TEXAS REGISTER

IN THIS ISSUE

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Texas Register

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

How to Use the Texas Register

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

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

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

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

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

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

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

Open Meetings - notices of open meetings.

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

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

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 19 (1994) is cited as follows: 19 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 TexReg 3."

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

Texas Administrative Code

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

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

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

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

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

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

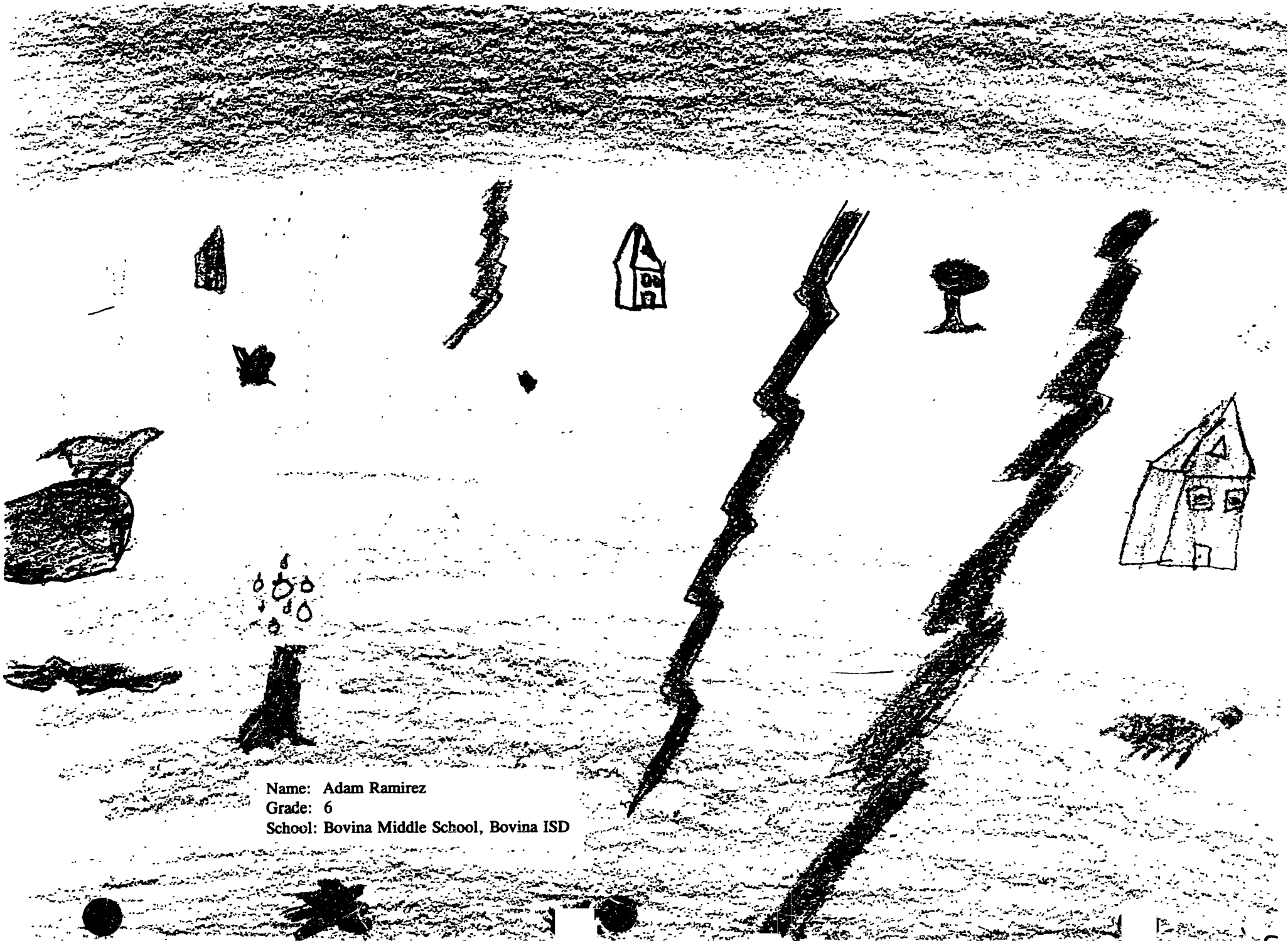
1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

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

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

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

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



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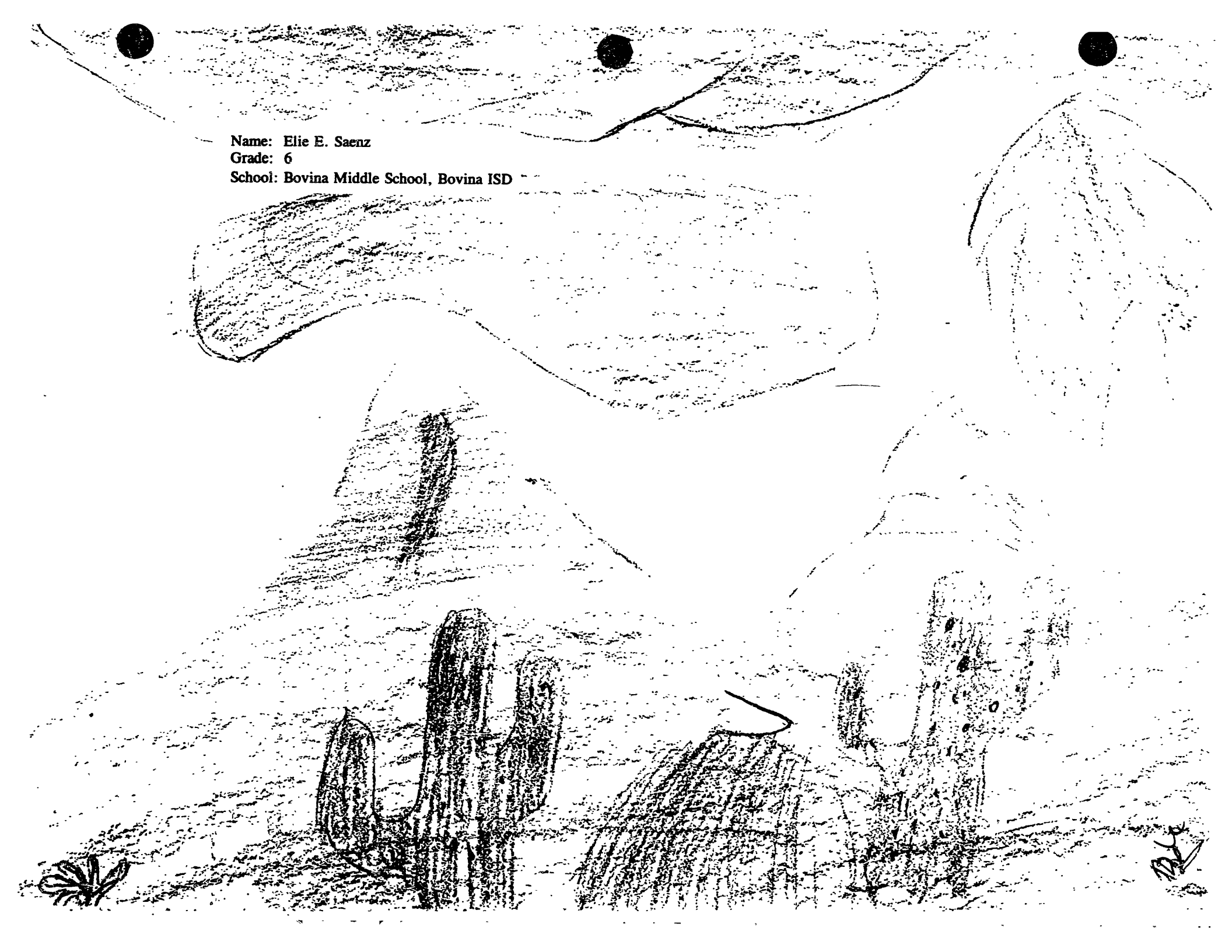

Name: Elie E. Saenz
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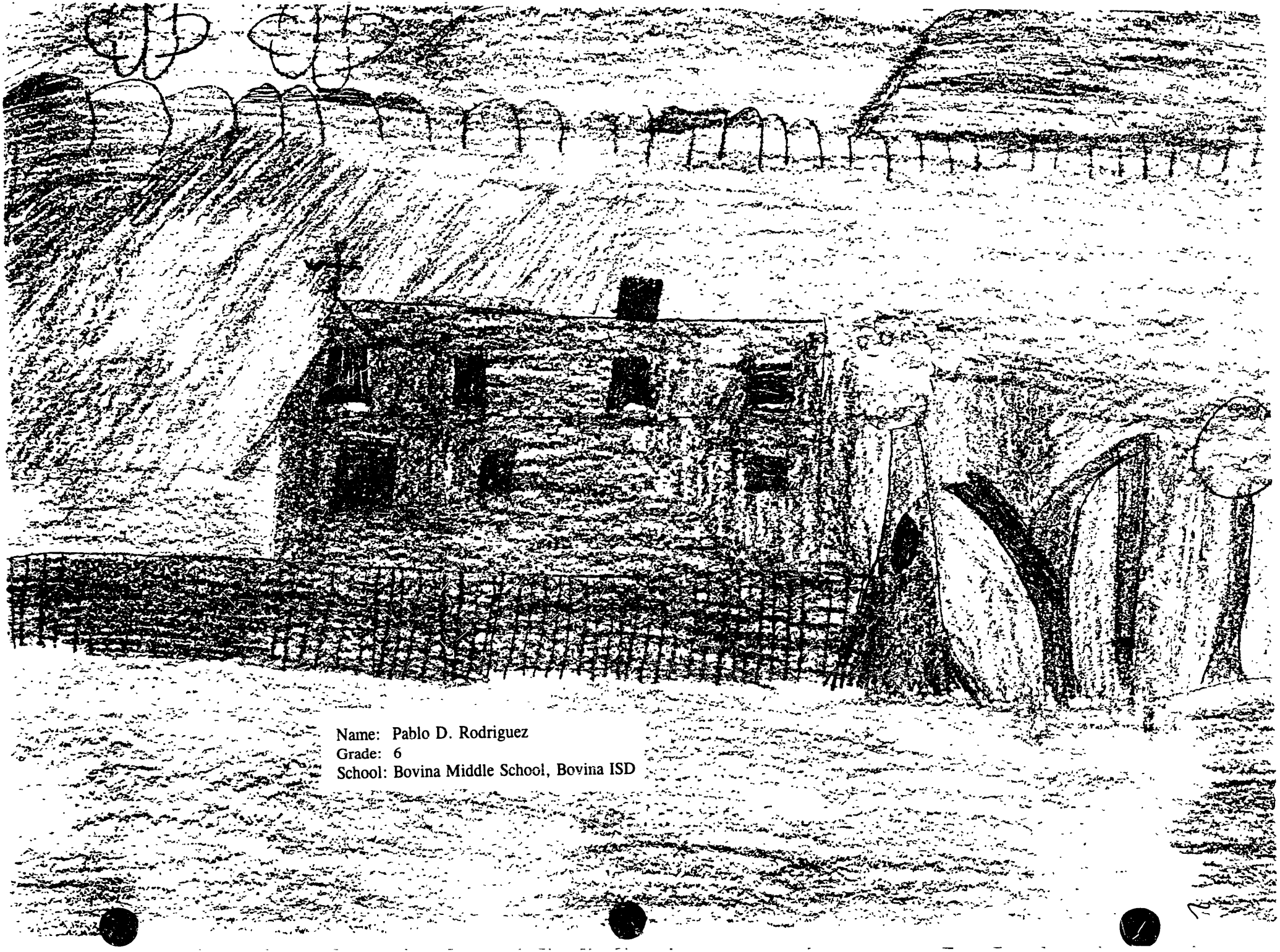

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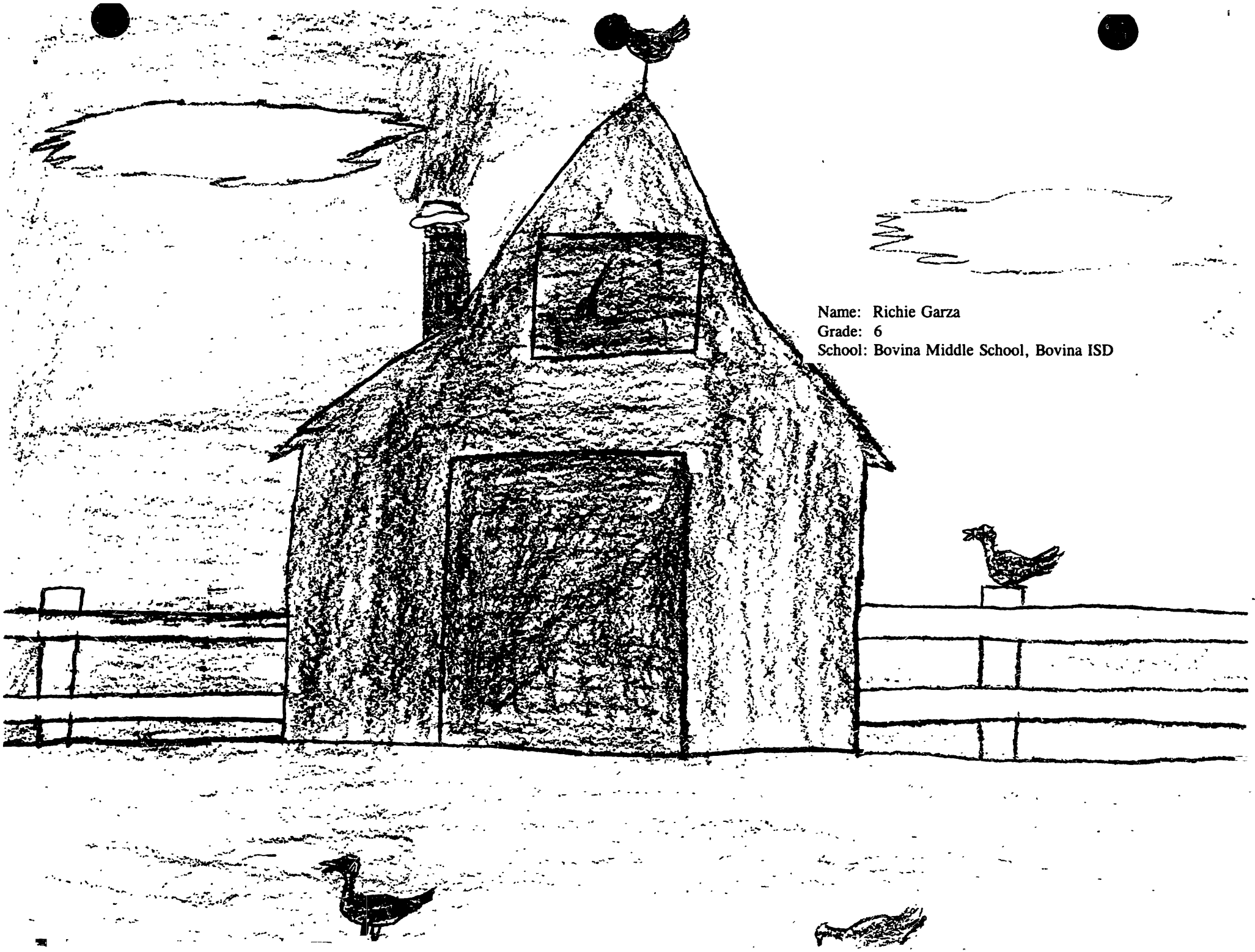

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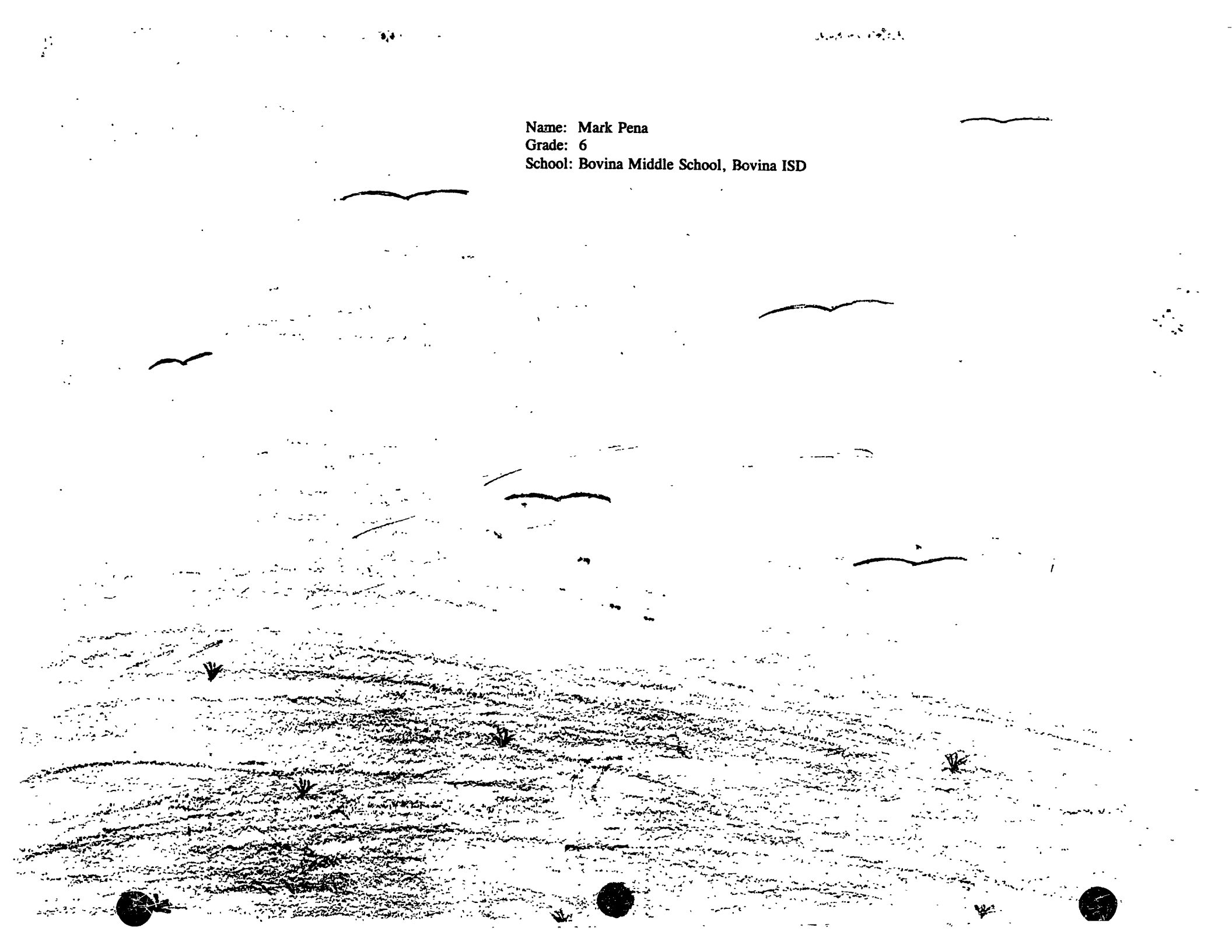

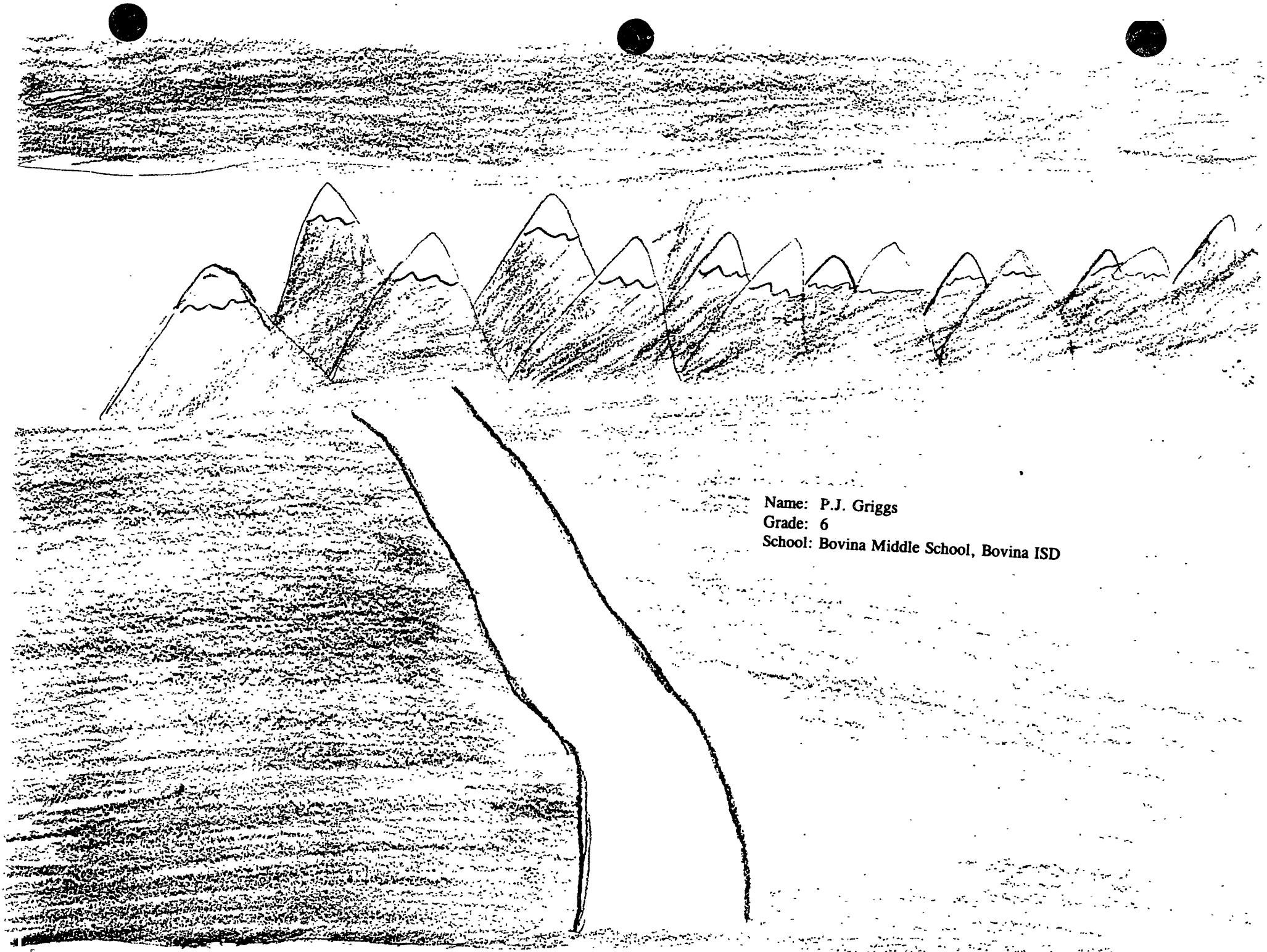

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EMERGENCY RULES

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 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 122. Sedation/Anesthesia Permits for Dentists

• **25 TAC §§122.1-122.5**

The Texas Department of Health is renewing the effectiveness of the emergency adoption of new §§122.1-122.5, for a 60-day period effective December 30, 1994. The text of new §§122.1-122.5 was originally published in the September 6, 1994, issue of the *Texas Register* (19 TexReg 6960).

Issued in Austin, Texas, on December 12, 1994.

TRD-9452339 Susan K. Steeg
General Counsel
Texas Department of Health

Effective date: December 30, 1994

Expiration date: February 28, 1995

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

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Chapter 143. Medical Radiologic Technologists

• **25 TAC §143.16**

The Texas Department of Health is renewing the effectiveness of the emergency adoption of new §143.6, for a 60-day period effective December 27, 1994. The text of new §143.6 was originally published in the September 6, 1994, issue of the *Texas Register* (19 TexReg 6369).

Issued in Austin, Texas, on December 12, 1994.

TRD-9452338 Susan K. Steeg
General Counsel
Texas Department of Health

Effective date: December 27, 1994

Expiration date: February 25, 1995

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

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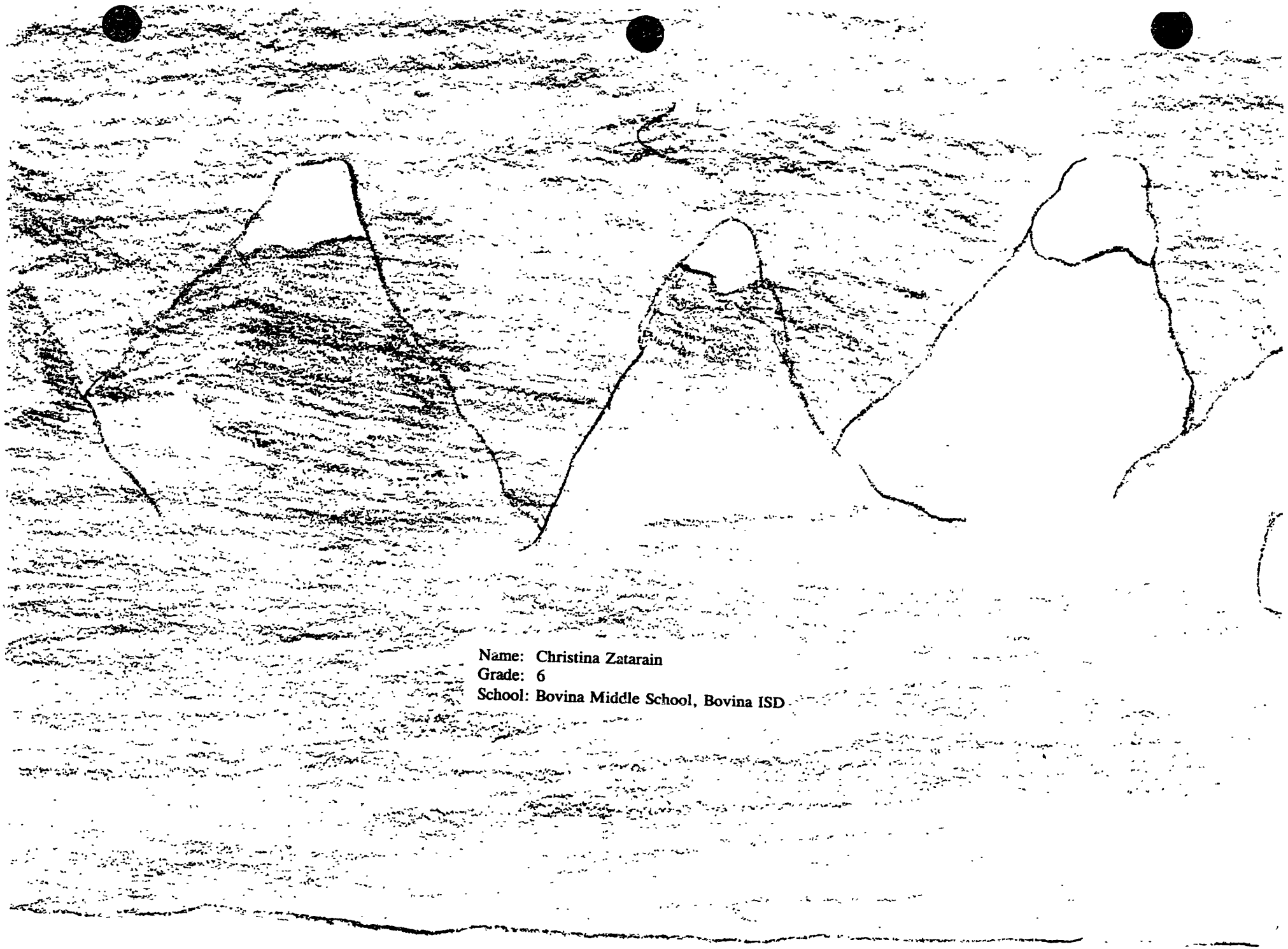

Name: Christina Zatarain
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PROPOSED RULES

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 7. BANKING AND SECURITIES

Part IV. Texas Savings and Loan Department

Chapter 77. Loans, Investments, Savings, and Deposits

• 7 TAC §77.71

The Texas Savings and Loan Department proposes an amendment to §77.71, concerning membership in the Federal Home Loan Bank and the Federal Reserve Systems. This proposed rule would amend subsection (f) to make membership in the Federal Home Loan Bank (FHLBank) and the Federal Reserve Systems voluntary for state savings banks. Authority for FHLBank and Federal Reserve membership is specifically set forth in the Texas Savings Bank Act, §7.15(7). Previously, subsection (f) of the Rules and Regulations Applicable to Texas Savings Banks required membership in the FHLBank System but did not address Federal Reserve membership or the authority to invest in Federal Reserve stock.

In June, 1993, the Office of Thrift Supervision amended its regulations to make membership in the FHLBank System voluntary effective April 19, 1995 (12 CFR §563.49, 58 Federal Regulation 14510, March 18, 1993). Under this amendment, membership in the FHLBank System becomes voluntary for all state chartered savings associations under the jurisdiction of the Office of Thrift Supervision. Current Texas savings and loan laws and regulations do not require mandatory membership, thus membership for Texas state chartered savings and loans will be voluntary by operation of law beginning on April 19, 1995. This amendment is proposed for savings banks to ensure that membership requirements are consistent for Texas state chartered savings and loans and savings banks.

State chartered savings associations withdrawing from FHLBank membership will be subject to the current statutory prohibition on reentry into the FHLBank system for ten years. De novo savings banks would be authorized to join the FHLBank and Federal Reserve systems but would not be required to do so. Such membership would be a management decision.

James L. Pledger, Commissioner, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government.

Mr. Pledger also has determined that for each year of the first five years there will be public benefit from the adoption of this amendment due to the flexibility of state chartered savings banks to choose the best investment options for their institution. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the proposed section is none. The rule will have no local employment impact.

Comments on the proposal may be submitted to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

The amendment is proposed under Texas Civil Statutes, Article 342-114, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

The following statute is affected by this rule: Texas Civil Statutes, Article 489e.

§77.71. Investment in Securities.

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

(f) A savings bank [shall] may be a member of the Federal Home Loan Bank System and/or Federal Reserve System and is specifically authorized to invest in such Federal Home Loan Bank and Federal Reserve Bank stock.

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, 1994.

TRD-9452414 James L. Pledger
Commissioner
Texas Savings and Loan Department

Earliest possible date of adoption January 20, 1995

For further information, please call: (512) 475-1360

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TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Housing and Community Affairs

Chapter 49. Low Income Housing Tax Credits Rules

• 10 TAC §49.15

The Texas Department of Housing and Community Affairs (the Department) Low Income Housing Tax Credit (LIHTC) Program proposes new §49.15, pursuant to the action by the Board of Directors of the Texas Department of Housing and Community Affairs at the November 10, 1994 meeting. The Department is proposing the new section in order to allow it to issue reservations and forward commitments of tax credits to applicants in the 1994 cycle or to carry forward applications on a waiting list to 1995 pursuant to an additional cycle.

This action is being undertaken to expedite the 1995 tax credit allocation process as well as to capture the efforts expended to date by the Department's staff and the tax credit applicants.

Kelly Elizondo, Director of Housing Programs, has determined that there will be no fiscal implications for the state or local government as a result of enforcing or administering the rule.

Mr. Elizondo also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to enhance the Department's ability to provide safe and sanitary housing for Texans through the tax credit program administered by the Department. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Kelly Elizondo, Director of Housing Programs, Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Suite 300, Austin, Texas 78704.

The new rule is proposed pursuant to the authority of the Texas Government Code, Chapter 2306; Acts of the 73rd Legislative

Regular Senate Bill 45, Chapter 141, effective May 16, 1993; and Acts of the 73rd Legislative Senate Bill 1356, Chapter 725, effective September 1, 1993, and the Internal Revenue Code of 1986, §42 as amended, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs and Executive Order AWR-91-4 (June 17, 1991), which provides this Department with the authority to make housing credit allocations in the State of Texas.

The Government Code, Chapter 2306, is affected by this new rule.

§49.15. Forward Reservations; Binding Commitments.

(a) Anything in §49.4 of this title (relating to Applications; Environmental Assessments; Market Study; Reservations; Notification; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments) or elsewhere in this chapter to the contrary notwithstanding, the Department may determine to issue reservations and commitments of tax credit authority with respect to projects from the state housing credit ceiling for the calendar year following the year of issuance (each a "forward commitment"). The Department may make such forward commitments:

(1) with respect to projects placed on a waiting list in any previous application cycle during the year; or

(2) pursuant to an additional application cycle.

(b) If the Department determines to make forward commitments pursuant to a new application cycle, it shall provide information concerning such cycle in the *Texas Register*. In inviting and evaluating applications pursuant to an additional allocation cycle, the Department may waive or modify any of the set-asides set forth in §49.5(a) and (b) of this title (relating to Set-Asides, Reservations and Preferences) and make such modifications as it determines appropriate in the threshold criteria, evaluation factors and selection criteria set forth in §49.6 of this title (relating to Threshold Criteria, Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects) and in the dates and times by which actions are required to be performed under this chapter. The Department may also, in an additional application cycle, include projects previously evaluated within the calendar year and rank such projects together with those for which applications are newly received.

(c) Unless otherwise provided in the reservation notice or commitment notice with respect to a project selected to receive a forward commitment or in the announcement of an application cycle for projects seeking a forward commitment, actions which are required to be performed under this chapter by a particular date within a calendar year shall be performed by such date in the calendar year of the anticipated allocation rather than in the calendar year of the forward commitment.

(d) Any forward commitment made pursuant to this §49.15 shall be made subject to the availability of state housing credit ceiling in the calendar year with respect to which the forward commitment is made. No more than 45% of the per capita component of state housing credit ceiling anticipated to be available in the State of Texas in a particular year shall be allotted pursuant to forward commitments and to project applications carried forward without being ranked in the new application cycle pursuant to subsection (f) of this section. If a forward commitment shall be made with respect to a project placed in service in the year of such commitment, the forward commitment shall be a "binding commitment" to allocate the applicable credit dollar amount within the meaning of the Code, §42(h)(1)(C).

(e) If tax credit authority shall become available to the Department later in a calendar year in which forward commitments have been awarded, the Department may allocate such tax credit authority to any eligible project which received a forward commitment, in which event the forward commitment shall be cancelled with respect to such project

(f) In addition to or in lieu of making forward commitments pursuant to §49.15(a), the Department may determine to carry forward project applications on a waiting list or otherwise received and ranked in any application cycle within a calendar year to the subsequent calendar year, requiring such additional information, applications and/or fees, if any, as it determines appropriate Project applications carried forward may, within the discretion of the Department, either be awarded credits in a separate allocation cycle on the basis of rankings previously assigned or may be ranked together with project applications invited and received in a new application cycle; provided, however, that the Department shall conduct at least one separate allocation round with respect to the 1995 housing credit ceiling for 1994 project applications The Department may determine in a particular calendar year to carry forward some project applications under the authority provided in this subsection, while issuing forward commitments pursuant to §49.15(a) with respect to others

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, 1994.

TRD-9452343

Henry Flores
Executive Director
Texas Department of Housing and Community Affairs

Earliest possible date of adoption: January 20, 1995

For further information, please call: (512) 475-3800

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TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 5. Program Development

Subchapter A. General Provisions

• **19 TAC §5.6**

The Texas Higher Education Coordinating Board proposes an amendment to §5.6, concerning the Common Calendar. The amendment is being made to extend the effective date of the calendar through 2005.

Dr Bill Sanford, Assistant Commissioner for Universities, 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.

Dr. Sanford 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 a common academic calendar will encourage universities, community colleges and public schools to schedule the beginnings and endings of semesters in a time frame that will accommodate students transferring from one to the other or with multiple enrollments. 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 Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendment is proposed under Texas Education Code, Subchapter C, §61. 051(a), which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning General Provisions (Common Calendar).

There will be no other section or article of the code affected.

§5 6. Common Calendar.

(a) Through fiscal year 1996-1997, the common calendar for public junior and senior colleges and universities shall be as follows:

Figure 1: 19 TAC §5.6(a)

(b)-(g) (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 12, 1994.

TRD-9452364 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: January 27, 1995

For further information, please call: (512) 483-6160

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Chapter 9. Public Junior Colleges

Subchapter E. Operational Provisions

• 19 TAC §9.103

The Texas Higher Education Coordinating Board proposes an amendment to §9.103, concerning Operational Provisions (Reporting for State Reimbursement) . The Coordinating Board's rules for refund of tuition and fees at public community and technical colleges have been found to be unnecessary because refunds to students who receive any federal Title IV student aid must be handled according to federal regulations, which differ from the Board's regulations. A high percentage of students enrolled at the community and technical colleges receive Title IV aid. In addition, the Texas Education Code does not require the Board to regulate refunds at community and technical colleges. The proposed amendment will eliminate the Board's regulation of the refund of tuition and fees. Refund policies will become institutional policy decisions rather than governance by Coordinating Board rules.

Dr. Bob Lahti, Assistant Commissioner for Community and Technical Colleges, 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.

Dr. Lahti 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 more local control and less state regulation of refunds can be anticipated as a result of enforcing the section as proposed. 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 Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendment is proposed under Texas Education Code, Subchapter 61, Subchapter C, §61.062(c), which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Operational Provisions (Reporting for State Reimbursement).

Other section or article of the code affected by this amendment is Texas Education Code, Chapter 54, Subchapter A, §54.006.

§9.103. Reporting for State Reimbursement.

(a) Class enrollments shall be reported on the CBM-004 for all students enrolled at the reporting institution in Coordinating Board approved semester-length courses (for which semester credit hours are awarded). Enrollment shall be reported as of the official census date prescribed in the current edition of the educational data reporting system for public community and technical colleges. On or before the official census date, each student eligible for inclusion shall have paid in full the amount set as tuition [and fees] by the respective governing board (or, where applicable, have a valid accounts receivable on record) [and shall be eligible for a refund of tuition and mandatory fees according to the schedule prescribed in paragraphs (1) and (2) of this subsection].

[(1) Students who officially withdraw from the institution will have their tuition and mandatory fees refunded according to the following schedule.
[FALL AND SPRING SEMESTERS
[Prior to the first class day-100%
[During the first five class days-80%
[During the second five class days-70%
[During the third five class days-50%
[During the fourth five class days-25%
[After the fourth five class days-None
[SUMMER SEMESTERS
[Prior to the first class day-100%
[During the first, second, or third class day-80%
[During the fourth, fifth, or sixth class day-50%
[After the sixth class day-None

[(A) Separate refund schedules may be established for optional fees such as intercollegiate athletics, cultural entertainment, parking, yearbooks, etc.

[(B) A public community/junior college may assess up to $15 as a matriculation fee if the student withdraws from the institution before the first day of classes.

[(C) Students who drop a course or courses and remain enrolled at the institution will have their tuition and mandatory fees refunded for those courses according to the following schedule:
[REGULAR SESSION
[During the first 12 class days-100%
[After the 12th class day-None
[SUMMER SESSION
[During the first four class days-100%
[After the fourth class day-None

[(2) Tuition and fees paid directly to the institution by a sponsor, donor or scholarship shall be refunded to the source rather than directly to the student.]

(b) Class enrollments shall be reported on the CBM-00C for all students enrolled in courses approved for other than semester length reporting. Enrollments shall be reported as of the official census date prescribed in the current edition of the **Educational Data Reporting Manual for Public Community and Technical Colleges**. Students enrolled in classes with less than three scheduled meetings may be reported if in attendance at one scheduled meeting.

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 12, 1994.

TRD-9452371 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: January 27, 1995

For further information, please call: (512) 483-6160

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Chapter 21. Student Services

Subchapter A. General Provisions

• 19 TAC §21.3

The Texas Higher Education Coordinating Board proposes an amendment to §21.3, concerning Loan Repayment Deferral and Loan Forgiveness for Emergency Tuition Loans Made Under Texas Education Code, §56.051. The amendment is being made to give better guidance to institutions for audit compliance. Institutions will have been notified of audit requirements.

Mack Adams, Assistant Commissioner for Student Services, 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. Adams 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 institutions of higher education will be better able to comply with criteria of auditors. 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 Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendment is proposed under Texas Education Code, §56.055, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Loan Repayment Deferral and Loan Forgiveness for Emergency Tuition Loans Made Under Texas Education Code, §56.051.

Other codes affected by this amendment is Texas Government Code, Chapter 441, Subsection D, §§441.051 et seq, relating to presentation and essential state records by state auditor.

§21.3. Loan Repayment Deferral and Loan Forgiveness for Emergency Tuition Loans Made Under Texas Education Code, §56.051.

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

(c) Documentation justifying the deferral of repayments or the forgiving of emergency loans made under the Education Code, §56.051 shall be maintained for review by the State Auditor.

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 12, 1994.

TRD-9452367 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: January 27, 1995

For further information, please call: (512) 483-6160

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• 19 TAC §21.4

The Texas Higher Education Coordinating Board proposes new §21.4, concerning Collection of Tuition. The new section is being made to give better guidance to institutions for audit compliance. Institutions will have been notified of audit requirements.

Mack Adams, Assistant Commissioner for Student Services, 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. Adams 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 institutions of higher education will be better able to comply with criteria of auditors. 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 Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The new section is proposed under Texas Education Code, §61.051(a), which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Collection of Tuition.

There will be no other section or article of the code affected.

§21.4. Collection of Tuition. The following conditions shall apply in the collection of tuition at institutions of higher education and in the conducting of enrollment audits.

(1) On or before the dates for reporting official enrollments to the Texas Higher Education Coordinating Board each enrollment period, each institution of higher education shall collect in full from each student that is to be counted for state aid purposes the amounts set as tuition by state law or by the respective governing boards. Valid contracts with the United States government for instruction of eligible military personnel, approved financial assistance, and valid contracts with private business and public-service type organizations or institutions such as hospitals, may be considered as collections thereunder, but subject to adjustments after final payment thereof.

(2) Returned checks must be covered by a transfer from a self-supporting auxiliary enterprise fund or other non-state fund source (e.g., food service, bookstore) within ten days of the date the institution receives the returned check in order for contact hours to be presented to the state for funding.

(3) Auxiliary enterprise or other non-state fund sources may not be reimbursed with state-provided funds.

(4) Institutions must retain records of individual student tuition payment and returned checks for verification by the State Auditor.

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 12, 1994.

TRD-9452368 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: January 27, 1995

For further information, please call: (512) 483-6160

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Subchapter J. The Physician Education Loan Repayment Program

• 19 TAC §§21.254, 21.255, 21.257, 21.261

The Texas Higher Education Coordinating Board proposes amendments to §§21.254, 21.255, 21.257, and 21.261, concerning the Physician Education Loan Repayment Program. The amendments are being made to comply with changes in federal statutes. The amendments change terminology to be consistent with federal statutes.

Mack Adams, Assistant Commissioner for Student Services, 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. Adams 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 none of consequence; however, change is necessary to continue to qualify for federal funds. 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 Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendments are proposed under Texas Education Code, §61.537, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning the Physician Education Loan Repayment Program.

There will be no other section or article of the code affected.

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

Economically Depressed Medically Underserved Area-Any economically depressed area or county of the state that is also a State Recommended Health Professional Shortage Area as defined in §21.255. Economically depressed areas of the state are those designated as economically depressed by the economic development administration of the United States Department of Commerce. Economically depressed counties of the state are those having a poverty rate of 20% or over as determined by the **U.S. Bureau of the Census** [Texas county poverty population model] and estimates developed by the Texas Department of Health and the Texas Department of Human Services. (Portions of counties, facilities, or population groups that are State Recommended Health Professional Shortage Areas within an economically depressed area or county are considered economically depressed medically underserved areas.)

Health Professional Shortage Area (**HPSA**) [(HMSA)] -An area of the state designated by the **Division of Shortage Designation** [Office of Shortage Analysis], Bureau of **Primary** Health Care [Delivery and Assistance], of the United States De-

partment of Health and Human Services, or its successors, as having a shortage of primary health care physicians or psychiatrists.

Rural Medically Underserved Area-Any State Recommended Health Professional Shortage Area in Texas that is not designated as a Metropolitan Statistical Area by the United States Office of Management and Budget [Bureau of the Census].

§21.255. State Recommended Health Professional Shortage Area. A State Recommended Health Professional Shortage Area shall be any area of the state recommended by the Texas Department of Health to the Division of Shortage Designation [Office of Shortage Analysis], Bureau of Primary Health Care [Delivery and Assistance], of the United States Department of Health and Human Services, or its successors, as having a shortage of primary health care physicians or psychiatrists.

(1) Denial of designation of the Division of Shortage Designation [Office of Shortage Analysis] does not remove a State Recommended Health Professional Shortage Area from the list of eligible areas in the state-funded portion of the program.

(2) A State Recommended Health Professional Shortage Area may be removed from the list of eligible areas in the state-funded portion of the program only after a recommendation to that effect by the Texas Department of Health to the Division of Shortage Designation [Office of Shortage Analysis].

§21.257. Eligible Lender or Holder. The board shall retain the right of determining eligibility of lenders and holders of education loans to which payments may be made. An eligible lender or holder shall, in general, make or hold education loans made to individuals for purposes of attending postsecondary institutions and shall not be any private individual. An eligible lender or holder may be, but is not limited to, a bank, savings and loan association, credit union, institution of higher education, secondary market, governmental agency, pension fund, private foundation, or insurance company, provided the education loan conforms to the definition of an eligible education loan in §21.260 [§21.259] of this subchapter (relating to Eligible Education Loan).

§21.261. State-funded Physician Education Loan Repayment Program.

(a) (No change.)

(b) The commissioner may authorize repayment of eligible education loans made to an eligible physician who shows evidence of a strong service commitment and who:

(1) (No change.)

(2) has completed at least one year of medical practice:

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

(C) for a Community Health Center in Texas; or

(D)[(C)] one year of training in an approved family practice residency training program in Texas.

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

Issued in Austin, Texas, on December 12, 1994.

TRD-9452369 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

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For further information, please call: (512) 483-6160

Subchapter L. Paul Douglas Teacher Scholarship Program

- **19 TAC §§21.307, 21.309, 21.311, 21.312, 21.320, 21.323, 21. 325**

The Texas Higher Education Coordinating Board proposes amendments to §§21.307, 21.309, 21.311, 21.312, 21.320, 21.323, and 21.325, concerning the Paul Douglas Teacher Scholarship Program. The amendments are being made to comply with changes in federal statutes. The amendments change eligibility criteria.

Mack Adams, Assistant Commissioner for Student Services, 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. Adams 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 more students may qualify for program benefits. 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 Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendments are proposed under Texas Education Code, §61.068, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning the Physician Education Loan Repayment Program.

There will be no other section or article of the code affected.

§21.307. Qualifications for Scholarships. The commissioner may authorize, or cause to be authorized, scholarships to qualified students at any eligible institution, provided the applicant:

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

(3) has graduated from high school or is scheduled to graduate by the end of the secondary school year [within three months of the award]; or has received a certificate of high school equivalency for successfully completing the Test of General Educational Development (GED);

(4)-(8) (No change.)

§21.309. Special Consideration.

(a) As required under the Higher Education Amendments of 1992, §523(d), at least 75% of the scholars will be selected on the basis of selection criteria that include criteria to give special consideration to individuals who:

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

(5) intend to teach in curricular areas or geographic areas where there are demonstrated shortages of qualified teachers; [or,]

(6) are from disadvantaged backgrounds, including low income, racial and ethnic minorities and the disabled, and from groups historically underrepresented in the teaching profession or in the curricular areas in which they are preparing to teach.

(b) (No change.)

§21.311. Criteria for Subsequent Scholarships. In order to be considered for subsequent scholarships qualified applicants must be:

(1) enrolled as a full-time student in a postsecondary institution that is currently accredited by a nationally recognized accrediting agency or association that the Secretary determines to be a reliable authority as to the quality of training offered, in accordance with the Act, §1202(a) [§1201(a)];

(2) (No change.)

(3) maintaining satisfactory progress toward a degree, or if the student already has a degree, toward teacher certification, as determined by the postsecondary institution the student is attending, in accordance with the criteria established in 34 Code of Federal Regulations, §668.16(e) of the Student Assistance General Provisions regulations.

§21.312. Application Priority Deadlines. A system of priority deadlines will be administered by the board to process applications.

(1) Initial applications arriving at the board on or before **June 30** [June 15] of each year will be given equal priority. Applications received after that date will be processed on a first come-first served basis until funds are depleted.

(2) Subsequent scholarship applications must be received by the board on or before **June 30** [June 15] to ensure the qualified applicant of receiving the full scholarship for which he or she is eligible, provided funds are available.

(3) Eligible applications received after **June 30** [June 15] will be honored as long as funds are available and applications for subsequent scholarships will receive priority. If available funds are insufficient to honor all applications for subsequent scholarships, **the Board will prorate reductions in order to fulfill its obligation to subsequent scholars.** [scholarships will be awarded on the basis of each scholar's ranking.]

§21.320. Loan Interest.

(a) Capitalized Interest. Interest accrues from the date of each initial scholarship payment if the board has determined that the scholar is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, [but not before six months have elapsed after cessation of the scholar's full-time enrollment in such a course of study,] or the day after that portion of the scholarship period for which the teaching obligation has been fulfilled. From the time capitalized interest begins to accrue to the time the repayment period begins (as described in §21.321, Repayment of Loans), the interest charge is adjusted annually and is set by the United States Secretary of Education by regulation at the rate that in no event is higher than the greater of the rate applicable to loans under Part B of Title IV, HEA, or **428(A) and 428(B)** of the HEA during the same 12-month period. The board shall capitalize any accrued unpaid interest the time it establishes the scholar's repayment schedule.

(b) Interest Rate. The interest rate is adjusted annually and is set by the United States Secretary of Education by regulation at the rate that in no event is higher than the greater of the rate applicable to loans under Part B of Title IV, HEA, or **428(A) and 428(B)** of the HEA during the same 12-month period.

(c) Interest Rate Applicable During the Repayment Period. The interest rate applicable during the repayment period is the interest rate prescribed by the United States Secretary of Education by regulation [at the rate that in no event is higher than the rate applicable to loans under Part B of Title IV, HEA,] that is in effect as of the beginning date of the repayment period.

§21.323. Deferments.

(a) To qualify for any deferments, the scholar must notify the board of his or her claim to a deferment and submit written proof acceptable to the board that he or she is:

(1) engaged in a full-time course of study at an institution of higher education, **as defined in §1201(a) of the HEA;**

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

(4) unable to secure employment for a period not to exceed 12 months by reason of the care required by a [spouse who is] disabled **child, spouse, or parent;**

(5)-(6) (No change.)

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

§21.325. Provisions for Disability and Death. The board shall cancel a scholar's repayment obligations if it determines:

(1) on the basis of a sworn affidavit of a qualified physician, that the scholar is unable to teach on a full-time basis because **the scholar is permanently, totally disabled** [of an impairment that is expected to continue indefinitely or result in death]; or

(2) (No change.)

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

Issued in Austin, Texas, on December 12, 1994.

TRD-9452370 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: January 27, 1995

For further information, please call: (512) 483-6160

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TITLE 22. EXAMINING BOARDS

Part XII. Board of Vocational Nurse Examiners

Chapter 235. Licensing Application for Licensure

• 22 TAC §235.9

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

The Board of Vocational Nurse Examiners proposes to repeal §235.9, entitled Applications and Fees. The rule is repealed in order to adopt a new rule which will more clearly outline procedures for submitting applications for examination and licensure.

Marjorie A. Bronk, Executive Director, has determined that for the first five year period the rule is in effect, there will be no fiscal implication for state or local government as a result of the repeal of this rule.

Mrs. Bronk has also determined that for each year of the first five years the rule is repealed, the public benefit will be more clearly outlined procedures for submitting applications for examination and licensure. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Comments on the proposed repeal of this rule may be submitted to Marjorie A. Bronk, R.N., M.S.H.P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758 (512) 835-2071.

The repeal is proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No statute, article or code will be affected by this proposal.

§235.9. Application Fees

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 12, 1994.

TRD-9452377 Marjorie A. Bronk
Executive Director
Board of Vocational Nurse Examiners

Earliest possible date of adoption: January 20, 1995

For further information, please call: (512) 835-2071

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• 22 TAC §235.9, §235.17

The Board of Vocational Nurse Examiners proposes new §235.9, concerning the procedure for submitting applications for the national examination and amendment of §235.17, relative to temporary permits. The proposal of §235. 9 is due to the changes in the submission procedure. The amendment of §235. 17 allows for explanation of what happens on temporary permits for those individuals who do not appear for the examination or fail to schedule for examination.

Marjorie A. Bronk, Executive Director, has determined that for the first five year period the rules are in effect, there will be no fiscal

implication for state local government as a result of enforcing or administering the rules.

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

Comments on the proposed rules may be submitted to Marjorie A. Bronk, R.N., M.S.H.P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-1072.

The amendment and new rule are proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No statute, article or code will be affected by the proposal.

§235.9. Applications and Fees.

(a) The national testing service application and fee shall:

(1) be submitted directly to the testing service;

(2) be accompanied by the correct fee and made payable to the National Council of State Boards of Nursing; and

(3) be nonrefundable.

(b) The application for examination and licensure and fee shall:

(1) be mailed directly to the Board office;

(2) be received in the Board office at least 30 days prior to the date set for the initial examination or the reexamination;

(3) be returned to the applicant if application or fee is incorrect;

(4) submit fee in the form of cash, cashier's check, money order, individual institutional check, or state warrant made payable to the Board of Vocational Nurse Examiners; and

(5) be nonrefundable.

(c) Personal checks are not acceptable. The Board assumes no responsibility for loss in transit of cash remittances. Each application for examination and licensure as a vocational nurse under Texas Civil Statutes, Article 4528(c), §6 and §7 shall be accompanied by the correct fee.

(d) The application for licensure by examination shall be mailed directly to the Board office.

§235.17. Temporary Permits

(a) (No change.)

(b) Graduates of approved vocational nursing programs in this state, another state, or the District of Columbia.

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

(3) The temporary permit will expire:

(A) on the applicant's receipt of a license; or

(B) on the date indicated on the permit for applicants who fail the examination; or

(C) on the date indicated on the permit for applicants who do not appear for the examination or fail to schedule for the examination within the authorized time period. [on the applicants receipt of a license or on the date indicated on the permit for applicants who fail the examination;]

(4) (No change.)

(c) Professional nursing education applicants.

(1) (No change.)

(2) The temporary permit will expire:

(A) on the applicant's receipt of a license; or

(B) on the date indicated on the permit for applicants who fail the examination; or

(C) on the date indicated on the permit for applicants who do not appear for the examination or fail to schedule for the examination within the authorized time period. [on the applicants' receipt of a license or on the date indicated on the permit for applicants who fail the examination.]

(d)-(e) (No change.)

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

Issued in Austin, Texas, on December 12, 1994

TRD-9452374 Marjorie A. Bronk
Executive Director
Board of Vocational Nurse Examiners

Earliest possible date of adoption: January 20, 1995

For further information, please call: (512) 835-2071

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Chapter 239. Contested Case Procedure

Reinstatement Process

• 22 TAC §239.55

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

The Board of Vocational Nurse Examiners proposes to repeal §239.55, entitled Reinstatement Process. The rule is repealed in order to adopt a new rule which will more clearly outline procedures for submitting applications for examination and licensure.

Marjorie A. Bronk, Executive Director, has determined that for the first five year period the rule is in effect, there will be no fiscal implication for state or local government as a result of the repeal of this rule.

Mrs. Bronk has also determined that for each year of the first five years the rule is repealed, the public benefit will be more clearly outlined procedures for submitting applications for examination and licensure. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Comments on the proposed repeal of this rule may be submitted to Marjorie A. Bronk, R.N., M.S.H.P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758 (512) 835-2071.

The repeal is proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No statute, article or code will be affected by this proposal.

§239.55. Failure to Appear.

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 12, 1994.

TRD-9452378 Marjorie A. Bronk
Executive Director
Board of Vocational Nurse Examiners

Earliest possible date of adoption: January 20, 1995

For further information, please call: (512) 835-2071

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Chapter 240. Peer Review and Reporting

• 22 TAC §240.11, §240.12

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

The Board of Vocational Nurse Examiners proposes the repeal of Rules 240. 11 and 240.12 relative to Peer Review and Reporting. The rules are being repealed in order to adopt new rules which include what may be considered minor incidents.

Marjorie A. Bronk, Executive Director, has determined that for the first five year period the repeal of these rules is in effect, there will be no fiscal implication for state or local government.

Mrs. Bronk has also determined that for each year of the first five years the repeal of these rules is in effect, there will be no anticipated public benefit. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposal.

Comments on the proposed repeal may be submitted to Marjorie A. Bronk, R.N., M.S.H.P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758 (512) 835-2071.

The repeals are proposed under Texas Civil Statutes, Article 4528c, §5(g), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No statute, article or code will be affected by the proposal.

§240.11. Vocational Nurse Peer Review.

§240.12. Vocational Nurse Reporting.

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 12, 1994.

TRD-9452379 Marjorie A Bronk
Executive Director
Board of Vocational Nurse Examiners

Earliest possible date of adoption. January 20, 1995

For further information, please call: (512) 835-2071

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• 22 TAC §§241.11-241.13

The Board of Vocational Nurse Examiners proposes new §§240.11-240.13, relative to Peer Review and Reporting. The previous §240.11 and §240.12 will be deleted in order to allow for addition of a rule determining what is considered a minor incident.

Marjorie A. Bronk, Executive Director, has determined that for the first five year period the rules are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rules.

Mrs. Bronk also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be a better understanding of what incidents must be reported to the board or to a peer review committee. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the rules may be submitted to Marjorie A. Bronk, R.N., M.S.H.P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The new sections are proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No statute, article or code will be affected by the proposal.

§240.11. Minor Incidents.

(a) The board believes protection of the public is not enhanced by the reporting of every minor infraction that may be a violation of the Vocational Nurse Act. This is particularly true when there are mechanisms in place in the vocational nurse's employment setting to take corrective action, remediate deficits and detect patterns of behavior. This rule is intended to clarify both what constitutes a minor incident and when a minor incident need not be reported to the board.

(b) A "minor incident" is defined as "conduct that does not indicted that the nurse's continuing to practice vocational nursing poses a serious risk of harm to the patient or other person" A vocational nurse involved in an incident which is determined to be minor, need not be reported tot he board, or the peer review committee, if all of the following factors exist:

(1) low risk of physical, emotional or financial harm to the patient, stemming from the incident;

(2) the incident is a one-time event with no prior evidence of poor practice;

(3) the vocational nurse exhibits a conscientious approach to, and accountability for his/her practice, and,

(4) the vocational nurse appears to have the knowledge and skill to practice safely.

(c) Other conditions which may be considered in determining that mandatory reporting is not required are:

(1) the significance of the event in the particular practice setting;

(2) the situation in which the event occurred; and

(3) the presence of contributing or mitigating circumstances in the nursing care delivery system.

(d) When a decision is made that the incident is minor, the following steps are required:

(1) an incident/variance report shall be completed according to the employing facility's policy;

(2) the nurse's supervisor shall maintain a record of each minor incident involving the vocational nurse;

(3) the nurse's supervisor shall assure that the incident/variance report contains a complete description of the incident, patient record number, witnesses, vocational nurse involved, and action taken to correct or remediate the problem;

(4) the nurse's supervisor shall report a vocational nurse to the peer review committee if three

(5) minor incidents involving that vocational nurse are documented within a one-year time period; and

(6) the peer review committee shall review the three minor incidents and make a determination as to whether a report to the board is warranted.

(e) In employment settings where no peer review committee is required to exist, the vocational nurse's supervisor shall review minor incidents involving those vocational nurses under his/her supervision and keep the same reports as required is subsection (d)(1), (2), and (3) of this section. The supervisor shall report any vocational nurse involved in three minor incidents within one year to the board.

(f) Nothing in this rule is intended to prevent reporting of a potential violation directly to the board

§240.12. Mandatory Reporting.

(a) Each vocational nurse having reasonable cause to suspect that another vocational nurse has exposed a patient or other person unnecessarily to a serious risk of harm, resulting in further medical intervention and/or death, because of unprofessional conduct, failure to adequately care for a patient, failure to conform to the minimum standards of acceptable vocational nursing practice, or impairment, shall report to the Board in a signed written document, the name of the vocational nurse commit-

ting the suspected violation and any other pertinent information within the vocational nurse's knowledge. A vocational nurse without personal knowledge of the suspected violation is not required to report under this Chapter if he or she has reasonable cause to believe the vocational nurse has already been reported.

(b) Each employer of a vocational nurse employer who is believed to have exposed a patient or other person unnecessarily to serious risk of harm, resulting in further medical intervention and/or death, because of unprofessional conduct, failure to adequately care for a patient, failure to conform to the minimum standards of acceptable vocational nursing practice, or impairment, shall report to the Board in a signed, written document, the name of the vocational nurse committing the suspected violation and any other pertinent information within the vocational nurse employer's knowledge.

(c) Each vocational nurse employer that regularly employs, hires or otherwise contracts for the services of ten or more vocational nurses shall develop a written plan for identifying and reporting vocational nurses in its service, who expose patients or other persons unnecessarily to a serious risk of harm resulting in further medical intervention and/or death, because of unprofessional conduct, failure to adequately care for a patient, failure to conform to the minimum standards of acceptable vocational nursing practice, or impairment. The plan must include an appropriate process for the review of any incident reportable under this Chapter by a vocational nursing peer review committee established and operated under Rule 241.11, and for the affected vocational nurse to submit rebuttal information to that committee. (Said written plan required by this Chapter shall be in operation by September 1, 1995.)

(d) The requirement that a report to the Board be reviewed by a vocational nursing peer review committee applies only to a mandatory report, and review by the peer review committee is only advisory The requirement may not be construed as subjecting an employer or other person's administrative decision to discipline a vocational nurse to the peer review process or as preventing an employer or other person from taking disciplinary action before review by the peer review committee is conducted. The review by the peer review committee established under subsection (c) of this section must include a determination as to whether or not the vocational nurse undergoing review, engaged in conduct that exposed a patient or other person unnecessarily to a serious risk of harm, resulting in further medical intervention and/or death, because of unprofessional conduct, failure to adequately care for a patient, failure to conform to the minimum standards of acceptable vocational nursing practice, or impairment. The peer review committee's findings shall be included in the report made to the Board under subsection (a) of this section.

(e) Each national or state association of vocational nurses that conducts a certification or accreditation program for vocational nurses that expels, decertifies, or takes any other substantive disciplinary action, as defined by the Board, against a vocational nurse as a result of the vocational nurse's failure to conform to the minimum standards of acceptable vocational nursing practice, shall report to the Board in writing the name of the vocational nurse committing the suspected violation and any other pertinent information within the association's knowledge.

(f) Each state agency that surveys health-care facilities or agencies with respect to the quality of vocational nursing care provided, unless otherwise expressly prohibited by state or federal law, shall report to the Board in writing any vocational nurse that it has reason to believe exposed a patient or other person unnecessarily to a serious risk of harm resulting in further medical intervention and/or death, because of unprofessional conduct, failure to adequately care for a patient, failure to conform to the minimum standards of acceptable vocational nursing practice, or impairment.

(g) If a vocational nurse required to be reported under this Chapter is impaired or suspected of being impaired by dependency on alcohol, chemicals or by mental illness, that vocational nurse, in lieu of being reported to the Board or reviewed by a vocational nursing peer review committee, may be reported to a peer assistance program approved by the Board under Chapter 701, Acts of the 69th Legislature, Regular Session, 1985 (Health and Safety Code Annotated, Chapter 467.)

(h) An individual, organization, agency, facility, or other person is not liable in any civil action for failure to file a report required by this Chapter, but the appropriate state licensing agency may take action against a licensed practitioner, agency, or facility for not reporting as required

(i) An individual, organization, agency, facility or other person that, in good faith, makes a report required, permitted or reasonably believed to be required or permitted under this Chapter, is immune from civil liability and may not be subjected to any other retaliatory action as a result of making that report.

(j) An individual, organization, agency, facility, or other person named as a defendant in any civil action or subjected to any other retaliatory action as a result of filing a report required, permitted or reasonably believed to be required or permitted under this Chapter, may file a counter-claim in any pending action or may prove a cause of action in a subsequent suit to recover defence costs, including reasonable attorney's fees and actual and punitive damages if the suit or retaliatory action is determined to be frivolous, unreasonable, or taken in bad faith

(k) No person shall suspend, terminate, or otherwise discipline or discriminate against a person reporting, in good faith, under this Chapter. A person has a cause of action against an individual, organization, agency, facility, or other person that suspends or terminates the employment of the person or otherwise disciplines or discriminates against the person for reporting under this Chapter. The person may recover:

(1) actual damages, including damages for mental anguish even though no other injury is shown, or $1,000, whichever amount is greater;

(2) exemplary damages;

(3) costs of court; and

(4) reasonable attorney's fees.

(l) In addition to amounts recovered under subsection (k)(1) of this section, a person whose employment is suspended or terminated in violation of this subsection is entitled to.

(1) reinstatement in the employee's former position or severance pay in an amount equal to three months of the employee's most current salary; and

(2) compensation for wages lost during the period of suspension or termination.

(m) A person who sues under subsection (k) of this section has the burden of proof, however, if either the Board or court of competent jurisdiction determines that the report made the subject of the cause of action was authorized or required under this Chapter, and that is was made in good faith, it is a rebuttable presumption that a person's employment was suspended or terminated for reporting under this Chapter if the person was suspended or terminated within 60 days after making the report

(n) An action under this Chapter may be brought in the district court of the county.

(1) in which the plaintiff resides,

(2) in which the plaintiff was employed by the defendant; or

(3) in which the defendant conducts business

(o) The Board shall notify each vocational nurse who is reported to the Board

under this Chapter of the filing of the report, unless doing so would jeopardize an active investigation.

(p) The vocational nurse or the vocational nurse's authorized representative is entitled on request to review any report submitted to the Board under this Chapter unless doing so would jeopardize an active investigation.

(q) The vocational nurse or authorized representative may place into the record a statement rebutting any information existing in the report. The statement shall at all times accompany that part of the report being rebutted. The Board, in investigating the report, shall review the statement and evaluate any reasons asserted by the vocational nurse as justifying his or her conduct.

(r) If at any time the Board determines that a report submitted under this Chapter is without merit, the report shall be expunged from the vocational nurse's file one year after the date the investigation is closed.

(s) A report required or authorized under this Chapter and the identity of the person making the report are confidential and may not be disclosed, except as follows:

(1) to the nurse being investigated and/or their authorized representative;

(2) to persons involved with the Board in a disciplinary action against the nurse;

(3) to peer assistance programs approved by the Board under Chapter 701, Acts of the 69th Legislature, Regular Session, 1985 (Health and Safety Code Annotated, Chapter 467.);

(4) law enforcement agencies;

(5) nurse licensing or disciplinary boards in other jurisdictions; and

(6) persons engaged in bona fide research, if all individual-identifying information has been deleted;

(7) with respect to any report made under this Chapter, the Board, on the request of any organization or other person required to report under this Chapter, shall provide to the organization or person, information about the allegations contained in the report, the findings of the peer review committee, and the status of the Board's investigation; or

(8) the information may be disclosed in any civil suit in which a person is named as a defendant as a result of the person making the report, or in the prosecution of any cause of action based on a claim that the person making the report was subject to retaliatory action as a result of making the report.

(t) This Chapter does not prevent disclosure under Article 4528c, Revised Statutes, of formal charges filed by the Board or a final disciplinary action taken by the Board, in whole or in part, of the submitting of a report under this Chapter. In no event may any report or information submitted as required, or authorized by this Chapter, be available for discovery or court subpoena or introduced into evidence in a vocational nursing liability suit.

(u) The filing of a report under this Chapter, an investigation by the Board, or any disposition by the Board, does not prevent an individual, agency, facility, or other person from taking disciplinary action against a vocational nurse.

(v) The reporting required under this Chapter does not constitute state action on behalf of the person or organization reporting.

(w) The Board shall inform, in the manner deemed appropriate, vocational nurses, facilities, agencies, and other persons of their duty to report under this Chapter.

§240.13. Vocational Nurse Peer Review.

(a) "Peer review" is the evaluation of vocational nursing services, the qualifications of vocational nurses, the quality of patient care rendered by vocational nurses, the merits of complaints concerning vocational nurses and vocational nursing care, and determinations or recommendations regarding complaints including:

(1) the accuracy of vocational nursing assessments and observations;

(2) the appropriateness and quality of care rendered by a vocational nurse within the scope of vocational nursing practice;

(3) the reports made to a vocational nursing peer review committee concerning activities under the committee's review authority;

(4) the reports by a vocational nursing peer review committee to other committees or to the Board as permitted or required by law; and

(5) the implementation of duties of a vocational nursing peer review committee by its members, agents, or employees.

(b) "Peer review committee" is a committee composed of at least a majority of professional and vocational nurses established under the authority of a national, state, or local vocational nursing association, long-term care facility, home health agency, nursing service agency, or other health-care facility or established employer or state agency or political subdivision for the purpose of conducting peer review. A peer review committee includes the employees and agents of the facility/agency, and any other person or organization that is employed by or serves the committee in any capacity.

(c) The peer review process may be conducted under the auspices of a professional peer review committee that includes designated slots for vocational nurses. Peer review of vocational nurses does not require a committee with a majority of vocational nurses.

(d) Except as otherwise provided by this Chapter, all proceedings of a peer review committee are confidential and all communications made to a peer review committee are privileged. A member, agent, or employee of a peer review committee or a participant in any proceeding before the committee may not disclose or be required to disclose a communication made to the committee or a record or proceeding of the committee.

(e) A person who attends a proceeding or a peer review committee may not disclose or be required to disclose any information acquired in connection with or in the course of the proceeding or disclose any opinion, recommendation, or evaluation of the committee or any member of the committee.

(f) The members of a peer review committee and the persons who provide information to the committee may not be questioned about their testimony before the committee or about opinions formed as a result of the committee proceedings

(g) Except as otherwise permitted by this Chapter, all information made confidential by this Chapter is not subject to subpoena or discovery in any civil matter, is not admissible as evidence in any judicial or administrative proceeding, and may not be introduced into evidence in a liability suit arising out of the provisions of or failure to provide vocational nursing services within the scope of vocational nursing practices.

(h) A peer review committee shall disclose upon written request, the written or oral communications made to the committee and the records and proceedings of the committee to:

(1) the state board of registration or licensure of any state; or

(2) a law enforcement authority investigating a criminal matter.

(3) the vocational nurse and/or their authorized representative.

(i) A peer review committee may disclose upon written request, the written or oral communications made to the committee and the records and proceedings of the committee to:

(1) the association, agency, facility, or other organization under whose authority the committee is established;

(2) another established and identified nursing peer review committee;

(3) a peer assistance program approved by the Board under the Health and Safety Code Annotated, Chapter 467;

(4) appropriate state or federal agencies or accrediting organizations which accredit health-care facilities, or which survey facilities for quality of care; or

(5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

(j) If a peer review committee discloses information under this Chapter that could result in the reprimand, suspension, termination, or other disciplinary action of a vocational nurse, or itself recommends or takes such action, the committee shall provide the nurse with a detailed summary of information disclosed or the basis of its action or recommendation. The vocational nurse shall be permitted an opportunity to offer rebuttal information and to submit a rebuttal statement of reasonable length. The rebuttal statement shall be included in the information disclosed.

(k) If a peer review committee discloses information to a vocational nurse under this Chapter, the committee has not, by that action, waived the privilege of nondisclosure of committee information and proceedings.

(l) The peer review committee disclosing and the person receiving the information disclosed under this Chapter, shall protect, to the extent possible, the identity of the patients.

(m) A member of a peer review committee or a person participating in peer review under this Chapter, who is named as a defendant in a civil action or subject to other retaliatory action as a consequence of the person's participation in peer review, may use information that is confidential under this Chapter in defense of the civil action, or in a civil action based on an allegation of retaliation for the person's participation in peer review

(n) If a person discloses information under this Chapter, the person has not, by that action, waived the privilege of nondisclosure of all other information privileged under this Chapter.

(o) A cause of action does not accrue against the members, agents, or employees of a peer review committee or against a long-term care facility, home health agency, nursing service agency, or other health-care facility or established employer, the nursing staff of such facility, or other organization from any act, statement, determination or recommendation made, or act reported, in good faith, in the course of peer review as defined in this Chapter. A person who, in good faith, furnishes records, information, or assistance to a peer review committee is not liable in a civil action based on the person's participation or assistance in peer review, and may not be subjected to retaliatory action as a result of such act.

(p) A peer review committee, a person participating in peer review, or an organization, named as a defendant in any civil action or subjected to other retaliatory action as a result of participation in peer review, may file a counterclaim in any pending action or may prove a cause of action in a subsequent suit to recover any defense costs, including court costs, reasonable attorney's fees and actual and punitive damages if the suit of retaliatory action is determined to be frivolous, unreasonable, without foundation, or taken in bad faith.

(q) A court may not enjoin the activities of a peer review committee under this Chapter.

(r) The provisions of this Chapter may not be nullified by contract.

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 12, 1994.

TRD-9452376 Marjorie A Bronk
Executive Director
Board of Vocational Nurse Examiners

Earliest possible date of adoption: January 20, 1995

For further information, please call: (512) 835-2071

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Part XX. Texas Board of Private Investigators and Private Security Agencies

Chapter 423. Rules of Procedure and Seal Code of Professional Responsibility and Conduct

Hearings, Grievances, and Appeal Procedures

- **22 TAC §423.12**

The Texas Board of Private Investigators and Private Security Agencies proposes an amendment to §423.12, concerning Definitions. The Board has determined that the amendment of this section is necessary in order to comply with House Bill 1808 of the 73rd Texas Legislature.

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

Ms. Sanders also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure that the people working in certain positions will be properly trained. The cost of compliance with the rule for small businesses will be minimal. The anticipated economic cost to persons who are required comply with the rule as proposed will be minimal.

Comments on the proposal may be submitted to Clema D. Sanders, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 4413(29bb), §11(a)(3), which provide the Texas Board of Private Investigators and Private Security Agencies with the authority to promulgate all rules and regulations necessary in carrying out the provisions of this Act.

The following is the statute that is affected by this rule: Rule Number, Statute, Article or Code: §423.12, Texas Civil Statutes, Article 4413(29bb).

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

[Security support person–An individual employed as an alarm systems installer, security sales person, alarm systems monitor, or dog trainer.]

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, 1994.

TRD-9452393 Clema D Sanders
Executive Director
Texas Board of Private Investigators and Private Security Agencies

Earliest possible date of adoption: January 20, 1995

For further information, please call: (512) 463-5545

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Chapter 429. Application and Examination

- **22 TAC §429.5**

The Texas Board of Private Investigators and Private Security Agencies proposes an amendment to §429.5, concerning Fingerprint Cards. The Board has determined that the amendment of this section is necessary in order to meet the requirements of the Department of Public Safety's AFIS system. This

computerized systems classifies fingerprints and cannot tolerate the slightest variance in the cards' weight or spacing. This amendment would eliminate the provision allowing for the use of facsimiles of fingerprint cards obtained from the Texas Board of Private Investigators and Private Security Agencies.

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

Ms. Sanders 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 criminal history background checks on applicants and employees of licensed companies will done much faster. The cost of compliance with the rule for small businesses will be minimal. The anticipated economic cost to persons who are required comply with the rule as proposed will be minimal.

Comments on the proposal may be submitted to Clema D Sanders, Texas Board of Private Investigators and Private Security Agencies, P.O Box 13509, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 4413(29bb), §11(a)(3), which provide the Texas Board of Private Investigators and Private Security Agencies with the authority to promulgate all rules and regulations necessary in carrying out the provisions of this Act.

The following is the statute that is affected by this rule: Rule Number, Statute, Article or Code: §429.5, Texas Civil Statutes, Article 4413(29bb)

§429.5 Fingerprint Cards.

(a) All fingerprint cards required by the Act shall be fingerprint cards approved by and obtained from the Board [or an authorized exact facsimile thereof] Two fingerprint cards shall be submitted for each applicant so that if one is not classifiable, the other one may be acceptable. All blank spaces shall be completed and the cards shall be signed by the applicant and the person taking the prints

(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 13, 1994

TRD-9452391 Clema D Sanders
Executive Director
Texas Board of Private Investigators and Private Security Agencies

Earliest possible date of adoption: January 20, 1995

For further information, please call (512) 463-5545

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Chapter 436. Alarm Installer and Alarm Systems Salesperson Training and Testing

• 22 TAC §§436.1-436.6

The Texas Board of Private Investigators and Private Security Agencies proposes amendments to §§436.1-436.6, concerning Alarm Installer and Alarm Systems Salesperson Training and Testing. The Board has determined that the amendment of this section is necessary in order to comply with House Bill 1808 of the 73rd Texas Legislature.

Clema D. Sanders, 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. Sanders 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 ensure proper installation and operation of burglar alarms used by the public. The cost of compliance with the rule for small businesses will be minimal. The anticipated economic cost to persons who are required comply with the rule as proposed will be minimal.

Comments on the proposal may be submitted to Clema D. Sanders, Texas Board of Private Investigators and Private Security Agencies, P O Box 13509, Austin, Texas 78711.

The amendments are proposed under Texas Civil Statutes, Article 4413(29bb), §11(a)(3), which provide the Texas Board of Private Investigators and Private Security Agencies with the authority to promulgate all rules and regulations necessary in carrying out the provisions of this Act.

The following is the statute that is affected by this rule Rule Number, Statute, Article or Code Chapter 436, Texas Civil Statutes, Article 4413(29bb)

*§436.1 Application for **Alarm** Training Program [Course] Approval*

(a) An application for alarm installer or alarm systems salesperson training **program** [school] approval shall be on a form prescribed by the Board to show proof that the applicant:

(1) has developed an adequate nationally recognized training **alarm program** [course] as its curriculum;

(2) will offer **alarm training programs** [course] consisting of at least 20 hours of instruction in alarm system installation;

(3) will provide, as a part of the **alarm** training program, a test that demonstrates the participant's qualifications to perform the duties allowed by the participant's registration;

(4) will offer at least two **alarm** training **programs** [courses] each year within 100 miles of each county in the state that has a population in excess of 500,000 people;

(5) has[, or has the capacity to provide,] adequate space, qualified **alarm training program** instructors, and proper instructional material; and

(6) has appointed **a director** [manager] who will be responsible for **alarm** training **program.**

(b) A Letter of Approval shall be granted by the Director to all qualified **alarm training programs** [schools] and shall be valid for one year and may be renewed by submitting an application for renewal **no later than** 30 days prior to the expiration date along with any required fees.

(c) **A director for an alarm** [manager] training **program** and a qualified **alarm training** instructor must have successfully completed a nationally recognized **program** [course] in alarm installation consisting of at least 20 hours and must have assisted in instruction of at least 20 hours and must have assisted in instruction of at least two other nationally recognized **programs** [courses] in alarm installation consisting of at least 20 hours each. Approval by the **Board** [Director] of **alarm training program directors** [managers] and qualified **alarm training** instructors shall be valid for one year

(d) A nationally recognized alarm training program shall be a training program that:

(1) is available throughout the nation;

(2) has been in existence a minimum of three years;

(3) is recognized by other state burglar alarm industry licensing and regulatory agencies; and

(4) is recognized by national burglar alarm industry trade associates as a training source for burglar alarm installers.

§436.2 Attendance, Progress and Completion Records Required

(a) A Board approved **alarm** training **program** [school] shall:

(1)[(a)] issue an original Certificate of Completion to each qualifying student within 14 days after the student qualifies.

(2)[(b)] maintain adequate records to show attendance and progress of grades of students.

(3) all records required to be kept by approved alarm training pro-

grams shall be made available for inspection by Board Staff during reasonable hours.

(b) Qualified Alarm Training Program Instructors shall maintain on file for inspection by Board Staff during reasonable hours adequate records to show attendance and progress of grades of students.

§436.3. Certificate of Completion Required.

(a) A person who is employed as an alarm systems installer or alarm system salesperson must hold a Certificate of Completion issued after August 30, 1993 in order to renew any [his initial] registration after December 31, 1994 except that a person who [that] holds a valid registration on September 30, 1993, does not have to obtain a Certificate of Completion for so long as he maintains his registration with his then current licensee.

(b) The Certificate of Completion shall contain the:

(1) name and approval number of the school;

(2) approval number(s) of qualified classroom instructor(s);

(3)[(2)] date of completion which must be after August 30, 1993;

(4)[(3)] name and signature of the manager of the school; and

(5)[(4)] full name and social security number of the student.

(c) The Certificate of Completion shall indicate that the student has passed the required test and shall contain the words "has successfully completed the alarm installers or alarm systems salespersons alarm training program [course] approved by the Texas Private Investigators Board and Private Security Agencies".

§436.4. Records Required on Manager. A Board approved alarm training program [school] shall maintain on file with the Board the name and signature of its director [manager] and shall notify the Board in writing when there has been a change in the program's [school's] director [manager], giving the Board the name and signature of the new director [manager], giving the Board the name and signature of the new director [manager] and furnishing the Board a signature card of the new director [manager] within 14 days after such change.

§436.5. Statutory or Rules Violations.

(a) The Board may refuse to accept a Certificate of Completion from an alarm training program [school] upon receipt of proof of violation of the Act or Board Rules involving an owner, officer, partner, shareholder, manager or alarm training program instructor.

(b) The Board may withdraw , suspend or revoke an approval of an alarm [a] training program or approval of an alarm training program instructor [school] upon receipt of proof that said program or instructor [school] has violated [been operated in violation of] the Act or Board Rules.

(c) In the event of a denial of approval of an alarm training program, an alarm training program instructor [school] or if the Board has withdrawal approval of an alarm training program, or an alarm training program instructor [school] the Board shall set forth in writing the reasons for the denial or withdrawal of approval. The applicant shall have the right to appeal in accordance with the Act and Board Rules. If the applicant fails to exercise his right of appeal within 30 days after receipt of notice of denial or withdrawing of approval, the notice shall become final.

§436.6. Continuing Education.

(a) Beginning January 1, 1996, any [September 30, 1994, a] person employed as an alarm systems installer or alarm systems salesperson must obtain 12 hours of continuing education credits for education in alarm installation in order to renew any registration subsequent to the renewal of his previous [initial] registration.

(b) A person that has not obtained his continuing education credits and was required to do so by the date his registration expires, upon renewal may receive a temporary registration for 90 days [three months] after which time he must have met the requirements of this section. A temporary registration that has been granted under this security may not be renewed except as a registration in full compliance with this section.

(c) To be valid, continuing education credits must have been obtained during the most recent registration period and not later than 90 days following the expiration of the registration. Continuing education credits may not be used more than once for any renewal and must be submitted totaling 12 or more hours at the time of renewal. Submissions later than 90 days beyond the expiration of the registration will require a new application and fees.

(d)[(c)] The Executive Director shall approve classes for continuing education that she determines meets the qualifications of [these rules and] the Act and Board Rules. Such classes may be provided [for] and taught by any organization or person that, in the Executive Director's discretion, has the knowledge and experience to provide such information, including informal classes by manufacturers of alarm products; informal classes by alarm associations; or other qualified [entity] entities. A person wishing to conduct a continuing education class must provide the Executive Director with a description of the contents of the curriculum and the qualifications of any instructor. The Executive Director shall inform the person wishing to conduct the class of her approval or disapproval within 15 days of receiving the request. The Executive Director may delegate This responsibility to other employees of the Board.

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

Issued in Austin, Texas, on December 13, 1994.

TRD-9452390

Clema D. Sanders
Executive Director
Texas Board of Private Investigators and Private Security Agencies

Earliest possible date of adoption: January 20, 1995

For further information, please call: (512) 463-5545

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TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 164. Extra-Hazardous Employer Program

The Texas Workers' Compensation Commission proposes new §164.1 and §164.14, the simultaneous repeal of existing §164.1 and §164.14, the repeal of §164.13, and amendments to §§164.2-164.12, concerning the Extra-Hazardous Employer Program. The repeals, new rules and amendments are proposed in order to change the method of computation used in identifying extra hazardous employers and incorporate numerous lessons learned from experience to date with the program. The computation is changed to replace the fatality index with a fixed threshold value for all employers who have experienced a fatality, and reduce the variable threshold value for employers without a fatality. The grounds for a hearing based on injuries caused by third parties unrelated to the workplace and beyond the control or jurisdiction of the employer have been eliminated in favor of a screening procedure that allows the division to eliminate from the computation or convert to injuries, fatalities that meet specific criteria. The employer's basic right to a hearing is not impaired.

The new §164.1 provides definitions of the words and terms used in the program, specifies the calculation used to determine extra-hazardous employer status, requires the commissioners to establish by rule the threshold values used in the calculation, and

provides an opportunity for the employer to verify the data used in the computation prior to notification of extra-hazardous employer status.

For the purposes of the program, an employer is a public or private entity defined by the employer's Federal Employer Identification Number (FEIN) and four-digit Standard Industrial Classification (SIC) code. This codifies existing practice. The definition of an employer subject to the program is moved from §164.13 to this rule.

The employer's SIC code is specified as the SIC Code derived from the *Standard Industrial Classification Manual*, current edition, published by the Office of Management and Budget, and assigned to the employer by the Texas Employment Commission (TEC). This provides a definitive source for SIC codes and recognizes the TEC as the authority for SIC codes in Texas.

The source of the employer's highest employment during the audit period, for use in the computation, is clarified as the highest figure reported to TEC or substantiated by employer payroll documents

The term injuries, as used in the computation, is clarified to mean the total number of lost time injuries, occupational diseases, and fatalities

The source and method of determining the expected injury rate is clarified and consolidated. The information is split between §164.1 and §164 14 in the current rules The new rule clearly articulates the sources and procedure currently in use

The audit period is the 12-month period used in determining the factual data on which the identification is based.

A fatality is the death of an employee from a work related injury or occupational disease, excluding those fatalities that meet the screening criteria in new §164 14. The screening criteria are discussed under new §164 14

The procedures for including an occupational disease in the computation are clarified An occupational disease will be included on the record of the employer under which the exposure occurred. The occupational disease will be included in the audit period during which it was reported. The exposure need not have occurred during the audit period

Lost time injuries are defined as injuries (excluding occupational diseases and fatalities) resulting in greater than seven days of lost time. This is not changed from the current rule.

The use of a fatality index in the current computation is replaced with a single, separate threshold value for all employers with one or more fatalities. This simplifies the computation. For employers with no fatalities, the current table of threshold values in §164 14 is retained with the threshold values for employers with 10 or more employees reduced to broaden the scope of the program. Values for both sets of thresholds will be selected such that no employer will be identified as an extra-hazardous employer who has only one lost time injury or occupational disease reported during the audit period nor will an employer be identified as extra-hazardous whose injury rate does not exceed their expected injury rate, even if the employer has suffered a fatality. The threshold for employers that experience at least one fatality will be lower than that for employers with no fatalities.

An employer whose identification is based solely on one fatality and whose total employment in all SIC codes is less than 20 may obtain a full OSHCON consultation from the division in lieu of being identified as an extra-hazardous employer.

The calculation used to determine extra-hazardous employer status has been simplified The employer's injury rate is divided by the expected injury rate and the result compared to the appropriate threshold value. If the ratio exceeds the threshold level, the employer is extra-hazardous In all instances, the identified employer's injury rate will exceed the expected injury rate by more than the amount determined by the commissioners and specified in new §164 14.

Prior to notification, the employer will be provided the opportunity to verify the FEIN, SIC code, employment data, and injury records that will be used in the computation The employer will also have the opportunity to provide documentation on any fatalities. The division will use the information in screening the fatalities using the criteria in new §164 14.

Section 164.2 is amended to clarify the matters that can be resolved through an administrative review by the division as specified in subsection (b) (4) This allows the division to deal administratively with matters that should have been resolved prior to notification, but which did not come to light until after the notification was made. This includes the ability to exclude, or convert to injuries, fatalities that meet the criteria in §164. 14 If the issue cannot be resolved administratively, the employer will be offered the opportunity for a hearing Additionally, subsection (b)(5) is amended to delete the grounds for a hearing based on injuries caused by third parties unrelated to the workplace and beyond the control or jurisdiction of the employer Fatalities caused by third parties and by circumstances beyond the control or jurisdiction of the employer are provided for in the screening criteria of new §164 14 Injuries in categories in §164 14(e) are included in the expected injury rate statistics to which the employer's injury rate is compared

Section 164 3 is amended to clarify the timely filing of the hazard survey report and the limits of extensions of time that may be granted to accomplish the initial consultation

Section 164 4 is amended to clarify the development and content of the accident prevention plan as specified in subsection (a) The employer is responsible for the development and submission of the plan with the assistance of an approved professional source The signature of the approved professional source on the plan certifies that the plan meets the format prescribed by the commission An individual responsible for each component must be specified in the plan, as well as the specific interval at which the recurring components must be accomplished.

Additionally, §164.4(e) is amended to specify that an employer who disagrees with the accident prevention plan must propose alternative measures to meet the objectives of the program. The reference to a hearing to resolve disputes over the content of the accident prevention plan is deleted.

The amendments to §§164.5, 164.6, 164.8, 164.11, and 164 12 contain only minor clarifications and/or updates of references to the Texas Labor Code. There are no substantive changes.

Section 164.7 is amended to clarify the title of the rule, changing it to read: "Removal From "Extra-Hazardous Employer" Status And Placement In Monitor Status". Subsection (b) is amended to refer the meaning of the phrase "the injury frequency that may reasonably be expected in that employer's business or industry" back to the meaning of the term "expected injury rate" in new §164.1(b)(7). Additionally, subsection (d) is amended to clarify the actions taken at the end of the monitor period.

Section 164.9 is amended to bring the requirement for an approved professional source application forward to subsection (a) from the current §164.9(e) and to specify the time frame for processing the application by the division.

Section 164 9 contains the following amendments

(1) Current subsection (c) is moved forward to precede current subsection (b) since it is the primary criteria for qualification as an approved professional source

(2) Subsection (b), now subsection (c), is amended to clarify the requirements for qualification under this subsection and to delete the current subsection (b)(6) providing for use of a certified training program to qualify as an approved professional source. No such programs exist nor are they likely to

(3) A new subsection (d) is added to define occupational health and safety experience as used to evaluate qualifications for an approved professional source

(4) Current subsection (d), now subsection (e), is amended to add a requirement for an approved professional source to attend an annual approved professional source update seminar in order to remain on the active approved professional source list

(5) Finally, subsection (g) is amended to delete the reference to a hearing if the applicant is not approved by the division

Section 164 10 contains the following amendments.

(1) Clarification that only the commissioners can remove an approved professional source from the list of approved professional sources

(2) A new subsection (a)(5) is added to provide for the removal of an approved professional source who approves an accident prevention plan that does not meet the criteria prescribed by the commission

(3) A new subsection (b) is added to provide the mechanics of notifying an approved pro-

fessional source that the division intends to recommend to the commissioners that the consultant be removed from the list and the procedure the approved professional source may follow to request a hearing This subsection replaces the current subsection (e).

(4) A new subsection (c) is added to specify that only the commissioners may remove an approved professional source from the list of approved professional sources and provide the mechanics of issuing an order of deletion.

(5) A new subsection (g) is added to provide a procedure for reinstatement of an approved professional source removed under new subsection (a)(5).

(6) A new subsection (h) is added to provide that an approved professional source who does not comply with the provision of subsection (e), pertaining to attending an annual update seminar, will be placed on an "inactive" list by the division and be prohibited from conducting Extra-Hazardous Employer Program consultations.

(7) Finally, a new subsection (i) provides for the reinstatement of an approved professional source placed on the inactive list under the provisions of subsection (h) of this rule

Section 164.13 (relating to Applicability) is repealed and reserved for future use The phase-in provisions provided in the current rule have been completed and the final applicability conditions incorporated in new §164 1(b)(2).

New §164 14 provides threshold values established by the commissioners in accordance with §164.1(d).

(1) Subsection (c) specifies the initial 12-month audit period under the revised rules and provides for subsequent audit periods at three month intervals. It also provides for annual review by the commissioners for authorization to continue the notification cycles for an additional year

(2) Subsection (d) provides criteria to be used by the division to exclude fatalities involving heart attacks, other diseases of life, homicides, and suicides from the computation. If the circumstances surrounding the fatality are not clear, the fatality will be included in the computation and the employer may exercise his or her right to a hearing.

(3) Finally, subsection (e) provides criteria to be used by the division to convert to injuries, for use in the computation, fatalities caused by third party vehicle accidents (including vehicle/pedestrian accidents), common carrier accidents, natural events, and circumstances beyond the control or jurisdiction of the employer.

Janet Chamness, Chief of Budget, has determined that for each year of the first five years the proposed rules will be in effect there will be no fiscal implications for state government There will be fiscal implications for local governments that are designated as extra-hazardous, persons who are required to comply with the proposal, and for small businesses as a result of enforcing or administering the rules, as they will incur the costs of implementing the safety program required by the rules. There will be no difference in the costs of compliance for large and small businesses required to comply with the rule, based on any of the standards for comparison required by statute These costs, however, already exist based on statutory requirements and existing rules, and the costs will not be increased by these proposed rule amendments and repeals or the proposed new rules.

Ms Chamness also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be possible savings to employers identified as extra-hazardous These savings would stem from a reduction in the number of accidents and the associated financial and human cost as a result of implementing the accident prevention plan mandated by the program. Experience to date of employers completing the program shows an average injury rate reduction of 70%

Comments on the proposal may be submitted for at least 30 days after the date of publication of this document in the *Texas Register* to Elaine Crease, Office of the General Counsel, Mail Stop 4D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491

• 28 TAC §§164.1-164.12, 164.14

The new rules and amendments are proposed under the Texas Labor Code, §402 061, which authorizes the commission to adopt rules necessary to administer the Act, and §§411 041-411 049, which require the commission to identify extra-hazardous employers and oversee the development and implementation of accident prevention programs

The Texas Labor Code, §§402 061, 411 041-411.049 is affected by these amendments and new sections

§164 1. Criteria For Identifying Extra-Hazardous Employers

(a) The Texas Workers' Compensation Commission (the commission) shall identify employers subject to the Texas Labor Code, §411 041, as extra-hazardous based on criteria established by the commission in Chapter 164 of this title (relating to Extra-Hazardous Employer Program). Each employer identified, continued, or monitored shall have the right to administrative review of the findings of the commission by the Workers' Health and Safety Division (the division) In addition, each employer identified, continued in the program or monitored shall have the right to request a hearing to contest the findings of the commission

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

(1) Employer-A public or private entity defined by the employer's Federal Employer Identification Number (FEIN) and four-digit Standard Industrial Classification (SIC) code.

(2) Employer subject to the program-Every employer who has workers' compensation insurance coverage to the extent that any finding as to extra-hazardous employer status made during such coverage shall continue, even if such coverage is terminated, until such status is removed pursuant to this chapter. In addition, this chapter applies to every employer who is not required to have such coverage and does not have such coverage and employs five or more non-exempt employees.

(3) Standard Industrial Classification (SIC) Code-The SIC Code derived from the *Standard Industrial Classification Manual*, current edition, published by the Office of Management and Budget, and assigned to the employer by the Texas Employment Commission (TEC).

(4) Employment (E)-Highest employment recorded during the audit period by the employer in any pay period, for the applicable SIC code, as reported to TEC or substantiated by employer payroll documents.

(5) Injuries (I)-The employer's total number of injuries, including lost time injuries, occupational diseases, and fatalities The category of no lost time injuries will be included when provided by rule.

(6) Rate (R)-The employer's injury rate normalized to the number of injuries per 100 employees, for the specified audit period, using the formula (I/E) x 100.

(7) Expected Injury Rate (Rexpected)-An employer's expected injury rate per 100 employees for the applicable SIC code from the following source: From the most current edition of the Bureau of Labor and Statistics (BLS) publication *Survey of Occupational Injuries and Illnesses* available to the commission when the audit period is initiated, using Table 1, Injuries and Illnesses, Lost Workday Cases with days away from work column, and using data for the four digit SIC if available; if not, then the three digit SIC if available; if not, then the two digit SIC. If applicable data is not available from the BLS publication, then from the most current edition of the National Safety Council publication *Work Injury and Illness Rates* available to the commission when the audit period is initiated, using the Cases Involving Days Away From Work & Deaths column, and using data for the four digit SIC if available; if not, then the three digit SIC if available; if not, then the two digit SIC If applicable data is not available for a specific SIC code from these two sources, the commission will develop an expected rate for the SIC code based on comparison of hazard exposures for the SIC code with the hazard exposures for a SIC code with an

established injury rate. Irrespective of source, when the published SIC code rate is less than 1.0, an expected rate of 1.0 will be used.

(8) Audit Period–The 12-month period to be used for obtaining employment data and for counting injuries, including occupational diseases and fatalities as specified in §164.14 of this title (relating to Values and Criteria Assigned for Computation of Extra-Hazardous Employer Identification).

(9) Fatality–The death of an employee from a work-related injury or occupational disease.

(10) Occupational diseases–Occupational diseases reported to the commission during the audit period. The occupational disease will be included on the record of the employer under which the exposure occurred. The occupational disease will be included in the audit period during which it was reported. The exposure need not have occurred during the audit period.

(11) Lost Time Injuries–Injuries (excluding occupational diseases and fatalities) resulting in greater than seven days of lost time. Injuries with lost time of greater than one day, but less than eight days, will be included when provided by rule.

(12) No Lost Time Injuries–Medical-only injuries with impairment, but no lost time (excluding occupational diseases).

(13) Threshold Level (X)–Specified in §164.14 and established so as to insure that an identified employer's injury frequency substantially exceeds that which may reasonably be expected in the employer's business or industry. Values for both thresholds will be selected such that no employer will be identified as an extra-hazardous employer who has only one lost time injury or occupational disease reported during the audit period nor will an employer be identified as extra-hazardous whose R does not exceed Rexpected.

(c) The following calculation shall be used to determine extra-hazardous employer status. An individual employer's rate of injuries per 100 employees, for the specified audit period, calculated using the formula: R = (I/E) x 100. The computed R is divided by the expected injury rate (Rexpected) and the result compared to the threshold level established in §164.14. If the ratio is greater than the threshold value, the employer is extra-hazardous.

(d) The commissioners will by rule establish the threshold values as specified in subsection (b)(13) of this section.

(e) Prior to notification, the employer will be given the opportunity to verify FEIN, SIC code, employment, and injury data.

(f) An employer whose identification is based solely on one fatality and whose total employment in all SIC codes is less than 20 may be excluded from identification for the program.

(1) An employer tentatively identified will be advised by certified mail at the employer's principal place of business that the employer has been tentatively identified for the program, and that the employer may voluntarily request a full OSHCON consultation from the division.

(2) If the employer requests a full OSHCON consultation within 30 days of receipt of the tentative identification and receives the consultation within 90 days of the notification, the employer will not be identified for the Extra-Hazardous Employer Program.

(3) If the employer does not request and receive a full OSHCON consultation, the employer will be identified for the Extra-Hazardous Employer Program.

(4) An employer tentatively identified for the program may request an administrative review of the facts used in the tentative identification as addressed in §164.2 of this title (relating to Notice to "Extra-Hazardous Employers").

§164.2. Notice To "Extra-Hazardous Employers".

(a) (No change.)

(b) The notice shall be in writing and shall inform the employer of the following requirements [provisions]:

(1) a statement [state] that the employer has been identified as an extra-hazardous employer;

(2) a statement of [state] the facts on which the identification of the extra-hazardous employer is based;

(3) (No change.)

(4) the information [inform the employer] that, if the employer's [injury] records show facts that differ from those [injuries] on which the identification of extra-hazardous employer is based, the employer may request an administrative review by the division. Subjects that may be resolved by administrative review include, but are not limited to, the proper SIC Code, the highest employment within the audit period, the status of claimants as employees or leased employees/independent contractors, duplicate claims, claims not belonging to the identified employer, companies that are out of business or no longer doing business in Texas, injury claims involving seven days or less lost time, and fatalities meeting the criteria in §164.14 of this title (relating to Values and Criteria Assigned for Computation of Extra-Hazardous Employer Identification) that were not excluded prior to notification. Such review requires that the employer allow complete and open inspection of all employer records that may impact upon the determination of being designated as an extra-hazardous employer and provide records upon request. The request for administrative review must be filed with the division no later than the Tenth day after the date the notice was received. The Workers' Health & Safety Division is the final arbiter of administrative reviews. If the extra-hazardous employer identification cannot be resolved administratively, the employer will be offered the opportunity to refer it to a hearing. The extra-hazardous employer status will remain in effect until notified by the division that the status has been revoked (unless the status is suspended by a request for a hearing);

(5) the information that [inform] the employer has [of] the right to contest "extra-hazardous employer" status by requesting a hearing within 20 days of notification of identification or failure to resolve the matter administratively, as provided by Chapter 145 of this title (relating to Dispute Resolutions Hearings Under the Administrative Procedure [and Texas Register] Act). [An employer may request a hearing on the following grounds: injuries resulting from third parties unrelated to the workplace, circumstances beyond the control or jurisdiction of the employer, or disagreement with the division's administrative review of the facts.] The Workers' Health & Safety Division will offer the employer the opportunity to refer to a hearing requests for an administrative review that are not resolved through the administrative process. A request for a hearing will suspend identification as an "extra-hazardous employer" pending the outcome of the hearing;

(6) [inform the employer of] the penalties for failure to take [steps] the actions required under the Extra-Hazardous Employer Program; and

(7) a statement [inform the employer] that any information or documents provided to the commission may be subject to disclosure under the Open Records Act.

§164.3. Safety Consultation.

(a) Employers who have not had an accident prevention plan developed and implemented in the last six months prior to notification shall, not later than 30 days following receipt of notice of identification as an extra-hazardous employer, complete a safety consultation from a [division pre-approved] consultant who has been approved by the division as an approved professional source. The [source] consultation may be provided by:

(1)-(3) (No change.)

(b) (No change)

(c) [Upon request,] The [the] division shall provide a list of approved professional sources to the identified employers

(d) (No change.)

(e) The hazard survey report(s) and any attachments shall be filed by the consultant with the division within 24 hours of [completing the consultation] the date of the employer's signature on the Hazard Survey Report.

(f) If the initial consultation and report cannot be completed in the time allowed under this section, the employer may apply to the commission for a waiver of the time requirements. In no case shall the initial consultation exceed 60 days following the receipt [date] of notification of identification as an extra hazardous employer.

(g) (No change)

§164 4 Formulation of Accident Prevention Plan.

(a) Employers who have not had an accident prevention plan developed in the last six months prior to notification will, within 30 days of the date of the consultant's initial report, develop with the assistance of a consultant an accident prevention plan [which is] This plan will be consistent with established federal and state codes and standards, or in the absence of such standards, with accepted industry practices If [if] the initial report indicated recognized hazards [exist] that are causing or are likely to cause death or serious physical harm to employees, [and that] it will address [addresses] each hazard and/or unsafe practice identified in the report. The accident prevention plan shall be developed [by] with the assistance of an approved professional source as defined in §164.9 of this title (relating to Approval of Professional Sources for Safety Consultations), and shall be in the format prescribed by the commission [, and shall include] The employer shall submit the completed accident prevention plan, developed and signed by the employer and the approved professional source, to the division The approved professional source's signature on the accident prevention plan cover sheet certifies that the accident prevention plan meets the format prescribed by the commission The format shall include the following components and specify the individual responsible for each, by position or title

(1) a management component with a written safety policy statement and assignment[, by position or title,] of [safety] responsibilities and authority,

(2)-(4) (No change)

(5) a safety audit/inspection component [which includes the identification, by title or position, of a qualified person(s) to conduct the audits/inspections] with a statement as to the interval between safety audits/inspections,

(6) (No change)

(7) a component to ensure a periodic review and revision of the safety program and operational procedures [component] to determine effectiveness of abatement measures with a statement as to the interval (minimum of annually) between reviews.

(b) Employers who have had an accident prevention plan developed and implemented within the six months prior to notification as an extra-hazardous employer [that has been] and verified and approved by the division pursuant to §164 3(b) of this title (relating to Safety Consultation) will continue implementation of the plan and obtain an inspection by the division as provided in §164 5 of this title (relating to Follow-up inspection by the Division)

(c)-(d) (No change)

(e) If the employer disagrees with any or all of the plan, the employer shall sign the accident prevention [plan] cover sheet and attach a statement containing the specific reasons for disagreement to the plan and what alternative measures the employer proposes to meet the objectives of the program. The division will review the areas of disagreement and notify the employer and the consultant of the decision on each area of the disagreement [If the employer disagrees with the decision rendered by the division, the employer may request a hearing as provided by Chapter 145 of this title (relating to Dispute Resolution Hearings Under the Administrative Procedure and Texas Register Act)]

(f)-(g) (No change)

(h) The employer shall be responsible for filing the accident prevention plan that has been reviewed by the approved professional source and signed as meeting the criteria in subsection (a) of this section with the division no later than [within] 30 days [of the date of the consultant's initial report] after completion of the safety consultation and no later than 90 days after the employer received notification of identification as an extra-hazardous employer Delays requested for good cause [will be reviewed] may be granted by the division

§164 5 Follow-Up Inspection By The Division

(a)-(b) (No change)

(c) The employer shall allow the division access to the employer's premises, including remote job sites, and employees during normal work hours to conduct the follow-up inspection. An employer who without good cause refuses to allow the division access to the employer's premises may be served with an order of the commission demanding such access. Failure to comply with the commission order will subject the employer to penalties and sanctions as provided in the Texas Labor Code, §415 021(b)(3) [section 10.21(b)(3) of the Texas Workers' Compensation Act, §10 21(b)(3)].

(d) (No change.)

§164 6 Report of Follow-Up Inspection.

(a) As soon as practical, but not later than 30 days from the date of inspection the employer, the safety consultant, and the employer's workers' compensation insurance carrier, if any, shall be provided copies of the report of the follow-up inspection by the division.

(b) The report shall be in writing and shall specify whether the employer has, or has not, implemented the accident prevention plan or other acceptable corrective measures approved by the division.

(c) If the employer is found not to have implemented the accident prevention plan, the report shall also contain:

(1) a notification that the employer's extra-hazardous employer status is being continued,

(2) a list of the specific areas of the accident prevention plan which have not been implemented,

(3) a list of the specific actions required of the employer to correct the identified deficiencies, and

(4) a notice that the matter is being referred to the Division of Compliance and Practices for investigation, if applicable

§164 7 Removal From "Extra Hazardous Employer" Status and Placement in Monitor Status

(a) (No change)

(b) If the employer has complied with the accident prevention plan but continues to exceed the injury frequency that may reasonably be expected in that employer's business or industry, the employer will be removed from extra-hazardous employer status and placed in a monitoring status. For purposes of placing an employer in monitor status, the phrase "reasonably expected" is defined as [the BLS rate or if not available from the BLS publication, other suitable standard approved by the Commissioners and used in the calculation] the Expected Injury Rate as defined in §164 1(b)(7) of this title (relating to Criteria For Identifying

Extra-Hazardous Employers). [Determining placement on monitor status will be based on] Injury [injury] data from the most recent 12-month [months] period for which data is available will be used to determine placement on monitor status

(c) (No change.)

(d) [If, at the end of a six month monitoring period, an employer continues to exceed the injury frequency that may reasonably be expected in that employer's business or industry, the employer shall be evaluated during the next extra-hazardous employer identification cycle and, if identified, will be required to fulfill all requirements of §§164.1-164.4 of this title.] At the end of the six month monitoring period the employer will be removed from the program. Such release from the program will not prevent the division from evaluating the employer in future audit periods. If identified in a future audit period, the employer will be required to fulfill all requirements of §§164.1-164.4 of this title (relating to Criteria For Identifying Extra-Hazardous Employers; Notice To "Extra-Hazardous Employers"; Safety Consultation; and Formulation Of Accident Prevention Plan).

(e) An employer who fails or refuses to implement accident prevention plans formulated by the division under subsection (c) of this section commits an [a] [Class B] administrative violation with a penalty not to exceed $5,000 a day.

§164.8. Continuation of Extra-Hazardous Employer Status.

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

(c) An employer shall file a progress report with the division every 60 days until the employer has been removed from extra-hazardous employer status. The report shall include:

(1) [for subsection (a) of this rule only,] the list of areas of the accident prevention plan which were identified as not being fully implemented at the time of the follow-up inspection;

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

(d) After the required corrective actions have been taken, the employer shall notify the division and request a reinspection. [The request for reinspection shall be made no later than six months after the date of the follow-up inspection.]

(e) The division shall reinspect the employer [as soon as practical and] six months after the date of the follow-up inspection or [no later than] within 30 days after receiving a request to reinspect, whichever is earlier.

§164.9. Approval of Professional Sources for Safety Consultations.

(a) (No change)

(b)[(c)] [Additionally, a] A total of ten years active practice in the occupational health and safety profession may qualify an applicant as an [a] approved professional source at the discretion of the division.

(c)[(b)] The individual who does not qualify under subsection (b) of this section may qualify as follows. To be [approved] considered by the division [as a professional source], an individual must have at least five years active practice within the last eight years in the occupational health and safety profession [and must meet at least one of the following qualifications:] In addition to the active occupational health and safety practice, the individual must meet at least one of the following qualifications:

(1) must have a bachelor's degree or advanced degree in safety, science, or engineering from an accredited college or university or other degrees with a minimum of 55 total semester hours in math, science and/or engineering from an accredited college or university;

(2) must be a professional engineer registered in Texas;

(3) must be a certified safety professional certified by the Board of Certified Safety Professionals (BCSP);

(4) must be a certified industrial hygienist certified by the American Board of Industrial Hygiene (ABIH); or

(5) must have a certification by another certifying organization which is approved by the division. [;or]

[(6) complete a certified training program in accident prevention services approved by the division. At a minimum, a safety training program shall include no less than 800 hours of classroom instruction, laboratory instruction, a supervised field training in: safety management practices and techniques; accident analysis; industrial hygiene sampling techniques, industrial health and hygiene, ergonomics, regulations, standards and codes relating to safety and health; and safety consultation. As a prerequisite to completion, the program must require each participant to take and pass an exam approved by the division of workers health and safety.]

(d) Occupational Health and Safety Experience is defined as the personal involvement in the development and implementation of safety programs where the individual has been assigned the duty and responsibility in one or more of the eleven occupational health and safety categories listed in paragraphs (1)-(11) of this subsection. All activities which do not fall within any of the eleven categories are not considered safety/health or environmental functions. Occupational health and safety experience will be verified with the employer or immediate supervisor listed by the applicant. The eleven occupational health and safety categories are:

(1) hazard identification;

(2) hazard evaluation;

(3) hazard control design;

(4) hazard control verification;

(5) safety/Health program design;

(6) safety/Health program evaluation;

(7) safety/Health communication;

(8) investigation and statistical reporting;

(9) safety/Health education and training;

(10) supervision of other safety and health professionals; and

(11) environmental protection.

(e)[(d)] Applicants who meet the requirements of either subsection (b) or (c) of this section must, in addition, complete an [a] [four hour] approved professional source seminar conducted by the division prior to their approval as an [a] approved professional source. Approved professional sources shall attend an approved professional source update seminar prior to December 31 of each year following the initial seminar in order to remain on the active approved professional source list

[(e) An application form shall be prescribed by the commission which provides specific information for an applicant to request approval as a professional source]

(f) An individual who meets the requirements of subsections (b) or (c), and [(d)] (e) of this section, shall be approved as an [a] approved professional source to provide safety consultations for extra-hazardous employers [Applications will be processed by the division within seven days of receipt of all required documentation]

(g) If an applicant is not approved, the division shall notify the applicant in writing and specify the basis of the denial [An applicant may contest denial by requesting a hearing, as provided by Chapter 145 of this title (relating to Dispute Resolution-Hearings Under the Administrative Procedure and Texas Register Act)]

§164.10. Removal From The List of Approved Professional Sources

(a) A safety consultant shall remain on the list of approved professional sources until removed by the commissioners because:

(1) the [safety consultant's] hazard analysis and accident prevention plan signed by the consultant [development] is in conflict with mandatory state and/or federal safety and health standards applicable to the workplace;

(2) (No change.)

(3) the safety consultant, without good cause, fails to file or to timely file the reports required under the extra-hazardous employer program; [or]

(4) the safety consultant no longer meets the qualifications of an approved professional source under §164.9 of this title (relating to Approval of Professional Sources for Safety Consultations)[.]; or

(5) (No change.)

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

(d)[(b)] A safety consultant removed from the list of approved professional sources under subsection (a)(1) or (2) of this section shall not be reinstated on the list.

(e)[(c)] A safety consultant removed from the list of approved professional sources under subsection (a)(3) of this section may apply for reinstatement on the list after a period of one year.

[(e) A safety consultant removed from the list of approved professional sources by the commission may contest removal by requesting a hearing, as provided by Chapter 145 of this title (relating to Dispute Resolution-Hearing Under the Administrative Procedure and Texas Register Act).]

(f)[(d)] A safety consultant removed from the list of approved professional sources under subsection (a)(4) of this section may apply for reinstatement on the list as soon as the consultant satisfies the requirements of §164.9.

(g) A safety consultant removed from the list of approved professional sources under subsection (a)(5) of this rule will be reinstated on the active list upon attending an approved source update seminar conducted by the division.

(h) If a consultant fails to attend an annual update seminar as prescribed in §164.9(e), the consultant will be placed on an "inactive" list by the division. Consultants on the inactive list are prohibited from conducting Extra-Hazardous Employer Program consultations. The consultant will be notified by the division using certified mail, return receipt requested.

(i) A safety consultant placed on the inactive list under subsection (h) of this section will be reinstated to the active list upon attending an approved professional source update seminar conducted by the division.

§164.11. Request For Safety Consultation From the Division.

(a) (No change.)

(b) The request shall be in writing on the form prescribed by the commission and may be delivered to the division by mail, in person, or by telephonic document transfer [transfers]. The form shall include:

(1)-(3) (No change.)

(c) The division shall accept only the number of requests that it can serve in the time frames established by the applicable rules and the Texas Labor Code, §411.041 [Texas Workers' Compensation Act, §7.04]. Priority shall be based on the order in which the requests are received, available consultant expertise in the requesting employer's industry, or extra-hazardous employer status involving multiple fatalities.

(d) The division shall notify each employer who requests services whether the division has accepted or rejected the request. The notice shall be in writing[,] and shall be made within three working days of the date the commission received the request[, and, if denied, include a list of approved professional sources].

§164.12. Reimbursement of Division for Services Provided to "Extra-Hazardous Employer".

(a) An employer shall be required to reimburse the division for the services it renders when:

(1) (No change.)

(2) the division investigates accidents at the employer's worksite(s) [worksite] while the employer is designated an extra-hazardous employer or is in monitor status;

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

(b) (No change.)

(c) The commission shall provide the employer with an [a] itemized statement each month. The payment is due 30 days after the billing date.

§164.14. Values and Criteria Assigned For Computation of Extra-Hazardous Employer Identification.

(a) The following Threshold Levels (X) will be used in the identification of employers that have no fatalities:

(1) 1,000 or more employees, the threshold is 1.6;

(2) 500-999 employees, the threshold is 1.7;

(3) 150-499 employees, the threshold is 1.8;

(4) 50-149 employees, the threshold is 2.5;

(5) 20-49 employees, the threshold is 5.0;

(6) 10-19 employees, the threshold is 10;

(7) 5-9 employees, the threshold is 20;

(8) 4 employees, the threshold is 25;

(9) 3 employees, the threshold is 34;

(10 2 employees, the threshold is 50; and

(11) 1 employee, the threshold is 100.

(b) The value of the Threshold Level (X) for employers that have one or more fatalities is 1.3.

(c) The initial 12-month audit period to be used for counting employment and injuries is September 1, 1993 through August 31, 1994. Subsequent 12-month audit periods will advance by three months for each audit period. The Extra-Hazardous Employer Program will be reviewed at least once each year at the January public meeting, beginning January 1996, for authorization by the commissioners to continue the notification cycles for the next year.

(d) Fatal injuries that meet the following screening criteria will be excluded from the computation by the division.

(1) Heart Attacks. A fatality resulting from a heart attack that has been successfully controverted and/or shown on a death certificate or autopsy report as the cause of death will not be used in the computation. This includes: cardiac arrest, cardiopulmonary arrest, ischemic heart disease, atherosclerotic coronary artery disease, myocardial infarction, and arteriosclerotic coronary artery disease. If the controversion was challenged for any reason, the TWCC dispute resolution process must have been exhausted and the death found to be non-compensable. If the fatality is found to not be within the course and scope of employment (compensable) the fatality will be excluded.

(2) Other Diseases of Life. A fatality resulting from a disease of life unrelated to the employment that has been successfully controverted and/or shown on a death certificate or autopsy report as the cause of death will not be used in the computation. If the controversion was challenged for any reason, the TWCC dispute resolution process must have been ex-

hausted and the death found to be non-compensable.

(3) Homicide. A fatal injury resulting from a homicide that did not result from the employment environment will not be used in the computation. To satisfy this criteria, information must be provided that clearly establishes the homicide as a personal matter or random occurrence and not directed at the employee as an employee or because of the employment. If there was workers' compensation insurance, and the homicide was the result of a personal matter, the carrier must have controverted the claim. If the controversion was challenged for any reason, the TWCC dispute resolution process must have been exhausted and the death found to be non-compensable.

(4) Suicide. A fatal injury resulting from a suicide will not be used in the computation. To satisfy this criteria, a death certificate plus a police report, and/or insurance investigation must be provided that clearly indicates that the death was a suicide with no indication that it was related to employment. If there was workers' compensation insurance, the carrier must have controverted the claim. If the controversion was challenged for any reason, the TWCC dispute resolution process must have been exhausted and the death found to be non-compensable.

(e) Fatal injuries that meet the following screening criteria will be converted to injuries by the division and used in the computation.

(1) Third Party Vehicle Accidents (includes vehicle/pedestrian accidents) A fatal injury resulting from a vehicle accident caused by a third party without contribution by the employer, or the employment environment will be included in the computation as an injury rather than as a fatality In order to satisfy this criteria information should be provided that clearly indicates that the accident was caused by a third party without contribution by the employee, the employer, or the employment environment (such as faulty equipment) Documentation of successful subrogation of cost to a third party is acceptable verification of third party liability.

(2) Common Carrier Accidents A fatal injury that occurred while the employee was a passenger on a common carrier will be included in the computation as an injury rather than as a fatality In order to satisfy this criteria, documentation should be provided showing that the employee was a passenger on the common carrier at the time of the accident and was not involved in causing the accident Documentation of successful subrogation of cost to a third party is acceptable as verification

(3) Natural Events A fatal injury arising out of an act of God, unless the employment exposed the employee to a greater risk of injury from an act of God than ordinarily applies to the general public and whose occurrence or severity could not have been foreseen by a prudent employer will be included in the computation as an injury rather than as a fatality. In order to satisfy this criteria, a documented account of the circumstances surrounding the accident, preferably by an outside source such as law enforcement authorities, OSHA, or an insurance investigator, should be provided that shows the event's occurrence or severity could not have been foreseen and/or that reasonable and prudent actions by the employer would not have prevented it.

(4) Circumstances Beyond the Control or Jurisdiction of the Employer. A fatality resulting from circumstances beyond the control or jurisdiction of the employer will be included in the computation as an injury rather than a fatality. Where the employee, employer, or employment environment was involved in the fatality and verifiable information was provided indicating preventive programs were in place and enforced, the fatality may be excluded.

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, 1994.

TRD-9452411 Susan Cory
General Counsel
Texas Workers' Compensation Commission

Earliest possible date of adoption. January 20, 1995

For further information, please call: (512) 440-3508

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• 28 TAC §§164.1, 164.13, 164.14

(Editor's note The text of the following sections proposed for repeal will not be published The sections may be examined in the offices of the Te as Workers' Compensation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin)

The repeals are proposed under the Texas Labor Code, §402 061, which authorizes the commission to adopt rules necessary to administer the Act, and §§411.041-411.049, which require the commission to identify extra-hazardous employers and oversee the development and implementation of accident prevention programs.

The Texas Labor Code, §§402 061 and 411.041-411 049 is affected by these repeals

§164 1 Criteria for Identifying Extra-Hazardous Employers

§164 13 Applicability

§164 14 Values Assigned for Computation of Extra-Hazardous Employer Identification

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, 1994.

TRD-9452410 Susan Cory
General Counsel
Texas Workers' Compensation Commission

Earliest possible date of adoption· January 20, 1995

For further information, please call (512) 440-3508

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 331. Underground Injection Control

The Texas Natural Resource Conservation Commission proposes the repeal of existing §331.62, and new §331 62, concerning underground injection control The repeal and new section ensure consistency with 40 CFR Part 146, regarding Underground Injection Control Program Criteria and Standards. The new rule also incorporates requirements mandated by the Texas Solid Waste Disposal Act (TSWDA), Texas Health and Safety Code, Chapter 361

Section 331 62 was originally proposed for public comment in the June 28, 1994, issue of the *Texas Register* (19 TexReg 5022). Due to the nature of the public comments received in response to the rules, proposed new §331. 62 as published in the June 28, 1994, issue of the *Texas Register* is being withdrawn from consideration, as is the proposed repeal of existing §331 62 The rulemaking published in this issue of the *Texas Register* incorporates the comments received in response to the previous proposal. As a courtesy to the public and the regulated community, TNRCC will address those comments and the commission's response in this preamble

The comment period for the June 28, 1994, proposals ended July 28, 1994 Comments on the proposed text were received from Terra Dynamics, Inc , the Texas Chemical Council, DuPont, Envirocorp, ECO Solutions, Inc , Merichem Company, Sterling Chemicals, and individual concerned citizens. All of the commenters were partially in favor of and partially opposed to adoption of the rule.

Several respondents suggested alternative language for §331.62(9), regarding the qualifications of persons who perform constructions and workovers. The intent was to ensure that the person who was ultimately responsible for the work was a registered professional engineer. The commission proposes changes to the language that should satisfy that concern

Several respondents expressed concern over §331.62(3)(A), which was based on the Environmental Protection Agency (EPA) Groundwater Program Guidance Number 22. Concerns centered around a provision requiring written approval to change the setting and cementing of surface casing One respondent suggested that the operator never be allowed to set surface casing shallower than required by the permit and that if the operator wished to set the surface casing deeper than stated in the permit that such action be allowed by rule and permit. Other respondents expressed concern with the perceived downtime while waiting for approval. The commission proposes language stating that no approval is necessary to set surface casing deeper than according to the permit Additional language will state that the setting of surface casing shallower than indicated on the permit will not be authorized Only changes to the cementing plan for the surface casing must be authorized in writing. Since a member of the UIC Team is either on location or on call (with access to a FAX machine), written approval can be given quickly, with a minimum amount of down-time for the rig.

New 331.62, concerning Construction Standards, meets or exceeds the requirements of 40 CFR §146.65. The proposed new section includes revisions to the design criteria, including a prohibition of the use of fluid seal systems; inclusion of a construction and cementing performance standard for all Class I injection wells; a revision of cementing standards for new wells, including wells converting to Class I status; and inclusion of the recommendations of United States Environmental Protection Agency's (EPA's) Groundwater Program Guidance Number 22, regarding Changes to Construction Plans Occurring During the Drilling of a Well. The revised design criteria emphasizes that wells are to be designed, constructed, and completed to prevent the movement of fluids that could result in the pollution of an underground source of drinking water (USDW) There are two possible routes of contamination of a USDW directly from a well a leak from the well tubing and casing; and vertically between the casing and the bore hole. The annulus system is the primary protective barrier for preventing leaks from the well. By prohibiting the use of fluid seal systems and adding the requirement that the annulus system be designed, constructed, and operated to prevent leaks from the well, the certainty that such wells will provide an effective means of pollution prevention will be strengthened. Cement is the primary protective barrier for vertical fluid flow along the wellbore. To protect USDWs from vertical fluid flow along the wellbore, the new rule requires the development and implementation of construction plans that anticipate lost circulation zones and other adverse subsurface conditions, and requires that the casing and cementing program be designed and implemented to meet the performance standard. The proposed language emphasizes greater detail on quality planning and implementation This new emphasis will discourage construction practices that emphasize speed and cost cutting over environmental protection, and which often lead to flawed cementing that requires expensive remediation Paragraph (7), concerning logs and tests, adds a requirement that an operator submit the results of all logs and tests and not just those required by this chapter. The rule also authorizes the executive director to allow the use of alternative logs when the alternative log would provide equivalent or better information Paragraph (9), regarding construction supervision, proposes that the supervisor of well constructions and workovers be a professional engineer with current registration pursuant to the Texas Engineering Practice Act, to provide consistency with §331.65(a)(5).

Stephen Minick, Division of Budget and Planning, has determined that for the first five years the section as proposed is in effect there will be fiscal implications as a result of enforcement and administration of the section Any cost implications for state government are anticipated to be minor and will be met within the agency's existing budgeted resources. There are no effects anticipated for local governments. The section is necessary in order to achieve consistency between state and federal regulations governing underground injection control facilities. The section as proposed, therefore, does not generally represent incremental fiscal implications for facility operators Additional technical requirements for drilling and cementing could result in increased costs of well development, depending on individual circumstances of casing size, casing interval, and other site-specific conditions. These costs are not anticipated to be a major cost of well completion. The requirements make the state's regulations consistent with the existing federal regulations and do not represent costs in excess of those required to comply with federal rules.

Mr. Minick also has determined that for the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcement of and compliance with the section will be improvements in the consistency between state and federal regulations governing underground injection control; the design, construction, and operation of underground injection control facilities; and the protection of the quality of the groundwater resources of the state. There will be no effects on small businesses. There are no additional economic costs anticipated for any person required to comply with the section as proposed.

Comments on the proposal may be submitted to Kathleen Vail, Geologist, Underground Injection Control Unit, Uranium and Radioactive Waste Section, Industrial and Hazardous Waste Division, Texas Natural Resource Conservation Commission, P O Box 13087, Austin, Texas, 78711-3087 Comments will be accepted until 5:00 p.m , 30 days following publication of this proposal

Subchapter D. Standards for Class I Wells Other than Salt Cavern Solid Waste Disposal Wells

• 30 TAC §331.62

(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 Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin)

The repeal is proposed pursuant to the Texas Water Code, §5.103 and §5.105, which authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code, Chapter 27, and other laws of this state; and pursuant to the Texas Health and Safety Code, §361.017 and §361.024, which further authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

The repeal affects Health and Safety Code, Chapter 361.

§331 62. Construction Standards.

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

Issued in Austin, Texas on December 12, 1994.

TRD-9452303 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: January 20, 1995

For further information, please call: (512) 239-6087

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The new section is proposed under the Texas Water Code, §5.103 and §5.105, which authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code, Chapter 27 and other laws of this state; and under the Texas Health and Safety Code, §361.017 and §361.024, which further authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

The proposed new section affects Health and Safety Code, Chapter 361

§331.62 Construction Standards. All Class I wells shall be designed, constructed and completed to prevent the movement of fluids that could result in the pollution of an underground source of drinking water.

(1) Design criteria. Casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well, including the post closure care period. The well shall be designed and constructed to prevent potential leaks from the well, prevent the movement of fluids along the wellbore into or between Underground Source of Drinking Waters (USDWs), to prevent the movement of fluids along the wellbore out of the injection zone, to permit the use of appropriate testing devices and workover tools, and to

permit continuous monitoring of injection tubing, long string casing and annulus, as required by this chapter. All well materials must be compatible with fluids with which the materials may be expected to come into contact. A well shall be deemed to have compatibility as long as the materials used in the construction of the well meet or exceed standards developed for such materials by the American Petroleum Institute (API), The American Society for Testing Materials (ASTM), or comparable standards acceptable to the executive director.

(A) Casing design. Surface casing shall be set to a minimum subsurface depth, as determined by the executive director, which extends into the confining bed below the lowest formation containing a USDW or freshwater aquifer. At least one long string casing, using a sufficient number of centralizers, shall extend to the injection interval. In determining and specifying casing and cementing requirements, the following factors shall be considered:

(i) depth of lowermost USDW or freshwater aquifer;

(ii) depth to the injection interval;

(iii) injection pressure, external pressure, internal pressure, and axial loading;

(iv) hole size;

(v) size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);

(vi) the maximum burst and collapse pressures, and tensile stresses which may be experienced at any point along the length of the casings at any time during the construction, operation, and closure of the well;

(vii) corrosive effects of injected fluids, formation fluids, and temperatures;

(viii) lithology of injection and confining intervals;

(ix) presence of lost circulation zones or other subsurface conditions that could affect the casing and cementing program;

(x) types and grades of cement; and

(xi) quantity and chemical composition of the injected fluid

(B) Tubing and packer design. All Class I injection wells shall inject fluids through tubing with a packer, set at a depth specified by the executive director Fluid seal systems will not be approved by the commission. The annulus system shall be designed and constructed to prevent the leak of injection fluids into any unauthorized zones. In determining and specifying requirements for tubingand packer, the following factors shall be considered:

(i) depth to the injection zone;

(ii) characteristics of injection fluid (chemical content, corrosiveness, temperature and density);

(iii) injection pressure;

(iv) annular pressure;

(v) rate (intermittent or continuous), temperature, and volume of injected fluid;

(vi) size of casing; and

(vii) tensile, burst, and collapse strengths of the tubing.

(2) Plans and specifications. Except as specifically required in the terms of the disposal well permit, the drilling and completion of the well shall be done in accordance with the requirements of this chapter and all permit application plans and specifications.

(3) Changes to plans and specifications. Any proposed changes to the plans and specifications must be approved in writing by the executive director that said changes provide protection standards equivalent to or greater than the original design criteria.

(A) If during the drilling and/or completion of the well, the operator proposes to change the cementing of the surface casing, the executive director shall require a written description of the proposed change, including any additional data necessary to evaluate the request. The operator may not execute the change until the executive director gives written approval. The operator may change the setting depth of the surface casing to a depth greater than that specified in the permit, either during drilling and/or completion, without approval from the executive director. Approval for setting depths shallower than specified in the permit will not be authorized.

(B) If the operator proposes to change the injection interval to one not reviewed during the permit application process, the operator shall submit an application to amend the permit. The operator may not inject into any unauthorized zone.

(C) Any other changes, including but not limited to the number of casing strings, changes in the size or material of intermediate and production casings, changes in the completion of the well, changes in the exact setting of screens or injection intervals within the permitted injection zone, and changes in the type of cement used, or method of cementing shall be considered minor changes. If minor changes are requested, the executive director may give immediate oral and subsequent written approval or written approval for those changes. The operator is required to submit a detailed written description of all minor changes, along with the information required in §331.65 of this title (relating to Reporting Requirements), before approval for operation of the well may be granted.

(4) Drilling requirements.

(A) The well shall be drilled according to sound engineering practices and established TNRCC guidance, to prevent problems which may jeopardize completion attempts, such as deviated holes, washouts and stuck pipe.

(B) As much as technically practicable and feasible, the hole should be drilled under laminar flow conditions, with appropriate fluid loss control, to minimize hole washouts.

(C) Immediately prior to running casing, the drilling fluid in the hole is to be circulated and conditioned to establish rheological properties commensurate with proper cementing practices.

(5) Construction performance standard. All Class I wells shall be cased and all casings shall be cemented to prevent the movement of fluids into or between USDWs or freshwater aquifers, and to prevent movement of fluids out of the injection zone.

(6) Cementing requirements, for all Class I wells constructed after the promulgation of this rule, including wells converting to Class I status.

(A) Cementing shall be by the pump and plug or other method approved by the executive director. Cementing may be accomplished by staging. Cement pumped shall be of a volume equivalent to at least 120% of the volume calculated necessary to fill the annular space between the hole and casing and between casing strings to the surface of the ground. The executive director may require more than 120% when the geology or other circumstances warrant it. A two-dimensional caliper shall be used to measure the hole diameter. If the two-dimensional caliper can not measure the diameter of the hole over an interval, then the minimum amount of cement needed for that interval shall be a volume calculated to be equivalent to or greater than 150% of the space between the casing and the maximum measurable diameter of the caliper.

(B) If lost circulation zones or other subsurface conditions are anticipated and/or encountered, which could result in less than 100% filling of the annular space between the casing and the borehole or the casings, the owner/operator shall implement the approved contingency plan submitted according to §331.121(a)(2)(O) of this title (relating to Class I Wells).

(7) Logs and tests.

(A) Integrity testing. Appropriate logs and other tests shall be conducted during the drilling and construction of Class I wells. All logs and tests shall be interpreted by the service company which processed the logs or conducted the test; or by other qualified persons. A minimum of the following logs and tests shall be conducted:

(i) deviation checks on all holes, conducted at sufficiently frequent intervals to assure that avenues for fluid migration in the form of diverging holes are not created during drilling;

(ii) for surface casing:

(I) spontaneous potential, resistivity, natural gamma, and caliper logs before the casing is installed; and

(II) cement bond with variable density log, and temperature logs after casing is set and cemented; and

(III) and any other test required by the executive director;

(IV) the executive director may allow the use of an alternative to subclauses (I) and (II) of this clause when an alternative will provide equivalent or better information; and

(iii) for intermediate and long string casing:

(I) spontaneous potential, resistivity, natural gamma, compensated density and/or neutron porosity, dipmeter/fracture finder, and caliper logs, before the casing is installed; and

(II) a cement bond with variable density log, casing inspection, and temperature logs after casing is set and cemented, and an inclination survey; and

(III) any other test required by the executive director; and

(iv) a mechanical integrity test consisting of:

(I) a pressure test with liquid or gas;

(II) a radioactive tracer survey;

(III) a temperature or noise log;

(IV) a casing inspection log, if required by the executive director; and

(V) any other test required by the executive director.

(B) Pressure tests. Surface casing shall be pressure tested to 1000 psig for at least 30 minutes, and long string casing shall be tested to 1500 psig for at least 30 minutes, unless otherwise specified by the executive director.

(C) Core samples. Full-hole cores shall be taken from selected intervals of the injection zone and lowermost overlying confining zone; or, if full-hole coring is not feasible or adequate core recovery is not achieved, side-wall cores shall be taken at sufficient intervals to yield representative data for selected parts of the injection zone and lowermost overlying confining zone. Core analysis shall include a determination of permeability, porosity, bulk density, and other necessary tests.

(8) Injectivity tests. After completion of the well, injectivity tests shall be performed to determine the well capacity and reservoir characteristics. Surveys shall be performed to establish preferred injection intervals. Prior to performing injectivity tests, the bottom hole pressure, bottom hole temperature, and static fluid level shall be determined, and a representative sample of formation fluid shall be obtained for chemical analysis. Information concerning the fluid pressure, temperature, fracture pressure and other physical and chemical characteristics of the injection and confining zones shall be determined or calculated.

(9) Construction and workover supervision. All phases of well construction and all phases of any well workover shall be supervised by qualified individuals acting under the responsible charge of a licensed, professional engineer, with current registration pursuant to the Texas Engineering Practice Act, who is knowledgeable and experienced in practical drilling engineering and who is familiar with the special conditions and requirements of injection well construction.

(10) Notification. The executive director shall have the opportunity to witness all cementing of casing strings, logging and testing. The owner or operator shall submit a schedule of such activities to the executive director at least 30 days prior to commencing drilling of the well. The executive director shall be given at least 24-hour notice before each activity in order that a representative of the executive director may be present.

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 12, 1994.

TRD-9452302 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: January 20, 1995

For further information, please call: (512) 239-6087

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Title 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter V. Franchise Tax

• 34 TAC §3.547

The Comptroller of Public Accounts proposes an amendment to §3.547, concerning taxable capital: accounting methods. Subsection (c)(4) was amended to delete the irrevocable election requirement. The amendment to subsection (d) (3)(A) prohibits push-down accounting on reports due on or after January 1, 1994, in accordance with legislation enacted by the 73rd Legislature, 1993. Subsection (d)(3)(B) was added to reflect current policy on push-down accounting for reports due prior to January 1, 1994.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no revenue impact on the state or local government beyond that anticipated in the legislation's fiscal note.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in the clarification of franchise tax rules regarding irrevocable election rules and push-down accounting procedures. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Joe A. Galvan, Jr., Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §§171.109 et seq.

§3.547. Taxable Capital. Accounting Methods.

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

(c) General rules. The provisions of this subsection apply to both the generally accepted accounting principles (GAAP) and federal income tax methods.

(1)-(3) (No change.)

[(4) The filing of a report using either the GAAP method or the federal income tax method shall constitute an irrevocable election of such method for the reporting period.]

(4)[(5)] A corporation's eligibility to report under the federal income tax method will determine whether it can change from the GAAP method to the federal income tax method, or vice versa, in a subsequent reporting period. Unless otherwise specified in this paragraph, a corporation cannot change accounting methods more often than once every four years without the written consent of the comptroller.

(A) A corporation that is eligible to report under the federal income tax method may change from the GAAP method to the federal income tax method once every four years. The corporation shall revert to the GAAP method within the next four years only if it loses its eligibility to use the federal income tax method.

(B) A corporation eligible to report under the federal income tax method may change from the federal income tax method to the GAAP method once every four years. The corporation cannot change back to the federal income tax method during the next four years.

(C) A corporation that loses its eligibility to report under the federal income tax method and has to report under the GAAP method may revert to the federal income tax method in a subsequent reporting period if it regains its eligibility to use that method.

(5)[(6)] A corporation may not amend its franchise tax report after the due date of that report except as indicated in this paragraph. These provisions apply to those returns not barred by the statute of limitations.

(A) An amended report may be filed to correct an accounting error. An accounting error results from a mathematical mistake, a mistake in the application of accounting principles in effect on the date on which the tax is based, or an oversight or unintentional misuse of facts that existed on the date on which the tax is based. Subsequent events (i.e., events or transactions occurring after the date on which the report is based) will not be considered, even if the subsequent event provides additional evidence with respect to conditions that existed on the date upon which the tax is based.

(B) If the courts invalidate a statutory provision, rule, or agency policy, or if the comptroller invalidates a rule or agency policy, a corporation may amend reports in accordance with the court or administrative decision. Amendments filed under this subparagraph would not be restricted by any other provisions of this section.

(6)[(7)] The cost method of accounting must be used for investments in other corporations. Cost is the original valuation of the investment under GAAP, without reduction for amortization of goodwill or any other write-downs. Beginning May 1, 1989, of any tax period, the investor's share of the pre-acquisition retained earnings of a subsidiary or investee may not be excluded from the investment cost of that subsidiary or investee. Retained earnings represent the accumulated gains and losses of a corporation to date, reduced by any dividend distributed to shareholders and any amounts transferred to either capital stock or paid-in capital. The cost of an investee may be reduced by legally declared dividends of the investee to the extent that such dividends exceed the investee's post-acquisition earnings as determined under GAAP.

(7)[(8)] Transfers of assets must be reported at the transferor's basis, as determined under the reporting method used for franchise tax, if allowed by GAAP. The transferor's basis may not, however, be reduced by unrealized, estimated, or contingent losses for the purposes of this subsection.

(d) Generally accepted accounting principles method.

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

(3) **The following guidelines are applicable to push-down accounting.** [If the majority of the voting stock of a corporation is acquired through a purchase, as described under GAAP, the assets and liabilities of the acquired corporation must be revalued based on the purchase price using GAAP (i.e., push-down accounting must be used).]

(A) For reports due on or after January 1, 1994, the push-down method of accounting cannot be used in computing a corporation's surplus.

(B) For reports due prior to January 1, 1994, a corporation may use either the push-down method of accounting or historical cost in computing its surplus. A corporation cannot write down its assets pursuant to Tax Code, §171.109(a). Thus, negative push-down is not allowed.

(e)-(f) (No change.)

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

Issued in Austin, Texas, on December 12, 1994.

TRD-9452330 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Earliest possible date of adoption: January 20, 1995

For further information, please call: (512) 463-4028

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• 34 TAC §3.548

The Comptroller of Public Accounts proposes an amendment to §3.548, concerning close and S corporations for taxable capital purposes. Subsection (f) was amended to delete the irrevocable election requirement. The amendment to subsection (g) allows an eligible corporation to provide notice of its election to use the federal tax method on or before the extended due date of the affected report. This amendment is in accordance with legislation enacted by the 73rd Legislature, 1993. Former subsection (g) has been changed to subsection (h).

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no revenue impact on the state or local government beyond that anticipated in the legislation's fiscal note.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in clarification of franchise tax rules regarding irrevocable election rules and accounting method notification requirements. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Joe A. Galvan, Jr., Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §171.113.

§3.548. Taxable Capital. Close and S Corporations.

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

(f) Effective with reports originally due between [on or after] January 1, 1992, and December 31, 1993, an eligible corporation under the Tax Code, §171.113, must provide written notice to the comptroller of its election to use the federal income tax method of reporting the taxable capital component of its franchise tax.

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

[(3) The election to use the federal income tax method will constitute an irrevocable election of such method for the reporting period.]

(g) Effective with reports originally due on or after January 1, 1994, an eligible corporation under the Tax Code, §171.113, must provide written notice to the comptroller of its election to use the federal income tax method of reporting the taxable capital component of its franchise tax.

(1) Notification must be postmarked on or before the extended due date of the report in which the election applies.

(2) The election must be made on the corporation's franchise tax report. [For more information on the federal income tax method of reporting the taxable capital component of the franchise tax, see §3.547 of this title (relating to Taxable Capital: Accounting Methods).]

(h) For more information on the federal income tax method of reporting the taxable capital component of the franchise tax, see §3.547 of this title (relating to Taxable Capital: Accounting Methods).

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

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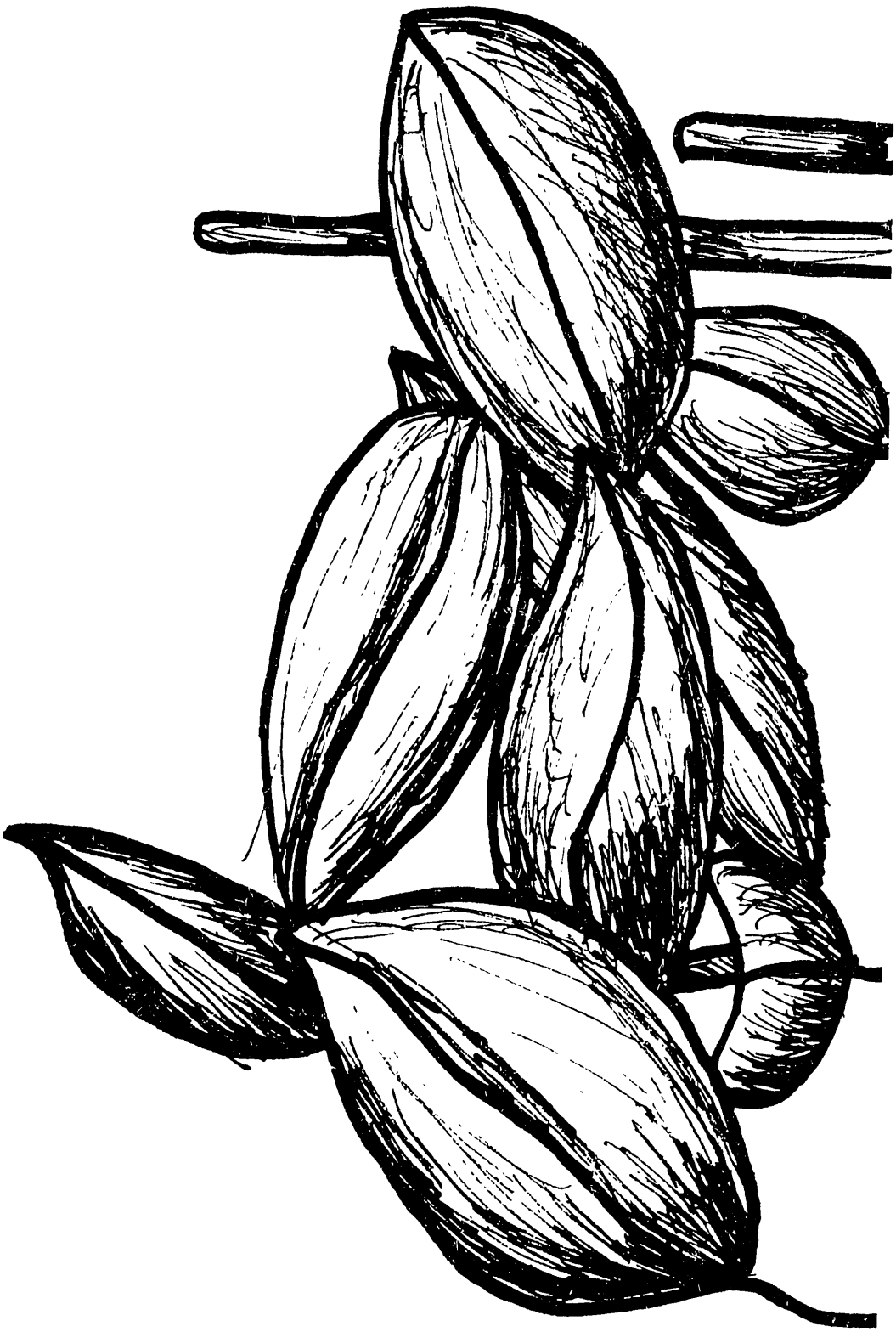
TRD-9452329 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Earliest possible date of adoption: January 20, 1995

For further information, please call: (512) 463-4028



Name: Kelly Bloxom
Grade 9
School Skyline High School, Dallas ISD

WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register***.

TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Housing and Community Affairs

Chapter 49. Low Income Housing Tax Credit Rules

• 10 TAC §49.15

The Texas Department of Housing and Community Affairs has withdrawn from consideration for permanent adoption a proposed new §49 15, which appeared in the November 25, 1994, issue of the *Texas Register* (19 TexReg 9333) The effective date of this withdrawal is December 13, 1994

Issued in Austin, Texas, on December 13, 1994

TRD-9452342 Henry Flores
Executive Director
Texas Department of Housing and Community Affairs

Effective date December 13, 1994

For further information, please call (512) 475-3800

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 331. Underground Injection Control

Subchapter D. Standards for Class I Wells Other than Salt Cavern Solid Waste Disposal Wells

• 30 TAC §331.62

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption a proposed repeal of §331 62, which appeared in the June 28, 1994, issue of the *Texas Register* (19 TexReg 5026) The effective date of this withdrawal is December 12, 1994

Issued in Austin, Texas, on December 12, 1994

TRD-9452305 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date December 12, 1994

For further information, please call (512) 239-6087

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The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption a proposed new §331 62, which appeared in the June 28, 1994, issue of the *Texas Register* (19 TexReg 5022) The effective date of this withdrawal is December 12, 1994

Issued in Austin, Texas, on December 12, 1994

TRD-9452304 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date December 12, 1994

For further information, please call (512) 239-6087

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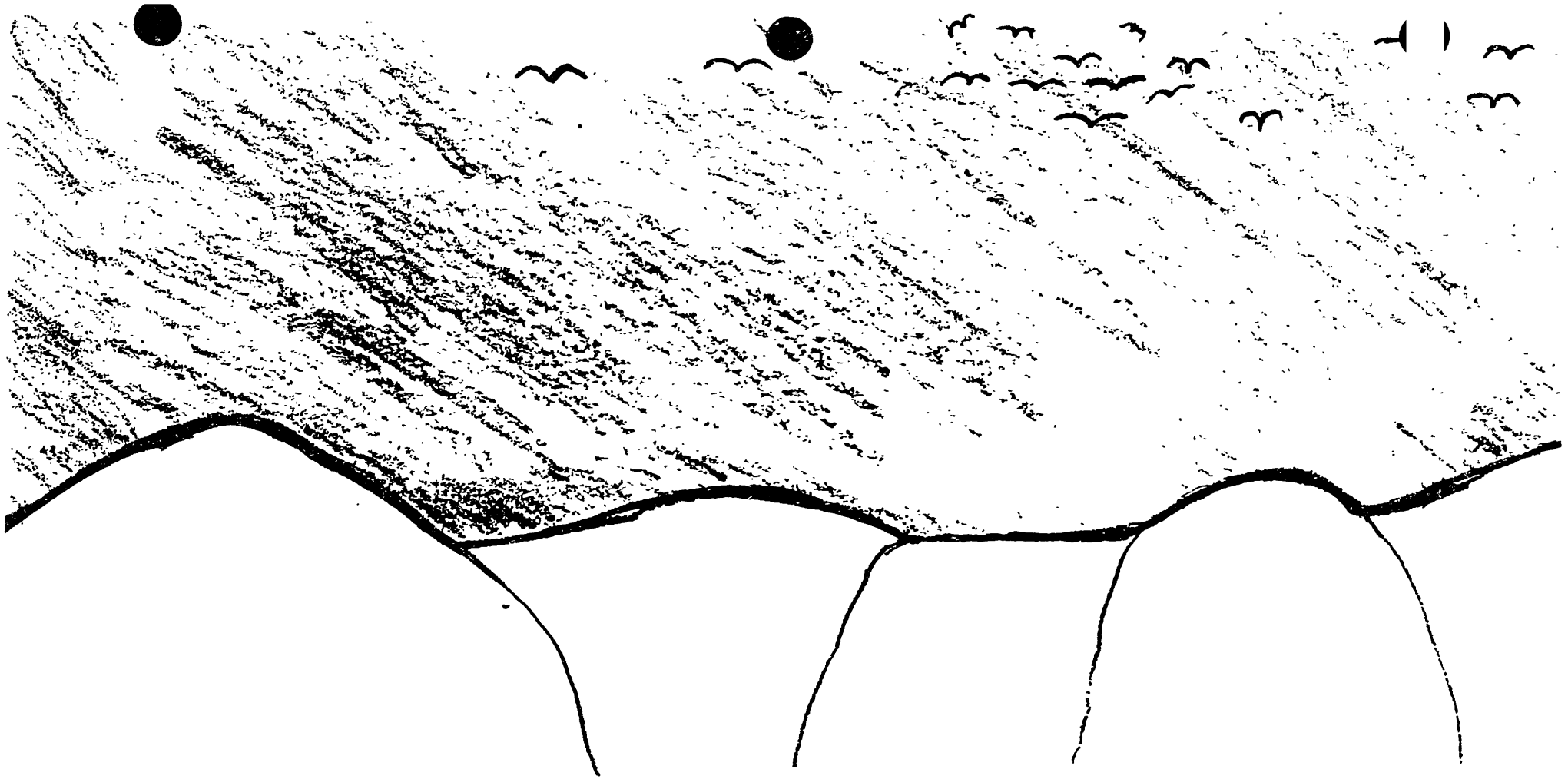
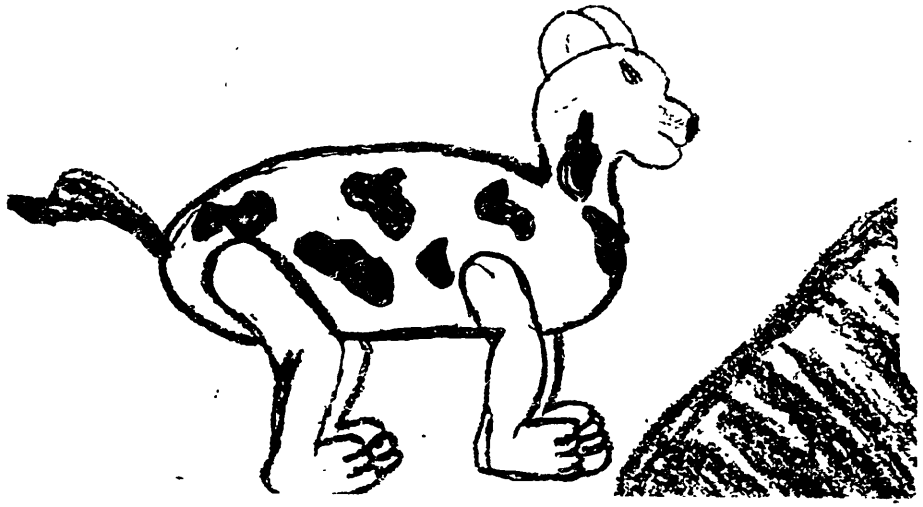


Name: Mike Robledo
Grade: 6
School: Bovina Middle School, Bovina ISD



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 10. COMMUNITY DEVELOPMENT

Part V. Texas Department of Commerce

Chapter 196. Tourism Advisory Committee Rules

• 10 TAC §§196.1-196.16

The Texas Department of Commerce adopts new §§196.1-196.16 as Tourism Advisory Rules, without changes to the proposed text as published in the June 14, 1994, issue of the *Texas Register* (19 TexReg 4616)

Adoption of the rules will enable the public to have information concerning the role of the Tourism Advisory Committee in assisting the Texas Department of Commerce's Tourism Division in fulfilling its role of promoting Texas as a tourism destination.

The rules set forth the mission of the advisory committee; the composition thereof, including qualifications for regular and ex-officio members; the minimum number of meetings; the method of reporting to the agency; and the manner and date of dissolution of the advisory committee. The rules also provide that the advisory committee is subject to the Texas Open Records Act and that the Texas Department of Commerce will provide staff to support the advisory committee.

No comments were received regarding adoption of the new rules.

The new rules are adopted under the authority of §§481.0044, 481.005, and 481.007 of the Texas Government Code, Article 6252-33, Texas Civil Statutes; and the Administrative Procedure Act, Chapter 2001 of the Texas Government Code.

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 13, 1994.

TRD-9452363 Deborah C. Kastrin
Executive Director
Texas Department of Commerce

Effective date. January 3, 1995

Proposal publication date: June 14, 1994

For further information, please call: (512) 936-0178

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter B. Commercial Carriers

• 16 TAC §§5.21-5.46

The Railroad Commission of Texas adopts the repeal of Subchapter B, §§5 21-5.46, without changes to the text as published in the November 8, 1994, issue of the *Texas Register* (19 TexReg 8825), and adopts new Subchapter EE, §§5 1001-5 1005, 5 1013-5 1015, and 5.1018-5 1020, with changes to the text published in the November 8, 1994, issue of the *Texas Register* (19 TexReg 8825). The text of the repeals will not be republished

The adopted action involves the repeal of all sections within Subchapter B, and the adoption of certain sections formerly within Subchapter B as new sections within Subchapter EE Other sections within Subchapter B that are no longer applicable pursuant to federal deregulation legislation contained in H. R. 2739, enacting Title VI of the Federal Aviation Administration Authorization Act of 1994, effective January 1, 1995, are not being adopted as new sections within Subchapter EE. The federal legislation includes a federal preemption over any state's regulation of prices, routes, or services of most motor carriers performing for-hire transportation. This repeal of §§5.21-5. 46 is adopted in order to provide for the adoption of a new Subchapter B, concerning Commercial Carriers, which will contain new rules for use by the Railroad Commission of Texas.

Proposed new §§5.1006, 5.1007, 5.1008, 5.1009, 5.1010, 5.1011, 5 1012, 5. 1016, 5.1017, 5.1021, 5 1022, 5.1023, 5.1024, 5.1025, and 5 1026, are not being adopted by the commission. Proposed new §§5 1001-5.005, 5.1013-5.1015, and 5.1018-5.1020 are being adopted by the commission. The text of the adopted sections will not be republished.

The repeal of Subchapter B and the adoption of new Subchapter EE will permit the proposed adoption of a new subchapter B, effective January 1, 1995, concerning registration, insurance, and safety requirements for commercial carriers.

A public hearing was held to receive comments on the proposed repeal and the proposed new subchapter on December 1, 1994 Comments on the proposed repeal and new Subchapter EE are summarized as follows

Two comments were received Both comments opposed the re-enactment of Subchapter B as Subchapter EE, on the basis that the federal deregulation legislation would make all of proposed Subchapter EE obsolete One comment specifically urged that proposed §5.1013, concerning contract carriers, not be adopted

The commission disagrees that all of proposed Subchapter EE is preempted by the federal deregulation legislation, because this legislation does not apply to the transportation of household goods or to motor bus companies Several of the proposed sections in proposed Subchapter EE are applicable to transporters of household goods and to motor bus companies, consequently, the commission is adopting those sections of proposed Subchapter EE that bear on household goods transporters and motor bus companies

No groups or associations commented regarding adoption of the repeals and new Subchapter EE

Sections 5 21-5 46 within existing Subchapter B are repealed pursuant to the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, which authorizes the commission to prescribe rules and regulations for the operations of motor carriers

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 12, 1994.

TRD-9452385 Mary Ross McDonald
Assistant Director, Legal Division, Gas Utilities/LP Gas
Railroad Commission of Texas

Effective date· January 3, 1995

Proposal publication date November 8, 1994

For further information, please call: (512) 463-7094

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Subchapter EE. Operating Certificates, Permits and Licenses

- **16 TAC §§5.1001-5.1005, 5.1013-5.1015, 5.1018-5.1020**

The new sections are adopted under the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, which authorizes the commission to prescribe rules and regulations for the operations of motor carriers.

§5.1001. Compliance with Laws and Regulations. All motor carriers, motor transportation brokers, and motor bus companies shall conduct their operations in accordance with all applicable laws of the State of Texas and all applicable regulations of the commission. All certificates, permits, and licenses issued by the commission are subject to applicable provisions of law and of these regulations as fully as if said laws and said regulations were set forth verbatim in each certificate, permit, and license.

§5 1002. Prohibition of Unauthorized Services No motor carrier, motor transportation broker, or motor bus company shall perform any service or services within the jurisdiction of the commission except those which are authorized by a certificate, permit, or license issued by the commission, or specifically authorized by these regulations for the class of which it is a member.

§5.1003. Call and Demand Service All motor carriers shall have authority, unless expressly prohibited by their respective certificates or permits, to render, in accordance with applicable tariff provisions, call and demand service upon the routes or within the territories upon or within which they are authorized to render service by their respective certificates or permits

§5 1004 Use of Highways.

(a) Each motor carrier and each motor bus company shall use only those highways which are authorized by its respective certificates or permits. However, motor carriers and motor bus companies which operate in both interstate and intrastate commerce are not required to secure additional authority from the commission to use in interstate commerce any highway which is included in the intrastate operating authority granted by a certificate or permit issued by the commission.

(b) All motor carriers and motor bus companies duly authorized to perform operations in interstate or foreign commerce in Texas pursuant to the provisions of the Interstate Commerce Act are hereby authorized to use the highways of this state to perform interstate operations within the commercial zone of any municipality, as provided by the order of the Interstate Commerce Commission in ex parte MC-37, 49 U.S.C. §10526.

§5.1005. Pick Up and Delivery Service. All motor carriers are hereby authorized, as an incident to the services authorized by their respective certificates or permits, to render pick-up and delivery services to and from all points which are located within the pick-up and delivery zones prescribed by the commission in applicable tariffs

§5.1013 Contract Carriers A contract carrier permit shall not authorize the performance of transportation services for more than 15 shippers, unless it is issued to a truckload contract carrier as that term is defined in §5.1126 of this title (relating to Truckload Contract Carriers) A truckload contract carrier permit cannot be limited as to the number of parties or eligible contracts to be served under such permit.

§5 1014 Duplication of Operating Authority From and after the effective date of these regulations, no motor carrier shall be granted in any proceeding operating authority duplicative of that held by such carrier under any existing certificate or permit; provided, however, that with respect to an application for approval of the sale and transfer of operating authority which in part is duplicative of authority already possessed by the purchaser, the commission may by its order approve the sale and transfer, but provide for merger of the duplicative portion of said authority.

§5.1015 Joinder of Motor Carrier Certificates A specialized motor carrier may not render a coordinated or through service not authorized by any single certificate by virtue of tacking, joining, or combining operations authorized under two or more separately granted specialized motor carrier certificates, or under two or more separately granted portions of a consolidated certificate, unless after notice and hearing the commission has found that public convenience and necessity require such coordinated or through service and has specifically authorized same.

§5.1018 Cancellation, Suspension, and Reinstatement of Intrastate Certificates or Permits

(a) Conditions under which authority may be involuntarily suspended or canceled The intrastate certificate or permit of a motor carrier or motor bus company shall be subject to cancellation under any of the following conditions:

(1) failure to provide evidence of continuous insurance or surety bond coverage as required by §5.181 of this title (relating to Evidence of Insurance Required);

(2) failure to maintain the required continuous insurance or surety bond coverage during the time the motor carrier or motor bus company holds an intrastate certificate or permit;

(3) failure to file an annual operating report as required by §5 81 of this title (relating to Annual Report Required);

(4) failure to register equipment as required by §5.151 of this title (relating to Cab Cards),

(5) failure to renew voluntary suspension or reactivate a suspended certificate or permit upon termination of voluntary suspension under the provisions of §5 307 of this title (relating to Voluntary Suspensions)

(b) Notice of insurance violation. Upon receipt by the commission of notification pursuant to §5.185 of this title (relating to Termination) that a motor carrier or motor bus company's surety bond, policy, or certificate of insurance will terminate after 30 days, the commission shall send a letter by first class mail advising the motor carrier or motor bus company that upon termination of such insurance it must cease all operations under its certificate or permit

(c) Notice of other violation. If any of the conditions enumerated in subsection (a)(2) and (4) of this section arises, the commission shall notify the motor carrier or motor bus company that its certificate or permit is subject to cancellation. Notification that a certificate or permit is subject to cancellation shall be by publication in the Transportation Division notice

(d) Extension of time for compliance. A certificate or permit shall not be subject to cancellation for noncompliance with insurance requirements if, prior to the termination of its current insurance, the motor carrier or motor bus company files proof of insurance in accordance with §5.184 of this title (relating to Insurance Carrier) The time for filing such proof of insurance may be extended for 30 days, during which time the certificate or permit will remain in good standing if, prior to the termination of its current insurance, the motor carrier or motor bus company files a certificate of insurance or a copy of an insurance policy, indicating new insurance at least equal in coverage to the current minimum levels established by the commission For good cause, the period for filing operating reports, registering equipment, or for otherwise complying with applicable laws and

regulations may be extended, in writing by the director, a maximum of 60 days, during which time the certificate or permit shall remain in good standing if a request for extension is filed with the commission prior to the carrier's certificate or permit having been made subject to cancellation.

(e) Return to good standing prior to cancellation.

(1) A certificate or permit which is subject to cancellation under this section for failure to provide evidence of continuous insurance or surety bond coverage as detailed in subsection (a)(1) of this section may be returned to good standing by the director if, before the issuance of a commission order canceling, suspending, or amending the certificate or permit, the holder of the certificate or permit files proof that the condition which made the certificate or permit subject to cancellation under subsection (a)(1) has been corrected, together with a fee in the amount of $1.00 for each day prior to filing under this subsection during which time the certificate or permit was subject to cancellation. Proof that there has been no lapse in insurance or surety bond coverage, only a failure to provide the commission with evidence of this coverage, shall include:

(A) an affidavit duly executed by the insurance agent; or

(B) a certificate of insurance from the insurance agent; or

(C) any other evidence deemed acceptable by the commission.

(2) A certificate or permit which is subject to cancellation under this section for failure to maintain the required continuous insurance or surety bond coverage as detailed in subsection (a)(2) of this section may be returned to good standing by the director if, before the issuance of a commission order canceling, suspending, or amending the certificate or permit, the holder files proof that the condition which made the certificate or permit subject to cancellation under this subsection has been corrected, together with a fee in the amount of $10 for each day prior to filing under this subsection during which time the certificate or permit was subject to cancellation. Proof that the condition has been corrected shall include an affidavit duly executed by the holder of the certificate or permit showing that:

(A) no accidents or losses have occurred; and

(B) no claims have arisen; or

(C) all damages, losses, and claims so arising have been satisfied.

(3) A certificate or permit which is subject to cancellation under this section for failure to:

(A) file an annual operating report;

(B) failure to register equipment; and/or

(C) failure to renew voluntary suspension or reactivate a suspended certificate or permit upon termination of voluntary suspension as detailed in subsection (a)(2)-(4) of this section, respectively, may be returned to good standing by the director if, prior to the issuance of a commission order canceling, suspending, or amending the certificate or permit, the holder of the certificate or permit files proof that the condition which made the certificate or permit subject to cancellation under subsection (a)(2)-(4) has been corrected, together with a fee in the amount of $10 for each day prior to filing under this subsection during which time the certificate or permit was subject to cancellation.

(f) Cancellation The commission may cancel, suspend, or amend any certificate or permit which is subject to cancellation under this section. No certificate or permit shall be canceled, suspended, or amended without notice by certified letter mailed to the carrier's current address on file with the Railroad Commission pursuant to §5.39 of this title (relating to Address for Receipt of Service) setting a time and place for hearing at which any interested party may appear to show cause why the certificate or permit should not be canceled.

(g) Surrender of certificates and permits, cards and plates, and cessation of operations. Upon issuance of a commission final order canceling or suspending a certificate or permit, the carrier shall immediately return the certificate or permit, together with all cab cards in the carrier's possession, to the commission or to any duly authorized representative of the commission. The motor carrier or motor bus company shall concurrently cease all operations under the certificate or permit.

(h) Reinstatement after cancellation.

(1) Reinstatement of certificates or permits canceled before enactment of this section. Certificates and permits canceled prior to enactment of this section shall be final for all purposes. Such certificates or permits cannot thereafter be reinstated.

(2) Reinstatement of certificates or permits canceled after enactment of this rule.

(A) Commission may provide for reinstatement in cancellation order. The Commission may, in the order canceling a certificate or permit, provide that the certificate or permit may be reinstated if the holder files a reinstatement application within a specified period of time following issuance of the cancellation order.

(B) Reinstatement authority of director. The Commission, in the order canceling a certificate or permit, may provide that the certificate be reinstated by the director. Under this subsection, the director shall reinstate a canceled certificate where the holder of the canceled certificate files with the Transportation Division:

(i) an application requesting reinstatement within the period provided in subparagraph (C) of this paragraph;

(ii) evidence of insurance or surety bond coverage as required by §5.181 of this title (relating to Evidence of Insurance Required);

(iii) evidence that all fees have been paid;

(iv) an equipment report as required by §5.151 of this title (relating to Equipment Reports); and

(v) an annual operating report as required by §5.81 of this title (relating to Annual Report Required)

(C) Deadline for filing reinstatement applications. The deadline for filing of reinstatement applications specified in the cancellation order shall not be later than two years after the issuance of the cancellation order.

(D) Reinstatement fee.

(i) No application for reinstatement of a certificate or permit canceled for failure to provide evidence of continuous insurance or surety bond coverage as detailed in subsections (a)(1) and (f) of this section shall be granted unless the applicant shall pay to the commission a reinstatement fee in the amount of $1.00 for each day prior to the filing of the reinstatement application during which time the certificate or permit was subject to cancellation.

(ii) No application for reinstatement of a certificate or permit canceled for failure to maintain the required continuous insurance or surety bond coverage, failure to file an annual operating report, failure to register equipment, and/or failure to renew voluntary suspension or

reactivate suspended certificate or permit upon termination of voluntary suspension as detailed in subsection (a)(2)-(5) of this section, respectively, and subsection (f), shall be granted unless the applicant shall pay to the commission a reinstatement fee in the amount of $10 for each day prior to the filing of the reinstatement application during which time the certificate or permit was subject to cancellation.

§5.1019. Address for Receipt of Service. Every holder of a certificate or permit issued by the Railroad Commission shall at all times maintain on file with the commission their address for receipt of service in all Railroad Commission proceedings. The address most recently filed shall be presumed conclusively to be the current address of the holder for all purposes.

§5.1020. Intercorporate Transportation Exemption

(a) Statutory exemption provisions. The transportation by motor vehicle for compensation by a member of a corporate family, as hereinafter defined, for other members of such corporate family of property which one member of the corporate family leases for use in its primary business, or of which one member of the corporate family is, or will become upon delivery, the bona fide owner, manufacturer, or producer, and which is produced, manufactured, or distributed as part of such corporate family member's primary business, other than a transportation business shall be authorized under a certificate of notice issued by the commission upon compliance with the terms of this section

(b) Definition of corporate family A corporate family is defined as a group of corporations consisting of a parent corporation and all subsidiaries in which the parent corporation owns directly or indirectly a 100% interest

(c) Application for certificate of notice. Before engaging in the transportation defined in subsection (a) of this section, the parent corporation shall file with the commission the following:

(1) an application for a certificate of notice in a form prescribed by the commission on behalf of the corporate member that is to provide the transportation together with a list of the subsidiaries involved and an affidavit that the parent corporation owns directly or indirectly a 100% interest in each of the participating subsidiaries;

(2) a certificate of insurance which covers all motor vehicles to be used in the transportation with public liability and property damage insurance in the amounts required by §5.183 of this title (relating to Minimum Limits) Each certificate of insurance filed with the commission shall be accompanied by a filing fee of $25, which fee shall be in addition to that required in paragraph (4) of this subsection;

(3) a statement identifying the primary business of the parent corporation and each participating subsidiary; and

(4) a $100 filing fee.

(d) Certificate of notice. A certificate of notice as defined in subsection (a) of this section shall be issued in the name of the corporation that provides the transportation and shall be carried in the cab of all vehicles used to conduct intercorporate transportation as defined in subsection (a) of this subsection.

(e) Inspection of books and records. Any corporation electing to engage in the transportation authorized hereunder shall be deemed to have given its consent to allow authorized employees or representatives of the commission to inspect the books and records of all members of the corporate family engaging in such transportation for the sole purpose of insuring that all exempt transportation provided other members of the corporate family is in strict conformity with the provisions of this section.

(f) Transfers A certificate of notice issued under this section is not transferable

(g) Conditions under which a certificate of notice shall be canceled. A certificate of notice shall be canceled for failure to provide evidence of continuous insurance as required by §5.181 of this title (relating to Evidence of Insurance Required); for failure to maintain the required continuous insurance coverage during the time the certificate of notice is held; or for failure to comply with subsection (e) of this section.

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 12, 1994

TRD-9452386 Mary Ross McDonald
Assistant Director, Legal Division, Gas Utilities/LP Gas
Railroad Commission of Texas

Effective date: January 3, 1995

Proposal publication date: November 8, 1994

For further information, please call. (512) 463-7086

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• 16 TAC §§5.21-5.32

The Railroad Commission of Texas adopts new §§5.21-5.32, within new Subchapter B, concerning commercial carriers. Sections 5.21, 5.22, and 5.24 are adopted with changes to the text as published in the November 8, 1994, issue of the *Texas Register* (19 TexReg 8836). Sections 5.23, and 5.25-5. 32 are adopted without changes to the text as published in the November 8, 1994, issue of the *Texas Register* (19 TexReg 8836).

The new sections are adopted to address recent federal deregulation legislation contained in House Bill 2739, enacting Title VI of the Federal Aviation Administration Authorization Act of 1994, effective January 1, 1995. The federal legislation includes a federal preemption over any state's regulation of prices, routes, or services of most motor carriers performing for-hire transportation. New §§5.21-5.32, within new Subchapter B create a system of registration for commercial motor vehicles, and insurance and safety requirements, to be effective January 2, 1995.

Within new §5.21, a new paragraph (J) is being added as an exception to the definition of "commercial motor vehicle." The new paragraph makes it clear that motor buses are not commercial motor vehicles and will not register or otherwise be subject to the provisions of new Subchapter B. The commission intends to revise its regulations concerning motor bus companies, and intends to include motor buses within those provisions rather than to treat them as commercial carriers under these proposed rules A new paragraph (K) is being added as an exception to the definition of "commercial motor vehicle," clarifying that recreational vehicles are not commercial motor vehicles and will not be required to register or otherwise be subject to the provisions of new Subchapter B

In §5.22, a new subsection (b) is being added, to provide transition rules for motor carriers currently operating under certificates of public convenience and necessity, permits, or commercial motor vehicle registration with the commission under the Texas Motor Carrier Act. The new subsection (b) states that motor carriers currently operating under certificates of public convenience and necessity, permits, or registered commercial vehicles do not have to register as commercial carriers on January 1, 1995, but may continue to operate until the expiration date of their existing cab cards, after which time they will need to register as commercial carriers Such carriers will be required to comply with all other requirements of the new Subchapter B from and after January 2, 1995. New language is also being added to §5.22(a) to provide that such motor carriers may continue to operate under the transition provisions of §5.22(b). The remaining subsections have been relettered to accommodate new §5.22(b). Section 5.22(e) is being deleted in its entirety, because any need for required identifying marks on power units is outweighed by the substantial expense to commercial carriers of placing such marks on each commercial motor vehicle operated by a commercial carrier and because of existing statutory requirements for markings in Texas Civil Statutes, Article 6701c-1 §6. Section 5.22(f) is being amended to clarify that a violation of any federal or state safety regulations is a violation of Subchapter B Section 5.22(j) is being amended to substitute "legal agent for service of process" for "ownership" in the information to be supplied the commission by a commercial carrier, because this information would be

more helpful if it becomes necessary to serve a commercial carrier with process or other legal notice.

Section 5.24(c) is being amended to require minimum insurance coverage in the amount of $500,000 for combined single limit for bodily injuries to or death of all persons killed in any accident, and loss or damage in any one accident to the property of others (excluding cargo), for all commercial carriers, without regard to the weight of the commercial motor vehicles, exclusive of certain transporters of hazardous wastes, hazardous materials, and hazardous substances, as described in §5.24(d). Subsection (e) is being amended to clarify that notification of cancellation of insurance coverage must come from the insurer, in keeping with proposed §5.27.

The adoption of the new sections within new Subchapter B will streamline the registration process for commercial motor vehicles and clarify for the public the registration, insurance, and safety requirements for commercial motor vehicles. In addition, the adoption of the new sections within new Subchapter B will ensure that commercial motor vehicles have adequate insurance coverage and comply with safety requirements for the public's protection.

A public hearing was held to receive comments on the proposed rules on December 1, 1994. Written and oral comments were received to the proposed rules. Comments to the proposed rules are summarized as follows.

(1) The definition of "commercial carrier" should be amended to exclude from the definition those commercial carriers and/or household goods carriers that operate wholly within commercial zones as defined in Subchapter P of this title, because such regulation is unnecessary, and is thus not contemplated under the federal deregulation legislation. The commenter states that the public would still be protected, because proof of insurance is required before a motor vehicle can receive its license plates. The commenter also suggests that no identifying marks be required on commercial motor vehicles operating exclusively within a commercial zone, because such constitutes unnecessary governmental regulation.

(2) The definition of "commercial motor vehicle" should be changed to provide that all motor vehicles that provide for-hire courier service to the public are commercial motor vehicles, without regard to the gross weight rating of such vehicles. The commenter states that many courier services hire drivers who own and operate private passenger cars or light trucks, and that these vehicles often do not have commercial insurance coverage. The commenter points out that insurance companies are not obligated to pay claims when the such claims arise from an accident occurring during a commercial delivery.

(3) The definition of "commercial motor vehicle" should not have any distinguishing criteria as regards the weight of a vehicle. The commenter states that any vehicle that is commercial in nature should be subject to the registration process, and that no exemptions should be allowed.

(4) Any commercial carrier that is required to register with any other state agency in a manner equivalent to the proposed rules should be exempted from this system of registration, so as to avoid unnecessary regulation. The commenter suggests that transporters of medical waste are required to register under Texas Natural Resource Conservation Commission rules and that there are differences in the registration systems that can be easily corrected. The Texas Natural Resource Conservation Commission does not provide for insurer notification upon cancellation of coverage or administrative penalties, however, the commenter states that the Texas Natural Resource Conservation Commission would be receptive to changing its rules to accommodate these topics.

(5) The minimum limits of financial responsibility should be the same for all commercial vehicles, and these limits should be equal to the federal limits or, at the very least, be $500,000. Several commenters state that the proposed minimum limits of financial responsibility for commercial carriers with a gross weight rating of 26,001-48,000 pounds are wholly inadequate. The commenters also state that the amount of damage that could be caused by a commercial motor vehicle with a gross weight rating of 48,000 pounds would be virtually identical to that of a commercial motor vehicle with a gross weight rating of 48,001 pounds, so that any distinction is arbitrary and contrary to free-market competition. Commenters also suggest that different insurance requirements will cause under-reporting of gross weight ratings by commercial carriers in an attempt to take advantage of the lower insurance requirements, thus creating a danger to the public in the form of underinsured commercial motor vehicles being operated on state roadways. One commenter also states that, for drivers with good driving records, it could cost as little as $500 to go from $20,000 worth of insurance coverage to $500,000 worth of insurance coverage.

(6) Better assurances should be given to the public that a commercial carrier has adequate, active insurance coverage. Comments suggest that a commercial carrier could cancel its insurance coverage and that, despite the 30-day cancellation notice requirement from the insurance company to the commission, the public would not be able to tell that insurance has been cancelled, because the commercial carrier would still be in possession of an insurance company issued card indicating that the commercial carrier is insured. Similarly, comments suggest that a cab card could appear to be valid, leading a shipper to assume that a commercial carrier is properly insured when, in fact, such commercial carrier's insurance coverage may have been cancelled.

(7) The commission should promulgate a form for insurance companies to submit to the commission regarding evidence of insurance coverage for a commercial carrier that is expressly limited to coverage for named vehicles within a policy, and that does not obligate an insurance company to cover, generally, a particular commercial carrier's commercial motor vehicles. The commenter states that federal deregulation removes the safeguards formerly afforded an insurance company by virtue of the commission's determination of a carrier's fitness to operate in regulated transportation.

(8) More detailed and stringent safety regulations should be in the rules, including safety training requirements for drivers of commercial motor vehicles and equipment specifications. A commenter also states that the commission should conduct equipment inspections to ascertain safety violations.

(9) Section 5.29 should be deleted, because the commission has no statutory authority to regulate insurance agents and because an international stamp program is contrary to state and federal statutes. The commenter states that there is pending litigation on this issue. As further support for deleting §5.29, the commenter asserts that the section will cause insurance agents to break the law and to lose legitimate business.

(10) Product liability insurance coverage should be required for any commercial carrier operating homemade equipment.

(11) There should be reciprocal agreements with surrounding states regarding the registration process.

(12) The commission should add a rule to provide for increased personnel to enforce the proposed rules.

(13) Tow trucks should not be required to register under this proposed system. A comment was also received that tow trucks should be required to register under the proposed system.

(14) Interstate carriers should not be allowed to make intrastate movements in Texas using single trip insurance, but should be required to register and obtain the required insurance as specified in proposed Subchapter B. The commenter states that interstate carriers should be required to share in the cost of insurance rates that Texas businesses are required to pay.

(15) Provision should be made for the transition from renewal of cab cards under the current rules to the registration process under proposed new Subchapter B.

(16) The commission should add rules that would be optional to commercial carriers desiring to operate under such rules, to deal with cargo claims, credit, and uniform bill of lading provisions.

(17) The federal deregulation legislation does not apply to intrastate regulation of hazardous waste, therefore, carriers of hazardous waste should be removed from the proposed system of registration and continue to be regulated as specialized motor carriers under the Motor Carrier Act.

(18) The commission should not require original cab cards to be maintained in commercial motor vehicles, because this places an unwarranted financial burden on commercial carriers. The commenter states that if there is a delay in receiving a cab card, a commercial motor vehicle would be non-productive, and the commercial carrier would lose revenue. The commenter suggests that the commission use an expediting service or fax cab cards to commercial carriers.

(19) Although household goods carriers are exempted from the definition of "commercial motor vehicle," the commission should also exempt such carriers from the definition of "commercial carrier," to further clarify that household goods carriers are not subject to the proposed registration system. The commenter also states that the commission should specify that if a household goods carrier also carries commodities other than household goods, it does not have to register as a commercial carrier under the proposed new Subchapter B.

Other comments were received relating to the state's reaction to the federal deregulation legislation, which comments are not susceptible to being addressed within the rulemaking function of the commission.

The commission disagrees with the portion of comment (1) that concerns an exemption for commercial carriers operating exclusively within a commercial zone. Metropolitan areas, which comprise commercial zones, are high-traffic areas, and the need for adequate insurance coverage and safety practices are greater in these areas than in rural, less congested areas of the state. The commission agrees with the portion of comment (1) that concerns identifying marks on vehicles, and has deleted that requirement because of a similar requirement in Texas Civil Statutes, Article 6701c-1 §6.

The commission disagrees with comment (2), concerning classifying all motor vehicles operating in courier service as commercial motor vehicles, and with comment (3), concerning eliminating the gross weight restriction from the definition of commercial motor vehicles. Texas Civil Statutes, Article 6701d §139(a)(2) establishes the scope of commission jurisdiction over commercial motor vehicles as limited to commercial motor vehicles with a gross weight rating of 26,001 pounds or more, with an exception for transporters of hazardous wastes, materials, or substances. Consequently, the commission has no statutory authority to promulgate rules with respect to vehicles with gross weight ratings of 26,000 pounds or less.

The commission agrees with comment (4) to the extent that it would be willing to consider future exemptions for any commercial motor vehicle that is required to comply with another state agency's requirements that are equivalent to those being proposed in Subchapter B, however, the commission has no information indicating that any group of commercial carriers is required to comply with another agency's rules that are equivalent to these proposed rules. The commission disagrees that it should provide for an exemption contemplated by comment (4), absent the opportunity to study any other agency's rules to determine whether such rules are equivalent to proposed Subchapter B.

The commission agrees with comment (5), that the minimum limits of financial responsibility should be the same for all commercial carriers under this proposed Subchapter B, except for those transporting hazardous wastes, materials, or substances as set out in proposed §5.24(d). The commission disagrees that these limits should be made equal to the federal limits of $750,000 at this time, because the commission has not had the opportunity to fully evaluate the fiscal impact that would occur to commercial carriers upon raising insurance rates from the current levels applicable to commercial motor vehicles with a gross weight rating of more than 48,000 pounds to the federal levels. However, the commission agrees that there is no weight-based justification for the different amounts of insurance coverage required of commercial carriers. The commission agrees that all commercial carriers, except as provided in proposed §5.24(d), should be subject to minimum limits of financial responsibility in the amount of $500,000.

The commission agrees with comment (6), concerning cab cards. The commission agrees that a commercial carrier's insurance coverage could be cancelled and that a shipper could potentially rely on the existence of a cab card as indicating that a commercial carrier has effective insurance in the required amounts. The commission, in response to this comment, is placing a commission telephone number on each cab card issued under this proposed Subchapter B. This will allow shippers and others to contact the commission for information on whether the commission has received from an insurer any notice of cancellation of a commercial carrier's insurance coverage.

The commission disagrees with comment (7), concerning amending the commission's notification form to be provided to the commission by an insurance agent upon cancellation of a commercial carrier's insurance coverage. The commission does not control to whom an insurance agent issues a policy of insurance coverage, and considers it the responsibility of the insurance agent to determine which vehicles are being insured by a commercial carrier. In addition, the commission wishes to maintain consistency with federal practices in this area, and does not have the personnel resources to accomplish the objective of the comment.

The commission disagrees with comment (8), that more specific safety regulations should be set out in proposed Subchapter B, because the safety requirements of Subchapter B provide that any violation of the Motor Carrier Safety Act, Texas Civil Statutes, Article 6701d, and any violation of any rule or order adopted or issued related to the safety provisions of the Motor Carrier Safety Act, are violations of proposed Subchapter B. Also, federal law, as set out in 49 United States Code, §2507(c)(4), substantially restricts the authority of a state agency to enact safety regulations more stringent than the federal requirements. The commission has not been provided sufficient information to indicate either that the Motor Carrier Safety Act and its rules and orders will not adequately protect the safety needs of the public, or that such act and the implementing rules must be reprinted in proposed Subchapter B.

The commission does not consider this rulemaking proceeding an appropriate context in which to address the pending litigation referred to in comment (9). The commission disagrees that it lacks authority to conduct the international stamp program or to require the participation of insurance agents as set out in proposed §5.29. The Third Court of Appeals, in *International Insurance Agency, Inc. vs Railroad Commission of Texas*, the lawsuit referenced by the commenter, upheld the commission's authority to establish an international stamp program, including requiring certain conduct by insurance agents. No injunction prohibits the commission from acting under its valid authority pending further appeals of this ruling.

The commission disagrees with comment (10), concerning adding a requirement that commercial carriers, operating homemade equipment, carry product liability insurance, because there is no statutory authority for such a requirement.

The commission disagrees with comment (11), concerning a need to make a reciprocal agreement with surrounding states for proposed Subchapter B, because the provisions of proposed Subchapter B apply only to intrastate transportation, and do not purport to address interstate traffic.

The commission disagrees with comment (12), stating that proposed Subchapter B should contain a rule that adds personnel to enforce the remaining provisions of proposed Subchapter B, because this is not a rulemaking function. In addition, the commission has recently restructured its Transportation Division in order to ensure that it has sufficient personnel to address concerns such as that raised by comment (12).

In response to the portion of comment (13) stating that tow trucks should not be required to register under the proposed system, the commission states that the proposed Subchapter B already exempts tow trucks from the commercial carrier registration process. Instead, tow trucks will register under the Tow Truck Act, Texas Civil Statutes, Article 6687-9b. This is accomplished by exempting tow truck owners from the definition of "commercial carrier," set out in §5.21. The commission disagrees with the portion of comment (13) stating that tow trucks should be required to register under the proposed system, because the Tow Truck Act provides a complete system of registration, specific to the tow truck industry, that meets all the requirements of the proposed registration system.

The commission agrees that, at this time, trip insurance should not be made available to interstate carriers for intrastate movements, as stated in comment (14), because currently the number of such movements does not justify the administrative cost of establishing a temporary registration program for interstate carriers making single-trip intrastate movements. The commission may consider this issue at a later time, should the need for such a program develop.

The commission agrees with comment (15), and has amended proposed new Subchapter B to provide a transition rule from current rules to the new registration system.

The commission disagrees with comment (16), concerning including optional rules for commercial carriers with regard to cargo claims, credit, and uniform bill of lading procedures, because such rules would not apply to all commercial carriers, absent a carrier's consent, and because such rules do not fall

within the scope of proposed new Subchapter B, covering registration, insurance, and safety requirements for commercial carriers. The commission will consider any petition for rulemaking in this regard, but disagrees that the proposed subchapter is the appropriate place to locate any such rules.

The commission disagrees with comment (17), that transporters of hazardous waste are exempted from the federal deregulation legislation. The commission is aware that different jurisdictions have taken conflicting positions on this issue; however, the commission regards classification of transporters of hazardous waste as commercial carriers to be within the law. In addition, the commission considers it to be in the public interest to register such transporters as commercial carriers, thus providing the public with assurances that such transporters are operating with the requisite levels of insurance coverage and according to all state and federal safety regulations

The commission disagrees with comment (18), stating that the commission should not require that original cab cards be maintained in commercial motor vehicles, because the potential for fraud is too great. If copies of cab cards are allowed to be carried in commercial motor vehicles instead of originals, a commercial carrier could reproduce a cab card and place it in a commercial motor vehicle without registering that vehicle with the commission Similarly, use of a reproduced cab card could allow a commercial carrier to operate a commercial motor vehicle without the required insurance coverage. The commission can usually issue cab cards the same day as requested, if all other registration requirements are met Expediting services are available to carriers for same day or overnight delivery of cab cards

The commission disagrees with comment (19)'s assertion that household goods carriers should be exempt from the definition of "commercial carrier," because to do so would allow household goods carriers operating in unregulated traffic to continue to operate outside any system of registration, depriving the public of any assurances that such carriers are operating with the requisite amount of insurance and in compliance with all state and federal safety regulations Only transporters of household goods operating pursuant to a specialized motor carrier certificate of public convenience and necessity issued by the commission are exempt from the definition of "commercial motor vehicle " Therefore, the commission also disagrees that it needs to amend the rules to specify that a certificated household goods carrier that also transports non-household goods commodities has to register with the commission as a commercial carrier.

The Sand & Gravel Motor Carriers Association commented against adoption of proposed §5.24, as written The Texas Towing & Storage Association commented generally against adoption of the sections within new Subchapter B. The Texas Motor Transportation Association, Inc , commented against proposed §§5.21, 5 23, and 5 24, as written The Texas Tank Truck Carriers Association, Building Materials Carriers Bureau, Inc , and the Texas Association of Cement Transporters, Inc., submitted comments suggesting changes to §5.24, but were generally in favor of adoption of the sections within new Subchapter B.

The new sections and subchapter are adopted pursuant to Texas Civil Statutes, Article 911b, §§ 4(a)(1), 4(a)(12), 4(a)(13), 13, and 13aa, which authorize the commission to define and register commercial motor vehicles; to prescribe rules for safety of motor carriers and to receive reports on safety violations, to set insurance coverage amounts and to ensure that insurance coverages are maintained; and to invoke certain sanctions for violations of its rules. The new sections and subchapter are also adopted pursuant to Texas Civil Statutes, Article 6701d §139(c) and (j), which authorizes the commission to require insurance coverage for commercial carriers and to impose certain sanctions for failure to maintain the required insurance coverage.

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

Cab card-A document issued by the commission, continuously maintained in a commercial vehicle, identifying that vehicle as operating under a specific commercial carrier's certificate of registration

Certificate of insurance-A certificate prescribed by and filed with the commission, in which an insurance carrier or surety company warrants that a commercial carrier for whom the certificate is filed has the minimum coverage required by §5.24 of this title (relating to Minimum Limits of Financial Responsibility), and that the insurance carrier or surety company will not cancel such coverage except upon notice to the commission as required by §5.27 of this title (relating to Termination of Insurance Coverage)

Certificate of registration-A certificate issued by the commission to a commercial carrier, containing a unique number

Commercial carrier--Any person that operates or causes the operation of a commercial motor vehicle upon the public highways of the State of Texas. This definition does not include a tow truck owner as that term is defined in §5.802 of this title (relating to Definitions).

Commercial motor vehicle-Any motor vehicle with a gross weight rating of 26,001 pounds or more, designed or used for the transportation of property For the purposes of this title, a vehicle transporting any of the commodities listed in §5 24(d)(1)-(3) of this title (relating to Minimum Limits of Financial Responsibility) is a commercial motor vehicle if such vehicle has a gross weight rating of 10,000 pounds or more. All tow trucks, as that term is defined in §5.802 of this title (relating to Definitions) are commercial motor vehicles, regardless of the gross weight rating of the tow truck. Notwithstanding the foregoing, the following are not commercial motor vehicles:

(A) a vehicle registered with the commission pursuant to §9.17 of this title (relating to LP-Gas Transport);

(B) a farm vehicle operating within Texas with a gross vehicle rating of less than 48,000 pounds or a vehicle operating in Texas that is transporting a seed cotton module;

(C) a vehicle transporting household goods as that term is defined in §5.251 of this title (relating to Authority), pursuant to a specialized motor carrier certificate of public convenience and necessity issued by the Commission

(D) a vehicle transporting property exclusively in interstate or foreign commerce pursuant to subchapter T of this title (relating to Single State Registration of Interstate Motor Carrier Operations);

(E) a vehicle operated by any governmental entity,

(F) a vehicle transporting property for an electric cooperative organized pursuant to the provisions of Texas Civil Statutes, Article 1528b;

(G) a vehicle transporting property for a telephone cooperative organized pursuant to the provisions of Texas Civil Statutes, Article 1528c;

(H) a vehicle transporting property for a non-profit water supply or sewer service corporation organized pursuant to the provisions of Texas Civil Statutes, Article 1434a;

(I) a vehicle transporting alcoholic beverages pursuant to a wholesale permit or license issued by the Texas Alcoholic Beverage Commission under the provisions of the Texas Alcoholic Beverage Code;

(J) motor buses; and

(K) recreational vehicles.

Commission-The Railroad Commission of Texas.

Director-The director of the Transportation/Gas Utilities Division of the Railroad Commission of Texas. Any act or function herein assigned to the director by the commission may be delegated by the director.

Gross weight rating–The maximum loaded weight of any combination of truck, tractor, and trailer equipment, as specified by the manufacturer of the equipment. If the manufacturer's rating is unknown, the gross weight rating is the greater of:

(A) the actual weight of the equipment and its lading; or

(B) the maximum lawful weight of the equipment and its lading.

Person–An individual, firm, partnership, corporation, company, association, or joint stock association, or other legally appointed receivers or trustees.

§5.22. Application for Certificate of Registration.

(a) Commercial carrier registration required. No commercial carrier shall operate any commercial motor vehicle upon the public streets and highways of this state unless the commission has issued a certificate of registration to such carrier, as prescribed by this subchapter, or unless the commercial carrier is operating a commercial motor vehicle pursuant to subsection (b) of this section.

(b) Transitional operations. Each commercial carrier operating, on December 31, 1994, pursuant to a certificate of public convenience and necessity or a permit under the Texas Motor Carrier Act, or operating as a commercial motor vehicle registered with the commission under the Texas Motor Carrier Act, §4(a)(13), shall be allowed to continue to operate as a commercial carrier after January 1, 1995, until the expiration date of such carrier's current cab cards, without filing an application, registering equipment, or paying filing fees pursuant to this section Each commercial carrier operating under this subsection shall comply with all other requirements of this subsection from January 1, 1995, through the expiration date of such carrier's current cab cards. At the expiration date of the cab cards of a commercial carrier formerly operating under a certificate of public convenience and necessity, permit, or commercial motor vehicle registration, such commercial carrier shall register its commercial motor vehicles according to the requirements of this subchapter if it desires to continue to operate as an intrastate commercial carrier. Any motor carrier operating under a certificate of public convenience and necessity, permit, or commercial motor vehicle registration, that does not wish to continue operating as an intrastate commercial carrier on or after January 1, 1995, shall notify the director on or before December 31, 1994, so that such carrier's cab cards will be cancelled and returned to the commission.

(c) Form of application. The application for a certificate of registration shall be in the form prescribed by the commission.

(d) Filing of application. The application for certificate of registration shall be filed with the Transportation/Gas Utilities Division of the Railroad Commission of Texas, at P.O. Box 12967, Austin, Texas 78711-2967.

(e) Equipment registration and reports. Each commercial carrier is responsible for the registration of all commercial motor vehicles used in its operations, and shall identify each commercial motor vehicle by filing an equipment report prescribed by the commission. No commercial carrier shall operate any commercial motor vehicle without a valid cab card issued for that vehicle pursuant to §5.23 of this title (relating to Cab Cards). Any subsequent registration of equipment shall be accompanied by a supplemental equipment report and the applicable fees set out in subsection (g) of this section. Each commercial motor vehicle shall be identified by its motor vehicle identification number, make, model year, and the unit number assigned to the commercial motor vehicle by the commercial carrier. The commercial carrier's certificate of registration number shall be assigned to each motor vehicle registered by the commercial carrier.

(f) Safety affidavit. Each commercial carrier shall complete, as part of the application, an affidavit stating that the commercial carrier has knowledge of and will conduct operations in accordance with all federal and state safety regulations. Each failure to conduct operations in accordance with all federal and state safety regulations shall constitute a violation of this subchapter.

(g) Filing fees.

(1) Commercial motor vehicle registration. The fee for registering a commercial motor vehicle shall be $10 for each vehicle. The fee will not be prorated. Subject to the provisions of subsection (i) of this section, registration of a commercial motor vehicle shall be effective for one year, unless revoked, cancelled, or suspended as provided in §5.32 of this title (relating to Administrative Sanctions).

(2) Form of payment. All fees paid pursuant to this subchapter shall be in the form of a check or money order, payable to Texas State Treasurer, or other commercial payment method approved by the commission.

(h) Incomplete applications. Any application for registration that is incomplete may be conditionally accepted by the director. Conditional acceptance shall in no way constitute approval of the application. The director shall notify the applicant of the additional information necessary to complete the application. If the applicant does not supply all necessary information within 45 days from notification by the director, the application will be dismissed and all fees will be retained.

(i) Renewal of commercial motor vehicle registration. Each commercial carrier will be assigned an annual date for renewal of the registration of its commercial motor vehicles according to the last digit of the carrier's certificate number, as follows: If the last digit is: Renew before the first day of: 1 January 2 February 3 March 4 April 5 May 6 June 7 July 8 October 9 November 0 December To ensure timely renewal of registration, all renewal applications shall be received by the commission no later than 15 calendar days prior to the carrier's annual registration date.

(j) Change of name, address, or legal agent for service of process. A commercial carrier shall notify the director, in writing, of any change of name, address, or legal agent for service of process no later than the effective date of the change.

(k) Registered agent and address for service of process. Each commercial carrier shall have and continuously maintain with the commission for the purpose of administrative or civil service of process:

(1) a registered office in Texas that may be, but need not be, the same as its principal place of business; and

(2) a registered agent that is either an individual resident of Texas whose business office is identical with such registered office, a domestic corporation, or a foreign corporation authorized to transact business in Texas that has a business office identical with such registered office.

§5.24. Minimum Limits of Financial Responsibility.

(a) Filing required. Every commercial carrier shall file and maintain evidence of currently effective bodily injury and property damage liability insurance, in the amounts required by subsections (c) and (d) of this section, and such commercial carrier shall not operate any commercial motor vehicle upon the highways of this state unless the carrier has filed and the commission has accepted evidence of currently effective insurance, as prescribed by subsection (e) of this section. Operation of a commercial motor vehicle over the public highways of this state without the appropriate insurance coverage in effect and on file with the commission shall be a violation of this subchapter.

(b) Submission of evidence of financial responsibility. The evidence of financial responsibility, as prescribed by subsection (e) of this section, shall be submitted prior to approval of the original application for certificate of registration required by §5.22 of this title (relating to

Applications for Certificates of Registration).

(c) Commercial carriers. The minimum limits of financial responsibility for commercial carriers are hereby prescribed as follows: combined single limit for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to the property of others (excluding cargo) -$500,000. These minimums do not apply to certain transporters of hazardous wastes, hazardous materials, and hazardous substances, as described in subsection (d) of this section.

(d) Commercial carriers of hazardous materials. For all commercial carriers operating commercial motor vehicles with a gross weight rating of 10,000 pounds or more that are required to utilize hazardous materials placarding for the transportation of a commodity specified in this subsection, the following combined single limits apply to bodily injuries to or death of all persons injured or killed in any accident, and also apply to loss or damage in any one accident to the property of others:

(1) Hazardous substances, as defined in 49 Code of Federal Regulations §171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles, with capacities in excess of 3,500 water gallons; or in bulk Classes A or B explosives, poison gas (Poison A), liquified compressed gas or compressed gas; or highway route controlled quantity radioactive materials as defined in 49 Code of Federal Regulations §173.403 (excluding cargo)-$5,000,000.

(2) Oil listed in 49 Code of Federal Regulations §172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 Code of Federal Regulations §171.8 and listed in 49 Code of Federal Regulations §172.101, but not mentioned in paragraphs (1) or (2) of this subsection (excluding cargo)-$1,000,000.

(3) Any quantity of Classes A or B explosives; any quantity of poison gas (Poison A); or any highway route controlled quantity of radioactive materials as defined in 49 Code of Federal Regulations §173.403 (excluding cargo)-$5,000,000.

(e) Proof required. The evidence of bodily injury and property damage liability insurance required by this section shall be in the form set forth by the commission, and shall be duly completed and executed by an authorized representative of an insurance company holding a certificate of authority to transact such kinds of insurance business in the State of Texas, or by a surplus lines insurer approved by the Texas Department of Insurance. The cancellation of a policy of insurance may be effected only by the insurance company giving 30 days' notice in writing to the commission. The 30 day notice period will be calculated from the date notice is actually received by the commission.

(f) Self-insurance. Notwithstanding the provisions of this section, a commercial carrier may be authorized to self-insure for bodily injury and property damage liability in lieu of filing proof of insurance, as provided in §5.28 of this subchapter (relating to Qualification as Self-Insurer).

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 12, 1994.

TRD-9452387 Mary Ross McDonald
Assistant Director, Legal Division, Gas Utilities/LP Gas
Railroad Commission of Texas

Effective date: January 3, 1995

Proposal publication date: November 8, 1994

For further information, please call: (512) 463-7086

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Subchapter W. Registration of Commercial Carriers

• 16 TAC §§5.501-5.508

The Railroad Commission of Texas adopts the repeal of Subchapter W, §§5.501-5.508, concerning registration of commercial carriers, without changes to the proposed text as published in the November 8, 1994, issue of the *Texas Register* (19 TexReg 8841).

The repeals are adopted because the commission adopted a new subchapter that addresses the insurance and registration requirements of all commercial carriers, as that term is defined in the new subchapter. The repeals will allow the accommodation of a new subchapter containing comprehensive insurance and registration provisions for commercial carriers.

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, which authorize the commission to prescribe rules and regulations for the operations of motor carriers.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 12, 1994.

TRD-9452388 Mary Ross McDonald
Assistant Director, Legal Division, Gas Utilities/LP Gas
Railroad Commission of Texas

Effective date: January 3, 1995

Proposal publication date: November 8, 1994

For further information, please call: (512) 463-7086

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Part IX. Texas Lottery Commission

Chapter 401. Administration of State Lottery Act

Subchapter D. Lottery Game Rules

• 16 TAC §401.302

The Texas Lottery Commission adopts an amendment to §401.302, concerning instant game rules, without changes to the proposed text published in the August 26, 1994, issue of the **Texas Register** *(19 TexReg 6099)*.

The section, as amended, will provide the Lottery with the ability to determine more specifically the total prize amount to be paid for instant games and the ability to decide when game procedures for an individual game are necessary and not redundant.

The section, as amended, clarifies that the director has discretion to set a maximum total cash amount or maximum payment time period for each prize level of an instant game and that the filing of individual game procedures is discretionary.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code §466.015 which provides the Texas Lottery Commission with the authority to adopt all rules governing the establishment and operation of the lottery.

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 14, 1994.

TRD-9452409 Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

Effective date: January 4, 1995

Proposal publication date: August 26, 1994

For further information, please call: (512) 323-3791

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• 16 TAC §401.368

The Texas Lottery Commission adopts new §401.368, without changes to the proposed text as published in the August 19, 1994, issue of the *Texas Register* (19 TexReg 6503).

The new section sets out guidelines for the use of instant ticket vending machines by lottery sales agents. The purpose of the rule is to preserve the integrity and security of the Lottery by ensuring that only instant ticket vending machines that are supplied and placed by the Texas Lottery may be used to distribute or sell instant tickets.

The new section prohibits a lottery sales agent from distributing or selling Texas Lottery Instant tickets from an instant ticket vending machine, except those instant ticket vending machines supplied and placed by the Texas Lottery. The Commission believes this is necessary in order to prevent the use of instant ticket vending machines that do not meet the security and quality standards necessary to ensure the integrity of the Lottery.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Government Code, §466 015, which provides the Texas Lottery Commission with the authority to adopt rules governing the security for the Lottery and provides the Lottery Commission with the authority to adopt rules governing the method to be used in selling a ticket.

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 14, 1994

TRD-9452408 Kimberly L Kiplin
General Counsel
Texas Lottery Commission

Effective date January 4, 1995

Proposal publication date August 19, 1994

For further information, please call (512) 371-3791

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TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 17. Campus Planning

Subchapter A. Criteria for Approval of New Construction and Major Repair and Rehabilitation

- **19 TAC §17.33**

The Texas Higher Education Coordinating Board adopts an amendment to §17.33, concerning Criteria for Approval of New Construction and Major Repair and Rehabilitation (Provisions for Review of Projects Previously Approved), without changes to the proposed text as published in the August 16, 1994, issue of the *Texas Register* (19 TexReg 6412)

The Coordinating Board asked the staff to recommend modifications to the rules that would allow the Campus Planning Committee to act for the Board in giving final approval to auxiliary enterprise construction projects, as well as projects that would renovate educational and general buildings and cost less than $3 million The proposed change would give the Campus Planning Committee the same options it has under the special approval procedure in rule 17.46, which are to approve a request or refer it to the next meeting of the Coordinating Board.

Comments were received stating that there is some confusion on the requirement to award contracts on a project approved by the Board within one year, or be subject to another review by the Board. It was suggested that we clarify whether this meant different contracts on the same project all had to be awarded within one year or that the initial contract had to be awarded by this time.

Comments were for the changes and were received from the University of Houston System, and the University of North Texas.

Comments received fell outside of the scope of rule changes being considered at the October meeting. We agreed that these were items that should be considered as possible rule changes. We have communicated to the people making comments on our intent to consider these as possible rule changes, and they were satisfied with that.

The amendment is adopted under Texas Education Code, Chapter 61, Subchapter B, Administrative Provisions, §61 027, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Criteria for Approval of New Construction and Major Repair and Rehabilitation (Provisions for Review of Projects Previously Approved)

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 12, 1994

TRD-9452365 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date January 3, 1995

Proposal publication date August 16, 1994

For further information, please call (512) 483-6160

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Subchapter B. Application for Approval of New Construction and Major Repair and Rehabilitation

- **19 TAC §§17.42-17.44, 17.46**

The Texas Higher Education Coordinating Board adopts amendments to §§17 42-17.44 and 17.46, concerning Application for Approval of New Construction and Major Repair and Rehabilitation, without changes to the proposed text as published in the August 16, 1994, issue of the *Texas Register* (19 TexReg 6412)

The Coordinating Board asked the staff to recommend modifications to the rules that would allow the Campus Planning Committee to act for the Board in giving final approval to auxiliary enterprise construction projects, as well as projects that would renovate educational and general buildings and cost less than $3 million. Section 17 42 would eliminate language that has led some institutions not to provide data on project funding and levels for first stage review of proposals to construct new educational and general space. Section 17. 43 will ensure that proposing institutions intend to comply with the state's statutory requirements for the elimination of architectural barriers to persons with disabilities. Section 17.44 would make it congruent with the change being made in §17.43 to eliminate the need for a certificate of compliance with accessibility requirements.

Comments received stated that they would like to see the two stage review and approval process for new construction adding educational and general space be modified so that two stage review is required only when a project would result in an excess of space above the Coordinating Board space standards.

Comments were for the changes and were received from the University of Houston System and the University of North Texas.

Comments received fell outside of the scope of rule changes being considered at the October meeting. We agreed that these were items that should be considered as possible rule changes. We have communicated to the people making comments on our intent to consider these as possible rule changes, and they were satisfied with that.

The amendments are adopted under Texas Education Code, Chapter 61, Subchapter B, Administrative Provisions, §61.027, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Application for Approval of New Construction and Major Repair and Rehabilitation

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 12, 1994

TRD-9452366 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date January 3, 1995

Proposal publication date August 16, 1994

For further information, please call (512) 483-6160

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TITLE 22. EXAMINING BOARDS

Part IV. Texas Cosmetology Commission

Chapter 85. Public Records

- **22 TAC §85.1**

The Texas Cosmetology Commission adopts new § 85.1, concerning Charges for Public Records, without changes to the proposed text as published in the November 1, 1994, issue of the *Texas Register* (19 TexReg 8661)

This rule is being adopted to comply with House Bill 1009, 73rd Legislative Session,

amended the Texas Open Records Act to require each state agency to specify, by rule, the charges the agency will make for copies of public records. The bill calls for a state agency to establish a charge for a copy of public records that is equal to the full cost to the agency in providing the copy. This bill also requires the General Services Commission to specify by rule the methods and procedures determining the amounts that the agency should charge to recover the full cost to the agency in providing copies of public records.

This rules defines the charges for public records.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Article 8451a, §4(a) which provide the Texas Cosmetology Commission with authority to "issue rules consistent with this Act after a public hearing", to protect the public's health and welfare.

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 12, 1994.

TRD-9452312 Dick G. Strader
Executive Director
Texas Cosmetology Commission

Effective date: January 2, 1995

Proposal publication date: November 1, 1994

For further information, please call: (512) 454-4674

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Part XVI. Texas State Board of Physical Therapy Examiners

Chapter 329. Licensing Procedure

• 22 TAC §329.5, §329.6

The Texas State Board of Physical Therapy Examiners adopts amendments to §329.5, concerning Licensing Procedures for Foreign-Trained Applicants, and §329.6, concerning Licensure of Persons Currently Licensed in Other States, the District of Columbia, or Territories of the United States. Section 329.6 is adopted with changes to the proposed text as published in the November 4, 1994, issue of the *Texas Register* (19 TexReg 8747). Section 329.5 is adopted without changes and will not be republished

Section 329.5 is being amended to establish a process that requires credentialing agencies to formally agree to follow the board's guidelines.

Section 329.6 is being amended to define the term "equivalent program" for applicants seeking licensure in Texas who already hold a valid license in another state or territory. These amendments will establish procedures for more consistent review and evaluation of an applicant's education credentials.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Physical Therapy Practice Act, Texas Civil Statute, Article 4512e, which provide the Texas State Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§329.6. Licensure of Persons Currently Licensed in Other States, the District of Columbia, or Territories of the United States.

(a) Qualifications for provisional licensure.

(1)-(3) (No change.)

(4) Determination of substantially equivalent. Determination by the board as to whether a state, the District of Columbia or a territory of the United States maintains professional standards substantially equivalent to those set forth by the Act, will be based on whether at the time the applicant was licensed in the state:

(A) (No change.)

(B) An applicant for a license as a physical therapist must present evidence satisfactory to the board that the applicant has completed an accredited program or equivalent program in physical therapy education. "Equivalent program" means that the applicant shall provide official documentation from a board-approved educational credentials review agency and completion of a minimum of 60 academic semester credits or the equivalent from an accredited institution of higher learning. An applicant for a physical therapist assistant license must present evidence satisfactory to the board that the applicant has completed an accredited physical therapist assistant program or an accredited physical therapy program.

(C) (No change.)

(5)-(9) (No change.)

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 13, 1994.

TRD-9452380 Nina Hunter
Interim Executive Director
Texas State Board of Physical Therapy Examiners

Effective date: January 3, 1995

Proposal publication date: November 4, 1994

For further information, please call. (512) 443-8202

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TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 168. Back Injury Prevention Training Program

• 28 TAC §168.1, §168.2

The Texas Workers' Compensation Commission adopts the repeal of §168 1 and §168 2, concerning the Back Injury Prevention Training Program, without changes to the proposed text as published in the August 16, 1994, issue of the *Texas Register* (19 TexReg 6415)

The repeals delete obsolete rules from the agency's body of rules and from the Texas Administrative Code. The rules were part of a two-year pilot program authorized by the Texas Workers' Compensation Act, §7 07. That section limited the program to a period of two years and therefore, the program is no longer in effect

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Labor Code, §402 061, which authorizes the commission to adopt rules necessary to administer the 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 14, 1994.

TRD-9452412 Susan Cory
General Counsel
Texas Workers' Compensation Commission

Effective date: January 20, 1995

Proposal publication date: August 16, 1994

For further information, please call (512) 440-3700

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 331. Underground Injection Control

The Texas Natural Resource Conservation Commission (TNRCC) adopts the repeal of §331.45 and amendments to §§331 2, 331.9, 331.36, 331.43-331.45, 331.61, 331.63-331.66, 331.68, 331.121, 331 122, 331.142-331.144, 331 163, 331. 164, 331.167, 331 171, and new 331.15, which

constitute Subchapters A-D, G, I, and J, concerning underground injection control Sections 331 2, 331 45, 331 63, and 331 65 are adopted with changes to the proposed text as published in the June 28, 1994, issue of the *Texas Register* (19 TexReg 5018) Sections 331 9, 331 15, 331 36, 331 43, 331 44, 331 61, 331 64-331 66, 331 68, 331 121, 331 122, 331 142-331 144, 331 163, 331 164, 331 167, and 331 171 are adopted without changes and will not be republished As a result of public comments, proposed new §331 62 is being withdrawn from consideration, as is the proposed repeal of existing §331 62 The commission will repropose new §331 62 for public comment

The comment period for the June 28, 1994, proposals ended July 28, 1994. Comments on the proposed text were received from Terra Dynamics, Inc, the Texas Chemical Council, DuPont, Envirocorp, ECO Solutions, Inc, Merichem Company, Sterling Chemicals, and individual concerned citizens. All of the commenters were partially in favor of and partially opposed to adoption of the rules.

One commenter expressed concern with respect to the proposed definition of "new waste stream" in §331 2, claiming that changes in waste streams due to process "upsets", mechanical problems and emergencies would be considered new waste streams and requested that the language be changed so that changes which fall outside of the ranges submitted to the Commission not be considered a new waste stream. The proposed language will be changed to indicate that wastes not permitted are considered new wastes Variations in composition can be addressed in the permit application by noting the potential concentration ranges

Several respondents stated that according to the definition in §361 003(5) of the Health and Safety Code, hazardous waste management facilities which accept wastes generated onsite, or from captured or "sister" facilities are considered non-commercial facilities, whether or not there is a charge. To be consistent, the definition of non-commercial well in §331.2 has been corrected by deleting the "for a charge" provision

Section 331 45 is changed for purposes of clarification A few respondents expressed concern over proposed new §331 45 (regarding Certification) and commented that the language should require the executive director to approve any well built in compliance with the regulations and the permit. The commission responds that the term "shall" expresses willingness, promise or intention, while the term "may" confers a right, privilege or power The term "must" is used when an obligation to act is imposed By using the term "may", the proposed language indicates that the executive director has the power or authority to approve or disapprove the construction of a well, based upon the executive director's determination of whether the well is protective of human health and the environment and is in compliance with regulations, the permit and official guidance One respondent suggested that since a permittee has made a substantial investment in the permit application and the construction of the well, the agency should assure a permittee that any well constructed in accordance with the regulations and permit will be approved for operation. However, that determination will continue to be made by the executive director or his/her designee

Section 331 65 is changed to reflect a typographical error in the proposed text. A bracket denoting deleted text was invadvertenly omitted, the commission wishes to clarify any possible confusion about the language being deleted from the rule.

As previously mentioned, §331.62 is being withdrawn from consideration. However, in the interest of avoiding confusion the commission wishes to address comments concerning the section.

Several respondents suggested alternative language for §331.62(7), regarding the qualifications of persons who perform constructions and workovers. The intent was to ensure that the person who was ultimately responsible for the work was a registered professional engineer. The commission intends to propose language that should satisfy that concern.

Several respondents expressed concern over §331.62(3)(A), which was based on the Environmental Protection Agency (EPA) Groundwater Program Guidance Number 22. Concerns centered around a provision requiring written approval to change the setting and cementing of surface casing. One respondent suggested that the operator never be allowed to set surface casing shallower than required by the permit and that if the operator wished to set the surface casing deeper than stated in the permit that such action be allowed by rule and permit. Other respondents expressed concern with the perceived downtime while waiting for approval. The commission intends to propose language stating that no approval is necessary to set surface casing deeper than according to the permit. Additional language will state that the setting of surface casing shallower than indicated on the permit will not be authorized. Only changes to the cementing plan for the surface casing must be authorized in writing. Since a member of the UIC Team is either on location or on call (with access to a FAX machine), written approval can be given quickly, with a minimum amount of down-time for the rig.

Several commenters expressed approval of the prohibition of fluid seal systems.

Most comments on proposed new §331.62 concerned the proposal to increase the minimum volume of cement pumped during the cementing of casing. The majority of respondents pointed out that the excess cement would cause problems with multi-stage cementing, and would not necessarily improve cementing in single-stage completions. Several respondents suggested alternative requirements to improve the chances for a good completion. The consensus of the respondents was that completion problems were best prevented by prudent engineering practices, good drilling mud programs and controlled hydraulics to ensure the drilling of a good hole without washouts and deviations If a hole is poorly drilled, little can be done later in the way of cementing techniques to remedy the situation. Several commenters recommended that operators be required to use at least a four-arm caliper when measuring the diameter of the hole. A caliper with a minimum of four arms would give more detailed information regarding washouts than a one-arm caliper would, and would provide more accurate measurements by which to calculate the amount of cement needed to fill the space between the casing and the formation. The minimum amount of cement will not be increased from 120% to 150%, except in cases where the caliper indicates a washout of the formation. Upon further review, staff agrees that additional cement cannot compensate or correct a poorly designed and drilled hole. Prudent engineering practices will be incorporated in the construction standards in proposed new §331.62. As recommended by several commenters, 150% cement will be required over a washout interval. Operators will be required to use a two-dimensional (minimum 4-arm) caliper to measure the radius of the borehole. The new requirements emphasize standard engineering practices to be used in the drilling of all wells. Additional standards will be put forth as guidance documents, since geologic conditions vary greatly across the state. Operators also will be required to follow appropriate guidance.

Several respondents complained about the removal of the three-month extension for annual mechanical integrity tests in §331.64. TNRCC has received warnings from EPA Region VI that the current language was in violation of federal regulations. The commission therefore changes the language to mirror the federal language.

One respondent disagreed with the waste analysis plan requirement of §331. 64(a)(1)-(4) applying to all Class I injection wells. The respondent felt that since a waste analysis plan is required under 40 Code of Federal Regulation (CFR) §146.68(a) only for hazardous Class I injection wells, that non-hazardous Class I injection wells should be exempt. It should be noted that all Texas Class I operators are already required by §331.64(a) to "sample and analyze injection fluids at a frequency sufficient to yield representative data of the characteristics". The proposed language clarifies how that sampling is to be done. The owner/operator is allowed great flexibility with regards to developing the waste analysis plan, including parameters to be tested and testing methods and frequency. The intent of the commission is to ensure that all facilities are knowledgeable about their waste streams and about any changes that might occur due to process or operational changes at the facility

One respondent wanted the term "certification" to remain in §331.163 and §331.164, concerning approval of waste disposal in salt caverns, rather than the term "approval" since the respondent felt that "approval" was too subjective a term, while "certification" was objective. There are no plans to change the approval/certification process "Certification" can have different connotations, including that the review was done by a registered professional engineer. "Approval" on the other hand, does not imply that the review was done by a registered professional engineer, but that the submittal was reviewed, found to be in compliance, and the operator is authorized to begin injection. "Approval" is the term

that EPA uses for this process in the UIC program No respondent complained about "approval" being used in the context of regular UIC wells, while several concurred with the proposed new rule There is no difference in the post-construction review process between regular Class I injection wells and Class I salt cavern disposal wells Therefore, "approval" will be used for consistency purposes.

Several respondents expressed approval of the proposed amendments to §§331 144-331 147, concerning financial assurance requirements

Subchapter A. General Provisions

• 30 TAC §§331.2, 331.9, 331.15

The new and amended sections are adopted under the Texas Water Code, §5 103 and §5.105, which authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code, Chapter 27, and other laws of this state; and under the Texas Health and Safety Code, §361.017 and §361. 024, which further authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes

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

Captured facility-A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex

Commercial UIC Class I well facility-Any waste management facility that accepts hazardous or nonhazardous industrial solid waste, for disposal in a UIC Class I injection well, for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

Commercial well-A UIC Class I injection well which disposes of hazardous or nonhazardous industrial solid wastes, for a charge, except for a captured facility or a facility that accepts waste only from facilities owned or effectively controlled by the same person

New waste stream-A waste stream not permitted.

Non-commercial UIC Class I well facility-A UIC Class I permittee which operates only non-commercial wells.

Non-commercial well-A UIC Class I injection well which disposes of wastes disposes of wastes that are generated onsite, at a captured facility or from other facilities owned or effectively controlled by the same person

Transmissive fault or fracture-A fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations

Underground injection control (UIC)-The program under the federal Safe Drinking Water Act, Part C, including the approved Texas state 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 legal authority

Issued in Austin, Texas, on December 12, 1994

TRD-9452293 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date. January 2, 1995

Proposal publication date June 28, 1994

For further information, please call (512) 239-6087

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Subchapter B. Jurisdiction Over In Situ Uranium Mining

• 30 TAC §331.36

The amendment is adopted under the Texas Water Code, §5.103 and §5 105, which authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code, Chapter 27, and other laws of this state, and under the Texas Health and Safety Code, §361 017 and §361 024, which further authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes

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 12, 1994

TRD-9452294 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

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For further information, please call (512) 239-6087

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Subchapter C. General Standards and Methods

• 30 TAC §§331.43-331.45

The amendments are adopted under the Texas Water Code, §5.103 and §5 105, which authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code, Chapter 27, and other laws of this state, and under the Texas Health and Safety Code, §361 017 and §361 024, which further authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes

§331 45 Executive Director Approval of Construction and Completion The executive director may approve or disapprove the construction and completion for an injection well or project In making a determination whether to grant approval, the following shall be reviewed for compliance with the standards of this chapter, and established TNRCC guidance

(1) for Class I wells, other than salt cavern disposal wells and associated salt caverns

(A) actual as-built drilling and completion data on the well,

(B) all logging and testing data on the well,

(C) a demonstration of mechanical integrity,

(D) anticipated maximum pressure and flow rate at which the permittee will operate,

(E) results of the injection zone and confining zone testing program as required in §331 62(f) of this title (relating to Construction Standards) and §331 65(a) of this title (relating to Class I Wells),

(F) the actual injection procedure,

(G) the compatibility of injected wastes with fluids in the injection zone and minerals in both the injection zone and the confining zone and materials used to construct the well,

(H) the calculated area of review and cone of influence based on data obtained during logging and testing of the well and the formation, and where necessary, revisions to the information submitted under §331 121 of this title (relating to Class I Wells),

(I) the status of corrective action required for defective wells in the area of review,

(J) compliance with the casing and cementing performance standard in §331 62(d) of this title (relating to Construction Standards), and where necessary, changes to the permit to provide for additional testing and/or monitoring of the well to insure the continuous attainment of the performance standard; and

(K) compliance with the cementing requirements in §331 62(e)

(2) for salt cavern disposal wells and associated salt caverns

(A) actual as-built drilling and completion data on the well,

(B) all logging, coring, and testing program data on the well and salt pilot hole,

(C) a demonstration of mechanical integrity of the well,

(D) the anticipated maximum wellhead and casing seat pressures and flow rates at which the well will operate during cavern development and cavern waste filling,

(E) results of the salt cavern injection zone and salt cavern confining zone testing program as required in §331 163(e)(3) of this title (relating to salt cavern solid waste disposal wells)

(F) the injection and production procedures for cavern development and cavern waste filling,

(G) the compatibility of injected materials with the contents of the salt cavern injection zone and the salt cavern confining zone, and with the materials of well construction,

(H) land subsidence monitoring data and groundwater quality monitoring data, including determinations of baseline conditions for such monitoring throughout the area of review;

(I) the status of corrective action required for defective wells in the area of review,

(J) actual as-built specifications of the well's surface support and monitoring equipment, and

(K) conformity of the constructed well system with the plans and specifications of the permit application

(3) for Class III wells:

(A) logging and testing data on the well,

(B) a satisfactory demonstration of mechanical integrity for all new wells, excluding monitor wells,

(C) anticipated operating data,

(D) the results of the formation testing program;

(E) the injection procedures, and

(F) the status of corrective action required for defective wells in the area of review

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 12, 1994

TRD-9452296 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date: January 2, 1995

Proposal publication date: June 28, 1994

For further information, please call (512) 239-6087

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Subchapter C. General Standards and Methods

• 30 TAC §331.45

The repeal is adopted under the Texas Water Code, §5 103 and §5 105, which authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code, Chapter 27, and other laws of this state, and under the Texas Health and Safety Code, §361.017 and §361.024, which further authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to manage industrial solid waste and municipal hazardous wastes

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 12, 1994

TRD-9452295 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date: January 2, 1995

Proposal publication date: June 28, 1994

For further information, please call (512) 239-6087

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Subchapter D. Standards for Class I Wells Other than Salt Cavern Solid Waste Disposal Wells

• 30 TAC §§331.61, 331.63-331.66, 331.68

The amendments are adopted under the Texas Water Code, §5 103 and §5 105, which authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code, Chapter 27, and other laws of this state; and under the Texas Health and Safety Code, §361 017 and §361.024, which further authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes

§331.63. Operating Requirements

(a) All Class I wells shall be operated to prevent the movement of fluids that could result in the pollution of an underground source of drinking water (USDW) and to prevent leaks from the well into unauthorized zones

(b) Injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone, initiate new fractures or propagate existing fractures in the confining zone, or cause movement of fluid out of the injection zone that may pollute USDWs, and fresh or surface water.

(c) Injection between the outermost casing protecting USDWs and fresh or surface water and the wellbore is prohibited

(d) The annulus between the tubing and long string casing shall be filled with a non-corrosive or corrosion-inhibiting fluid approved by the commission The annulus pressure shall be at least 100 psi greater than the injection tubing pressure to prevent leaks from the well into unauthorized zones and to detect well malfunctions, unless the executive director determines that such a requirement might harm the integrity of the well.

(e) Monthly average and maximum instantaneous rates of injection, and annual and monthly volumes of injected fluids shall not exceed limits specified by the commission

(f) All gauges, pressure sensing, and recording devices shall be tested and calibrated quarterly.

(g) Any chemical or physical characteristic of the injected fluids shall be

maintained within specified permit limits for the protection of the injection well, associated facilities, and injection zone and to ensure proper operation of the facility

(h) The permittee shall notify the executive director before commencing any workover operation or corrective maintenance which involves taking the injection well out of service The notification shall be in writing and shall include plans for the proposed work. The executive director may grant an exception of the prior written notification when immediate action is required Approval by the executive director shall be obtained before the permittee may begin any workover operation or corrective maintenance that involves taking the well out of service Pressure control equipment shall be installed and maintained during workovers which involve the removal of tubing

(i) Mechanical integrity shall be demonstrated following any major operations which involve removal of the injection tubing, recompletions, or unseating of the packer

(j) For workovers or testing operations on hazardous waste disposal wells, all hazardous fluids shall be flushed from the wellbore with a non-hazardous fluid before conducting any portion of the operations which would result in the exposure of the hazardous wastes to the environment or the public.

(k) An owner or operator of a Class I well who ceases injection operations temporarily may keep the well open provided he·

(1) has received written authorization from the executive director, and

(2) has described actions or procedures, satisfactory to the executive director, that the owner or operator will take to ensure that the well will not endanger USDWs, and fresh or surface water during the period of temporary disuse. These actions and procedures shall include compliance with the technical requirements applicable to active injection wells, including mechanical integrity

(l) The owner or operator of a well that has ceased operations for more than two years shall notify the executive director 30 days prior to resuming operation of the well.

(m) The owner or operator shall maintain mechanical integrity of the injection well at all times.

§331 65 Reporting Requirements.

(a) Pre-operation reports For new wells, including wells converting to Class I status, the requirements are as follows.

(1) Completion report. Within 90 days after the completion or conversion of the well, the permittee shall submit a Completion Report to the executive director The report shall include a surveyor's plat showing the exact location and giving the latitude and longitude of the well The report will also include a certification that a notation on the deed to the facility property or on some other instrument which is normally examined during title search has been made stating the surveyed location of the well, the well permit number, and its permitted waste streams The permittee shall also include in the report, the following, prepared and sealed by a professional engineer with current registration pursuant to the Texas Engineering Practice Act

(A) actual as-built drilling and completion data on the well,

(B) all logging and testing data on the well,

(C) a demonstration of mechanical integrity,

(D) anticipated maximum pressure and flow rate at which the permittee will operate,

(E) results of the injection zone and confining zone testing program as required in §331.62 of this title (relating to Construction Standards) and subsection (a) of this section,

(F) adjusted formation pressure increase calculations, fluid front calculations and updated cross-sections of the confining and injection zones, based on the data obtained during construction and testing;

(G) the actual injection procedure,

(H) the compatibility of injected wastes with fluids in the injection zone and minerals in both the injection zone and the confining zone and materials used to construct the well;

(I) the calculated area of review and cone of influence based on data obtained during logging and testing of the well and the formation, and where necessary, revisions to the information submitted under §331.121 of this title (relating to Class I Wells),

(J) the status of corrective action required for defective wells in the area of review,

(K) a Well Data Report on forms provided by the executive director,

(L) compliance with the casing and cementing performance standard in §331 62(4) of this title, and

(M) compliance with the cementing requirements in §331 62(5) of this title

(2) Local authorities The permittee shall provide written notice to the executive director, in a manner specified by the executive director, that a copy of the permit has been properly filed with the health and pollution control authorities of the county, city, and town where the well is located

(3) Start-up date and time The permittee shall notify the executive director in writing of the anticipated well start-up date. Compliance with all pre-operation terms of the permit must occur prior to beginning injection operations The permittee shall notify the executive director at least 24 hours prior to beginning drilling operations

(4) Approval of construction and completion Prior to beginning operations, the permittee must obtain written approval from the executive director, according to §331 45 of this title (relating to Executive Director Approval of Construction and Completion)

(b)-(c) (No change)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on December 12, 1994

TRD-9452297 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

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Proposal publication date. June 28, 1994

For further information, please call (512) 239-6087

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Subchapter G. Consideration Prior to Permit Issuance

• 30 TAC §331.121, §331.122

The amendments are adopted under the Texas Water Code, §5.103 and §5 105, which authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code, Chapter 27, and other laws of this

state, and under the Texas Health and Safety Code, §361 017 and §361 024, which further authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes

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 12, 1994

TRD-9452298 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date January 2, 1995

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For further information, please call (512) 239-6087

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Subchapter I. Financial Responsibility

- **30 TAC §§331.142-331.144**

The amendments are adopted under the Texas Water Code, §5 103 and §5. 105, which authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code, Chapter 27, and other laws of this state, and under Texas Health and Safety Code, §361 017 and §361 024, which further authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes

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

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TRD-9452299 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

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Proposal publication date June 28, 1994

For further information, please call (512) 239-6087

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Subchapter J. Standards for Class I Salt Cavern Solid Waste Disposal Wells

- **30 TAC §§331.163. 331.164, 331.167, 331.171**

The amendments are adopted under the Texas Water Code, §5 103 and §5 105, which authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code, Chapter 27, and other laws of this state, and under the Texas Health and Safety Code, §361 017 and §361 024, which further authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes

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 12, 1994

TRD-9452300 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date January 2, 1995

Proposal publication date: June 28, 1994

For further information, please call (512) 239-6087

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Chapter 334. Underground and Aboveground Storage Tanks

The Texas Natural Resource Conservation Commission (TNRCC) adopts amendments to §§334.49, 334.51, 334 55, and 334 77, concerning the underground and aboveground storage tank program, without changes to the proposed text as published in the July 8, 1994, issue of *Texas Register* (19 TexReg 5335).

The rules are necessary in order for the TNRCC storage tank program to receive approval from the U S. Environmental Protection Agency (EPA), and are intended to satisfy the "no less stringency" requirement mandated by EPA.

The rules clarify alternative systems that will be allowed for corrosion protection of underground storage tanks (USTs), alternative systems that will be allowed for spill and overfill prevention equipment on USTs, and the reporting requirements of initial abatement measures for confirmed releases. The rules also adjust cross-references.

The TNRCC received no comments regarding adoption of the rules

Subchapter C. Technical Standards

- **30 TAC §§334.49, 334.51, 334.55**

The amendments are adopted under the Texas Water Code, §5 103, which provides the TNRCC with the authority to adopt any rules necessary to carry out the powers and duties under the Texas Water Code and other laws of this state

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 9, 1994

TRD-9452334 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date January 2, 1995

Proposal publication date July 8, 1994

For further information, please call (512) 239-6087

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Subchapter D. Release Reporting and Corrective Action

- **30 TAC §334.77**

The amendment is adopted under the Texas Water Code, §5.103, which provides the TNRCC with the authority to adopt any rules necessary to carry out the powers and duties under the Texas Water Code and other laws of this state

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 9, 1994

TRD-9452333 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date January 2, 1995

Proposal publication date July 8, 1994

For further information, please call. (512) 239-6087

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Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

Subchapter M. Pre-application Review and Permit Procedures

- **30 TAC §335.391, §335.392**

The Texas Natural Resource Conservation Commission adopts amendments to §335 391 and §335 392, concerning local pre-application review of proposals for new hazardous waste management facilities Section 335 391 is adopted with changes to the proposed text as published in the September 30, 1994, issue of the *Texas Register* (19 TexReg 7752) Section 335 392 is adopted without changes and will not be republished.

The adopted sections define new and clarified requirements for informing the public of pre-application review, for designating the

membership of review committees, and for procedures related to such review.

The amendments increase the effectiveness of the review process by expanding public awareness through published notice of intended applications, by requiring a more balanced and representative makeup of local review committees, by requiring the engagement of professional facilitators to coordinate the activities of review committees, and by directing prospective applicants to defray the reasonable expenses of committees and facilitators.

The comment period closed on October 31, 1994. No public hearing was requested to be held on the rules nor was such a hearing initiated by staff of the Commission. Written comments were received from an individual and a municipality. The individual commenter served on the committee that reviewed and recommended the amendments to the pre-application review and permit procedures.

One commenter urged inclusion of language in the amendment to §335.391(d) requiring the executive director to include agreements reached by the applicant and the local review committee in the draft permit as found to be consistent with that draft. The commenter adds that the procedure for offering the report at the hearing is inadequate as it provides only that the report may be offered by any party at a hearing. The commenter points out that the local review committee would not necessarily be a party and it is possible that an applicant may not volunteer to place the report into the record of the hearing. The commission responds that the requirement in subsection (d) that the executive director shall consider the report in any decision to recommend granting or denial of the permit application is intended to give serious consideration to any report produced by a local review committee and to any agreements reached by the applicant and local review committee. Since commission hearings are legal in nature the report may be offered only by parties to the hearing, subject to the rules of evidence. In any event, the commission believes that the report is likely to be entered into evidence by either a party supporting or opposing the permit application.

The second commenter suggests that since facilitators are not licensed, perhaps it would be more feasible to allow the group to choose who they wish as a facilitator. The Commission responds with a clarification of §335.391(c) (3)(B)(x) to provide that the committee shall select and engage the services of a professional facilitator.

The amendments are adopted under the Texas Water Code, Title 2, Subtitle A, §5.103 and §5.105, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the code and other laws of this state and to establish and approve all general policy of the commission and under Health and Safety Code, Title 5, Subtitle B, §361.024, which authorizes the commission to adopt rules consistent with that chapter and to establish minimum standards of operation for the management and control of the solid waste under the commission's jurisdiction.

§335.391. Pre-Application Review.

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

(c) Procedure.

(1) If a potential applicant decides to participate in a local review committee process, the potential applicant may so inform the persons listed in subparagraphs (A)-(C) of this paragraph, as soon as feasible after beginning informal discussions with the commission. To formally initiate the pre-application review process, the potential applicant shall file a notice of intent to file an application with the commission. Further, at the same time the potential applicant shall cause the notice to be published in a paper of general circulation in the county in which the facility is to be located. The form of this notice is specified in §335.392 of this title (relating to Notice of Intent To File a Permit Application). The potential applicant will, at the same time, send a copy of the notice by certified mail, return receipt requested, to the following persons:

(A)-(C) (No change.)

(2) (No change.)

(3) Local review committees shall be composed of representatives of both local and regional interests.

(A) Size. A local review committee shall consist optimally of 12 individuals. However, by mutual agreement between the applicant and the persons appointing the committee, a larger committee to better represent all interest groups present in a community or a smaller committee for economic reasons may be appointed. However, the committee shall maintain a one to one ratio of regional appointments to local appointments.

(B) Appointments:

(i)-(iv) (No change.)

(v) If any local official or regional entity has failed to make any appointments within 45 days after the notice of intent to file has been received by the commission, the committee will be abolished without harm to the applicant's ability to pursue the application.

(vi) Every effort should be made to appoint individuals who are open-minded, willing to participate in good faith, able to devote adequate time to participation, and respected in the community or region. The committee shall reflect the diversity of the community, including but not limited to the following factors: gender, age, race, economic status, and educational level.

(vii) Appointees shall not be employees or agents of the potential applicant.

(viii) (No change.)

(ix) The committee shall elect a chairperson who will preside over meetings.

(x) The committee shall be required to select and engage the services of a professional facilitator for the purpose of coordinating the activities of the committee and preparing the report.

(4) The local review committee shall meet within 21 days after all regional and local appointments have been made. The commission will provide manuals to committee members which will orient them as to what the committee's activities should be; i.e., the production of a report detailing issues resolved, issues unresolved, and unanswered questions.

(5) The pre-application review process shall continue for a maximum of 180 days unless it is shortened or lengthened by mutual agreement between the potential applicant and the local review committee. In addition, by mutual agreement the applicant and the committee may continue a dialogue for the purpose of addressing new concerns and changes to the draft permit.

(6) Individuals who serve on local review committees shall serve without compensation; however, reasonable expenses for travel may be provided by the applicant. The potential applicant shall provide resources to fund the facilitator and other expenses which may include clerical and technical assistance, meeting space, and/or other items which may be necessary to aid the committee in its work.

(d) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 12, 1994.

TRD-9452301

Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date: January 2, 1995

Proposal publication date: September 30, 1994

For further information, please call: (512) 239-6087

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 17. Vehicle Titles and Registration

Dealers and Manufactures Vehicle License Plates

• **43 TAC §17.67**

The Texas Department of Transportation adopts an amendment to §17.67, with changes to the proposed text as published in the September 23, 1994, issue of the *Texas Register* (19 TexReg 7516). Appendix B-1 and B-2 of §17.67 reflect the changes.

Temporary cardboard tags are displayed for up to 20 days after purchase, in lieu of regular license plates. The department has received several complaints concerning the address requirement, particularly from women and older persons who are concerned for their personal safety. The department has determined that the safety concerns relating to the display of the purchaser's address outweigh the benefits and, therefore, finds it necessary to adopt an amendment to §17.67 to remove the requirement that the temporary cardboard tags display the purchaser's address. The department has changed the proposed rule so that the statement on the bottom line of the tag which read "Alterations Void This Receipt" is changed to read "Alterations Void This Tag."

A public hearing on the proposed amendment was held on October 4, 1994 and no oral or written comments were received.

The amendment is adopted under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and more specifically Texas Civil Statutes, Article 6686, which authorize the department to promulgate rules necessary to carry out the provision of laws governing the issuance of dealer's and manufacture's license plates and tags.

§17.67. Temporary Cardboard Tags.

(a) (No change.)

(b) The following appendices indicate the design and instructions for printing and use of each of the respective temporary tags:

(1) Appendix A-1-dealer (design); Appendix A-2-dealer (instructions); *Figure 1: 43 TAC §17.67(b)(1).*

(2) Appendix B-1-buyer (design); Appendix B-2-buyer (instructions); *Figure 2: 43 TAC §17.67(b)(2).*

(3) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on December 12, 1994.

TRD-9452328 Diane L Northam
Legal Executive Assistant
Texas Department of Transportation

Effective date: January 2, 1995

Proposal publication date: September 23, 1994

For further information, please call: (512) 463-8630

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TABLES AND GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure 1 19 TAC <*>5 6

Year	Fall Semester First class day Not later than the week of	Spring Semester First class day Not later than the week of	Summer Session Registration Begins Not later than
1994-95	Sept 5	Jan. 16	June 5
1995-96	Sept 4	Jan 15	June 3
1996-97	Sept 2	Jan. 13	June 2
1997-98	Sept 1	Jan 19	June 1
1998-99	Aug 31	Jan. 18	May 31
1999-2000	Aug. 30	Jan 17	June 5
2000-001	Aug 28	Jan. 15	June 4
2001-002	Sept 3	Jan 14	June 3
2002-003	Sept 2	Jan 13	June 2
2003-004	Sept 1	Jan. 19	May 31
2004-005	Aug 30	Jan 17	May 30
[1986-87	Sept 2	Jan. 19	June 1]
[1987-88	Aug. 31	Jan. 18	May 30]
[1988-89	Sept 5	Jan. 16	June 5]
[1989-90	Sept. 4	Jan. 15	June 4]
[1990-91	Sept 3	Jan. 14	June 3]
[1991-92	Sept 2	Jan 20	June 1]
[1992-93	Aug 31	Jan. 18	May 31]
[1993-94	Aug 30	Jan 17	May 30]
[1994-95	Sept 5	Jan 16	June 5]
[1995-96	Sept 4	Jan. 15	June 3]
[1996-97	Sept 2	Jan 13	June 2]

(b)-(g) No Change

Figure 1 43 TAC §17.67(b)(1)

APPENDIX B-1

Figure 2 43 TAC §17,67(b)(2).

TEMPORARY CARDBOARD TAG FOR MOTOR VEHICLE

INSTRUCTIONS TO DEALER

You are authorized under V.C.S. 6686 to provide each customer with one red cardboard buyer's tag to be used on unregistered new or used vehicles for a period not to exceed twenty (20) days from the date sold. You will note, however, as a dealer, it is your responsibility to see that the following information is placed on the tag:

1. Make of Vehicle
2. Buyer's Name
3. Motor or Serial Number
4. Date Vehicle Sold

If a buyer operates an unregistered vehicle without the above information being shown, both the dealer and the buyer may be subject to a fine.

Under no circumstances will a homemade tag be permitted to be used.

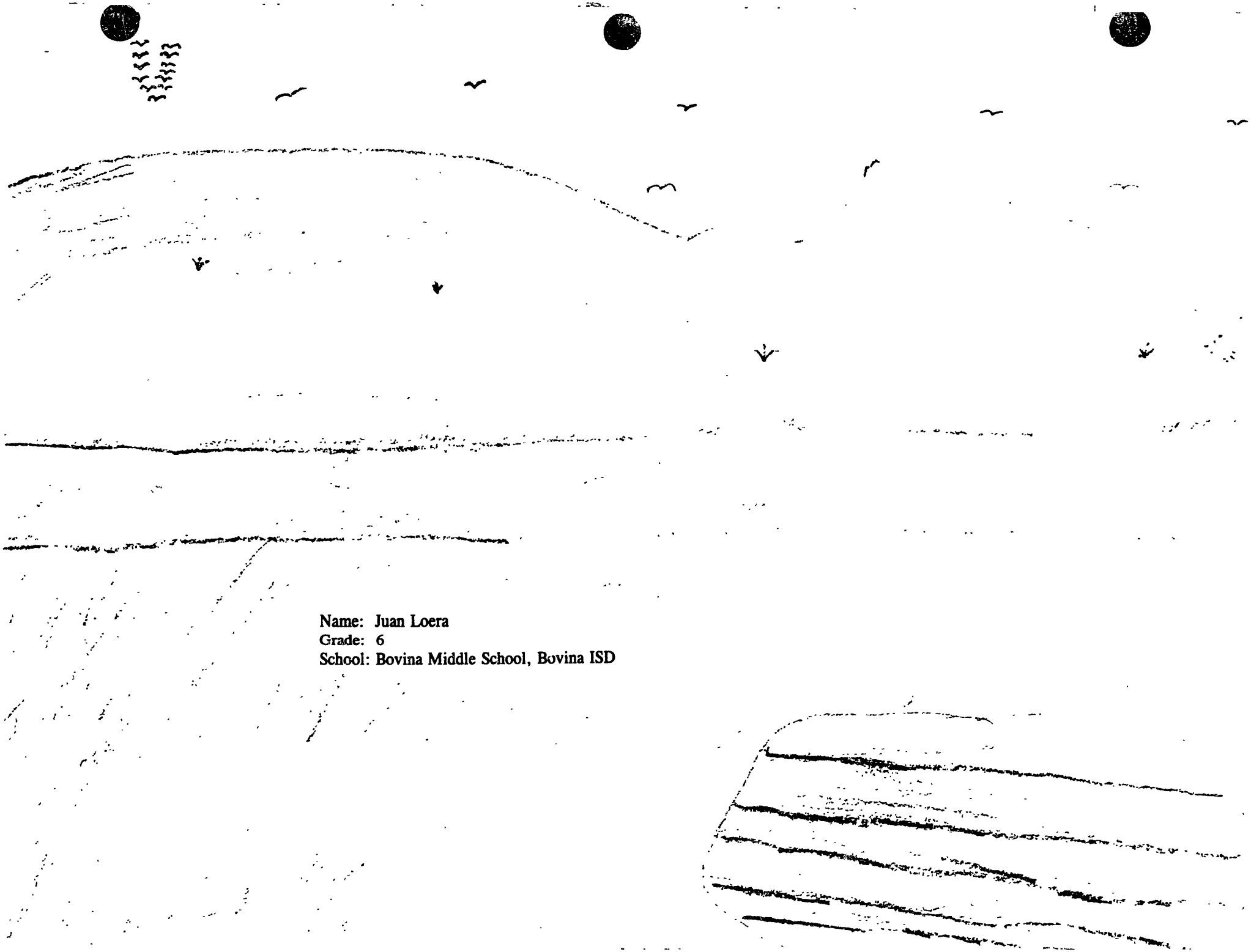
INSTRUCTIONS TO PRINTER

The cardboard buyer's tag is to be cut 6" X 11". The tag shown on the reverse side will be printed on not less than 6 ply cardboard with bolt holes to be horizontally punched on 7" centers and vertically punched on 4½" centers. The numerals and letters in the dealer number shall not be less that 2" high. All buyer's tags are to be printed with red numbers and letters on a white background. Printed matter on the plate will appear exactly as shown on the reverse sid except that the dealer's number, name, and address shall be the same as that shown on the Certificate of General Distinguishing Number. When printing the dealer's number on the tags, the prefix letter "P" should be separated from the numerals by a dash (-).

Texas Department of Transportation

TEXAS DEPARTMENT OF TRANSPORTATION - VEHICLE TITLES AND REGISTRATION DIVISION

APPENDIX B-2



Name: Juan Loera
Grade: 6
School: Bovina Middle School, Bovina ISD

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the ***Texas Register***.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Bond Review Board

Thursday, December 22, 1994, 10:00 a.m.

1400 North Congress Avenue, Capitol Extension, Room E1.012

Austin

Board Meeting

AGENDA:

I. Call to order

II. Approval of minutes

III. Consideration of proposed issues

A. Comptroller of Public Accounts–lease purchase of computer equipment

B. Texas A&M University System–Revenue Financing System Bonds

IV. Other business

Discussion of January meeting dates

V. Adjourn

Contact: Albert L. Bacarisse, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: December 14, 1994, 1:17 p.m.

TRD-9452436

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Texas Natural Resource Conservation Commission

Wednesday, December 21, 1994, 9:30 a.m.

12118 North Interstate 35, Building E, Room 201S

Austin

AGENDA:

Second addendum to the contested agenda. Item concerns the decision and order application of the City of Dallas for water rights permit Number 5414.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: December 13, 1994, 3:18 p.m.

TRD-9452383

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Texas Public Finance Authority

Wednesday, December 21, 1994, 10:00 a.m.

1400 North Congress Avenue, Capitol Extension Building, Room E1.028

Austin

Board Meeting

AGENDA:

1. Call to order.

2. Approval of minutes of October 19, 1994 Board meeting.

3. Report on Alternative Fuels litigation and consider formal request for financing from the Alternative Fuels Council for $50,000,000.

4. Selection of bank to provide credit enhancement on Alternative Fuels Program.

5. Selection of underwriter/dealer for the Alternative Fuels $50,000,000 revenue commercial paper program.

6. Selection of underwriters for the negotiated sale of $300,000,000 of General Obligation Refunding Bonds.

7. Report on cancellation of certain Texas Workers' Compensation Insurance Fund (TWCIF) Bonds and consider approval and execution of an Escrow Agreement for the economic defeasance of certain TWCIF Bonds.

8. Discussion of conversion of Series 1993A General Obligation Commercial Paper Program to book-entry DTC eligible.

9. Consideration of amended request for financing for issuance of $48,600, 000 of revenue bonds to finance addition to Hobby Building Complex and selection of method of sale.

10. Executive session to review executive staff salaries (Article 6252-17, §2(g)).

11. Consider adopting a resolution to adjust salary caps for executive staff.

12. Other business.

13. Adjourn.

Persons with disabilities who have special communication or other needs, who are planning to attend the meeting, should contact Jeanine Barron or Patricia Logan at (512) 463-5544. Requests should be made as far in advance as possible.

Contact: Jeanine Barron (512) 463-5544, 300 West 15th, Suite 411, Austin, Texas 78701.

Filed: December 13, 1994, 12:14 p.m.

TRD-9452355

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Public Utility Commission of Texas

Tuesday, January 3, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A settlement conference has been scheduled for the above date and time in Docket Number 13575-application of Texas Utilities Electric Company for approval of its 1995 Integrated Resource Plan and the demand-side management programs and contracts, renewable resource agreement, and notices of intent associated therewith, and for approval of certain cost recovery mechanisms, and for other relief.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 13, 1994, 1:13 p.m.

TRD-9452360

Tuesday, January 10, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A settlement hearing has been scheduled for the above date and time in Docket Number 13575-application of Texas Utilities Electric Company for approval of its 1995 Integrated Resource Plan and the demand-side management programs and contracts, renewable resource agreement, and notices of intent associated therewith, and for approval of certain cost recovery mechanisms, and for other relief.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 13, 1994, 1:13 p.m.

TRD-9452361

Wednesday, January 18, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A prehearing conference has been scheduled for the above date and time in Docket Number 13575-application of Texas Utilities Electric Company for approval of its 1995 Integrated Resource Plan and the demand-side management programs and contracts, renewable resource agreement, and notices of intent associated therewith, and for approval of certain cost recovery mechanisms, and for other relief.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 13, 1994, 1:14 p.m.

TRD-9452362

Monday, January 23, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A hearing on sanctions will be held on the above date and time in Docket Number 11823-complaint of Raye E. Stiles against GTE Southwest, Inc.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 14, 1994, 2:12 p.m.

TRD-9452440

Tuesday, June 27, 1995, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A hearing on the merits is scheduled for the above date and time in Docket Number 13655: application of Teleport Communications Dallas and Teleport Communications of Houston, Inc. for a Certificate of Convenience and Necessity within Harris, Galveston, Montgomery, Brazoria, Dallas, Tarrant, Collin, and Denton counties.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 15, 1994, 9:26 a.m.

TRD-9452460

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Railroad Commission of Texas

Monday, December 19, 1994, 9:30 a.m.

1701 North Congress Avenue, Room 1-111

Austin

Emergency Revised Agenda

AGENDA:

Consideration of The Oklahoma Corporation Commission, et al, v. U.S. et al, lawsuit, pending in the United States District Court for the Western District for Oklahoma under cause number CIV-94-1999R, and plaintiffs' "Motion for Preliminary Injunction" ("Motion") against enforcement of §601 of Title VI of the Federal Aviation Administration Authorization Act of 1994, and Commission participation, if any.

Reason for emergency: The Commission first received a copy of the Motion on December 12, 1994 after the deadline for posting for the next regular meeting. Federal court has scheduled a hearing on the Motion for December 27, 1994. The Commission considers such Motion and hearing to be a reasonably unforeseeable situation requiring an emergency addition to its agenda for its December 19, 1994, meeting.

Contact: Brenda Loudermilk, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-7149.

Filed: December 13, 1994, 3:18 p.m.

TRD-9452382

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Texas Department of Transportation

Wednesday, December 21, 1994, 9:00 a.m.

200 East Riverside Drive, Room 101

Austin

Texas Transportation Commission

AGENDA:

Approve minutes. Contract awards/rejections/defaults. Reports: bid proposal guaranties and selection/award of professional services contracts. Texas Statewide Transportation Enhancement Program/projects. Routine minute orders. District/division/special office reports. Interstate, U.S., State and FM Road projects. Transportation planning: approve revisions to El Paso portion of fiscal year 1995-1997 Statewide Transportation Improvement Program; designate certifying official for Intermodal Surface Transportation Efficiency Act of 1991 management systems; and authorize project selection process for developing project development plan. Approve 1994 Texas Transportation Plan. Multimodal transportation. Leasing. Rulemaking: 43 TAC Chapters 1, 9, 22, and 25. Executive session for legal counsel and land acquisition matters. Open comment period.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630.

Filed: December 13, 1994, 11:52 a.m.

TRD-9452354

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Regional Meetings

Meetings Filed December 13, 1994

The Central Counties Center for MHMR Services Board of Trustees will meet at 304 South 22nd Street, Temple, December 20, 1994, at 7:00 p.m. Information may be obtained from Eldon Tietje, 304 South 22nd Street, Temple, Texas 76501, (817) 778-4841, Ext. 301. TRD-9452352.

The Houston-Galveston Area Council Projects Review will meet at 3555 Timmons Lane, Conference Room A, Houston, December 20, 1994, at 9:30 a.m. Information may be obtained from Rowena Ballas, 3555 Timmons Lane, Suite 500, Houston, Texas 77027-2777, (713) 627-3200. TRD-9452358.

The Houston-Galveston Area Council Board of Directors will meet at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, December 20, 1994, at 10:00 a.m. Information may be obtained from Cynthia Marquez, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9452359.

The Lampasas County Appraisal District (Emergency Revised Agenda.) Board of Directors met at 109 East Fifth Street, Lampasas, December 15, 1994, at 7:00 p m. (Reason for emergency: Create fund balance for mapping system.) Information may be obtained from Tommy L. Watson, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9452395.

The Limestone County Appraisal District Board of Directors will meet at 200 State Street, LCAD Office, Ground Floor, County Courthouse, Groesbeck, December 20, 1994, at 1:30 p.m. Information may be obtained from Karen Wietzikowski, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009. TRD-9452397.

The Trinity River Authority of Texas Central Regional Wastewater System Right-of-Way Committee met at 5300 South Collins Street, Arlington, December 19, 1994, at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9452384.

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Meetings Filed December 14, 1994

The Blanco County Appraisal District (Emergency meeting. Rescheduled from December 13, 1994.) 1994 Board of Directors met at Avenue G and Seventh Street, Johnson City, December 14, 1994, at 5:00 p.m. (Reason for emergency: Pay monthly bills.) Information may be obtained from Hollis Boatright, P.O. Box 338, Johnson City, Texas 78636, (210) 868-4013. TRD-9452423.

The Brown County Appraisal District Board of Directors met at 403 Fisk Avenue, Brownwood, December 19, 1994, at Noon. Information may be obtained from Doran E. Lemke, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676. TRD-9452428.

The Cash Water Supply Corporation Board of Directors met at the Corporation Office, FM 1564 at Highway 34, Greenville, December 19, 1994, at 7: 00 p.m. Information may be obtained from Eddy W. Daniel, P.O. Box 8129, Greenville, Texas 75404-8129, (903) 883-2695. TRD-9452448.

The Comal Appraisal District Board of Directors will meet at 178 East Mill Street #101, New Braunfels, December 21, 1994, at 5:30 p.m. Information may be obtained from Lynn E. Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (210) 625-8597. TRD-9452442.

The Education Service Center, Region IV (Special Emergency Meeting.) Board of Directors met at 7145 West Tidwell, Houston, December 16, 1994, at 11:00 a.m. (Reason for emergency: Notification that posting of Emergency Revised Agenda did not make the statutory requirements. Action taken with regard to that agenda being ratified.) Information may be obtained from W. L. McKinney, 7145 West Tidwell, Houston, Texas 77092, (713) 744-6534. TRD-9452437.

The Hays County Appraisal District Appraisal Review Board will meet at 21001 North IH-35, Kyle, December 20, 1994, at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 21001 North IH-35, Kyle, Texas 78640, (512) 268-2522. TRD-9452443.

The High Plains Underground Water Conservation District Number One Board will meet at 2930 Avenue Q, Board Room, Lubbock, December 20, 1994, at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9452449.

The Lower Rio Grande Valley Development Council LRGVDC Board of Directors will meet at Mission City Hall, 900 Doherty, Mission, December 20, 1994, at 1:30 p.m. Information may be obtained from Kenneth N. Jones, Jr., or Anna Hernandez, 4900 North 23rd Street, McAllen, Texas 78504, (210) 682-3481. TRD-9452402.

The Permian Basin Quality Work Force Full Planning Committee will meet at 2910 LaForce Boulevard, Midland, January 17, 1995, at Noon. Information may be obtained from Allison F. Garvin, 2910 LaForce Boulevard, Midland, Texas 79711, (915) 563-1061. TRD-9452429.

The Surplus Lines Stamping Office of Texas Board of Directors met at Hughes and Luce, 111 Congress Avenue, Suite 900, Austin, December 19, 1994, at 10:00 a.m. Information may be obtained from Charles L. Tea, Jr., P.O. Box 9906, Austin, Texas 78766, (512) 346-3274. TRD-9453204.

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Meetings Filed December 15, 1994

The Hunt County Appraisal District (Rescheduled from December 8, 1994, at Noon.) Board of Directors will meet at 4801 King Street, Greenville, December 29, 1994, at Noon. Information may be obtained from Shirley Smith, P. O. Box 1339, Greenville, Texas 75403, (903) 454-3510. TRD-9452457.

The Swisher County Appraisal District (Rescheduled from December 22, 1994.) Board of Directors will meet at 130 North Armstrong, Tulia, December 20, 1994, at 11:00 a.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118. TRD-9452462.

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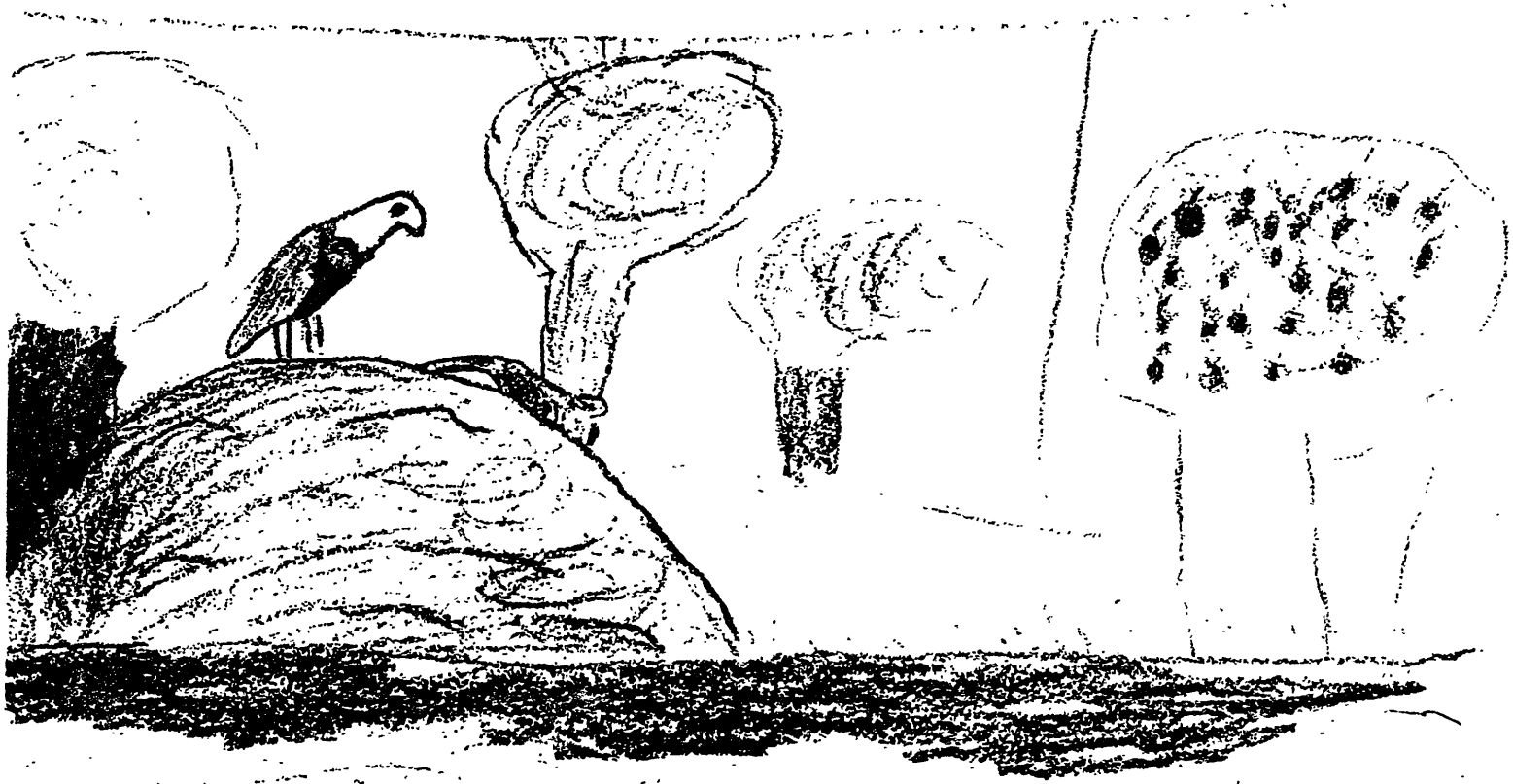
Name: Jesse Acosta
Grade: 6
School: Bovina Middle School, Bovina ISD



IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Pesticide Administrative Penalty Matrix

I. Background.

Texas Agriculture Code (the Code), §76.1555 confers administrative penalty authority on the Texas Department of Agriculture (the department). Section 76.1555(b) requires the department to "establish a schedule stating the types of violations possible under Chapters 75 and 76 of this code and the maximum fine applicable to each type of violation." The department's initial schedule was published on November 20, 1990 (15 TexReg 6679). This document represents a revision of the initial schedule and is effective immediately upon publication.

Pursuant to the provisions of the Code, Chapter 76, the department has primary responsibility and authority for regulating pesticides in the State of Texas. In accordance with the department's regulatory authority, and pursuant to the powers and duties of the State of Texas, including those powers and duties set forth in the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001 (West 1994), the department may initiate various enforcement actions in response to violations of Chapters 75 and 76 and the regulations promulgated thereunder. Administrative enforcement actions available to the department include license suspension, modification, revocation, probated suspension, reprimand or assessment of an administrative penalty. The department may assess an administrative penalty not to exceed $2,000 for each violation, provided that the penalty does not exceed $4,000 for all violations related to a single incident. Section 76.1555 requires the department to publish a schedule of administrative penalty maximums. This document serves as a revision to the initial schedule, and is intended to fulfill the requirements of §76.1555, and to ensure that the department's administrative enforcement actions are fair, uniform, consistent, and appropriate.

II. Applicability.

These guidelines apply to monetary administrative penalties, continuing education units (CEUs), and license suspensions assessed for violations of Chapters 75 and 76 of the Code and corresponding regulations which have been referred to the department's legal division for enforcement action. In lieu of or in addition to an administrative penalty, the department may require that a licensee obtain CEUs when in the department's sole discretion it determines that CEUs will best encourage compliance and deter future violations. These guidelines do not apply to emergency orders or other enforcement remedies requiring timely actions, such as ten day license suspensions under §76.116, and stop-sale orders under §76.153; citations issued by department inspectors under the field-citation program, or referrals for civil or criminal penalties.

III. Determining the Appropriate Penalty.

Texas Agriculture Code, §76.1555(c)(1-6) requires the department to consider the following six factors in determining an appropriate penalty: the seriousness of the violation; economic damage to property or the environment; the violator's history of previous violations; the deterrent effect of the penalty; the violator's efforts to correct the violation, and other matters that justice may require.

Upon determining that a violation has occurred, the department will employ the following analysis to calculate the appropriate penalty. A base penalty will be established based upon the following: the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts, the hazard or potential hazard created to the health or safety of the public or the environment, and the economic damage to property or the environment. In evaluating whether an action is hazardous to health, safety or the environment, the department may consider the extent to which the action resulted in actual harm to human health or the environment (i. e., crops, water, livestock, wildlife, wilderness or other sensitive natural areas). After an evaluation of these factors, the base penalty is determined by locating the violation in the listing below, under Section IV, and applying the corresponding penalty tables at the end of this document. The base penalty may then be adjusted in accordance with the factors listed in "B" of this section.

In the listing that follows, violations are categorized under subject headings. The penalties referred to in Section IV may be found in the Code, but will be referenced to the "Texas Pesticide Law" (Chapter 76) or "Texas Herbicide Law" (Chapter 75). The regulations referenced in Section IV may be found in Title 4 of the Texas Administrative Code in Chapters 7 and 11, and will be referred to as "4 TAC."

A. Base Penalty.

1. Nature, Circumstances, Extent and Gravity of the Prohibited Acts (horizontal or "NCEG" axis). Each violation is assigned an NCEG value. The NCEG value may be classified as either major, moderate, or minor. The following factors are to be considered in determining whether the NCEG is major, moderate, or minor: (a) the degree of compliance with the various requirements of the label, statutes or regulations; (b) the magnitude of the violation and/or damages, including, but not limited to, the number of containers involved in the incident or the volume of pesticide spilled; (c) the use of methods or conduct tending to increase or decrease the likelihood of improper exposure, damage, or contamination, including, but not limited

to, use of buffer zones and drift control agents; (d) the amount of acreage adversely affected; (e) topographic features of the area tending to increase or decrease the likelihood of improper exposure, damage, or contamination; and (f) the presence or proximity of species susceptible to the chemical.

2. Hazard or Potential Hazard to the Health or Safety of the Public or the Environment (vertical or "HPH" axis). HPH is based upon the relative toxicity of the pesticide as reflected by the signal word of the product. A major HPH value is reflected by the signal word "danger." A moderate HPH value is reflected by the signal word "warning." A minor HPH value is reflected by the signal word "caution."

B. Adjustments To Base Penalty.

Once a base penalty is determined by reference to the attached tables, the department may adjust the base penalty upward or downward utilizing the following factors.

1. Previous Violations. Previous violations are those for which action has been completed and a penalty, be it monetary or otherwise, has been assessed and an order issued prior to the date action is taken in response to a pending violation. Violations which resulted in a license revocation or involving fraud will be considered regardless of the date of the occurrence. As to all other violations, the department will consider only those which occurred within three years of the pending violation. Each previous violation may result in an increase of the base penalty or license suspension for the pending violation by an amount not exceeding 50% of the base penalty or license suspension.

For purposes of adjusting the base license suspension, apply the same percentage adjustments under Section III (B). If an adjustment to the number of days suspended results in a fraction, then adjust the number of days upward to the next whole number.

2. Respondent's Culpability. If the respondent's actions constituted a knowing or willful violation of the statute or regulations, or respondent had knowledge of the general hazardousness of the action, then the department may increase the base penalty by an amount not to exceed 50% of the base penalty.

3. Deterrence Of Future Violations. If failure to comply with the statutory or regulatory requirement resulted in some significant savings or extraordinary benefit to the respondent, the base penalty may be increased by up to 100% of the penalty within the statutory maximum.

4. Respondent's Efforts To Correct The Violation. The department may decrease a base penalty if the respondent has made extraordinary efforts to cooperate with the department. Such efforts include, but are not limited to, self-reporting of a violation, compensating an affected person for any damages, harm, or costs incurred as a result of the violative conduct, or remedying any environmental harm through clean-up or other such activities.

5. Other Factors That Justice May Require. The penalty may be reduced or increased as justice may require. Factors which may justify such a modification include, but are not limited to: (a) respondent's reliance on inaccurate information provided by a farm owner or operator regarding the size or location of the target area; (b) the existence of extreme circumstances preventing the use of pesticides in compliance with the statute or regulations; (c) respondent engaged in extraordinary conduct to prevent or minimize actual or potential adverse effects resulting from his or her application of pesticides; (d) the level of residue amounts detected in a sample taken from a non-target location; and (e) the base penalty is insufficient to penalize respondent's egregious conduct and to deter similar conduct in the future.

6. Multiple Adjustments To Base Penalty. If the respondent's conduct could result in more than one adjustment to the base penalty, the adjustments will be added to the base penalty. In no circumstance shall the adjusted penalty exceed the statutory limit.

In any case involving several different violations, the adjusted penalty for each violation will be determined without regard to the other violations being considered in that case. The total penalty will equal the sum of all the adjusted penalties, without exceeding the statutory maximum.

IV. Penalties.

A. A person who commits any of the following actions in such a manner as to cause a confirmed human exposure may be assessed, for that violation, an administrative penalty not to exceed $2,000 or a license or certificate suspension not to exceed 120 days. If any of the following listed violations result in a confirmed human exposure, apply Table I. A confirmed human exposure occurs when the person suffers from a pesticide exposure, and shows a clinical indication of pesticide poisoning as diagnosed by a physician. The exposure may be supported by blood and urine tests for appropriate biological indicator(s) performed by a laboratory. Such tests may indicate a marked change in the activity of a blood enzyme or significant concentration of an abnormal chemical or its metabolite.

If a violation has not been listed below, but has resulted in confirmed human exposure, apply Table I.

Use Restrictions-General (Table I) (Confirmed Human Exposure)

Licensee or individual using or causing a pesticide to be used in a manner inconsistent with its label or labeling. Texas Pesticide Law, §76.116(a)(1); 4 TAC, §7.22(1) and (2).

Licensee or certificate holder operating in a faulty, careless or negligent manner causing a confirmed human exposure. Texas Pesticide Law, §76.116(a)(2) .

Worker and Resident Protection Requirements (Table I) (Confirmed Human Exposure)

Violation of label requirements related to failure to observe reentry intervals, preharvest intervals, grazing restrictions, or worker protection requirements, e.g., failure of person in control of the commodity or site treated to be knowledgeable of and comply with the requirements of 4 TAC, §7. 22(3). 4 TAC, §7.22(3).

Application of a pesticide during a time when persons not involved with the application were lawfully present in the field. 4 TAC §7.29(1).

Failure to stop an application when a person not wearing protective clothing lawfully entered the field. 4 TAC, §7.29(2).

Farm operator failing to direct workers not to enter a field when he knows the field has been treated with pesticides and the reentry interval has not expired (where reentry interval is seven days or less), and failing to make reasonable efforts to prevent such entry. 4 TAC, §7.27(b)(1).

Farm operator permitting entry into a treated field by workers not wearing appropriate protective clothing prior to the expiration of the reentry interval (where interval is seven days or less) and farm operator failing to give instructions provided in 4 TAC, §7.28, and failing to post treated field as required by 4 TAC, §7.27(d). 4 TAC, §7.27(b)(2).

Farm operator failing to do the following three things when reentry interval is greater than seven days: to erect signs for reentry interval in accordance with 4 TAC, §7.27(d); to direct workers who are about to enter such field not to enter the field until expiration of the reentry interval; and to make reasonable efforts to obtain compliance therewith or permit workers to enter the field only if they are wearing appropriate protective clothing and have received instructions provided in 4 TAC, §7.28. 4 TAC, §7.27(c)(1) and (2) or 4 TAC, §7.27(c)(1) and (3).

Ordering workers not wearing appropriate protective clothing to engage in an activity that involves substantial contact with sources of pesticide residues prior to the expiration of the reentry interval. 4 TAC, §7.27(f).

Failure of farm operator to know or to have access to and to promptly make available upon request the trade and common chemical name of the pesticide, the pesticide's label, and other safety requirements, to workers, persons alleging pesticide exposure and to treating medical personnel. 4 TAC, §7. 28(e).

Storage and Disposal Restrictions (Table I) (Confirmed Human Exposure)

Disposal of, discarding, or storing any pesticide or pesticide container in a manner that may cause or result in injury to humans. 4 TAC, §7.21(a).

Disposal or storage of pesticide containers, concentrates, spray mixes, container rinsates and/or spray system rinsates not in accordance with the pesticide label directions or provisions of the Texas Solid Waste Disposal Act. 4 TAC, §7.21(e) and §7.22(4).

Licensee or certificate holder storing or disposing of a pesticide in a faulty, careless or negligent manner. Texas Pesticide Law, §76.116(a)(2).

Distribution Requirements-General (Table I) (Confirmed Human Exposure)

Distribution of a pesticide without appropriate labeling. Texas Pesticide Law, §76.021(a); 4 TAC, §7.3.

Use Restrictions-LPC and M-44(Table I) (Confirmed Human Exposure)

Use of a Livestock Protection Collar (LPC) in a manner inconsistent with its label. 4 TAC, §7.32(f).

Registrant or agent disposing of an LPC contrary to label directions. 4 TAC, §7.32(c)(6).

Use of M-44 sodium cyanide in a manner inconsistent with its label. 4 TAC, §7.33(d)(2).

Dealer selling or transferring M-44 sodium cyanide without providing a complete label for the product. 4 TAC, §7.33(c)(6).

B. A person who commits any of the actions listed under Section A above in such a manner as to cause an unconfirmed human exposure may be assessed, for that violation, an administrative penalty not to exceed a base penalty of $1, 500 or a license or certificate suspension not to exceed 120 days. If any of the violations listed in Section A result in an unconfirmed human exposure, apply Table II. An unconfirmed human exposure occurs when the person suffers from a pesticide exposure, but one which is not substantiated by a physician's diagnosis even though either test samples from the premises show chemical residues, or, based upon reported symptoms, the possibility of an exposure exists.

C. A person who commits any of the following violations in a manner not involving any type of human exposure may be assessed, for that violation, a penalty not to exceed $1,000 or a license or certificate suspension not to exceed 120 days. If a violation has not been listed below, apply Table III.

Use Restrictions-General (Table III)

Licensee or individual using or causing a pesticide to be used in a manner inconsistent with its label or labeling. Texas Pesticide Law, §76.116(a)(1); 4 TAC, §7.22(1) and (2).

Licensee or certificate holder operating in a faulty, careless or negligent manner. Texas Pesticide Law 76.116(a)(2)

Financial Responsibility Requirements (Table IV)

Commercial applicator applying a chemical excluded from coverage of his insurance policy. Texas Pesticide Law, §76.105(a)(1) and 4 TAC, §7.14(a)(3) .

Use Restriction-Herbicides (Table III)

Application of a regulated herbicide during a time period prohibited by County Special Provisions Regulations. Texas Herbicide Law, §75.012(a); 4 TAC, §11.2.

Spray application of regulated herbicides when the wind velocity exceeds ten miles per hour or as specified on the product label, if the label is more restrictive. 4 TAC, §11.7(b).

Application of a highly volatile herbicide when there are susceptible crops within a four mile radius from every point of the land to be sprayed. Texas Herbicide Law, §75.012(a); 4 TAC, §11.6(1)(C).

Application of a regulated herbicide at a rate in excess of the maximum pressure for aerial equipment. Texas Herbicide Law, §75.012(a); 4 TAC, §11. 7(a)(1).

Application of a regulated herbicide with ground equipment at a rate in excess of the maximum pressure. Texas Herbicide Law, §75.012(a); 4 TAC, §11.7(a)(2).

Storage and Disposal Restrictions (Table III)

Disposal of, discarding, or storing a pesticide or pesticide container in a manner that may cause or result in injury to vegetation, crops, livestock, wildlife, or pollinating insects, or pollution of any water supply or waterway. 4 TAC, §7.21(a).

Displaying or offering for sale pesticides in leaking, broken, corroded, or otherwise unsafe containers, or with illegible labels. 4 TAC, §7.21(d).

Disposal of pesticide containers, concentrates, spray mixes, container rinsates and/or spray system rinsates not in accordance with the pesticide label directions or the provisions of the Texas Solid Waste Disposal Act. 4 TAC, §7.21(e).

Licensee or certificate holder storing or disposing of a pesticide in a faulty, careless or negligent manner. Texas Pesticide Law, §76.116(a)(2).

Individual using or causing a pesticide to be used in violation of label requirements related to improper storage or disposal of the pesticide or its container. 4 TAC, §7.22(4).

Storing or displaying pesticides intended for distribution or sale in open areas without surveillance. 4 TAC, §7.21(b).

Distribution Requirements-General (Table III)

Distribution of a pesticide containing no label or a misbranded label. Texas Pesticide Law, §76.021(a), §76.023; 4 TAC, §7.3.

Distribution of restricted use (RU) or state limited use (SLU) products without a valid, current dealer's license. Texas Pesticide Law, §76.071(a); Texas Herbicide Law, §75.004(a); 4 TAC, §11.5(a).

Failure of a herbicide and/or pesticide dealer to obtain a license for each location from which the RU, SLU or regulated herbicide is distributed. Texas Herbicide Law, §75.004(b); Texas Pesticide Law, §76.071(b).

Dealer distributing RU or SLU pesticides to persons other than licensed or certified private applicators, or persons acting under the direct supervision of a licensed applicator, or persons authorized by a certified private applicator or a licensed dealer. 4 TAC, §7.8(b)(6).

Pesticide dealer's failure to have a list of poison control centers in the state or other sources of contact designed to provide medical assistance. 4 TAC, §7.21(g).

Distribution of an unregistered product within the State of Texas. Texas Pesticide Law, §76.041(a).

A registrant failing to register as separate products a pesticide distributed under more than one brand name or formulation. 4 TAC, §7.4(b).

Continuing to distribute a product in the state without renewing the product registration by December 31. Texas Pesticide Law, §76.041(a); 4 TAC, §7.4(c).

Use Restrictions-LPC and M-44 (Table III)

Use of an LPC in a manner inconsistent with its label. 4 TAC, §7.32(f).

Licensed LPC applicator failing to give appropriate, verifiable instructions on the use of LPCs as required by 4 TAC, §7.34 before the non certified person handles the LPC. 4 TAC, §7.32(i).

Use of M-44 sodium cyanide in a manner inconsistent with its label. 4 TAC, §7.33(d)(2).

Licensed commercial LPC applicator failing to be physically present to supervise the use of LPCs by non certified applicators. 4 TAC, §7.32(i).

Distribution Requirements-LPC (Table III)

LPC registrant failing to file with the department written notice of the name, home address, address of distribution site, and telephone number of each agent or LPC registrant or failing to notify the department within ten days of any change in the information required under 4 TAC, §7.32(c)(4). 4 TAC, §7. 32(c)(4).

LPC registrant or agent selling or transferring an LPC with no serial number. 4 TAC, §7.32(c)(5).

LPC registrant or agent failing to distribute the forms prescribed by the department for use by LPC applicators with each sale or transfer of LPCs. 4 TAC, §7.32(c)(7).

LPC registrant, agent, or collar pool agent failing to comply with sale or transfer requirements. 4 TAC, §7.32(c).

Failure of registrant or agent to report to the department any incident or complaint of misuse involving LPCs. 4 TAC, §7.32(c)(8).

Selling or transferring LPCs without first obtaining an applicator's license with an LPC subcategory certification and a pesticide dealer's license. 4 TAC, §7.32(c)(2).

Registrant or agent selling or transferring LPCs to persons other than registrants or agents for the purpose of resale or transfer. 4 TAC, §7.32(c) (3).

Registrant or agent disposing of LPC contrary to label directions. 4 TAC, §7.32(c)(6).

Distribution Requirements-M-44 (Table III)

Authorized M-44 dealer selling or transferring M-44 sodium cyanide to unauthorized individuals. 4 TAC, §7.33 (c)(2).

Authorized M-44 dealer selling or transferring M-44 sodium cyanide without providing a complete label for the product. 4 TAC, §7.33(c)(6).

Authorized M-44 dealer selling product in quantities other than specified in this section. 4 TAC, §7.33(c)(6).

Dealer failing to keep for a period of two years, on forms prescribed by the department, complete records of all transactions involving M-44 sodium cyanide. 4 TAC, §7.33(c)(5).

Dealer failing to provide to M-44 applicators the record keeping forms prescribed by the department. 4 TAC, §7.33(c)(6).

Dealer failing to obtain the department's approval prior to purchasing any M-44 sodium cyanide. 4 TAC, §7.33(c)(7).

Dealer failing to report to the department any incident or complaint of misuse involving M-44 sodium cyanide. 4 TAC, §7.33(c)(8).

Prior Notification Requirements (Table III)

Failure to give proper or timely notice to adjoining landowners as required by this section. 4 TAC, §7.26.

License and Permit Requirements (Table IV)

Individual using or supervising the use of a RU or SLU pesticide without either being appropriately licensed or certified as a commercial, non-commercial, private, or certified private applicator as required by law; or performing services in a category for which he/she is not licensed. Texas Pesticide Law §76.105(a)(1), (2), and (3); 4 TAC, §7.8(a)(1), (2) or (3).

Failure of a person operating a business or an employee of a business, and who is required to be licensed under §76.105 of the Code, to obtain a license prior to applying a RU or SLU pesticide to the land of another for hire or compensation. Texas Pesticide Law §76.108(a).

Failure of a licensed business, commercial applicator or entity to employ a certified applicator. Texas Pesticide Law §76.108(f).

License or certificate holder aiding or abetting or conspiring with a certified licensed or unlicensed person to evade the provisions of Chapter 76. Texas Pesticide Law §76.116(a)(8).

License or certificate holder allowing license or certificate to be used by another person. Texas Pesticide Law §76.116(a)(8).

Fraud or misrepresentation when applying for an original applicator's license or a renewal of such license. Texas Pesticide Law §76.116(a)(7).

Other License and Permit Violations (Table VI)

Failure of a licensee to notify the department immediately of any change in address, status, or employment. 4 TAC, §7.13(c) or (d).

Failure of a pesticide dealer to display license. Texas Pesticide Law §76. 074(a).

Failure to obtain a spray permit prior to making a herbicide application in a regulated county. Texas Herbicide Law §75.006(a); 4 TAC, §11.6(1).

Failure of a licensee to submit a supplemental spray report to the department within seven days of the herbicide application. 4 TAC, §11.6(1).

Supervision Requirements (Table IV)

Failure of a commercial applicator to be continuously physically present on the site where a RU or SLU pesticide is being applied by a person working under the licensee's direct supervision. 4 TAC, §7.34(b).

Failure of a licensed applicator to assure that any person working under the licensee's direct supervision is knowledgeable of the label requirements and rules and regulations governing the use of the particular pesticide being used by the individual. 4 TAC, §7.34(d).

An authorized M-44 dealer failing to be or failing to employ a person certified under 4 TAC, §7.33. 4 TAC, §7.33(c)(4).

Record and Report Requirements-General (Table V)

Commercial applicator or non-commercial applicator licensees failing to record or maintain all the information required under 4 TAC, §7.18 regarding records of pesticide use for a period of two years. Texas Pesticide Law §76. 114(a); 4 TAC, §7.18.

Applicator failing to maintain for a period of two years all the information required for regulated herbicide applications. Texas Herbicide Law, §75.013(a); 4 TAC, §11.6(4).

Record and Report Requirements-Distributor (Table V)

Dealer failing to maintain for a period of two years records for sale of RU or SLU pesticides. Texas Pesticide Law §76.075(a).

Failure of a licensed dealer to maintain required information at the place of business where the pesticides are distributed. 4 TAC, §7.8(b)(5).

Failure of licensed dealer to record all the required information pertaining to distribution of regulated herbicides. Texas Herbicide Law, §75. 005(a); 4 TAC, §11.5(g).

Failure of licensed dealer to maintain records of all required information pertaining to distribution of a regulated herbicide for at least two years. Texas Herbicide Law, §75.005(a); 4 TAC, §11.5(g).

Record and Report Requirements-LPC and M-44 (Table V)

Registrant or agent failing to record or maintain for two years, on forms prescribed by the department, all of the information required by this section. 4 TAC, §7.32(g).

Registrant, agent, or LPC applicators failing to report to the department by telephone, within one working day, accidents involving any suspected or actual poisoning of threatened or endangered species, humans, domestic animals or non-target wild animals. 4 TAC, §7.32(g)(5).

M-44 applicator failing to keep all the required information concerning the placement of M-44s and the results of each placement. 4 TAC, §7.33(e).

Failure of a licensed dealer to maintain required information under this section on a single form. 4 TAC, §7.8(b)(4).

D. If the department determines, in its sole discretion, that license or certificate suspension is the most effective means of encouraging compliance and deterring future violations, apply Table VII to determine the length of suspension for violations listed in Sections A through C. The department shall determine the effective date of any license suspension.

E. A person who commits any of the following actions may be assessed a fixed administrative penalty.

Records and Report Requirements-General (Fixed Administrative Penalty = $1,000)

Applicator making false or fraudulent records, invoices or reports. Texas Pesticide Law §76.116(a)(6).

Failure of a licensee upon written request of the department to furnish a copy of any requested records pertaining to the application of a pesticide. Texas Pesticide Law §76.114(d); 4 TAC, §7.18(b).

Failure of a commercial or non-commercial licensee, upon written request by the department, to submit a copy of pesticide application records. 4 TAC, §7. 18(b).

Failure of a licensed dealer or registrant to allow the commissioner, or his authorized agent, to examine distribution records. 4 TAC, §7.9.

Individual operating as a commercial applicator during a period when his insurance is not in effect. Texas Pesticide Law §76.111(j).

A licensee or certificate holder failing to maintain a bond or policy of insurance as required by this chapter. Texas Pesticide Law §76.116(a)(5).

Failure to maintain a liability insurance policy or bond protecting persons who might suffer damages as a result of the applicator's operations and applications. 4 TAC, §7.14(a).

Worker and Resident Protection Requirements (Fixed Administrative Penalty = $500.00)

Person employed by a farm operator knowingly entered a field to which pesticides have been applied and the reentry interval had not expired or knowingly entered a field to which pesticides were being applied without the authorization of the farm operator. 4 TAC, §7.29(3).

Failure to remove reentry signs or flags from treated field within 72 hours after the expiration of the reentry period. 4 TAC, §7.27(d)(2) and §7.26(1) .

License and Permit Requirements (Fixed Administrative Penalty = $500.00)

Failure of an applicator to comply with registration requirements. 4 TAC, §11.7.

Failure of an applicator to comply with equipment specifications. 4 TAC, §11.7.

V. Other Penalties.

In appropriate cases, the department will continue to refer cases for local prosecution or civil action. The department may refer for civil action incidents where the administrative penalties available do not reflect the egregious nature of the violation.

Table I
Human Exposure
(confirmed)

Hazard or Potential Hazard	Nature, Circumstances, Extent, and Gravity: Minor	Moderate	Major
Minor	$500	$750	$1000
Moderate	$1000	$1250	$1500
Major	$1500	$1750	$2000

Table II
Human Exposure
(unconfirmed)

Hazard or Potential Hazard	Nature, Circumstances, Extent, and Gravity: Minor	Moderate	Major
Minor	$200	$400	$600
Moderate	$600	$800	$1000
Major	$1000	$1200	$1500

Table III
Non-Human Exposure

Hazard or Potential Hazard	Nature, Circumstances, Extent, and Gravity: Minor	Moderate	Major
Minor	$200	$400	$600
Moderate	$400	$600	$800
Major	$600	$800	$1000

176--Pesticide Administrative Penalty Matrix-Figure 1

Table IV
Permits and License Requirements

Hazard or Potential Hazard	First Violation	Subsequent Violations
Minor	$500	$750
Moderate	$750	$1000
Major	$1000	$1500
HPH Inapplicable	$500	$1000

Table V
Recordkeeping Requirements

	Failure to maintain or submit information
First Violation	$250
Second Violation	$500
Third Violation	$750

176-Pesticide Administrative Penalty Matrix-Figure 2

Table VI
Permit and License Violations

Hazard or Potential Hazard	First Violation	Subsequent Violations
Minor	$250	$500
Moderate	$500	$1000
Major	$750	$1500
HPH Inapplicable	$250	$500

Table VII
License Suspensions
by Days

Hazard or Potential Hazard	Nature, Circumstances, Extent, and Gravity		
	Minor	Moderate	Major
Minor	30	45	60
Moderate	45	60	90
Major	60	90	120

176-Pesticide Administrative Penalty Matrix-Figure 3

Issued in Austin, Texas, on December 13, 1994.

TRD-9452401 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Filed: December 13, 1994

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Barton Springs/Edwards Aquifer Conservation District

Computer Request for Proposal

RFP #12-94 DP. The District is soliciting sealed proposals for a Turnkey Network and Computer System Hardware and Software for the Barton Springs segment of the Edwards Aquifer. Proposal documents are for 12 computer workstations including network software and hardware, operating system software, documentation and services for installation, maintenance, technical support and training. Proposals will be accepted until 5:00 p.m. CST, Friday, January 27, 1995. The contractor selection process will include receipt of proposal, review of proposals submitted, evaluation of proposals and ranking of offerors. District staff shall review all information available from the selection process and rank the offerors. Contract award-the District reserves the right to accept or reject any and all proposals. Similarly, the District is not bound to accept the lowest dollar proposal if the proposal is not the most advantageous to the District. Unless all proposals are rejected or the solicitation is canceled, the District will award the contract to the offeror whose proposal is the most advantageous to the District considering the relative importance of price and the other evaluation factors outlined in the RFP. The District reserves the right to negotiate all elements which comprise the proposal. No proposal is to be considered binding upon the District until a contract has been awarded. For information and request for proposal documents, contact Stovy Bowlin, GIS Coordinator, at 1124A Regal Row, Austin, Texas 78748, (512) 282-8441

Issued in Austin, Texas, on December 12, 1994.

TRD-9452318 Bill E. Couch
General Manager
Barton Springs/Edwards Aquifer Conservation District

Filed: December 12, 1994

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Texas Department of Health

Community Coalitions to Address Locally-Identified Health Programs Request for Proposals

The Texas Department of Health, Public Health Region 1 (region), invites interested parties to submit proposals for the creation and support of community coalitions to address the prevention of locally-identified health problems. The proposal must be made on behalf of a community coalition consisting of at least seven members who are either representatives of community agencies or interested individuals. The community must be within at least one of the counties comprising Public Health Region 1 of the Texas Department of Health. All coalitions must identify a public or private non-profit agency which can serve as fiscal agent for funds awarded through a successful proposal.

Proposed objectives and activities must fall into one or more of the following categories: training for coalition members in related skill and knowledge areas such as prevention concepts and models, prevention needs assessment and planning, cultural competence, community mobilization, leadership and/or grant writing; needs assessment and planning for the prevention of health problems; recruitment and training of community adults and youth for leadership roles in the prevention of health problems; the development of prevention projects that address health problems at the systems or community level, such as policies, laws and organizational practices; the development and implementation of prevention projects that must address: the reduction of factors which promote or increase health problems, and/or the increase or strengthening of factors which promote health and wellness.

Proposals must be received by the Texas Department of Health, Public Health Region 1, by 5:00 p.m. on February 15, 1994. The anticipated project start date of May 1, 1995. Up to ten proposals, not exceeding $5,000 each, may be awarded. All applicants must use an application packet which may be requested from: Cyndi Simpson, MA, MSPH, Prevention Program Manager, Texas Department of Health, Public Health Region 1, 1109 Kemper Street, Lubbock, Texas 79403 (806) 767-0489.

Issued in Austin, Texas, on December 13, 1994.

TRD-9452417 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: December 14, 1994

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Notice of Emergency Cease and Desist Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Steeplechase Diagnostic Center (registrant-M00152) of Houston to cease and desist performing mammographic examinations until all violations noted during a recent inspection have been corrected. The bureau determined the performance of mammography when the analyses of quality assurance tests indicate the limits established in the Texas Regulations for Control of Radiation are exceeded constitutes an immediate threat to public health and safety, and the existence of an emergency.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on December 13, 1994.

TRD-9452419 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: December 14, 1994

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Notices of Intent to Revoke Certificates of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code, §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Provident Medical Center, Dallas, R15984; Robert L. Levine, D.D.S., Dallas, R10968; P. D. Kothmann, D.D.S., M.S., Inc., Fredericksburg, R12596.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the items in the complaints are corrected within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756- 3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5 :00 p.m. (except holidays).

Issued in Austin, Texas, on December 13, 1994.

TRD-9452421 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: December 14, 1994

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Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code, §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Tim Knutson, D.P.M., San Antonio, R10588; Clear Lake Family Practice Clinic, P.A., Houston, R13402; Carlin M. Riggs, D.D.S., Brazoria, R13555; Keith R. Acheson, D.D.S., Cedar Park, R15243; Drennan Chiropractic Clinic, Dallas, R18412; Steven D. Peters, D.D.S., Allen, R19017; Parkglen Animal Clinic, Stafford, R19804; Life Chiropractic, Corpus Christi, R19863; Gulf South Lithotripsy, Inc., New Orleans, Louisiana, R20210; Baker Veterinary Clinic, Waller, R20516; Micah Allen Wesson, D.C., Sherman, R20559; YLS Productions, Inc., Los Alamitos, California, Z00846; Bio-Rad Micromeasurements (Canada), Inc., Ottawa, Ontario, R18832; Southern Medical Devices, Inc., Seminole, Florida, R19811.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756- 3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on December 13, 1994.

TRD-9452420 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: December 14, 1994

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Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 TAC §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following registrant: Jeffrey A. Facey, D.D.S., Houston, R14332.

The department intends to revoke the certificate of registration; order the registrant to cease and desist use of such radiation machine(s); order the registrant to divest himself of such equipment; and order the registrant to present evidence satisfactory to the bureau that he has complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the items in the complaint are corrected within 30 days of the date of the complaint, the department will not issue an order.

This notice affords the opportunity to the registrant for a hearing to show cause why the certificate of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756- 3189. Should no request for a public hearing be timely filed or if the items in the complaint are not corrected, the certificate of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5 :00 p.m. (except holidays).

Issued in Austin, Texas, on December 13, 1994.

TRD-9452416 Susan K Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: December 14, 1994

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation

Notice is hereby given that the Bureau of Radiation Control (bureau) issued a notice of violationn and proposal to assess an administrative penalty to Joe C. Edwards, D.D.S. (registrant- R05931) of San Antonio for violations of the Texas Regulations for Control of Radiation. A total penalty of $18,000 is proposed to be assessed to the registrant for operating x-ray equipment without a valid certificate of registration and failing to adequately correct a violation of radiation regulations found during a previous inspection of the facility. The registrant is further required to provide written evidence satisfactory to the bureau regarding the corrective actions and the date or dates of implementation.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on December 13, 1994.

TRD-9452418 Susan K Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed. December 14, 1994

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Notice of Rescission of Order

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: Emergency Cease and Desist Order issued October 21, 1994, to Carpenter Medical Clinic, 7203 Carpenter Freeway, Dallas, Texas 75247, holder of Radioactive Materials License Number L04500.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, the Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on December 13, 1994.

TRD-9452415 Susan K Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed December 14, 1994

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Texas Department of Insurance

Notice of Application

Notice is given to the public of the application of SHA, L.L.C., Amarillo, Texas for the issuance of a certificate of authority to establish and operate a health maintenance organization (HMO) in the State of Texas in compliance with the Texas HMO Act and rules and regulations for HMOs. The Application is subject to public inspection at the offices of the Texas Department of Insurance, HMO Unit, 333 Guadalupe, Hobby Tower I, Sixth Floor, Austin, Texas

If you wish to object to the issuance of a certificate of authority to SHA, L.L.C. to operate an HMO in the State of Texas, you must submit your written objection to Leah Rummel, Director of the HMO Unit, Mail Code 106-3A, Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78714-9104, no later than 20 days after the date of publication of this notice. If any written objections are submitted within the time period specified, a public hearing will be set before the State Office of Administrative Hearings.

If no written objections are submitted within the time period specified, the Commissioner of Insurance or his designee may take action to issue the certificate of authority to SHA, L.L.C. without a public hearing.

Issued in Austin, Texas, on December 14, 1994.

TRD-9452413 D. J. Powers
General Counsel and Chief
Texas Department of Insurance

Filed: December 14, 1994

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Texas Natural Resource Conservation Commission

Enforcement Orders

An Agreed Enforcement Order regarding Jack Lenamond doing business as Big Creek West Water System (Docket Number 94-0783-PWS-E, Order Number 9404074) was entered on December 9, 1994, assessing $300 in administrative penalties. Information concerning any aspect of this Order may be obtained by contacting Leslie Brown, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0461.

An Agreed Enforcement Order regarding Charles Buckner doing business as Fairport Business Center (Docket Number 94-0785-PWS-E, Order Number 9406024) was entered on December 9, 1994, assessing $730 in administrative penalties. Information concerning any aspect of this Order may be obtained by contacting Leslie Brown, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0461.

An Agreed Enforcement Order regarding Koomey Company International, Inc. (Docket Number 94-0784-PWS-E, Order Number 9406014) was entered on December 9, 1994, assessing $730 in administrative penalties. Information concerning any aspect of this Order may be obtained by contacting Leslie Brown, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0461.

An Agreed Enforcement Order regarding Sloan Valve Company (Docket Number 94-0772-WHY-E, Order Number 9405047) was entered on December 9, 1994, assessing $5,000 in administrative penalties. Information concerning any aspect of this Order may be obtained by contacting Leslie Brown, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0461.

An Agreed Enforcement Order regarding the City of San Benito (Docket Number 94-0771-PWS-E, Order Number 9404001) was entered on December 9, 1994, assessing $1,000 in administrative penalties. Information concerning any aspect of this Order may be obtained by contacting Leslie Brown, Staff Attorney, Texas Natural Resource

Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0461.

An Agreed Enforcement Order regarding Fort Bend Chrylser, Plymouth, Jeep, Eagle, Inc. (Docket Number 94-0770-PWS-E, Order Number 9406912) was entered on December 9, 1994, assessing $1,080 in administrative penalties. Information concerning any aspect of this Order may be obtained by contacting Leslie Brown, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0461.

Issued in Austin, Texas, on December 9, 1994.

TRD-9452356 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: December 13, 1994

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Extension of Comment Period

The Texas Natural Resource Conservation (TNRCC) announces an extension of the deadline to receive comments on proposed Chapter 281, Subchapters A-H, concerning Application Processing. The rules were published in the November 18, 1994, issue of the *Texas Register* (19 TexReg 9100). The deadline to receive comments has been extended from 5:00 p.m., Monday, December 19, 1994, to 5:00 p.m., Wednesday, January 18, 1995.

Written comments on the proposal may be submitted to Ray Austin, Office of Policy and Regulatory Development, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-6166.

Questions relating to this publication should be directed to Bettie Mabry at (512) 239-6087.

Issued in Austin, Texas, on December 13, 1994.

TRD-9452400 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Filed: December 13, 1994

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Notice of Application for Municipal Solid Waste Facility For the Week Ending December 9, 1994

Application by the University of Texas Medical Branch, Galveston, Proposed Permit Number MSW2232, authorizing the operation of their existing medical waste incinerator as a commercial Type V Medical and Municipal Solid Waste Incinerator. The site covers approximately 0.3907 acres of land and is located in the 700 block of Port Industrial Boulevard in Galveston, Galveston County, Texas.

This application is subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permit unless one or more persons file written protests and/or requests for hearing within ten days of the date of *Texas Register* publication.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the application number, TNRCC docket number or other recognizable reference to the application; the statement "I/we request an evidentiary public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and a description of the location of your property relative to the applicant's operations.

If one or more protests and/or requests for hearing are filed on an application, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where an evidentiary hearing may be held. If no protests and/or requests for hearing are filed on an application, the Executive Director will approve the application. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 4301, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Issued in Austin, Texas, on December 9, 1994.

TRD-9452357 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: December 13, 1994

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Notice of Award

The Texas Natural Resource Conservation Commission (TNRCC) furnishes this notice of a consulting services contract award for development of a strategic plan to assist the TNRCC in the review and improvement of air programs stationary source information collection and management systems and business processes. The notice for request for proposals was published in the June 7, 1994, issue of the *Texas Register* (19 TexReg 4776).

Description of Services. The contractor will develop both short-term and long-range strategic plans to guide the TNRCC in the development of an efficient, cost effective, accurate, and comprehensive stationary source information management system capable of meeting customer needs in a timely manner. The following major products will be produced (delivery dates in parenthesis after each work product): a project work plan document or documents (December 21, 1994), four written progress reports (January 6, 1995, February 4, 1995, March 4, 1995, April 1, 1995) a preliminary report (January 27, 1995), a survey methodology document and survey forms (January 9, 1995), and three major reports, including a final report that summarizes the project work and includes recommendations for modifications and enhancements of information management system, for training, and for staffing and organization (January 30, 1995, February 3, 1995, April 30, 1995). Dates provided for deliverables are subject to change depending on the progress of the project work.

Effective Date and Value of Contract. The contract will be effective from date of December 14, 1994, until April 30, 1995. The total cost of the contract is $246,605.

Name of the Contractor. The contract has been awarded to EDS Corporation, 5400 Legacy, Plano, Texas 75024.

Persons who have questions concerning this award may contact Mike Fishburn, Emissions Inventory, TNRCC, P.O. Box 13087, Capitol Station, Austin, Texas 78711-3087, (512) 239-1934.

Issued in Austin, Texas, on December 14, 1994.

TRD-9452406 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: December 14, 1994

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Notification of Deadline Extension

The Texas Natural Resource Conservation Commission (TNRCC) announces an extension of the deadline to apply for assistance grants for the purpose of continuing and improving local municipal solid waste enforcement programs The notification of availability of these grants was made in the November 25, 1994, issue of the *Texas Register* (19 TexReg 9415). The TNRCC has made these grants available under the authority granted by Texas Health and Safety Code, §361.031. The deadline for applying for these grants has been extended from 5:00 p.m., Monday, January 9, 1995, to **5:00 p.m., Wednesday, February 1, 1995**. Questions relating to this deadline extension should be directed to Tim Haase of the TNRCC Municipal Solid Waste Division, Compliance and Enforcement Section at (512) 908-6007.

Issued in Austin, Texas, on December 12, 1994.

TRD-9452399 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Filed: December 13, 1994.

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Request for Nominations to Municipal Solid Waste Management and Resource Recovery Advisory Council

The Texas Natural Resource Conservation Commission, at its agenda meeting on January 18, 1995, will consider appointments to fill the three existing vacancies on the Municipal Solid Waste Management and Resource Recovery Advisory Council. The agenda meeting will be held at 9:30 a.m. on January 18, 1995, at the TNRCC Park 35 Complex, Building E, Room 201S, 12118 North Interstate 35, Austin. Each member will be appointed to fill an unexpired term.

The Advisory Council was mandated by the 69th Legislature (1983) and is composed of 18 members representing various segments of the regulated community; i.e., city and county solid waste agencies, commercial solid waste operators, solid waste districts/authorities, environmental groups, city and county officials, tire processors, financial community, and the general public.

The Advisory Council meets a minimum of four times per year but will meet each month as needed. The meetings usually last two full days and are held in Austin, Texas. One day is scheduled for committee meetings and the other day is for a general business session with reports from committee chairpersons, TNRCC staff, and special guests.

The TNRCC Commissioners invite the general public to submit nominations for each of the three vacant positions. Before nominating an individual, please confirm that the person meets the qualifications set forth elsewhere in this notice. Nominations should include a biographical summary of each nominee's education, experience, and qualifications, and a letter from the nominee stating his or her agreement to serve if appointed.

The TNRCC Commissioners will appoint one individual for each vacant position. Nominations will be accepted from business groups, trade associations, organizations, agencies, individuals, etc.

Council members are allowed reimbursements for travel and per diem expenses according to State guidelines. Per diem reimbursements are set by the Texas Legislature at a maximum of $25 per day for meals and $55 per day for hotel expenses. Council members are reimbursed for airfares and mileage on personal vehicles. In addition, each member is allowed a stipend payment of $30 per Council meeting attended. Stipends are paid for attending regularly scheduled meetings of the entire Advisory Council. Travel and per diem expenses will be paid for attendance at committee meetings and other Advisory Council business trips. In some cases, by their own choice, members cover their own travel expenses or their expenses are paid by the interest group they represent.

The council reviews and evaluates the effect of state policies and programs on municipal solid waste management; makes recommendations to the TNRCC commissioners on matters relating to municipal solid waste management; recommends legislation to the commissioners to encourage the efficient management of municipal solid waste; recommends policies to the Commissioners for the use, allocation, or distribution of the Municipal Solid Waste Division's planning funds; and recommends to the Commissioners special studies and projects to further the effectiveness of municipal solid waste management and resource recovery for the state of Texas.

The following positions on the council will be filled: an elected official representing solid waste planning regions, for a term to expire December 1, 1995; an elected city official of a municipality with a population between 100,000 and 750,000, for a term to expire December 1, 1997; and an elected official of any county, for a term to expire December 1, 1997.

Written nominations must be postmarked by January 9, 1995. Nominations should be directed to Gary W. Trim, Special Programs Director, Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, P.O. Box 13087, Austin, Texas 78711-3087.

Questions regarding the MSW Advisory Council can be directed to Mr. Trim at (512) 239-6708.

Issued in Austin, Texas, on December 13, 1994.

TRD-9452398 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Filed: December 13, 1994

Railroad Commission of Texas

Statement of Commissioner Carole Keeton Rylander

RE: Transportation Docket Nubmers 005.21A1RR and 05.1001A1NR; proposed repeal of 16 TAC Subchapter B, and proposed new Subchapter EE, concerning Operating Certificates, Permits, and Licenses; and Docket Numbers 005.500A1RR and 005.21A1NR; proposed repeal of 16 TAC Subchapter W, and proposed new Subchapter B, concerning Commercial Carriers.

I concur in the Railroad Commission's decision today to take this first step in implementing Title VI of the Federal Aviation Administration Authorization Act of 1994, which deregulates intrastate trucking, and preempts the states from enacting or enforcing any law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier, other than household goods motor carriers. In concurring with the decision to implement these interim vehicle registration and insurance rules, which will be in effect pending further review of state trucking regulations by the Texas Legislature, I express my intent to send a strong message to Congress and the Courts that the Railroad Commission of Texas is ready for the deregulation of intrastate trucking, and to clarify that today's actions are a first step toward complete deregulation. I intend for the Railroad Commission to review and address, as soon as possible, all of the existing Motor Transportation Regulations that relate to a price, route, or service, including all existing motor carrier permits and certificates, and all existing rates and tariffs, and to repeal all regulations, permits, certificates, rates and tariffs necessary in order to fully implement deregulation of intrastate trucking in Texas, except for household goods motor carriers.

In this regard, I have requested the Railroad Commission Transportation and Legal staff to present to the Commission, as soon as possible following January 1, 1995, a report on all existing Motor Transportation Regulations affected by federal deregulation, so that the Railroad Commission can conduct a comprehensive review and act quickly to repeal all those regulations and related permits, certificates, rates, and tariffs preempted by federal law.

Separate and apart from this request, I also have requested the staff to present to the Commission, as soon as possible after January 1, 1995, a report concerning what relief the Railroad Commission can grant, under existing law, to household goods carriers, with respect to market entry and rates and tariffs.

Issued in Austin, Texas, on December 12, 1994.

TRD-9452388 Mary Ross McDonald
Assistant Director, Legal Division, Gas Utilities/LP Gas
Railroad Commission of Texas

Filed: December 13, 1994

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Teacher Retirement System of Texas

Request for Information

Notice is given to the public that the Teacher Retirement System of Texas will be upgrading its mainframe computing environment. A "Request for Information (RFI) Relating to Upgrade of the Mainframe Computing Environment at the Teacher Retirement System" was issued on December 20, 1994. Copies of this RFI are on file at the Teacher Retirement System headquarters in Austin. Historically Underutilized Business (HUB) vendors are encouraged to respond to this RFI.

Persons who wish to have a copy of the RFI should contact the TRS representative at the following address or phone numbers: Ken Chance, Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas, 78701, (512) 397-6416, (512) 370-6400 FAX, (512) 397-6444 TDD.

Closing date for the receipt of the RFI is January 9, 1995, at 3:00 p.m. filed with Purchasing at the previously mentioned address.

All proposals will be evaluated based upon the responses to the specific requirements in the RFI. TRS will determine the best value and will proceed with its procurement if feasible.

Issued in Austin, Texas, on December 14, 1994.

TRD-9452422 Wayne Blevins
Executive Director
Teacher Retirement System

Filed: December 14, 1994

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Texas Department of Transportation

Public Notice

The Texas Department of Transportation hereby publishes this cancellation of two requests for proposals for an engineering consultant which appeared in the December 6, 1994, issue of the *Texas Register* (19 TexReg 9693).

The preproposal meeting scheduled for December 20 1994, is also cancelled. One project was on Diana Drive in Northeast El Paso and the other project was for Artcraft Road in El Paso County. Both of these projects will be readvertised at a future date. For additional information on the cancellation of these two requests for proposals contact Jose Rodarte, P.E., TxDOT El Paso District Office, Project Design, (915) 774-4257.

Issued in Austin, Texas, on December 12, 1994

TRD-9452327 Diane L. Northam
Legal Executive Assistant
Texas Department of Transportation

Filed: December 12, 1994

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Request for Proposals

Notice of Invitation: The Texas Department of Transportation (TxDOT) intends to engage an engineer, pursuant to Texas Government Code, Chapter 2254, Subchapter A, to provide the following services.

Contract #02-545P5007. Phase I-environmental analysis, public involvement participation, route selection and calculation, summary and analysis of public hearing comments. Phase II-complete design, plans, specifications, estimate development and right of way plans for an urban street widening and reconstruction along Rosedale Street, from Forrest Park Boulevard to I.H. 35 West in the City of Fort Worth, Tarrant County, Texas.

Request for Proposal Deadline: A letter of intent notifying TxDOT of the engineering consultant's intent to submit a proposal shall be either hand delivered to TxDOT, Fort Worth District Office, 2501 Southwest Loop, Fort Worth, Texas, or mailed to P.O. Box 6868, Fort Worth, Texas 76115, by 5:00 p.m. on Friday, December 30, 1994. Upon receipt of the Letter of Intent, a "Request for Proposal" packet will be issued.

Pre-Proposal Meeting. A pre-proposal meeting will be held at 2501 Southwest Loop, Fort Worth, Texas, at the District Meeting Room of the Fort Worth District Office, beginning at 10:00 a.m. on Wednesday, January 4, 1995. (TxDOT will not accept a proposal from an engineer who has failed for any reason to attend the mandatory pre-proposal meeting.)

Proposal Submittal Deadline: The complete proposal will be accepted until 5: 00 p.m. on January 18, 1995. Agency Contact: Requests for additional information regarding the request for proposals should be directed to W. L. Wimberley, P.E. at (817) 370-6551 or Judy Brown at (817) 370-6572 or Fax (817) 370-6553.

Issued in Austin, Texas, on December 14, 1994.

TRD-9452405 Diane L. Northam
Legal Executive Assistant
Texas Department of Transportation

Filed: December 14, 1994

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University of North Texas

UNT's Consulting Contracts Amendments

Pursuant to Texas Government Code, Chapter 2254, the University of North Texas announces that four consultant contracts, all related to the same study, were awarded in amounts of less than $10,000 each, but later amended to exceed $10,000 each. Each of these consultants assisted the University of North Texas with different aspects to perform a project definition study related to the potential use of the linear accelerator at the Superconducting Supercollider. This study, funded by the United States Department of Energy under federal and state legislation relating to the shutdown of the Superconducting Supercollider, was conducted in two phases. This project was activated at the request of the governor's office. On April 15, 1994, the University of North Texas, with the help of various consultants, began to prepare responses to Phase I that were due by May 6, 1994. The costs of the initial consulting contracts for Phase I resulted in consulting contracts less than $10,000 to each firm, and did not require competitive bids.

After the review and evaluation of Phase I, Phase II was authorized. Phase II required considerably more consultant time than Phase I to perform the study adequately, and now requires additional payments to each consultant beyond the $10,000 limit. In addition, Part B of Phase II was contingent on Part A of Phase II, but Phase IIB was never guaranteed, so there was no firm start date, only a preferred completion date by September 1, 1994. It was not possible to advertise for bids in the middle of Phase II when it was clear that the contracts exceeded $10,000. Consequently, the University of North Texas amended the four consulting contracts it has with:

Hospital Financial Corporation, 11330 Theo Trecker Way, West Allis, Wisconsin 53214. The original contract was entered into April 15, 1994. The original contract amount was amended to increase the maximum amount payable to $10,032.21.

Homer Hupf, 3341 Cadencia Street, Carlsbad, California 92009. The original contract was entered into April 15, 1994. The original contract amount was amended to increase the maximum amount payable to $22,121.71.

J P Accelerator Works (or James Potter), 2245 47th Street, Los Alamos, New Mexico 87544. The original contract was entered into April 15, 1994. The original contract amount was amended to increase the maximum amount payable to $14,884.59.

Hal O'Brien, Dr., 107 La Senda Road, Los Alamos, Mexico 87544. The original contract was entered into April 15, 1994. The original contract amount was amended to increase the maximum amount payable to $32,933.97.

For further information contact Pat Fine, Purchasing Department, University of North Texas, 2310 North Interstate 35-E, Denton, Texas 76201, (817) 565-2687.

Issued in Austin, Texas, on December 12, 1994.

TRD-9452353 Pat Fine
Senior Buyer, UNT Purchasing
University of North Texas

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