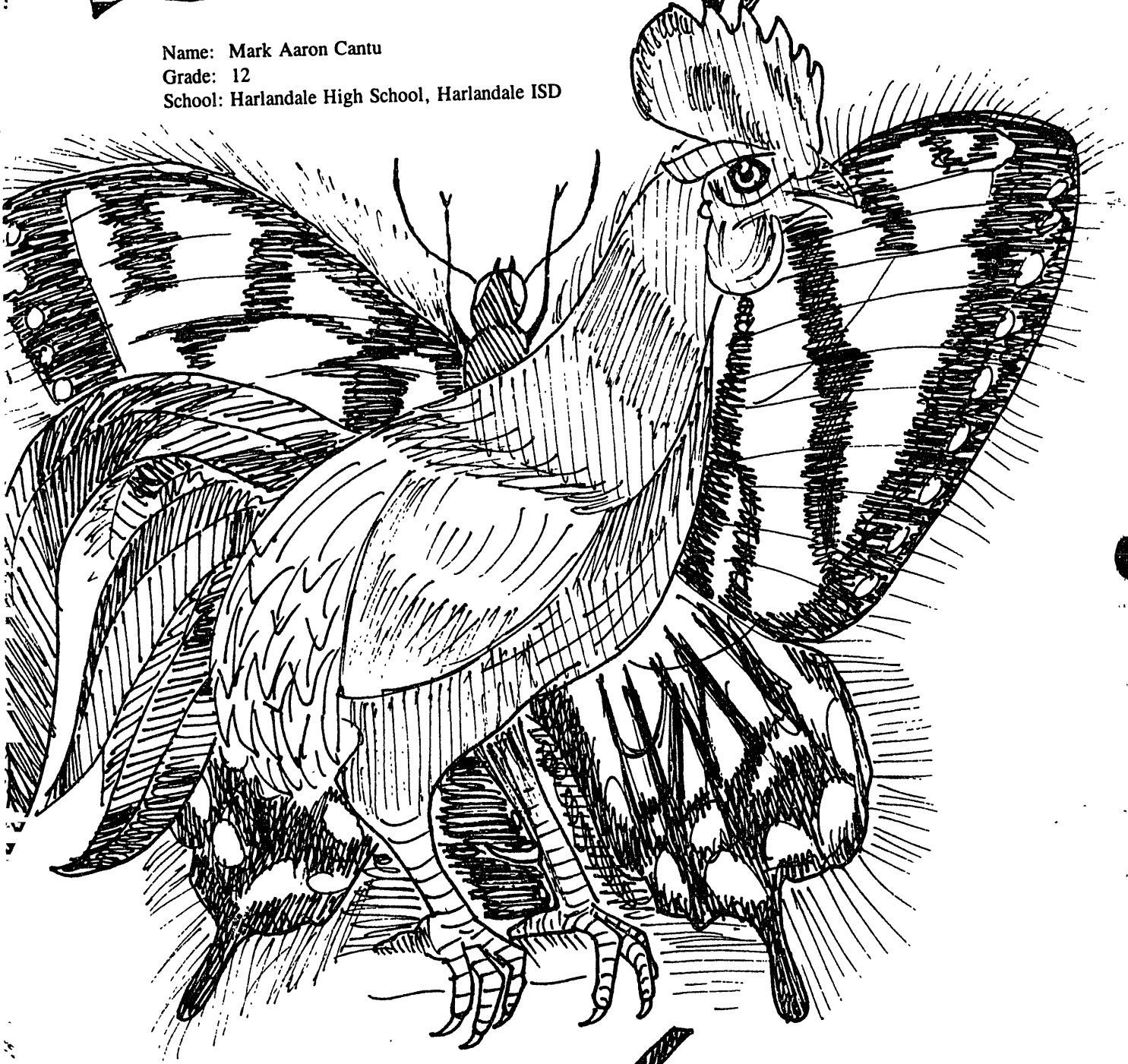
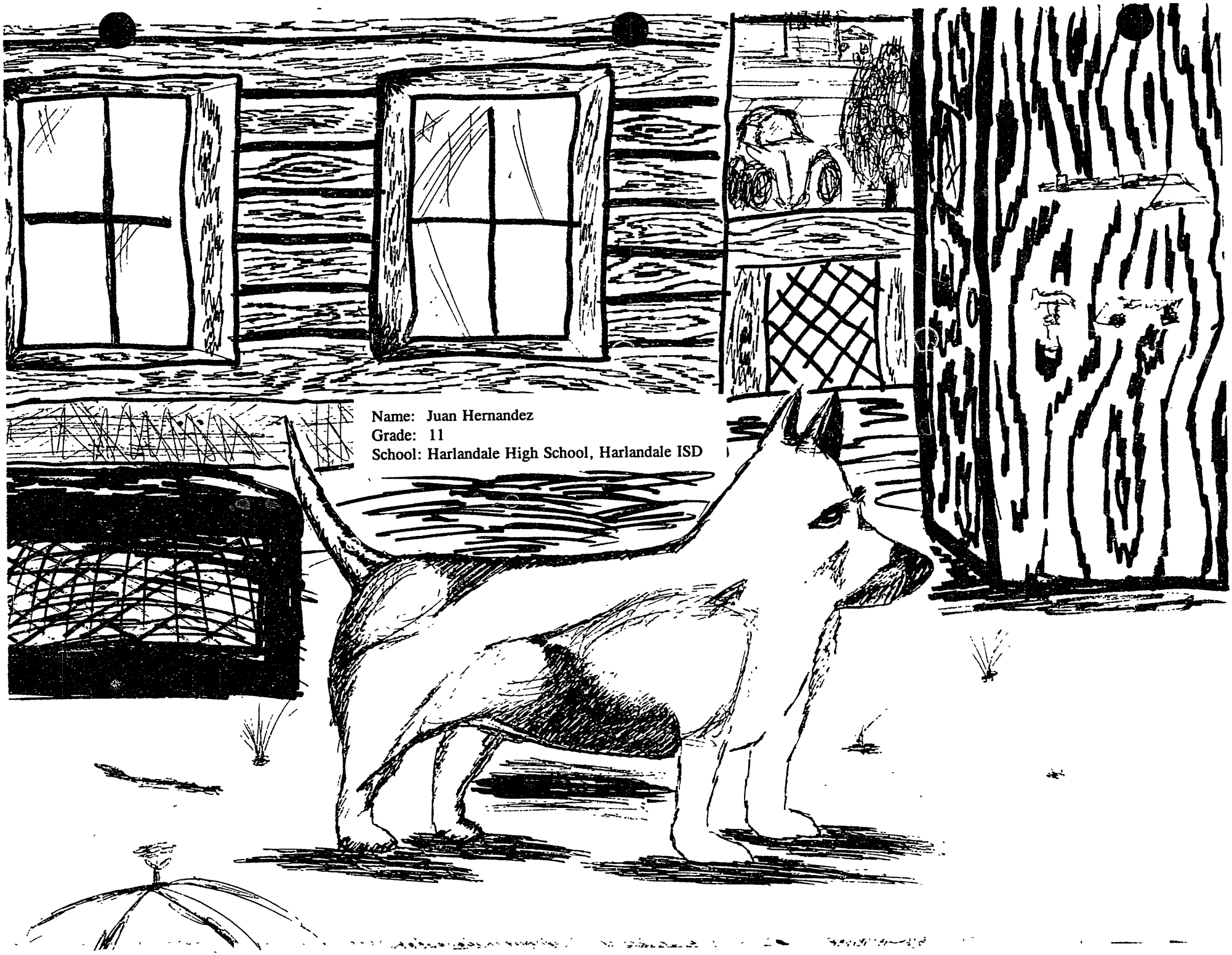


Name: Daniel Ramirez
Grade: 11
School: Harlandale High School, Harlandale ISD

Butterflies and Chickens

Name: Mark Aaron Cantu
Grade: 12
School: Harlandale High School, Harlandale ISD





Name: Juan Hernandez
Grade: 11
School: Harlandale High School, Harlandale ISD

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Grade: 11
School: Harlandale High School, Harlandale ISD

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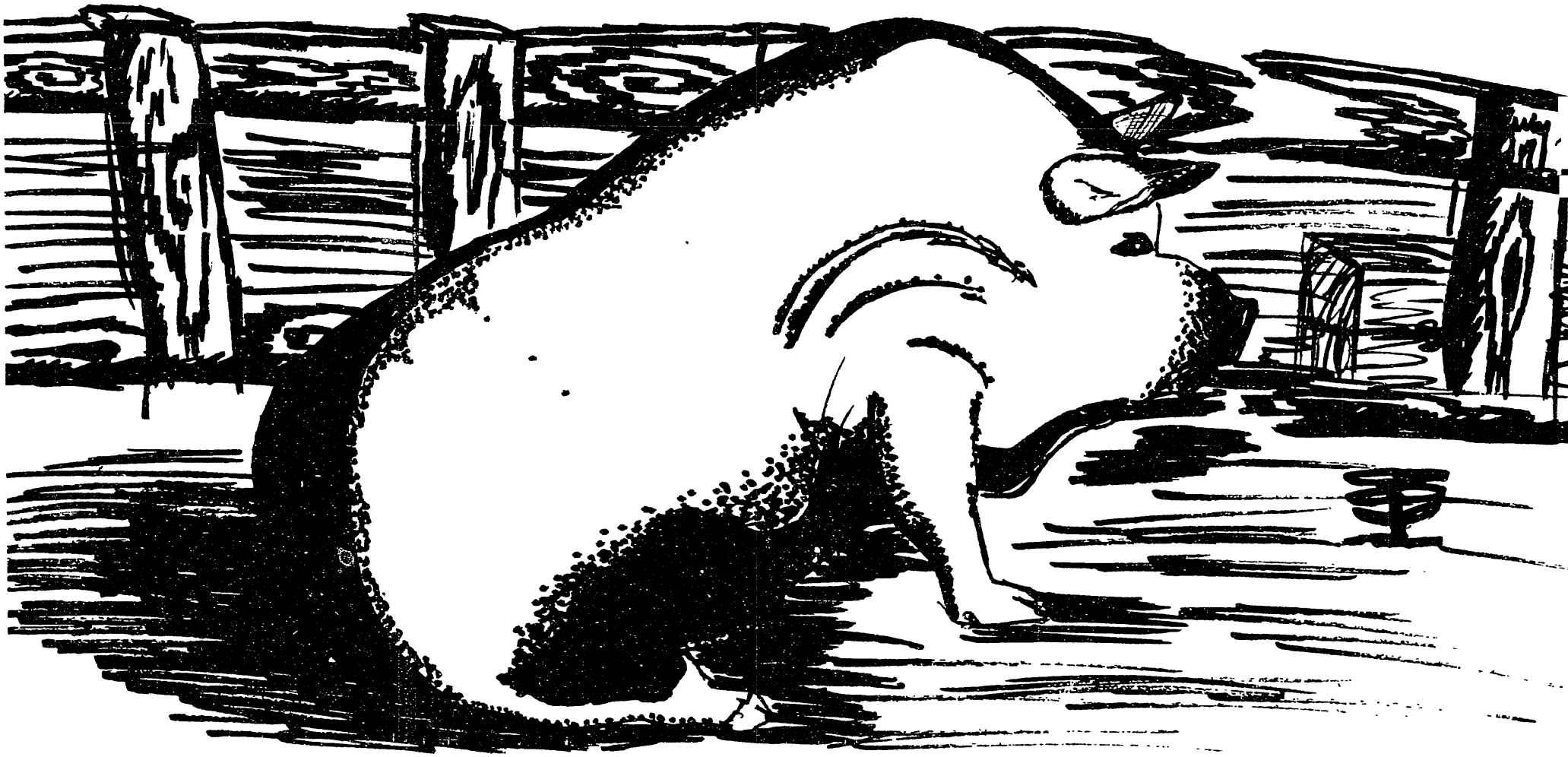
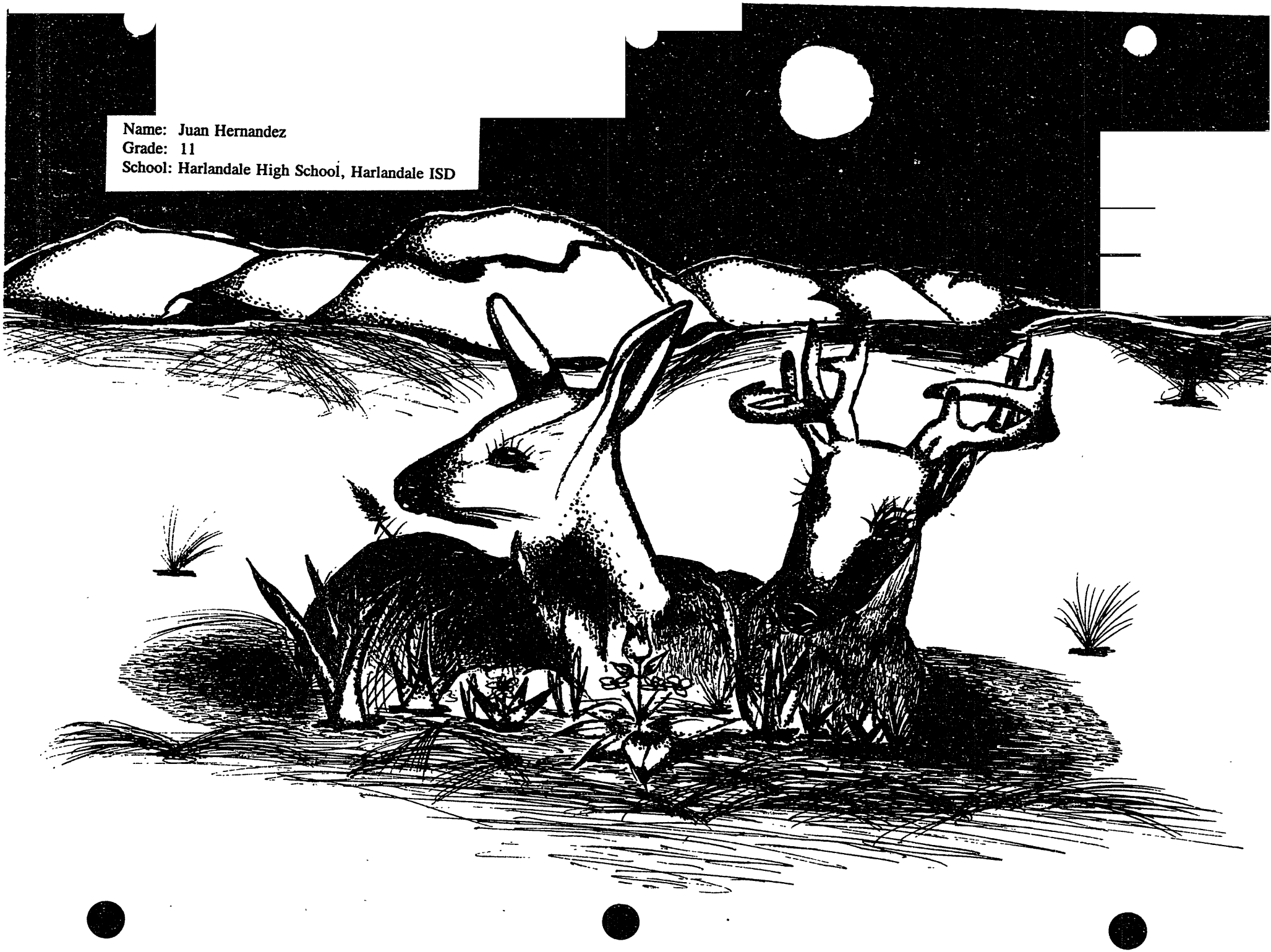
Grade: 11
School: Harlandale High School, Harlandale ISD





Name: Juan Hernandez
Grade: 11
School: Harlandale High School, Harlandale ISD

ATTORNEY GENERAL

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 may be 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. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

Requests for Opinions

(ID#-36858). Request from Mike Moses, Commissioner of Education, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, concerning applicability of the nepotism provisions, Government Code, Chapter 573, when a school district employee, previously not ineligible thereunder because of longevity, returns to employment while the person related to him within the prohibited degree is still a member of the district board of trustees.

(ID#-36911). Request from Honorable Pat Phelan, County Attorney, Hockley County Courthouse, Box 11, Levelland, Texas 79936, concerning whether an assistant juvenile probation officer may simultaneously hold the elective office of constable.

(ID#-36913). Request from Honorable David Sibley, Chair, Economic Development Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning whether the Texas Racing Commission may approve an application for wagering in simulcast races by a facility which is as yet incapable of hosting live racing events.

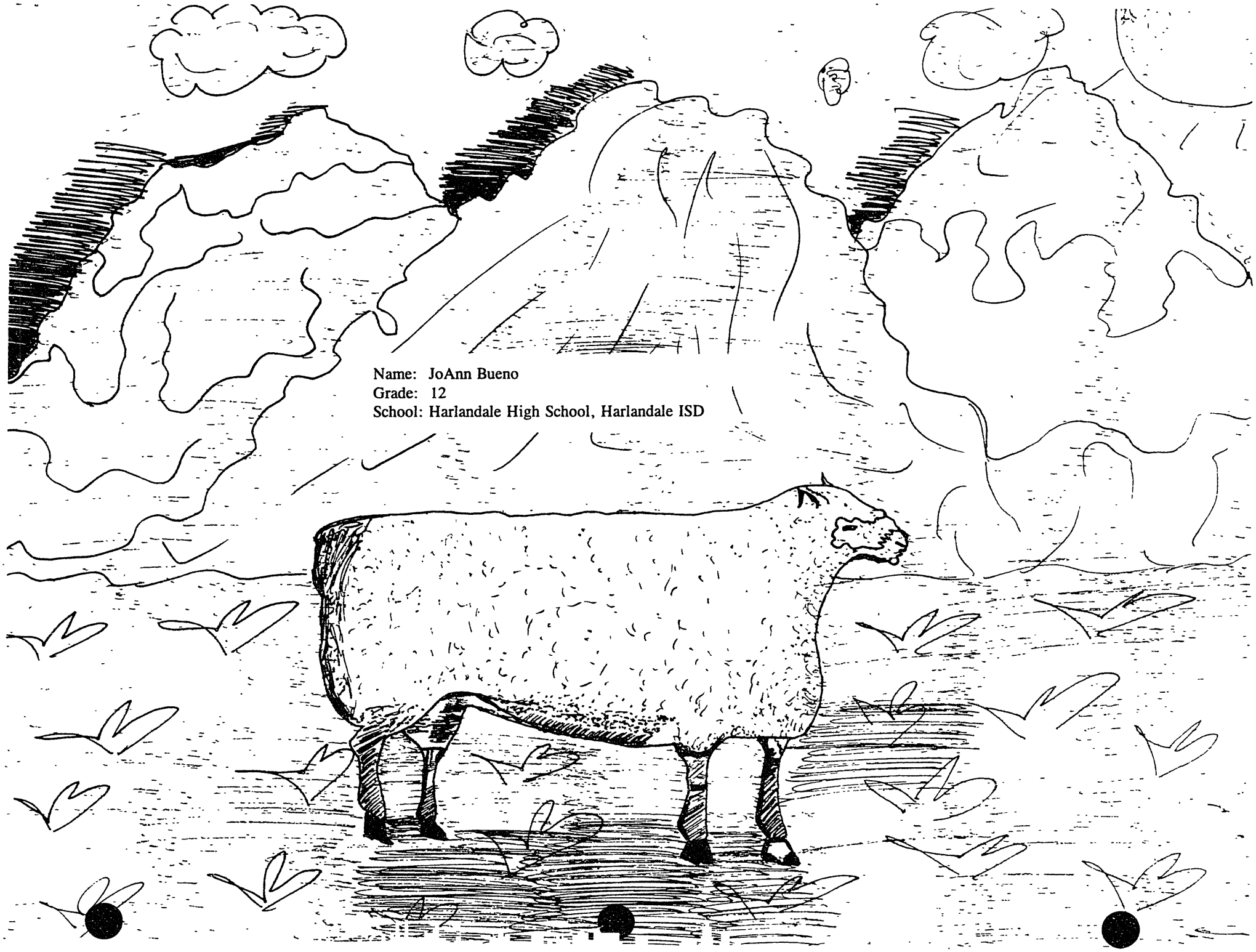
(ID#-36955). Request from David R. Smith, M.D., Commissioner, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, concerning whether a "special hospital," as defined by Health and Safety Code, §241.003, may provide surgical or obstetrical services.

(ID#-37190). Request from Honorable Kim Brimer, Chair, Committee on Business and Industry, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning collection of funds for the Texas Peace Officers Memorial under the auspices of the Texas Peace Officers Advisory Committee, as established by Government Code, Chapter 415, Subchapter F.

(ID#-37250). Request from Honorable Kenny Marchant, Chair, Investments and Banking, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether the sales and use tax collected pursuant to Texas Civil Statutes, Article 5190.6, the Development Corporation Act of 1979, may be used to finance the purchase of books for a municipal public library.

TRD-9516572

♦ ♦ ♦



Name: JoAnn Bueno
Grade: 12
School: Harlandale High School, Harlandale ISD

EMERGENCY RULES

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

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

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 27. Crime Records

Juvenile Justice Information System

- **37 TAC §§27.51-27.64**

The Texas Department of Public Safety adopts on an emergency basis new §§27.51-27.64, concerning juvenile justice information systems.

These new sections are necessary to implement the juvenile justice information system provisions of House Bill 327, 74th Legislature, Regular Session, 1995 "the Act", part of which was codified as the Texas Family Code, Title 3 §§58.001-58.113. The Act makes the Texas Department of Public Safety (department) responsible for recording data and maintaining a database for a computerized juvenile justice information system. The new sections set forth procedures and implementation for the reporting of juvenile offender processing data by the agency responsible for the data from the time a juvenile offender is initially taken into custody, detained, or referred until the time a juvenile offender is released from the jurisdiction of the juvenile justice system. The department finds that adoption of these rules on fewer than 30 days notice is required by state law.

The new sections are adopted on an emergency basis pursuant to Texas Family Code, Title 3, Chapter 58, §§58.001-58.113 and Texas Government Code, §411. 006(4), which provide the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department.

§27.51 Juvenile Justice Information System.

(a) The Department of Public Safety is responsible for recording data and maintaining a database for a computerized juvenile justice information system that serves:

(1) as the record creation point for the juvenile justice information system maintained by the state; and

(2) as the control terminal for entry of records, in accordance with federal law, rule and policy into the federal records systems maintained by the Federal Bureau of Investigation.

(b) The Department of Public Safety will not collect or retain information relating to a juvenile if Texas Family Code, Chapter 58 prohibits or restricts the collection or retention of the information.

(c) Local law enforcement and juvenile justice agencies must report, and the Department of Public Safety must retain the information required by Texas Family Code, Chapter 58, Subchapter B, §§58.101-58.113.

§27.52. Purpose Of The Juvenile Justice Information System. The purpose of the Juvenile Justice Information System is to:

(1) provide agencies and personnel within the juvenile justice system accurate information relating to children who come into contact with the juvenile justice system of Texas;

(2) provide, where allowed by law, adult criminal justice agencies accurate and easily accessible information relating to children who come into contact with the juvenile justice system;

(3) provide an efficient conversion, where appropriate, of juvenile records to adult criminal records;

(4) improve the quality of data used to conduct impact analyses of proposed legislative changes in the juvenile justice system; and

(5) improve the ability of interested parties to analyze the functioning of the juvenile justice system.

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

Criminal Justice Agency-Has the meaning assigned by Texas Government Code, Section 411.082;

Department-Refers to the Department of Public Safety of the State of Texas

Disposition-Refers to an action that results in the termination, transfer of jurisdiction, or indeterminate suspension of the prosecution of a juvenile offender.

Incident Number-Refers to a unique number assigned to a child during a specific custodial or detention period or for a specific referral to the office or official designated by the juvenile court, if the juvenile offender was not taken into custody before the referral.

Juvenile Justice Agency-Refers to an agency that has custody or control over juvenile offenders.

Juvenile Justice Information System-Is the information related to a child forwarded by a law enforcement agency, including photographs and fingerprints, to the department for inclusion in the database created in Texas Family Code, Title 3, Subchapter B, §§58.101-58.113.

Juvenile Offender-Refers to a child who has been assigned an incident number.

Referral To Juvenile Court-Refers to the referral of a child or a child's case to the office or official, including an intake officer or probation officer, designated by the juvenile court to process children within the juvenile justice system.

State Identification Number-Refers to a unique number assigned by the department to a child in the juvenile justice information system, or the adult criminal history system.

Uniform Incident Fingerprint Card-Refers to a multiple-part form containing a unique incident number with space for information relating to the conduct for which a child has been taken into custody, detained or referred, the child's fingerprints, and other relevant information.

§27.54. Types Of Information Collected In The Juvenile Justice Information System.

(a) Subject to the records sealing provisions of Texas Family Code, §58.003, the juvenile justice information system shall

consist of information relating to delinquent conduct committed by a juvenile offender that, if the conduct had been committed by an adult, would constitute a criminal offense other than an offense punishable by a fine only.

(b) Information in the system shall include information relating to:

(1) the juvenile offender;

(2) the intake or referral of the juvenile offender into the juvenile justice system;

(3) the detention of the juvenile offender;

(4) the prosecution of the juvenile offender;

(5) the disposition of the juvenile offender's case, including the name and description of any program to which the juvenile offender is referred; and

(6) the probation or commitment of the juvenile offender.

§27 55. Specific Information Collected In The Juvenile Justice Information System.

(a) The department shall assign codes for the reporting of data to the juvenile justice information system. The department shall designate and distribute a list of uniform offense codes to be used in reporting data to the juvenile justice information system. The department has the sole responsibility for designating the state identification number for each juvenile whose name appears in the juvenile justice information system. The department will, upon receipt of fingerprint submissions of juvenile offender data, assign unique state identification numbers to each juvenile offender reported to the juvenile justice information system.

(b) To the extent possible, and subject to the above list of types of information collected, local law enforcement and juvenile justice agencies shall report, and the department shall include in the juvenile justice information system the following information for each juvenile offender referred under the Texas Family Code, Title 3, Chapter 58, §§58.101-58.113 for delinquent conduct:

(1) the juvenile offender's name, including other names by which the juvenile offender is known or has used;

(2) the juvenile offender's date and place of birth, including alias dates of birth used by the offender;

(3) the juvenile offender's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;

(4) the juvenile offender's state identification number, and other numbers as identified on the uniform incident fingerprint card as designed by the department for reporting to the juvenile justice information system, including alias identifying numbers;

(5) the juvenile offender's fingerprints, which shall be stored in the statewide automated fingerprint identification system;

(6) the juvenile offender's last known residential address, from which the department shall determine the census tract number designation, if possible;

(7) the name and identifying number as assigned by the Federal Bureau of Investigation of the agency that took into custody or detained the juvenile offender;

(8) the date of detention or custody;

(9) the conduct for which the juvenile offender was taken into custody, detained, or referred, including level and degree of the alleged offense;

(10) the name and identifying number as assigned by the Federal Bureau of Investigation of the juvenile intake agency or juvenile probation office;

(11) each disposition by the juvenile intake agency or juvenile probation office, as identified by codes assigned by the department;

(12) the date of disposition by the juvenile intake agency or juvenile probation office;

(13) the name and identifying number as assigned by the Federal Bureau of Investigation of the prosecutor's office;

(14) each disposition by the prosecutor;

(15) the date of disposition by the prosecutor;

(16) the name and identifying number as assigned by the Federal Bureau of Investigation of the court;

(17) each disposition by the court, as identified by codes assigned by the department, including information concerning custody of a juvenile offender by a juvenile justice agency or probation;

(18) the date of disposition by the court;

(19) any commitment or release under supervision by the Texas Youth Commission;

(20) the date of any commitment or release under supervision by the Texas Youth Commission; and

(21) a description of each appellate proceeding, as identified by codes assigned by the department.

(c) Local agencies are not required to report, nor is the department required to maintain dispositions that represent administrative status notices of a juvenile justice agency.

§27.56. Duties Of Reporting Agencies And Courts. A juvenile justice agency and a clerk of the court shall:

(1) compile and maintain records needed for reporting data required by the department;

(2) transmit to the department in the manner provided by the department, whether on uniform incident fingerprint cards provided by the department or in electronic formats designated by the department, data required by the department;

(3) give the department or its accredited agents access to the agency or court for the purpose of inspection to determine the completeness and accuracy of data reported; and

(4) cooperate with the department to enable the department to perform its duties under the law.

§27.57. Collection Of Records Of Children To Be Forwarded To The Juvenile Justice Information System.

(a) Law enforcement officers and other juvenile justice personnel shall collect information described by these sections and Texas Family Code §58.104, as part of the juvenile justice information system.

(b) A law enforcement agency may forward information, which includes fingerprints, relating to a child who has been detained or taken into custody by the agency to the department for inclusion in the juvenile justice information system, only if the child or the child's case is referred to juvenile court, including referral to a juvenile probation office or prosecutor, only if the child or the case is referred on or before the 10th day after the date the child is detained or taken into custody.

(c) If the child or case is not referred to juvenile court within that time, the law enforcement agency shall destroy all information, including photographs and fingerprints, relating to the child unless the child is placed in a first offender program under Texas Family Code §52.031 or on informal disposition under Texas Family Code §52.03.

(d) The law enforcement agency may not forward information to the department relating to the child while the child is in a first offender program under Texas Family Code §52. 031 or on informal disposition under Texas Family Code §52.03. On

successful completion by the child of an informal disposition under Texas Family Code §52.03, the law enforcement agency shall destroy all information, including photographs and fingerprints, relating to the child. Ninety days after successful completion by the child of a first offender program under Texas Family Code §52.031, the law enforcement agency shall destroy all information , including photographs and fingerprints, relating to the child. The information should be retained during the 90-day period in order for it to be available for a referral of the original offense to the juvenile court in the event the child re-offends during the 90-day time period.

(e) If the child fails to successfully complete the above described programs, or re-offends within 90 days of successful completion of a first offender program under Texas Family Code §52.031, the law enforcement agency may forward the information, including fingerprints to the department.

§27.58. Reporting Of Data To The Juvenile Justice Information System.

(a) Juvenile offender processing data as described by these sections and Texas Family Code, Title 3, Chapter 58, §§58.101-58.113 must be reported by the agency responsible for the data from the time a juvenile offender is initially taken into custody, detained, or referred until the time a juvenile offender is released from the jurisdiction of the juvenile justice system.

(b) The law enforcement agency or the juvenile intake agency that initiates the entry of the juvenile offender into the juvenile justice information system for a specific incident shall prepare a uniform incident fingerprint card, or an electronic submission of the same data, and initiate the reporting process for each incident reportable to the juvenile justice information system. The initiation of reporting of each juvenile offender referral to the juvenile court must be accompanied by fingerprint data. The local juvenile board shall establish a process for fingerprinting when a juvenile is referred to the juvenile court without having first been taken into custody or detained by a law enforcement agency, and, therefore, the fingerprints have not been supplied by a law enforcement agency.

(c) The prosecutor exercising jurisdiction over a juvenile offender's case shall ensure that each disposition by the prosecutor and the date of that disposition is reported to the juvenile justice information system.

(d) The clerk of the court exercising jurisdiction over a juvenile offender's case shall promptly report to the department the disposition of the case, including information concerning custody of a juvenile offender by a juvenile justice agency or probation, the date of disposition, a description of any appellate proceeding, and the name and description, as described by codes assigned by the department, of any program to which the juvenile offender is referred.

(e) In each county, the reporting agencies may make alternative arrangements for reporting the required information, including combined reporting, or electronic reporting, if the alternative reporting is approved by the local juvenile board and the department.

(f) Except as otherwise required by applicable state laws or regulations, information required to be reported to the juvenile justice information system shall be reported promptly. Except as provided below, the information shall be reported not later than the 30th day after the date the information is received by the agency responsible for reporting the information. A juvenile offenders' in-custody referral shall be reported to the department not later than the seventh day after the referral. A referral without previous custody shall be reported to the department not later than the seventh day after the date the child is fingerprinted.

(g) All information to be reported to the juvenile justice information system by juvenile reporting agencies may be reported electronically, with the approval of the local juvenile board and the department.

§27.59. Compatibility Of Data. Data supplied to the juvenile justice information system must be compatible with the system and must contain the incident numbers. The state identification number must be reported when already assigned by the department and known by the reporting agency.

§27.60. Uniform Incident Fingerprint Card.

(a) The department will provide for the use of a uniform incident fingerprint card in the maintenance of the juvenile justice information system.

(b) The incident cards will:

(1) be serially numbered with an incident number in a manner that allows each incident of referral of a juvenile offender who is the subject of the incident fingerprint card to be readily ascertained;

(2) be multiple-part forms that can be transmitted with the juvenile offender through the juvenile justice process and that allow each agency to report required data to the department.

(c) Subject to available telecommunications capacity, the department will develop the capability to receive by electronic means from a law enforcement agency, prosecutor, juvenile probation department, court, state juvenile agency, or appropriate data processing provider on behalf of those agencies the information on the uniform incident fingerprint card. The information must be in a form that is compatible to the form required of data supplied to the juvenile justice information system.

§27.61. Duties Of The Juvenile Board. Each juvenile board shall provide for:

(1) the compilation and maintenance of records and information needed for reporting information to the department;

(2) the transmittal to the department, in the manner provided by the department, of all records and information required by the department under the law; and

(3) access by the department to inspect records and information to determine the completeness and accuracy of information reported.

§27.62. Local Data Advisory Boards. The commissioners court of each county may create a local data advisory board to perform the same duties relating to the juvenile justice information system as the duties performed by a local data advisory board in relation to the criminal history record system under Texas Code of Criminal Procedure, Article 60.09.

§27.63. Confidentiality. Except as provided in paragraphs (1) -(5) of this section information contained in the juvenile justice information system is confidential information for the use of the department and may not be disseminated by the department except:

(1) with the permission of the juvenile offender, to military personnel of this state or the United States;

(2) to a person or entity to which the department may grant access to adult criminal history records as provided by Texas Government Code, §411.083;

(3) to a juvenile justice agency;

(4) to the Criminal Justice Policy Council, the Texas Youth Commission, and the Texas Juvenile Probation Commission for analytical purposes; or

(5) to the juvenile, or juvenile's authorized representative as provided in the Texas Open Records Act.

§27.64. Records Of Missing And Wanted Children.

(a) If a child has been reported missing by a parent, guardian, or conservator of that child, information about the child may be forwarded to and disseminated by

the Texas Crime Information Center and the National Crime Information Center.

(b) The department shall maintain in a computerized database that is accessible by the same entities that may access the juvenile justice information system information relating to a warrant of arrest, as that term is defined by Texas Code of Criminal Procedure, Article 15.01, or a directive to apprehend under Texas Family Code, §52.015 for any child, without regard to whether the child has been taken into custody.

(c) The department shall forward to the National Crime Information Center, those warrants reported to the above mentioned database which qualify under Federal Bureau of Investigation criteria.

Issued in Austin, Texas, on December 19, 1995.

TRD-9516543- James R. Wilson
Director
Texas Department of Public Safety

Effective date: January 1, 1996

Expiration date: May 1, 1996

For further information, please call: (512) 424-2890

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Active Protective Orders

• 37 TAC §§27.71-27.76

The Texas Department of Public Safety adopts on an emergency basis new §§27.71-27.76, concerning active protective orders.

The new sections are necessary to implement the active protective order provisions of Senate Bill 130, 74th Legislature, Regular Session, 1995 codified, in part, as the Texas Family Code, Chapter 71, §71.17(b)(1) and §71.18(c) and Texas Government Code, §411.042(b)(5)(A)-(G) and (g). "The Act" creates a state-wide computerized file of active protective orders to be searched by chief law enforcement officers in Texas upon their receipt from licensed firearms dealers of requests for background records checks of prospective transferees under the Brady Handgun Violence Prevention Act. The Act requires the Department of Public Safety to collect specified information into the file and establish rules which ensure that information relating to the issuance and dismissal of an active protective order is reported to the local law enforcement agency at the time of the order's issuance or dismissal and entered into the file by the local law enforcement agency. These sections set forth procedures and implementation for the reporting of active protective orders and the access to information regarding active protective orders. The department finds that adoption of these rules on fewer than 30 days notice is required by state law.

The new sections are adopted on an emergency basis pursuant to Texas Family Code, Chapter 71, §71.17(b)(1) and §71.18(c) and Texas Government Code, §411.006(4), and §411.042(b)(5)(A)-(G) and (g), which provide the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department.

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

Active Protective Order-Refers to a protective order issued under Texas Family Code, Chapter 71, that is in effect. The term does not include a temporary protective order issued before the court holds a hearing on the matter, or an emergency protective order not issued under Texas Family Code, Chapter 71.

Department-Refers to the Texas Department of Public Safety of the State of Texas.

Hit Confirmation-Refers to an exchange of communications between the agency that has entered a protective order in the Protective Order File and a person or agency who has made a potential match of that protective order record in order to verify that the protective order is still active, that the person inquired upon is identical with the subject of the record (both the respondent and the protected person, when appropriate), and to exchange data regarding the conditions and facts of the protective order. The term includes the rules and procedures established by the Federal Bureau of Investigation for hit confirmation of records for missing or wanted persons within the National Crime Information Center.

Protected Person-Refers to the party in an application for protective order proceeding who is the applicant or is a member of the family or household for whose benefit the protective order may or was issued.

Protective Order File-Refers to a computerized file of active protective orders including a history of protective orders issued after December 31, 1995, and including those which are no longer in effect and are established under Texas Government Code, Article 411.042 and maintained by the department within the Texas Crime Information Center.

Respondent-Refers to the party in an application for protective order proceeding who is alleged to have committed family violence.

§27.72. Reporting of Information Related to the Protective Order File.

(a) The clerk of the court issuing an original or modified protective order under Texas Family Code, Chapter 71, including a dismissal of such order, shall send a copy of the order to the department at the following address: CRS/TCIC Control Room-Protective Orders, Texas Department of Public Safety, P.O. Box 4225, Austin, Texas 78765-4225.

(b) The clerk of the court issuing an original or modified protective order under Texas Family Code, Chapter 71, including a dismissal of such order, shall send a copy of the order and related information to: the chief of police of the city where the member of the family or household protected by the order resides, if the person resides in a city with a police department, or to the sheriff of the county where the person resides, if the person does not reside in a city with a police department.

(c) Information related to the protective order that is not contained in the protective order but is required or optional for entry into the Protective Order File may be sent from the court to the appropriate chief or sheriff on a form supplied by the department or a form supplied by the clerk. Such information must be conveyed to the chief or sheriff at the time of issuance.

(d) The protective order and related information shall be sent in a manner which will allow the data to be entered into the Protective Order File by the chief or sheriff immediately thereafter.

(e) If the chief or sheriff does not have a telecommunications terminal on the Texas Law Enforcement telecommunications System within their agency, the chief or sheriff shall enter into a written agreement with another law enforcement or criminal justice agency that does have such terminal, for the entry and updating of protective orders in the manner described under these sections.

(f) Nothing in these rules prohibits the transmission of the protective order and related information from the clerk or from an automated court system to the appropriate chief or sheriff in an electronic or magnetic manner; however, the appropriate entry, modification, and removal of the record from the Protective Order File, as well as the related file maintenance functions required by the department, remain the responsibility of the chief or sheriff.

(g) Nothing in these sections prevents appropriate agencies from entering into written agreements that consolidate or expedite the entry and updating of protective orders in the Protective Order File, if those agreements are approved in advance by the department.

(h) The chief or sheriff who enters the order shall retain a copy of the order in a manner accessible 24 hours a day for hit confirmation purposes.

§27.73. Collection of Information related to the Protective Order File.

(a) Although an active protective order may be entered with the minimum mandatory data, the effectiveness of the record entry in identifying the respondent or

the protected person upon inquiry is greatly enhanced by inclusion of as much data as possible in the record.

(b) Law enforcement agencies are encouraged to obtain information from relevant sources for addition to a Protective Order File record, as long as it can be determined with certainty that the additional data does relate to the named respondent, protected person, or protective order.

§27.74. Data For Entry Into The Protective Order File. The local law enforcement agency should remit to the department the following information as it relates to the:

(1) Respondent: the name, sex, race, ethnicity, place of birth, date of birth, height, weight, skin tone, eye color, hair color, scars, marks, tattoos, fingerprint classification, relationship to protected person, Texas identification card number, state identification card (if from another state), Federal Bureau of Investigation identification number, miscellaneous number, as identified by the Federal Bureau of Investigation for entry of persons into the National Crime Information Center, social security number, operator's license number with operator's license state and operator's license year of expiration, and license plate type, vehicle identification number with vehicle year, vehicle make, vehicle model, vehicle style, and vehicle color, and residence address and street, city, state, zip code, and county. This data is collected in addition to other data as defined by the department.

(2) Protected Person: the name, sex, race, ethnicity, date of birth, residence address and street, city, state, zip code, and county, place of employment name, address and street, city, state, zip code; and protected child-care facility name, address and street, city, state, zip code. This data is collected in addition to other data as defined by the department.

(3) Protective Order: the ORI, or Federal Bureau of Investigation issued identifier of the law enforcement agency that maintains that protective order document for 24 hours a day access; case number assigned, protective order number, court identifier, date issued, date of expiration, and date of dismissal. This data is collected in addition to other data as defined by the department.

§27.75. Minimum Data Required for Entry Into The Protective Order File. In order to qualify for entry into the Protective Order File, a protective order and its accompanying information must include at a minimum:

(1) Information regarding the Respondent to include: the name, sex, race, height, weight, eye color, hair color, county of residence, relationship to protected person, and at least one of the following numeric identifiers, date of birth, Federal Bureau of Investigation identification number, miscellaneous number, as identified by the Federal Bureau of Investigation for entry of persons into the National Crime Information Center, social security number, operator's license number with operator's license state and operator's license year of expiration, license plate number with license plate state, license plate year of expiration, and license plate type; or vehicle identification number with vehicle year, vehicle make, and vehicle style. Although the record can be entered with only one of the above numeric identifiers, it is highly recommended that as many as possible be captured and entered into the file, especially the date of birth;

(2) Information regarding the protected person to include: the name, sex, race, date of birth, county of residence.

(3) Information regarding the Protective Order to include: the ORI, or Federal Bureau of Investigation issued identifier of the law enforcement agency that maintains that protective order document for 24 hours a day access; case number assigned, protective order number, court identifier, date issued, date of expiration, and date of dismissal.

§27.76. Access to a National Protective Order File. If the Federal Bureau of Investigation implements a protective order file with the National Crime Information Center, entries, modifications, deletions, and inquiries into the Texas Protective Order File will be forwarded by the department for processing in the national file, to the extent allowed by state and federal law, rule, and policy.

Issued in Austin, Texas, on December 19, 1995.

TRD-9516544

James R. Wilson
Director
Texas Department of Public Safety

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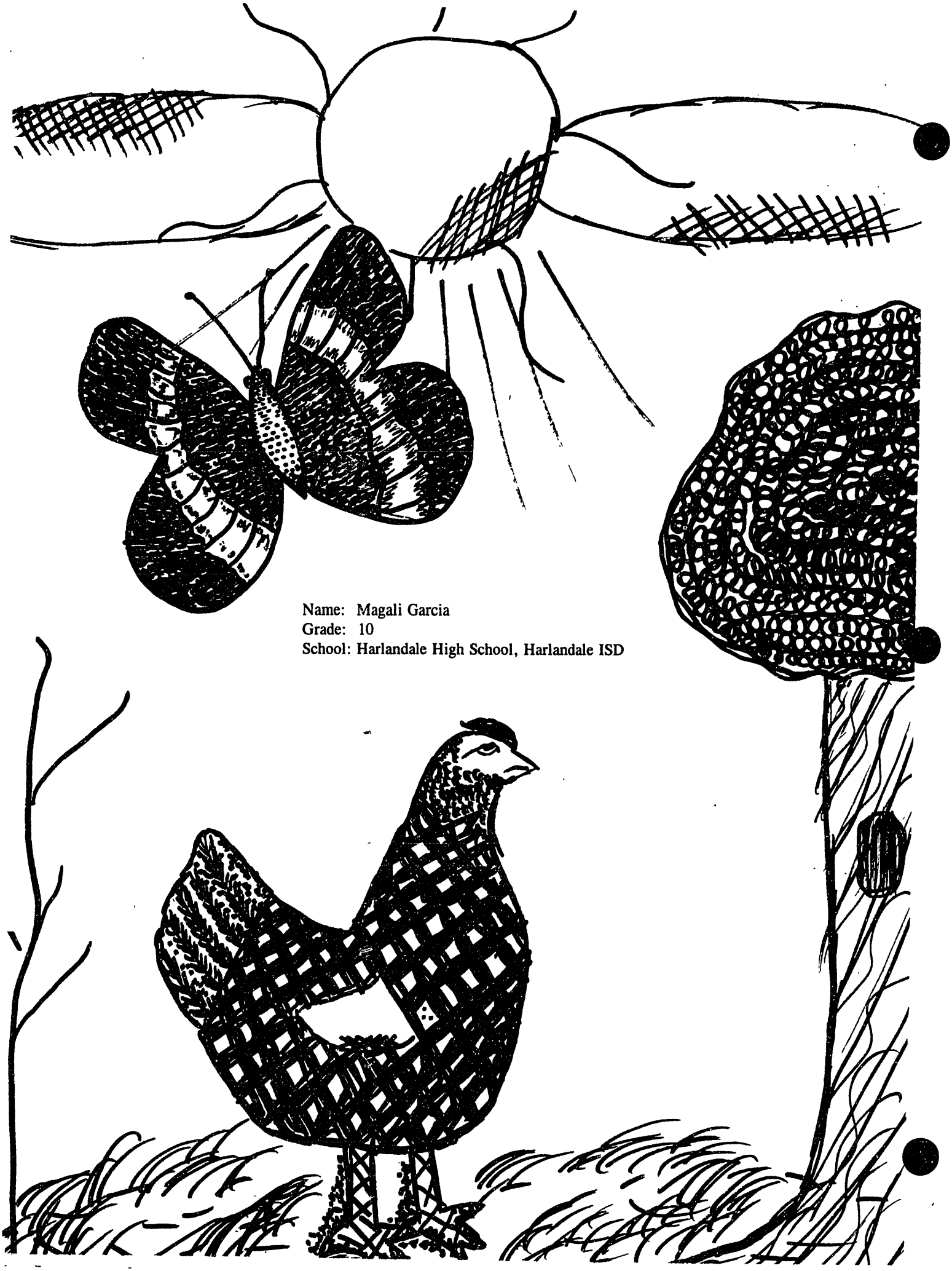
For further information, please call: (512) 424-2890



Name: Magali Garcia
Grade: 10
School: Harlandale High School, Harlandale ISD

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

Part XVIII. Telecommunications Infrastructure Fund

Chapter 471. Operating Rules of the Telecommunications Infrastructure Fund

- **1 TAC §§471.1, 471.3, 471.5, 471.7, 471.9, 471.11, 471.13, 471.15, 471.17, 471.19, 471.30-471.33, 471.50, 471.60, 471.70, 471.80, 471. 90-471.92, 471.100**

The Telecommunications Infrastructure Fund Board proposes new §§471.1, 471.3, 471.5, 471.7, 471.9, 471.11, 471.13, 471.15, 471.17, 471.19, 471.30-471. 33, 471.50, 471.60, 471.70, 471.80, 471.90-471.92, and 471.100, outlining the general powers and operating procedures of the Board. These include the role and term of Vice-Chairman, types of meetings allowed, requirement of a quorum to conduct official business, standing and advisory committees, contract powers, standards of conduct an conflict of interest provisions.

Carolyn Bacon, Chairman of the Telecommunications Infrastructure Fund Board, has determined that there will be no fiscal implications for the state or units of local governments as a result of enforcing or administering these sections.

Ms. Bacon also has determined that the adoption of these sections will have no effect on the public and small businesses, and there is no economic cost to persons required to comply with the sections as proposed.

Comments on the proposed rules may be submitted to Carolyn Bacon, Chairman, Telecommunications Infrastructure Fund Board, in care of Office of the Governor, P.O. Box 12428, Austin, Texas 78711.

The new sections are proposed pursuant to Texas Civil Statutes, Article 1446c-0(f) and Government Code, Chapter 2001, providing the Telecommunications Infrastructure Fund Board the authority to promulgate rules.

No other statutes, articles, or codes are affected by the proposed new sections.

§471.1. General Powers. The property, affairs, and business of the Telecommunications Infrastructure Fund Board (hereinafter TIF) shall be managed by the TIF Board.

§471.3. Number, Terms of Office and Qualifications. The Number, Term, Qualifications and Method of Appointment of the TIF Board of Directors is as provided in House Bill 2128, 74th Legislature, which currently provides that: The Board consists of nine members. Three members are appointed by the Governor, three members are appointed by the Lieutenant Governor, and three members are appointed by the Governor from a list of individuals submitted by the Speaker of the House of Representatives. Members of the Board serve for staggered, six-year terms, with three members' terms expiring on August 31 of each odd-numbered year.

§471.5. Chairman. The Chairman is designated by the Governor and shall preside at all Board meetings.

§471.7. Vice-Chairman. The Board shall elect, by majority vote of the Board, from among its members, a Vice-Chairman as there may be a vacancy. The Vice-Chairman shall serve for and annual term from September 1 to August 31 or until a successor has been duly elected or until he shall resign or otherwise vacate his office or Board membership. In the absence of the Chairman, the Vice-Chairman shall act in all respects in the stead of the Chairman. In the case of a vacancy in the office of the Chairman, the Vice-Chairman shall act in all respects in the stead of the Chairman until the Governor names a new Chairman.

§471.9. Compensation of Board Members. Members of the Board serve without pay but are entitled to reimbursement for their actual expenses incurred in attending meetings of the Board or in attending to other work of the Board if approved by the chairman of the Board, in accordance with the General Appropriations Act.

§471.11. Place of TIF Board Meetings. The Chairman may call meetings in locations as he feels necessary to carry out the goals of the TIF.

§471.13. Regular Meetings. Regular meetings of the Board shall be held at such intervals as may be fixed by resolution adopted by the Board. The board shall meet at least once each calendar quarter on dates determined by the Board. Notice of such meetings shall be given pursuant to the Texas Open Meetings Act, Government Code, Chapter 551. All meetings shall be open to the public, except executive sessions as discussed below. All or any part of the public meeting may be recorded by any person in attendance by means of tape recorder, video camera, or any other means of sonic or visual reproduction unless determined by the Chairman to be disruptive of the meeting. The Chairman will determine the location of any such equipment and the manner in which the recordings are conducted.

§471.15. Emergency Meetings. Emergency Meetings of the TIF Board may be called by the Chairman or by a majority of the Board members. Notice of such meeting shall be communicated in the manner most likely to give greatest amount of notice to the members: Phone, facsimile, mail, or overnight express service to each Board member at his phone or address appearing on the books of the TIF Board. Every such meeting notice to Board members shall contain the meeting time, place, day, hour and general nature of the business to be transacted. Notice to the public of Emergency meetings shall be given pursuant to Government Code, Chapter 551.

§471.17. Executive Sessions. Executive Sessions of the Board are closed meetings of the Board which may be held only as

expressly authorized by the Open Meetings Act. Persons who may attend and subjects which may be discussed are also described in the Texas Open Meetings Act.

§471.19. Quorum, Manner of Acting and Adjournment. At each regular or emergency meeting, the Chairman shall certify a quorum of members is present in order to conduct official business of the Board. A majority of Board members present shall constitute a quorum. A majority of members present, whether or not they comprise a quorum, may adjourn the meeting from time to time. Each Board Member shall have one vote and voting rights may not be exercised by proxy, by telephone, or fax.

§471.30. Finance and Audit Committee. The Chairman shall appoint Board members to serve on the Finance and Audit Committee, including one to serve as presiding officer. The Finance and Audit Committee shall be responsible for meeting with and receiving reports from outside and internal Auditors and shall assume additional duties as may be assigned to it by the Board. The Finance and Audit Committee shall be responsible for developing a system to monitor grants and loans as awarded by the Board.

§471.31. Other Committees. The Board may establish such other regular, standing or temporary committees as it may deem appropriate to perform such functions as it may designate. The Chairman of the Board shall appoint an appropriate number of members to serve on the committees, including one to serve as presiding officer.

§471.32. Advisory Committees. The Board may establish advisory committees to help the Board carry out their duties. The Board shall adopt rules covering the composition, duration, and procedures of advisory committees.

§471.33. Committee Procedure. Each member of a committee shall serve as a member of that committee at the pleasure of the Chairman. The Chairman of the TIF Board shall serve as an ex officio member of all committees, with the same rights and obligations as all duly appointed members, except that he shall not be counted to establish a quorum. A Majority of the committee members shall constitute a quorum and an act of a majority of those present as which a quorum is present shall constitute an act of the committee. Meetings of each Committee shall be called by the presiding officer of the committee. Notice of committee meetings shall be given pursuant to Government Code, Chapter 551.

§471.50. Contracts and Appointments of Agents. The TIF Board, by the adoption of a resolution, may authorize the TIF Board Chairman, and the Vice-Chairman in the absence of the Chairman, to execute any contracts deemed necessary until such time as an Executive Director has been selected.

§471.60. Rules Governing Acceptance of Gifts, Grants and Donations. The board may accept gifts, grants, and donations and use them for the purposes for which they are given or for any purpose within the Board's authority.

§471.70. Standard of Conduct and Conflict of Interest Provisions. A TIF officer or employee should not accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct:

(1) a TIF officer or employee should not accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;

(2) a TIF officer or employee should not accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;

(3) a TIF officer or employee should not make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; and

(4) a TIF officer or employee should not intentionally or knowingly, solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another.

§471.80. Private Interest in Measure or Decision. A TIF Board member who has a personal or private interest in a measure, proposal, or decision pending before the board or commission shall publicly disclose the fact to the Board or commission in a meeting called and held in compliance with Chapter 551. The Board member may not vote or otherwise participate in the decision. The disclosure shall be entered in the minutes of the meeting.

§471.90. Fiscal Year. The fiscal year of the TIF shall be the official fiscal year of the State of Texas. It shall begin on September 1 and end on August 31 of each year.

§471.91. Books and Records. The TIF office shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board and committees having any of the authority of the TIF Board. Minutes of the Board meetings, as required in the Texas Open Meeting Act, shall be approved by the Board and signed by the Chairman and Vice-Chairman. Before the Board approves the minutes of the last meeting, the minutes shall be sent to each Board members for review, comment and correction prior to approval. Board minutes are available for public review as authorized by the Texas Open Meetings Act. All books and records of the TIF and its Board shall be stored according to the records retention schedules as set forth by the State Library and Archives Commission.

§471.92. Effective Date of Rules. These rules shall become effective only upon approval of the TIF Board and in accordance of Government Code, Chapter 2001.

§471.100. Amendments to the Rules. Any of these rules may be altered, amended or repealed and new rules may be adopted, by an affirmative vote of a majority of the TIF Board. Any changes in these rules must be posted as an action item of the board and follow all guidelines as set forth in Government Code, Chapters 551 and 2001.

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 December 20, 1995.

TRD-9516581

Pete Wassdorf
Deputy General Counsel,
Governor's Office
Telecommunications
Infrastructure Fund

Earliest possible date of adoption: January 26, 1996

For further information, please call: (512) 475-2498

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TITLE 13. CULTURAL RESOURCES

Part VII. State Preservation Board

Chapter 111. Rules and Regulations of the Board

• 13 TAC §111.15

The State Preservation Board proposes an amendment to §111.15, concerning Rules and Regulations of the Board. The amendment allows the State Preservation Board to modify rules regarding the approval of film or video production activities, the scheduling of film or video production activities, and the use of the Capitol Building for such activities.

Duane Waddill, Director of Finance, 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. 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 that the agency will have met requirements of the Texas Government Code, §443.007, clearly defining the area under the responsibility of the Board. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Rick Crawford, Executive Director of the State Preservation Board, P.O. Box 13286, Austin, Texas 78711.

The amendment is proposed under the Texas Government Code, Chapter 443, which provides the State Preservation Board with the authority to adopt rules concerning the buildings, their contents, and their grounds.

No other statutues, articles, or codes are affected by the proposed amendment.

*§111.15. Use of the Capitol, **Capitol Extension, Capitol Grounds, and General Land Office** for Film or Video Production.*

(a) Definition and approval of film or video production.

(1) (No change.)

(2) All film or video production must be approved by the office of the State Preservation Board. The office of the State Preservation Board reserves the right to deny use of the Capitol for reasons involving security, preservation of the Capitol as a national historic landmark, **impact on the buildings or their occupants,** and the appropriateness of the proposed activities **within a public building.** A decision will be made after a careful review of the content, purpose, and impact on the building.

(3) (No change.)

(b) Scheduling of film or video production.

(1) The office of the State Preservation Board will be responsible for scheduling production dates.

(2) All production companies will be required to fill out an [a contact sheet] **application** and submit a letter of intent to proceed with production.

(3)-(5) (No change.)

(6) The State Preservation Board shall be reimbursed for staff time allocated to any filming or videoing activity, including benefits and support costs.

(7) Production activities will generally be prohibited during standard business hours (8:00 a.m. to 5:30 p.m. Weekdays) and during Legislative sessions.

(c) Use of the Capitol.

(1) Film or video production activities must be compatible with the preservation of the historic preservation of the Capitol.

(2) Construction in the Capitol for production purposes is strictly prohibited.

(3) Film or video production is prohibited in the Historically Significant spaces listed below: House Chamber, Senate Chamber, Original Governor's Office, Treasury, Legislative Library, Supreme Courtroom, Appeals Courtroom, Agricultural Museum Room, Secretary of State's Office, Governor's Reception Room. The Texas House of Representatives and the Texas Senate may authorize the use of video in the House Chamber or Senate Chamber for governmental purposes or special activities scheduled by the House or Senate.

(4) Attachments to or contact with furnishings, artwork, or architectural surfaces is strictly prohibited.

(5) Any film or video production aids or equipment must be freestanding with a stable base.

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 December 18, 1995.

TRD-9516486 Rick Crawford
Executive Director
State Preservation Board

Earliest possible date of adoption: January 26, 1996

For further information, please call: (512) 463-5495

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• 13 TAC §111.29, §111.30

The State Preservation Board proposes new §111.29, concerning Capitol Complex Visitors Center Texas Gift Shop Product Selection Policies and Procedures. The new section establishes policies and procedures for product selection for resale in the Capitol Complex Visitors Center Texas Gift Shop and new §111.30, concerning Rules and Regulations of the Board. The new section establishes policies and procedures for responses to public information requests presented to the Board.

Duane Waddill, Director of Finance, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. 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 a clear understanding of the procedures for gift shop product selection and will be access to Board public information in a reasonable, expedient manner. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with §111.29 as proposed. The cost to persons who are required to comply with §111.30 as proposed will be in accordance with the Public Information Act and with the rules adopted by the General Services Commission as recorded in Title 1 of the Texas Administrative Code, Chapter 111.

Comments on the proposal may be submitted to Rick Crawford, Executive Director of the State Preservation Board, P.O. Box 13286, Austin, Texas 78711.

The new sections are proposed under Texas Government Code, Chapter 443, which provides the State Preservation Board with the authority to adopt rules concerning the buildings, their contents, and their grounds.

No other statutes, articles, or codes are affected by the proposed new rules.

§111.29. Capitol Complex Visitors Center Texas Gift Shop Product Selection Policies and Procedures.

(a) Mission Statement.

(1) The gift shop will offer visitors items related to the Capitol, General Land Office, and the State of Texas. It will feature books and products reflecting Texas, Texas history, historic preservation and Texas government with priority given to products with an education focus.

(2) Consideration will be given to Texas-made products, and at least 80% of vendors supplying items to the gift shop should be from Texas.

(3) In accordance with house bill 2626, it is our goal that 30% of the dollar value of items purchased for resale in the gift shop will be provided by minority-owned and women-owned businesses.

(4) We will also encourage purchases of relevant materials published or produced through Texas state agencies by Texans with disabilities. We will encourage purchases of recycled or recyclable materials.

(5) Net revenue from the gift shop will help support the administrative

operations and education programming of the center.

(b) Criteria for Product Selection.

(1) The gift shop manager will review potential products and make final determinations regarding purchase and quantities of products. Products will be selected based upon review of the following criteria:

(A) compatibility with the mission statement;

(B) quality;

(C) value;

(D) uniqueness;

(E) presentation potential;

(F) visual appearance;

(G) demonstrated marketability; and

(H) quality in packaging.

(2) All items should reflect the mission of the visitors center, should be of production quality, and should be suitable for display within a significant historic structure on the state Capitol grounds. Only the highest quality products relating to the Capitol; Texas state government; or its land, history and heritage will be considered for the gift shop.

(3) Consideration will be given to minority-owned and women-owned businesses to achieve a goal of a minimum of 30%.

(4) At least 80% of vendors supplying items to the gift shop should be from Texas.

(5) Consideration will be given to products made of natural, recycled or recyclable materials whenever possible. Every effort will be made to avoid products made from plastic or other synthetic materials.

(6) All products must complement existing shop inventory.

(7) All products submitted for review must have a demonstrated record in retail sales.

(8) Letters of recommendation will not be considered in evaluating products submitted for the gift shop.

(9) A majority of the products carried in the gift shop will have a retail price of $25 or less.

(10) All products must achieve an acceptable level of sales activity within three months of receipt of order to be considered for continued representation in the gift shop.

(11) Items must be able to be produced and shipped quickly in reasonable quantities for resale.

(12) When comparing similar products with other criteria being equal, the lowest wholesale cost will be the determining factor.

(c) Submission of Potential Products.

(1) All requests to carry products must be submitted in writing with catalogues or photographs to the gift shop manager, Capitol Complex Visitors Center, 112 East 11th Street, Austin, Texas 78701.

(2) Do not send samples. Samples will be requested at a later date if necessary.

(d) The gift shop manager's decision regarding acceptance or non-acceptance of any item to be sold in the gift shop is final.

§111.30. Public Information Request Procedures.

(a) Definitions.

(1) Public Information-Information that is collected, assembled, or maintained by the State Preservation Board as a result of its operations as defined by the Texas Government Code, Chapter 443.

(2) Public Information Officer-The person with the responsibility for coordinating the dissemination of information to the public.

(3) Requester-Person who submits a request to inspect or to receive copies of public information.

(b) Public Information Rules.

(1) The State Preservation Board will grant access to its public information in a reasonable, expedient manner. The State Preservation Board will follow the rules and procedures as set forth in the Public Information Act (Texas Government Code, Chapter 552).

(2) The State Preservation Board hereby designates the Executive Director as its Public Information Officer. The Public Information Officer is responsible for the dissemination of public information in an acceptable and expedient manner and may charge the requester for fees necessary to recover the cost of assembling and reproducing public information.

(3) Fees and charges will be made in accordance with the Public Information Act and in accordance with the rules adopted by the General Services Commission as recorded in Title 1 of the Texas Administrative Code, Chapter 111, regarding the actual cost of reproduction and the suggested charges for providing public information.

(4) In accordance with the terms of the Public Information Act, the State Preservation Board does not charge a fee for inspection of public information at designated locations when the State Preservation Board is not required to reproduce or manipulate public information.

(5) In the event that information requested may be considered confidential or is not considered public information, the Public Information Officer will develop a request of the Attorney General for an opinion regarding the status of information in accordance with the terms and conditions of the Public Information Act.

(c) Procedures. The State Preservation Board will make available to the public information about filing an open records request, fees and charges, and response deadlines.

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 December 18, 1995.

TRD-9516487 **Rick Crawford**
Executive Director
State Preservation Board

Earliest possible date of adoption: January 26, 1996

For further information, please call: (512) 463-5495

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 289. Radiation Control

The Texas Department of Health (department) proposes the repeal of existing §289.113; and proposes new §289.202, concerning the control of radiation. The section proposed for repeal adopts by reference Part 21, titled "Standards for Protection Against Radiation" of the Texas Regulations for Control of Radiation (TRCR). The proposed new section incorporates language from Part 21 that has been rewritten in *Texas Register* format and includes clarification of several subsections of the section. The clarified requirements concern definitions; determination of the effective dose equivalent when using fluoroscopic equipment; determining occupational dose for the current year; planned special exposures; determination of dose to the embryo/fetus when multiple monitoring mea-

surements are made; the location where individual monitoring devices are to be worn; posting; and recordkeeping. In addition, a memorandum of understanding between the department and the Texas Water Commission is deleted because it is outdated and inaccurate.

The repeal and new section are part of the second phase in the process for converting existing sections that adopt by reference the various parts of the TRCR to *Texas Register* format.

Mrs. Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, has determined that for the first five-year period the section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section as proposed.

Mrs. McBurney also has determined that for each year of the first five years the proposed section will be in effect, the public benefit anticipated as a result of enforcing the section will be improved radiation safety programs of licensees and registrants due to the clarification of confusing and ambiguous requirements. Licensees or registrants will also have improved radiation safety programs for the same reasons. No impact is anticipated on small businesses, or persons who are required to comply with this section. There is no anticipated effect on local employment as a result of implementing this section.

Comments on the proposal may be presented to Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, (512) 834-6688. Public comments will be accepted for 60 days following publication of these proposed changes in the *Texas Register*. In addition, a public hearing will be held at 9:00 a.m., Thursday, January 25, 1996, in conference room N218, Texas Department of Health, Bureau of Radiation Control, located at the Exchange Building, 8407 Wall Street, Austin, Texas.

Texas Regulations for the Control of Radiation

• 25 TAC §289.113

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

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

The repeal will affect Health and Safety Code, Chapter 401.

§289.113. Standards for Protection Against Radiation.

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 December 18, 1995.

TRD-9516489 Susan K. Steeg
General Counsel
Texas Department of Health

Proposed date of adoption: February 25, 1996

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

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General

• 25 TAC §289.202

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

The new section will affect Health and Safety Code, Chapter 401.

§289.202. Standards for Protection Against Radiation.

(a) Purpose.

(1) This section establishes standards for protection against ionizing radiation resulting from activities conducted pursuant to licenses or certificates of registration issued by the agency. These rules are issued pursuant to the Texas Radiation Control Act.

(2) The rules in this section are designed to control the receipt, possession, use, and transfer of sources of radiation by any licensee or registrant so the total dose to an individual, including doses resulting from all sources of radiation other than background radiation, does not exceed the standards for protection against radiation prescribed in this section. However, nothing in this section shall be construed as limiting actions that may be necessary to protect health and safety in an emergency.

(b) Scope. Except as specifically provided in other section of this chapter, this section applies to persons licensed or registered by the agency to receive, possess, use, or transfer sources of radiation. The limits in this section do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, or to voluntary participation in medical research programs.

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

(1) Annual limit on intake (ALI)-The derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by Reference Man that would result in a committed effective dose equivalent of 5 rems (0.05 sievert) or a committed dose equivalent of 50 rems (0.5 sievert) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Columns 1 and 2 of Table I of subsection (ggg)(2) of this section.

(2) Class-A classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D, Days, of less than ten days, for Class W, Weeks, from ten to 100 days , and for Class Y, Years, of greater than 100 days. For purposes of this section, lung class and inhalation class are equivalent terms.

(3) Declared pregnant woman-A woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception.

(4) Derived air concentration (DAC)-The concentration of a given radionuclide in air which, if breathed by Reference Man for a working year of 2,000 hours under conditions of light work, results in an intake of 1 ALI. For purposes of this section, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Column 3 of Table I of subsection (ggg)(2) of this section.

(5) Derived air concentration-hour (DAC-hour)-The product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to representALI, equivalent to a committed effective dose equivalent of 5 rems (0.05 sievert).

(6) Dosimetry processor-A registrant that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

(7) Inhalation class (see definition for Class).

(8) Lung class (see definition for Class).

(9) Nonstochastic effect-A health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of this section, deterministic effect is an equivalent term.

(10) Planned special exposure-An infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

(11) Quarter-A period of time equal to one-fourth of the year observed by the licensee or registrant, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(12) Reference man-A hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health employees to standardize results of experiments and to relate biological insult to a common base. A description of Reference Man is contained in the International Commission on Radiological Protection report, ICRP Publication 23, "Report of the Task Group on Reference Man."

(13) Respiratory protective equipment-An apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

(14) Sanitary sewerage-A system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

(15) Stochastic effect-A health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of this section probabilistic effect is an equivalent term.

(16) Very high radiation area-An area, accessible to individuals, in which radiation levels could result in an individual receiving an absorbed dose in excess of 500 rads (5 grays) in 1 hour at 1 meter from a source of radiation or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose, gray and rad, are appropriate, rather than units of dose equivalent, sievert and rem.

(17) Weighting factor w_T for an organ or tissue (T) -The proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

Figure 1: 25 TAC §289.202(c)(17)

(d) Implementation.

(1) Any existing license or certificate of registration condition that is more restrictive than this section remains in force until there is an amendment or renewal of the license or registration.

(2) If a license or certificate of registration condition exempts a licensee or registrant from a provision of this section in effect on or before January 1, 1994, it also exempts the licensee or registrant from the corresponding provision of this section.

(3) If a license or registration condition cites provisions of this section in effect prior to January 1, 1994, which do not correspond to any provisions of this section, the license or registration condition remains in force until there is an amendment or renewal of the license or registration that modifies or removes this condition.

(e) Radiation protection programs.

(1) Each licensee or registrant shall develop, document, and implement a radiation protection program sufficient to ensure compliance with the provisions of this section. See subsection (mm) of this section for recordkeeping requirements relating to these programs.

(2) The licensee or registrant shall use, to the extent practicable, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and public doses that are as low as is reasonably achievable (ALARA).

(3) The licensee or registrant shall, at intervals not to exceed 12 months, ensure the radiation protection program content and implementation is reviewed.

(f) Occupational dose limits for adults.

(1) The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures pursuant to subsection (k) of this section, to the following dose limits.

(A) An annual limit shall be the more limiting of:

(i) the total effective dose equivalent being equal to 5 rems (0.05 sievert); or

(ii) the sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 50 rems (0.5 sievert).

(B) The annual limits to the lens of the eye, to the skin, and to the extremities shall be:

(i) an eye dose equivalent of 15 rems (0.15 sievert); and

(ii) a shallow dose equivalent of 50 rems (0.5 sievert) to the skin or to any extremity.

(2) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime. See subsection (k)(1)(F)(i) and (ii) of this subsection.

(3) The assigned deep dose equivalent and shallow dose equivalent shall be for the portion of the body receiving the highest exposure.

(4) The deep dose equivalent, eye dose equivalent and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.

(5) When a protective apron is worn while working with fluoroscopic equipment used for clinical diagnostic or research purposes, the effective dose equivalent for external radiation shall be determined as follows.

(A) When only one individual monitoring device is used and it is located at the neck outside the protective apron, the reported deep dose equivalent shall be the effective dose equivalent for external radiation.

(B) When only one individual monitoring device is used and it is located at the neck outside the protective apron, and the reported dose exceeds 25% of the limit specified in paragraph (1) of this subsection, the reported deep dose equivalent value multiplied by 0.3 shall be the effective dose equivalent for external radiation.

(C) When individual monitoring devices are worn, both under the protective apron at the waist and outside the protective apron at the neck, the effective dose equivalent for external radiation shall be assigned the value of the sum of the deep dose equivalent reported for the individual monitoring device located at the waist under the protective apron multiplied by 1.5 and

the deep dose equivalent reported for the individual monitoring device located at the neck outside the protective apron multiplied by 0.04.

(6) Derived air concentration (DAC) and annual limit on intake (ALI) values are specified in Table I of subsection (ggg)(2) of this section and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits. See subsection (rr) of this section.

(7) Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to ten milligrams in a week in consideration of chemical toxicity. See footnote 3 of subsection (ggg)(2) of this section.

(8) The licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person. See subsection (j)(4) of this section.

(g) Compliance with requirements for summation of external and internal doses.

(1) If the licensee is required to monitor pursuant to both subsection (q)(1) and (3) of this section, the licensee shall demonstrate compliance with the dose limits by summing external and internal doses. If the licensee or registrant is required to monitor only pursuant to subsection (q)(1) of this section or only pursuant to subsection (q)(2) of this section, then summation is not required to demonstrate compliance with the dose limits. The licensee may demonstrate compliance with the requirements for summation of external and internal doses pursuant to paragraphs (2), (3) and (4) of this subsection. The dose equivalents for the lens of the eye, the skin, and the extremities are not included in the summation, but are subject to separate limits.

(2) If the only intake of radionuclides is by inhalation, the total effective dose equivalent limit is not exceeded if the sum of the deep dose equivalent divided by the total effective dose equivalent limit, and one of the following, does not exceed unity:

(A) the sum of the fractions of the inhalation ALI for each radionuclide; or

(B) the total number of derived air concentration-hours (DAC-hours) for all radionuclides divided by 2,000; or

(C) the sum of the calculated committed effective dose equivalents to all significantly irradiated organs or tissues (T) calculated from bioassay data using appropriate biological models and expressed as a fraction of the annual limit. For purposes of this requirement, an organ or tissue is deemed to be significantly irradiated if, for that organ or tissue, the product of the weighting factors, w_T, and the committed dose equivalent, $H_{T,50}$, per unit intake is greater than 10% of the maximum weighted value of $H_{T,50}$, that is, $w_T H_{T,50}$, per unit intake for any organ or tissue.

(3) If the occupationally exposed individual receives an intake of radionuclides by oral ingestion greater than 10% of the applicable oral ALI, the licensee shall account for this intake and include it in demonstrating compliance with the limits.

(4) The licensee shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption. The intake through intact skin has been included in the calculation of DAC for hydrogen-3 and does not need to be evaluated or accounted for pursuant to this paragraph.

(h) Determination of external dose from airborne radioactive material.

(1) Licensees shall, when determining the dose from airborne radioactive material, include the contribution to the deep dose equivalent, eye dose equivalent, and shallow dose equivalent from external exposure to the radioactive cloud. See footnotes 1 and 2 of subsection (ggg)(2) of this section.

(2) Airborne radioactivity measurements and DAC values shall not be used as the primary means to assess the deep dose equivalent when the airborne radioactive material includes radionuclides other than noble gases or if the cloud of airborne radioactive material is not relatively uniform. The determination of the deep dose equivalent to an individual shall be based upon measurements using instruments or individual monitoring devices.

(i) Determination of internal exposure.

(1) For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, the licensee shall, when required pursuant to subsection (q) of this section, take suitable and timely measurements of:

(A) concentrations of radioactive materials in air in work areas;

(B) quantities of radionuclides in the body;

(C) quantities of radionuclides excreted from the body; or

(D) combinations of these measurements.

(2) Unless respiratory protective equipment is used, as provided in subsection (x) of this section, or the assessment of intake is based on bioassays, the licensee shall assume that an individual inhales radioactive material at the airborne concentration in which the individual is present.

(3) When specific information on the physical and biochemical properties of the radionuclides taken into the body or the behavior of the material in an individual is known, the licensee may:

(A) use that information to calculate the committed effective dose equivalent, and, if used, the licensee shall document that information in the individual's record;

(B) upon prior approval of the agency, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material, for example, aerosol size distribution or density; and

(C) separately assess the contribution of fractional intakes of Class D, W, or Y compounds of a given radionuclide to the committed effective dose equivalent. See subsection (ggg)(2) of this section.

(4) If the licensee chooses to assess intakes of Class Y material using the measurements given in paragraph (1)(A) or (B) of this subsection, the licensee may delay the recording and reporting of the assessments for periods up to 7 months, unless otherwise required by subsections (xx) or (yy) of this section. This delay permits the licensee to make additional measurements basic to the assessments.

(5) If the identity and concentration of each radionuclide in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours shall be either:

(A) the sum of the ratios of the concentration to the appropriate DAC value, that is, D, W, or Y, from subsection (ggg)(2) of this section for each radionuclide in the mixture; or

(B) the ratio of the total concentration for all radionuclides in the mixture to the most restrictive DAC value for any radionuclide in the mixture.

(6) If the identity of each radionuclide in a mixture is known, but the concentration of one or more of the radionuclides in the mixture is not known,

the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

(7) When a mixture of radionuclides in air exists, a licensee may disregard certain radionuclides in the mixture if:

(A) the licensee uses the total activity of the mixture in demonstrating compliance with the dose limits in subsection (f) of this section and in complying with the monitoring requirements in subsection (q)(3) of this section;

(B) the concentration of any radionuclide disregarded is less than 10% of its DAC; and

(C) the sum of these percentages for all of the radionuclides disregarded in the mixture does not exceed 30%.

(8) When determining the committed effective dose equivalent, the following information may be considered.

(A) In order to calculate the committed effective dose equivalent, the licensee may assume that the inhalation of 1 ALI, or an exposure of 2,000 DAC-hours, results in a committed effective dose equivalent of 5 rems (0.05 sievert) for radionuclides that have their ALIs or DACs based on the committed effective dose equivalent.

(B) For an ALI and the associated DAC determined by the nonstochastic organ dose limit of 50 rems (0.5 sievert), the intake of radionuclides that would result in a committed effective dose equivalent of 5 rems (0.05 sievert), that is, the stochastic ALI, is listed in parentheses in Table I of subsection (ggg)(2) of this section. The licensee may, as a simplifying assumption, use the stochastic ALI to determine committed effective dose equivalent. However, if the licensee uses the stochastic ALI, the licensee shall also demonstrate that the limit in subsection (f)(1)(A)(ii) is met.

(j) Determination of occupational dose for the current year.

(1) For each individual who may enter the licensee's or registrant's restricted area and is likely to receive, in a year, an occupational dose requiring monitoring pursuant to subsection (q) of this section, the licensee or registrant shall determine the occupational radiation dose received during the current year.

(2) In complying with the requirements of paragraph (1) of this subsection, a licensee or registrant may:

(A) accept, as a record of the occupational dose that the individual received during the current year, TRC Form 21-2 from prior employers, or other clear and legible record, of all information required on that form and indicating any periods of time for which data are not available; or

(B) accept, as a record of the occupational dose that the individual received during the current year, a written signed statement from the individual, or from the individual's prior employer(s) for work involving radiation exposure, that discloses the nature and the amount of any occupational dose that the individual received during the current year; or

(C) obtain reports of the individual's dose equivalent from prior employer(s) for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant, by telephone, telegram, facsimile, or letter. The licensee or registrant shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

(3) The licensee or registrant shall record the exposure data for the current year, as required by paragraph (1) of this subsection, on TRC Form 21-3, or other clear and legible record, of all the information required on that form.

(4) If the licensee or registrant is unable to obtain a complete record of an individual's current occupational dose while employed by any other licensee or registrant, the licensee or registrant shall assume in establishing administrative controls pursuant to subsection (f)(8) of this section for the current year, that the allowable dose limit for the individual is reduced by 1.25 rems (12.5 millisieverts) for each quarter; or 416 millirems (4.16 millisieverts) for each month for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure.

(5) If an individual's has incomplete (e.g., a lost or damaged personnel monitoring device) current occupational dose data for the current year and that individual is employed solely by the licensee or registrant during the current year, the licensee or registrant shall:

(A) assume that the allowable dose limit for the individual is reduced by 1.25 rems (12.5 millisieverts) for each quarter;

(B) assume that the allowable dose limit for the individual is reduced by 416 millirems (4.16 millisieverts) for each month; or

(C) assess an occupational dose for the individual during the period of missing data using surveys, radiation measurements, or other comparable data for the purpose of demonstrating compliance with the occupational dose limits.

(6) Administrative controls established in accordance with paragraph (4) of this subsection shall be documented and maintained for inspection by the agency. Occupational dose assessments made in accordance with paragraph (5) of this subsection and records of data used to make the assessment shall be maintained for inspection by the agency. The licensee or registrant shall retain the records in accordance with subsection (rr) of this section.

(k) Planned special exposures.

(1) A licensee may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in subsection (F) of this section provided that each of the following conditions is satisfied.

(A) The licensee authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the higher exposure are unavailable or impractical.

(B) The licensee and employer if the employer is not the licensee or registrant, specifically authorizes the planned special exposure, in writing, before the exposure occurs.

(C) Before a planned special exposure, the licensee ensures that each individual involved is:

(i) informed of the purpose of the planned operation;

(ii) informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that might be involved in performing the task; and

(iii) instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present.

(D) Prior to permitting an individual to participate in a planned special exposure, the licensee shall determine:

(i) the internal and external doses from all previous planned special exposures;

(ii) all doses in excess of the limits, including doses received during

accidents and emergencies, received during the lifetime of the individual; and

(iii) all lifetime cumulative occupational radiation doses.

(E) In complying with the requirements of subparagraph (D)(iii) of this paragraph, a licensee may:

(i) accept, as the record of lifetime cumulative radiation dose, an up-to-date TRC Form 21-2 or equivalent, signed by the individual and countersigned by an appropriate official of the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee; and

(ii) obtain reports of the individual's dose equivalent from prior employer(s) for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee, by telephone, telegram, facsimile, or letter. The licensee shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

(F) Subject to subsection (f)(2) of this section, the licensee shall not authorize a planned special exposure that would cause an individual to receive a dose from all planned special exposures and all doses in excess of the limits to exceed:

(i) the numerical values of any of the dose limits in subsection (f)(1) of this section in any year; and

(ii) five times the annual dose limits in subsection (f)(1) of this section during the individual's lifetime.

(G) The licensee maintains records of the conduct of a planned special exposure in accordance with subsection (qq) of this section and submits a written report to the agency in accordance with subsection (zz) of this section.

(H) The licensee records the best estimate of the dose resulting from the planned special exposure in the individual's record and informs the individual, in writing, of the dose within 30 days from the date of the planned special exposure. The dose from planned special exposures shall not be considered in controlling future occupational dose of the individual pursuant to subsection (f)(1) but shall be included in evaluations required by subparagraphs (D) and (E) of this paragraph.

(i) The licensee shall record the exposure history, as required by subparagraph (D) of this paragraph, on TRC Form 21-2, or other clear and legible record, of all the information required on that form. The form or record shall show each period in which the individual received occupational exposure to radiation or radioactive material and shall be signed by the individual who received the exposure. For each period for which the licensee obtains reports, the licensee shall use the dose shown in the report in preparing TRC Form 21-2 or equivalent.

(2) Planned special exposures are not applicable to registrants.

(l) Occupational dose limits for minors. The annual occupational dose limits for minors are 10% of the annual occupational dose limits specified for adult workers in subsection (f) of this section.

(m) Dose to an embryo/fetus.

(1) If a woman declares her pregnancy, the licensee or registrant shall ensure that the dose to an embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed 0.5 rem (5 millisieverts). If a woman chooses not to declare pregnancy, the occupational dose limits specified in subsection (f)(1) of this section are applicable to the woman. See subsection (rr) of this section for recordkeeping requirements.

(2) The licensee or registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in paragraph (1) of this subsection. The National Council on Radiation Protection and Measurements recommended in NCRP Report Number 91 "Recommendations on Limits for Exposure to Ionizing Radiation" (June 1, 1987) that no more than 0.05 rem (0.5 millisievert) to the embryo/fetus be received in any 1 month.

(3) The dose to an embryo/fetus shall be taken as:

(A) The dose to the embryo/fetus from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman; and

(B). The dose that is most representative of the dose to the embryo/fetus from external radiation, that is, in the mother's lower torso region.

(i) If multiple measurements have not been made, assignment of the highest deep dose equivalent for the declared pregnant woman shall be the dose to the embryo/fetus.

(ii) If multiple measurements have been made, assignment of the deep dose equivalent for the declared pregnant woman from the individual monitoring device which is most representative of the dose to the embryo/fetus shall be the dose to the embryo/fetus. Assignment of the highest deep dose equivalent for the declared pregnant woman to the embryo/fetus is not required unless that dose is also the most representative deep dose equivalent for the region of the embryo/fetus.

(4) If by the time the woman declares pregnancy to the licensee or registrant, the dose to the embryo/fetus has exceeded 0.45 rem (4.5 millisieverts), the licensee or registrant shall be deemed to be in compliance with paragraph (1) of this subsection, if the additional dose to the embryo/fetus does not exceed 0.05 rem (0.5 millisievert) during the remainder of the pregnancy.

(n) Dose limits for individual members of the public.

(1) Each licensee or registrant shall conduct operations so that:

(A)except as provided in subparagraph (B) of this paragraph, the total effective dose equivalent to individual members of the public from the licensed and/or registered operation does not exceed 0.1 rem (1 millisievert) in a year, exclusive of the dose contribution from the licensee's disposal of radioactive material into sanitary sewerage in accordance with subsection (gg) of this section;

(B) the total effective dose equivalent to individual members of the public from exposure to radiation from radiation machines does not exceed 0.5 rem (5 millisieverts) in a year; and

(C) the dose in any unrestricted area from licensed and/or registered external sources does not exceed 0.002 rem (0.02 millisievert) in any 1 hour.

(2) If the licensee or registrant permits members of the public to have access to restricted areas, the limits for members of the public continue to apply to those individuals.

(3) A licensee or an applicant for a license may apply for prior agency authorization to operate up to an annual dose limit for an individual member of the public of 0.5 rem (5 millisieverts). This application shall include the following information:

(A) demonstration of the need for and the expected duration of operations in excess of the limit in paragraph (1) of this subsection;

(B) the licensee's or registrant's program to assess and control dose

within the 0.5 rem (5 millisieverts) annual limit; and

(C) the procedures to be followed to maintain the dose ALARA.

(4) In addition to the requirements of this section, a licensee subject to the provisions of the United States Environmental Protection Agency's (EPA) generally applicable environmental radiation standards in 40 Code of Federal Regulations (CFR) 190 shall comply with those requirements.

(5) The agency may impose additional restrictions on radiation levels in unrestricted areas and on the total quantity of radionuclides that a licensee may release in effluents in order to restrict the collective dose.

(o) Compliance with dose limits for individual members of the public.

(1) The licensee or registrant shall make or cause to be made surveys of radiation levels in unrestricted areas and radioactive materials in effluents released to unrestricted areas to demonstrate compliance with the dose limits for individual members of the public as required in subsection (n) of this section.

(2) A licensee or registrant shall show compliance with the annual dose limit in subsection (n) of this section by:

(A) demonstrating by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from the licensed or registered operation does not exceed the annual dose limit; or

(B) demonstrating that:

(i) the annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the unrestricted area do not exceed the values specified in Table II of subsection (ggg)(2) of this section; and

(ii) if an individual were continuously present in an unrestricted area, the dose from external sources would not exceed 0.002 rem (0.02 millisievert) in an hour and 0.05 rem (0.5 millisievert) in a year.

(3) Registrants exempt from personnel monitoring requirements in accordance with subsection (p)(4)-(5) of this section are exempt from the requirements of paragraphs (1) and (2) of this subsection.

(4) Upon approval from the agency, the licensee may adjust the effluent concentration values in Table II, of subsection (ggg)(2) of this section, for members of the public, to take into account the actual physical and chemical characteristics of the effluents, such as, aerosol size distribution, solubility, density, radioactive decay equilibrium, and chemical form.

(p) General surveys and monitoring.

(1) Each licensee or registrant shall make, or cause to be made, surveys that:

(A) are necessary for the licensee or registrant to comply with this section; and

(B) are necessary under the circumstances to evaluate:

(i) radiation levels;

(ii) concentrations or quantities of radioactive material; and

(iii) the potential radiological hazards that could be present.

(2) The licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements, for example, dose rate and effluent monitoring, are operable and calibrated:

(A) by a person licensed or registered by the agency, another Agreement State, a Licensing State, or the United States Nuclear Regulatory Commission (NRC) to perform such service;

(B) at intervals not to exceed 12 months unless a more restrictive time interval is specified in another part of this chapter;

(C) after each instrument or equipment repair;

(D) for the types of radiation used and at energies appropriate for use; and

(E) at an accuracy within 20% of the true radiation level.

(3) All personnel dosimeters, except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to any extremity, that require processing to determine the radiation dose and that are used by licensees and registrants to comply with subsection (f) of this section, with other applicable provisions of these rules, or with conditions specified in a license or certificate of registration, shall be processed and evaluated by a dosimetry processor:

(A) holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology;

(B) approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored; and

(C) holding a current certificate of registration from the Agency authorizing dosimetry processing.

(4) Notwithstanding the requirements of subsection (q)(1) of this section, no personnel monitoring shall be required for personnel operating only minimal threat devices as specified in §289.201(q)(4) of this title (relating to General Provisions).

(5) Notwithstanding the requirements of subsection (q)(1) of this section, no personnel monitoring shall be required for personnel operating only dental radiographic systems.

(q) Conditions requiring individual monitoring of external and internal occupational dose. Each licensee or registrant shall monitor exposures from sources of radiation at levels sufficient to demonstrate compliance with the occupational dose limits of this section. As a minimum:

(1) each licensee or registrant shall monitor occupational exposure to radiation and shall supply and require the use of individual monitoring devices by:

(A) adults likely to receive, in 1 year from sources external to the body, a dose in excess of 10% of the limits in subsection (f)(1) of this section;

(B) minors and declared pregnant women likely to receive, in 1 year from sources external to the body, a dose in excess of 10% of any of the applicable limits in subsections (l) or (m) of this section; and

(C) individuals entering a high or very high radiation area;

(2) notwithstanding paragraph (1)(C) of this subsection, the licensee or registrant is exempt from supplying individual monitoring devices to nursing personnel who may enter a high radiation area while providing routine in-patient care if:

(A) the nursing personnel are not likely to receive, in 1 year from sources external to the body, a dose in excess of

10% of the limits in subsection (f)(1) of this section; and

(B) the licensee or registrant complies with the requirements of subsection (e)(2) of this section; and

(3) each licensee shall monitor, to determine compliance with subsection (i) of this section, the occupational intake of radioactive material by and assess the committed effective dose equivalent to:

(A) adults likely to receive, in 1 year, an intake in excess of 10% of the applicable ALI in Columns 1 and 2 of Table I of subsection (ggg)(2) of this section; and

(B) minors and declared pregnant women likely to receive, in 1 year, a committed effective dose equivalent in excess of 0.05 rem (0.5 millisievert).

(r) Location and use of individual monitoring devices.

(1) Each licensee or registrant shall ensure that individuals who are required to monitor occupational doses in accordance with subsection (l) of this section wear and use individual monitoring devices as follows.

(A) An individual monitoring device used for monitoring the dose to the whole body shall be worn at the unshielded location of the whole body likely to receive the highest exposure. When a protective apron is worn, the location of the individual monitoring device is typically at the neck (collar).

(B) An individual monitoring device used for monitoring the dose to an embryo/fetus of a declared pregnant woman, pursuant to subsection (m)(1) of this section, shall be located at the waist under any protective apron being worn by the woman.

(C) An individual monitoring device used for monitoring the eye dose equivalent, to demonstrate compliance with subsection (f)(1)(B)(i) of this section, shall be located at the neck (collar) or at a location closer to the eye, outside any protective apron being worn by the monitored individual.

(D) An individual monitoring device used for monitoring the dose to the extremities, to demonstrate compliance with subsection (f)(1)(B)(ii) of this section, shall be worn on the extremity likely to receive the highest exposure. Each individual monitoring device, to the extent practicable, shall be oriented to measure the highest dose to the extremity being monitored.

(E) An individual monitoring device shall be assigned to and worn by only one individual.

(F) An individual monitoring device shall be worn for the period of time authorized by the dosimetry processor's certificate of registration or for no longer than 3 months, whichever is more restrictive.

(2) Each licensee or registrant shall ensure that individual monitoring devices are returned to the dosimetry processor for processing within 14 calendar days or as soon as practicable. In circumstances that make it impossible to return each individual monitoring device within 14 calendar days, such circumstances must be documented and available for review by the agency.

(3) Each licensee or registrant shall ensure that adequate precautions are taken to prevent a deceptive exposure of an individual monitoring device.

(s) Control of access to high radiation areas.

(1) The licensee or registrant shall ensure that each entrance or access point to a high radiation area has one or more of the following features:

(A) a control device that, upon entry into the area, causes the level of radiation to be reduced below that level at which an individual might receive a deep dose equivalent of 0.1 rem (1 millisievert) in 1 hour at 30 centimeters from the source of radiation from any surface that the radiation penetrates;

(B) a control device that energizes a conspicuous visible or audible alarm signal so that the individual entering the high radiation area and the supervisor of the activity are made aware of the entry; or

(C) entryways that are locked, except during periods when access to the areas is required, with positive control over each individual entry.

(2) In place of the controls required by paragraph (1) of this subsection for a high radiation area, the licensee or registrant may substitute continuous direct or electronic surveillance that is capable of preventing unauthorized entry.

(3) The licensee or registrant may apply to the agency for approval of alternative methods for controlling access to high radiation areas.

(4) The licensee or registrant shall establish the controls required by paragraphs (1) and (3) of this subsection in a way that does not prevent individuals from leaving a high radiation area.

(5) The licensee is not required to control each entrance or access point to a room or other area that is a high radiation area solely because of the presence of radioactive materials prepared for transport and packaged and labeled in accordance with the regulations of the United States Department of Transportation (DOT) provided that:

(A) the packages do not remain in the area longer than three days; and

(B) the dose rate at 1 meter from the external surface of any package does not exceed 0.01 rem (0.1 millisievert) per hour.

(6) The licensee is not required to control entrance or access to rooms or other areas in hospitals solely because of the presence of patients containing radioactive material, provided that there are personnel in attendance who are taking the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the established limits in this part and to operate within the ALARA provisions of the licensee's radiation protection program.

(7) The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a high radiation area as described in this subsection if the registrant has met all the specific requirements for access and control specified in other applicable parts of this chapter, such as, §289.115 of this title (relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography), §289.116 of this title (relating to Use of Radiation Machines in the Healing Arts and Veterinary Medicine), and §289.119 of this title (relating to Radiation Safety Requirements for Particle Accelerators).

(t) Control of access to very high radiation areas.

(1) In addition to the requirements in subsection (s) of this section, the licensee or registrant shall institute measures to ensure that an individual is not able to gain unauthorized or inadvertent access to areas in which radiation levels could be encountered at 500 rads (5 grays) or more in 1 hour at 1 meter from a source of radiation or any surface through which the radiation penetrates at this level. This requirement does not apply to rooms or areas in which diagnostic x-ray systems are the only source of radiation, or to non-self-shielded irradiators.

(2) The registrant is not required to control entrance or access to rooms or other areas containing sources of radiation capable of producing a very high radiation area as described in paragraph (1) of this subsection if the registrant has met all the specific requirements for access and control specified in other applicable parts of this chapter, such as, §289.115 of this title, §289.116 of this title, and §289.119 of this title.

(u) Control of access to very high radiation areas for irradiators.

(1) This subsection applies to licensees with sources of radiation in non-self-shielded irradiators. This subsection does not apply to sources of radiation that are used in teletherapy, in industrial radiography, or in completely self-shielded irradiators in which the source of radiation is both stored and operated within the same shielding radiation barrier and, in the designed configuration of the irradiator, is always physically inaccessible to any individual and cannot create high levels of radiation in an area that is accessible to any individual.

(2) Each area in which there may exist radiation levels in excess of 500 rads (5 grays) in 1 hour at 1 meter from a source of radiation that is used to irradiate materials shall meet the following requirements.

(A) Each entrance or access point shall be equipped with entry control devices which:

(i) function automatically to prevent any individual from inadvertently entering a very high radiation area;

(ii) permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the source of radiation, to be reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 0.1 rem (1 millisievert) in 1 hour; and

(iii) prevent operation of the source of radiation if it would produce radiation levels in the area that could result in a deep dose equivalent to an individual in excess of 0.1 rem (1 millisievert) in 1 hour.

(B) Additional control devices shall be provided so that, upon failure of the entry control devices to function as required by subparagraph (A) of this paragraph:

(i) the radiation level within the area, from the source of radiation, is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 0.1 rem (1 millisievert) in 1 hour; and

(ii) conspicuous visible and audible alarm signals are generated to make an individual attempting to enter the area aware of the hazard and at least one other authorized individual, who is physically present, familiar with the activity, and prepared to render or summon assistance, aware of the failure of the entry control devices.

(C) The licensee shall provide control devices so that, upon failure or removal of physical radiation barriers other than the sealed source's shielded storage container:

(i) the radiation level from the source of radiation is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 0.1 rem (1 millisievert) in 1 hour; and

(ii) conspicuous visible and audible alarm signals are generated to make potentially affected individuals aware of the hazard and the licensee or at least one other individual, who is familiar with the activity and prepared to render or summon assistance, aware of the failure or removal of the physical barrier.

(D) When the shield for stored sealed sources is a liquid, the licensee shall provide means to monitor the integrity of the shield and to signal, automatically, loss of adequate shielding.

(E) Physical radiation barriers that comprise permanent structural components, such as walls, that have no credible probability of failure or removal in ordinary circumstances, need not meet the requirements of subparagraphs (2)(C) and (D) of this paragraph.

(F) Each area shall be equipped with devices that will automatically generate conspicuous visible and audible alarm signals to alert personnel in the area before the source of radiation can be put into operation and in time for any individual in the area to operate a clearly identified control device, which must be installed in the area and which can prevent the source of radiation from being put into operation.

(G) Each area shall be controlled by use of such administrative procedures and such devices as are necessary to ensure that the area is cleared of personnel prior to each use of the source of radiation.

(H) Each area shall be checked by a radiation measurement to ensure that, prior to the first individual's entry into the area after any use of the source of radiation, the radiation level from the source of radiation in the area is below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 0.1 rem (1 millisievert) in 1 hour.

(i) The entry control devices required in subparagraph (A) of this paragraph shall be tested for proper functioning. See subsection (uu) of this section for recordkeeping requirements.

(i) Testing shall be conducted prior to initial operation with the source of radiation on any day, unless operations were continued uninterrupted from the previous day.

(ii) Testing shall be conducted prior to resumption of operation of the source of radiation after any unintentional interruption.

(iii) The licensee shall submit and adhere to a schedule for periodic tests of the entry control and warning systems.

(J) The licensee shall not conduct operations, other than those necessary to place the source of radiation in safe condition or to effect repairs on controls, unless control devices are functioning properly.

(K) Entry and exit portals that are used in transporting materials to and from the irradiation area, and that are not intended for use by individuals, shall be controlled by such devices and administrative procedures as are necessary to physically protect and warn against inadvertent entry by any individual through these portals. Exit portals for irradiated materials shall be equipped to detect and signal the presence of any loose radioactive material that is carried toward such an exit and automatically to prevent loose radioactive material from being carried out of the area.

(3) Licensees or applicants for licenses for sources of radiation within the purview of paragraph (2) of this subsection which will be used in a variety of positions or in locations, such as open fields or forests, that make it impracticable to comply with certain requirements of paragraph (2) of this subsection, such as those for the automatic control of radiation levels, may apply to the Agency for approval of alternative safety measures. Alternative safety measures shall provide personnel protection at least equivalent to those specified in paragraph (2) of this subsection. At least one of the alternative measures shall include an entry-preventing interlock control based

on a measurement of the radiation that ensures the absence of high radiation levels before an individual can gain access to the area where such sources of radiation are used.

(4) The entry control devices required by paragraphs (2) and (3) of this subsection shall be established in such a way that no individual will be prevented from leaving the area.

(v) Use of process or other engineering controls. The licensee shall use, to the extent practicable, process or other engineering controls, such as, containment or ventilation, to control the concentrations of radioactive material in air.

(w) Use of other controls. When it is not practicable to apply process or other engineering controls to control the concentrations of radioactive material in air to values below those that define an airborne radioactivity area, the licensee shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one or more of the following means:

(1) control of access;

(2) limitation of exposure times;

(3) use of respiratory protection equipment; or

(4) other controls.

(x) Use of individual respiratory protection equipment.

(1) If the licensee uses respiratory protection equipment to limit intakes pursuant to subsection (w) of this section.

(A) Except as provided in subparagraph (B) of this paragraph, the licensee shall use only respiratory protection equipment that is tested and certified or had certification extended by the National Institute for Occupational Safety and Health (NIOSH) and the Mine Safety and Health Administration (MSHA).

(B) If the licensee wishes to use equipment that has not been tested or certified by the NIOSH and the MSHA, or has not had certification extended by the NIOSH and the MSHA, or for which there is no schedule for testing or certification, the licensee shall submit an application for authorized use of that equipment, including a demonstration by testing, or a demonstration on the basis of test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use.

(C) The licensee shall implement and maintain a respiratory protection program that includes:

(i) air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate exposures;

(ii) surveys and bioassays, as appropriate, to evaluate actual intakes;

(iii) testing of respirators for operability immediately prior to each use;

(iv) written procedures regarding selection, fitting, issuance, maintenance, and testing of respirators, including testing for operability immediately prior to each use; supervision and training of personnel; monitoring, including air sampling and bioassays; and recordkeeping; and

(v) determination by a physician prior to initial fitting of respirators, and at least every 12 months thereafter, that the individual user is physically able to use the respiratory protection equipment.

(D) The licensee shall issue a written policy statement on respirator usage covering:

(i) the use of process or other engineering controls, instead of respirators;

(ii) the routine, nonroutine, and emergency use of respirators; and

(iii) the length of periods of respirator use and relief from respirator use.

(E) The licensee shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other conditions that might require such relief.

(F) The licensee shall use respiratory protection equipment within the equipment manufacturer's expressed limitations for type and mode of use and shall provide proper visual, communication, and other special capabilities, such as adequate skin protection, when needed.

(2) When estimating exposure of individuals to airborne radioactive materials, the licensee may make allowance for respiratory protection equipment used to limit intakes pursuant to subsection (w) of this section, provided that the following conditions, in addition to those in paragraph (1) of this subsection, are satisfied.

(A) The licensee selects respiratory protection equipment that provides a protection factor, specified in subsection (ggg)(1) of this section, greater than the multiple by which peak concentrations of airborne radioactive materials in the working area are expected to exceed the values specified in Column 3 of Table I of subsection (ggg)(2) of this section. However, if the selection of respiratory protection equipment with a protection factor greater than the peak concentration is inconsistent with the goal specified in subsection (w) of this section of keeping the total effective dose equivalent ALARA, the licensee may select respiratory protection equipment with a lower protection factor provided that such a selection would result in a total effective dose equivalent that is ALARA. The concentration of radioactive material in the air that is inhaled when respirators are worn may be initially estimated by dividing the average concentration in air, during each period of uninterrupted use, by the protection factor. If the exposure is later found to be greater than initially estimated, the corrected value shall be used; if the exposure is later found to be less than initially estimated, the corrected value may be used.

(B) The licensee shall obtain authorization from the agency before assigning respiratory protection factors in excess of those specified in subsection (ggg)(1) of this section. The agency may authorize a licensee to use higher protection factors on receipt of an application that:

(i) describes the situation for which a need exists for higher protection factors; and

(ii) demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

(3) In an emergency, the licensee shall use as emergency equipment only respiratory protection equipment that has been specifically certified or had certification extended for emergency use by the NIOSH and the MSHA.

(4) The licensee shall notify the agency in writing at least 30 days before the date that respiratory protection equipment is first used pursuant to either paragraphs (1) or (2) of this subsection.

(y) Security and control of licensed or registered sources of radiation.

(1) The licensee shall secure radioactive material from unauthorized removal or access.

(2) The licensee shall maintain constant surveillance, using devices and/or administrative procedures to prevent unau-

thorized use of radioactive material that is in an unrestricted area and that is not in storage.

(3) The registrant shall secure radiation machines from unauthorized removal.

(4) The registrant shall use devices and/or administrative procedures to prevent unauthorized use of radiation machines.

(z) Caution signs.

(1) Unless otherwise authorized by the agency, the standard radiation symbol prescribed shall use the colors magenta, or purple, or black on yellow background. The standard radiation symbol prescribed is the three-bladed design as follows:
Figure 2: 25 TAC §289.202(z)(1)

(A) The cross-hatched area of the symbol is to be magenta, or purple, or black; and

(B) The background of the symbol is to be yellow.

(2) Notwithstanding the requirements of paragraph (1) of this subsection, licensees or registrants are authorized to label sources, source holders, or device components containing sources of radiation that are subjected to high temperatures, with conspicuously etched or stamped radiation caution symbols and without a color requirement.

(aa) Posting requirements.

(1) The licensee or registrant shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."

(2) The licensee or registrant shall post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA."

(3) The licensee or registrant shall post each very high radiation area with a conspicuous sign or signs bearing the radiation symbol and words "GRAVE DANGER, VERY HIGH RADIATION AREA." If the very high radiation area involves medical treatment of patients, the licensee or registrant may omit the word "GRAVE" from the sign or signs.

(4) The licensee shall post each airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, AIRBORNE RADIOACTIVITY AREA" or "DANGER, AIRBORNE RADIOACTIVITY AREA."

(5) The licensee shall post each area or room in which there is used or stored an amount of licensed material exceeding ten times the quantity of such material specified in subsection (ggg)(3) of this section with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL(S)" or "DANGER, RADIOACTIVE MATERIAL(S)."

(bb) Exceptions to posting requirements.

(1) A licensee or registrant is not required to post caution signs in areas or rooms containing sources of radiation for periods of less than 8 hours, if each of the following conditions is met:

(A) the sources of radiation are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to sources of radiation in excess of the limits established in this section; and

(B) the area or room is subject to the licensee's or registrant's control.

(2) Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to subsection (aa) of this section provided that the patient could be released from confinement pursuant to §289.252(f)(3) of this title (relating to Licensing of Radioactive Material).

(3) A room or area is not required to be posted with a caution sign because of the presence of a sealed source provided the radiation level at 30 centimeters from the surface of the sealed source container or housing does not exceed 0.005 rem (0.05 millisievert) per hour.

(cc) Labeling containers and radiation machines.

(1) The licensee shall ensure that each container of licensed material bears a durable, clearly visible label bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL." The label shall also provide information, such as the radionuclides present, an estimate of the quantity of radioactivity, the date for which the activity is estimated, radiation levels, kinds of materials, and mass enrichment, to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

(2) Each licensee shall, prior to removal or disposal of empty uncontaminated containers to unrestricted areas, remove or deface the radioactive material label or otherwise clearly indicate that the container no longer contains radioactive materials.

(3) Each registrant shall ensure that each radiation machine is labeled in a conspicuous manner which cautions individuals that radiation is produced when it is energized. This label shall be affixed in a clearly visible location on the face of the control unit.

(dd) Exemptions to labeling requirements: A licensee is not required to label:

(1) containers holding licensed material in quantities less than the quantities listed in subsection (ggg)(3) of this section;

(2) containers holding licensed material in concentrations less than those specified in Table III of subsection (ggg)(2) of this section;

(3) containers attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the limits established by this section;

(4) containers when they are in transport and packaged and labeled in accordance with the rules of the DOT (labeling of packages containing radioactive materials is required by the DOT if the amount and type of radioactive material exceeds the limits for an excepted quantity or article as defined and limited by DOT regulations 49 CFR 173.403(m) and (w) and 173.424);

(5) containers that are accessible only to individuals authorized to handle or use them, or to work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record. Examples of containers of this type are containers in locations such as water-filled canals, storage vaults, or hot cells. The record shall be retained as long as the containers are in use for the purpose indicated on the record; or

(6) installed manufacturing or process equipment, such as piping and tanks.

(ee) Procedures for receiving and opening packages.

(1) Each licensee who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as defined in §289.201(b) and (q)(5) of this title, shall make arrangements to receive:

(A) the package when the carrier offers it for delivery; or

(B) the notification of the arrival of the package at the carrier's terminal and to take possession of the package expe-

ditiously.

(2) Each licensee shall:

(A) monitor the external surfaces of a labeled package, labeled with a Radioactive White I, Yellow II, or Yellow III label as specified in DOT regulations 49 CFR 172.403 and 172.436-440, for radioactive contamination unless the package contains only radioactive material in the form of gas or in special form as defined in §289.201(b) of this title; and

(B) monitor the external surfaces of a labeled package, labeled with a Radioactive White I, Yellow II, or Yellow III label as specified in DOT regulations 49 CFR 172.403 and 172.436-440, for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as defined in §289.201(b) and (q)(5) of this title; and

(C) monitor all packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of degradation of package integrity, such as packages that are crushed, wet, or damaged.

(3) The licensee shall perform the monitoring required by paragraph

(2) of this subsection as soon as practicable after receipt of the package, but not later than 3 hours after the package is received at the licensee's facility if it is received during the licensee's normal working hours. If a package is received after working hours, the package shall be monitored no later than 3 hours from the beginning of the next working day. If the licensee discovers there is evidence of degradation of package integrity, such as a package that is crushed, wet, or damaged, the package shall be surveyed immediately.

(4) The licensee shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the agency when removable radioactive surface contamination or external radiation levels exceed the limits established in subparagraphs (A) and (B) of this paragraph.

(A) Limits for removable radioactive surface contamination levels.

(i) The level of removable radioactive contamination on the external surfaces of each package offered for shipment shall be ALARA. The level of removable radioactive contamination may be determined by wiping an area of 300 square centimeters of the surface concerned with an absorbent material, using moderate pressure, and measuring the activity on the wiping material. Sufficient measurements must be taken in the most appropriate locations to yield a representative assessment of the removable contamination levels. Except as provided in clause (iii) of this subparagraph, the amount of radioactivity measured on any single wiping material, when averaged over the surface wiped, must not exceed the limits given in clause (ii) of this subparagraph at any time during transport. If other methods are used, the detection efficiency of the method used must be taken into account and in no case may the removable contamination on the external surfaces of the package exceed ten times the limits listed in clause (ii) of this subparagraph.

(ii) Removable external radioactive contamination wipe limits are as follows.

Figure 3: 25 TAC §289.202(ee)(4)(A)(ii)

(iii) In the case of packages transported as exclusive use shipments by rail or highway only, the removable radioactive contamination at any time during transport must not exceed ten times the levels prescribed in clause (ii) of this subparagraph. The levels at the beginning of transport must not exceed the levels in clause (ii) of this subparagraph.

(B) Limits for external radiation levels.

(i) External radiation levels around the package and around the vehicle, if applicable, will not exceed 200 millirems/hr (2 mSv/hr) at any point on the external surface of the package at any time during transportation. The transport index shall not exceed ten.

(ii) For a package transported in exclusive use by rail, highway or water, radiation levels external to the package may exceed the limits specified in clause (i) of this subparagraph but shall not exceed any of the following:

(i) 200 millirems/hr (2 mSv/hr) on the accessible external surface of the package unless the following conditions are met, in which case the limit is 1,000 millirems/hr (10 mSv/hr):

(-a-) the shipment is made in a closed transport vehicle;

(-b-) provisions are made to secure the package so that its position within the vehicle remains fixed during transportation; and

(-c-) there are no loading or unloading operations between the beginning and end of the transportation;

(ii) 200 millirems/hr (2 mSv/hr) at any point on the outer surface of the vehicle, including the upper and lower surfaces, or, in the case of a flat-bed style vehicle, with a personnel barrier, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load (or enclosure, if used), and on the lower external surface of the vehicle (a flat-bed style vehicle with a personnel barrier shall have radiation levels determined at vertical planes. If no personnel barrier, the package cannot exceed 200 millirems/hr (2 mSv/hr) at the surface.);

(iii) 10 millirems/hr (0.1 mSv/h) at any point 2 meters from the vertical planes represented by the outer lateral surfaces of the vehicle, or, in the case of a flat-bed style vehicle, at any point 2 meters from the vertical planes projected from the outer edges of the vehicle; and

(iv) 2 millirems/hr (0.02 mSv/hr) in any normally occupied positions of the vehicle, except that this provision does not apply to private motor carriers when persons occupying these positions are provided with special health supervision, personnel radiation exposure monitoring devices, and training in accordance with 22.12 of Texas Regulations for Control of Radiation (TRCR) Part 22 as adopted by reference in §289.114 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections).

(5) Each licensee shall:

(A) establish, maintain, and retain written procedures for safely opening packages in which radioactive material is received; and

(B) ensure that the procedures are followed and that due consideration is given to special instructions for the type of package being opened.

(6) Licensees transferring special form sources in vehicles owned or operated by the licensee to and from a work site are exempt from the contamination monitoring requirements of paragraph (2) of this subsection, but are not exempt from the monitoring requirement in paragraph (2) of this subsection for measuring radiation levels that ensures that the source is still properly lodged in its shield.

(ff) General requirements for waste management.

(1) Unless otherwise exempted, a licensee shall discharge, treat, or decay licensed material or transfer waste for disposal only:

(A) by transfer to an authorized recipient as provided in subsection (jj) of this section or in §289.127 of this title (relating to Licensing of Naturally Occurring Radioactive Material (NORM)),

§289.252 of this title (relating to Licensing of Radioactive Material), or §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities), or to the United States Department of Energy (DOE);

(B) by decay in storage with prior approval from the agency;

(C) by release in effluents within the limits in subsection (n) of this section; or

(D) as authorized pursuant to subsections (gg) and (hh) of this section.

(2) A person shall be specifically licensed to receive waste containing licensed material from other persons for:

(A) treatment prior to disposal;

(B) treatment by incineration;

(C) decay in storage;

(D) disposal at an authorized land disposal facility; or

(E) storage until transferred to a storage or disposal facility authorized to receive the waste.

(gg) Discharge by release into sanitary sewerage.

(1) A licensee may discharge licensed material into sanitary sewerage if each of the following conditions is satisfied:

(A) the material is readily soluble, or is readily dispersible biological material, in water;

(B) the quantity of licensed radioactive material that the licensee releases into the sewer in 1 month divided by the average monthly volume of water released into the sewer by the licensee does not exceed the concentration listed in Table III of subsection (ggg)(2) of this section; and

(C) if more than one radionuclide is released, the following additional conditions must also be satisfied:

(i) the fraction of the limit in Table III of subsection (ggg)(2) of this section represented by discharges into sanitary sewerage determined by dividing the actual monthly average concentration of each radionuclide released by the licensee into the sewer by the concentration of that radionuclide listed in Table III of Appendix 21-B; and

(ii) the sum of the fractions for each radionuclide required by clause (i) of this subparagraph does not exceed unity; and

(D) the total quantity of licensed radioactive material that the licensee releases into the sanitary sewerage in a year does not exceed 5 curies (185 gigabecquerels) of hydrogen-3, 1 curie (37 gigabecquerels) of carbon-14, and 1 curie (37 gigabecquerels) of all other radioactive materials combined.

(2) Excreta from individuals undergoing medical diagnosis or therapy with radioactive material are not subject to the limitations contained in paragraph (1) of this subsection.

(hh) Treatment by incineration. A licensee may treat licensed material by incineration only in the form and concentration specified in subsection (fff)(1) of this section or as authorized by the agency.

(ii) Discharge by release into septic tanks. No licensee shall discharge radioactive material into a septic tank system except as specifically approved by the agency.

(jj) Transfer for disposal and manifests.

(1) The requirements of this subsection and subsection (ggg)(4) of this section are designed to control transfers of low-level radioactive waste intended for disposal at a licensed low-level radioactive waste disposal facility, establish a manifest tracking system, and supplement existing requirements concerning transfers and recordkeeping for those wastes.

(2) Each shipment of radioactive waste designated for disposal at a licensed low-level radioactive waste disposal facility shall be accompanied by a shipment manifest as specified in subsection (ggg)(4)(A) of this section.

(3) Each shipment manifest shall include a certification by the waste generator as specified in subsection (ggg)(4)(B) of this section.

(4) Each person involved in the transfer of waste for disposal including the waste generator, waste collector, and waste processor, shall comply with the requirements specified in subsection (ggg)(4)(C) of this section.

(5) Each shipment of waste to a licensed land disposal facility in Texas shall be inspected by the agency prior to shipment. The waste shipper shall notify the agency no less than 72 hours prior to the scheduled shipment of the intent to transport waste to the licensed land disposal facility.

(kk) Compliance with environmental and health protection regulations. Nothing in subsections (ff), (gg), (hh), (ll), or (jj) of this section relieves the licensee from complying with other applicable federal, state, and local regulations governing any other toxic or hazardous properties of materials that may be disposed of according to subsections (ff), (gg), (hh), (ll), or (jj) of this section.

(ll) General provisions for records.

(1) Each licensee or registrant shall use the SI units becquerel, gray, sievert, and coulomb per kilogram, or the special units curie, rad, rem, and roentgen, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this section. Disintegrations per minute may be indicated on records of surveys performed to determine compliance with subsection (ggg)(7) of this section.

(2) The licensee or registrant shall make a clear distinction among the quantities entered on the records required by this section, such as, total effective dose equivalent, total organ dose equivalent, shallow dose equivalent, eye dose equivalent, deep dose equivalent, or committed effective dose equivalent.

(3) Records required pursuant to §289.201(d) of this title, and subsections (mm), (nn), (oo), (tt), and (uu) of this section shall include the date and the identification of individual(s) making the record, and, as applicable, a unique identification of survey instrument(s) used, and an exact description of the location of the survey. Records of receipt, transfer, and disposal of sources of radiation shall uniquely identify the source of radiation.

(4) Copies of records required pursuant to §289.201(d) of this title, and subsections (mm) through (uu) of this section, and by license or certificate of registration condition that are relevant to operations at an additional authorized use/storage site shall be maintained at that site in addition to the main site specified on a license or certificate of registration.

(mm) Records of radiation protection programs.

(1) Each licensee or registrant shall maintain records of the radiation protection program, including:

(A) the provisions of the program; and

(B) audits and other reviews of program content and implementation.

(2) The licensee or registrant shall retain the records required by paragraph (1)(A) of this subsection until the agency terminates each pertinent license or registration requiring the record. The licensee or registrant shall retain the records required by paragraph (1)(B) of this subsection for three years after the record is made.

(nn) Records of surveys.

(1) Each licensee or registrant shall maintain records showing the results of surveys and calibrations required by subsections (p) and (ee)(2) of this section. The licensee or registrant shall retain these records for three years after the record is made.

(2) The licensee or registrant shall retain each of the following records until the agency terminates each pertinent license or registration requiring the record:

(A) the results of surveys to determine the dose from external sources of radiation used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents; and

(B) results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose; and

(C) results of air sampling, surveys, and bioassays required pursuant to subsection (x)(1)(C)(i) and (ii) of this section; and

(D) results of measurements and calculations used to evaluate the release of radioactive effluents to the environment.

(oo) Records of tests for leakage or contamination of sealed sources. Records of tests for leakage or contamination of sealed sources required by §289.201(g) of this title shall be kept in units of becquerel or microcurie and retained for inspection by the agency for 5 years after the records are made.

(pp) Records of lifetime cumulative occupational radiation dose. The licensee shall retain the records of lifetime cumulative occupational radiation dose as specified in subsection (k) of this section on TRC Form 21-2 or equivalent until the agency terminates each pertinent license requiring this record. The licensee shall retain records used in preparing TRC Form 21-2 or equivalent for three years after the record is made.

(qq) Records of planned special exposures.

(1) For each use of the provisions of subsection (k) of this section for planned special exposures, the licensee shall maintain records that describe:

(A) the exceptional circumstances requiring the use of a planned special exposure;

(B) the name of the management official who authorized the planned special exposure and a copy of the signed authorization;

(C) what actions were necessary;

(D) why the actions were necessary;

(E) what precautions were taken to assure that doses were maintained ALARA;

(F) what individual and collective doses were expected to result; and

(G) the doses actually received in the planned special exposure.

(2) The licensee shall retain the records until the agency terminates each pertinent license requiring these records.

(rr) Records of individual monitoring results.

(1) Each licensee or registrant shall maintain records of doses received by all individuals for whom monitoring was required pursuant to subsection (q) of this section, and records of doses received during planned special exposures, accidents, and emergency conditions. Assessments of dose equivalent and records made using units in effect before January 1, 1994, need not be changed. These records shall include, when applicable:

(A) the deep dose equivalent to the whole body, eye dose equivalent, shallow dose equivalent to the skin, and shallow dose equivalent to the extremities;

(B) the estimated intake of radionuclides, see subsection (g) of this section;

(C) the committed effective dose equivalent assigned to the intake of radionuclides;

(D) the specific information used to calculate the committed effective dose equivalent pursuant to subsection (i)(3) of this section;

(E) the total effective dose equivalent when required by subsection (g) of this section;

(F) the total of the deep dose equivalent and the committed dose to the organ receiving the highest total dose; and

(G) the data used to make occupational dose assessments in accordance with subsection (j) of this section.

(2) The licensee or registrant shall make entries of the records specified in paragraph (1) of this subsection at intervals not to exceed 1 year.

(3) The licensee or registrant shall maintain the records specified in paragraph (1) of this subsection on TRC Form 21-3, in accordance with the instructions for TRC Form 21-3, or in clear and legible records containing all the information required by TRC Form 21-3.

(4) The licensee or registrant shall maintain the records of dose to an embryo/fetus with the records of dose to the declared pregnant woman. The declaration of pregnancy, including the estimated date of conception, shall also be kept on file, but may be maintained separately from the dose records.

(5) The licensee or registrant shall retain each required form or record until the agency terminates each pertinent license or registration requiring the record. The licensee or registrant shall retain records used in preparing TRC Form 21-3 or equivalent for three years after the record is made.

(ss) Records of dose to individual members of the public.

(1) Each licensee or registrant shall maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public. See subsection (n) of this section.

(2) The licensee or registrant shall retain the records required by paragraph (1) of this subsection until the agency terminates each pertinent license or registration requiring the record.

(tt) Records of discharge, treatment, or transfer for disposal.

(1) Each licensee shall maintain records of the discharge or treatment of licensed materials made pursuant to subsection (gg) and (hh) of this section and of transfers for disposal made pursuant to subsection (jj) of this section.

(2) The licensee shall retain the records required by paragraph (1) of this subsection until the agency terminates each pertinent license requiring the record.

(uu) Records of testing entry control devices for very high radiation areas.

(1) Each licensee or registrant shall maintain records of tests made pursuant to subsection (u)(2)(I) of this section on entry control devices for very high radiation areas. These records must include the date, time, and results of each such test of function.

(2) The licensee or registrant shall retain the records required by paragraph (1) of this subsection for three years after the record is made.

(vv) Form of records. Each record required by this section shall be legible throughout the specified retention period. The record shall be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period or the record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, shall include all pertinent information, such as stamps, initials, and signatures. The licensee or registrant shall maintain adequate safeguards against tampering with and loss of records.

(ww) Reports of stolen, lost, or missing licensed or registered sources of radiation.

(1) Each licensee or registrant shall report to the agency by telephone as follows:

(A) immediately after its occurrence becomes known to the licensee, stolen, lost, or missing licensed radioactive material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in subsection (ggg)(3) of this section, under such circumstances that it appears to the licensee that an exposure could result to individuals in unrestricted areas; or

(B) within 30 days after its occurrence becomes known to the licensee, lost, stolen, or missing licensed radioactive material in an aggregate quantity greater than ten times the quantity specified in subsection (ggg)(3) of this section that is still missing.

(C) immediately after its occurrence becomes known to the registrant, a stolen, lost, or missing radiation machine.

(2) Each licensee or registrant required to make a report pursuant to paragraph (1) of this subsection shall, within 30 days after making the telephone report, make a written report to the agency setting forth the following information:

(A) a description of the licensed or registered source of radiation involved, including, for radioactive material, the kind, quantity, and chemical and physical form; and, for radiation machines, the manufacturer, model and serial number, type and maximum energy of radiation emitted;

(B) a description of the circumstances under which the loss or theft occurred;

(C) a statement of disposition, or probable disposition, of the licensed or registered source of radiation involved;

(D) exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas;

(E) actions that have been taken, or will be taken, to recover the source of radiation; and

(F) procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed or registered sources of radiation.

(3) Subsequent to filing the written report, the licensee or registrant shall also report additional substantive information on the loss or theft within 30 days after the licensee or registrant learns of such information.

(4) The licensee or registrant shall prepare any report filed with the agency pursuant to this subsection so that names of individuals who may have received exposure to radiation are stated in a separate and detachable portion of the report.

(xx) Notification of incidents.

(1) Notwithstanding other requirements for notification, each licensee or registrant shall immediately report each event involving a source of radiation possessed by the licensee or registrant that may have caused or threatens to cause:

(A) an individual to receive:

(i) a total effective dose equivalent of 25 rems (0.25 sievert) or more;

(ii) an eye dose equivalent of 75 rems (0.75 sievert) or more; or

(iii) a shallow dose equivalent to the skin or extremities or a total organ dose equivalent of 250 rads (2.5 grays) or more; or

(B) the release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake five times the occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(2) Each licensee or registrant shall, within 24 hours of discovery of the event, report to the agency each event involving loss of control of a licensed or registered source of radiation possessed by the licensee or registrant that may have caused, or threatens to cause:

(A) an individual to receive, in a period of 24 hours:

(i) a total effective dose equivalent exceeding 5 rems (0.05 sievert);

(ii) an eye dose equivalent exceeding 15 rems (0.15 sievert); or

(iii) a shallow dose equivalent to the skin or extremities or a total organ dose equivalent exceeding 50 rems (0.5 sievert); or

(B) the release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake in excess of one occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(3) Licensees or registrants shall make the initial notification reports required by paragraphs (1) and (2) of this subsection by telephone to the agency and shall confirm the initial notification report within 24 hours by telegram, mailgram, or facsimile to the agency.

(4) The licensee or registrant shall prepare each report filed with the agency pursuant to this section so that names of individuals who have received exposure to sources of radiation are stated in a separate and detachable portion of the report.

(5) The provisions of this section do not apply to doses that result from planned special exposures, provided such doses are within the limits for planned special exposures and are reported pursuant to subsection (zz) of this section.

(yy) Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the limits.

(1) In addition to the notification required by subsection (xx) of this section, each licensee or registrant shall submit a written report within 30 days after learning of any of the following occurrences:

(A) incidents for which notification is required by subsection (xx) of this section;

(B) doses in excess of any of the following:

(i) the occupational dose limits for adults in subsection (f) of this section;

(ii) the occupational dose limits for a minor in subsection (l) of this section;

(iii) the limits for an embryo/fetus of a declared pregnant woman in subsection (m) of this section;

(iv) the limits for an individual member of the public in subsection (n) of this section; or

(v) any applicable limit in the license or registration;

(C) levels of radiation or concentrations of radioactive material in:

(i) a restricted area in excess of applicable limits in the license or registration; or

(ii) an unrestricted area in excess of ten times the applicable limit set forth in this section or in the license or registration, whether or not involving exposure of any individual in excess of the limits in subsection (n) of this section; or

(D) for licensees subject to the provisions of the EPA's generally applicable environmental radiation standards in 40 CFR 190, levels of radiation or releases of radioactive material in excess of those standards, or of license conditions related to those requirements.

(2) Each report required by paragraph (1) of this subsection shall describe the extent of exposure of individuals to radiation and radioactive material, including, as appropriate:

(A) estimates of each individual's dose;

(B) the levels of radiation and concentrations of radioactive material involved;

(C) the cause of the elevated exposures, dose rates, or concentrations; and

(D) corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, generally applicable environmental standards, and associated license or registration conditions.

(3) Each report filed pursuant to paragraph (1) of this subsection shall include for each individual exposed: the name, social security number, and date of birth. With respect to the limit for the embryo/fetus in subsection (m) of this section, the identifiers should be those of the declared pregnant woman. The report shall be prepared so that this information is stated in a separate and detachable portion of the report.

(4) All licensees or registrants who make reports pursuant to paragraph (1) of this subsection shall submit the report in writing to the agency.

(zz) Reports of planned special exposures. The licensee or registrant shall submit a written report to the agency within 30 days following any planned special exposure conducted in accordance with subsection (k) of this section, informing the Agency that a planned special exposure was conducted and indicating the date the planned special exposure occurred and the information required by subsection (qq) of this section.

(aaa) Notifications and reports to individuals.

(1) Requirements for notification and reports to individuals of exposure to radiation or radioactive material are specified in §289.114 of this title.

(2) When a licensee or registrant is required pursuant to subsection (yy) of this section to report to the agency any exposure of an individual to radiation or radioactive material, the licensee or registrant shall also notify the individual. Such notice shall be transmitted at a time not later than the transmittal to the agency, and shall comply with the provisions of 22. 13(A) of TRCR Part 22 as adopted by reference in §289.114 of this title.

(bbb) Reports of leaking or contaminated sealed sources. The licensee shall immediately notify the agency if the test for leakage or contamination required pursuant to §289.201(g) of this section indicates a sealed source is leaking or contaminated. A written report of a leaking or contaminated source shall be submitted to the agency within 5 days. The report shall include the equipment involved, the test results and the corrective action taken.

(ccc) Vacating premises. Each licensee, registrant, or person possessing non-exempt sources of radiation shall, no less than 30 days before vacating or relinquishing possession or control of premises, notify the agency, in writing, of the intent to vacate. The licensee or person possessing non-exempt radioactive material shall decommission the premises to a degree consistent with subsequent use as an unrestricted area and in accordance with the requirements of subsections (ddd) and (eee) of this section.

(ddd) Soil contamination limits.

(1) No licensee shall possess, receive, use, or transfer radioactive material in such a manner as to cause contamination of soil in unrestricted areas, to the extent that the contamination exceeds, on a dry weight basis, the concentration limits specified in:

(A) subsection (ggg)(9) of this section; or

(B) the effluent concentrations in Table III of subsection (ggg)(2) of this section, with the units changed from Ci/ml to Ci/gm, for radionuclides not specified in subsection (ggg)(9) of this section or paragraph (3) of this subsection.

(2) Where combinations of radionuclides are involved, the sum of the ratios between the concentrations present and the limits specified in paragraph (1) of this subsection shall not exceed one.

(3) Except for the requirements in §289.127 of this title and notwithstanding the limits imposed by paragraph (1) of this subsection, the concentration of radium-226 or radium-228 in soil averaged over any 100 square meters shall not exceed the background level by more than:

(A) 5 pCi/gm, averaged over the first 15 centimeters of soil below the surface; and

(B) 15 pCi/gm, averaged over 15 centimeter thick layers of soil more than 15 centimeters below the surface.

(eee) Surface contamination limits for facilities and equipment. Prior to vacating any facility or releasing areas or equipment for unrestricted use, each licensee shall ensure that radioactive contamination has been removed to levels as low as reasonably achievable. In no case shall the licensee vacate a facility or release areas or equipment for unrestricted use until radioactive surface contamination levels are below the limits specified in subsection (ggg) (7) of this section.

(fff) Exemption of specific wastes.

(1) A licensee may discard the following licensed material without regard to its radioactivity:

(A) 0.05 microcurie (1.85 kilobecquerels), or less, of hydrogen-3, carbon-14, or iodine-125 per gram of medium used for liquid scintillation counting or *in vitro* clinical or *in vitro* laboratory testing; and

(B) 0.05 microcurie (1.85 kilobecquerels), or less, of hydrogen-3, carbon-14, or iodine-125, per gram of animal tissue, averaged over the weight of the entire animal.

(2) A licensee shall not discard tissue pursuant to paragraph (1)(B) of this subsection in a manner that would permit its use either as food for humans or as animal feed.

(3) The licensee shall maintain records in accordance with subsection (tt) of this section.

(4) Any licensee may, upon agency approval of procedures required in paragraph (6) of this subsection, discard licensed material included in subsection (ggg)(8) of this section, provided that it does not exceed the concentration and total curie limits contained therein, in a Type I municipal solid waste site as defined in the Municipal Solid Waste Regulations of the authorized regulatory agency (31 TAC §330), unless such licensed material also contains hazardous waste, as defined in §3(15) of the Solid Waste Disposal Act, Health and Safety Code, Chapter 361. Any licensed material included in subsection (ggg)(8) of this section and which is a hazardous waste as defined in the Solid Waste Disposal Act may be discarded at a facility authorized to manage hazardous waste by the authorized regulatory agency.

(5) Each licensee who discards material described in paragraphs (1) or (4) of this subsection shall:

(A) make surveys adequate to assure that the limits of paragraphs (1) or (4) of this subsection are not exceeded; and

(B) remove or otherwise obliterate or obscure all labels, tags, or other markings which would indicate that the material or its contents is radioactive.

(6) Prior to authorizations pursuant to paragraph (4) of this subsection, a licensee shall submit procedures to the agency for:

(A) the physical delivery of the material to the disposal site;

(B) surveys to be performed for compliance with paragraph (5)(A) of this subsection;

(C) maintaining secure packaging during transportation to the site; and

(D) maintaining records of any discards made under paragraph (4) of this subsection.

(7) Nothing in this section relieves the licensee of maintaining records showing the receipt, transfer, and discard of such radioactive material as specified in §289.201(d) of this title.

(8) Nothing in this section relieves the licensee from complying with other applicable federal, state, and local regulations governing any other toxic or hazardous property of these materials.

(9) Licensed material discarded under this section is exempt from the requirements of §289.252(t) of this title.

(ggg) Appendices.

(1) Protections factors for respirators. The following table contains protection factors for respirators.

Figure 4: 25 TAC §289.202(ggg)(1)(2)

Annual limits on intake (ALI) and derived air concentrations (DAC) of radionuclides for occupational exposure; effluent concentrations; concentrations for release to sanitary sewerage.

(A) Introduction.

(i) For each radionuclide, Table I of subparagraph (F) of this paragraph indicates the chemical form that is to be used for selecting the appropriate ALI or DAC value. The ALIs and DACs for inhalation are given for an aerosol with an activity median aerodynamic diameter (AMAD) of 1 m, micron, and for three classes (D,W,Y) of radioactive material, which refer to their retention (approximately days, weeks, or years) in the pulmonary region of the lung. This classification applies to a range of clearance half-times for D if less than ten days, for W from ten to 100 days, and for Y greater than 100 days. Table II of subparagraph (F) of this paragraph provides concentration limits for airborne and liquid effluents released to the general environment. Table III of subparagraph (F) of this paragraph provides concentration limits for discharges to sanitary sewerage.

(ii) The values in Tables I, II, and III of subparagraph (F) of this paragraph are presented in the computer "E" notation. In this notation a value of 6E-02 represents a value of 6×10^{-2} or 0.06, 6E+2 represents 6×10^{2} or 600, and 6E+0 represents 6×10^{0} or 6.

(B) Occupational values.

(i) Note that the columns in Table I of subparagraph (F) of this paragraph captioned "Oral Ingestion ALI," "Inhalation ALI," and "DAC," are applicable to occupational exposure to radioactive material.

(ii) The ALIs in subparagraph (F) of this paragraph are the annual intakes of given radionuclide by "Reference Man" that would result in either a committed effective dose equivalent of 5 rems (0.05 sievert), stochastic ALI, or a committed dose equivalent of 50 rems (0.5 sievert) to an organ or tissue, non-stochastic ALI. The stochastic ALIs were derived to result in a risk, due to irradiation of organs and tissues, comparable to the risk associated with deep dose equivalent to the whole body of 5 rems (0.05 sievert). The derivation includes multiplying the committed dose equivalent to an organ or tissue by a weighting factor, w_T. This weighting factor is the proportion of the risk of stochastic effects resulting from irradiation of the organ or tissue, T, to the total risk of stochastic effects when the whole body is irradiated uniformly. The values of w_T are listed under the definition of "weighting factor" in subsection (c) of this section. The non-stochastic ALIs were derived to avoid non-stochastic effects, such as prompt damage to tissue or reduction in organ function.

(iii) A value of $w_T = 0.06$ is applicable to each of the five organs or tissues in the "remainder" category receiving the highest dose equivalents, and the dose equivalents of all other remaining tissues may be disregarded. The following portions of the GI tract; stomach, small intestine, upper large intestine, and lower large intestine, are to be treated as four separate organs.

(iv) The dose equivalents for an extremity, skin, and lens of the eye are not considered in computing the committed effective dose equivalent, but are subject to limits that must be met separately.

(v) When an ALI is defined by the stochastic dose limit, this value alone is given. When an ALI is determined by the non-stochastic dose limit to an organ, the organ or tissue to which the limit applies is shown, and the ALI for the stochastic limit is shown in parentheses. Abbreviated organ or tissue designations are used as follows:

(I) LLI wall = lower large intestine wall;

(II) St. wall = stomach wall;

(III) Blad wall = bladder wall; and

(IV) Bone surf= bone surface.

(vi)
Figure 5: 25 TAC §289.202(ggg)(2)(B)(vi)

(vii) The dose equivalents for an extremity, skin, and lens of the eye are not considered in computing the committed effective dose equivalent, but are subject to limits that must be met separately.

(viii) The DAC values are derived limits intended to control chronic occupational exposures. The relationship between the DAC and the ALI is given by:
Figure 6: 25 TAC §289.202(ggg)(2)(B)(viii)

(ix) The DAC values relate to one of two modes of exposure: either external submersion or the internal committed dose equivalents resulting from inhalation of radioactive materials. DACs based upon submersion are for immersion in a semi-infinite cloud of uniform concentration and apply to each radionuclide separately.

(x) The ALI and DAC values include contributions to exposure by the single radionuclide named and any ingrowth of daughter radionuclides produced in the body by decay of the parent. However, intakes that include both the parent and daughter radionuclides should be treated by the general method appropriate for mixtures.

(xi) The values of ALI and DAC do not apply directly when the individual both ingests and inhales a radionuclide, when the individual is exposed to a mixture of radionuclides by either inhalation or ingestion or both, or when the individual is exposed to both internal and external irradiation. See subsection (g) of this section. When an individual is exposed to radioactive materials which fall under several of the translocation classifications of the same radionuclide, such as, Class D, Class W, or Class Y, the exposure may be evaluated as if it were a mixture of different radionuclides.

(xii) It should be noted that the classification of a compound as Class D, W, or Y is based on the chemical form of the compound and does not take into account the radiological half-life of different radionuclides. For this reason, values are given for Class D, W, and Y compounds, even for very short-lived radionuclides.

(C) Effluent concentrations.

(i) The columns in Table II of subparagraph (F) of this paragraph captioned "Effluents," "Air," and "Water" are applicable to the assessment and control of dose to the public, particularly in the implementation of the provisions of subsection (o) of this section. The concentration values given in Columns 1 and 2 of Table II of subparagraph (F) of this paragraph are equivalent to the radionuclide concentrations which, if inhaled or ingested continuously over the course of a year, would produce a total effective dose equivalent of 0.05 rem (0.5 millisievert).

(ii) Consideration of non-stochastic limits has not been included in deriving the air and water effluent concentration limits because non-stochastic effects are presumed not to occur at or below the dose levels established for individual members of the public. For radionuclides, where the non-stochastic limit was governing in deriving the occupational DAC, the stochastic ALI was used in deriving the corresponding airborne effluent limit in Table II of subparagraph (F) of this paragraph. For this reason, the DAC and airborne effluent limits are not always proportional as they were in the previous radiation protection standards.

(iii) The air concentration values listed in Column I of Table II of subparagraph (F) of this paragraph were derived by one of two methods. For those radionuclides for which the stochastic limit is governing, the occupational stochastic inhalation ALI was divided by 2.4×10^9, relating the inhalation ALI to the DAC, as explained in subparagraph (B)(viii) of this paragraph, and then divided by a factor of 300. The factor of 300 includes the following components:

(I) a factor of 50 to relate the 5 rems (0.05 sievert) annual occupational dose limit to the 0.1 rem limit for members of the public;

(II) a factor of 3 to adjust for the difference in exposure time and the inhalation rate for a worker and that for members of the public; and

(III) a factor of 2 to adjust the occupational values, derived for adults, so that they are applicable to other age groups.

(iv) For those radionuclides for which submersion, that is external dose, is limiting, the occupational DAC in Column 3 of Table I of subparagraph (F) of this paragraph was divided by 219. The factor of 219 is composed of a factor of 50, as described in clause (iii) of this subparagraph, and a factor of 4.38 relating occupational exposure for 2,000 hours per year to full-time exposure (8,760 hours per year). Note that an additional factor of 2 for age considerations is not warranted in the submersion case.

(v) The water concentrations were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^7. The factor of 7.3×10^7 (ml) includes the following components:

(I) the factors of 50 and 2 described in clause (iii) of this subparagraph; and

(II) a factor of 7.3×10^5 (ml) which is the annual water intake of "Reference Man."

(vi) Note 2 of subparagraph (F) of this paragraph provides groupings of radionuclides that are applicable to unknown mixtures of radionuclides. These groupings, including occupational inhalation ALIs and DACs, air and water effluent concentrations, and releases to sewer, require demonstrating that the most limiting radionuclides in successive classes are absent. The limit for the unknown mixture is defined when the presence of one of the listed radionuclides cannot be definitely excluded as being present either from knowledge of the radionuclide composition of the source or from actual measurements.

(D) Releases to sewers. The monthly average concentrations for release to sanitary sewerage are applicable to the provisions in subsection (gg) of this section. The concentration values were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^6 (ml). The factor of 7.3×10^6 (ml) is composed of a factor of 7.3×10^5 (ml), the annual water intake by "Reference Man," and a factor of 10, such that the concentrations, if the sewage released by the licensee were the only source of water ingested by a "Reference Man" during a year, would result in a committed effective dose equivalent of 0.5 rem.

(E) List of elements.
Figure 7: 25 TAC §289.202(ggg)(2)(E)

(F) Tables-Values for annual limits. The following tables contain values for annual limits on intake (ALI) and derived air concentrations (DAC) of radionuclides for occupational exposure; effluent concentrations; concentrations for release to sanitary sewerage:

Figure 8: 25 TAC §289.202(ggg)(2)(F)

(3) Quantities of licensed material requiring labeling. The following tables contain quantities of licensed material requiring labeling.

Figure 9: 25 TAC §289.202(ggg)(3)

(4) Requirements for transfer of low-level radioactive waste for disposal at land disposal facilities and manifests.

(A) Manifest. The shipment manifest shall contain the name, address, and telephone number of the person generating the waste. The manifest shall also include the name, address, and telephone number or the name and U.S. Environmental Protection Agency hazardous waste identification number of the person transporting the waste to the land disposal facility. The manifest shall also indicate: a physical description of the waste, the volume, radionuclide identity and quantity, the total radioactivity, and the principal chemical form. The solidification agent shall be specified. Waste containing more than 0.1% chelating agents by weight shall be identified and the weight percentage of the chelating agent estimated. Wastes classified as Class A, Class B, or Class C in paragraph (5)(A) of this subsection shall be clearly identified as such in the manifest. The total quantity of the radionuclides hydrogen-3, carbon-14, technetium-99, and iodine-129 shall be shown. The manifest required by this subparagraph may be shipping papers used to meet DOT or EPA regulations or requirements of the receiver, provided all the required information is included. Copies of manifests required by this paragraph may be legible carbon copies or legible photocopies.

(B) Certification. The waste generator shall include in the shipment manifest a certification that the transported materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the DOT and the agency. An authorized representative of the waste generator shall sign and date the manifest.

(C) Control and tracking.

(i) Any radioactive waste generator who transfers radioactive waste to a land disposal facility or a licensed waste collector shall comply with the requirements in subclauses (I)-(IX) of this clause. Any radioactive waste generator who transfers waste to a licensed waste processor who treats or repackages waste shall comply with the requirements of subclauses (IV)-(IX) of this clause. A licensee shall:

(I) prepare all wastes so that the waste is classified according to paragraph (5)(A) of this subsection and meets the waste characteristics requirements in paragraph (5)(B) of this subsection;

(II) label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste, in accordance with paragraph (5)(A) of this subsection;

(III) conduct a quality control program to ensure compliance with paragraphs (5)(A) and (B) of this subsection; the program shall include management evaluation of audits;

(IV) prepare shipping manifests to meet the requirements of subparagraphs (A) and (B) of this paragraph;

(V) forward a copy of the manifest to the intended recipient, at the time of shipment, or deliver to a collector at the time the waste is collected, obtaining acknowledgment of receipt in the form of a signed copy of the manifest or equivalent documentation from the collector;

(VI) include one copy of the manifest with the shipment;

(VII) retain a copy of the manifest and documentation of acknowledgment of receipt as the record of transfer of licensed material as required by §289.252(p) of this title;

(VIII) for any shipments or any portion of a shipment for which acknowledgment of receipt has not been received within the times set forth in this section, conduct an investigation in clause (v) of this subparagraph; and

(IX) forward a legible copy of the manifest to the agency at the time of transfer or shipment.

(ii) Any waste collector licensee who handles only prepackaged waste shall:

(I) acknowledge receipt of the waste from the generator within one week of receipt by returning a signed copy of the manifest or equivalent documentation;

(II) prepare a new manifest to reflect consolidated shipments; the new manifest shall serve as a listing or index for the detailed generator manifests. Copies of the generator manifests shall be a part of the new manifest. The waste collector may prepare a new manifest without attaching the generator manifests, provided the new manifest contains for each package the information specified in subparagraph (A) of this paragraph. The collector licensee shall certify that nothing has been done to the waste that would invalidate the generator's certification;

(III) forward a copy of the new manifest to the land disposal facility operator at the time of shipment;

(IV) include the new manifest with the shipment to the disposal site;

(V) retain a copy of the manifest and documentation of acknowledgement of receipt as the record of transfer of licensed material as required by §289.252(p) of this title, and retain information from generator manifest until disposition is authorized by the agency;

(VI) for any shipments or any portion of a shipment for which acknowledgement of receipt is not received within the times set forth in this paragraph, conduct an investigation in accordance with subparagraph (C)(v) of this paragraph; and

(VII) forward a legible copy of the manifest to the agency no later than the date of shipment of the waste to the land disposal facility.

(iii) Any licensed waste processor who treats or repackages wastes shall:

(I) acknowledge receipt of the waste from the generator within one week of receipt by returning a signed copy of the manifest or equivalent documentation;

(II) prepare a new manifest that meets the requirements of subparagraphs (A) and (B) of this paragraph. Preparation of the new manifest reflects that the processor is responsible for the waste;

(III) prepare all wastes so that the waste is classified according to paragraph (5)(A) of this subsection and meets the waste characteristics requirements in paragraph (5)(B) of this subsection;

(IV) label each package of waste to identify whether it is Class

A waste, Class B waste, or Class C waste, in accordance with paragraph (5)(A) and (C) of this subsection;

(V) conduct a quality control program to ensure compliance with paragraph (5)(A) and (B) of this subsection. The program shall include management evaluation of audits;

(VI) forward a copy of the new manifest to the disposal site operator or waste collector at the time of shipment, or deliver to a collector at the time the waste is collected, obtaining acknowledgement of receipt in the form of a signed copy of the manifest or equivalent documentation by the collector;

(VII) include the new manifest with the shipment;

(VIII) retain copies of original manifests and new manifests and documentation of acknowledgement of receipt as the record of transfer of licensed material required by §289.252(p) of this title;

(IX) for any shipment or portion of a shipment for which acknowledgement is not received within the times set forth in this section, conduct an investigation in accordance with subparagraph (C)(v) of this paragraph; and

(X) forward a legible copy of the manifest to the agency no later than the date of the shipment to the land disposal facility.

(iv) The land disposal facility operator shall:

(I) acknowledge receipt of the waste within one week of receipt by returning a signed copy of the manifest or equivalent documentation to the shipper. The shipper to be notified is the licensee who last possessed the waste and transferred the waste to the operator. The returned copy of the manifest or equivalent documentation shall indicate any discrepancies between materials listed on the manifest and materials received;

(II) maintain copies of all completed manifests or equivalent documentation until the agency authorizes their disposition; and

(III) notify the shipper, that is, the generator, the collector, or processor, and the agency when any shipment or portion of a shipment has not arrived within 60 days after the advance manifest was received.

(v) Any shipment or portion of a shipment for which acknowledgement is not received within the times set forth in this section shall:

(I) be investigated by the shipper if the shipper has not received notification or receipt within 20 days after transfer; and

(II) be traced and reported. The investigation shall include tracing the shipment and filing a report with the agency. Each licensee who conducts a trace investigation shall file a written report with the agency within 2 weeks of completion of the investigation.

(5) Classification and characteristics of low-level radioactive waste.

(A) Classification of radioactive waste for land disposal.

(i) Considerations. Determination of the classification of radioactive waste involves two considerations. First, consideration must be given to the concentration of long-lived radionuclides (and their shorter-lived precursors) whose potential hazard will persist long after such precautions as institutional controls, improved waste form, and deeper disposal have ceased to be effective. These precautions delay the time when long-lived radionuclides could cause exposures. In addition, the magnitude of the potential dose is limited by the concentration and availability of the radionuclide at the time of exposure. Second, consideration must be given to the concentration of shorter-lived radionuclides for which requirements on institutional controls, waste form, and disposal methods are effective.

(ii) Classes of waste.

(I) Class A waste is waste that is usually segregated from other waste classes at the disposal site. The physical form and characteristics of Class A waste must meet the minimum requirements set forth in subparagraph (B)(i) of this paragraph. If Class A waste also meets the stability requirements set forth in subparagraph (B)(ii) of this paragraph, it is not necessary to segregate the waste for disposal.

(II) Class B waste is waste that must meet more rigorous requirements on waste form to ensure stability after disposal. The physical form and characteristics of Class B waste must meet both the minimum and stability requirements set forth in subparagraph (B) of this paragraph.

(III) Class C waste is waste that not only must meet more rigorous requirements on waste form to ensure stability but also requires additional measures at the disposal facility to protect against inadvertent intrusion. The physical form and characteristics of Class C waste must meet both the minimum and stability requirements set forth in subparagraph (B) of this paragraph.

(iii) Classification determined by long-lived radionuclides. If the radioactive waste contains only radionuclides listed in subclause (V) of this clause, classification shall be determined as follows.

(I) If the concentration does not exceed 0.1 times the value in subclause (V) of this clause, the waste is Class A.

(II) If the concentration exceeds 0.1 times the value in Table I, but does not exceed the value in subclause (V) of this clause, the waste is Class C.

(III) If the concentration exceeds the value in subclause (V) of this clause, the waste is not generally acceptable for land disposal.

(IV) For wastes containing mixtures of radionuclides listed in subclause (V) of this clause, the total concentration shall be determined by the sum of fractions rule described in clause (vii) of this subparagraph.

(V) Classification table for long-lived radionuclides.
Figure 10: 25 TAC §289.202(ggg)(5)(A)(iii)(V)

(iv) Classification determined by short-lived radionuclides. If the waste does not contain any of the radionuclides listed in clause (iii)(V) of this subparagraph, classification shall be determined based on the concentrations shown in subclause (VI) of this clause. However, as specified in clause (vi) of this subparagraph, if radioactive waste does not contain any nuclides listed in either clause (iii)(V) of this subparagraph or subclause (VI) of this clause, it is Class A.

(I) If the concentration does not exceed the value in Column 1 of subclause (VI) of this clause, the waste is Class A.

(II) If the concentra-

tion exceeds the value in Column 1 of subclause (VI) of this clause but does not exceed the value in Column 2 of subclause (VI) of this clause, the waste is Class B.

(III) If the concentration exceeds the value in Column 2 of subclause (VI) of this clause but does not exceed the value in Column 3 of subclause (VI) of this clause, the waste is Class C.

(IV) If the concentration exceeds the value in Column 3 of subclause (VI) of this clause, the waste is not generally acceptable for near-surface disposal.

(V) For wastes containing mixtures of the radionuclides listed in subclause (VI) of this clause, the total concentration shall be determined by the sum of fractions rule described in clause (vii) of this subparagraph.

(VI) Classification table for short-lived radionuclides.
Figure 11: 25 TAC §289.202(ggg)(5)(A)(iv)(VI)

(v) Classification determined by both long- and short-lived radionuclides. If the radioactive waste contains a mixture of radionuclides, some of which are listed in clause (iii)(V) of this subparagraph and some of which are listed in clause (iv)(VI) of this subparagraph, classification shall be determined as follows:

(I) If the concentration of a radionuclide listed in clause (iii)(V) of this subparagraph is less than 0.1 times the value listed in clause (iii)(V) of this subparagraph, the class shall be that determined by the concentration of radionuclides listed in clause (iv)(VI) of this subparagraph.

(II) If the concentration of a radionuclide listed in clause (iii)(V) of this subparagraph exceeds 0.1 times the value listed in clause (iii)(V) of this subparagraph, but does not exceed the value listed in clause (iii)(V) of this subparagraph, the waste shall be Class C, provided the concentration of radionuclides listed in clause (iv)(VI) of this subparagraph does not exceed the value shown in Column 3 of clause (iv)(VI) of this subparagraph.

(vi) Classification of wastes with radionuclides other than those listed in clauses (iii)(V) and (iv)(VI) of this subparagraph. If the waste does not contain any radionuclides listed in either clauses (iii)(V) and (iv) (VI) of this subparagraph, it is Class A.

(vii) The sum of the fractions rule for mixtures of radionuclides. For determining classification for waste that contains a mixture of radionuclides, it is necessary to determine the sum of fractions by dividing each radionuclide's concentration by the appropriate limit and adding the resulting values. The appropriate limits must all be taken from the same column of the same table. The sum of the fractions for the column must be less than 1.0 if the waste class is to be determined by that column. Example: A waste contains Sr-90 in a concentration of 50 Ci/m^3 (1.85 TBq/m^3) and Cs-137 in a concentration of 22 Ci/m^3 (814 Gbq/m^3). Since the concentrations both exceed the values in Column 1 of clause (iv)(VI) of this subparagraph, they must be compared to Column 2 values. For Sr-90 fraction, 50/150 = 0.33, for Cs-137 fraction, 22/44 = 0.5; the sum of the fractions = 0.83. Since the sum is less than 1.0, the waste is Class B.

(viii) Determination of concentrations in wastes. The concentration of a radionuclide may be determined by indirect methods such as use of scaling factors, which relate the inferred concentration of one radionuclide to another that is measured, or radionuclide material accountability, if there is reasonable assurance that the indirect methods can be correlated with actual measurements. The concentration of a radionuclide may be averaged over the volume of the waste, or weight of the waste if the units are expressed as nanocurie (becquerel) per gram.

(B) Radioactive waste characteristics.

(i) The following are minimum requirements for all classes of waste and are intended to facilitate handling and provide protection of health and safety of personnel at the disposal site.

(I) Wastes shall be packaged in conformance with the conditions of the license issued to the site operator to which the waste will be shipped. Where the conditions of the site license are more restrictive than the provisions of this section, the site license conditions shall govern.

(II) Wastes shall not be packaged for disposal in cardboard or fiberboard boxes.

(III) Liquid waste shall be packaged in sufficient absorbent material to absorb twice the volume of the liquid.

(IV) Solid waste containing liquid shall contain as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed 1.0% of the volume.

(V) Waste shall not be readily capable of detonation or of explosive decomposition or reaction at normal pressures and temperatures, or of explosive reaction with water.

(VI) Waste shall not contain, or be capable of generating, quantities of toxic gases, vapors, or fumes harmful to persons transporting, handling, or disposing of the waste. This does not apply to radioactive gaseous waste packaged in accordance with subclause (VIII) of this clause.

(VII) Waste must not be pyrophoric. Pyrophoric materials contained in wastes shall be treated, prepared, and packaged to be nonflammable.

(VIII) Wastes in a gaseous form shall be packaged at an absolute pressure that does not exceed 1.5 atmospheres at 20 degrees Celsius. Total activity shall not exceed 100 curies (3.7 terabecquerels) per container.

(IX) Wastes containing hazardous, biological, pathogenic, or infectious material shall be treated to reduce to the maximum extent practicable the potential hazard from the non-radiological materials.

(ii) The following requirements are intended to provide stability of the waste. Stability is intended to ensure that the waste does not degrade and affect overall stability of the site through slumping, collapse, or other failure of the disposal unit and thereby lead to water infiltration. Stability is also a factor in limiting exposure to an inadvertent intruder, since it provides a recognizable and nondispersible waste.

(I) Waste shall have structural stability. A structurally stable waste form will generally maintain its physical dimensions and its form, under the expected disposal conditions such as weight of overburden and compaction equipment, the presence of moisture, and microbial activity, and internal factors such as radiation effects and chemical changes. Structural stability can be provided by the waste form itself, processing the waste to a stable form, or placing the waste in a disposal container or structure that provides stability after disposal.

(II) Notwithstanding the provisions in clause (i)(III) and (iv) of this subparagraph, liquid wastes, or wastes

containing liquid, shall be converted into a form that contains as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed 1.0% of the volume of the waste when the waste is in a disposal container designed to ensure stability, or 0.5% of the volume of the waste for waste processed to a stable form.

(III) Void spaces within the waste and between the waste and its package shall be reduced to the extent practicable.

(C) Labeling. Each package of waste shall be clearly labeled to identify whether it is Class A, Class B, or Class C waste, in accordance with subparagraph (A) of this paragraph.

(6) Time requirements for record keeping.
Figure 12: 25 TAC §289.202(ggg)(6)

(7) Acceptable surface contamination levels.
Figure 13: 25 TAC §289.202(ggg)(7)

(8) Concentration and activity limits of nuclides for disposal in a Type I municipal solid waste site or a hazardous waste facility (for use in subsection (fff) of this section).
Figure 14: 25 TAC §289.202(ggg)(8)

(9) Soil contamination limits for selected radionuclides (for use in subsection (ddd) of this section).
Figure 15: 25 TAC §289.202(ggg)(9)

(10) The following, TRC Form 21-2, is to be used to document cumulative occupational exposure history;
Figure 16: 25 TAC §289.202(ggg)(10)

(11) The following, TRC Form 21-3, is to be used to document occupational exposure record for a monitoring period:
Figure 17: 25 TAC §289.202(ggg)(11)

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 December 18, 1995.

TRD-9516490 Susan K. Steeg
General Counsel
Texas Department of Health

Proposed date of adoption: February 25, 1996

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

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Part II. Texas Department of Mental Health and Mental Retardation

Chapter 403. Other Agencies and the Public

Subchapter B. Charges for Community-Based Services

• 25 TAC §403.46,§403.48

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes amendments to §403.46 and §403.48 of Chapter 403, Subchapter B, concerning charges for community-based services.

The amendments would allow for the collection of fees for vocational services if a person identified such services as part of his/her approved plan utilizing Social Security work incentive provisions. Language would be deleted which allowed statements to be sent to persons who have been determined as having an inability to pay when required by federal regulations. Federal regulations do not require statements to be sent to persons known to have an inability to pay in order to declare a charge as bad debt. Language would be added stating that statements not be sent to persons who maintain a zero balance, unless the person requested otherwise. Language would be added that prohibits financial penalties as punitive action.

Don Green, chief financial officer, has determined that for each year of the first five-year period the amendments as proposed are in effect there will be no significant fiscal impact on state or local government or small businesses.

Steven Shon, M.D., director, Managed Care, has determined that the public benefit anticipated is the consistent, statewide, and nondiscriminatory manner in which persons are charged for community-based mental heath and mental retardation services. There is no significant anticipated economic cost to persons who are required to comply with the sections as proposed.

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

The amendments are proposed under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

The amendments affect the Texas Health and Safety Code, §534.067 and §534.017.

§403.46. Determination of Ability to Pay.

(a) (No change.)

(b) Inability to pay. A maximum monthly fee of zero is established for persons who are determined as having an inability to pay, based on the person's financial assessment and calculated using the Monthly Ability-To-Pay Fee Schedule. No other minimum fee (e.g., co-payment) may be assessed, unless a federal waiver to allow co-payments by Medicaid is approved. **A person may be charged for vocational services only if the person identified such services in his/her approved plan utilizing Social Security work incentive provisions (i.e., *Plan to Achieve Self-Sufficiency; Impairment Related Work Expense*).** Persons may not be denied services if they do not include fees for vocational services as part of an approved plan for utilizing these Social Security work incentives for which they may be eligible.

(c) (No change.)

§403.48. Billing Procedures

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

(d) Statements.

(1) Persons who have been determined as having the ability to pay are sent monthly or quarterly statements that include:

(A) -(D) (No change.)

(E) the amount to be paid [, if any].

(2) Unless requested by the person, statements are not sent to persons with an ability to pay if they maintain a zero balance (i.e., the person does not currently owe any money).

(3)[(2)] Statements may not be sent to persons who have been determined as having an inability to pay [, except when required by federal regulations].

(4)[(3)] When the person's interdisciplinary or multidisciplinary team has determined that being charged for services and receiving statements will result in a reduction in the functioning level of the person or the person's refusal or rejection of the needed services, then charges will cease and statements will no longer be sent. This determination requires clinical documentation and must be reassessed at least annually by the team.

(e) (No change.)

(f) Punitive action. Financial penalties may not be imposed on a person nor may a person be denied services as punitive action. Actions such as missed appointments without canceling or consistently losing medications by a person should be addressed by the person's interdisciplinary or multidisciplinary team.

(g) Pursuant to the Texas Health and Safety Code, §534.017(c) and (d), fee collection may be accomplished only through the county or district attorney of

the county in which the local MHMR authority is located.

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 December 20, 1995.

TRD-9516574 Ann Utley
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation Texas

Earliest possible date of adoption: January 26, 1996

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part XV. Texas Low-Level Radioactive Waste Disposal Authority

Chapter 450. Planning and Implementation Fees

Subchapter A. Assessment of Fees

• 31 TAC §§450.1-450.4

The Texas Low-Level Radioactive Waste Disposal Authority proposes amendments to §§450.1-450.4, concerning the adoption of planning and implementation fees for low-level radioactive waste generators for the state's fiscal year 1996. The amended sections assess the fees, specifies which entities should pay the fees, and provides for the collection and deposit of fees in the state treasury.

Tim Schaffner, Director of Finance, has determined that for fiscal year 1996, there will be fiscal implications to the state as a result of enforcing or administering the subchapter. There will be an estimated increase in state government revenue for 1996 of $7,650,000, but for the fiscal years 1997-2000, there will be no fiscal implications for state government since the subchapter applies only to fiscal year 1996. There will be no fiscal implications for local governments.

Mr. Schaffner also has determined that for 1996, the public benefits anticipated as a result of enforcing the subchapter as proposed will be that the waste generators, rather than the general revenue of the state, will provide the funding of the low-level radioactive waste disposal program.

The total anticipated economic cost to persons generators and small and large business generators of waste who are required to comply with this subchapter as proposed will be: $7,650,000 in 1996. The subchapter will not be in effect during fiscal years 1997-2000.

Comments on the proposal may be submitted to Lee H. Mathews, Deputy General Manager and General Counsel, Texas Low-Level Radioactive Waste Disposal Authority, 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752.

The amendments are proposed under the Health and Safety Code, §402.054, which provides the Texas Low-Level Radioactive Waste Disposal Authority with the authority to adopt rules, standards, and orders necessary to properly carry out the Texas Low-Level Radioactive Waste Disposal Authority Act, and §402.2721, which directs the authority to adopt planning and implementation fees.

The Texas Health and Safety Code, §402.054 and §402.2721 are affected by the amended sections.

§450.1. Purpose. The purpose of this subchapter is to adopt, for this state's fiscal year[s] 1996, planning and implementation fees to fund the Authority's budget [estimated expenditures] for that [those] fiscal year[s].

§450 2. Applicability.

(a) This subchapter applies to:

(1) (No change.)

(2) persons required to be licensed by the Texas Department of Health to possess or use radioactive material and who generated and shipped or caused to have shipped by others, 7.5 cubic feet or more of radioactive material to a licensed low-level waste disposal facility during the period January 1, 1994 [1992] through November 30, 1995 [December 31, 1992].

(b) (No change.)

§450.3. Assessed Fees.

(a) Fees shall be assessed to persons subject to §450.2(a)(1) of this title (relating to Applicability), as follows: Figure: §450.3(a)

(b) Fees [For each year of this state's fiscal years 1994-1995, fees] shall be assessed to persons subject to §450.2(a)(2), as follows: $500 plus an additional $1.00 for every cubic foot in excess of 7.5 cubic feet of radioactive material generated and shipped.

(c) (No change.)

§450.4. Collection of Fees.

(a) (No change.)

(b) Fees assessed under this subchapter shall be paid in one payment equal to the 1996 assessment on or before March 1, 1996. [payable as follows:

[(1) for state fiscal year 1994, one payment equal to the 1994 assessment on or before March 1, 1994;

[(2) for state fiscal year 1995, one payment equal to the 1995 assessment on or before March 1, 1995.]

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 December 19, 1995.

TRD-9516520 Lee H. Mathews
Deputy General Manager and General Counsel
Texas Low-Level Radioactive Waste Disposal Authority

Earliest possible date of adoption: January 26, 1996

For further information, please call: (512) 451-5292

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 16. Commercial Driver's License

Sanctions and Disqualifications

• 37 TAC §§16.103-16.105

The Texas Department of Public Safety proposes new §§16.103-16.105, concerning sanctions and disqualifications. The new sections are necessary to implement 49 Code of Federal Regulations (CFR), Part 383, and Texas Transportation Code, §522.071 and §522.090. The new sections establish the disqualifications and penalties pertaining to violations of out-of service orders for drivers and employers.

Tom Haas, Chief of Finance, has determined that for the first five-year period the new sections are in effect there may be fiscal implications for state government as a result of enforcing or administering the sections; however, the department has no historical data on which to base this. There will be no fiscal implications for local government.

Mr. Haas 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 to keep unsafe drivers and vehicles from operating on Texas highways. 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 John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 424-2890.

The new sections are proposed pursuant to Texas Transportation Code, §522. 005, which provides the department may adopt rules necessary to carry out this chapter and the Federal Act and Texas Civil Statutes, Article 6675d, §3(a), which provides that the department may adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles.

The new sections affect Texas Transportation Code, §522.005, and Texas Civil Statutes, Article 6675d.

§16.103. Disqualifications and Penalties for Violations of Out-of-Service Orders.

(a) Texas Transportation Code, §522.071 and §522.090 provide for an offense and penalty for a driver who is convicted of violating an out-of-service order while driving a commercial motor vehicle (CMV). Section 522.090 provides that in addition to the penalties provided for in §522.071, a driver may be disqualified from driving a CMV as provided for in 49 Code of Federal Regulations (CFR), Part 383. In addition, such driver is subject to the special penalties as contained in 49 CFR, Part 383.53. Texas Transportation Code, §522.072 provides that an employer commits an offense if the employer permits a driver who has been placed out-of-service or disqualified to operate a CMV. The employer may be penalized or disqualified as provided for in 49 CFR, Part 383.

(b) The term "out-of-service" as used in this chapter has the same definition as that found in Texas Transportation Code, §522.003(23) and 49 CFR, Part 383.5.

§16.104. Disqualifications. Driver disqualifications as set out in 49 CFR, Part 383, are adopted by this department and are as follows:

(1) First violation. A driver is disqualified for not less than 90 days nor more than one year if the driver is convicted of a first violation of an out-of-service order.

(2) Second violation. A driver is disqualified for not less than one year nor more than five years if, during any 10-year period, the driver is convicted of two violations of out-of-service orders in separate incidents.

(3) Third or subsequent violation. A driver is disqualified for not less than three years nor more than five years if, during any ten-year period, the driver is convicted of three or more violations of out-of-service orders in separate incidents.

(4) Special rule for hazardous materials and passenger offenses. A driver is disqualified for a period of not less than 180 days nor more than two years if the driver is convicted of a first violation of an out-of-service order while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (49 United States Code, §§1801-1813), or while operating a motor vehicle designed to transport more than 15 passengers, including the driver. A driver is disqualified for a period of not less than three years nor more than five years if, during any ten-year period, the driver is convicted of any subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded under the Hazardous Materials Act, or while operating motor vehicles designed to transport more than 15 passengers, including the driver.

(5) Court to report conviction. If a driver is convicted of an offense under the Transportation Code, §522.071, the convicting court shall order a disqualification period as set out in paragraphs (1)-(4) of this section. The court shall report the conviction and disqualification on a form approved by the department. If the court fails to set a period of disqualification, the department shall disqualify the CMV driving privileges for 90 days for the first violation, one year for a second violation, and three years for the third or subsequent violation. If the court fails to set a period of suspension for convictions of these offenses which occurred while transporting hazardous materials required to be placarded under the Hazardous Materials Act or while operating a motor vehicle designed to transport more than 15 passengers, including the driver, the department shall disqualify the CMV driving privileges for 180 days for the first violation and three years if, during any ten-year period, the driver is convicted of any subsequent violations.

§16.105. Special Penalties Pertaining to Violation of Out-of-Service Orders for Drivers and Employers. In addition to the penalties provided for in the Texas Transportation Code, §522.071 and §522. 072, drivers and employers are subject to the penalties of 49 CFR, Part 383, which are hereby adopted by this department and are as follows:

(1) General rule. Any person who violates the rules set forth in Subparts B and C of 49 CFR, Part 383, may be subject to civil or criminal penalties as provided for in 49 United States Code, 521(b).

(2) Driver violations. A driver who is convicted of violating an out-of-service order shall be subject to a civil or administrative penalty of not less than $1,000 nor more than $2,500, in addition to disqualification action as provided for by 49 CFR, Part 383 and this section.

(3) Employer violations. An employer who is convicted of a violation of 49 CFR, Part 383.37(c), shall be subject to a civil or administrative penalty of not less than $2,500 nor more than $10,000.

(4) Penalties. Civil penalties for violations of the regulations adopted herein may be assessed by a court of competent jurisdiction or assessed as an administrative penalty under the provisions of Texas Civil Statutes, Article 6675d, Revised Statutes, and §3.62 of this title (relating to Regulations Governing Transportation Safety).

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 December 14, 1995.

TRD-9516475 James R. Wilson
Director
Texas Department of Public Safety

Earliest possible date of adoption: January 26, 1996

For further information, please call: (512) 424-2890

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Chapter 27. Crime Records

Juvenile Justice Information System

- **37 TAC §§27.51-27.64**

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

The Texas Department of Public Safety proposes new §§27.51-27.64, concerning juvenile justice information systems. These new sections are necessary to implement the juvenile justice information system provisions of House Bill 327, 74th Legislature, Regular Session, 1995 "the Act", part of which was codified as the Texas Family Code, Title 3 §§58.001-58.113. The Act makes the Texas Department of Public Safety (department) responsible for recording data and maintaining a database for a computerized juvenile justice information system. These new sections set forth procedures and implementation for the reporting of juvenile offender processing data by the agency responsible for the data from the time a juvenile offender is initially taken into custody, detained, or referred until the time a juvenile offender is released from the jurisdiction of the juvenile justice system. Identical emergency action has been simultaneously filed.

Tom Haas, Chief of Finance, has determined that for the first five year period the sections are in effect, there may be fiscal implications for state government as a result of administering the sections. The Department has no historical data on which to determine the fiscal impact of this chapter to units of local government.

Mr. Haas has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of administering the sections will be enhanced protection to the public and public safety and to promote the concept of punishment for criminal acts. There will be no effect on small or large businesses. There is no anticipated economic cost to persons.

Comments on the proposal may be submitted to John C. West, Jr., Chief of Legal Services, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas, 78773-0001, (512) 424-2890.

The new sections are proposed pursuant to Texas Family Code, Title 3, Chapter 58, §§58.001-58.113 and Texas Government Code, §411.006(4), which provide the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department.

The proposal affects Texas Family Code, Title 3, Chapter 58, §§58. 001-58113.

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 December 19, 1995.

TRD-9516542 James R. Wilson
Director
Texas Department of Public Safety

Earliest possible date of adoption: January 26, 1996

For further information, please call: (512) 424-2890

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Active Protective Orders

• 37 TAC §§27.71-27.76

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

The Texas Department of Public Safety proposes new §§27.71-27.76, concerning active protective orders. The new sections are necessary to implement the active protective order provisions of Senate Bill 130, 74th Legislature, Regular Session, 1995 codified, in part, as the Texas Family Code, Chapter 71, §71.17(b)(1) and §71.18(c) and Texas Government Code, §411. 042(b)(5)(A)-(G) and (g). "The Act" creates a state-wide computerized file of active protective orders to be searched by chief law enforcement officers in Texas upon their receipt from licensed firearms dealers of requests for background records checks of prospective transferees under the Brady Handgun Violence Prevention Act. The Act requires the Department of Public Safety to collect specified information into the file and establish rules which ensure that information relating to the issuance and dismissal of an active protective order is reported to the local law enforcement agency at the time of the order's issuance or dismissal and entered into the file by the local law enforcement agency. These sections set forth procedures and implementation for the reporting of active protective orders and the access to information regarding active protective orders. Identical emergency action has been filed simultaneously.

Tom Haas, Chief of Finance, has determined that for the first five years the sections are in effect, there may be fiscal implications for state government as a result of enforcing or administering the section. The department has no historical data to determine the fiscal impact of this section to units of local government.

Mr. Haas has also 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 enhanced protection to the public and public safety. There will be no effect on small or large businesses. There is no anticipated economic cost to persons.

Comments on the proposal may be submitted to John C. West, Jr., Chief of Legal Services, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0001, (512) 424-2890.

The new sections are proposed pursuant to Texas Family Code, Chapter 71, §71.17(b)(1) and §71.18(c) and Texas Government Code, §411.006(4), and §411.042(b)(5)(A)-(G) and (g), which provide the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department.

The proposal affects Texas Family Code, Chapter 71, §71.17(b)(1) and §71.18(c) and Texas Government Code, §411.006(4), and §411.042(b)(5)(A) -(G) and (g).

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 December 19, 1995.

TRD-9516545 James R. Wilson
Director
Texas Department of Public Safety

Earliest possible date of adoption: January 26, 1996

For further information, please call: (512) 424-2890

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Part VII. Texas Commission on Law Enforcement Officer Standards and Education

Chapter 211. Administration Division

• 37 TAC §211.81

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Law Enforcement Officer Standards and Education or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Law Enforcement Officer Standards and Education (commission) proposes the repeal of §211.81, concerning administration division requirements for agencies that appoint certain officers. The provisions of this section will be incorporated into new Chapter 221, which will also provide for administration of new legislative requirements in this area.

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

Mr. Dozier also has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result will be better coordination of the reporting process for law enforcement agencies, and better control over the administration of continuing education training for law enforcement personnel. There will be no effect on small businesses, and no anticipated increase in economic cost to persons who are required to comply.

Written comments should be submitted to D. C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 1033 La Posada, Suite 240, Austin, Texas 78752 or by facsimile (FAX) to (512) 406-3666.

The repeal is proposed under Government Code, Chapter 415, §415.010(1), which authorizes the commission to promulgate rules for the administration of Chapter 415, and under Government Code, Chapters 2001 and 2002, which establish the rulemaking requirements for the commission.

The following statutes are affected by this proposed repeal: Government Code, Chapter 415, §415.010-General Powers.

§211.81. Agency And Chief Administrator Reporting Responsibilities.

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 December 18, 1995.

TRD-9516480 D. C. Jim Dozier
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: January 26, 1996

For further information, please call: (512) 450-0188

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• 37 TAC §211.87

The Texas Commission on Law Enforcement Officer Standards and Education (commission) proposes an amendment to §211.87, concerning the suspension of licenses issued by the commission. The proposed amendment provides chief administrators and all licensees with a more concise statement of the reasons a license issued by the commission may be suspended. The amendments further provide for immediate suspension of a license whenever a licensee is charged with a felony and receives a community supervision sentence under the deferred adjudication procedure as provided in the Code of Criminal Procedure.

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

Mr. Dozier also has determined that for each year of the first five years this section is in effect, the public benefit anticipated as a result of enforcing this rule will be reduction in the time required to suspend the license of an individual who is in violation of the commission rules. There will be no effect on small businesses. There is no anticipated increase in economic cost to persons who are required to comply with this section.

Written comments should be submitted to D. C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 1033 La Posada, Suite 240, Austin, Texas 78752 or by facsimile (FAX) to (512) 406-3666.

The amendment is proposed under Government Code, Chapter 415, §415.010(1), which authorizes the commission to promulgate rules for the administration of Chapter 415, and §§415.010(6), 415.058, and 415.060 as amended; and Code of Criminal Procedure, §42.011; and under Government Code, Chapters 2001 and 2002, which establish the rulemaking requirements for the commission.

The following statutes are affected by the proposed amendment: Government Code, Chapter 415, §§415.010-General Powers, 415.058-Felony Conviction or Placement on Community Supervision as amended by Senate Bill 1337, Acts 1995, 74th Legislature, 415.060-Revocation; Probation; Suspension as amended; and Code of Criminal Procedure, §42.011-Judgment Affecting an Officer or Jailer.

§211.87. Suspension of License.

(a) Unless revocation is explicitly noted, the commission may suspend any license issued by the commission if the license holder [violates any provision of]:

(1) violates any provision of these sections; [or]

(2) violates any provision of [the Act,]the Government Code, Chapter 415[.];

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

(b) If a license holder is charged with the commission of a felony, adjudication is deferred, and the license holder is placed on community supervision, the commission shall immediately suspend any license held. The suspension of any license under this subsection is effective immediately when the commission receives a certified copy of a court's judgment and issues notice to the license holder via certified mail that any license held is suspended.

(c)[(b)] Unless otherwise specified, the term of suspension shall be 12 months. The exceptions are as follows.

(1) If a judgment and sentence is entered resulting in a misdemeanor conviction and sentence of either a fine, a jail term or both, or **community supervision** [probation], then, regardless of the actual sentence imposed, the term of suspension shall be essentially equal to the maximum potential confinement applicable to that offense, **except for DWI, for which the term of suspension shall be 24 months.** [such as:

(A) DWI, 24 months;

(B) Class A Misdemeanor, 12 months;

(C) Class B Misdemeanor, six months; or

(D) Class C Misdemeanor, no suspension is possible (since no jail time is possible), except as otherwise provided in this section.]

(2) If the court's judgment or adjudication is deferred for any felony or serious misdemeanor and the license holder is then placed on **community supervision** [probation], the term of suspension shall be equal to the actual time served on **community supervision** [probation].

(3) Twelve months may be added to the term of a new suspension for each separate previous violation that has resulted in either a license suspension, a probated suspension, or a written reprimand before the beginning date of the new suspension.

(d)[(c)] A suspension or probation may be ordered to run concurrently or consecutively with any other suspension or probation. The beginning date of a probation must be within the term of suspension. The beginning date of the suspension shall be:

(1) any date agreed to by both parties which is no earlier than the date of the rule violation;

(2) the date the license holder notifies the commission in writing of the rule violation if the commission later receives a signed waiver of suspension from the license holder that was postmarked within ten days of its receipt;

(3) the date the commission final order is entered in a contested case or the date it becomes effective, if that order is appealed.

(e)[(d)] If a license can be suspended for a **community supervision** [probation] or misdemeanor conviction, the commissioners may, in their discretion and upon proof of mitigating factors, either:

(1) probate all or part of the suspension term during a probation term of up to twice the maximum suspension term; or

(2) issue a written reprimand in lieu of suspension.

(f)[(e)] If a license can be suspended for any other reason, the commission, through its executive director may, in its discretion and upon proof of the same mitigating factors, either:

(1) probate all or part of the suspension term during a probation term of up to twice the maximum suspension term; or

(2) issue a written reprimand in lieu of suspension.

(g)[(f)] The executive director shall inform the commissioners of any such probation or reprimand no later than at their next regular meeting.

(h)[(g)] If probated either way, a suspension may not be probated for less than six months.

(i)[(h)] The commission may impose reasonable terms of probation, such as:

(1) continued employment requirements;

(2) special reporting conditions;

(3) special document submission conditions;

(4) voluntary duty requirements;

(5) no further rule or law violations; or

(6) any other reasonable term of probation.

(j)[(i)] A probated license remains probated until:

(1) the term of suspension has expired;

(2) all other terms of probation have been fulfilled; and

(3) a written request for reinstatement has been received by the commission from the license holder unless the probation has been revoked by the commis-

sion for violation of probation; or

(4) until revoked.

(k)[(j)] Before reinstatement, a license probation may be revoked upon a showing that any of its terms have been violated before the expiration date of the probation regardless of when the petition is filed. Upon revocation, the full term of suspension shall be imposed with credit for any time already served on that suspension.

(l)[(k)] Once a license has been suspended, the suspension probated, the probation revoked, or the license holder reprimanded, the commission shall search its files and send, by regular mail, notice of the action to the chief administrator of any agency shown to have the license holder under either current or latest appointment.

(m)[(l)] A suspended license remains suspended until:

(1) the term of suspension has expired **and the term of court-ordered community supervision has been completed**; and

(2) a written request for reinstatement has been received from the license holder; or

(3) the remainder of the suspension is probated.

(n)[(m)] The commission may suspend for not less than six months and not more than 24 months the license of a person convicted of a Class C Misdemeanor that was directly related to the duties and responsibilities of office, after the commission has considered, where applicable, the factors listed in the revocation section.

(o)[(n)] The commission may suspend a license even though it may have become inactive by some other means, such as:

(1) expiration;

(2) voluntary surrender;

(3) two-year break deactivation; or

(4) any other means.

(p)[(o)] The effective date of this section is April 15, 1996.

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 December 18, 1995.

TRD-9516483 D C. Jim Dozier
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: January 26, 1996

For further information, please call: (512) 450-0188

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Chapter 217. Licensing Requirements Division

• 37 TAC §217.9

The Texas Commission on Law Enforcement Officer Standards and Education (commission) proposes new §217.9, concerning continuing education requirements for law enforcement personnel. The section outlines the length and content of continuing education courses, as well as the manner in which the commission must notify agencies of their personnel's noncompliance with such requirements. This new section will replace parts of old §221.100, which will be repealed.

D. C. Jim Dozier, Executive Director of the commission, has determined that for the first five-year period the this rule is in effect, there will be no new fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Dozier also has determined that for each year of the first five years this section is in effect, the public benefit anticipated as a result of enforcing this section will be more consistent compliance with continuing education training requirements for peace officers. There will be no effect on small businesses, and no anticipated increase in economic cost to persons who are required to comply with this section.

Written comments should be submitted to D. C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 1033 La Posada, Suite 240, Austin, Texas 78752 or by facsimile (FAX) to (512) 406-3666.

The new section is proposed under Government Code, Chapter 415, §415. 010(1), which authorizes the commission to promulgate rules for the administration of Chapter 415, and §§415.010(6), 415.012(a)(1) and (c), 415. 034 and 415.0345 as amended by Senate Bills 80, 225, 1135, and 1337, Acts 1995, 74th Legislature; and under Government Code, Chapters 2001 and 2002, which establish the rulemaking requirements for the commission.

The following statutes are affected by this proposed section: Government Code, Chapter 415, §§415.010-General Powers, 415.012-Reports from Agencies and Schools, 415.034-Continuing Education as amended by Senate Bills 80, 225, 1135, and 1337, Acts 1995, 74th Legislature, and 415.0345-Continuing Education for Constables and Deputy Constables.

§§217.9. Continuing Education for License Holders.

(a) Each agency that appoints or employs peace officers, reserve law enforcement officers, county jailers, or public security officers shall provide each peace officer, reserve law enforcement officer, county jailer, or public security officer it appoints or employs a continuing education program at least once every 24 months.

(b) The commission shall develop curricula with learning objectives for the statutorily required continuing education programs that include the following topics:

(1) civil rights, racial sensitivity, and cultural diversity;

(2) the recognition and documentation of cases that involve child abuse, child neglect, family violence, sexual assault, and issues concerning sex offender characteristics; and

(3) supervision.

(c) The required continuing education program for peace officers shall consist of 40 hours of training. The required program as outlined in subsection (b) of this section shall contain no more than 20 hours of curricula and learning objectives. The remaining hours may consist of additional objectives and materials selected or developed by the appointing or employing agency. The additional topic or topics selected by the agency should be consistent with the peace officer's assigned duties. This rule does not limit the number of hours of continuing education an agency may provide to each peace officer, reserve law enforcement officer, county jailer, or public security officer it appoints or employs.

(d) As part of the 20 hours of required training which must include the curricula and learning objectives developed by the commission:

(1) each peace officer, reserve law enforcement officer, county jailer, or public security officer shall complete the course of training developed by the commission in civil rights, racial sensitivity, and cultural diversity during each 24-month period;

(2) each peace officer shall complete the course of training developed by the commission in the recognition and documentation of cases that involve child abuse, child neglect, family violence, sexual assault, and issues concerning sex offender characteristics during each 24-month period. If an agency chief administrator determines these subjects to be inconsistent with the peace officer's assigned duties, the chief administrator may substitute other training determined to be consistent with the officer ' s assigned duties; or

(3) each constable and deputy constable shall also complete a 20 hour course of training in civil process during each 24 month period. The commission may waive the requirement for civil process training if the constable requests a waiver, by written certification, because of hardship and the commission determines that a hardship exists; and

(4) each peace officer appointed to their first supervisory position must complete the course of training developed by the commission in supervision as part of the required training within 24 months following the date of appointment as a supervisor.

(e) The commission shall provide notice to agencies and officers of impending non-compliance with the continuing education requirements. Such notice will be provided not later than six months prior to the expiration of the 24 month period.

(f) The commission may suspend a peace officer's license for failure to complete the required continuing education program at least once every 24 months.

(g) Each peace officer who is currently licensed and reported to the commission as appointed or employed by an agency on or before September 1, 1995 shall complete the continuing education program required under this section before September 1, 1997. Any officer licensed or appointed after September 1, 1995 shall have 24 calendar months from the date of initial licensing to complete the continuing education program required under this section.

(h) Subsequent 24 month periods for continuing education shall begin on the last day of the prior period and end 24 months thereafter.

(i) The effective date of this section is April 15, 1996.

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 December 18, 1995.

TRD-9516481 D. C Jim Dozier
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: January 26, 1996

For further information, please call: (512) 450-0188

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Chapter 221. Proficiency Certificates and Other Post-Basic Licenses Division

• 37 TAC §§221.1, 221.3, 221.5, 221.7, 221.9

The Texas Commission on Law Enforcement Officer Standards and Education (commission) proposes new §§221.1, 221.3, 221.5, 221.7, and 221.9, concerning the responsibilities of law enforcement agencies to submit applications for licensing, to report appointments, criminal convictions, and separations from employment of licensees, and to report continuing education training of licensees to the commission.

These new sections will replace §211.81 and parts of §221.100, which will be repealed, and will provide chief administrators with a more concise statement of their reporting responsibilities. The sections will also incorporate changes required by amendments to Chapter 415, Government Code, made by the 74th Legislature.

D. C. Jim Dozier, Executive Director of the commission, has determined that for the first five-year period that these sections are in effect, there will be fiscal implications for state or local government as a result of enforcing or administering the sections. The sections will require the expenditure out of state funds of approximately $210,569 for the first year the sections are in effect, $249,778 for the second year, and $202,614 for each of the three following years. The impact would continue thereafter as long as the sections are in effect.

Mr. Dozier also has determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of enforcing these sections will be better and more accurate records concerning officers employed by law enforcement agencies statewide. There will be no effect on small businesses. There is no anticipated increase in economic cost to persons who are required to comply with the sections.

Written comments should be submitted to D. C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 1033 La Posada, Suite 240, Austin, Texas 78752 or by facsimile (FAX) to (512) 406-3666.

These new sections are proposed under Government Code, Chapter 415, §415. 010, which authorizes the commission to promulgate rules for the administration of Chapter 415, and §§415.010(6), 415.012, 415.051, 415.052, 415.057, 415.060, 415.063, and 415.0635; and under Government Code, Chapters 2001 and 2002, which establish the rulemaking requirements for the commission.

The following statutes are affected by these proposed new sections: Government Code, Chapter 415, §§415.010-General Powers, 415.012-Reports from Agencies and Schools, 415.034 as amended by Senate Bill 1337, Acts 1995, 74th Legislature, 415.051-Appointment; License Requirement as amended, 415. 052-Granting of License as amended, 415.057-Psychological and Physical Examinations, 415.060-Revocation; Probation; Suspension as amended, 415. 063-Records as amended, and 415.0635-Employment History Records.

§221.1 Responsibilities of Agency Chief Administrators.

(a) An agency chief administrator is responsible for making any reports or submitting any documents required of that agency by the commission.

(b) An agency appointing a person who does not hold a commission license must file an application for the appropriate license with the commission.

(c) An agency shall notify the commission of appointment of any licensee to a position requiring a commission license.

(d) An agency shall notify the commission in writing within 30 days when it receives information that a person under appointment with that agency has been arrested, charged, indicted, or convicted for any offense for which confinement may be a punishment .

(e) Except in the case of a commission error, an agency that wishes to report a change to any information within commission files about a license holder shall do so in a signed, written request to the commission, containing:

(1) the license holder's name and social security number;

(2) the requested change; and

(3) the reason for the change.

(f) An agency must notify the commission in writing on a commission form that reports termination when a person under appointment with that agency resigns or is terminated.

(g) The effective date of this section is April 15 1996.

§221.3. Application for License and Initial Report of Appointment.

(a) An agency appointing a person who does not hold a commission license must file an application for the appropriate license with the commission. The application must be approved with a license issuance date before the person is appointed or commissioned. The application must be completed, signed, and filed with the commission by the agency's chief administrator or designee.

(b) An application for a license must be submitted on the application form currently prescribed by the commission, and must have attached to it two commission applicant fingerprint cards.

(c) An agency that files an application for licensing must keep on file and in a format readily accessible to the commission a copy of the documentation necessary to show each officer, jailer, or armed public security officer appointed by that agency met the minimum standards for licensing, including specifically:

(1) a criminal history by name, race, sex and date of birth from both TCIC and NCIC;

(2) two completed applicant fingerprint cards, or, pending receipt of such cards, an original sworn, notarized statement by the applicant

(A) of his or her complete criminal history, or

(B) that he or she has never been arrested, charged, convicted, or placed on probation for a criminal offense. Such affidavit may be maintained by the agency while awaiting the return of completed applicant fingerprint card. The affidavit may be completed only once, and shall be valid for a maximum of 180 days from the date it is signed;

(3) a certified document from the appropriate authority showing final disposition of each arrest, probation, community supervision, conviction, or any other criminal history that may exist;

(4) an original and current declaration signed by a physician that the applicant is both physically sound and shows no trace of drug dependency or illegal drug use;

(5) an original and current declaration signed by an appropriate professional that the applicant is in satisfactory psychological and emotional health to be the type of officer for which the license is sought;

(6) a military discharge or other documentation showing the character of service, if the applicant was ever in the military;

(7) a copy of a valid high school diploma, GED, college transcript, or other documentation necessary to show the applicant meets the education standard for that license; and

(8) any other documentation required by the commission for that license.

(d) An agency must retain records kept under subsection (c) of this section for a minimum of five years after the licensee's termination date with that agency. The records must be maintained in a format readily accessible to the commission.

(e) An agency which submits an application for an individual must report to the commission any failure to appoint that individual in the reported capacity within 30 days of the reported date of appointment. Such report must be made on a currently prescribed commission form that reports termination.

(f) The effective date of this section is April 15, 1996.

§221.5 Reporting the Appointment of a Licensee.

(a) Before hiring or appointing a person who already holds a commission license, an agency shall contact the commission in writing to determine whether the commission has employment history records on that person.

(b) In order to receive information from employment history records regarding the reasons for resignation or termination submitted by a former appointing agency, the inquiring agency must request the information in writing on the agency's letterhead. The request must be signed by the agency chief administrator or designee. The request must be accompanied by a commission form that authorizes release of that information. This form must be signed and sworn to by the person who is the subject of the report.

(c) An agency that appoints a person who already holds a valid, active license appropriate to that position must notify the commission of such appointment not later than 30 days after the date of appointment. This notification must be made on the currently prescribed commission form that reports appointment. This form must be completed, signed and filed with the commission by the agency's chief administrator or designee. If the appointment is made after a 180-day break in appointment, the agency must have the following on file and readily accessible to the commission:

(1) a new criminal history check by name, sex, race and date of birth from both TCIC and NCIC;

(2) a new declaration of psychological and emotional health;

(3) a new declaration of lack of any drug dependency or illegal drug use; and

(4) two completed applicant fingerprint cards or, pending receipt of such cards, an original sworn, notarized statement by the applicant

(A) of his or her complete criminal history, or

(B) that he or she has never been arrested, charged, convicted, or placed on probation for a criminal offense. Such affidavit may be maintained by the agency while awaiting the return of completed applicant fingerprint card. The affidavit may be completed only once, and shall be valid for a maximum of 180 days from the date it is signed;

(d) An agency must retain records kept under subsection (c) of this section for a minimum of five years after the licensee's termination date with that agency. The records must be maintained in a format readily accessible to the commission.

(e) The effective date of this section is April 15, 1996.

§221.7. Reporting the Resignation or Termination of a Licensee.

(a) When a person licensed by the commission resigns from appointment or employment with an agency or if a person's appointment or employment is terminated for any reason, the agency shall submit a report to the commission on the currently prescribed commission form that reports resignation or termination. The report shall be submitted within 30 days following the date of resignation or termination. The report shall include an explanation of the circumstances under which the person resigned or was terminated. The agency shall provide the person who is the subject of the report a copy of the report. The person may submit a written statement to the commission to contest or explain any matters contained in the report.

(b) A report or statement submitted under this section is exempt from disclosure under the Public Information Act, Chapter 552, Government Code and is subject to subpoena only in a judicial proceeding.

(c) The effective date of this section is April 15, 1996.

§221.9. Reporting Continuing Education.

(a) Each agency, academy, or training provider shall provide documentation of a licensee's completion of continuing education training on the report of training form currently prescribed by the commission. The report of training shall be submitted to the commission within 30 days following completion of the training. Upon receipt of a properly completed report of training, the commission will make the appropriate entry into the training records of the licensee.

(b) The commission shall provide notice to agencies and officers of impending non-compliance with continuing education requirements. Such notice will be provided not later than six months prior to the expiration of the 24 month period for completing continuing education requirements.

(c) The commission shall notify agencies when a peace officer reported as appointed or employed by that agency is in non-compliance with continuing education requirements.

(d) The chief administrator of an agency that has peace officers appointed or employed who are in non-compliance shall, within 30 days of receipt of notice of non-compliance, submit a report to the commission explaining the reasons for such non-compliance.

(e) The effective date of this section is April 15, 1996.

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 December 18, 1995.

TRD-9516479 Edward T. Laine
Chief, Professional Standards and Administrative Operations
Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: January 26, 1996

For further information, please call: (512) 450-0188

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• 37 TAC §221.100

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Law Enforcement Officer Standards and Education or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Law Enforcement Officer Standards and Education (commission) proposes the repeal of §221.100, concerning in-service training requirements for agencies that appoint certain officers. The provisions of this section will be incorporated into new §217.9, which will also provide for administration of new legislative requirements in this area.

D. C. Jim Dozier, Executive Director of the commission, has determined that for the first five-year period the this repeal is in effect there will be no new fiscal implications for state or local government as a result.

Mr. Dozier also has determined that for each year of the first five years this repeal is in effect the public benefit anticipated as a result will be more complete compliance with the continuing education requirements for peace officers imposed by statute. There will be no effect on small businesses, and no anticipated increase in economic cost to persons who are required to comply with this section.

Written comments should be submitted to D. C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 1033 La Posada, Suite 240, Austin, Texas 78752 or by facsimile (FAX) to (512) 406-3666.

The repeal is proposed under Government Code, Chapter 415, §415.010, which authorizes the commission to promulgate rules for the administration of Chapter 415; and under Government Code, Chapters 2001 and 2002, which establish the rulemaking requirements for the commission.

The following statutes are affected by this proposed repeal: Government Code, Chapter 415, §415.010-General Powers.

§222.100. In-service Training Requirements for Agency That Appoint Peace Officers.

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

Issued in Austin, Texas, on December 18, 1995.

TRD-9516482 D. C. Jim Dozier
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: January 26, 1996

For further information, please call: (512) 450-0188

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part IV. Texas Commission for the Blind

Chapter 159. Administrative Rules and Procedures

Procedures of the Commission

• 40 TAC §159.6

The Texas Commission for the Blind proposes an amendment to §159.6, concerning meetings of the board. The purpose of the amendment is to expand the minimum number of times the board meets in a calendar year from one to four.

The amendment will serve as notice to the public that the board will meet at least quarterly unless otherwise agreed to by two-thirds of the board.

Jim Fowler, deputy director, Administration and Finance, 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.

Pat D. Westbrook, executive director, 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 and regular opportunities for the public to attend and observe the business of the commission. 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.

Questions about the content of this proposal may be directed to Jean Wakefield at (512) 459-2611, and written comments on the proposal may be submitted to Policy and Rules Coordinator, P.O. Box 12866, Austin, Texas 78711, within 30 days from the date of this publication.

The amendment is proposed under the Human Resources Code, Title 5, Chapter 91, which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

The amendment affects Human Resources Code, Title 5, Chapter 91, §91.018, concerning Relations with Public.

§159.6. Meetings. Meetings are called by the chairman, as frequently as circumstances might require, but not less than once each calendar quarter, unless otherwise agreed to by an affirmative vote of 2/3 of the Board [per year].

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 December 14, 1995.

TRD-9516527 Pat D. Westbrook
Executive Director
Texas Commission for the Blind

Earliest possible date of adoption: January 26, 1996

For further information, please call: (512) 459-2611

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Chapter 163. Vocational Rehabilitation Program

Subchapter A. General Information

• 40 TAC §163.5

The Texas Commission for the Blind proposes new §163.5, concerning the commission's Vocational Rehabilitation Program. The new section explains that determinations made by rehabilitation counselors concerning eligibility for services, denial of services, or termination of services may be appealed by consumers.

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

Mr. Westbrook also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a rule base that conforms to federal requirements to assure full benefits to the state and persons receiving services under the program. 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.

Questions about the content of this proposal may be directed to Jean Wakefield at (512) 459-2611 and written comments on the proposal may be submitted to Policy and Rules

Coordinator, P.O. Box 12866, Austin, Texas 78711, within 30 days from the date of this publication.

The new section is proposed under the Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs, and 29 United States Code, §§701 et seq, Title I of the Rehabilitation Act of 1993, as amended, which requires the commission to offer to applicants and consumers the opportunity to appeal determinations.

The new section affects Human Resources Code, Title 5, Chapter 91, Subchapter D, §91.021, concerning Responsibility for Visually Handicapped Persons, §91.023, concerning Rehabilitation Services, §91.052, concerning the Vocational Rehabilitation Program for the Blind, §91.053, concerning Cooperation With Federal Government, and §91.055, concerning Eligibility for Vocational Rehabilitation Services.

§163.5. Appeals of Determinations. The agency's appeal process shall be available to applicants and consumers who wish to contest a determination made by a rehabilitation counselor concerning eligibility for services, the denial of services, and the termination of services.

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 December 14, 1995.

TRD-9516512 Pat D. Westbrook
Executive Director
Texas Commission for the Blind

Earliest possible date of adoption: January 26, 1996

For further information, please call: (512) 459-2611

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Subchapter C. Vocational Rehabilitation Services

• 40 TAC §§163.25, 163.28, 163.32

The Texas Commission for the Blind proposes amendments to §§163.25, 163. 28, and 163.32, concerning services available through the commission's Vocational Rehabilitation Program. The purposes of the amendments are to clarify the agency's use of comparable services and benefits, to remove a reference to the Texas Education Agency that is no longer valid, to clarify the agency's use of uncertified interpreters, and to respond to consumer requests that the agency remove certain probationary rules and apply individual university standards in providing academic services.

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

Mr. Westbrook 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 a rule base that conforms to federal requirements to assure full benefits to the state and persons receiving services under the program. 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.

Questions about the content of this proposal may be directed to Jean Wakefield at (512) 459-2611 and written comments on the proposal may be submitted to Policy and Rules Coordinator, P.O. Box 12866, Austin, Texas 78711, within 30 days from the date of this publication.

The amendments are proposed under the Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

The amendments affect Human Resources Code, Title 5, Chapter 91, Subchapter D, §91.021, concerning Responsibility for Visually Handicapped Persons, §91.023, concerning Rehabilitation Services, §91.052, concerning the Vocational Rehabilitation Program for the Blind, §91.053, concerning Cooperation With Federal Government, and §91.055, concerning Eligibility for Vocational Rehabilitation Services.

§163.25. Goods and Services.

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

(e) The agency uses, to the maximum extent possible and allowed, comparable services and benefits **from other sources for all services to be provided under this chapter.**

§163.28. Vocational and Other Training Services.

(a) (No change.)

(b) Business school training **shall** be [is] provided only by public or private businesses or technical or vocational schools that are state-certified [by the Texas Education Agency].

(c) Academic training in institutions of higher education **shall** be [is] subject to the following:

(1) No academic training **shall** be [is] paid from vocational rehabilitation funds unless maximum efforts have been made by the consumer to secure grant assistance in whole or in part from other sources to pay for such training.

(2) The consumer **must** [shall] contact the college or university to determine what grants, loans, or scholarships may be available; **must** [shall] apply for SSI or SSDI; and **must** [shall] complete any necessary paperwork required to apply for such grants, loans, or scholarships.

(3) The PELL grant, like any other comparable services and benefits, **shall be** [is] applied to the educational process prior to the expenditure of commission funds **for services under this section.** Services **shall not be** [are not] denied pending receipt of a PELL grant, but **shall be** [are] contingent upon the consumer's making application if eligible.

(4) Academic training **shall be** [is] provided through public tax-supported colleges and universities unless a specific curriculum is not available at a public institution.

(5) Consumers who are blind and who do not meet the residency requirements of a particular institution and are not eligible for tuition exemption under the Education Code, §54.205, **may** receive tuition assistance from the commission regardless of economic need of the consumer; however, such payments **shall** [may] not exceed the tuition paid for a student who does meet the residency requirements.

(6)-(7) (No change.)

(8) Academic training **shall be** [is] limited to a course of study related to the consumer's vocational objective and to the attainment of a college degree required for entry-level employment in that chosen field. Academic training beyond the first bachelor's degree may be provided only if it is necessary for entry-level employment after taking into consideration the consumer's disability and needs, the labor market, and job requirements.

(9) Academic training **shall** [does] not include continuing education required for maintaining certification in a field in which an individual is already gainfully employed.

(10) If a consumer is blind and is [not] attending a **non-tax-supported** college or university, tuition and fees may be paid by the commission regardless of economic need of the consumer. However, the commission **shall** [does] not pay tuition and fees in excess of the college or university's published rate for training. If the college or university does not have a published rate, tuition and fees **shall be** [are] paid at rates in accordance with a written agreement between the college or university and the commission.

(11) (No change.)

(12) Once admitted to academic training:

(A) A consumer must maintain and complete a full-time course load as

defined by the college or university[, which is defined as a minimum of 12 semester hours for undergraduate school or nine semester hours for graduate school unless the person is completing a thesis or dissertation]. This requirement may be waived if:

(i) **the person is a graduating senior** [extenuating circumstances prevent the consumer from participating in a full-time course load];

(ii) the person is an incoming freshman (first two semesters or quarters);

(iii) the person is a returning adult (first academic year only); [or]

(iv) the person is in summer school[.]; **or**

(v) **other extenuating circumstances prevent the consumer from participating in a fullltime course load.**

(B) [A consumer must maintain a "C" average for the semester. If a consumer fails to meet this requirement the consumer is placed on probation for one semester.

[(13) Probation consists of written warning to the consumer and observation of the consumer's academic performance. Probationary terms are addressed on the IWRP.

[(14) Academic services may be discontinued at the end of a probationary semester if the consumer fails to achieve a minimum of a "C" average for the probationary period.

[(15) A probationary period may be extended one semester before suspending academic services if there are extenuating circumstances that may have hindered the consumer.

[(16) If a consumer returns to school after an unsuccessful probationary semester, the consumer shall be responsible for his or her own costs until the consumer meets the academic level of a "C" average for one semester. Once the consumer successfully achieves a "C" average for one semester, services may be restored.

[(17) A consumer is allowed a maximum of ten course withdrawals per degree. This requirement may be waived only for medical reasons or unusual circumstances affecting the consumer or the consumer's family. Beyond ten withdrawals, to continue academic services a consumer must furnish the counselor with written evidence of completion of incomplete course work no later than 12 months following receipt of the grade slip showing the incomplete.

[(18) Any withdrawal or incomplete which drops a consumer below the full-time requirements in paragraph (12) of this subparagraph results in withdrawal of commission support in the next semester.

[(19)] The consumer shall meet with the counselor at least once each semester, shall submit add or drop slips as changes occur, and shall provide grade slips or transcripts to the counselor at the end of each semester.

§163.32. Interpreter Services and Notetaking Services for Individuals Who are Deaf and Tactile Interpreting for Individuals Who are Deaf-Blind. If available, only interpreters certified by the Registry of Interpreters are used[; if none are available, the commission uses care to assure quality of services]. **If a certified interpreter is not available, the commission shall use care to select the best available uncertified interpreter to assure quality of services.**

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 December 14, 1995.

TRD-9516513 Pat D. Westbrook
Executive Director
Texas Commission for the Blind

Earliest possible date of adoption: January 26, 1996

For further information, please call: (512) 459-2611

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Subchapter E. Consumer Participation in Cost of Services

• 40 TAC §163.62, §163.63

The Texas Commission for the Blind proposes amendments to §163.62 and §163.63, concerning consumer participation in the cost of vocational rehabilitation services. The purpose of the amendments are to clarify the definitions of dependent and minor for the purposes of determining family income and to remove the waiver authority retained by the executive director under the subchapter to ensure statewide equitable treatment.

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

Mr. Westbrook 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 a rule base that conforms to federal requirements to assure full benefits to the state and persons receiving services under the program. 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.

Questions about the content of this proposal may be directed to Jean Wakefield at (512) 459-2611 and written comments on the proposal may be submitted to Policy and Rules Coordinator, P.O. Box 12866, Austin, Texas 78711, within 30 days from the date of this publication.

The amendments are proposed under the Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

The amendments affect Human Resources Code, Title 5, Chapter 91, Subchapter D, §91.021, concerning Responsibility for Visually Handicapped Persons, §91.023, concerning Rehabilitation Services, §91.052, concerning the Vocational Rehabilitation Program for the Blind, and §91.053, concerning Cooperation With Federal Government, and §91.055, concerning Eligibility for Vocational Rehabilitation.

§163.62. Definitions. As used in this subchapter, the following words or terms have the following meanings unless the context clearly indicates otherwise.

Dependent–A person [age 18 or older] carried as a dependent by the parents, foster parents, legal guardian, or conservator for income tax purposes during the current tax year, **including consumers who are minors or dependents, consumers under 18 years of age and married but not living with their spouse and whose major source of income is from parents or legal guardians, and consumers adjudged legally incompetent.**

Minor–A person who is[:] **under 18 years of age who is not and has not been married or who has not had his disabilities of minority removed for general purposes. In the context of child support (child) includes a person over 18 years of age who is fully enrolled in an accredited secondary school in a program leading toward a high school diploma. "Adult" means any other person.**

[(A) adjudged legally incompetent; or

[(B) under the age of 18, unmarried, and normally dependent upon parents, foster parents, or a legal guardian or conservator; or

[(C) under the age of 18 and married, but who is not living with the spouse, and whose major source of income is from parents or legal guardians.]

§163.63. General Procedures.

(a)-(f) (No change.)

[(g) The commission reserves the right through the executive director to waive any requirement under this subchapter.]

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 December 14, 1995.

TRD-9516514 Pat D. Westbrook
Executive Director
Texas Commission for the Blind

Earliest possible date of adoption: January 26, 1996

For further information, please call: (512) 459-2611

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Subchapter F. Maximum Affordable Payment

• 40 TAC §163.75

The Texas Commission for the Blind proposes an amendment to §163.75, concerning the maximum amount the commission pays for a medical or medically related service and interpreter services through the commission's Vocational Rehabilitation Program. The purpose of the amendment is to use different verb forms in the rule to clarify that the payment schedule shall not be so low as to effectively deny a person a necessary service.

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

Mr. Westbrook also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a statewide uniform payment schedule for services covered by the subchapter. 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.

Questions about the content of this proposal may be directed to Jean Wakefield at (512) 459-2611 and written comments on the proposal may be submitted to Policy and Rules Coordinator, P.O. Box 12866, Austin, Texas 78711, within 30 days from the date of this publication.

The amendment is proposed under the Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

The amendment affects Human Resources Code, Title 5, Chapter 91, Subchapter D, §91.023, concerning Rehabilitation Services and §91.052, concerning the Vocational Rehabilitation Program for the Blind.

§163.75. Scope of Subchapter.

(a) The maximum affordable payment is the maximum amount the commission pays for a medical or medically related service and interpreter services. However, the payment:

(1) shall not be [is not] so low as to effectively deny a person a necessary service; and

(2) shall permit[s] exceptions so that individual needs can be addressed.

(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 December 14, 1995.

TRD-9516515 Pat D. Westbrook
Executive Director
Texas Commission for the Blind

Earliest possible date of adoption: January 26, 1996

For further information, please call: (512) 459-2611

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Chapter 174. Endowment Loan Fund

• 40 TAC §§174.2-174.4, 174.6, 174.8-174.12

The Texas Commission for the Blind proposes amendments to §§174.2-174.4, 174.6, and 174.8-174.12, concerning procedures for obtaining a loan from the agency for the purchase of technological aids. The purpose of the amendments is to continue the commission's recodification of its rules. The proposed amended language inserts appropriate verb forms for clarity, corrects cross references to other agency rules that have changed in the recodification process, and corrects terminology no longer used by the commission in the provision of services.

Jim Fowler, deputy director, Administration and Finance, 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.

Pat D. Westbrook, executive director, 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 a clearer rule base that conforms to recommended standards for rulemaking. 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.

Written comments on the proposal may be submitted to Jean Wakefield, Policy and Rules Coordinator, P.O. Box 12866, Austin, Texas, 78711. Comments must be received within 30 days of the publication of this proposal.

The amendments are proposed under the Human Resources Code, Title 5, Chapter 91, §91.0301, which authorizes the commission to establish a program to make loans to finance the purchase of technological aids for persons who are visually handicapped, and which authorizes the commission to promulgate rules to administer the program.

The amendments affect Human Resources Code, Title 5, Chapter 91, §91.023, concerning Rehabilitation Services, §91.052, concerning the Vocational Rehabilitation Program for the Blind.

§174.2. Availability of Funds.

(a) The total amount of funds available for loans shall be [is] limited to the interest accrued in any given year on the corpus of the commission's endowment loan fund, plus unspent interest from previous years.

(b) If requests for loans exceed the amount of available funds in any given year, applications shall [will] be considered on a first-come, first-served basis.

§174.3. Eligibility. To apply for a loan, an applicant must:

(1) be a current consumer [client] of the commission;

(2) be legally or totally blind;

(3) have an income above that allowed [specified] in §163.64 [163.8] of this title (relating to Maximum Allowable Amount [Economic Need]); and

(4) have applied for, and been denied, a loan from at least one commercial financial institution.

§174.4. Restrictions

(a) Loans shall be [are] available only for equipment essential to securing or enhancing employment outside the home.

(b) The amount of an individual loan shall be [is] limited to $10,000 or the cost of the equipment, whichever is the lesser amount.

§174.6. Payments.

(a) If a consumer [client] applies for and receives a loan, he or she shall [will] arrange to make all payments to the commission via an electronic fund transfer, if the service is available to the consumer [client].

(b) If a transfer or a payment is returned for insufficient funds, the individ-

ual **shall** [will] pay an additional $15 charge to the agency.

§174.8. Application.

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

(c) An evaluation **shall** [will] be made of an applicant's financial condition. The applicant's financial condition must be such as to allow him **or her** to make reasonable payments. The income and debts of the applicant's spouse may be considered in the evaluation. In such cases, the promissory note **shall** [will] be executed jointly.

(d) (No change.)

(e) Disapproval of loan requests **shall** [will] be made in writing to the applicant and **shall** [will] specify reasons for denial.

§174.9 Equipment Maintenance

(a) **Consumers** [Clients] who are successful in obtaining a loan **must** [will] maintain the equipment in good working order during the loan term.

(b) **Consumers** [Clients] **must** [will also]:

(1) purchase a maintenance agreement when available;

(2) provide a copy of the maintenance agreement to his or her vocational rehabilitation counselor; and

(3) renew the **maintenance** agreement annually, if appropriate.

§174.10 Insurance.

(a) **Consumers** [Clients] who obtain a loan **shall** [will] secure insurance coverage against fire, casualty, and theft throughout the loan term in an amount equal to or greater than the outstanding principal balance of the loan.

(b) The commission's financial interest in the equipment (amount yet unpaid on note) **shall** [will] be reflected in the policy's mortgage indemnity clause.

(c) **Consumers** [Clients] **shall** [will]:

(1) deliver the **insurance** policy to his or her vocational rehabilitation counselor for safekeeping;

(2) renew coverage annually; and

(3) provide renewal to the counselor at least ten days prior to expiration of the previous policy.

§174.11. Maintenance and Insurance Renewals.

[(a)] If the **consumer's** [client's] case is closed before the loan is repaid, and maintenance and insurance renewals are necessary, it **shall be** [becomes] the responsibility of the **ex-consumer** [client] to provide a copy of the renewals directly to the **commission's central office** [director, Support Services,] at least ten days before expiration of the preceding agreement.

[(b) The counselor should inform the client of this responsibility at case closure and provide accurate mailing information.]

§174.12. Default and Repossession

(a) (No change.)

(b) **A loan shall be** [The client is considered to be] in default if **the consumer** [he or she] fails to purchase a maintenance agreement when available or fails to maintain the equipment in good working order during the term of this note.

(c) **A loan shall be** [The client is considered] in default if **the consumer** [he or she] fails to maintain fire, casualty, and theft insurance on the equipment for the duration of the loan in an amount equal to or greater than the outstanding principal balance of the loan.

(d) (No change.)

(e) If the loan is not paid at maturity and is placed with an attorney for collection or if suit is instituted to enforce payment of this note, the **consumer must** [client agrees to] pay all costs of such action or proceedings and an attorney's fee equal to 10% of the amount of the principal remaining unpaid at the time such action is instituted by the commission.

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 December 19, 1995.

TRD-9516577 Pat D. Westbrook
Executive Director
Texas Commission for the Blind

Earliest possible date of adoption: January 26, 1996

For further information, please call: (512) 459-2611

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Part X. Texas Employment Commission

Chapter 301. Unemployment Insurance

• 40 TAC §301.20

The Texas Employment Commission proposes an amendment to §301.20, concerning claims for unemployment insurance benefits. The amendments will interpret current law which allows individuals who are deemed eligible to receive unemployment insurance to be offered the option to have Federal income tax withheld from unemployment insurance benefits they may receive. Unemployment insurance benefits have been subject to Federal income tax regulations since 1986. In 1994, the United States Congress passed legislation which requires that all states offer unemployed individuals an option to have Federal income tax withheld from any unemployment insurance benefits they may receive beginning January 1, 1997. The amendment specifies the procedures the commission will follow to inform unemployed individuals of this option and to process such requests.

Mike Sheridan, Division Director for Unemployment Insurance Benefits for the Texas Employment Commission, 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. Sheridan 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 unemployed individuals who receive unemployment insurance may choose to have all applicable Federal income tax withheld from these benefits and not find themselves with an unplanned Federal income tax liability when they file their Federal income tax return. There will be no effect on small businesses.

Comments on the proposal may be submitted to Carolyn Calhoon, Office of the Deputy Administrator for Legal Affairs, Texas Workforce Commission Building, 101 East 15th Street, Room 660, Austin, Texas 78778, (512) 463-2291.

The amendment is proposed under Texas Labor Code, Title 4, Subtitle B, which provides the Texas Employment Commission with the authority to adopt rules as necessary for the administration of the Labor Code, Title 4.

The proposed amendment affects P.L. 103-465 and the Texas Labor Code, Chapter 207, Subchapter F.

§301.20 Claim for Benefits. An unemployed individual who has no current benefit year and who wishes to claim benefits shall report to an office of the Texas Employment Commission, or to a representative of the commission at an itinerant service point or such other place or in such other manner, including telephonic or electronic means, as the commission may approve, register for work, and file a claim for benefits.

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

(9) Withholding From Benefits for Federal Income Tax.

(A) An individual filing a new claim for unemployment compensa-

tion shall, at the time of filing such claim, be advised that:

(i) Unemployment compensation is subject to federal, state and local income tax;

(ii) Requirements exist pertaining to estimated tax payments;

(iii) The individual may elect to have Federal income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in the Federal Internal Revenue Code;

(iv) The individual shall be permitted to change a previously elected withholding status.

(B) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the Federal taxing authority as a payment of income tax.

(C) The commission shall follow all procedures specified by the United States Department of Labor and the Federal Internal Revenue Service pertaining to the deducting and withholding of income tax.

(D) Amounts shall be deducted and withheld under this section only after amounts are deducted and withheld under any other provisions of the Texas Unemployment Compensation Act.

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

Issued in Austin, Texas, on December 19, 1995.

TRD-9516508 C. Ed Davis
Deputy Administrator for Legal Affairs
Texas Employment Commission

Earliest possible date of adoption: January 26, 1996

For further information, please call: (512) 463-2291

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TITLE 43. TRANSPORTATION

Part III. Automobile Theft Prevention Authority

Chapter 57. Automobile Theft Prevention Authority

• 43 TAC §§57.48-57.51

The Automobile Theft Prevention Authority proposes new §§57.48-57.51, concerning the administration of insurance company refunds. The new rules are necessary to establish guidelines for determining insurance company calculations for motor vehicles according to Texas Civil Statutes, Article 4413(37), §10.

The proposed rules establish fee calculation by insurance companies, the employment of auditors by Automobile Theft Prevention Authority to determine compliance by insurance companies with Texas Civil Statutes, Article 4413(37), §10, provision of reports to the Department of Insurance reflecting that an insurer neglected to pay or intentionally underpaid the fee required by Texas Civil Statutes, Article 4413(37), §10, and guidelines for refunds to insurance companies for overpayment.

Linda Young, 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. Young also has determined that for each year of the first five years the sections as proposed are in effect the public will not be impacted as a result of enforcing or administering the sections. The effect on small business is the mechanism the sections give to refund insurance companies in the event of overpayment to the Automobile Theft Prevention Authority. There will be no economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted in writing to Linda Young, Executive Director, Automobile Theft Prevention Authority, One Commodore Plaza, 800 Brazos Street, Suite 620, Austin, Texas 78701, for a period of 30 days following publication in this issue of the *Texas Register*.

The new sections are proposed under Texas Civil Statutes, Article 4413(37), §10, which require each motor vehicle insurer to pay the annual assessment and §6(a) which authorize the Automobile Theft Prevention Authority to adopt rules to implement its powers and duties.

Texas Civil Statutes, Article 4413(37) is affected by these proposed rules.

§57.48. Motor Vehicle Years of Insurance Calculations. Each insurer, in calculating the fees established by Texas Civil Statutes, Article 4413(37), §10, shall follow the following guidelines:

(1) A single statutory fee is payable on each motor vehicle for which the insurer provides insurance coverage during the calendar year regardless of the number of policy renewals; and

(2) When more than one insurer provides coverage for a motor vehicle during the calendar year, each insurer shall pay the statutory fee for that vehicle.

§57.49. Audit.

(a) The authority may employ or retain the services of auditors for the purpose of assisting the authority to determine an insurer's compliance with the requirements of Texas Civil Statutes, Article 4413(37), §10.

(b) All insurers subject to Texas Civil Statutes, Article 4413(37), §10 shall make their books and records reflecting motor vehicle years of insurance available to the auditors upon request during normal business hours.

(c) The authority may assess to insurance companies charges for audit in cases where the companies' assertion of Refund Due was determined to be unfounded.

§57.50. Report to Department of Insurance. If the authority determines that an insurer failed to pay or intentionally underpaid the fee required by Texas Civil Statutes, Article 4413(37), §10, the authority shall notify the Department of Insurance with the request that the Department revoke the insurer's certificate of authority.

§57.51. Refund Determinations.

(a) An insurer claiming an overpayment of the annual fees due under Texas Civil Statutes, Article 4413(37), §10 must file a written claim for refund within six months of the date the fees were due to be paid to the authority. The claim shall be filed with the executive director and shall contain the factual and legal basis for the claim, the amount of the refund claimed, and all reasons for the overpayment.

(b) The executive director or the director's designee shall review the claim and obtain from the insurer any additional information, if any, that may be necessary or helpful to assist in the authority's determination. If an insurer refuses to provide the requested information, the refund may be denied in whole or in part.

(c) The director is authorized to employ or retain the services of financial advisors to assist in the determination. The director shall prepare a written report to the authority's board based on the director's or the designee's review containing the director's findings, conclusions, and the director's recommendation.

(d) The authority shall base its determination on the documentary evidence considered by the director or the director's designee. The insurance company representatives shall not participate in the determination. The authority's decision shall be based on a majority vote of the five remaining members. The authority's decision is final.

(e) Upon determining that an insurer is entitled to a refund, the authority shall notify the comptroller and request the comptroller to draw warrants on the automobile theft prevention fund for the purpose of refunding monies overpaid.

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 December 13, 1995.

TRD-9516293 Linda Young
Executive Director
Automobile Theft
Prevention

Earliest possible date of adoption: January 26, 1996

For further information, please call: (512) 494-1976

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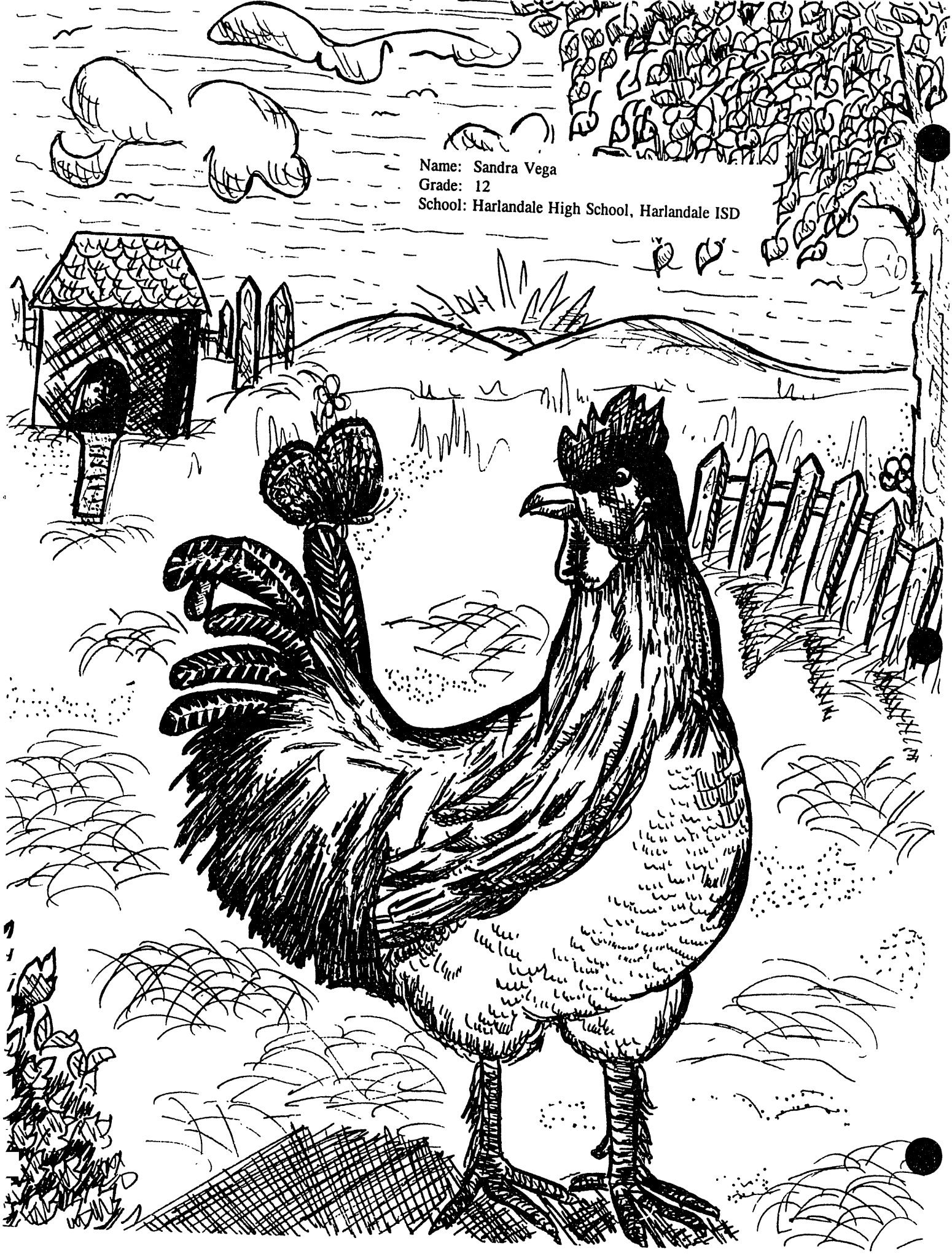

Name: Sandra Vega
Grade: 12
School: Harlandale High School, Harlandale ISD

ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

Part V. General Services Commission

Chapter 125. Travel and Transportation Division

State Vehicle Fleet Management

• **1 TAC §125.45, §125.49**

The General Services Commission adopts an amendment to §125.45 and new §125.49, concerning the State Vehicle Fleet Management Program, without changes to the proposed text as published in the November 17, 1995, issue of the *Texas Register* (20 TexReg 9520).

Amendment to §125.45 is adopted to conform to House Bill 2448, §3, Acts, 74th Legislature (1995) requirements to change reporting sequences to a semiannual basis. New §125.49 identifies the Vehicle Use Report as the only official record of vehicle usage.

Amendment to §125.45 will facilitate more accurate fleet analysis and new §125.49 clarifies the development and use of the Vehicle Use Report.

No comments were received regarding adoption of the amendment and new section.

The amendment and new section are adopted under the Government Code, Title 10, Subtitle D, §2171.101, which provides the General Services Commission with authority to promulgate rules consistent with the Code.

This agency 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 December 19, 1995

TRD-9516551 David Ross Brown
Assistant General Counsel
General Services Commission

Effective date: January 9, 1996

Proposal publication date: November 17, 1995

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

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

• **16 TAC §3.83**

The Railroad Commission of Texas adopts an amendment to §3.83, concerning a tax exemption for three-year inactive wells, with changes to the proposed text as published in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9238). The section specifies which wells qualify as three-year inactive wells for the purpose of the ten-year severance tax exemption provided for in House Bill 1975, 73rd Legislature, 1993. Adoption of the proposed amendments will increase oil and gas production in Texas by providing an incentive to operators to produce wells which have been inactive for three years or more. There is no statutory requirement that a well show productive capacity before it may be certified. The amended rule, which removes the requirement that a well show productive capacity before certification, will allow a greater number of qualified wells to take advantage of the severance tax exemption.

One commenter suggested that the rule should clarify that all certifications are also designations under the statute. The commission declines to make this change. The terms "certify" and "designate" are used interchangeably throughout the statute. Using one term or the other will cause less confusion. The same commenter suggested that language be added to the effect that "no designation or clarification may be revoked because production is not established on a well by February 29, 1996." The commission declines to make this change. The purpose of amending the current rule is to remove the requirement that inactive wells must establish productive capability on or before February 29, 1996, to receive certification. That requirement has been removed and language to that effect would be superfluous.

The same commenter suggested that "all wells designated as candidates for certification are hereby designated as three-year inactive wells." This language is unnecessary. Since wells no longer need to establish productive capability before certification, there is no reason not to certify wells already identified as three-year inactive wells, and the commission will certify these wells on or before February 29, 1996. The same commenter suggested that certifications "shall be effective on the earlier of (i) February 29, 1996, or, (ii) the date of first production after such three-year inactive well is restored to production." This language is not necessary, because the commission's practice has been to certify any well establishing production as of the date of first production.

The same commenter suggested that the commission designate as three-year inactive wells all qualifying, undesignated wells, including all non-producing plugged or temporarily abandoned wellbores in Texas. The commission declines to make a blanket designation of all such unknown wells. The commission will endeavor to identify as many three-year inactive wells as possible on or before February 26, 1996. The commission declines to find that certifying such unknown wells "would make the longstanding problems of unplugged wells disappear" and does not wish to encourage operators to abandon wells without plugging them.

Another commenter suggested that "the rule include an opportunity for hearing when there is a denial of an application for certification." Under the statute no applications for certification can be filed after August 31, 1995. Applications received before that date for wells that have not established productive capability have been held in abeyance pending the adoption of these proposed amendments. All of these wells, more than likely, will be certified on or before February 29, 1996. If the commission did decline to certify a well, the operator would be entitled to notice and opportunity for hearing under the contested case procedures of the Administrative Procedures Act. However, the commission agrees that the rule should contain a provision to inform an operator of his opportunity for a hearing if certification was denied, and such change has been made to the rule.

The following groups or associations commented and supported adoption of the amendments with no, or minor, changes: Texas Independent Producers and Royalty Owners Association, Permian Basin Petroleum Association, and North Texas Oil and

Gas Association. There were no comments opposing the proposed amendments.

The amendment is adopted pursuant to Texas Natural Resources Code, §§81. 052, 85.046, and 85.202, which provides the commission with authority to adopt rules to regulate persons and their operations under the jurisdiction of the commission and to prevent the waste of oil in producing operations, and Texas Tax Code, §202.056, which provides the commission with the authority to certify a well as a three-year inactive well, to revoke the certificate for cause, and to adopt all necessary rules to administer Texas Tax Code §202. 056.

§3.83. Tax Exemption For Three-Year Inactive Wells

(a) (No change.)

(b) Definitions.

(1) Three-year inactive well–A well that has not produced any hydrocarbons in more than one calendar month in the three years prior to the date of certification by the commission under this section. Wells eligible under this section include those that:

(A)-(C) (No change.)

(2) (No change.)

(c) Certification. The commission or its delegate may certify a well as a three-year inactive well. If the commission or its delegate declines to certify a well administratively, the operator affected by this action may request a hearing.

(d) Revocation of Certification. Certification may be revoked by the commission for cause which includes, but is not limited to, receipt of information by the commission that a certified well produced hydrocarbons in more than one calendar month in the three years prior to certification, or if production from other wells is credited to the three-year inactive well, or if a certified well is reported to the commission to be capable of production but is not capable of production. The Comptroller of Public Accounts will be notified of any revocation.

(e) Certified Wells. The commission may not certify a well under this section after February 29, 1996. Prior to applying to the Office of Comptroller for the tax incentives listed in subsection (a) of this section, the operator of a certified well shall file with the commission a test report showing productive capability for the well. Production is presumed to begin on this well test date. The certification remains with the well in the event of a change of operator or ownership.

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 December 20, 1995.

TRD-9516576 Mary Ross McDonald
Acting General Counsel, Office of General Counsel
Railroad Commission of Texas

Effective date: January 10, 1996

Proposal publication date: November 7, 1995

For further information, please call: (512) 463-7008

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Part IV. Texas Department of Licensing and Regulation

Chapter 61. Boxing

Subchapter B. Elimination Tournaments

• 16 TAC §§61.200-61.202, 61.204-61.212

The Texas Department of Licensing and Regulation adopts the repeal of §§61.200-61.202 and §§61.204-61.212, concerning Elimination Tournaments, without changes to the proposed text as published in the November 3, 1995, issue of the *Texas Register* (20 TexReg 9111).

These sections are being repealed to allow for adoption of new sections.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 8501-1, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Texas Boxing Act.

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

Issued in Austin, Texas, on December 19, 1995.

TRD-9516509 Jack W. Garison
Executive Director
Texas Department of Licensing and Regulation

Effective date: January 9, 1996

Proposal publication date: November 3, 1995

For further information, please call: (512) 463-7357

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• 16 TAC §§61.200-61.202, 61.204-61.211

The Texas Department of Licensing and Regulation adopts new §§61.200-61. 202, 61.204-61.211, concerning the regulation of elimination tournaments, without changes to the proposed text as published in the November 3, 1995, issue of the *Texas Register* (20 TexReg 9112)

The new sections regulate elimination tournaments in the State of Texas and correspond with legislative changes.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 8501-1, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Texas Boxing Act.

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

Issued in Austin, Texas, on December 19, 1995.

TRD-9516510 Jack W. Garison
Executive Director
Texas Department of Licensing and Regulation

Effective date: January 9, 1996

Proposal publication date: November 3, 1995

For further information, please call: (512) 463-7357

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• 16 TAC §61.203

The Texas Department of Licensing and Regulation adopts the repeal of §61.203, concerning Elimination Tournaments, without changes to the proposed text as published in the August 11, 1995, issue of the *Texas Register* (20 TexReg 6072).

The section is being repealed because bond requirements are now addressed in Texas Civil Statutes, Article 8501-1 due to recent legislative changes to the statute.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 8501-1, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Texas Boxing Act.

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

Issued in Austin, Texas, on December 19, 1995.

TRD-9516511 Jack W. Garison
Executive Director
Texas Department of Licensing and Regulation

Effective date: January 9, 1996

Proposal publication date: August 11, 1995

For further information, please call (512) 463-7357

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 3. Life, Accident and Health Insurance and Annuities

Subchapter J. Required Reinstatement Relating to Mental Incapacity of the Insured for Individual Life Policies Without Nonforfeiture Benefits

- **28 TAC §§3.901-3.913**

The Commissioner of Insurance of the Texas Department of Insurance adopts new §§3 901-3 913, concerning the required reinstatement relating to mental incapacity for individual life policies without nonforfeiture benefits, with changes to the proposed text as published in the October 24, 1995, issue of the *Texas Register* (20 TexReg 8781)

New Subchapter J is necessary to implement amendments to the Insurance Code, Article 3 44d, passed by the 74th Legislature in 1995 The new subchapter will result in the protection of consumers who suffer from mental incapacity and who would otherwise have made timely payment of premiums on their individual life policies The sections set forth guidelines for the appropriate determination and, under certain circumstances, require insurers to reinstate individual life policies which do not have nonforfeiture benefits within a year of their lapse if such lapse is due to mental incapacity The adoption includes changes to the proposed text for reasons stated in this paragraph Changes were made in §3 904 to the definition of "mental incapacity" to conform to the statute For this same reason, the word "immediately" was deleted from §3 905 Paragraph (4) was added to §3 905 to clarify and enhance readability Subsection (b) of §3.909 was changed to conform to the language of subsection (a), to clarify the section The time frame for compliance with the notification requirements of the adopted sections was changed from January 1, 1996, to February 1, 1996, to ease the burden of compliance for industry. The language of §3 909(c) was changed to conform to the statute. The word "may" was replaced with the word "shall" in §3 911 to conform to the statute, as well as to clarify and enhance readability. The language in §3.911 regarding reduction in benefits has been changed to more clearly track the statute. A reference to "uncontroverted claim" was added to §3.911 to conform to the statute. The words "or methods" were added to §3 912(b) to clarify the options available to insurers for methods of compliance with the subchapter There are numerous changes and additions made to §3 913 to clarify, enhance readability, or conform to changes made elsewhere in the sections

The new subchapter provides guidelines for the appropriate determination of mental incapacity and, under certain circumstances, requires insurers to reinstate individual life policies which do not have nonforfeiture benefits within a year of their lapse if such lapse is due to mental incapacity. The adopted sections address the reinstatement requirements for individual life policies that lapse due to the mental incapacity of the insured under certain conditions and describe the policies to which they apply, which are, specifically, all individual life policies issued in Texas which do not provide nonforfeiture benefits. Definitions are provided of words and terms used in the adopted sections, including the terms "insured," "owner," "policyholder," and "mental incapacity." Requirements are set forth which must be met for a policy to be eligible for reinstatement under the sections. A provision is made that an insurer may require, as a condition of reinstatement, payment of past due premiums plus interest. The new sections also provide that a reinstated policy continues in force as though it has not lapsed. The exception to reinstatement is set forth where the insured first became mentally incapacitated after lapse of the policy. The specific requirements of how, when, and to whom the required notification and disclosure requirements must be sent are enumerated. The procedure for request of reinstatement of an eligible policy is set forth, and the new sections allow the insurer to reduce the death benefit under a reinstated policy by the amount of premiums due and unpaid on the date of death, plus interest on such premiums. The sections set forth procedures for certification to the Texas Department of Insurance of notification by insurers to applicable policyholders, and promulgate the form for the required notice and disclosure under the sections

Several commenters express the opinion that the proposed rule is well balanced and is a commendable effort to establish a workable solution to the mandated additions. Several commenters recommend adoption of the proposal with some suggested changes, primarily in order to more closely track the statute Numerous commenters complimented the agency on the open and inclusive process used in developing the proposed sections, and believe the process has resulted in a significant increase in the practicality of the proposed regulation. Several commenters understand the complicated nature of implementation of the statute. These commenters applaud staff's efforts and appreciate inclusion of insurance industry in discussions regarding the most precise and accurate ways to implement the statute

Agency Response: The agency appreciates the assistance and comments provided by interested parties during the rule development process The agency intends to maintain an open process, and invite participation from interested persons.

One commenter suggested that the rule is in violation of the United States Constitution, in that it amends existing contracts.

Agency Response: The agency disagrees. It is the agency's position that the sections are constitutional and authority exists for the agency to adopt the subchapter.

Section 3.904: Several commenters suggest changing the language in the definitions of "insured," "owner," and "policyholder" to reflect what they believe is the underlying premise that the insured, owner, and policyholder are one and the same. Some commenters suggest the inclusion of only one of these definitions in the rule. One commenter suggests changing the definition of "owner." One commenter suggests amendment of the definition of "insured." Other commenters suggest the same changes in the contexts of §3.909 and §3. 910.

Agency Response: The terms "owner" and "policyholder" are used interchangeably in the statute, and are defined separately in the section for clarification of the different uses of the terms within the statute. The term "insured" is defined in the section because it is necessary to indicate that there is a distinction between the insured and the owner, in that the owner has certain statutory rights independent of this section and the underlying statute. The definition of "insured" has been amended to include the language "as set forth in the policy" to clarify the usage of the term "insured" and "owner." The agency does not agree that other suggested amendments of the definitions are necessary, in that they neither accomplish substantive changes nor enhance readability of the sections.

One commenter suggests changing the definition of "mental incapacity" by adding the words "nature and" so that the definition would read "Lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a decision regarding failure to pay a premium when due and the ability to reach an informed decision in the matter."

Agency Response: Although there is no substantive change, the agency agrees with the suggested change.

Section 3.905: One commenter suggests deleting the word "immediately" in order to conform with Texas Insurance Code Annotated, Article 3.44d. Another commenter suggests replacing the word "immediately" with the word "forthwith."

Agency Response: Although the agency agrees with deleting the word "immediately" in order to conform with the statute, this deletion has no substantive effect, in that once past due premiums are paid, an eligible policy must be reinstated immediately.

One commenter notes that the language of the proposed regulation does not allow for any type of investigation into the validity of the diagnosis of "proof of mental incapacity." This commenter feels that basic fairness and due process of law should allow an insurer the opportunity to investigate the validity of a tendered diagnosis, and that the regulation should be changed to provide for good faith investigation.

Agency Response: The agency disagrees. The section is consistent with the underlying statute, which provides for reinstatement upon satisfaction of eligibility criteria. Specifically, (1) mental incapacity (2) established by a physician qualified to make the diagnosis.

Some commenters suggest that the requirement for proof and request for reinstatement to be submitted within a year from the date of lapse should be added as a fourth enumerated requirement

Agency Response: The agency agrees and has made the change since it enhances readability.

Some commenters feel that the language of §3.905(2) is inconsistent with the statute where it reads: "It has been without default in the payment of premiums during such period."

Agency Response: The agency disagrees. The language in the section is consistent with the statute, and it enhances readability and clarifies the meaning of "default" as used in the context of the subchapter.

Section 3.905 and §3.906: One commenter feels that the language of §3. 905 and §3.906 is inconsistent with the statute.

Agency Response: The agency disagrees. The language tracks the statute exactly.

Section 3 907: One commenter suggests adding an exemption of guaranteed issue products from this section on the basis that these products require reinstatement regardless of mental capacity.

Agency Response: The agency disagrees. The agency acknowledges that such an exemption might be justified in some instances; however, the statute does not provide for any specific exemption to disclosure. In addition, there is the possibility that such an exemption could narrow the application of the statute (i.e., upon death there is no reinstatement requirement for a guaranteed issue product as is provided for in the subchapter).

One commenter seeks to narrow the application of the proposed regulation by suggesting limiting the required notice to policyowners whose policy is eligible under the statute (i.e., already in effect for five years, no default, etc.).

Agency Response: The agency disagrees. It is felt that the commenter confuses eligible applicants with applicable applicants. The two are very distinct. The statute requires notice to ALL new policyholders regardless of their current ELIGIBILITY. It logically follows that the same is contemplated of previously existing policyholders.

One commenter suggests that "an eligible policy" should be changed to read "a policy to which this subchapter applies."

Agency Response: The agency disagrees. The suggestion does not result in a substantive difference or enhancement of readability of the section.

One commenter believes that subsection (b) contains an incorrect statement relating to "...disclosure of the reinstatement required by this subchapter ... ". This commenter recommends using language contained in §3.909(a) which makes it clear that the content of the disclosure relates to the "... conditions set forth in this subchapter under which the policy may qualify for reinstatement due to the mental incapacity of the insured." Reinstatement is not "required" until such conditions are met.

Agency Response: The agency agrees that this clarifies and enhances readability and the suggested change has been made.

One commenter suggests revising the September 1, 1995 date, since this date has passed.

Agency Response: In order to comply with the statute, notice must be complied with for all policies issued on or after September 1, 1995. However, pursuant to the authority given to the commissioner in the statute to adopt reasonable rules to implement this article, and to prescribe the form and manner in which the required disclosure must be made, the agency has extended the time frame for such compliance to February 1, 1996.

One commenter suggests that the language of §3 909(a) limits the statute and feels that other means of service should be available to insurers, and that the methods of compliance enumerated in the proposed regulation merely identify the methods which will be deemed to be in compliance, rather than restricting the alternative methods. This commenter recommends including the language "will be deemed to be in compliance."

Agency Response: The agency agrees and the change has been made.

Section 3.911: One commenter suggests that there is a discrepancy in the language used in §3.905 and §3.911. Section 3.905 states that a "policy ... shall be reinstated ... on payment of past due premiums if it meets the requirements... " Section 3.911 states "the insurer shall pay ... if the requirements for submitting proof of mental incapacity and request for reinstatement are met."

Agency Response: The agency disagrees. Section 3.905 addresses eligibility under any circumstances, whether or not death has occurred. Section 3.911 addresses payment only after death.

One commenter suggests changing the language to track the statute regarding reduction in benefits.

Agency Response: The agency agrees and the suggested change has been made.

A comment was received that this section should track the statute and include a reference to "uncontroverted claim."

Agency Response: The agency agrees and has made the change.

Section 3.912: One commenter believes that the notification and certification requirements set forth in the proposed sections will be burdensome and are unnecessary to assure compliance with the law. In addition, this commenter feels that this section appears to imply that insurers must elect only one method of notification rather than using a combination of methods. This commenter requests that TDI reconsider requiring any certification and, at a minimum, revising language to allow insurers to certify as to the "method or methods" of notification. Another commenter believes that TDI may be overstepping its statutory authority in requiring "certification."

Agency Response: The agency disagrees. Notification requirements are required by the statute. The agency does not believe that the certification requirements are burdensome or unnecessary. The department has the authority to require certification. However, the agency has changed the section to allow insurers to certify as to the "method or methods" of notification to clarify that insurers may elect more than one method of notification.

One commenter feels that a retroactive requirement is not appropriate, and maintains that companies have been filing such forms without such notification because no current rules require the notification.

Agency Response: The agency disagrees and maintains that the section is consistent with the statute. The statute requires compliance for all applicable policies on or after September 1, 1995. However, the period for compliance has been extended until February 1, 1996.

Section 3.913: One commenter recommended the following wording under "eligibility": "The insured is mentally incapacitated prior to the lapse date, and premium payments have stopped due to mental incapacity." The same commenter suggested changing the wording under "reinstatement" as follows: "After reinstatement, your policy will continue in force as though it had not lapsed, subject to all policy provisions."

Agency Response: The agency disagrees. The suggested changes do not achieve any substantive changes, nor do they enhance readability.

Many commenters suggest various changes to the promulgated disclosure form. One commenter suggests that the notice is too wordy. A commenter objected to the statement at the top of the form reading: "Attach This Notice to Your Policy", in that the commenter believes that the statement indicates that the contract is amended. The commenter suggests replacing the statement with: "Keep This Notice with your Insurance Papers." Another commenter felt that the promulgated notice incorrectly summarizes the statute. One commenter suggests that the language in the promulgated form relating to qualifications of the physician making the diagnosis of mental incapacity should match the language in §3.904, and suggested substituting "a clinical diagnosis by a physician licensed in this state and qualified to make the diagnosis" for "a clinical diagnosis by a qualified physician licensed in this state." This commenter expressed concern that not making this change would lead to unnecessary conflict over the term "qualified physician." Several commenters recommended modifications to the language of the promulgated disclosure form. Comments included recommendations of changes for stylistic purposes and/or enhanced readability. One commenter suggests changing the reference to "this state" in the first sentence of the "Proof and Request" section to "Texas."

Agency Response: The agency agrees in part and has made changes to provide additional clarification. The statement at the top of the first page of the Notice was changed to "Keep This Notice With your Insurance Papers." However, it is important to note that should the carrier choose to comply with the provi-

sions of this subchapter via an endorsement, appropriate contractual language amending the policy would need to appear in such endorsement.

One commenter indicates that the promulgated notice might not be appropriate for all methods of compliance, and urges promulgation of additional language for purposes of clarification.

Agency Response: The agency agrees and has made the suggested change.

For, with changes: Guarantee Reserve Life Insurance Company, Insurance Alliance of America, Northwestern Mutual Life, Office of Public Insurance Counsel, Physicians Mutual Insurance Company and Physicians Life Insurance Company, Southwestern Life, State Farm Insurance Companies, Texas Association of Insurance Officials, Texas Legal Reserve Officials Association, Texas Service Life Insurance Company, Transamerica Occidental Life.

Against: Insurance Alliance of America.

The new subchapter is adopted under the authority of the Texas Insurance Code, Articles 3.44d, 3.42(e), and 1.03A. Article 3.44d authorizes certain reinstatement requirements relating to the mental incapacity for individual life policies without nonforfeiture benefits. Article 3.42(e) authorizes the Commissioner of Insurance to adopt reasonable rules and amendments to rules that are necessary to establish guidelines, procedures, methods, standards, and criteria by which the various and different types of forms and documents submitted to the department are to be reviewed and approved by the department as being in compliance with the Texas Insurance Code, and to provide those guidelines, procedures, methods, standards, and criteria by which a summary review and approval may be given to those particular types of forms and documents designated by the department that, in its opinion, will expedite the review and approval process of those forms and documents. Article 1.03A authorizes the Commissioner of Insurance to promulgate and adopt rules and regulations for the conduct and execution of the duties and functions of the department.

§3.901. Purpose and Scope. The purpose of this subchapter is to address the reinstatement requirements for individual life policies that lapse due to the mental incapacity of the insured under certain conditions as prescribed in this subchapter.

§3.902. Applicability. This subchapter applies to all individual life policies which do not provide nonforfeiture benefits issued to Texas residents by insurers licensed in this state, including stipulated premium companies and fraternal benefit societies, which lapse due to the mental incapacity of the insured, and which qualify for reinstatement under the eligibility requirements set forth in §3.905 of this title (relating to Eligibility Requirements).

§3.903. Severability. Where any term or section of this subchapter is determined by a court of competent jurisdiction to be inconsistent with the statutes of this state or to be unconstitutional, the remaining terms and provisions of this subchapter shall remain in effect.

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

Commissioner-The Commissioner of Insurance.

Department-The Texas Department of Insurance.

Insured-The person whose life is insured under the policy. For purposes of this subchapter, the insured is the owner, unless the insured and owner are different parties as set forth in the policy.

Mental Incapacity-Lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a decision regarding failure to pay a premium when due and the ability to reach an informed decision in the matter.

Owner-The person who has all the rights and all the responsibilities of the policy.

Policyholder-The owner of the policy.

Proof of mental incapacity-The clinical diagnosis of a physician licensed in this state and qualified to make the diagnosis.

§3.905. Eligibility requirements. An eligible policy that is subject to this subchapter shall be reinstated, without evidence of insurability, on payment of past due premiums and interest if it meets the requirements set forth in paragraphs (1)-(4) of this subsection:

(1) it has been in force continuously for at least five years immediately prior to the date of lapse;

(2) all premiums have been paid during such period, or within the grace period;

(3) there is a subsequent unintentional default in premium payments caused by the mental incapacity of the insured; and

(4) proof and request for reinstatement are submitted within one year from the date of lapse.

§3.906. Payment of Past Due Premiums. The insurer may require, as a condition of reinstatement, payment of past due premiums, plus interest at a rate not to exceed 6.0% per annum.

§3.907. Coverage Dates Back to Date of Lapse. Upon reinstatement, the policy will continue in force as though it had not lapsed.

§3.908. Exceptions to Reinstatement. An insurer is not required to reinstate coverage or pay benefits under this subchapter if the insured first became mentally incapacitated after the expiration of the grace period contained in the policy.

§3.909. Notification and Disclosure Requirements.

(a) The insurer is required to send notice of the conditions set forth in this subchapter under which the policy may qualify for reinstatement due to the mental incapacity of the insured. The notice must be sent to the owner of any individual life policy which does not provide nonforfeiture benefits if the policy is in force, renewed or issued on or after September 1, 1995. The notice required to be provided by this subsection shall either be:

(1) provided within 90 days following lapse of an eligible policy; or

(2) provided to existing policyholders within 90 days after the effective date of the Insurance Code, Article 3.44d, or if this subchapter is not effective on or before 90 days after the effective date of Article 3.44d, no later than February 1, 1996.

(b) For all policies issued on or after September 1, 1995, disclosure of the conditions set forth in this subchapter under which the policy may qualify for reinstatement due to the mental incapacity of the may be made by incorporating the language of §3.913 of this title (relating to Notice and Disclosure Form), either in the policy or in an endorsement attached to the policy, in lieu of the notice requirements set forth in subsection (a) of this section. If this method is elected by the insurer, for policies issued on or after September 1, 1995 but prior to the effective date of this subchapter, the language of §3.913 of this title (relating to Notice and Disclosure Form) shall be incorporated no later than February 1, 1996.

(c) The notice required to be provided by this subsection will be deemed to be in compliance if mailed by first class mail to the last known address of the policyholder or if contained in the policy or included as an endorsement thereto.

(d) The notice required by this subsection shall be provided in the form set forth in §3.913 of this title (relating to Notice and Disclosure Form).

§3.910. Reinstatement Procedures.

(a) The insurer shall accept a request for reinstatement and proof of mental incapacity that is filed by:

(1) the insured, or the owner, if the insured and owner are not the same party;

(2) the legal guardian of the insured;

(3) other legal representative of the insured; or

(4) the legal representative of the estate of the insured.

(b) Proof of mental incapacity and the request for reinstatement must be submitted within one year after the date of lapse of the policy.

§3.911. Reduced Benefits. The insurer shall pay the death benefit under an eligible policy if the insured dies within one year of the date of lapse and the requirements for submitting proof of mental incapacity and request for reinstatement are met. The insurer shall reduce the death benefit under a policy that is eligible for reinstatement under this subchapter by the amount of premiums due and unpaid on the date of death, plus interest on such premiums at the reinstatement interest rate, if there is an uncontroverted claim for benefits that exceeds the amount of premiums and interest owed.

§3.912. Form Filing Procedures.

(a) For all new forms subject to this subchapter filed on or after September 1, 1995, the insurer must include with the form filing written notification to the department specifying the method of notification as set forth in §3.909 of this title (relating to Notification and Disclosure Requirements) by which the notice requirements of §3.913 of this title (relating to Notice and Disclosure Form) will be met.

(b) For all forms subject to this subchapter approved or filed before September 1, 1995, the insurer must submit to the department a certification, signed by an officer of the company, specifying the method or methods of notification as set forth in §3.909 of this title (relating to Notification and Disclosure Requirements) by which the notice requirements of §3.913 of this title (relating to Notice and Disclosure Form) will be met.

(c) All policies and endorsements are subject to the filing requirements of subchapter A of this chapter (relating to Requirements for Filing of Policy Forms, Riders, Amendments, and Endorsements for Life, Accident, and Health Insurance and Annuities).

§3.913. Notice and Disclosure Form.

(a) If the elected method of compliance is notification to all existing policyholders as described in §3.902(a)(2) of this subchapter (relating to Notification and Disclosure Requirements), the notice required by this subchapter shall be provided in the following manner:
Figure 1: 28 TAC §3.913

(b) If the elected method of compliance is notification within 90 days following the lapse of an eligile policy as described in §3.909(a)(1) of this subchapter (relating to Notification and Disclosure Requirements), the notice required by this subchapter shall be provided in the following manner:
(et)Figure 2: 28 TAC §3.913

(c) If the elected method of compliance is incorporating the language of §3.913 in the policy or in an endorsement, the insurer may incorporate the text of subsection (a) of this section, omitting the titles referencing "Notice" and substituting an appropriate prominent title, such as "Reinstatement Due to the Mental Incapacity of the Insured."

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 December 20, 1995.

TRD-9516573 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Effective date: January 10, 1996

Proposal publication date: October 24, 1995

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

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 7. Prepaid Higher Education Tuition Program

The Comptroller of Public Accounts adopts new §§7.1, 7.2, 7.11-7.18, 7. 21, 7.31-7.33, 7.41-7.43, 7.51, 7.52, 7.61-7.63, 7.71, 7.81-7.83, and 7.91, concerning the Prepaid Higher Education Tuition Program. Sections 7.11, 7.18, 7.21, 7.41, 7.42, 7.43, 7.51, 7.61, and 7.81 are adopted with changes to the proposed text as published in the November 17, 1995, issue of the *Texas Register* (20 TexReg 9546). Sections 7.1, 7.2, 7.12-7.17, 7.31-7.33, 7.52, 7. 62-7.63, 7.71, 7.82-7.83, and 7.91 are adopted without changes and will not be republished.

The new chapter is in response to legislation during the 74th Legislature, 1995, which requires the state to use all of the higher education facilities and resources within the state, both public and private, to provide a wide variety of educational environments and instructional options and to preserve the partnership between the state and private or independent institutions of higher education.

The following is a summary of the changes made to the proposed text.

Proposed §7.11(d), proposed §7.18(a), proposed §7.41(b), and proposed §7.42(a) were changed to reflect a different mailing address for the Prepaid Higher Education Tuition Program.

Proposed §7.21(5) was changed to clarify the manner in which the board will establish contract prices.

Proposed §7.51(b) was changed to clarify that the board will establish the estimated average private tuition and required fees on an annual basis.

Proposed §7.61 was changed to clarify the date on which a beneficiary must satisfy applicable age requirements.

Proposed §7.81(d) was changed to provide purchasers with the ability to designate a person with a right of survivorship with respect to the contract in the event of the purchaser's death, and to provide purchasers with the ability to elect to transfer benefits to an accredited out of state college or university. The subparts following subsection (d) were renumbered to reflect the change.

Proposed §7.81(d)(2) was changed in response to comment to reflect the amount of refund allowed if a beneficiary receives a partial scholarship. The changes provide that the refund amount shall equal the amount of the partial scholarship rather than the amount by which the average amount of tuition and required fees exceeds the scholarship amount.

Proposed §7.81(b), (d)(1)-(5), (d)(6), (7) were changed in response to comment to address the tax consequences of refunds to a person other than the purchaser. The changes provide that refunds shall be made to the purchaser, instead of a person so designated in the contract.

Comments were received from three sources regarding adoption of the new sections.

The proposed rules do not provide for reciprocity with other states that have programs similar to the Prepaid Higher Education Tuition Program. An individual requested that the rules allow for reciprocity. The board disagrees with this request since the Education Code, Chapter 54, Subchapter F does not authorize reciprocity.

Proposed §7.81(d)(2) requires that if a beneficiary receives a partial scholarship, a refund shall equal the amount by which the average amount of tuition and required fees exceeds the scholarship amount. An individual requested clarification regarding a refund in the event of a partial scholarship. The board agrees with this request and has changed §7.81(d)(3), to clarify the refund of scholarship amounts.

Proposed §7.81(b), (d)(1)-(5), (d)(6) and (7) provided that a refund would be made to the person specified by the purchaser in the Pre-

paid Tuition contract. Ernst & Young raised concerns that such an option had potential tax consequences since a person other than the purchaser could receive a refund. The board agrees that the refund should be limited to the purchaser as necessary to avoid potential tax consequences of the refunds as stated in the proposed rules. Section 7.81(b), (d)(1)-(5), (d)(6) and (7) have been changed accordingly.

Subchapter A. General Rules

• 34 TAC §7.1, §7.2

The new sections are adopted under the Education Code, Chapter 54, Subchapter F, §54.618, which authorizes the board to adopt rules necessary for the implementation of Prepaid Higher Education Tuition Program.

The new sections implement the Education Code, Chapter 54, Subchapter F.

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

Issued in Austin, Texas, on December 18, 1995.

TRD-9516493 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Effective date: January 8, 1996

Proposal publication date: November 17, 1995

For further information, please call: (512) 463-4028

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Subchapter B. Board Meeting Guidelines and Requirements

• 34 TAC §§7.11-7.18

The new sections are adopted under Education Code, Chapter 54, Subchapter F, §54.618, which authorizes the board to adopt rules necessary for the implementation of Prepaid Higher Education Tuition Program.

§7.11. Board Officers.

(a) The comptroller is the presiding officer of the board. The comptroller's chief clerk shall serve as presiding officer in the comptroller's absence.

(b) The board shall designate one of its members or board staff to serve as secretary of the board to ensure that appropriate notices are posted, minutes of board meetings are prepared, and to perform other duties delegated to the secretary by the board.

(c) The comptroller is the executive director of the board and shall perform the duties prescribed by law and such other duties as may be prescribed by the board.

(d) Notices, suggestions, correspondence or other documents to be delivered to the board may be delivered to the staff for distribution to the members of the board. Such information should be addressed to the Prepaid Higher Education Tuition Program, Office of the Comptroller of Public Accounts, P.O. Box 13407, Austin, Texas 78711-3407; 111 E. 17th St., Room 131, Austin, Texas 78774-0001. Staff for the program may be reached by calling toll-free at 1-800-445-GRAD (4723).

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

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TRD-9516494 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

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For further information, please call: (512) 463-4028

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Subchapter C. Board Responsibilities

• 34 TAC §7.21

The new section is adopted under Education Code, Chapter 54, Subchapter F, §54.618, which authorizes the board to adopt rules necessary for the implementation of Prepaid Higher Education Tuition Program.

§7.21. General Responsibilities. The board shall retain the following responsibilities, all of which expressly are not delegated to the executive director:

(1) initiation, settlement or defense of litigation and the retention of legal counsel in connection with litigation; provided that limited authority with respect to litigation is delegated to the executive director as set forth in §7.33(2) of this title (relating to Delegated Responsibilities);

(2) adoption of rules relating to the program;

(3) development of investment guidelines;

(4) limitation of enrollments in the program;

(5) approval of contract prices;

(6) negotiation and execution of purchase, contracts, leases, lease purchases, licenses and agreements involving payments of more than $10,000; and

(7) all policy making responsibilities of general applicability, provided that the board may delegate policy making responsibility to the executive director where parameters have been adopted by the board to be followed by the executive director in the exercise of such responsibility.

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

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TRD-9516495 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

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For further information, please call: (512) 463-4028

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Subchapter D. Executive Director

• 34 TAC §§7.31-7.33

The new sections are adopted under Education Code, Chapter 54, Subchapter F, §54.618, which authorizes the board to adopt rules necessary for the implementation of Prepaid Higher Education Tuition Program.

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

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Chief, General Law
Comptroller of Public Accounts

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For further information, please call: (512) 463-4028

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Subchapter E. Application, Enrollment, Payment, and Fees

• 34 TAC §§7.41-7.43

The new sections are adopted under Education Code, Chapter 54, Subchapter F, §54.618, which authorizes the board to adopt rules necessary for the implementation of Prepaid Higher Education Tuition Program.

§7.41. Application.

(a) These rules apply to prepaid tuition contracts for the prepayment of tuition and required fees necessary for a beneficiary to attend an institution of higher education or private or independent institution of higher education. Prepayments are expressly limited to payment of tuition and required fees as specified in this chapter,

the Education Code, Chapter 54, Subchapter F, and the prepaid tuition contracts issued pursuant thereto.

(b) Applications shall be made available through the Prepaid Higher Education Tuition Program, Office of the Comptroller of Public Accounts, P.O. Box 13407, Austin, Texas 78711-3407; 111 E. 17th St., Room 131, Austin, Texas 78774-0001, or by calling toll-free at 1-800-445-GRAD (4723), or as otherwise provided by the board.

(c) The rights of purchasers and beneficiaries are subject to the provisions of this chapter, the Education Code, Chapter 54, Subchapter F, and the terms and conditions of the prepaid tuition contract. Prepaid tuition contract prices shall be determined by the board annually to ensure the actuarial soundness of the fund. Prepaid tuition contract prices will be published in the *Texas Register* and shall apply to prepaid tuition contracts entered into subsequent to board approval.

§7.42 Enrollment Period.

(a) Each enrollment period shall begin and end on dates set annually by the board and published in the *Texas Register*, with the initial enrollment period beginning January 2, 1996, and ending March 31, 1996. The official postmark date affixed by the United States Postal Service or date stamp evidencing actual receipt of the application at the address specified below, whichever is earlier, shall be considered the date of receipt of an application for purposes of the enrollment period. Applications may be mailed to the following address: Prepaid Higher Education Tuition Program, Office of the Comptroller of Public Accounts, P.O. Box 13407, Austin, Texas 78711-3407. In the alternative, applications may be delivered to the following address 111 E. 17th St., Room 131, Austin, Texas 78774-0001.

(b) The board reserves the right to limit enrollment as necessary to insure the actuarial soundness of the fund.

§7.43. Administrative Fees.

(a) The board shall adopt an administrative fee schedule to cover costs of administration of the program.

(b) Fees adopted by the board shall reflect the intent to make the program self-supporting and to maintain the actuarial soundness of the fund. The fees may include the following.

(1) a nonrefundable application fee collected at the time the application is submitted;

(2) a termination fee assessed upon the termination of a contract by the purchaser prior to being fully paid, which fee shall be in an amount determined by the board to allow reimbursement of the board's estimated expenses in terminating the contract;

(3) a change of beneficiary fee assessed in connection with a request to substitute beneficiaries under the plan;

(4) a change in purchaser fee assessed for assignment of contract rights and obligations to another purchaser;

(5) a cancellation or benefits transfer fee deducted from payments when funds are used for out-of-state tuition or not used for college;

(6) an account maintenance fee for servicing accounts;

(7) a fee for changes in the mode of payment or payment schedule requested by a purchaser;

(8) a late fee assessed for payments made past the due date;

(9) an insufficient funds fee assessed for all payments returned for insufficient funds;

(10) an improper notice fee assessed for failure to provide timely notice of the intent to use contract benefits;

(11) replacement of coupon books and other contract related documents; and

(12) other administrative fees established by the board.

(c) Where applicable, charges for copies of public records shall be assessed at the rates established by the General Services Commission pursuant to the Government Code, §552.261, and consistent with similar charges assessed for public records by the Office of the Comptroller.

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

Issued in Austin, Texas, on December 18, 1995.

TRD-9516497 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

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For further information, please call: (512) 463-4028

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Subchapter F. Tuition.

• 34 TAC §7.51, §7.52

The new sections are adopted under Education Code, Chapter 54, Subchapter F, §54.618, which authorizes the board to adopt rules necessary for the implementation of Prepaid Higher Education Tuition Program.

§7.51. Tuition Paid.

(a) For prepaid tuition contracts issued under the junior college plan, junior/senior college plan, or senior college plan, the tuition and required fees paid pursuant to such prepaid tuition contracts shall be paid in accordance with the rates charged to Texas residents.

(b) For prepaid tuition contracts issued under the private college plan, tuition, and required fees paid pursuant to the prepaid tuition contract shall be limited to the estimated average private tuition and required fees as determined by the board on an annual basis.

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

Issued in Austin, Texas, on December 18, 1995.

TRD-9516498 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

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For further information, please call: (512) 463-4028

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Subchapter G. Beneficiaries.

• 34 TAC §§7.61-7.63

The new sections are adopted under Education Code, Chapter 54, Subchapter F, §54.618, which authorizes the board to adopt rules necessary for the implementation of Prepaid Higher Education Tuition Program.

§7.61. Qualified Beneficiary. A qualified beneficiary is an individual who is under the age of 18 at the time the purchaser enters into the contract, who has not graduated from high school nor obtained high school equivalency certification, and is either:

(1) a resident of the state of Texas; or

(2) a non-resident who is the child of a parent who is a resident of the state of Texas at the time the parent enters into the contract.

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

Issued in Austin, Texas, on December 18, 1995.

TRD-9516493 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

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For further information, please call: (512) 463-4028

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Subchapter H. Conversion

• 34 TAC §7.71

The new section is adopted under Education Code, Chapter 54, Subchapter F, §54.618, which authorizes the board to adopt rules necessary for the implementation of Prepaid Higher Education Tuition Program.

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

Issued in Austin, Texas, on December 18, 1995.

TRD-9516500 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

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For further information, please call: (512) 463-4028

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Subchapter I. Refunds, Termination

• 34 TAC §§7.81-7.83

The new sections are adopted under Education Code, Chapter 54, Subchapter F, §54.618, which authorizes the board to adopt rules necessary for the implementation of Prepaid Higher Education Tuition Program.

§7.81 Refunds

(a) Refunds shall be made in accordance with provisions of these rules and the prepaid tuition contract, in a manner that will not adversely affect the tax status of the program under applicable provisions of the Internal Revenue Code, as amended from time to time. Refunds shall be governed by these rules as amended and as in effect on the date the request for refund is submitted to the board. In general, it is the board's intent that the amount of any refund shall be the sum of all payments made under the contract for tuition and required fees, less fees due and payable to the program under the board's fee schedule and less any amounts paid by the program pursuant to the prepaid tuition contract prior to the refund.

(b) Refunds shall be made to the purchaser of the prepaid tuition contract unless otherwise designated by the purchaser in writing to the board in the event of the purchaser's death.

(c) Should a beneficiary terminate his/her student status on or after the date on which the institution denies refunds to students withdrawing for a particular semester, no refund shall be paid under the prepaid tuition contract for amounts relating to such semester.

(d) Examples of circumstances under these rules in which refunds may be made include, but are not limited to, the following.

(1) Under any plan, if the beneficiary receives a full scholarship, the average amount of tuition and required fees under the plan selected or the estimated average private tuition and required fees, as applicable, may be refunded. Refund payments may be issued each academic term as long as the scholarship is effective. The purchaser of the prepaid tuition contract shall be entitled to such refund. Proof of scholarship must be submitted in a form acceptable to the board.

(2) Under the junior college plan, junior/senior college plan or senior college plan, if a beneficiary receives a partial scholarship, the tuition scholarship amount may be refunded. Under the private college plan, if a beneficiary receives a partial scholarship, a refund may be made in an amount equal to the excess of: (A) the estimated average private tuition and required fee amounts, over (B) the actual tuition and required fee amounts less the scholarship amount. Refund payments up to the amount determined in accordance with this paragraph may be issued each academic term as long as the scholarship is effective. The purchaser of the prepaid tuition contract shall be entitled to such refund. Proof of scholarship must be submitted in a form acceptable to the board.

(3) If the beneficiary dies or becomes disabled while attending an institution of higher education or a private or independent institution of higher education, the amount of benefits remaining available under the prepaid tuition contract, less any applicable fees, may be refunded or the benefits under such contract may be transferred to another qualified beneficiary. If a change of beneficiary is not requested, a lump sum refund may be made within 60 days of the date the program is notified of the death or disability to the purchaser of the prepaid tuition contract, provided proof of death or disability is submitted in a form acceptable to the board.

(4) If the beneficiary dies or becomes disabled after having graduated from high school but prior to attending an institution of higher education or a private or independent institution of higher education, a refund may be issued or the benefits under such contract may be transferred to another qualified beneficiary. If a change of beneficiary is not requested, a lump sum refund may be made within 60 days of the date the program is notified of the death or disability to the purchaser of the prepaid tuition contract, provided proof of death or disability is submitted in a form acceptable to the board. Under the junior college plan, junior/senior college plan, or senior college plan, the refund will equal the average amount of tuition and required fees in effect at the time the refund is requested. Under the private college plan, the refund will equal the estimated average of private tuition and required fees as determined annually by the board.

(5) If a prepaid tuition contract is terminated under §7.82(c) of this title (relating to Termination of Prepaid Tuition Contract), such contract may be refunded in an amount equal to the lesser of:

(A) the lowest amount of tuition and required fees among all institutions under the plan selected, less a cancellation fee and any other applicable fee; or

(B) the amount of payments made under the plan for tuition and required fees; plus the average annual earnings rate on the fund, less 3.0% but not to exceed 5.0% times the accumulated payments made under the contract as of December 31, of each year; less a cancellation fee and any other applicable fee. Any such refund may be made in semi-annual installments to the purchaser of the prepaid tuition contract.

(6) If the purchaser who selected the junior college plan, junior/senior college plan, or senior college plan dies or becomes disabled and payments cease before the contract is paid in full, and unless otherwise directed by the purchaser in writing, a refund may be made. The refund amount will be equal to a percentage of the average amount of tuition and required fees in effect at the time the refund is requested, determined by reference to the percentage of payments made under the contract by the purchaser. If the purchaser who selected the private college plan dies or becomes disabled and payments cease before the contract is paid in full, a refund may be made. The refund amount will be equal to a percentage of the estimated amount of private tuition and required fees set forth in the prepaid tuition contract, determined by reference to the percentage of payments made under the contract by the purchaser. A lump-sum refund may be made within 60 days to the purchaser of the prepaid tuition contract unless otherwise specified in writ-

ing by the purchaser as described in this paragraph. In the alternative, contract benefits may be converted to a plan with reduced benefits Proof of death or disability shall be in a form acceptable to the board. Notwithstanding any other provision of this paragraph, the purchaser, in a writing to the board, and providing such other information as the board may request, may designate a person who shall have a right of survivorship with respect to the purchaser's rights and obligations pursuant to a prepaid tuition contract, provided that such designation shall in no way affect the purchaser's ability to modify or terminate the contract and receive a refund without the consent or authorization of the designee.

(7) Refunds may be made for other reasons as approved by the board. By way of example, such refunds may by made in an amount equal to the lowest amount of tuition and required fees of all institutions under the plan selected, less a cancellation fee. Refund payments may be made in semi-annual installments to the purchaser of the prepaid tuition contract.

(8) As an alternative to a refund, the purchaser may transfer benefits to an out of state college or university accredited by a regional accrediting association. The amount of the transfer shall not exceed the average amount of tuition and required fees under the plan selected, or the estimated average private tuition and required fees, as applicable, less a cancellation fee and any other applicable fees. Payments may be transferred each academic term to the out of state college or university as necessary to pay for tuition and required fees up to the credit hours limit identified in the prepaid tuition contract. A statement from the out-of-state college or university shall be submitted to the board during each academic term, in a form acceptable to the board.

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

Issued in Austin, Texas, on December 18, 1995.

TRD-9516501 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Effective date: January 8, 1996

Proposal publication date: November 17, 1995

For further information, please call: (512) 463-4028

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Subchapter J. Default

• 34 TAC §7.91

The new section is adopted under Education Code, Chapter 54, Subchapter F, §54.618, which authorizes the board to adopt rules for the necessary for the implementation of Prepaid Higher Education Tuition Program.

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

Issued in Austin, Texas, on December 18, 1995

TRD-9516502 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

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For further information, please call: (512) 463-4028

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 6. License To Carry Concealed Handgun

The Texas Department of Public Safety adopts new §§6.1-6.5, 6.11-6.21, 6.31, 6.32, 6.41-6.47, 6.51-6.54, 6.61-6.63, 6.71-6.96, and 6.111-6.119, concerning License To Carry Concealed Handgun. Section 6.3 and §6.5 are adopted with changes to the proposed text as published in the October 17, 1995, issue of the *Texas Register* (20 TexReg 8418). Sections 6.1, 6.2, 6.4, 6.11-6.21, 6.31, 6.32, 6.41-6.47, 6.51-6.54, 6.61-6.63, 6.71-6.96, and 6.111-6. 119 are adopted without changes and will not be republished.

Section 6.5(c)(1) was changed for grammatical corrections.

An editorial change was made to §6.3(a) to provide a new address for all correspondence relating to requests for hearings made by persons having experienced a denial, suspension, or revocation of an instructor certification or license to carry. Requests for hearings are time-sensitive documents and specific handling is required to assure that the department may respond in a timely manner.

The justification for these sections is the licensing of individuals to carry a concealed handgun.

These sections set forth eligibility and procedures for licensing persons to carry concealed handguns, enforcement, suspension and revocation procedures, and certification of qualified handgun instructors.

Comments on the proposed new rules were received from the Texas Automobile Dealers Association and the Texas Hospital Association.

Full and objective analysis and consideration was given to all comments received, as evidenced by the revisions made from the rules as proposed, and the responses to comments in the following paragraphs in this preamble. The factual, statutory, and policy basis for parts of the rules which received comments, are described in these responses.

A summary of the comments received and the department's responses are as follows:

COMMENT: A comment was received suggesting grammatical corrections in the Spanish text as quoted in §6.5(c)(1).

RESPONSE: The department agrees that corrections should be made in portions of the Spanish text quoted in §6.5(c)(1) and the optional notice was revised to read: "No se permite posser armas de fuego en este edificio bajo authoridad de la Ley de Permisos para portar armas de fuego en el Estado de Texas (Texas Civil Statutes, Article 4413(29ee)."

COMMENT: A comment was received which asked the department "If a customer decides to leave a concealed handgun in his or her automobile when it is brought to a dealership for service, if the dealership posts one of the two notices, as set out in §6.5(b), is this notice adequate to inform the customer to remove a concealed handgun when the motor vehicle is brought to the dealership for service?" The commenter then asks "If one of the proposed notices is not adequate, may the dealership post an additional notice informing a customer that a concealed handgun is to be removed when the concealed handgun is in a motor vehicle and that vehicle is at the dealership for service?"

RESPONSE: The department cannot provide a definitive opinion regarding the adequacy of the notice described above, as that is a matter within the purview of the Attorney General and is an issue that will be determined on a case-by-case basis as violations are prosecuted in local courts. In addressing the adequacy of such notices, however, the department emphasizes that §6.5 of the rules provides only sample language that may be used by a public or private employer to prohibit persons who are licensed to carry from carrying a concealed handgun on the premises of the business The department believes it is possible for public or private employers to tailor notices to reflect the policy they have formulated to restrict persons who are licensed to carry from specific locations on the premises of the business. However, because of the variety of fact specific situations that may arise, the department also believes it is impracticable to formulate multiple samples into the rule.

COMMENT: A comment was received which asked if hospitals required to post signs could place such signs in a conspicuous manner clearly visible to the public from outside or immediately inside each public entrance and not at hospital employee and delivery service entrances. The commenter indicates that an administrative and financial burden is created by having to place signs at other than public entrances and is unnecessary.

RESPONSE: The department differs with this construction of the Concealed Handgun Stat-

ute (Texas Civil Statutes, Article 4413(29ee)), §31. The department is of the view that the Legislature intended that all entrances have signs at those facilities where signs are required. The Legislature has settled on a policy that would provide notice in a manner so as to alert all possible persons that no handguns would be permitted in the facility, unless the license holder has written authorization of the hospital (§31, supra, and Article 46.035(b)(4), Penal Code). Under these circumstances, the department is of the view that the language of §6.4(c) of the rules carries out the legislative mandate.

Subchapter A. General Provisions

• 37 TAC §§6.1-6.5

The new sections are adopted pursuant to Texas Civil Statutes, Article 4413(29ee), §22, which authorize the department to adopt rules to administer this article. Authority to adopt by rule specific forms, fees and procedures, is provided under Article 4413(29ee) as follows: application request form, §6(a); form of license §6(e); application for modified license, §10(b); renewal application form and renewal fee, §11(b); procedure for renewal by mail, §11(d); minimum standards for handgun proficiency, §16(a); establishment of continuing education course, §16(c); record keeping responsibilities of certified handgun instructors, §16(i); fee for handgun proficiency certificate, §17(a); and retraining course for certified handgun instructors, §17(d). Authority for the department to adopt rules for local law enforcement to report concealed handgun incidents is provided by Texas Government Code §411.047(b).

§6.3 Correspondence

(a) Addressed to the department. Except as otherwise provided, applications and correspondence not relating to requests for hearings should be mailed to the department at the following address: Texas Department of Public Safety, Concealed Handgun Licensing Unit, Post Office Box 15888, Austin, Texas 78761-5888. A request for hearing and all correspondence relating thereto should be mailed to the department at the following address: Texas Department of Public Safety, Legal Services - Concealed Handgun Section, Post Office Box 15327, Austin, Texas 78761-5327.

(b) Addressed to applicant, license holder, or certified instructor. Notice will be mailed to the address currently reported to the department by an applicant, license holder, or certified instructor as the correct address. For the purpose of any notice required by the Act, the department will assume that the address currently reported to the department by the applicant or license holder is the correct address.

(c) Notice. Written notice meets the requirements under this Act if the notice is sent by certified mail to the current address reported by the applicant or license holder to the department. If a notice is returned to the department because the notice is not deliverable, the department may give notice by publication once in a newspaper of general interest in the county of the applicant's or license holder's last reported address. On the 31st day after the date the notice is published, the department may take the action proposed in the notice.

§6.5 Notice Optional on Other Premises.

(a) Notice. A public or private employer may prohibit persons who are licensed to carry from carrying a concealed handgun on the premises of the business.

(b) Text. The sign may state that it is prohibited to carry a handgun on the premises. The following are samples of text which may be used:

(1) "Possession of a handgun under authority of Texas Concealed Handgun Permit Law, Texas Civil Statutes, Article 4413(29ee), is prohibited in this building."

(2) "Possession of a handgun under authority of Texas Concealed Handgun Permit Law, Texas Civil Statutes, Article 4413(29ee), is prohibited beyond this point."

(c) Spanish Text. The notice may also be posted in Spanish as follows:

(1) "No se permite posser armas de fuego en este edificio bajo authoridad de la Ley de Permisos para portar armas de fuego en el Estado de Texas, Texas Civil Statutes, Article 4413, (29ee)."

(2) "De este lugar en adelante, no se permite poseer armas de fuego bajo authoridad de la Ley de Permisos para Portar Armas de Fuego en el Estado de Texas, Texas Civil Statutes, Article 4413 (29ee)."

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

Issued in Austin, Texas, on December 14, 1995.

TRD-9516467 James R. Wilson
Director
Texas Department of Public Safety

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For further information, please call: (512) 424-2890

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Subchapter B. Eligibility and Application Procedures

• 37 TAC §§6.11-6.21

The new sections are adopted pursuant to Texas Civil Statutes, Article 4413(29ee). Authority to adopt by rule specific forms, fees and procedures, is provided under Article 4413(29ee) as follows: application request form, §6(a) ; form of license, §6(e); application for modified license, §10(b); renewal application form and renewal fee, §11(b); procedure for renewal by mail, §11(d); minimum standards for handgun proficiency, §16(a); and application fee for active or retired judicial officer, §30(d)(4). Authority to adopt a system to implement staggered and evenly distributed license expiration dates is granted by Senate Bill 60, 74th Legislature, 1995, Chapter 229, §8(b).

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

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TRD-9516468 James R. Wilson
Director
Texas Department of Public Safety

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For further information, please call: (512) 424-2890

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Subschapter C. Procedures on Denial of License

• 37 TAC §6.31, §6.32

The new sections are adopted pursuant to Texas Civil Statutes. Article 4413(29ee) §22, which authorize the department to adopt rules to administer this article.

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

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Director
Texas Department of Public Safety

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For further information, please call: (512) 424-2890

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Subchapter D. Time, Place, and Manner Restrictions on License Holders

• 37 TAC §§6.41-6.47

The new sections are adopted pursuant to Texas Civil Statutes, Article 4413(29ee) §22, which authorize the department to adopt rules to administer this article.

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

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TRD-9516470 James R. Wilson
Director
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For further information, please call: (512) 424-2890

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Subchapter E. Enforcement Procedures

• **37 TAC §§6.51-6.54**

The new sections are adopted pursuant to Texas Civil Statutes, Article 4413 (29ee) §22, which authorize the department to adopt rules to administer this article. Authority for the department to adopt rules for local law enforcement to report concealed handgun incidents is provided by Texas Government Code, §411.047(b).

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

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TRD-9516471 James R. Wilson
Director
Texas Department of Public Safety

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Subchapter F. Suspension and Revocation Procedures

• **37 TAC §§6.61-6.63**

The new sections are adopted pursuant to Texas Civil Statutes, Article 4413(29ee), §22, which authorize the department to adopt rules to administer this article. Authority for the department to adopt rules for local law enforcement to report concealed handgun incidents is provided by Texas Government Code, §411.047(b).

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

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Director
Texas Department of Public Safety

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For further information, please call: (512) 424-2890

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Subchapter G. Certified Handgun Instructors

• **37 TAC §§6.71-6.96**

The new sections are adopted pursuant to Texas Civil Statutes, Article 4413(29ee) §22, which authorize the department to adopt rules to administer this article. Authority to adopt by rule specific procedures is provided under Article 4413(29ee) as follows: record keeping responsibilities of certified handgun instructors, §16(i); fee for handgun proficiency certificate, §17(a); and retraining course for certified handgun instructors §17(d).

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

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Director
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For further information, please call: (512) 424-2890

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Subchapter H. Information and Reports

• **37 TAC §§6.111-6.119**

The new sections are adopted pursuant to Texas Civil Statutes, Article 4413(29ee) §22, which authorize the department to adopt rules to administer this article.

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

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