

# Texas Register

Volume 18, Number 15, February 23, 1993

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Texas Register



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How to Use the Texas Register

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

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

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

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

Proposed Sections - sections proposed for adoption.

Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

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

Open Meetings - notices of open meetings.

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

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

How to Cite: Material published in the Texas Register is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 18 (1993) is cited as follows: 18 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "18 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 18 TexReg 3."

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

Texas Administrative Code

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

The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals).

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

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

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

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

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

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

How to update: To find out if a rule has changed since the publication of the current supplement to the Texas Administrative Code, please look at the Table of TAC Titles Affected. The table is published cumulatively in the blue-cover quarterly indexes to the Texas Register (January 22, April 16, July 13, and October 12, 1993). In its second issue each month the Texas Register contains a cumulative Table of TAC Titles Affected for the preceding month. If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more Texas Register page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
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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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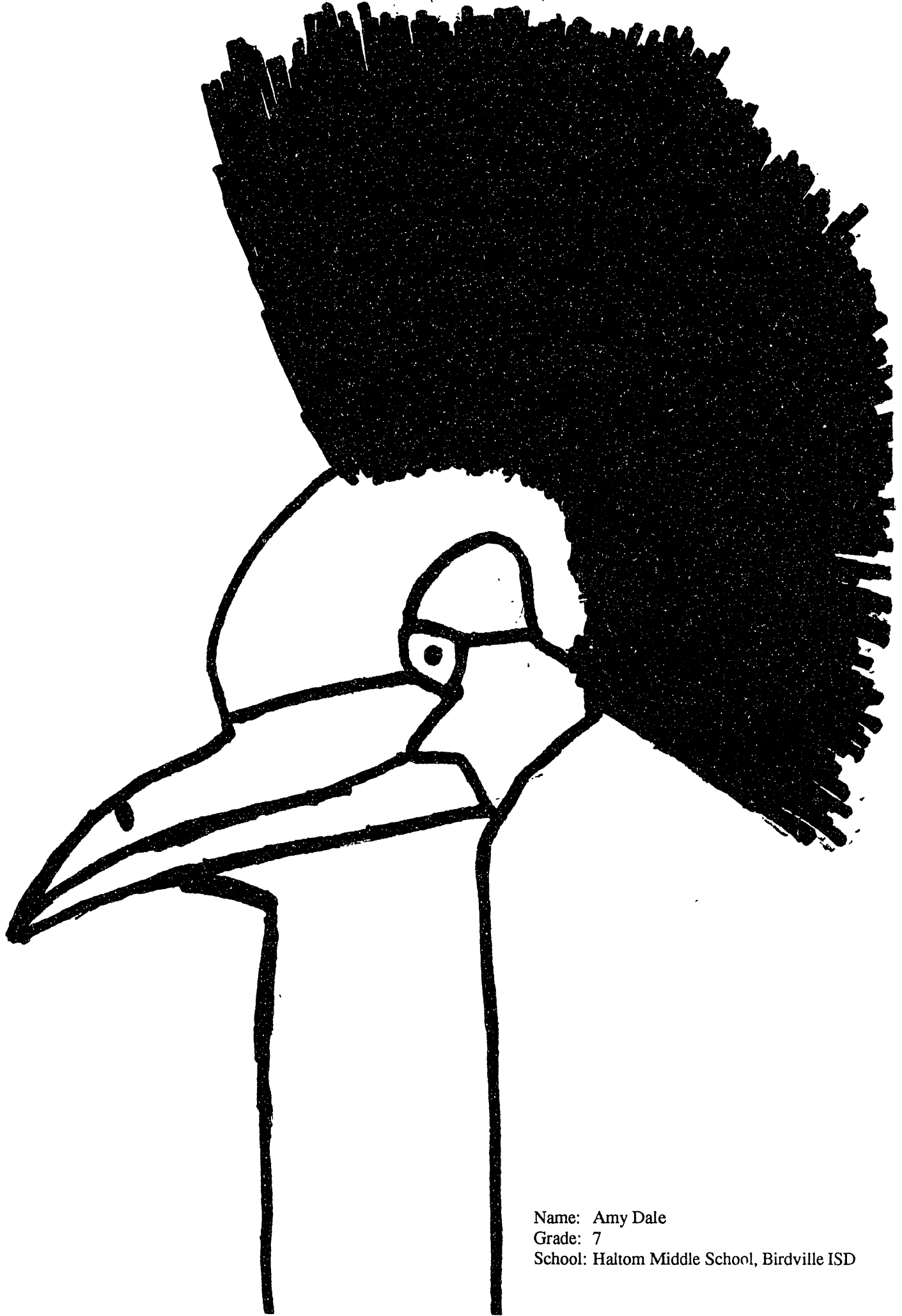
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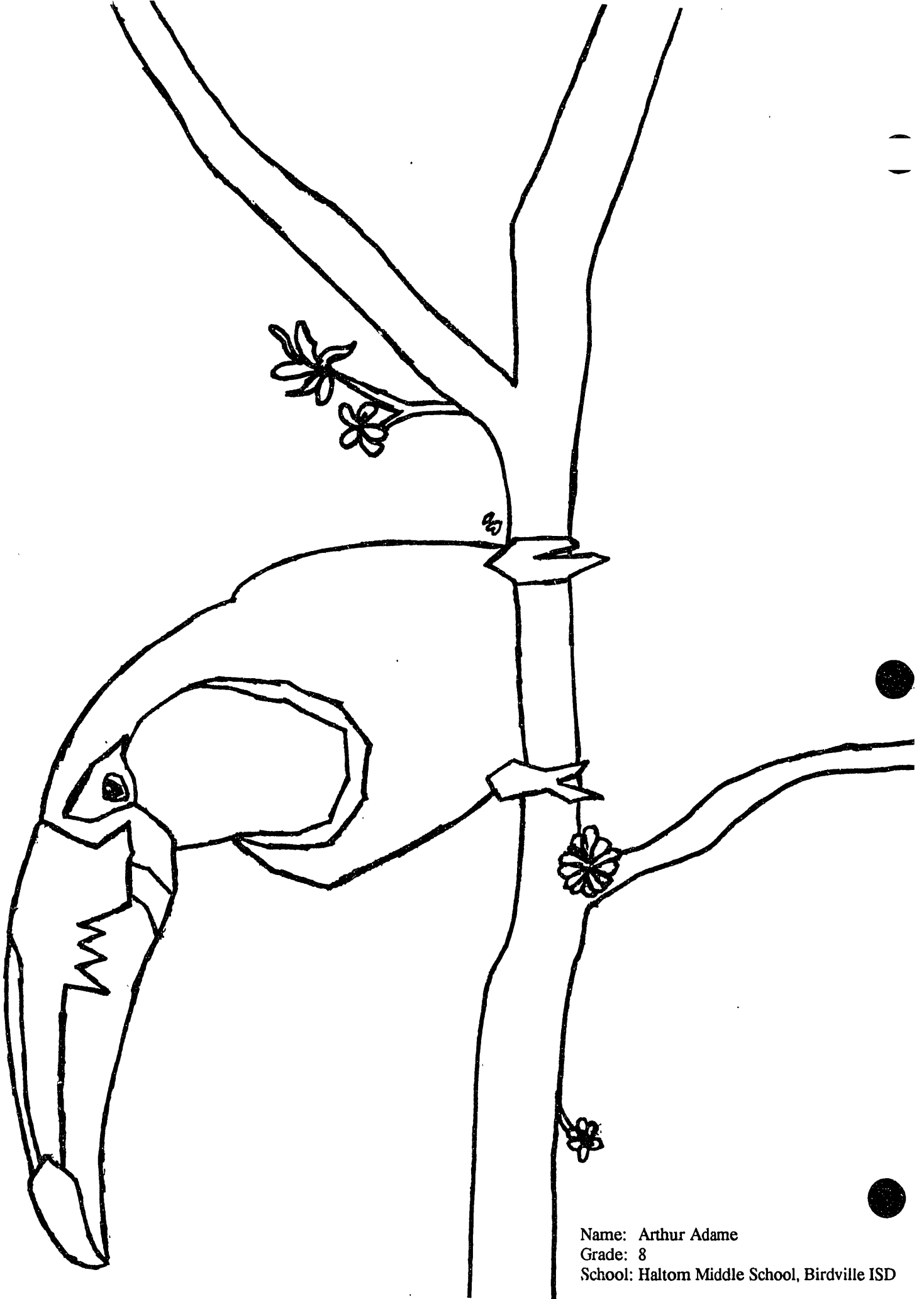
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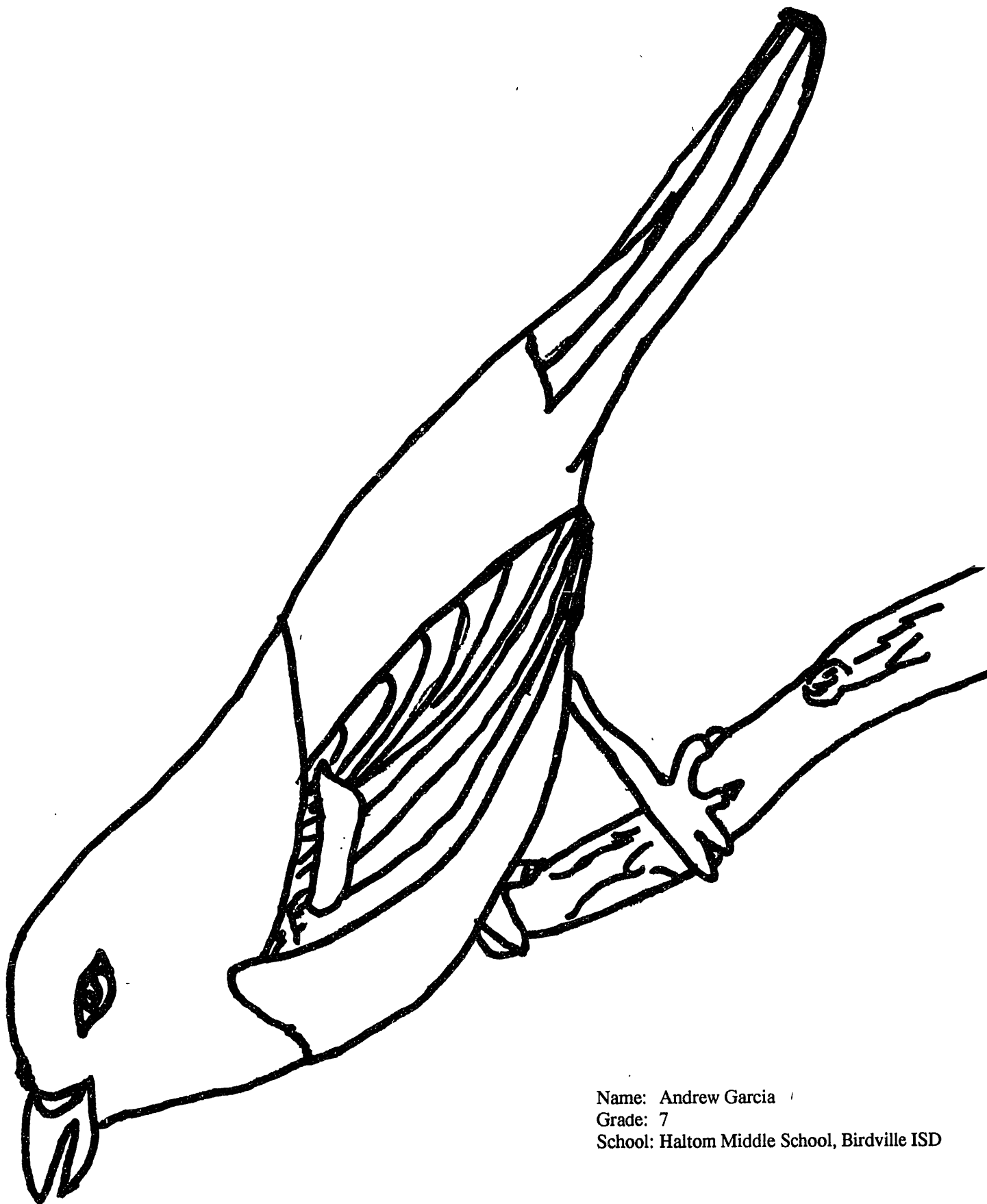
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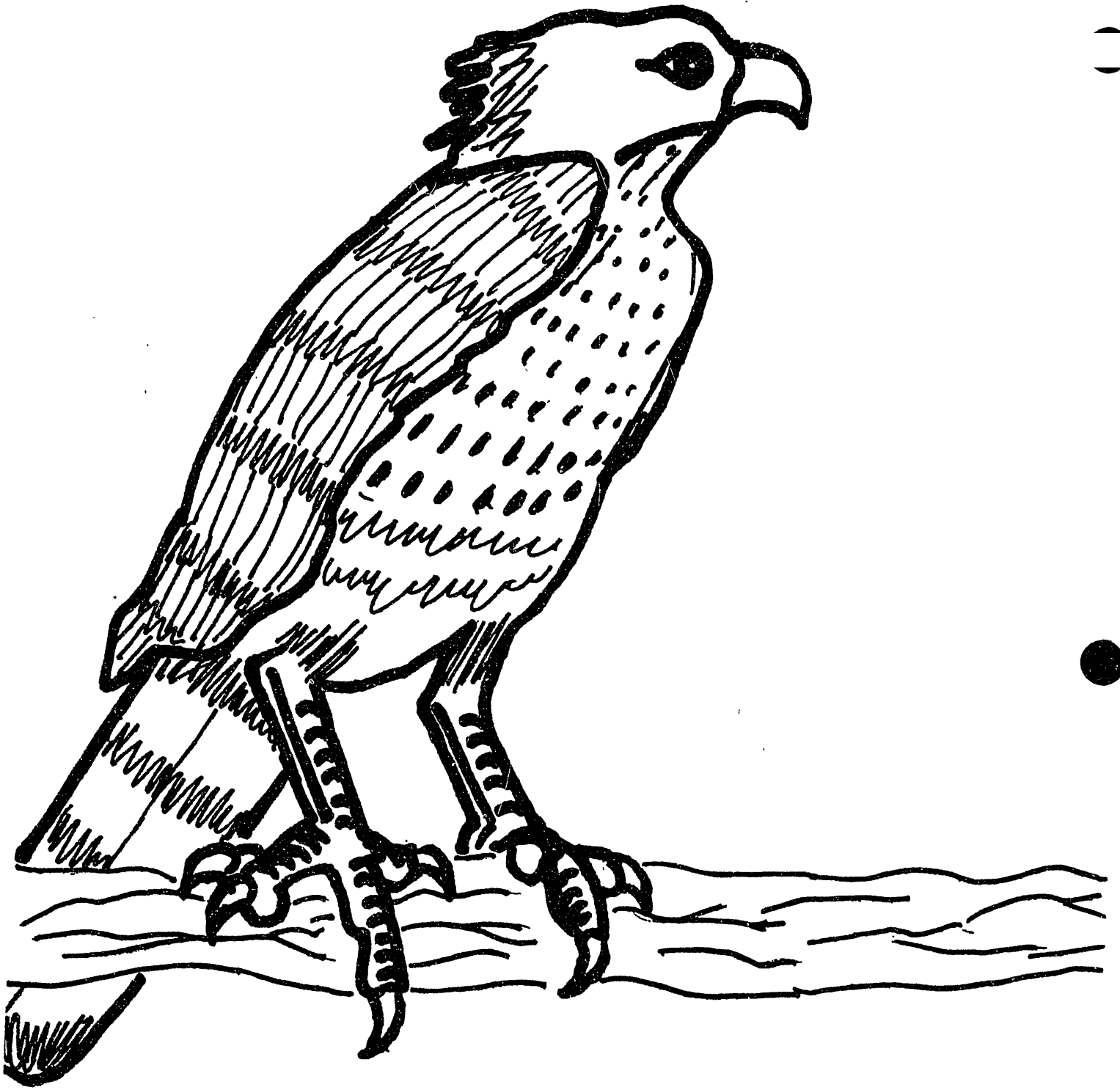
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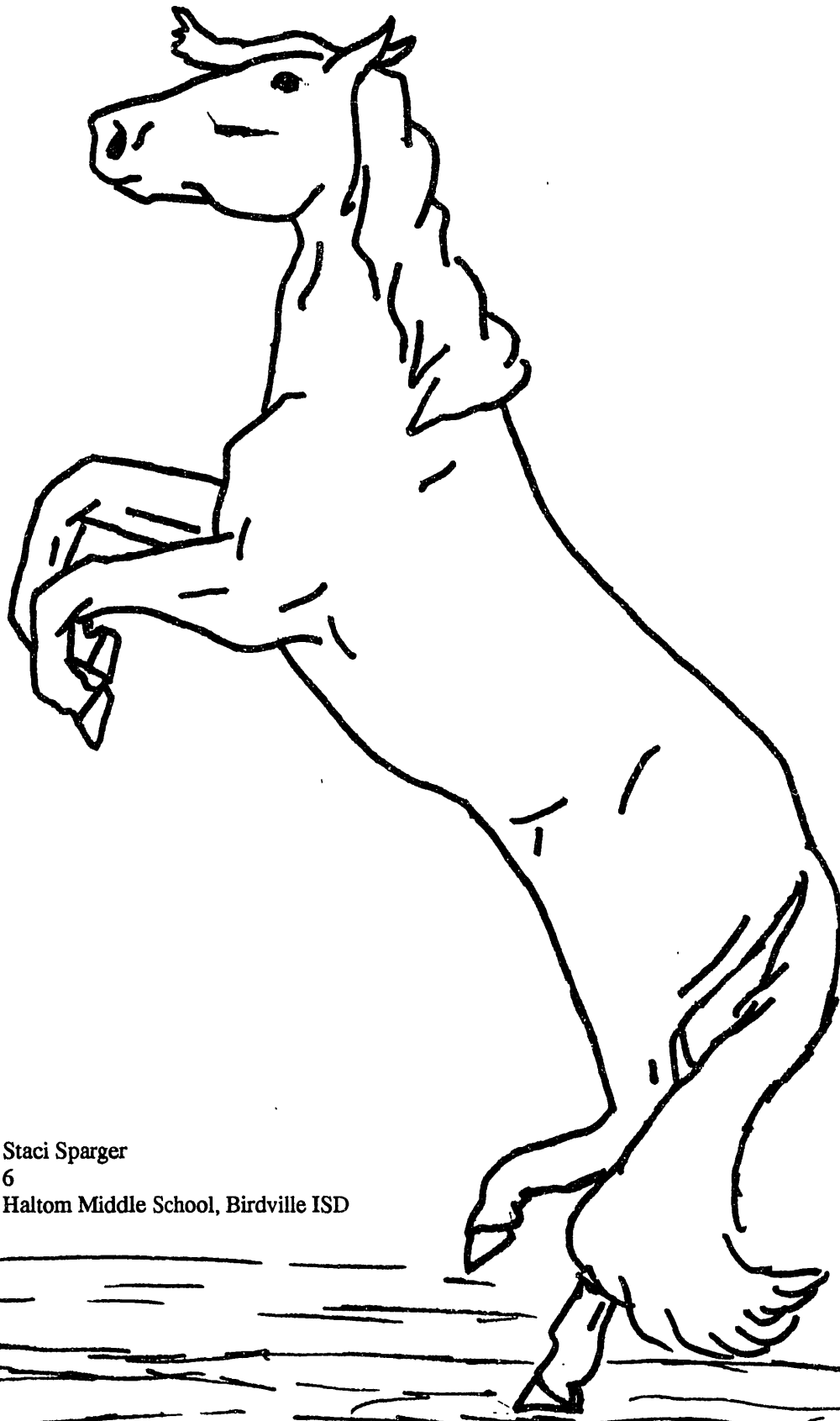


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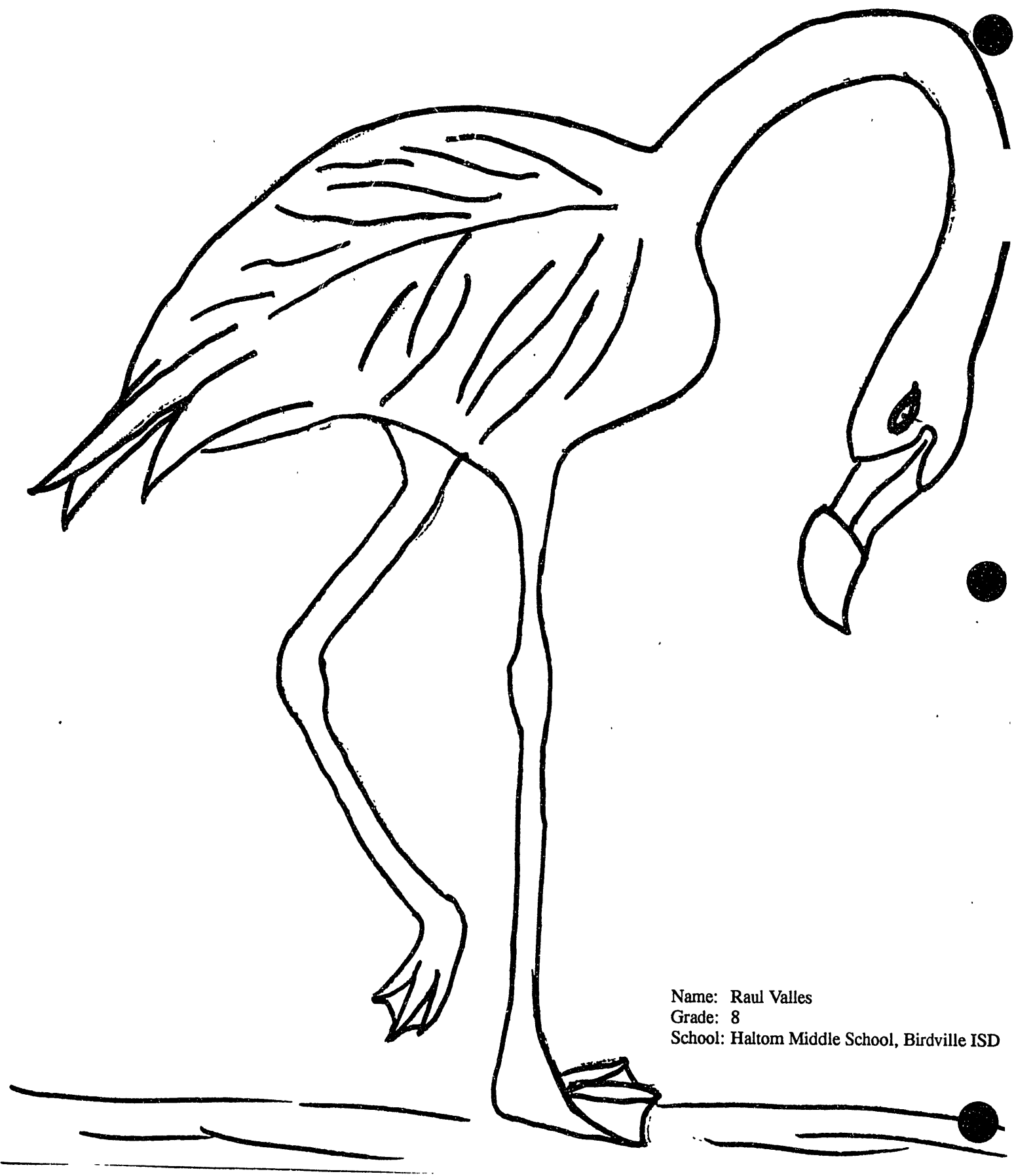
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# Texas Ethics Commission

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

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

## Request for Opinions

**AOR-154.** The Texas Ethics Commission has been asked to consider several questions about whether various officers and employees of a state institution of higher education are required to file financial disclosure statements under Texas Civil Statutes, Article 6252-9b.

The first question is whether the chancellor, vice-chancellors, and campus presidents are required to file financial disclosure statements.

The second question is whether persons appointed to the board of regents of the institution are required to file annual financial disclosure statements.

The third question is whether a person who was appointed to the board of regents in 1992 and who filed a financial statement within 30 days of appointment and who will be up for Senate confirmation in 1993 is required to file a financial statement in 1993.

**AOR-155.** The Texas Ethics Commission has been asked to consider a situation in which a person registered as a lobbyist invites members of the legislature to dinner in his home. The question is whether the lobbyist must report the value of the use of his home as a lobby expenditure and, if so, how the value of the expenditure is to be determined.

**AOR-156.** The Texas Ethics Commission has been asked to consider whether an ex officio, non-voting member of the Board of Licensure for Nursing Home Administrators is required to file a financial disclosure statement under Texas Civil Statutes, Article 6252-9b.

**AOR-157.** The Texas Ethics Commission has been asked to consider whether a state employee may accept a stipend for speaking. The request letter describes a situation in which the state employee has been asked to speak on a paper that he researched and wrote before he held his current state job.

**AOR-158.** The Texas Ethics Commission has been asked whether a certain type of

political fundraiser would be a prohibited corporate contribution. The fundraiser would consist of a contract between a candidate and a corporation, pursuant to which the corporation would provide a carnival. The candidate would receive 10% to 15% to the gross proceeds.

**AOR-159.** The Texas Ethics Commission has been asked whether members of the Commission on Law Enforcement Officer Standards and Education, members of the Law Enforcement Management Institute, and the Texas Peace Officers' Advisory Committee are required to file financial disclosure statements under Texas Civil Statutes, Article 6252-9b.

Issued in Austin, Texas, on February 11, 1993.

TRD-9319014

Sarah Woelk  
Director, Advisory Opinions  
Texas Ethics Commission

Filed: February 12, 1993

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

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# Proposed Sections

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

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

## TITLE 16. ECONOMIC REGULATION Part VIII. Texas Racing Commission

### Chapter 313. Officials and Rules of Horse Racing

#### Subchapter A. Officials

##### Duties of Stewards

###### • 16 TAC §313.22

The Texas Racing Commission proposes an amendment to §313.22, concerning general duties. The amendment clarifies the authority of the stewards to deny the issuance of individual licenses.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter 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 the assurance that pari-mutuel racing is conducted with utmost integrity. 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 on or before April 1, 1993, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.2, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §3.7, which authorizes the commission to adopt rules specifying the authority and duties of racing officials.

###### §313.22. General Duties.

(a) (No change.)

(b) The stewards have the power to:

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

(3) review applications for individual licenses submitted at the racetrack, [and] hold hearings on applications for

individual licenses, and deny temporary or permanent licenses for grounds authorized by the Act or Commission rule [make recommendations to the commission regarding the issuance of individuals licenses];

(4)-(9) (No change.)

(c) (No change.)

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

Issued in Austin, Texas, on February 8, 1993.

TRD-9319105 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: March 26, 1993

For further information, please call: (512) 794-8461

#### Subchapter B. Entries, Declara- tions, and Allowances

##### Entries

###### • 16 TAC §313.112

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

The Texas Racing Commission proposes the repeal of §313.112, concerning official workouts. The section is proposed for repeal to avoid conflict with new rules that regulate licensed training facilities.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

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

Comments on the proposal may be submitted on or before April 1, 1993, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The repeal is proposed under Texas Civil Statutes, Article 179e, §3.2, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act.

###### §313.112. Official Workouts.

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 February 8, 1993.

TRD-9319106 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: March 26, 1993

For further information, please call: (512) 794-8461

#### Subchapter D. Running of the Race

##### Jockeys

###### • 16 TAC §313.405

The Texas Racing Commission proposes an amendment to §313.405, concerning whips and other equipment. The amendment outlines the correct and incorrect uses of a whip, as well as the permitted configuration for a whip.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel horse racing is humane for the racehorses. 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 on or before April 1, 1993, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.2, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, and §14.3, which authorizes the commission to adopt rules prohibiting the illegal influence of a race.

§313.405. Whips and Other Equipment.

(a) The use of a whip is not required and a jockey who uses a whip during a race may do so only in a manner consistent with using the jockey's best efforts to win. The correct uses of a whip include:

- (1) showing the whip to the horse before hitting the horse;
- (2) using the whip in rhythm to the horse's stride; and
- (3) using the whip as an aid to keep a horse running straight. [A jockey may not use a whip that weighs more than one pound.]

(b) A whip used in races must be at least 1/4 inch in diameter and have a looped leather "popper" affixed to one end. The whip must have at least three rows of leather feathers above the popper and each feather must be at least one inch long. The popper must be at least 1 1/4 inch wide and three inches long. A whip may not exceed one pound in weight or 31 inches in length, including the popper.

(c) (No change.)

(d) A jockey may not whip a horse:

- (1) on the head, flanks, or on any part of the horse's body other than the shoulders or hind quarters;
- (2) [or use the whip] excessively or brutally causing welts or breaks in the skin; [at any time.]
- (3) in the post parade except when necessary to control the horse;
- (4) when the horse is clearly out of the race or has obtained its maximum placing; or
- (5) persistently, if the horse is not responding to the whip.

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 February 8, 1993.

TRD-9319104

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: March 26, 1993

For further information, please call: (512) 794-8461

## Subchapter E. Training Facilities

### • 16 TAC §§313.501-313.508

The Texas Racing Commission proposes new §§313.501-313.508, concerning training facilities. The new sections outline the licensing procedures and operational requirements for training facilities and their employees.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for local government as a result of enforcing the section. Ms. Carter also has determined that for each of the first five years the sections are in effect the Commission will expend approximately \$1,500 in salaries and travel for each licensed training facility for regulation and enforcement. This cost will be offset, however, by the \$1,500 annual fee for a licensed training facility.

Ms. Carter also has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the assurance that wagerers will have accurate workout information on horses on which they are wagering and that race horses participating in pari-mutuel racing are fit and ready to compete. Each licensed training facility will be required to pay an annual fee of \$1,500 to cover the costs of regulation and enforcement. An individual employed at a licensed training facility will be required to obtain an occupational license at a cost of \$20 per year.

Comments on the proposal may be submitted on or before April 1, 1993, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711. In addition, the Commission will take public testimony on the proposed rules at its next regular meeting scheduled for Monday, March 15, 1993, beginning at 10 a.m., Stephen F. Austin Building, 1700 North Congress, Room 118, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 179e, §3.2, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §3.21, which authorizes the commission to adopt rules for the licensing and regulation of training facilities and to charge an annual fee for training facility licenses; §7.2 which authorizes the commission to adopt categories of occupational licenses; and §7.5, which authorizes the commission to set the amount of occupational license fees by rule.

§313.501. Purpose. To protect the health, safety, and welfare of race animals and participants in racing, to safeguard the interest of the general public, and to promote the orderly growth and conduct of racing within the state, the Legislature has authorized the commission to license training facilities. Due to the distances many horse owners and trainers must travel to pari-mutuel racetracks to obtain official workouts, the commission finds a need exists to license a

training facility in each of the various geographic regions of the state. The commission also finds, however, that the commission's primary regulatory responsibility is with pari-mutuel racing and the commission's resources must be allocated efficiently to effectively regulate the pari-mutuel racetracks and licensed training facilities. The purpose of this subchapter is to allocate the commission's resources for the regulation of official workouts and to provide a framework for the licensing and regulation of training facilities. Further, it is the intent of the commission in adopting this subchapter to facilitate the obtaining of official workouts and the commission does not intend to sanction organized nonpari-mutuel racing activities.

### §313.502. Training Facility License.

(a) The commission shall divide the state into not more than seven geographic regions for purposes of licensing training facilities. The commission may issue only one training facility license for each region. In dividing the state into the geographic regions, the commission shall consider the following factors:

- (1) the number and locations of the pari-mutuel racetracks currently operating in this state and the race meetings scheduled at those racetracks;
- (2) the number and locations of the breeding farms in this state;
- (3) the approximate number of race horses in each region;
- (4) the approximate number of licensed horse trainers residing in each region; and
- (5) the enforcement and regulatory resources of the commission.

(b) During any year in which a training facility license for a geographic region is available, the commission shall set a deadline for receiving applications for the training facility license. A person applying for a training facility must file an original and six copies of the application at the commission office in Austin. All commission rules relating to the form and filing of pleadings apply to the filing of an application for a training facility license.

(c) An application for a training facility license must contain the following information:

- (1) the name of the owner of the training facility, including occupational license applications for each of the facility's employees, managers, and owners and all fingerprints required by the Act, §5.03(a) or by the Department of Public Safety;
- (2) the location of the training facility, including the street and mailing

addresses, telephone number, and facsimile number;

(3) the name, address, and telephone number of each person who holds a mortgage or other security interest on the land on which the facility is located or on any of the improvements on the land;

(4) a description of the race-track, stalls, and other areas of the training facility;

(5) a description of the equipment available for conducting official workouts;

(6) a description of all other proposed uses of the training facility besides training;

(7) the names of the officials proposed to supervise the workouts;

(8) a copy of all conditions and rules of the training facility; and

(9) a schedule indicating when the training facility would be open for official workouts.

(d) After an application has been filed, the executive secretary shall review the application. The executive secretary may request additional information from the applicant if the executive secretary determines the additional information is necessary for a complete analysis of the application.

(e) If after the review the executive secretary is of the opinion that a training facility license should be granted to the applicant, the executive secretary shall grant the license. If after the review the executive secretary is of the opinion that a training facility license should not be granted to the applicant, the executive secretary shall notify the applicant and arrange a hearing on the proposed denial.

(f) A training facility license may be denied, suspended, or revoked for any of the grounds listed in the Act, §7.04.

(g) Except as otherwise provided by this subsection, an application for a training facility license is not a contested case. A person who has been denied a training facility license is entitled to appeal the decision of the executive secretary to the commission. An appeal of the denial of a training facility license is a contested case and shall be conducted in accordance with Chapter 307 of this title (relating to Practice and Procedure).

(h) If more than one application is received for a particular region, a hearing shall be conducted on the applications in accordance with Chapter 307 of this title (relating to Practice and Procedure). After notice and hearing, the commission shall issue the training facility license to the applicant whose proposal best serves to nur-

ture, promote, develop, or improve the horse industry in this state.

#### §313.503. Terms of License.

(a) A training facility license is valid for three calendar years.

(b) The annual fee for a training facility license is \$1,500. The annual fee is due and payable to the commission on January 1 of each year. The annual fee for the initial year of the term of the license is due not later than 10 business days after the date the license is issued.

(c) A training facility license is personal to the licensee and may not be transferred.

(d) The facilities and operations of a training facility licensee are subject to inspection and verification by the commission or its staff at any time. If the executive secretary determines that the training facility licensee has failed to safeguard the integrity of the workouts obtained at the facility, the executive secretary may immediately notify the pari-mutuel racetracks in this state that workouts obtained at the facility may not be accepted as official workouts. The executive secretary shall notify the licensee of the executive secretary's findings and specifically describe the corrective action necessary to make the facility's workouts official. The training facility licensee may take the necessary corrective action or request a hearing on the executive secretary's findings.

(e) A training facility licensee shall comply with all the requirements of this subchapter and failure to continuously comply with those requirements is grounds for disciplinary action by the commission, including suspension or revocation of the training facility license.

#### §313.504. Physical Plant.

(a) A training facility shall provide adequate stall space to serve the number of horse trainers in that geographic region. The training facility shall provide at least 24 stalls that are available for use by the public.

(b) The racetrack at a training facility must be an oval that is at least:

(1) five-eighths mile in length;

(2) 30 feet wide on each straightaway; and

(3) 20 feet wide on each turn.

(c) The distances and widths of the racetrack at a training facility must be surveyed by a certified land surveyor at least once every 12 months. The training facility licensee shall send a copy of the results of the survey to the commission.

(d) A training facility shall provide a padded starting gate approved by the commission. The training facility shall provide timing equipment that is capable of recording the time of a horse in at least hundredths of a second. The timing equipment is subject to testing and approval by the commission.

(e) A training facility is not required to have:

(1) facilities for the public to observe the workouts; or

(2) concessions.

#### §313.505. Operational Requirements.

(a) The primary business of a training facility must be the training of race horses. The training facility must be available to provide official workouts on a schedule approved by the commission, but at least five days per week.

(b) A training facility licensee shall prohibit any wagering at the facility and shall promptly eject any person who is found to be wagering.

(c) On request by the commission, a training track licensee shall provide proof of adequate liability insurance for the facility.

(d) A training facility licensee shall ensure that veterinary services and facilities are available to the training facility in close enough proximity to permit a response time of not more than one hour. The veterinary services and facilities are subject to the approval of the commission.

(e) A training facility licensee shall maintain records regarding the management and operation of the training facility and the records are subject to inspection by the commission or the commission staff.

(f) A training facility licensee shall cooperate fully with the commission and the commission staff in the regulation of training facilities and shall promptly provide any information requested by the commission or the commission staff.

(g) A training facility licensee shall post in a prominent place a list of the dates and times that official workouts may be obtained.

(h) To be admitted to the stable area of a licensed training facility, a horse must have:

(1) a valid negative agar gel immunodiffusion test for equine infectious anemia (Coggins test) issued in the 12-month period preceding the horse's arrival; and

(2) a health certificate issued in the 45-day period preceding the horse's arrival.

(i) All individuals who have access to the stable area or racetrack area of a licensed training facility on a day on which official workouts may be obtained must be licensed by the commission. A training facility licensee shall institute appropriate security measures to enforce this subsection.

#### §313.506. Workout Requirements.

(a) All official workouts must be supervised by the following officials, who must be approved by the commission:

- (1) a timer/clock;
- (2) a horse identifier; and
- (3) a starter.

(b) The horse identifier shall identify each horse before each official workout. The original registration papers for each horse that is to workout, or a copy that satisfies the horse identifier, must be submitted to the horse identifier before the horse's initial workout at the facility to permit the identifier to record the horse's color, gender, markings, and tattoo number, if applicable. The horse identifier shall inspect all documents of ownership, registration, or breeding necessary to ensure the proper identification of the horse. The identification procedures used at the training facility are subject to the approval of the commission.

(c) The distance of an official workout must be at least:

- (1) 220 yards for a quarter horse;
- (2) two furlongs, for a two-year old thoroughbred; and
- (3) three furlongs, for a thoroughbred three years of age or older.

(d) If a workout is conducted without electronic timing equipment, the workout must be timed on a stopwatch that is accurate to within .01 of a second and be identified as "hand timed." Times for quarter horses shall be rounded to tenths of one second and times for thoroughbred horses shall be rounded to fifths of one second.

(e) An individual may not ride a horse in an official workout unless the individual is wearing a properly fastened helmet of a type approved by the commission.

(f) Not later than 24 hours after the day of an official workout, a training facility shall promptly transmit the results of the workout to:

- (1) each pari-mutuel horse racetrack in this state that has a live race meeting scheduled during that calendar year;
- (2) the official past performance publisher; and
- (3) the commission.

(g) A horse may not have more than one official workout on a calendar day.

#### §313.507. Validity of Workouts.

(a) Except as otherwise provided by this subchapter, an official workout obtained at a training facility licensed under this subchapter satisfies the workout requirements of §313.103 of this title (relating to Eligibility Requirements).

(b) The officials at an association's race meeting may reject a workout conducted at a facility licensed under this subchapter if the officials determine the time of the workout indicates the horse may not be fit to compete with the other horses entered in the race.

(c) The starter at an association's race meeting may reject a gate approval obtained at a facility licensed under this subchapter if:

- (1) the starter has knowledge the gate approval does not ensure the safety of the horse or jockey; or
- (2) based on the starter's knowledge, the starter believes the horse would not break from the gate in a manner that would safeguard the interests of the public.

#### §313.508. Employees of Training Facilities.

(a) An employee of or official for a training facility licensee must be licensed by the commission. The license fee for a training facility employee license is \$20. A training facility employee license may be denied, suspended, or revoked for any of the grounds listed in the Act, §7.04.

(b) A training facility employee license does not entitle the licensee to participate in pari-mutuel racing in this state, but the licensee is not prohibited from obtaining a license to participate in pari-mutuel racing in accordance with the rules of the commission.

(c) An employee of or official for a training facility licensee may not:

- (1) directly or indirectly offer or give a bribe to a person to violate the Act or a rule of the commission;
- (2) solicit or accept a bribe from a person to violate the Act or a rule of the commission;
- (3) falsify or improperly influence an official workout;
- (4) offer, give, solicit, or accept a bribe to falsify or improperly influence an official workout;
- (5) subject a horse to cruel or inhumane treatment or, through act or neglect, subject a horse to unnecessary suffering;

(6) provide false or misleading information regarding an official workout to anyone; or

(7) give a false statement under oath to the commission, the executive secretary, or an administrative law judge acting on behalf of the commission or, except in exercising a legal privilege, refuse to testify before the commission, the executive secretary, or an administrative law judge acting on behalf of the commission.

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

Issued in Austin, Texas, on February 8, 1993.

TRD-9319107

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: March 28, 1993

For further information, please call: (512) 794-8461

## TITLE 22. EXAMINING BOARDS Part V. Texas State Board of Dental Examiners

### Chapter 101. Dental Licensure General Qualifications • 22 TAC §101.1

The Texas State Board of Dental Examiners proposes an amendment to §101.1, concerning general qualifications. The amendment states the general qualifications for any person desiring to practice dentistry in the State of Texas.

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

Mr. Camp also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure that applicants for dental licensure receive the highest standards and to assure that the people of the State of Texas receive the highest quality of dental care. Also, to allow access to dental licensure to as many applicants in order to serve the people of Texas. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The amendment is proposed under Texas Civil Statutes, Article 4544, §2, which provides



the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

**§101.1. General Qualifications.**

(a) (No change.)

(b) An applicant for licensure from the Texas State Board of Dental Examiners shall:

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

(3) present proof of graduation from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association.

Pursuant to Texas Civil Statutes, Article 4544, §2, if an applicant is a foreign and/or non-accredited dental school graduate, the applicant shall present evidence satisfactory to the Board that the applicant is a graduate of a reputable dental school whose entrance requirements and course of instruction are as high as those adopted by the better class of dental colleges of the United States, and whose course of instruction shall be the equivalent of not less than four terms of eight months each, and the applicant shall also present evidence satisfactory to the Board that the applicant is capable of performing minimum clinical tasks, where clinical performance is required on an exam.

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

(8) in addition to the requirements in paragraphs (1)-(7) of this subsection, an applicant for specialty examination must meet the following additional requirements:

(B) Present proof of graduate training in the specialty area of requested examination by one of the following methods: [Present proof of completion of specialty training from an accredited program of the American Dental Association Council on Dental Education in the examination area requested.]

(i) certificate of completion from a dental specialty program approved by the American Dental Association Commission on Dental Accreditation; or

(ii) documentation from the American Dental Association approved specialty Board that applicant was, at any time, recognized as "Board Eligible."

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 February 16, 1993.

TRD-9319119

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

Earliest possible date of adoption: March 26, 1993

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

**Part IX. Texas State Board of Medical Examiners**

**Chapter 185. Physician Assistants**

**• 22 TAC §§185.2, 185.9, 185.15**

The Texas State Board of Medical Examiners proposes amendments to §§185.2, 185.9, 185.15, concerning physician assistants. Several amendments related to the definition of physician assistants, independent billing by physician assistants, and information on applications are proposed.

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

Pat Wood, Secretary to the Executive Director, 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 further clarification of current rules and elimination of unnecessary information on the physician assistant application. 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 Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134.

The amendments are proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

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

Physician assistant—A graduate of a physician assistant or surgeon assistant training program accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association and/or a person who has passed the examination given by the National Commission

on the Certification of Physician Assistants, and who is registered as a physician assistant with the Texas State Board of Medical Examiners.

**§185.9. Application for Approval to Supervise.** Approval by the board to supervise a physician assistant shall be obtained by the supervising physician by filing an application with the board on forms provided by said board; which shall include the following:

(1) the name and license number [, business address, telephone number, and specialty] of the supervising physician;

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

(4) the name, license number, and signature [business address, telephone number, and specialty] of any alternate supervising physician(s).

**§185.15. Employment Guidelines.**

(a) (No change.)

(b) The physician assistant may not independently bill patients for their services except where provided by law.

(c) (No change.)

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

Issued in Austin, Texas, on February 12, 1993.

TRD-9319060

Homer R. Goehrs, M.D.  
Executive Director  
Texas State Board of  
Medical Examiners

Earliest possible date of adoption: March 26, 1993

For further information, please call: (512) 834-4502

**Part XXIV. Texas Board of Veterinary Medical Examiners**

**Chapter 575. Practice and Procedure**

**• 22 TAC §575.23**

The Texas Board of Veterinary Medical Examiners proposes new §575.23, concerning Conditions Relative to License Suspension. The new section provides guidelines when suspending a licensee's veterinary license.

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

Mr. Matthijetz 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 protect the consumer from utilizing the veterinary services of a licensee whose license has been suspended by disciplinary action taken by the Board. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be minimal. The cost to practitioners will depend upon which portions of this rule the board elects to enforce.

Comments on the proposal may be submitted to Buddy Matthijetz, Executive Director, Texas Board of Veterinary Medical Examiners, 1946 South IH-35, Suite 306, Austin, Texas 78704.

The new section is proposed under Texas Civil Statutes, Article 8890, §7(a), which provide the Texas Board of Veterinary Medical Examiners with the authority to "...make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act."

**§575.23. Conditions Relative to License Suspension.** If a Board disciplinary action is taken against a veterinarian which results in the suspension of a license for a specified period of time, the Board shall identify specific conditions (or prohibitions) relative to the suspension. The conditions (or prohibitions) should be clearly stated as part of the negotiated settlement or Board Order. The following guidelines will be utilized when specifying the conditions of a license suspension.

(1) Licensees shall not practice nor give the appearance that they are practicing veterinary medicine during the time of suspension. The Board may provide a notice of the Board's Order of suspension for the licensee to post in the reception area or other place clearly visible to the public.

(2) Licensees shall not supervise other veterinarians, nor supervise, encourage, or allow any employee(s) who are not licensed to practice veterinary medicine in Texas, to perform duties described as the practice of veterinary medicine in the Veterinary Licensing Act and Rules of Professional Conduct and other policies of the Board.

(3) During the period of downtime, licensees shall notify all present and prospective employers of the Board Order, including the terms, conditions, and restrictions imposed. Within 30 days of the effective date of the Order and within 15 days of undertaking new employment, licensees shall cause their employers to provide written acknowledgement to the Board that they have read and understand the terms and conditions of the Board Order.

(4) Licensees shall notify all veterinarians and veterinary technician employees in the clinic, hospital, or practice of the Board Order and, within 30 days of the

effective date of the Order, licensees shall acknowledge to the Board in writing that this has been done.

(5) A sole practitioner's clinic or hospital facilities may be used by the disciplined licensee for administrative purposes only. Examples are opening mail, referring patients, accepting payments on accounts, and general office tasks. In these instances, he/she must exercise extreme caution to not be persuaded, coerced, or otherwise drawn by anyone to practicing or even giving the appearance of practicing veterinary medicine. The licensee may lease the clinic/practice to, or employ, another veterinarian to continue the clinic business during suspension.

(6) A disciplined licensee who owns/operates a clinic and employs associate veterinarians may enter the clinic or hospital for administrative purposes only, as cited in paragraph (5) of this section.

(7) The licensee shall abide by the Board's Order and conform to all laws, rules, and regulations governing the practice of veterinary medicine in Texas.

(8) If the Board receives information alleging that the licensee is practicing veterinary medicine during the period of suspension (downtime), Board staff will initiate an investigation. If there is evidence to support the allegation, the licensee will be subject to further disciplinary action.

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 February 12, 1993.

TRD-9319089

Buddy Matthijetz  
Executive Director  
Texas Board of Veterinary  
Medical Examiners

Proposed date of adoption: June 10, 1993

For further information, please call: (512) 447-1183

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**Part III. Texas Air Control Board**

**Chapter 116. Control of Air Pollution by Permits For New Construction or Modification**

**• 31 TAC §§116.1-116.6, 116.8-116.14**

*(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 Texas Air Control Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Air Control Board (TACB) proposes the repeal of §§116.1-116.6 and 116.8-116.14, concerning Control of Air Pollution by Permits for New Construction or Modification. In concurrent action, the TACB is proposing a new Chapter 116 in a new and expanded format. The new regulation will add a variety of subchapters and undesignated heads as opposed to the present format which consists of one undesignated head, Permits, encompassing the entire regulation. These changes have been initiated by the TACB in preparation for implementation of the Federal Clean Air Act (CAA) Title V permitting requirements which must be adopted by November 15, 1993, and to improve organization of the contents of the regulation.

Lane Hartsock, Deputy Director of Air Quality Planning, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Hartsock also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be improved quality of permit applications from industry and a better understanding of the permitting process by the general public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

A public hearing on this proposal will be held on March 16, 1993, at 10 a.m. in the Auditorium, Room 201S of the TACB central office, Air Quality Planning Annex located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, Texas 78753. The hearing is structured for the receipt of oral or written comments by interested persons. Interrogation or cross-examination is not permitted, however, a TACB staff member will discuss the proposal 30 minutes before the hearing and will be available to answer questions.

Written comments not presented at the hearing may be submitted to the TACB, 12124 Park 35 Circle, Austin, Texas 78753 through March 31, 1993. Material received by the Regulation Development Division by 4 p.m. on that date will be considered by the Board prior to any final action on the proposed sections. Copies of the proposal are available at the TACB Air Quality Planning Annex located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, Texas 78753, and at all TACB regional offices. For further information, contact Gary McArthur at (512) 908-1917.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 908-1815. Requests should be made as far in advance as possible.

The repeals are proposed under the Texas Clean Air Act (TCAA), §382.017, Texas

Health and Safety Code (Vernon 1990), which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

*§116.1. Permit Requirements.*

*§116.2. Responsibility for Obtaining Permit or Exemption.*

*§116.3. Consideration for Granting Permits to Construct and Operate.*

*§116.4. Special Conditions.*

*§116.5. Representations in Application for Permit and Exemption.*

*§116.6. Exempted Facilities.*

*§116.8. Local Air Pollution Control Agencies.*

*§116.9. Effective Date.*

*§116.10. Public Notification and Comment Procedure.*

*§116.11. Permit Fees.*

*§116.12. Review and Continuance of Operating Permits.*

*§116.13. Emergency Orders for Damaged Facilities.*

*§116.14. Compliance History Requirements.*

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 February 12, 1993.

TRD-9318965 Lane Hartsoc  
Deputy Director, Air Quality  
Planning  
Texas Air Control Board

Proposed date of adoption: May 15, 1993

For further information, please call: (512) 908-1451

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**Chapter 116. Control of Air  
Pollution by Permits For  
New Construction or  
Modification**

The Texas Air Control Board (TACB) proposes new §§116.10-116.12, 116. 110, 116.111, 116.114-116.117, 116.120-116.128,

116.130-116.134, 116.136, 116. 137, 116.140, 116.141, 116.143, 116.150, 116.151, 116.160-116.163, 116.170, 116.174, 116.175, 116.211-116.213, 116.310-116.314, and 116.410-116.418, concerning Control of Air Pollution by Permits For New Construction or Modification. The proposed chapter is organized into five subchapters: Subchapter A-Definitions, Subchapter B-New Source Review Permits, Subchapter C-Permit Exemptions, Subchapter D-Permit Renewals, and Subchapter E-Emergency Orders. These changes have been initiated by the TACB to improve the organization of the regulation and to implement those recommendations of the TACB Permits Process Workshop that require changes to TACB rules. In concurrent action, TACB proposes to repeal the existing Chapter 116 in its entirety. In addition to the reorganization of Regulation VI, the following changes to existing language are proposed: replace previous operating permits with requirements for operations certification; revise nonattainment review definitions and rules for consistency with permits guidance; limit the applicability of standard exemptions in nonattainment areas; revise Standard Exemption 89 for ethylene oxide sterilizers and change the reference date of the Standard Exemption List in new §116.211; add a new Standard Exemption 124 to exempt changes to emission controls that are required by other TACB rules from the permitting process; provide for voluntary certification of emissions to create enforceable emission limitations for standard exemptions; create a permit alteration procedure for changes that do not increase the rate or affect the character or method of control of emissions, but which may affect ambient impacts from the permitted facility or which require a change in the general or special provisions of the permit; clarify TACB policy to eliminate the requirement for a permit amendment for changes to a permitted facility that qualify for a standard exemption; require any hearing request to include a statement of the basis for that request.

The new Subchapter A, concerning Definitions, will contain general definitions, compliance history definitions, and nonattainment review definitions applicable to Chapter 116 that are also located in the General Rules and existing definitions concerning compliance history located in the existing §116.14(a). There will be three sections, §§116.10-116.12, contained in this subchapter. A new definition is proposed to be added to §116.10 concerning General Definitions, for lead smelting plant, and the definition of nonattainment area has been reworded for clarity. Also proposed for addition are the terms "contemporaneous," "contemporaneous period," and "offset ratio," in §116.12, concerning Nonattainment Review Definitions. Other options were considered in defining the contemporaneous period specifically relating to small businesses. These options are available upon request from the TACB Air Quality Planning Program. The existing definition for major modification has been revised to add reference to nitrogen oxides (NO<sub>x</sub>) for significant increases and to delete note 2 which allowed best available control technology as an alternative to lowest achievable emission rate. The definition of

major facility/stationary source has also been changed to add a reference to NO<sub>x</sub>. The definitions of de minimis threshold and net emissions increase have been changed for consistency with the definition of contemporaneous period under federal Prevention of Significant Deterioration requirements. Once November 15, 1992, becomes the beginning of the contemporaneous period it will remain the beginning of the period. The contemporaneous period for NO<sub>x</sub> sources will always begin on November 15, 1992. The definitions of "actual emissions," "allowable emissions," "commence," "potential to emit," and "stationary source" have been slightly reworded for clarity. These changes are intended to maintain consistency with TACB Permits Program guidance concerning nonattainment review.

The new Subchapter B, concerning New Source Review Permits, includes seven undesignated heads and contains information applicable to obtaining a permit or permit amendment. The new undesignated heads are titled "Permit Application," "Compliance History," "Public Notification and Comment Procedures," "Permit Fees," "Nonattainment Review," "Prevention of Significant Deterioration Review," and "Emission Reductions: Offsets."

The new undesignated head regarding Permit Application replaces the previous §§116.1-116.5 which explain the contents of a permit application, permit review schedule, procedure for amending a permit, and special distance limitations on lead smelters and hazardous waste permits. There will be six new §§116.110, 116.111, and 116.114-116.117 contained in this undesignated head. The proposed new §116.110(c), concerning Operations Certification, has been added to require an initial notification to the TACB when a new permitted facility commences operation and a second notification when all of the permit conditions have been met. Section 116.117 will correct an error in the previous §116.3(a)(13)(D) which stated that hazardous waste facilities could not be permitted at a distance "greater than" 1/2 mile. It should state "within" 1/2 mile.

The proposed new §116.111, concerning General Application, adds language to clarify an existing Permits Program requirement to include a Form PL-1 General Application as part of a permit application. New language has also been added to clarify air dispersion modeling requirements for permit review. The new §116.116, concerning Amendments, deletes the outdated reference to amendment of exemptions which was contained in the previous §116.5.

Section 116.116 also formalizes a mechanism for permit alteration: when a change to a permitted facility as represented in the permit application will not increase the rate or affect the character or method of control of emissions; or to change permit provisions that do not relate to the rate, character of method of control of emissions. Finally, §116.116 clarifies that changes to a permitted facility that qualify for a standard exemption do not require a permit amendment.

The new undesignated head regarding Compliance History replaces the previous §116.14

and specifies the compliance history information to be included in the permit review process. There will be seven new §§116.120-116.123 contained in this undesignated head. The proposed §116.126, concerning Voladance of Permit Applications, contains minor rewording of the previous §116.14(h) to clarify the requirement.

The new undesignated head regarding Public Notification and Comment Procedures replaces previous §116.10. There will be eight new §§116.130-116.137 contained in this undesignated head.

The new §§116.130-116.135 describe the procedures and format for completing public notification and sign posting requirements. Some of the language of §116.132(a) describing publication in the public notice section of the newspaper was revised to track the Texas Health and Safety Code, §382.56, which was amended effective September 1, 1991. The new §116.136 explains the procedures for submitting public comments, including the requirement to include with any request for hearing a statement of the basis for the request. Schedules for responding to permit application deficiencies in previous §116.10(a)(1) are now contained in the new §116.114 under the undesignated head Permit Application. Revised wording has been included in §116.135, concerning Provisions of Public Notice Exemption, to clarify that a public notice may not be required for relocated facilities if it will not cause a condition of air pollution. Existing §116.10(d), pertaining to public notification of new best available control technology determinations, has been deleted due to obsolescence.

The new undesignated head regarding Permit Fees replaces previous §116.11 and explains the applicability and determination of permit fees. There will be three new §§116.140, 116.141, and 116.143 contained in this undesignated head. New language is proposed in §116.140, concerning Applicability, to clarify that permit amendments are assessed a permit fee. New language is proposed in §116.141, concerning Determination of Fees, to clarify that permit amendments which involve no capital expenditures shall remit the minimum permit fee of \$450.

The new undesignated head regarding Nonattainment Review replaces the portions of previous §116.3, containing permit requirements for facilities in nonattainment areas. There will be two new §§116.150 and §116.151 located in this undesignated head. The previous §116.3(a)(8), relating to reasonable further progress, has been deleted. This section is no longer necessary because the requirement for lowest achievable emission rate and offsets in nonattainment areas ensure reasonable further progress. Proposed §116.150, concerning New Major Source or Major Modification Requirements, replaces previous §116.3(a)(7) pertaining to permit requirements in ozone nonattainment areas. The designation of the time period used to determine creditable source emission increases and decreases (as defined in contemporaneous period and net emissions increase) has been changed for consistency with federal Prevention of Significant Deterioration (PSD) requirements and to maintain consistency with TACB Permits Program

guidance concerning nonattainment review. The de minimis threshold test requiring a netting calculation to determine if a source is major for nonattainment review will be required for ozone nonattainment areas if the proposed VOC or NO<sub>x</sub> increase is equal to or exceeds five tons per year. Other options concerning offset requirements were considered and are available upon request from the TACB Air Quality Planning Program.

The new undesignated head regarding Prevention of Significant Deterioration replaces portions of previous §116.3 pertaining to the federal requirements for PSD permit applications. There will be four new §§116.160-116.163 contained in this undesignated head. The new §116.163, concerning Prevention of Significant Deterioration Permit Fees, replaces previous §116.11(b) with clarification. New §161.161 replaces the previous §116.3(a)(9). This section was rewritten to correct an error in the interpretation of the federal requirement identified in previous §116.3(a)(9). The rule identified additional requirements needed to obtain a permit when the emissions from a facility is located in an attainment area but has a greater than de minimis impact on a nonattainment area. However, the FCAA requires that the impact of these emissions be reduced to eliminate the exceedances. Thus, the additional control requirements are not necessary.

The new undesignated head regarding Emission Reductions: Off-sets, replaces portions of previous §116.3 which explains the criteria and procedures to qualify for emission reduction credits. There will be three new §§116.170, 116.174, and 116.175 contained in this undesignated head. No changes from the existing language are proposed.

The new Subchapter C, concerning Permit Exemptions, replaces previous §116.6, explains the criteria for standard exemption qualification, and states public notification procedures and requirements for concrete batch plants. There will be three new §§116.211-116.213 contained in this subchapter. A proposed condition has been added to §116.211, concerning the Standard Exemption List, which imposes additional limitations on standard exemptions in nonattainment areas. The language in the new §116.212, regarding Public Notification and Comment Procedures, adds new language regarding public notification requirements for concrete batch plants. The proposed new §116.213, concerning Registration of Emissions, has been added to allow voluntary registration of maximum emission rates represented for facilities covered under standard exemption. The registered emission rates would become enforceable emission limitations and could be used to make an emission netting demonstration for future expansion in a nonattainment area. Proposed changes to Standard Exemption Number 89, concerning ethylene oxide sterilizer chambers, clarify and restrict applicability.

The proposed new Standard Exemption Number 124 contains an exemption for changes to emission controls that are required by other TACB rules. The TACB specifically invites comments on the following issues surrounding this exemption: should use of the exemption be subject to emission

limitations or should the emission reductions required by a rule be considered as sufficient criteria to offset any subsequent increase in emissions of other pollutants resulting from the application of required control technologies; should use of the exemption be expanded to all Federal (including Nonattainment Review, Prevention of Significant Deterioration Review, New Source Performance Standards, National Emissions Standards for Hazardous Air Pollutants, and other requirements of the Federal Clean Air Act) as well as State air pollution control requirements; should this proposal be handled as a general permit designation rather than a standard exemption.

The new Subchapter D, concerning Permit Renewals, replaces previous §116.12 and explains the requirements for permit renewal, including application fees, and public notification. There will be five new §§116.310-116.314 contained in this subchapter. No changes from the existing language are proposed.

The new Subchapter E, concerning Emergency Orders, replaces previous §116.13 and explains the applicability and procedures for obtaining an emergency order. There will be nine new §§116.410-116.418 contained in this subchapter. No changes from the existing language are proposed.

Lane Hartsock, Deputy Director of Air Quality Planning, has determined that for the first five-year period the sections are in effect there will be no fiscal implications as a result of enforcing or administering the sections. New language added to §116.211(a)(2) limiting the use of standard exemptions in nonattainment areas should not result in additional fiscal implications since the stricter limitations were adopted May 8, 1992, as part of the nonattainment new source review rules.

Mr. Hartsock also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be improved quality of permit applications from industry and a better understanding of the permitting process by the general public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

A public hearing on this proposal will be held on March 16, 1993, at 10 a.m. in the Auditorium (Room 201S) of the TACB Central Office, Air Quality Planning Annex, located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, Texas 78753. The hearing is structured for the receipt of oral or written comments by interested persons. Interrogation or cross-examination is not permitted; however, a TACB staff member will be available to discuss the proposal and answer questions at 9:30 a.m., prior to the hearing.

Written comments not presented at the hearing may be submitted to the TACB, 12124 Park 35 Circle, Austin, Texas 78753 through March 31, 1993. Material received by the Regulation Development Division by 4 p.m. on that date will be considered by the Board prior to any final action on the proposed sections. Copies of the proposal are available at the central office of the TACB, Air Quality

Planning Annex, located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, Texas and at all TACB regional offices. For further information, contact Gary McArthur at (512) 908-1917.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 908-1815. Requests should be made as far in advance as possible.

**Subchapter A. Definitions**  
**31 TAC §§116.10-116.12**

The new sections are proposed under the Texas Clean Air Act (TCAA), §382. 017,

Texas Health and Safety Code (Vernon 1990), which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

*§116.10. General Definitions.* Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Board, the terms used by the Board have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, and in §101.1 of this title (relating to General

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

De minimis impact-A change in ground level concentration of an air contaminant as a result of the operation of any new major stationary source or of the operation of any existing source which has undergone a major modification, which does not exceed the following specified amounts.

<u>AIR CONTAMINANT</u>	<u>ANNUAL</u>	<u>24-HOUR</u>	<u>8-HOUR</u>	<u>3-HOUR</u>	<u>1-HOUR</u>
<b>INHALABLE</b>					
<b>PARTICULATE</b>					
MATTER (PM <sub>10</sub> )	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>			
<u>AIR CONTAMINANT</u>	<u>ANNUAL</u>	<u>24-HOUR</u>	<u>8-HOUR</u>	<u>3-HOUR</u>	<u>1-HOUR</u>
SULFUR DIOXIDE	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>		25 µg/m <sup>3</sup>	
NITROGEN DIOXIDE	1.0 µg/m <sup>3</sup>				
CARBON MONOXIDE			0.5 mg/m <sup>3</sup>		2 mg/m <sup>3</sup>

Emissions unit-Any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Federal Clean Air Act.

Federally enforceable-All limitations and conditions which are enforceable by the Administrator of the United States Environmental Protection Agency (EPA), including those requirements developed pursuant to Title 40 of the Code of Federal Regulations Parts 60 and 61 (40 CFR 60 and 61), requirements within any applicable State Implementation Plan (SIP), any permit requirements established pursuant to 40 CFR 52.21, or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including permits issued under the EPA-approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program.

Lead smelting plant-Any facility which produces purified lead by melting and separating lead from metal and nonmetallic contaminants and/or by reducing oxides into elemental lead. Raw materials consist of lead concentrates, lead bearing ores or lead scrap, drosses, or other residues. Additional processing may include re-

fining, alloying, and even oxidizing into lead oxide. A facility which only remelts lead bars or ingots for casting into lead products is not considered to be a smelter.

New source-Any stationary source, the construction or modification of which is commenced after the date of adoption of these sections.

Nonattainment area-A defined region within the state which is designated by the United States Environmental Protection Agency (EPA) as failing to meet the National Ambient Air Quality Standard for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of the Federal Clean Air Act, §107(d).

Public notice-The public notice of application for a permit as required in this chapter.

Source-A point of origin of air contaminants, whether privately or publicly owned or operated. Upon request of a source owner, the Executive Director shall determine whether multiple processes emitting air contaminants from a single point of emission will be treated as a single source or as multiple sources.

*§116.11. Compliance History Definitions.* Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Board, the terms used by the Board have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, and in §101.1 of this title (relating to General Rules), the following words and terms, when used in the undesignated head of this chapter regarding Compliance History, shall have the following meanings, unless the context clearly indicates otherwise.

Adjudicated decision-Any conviction, final order, judgment, or decree as follows:

(A) a criminal conviction of the applicant in any court for violation of any law of this state, another state, or of the United States governing air contaminants;

(B) a final order, judgment, or decree of any court or administrative agency, or agreement entered into settlement of any legal or administrative action brought in a court or administrative agency, addressing:

(i) the applicant's past performance or compliance with the laws and rules of this state, another state, or of the United States governing air contaminants; or

(ii) the terms of any permit or order issued by the Board; or

(C) an order of any court or administrative agency, whether final or not, respecting air contaminants for the facility that is the subject of the permit application.

Compliance event—An adjudicated decision or compliance proceeding as defined in this section.

Compliance history—The record of an applicant's adherence to air pollution control laws and rules of the State of Texas, other states, and of the United States except as provided in §116.123 of this title (relating to Effective Dates). The history shall be for the five-year period prior to the date on which the application for issuance, amendment, or renewal is filed. The compliance history shall include all compliance events, as defined in this section.

Compliance proceeding—A notice of violation issued by the Texas Air Control Board (TACB) or other agency for which the TACB has recommended formal enforcement action and has notified the applicant of such recommendation.

Existing site—A plant property that is not a new site.

New site—A plant property having an operating history less than five years in length as of the date of application.

*§116.12. Nonattainment Review Definitions.* Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Board, the terms used by the Board have the meanings commonly ascribed to them in the field of air pollution control. The terms in this section are applicable to permit review for major source construction and major source modification in nonattainment areas. In addition to the terms which are defined by the TCAA, and in §101.1 of this title (relating to General Rules), the following words and terms, when used in the undesignated head regarding Nonattainment Review, shall have the following meanings, unless the context clearly indicates otherwise.

Actual emissions—Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The Executive Director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production

rates, and types of materials processed, stored, or combusted during the selected time period. The Executive Director may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions, e.g., when the allowable limit is reflective of actual emissions. For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

Allowable emissions—The emissions rate of a stationary source, calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both), and the most stringent of the following:

(A) the applicable standards set forth in Title 40 Code of Federal Regulations, Part 60 or 61;

(B) The applicable State Implementation Plan emissions limitation including those with a future compliance date; or

(C) the emissions rate specified as a federally enforceable permit condition including those with a future compliance date.

Begin actual construction—In general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

Building, structure, facility, or installation—All of the pollutant-emitting activities which belong to the same industrial grouping, are located in one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

Commence—As applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time. Alternately, the owner or operator must dem-

onstrate that there are binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to begin and complete actual construction of the source within a reasonable time.

Construction—Any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

Contemporaneous—An increase or decrease in actual emissions is contemporaneous if it occurs within the contemporaneous period. Once November 15, 1992, becomes the beginning of the contemporaneous period, increases or decreases resulting from applications received after that date are contemporaneous.

Contemporaneous period—The period between:

(A) the date five years before construction on the particular change commences or November 15, 1992, whichever date is earlier; except for NO<sub>x</sub> as a precursor to ozone in ozone non-attainment areas, November 15, 1992; and

(B) the date that the increase from the particular change occurs.

De minimis threshold test—A method of determining if a proposed emission increase will trigger nonattainment review. The summation of the proposed increase with all other creditable source emission increases and decreases during the contemporaneous period, is compared to the MAJOR MODIFICATION column of Table I (in tons per year) for that specific nonattainment area. If the major modification level is exceeded, then nonattainment review is required.

Lowest achievable emission rate—For any emitting facility, that rate of emissions of a contaminant which does not exceed the amount allowable under applicable New Source Performance Standards promulgated by the United States Environmental Protection Agency under the Federal Clean Air Act, §111 and which reflects the following:

(A) the most stringent emission limitation which is contained in the rules and regulations of any approved state implementation plan for a specific class or category of facility, unless the owner or operator of the proposed facility demonstrates that such limitations are not achievable; or

(B) the most stringent emission limitation which is achieved in practice by a specific class or category of facilities.

Major facility/stationary source—Any

facility/stationary source which emits, or has the potential to emit, the amount specified in the MAJOR SOURCE column of Table I of this section or more of any air contaminant (including volatile organic compounds) for which a National Ambient Air Quality Standard has been issued. Any physical change that would occur at a stationary source not qualifying as a major stationary source in Table I of this section, if the change would constitute a major stationary source by itself. A major stationary source that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this definition whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in Title 40 Code of Federal Regulations, Part 51.165(a)(1)(iv)(C).

Major modification—Any physical change in, or change in the method of operation of a facility/stationary source that causes a significant net emissions increase for any air contaminant for which a National Ambient Air Quality Standard (NAAQS) has been issued. At a facility/stationary source that is not major prior to the

increase, the increase by itself must equal or exceed that specified in the MAJOR SOURCE column of Table I of this section. At an existing major facility/stationary source, the increase must equal or exceed that specified in the MAJOR MODIFICATION column of Table I. Any net emissions increase that is considered significant for VOC or nitrogen oxides shall be considered significant for ozone. A physical change or change in the method of operation shall not include:

(A) routine maintenance, repair, and replacement;

(B) use of an alternative fuel or raw material by reason of an order under the Energy Supply and Environmental Coordination Act of 1974, §2(a) and (b) (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(C) use of an alternative fuel by reason of an order or rule of the Federal Clean Air Act, §125;

(D) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(E) use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before December 21, 1976, (unless such change would be prohibited under any federally enforceable permit condition established after December 21, 1976), or the source is approved to use under any permit issued under regulations approved pursuant to this chapter;

(F) an increase in the hours of operation or in the production rate (unless the change is prohibited under any federally enforceable permit condition which was established after December 21, 1976); or

(G) any change in ownership at a stationary source.

TABLE I

MAJOR SOURCE/MAJOR MODIFICATION EMISSION THRESHOLDS

POLLUTANT	MAJOR SOURCE <u>tons/year</u>	MAJOR MODIFICATION		OFFSET RATIO <u>minimum</u>
		net increase in <u>tons/year</u>		
VOC/NO <sub>x</sub> <sup>1</sup>				
I marginal	100	40		1.10 to 1
II moderate	100	40		1.15 to 1
III serious	50	25		1.20 to 1
IV severe	25	25		1.30 to 1
CO				
I moderate	100	100		1.00 to 1 <sup>2</sup>
II serious	50	50		1.00 to 1 <sup>2</sup>
SO <sub>2</sub>	100	40		1.00 to 1 <sup>2</sup>

TABLE I - (Continued)

MAJOR SOURCE/MAJOR MODIFICATION EMISSION THRESHOLDS

POLLUTANT	MAJOR SOURCE	MAJOR MODIFICATION		OFFSET RATIO
		net increase in		
	<u>tons/year</u>	<u>tons/year</u>	<u>minimum</u>	
PM <sub>10</sub>				
I moderate	100	15		1.00 to 1 <sup>2</sup>
II serious	70	15		1.00 to 1 <sup>2</sup>
Lead	100	0.6		1.00 to 1 <sup>2</sup>

<sup>1</sup> VOC and NO<sub>x</sub> are to be considered separately for purposes of determining whether a source is subject to permit requirements. For those counties which are designated nonattainment for ozone, but are not classified because of incomplete data (Victoria County), the new source review rules for a marginal classification apply to sources of VOC but not to sources of NO<sub>x</sub>.

<sup>2</sup> The offset ratio is specified to be greater than 1.00 to 1.

VOC = volatile organic compound

NO<sub>x</sub> = oxides of nitrogen

CO = carbon monoxide



SO<sub>2</sub> = sulfur dioxide

PM<sub>10</sub> = particulate matter of less than 10 microns in diameter

Necessary preconstruction approvals or permits—Those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

Net emissions increase—The amount by which the sum of the following exceeds zero: the total increase in actual emissions from a particular physical change or change in the method of operation at a stationary source, plus any sourcewide creditable contemporaneous emission increases minus any sourcewide creditable contemporaneous emission decreases.

(A) An increase or decrease in actual emissions is creditable only if both of the following conditions are met:

(i) it occurs during the contemporaneous period to be specified by the Executive Director; and

(ii) the Executive Director has not relied on it in issuing a permit for the source (under regulations approved during which the permit is in effect) when the increase in actual emissions from the particular change occurs.

(B) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(C) A decrease in actual emissions is creditable only to the extent that all of the following conditions are met:

(i) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) it is federally enforceable at and after the time that actual construction on the particular change begins, the reviewing authority has not relied on it in issuing any permit, or the state has not relied on it in demonstrating attainment or reasonable further progress; and

(iii) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(D) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

Offset ratio—For the purpose of satisfying the emissions offset reduction requirements of the Federal Clean Air Act, §173(a)(1)(A), the emissions offset ratio is the ratio of total actual reductions of emissions to total allowable emissions increases of such pollutants from the new source. The minimum offset ratios are included in Table I of this section under the definition of major modification.

Potential to emit—The maximum capacity of a facility/ stationary source to emit a pollutant under its physical and operational design. Any physical or enforceable operational limitation on the capacity of the facility/stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions, as defined in 40 Code of Federal Regulations 51.165(viii), do not count in determining the potential to emit of a stationary source.

Secondary emissions—Emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the source or modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions, except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tail pipe of a motor vehicle, from a train, or from a vessel.

Stationary source—Any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Federal Clean Air Act.

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

Issued in Austin, Texas, on February 12, 1993.

TRD-9318954

Lane Hartssock  
Deputy Director, Air Quality  
Planning  
Texas Air Control Board

Proposed date of adoption: May 15, 1993

For further information, please call: (512) 908-1451

◆ ◆ ◆  
Subchapter B. New Source  
Review Permits  
Permit Application

• 31 TAC §§116.110, 116.111,  
116.114-116.117

The new sections are proposed under the Texas Clean Air Act (TCAA), §382.17, Texas Health and Safety Code, (Vernon 1990), which provide the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§116.110. Applicability.

(a) Permit to construct. Any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of this state shall obtain a permit pursuant to §116.111 of this title (relating to General Application) or satisfy the conditions for exempt facilities pursuant to Subchapter C of this chapter (relating to Permit Exemptions) before any actual work is begun on the facility. Modifications to existing permitted facilities may be handled through the amendment of an existing permit.

(b) Operations Certification.

(1) To ensure that operations addressed in the applicant's permit are in conformance with the representations in the permit application, any person that has ap-

plied for and received a permit from the Texas Air Control Board (TACB) shall:

(A) submit the first part of the operations certification before commencing operations certifying that, to the best of the knowledge of the individual signing the certification, the facilities or changes authorized by the permit have been accomplished as represented, if those representations affect emissions, method of control, or character of emissions;

(B) submit a second certification certifying that, to the best of the knowledge of the individual signing the certification, the facility complies with all terms of the preconstruction permit and that operations of the facility are in compliance with the Texas Clean Air Act and the rules of the TACB. This certification shall be submitted simultaneously with any report of testing or monitoring results required by the permit or, if no testing or monitoring is required, within 60 days of the commencement of operation. The certification deadline may be extended by the Executive Director upon a showing of good cause by the permit holder; the request for extension must be filed prior to the certification deadline.

(2) Multiple operations certifications may be submitted on a facility-by-facility basis for a given permit.

(3) All permits issued after the effective date of this subsection are subject to the provisions of this subsection.

(c) Change in ownership. The new owner of a facility which previously has received a permit or special permit from the TACB shall not be required to apply for a new permit or special permit, and the change of ownership shall not be subject to the public notification requirements of this chapter, provided that within 30 days after the change of ownership the new owner notifies the TACB of the change. The notification shall include a certification of each of the following:

(1) the ownership change has occurred and the new owner will comply with all conditions and provisions of the permit or special permit and all representations made in the application for permit or special permit and any amendments to the permit;

(2) there will be no change in the type of pollutants emitted.

(3) there will be no increase in the quantity of pollutants emitted.

(d) Submittal under seal of registered professional engineer. All applications for permit or permit amendment with an estimated capital cost of the project above

\$2 million, and not subject to any exemption contained in the Texas Engineering Practice Act (TEPA), shall be submitted under seal of a registered professional engineer. However, nothing in this subsection shall limit or affect any requirement which may apply to the practice of engineering under the TEPA or the actions of the Texas State Board of Registration for Professional Engineers. For purposes of this subsection, the estimated capital cost is defined in §116.141 of this title (relating to Determination of Fees).

(e) Responsibility for permit application. The owner of the facility or the operator of the facility authorized to act for the owner is responsible for complying with this section.

*§116.111. General Application.* Any application for a new permit, permit amendment, or special permit amendment must include a completed Form PI-1 General Application. The Form PI-1 must be signed by an authorized representative of the applicant. The Form PI-1 specifies additional support information which must be provided before the application is deemed complete. In order to be granted a permit, permit amendment, or special permit amendment, the owner or operator of the proposed facility shall submit information to the Texas Air Control Board (TACB) which shall demonstrate that all of the following are met.

(1) Protection of public health and welfare. The emissions from the proposed facility will comply with all rules and regulations of the TACB and with the intent of the Texas Clean Air Act (TCAA), including protection of the health and physical property of the people. In considering the issuance of a permit for construction or modification of any facility within 3,000 feet or less of an elementary, junior high/middle, or senior high school, the TACB shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility may have on the individuals attending these school facilities.

(2) Measurement of emissions. The proposed facility will have provisions for measuring the emission of significant air contaminants as determined by the Executive Director. This may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the TACB *Compliance Sampling Manual*.

(3) Best available control technology (BACT). The proposed facility will utilize BACT, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility.

(4) Federal New Source Performance Standards (NSPS). The emissions from the proposed facility will meet at least the requirements of any applicable NSPS as listed under Title 40 Code of Federal Regulations (CFR) Part 60, promulgated by the U.S. Environmental Protection Agency (EPA) pursuant to authority granted under the Federal Clean Air Act (FCAA), §111, as amended.

(5) National Emission Standards for Hazardous Air Pollutants (NESHAP). The emissions from the proposed facility will meet at least the requirements of any applicable NESHAP, as listed under 40 CFR Part 61, promulgated by the EPA pursuant to authority granted under the FCAA, §112, as amended.

(6) Performance demonstration. The proposed facility will achieve the performance specified in the permit application. The applicant may be required to submit additional engineering data after a permit has been issued in order to demonstrate further that the proposed facility will achieve the performance specified in the permit application.

(7) Nonattainment review. If the proposed facility is located in a nonattainment area, it shall comply with all applicable requirements under the undesignated head of this subchapter relating to Nonattainment Review.

(8) Prevention of Significant Deterioration review. The proposed facility shall comply with all applicable requirements under the undesignated head of this subchapter relating to Prevention of Significant Deterioration.

(9) Air dispersion modeling. Computerized air dispersion modeling may be required to determine the air quality impacts from a proposed new facility or source modification. The TACB Permits Program will make a determination as to whether modeling will be required for minor new sources or source modifications. Permit applications for a major source or major modification, including Prevention of Significant Deterioration review, shall include a modeling analysis.

#### *§116.114. Application Review Schedule.*

(a) Review schedule. The permit application will be reviewed by the Texas Air Control Board in accordance with the following schedule.

(1) Within 90 days of receipt of an application for a new permit, or amendment to a permit or special permit, the Executive Director shall mail written notification informing the applicant that the application is complete or that it is deficient. If the application is deficient, the notification shall state any additional information

required, and the intent of the Executive Director to void the application if information for a complete application is not submitted. Additional information may be requested within 60 days of receipt of the information provided in response to the deficiency notification.

(2) Within 180 days of receipt of a completed permit application, or 150 days of receipt of a permit amendment or special permit amendment, the Executive Director shall mail written notice informing the applicant of his decision to approve or not approve the application provided that no requests for public hearing or public meeting on the proposed facility have been received and the applicant has provided public notification as required by the Executive Director.

(3) If the time limits provided in this section to process an application are exceeded, the applicant may appeal in writing to the Executive Director. If the Executive Director finds that the application was not approved or denied within the specified period and that the agency exceeded that period without good cause, as provided in Texas Civil Statutes, Article 6252-13b.1, §3, the Executive Director shall reimburse the permit fee which was remitted with the application.

(b) Voiding of deficient application. An applicant shall make a good faith effort to submit, in a timely manner, adequate information which demonstrates that the requirements for obtaining a permit or permit amendment are met in response to any deficiency notification issued by the Executive Director pursuant to the provisions of this section concerning Application Review Schedule, or §116.131 of this title (relating to Public Notification Requirements). If an applicant fails to make such good faith effort, the Executive Director shall void the application and notify the applicant. If the application is resubmitted within six months of the voidance, it shall be exempt from the requirements of §116.140 of this title (relating to Permit Fee Applicability).

*§116.115. Special Provisions.* Permits and special permits may contain general and special provisions. The holders of permits and special permits shall comply with any and all such provisions. Upon a specific finding by the Executive Director that an increase of a particular pollutant could result in a significant impact on the air environment, or could cause the facility to become subject to review under the undesignated head of this subchapter relating to Nonattainment Review or Prevention of Significant Deterioration Review, the permit may include a special provision which states that the permittee must obtain written approval from the Executive Direc-

tor before constructing a source under a standard exemption.

*§116.116. Amendments and Alterations.*

(a) Permit amendments. All representations with regard to construction plans and operation procedures in an application for a permit, special permit, or special exemption, as well as any general and special provisions attached to the permit or special exemption itself, become conditions upon which the subsequent permit, special permit, or special exemption are issued. It shall be unlawful for any person to vary from such representation or permit provision if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in an increase in the discharge of the various emissions, unless application is made to the Executive Director to amend the permit or special permit in that regard and such amendment is approved by the Executive Director or Board. Applications to amend a permit or special permit shall be submitted with a completed Form PI-1 and are subject to the requirements of §116.111 of this title (relating to General Application).

(b) Permit alterations.

(1) A permit alteration shall be obtained:

(A) for any variation from a representation in a permit application that does not involve an increase in emission rates or a change in the character or method of control of emissions; or

(B) for any change in a general or special provision of a permit that does not involve an increase in emission rates or a change in the character or method of control of emissions.

(2) All requests for a permit alteration shall require prior approval by the Executive Director by submitting a request for permit alteration with information sufficient to demonstrate that the change does not interfere with the owner or operator's previous demonstrations of compliance with the requirements of §116.111 of this title.

(3) Permit alterations shall not be subject to the requirements of best available control technology identified in §116.111(c) of this title.

(c) Standard exemption in lieu of permit amendment or alteration. Notwithstanding subsections (a) or (b) of this section, no permit amendment or alteration is required if the changes to the permitted facility qualify for an exemption under Subchapter C of this chapter (regarding Permit Exemptions) unless prohibited by permit provision as provided in §116.115 of this title (relating to Special Provisions). All

such exempted changes to a permitted facility shall be incorporated into that facility's permit at such time as the permit is amended or renewed.

*§116.117. Distance Limitations.*

(a) Lead smelters. Pursuant to the Texas Clean Air Act, §382.53, a permit shall not be issued for a new lead smelting plant at a site located within 3,000 feet of the residence of any individual and at which lead smelting operations have not been conducted before August 31, 1987. This subsection does not apply to a modification of a lead smelting plant in operation on or before August 31, 1987, to a new lead smelting plant or modification of a plant with the capacity to produce not more than 200 pounds of lead per hour, or to a lead smelting plant that was located more than 3,000 feet from the nearest residence when the plant began operations.

(b) Hazardous waste permits. Permits for hazardous waste management facilities shall not be issued if the facility is to be located in the vicinity of specified public access areas under the following circumstances.

(1) No permit shall be issued for a new hazardous waste landfill or land treatment facility or an areal expansion of an existing facility if the boundary of the facility or expansion is to be located within 1,000 feet of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(2) No permit shall be issued for a new commercial hazardous waste management facility or the subsequent areal expansion of such a facility or unit of that facility if the boundary of the unit is to be located within 1/2 mile (2,640 feet) of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(3) For a subsequent areal expansion of a new commercial hazardous waste management facility that is required to comply with paragraph (2) of this subsection, distances shall be measured from a residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park only if such structure, water supply, or park was in place at the time the distance was certified for the original permit.

(4) No permit shall be issued for a new commercial hazardous waste management facility that is proposed to be located within 1/2 mile (2,640 feet) from an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park, at any distance beyond the

facility's property boundaries, unless the applicant demonstrates that the facility will be operated so as to safeguard public health and welfare and protect physical property and the environment.

(5) The measurement of distances required by paragraphs (1), (2), (3), and (4) of this subsection shall be taken toward an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park that is in use when the permit application is filed with the Texas Air Control Board. The restrictions imposed by paragraphs (1), (2), (3), and (4) of this subsection do not apply to a residence, church, school, day care center, surface water body used for a public drinking water supply, a dedicated public park located within the boundaries of a commercial hazardous waste management facility, or property owned by the permit applicant.

(6) The measurement of distances required by paragraphs (1), (2), (3), and (4) of this subsection shall be taken from a perimeter around the proposed hazardous waste management unit. The perimeter shall be no more than 75 feet from the edge of the proposed hazardous waste management unit.

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 February 12, 1993.

TRD-9318955

Lane Hartscock  
Deputy Director, Air Quality  
Planning  
Texas Air Control Board

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For further information, please call: (512) 908-1451

## Compliance History

### • 31 TAC §§116.120-116.126

The new sections are proposed under the Texas Clean Air Act (TCAA), §382.17, Texas Health and Safety Code, (Vernon 1990), which provide the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

#### §116.120. Applicability.

(a) Except as provided in §116.121 of this title (relating to Exemptions) as part of its construction permit review, or the review of an amendment, or renewal of an existing permit, the Texas Air Control Board (TACB) shall compile the following information:

(1) for a new facility at an existing site or for an amendment or renewal of

an existing permit, the compliance history for the existing site; or

(2) for a new facility at a new site, compliance history on similar facilities, if any, owned or operated by the applicant in Texas. The TACB may require the applicant to indicate which facilities the applicant considers to be similar.

(b) For a facility at a new site, if the applicant does not own or operate a similar facility in Texas, the applicant shall provide the TACB with a compliance history for similar facilities owned or operated by the applicant in other states.

§116.121. Exemptions. The Texas Air Control Board shall not be required to compile a compliance history where the total increased actual emissions of any specific contaminant (specific substance, e.g., benzene, arsenic, etc.) from the facility or site will be accompanied by greater than a 1.1 to 1 reduction of the same specific air contaminant (specific substance, e.g., benzene, arsenic, etc.) from the facility or site.

#### §116.122. Contents of Compliance History.

(a) The compliance history shall include a listing of all adjudicated decisions and compliance proceedings, as defined in §116.11 of this title (relating to Compliance History Definitions), involving the facility that is the subject of the permit application.

(b) If the applicant has no compliance history in the United States, then the applicant shall provide the Texas Air Control Board (TACB) with a compliance history for any similar facilities owned or operated by:

(1) a person who is presently an officer, director, or agent of the applicant;

(2) a parent corporation, subsidiary, or predecessor in interest of the applicant;

(3) one who owns 20% or more of the applicant, whether directly, as a shareholder, partner, beneficiary, or otherwise; or

(4) one who controls the applicant or has the ability to direct the conduct of the applicant.

(c) The compliance history shall include the following compliance events and associated information:

(1) for Texas facilities:

(A) criminal convictions known to the TACB and civil orders, judgments, and decrees identified by stating:

(i) the style of the case;

(ii) the tribunal issuing the conviction or judgment;

(iii) the docket number and the date of action; and

(iv) the general nature of the alleged violation;

(B) administrative enforcement orders identified by stating:

(i) the name or style of action;

(ii) the agency issuing the order;

(iii) the docket number and the date of the order; and

(iv) the general nature of the alleged violation;

(C) compliance proceedings identified by stating:

(i) the name or style of action;

(ii) the general nature of the alleged violation;

(2) for U.S. facilities outside Texas:

(A) criminal convictions and civil judgments identified by stating:

(i) the style of the case;

(ii) the tribunal issuing the conviction or judgment;

(iii) the docket number and date of action; and

(iv) the general nature of the alleged violation;

(B) administrative enforcement orders identified by stating:

(i) the name or style of action;

(ii) the agency issuing the order;

(iii) the docket number and the date of the order; and

(iv) the general nature of the alleged violation;

(C) for notices of violation issued by the U.S. Environmental Protection Agency (EPA):

(i) the name of the action;

(ii) the EPA identification number and date of notice; and

(iii) the general nature of the alleged violation;

(d) In compiling the applicant's compliance history pursuant to subsection (c) of this section, the TACB shall not

include violations of fugitive emission monitoring and recordkeeping requirements imposed either by §101.20(1) and (2) of this title (relating to Compliance with EPA Standards), or State Implementation Plan requirements applicable to major sources in nonattainment areas where:

(1) violations occurring after the effective date of this rule have been the subject of a TACB administrative enforcement action and the Board classified those violations as not being subject to compliance history review; or

(2) violations occurring during five years preceding the effective date of this rule have been the subject of TACB administrative enforcement action in which:

(A) the TACB did not classify those violations as either major seriousness or major impact for the purpose of administrative review; and

(B) the Board assessed a total administrative penalty of less than \$20,000 for any of those violations.

(c) The TACB may request an analysis of the significance of any of the compliance events identified in the compliance history and their relevance to the facility that is the subject of the application. The TACB request shall list specific compliance events requiring such an analysis.

**§116.123. Effective Dates.** The requirements under this undesignated head (concerning Compliance History) apply only to applications filed on or after December 9, 1992. For applications filed before June 1, 1993, neither the Texas Air Control Board (TACB) nor the applicant is required to include compliance events occurring before June 1, 1988. For applications filed on or after June 1, 1993, neither the TACB nor the applicant is required to include compliance events occurring more than five years prior to the date on which the application is filed.

**§116.124. Public Notice of Compliance History.** When public notice is required pursuant to §116.131 of this title (relating to Public Notification Requirements), the applicant shall include the following statement in the notice: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Air Control Board."

**§116.125. Preservation of Existing Rights and Procedures.** Nothing in this subchapter (concerning Compliance History) shall diminish the rights of any party in a contested case hearing to raise any issue authorized by the Texas Health and

Safety Code, §382.518(c), nor diminish the rights of any person to request and obtain compliance history information from the Texas Air Control Board. Nothing in this subchapter shall limit the authority of the Board to request and consider any other information that is relevant to the application under the law. Nothing in this subchapter shall create any right in third parties which did not exist before the effective date of this subchapter.

**§116.126. Voidance of Permit Applications.** If an applicant does not submit compliance history information within 180 days, upon written request, the Texas Air Control Board (TACB) will void the permit application. The applicant will also forfeit the fees associated with the permit application. A new permit application shall be required for further consideration by the TACB.

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-9318958

Lane Hartscock  
Deputy Director, Air Quality  
Planning  
Texas Air Control Board

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For further information, please call: (512) 908-1451

## Public Notification and Comment Procedures

- 31 TAC §§116.130-116.134, 116.136, 116.137

The new sections are proposed under the Texas Clean Air Act (TCAA), §382.17, Texas Health and Safety Code (Vernon 1990), which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

### §116.130. Applicability.

(a) Any person who applies for a new permit shall be required to publish notice of intent to construct a new facility or modify an existing facility in a newspaper in general circulation in the municipality where the facility is located. Any person who applies for a permit amendment shall provide public notification as required by the Executive Director.

(b) Upon written request by the owner or operator of a facility which previously has received a permit or special permit from the Texas Air Control Board, the Executive Director or designated representative may exempt the relocation of such

facility from the requirements of this section if there is no indication that operation of the facility at the proposed new location will significantly affect ambient air quality and no indication that operation of the facility at the proposed new location will cause a condition of air pollution.

### §116.131. Public Notification Requirements.

(a) Notification by applicant. If the application is complete, for any permit subject to the Federal Clean Air Act (FCAA), Title I Part C or D or to Title 40 Code of Federal Regulations (CFR), Part 51.165(b), the Executive Director shall state a preliminary determination to issue or deny the permit and require the applicant to conduct public notice of the proposed construction. If an application is received for a permit not subject to the FCAA, Part C or D or to 40 CFR 51.165(b), the Executive Director shall require the applicant to conduct public notice of the proposed construction. In all cases, public notice shall include the information specified in §116.132 of this title (relating to Public Notice Format) and the applicant shall provide such notice using each of the methods specified in §116.132 of this title. The Executive Director may specify that additional information needed to satisfy public notice requirements of 40 CFR §52.21 also be included in the notice published pursuant to §116.132 of this title.

(b) Availability of application for review. The Executive Director shall make the completed application (except sections relating to confidential information) and the preliminary analyses of the application completed prior to publication of the public notice available for public inspection during normal business hours at the TACB Austin office and at the appropriate TACB regional office in the region where construction is proposed throughout the comment period established in the notice published pursuant to §116.132 of this title.

### §116.132. Public Notice Format.

(a) Publication in public notices section of newspaper. At the applicant's expense, notice of intent to obtain a permit to construct a facility, modify an existing facility, operate a federal source, or to seek permit renewal review shall be published in the public notice section of two successive issues of a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located, or in the municipality nearest to the location or proposed location of the facility. The notice shall contain the following information:

- (1) permit application number;
- (2) company name;
- (3) type of facility;

(4) description of the location of facility or proposed location of the facility;

(5) contaminants to be emitted;

(6) preliminary determination of the Executive Director to issue or not issue the permit (for permits subject to the Federal Clean Air Act, Title I Part C or D or to 40 Code of Federal Regulations 51.165(b));

(7) location and availability of copies of the completed permit application and the Texas Air Control Board's (TACB's) preliminary analyses;

(8) public comment period;

(9) procedure for submission of public comments concerning the proposed construction;

(10) notification that a person who may be affected by emission of air contaminants from the facility is entitled to request a hearing in accordance with TACB rules; and

(11) name, address, and phone number of the regional TACB office to be contacted for further information.

(b) Publication elsewhere in the newspaper. Another notice with a size of at least 96.8 square centimeters (15 square inches) and whose shortest dimension is at least 7.6 centimeters (three inches) shall be published in a prominent location elsewhere in the same issue of the newspaper and shall contain the information specified in paragraphs (a)(1)-(4) of this section and note that additional information is contained in the notice published pursuant to subsection (a) of this section in the public notice section of the same issue.

#### *§116.133. Sign Posting Requirements.*

(a) At the applicant's expense, a sign or signs shall be placed at the site of the proposed facility declaring the filing of an application for a permit and stating the manner in which the Texas Air Control Board (TACB) may be contacted for further information. Such signs shall be provided by the applicant and shall meet the following requirements:

(1) signs shall consist of dark lettering on a white background and shall be no smaller than 18 inches by 28 inches;

(2) signs shall be headed by the words "PROPOSED AIR QUALITY PERMIT" in no less than two-inch bold face block printed capital lettering;

(3) signs shall include the words "APPLICATION NO. " and the number of the permit application in no less than one-inch bold-face block printed capital lettering (more than one number may be included on the signs if the respective public comment periods coincide);

(4) signs shall include the words "for further information contact" in no less than 1/2-inch lettering;

(5) signs shall include the words "Texas Air Control Board," and the address of the appropriate TACB regional office in no less than one-inch bold-face capital lettering and 3/4-inch bold-face lower case lettering; and

(6) signs shall include the phone number of the appropriate TACB regional office in no less than two-inch bold-face numbers.

(b) The sign or signs must be in place by the date of publication of the newspaper notice required by §116.132 of this title (relating to Public Notice Format) and must remain in place and legible throughout the period of public comment provided for in §116.136(a) of this title (relating to Public Comment Procedures).

(c) Each sign placed at the site must be located within 10 feet of each (every) property line paralleling a street or other public thoroughfare. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs shall be required along any property line paralleling a public thoroughfare.

(d) These sign requirements do not apply to properties under the same ownership which are noncontiguous and/or separated by intervening public thoroughfares, unless directly involved by the permit application.

*§116.134. Notification of Affected Agencies.* When newspaper notices are published in accordance with §116.132 of this title (relating to Public Notice Format), the permit applicant shall furnish a copy of such notices and date of publication to the Texas Air Control Board (TACB) in Austin; the Environmental Protection Agency Regional Administrator in Dallas; all local air pollution control agencies with jurisdiction in the county in which the construction is to occur; and the air pollution control agency of any nearby state in which air quality may be adversely affected by the emissions from the new or modified facility. Along with such notices furnished to the TACB, the permit applicant shall certify that the signs required by §116.133 of this title (relating to Sign Posting Requirements) have been posted in accordance with the provisions of that section.

#### *§116.136. Public Comment Procedures.*

(a) Comment period. Interested persons may submit written comments, including requests for public hearings pursuant to the Texas Clean Air Act, §382.56, on the permit application and on the Executive

Director's preliminary decision to issue or not to issue the permit. All such comments and hearing requests must be received in writing within 30 days of the last publication date of the notices specified in §116.132 of this title (relating to Public Notice Format). The comment period for permit renewals and for concrete batch plants which meet the conditions of a standard exemption is 15 days. Any requests for a contested case hearing shall include a brief, but specific, written statement of interest and basis for challenging the application. Such statement shall convey in plain language the requestor's location relative to the proposed facility, why the requestor believes he or she will be affected by emissions from the proposed facility, what the requestor's concerns are about the emissions from the proposed facility, and how the requestor believes emissions from the facility will affect him or her if permitted. This statement shall not be used as the basis for denial of party status in any contested case hearing. Party status determinations will be made based on evidence developed at the initial prehearing conferences.

(b) Consideration of comments. All written comments received by the Executive Director during the period specified in subsection (a) of this section shall be considered in determining whether to issue or not to issue the permit. The Executive Director shall make record of all comments received together with the agency analysis of such comments available for public inspection during normal business hours at the Austin office of the Texas Air Control Board and appropriate regional office.

#### *§116.137. Notification of Final Action by the Texas Air Control Board.*

(a) Notification of applicant. Within 180 days of receipt of a completed application, the Executive Director shall notify the permit applicant of the final decision to grant or deny the permit, provided:

(1) no requests for public hearing or public meeting on the proposed facility have been received;

(2) the applicant has satisfied all public notification requirements of this section; and

(3) the federal regulations for Prevention of Significant Deterioration of Air Quality and nonattainment review do not apply.

(b) Notification of commenters. Persons submitting written comments in accordance with §116.136(a) of this title (relating to Public Comment Procedures) or persons submitting a written request to be notified of the final agency action within the comment period specified in §116.136(a) of this title will be notified of

the Executive Director's final decision at the same time that the applicant is notified.

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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Lane Hartsock  
Deputy Director, Air Quality  
Planning  
Texas Air Control Board

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For further information, please call: (512) 908-1451

## Subchapter B. New Source Review Permits

### Permit Fees

#### • 31 TAC §§116.140-116.141, 116.143

The new sections are proposed under the Texas Clean Air Act (TCAA), §382.17, Texas Health and Safety Code (Vernon 1990), which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

**§116.140. Applicability.** Any person who applies for a permit to construct a new facility or to modify an existing facility, or for an amendment to an existing permit pursuant to §116.110 of this title (relating to Applicability) shall remit, at the time of application for such permit, a fee based on the estimated capital cost of the project. The fee will be determined as set forth in §116.141 of this title (relating to Determination of Fees). Fees will not be charged for operating permits, permit revisions, amendments to special permits, standard exemptions, site approvals for permitted portable facilities, changes of ownership, or changes of location of permitted facilities.

#### **§116.141. Determination of Fees.**

(a) The estimated capital cost of the project is the estimated total cost of the equipment and services that would normally be capitalized according to standard and generally accepted corporate financing and accounting procedures.

(b) The following fee schedule may be used by a permit applicant to determine the fee to be remitted with a permit application.

(1) If the estimated capital cost of the project is less than \$300,000 or if the project consists of new facilities controlled and operated directly by the federal government for which an application is submitted after January 1, 1987, and the federal regu-

lations for Prevention of Significant Deterioration (PSD), Review do not apply, the fee is \$450. The provisions of subsections (c) and (d) of this section do not apply to a project consisting of new facilities controlled and operated directly by the federal government.

(2) If the estimated capital cost of the project is \$300,000 or more and the PSD regulations do not apply, the fee is 0.15% of the estimated capital cost of the project. The maximum fee is \$75,000.

(c) If the estimated capital cost of the project is less than \$50 million, the permit applicant shall include a certification that the estimated capital cost of the project is correct. Certification of the estimated capital cost of the project may be spot checked and evaluated for reasonableness during permit processing. The reasonableness of project capital cost estimates used as a basis for permit fees shall be determined by the extent to which such estimates include fair and reasonable estimates of the capital value of the direct and indirect costs listed as follows:

#### (1) Direct costs:

(A) process and control equipment not previously owned by the applicant and permitted in Texas;

(B) auxiliary equipment, including exhaust hoods, ducting, fans, pumps, piping, conveyors, stacks, storage tanks, waste-disposal facilities, and air pollution control equipment specifically needed to meet permit and regulation requirements;

#### (C) freight charges;

(D) site preparation (including demolition), construction of fences, outdoor lighting, road, and parking areas;

(E) installation (including foundations), erection of supporting structures, enclosures or weather protection, insulation and painting, utilities and connections, process integration, and process control equipment;

(F) auxiliary buildings, including materials storage, employee facilities, and changes to existing structures;

(G) ambient air monitoring network.

#### (2) Indirect costs:

(A) final engineering design and supervision, and administrative overhead;

(B) construction expense (including construction liaison), securing local building permits, insurance, temporary construction facilities, and construction clean-up;

(C) contractor's fee and overhead.

(d) A fee of \$75,000 shall be required if no estimate of capital project cost is included with a permit application.

(e) An applicant for a permit or permit amendment not involving any capital expenditure shall be required to remit the minimum permit fee of \$450.

**§116.143. Payment of fees.** All permit fees will be remitted in the form of a check or money order made payable to the Texas Air Control Board and delivered with the application for permit or amendment to the Texas Air Control Board, 12124 Park 35 Circle, Austin, Texas 78753. Required fees must be received before the agency will begin examination of the application.

(1) Single fee. The Executive Director shall charge only one fee for multiple permits issued for one project if it is determined that the following conditions are met:

(A) all the component or separate processes being permitted are integral or related to the overall project;

(B) the project is under continuous construction of the component parts;

(C) the permitted facilities are to be located on the same or contiguous property; and

(D) applications for all permits for the project must be submitted at the same time.

(2) Return of fees. Fees must be paid at the time an application for a permit or amendment is submitted. If no permit or amendment is issued by the agency or if the applicant withdraws the application prior to issuance of the permit or amendment, one-half of the fee will be refunded except that the entire fee will be refunded for any such application for which a standard exemption is allowed. No fees will be refunded after a deficient application has been voided or after a permit or amendment has been issued by the agency.

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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Lane Hartssock  
Deputy Director, Air Quality  
Planning  
Texas Air Control Board

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## Nonattainment Review

### • 31 TAC §116.150, §116.151

The new sections are proposed under the Texas Clean Air Act (TCAA), §382.17, Texas Health and Safety Code (Vernon 1990), which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

*§116.150. New Major Source or Major Modification in Ozone Non-attainment Area.* The owner or operator of a proposed new facility which is a major stationary source of volatile organic compound (VOC) emissions or nitrogen oxides (NO<sub>x</sub>) emissions, or which is a facility that will undergo a major modification with respect to VOC or NO<sub>x</sub> emissions, and which is to be located in any area designated as nonattainment for ozone in accordance with the Federal Clean Air Act (FCAA), §107, shall meet the additional requirements of paragraphs (1)-(4) of this section. Table I of §116.12 of this title (relating to Nonattainment Review Definitions), specifies the various classifications of nonattainment along with the associated emission levels which designate a major stationary source or major modification for those classifications. The de minimis threshold test shall be required for proposed VOC or NO<sub>x</sub> emissions increases that equal or exceed five tons per year in moderate, serious, and severe ozone nonattainment areas. In applying the de minimis threshold test, if the net emissions increases aggregated over the contemporaneous period are greater than the major modification levels stated in Table I, then the following requirements apply.

(1) The proposed facility shall comply with the lowest achievable emissions rate (LAER) as defined in §116.12 of this title for the pollutant for which the facility is a new major source or major modification. LAER shall be applied to each new emissions unit and to each existing emissions unit at which a net emissions increase will occur as a result of a physical change or change in the method of operation of the emissions unit.

(2) All major stationary sources owned or operated by the applicant (or by any person controlling, controlled by, or under common control with the applicant) in the state shall be in compliance or on a

schedule for compliance with all applicable state and federal emission limitations and standards.

(3) At the time the new or modified facility commences operation, the net emissions increases from all new or modified facilities resulting from applications received after November 15, 1992, shall be offset. The proposed facility shall use the offset ratio for the appropriate nonattainment classification as defined in §116.12 of this title and shown in Table I of §116.12 of this title.

(4) In accordance with the FCAA, the permit application shall contain an analysis of alternative sites, sizes, production processes, and control techniques for the proposed source. The analysis shall demonstrate that the benefits of the proposed location and source configuration significantly outweigh the environmental and social costs of that location.

*§116.151. New Major Source or Major Modification in Nonattainment Area Other than Ozone.* The owner or operator of a proposed facility in a designated nonattainment area for an air contaminant other than ozone, which will be a new major stationary source or a major modification for that nonattainment air contaminant, must meet the additional requirements of paragraphs (1)-(4) of this section regardless of the degree of impact of its emissions on ambient air quality. Table I, of §116.12 of this title (relating to Nonattainment Review Definitions), specifies the various classifications of nonattainment along with the associated emission levels which designate a major stationary source or major modification for those classifications.

(1) The proposed facility shall comply with the lowest achievable emissions rate (LAER) as defined in §116.12 of this title for the nonattaining pollutants for which the facility is a new major source or major modification. LAER shall be applied to each new emissions unit and to each existing emissions unit at which a net emissions increase will occur as a result of a physical change or change in the method of operation of the emissions unit.

(2) All major stationary sources owned or operated by the applicant (or by any person controlling, controlled by, or under common control with the applicant) in the state shall be in compliance or on a schedule for compliance with all applicable state and federal emission limitations and standards.

(3) At the time the new or modified facility commences operation, the net emissions increases from all new or modified facilities resulting from applications received after November 15, 1992, shall be offset. The proposed facility shall use the

offset ratio for the appropriate nonattainment classification as defined in §116.12 of this title and shown in Table I of §116.12 of this title.

(4) In accordance with the Federal Clean Air Act, the permit application shall contain an analysis of alternative sites, sizes, production processes, and control techniques for the proposed source. The analysis shall demonstrate that the benefits of the proposed location and source configuration significantly outweigh the environmental and social costs of that location.

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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Lane Hartssock  
Deputy Director, Air Quality  
Planning  
Texas Air Control Board

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For further information, please call: (512) 908-1451

## Prevention of Significant Deterioration Review

### • 31 TAC §§116.160-116.163

The new sections are proposed under the Texas Clean Air Act (TCAA), §382.17, Texas Health and Safety Code (Vernon 1990), which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

#### *§116.160. Prevention of Significant Deterioration Requirements.*

(a) The proposed facility shall comply with the Prevention of Significant Deterioration (PSD) of Air Quality regulations promulgated by the U.S. Environmental Protection Agency (EPA) in Title 40 Code of Federal Regulations (CFR) at 40 CFR 52.21 as amended October 17, 1988, and the Definitions for Protection of Visibility promulgated at 40 CFR 51.301, hereby incorporated by reference.

(b) The following paragraphs are excluded:

(1) 40 CFR 52.21(j), concerning control technology review;

(2) 40 CFR 52.21(l), concerning air quality models;

(3) 40 CFR 52.21(q), concerning public notification (provided, however, that a determination to issue or not issue a permit shall be made within one year after receipt of a complete permit application so long as a contested case hearing has not been called on the application);

(4) 40 CFR 52.21(r)(2), concerning source obligation;

(5) 40 CFR 52.21(s), concerning environmental impact statements;

(6) 40 CFR 52.21(u), concerning delegation of authority; and

(7) 40 CFR 52.21(w), concerning permit rescission.

(c) The term "Executive Director" shall replace the word "Administrator," except in 40 CFR 52.21(b)(17), (f)(1)(v), (f)(3), (f)(4)(i), (g), and (t). "Administrator or Executive Director" shall replace "Administrator" in 40 CFR 52.21(b)(3)(iii), and "Administrator and Executive Director" shall replace "Administrator" in 40 CFR 52.21(p)(2).

(d) All estimates of ambient concentrations required under this subsection shall be based on the applicable air quality models and modeling procedures specified in the *EPA Guideline on Air Quality Models*, as amended, or models and modeling procedures currently approved by the EPA for use in the state program, and other specific provisions made in the PSD state implementation plan. If the air quality impact model approved by EPA or specified in the guideline is inappropriate, the model may be modified or another model substituted on: a case-by-case basis; or a generic basis for the state program, where appropriate. Such a change shall be subject to notice and opportunity for public hearing and written approval of the Administrator of the EPA.

**§116.161. Source Located in an Attainment Area with a Greater than De Minimis Impact.** The Texas Air Control Board may not issue a permit to any new major stationary source or major modification located in an area designated as attainment or unclassifiable, for any National Ambient Air Quality Standard (NAAQS) pursuant to the Federal Clean Air Act, §107, if ambient air impacts from the proposed source would cause or contribute to a violation of any NAAQS. In order to obtain a permit, the source must reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to eliminate the predicted exceedences of the NAAQS. A major source or major modification will be considered to cause or contribute to a violation of a NAAQS when the emissions from such source or modification would, at a minimum, exceed the de minimis impact levels specified in §116.10 of this title (relating to General Definitions) at any locality that is designated as nonattainment or is predicted to be nonattainment for the applicable standard.

**§116.162. Evaluation of Air Quality Impacts.** In evaluating air quality impacts under §116.160 of this title (relating to Prevention of Significant Deterioration Requirements) or §116.161 of this title (relating to Sources Located in an Attainment Area with a Greater than De Minimis Impact), the owner or operator of a proposed new facility or modification of an existing facility shall not take credit for reductions in impact due to dispersion techniques as defined in Title 40 Code of Federal Regulations (CFR). The relevant federal regulations are incorporated herein by reference, as follows:

(1) 40 CFR 51.100(hh)-(kk) promulgated November 7, 1986;

(2) the definitions of "owner or operator," "emission limitation and emission standards," "stack," "a stack in existence," and "reconstruction," as given under 40 CFR §51.100(f), (z), (ff), (gg), and 40 CFR 60, respectively;

(3) 40 CFR 51.118(a), (b), and (c); and

(4) 40 CFR 51.164.

**§116.163. Prevention of Significant Deterioration Permit Fees.**

(a) If the estimated capital cost of the project is less than \$300,000 or if the project consists of new facilities controlled and operated directly by the federal government for which an application is submitted after January 1, 1987, and the federal regulations for Prevention of Significant Deterioration (PSD) of Air Quality are applicable, the fee is \$1,500.

(b) If the estimated capital cost of the project is \$300,000 or more and the PSD regulations are applicable, the fee is 0.5% of the estimated capital cost of the project. The maximum fee is \$75,000.

(c) Whenever a permit application is submitted under PSD requirements, there shall be no additional fee for the state new source review permit application.

(d) Certification of the estimated capital cost of the project shall be provided in accordance with §116.141(c) and (d) of this title (relating to Determination of Fees).

(e) A fee of \$75,000 shall be required if no estimate of capital project cost is included with a permit application.

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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Lane Hartssock  
Deputy Director, Air Quality  
Planning  
Texas Air Control Board

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For further information, please call: (512) 908-1451

## Emission Reductions: Offsets

• 31 TAC §§116.170, 116.174, 116.175

The new sections are proposed under the Texas Clean Air Act (TCAA), §382.17, Texas Health and Safety Code (Vernon 1990), which provide TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

**§116.170. Applicability for Reduction Credits.** At the time of application for a permit in accordance with this chapter, any applicant who has effected air contaminant emission reductions may also apply to the Executive Director to use such emission reductions to offset emissions expected from the facility for which the permit is sought, provided that the following conditions are met.

(1) The emission reductions are not required by any provision of the Texas State Implementation Plan as promulgated by the United States Environmental Protection Agency in 40 Code of Federal Regulations, Part 52, Subpart SS, nor by any other federal regulation under the Federal Clean Air Act, as amended, such as New Source Performance Standards. Minimum offset ratios as specified in Table I of §116.12 of this title (relating to Nonattainment Review Definitions) shall be used in areas designated as nonattainment areas.

(2) The applicant furnished documentation at the time of his permit application to substantiate his claim of emission reductions previously effected. The following information must be included in the documentation:

(A) location and identity of the source(s) where emissions are reduced;

(B) chemical composition of emissions reduced;

(C) date(s) when emission reductions occurred;

(D) amount of emission reductions expressed in rates of tons per year and in pounds per hour;

(E) a complete description of the reduction method (i.e., source shut-down, process or operational change, type of control device, etc.);

(F) a certification by the applicant that the emission reductions have in fact been achieved and that the same reduc-

tions have not been used previously and will not be used subsequently to offset another source; and

(G) any other pertinent detailed descriptive information that may be requested by the Executive Director.

(3) Emissions increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source, shall be allowed to be offset by alternative or innovative means, provided the following conditions are met:

(A) any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source permitted to test such engines as of November 15, 1990;

(B) the source demonstrates to the satisfaction of the Texas Air Control Board (TACB) that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source;

(C) the source has obtained a written finding from the Department of Defense, Department of Transportation, National Aeronautics and Space Administration, or other appropriate federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security; and

(D) the source will comply with an alternative measure, imposed by TACB, designed to offset any emission increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, TACB may impose an emissions fee to be paid which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that area during the previous three years.

**§116.174. Determination by Executive Director to Authorize Reductions.** The Executive Director may grant authority to a permit applicant to use prior emission reductions and emission reductions granted to the applicant by another entity (either public or private) in accordance with §116.170 of this title (relating to Applicability for Reduction Credits) if the Texas Air Control Board determines that the prior emission reductions have, in fact, occurred and, when considered with other emission reductions

that may be required by the permit as well as contaminants that will be emitted by the new source, will result in compliance with §116.150 (b) of this title (relating to New Major Source or Major Modification Required), §116.160 of this title (relating to Prevention of Significant Deterioration Requirements), and §116.152 of this title (relating to Evaluation of Air Quality Impacts), as applicable, in the area where the new source is to be located. Prior as well as future emission reductions to be used as an offset shall be made conditions for granting authority to construct the proposed new source and shall be enforced.

**§116.175. Recordkeeping.** The Executive Director will maintain no records of emission offset credits claimed by an applicant in accordance with §116.170 of this title (relating to Applicability for Reduction Credits) other than those contained in permit application and permit files. The applicant shall maintain all records necessary to substantiate claims of emission reductions and shall make such records available for inspection upon request of the Executive Director.

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

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Lane Hartssock  
Deputy Director, Air Quality  
Planning  
Texas Air Control Board

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For further information, please call: (512) 908-1451

## ◆ ◆ ◆ Subchapter C. Permit Exemptions

### • 31 TAC §116.211-116.213

The new sections are proposed under the Texas Clean Air Act (TCAA), §382.17, Texas Health and Safety Code (Vernon 1990), which provides TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

#### **§116.211. Standard Exemption List.**

(a) Pursuant to the Texas Clean Air Act (TCAA), §382.57, the facilities or types of facilities listed in the Standard Exemption List, dated June 18, 1992, as filed in the Secretary of State's Office and herein adopted by reference, are exempt from the permit requirements of the TCAA, §382.518, because such facilities will not make a significant contribution of air contaminants to the atmosphere. A facility shall

meet the following conditions to be exempt from permit requirements.

(1) Total actual emissions authorized under standard exemption from the proposed facility shall not exceed 250 tons per year (TPY) of carbon monoxide (CO) or nitrogen oxides (NO<sub>x</sub>), or 25 TPY of volatile organic compounds (VOC) or sulfur oxides (SO<sub>x</sub>) or inhalable particulate matter (PM<sub>10</sub>), or 25 TPY of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.

(2) Total actual emissions authorized under standard exemption from the proposed facility which is located in a nonattainment area for that pollutant shall not exceed 50 TPY of CO, or 25 TPY of SO<sub>2</sub>, or 15 TPY of PM<sub>10</sub>, whichever applies. In an ozone nonattainment area total actual emissions authorized under standard exemption from the proposed facility shall not exceed 25 TPY of VOC or NO<sub>x</sub>.

(3) The property where the proposed facility is to be located shall not exceed 250 TPY of CO or NO<sub>x</sub> or 25 TPY of VOC or SO<sub>2</sub> or PM<sub>10</sub> or 25 TPY of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen, unless at least one facility at such property has been subject to public notification and comment as required in Subchapter B of this chapter (relating to Public Notification and Comment Procedures).

(4) Construction or modification of the facility shall be commenced prior to the effective date of a revision of the Standard Exemption List under which the construction or modification would no longer be exempt.

(5) The proposed facility shall comply with the applicable provisions of the Federal Clean Air Act (FCAA), §111 (regarding federal New Source Performance Standards) and §112 (regarding hazardous air pollutants), and the new source review requirements of Part C and Part D, of the FCAA and regulations promulgated thereunder.

(6) There are no permits under the same Texas Air Control Board (TACB) Account Number that contain a condition or conditions precluding use of the standard exemption or standard exemptions.

(b) Notwithstanding the provisions of this section, any facility which constitutes a new major source, or any modification which constitutes a major modification under the FCAA, as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder shall be subject to the requirements of §116.110 of this title (relating to Applicability) rather than this section.

(c) No person shall circumvent by artificial limitations the requirements of

§116.110 of this title.

(d) The emissions from the facility shall comply with all rules and regulations of TACB and with the intent of the TCAA, including protection of health and property of the public and all emissions control equipment shall be maintained in good condition and operated properly during operation of the facility.

(e) Copies of the current Standard Exemption List are available from the TACB Air Quality Planning Annex, located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, Texas 78753, and at all TACB regional offices.

(f) Installations exempted by TACB may be required by local air pollution control agencies to receive a permit or permits from that agency, or register with that agency.

**§116.212. Public Notification and Comment Procedures.** Facilities constructed under the Standard Exemption List that consist of permanently or temporarily located concrete plants that accomplish wet batching, dry batching, or central mixing, or specialty wet batch, concrete, mortar, grout mixing, or pre-cast concrete products, shall conduct public notice of the proposed construction. In all cases, public notice shall include the information specified in paragraph (1)(A) and (B) of this section.

(1) Public notification procedures.

(A) Publication in public notices section of a newspaper. At the applicant's expense, notice of intent to construct shall be published in the public notice section of two successive issues of a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility. The notice shall contain the following information:

- (i) application number;
- (ii) company name;
- (iii) type of facility;
- (iv) description of the location of facility or proposed location of the facility;
- (v) contaminants to be emitted;
- (vi) location and availability of copies of the completed application;
- (vii) public comment period;
- (viii) procedure for submission of public comments concerning the proposed construction;

(ix) notification that a person residing within 1/4 mile of the proposed plant is an affected person who is entitled to request a hearing in accordance with Texas Air Control Board rules; and

(x) name, address, and phone number of the regional TACB office to be contacted for further information.

(B) Publication elsewhere in the newspaper. Another notice with a size of at least 96.8 square centimeters (15 square inches) and whose shortest dimension is at least 7.6 centimeters (three inches) shall be published in a prominent location elsewhere in the same issues of the newspaper and shall contain the information specified in subparagraph (A) (i)-(iv) of this paragraph and note that additional information is contained in the notice published pursuant to subparagraph (A) of this paragraph in the public notice section of the same issue.

(2) Comment procedures.

(A) Comment period. Interested persons may submit written comments to the executive director, including requests for public hearings pursuant to the Texas Clean Air Act, §382.56, on the executive director's preliminary decision to issue or not to issue the standard exemption. All such comments and hearing requests must be received in writing within 15 days of the last publication date of the notices specified in paragraph (1)(A) and (B) of this section. Any requests for a contested case hearing shall include a brief, but specific, written statement of interest and basis for challenging the application. Such statement shall convey in plain language the requestor's location relative to the proposed facility, why the requestor believes he or she will be affected by emissions from the proposed facility, what the requestor's concerns are about the emissions from the proposed facility, and how the requestor believes emissions from the facility will affect him or her if permitted. This statement shall not be used as the basis for denial of party status in any contested case hearing. Party status determinations will be made based on evidence developed at the initial prehearing conferences.

(B) Consideration of comments. All written comments received by the Executive Director during the period specified in subparagraph (A) of this paragraph shall be considered in determining whether to issue or not to issue the standard exemption. The Executive Director shall make record of all comments received together with the agency analysis of such comments available for public inspection during normal business hours at the Austin

office of TACB and appropriate regional office.

**§116.213. Registration of Emissions.** An applicant may submit a certified registration of the maximum emission rates from the facilities qualifying for a standard exemption in order to establish enforceable allowable emission rates which are below those allowed in §116.211 of this title (relating to Standard Exemption List). All representations with regard to construction plans, permitting procedures, and maximum emission rates in any specially certified registration for a standard exemption become conditions upon which the exempt facility shall be constructed and operated. It shall be unlawful for any person to vary from such representation if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in an increase in the discharge of the various emissions, unless the registration is first revised. The special certification must include documentation of the basis of emission estimates and a written statement by the registrant certifying that the maximum emission rates listed on the registration reflect the reasonably anticipated maximums for operation of the facility. The specially certified registration shall be maintained on site and be provided immediately upon request by representatives of the Texas Air Control Board or any air pollution control agency having jurisdiction. Copies of the certified registration shall be included in subsequent applications for Prevention of Significant Deterioration Requirements and Nonattainment Review.

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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Lane Harsock  
Deputy Director, Air Quality  
Planning  
Texas Air Control Board

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For further information, please call: (512) 908-1451

## Subchapter D. Permit Renewals

### • 31 TAC §§116.310-116.314

The new sections are proposed under the Texas Clean Air Act (TCAA), §382.17, Texas Health and Safety Code (Vernon 1990), which provides TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

**§116.310. Notification of Permit Holder.** The Texas Air Control Board (TACB)

shall provide written notice to the holder of a permit that the permit is scheduled for review. Such notice will be provided by certified or registered United States Mail no less than 180 days prior to the expiration of the permit. The notice shall specify the procedure for filing an application for review and the information to be included in the application. The application shall be completed by the holder of the permit and returned to TACB within 90 days of receipt of the notice. Pursuant to Chapter 691, House Bill 1393 (72nd Legislature, Regular Session), TACB shall exempt a holder of a permit from any increased fee or other penalty for failure to renew the permit if the individual establishes, to the satisfaction of TACB, that the failure to renew in a timely manner occurred because the individual was on active duty in the United States Armed Forces serving outside the State of Texas.

#### *§116.311. Permit Renewal Application.*

(a) In order to be granted a permit renewal, the owner or operator of the facility shall submit information in support of the application which demonstrates that:

(1) the emissions from the facility comply with all applicable specifications and requirements in the Texas Air Control Board (TACB) rules and the Texas Clean Air Act (TCAA);

(2) the facility is being operated in accordance with all requirements and conditions of the existing permit, including representations in the application for permit to construct and subsequent amendments, and any previously granted renewal;

(3) the facility has appropriate means to measure the emission of significant air contaminants as determined to be necessary by the executive director;

(4) the facility uses that control technology determined by the executive director to be economically reasonable and technically practicable considering the age of the facility and the impact of its emissions on the surrounding area;

(5) the emissions from the facility meet at least the requirements of any applicable new source performance stan-

dards promulgated by the Environmental Protection Agency (EPA) under the authority of the Federal Clean Air Act (FCAA), §111, as amended;

(6) the emissions from the facility meet at least the requirements of any applicable emission standard for hazardous air pollutants promulgated by the EPA under the authority of the FCAA, §112, as amended.

(b) the TACB shall review the compliance history of the facility in consideration of granting a permit renewal. Upon request of the executive director, the application shall include additional information which demonstrates the extent to which specified notices of violation (NOVs) relate to the facility. In order for the permit to be renewed, the application shall include information demonstrating that, notwithstanding such NOVs, the facility is or has been in substantial compliance with the provisions of the TCAA and the terms of the existing permit. If the facility has a history which demonstrates failure to maintain substantial compliance with the provisions of the TCAA or the terms of the existing permit, the renewal shall not be granted. If the facility has any unresolved nonclerical violations of the TACB rules, the renewal shall not be granted unless the facility is brought into compliance or is complying with the terms of an applicable board order or court order prior to the expiration of the permit as identified in subsection (c) of this section.

(c) A permit holder that fails to submit an application for review and renewal within 90 days after receiving notification from TACB pursuant to subsection (a) of this section, will cause the subject permit to expire, unless the time period for the submission of the application is extended by the Executive Director. Permits are subject to the following renewal schedule.

(1) Any permit issued before December 1, 1991, is subject for review 15 years after the date of issuance.

(2) Any permit issued on or after December 1, 1991, is subject for review every five years after the date of issuance.

*§116.312. Public Notification and Comment Procedures.* The executive director shall mail a written notification to the permit holder within 30 days of receipt of a completed application for permit review and renewal, as determined by the executive director of the Texas Air Control Board (TACB). The notification will acknowledge receipt of the application and require the applicant to provide public notice of the application for permit renewal according to §116.132 of this title (relating to Public Notice Format) and §116.133 of this title (relating to Sign Posting Requirements). All requirements pertaining to signs and public notification in §116.132 of this title and §116.133 of this title and to public comments in §116.136 of this title (relating to Public Comment Procedures), which apply to proposed construction, proposed facilities, and permit applications shall apply likewise to proposed renewals, existing facilities, and renewal applications. The sign heading required under §116.133(a)(2) of this title shall read "PROPOSED RENEWAL OF AIR QUALITY PERMIT." When newspaper notices are published in accordance with §116.132 of this title, the applicant for permit renewal shall furnish a copy of such notices and dates of publication to TACB in Austin and all local air pollution control agencies with jurisdiction in the county in which the facility is located. Along with such notices furnished to TACB, the applicant shall certify that the signs required by §116.133 of this title have been posted in accordance with the provisions of §116.133(a) (2).

*§116.313. Renewal Application Fees.* The holder of a permit to be reviewed for renewal by the Texas Air Control Board (TACB) shall remit a fee with each renewal application, pursuant to the Texas Clean Air Act, §382. 62(a)(1)(B), based on the total annual allowable emissions from the permitted facility for which the renewal is being sought, as applied to the following table:

RENEWAL FEE TABLE\*

X = TOTAL ALLOWABLE (TONS/YEAR)	BASE FEE	INCREMENTAL FEE
X ≤ 5	\$ 300	-
5 < X ≤ 24	\$ 300	\$35/ton
24 < X ≤ 99	\$ 965	\$25/ton

RENEWAL FEE TABLE\* (Continued)

X = TOTAL ALLOWABLE (TONS/YEAR)	BASE FEE	INCREMENTAL FEE
99 < X ≤ 994	\$ 2,840	\$ 8/ton
X > 994	\$10,000	-

Minimum fee: \$300

Maximum fee: \$10,000

\* To calculate the fee, multiply the number of tons in excess of the lower limit of the appropriate category by the incremental fee, then add this amount to the base fee. For example, if total emissions of all air contaminants are 50 tons per year, the total fee would be \$1,615 (base fee of \$965, plus incremental fee of \$25 x 26 tons or \$650).

This fee shall be due and payable at the time application for review and renewal is filed with TACB in response to written notice from TACB consistent with §116.310 of this title (relating to Notification of Permit Holder). No fee will be accepted before the permit holder has been notified by TACB that the permit is scheduled for

review. The basis for fees is the schedule in effect at the time the application is filed. All permit review fees shall be remitted by check or money order payable to the Texas Air Control Board, located at 12124 Park 35 Circle, Austin, Texas 78753. Required fees must be received before the agency will consider an application to be complete.

**§116.314. Review Schedule.**

(a) Renewal of permit. Subsequent to review, the executive director shall renew a permit if it is determined the facility meets the requirements of §116.311 of this title (relating to Permit Renewal Applications) and §116.312 of this title (relating to Public Notification and Comment Procedures). The executive director shall notify the permit holder in writing of the decision regarding renewal. If the permit cannot be renewed, the Executive Director shall forward, with the notice, a report which describes the basis for the determination. If denial is based on failure to meet the requirements of §116.311(a) of this title, the executive director's report shall establish a schedule for compliance with the renewal requirements. The report shall be forwarded to the permit holder no later than 180 days after the Texas Air Control Board (TACB) receives a completed application. The permit shall be renewed if the requirements are met according to the schedule specified in the report and the executive director shall notify the permit holder in writing of the permit renewal. However, if denial is based on failure to maintain substantial compliance with the provisions of the Texas Clean Air Act or the terms of the existing permit pursuant to §116.311(b) of this title, the renewal denial shall be final, and the Executive Director shall notify the permit holder in writing of the denial.

(b) Contested case hearing. In the event that the permit holder fails to satisfy the TACB requirements for corrective action by the deadline specified in the TACB report, the applicant shall be required to show cause in a contested case proceeding why the permit should not expire. The proceeding will be conducted pursuant to the requirements of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

(c) Effective date of existing permit. An existing permit shall remain effective until it is renewed, or until the deadline specified in the Executive Director's report to the permit holder, or until a date specified in any Board order entered following a contested case hearing held pursuant to subsection (b) of this section. An existing permit shall remain in effect during the course of a contested case hearing if the hearing proceeds beyond the permit expiration as identified in §116.311(c) of this title.

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 February 12, 1993.

TRD-9318963

Lane Hartssock  
Deputy Director, Air Quality  
Planning  
Texas Air Control Board

Proposed date of adoption: May 15, 1993

For further information, please call: (512) 908-1451

◆ ◆ ◆  
**Subchapter E. Emergency Orders**

• **31 TAC §116.410-116.418**

These rules are being proposed for adoption under §382.17 of the Texas Clean Air Act (TCAA), Texas Health and Safety Code (Vernon 1990), which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

**§116.410. Applicability.** The owner or operator of a facility may apply to the executive director for an emergency order to authorize immediate action for the addition, replacement, or repair of facilities or control equipment, and authorizing associated emissions of air contaminants, whenever a catastrophic event necessitates such construction and emissions otherwise precluded under the Texas Clean Air Act. For purposes of this section, a catastrophic event is an unforeseen event including, but not limited to, an act of God, an act of war, severe weather conditions, explosions, fire, or other similar occurrences beyond the reasonable control of the operator, which renders a facility or its functionally related appurtenances inoperable.

**§116.411. Application for an Emergency Order.** The owner or operator of a facility who applies for an emergency order shall submit a sworn application which contains all of the following:

(1) A statement that the proposed construction and emissions are essential to prevent loss of life, serious injury, severe property damage, or severe economic loss not attributable to the applicant's actions, and are necessary for the addition, replacement, or repair of facilities or control equipment necessitated by a catastrophic event;

(2) A description of the catastrophic event;

(3) A statement that there are no practicable alternatives to the proposed construction and emissions;

(4) A statement that the emissions will not cause or contribute to a condition of air pollution;

(5) A statement that the proposed construction and emissions will occur only at the property where the catastrophic event occurred or on other property owned by the owner or operator of the damaged facility, which produces the same intermediates, products, or by-products, providing no more than a de minimis increase will occur in the predicted concentration of the

air contaminants at or beyond the property line at such other property;

(6) A description of the proposed construction and the type and quantity of air contaminants to be emitted;

(7) An estimate of the dates on which the proposed construction and emissions will begin and end;

(8) An estimate of the date on which the facility will begin operation; and

(9) Any other information or item the Executive Director may require to support or explain the need for, or to expedite the issuance of, an emergency order; including information regarding the applicability of and compliance with any federal requirements for new or modified sources.

**§116.412. Public Notification.** The Texas Air Control Board (TACB) shall publish notice of the issuance of an emergency order in the *Texas Register* as soon as practicable after issuance of the order. If the order is issued prior to a hearing, the order shall fix a time and location for a hearing which is to be held as soon as practicable after the order is issued. The TACB shall publish notice of any hearing in the *Texas Register* not later than the tenth day prior to the date set for the hearing, plus give any other general notice determined by the executive director to be warranted and practicable under the circumstances. Notice of the issuance and notice of the hearing may be consolidated for publication in the *Texas Register*.

**§116.413. Public Hearing for an Emergency Order.** A public hearing on the merits and needs of an emergency order shall be held either prior to or following issuance of the order. If the hearing is held prior to issuance of a proposed emergency order, the board shall affirm the order as proposed, issue a modified order, or deny and set aside the order. If the hearing is held following issuance of an emergency order, the board shall affirm, modify, or set aside the order as issued. Any hearing on an emergency order shall be conducted by the board or a hearings examiner of the board in accordance with provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and §§103.41-103.65 of this title (relating to Procedural Rules).

**§116.414. Affirmation of an Emergency Order.** The board shall affirm a proposed or issued order if the applicant shows at the hearing, by a preponderance of the evidence, that:

(1) the proposed construction and emissions are essential to prevent loss of life, serious injury, severe property dam-

age, or severe economic loss not attributable to the applicant's actions and are necessary for the addition, replacement, or repair of facilities or control equipment that is necessitated by a catastrophic event;

(2) There are no practicable alternatives to the proposed construction and emissions;

(3) The emissions will not cause or contribute to a condition of air pollution;

(4) The proposed construction or emissions will occur only:

(A) At property where the catastrophic event occurred, or

(B) At other property owned by the owner or operator of the damaged facility which produces the same intermediates, products, or by-products, so long as there will be no more than a de minimis increase in the predicted concentration of the air contaminants at or beyond the property line at such other property.

(5) The time limits in the order for the beginning and completion of the proposed construction and emissions are reasonable; and

(6) The schedule in the order for submission of a complete permit application is reasonable.

**§116.415. Contents of an Emergency Order.** An emergency order issued by the executive director shall contain at least the following:

(1) a description of the emergency construction and emissions to be authorized;

(2) reasonable time limits for the beginning and the completion of the proposed construction and emissions;

(3) authorization for action only at the property where the catastrophic event occurred or on other property owned by the owner or operator of the damaged facility, which also produces the same intermediates, products, or byproducts, provided there will be no more than a de minimis increase in the concentration of air contaminants at or beyond the property line at such other property; and

(4) a schedule for submission of a complete construction permit application under provisions of the Texas Clean Air Act, §382.518.

**§116.416. Requirement to Apply for a Permit or Modification.** The owner or operator of a facility for which an emergency order has been issued shall submit an application within 60 days of issuance of the

order pursuant to the Texas Clean Air Act (TCAA), §382.63, and in accordance with provisions of the TCAA, §382.518, and with Subchapter B of this chapter (relating to New Source Review Permits). The application shall be reviewed and acted upon by the executive director without regard to construction activity authorized by the emergency order. The appropriate permit fee shall be due and payable pursuant to the undesignated head Permit Fees in Subchapter B of this chapter. Costs and expenses related to additions, replacement, or repair of facilities or control equipment shall not be a consideration in any determination in the review of this application.

**§116.417. Modification of an Emergency Order.** The board shall modify a proposed or issued order if the hearing record shows that:

(1) construction and emissions otherwise precluded under the Texas Clean Air Act are essential to prevent loss of life, serious injury, severe property damage, or severe economic loss not attributable to the applicant's actions and are necessary for the addition, replacement, or repair of facilities or control equipment that is necessitated by a catastrophic event;

(2) there is no practicable alternative to such construction and emissions; and

(3) modification of certain terms of the proposed or issued order is necessary to make the order, construction, and/or emissions meet the requirements stated in §116.414 of this title (relating to Affirmation of an Emergency Order).

**§116.418. Setting Aside an Emergency Order.** The board shall set aside a proposed or issued order if the hearing record does not show, in accordance with §116.414 of this title (relating to Affirmation of an Emergency Order) or §116.417 of this title (relating to Modification of an Emergency Order), that the order should be either affirmed or modified and adopted as modified.

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 February 12, 1993.

TRD-9318964

Lane Hertaock  
Deputy Director, Air Quality  
Planning  
Texas Air Control Board

Proposed date of adoption: May 15, 1993

For further information, please call: (512) 908-1451

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 6. Disaster Assistance

##### Case Decision, Review, and Closing

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

The Texas Department of Human Services (DHS) proposes the repeal of §6.303 and new §6.303, concerning the right of applicants for disaster assistance under the Individual and Family Grant Program (IFGP) to request reconsideration and to appeal. The purpose of the repeal and new section is to change the appeal authority from the Texas Department of Public Safety, Division of Emergency Management, to the DHS Hearings Department. New §6.303 also describes procedures and time frames for reconsideration and appeals.

Burton F. Raiford, commissioner, has determined that for the first five-year period the repeal and section are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal and section.

Mr. Raiford also has determined that for each year of the first five years the repeal and section are in effect the public benefit anticipated as a result of enforcing the repeal and section will be the entitlement of persons who want to appeal a decision on their IFGP application to receive a hearing by a DHS hearing officer. Previously, IFGP applicants who appealed received only an administrative review of their case. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal and section as proposed.

Questions about the content of the proposal may be directed to Dennis McCudden at (512) 450-3456 in DHS's Disaster Assistance Unit. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-028, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the Texas Register.

#### • 40 TAC §6.303

The repeal is proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

#### §6.303. Right to Request an Appeal.

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 February 16, 1993.

TRD-9319085

Nancy Murphy  
Agency Liaison, Policy and  
Document Support  
Texas Department of  
Human Services

Proposed date of adoption: May 1, 1993

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

The new section is proposed under the Human Resources Code, Title 2, Chapter 22 which provides the department with the authority to administer public assistance programs.

### §6.303. Right to Request Reconsideration and Appeal.

#### (a) Reconsiderations.

(1) The applicant may request reconsideration of a grant decision by writing within 20 days of the date of the letter notifying the applicant of the decision to the grant coordinating officer, Individual and Family Grant Program (IFGP), requesting reconsideration. If the applicant files a request for reconsideration after the 20-day deadline, it will not be considered unless the applicant demonstrates good cause for failure to request reconsideration within that time period. The IFGP grant coordinating officer or designee is the sole determiner of whether good cause is shown. Good cause means circumstances beyond the applicant's control. The filing of a timely request for reconsideration is a prerequisite to an administrative appeal.

(2) Upon receipt of the reconsideration request, the grant coordinating officer or designee reviews the case file to determine if needs have been met. The grant coordinating officer or designee may request that a second inspection be conducted.

(3) The applicant is notified of the reconsideration decision by letter within 20 days of the reconsideration. The letter notifying the applicant of the grant reconsideration must contain notice of the right to appeal the reconsideration decision by filing a written request for an appeal with IFGP within 20 days of the date of the reconsideration decision letter. The appeal is decided by the Texas Department of Human Services' (DHS's) hearing officer in the appropriate region.

#### (b) Appeals.

(1) The applicant must direct any request to appeal in writing to the IFGP within 20 days of the date of the reconsideration decision. The appeal hearing will be

held by a hearing officer in the region where the applicant is living at the time he files the appeal. The appeal hearing and the written hearing decision must be completed by the hearing officer by the earlier of the following two dates:

(A) 90 days from the receipt of the request for an appeal by IFGP; or

(B) the program completion date.

(2) The right to appeal is limited to eligibility and grant determinations. The hearing must be expedited if the disaster program is closing. All grant award activity, including eligibility determination, disbursement, and disposition of appeals must be completed within 180 days following the declaration of the disaster. Appeals are not accepted within 45 days of the program closing date without a written extension granted by the Federal Emergency Management Agency of the program completion date to process the requested appeals.

(3) As part of the hearing process, the IFGP's grant coordinating officer permits the applicant to examine any documents submitted by the IFGP to the hearing officer, if requested by the applicant, by sending copies of the documents to the applicant within five days of the applicant's request.

(4) At the time a disaster declaration is made and the IFGP State Administrative Plan approved, IFGP staff must deliver to the DHS State Office Hearings Department a copy of the State Administrative Plan, any itemized price lists applicable to the disaster, and a list of regions affected by the disaster. The Hearings Department ensures that copies of this material are forwarded to the appropriate regional attorneys for use by the hearing officers.

(5) A record of all documents submitted and a tape recording of any oral testimony is prepared by the DHS hearing officer and kept for a period of two years following the ruling on the appeal.

(c) Appeal Procedures. When IFGP receives a request for an appeal, the following activities occur:

(1) IFGP staff completes DHS's Petition for Fair Hearing form and forwards the request for appeal to the DHS regional attorney where the applicant resides within five days of receiving the written request for appeal. During the first five days from the appeal date, IFGP staff may try to resolve any questions or concerns the applicant may have and, if applicable, reissue another reconsideration decision. If the applicant, prior to the time the Petition for Fair Hearing form is sent to the regional attorney, decides to withdraw the appeal,

IFGP staff should obtain a written statement from the applicant that he wishes to withdraw the appeal prior to closing the file.

(2) When the hearing officer makes an appeal decision, the hearing officer notifies the applicant of the appeal decision in writing. After the hearing decision is issued, IFGP staff take appropriate action if any is ordered by the hearing officer.

(3) In all procedural matters not superseded by this section, DHS's fair hearings rules apply, as set forth in §§79.1101-79.1317 of this title (relating to Fair Hearings, Appeals Process, and Hearing Procedure).

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 February 16, 1993.

TRD-9319084

Nancy Murphy  
Agency Liaison, Policy and  
Document Support  
Texas Department of  
Human Services

Proposed date of adoption: May 1, 1993

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

## Chapter 11. Food Distribution and Processing

### Food Distribution Program

The Texas Department of Human Services (DHS) proposes amendments to §§11.103, 11.105, 11.6008, and 11.6009, concerning eligibility determination for recipient agencies and recipients, contract termination and appeal rights, reimbursement, and selection of contractors in its Food Distribution and Processing chapter. The purpose of the amendments is to establish compliance with the requirements of the Single Audit Act as a condition of eligibility for participation in the Special Nutrition Programs, and to establish sanctions for noncompliance with the requirements of the Act. Also in this issue of the *Texas Register*, DHS is proposing related amendments in Chapter 12 of this title (relating to Special Nutrition Programs).

Burton F. Raiford, commissioner, has determined that for the first five-year period, the sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Mr. Raiford 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 greater accountability for public funds. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Keith Churchill at (512) 467-5837 in DHS's Special Nutrition Program Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-029, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

• 40 TAC §11.103, §11.105

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

*§11.103. Eligibility Determination for Recipient Agencies and Recipients.*

(a) The Texas Department of Human Services (DHS) determines the eligibility of recipient agencies to receive donated foods according to 7 Code of Federal Regulations, §250.11.

(b) DHS requires recipient agencies to submit documentation of compliance with the requirements of the Single Audit Act. Recipient agencies must submit as proof of eligibility one or more of the forms of documentation of compliance specified in paragraphs (1)-(3) of this subsection:

(1) a copy of an organization wide audit which has been determined to meet the requirements of the Single Audit Act;

(2) a copy of a contract or binding letter of engagement with an approved auditor to conduct an organization wide audit which will meet the requirements of the Single Audit Act; or

(3) documentation that the recipient agency is not subject to the Single Audit Act.

*§11.105. Contract Termination and Appeal Rights.*

(a) An applicant or recipient agency whose contract has been terminated has the right to appeal the termination as specified in §79.1603 of this title (relating to Special Requirements).

(b) The Texas Department of Human Services (DHS) imposes fiscal sanctions on recipient agencies for failure to comply with the requirements of the Single Audit Act.

(1) DHS takes fiscal sanctions against a recipient agency according to the procedures specified in subparagraphs (A)-(D) of this paragraph.

(A) DHS notifies each recipient agency upon approval of the ap-

plication for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in sanctions up to and including contract termination and recovery of payments.

(B) DHS notifies recipient agencies by certified mail within 15 days after a required audit is not received, or an audit is determined to be unacceptable, that failure to submit an acceptable audit within 60 days of receipt of the notification will result in termination.

(C) If an acceptable audit is not received within the 60 days specified in subparagraph (B) of this paragraph, DHS notifies the recipient agency by certified mail that the audit has not yet been received and that failure to submit the required audit within 30 days of receipt of this notification will result in termination in the next claim month.

(D) If an acceptable audit is not received within the 30 days specified in subparagraph (C) of this paragraph, DHS notifies the recipient agency that their contract is terminated effective upon receipt of this notification.

(2) If DHS has determined there are extenuating circumstances, DHS may conduct an audit, either directly or through the engagement of a third party. All costs associated with such an audit must be paid by the recipient agency.

(3) If DHS imposes sanctions according to the procedures specified in paragraph (1) of this subsection for failure to submit an audit in compliance with the requirements of the Single Audit Act, and a recipient agency submits an audit which does not meet the requirements of the Single Audit Act, the sanction procedures will be reinitiated as specified in paragraph (1)(B) of this subsection. DHS may extend the time within which a recipient agency must submit an audit if DHS determines such an extension is justified.

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 February 16, 1993.

TRD-9319083

Nancy Murphy  
Agency Liaison, Policy and  
Document Support  
Texas Department of  
Human Services

Proposed date of adoption: April 15, 1993

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

◆ ◆ ◆  
**Emergency Food Assistance  
Program**

• 40 TAC §11.6008, §11.6009

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

*§11.6008. Reimbursement.*

(a)-(c) (No change.)

(d) DHS imposes fiscal sanctions on contractors for failure to comply with the requirements of the Single Audit Act.

(1) DHS takes fiscal sanctions against a contractor according to the procedures specified in subparagraphs (A)-(E) of this paragraph.

(A) DHS notifies each contractor upon approval of their application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in sanctions up to and including contract termination and recovery of payments.

(B) DHS notifies contractors by certified mail within 15 days after a required audit is not received, or an audit is determined to be unacceptable, that failure to submit an acceptable audit within 30 days of receipt of the notification will result in suspension of payments.

(C) If an acceptable audit is not received within the 30 days specified in subparagraph (B) of this paragraph, DHS notifies the contractor by certified mail that payments will be withheld beginning the next claim month, and that failure to submit the required audit within 30 days of receipt of this notification will result in termination.

(D) If an acceptable audit is not received within the 30 days specified in subparagraph (C) of this paragraph, DHS notifies the contractor by certified mail that failure to submit the required audit within 30 days of receipt of this notification will result in termination in the next claim month.

(E) If an acceptable audit is not received within the 30 days specified in subparagraph (D) of this paragraph,

DHS notifies the contractor that the contract is terminated effective upon receipt of this notification.

(2) If DHS has determined there are extenuating circumstances, DHS may conduct an audit, either directly or through the engagement of a third party. All costs associated with such an audit must be paid by the contractor.

(3) If DHS imposes sanctions according to the procedures specified in paragraph (1) of this subsection for failure to submit an audit in compliance with the requirements of the Single Audit Act, and a contractor submits an audit which does not meet the requirements of the Single Audit Act, the sanction procedures will be re-initiated as specified in paragraph (1)(B) of this subsection. DHS may extend the time within which a contractor must submit an audit if DHS determines such an extension is justified.

*§11.6009. Selection of Contractors.*

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

(c) The Texas Department of Human Services requires contractors to submit documentation of compliance with the requirements of the Single Audit Act. Contractors must submit as proof of eligibility one or more of the forms of documentation of compliance specified in paragraphs (1)-(3) of this subsection:

(1) a copy of an organization wide audit which has been determined to meet the requirements of the Single Audit Act;

(2) a copy of a contract or binding letter of engagement with an approved auditor to conduct an organization wide audit which will meet the requirements of the Single Audit Act; or

(3) documentation that the contractor is not subject to the Single Audit Act.

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

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Nancy Murphy  
Agency Liaison, Policy and  
Document Support  
Texas Department of  
Human Services

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

## Chapter 12. Special Nutrition Programs

### Child and Adult Care Food Program

The Texas Department of Human Services (DHS) proposes amendments to §§12.3, 12.24, 12.103, 12.121, 12.205, 12.209, 12.305, 12.309, 12.405, and 12.409, concerning contractor eligibility and sanctions and penalties for the Child and Adult Care Food Program, the Summer Food Service Program, the Special Milk Program, the School Breakfast Program, and the National School Lunch Program in its Special Nutrition Programs chapter. The purpose of the amendments is to establish compliance with the requirements of the Single Audit Act as a condition of eligibility for participation in the Special Nutrition Programs and to establish sanctions for noncompliance with the requirements of the Act. Also in this issue of the *Texas Register*, DHS is proposing related amendments in Chapter 11 of this title (relating to Food Distribution and Processing).

Burton F. Raiford, commissioner, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Mr. Raiford 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 greater accountability for public funds. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Keith Churchill at (512) 467-5837 in DHS's Special Nutrition Program Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-029, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

#### • 40 TAC §12.3, §12.24

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

#### *§12.3. Eligibility of Contractors and Facilities.*

(a)-(f) (No change.)

(g) DHS requires contractors to submit documentation of compliance with the requirements of the Single Audit Act. Contractors must submit as proof of eligibility one or more of the forms of documentation of compliance specified in paragraphs (1)-(3) of this subsection:

(1) a copy of an organization wide audit which has been determined to

meet the requirements of the Single Audit Act;

(2) a copy of a contract or binding letter of engagement with an approved auditor to conduct an organization wide audit which will meet the requirements of the Single Audit Act; or

(3) documentation that the contractor is not subject to the Single Audit Act.

#### *§12.24. Sanctions and Penalties.*

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

(e) DHS imposes fiscal sanctions on contractors for failure to comply with the requirements of the Single Audit Act.

(1) DHS takes fiscal sanctions against a contractor according to the procedures specified in subparagraphs (A)-(E) of this paragraph.

(A) DHS notifies each contractor upon approval of the application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in sanctions up to and including contract termination and recovery of payments.

(B) DHS notifies contractors by certified mail within 15 days after a required audit is not received, or an audit is determined to be unacceptable, that failure to submit an acceptable audit within 30 days of receipt of the notification will result in suspension of payments.

(C) If an acceptable audit is not received within the 30 days specified in subparagraph (B) of this paragraph, DHS notifies the contractor by certified mail that payments will be withheld beginning the next claim month, and that failure to submit the required audit within 30 days of receipt of this notification will result in termination.

(D) If an acceptable audit is not received within the 30 days specified in subparagraph (C) of this paragraph, DHS notifies the contractor by certified mail that failure to submit the required audit within 30 days of receipt of this notification will result in termination in the next claim month.

(E) If an acceptable audit is not received within the 30 days specified in subparagraph (D) of this paragraph, DHS notifies the contractor that the con-

tract is terminated effective upon receipt of this notification.

(2) If DHS has determined there are extenuating circumstances, DHS may conduct an audit, either directly or through the engagement of a third party. All costs associated with such an audit must be paid by the contractor.

(3) If DHS imposes sanctions according to the procedures specified in paragraph (1) of this subsection for failure to submit an audit in compliance with the requirements of the Single Audit Act, and a contractor submits an audit which does not meet the requirements of the Single Audit Act, the sanction procedures will be re-initiated as specified in paragraph (1)(B) of this subsection. DHS may extend the time within which a contractor must submit an audit if DHS determines such an extension is justified.

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-9319081 Nancy Murphy  
Agency liaison, Policy and  
Document Support  
Texas Department of  
Human Services

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

### Summer Food Service Program

#### • 40 TAC §12.103, §12.121

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

#### §12.103. Eligibility of Sponsors and Facilities.

(a)-(g) (No change.)

(h) DHS requires sponsors to submit documentation of compliance with the requirements of the Single Audit Act. Sponsors must submit as proof of eligibility one or more of the forms of documentation of compliance specified in paragraphs (1)-(3) of this subsection:

(1) a copy of an organization wide audit which has been determined to meet the requirements of the Single Audit Act;

(2) a copy of a contract or binding letter of engagement with an approved auditor to conduct an organization wide audit which will meet the requirements of the Single Audit Act; or

(3) documentation that the sponsor is not subject to the Single Audit Act.

#### §12.121. Sanctions and Penalties.

(a) The Texas Department of Human Services (DHS) investigates irregularities in or complaints about the operation of the program and applies program sanctions according to 7 Code of Federal Regulations, §§225.9, 225.11, and 225.12.

(b) DHS imposes fiscal sanctions on sponsors for failure to comply with the requirements of the Single Audit Act.

(1) DHS takes fiscal sanctions against a sponsor according to the procedures specified in subparagraphs (A)-(E) of this paragraph.

(A) DHS notifies each sponsor upon approval of its application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in sanctions up to and including contract termination and recovery of payments.

(B) DHS notifies the sponsor by certified mail within 15 days after a required audit is not received, or an audit is determined to be unacceptable, that failure to submit an acceptable audit within 30 days of receipt of the notification will result in suspension of payments.

(C) If an acceptable audit is not received within the 30 days specified in subparagraph (B) of this paragraph, DHS notifies the sponsor by certified mail that payments will be withheld beginning the next claim month, and that failure to submit the required audit within 30 days of receipt of this notification will result in termination.

(D) If an acceptable audit is not received within the 30 days specified in subparagraph (C) of this paragraph, DHS notifies the sponsor by certified mail that failure to submit the required audit within 30 days of receipt of this notification will result in termination in the next claim month.

(E) If an acceptable audit is not received within the 30 days specified in subparagraph (D) of this paragraph, DHS notifies the sponsor that the contract is terminated effective upon receipt of this notification.

(2) If DHS has determined there are extenuating circumstances,

DHS may conduct an audit, either directly or through the engagement of a third party. All costs associated with such an audit must be paid by the sponsor.

(3) If DHS imposes sanctions according to the procedures specified in paragraph (1) of this subsection for failure to submit an audit in compliance with the requirements of the Single Audit Act, and a sponsor submits an audit which does not meet the requirements of the Single Audit Act, the sanction procedures will be re-initiated as specified in paragraph (1)(B) of this subsection. DHS may extend the time within which a sponsor must submit an audit if DHS determines such an extension is justified.

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 February 16, 1993.

TRD-9319080 Nancy Murphy  
Agency liaison, Policy and  
Document Support  
Texas Department of  
Human Services

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

### Special Milk Program

#### • 40 TAC §12.205, §12.209

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

#### §12.205. Contractor Eligibility.

(a) To participate as a contractor in the Special Milk Program [SMP], a contractor must meet the definition of a school or child care institution as stipulated in 7 Code of Federal Regulations, §215.2.

(b) The Texas Department of Human Services requires contractors to submit documentation of compliance with the requirements of the Single Audit Act. Contractors must submit as proof of eligibility one or more of the forms of documentation of compliance specified in paragraphs (1)-(3) of this subsection:

(1) a copy of an organization wide audit which has been determined to meet the requirements of the Single Audit Act;

(2) a copy of a contract or binding letter of engagement with an approved auditor to conduct an organization wide audit which will meet the requirements of the Single Audit Act; or

(3) documentation that the contractor is not subject to the Single Audit Act.

*§12.209. Fiscal Action.*

(a) The Texas Department of Human Services (DHS) takes fiscal action against contractors according to the guidelines specified in 7 Code of Federal Regulations, §215. 12.

(b) DHS imposes fiscal sanctions on contractors for failure to comply with the requirements of the Single Audit Act.

(1) DHS takes fiscal sanctions against a contractor according to the procedures specified in subparagraphs (A)-(E) of this paragraph.

(A) DHS notifies each contractor upon approval of its application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in sanctions up to and including contract termination and recovery of payments.

(B) DHS notifies contractors by certified mail within 15 days after a required audit is not received, or an audit is determined to be unacceptable, that failure to submit an acceptable audit within 30 days of receipt of the notification will result in suspension of payments.

(C) If an acceptable audit is not received within the 30 days specified in subparagraph (B) of this paragraph, DHS notifies the contractor by certified mail that payments will be withheld beginning the next claim month, and that failure to submit the required audit within 30 days of receipt of this notification will result in termination.

(D) If an acceptable audit is not received within the 30 days specified in subparagraph (C) of this paragraph, DHS notifies the contractor by certified mail that failure to submit the required audit within 30 days of receipt of this notification will result in termination in the next claim month.

(E) If an acceptable audit is not received within the 30 days specified in subparagraph (D) of this paragraph, DHS notifies the contractor that the contract is terminated effective upon receipt of this notification.

(2) If DHS has determined there are extenuating circumstances, DHS may conduct an audit, either di-

rectly or through the engagement of a third party. All costs associated with such an audit must be paid by the contractor.

(3) If DHS imposes sanctions according to the procedures specified in paragraph (1) of this subsection for failure to submit an audit in compliance with the requirements of the Single Audit Act, and a contractor submits an audit which does not meet the requirements of the Single Audit Act, the sanction procedures will be re-initiated as specified in paragraph (1)(B) of this subsection. DHS may extend the time within which a contractor must submit an audit if DHS determines such an extension is justified.

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 February 16, 1993.

TRD-9319079

Nancy Murphy  
Agency Liaison, Policy and  
Document Support  
Texas Department of  
Human Services

Proposed date of adoption: April 15, 1993

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

◆ ◆ ◆  
**School Breakfast Program**

• 40 TAC §12.305, §12.309

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

*§12.305. Contractor Eligibility.*

(a) To participate as a contractor in the School Breakfast Program [SBP], a contractor must meet the definition of a school as stipulated in 7 Code of Federal Regulations, §220.2 and provide breakfasts to a child as defined in 7 Code of Federal Regulations, §220.2.

(b) The Texas Department of Human Services requires contractors to submit documentation of compliance with the requirements of the Single Audit Act. Contractors must submit as proof of eligibility one or more of the forms of documentation of compliance specified in paragraphs (1)-(3) of this subsection:

(1) a copy of an organization wide audit which has been determined to meet the requirements of the Single Audit Act;

(2) a copy of a contract or binding letter of engagement with an approved auditor to conduct an organiza-

tion wide audit which will meet the requirements of the Single Audit Act; or

(3) documentation that the contractor is not subject to the Single Audit Act.

*§12.309. Fiscal Action.*

(a) The Department of Human Services (DHS) takes fiscal action against contractors according to the guidelines specified in 7 Code of Federal Regulations, §220.14.

(b) DHS imposes fiscal sanctions on contractors for failure to comply with the requirements of the Single Audit Act.

(1) DHS takes fiscal sanctions against a contractor according to the procedures specified in subparagraphs (A)-(E) of this paragraph.

(A) DHS notifies each contractor upon approval of its application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in sanctions up to and including contract termination and recovery of payments.

(B) DHS notifies contractors by certified mail within 15 days after a required audit is not received, or an audit is determined to be unacceptable, that failure to submit an acceptable audit within 30 days of receipt of the notification will result in suspension of payments.

(C) If an acceptable audit is not received within the 30 days specified in subparagraph (B) of this paragraph, DHS notifies the contractor by certified mail that payments will be withheld beginning the next claim month, and that failure to submit the required audit within 30 days of receipt of this notification will result in termination.

(D) If an acceptable audit is not received within the 30 days specified in subparagraph (C) of this paragraph, DHS notifies the contractor by certified mail that failure to submit the required audit within 30 days of receipt of this notification will result in termination in the next claim month.

(E) If an acceptable audit is not received within the 30 days specified in subparagraph (D) of this paragraph, DHS notifies the contractor that the contract is terminated effective upon receipt of this notification.

(2) If DHS has determined there are extenuating circumstances, DHS may conduct an audit, either directly or through the engagement of a third party. All costs associated with such an audit must be paid by the contractor.

(3) If DHS imposes sanctions according to the procedures specified in paragraph (1) of this subsection for failure to submit an audit in compliance with the requirements of the Single Audit Act, and a contractor submits an audit which does not meet the requirements of the Single Audit Act, the sanction procedures will be re-initiated as specified in paragraph (1)(B) of this subsection. DHS may extend the time within which a contractor must submit an audit if DHS determines such an extension is justified.

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 February 16, 1993.

TRD-9319077

Nancy Murphy  
Agency Liaison, Policy and  
Document Support  
Texas Department of  
Human Services

Proposed date of adoption: April 15, 1993

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

◆ ◆ ◆  
**National School Lunch Program**

• 40 TAC §12.405, §12.409

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

*§12.405. Contractor Eligibility.*

(a) To participate as a contractor in the National School Lunch Program [NSLP], a contractor must meet the definition of a school as stipulated in 7 Code of Federal Regulations, §210.2 and provide lunches to a child as defined in 7 Code of Federal Regulations, §210.2.

(b) The Texas Department of Human Services requires contractors to submit documentation of compliance with the requirements of the Single Audit Act. Contractors must submit as proof of eligibility one or more of the forms of documentation of compliance specified in paragraphs (1)-(3) of this subsection:

(1) a copy of an organization wide audit which has been determined to meet the requirements of the Single Audit Act;

(2) a copy of a contract or binding letter of engagement with an approved auditor to conduct an organization wide audit which will meet the requirements of the Single Audit Act; or

(3) documentation that the contractor is not subject to the Single Audit Act.

*§12.409. Fiscal Action.*

(a) The Texas Department of Human Services (DHS) takes fiscal action against contractors according to the guidelines specified in 7 Code of Federal Regulations, §210.19(c).

(b) DHS imposes fiscal sanctions on contractors for failure to comply with the requirements of the Single Audit Act.

(1) DHS takes fiscal sanctions against a contractor according to the procedures specified in subparagraphs (A)-(E) of this paragraph.

(A) DHS notifies each contractor upon approval of its application for program participation of the date by which an acceptable audit must be received by DHS, and that failure to comply will result in sanctions up to and including contract termination and recovery of payments.

(B) DHS notifies contractors by certified mail within 15 days after a required audit is not received, or an audit is determined to be unacceptable, that failure to submit an acceptable audit within 30 days of receipt of the notification will result in suspension of payments.

(C) If an acceptable audit is not received within the 30 days specified in subparagraph (B) of this paragraph, DHS notifies the contractor by certified mail that payments will be withheld beginning the next claim month, and that failure to submit the required audit within 30 days of receipt of this notification will result in termination.

(D) If an acceptable audit is not received within the 30 days specified in subparagraph (C) of this paragraph, DHS notifies the contractor by certified mail that failure to submit the required audit within 30 days of receipt of this notification will result in termination in the next claim month.

(E) If an acceptable audit is not received within the 30 days specified in subparagraph (D) of this paragraph, DHS notifies the contractor that the con-

tract is terminated effective upon receipt of this notification.

(2) If DHS has determined there are extenuating circumstances, DHS may conduct an audit, either directly or through the engagement of a third party. All costs associated with such an audit must be paid by the contractor.

(3) If DHS imposes sanctions according to the procedures specified in paragraph (1) of this subsection for failure to submit an audit in compliance with the requirements of the Single Audit Act, and a contractor submits an audit which does not meet the requirements of the Single Audit Act, the sanction procedures will be re-initiated as specified in paragraph (1)(B) of this subsection. DHS may extend the time within which a contractor must submit an audit if DHS determines such an extension is justified.

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 February 16, 1993.

TRD-9319078

Nancy Murphy  
Agency Liaison, Policy and  
Document Support  
Texas Department of  
Human Services

Proposed date of adoption: April 15, 1993

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

◆ ◆ ◆  
**Part II. Texas Rehabilitation Commission**

**Chapter 115. Memoranda of Understanding with Other State Agencies**

• 40 TAC §115.6

The Texas Rehabilitation Commission proposes an amendment to §115.6, concerning investigation of abuse, neglect, or exploitation. The amendment regards investigation of all reports it receives relating to the abuse, neglect, or exploitation of a TRC client who is a disabled adult (age 18 and over) or an elderly person (age 65 and over).

Charles Harrison, Comptroller, 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.

Joellen F. Simmons, Deputy Commissioner for Rehabilitation Services, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the public with notice that the

Texas Department of Protective and Regulatory Services will investigate all reports it receives from the Texas Rehabilitation Commission relating to the abuse, neglect, or exploitation of a TRC client who is a disabled adult (age 18 and over) or an elderly person (age 65 and over). 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 Joellen F. Simmons, Deputy Commissioner for Rehabilitation Services, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7320, Austin, Texas 78751-2316.

The amendment is proposed under the Texas Human Resources Code, Title 7, which provides the Texas Rehabilitation Commission with the authority to "... make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for reha-

bilitation and other services, procedures for hearings, and other regulations subject to this section as necessary to carry out the purposes of this chapter."

*§115.6. Investigation of Abuse, Neglect, or Exploitation.* The Texas Department of Protective and Regulatory Services [Texas Department of Human Services], hereinafter called TDPRS [TDHS], and the Texas Rehabilitation Commission, hereinafter called TRC, agree to the following.

(1) TRC agrees to refer to TDPRS [TDHS] for investigation all reports it receives relating to abuse, neglect, or exploitation of a TRC client who is a disabled adult (age 18 and over) or an elderly person (age 65 and over).

(2) TDPRS [TDHS] agrees to:

(A) (No change.)

(B) notify TRC of reports received and the intention of TDPRS [TDHS] to investigate;

(C) (No change.)

(D) provide TRC with a copy of the annual report compiled by TDPRS [TDHS] regarding investigations.

(3) (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 February 16, 1993.

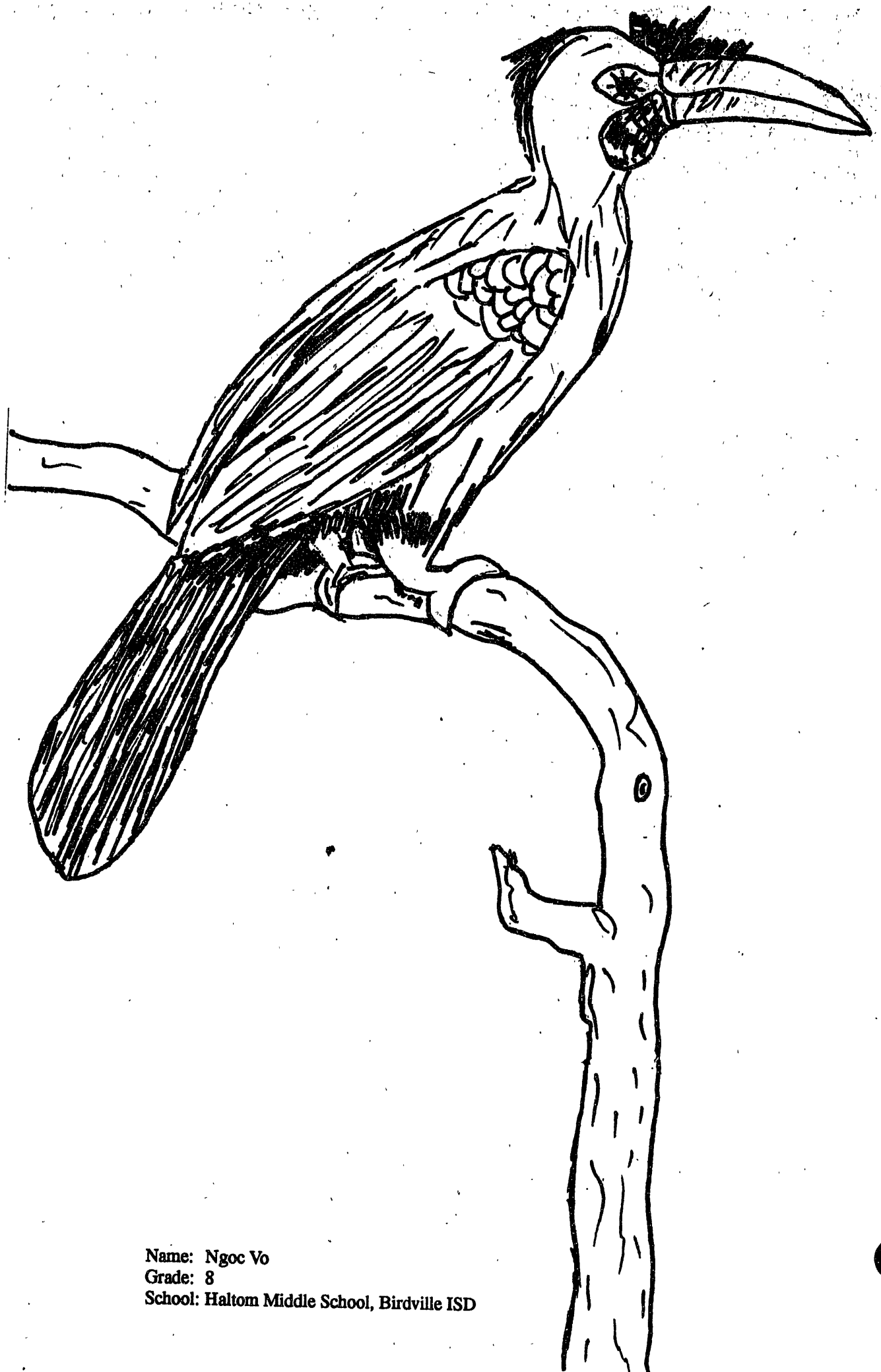
TRD-9319086

Andrea Sargent-Fambles  
Legal Examiner  
Texas Rehabilitation  
Commission

Earliest possible date of adoption: March 26, 1993

For further information, please call: (52) 483-4055





Name: Ngoc Vo  
Grade: 8  
School: Haltom Middle School, Birdville ISD



# Withdrawn Sections

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

## TITLE 22. EXAMINING BOARDS

### Part V. Texas State Board of Dental Examiners

#### Chapter 101. Dental Licensure

##### General Qualifications

###### • 22 TAC §101.1

The Texas State Board of Dental Examiners has withdrawn from consideration for permanent adoption a proposed amendment to §101.1 which appeared in the December 18, 1992, issue of the *Texas Register* (17 TexReg 8873). The effective date of this withdrawal is February 17, 1993.

Issued in Austin, Texas, on February 17, 1993.

TRD-9319118

Mel Ling Clendennen  
Administrative Technician  
III  
Texas State Board of  
Dental Examiners

Effective date: February 17, 1993

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



## Part XXII. Texas State Board of Public Accountancy

### Chapter 528. Miscellaneous

#### • 22 TAC §528.1

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption a proposed new §528.1 which appeared in the November 27, 1992, issue of the *Texas Register* (17 TexReg 8266). The effective date of this withdrawal is March 27, 1993.

Issued in Austin, Texas, on February 12, 1993.

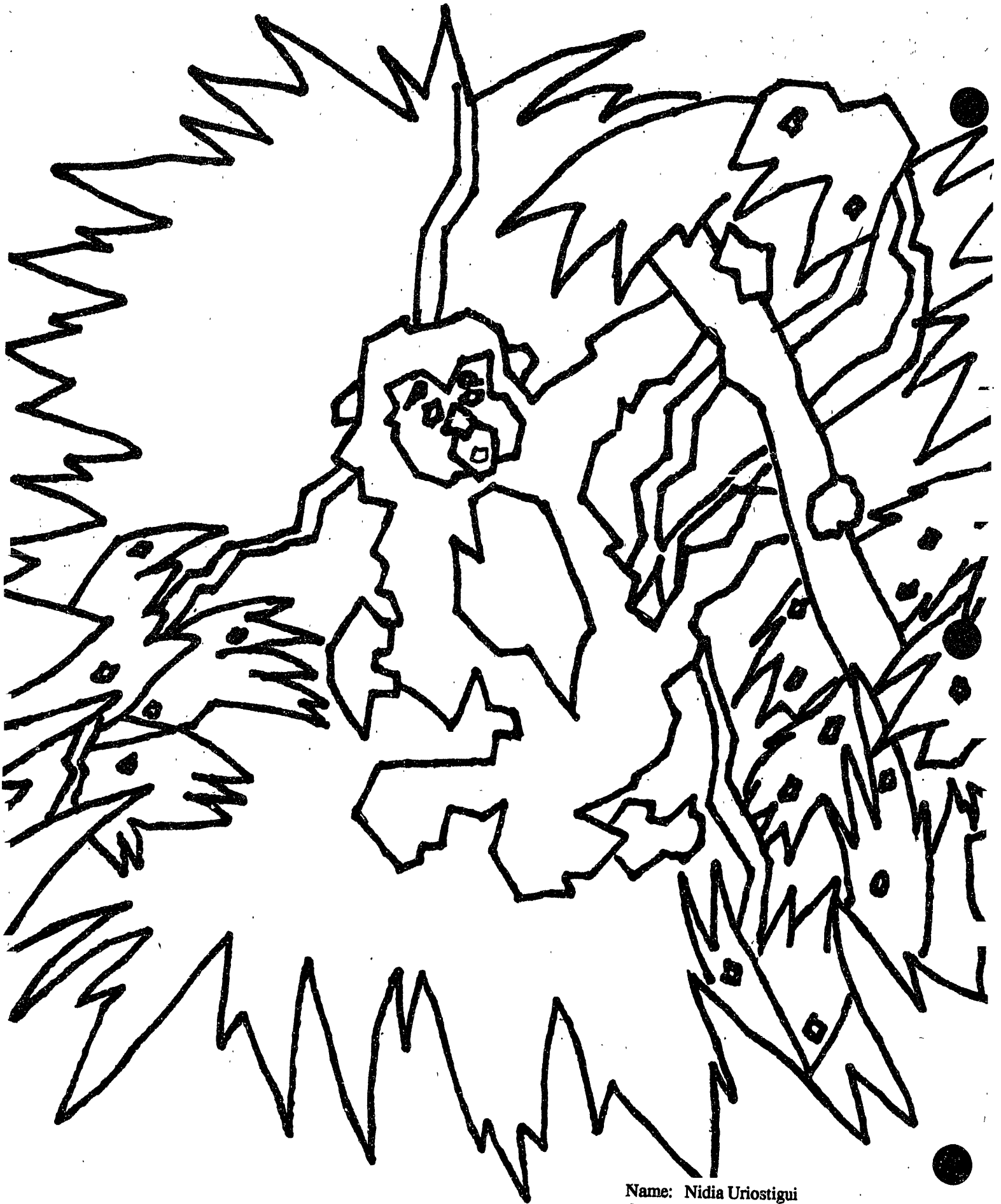
TRD-9319010

J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

For further information, please call: (512)  
450-7066





Name: Nidia Uriostigui  
Grade: 8  
School: Haltom Middle School, Birdville ISD

# Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

## TITLE 19. EDUCATION

### Part II. Texas Education Agency

#### Chapter 169. Relationship with University Interscholastic League

##### • 19 TAC §169.1

The Texas Education Agency adopts the repeal of §169.1, concerning review and implementation of rules relating to extracurricular activities, without changes to the proposed text as published in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8376).

The chapter is being repealed in accordance with the sunset review process mandated by Senate Bill 1, 71st Legislature. A new Chapter 169 is being adopted in a separate submission.

The repeal will result in a clearer, more concise statement of the rules relating to the University Interscholastic League.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the State Board of Education to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

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 February 17, 1993.

TRD-9319127  
Cris Cloudt  
Director of Policy Planning  
and Evaluation  
Texas Education Agency

Effective date: March 10, 1993

Proposal publication date: December 4, 1992

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

##### • 19 TAC §169.1

The Texas Education Agency adopts new §169.1, concerning review and implementation of rules relating to extracurricular activi-

ties, without changes to the proposed text as published in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8376).

The section is necessary for the State Board of Education (SBOE) to review rules and procedures proposed by the University Interscholastic League (UIL). It authorizes the SBOE to approve, disapprove, or modify any rule or procedure submitted by the UIL.

No comments were received regarding adoption of the section.

The new section is adopted under the Texas Education Code, §21.921, which requires the UIL to submit its rules and procedures to the SBOE for approval, disapproval, or modification.

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 February 17, 1993.

TRD-9319128  
Cris Cloudt  
Director of Policy Planning  
and Evaluation  
Texas Education Agency

Effective date: March 10, 1993

Proposal publication date: December 4, 1992

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

## TITLE 22. EXAMINING BOARDS

### Part V. Texas State Board of Dental Examiners

#### Chapter 109. Conduct

##### Anesthesia and Anesthetic Agents

##### • 22 TAC §109.173

The Texas State Board of Dental Examiners adopts an amendment to §109.173, concerning minimum standard of care, with changes to the proposed text as published in the December 11, 1992, issue of the *Texas Register* (17 TexReg 8612).

The amendment is necessary in order to provide for the protection of public health and welfare and enhance the quality of dental health care in Texas, and to provide the public access to information.

The amendment states that each dentist li-

censed by the Texas State Board of Dental Examiners and practicing in Texas shall utilize standard of care.

The Texas Association of Orthodontists agreed with the rule, suggesting minor word changes. The Texas Dental Association "strongly believes that determinations to histories and physicals and informed consent should be left to the discretion of the treating dentists." One individual agreed with the rule and another individual suggested word changes.

Commenting in favor was the Texas Association of Orthodontists. Commenting against was the Texas Dental Association.

The agency disagrees with some comments and agrees with some comments as it relates to protecting public health and safety.

The amendment is adopted under Texas Civil Statutes, Article 4551d(a), which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.173. *Minimum Standard of Care.* Each dentist licensed by the Texas State Board of Dental Examiners and practicing in Texas shall conduct their practice in a manner consistent with that of a reasonable and prudent dentist under the same or similar circumstances. Further, each dentist:

(1) shall maintain a patient record:

(A) from which a diagnosis may be made;

(B) which includes a description of treatment rendered;

(C) includes the date on which treatment is performed; and

(D) which includes any information a reasonable and prudent dentist in the same or similar circumstances would include;

(2) shall maintain and review an initial medical history and limited physical evaluation for all dental patients to wit-

(A) The initial medical history shall include, but shall not necessarily be limited to, known allergies to drugs, serious illness, current medications, previous hospitalizations and significant surgery, and a review of the physiologic systems obtained by patient history. A "check list", for consistency, may be utilized in obtaining initial information. The dentist shall review the medical history with the patient at any time a reasonable and prudent dentist in the same or similar circumstance would so do.

(B) The initial limited physical examination shall include, but shall not necessarily be limited to, blood pressure and pulse/heart rate as may be indicated for each patient;

(3) shall obtain and review an updated medical history and limited physical evaluation when a reasonable and prudent dentist under the same or similar circumstances would determine it is indicated;

(4) shall, for office emergencies:

(A) maintain a positive pressure breathing apparatus including oxygen which shall be in working order;

(B) maintain other emergency equipment and/or currently dated drugs as a reasonable and prudent dentist with the same or similar training and experience in the same or similar circumstances would maintain;

(C) provide training to dental office personnel in emergency procedures which shall include, but not necessarily be limited to, basic cardiac life support, inspection and utilization of emergency equipment in the dental office, and office procedures to be followed in the event of an emergency as determined by a reasonable and prudent dentist in the same or similar circumstances;

(5) shall complete a course in basic cardiopulmonary resuscitation every two years offered by either the American Heart Association or the American Red Cross.

(6) shall obtain an informed consent in all situations where required by law.

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 February 17, 1993.

TRD-9319120

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

Effective date: March 10, 1993

Proposal publication date: December 11, 1992

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

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

### • 22 TAC §115.10

The Texas State Board of Dental Examiners adopts an amendment to §115. 10, without changes to the proposed text as published in the December 11, 1992, issue of the *Texas Register* (17 TexReg 8613).

The amendment is necessary in order to achieve consistency and uniformity with the Administrative Procedure and Texas Register Act and to achieve uniformity in standard civil practices.

The amendment outlines the procedures for any person performing radiologic procedures under the supervision of a Texas licensed dentist.

No comments were received regarding adoption of the amendment.

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

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 February 16, 1993.

TRD-9319117

C. Thomas Camp  
Executive Director  
Texas State Board of  
Medical Examiners

Effective date: March 10, 1993

Proposal publication date: December 11, 1992

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

## Chapter 163. Licensure

### • 22 TAC §163.9

The Texas State Board of Medical Examiners adopts an amendment to §163. 9, concerning procedural rules for all licensure applicants, without changes to the proposed text pub-

lished in the December 25, 1992, issue of the *Texas Register* (17 TexReg 9085).

The amendment to the section is necessary to delete a subsection of the licensure rules which is no longer pertinent, in view of the fact National Boards Examinations are now accepted for licensure in Texas.

The section will function by omission of a subsection which is no longer pertinent.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this 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 February 12, 1993.

TRD-9319061

Homer R. Goehrs, M.D.  
Executive Director  
Texas State Board of  
Medical Examiners

Effective date: March 9, 1993

Proposal publication date: December 25, 1992

For further information, please call: (512) 834-4502

## Part XXII. Texas State Board of Public Accountancy

### Chapter 501. Professional Conduct

#### General Provisions

##### • 22 TAC §501.4

The Texas State Board of Public Accountancy adopts an amendment to §501. 4, concerning the practice of public accountancy, without changes to the proposed text as published in the November 27, 1992, issue of the *Texas Register* (17 TexReg 8263).

The benefit anticipated as a result of enforcing the section will be that the rule is simplified.

The amendment deletes the section regarding temporary practice permits.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §8(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to the practice of public accountancy.

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 February 10, 1993.

TRD-9318987

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: November 27, 1992

For further information, please call: (512) 450-7066

## Other Responsibilities and Practices

### • 22 TAC §501.39

The Texas State Board of Public Accountancy adopts new §501.39, concerning frivolous complaints, without changes to the proposed text as published in the November 27, 1992, issue of the *Texas Register* (17 TexReg 8264).

As a result of enforcing this section the number of frivolous complaints shall be reduced and investigations will be facilitated.

The section encourages CPAs who complain against other CPAs to cooperate with the ensuing investigation.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to frivolous complaints.

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 February 10, 1993.

TRD-9318988

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: November 27, 1992

For further information, please call: (512) 450-7066

### • 22 TAC §501.40

The Texas State Board of Public Accountancy adopts an amendment to §501.40, concerning licensing/registration requirements, without changes to the proposed text as published in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7839).

The public benefit anticipated as a result of enforcing the section will be that the rules of the agency shall conform to the Act.

The amendment eliminates language which could be perceived as a conflict with the

requirement of the Public Accountancy Act, §9, that all certificate and registration holders obtain biennial licenses.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to licensing and registration requirements.

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 February 10, 1993.

TRD-9318989

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: November 10, 1992

For further information, please call: (512) 450-7066

## Chapter 505. The Board

### • 22 TAC §505.3

The Texas State Board of Public Accountancy adopts an amendment to §505.3, concerning the chairman of the board, without changes to the proposed text as published in the November 27, 1992, issue of the *Texas Register* (17 TexReg 8284).

Enforcing the section simplifies the procedures for signing Board Orders.

The amendment allows the chairman of the board to sign Board Orders on behalf of the board.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to the chairman of the Board.

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

Issued in Austin, Texas, on February 10, 1993.

TRD-9318990

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: November 27, 1992

For further information, please call: (512) 450-7066

### • 22 TAC §505.10

The Texas State Board of Public Accountancy adopts an amendment to §505.10, concerning board committees, without changes to the proposed text as published in the October 16, 1992, issue of the *Texas Register* (17 TexReg 7153).

Enforcing the section will protect the public from potential difficulties associated with drug and alcohol abuse by CPAs.

The amendment adds the Peer Oversight Committee to the board's standing committee.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to board committees.

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 February 10, 1993.

TRD-9318991

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: October 16, 1992

For further information, please call: (512) 450-7066

## Chapter 511. Certification as a CPA

### Certification by Reciprocity

#### • 22 TAC §511.140

The Texas State Board of Public Accountancy adopts new §511.140, without changes to the proposed text as published in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8389).

By enforcing this section the process for reciprocal licensees will be simplified for individuals certified in states with substantially the same certification requirements as Texas, which will promote interstate cooperation.

The new section reduces paper work and staff resources currently needed for reciprocity.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to application for certification by reciprocity in approved states.

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 February 10, 1993.

TRD-9318992

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: December 4, 1992

For further information, please call: (512) 450-7066

◆ ◆ ◆  
• 22 TAC §511.141

The Texas State Board of Public Accountancy adopts an amendment to §511.141, concerning application for certification by reciprocity, without changes to the proposed text as published in the October 16, 1992, issue of the *Texas Register* (17 TexReg 7153).

Enforcing the section will ensure that international treaties will be honored by the Board.

The amendment permits applications to be made to the extent required by international treaties.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to reciprocal fees for a Texas CPA certificate by reciprocity.

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 February 10, 1993.

TRD-9318993

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: November 16, 1992

For further information, please call: (512) 450-7066

◆ ◆ ◆  
• 22 TAC §511.142

The Texas State Board of Public Accountancy adopts an amendment §511.142, concerning qualifications for certification by reciprocity, without changes to the proposed text as published in the October 16, 1992, issue of the *Texas Register* (17 TexReg 7153).

As a result of enforcing the section the Board will honor international treaties.

The amendment permits certification by reciprocity to the extent required by international treaties.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to reciprocal fees for a Texas CPA certificate by reciprocity.

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 February 10, 1993.

TRD-9318994

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: October 16, 1992

For further information, please call: (512) 450-7066

◆ ◆ ◆  
Certification

• 22 TAC §511.171

The Texas State Board of Public Accountancy adopts new §511.171, concerning consent revocation, without changes to the proposed text as published in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8390).

As a result of enforcing the section the procedures for revocation and reinstatement will be clarified.

The new section will establish procedures for voluntary revocation of a CPA's certificate and for reinstatement of the certificate.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to consent revocation.

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 February 10, 1993.

TRD-9318995

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: December 4, 1992

For further information, please call: (512) 450-7066

## Chapter 517. Temporary Practice in Texas

• 22 TAC §517.1

The Texas State Board of Public Accountancy adopts an amendment to §517.1, concerning temporary practice, without changes to the proposed text as published in the November 27, 1992, issue of the *Texas Register* (17 TexReg 8264).

As a result of enforcing the section temporary practice permit holders will have to meet high standards of professionalism.

The amendment restricts public accountants from other states from receiving temporary practice permits.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to temporary practice in Texas.

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 February 10, 1993.

TRD-9318996

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: November 27, 1992

For further information, please call: (512) 450-7066

◆ ◆ ◆  
Chapter 519. Practice and Procedure

• 22 TAC §§519.39, 519.40, 519.43

The Texas State Board of Public Accountancy adopts amendments to §§519.39, 519.40, and 519.43, without changes to the proposed text as published in the November 27, 1992, issue of the *Texas Register* (17 TexReg 8265).

As a result of enforcing the amendments the cost for issuing subpoenas and for issuing commissions to take depositions shall be reduced.

The amendments allow the Executive Director to issue subpoenas and to issue commissions to take depositions.

Two commenters jointly submitted comments to the proposed amendments to §§519.39, 519.40, and 519.43 of the Board's Rules of Practice and Procedure indicating that they were of the opinion that allowing the Executive Director to issue commissions to take depositions and to sign and issue subpoenas "without prior approval by the Board or a hearings officer gives too much power to an

employee hired by the Board who may not even be a CPA." The commenters went on to say that "there is a great potential for abuse for one person to have this authority."

The Board disagrees with the commenters because the Administrative Procedure and Texas Register Act, (Texas Civil Statutes, Article 6252-13a) allows the agency to issue commissions to take depositions and to issue subpoenas. It is appropriate for the Board to delegate these ministerial tasks to staff in order to avoid the costs incurred by having a hearings examiner issue commissions to take depositions and subpoenas. The Board meets only seven times a year; therefore, requiring the Board to issue commissions to take depositions and subpoenas as a body will unacceptably delay enforcement proceedings and will therefore be detrimental to the public interest. Finally, allowing staff to issue commissions to take depositions and to sign and issue subpoenas will not abrogate the Respondent's rights to have a public hearing with full procedural due process as guaranteed by the Texas and Federal Constitutions, the Administrative Procedure and Texas Register Act, and the Public Accountancy Act; moreover, it will not affect the Respondent's rights under Texas law to challenge the subpoenas by filing a motion to quash or other appropriate motion, nor will it affect the Respondent's rights under Texas law to challenge the issuance of commissions to take depositions.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to issuance of subpoenas and issuance of commissions to take depositions.

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 February 10, 1993.

TRD-9318997 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: November 27, 1992

For further information, please call: (512) 450-7066

## Chapter 523. Continuing Professional Education

### Continuing Professional Education Programs

#### • 22 TAC §523.5

The Texas State Board of Public Accountancy adopts an amendment to §523. 5, concerning program developers, without changes to the proposed text as published in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8390).

As a result of enforcing the section the rule will be grammatically consistent.

The amendment is a grammatical change to the rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to program developers.

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 February 10, 1993.

TRD-9318998 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: December 4, 1992

For further information, please call: (512) 450-7066

#### • 22 TAC §523.7

The Texas State Board of Public Accountancy adopts an amendment to §523. 7, concerning program review, without changes to the proposed text as published in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8390).

As a result of enforcing the section the rule will be grammatically consistent.

The amendment is a grammatical change to the rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to program 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 February 10, 1993.

TRD-9318999 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: December 4, 1992

For further information, please call: (512) 450-7066

## Continuing Professional Education Standards

#### • 22 TAC §523.21

The Texas State Board of Public Accountancy adopts an amendment to §523. 21, concerning program presentation standards, without changes to the proposed text as published in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8390).

As a result of enforcing the section the rules will be grammatically consistent.

The amendment will not change the substantive meaning of the rule; will only make a grammatical change.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to program presentation standards.

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 February 10, 1993.

TRD-9319000 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: December 4, 1992

For further information, please call: (512) 450-7066

#### • 22 TAC §523.29

The Texas State Board of Public Accountancy adopts an amendment to §523. 29, concerning minimum hours required as a participant, without changes to the proposed text as published in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8391).

As a result of enforcing the section the reporting requirements for Continuing Professional Education will be simplified.

The amendment requires that 50% of the requirement must be from involvement as a participant in a CPE program.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to minimum hours required as a participant.

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 February 10, 1993.

TRD-9319001

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: December 4, 1992

For further information, please call: (512) 450-7066

◆ ◆ ◆  
• 22 TAC §523.30

The Texas State Board of Public Accountancy adopts an amendment to §523. 30, concerning limitation, without changes to the proposed text as published in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8391).

As a result of enforcing the section reporting requirements for Continuing Professional Education will be simplified.

The amendment conforms the rule to the biennial reporting periods.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to limitation for nontechnical courses.

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 February 10, 1993.

TRD-9319002

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: December 4, 1992

For further information, please call: (512) 450-7066

◆ ◆ ◆  
**Continuing Professional Education Reporting**

• 22 TAC §523.41

The Texas State Board of Public Accountancy adopts an amendment to §523. 41, concerning standards for CPE reporting, without changes to the proposed text as published in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8391).

As a result of enforcing this section the CPA's responsibilities are clearly defined.

The amendment makes a grammatical correction changing "contact hours" to "credit" hours; and makes it clear that the CPA is responsible for retaining documentation of courses attended.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provides the Texas State Board of Public Accountancy with the authority to promulgate rules relating to standards for CPE reporting.

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 February 10, 1993.

TRD-9319003

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: December 4, 1992

For further information, please call: (512) 450-7066

◆ ◆ ◆  
• 22 TAC §523.42

The Texas State Board of Public Accountancy adopts an amendment to §523. 42, concerning sponsor's record, without changes to the proposed text as published in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8392).

As a result of enforcing the section the record retention time is reduced.

The amendment reduces the time for retention of records from five to three years.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to sponsor's record.

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 February 10, 1993.

TRD-9319004

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: December 4, 1992

For further information, please call: (512) 450-7066

◆ ◆ ◆  
**Chapter 523. Continuing Professional Education**

**Mandatory Continuing Education (CE) Program**

• 22 TAC §523.61

The Texas State Board of Public Accountancy adopts an amendment to §523. 61, concerning establishment of mandatory CE

program, without changes to the proposed text as published in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8392).

The amendment is necessary in order to ensure that the rule cites to the current version of the Public Accountancy Act.

The amendment replaces the older citation to the Public Accountancy Act with the updated citation.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to establishment of mandatory CE 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 February 10, 1993.

TRD-9319005

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: December 4, 1992

For further information, please call: (512) 450-7066

◆ ◆ ◆  
• 22 TAC §523.62

The Texas State Board of Public Accountancy adopts an amendment to §523. 62, concerning mandatory CE reporting, without changes to the proposed text as published in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8392).

The amendment is necessary in order to eliminate reference to a date and annual license renewal.

The amendment deletes "1990" and "annual."

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to mandatory CE reporting.

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 February 10, 1993.

TRD-9319006

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: December 4, 1992

For further information, please call: (512) 450-7066



## Mandatory Continuing Education (CE) Program

### • 22 TAC §523.63

The Texas State Board of Public Accountancy adopts an amendment to §523.63, concerning mandatory CE attendance, without changes to the proposed text as published in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8393).

The amendment is necessary in order to ensure that the rule is grammatically consistent. Further, the amendment permits CPAs who will not be employed during the upcoming biennium to receive exemptions, regardless of whether the CPA has retired status.

The amendment makes some grammatical corrections to the rule. The amendment also allows an exemption for CPAs who will not be employed during the upcoming biennium.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to mandatory CE reporting.

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 February 10, 1993.

TRD-9319007

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: December 4, 1992

For further information, please call: (512) 450-7066

## Mandatory Continuing Education (CE) Program

### • 22 TAC §523.64

The Texas State Board of Public Accountancy adopts an amendment to §523.64, concerning disciplinary actions relating to CE, without changes to the proposed text as published in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8393).

The amendment is necessary in order to ensure that the rule cites to the current version of the Public Accountancy Act.

The amendment will cite the Public Accountancy Act of 1991 instead of the previous version of the Act.

No comments were received regarding the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to CE disciplinary actions.

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 February 10, 1993.

TRD-9319008

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: December 4, 1992

For further information, please call: (512) 450-7066

## Registered Continuing Education Sponsors

### • 22 TAC §523.74

The Texas State Board of Public Accountancy adopts an amendment to §523.74, concerning national registry of CPE sponsors, without changes to the proposed text as published in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8394).

The amendment is necessary in order to insure the rule cited in the section is correct.

The amendment corrects the rule number cited.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to national registry of CPE sponsors.

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 February 10, 1993.

TRD-9319009

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 5, 1993

Proposal publication date: December 4, 1992

For further information, please call: (512) 450-7066

## Part XXIV. Texas Board of Veterinary Medical Examiners

### Chapter 573. Rules of Professional Conduct

#### Records Keeping

##### • 22 TAC §573.51

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.51,

concerning Rabies Control, with changes to the proposed text as published in the January 15, 1993, issue of the *Texas Register* (18 TexReg 294).

Amendment bring this rule into compliance with recently adopted rule changes concerning the control of rabies made by the Texas Department of Health.

The amendment will require practitioners to maintain standard information for each rabies vaccination certificate issued, and comply with the Rabies Control and Eradication Act in preserving animal's bodies for rabies diagnosis in suspect cases. The change is to the first sentence which will read in part: "Official rabies vaccination certificates shall be issued by vaccinating veterinarian and shall contain certain information...."

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8890, §7(a), which provide the Texas Board of Veterinary Medical Examiners with the authority to "...make, alter, or amend such rules and regulations as may be necessary on desirable to carry into effect the provisions of this Act."

#### §573.51. Rabies Control.

(a) Official rabies vaccination certificates shall be issued by the vaccinating veterinarian and shall contain certain standard information as designated by the Texas Department of Health, as follows:

- (1) owner's name, address, and telephone number;
- (2) animal identification (species, sex, age, size (pounds), predominate breed and color);
- (3) vaccine used, producer, expiration date, and serial number;
- (4) date vaccinated;
- (5) rabies tag number if a tag is issued;
- (6) veterinarian's signature or signature stamp and license number.

(b) Each Texas licensed veterinarian shall keep a copy of each rabies vaccination certificate administered by him/her for at least three years.

(c) It is the duty of the veterinarian having knowledge of an animal bite to a human to immediately report the incident to the local health authority. If the veterinarian prepares the biting animal's body for rabies diagnosis, he shall follow instructions detailed in the Texas Rabies Control and Eradication Act, §169.33.

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

records of the practice are transferred to a new owner.

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 February 12, 1993.

TRD-9319088

Buddy Matthjetz  
Executive Director  
Texas Board of Veterinary  
Medical Examiners

Effective date: March 9, 1993

Proposal date of adoption: January 15, 1993

For further information, please call: (512) 447-1183



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 48. Community Care for Aged and Disabled

##### Case Management

###### • 40 TAC §48.3903

The Texas Department of Human Services (DHS) adopts an amendment to §48.3903, without changes to the proposed text published in the January 5, 1993, issue of the *Texas Register* (18 TexReg 114).

The justification for the amendment is to require 12 days advance written notice of adverse action, regardless of whether the notice is given or mailed to the client.

The amendment will function by providing a simpler policy that gives all clients 12 days advance notice.

No comments were received regarding adoption of the amendment.

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

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 February 16, 1993.

TRD-9319075

Nancy Murphy  
Agency Liaison, Policy and  
Document Support  
Texas Department of  
Human Services

Effective date: March 15, 1993

Proposal publication date: January 5, 1993

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



# Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

**Emergency meetings and agendas.** Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the Office of the Secretary of State in lobby of 221 East 11th Street, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

## Texas Department of Agriculture

Thursday, March 11, 1993, 10 a.m. The Office of Hearings of the Texas Department of Agriculture will hold an administrative hearing to meet at the Texas Department of Agriculture, 2626 South Loop West, Suite 130, Houston. According to the complete agenda, the department will review alleged violation of Texas Agriculture Code Annotated, §103.001, et seq. (Vernon 1982) by Texas Tomatoes, Inc. as petitioned by Sun Valley Produce, Inc.

Contact: Joyce C. Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: February 17, 1993, 2:28 p.m.

TRD-9319153

Thursday, March 11, 1993, 1:30 p.m. The Office of Hearings of the Texas Department of Agriculture will hold an administrative hearing to meet at the Texas Department of Agriculture, 2626 South Loop West, Suite 130, Houston. According to the complete agenda, the department will review alleged violation of Texas Agriculture Code Annotated, §103.001, et seq. (Vernon 1982) by Texas Tomatoes, Inc. as petitioned by John W. Stahman doing business as Stahman Farms.

Contact: Joyce C. Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: February 17, 1993, 2:28 p.m.

TRD-9319154

## Texas Alcoholic Beverage Commission

Wednesday, February 24, 1993, at 9 a.m. The Texas Alcoholic Beverage Commission

will meet at 5806 Mesa Drive, Travis County, Room 180, Austin. According to the complete agenda, the commission will discuss approval of the minutes of January 26, 1993, meeting; administrator's report on agency activity; recognition of TABC employees with 20 and above years of services; presentation of Certificate of Appreciation to Terry Shankle for her commitment as TABC campaign coordinator for the Capital Area United Way Campaign; discuss and possibly act on changing TABC meeting time and date; designation of Jeannene Fox as Custodian of Records; outlined plan, objectives, method of implementation and evaluation of penalty chart; Wine Task Force proposed legislative recommendations; and staff proposed legislative recommendations; and public comment.

Contact: Dick Durbin, P.O. Box 13127, Austin, Texas 78711, (512) 458-2500.

Filed: February 16, 1993, 12:35 p.m.

TRD-9319073

## Texas Appraiser Licensing and Certification Board

Thursday, February 25, 1993, 1:30 p.m. The Education Committee of the Texas Appraiser Licensing and Certification Board will meet at the TREC Headquarters, Conference Room 235, (Second Floor), 1101 Camino La Costa, Austin. According to the complete agenda, the committee will call the meeting to order; discuss and possibly make recommendations to the Texas Appraiser Licensing and Certification Board concerning approval of qualifying and appraiser continuing education (ACE) courses; qualifying examinations; other educational matters; and adjourn. For ADA assistance,

call Nancy Guevremont, (512) 465-3923 at least two days prior to the meeting.

Contact: Renil C. Liner, 1101 Camino La Costa, Austin, Texas 78752, (512) 463-3950.

Filed: February 17, 1993, 1:39 p.m.

TRD-9319145

Thursday, February 25, 1993, 3 p.m. The Special Projects Committee of the Texas Appraiser Licensing and Certification Board will meet at the TREC Headquarters, Conference Room 235, (Second Floor), 1101 Camino La Costa, Austin. According to the complete agenda, the committee will call the meeting to order; discuss and possibly make recommendations to the Texas Appraiser Licensing and Certification Board regarding a policy for board member travel; minorities and women in the appraisal industry; and adjourn. For ADA assistance, call Nancy Guevremont, (512) 465-3923 at least two days prior to the meeting.

Contact: Renil C. Liner, 1101 Camino La Costa, Austin, Texas 78752, (512) 463-3950.

Filed: February 17, 1993, 1:40 p.m.

TRD-9319146

## Texas Commission on the Arts

Thursday, March 4, 1993, 8:30 a.m. The Texas Commission on the Arts will meet at the Embassy Suites Hotel-Ballroom, 5901 IH-35 North, Austin. According to the agenda summary, the commission will call the meeting to order; discuss public hearing;

items for commission consent, individual consideration, and information only; meet in executive session; and adjourn.

Contact: Connie Green, P.O. Box 13406, Austin, Texas 78711-3406, (512) 463-5535.

Filed: February 16, 1993, 2:55 p.m.

TRD-9319094

### Canadian River Compact Commission

Monday, March 22, 1993, 1 p.m. The Canadian River Compact Commission met at the Oklahoma Water Resources Board, 600 North Harvey Street, Oklahoma City. According to the agenda summary, the commission called the meeting to order; discussed approval of the minutes of the April 7, 1992; heard reports of the chairman, secretary, treasurer, engineering committee, states and federal agencies; and new business was discussed.

Contact: Herman Settemeyer, P.O. Box 13087, Austin, Texas 78711, (512) 475-4617.

Filed: February 16, 1993, 2:31 p.m.

TRD-9319090

### Texas Department of Criminal Justice

Wednesday, February 17, 1993, 5 p.m. The Board Subcommittee on Construction of the Texas Department of Criminal Justice held an emergency meeting at the TDCJ Austin Office, 816 Congress Avenue, Suite 500, Austin. According to the complete agenda, the board heard presentation by Skip Stevens, H.B. Zachary Company, Inc.; presentation by Jim Slack, Sprung Instant Structures, Inc.; current project status: 2250 Man Units, Stiles Unit-Beaumont, Terrell Unit-Livingston and Karnes City, and 1000 Man Unit, Cuero; Psychiatric Unit, Jester-Sugarland; 25,300 Bed Program; prevailing wage update; subcontractor bonding; weather time extensions; date, location, and format for next meeting; discussed other items; and adjourned. Convened in executive session to discuss Alberti litigation (closed in accordance with Texas Civil Statutes, Article 6252-17, §2(e)). The emergency meeting was necessary due to the passage of emergency appropriations through Senate Bill 171 and the tight time frames for construction to relieve jail overcrowding required that the subcommittee meet on an emergency basis.

Contact: Susan McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: February 17, 1993, 11:51 a.m.

TRD-9319143

### Texas Council on Vocational Education

Wednesday, March 3, 1993, 9 a.m. The Texas Council on Vocational Education will meet at the Spring Branch ISD, Administration Building, 955 Campbell Road, Houston. According to the agenda summary, the council will receive an overview of vocational programs at Spring Branch ISD and then tour the Spring Woods Senior High Campus, looking specifically at their tech prep and integrated academic/vocational education programs. The council will tour the Northbrook Middle School to look at integrated career awareness and Life Management Skills/Industrial Technology programs. A regular business meeting will be held at 1 p.m. in the Career Center Library at which time the council receive testimony on issues relevant to vocational education; discuss the approval of the minutes of January 29, 1993 meeting; take action on the JTPA/Vocational Education evaluation report, and the establishment of a State Human Resource Investment Council; receive an update on the 1993 Texas Vocational Education Awards Program; integration of academic and vocational education project; and tour the Junior Livestock Show in Houston at 5 p.m.

Contact: Val Blaschke, P.O. Box 1886, Austin, Texas 78767, (512) 463-5490.

Filed: February 18, 1993, 9:16 a.m.

TRD-9319192

### Texas Education Agency

Thursday-Friday, February 25-26, 1993, 1:30 p.m. and 9 a.m. (respectively). The Committee on Student Learning of the Texas Education Agency will meet in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the complete agenda, on Thursday at 1:30 p.m., the committee will discuss optional worksession on the status of accountability recommendations, the results derivation process, and other issues of concern to members of the Committee on Student Learning; and on Friday, at 9 a.m., the committee will make introductions and comments; toward a comprehensive reform agenda: Dr. Rexford Brown, Senior Fellow, Education Commission of the States will discuss with the committee the following topics: The Elements of Systemic Reform: What's Going On and Who's Doing What in Texas? , Results-driven Education, and Hard Choices in Student Assessment; discuss priorities and next steps; and review the results process.

Contact: Marvin Veselka, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9533.

Filed: February 17, 1993, 4:04 p.m.

TRD-9319175

### Statewide Health Coordinating Council

Wednesday, February 24, 1993, 10 a.m. The Legislative Committee of the Statewide Health Coordinating Council will meet at the Texas Department of Health, Room M-652, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss and possibly act on health planning issues; legislative tracking system; legislative visits; and prioritizing legislation for tracking.

Contact: Don R. Kretsinger, 1110 West 49th Street, Austin, Texas 78756, (512) 458-7261. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior the meeting.

Filed: February 16, 1993, 4:13 p.m.

TRD-9319113

Wednesday, February 24, 1993, 11:30 a.m. The Statewide Health Coordinating Council will meet at the Texas Department of Health, Room M-652, 1100 West 49th Street, Austin. According to the complete agenda, the council will discuss approval of the minutes of the previous meetings; discuss and possibly act on reports from the Bureau Chief, the Legislative Committee, the Nominating Committee; and election of officers.

Contact: Don R. Kretsinger, 1110 West 49th Street, Austin, Texas 78756, (512) 458-7261. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior the meeting.

Filed: February 16, 1993, 4:13 p.m.

TRD-9319111

### Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids

Thursday, February 25, 1993, 7 p.m. The Organization Committee of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids will meet at the Ramada Airport Hotel, 5660 North IH-35, Austin. According to the complete agenda, the committee will discuss §1.18, Employment of License; §1.01(g), 30-day trial period; and Rule and Regulation 141.1-Supervision.

Contact: Wanda F. Stewart, 4800 North Lamar Boulevard, Suite 150, Austin, Texas 78756-3178, (512) 459-1489.

Filed: February 18, 1993, 8:12 a.m.

TRD-9319190

Friday, February 26, 1993, 8 a.m. The State Board Examination of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids will meet at the Ramada Airport Hotel, 5660 North IH-35, Austin. According to the complete agenda, the board will conduct State Examinations.

Contact: Wanda F. Stewart, 4800 North Lamar Boulevard, Suite 150, Austin, Texas 78756-3178, (512) 459-1489.

Filed: February 18, 1993, 8:12 a.m.

TRD-9319189

Saturday, February 27, 1993, 8 a.m. The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids will meet at the Ramada Airport Hotel, 5660 North IH-35, Austin. According to the complete agenda, the board will discuss invocation-A. L. Burns, Jr.; discuss approval of minutes of October 24, 1992; board action on examination; hear committee reports; discuss §1.18, Employment of Licensee; §1.01(g), 30-day trial period; Rule and Regulation 141.1-Supervision; hear executive director's report; president's report; and plan future meeting dates.

Contact: Wanda F. Stewart, 4800 North Lamar Boulevard, Austin, Texas 78756-3178, (512) 459-1489.

Filed: February 18, 1993, 8:13 a.m.

TRD-9319191

### Texas Department of Insurance

Thursday, February 25, 1993, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the hearing section will conduct a public hearing to consider the application of Doris F. Lynch of Blooming Grove, Texas, for a Group I, Legal Reserve Life Insurance Agent's license.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: February 16, 1993, 10:37 a.m.

TRD-9319071

Friday, February 26, 1993, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the hearing section will conduct a public hearing to consider the application for approval of the articles of agreement of

CU Lloyds of Texas, changing the attorney-in-fact.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: February 16, 1993, 10:37 a.m.

TRD-9319070

Monday, March 1, 1993, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the hearing section will conduct a public hearing to consider the application of Steven Mark Orme, Austin, Texas, for a Group I, Legal Reserve Life Insurance Agent's license.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: February 16, 1993, 10:37 a.m.

TRD-9319069

### Texas Department of Licensing and Regulation

Thursday, February 25, 1993, 9 a.m. (Rescheduled from Thursday, February 16, 1993). The Inspections and Investigations, Manufactured Housing of the Texas Department of Licensing and Regulation will meet at 920 Colorado, E.O. Thompson Building, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension, or revocation of the license for Tommy Phillips doing business as Western Star Mobile Home Service for violation of Articles 6252-13(a) and 9100, 16 TAC, §§69.28(a), 69.121(c), and 69.54(b)(1).

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: February 17, 1993, 11:05 a.m.

TRD-9319142

Tuesday, March 16, 1993, 9 a.m. The Inspections and Investigations, Auctioneers of the Texas Department of Licensing and Regulation will meet at 920 Colorado, E.O. Thompson Building, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension, or revocation of the license for Donnie Dickerson for violation of Article 8700, §7(a)(4) and 16 TAC, §67.101(4) and 9100.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: February 17, 1993, 11:04 a.m.

TRD-9319141

Wednesday, March 17, 1993, 9 a.m. The Inspections and Investigations, Auctioneers of the Texas Department of Licensing and Regulation will meet at 920 Colorado, E.O. Thompson Building, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension, or revocation of the license for Morris Taibel for violation of Article 8700, §7(a)(4) and 16 TAC, §67.101(4) and 9100.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: February 17, 1993, 11:04 a.m.

TRD-9319140

### Texas State Board of Medical Examiners

Thursday, February 25, 1993, 4 p.m. The Ad Hoc Committee for Ethical Issues of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the complete agenda, the committee will call the meeting to order; take roll call; introduce guests; discuss ethical issues to be pursued by the committee; and adjourn. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484).

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: February 17, 1993, 4:18 p.m.

TRD-9319185

Thursday-Friday, February 25-26, 1993, 1 p.m. and 8:30 a.m. respectively. The Disciplinary Process Review Committee of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the agenda summary, the committee will discuss approval of the minutes of previous meeting; discuss the January 1993 enforcement report; review addition and change in the Compliance Procedure Manual; meet in executive session to review selected files; and discuss proposed rule change. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484).

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: February 17, 1993, 4:19 p.m.

TRD-9319186

Friday, February 26, 1993, 8:30 a.m. The Examination Committee of the Texas State

Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the complete agenda, the committee will review examination applicants; review December 1992 FLEX/Jurisprudence Examination results; and examination applicants complete for consideration of licensure. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484).

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: February 17, 1993, 4:18 p.m.

TRD-9319183

Friday, February 26, 1993, 8:30 a.m. The Reciprocity Committee of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the complete agenda, the committee will review December, 1992 SPEX examination statistics; discuss reciprocal endorsement applicants to be considered for permanent licensure; review of reciprocal endorsement applicants; review of application questions; discuss proposed instruction packet warning notice; and American Board of Anesthesiology "Continued Demonstration of Qualifications" examination. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484).

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: February 17, 1993, 4:18 p.m.

TRD-9319184

Friday, February 26, 1993, 2 p.m. The Public Information Committee of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the complete agenda, the committee will give a report on 800 numbers; update on newsletter; discussion for enhancing the board's public relations: upcoming TMA/TOMA Conventions; medical school visits; other conventions; and discuss news items from board members. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484).

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: February 17, 1993, 4:18 p.m.

TRD-9319182

Friday, February 26, 1993, 2 p.m. The Long Range Planning Committee of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite

300, Austin. According to the complete agenda, the committee will call the meeting to order; take roll call; discuss possible changes in board rules; proposed changes to the Medical Practice Act; discuss Sunset issues; feasibility of establishing a Compliance Committee to review non-complaint probationers; and adjourn. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484).

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: February 17, 1993, 4:15 p.m.

TRD-9319180

Friday, February 26, 1993, 2:30 p.m. The Medical School Committee of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the complete agenda, the committee will call the meeting to order; take roll call; discussion and feedback from medical school deans regarding licensure and teaching permits; update on medical school visits; and adjourn. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484).

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: February 17, 1993, 4:15 p.m.

TRD-9319179

Friday, February 26, 1993, 4:30 p.m. The Finance Committee of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the complete agenda, the committee will give a report and update on Finance Committee recommendations; report on uniform statewide accounting system; report on financial status; comptroller's report "Against the Grain"; and review fiscal notes. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484).

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: February 17, 1993, 4:15 p.m.

TRD-9319178

Friday, February 26, 1993, 4:30 p.m. The Standing Orders Committee of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the agenda summary, the committee will discuss clarification of rules and policy; introduce the Acupuncture Advisory Committee; and discuss proposed rule changes for acupuncturists. (Executive session under authority of Arti-

cle 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484).

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: February 17, 1993, 4:14 p.m.

TRD-9319177

Friday, February 26, 1993, 5 p.m. The Legislative Committee of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the complete agenda, the committee will call the meeting to order; take roll call; update on Sunset Review and budget; update on board members' contacts with Legislators; and adjourn. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484).

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: February 17, 1993, 4:14 p.m.

TRD-9319176

Friday-Saturday, February 26-27, 3:30 p.m. and 8:30 a.m., respectively. The Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the agenda summary, the board will discuss statutory changes to requirements for international medical graduates; conduct probation appearances; consider proposal for decision and requests for termination of suspension and probation; discuss approval of minutes and board orders; consider an interlocutory appeal to the board for protective order; and hear the executive director's report which will include a discussion of enforcement, finances, licensure, Sunset Review, and legislative issues. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484).

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: February 17, 1993, 4:19 p.m.

TRD-9319188

Friday, March 12, 1993, 10 a.m. The District Review Committee Number Three will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the complete agenda, the committee will call the meeting to order; election of officers; review of multiple liability files; and adjourn. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484).

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: February 17, 1993, 4:19 p.m.

TRD-9319187

### State Pension Review Board

Tuesday, March 2, 1993, 8:30 a.m. The Legislative Advisory Committee of the State Pension Review Board will meet at the William P. Clements Building, 300 West 15th Street, Fourth Floor, Room 406, Austin. According to the complete agenda, the committee will make preparation of actuarial impact statements on bills for which actuarial information is available by meeting time, and for which requests have been received from legislative committees.

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736

Filed: February 17, 1993, 9:23 a.m.

TRD-9319126

Tuesday, March 9, 1993, 8:30 a.m. The Legislative Advisory Committee of the State Pension Review Board will meet at the William P. Clements Building, 300 West 15th Street, Fourth Floor, Room 406, Austin. According to the complete agenda, the committee will make preparation of actuarial impact statements on bills for which actuarial information is available by meeting time, and for which requests have been received from legislative committees.

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736

Filed: February 17, 1993, 9:23 a.m.

TRD-9319125

Tuesday, March 16, 1993, 8:30 a.m. The Legislative Advisory Committee of the State Pension Review Board will meet at the William P. Clements Building, 300 West 15th Street, Fourth Floor, Room 406, Austin. According to the complete agenda, the committee will make preparation of actuarial impact statements on bills for which actuarial information is available by meeting time, and for which requests have been received from legislative committees.

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736

Filed: February 17, 1993, 9:23 a.m.

TRD-9319123

Tuesday, March 23, 1993, 8:30 a.m. The Legislative Advisory Committee of the State Pension Review Board will meet at the William P. Clements Building, 300 West 15th Street, Fourth Floor, Room 406, Austin. According to the complete agenda, the committee will make preparation of actuarial impact statements on bills for which actuarial information is available by meeting time, and for which requests have been received from legislative committees.

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736

Filed: February 17, 1993, 9:22 a.m.

TRD-9319122

Tuesday, March 30, 1993, 8:30 a.m. The Legislative Advisory Committee of the State Pension Review Board will meet at the William P. Clements Building, 300 West 15th Street, Fourth Floor, Room 406, Austin. According to the complete agenda, the committee will make preparation of actuarial impact statements on bills for which actuarial information is available by meeting time, and for which requests have been received from legislative committees.

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736

Filed: February 17, 1993, 9:22 a.m.

TRD-9319121

### Public Utility Commission of Texas

Wednesday, February 24, 1993, 9 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the commission will consider the following dockets: 10981, 11275, 11406, 11431, 10776, 11262, 11259, P-11462, 11312, 11392, 11221, 11337, 10929, 11382, 10883, 11253, 11371, P-11708, and P-11546.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 16, 1993, 3:32 p.m.

TRD-9319100

Wednesday, February 24, 1993, 9:05 a.m. The Administrative of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the administration will discuss reports; discuss and act on approval of comments by the Texas PUC in FCC Docket; discuss Texas Weatherization Policy Advisory Council suggestions; briefing and possible intervention in Tex-La Electric Cooperative of Texas, Inc. v. TU, Docket Number TX 93-1, before FERC; discuss CES/PUC interagency contract; consider proposed or pending legislation and possibly act with respect thereto; budget and fiscal matters; adjourn for executive session to consider litigation and personnel matters; reconvene for discussion and decisions on matters considered in executive session; set time and place for next meeting; and final adjournment.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 16, 1993, 3:33 p.m.

TRD-9319101

Wednesday, March 3, 1993, 10 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a prehearing conference in Docket Number 11346-application of Magic Valley Electric Cooperative, Inc. to amend Certificate of Convenience and Necessity to construct a new transmission line in Hidalgo County.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 17, 1993, 3:32 p.m.

TRD-9319171

Wednesday, March 3, 1993, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11494-application of Livingston Telephone Company, Inc. to revise tariff.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 17, 1993, 3:32 p.m.

TRD-9319172

Thursday, March 25, 1993, 10 a.m. (Rescheduled from March 17, 1993 at 10 a.m.). The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11660-application of Houston County Electric Cooperative, Inc. for authority to implement a new high load factor rate.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 17, 1993, 3:33 p.m.

TRD-9319173

Monday, May 3, 1993, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in the revenue requirement phase in Docket Number 11735-application of Texas Utilities Electric Company for authority to change rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 16, 1993, 3:34 p.m.

TRD-9319102

### Texas Municipal Retirement System

Friday, March 5, 1993, 8:30 a.m. The Board of Trustees of the Texas Municipal Retirement System will meet at 1200 North IH-35, Austin. According to the complete agenda, the board will hear and discuss approval of the minutes of the December 12, 1992, regular meeting; review and approve service retirements; disability retirements; review and approve supplemental death benefits payments; consider extended supplemental death benefits; review and act on financial statements; consider and approve prescribed application forms for withdrawals of deposits after January 1, 1993; consider resolution designating persons to authorize the sale, assignment, or transfer of securities owned by the system; consider selection of a consultant to perform a comprehensive classification and compensation study for the system's employees; consider and act upon system's response to pending legislation; report by legal counsel; and consider any other business to come before the board.

Contact: Gary W. Anderson, 1200 North IH-35, Austin, Texas 78701, (512) 476-7577.

Filed: February 17, 1993, 2:46 p.m.

TRD-9319163

### Texas Surplus Property Agency

Thursday, March 4, 1993, 3 p.m. The Governing Board of the Texas Surplus Property Agency will meet at the General Services Commission, 1711 San Jacinto Street, Room 402 (Board Room), Austin. According to the complete agenda, the board will discuss approval of minutes of November 17, 1992, board meeting; general public presentations; discuss state audit, management consultant report; internal audit function; handling fee rate review; and approval of completion of Houston district warehouse expansion.

Contact: Marvin J. Titzman, Box 8120, San Antonio, Texas 78208, (210) 661-2381.

Filed: February 17, 1993, 2:59 p.m.

TRD-9319165

### Texas Water Commission

Wednesday, April 7, 1993, 9 a.m. The Texas Water Commission will meet at the

Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing to consider Guadalupe River R.V. Resort, Inc.'s Application Number 5444 for a permit to divert and use 100 acre-feet of water per annum from the Guadalupe River, Guadalupe River Basin. The water will be used to irrigate 25.5 acres of land out of a 28-acre tract located approximately four miles northwest of Kerrville in Kerr County.

Contact: Mark Evans, P.O. Box 13087, Austin, Texas 78711, (512) 475-4584.

Filed: February 16, 1993, 4:12 p.m.

TRD-9319109

Thursday, April 8, 1993, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Weslaco Public Library Theater and Meeting Room, 525 South Kansas, Weslaco. According to the agenda summary, the commission will hold a hearing to consider the City Of Donna's wholesale water rate increase. Docket Number 9891-A.

Contact: Jim Bateman, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: February 16, 1993, 4:13 p.m.

TRD-9319114

Wednesday, April 14, 1993, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the American Legion Hall, Post 40, 1612 North Robertson, Gonzales. According to the agenda summary, the commission will hold a hearing to consider the petition for creation of the Gonzales County Underground Water Conservation District.

Contact: Cynthia Hayes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: February 16, 1993, 4:12 p.m.

TRD-9319110

Wednesday, May 5, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on Application Number 5446 submitted by the United States Fish and Wildlife Service, San Bernard National Wildlife Refuge for a permit to divert 2,545 acre-feet of water per annum from Cedar Lake Creek, tributary of Cedar Lakes, tributary of Intracoastal Waterway, Brazos-Colorado Coastal Basin. Water will be diverted, primarily October through February, into a 1,086 acre-foot capacity, off-channel storage reservoir complex for subsequent release into wetland areas used for water fowl habitats. The reservoir complex will be used as a deep water habitat (between 2.5 and 3 feet deep) and diverted water will be used to maintain 2,545 acres

of existing high use wetlands (out of 16,783. 67 acres of land owned by the applicant) within the San Bernard Wildlife Refuge, located approximately 20 miles southwest of Angleton in Brazoria County.

Contact: Lann Bookout, P.O. Box 13087, Austin, Texas 78711, (512) 463-8195.

Filed: February 16, 1993, 4:13 p.m.

TRD-9319112

### Texas Water Development Board

Wednesday, February 24, 1993, 3 p.m. The Policy and Finance Committee of the Texas Water Development Board will meet at the Stephen F. Austin Building, Room 513-F, 1700 North Congress Avenue, Austin. According to the complete agenda, the committee will discuss approval of the minutes of the January 20, 1993 policy and finance committee meeting; briefing and discussion of: change to State Revolving Fund Banking Services agreement with the Canadian Imperial Bank of Commerce; present and future EDAP projects; status of Trans-Texas Program; consider request from El Paso County on a Colonia Plumbing Loan application; and may consider items on the agenda of the February 25, 1993 board meeting. Additional non-committee board members may be present to deliberate but will not vote in the committee meeting.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: February 16, 1993, 4:06 p.m.

TRD-9319103

Thursday, February 25, 1993, 9 a.m. The Texas Water Development Board will meet at 208 Barton Springs Road, Hyatt Hotel, Hill Country Room, Austin. According to the agenda summary, the board will consider minutes; hear financial, executive, and committee reports; review extensions to Bridgeport, Fort Worth, and North Channel Water Authority; financial assistance to Kaufman, Evergreen UWCD, Mustang WSC, Alvarado, Dimmit County, Edinburg, Hidalgo County and El Paso (Westway); administrative costs under the Colonia Plumbing Loan Program; contracts for Spring Flow Augmentation at Comal and San Marcos Springs and industrial water use efficiency; Fiscal Year 1993-2000 SRF project priority list; Series 1993A-1993F bond lending rate; glossary and covenant requirements for financing programs; TWRFA portfolio sale and interim finance program; change of security pledge for Temple; refunding certificates of obligation for Hillsboro; grant fund for economically distressed areas program (EDAP) innovative technology projects; federal funds for



EDAP projects; and renewal option with First Southwest Company.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: February 17, 1993, 3:26 p.m.

TRD-9319167

### Texas Water Resources Finance Authority

Thursday, February 25, 1993, at 9 a.m. The Texas Water Resources Finance Authority will meet at 208 Barton Springs Road, Hyatt Hotel, Hill Country Room, Austin. According to the complete agenda, the authority will consider approval of the minutes of the meeting of January 21, 1993; two-year renewal option on the Financial Advisory Agreement with First Southwest Company; and authorizing the Executive Administrator and the Development Fund Manager to take all actions necessary for the sale of assets in the TWRFA portfolio and implementation of an Interim Finance Program.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78701, (512) 463-7847.

Filed: February 17, 1993, 3:26 p.m.

TRD-9319168

### Texas Workers' Compensation Insurance Fund

Wednesday, February 24, 1993, 8:30 a.m. The Board of Directors of the Texas Workers' Compensation Insurance Fund will meet at the Lakeway Inn Conference Resort, Austin. According to the complete agenda, the board will call the meeting to order; take roll call; review and discuss approval of the minutes of the January 27, 1993, board meeting; public participation; fund activity reports; plan for internal audit process; adopt benefits services' training program; policies and procedures; facility depopulation and transition team report; report on direct marketing policy follow-up; discuss board strategic planning retreat; make announcements; and adjourn.

Contact: Jodie Bowen, 100 Congress Avenue, Suite 300, Austin, Texas 78701, (512) 322-3851.

Filed: February 16, 1993, 11:59 a.m.

TRD-9319072

### Regional Meetings

#### Meetings Filed February 16, 1993

The Austin Transportation Study Policy Advisory Committee held an emergency meeting at the Saint Edwards University, Maloney Room, Main Building, Room 320, Austin, February 19, 1993, at 9 a.m. The emergency meeting was necessary because the committee was unable to meet deadline due to holidays. Information may be obtained from Michael R. Aulick, P.O. Box 1088, Austin, Texas 78767, (512) 499-6441. TRD-9319078.

The Dallas Central Appraisal District Board of Directors met at 2949 North Stemmons Freeway, First Floor, Dallas, February 22, 1993, at 9 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9319108.

The Dallas Central Appraisal District Appraisal Review Board met at 2949 North Stemmons Freeway, Dallas, February 22, 1993, at 10 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9319093.

The Deep East Texas Council of Governments Board of Directors will meet at the Crockett Inn, 1600 East Loop 304, South, Houston County, Crockett, February 25, 1993, at 1 p.m. Information may be obtained from Joan Draper, 274 East Lamar, Jasper, Texas 75951, (409) 384-5704. TRD-9319096.

The Deep East Texas Private Industry Council, Inc. will meet in Room 102, City Hall, Lufkin, February 23, 1993, at 2:30 p.m. Information may be obtained from Charlene Meadows, P.O. Box 1463, Lufkin, Texas 75901, (409) 634-2247. TRD-9319098.

The Golden Crescent Regional Planning Commission Board of Directors will meet at the GCRPC Board Room, Regional Airport, Building 102, Victoria, February 24, 1993, at 5 p.m. Information may be obtained from Patrick Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587. TRD-9319095.

The Lometa Rural Water Supply Corporation Board of Directors held an emergency meeting at the Lometa School Activity Center, 228 North Eighth Street, Lometa, February 18, 1993, at 7 p.m. The emergency meeting was necessary due to holiday. Information may be obtained from Levi G. Cash and/or Tina L. Hodge, P.O. Box 158, Lometa, Texas 76853, (512) 752-3505. TRD-9319062.

The Parmer County Appraisal District Board of Directors will meet at 305 Third Street, Bovina, March 11, 1993, at 7 p.m. Information may be obtained from Ron Procter, Box 56, Bovina, Texas 79009, (806) 238-1405. TRD-9319097.

The Region V Education Service Center Board of Directors will meet at the ESC Boardroom, Delaware Street, Beaumont, February 24, 1993, at 1 p.m. Information may be obtained from Robert E. Nicks, 2295 Delaware Street, Beaumont, Texas 77703, (409) 835-5212. TRD-9319099.

The Wise County Education District Board of Directors will meet at 2108 15th Street, Bridgeport, February 23, 1993, at 7:30 p.m. Information may be obtained from Freddie Triplett, 206 South State Street, Decatur, Texas 76426, (817) 627-3081. TRD-9319087.

#### Meetings Filed February 17, 1993

The Bexar Appraisal District Appraisal Review Board held an emergency meeting at 535 South Main Street, San Antonio, February 19, 1993, at 9 a.m. The emergency status was necessary as this was the only time a quorum of board members were available. Information may be obtained from Beverly Houston, 535 South Main Street, San Antonio, Texas 78204, (512) 224-8511. TRD-9319158.

The Bexar Appraisal District Board of Directors met at 535 South Main Street, San Antonio, February 22, 1993, at 5 p.m. Information may be obtained from Beverly Houston, 535 South Main Street, San Antonio, Texas 78204, (512) 224-8511. TRD-9319155.

The Bexar Appraisal District Appraisal Review Board will meet at 535 South Main Street, San Antonio, March 1-5, 8-12, 15-18, 22-26, 29-31, 1993, at 8:30 a.m. Information may be obtained from Beverly Houston, 535 South Main Street, San Antonio, Texas 78204, (512) 224-8511. TRD-9319157.

The Brazos Valley Development Council Family Self-Sufficiency Coordinating Body will meet at the Council's Office, 3006 East 29th Street, Bryan, February 23, 1993, at noon. Information may be obtained from Laura Klesel, P.O. Box 4128, Bryan, Texas 77805-4128. TRD-9319161.

The Houston-Galveston Area Council H-GAC Projects Review Committee will meet at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, February 23, 1993, at 9 a.m. Information may be obtained from Cynthia Marquez, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9319133.

The Houston-Galveston Area Council H-GAC Board of Directors will meet at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, February 23, 1993, at 10 a.m. Information may be obtained from Cynthia Marquez, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9319132.

The Johnson County Rural Water Supply Corporation held an emergency meeting at the Corporation Office, Highway 171 South, Cleburne, February 19, 1993, at 11:30 a.m. The emergency meeting was necessary due to a court hearing at 1:30 p.m. and a decision needed to be made prior to hearing. Information may be obtained from Charlene SoRelle, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9319174.

The Lee County Appraisal District Board of Directors will meet at 218 East Richmond Street, Giddings, February 24, 1993, at 9 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9319156.

The Leon County Central Appraisal District Board of Directors met at the Leon County Central Appraisal District Office, Corner Highway 75 and Highway 7, Gresham Building, Centerville, February 22, 1993, at 7 p.m. Information may be obtained from Donald Gillum, P.O. Box 536, Centerville, Texas 75833, (903) 536-2252. TRD-9319148.

The Liberty County Central Appraisal District Board of Directors will meet at 315 Main Street, Liberty, February 24, 1993, at

9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722. TRD-9319131.

The Lubbock Regional Mental Health and Mental Retardation Center Board of Trustees met at 3801 Avenue J, Board Room, Lubbock, February 22, 1993, at noon. Information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79401, (806) 766-0202. TRD-9319170.

The Middle Rio Grande Development Council Board of Directors will meet at the K.C. Hall, 306 Ford Street, Eagle Pass, February 24, 1993, at 10 a.m. Information may be obtained from Michael Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9319144.

The Region VIII Education Service Center Board of Directors will meet at the Holiday Inn Restaurant, Mt. Pleasant, February 25, 1993, at 11:30 a.m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Mt. Pleasant, Texas 75456, (903) 572-8551. TRD-9319162.

The Swisher Appraisal District Board of Directors will meet at 130 North Armstrong, Tulia, February 23, 1993, at 7 p.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118. TRD-9319164.

The Trinity River Authority of Texas Board of Directors will meet at 5300 South Collins, Arlington, February 24, 1993, at 10 a.m. Information may be obtained from James L. Murphy, 5300 South Collins, Ar-

lington, Texas 76018, (817) 467-4343. TRD-9319160.

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**Meetings Filed February 18, 1993**

The Alamo Area Council of Governments Management Committee met at 118 Broadway, Suite 420, San Antonio, February 23, 1993, at 10:30 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201. TRD-9319197.

The Alamo Area Council of Governments Board of Directors met at 118 Broadway, Suite 420, San Antonio, February 23, 1993, at 1 p.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201. TRD-9319196.

The Bandera County Appraisal District Appraisal Review Board will meet at the Bandera County Appraisal Office, North End of Ninth Street, Bandera, February 25, 1993, at 9 a.m. Information may be obtained from P. H. Coates, IV, P.O. Box 1119, Bandera, Texas 78003, (210) 796-3039, FAX (210) 796-3672. TRD-9319195.

The Deep East Texas Council of Governments Grants Application Review Committee will meet at 1600 East Loop 304 South, Crockett, February 25, 1993, at 11 a.m. Information may be obtained from Rusty Phillips, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9319194.

# 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 Committee on Purchases of Products and Services of Blind and Severely Disabled Persons

### List of Suitable Products

The purpose of the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons is to further the state's policy of encouraging and assisting disabled citizens to achieve maximum personal independence. This purpose is carried out by employing disabled persons in activities which provide products and services to state and local governments. As required by Title 40, Texas Administrative Code, §189.14, the committee has published a list of suitable products selected by the committee for placement in a catalog. This listing contains information regarding the products, delivery schedules, freight, and packaging.

The listing is available for public inspection at the Texas Commission for the Blind, 4800 North Lamar Boulevard, Administrative Building, Suite 320, Austin (Attention: Michael T. Phillips) and at the General Services Commission, Central Services Building, 1711 San Jacinto, Third Floor, Austin (Attention: Ron Arnett).

Issued in Austin, Texas, on February 10, 1993.

TRD-9319016 Michael T. Phillips  
Committee Member  
Texas Committee on Purchases of  
Products and Services of Blind and  
Severely Disabled Persons

Filed: February 12, 1993

## Texas Bond Review Board

### Bi-Weekly Report on the 1993 Allocation of the State Ceiling on Certain Private Activity Bonds

The information that follows is a report of the allocation activity for the period of January 30-February 12, 1993.

Total amount of state ceiling remaining unreserved for the \$247,184,000 subceiling for qualified mortgage bonds under the Act as of February 12, 1993: \$247,184,000.

Total amount of state ceiling remaining unreserved for the \$154,490,000 subceiling for state-voted issues under the Act as of February 12, 1993: \$44,490,000.

Total amount of state ceiling remaining unreserved for the \$66,210,000 subceiling for qualified small issues under the Act as of February 12, 1993: \$66,210,000.

Total amount of state ceiling remaining unreserved for the \$44,140,000 subceiling for residential rental project issues under the Act as of February 12, 1993: \$426,000.

Total amount of state ceiling remaining unreserved for the \$370,776,000 subceiling for all other bonds requiring an allocation under the Act as of February 12, 1993: \$120,776,000.

Total amount of the \$882,800,000 state ceiling remaining unreserved as of February 12, 1993: \$479,086,000.

Following is a comprehensive listing of applications which have received a reservation date pursuant to the Act from January 30, 1993-February 12, 1993: North Texas Higher Education Authority, Eligible Borrowers, Qualified Student Loan Bonds, \$50,000,000; Gulf Coast IDA, Amoco Corporation, All Other Bonds Dock and Wharf Facilities, \$50,000,000; Southeast Texas HFC, Magi, Inc., Residential Rental The Ridge Apartments, \$8,000,000; El Paso HFC, JRK-Pecan Grove Partners, L.P., Residential Rental Pecan Grove Apartments, \$4,554,000; Gulf Coast Waste Disposal Authority, Union Carbide Borrowers, All Other Bonds Sewage and Solid Waste Disposal Facilities, \$50,000,000.

Following is a comprehensive listing of applications which have issued and delivered the bonds and received a Certificate of Allocation pursuant to the Act from January 30, 1993-February 12, 1993: Texas Veterans Land Board, Eligible Borrowers, Land Bonds State-Voted, \$35,000,000.

Issued in Austin, Texas, on February 15, 1993.

TRD-9319116 Jim Thomassen  
Executive Director  
Texas Bond Review Board

Filed: February 16, 1993

## Comptroller of Public Accounts

### Local Sales Tax Changes Effective April 1, 1993

The 1.0% city sales tax will be abolished effective April 1, 1993, in the city of Monticello (Titus Company), City Code 2225045, New Rate 0.0%, Combined Rate 684%.

An additional 1/2% sales tax for improving and promoting industrial and economic development will become effective April 1, 1993, in the city following.

<u>City Name</u>	<u>City Code</u>	<u>New Rate</u>	<u>Combined Rate</u>
Grand Prairie (Dallas Co.)	2220013	1 1/2%	7 3/4%
Grand Prairie (Ellis Co.)	2220013	1 1/2%	7 3/4%
Grand Prairie (Tarrant Co.)	2220013	1 1/2%	7 3/4%

A 1/2% special purpose district sales tax will become effective April 1, 1993, in Kinney County to be used for county health services: SPD Name Kinney Company Health Services, SPD Code 513506, New Rate 1/2%.

Combined Rate:

The City of Brackettville currently is collecting a 1.0% city sales tax within this county. Its combined rate will be 784%;

The City of Spofford has no city sales tax, so its combined rate will be 684%.

Issued in Austin, Texas, on February 17, 1993.

TRD-9319124

Martin Cherry  
Chief, General Law Section  
Comptroller of Public Accounts

Filed: February 17, 1993

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**Employees Retirement System of Texas  
Fiscal Report**

The Government Code, Title 8, Subtitle B, §815.108, requires that the Employees Retirement System of Texas (System) publish a report in the *Texas Register* containing the balance sheet of the System as of August 31 of the preceding fiscal year and an actuarial valuation of the System's assets and liabilities.

The report consists of an explanation of fund structure, combining balance sheets by fund type, and an actuarial valuation of the System's pension funds.

The balance sheets are presented by fund within fund type. They present more detailed information than would be required by Generally Accepted Accounting Principles (GAAP), and they do not include the note disclosures required by GAAP. They are presented in the following order, preceded by an explanation of the fund structure:

Combining Balance Sheets

Schedule 1: Pension Trust Funds

Schedule 2: Expendable Trust Funds

Schedule 3: Special Revenue Funds

Schedule 4: Agency Funds

The actuarial valuation consists of the following: Actuary's Opinion, Actuarial Valuation Balance Sheets and Summary of Actuarial Valuation Results, Actuarial Cost Method and Assumptions, and Glossary of Actuarial Terminology.

Questions about the reports should be directed to Darrell J. Leslie, Director of Accounting, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, (512) 867-3224, WATS number 1 (800) 252-3645.

# Employees Retirement System of Texas

## FUND STRUCTURE

The financial statements are organized on the basis of funds, each of which is considered to be a separate accounting entity. The operations of each fund are accounted for with a separate set of self-balancing accounts. These accounts are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with applicable statutory guidelines or restrictions. The System's accounts fall under two basic fund types: Governmental Funds and Fiduciary Funds. The following is a brief description of the primary activity of each fund.

### 1. Governmental Funds

#### Special Revenue Funds

Special Revenue Funds are used to account for the System's proceeds from specific revenue sources that are legally restricted to expenditures for specified purposes.

#### (i) Social Security Administration Fund

The Social Security Administration Fund is the operating fund from which the expenditures of administration and maintenance of the Social Security Program are paid.

#### (ii) Death Benefits Program for Commissioned Peace Officers, Firemen, etc. Fund (General Revenue Fund)

The Death Benefits Program for Commissioned Peace Officers, Firemen, etc., Fund is used to account for payments of death benefits and administrative fees funded by appropriations from the State's General Revenue Fund.

#### (iii) Judicial Return to Work Fund (General Revenue Fund)

The Judicial Return to Work Fund is used to account for salaries and salary related costs for retired judges and justices called to service which are funded by an appropriation from the State's General Revenue Fund.

#### (iv) Uniform Statewide Accounting System Implementation Account (General Revenue Fund)

The Uniform Statewide Accounting System Implementation Account, which is funded by an appropriation from the State's General Revenue Fund, is used to account for the allocation from the State Comptroller's Office to the System for expenditures of implementing the Uniform Statewide Accounting System.

### 2. Fiduciary Funds

#### (a) Pension Trust Funds

Pension Trust Funds are used to account for public employee retirement system funds.

#### (i) Employees Retirement Fund and Judicial Retirement System Plan Two Fund

The following accounts of the Employees Retirement Fund and the Judicial Retirement System Plan Two Fund hold the reserves for future and current benefit payments. These reserves are included in the fund balance reserved for retirement trust funds.

##### *o Employees Savings Account*

The Employees Savings Account is the account in which members' contributions and interest credited to those contributions are accumulated.

##### *o State Accumulation Account*

The State Accumulation Account is the account in which retirement and death benefits contributions made by the State are accumulated.

## *Employees Retirement System of Texas*

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### **FUND STRUCTURE**

*(continued)*

*o Retirement Annuity Reserve Account*

The Retirement Annuity Reserve Account is the account in which reserves for annuities granted and in force are held as determined by the System's actuarial consultants, and from which annuities are paid.

*o Interest Account*

The Interest Account is the account in which interest, dividends, and gains and losses derived from investments of the System's funds are accumulated. At the close of each fiscal year, the investment revenues are transferred to the other accounts as provided by statute.

*o Investment Account*

The Investment Account is the account through which available assets and monies of the Retirement Systems are invested.

*o Benefit Increase Reserve Account*

The Benefit Increase Reserve Account is the account in which appropriated reserves are held for post-retirement increases in annuities for elected and employee class members and their survivors for benefit increases authorized in 1977, 1979, February 1981 and September 1981.

*o Expense Account*

The Expense Account is the account from which the expenses of administration and maintenance of the Retirement System Programs are paid.

**(ii) Law Enforcement and Custodial Officer Supplemental Retirement Fund**

The Law Enforcement and Custodial Officer Supplemental Retirement Fund was created for the purpose of receiving funds collected as part of the motor vehicle inspection fee and facilitating the payment of benefits as provided by the Commissioned Law Enforcement and Custodial Officer Supplemental Retirement Benefit Act. Available assets and monies of the fund are invested, and revenues accruing from the investments are deposited to the fund.

An annuity reserve fund balance account has been established to reserve the benefits payable for annuities granted and currently in force as determined by the System's actuarial consultants.

**(iii) Judicial Retirement System Plan One Fund**

The Judicial Retirement System Plan One Fund receives appropriations from the State's General Revenue Fund for annuity and refund payments to judges who are members of this program.

**(iv) Deferred Compensation Administrative Trust Fund**

The Deferred Compensation Administrative Trust Fund includes an operating expense account from which administrative expenses are paid. The tax-deferred contributions are accounted for as an Agency Fund.

**(v) TexaSaver Administrative Trust Fund**

The TexaSaver Administrative Trust Fund includes an operating expense account from which administrative expenses are paid. The tax-deferred contributions are accounted for as an Agency Fund.

**FUND STRUCTURE**  
*(concluded)*

(c) **Agency Funds**

Agency Funds are used to account for assets held by a governmental unit in an agency capacity for individuals, other governmental entities, other funds, etc. Agency Funds are custodial in nature (assets equal liabilities) and do not measure results of operations.

(i) **Unappropriated Receipts (General Revenue Fund)**

This fund accounts for member contributions received from Judicial Retirement System Plan One members. The member contributions are deposited directly into the General Revenue Fund as unappropriated receipts.

(ii) **Social Security Trust Fund**

The Social Security Trust Fund received employee and employer contributions from participating local governmental entities for wages paid before January 1, 1987, and transmitted those funds to the Federal Social Security Administration. This fund also received employee and employer contributions from participating state agencies and universities for wages paid before April 1, 1987, and transmitted those funds to the Federal Social Security Administration.

(iii) **Employees Savings Bond Fund**

The Employees Savings Bond Fund is used to accumulate payroll deductions for U. S. Savings Bonds. Bonds are purchased for each participating employee when the employee's account balance equals the purchase price of the specified bond.

(iv) **Deferred Compensation Trust Fund**

The Deferred Compensation Trust Fund accounts for tax-deferred portions of salaries of State employees in accordance with the provisions of Internal Revenue Code Section 457. The assets in the plan are the property of the State of Texas, and are recorded at market value.

(v) **TexaSaver Trust Fund**

The TexaSaver Trust Fund accounts for tax-deferred portions of salaries of State employees in accordance with the provisions of Internal Revenue Code Section 401(k). The assets in the plan are solely the property of the employee.

(vi) **Higher Education Group Insurance Fund**

The Higher Education Group Insurance Fund accounts for the legislative appropriation for group insurance benefits provided to the employees and retirees of Texas Higher Education Institutions.

EMPLOYEES RETIREMENT SYSTEM OF TEXAS

SCHEDULE 1

COMBINING BALANCE SHEET - PENSION TRUST FUNDS  
August 31, 1992

	Employees Retirement Fund (955)	Law Enforcement and Custodial Officer Supplemental Retirement Fund (977)	Judicial Retirement System Plan One (001)	Judicial Retirement System Plan Two (993)	Deferred Compensation Administrative Trust Fund (945)	TexasSaver Administrative Trust Fund (946)	Totals August 31, 1992
<b>ASSETS</b>							
<b>Current Assets</b>							
Cash and Temporary Investments:							
Cash on Hand	495,002						495,002
Cash in Bank	10,000						10,000
Cash in State Treasury	1,115,076,602	70,309,016	93,621	837,371	761,808	44,930	1,187,123,348
Short-Term Investments	155,413,343						155,413,343
Receivables:							
Accounts Receivable	20,659,873	2,317,485	13,307	201,820	3,300	194	23,192,485
Interest and Dividends Receivable	73,859,466	2,831,129		4,911	30,006		76,699,000
Due From Other Funds	380,040						410,046
Prepaid Expenses	117,098						117,136
<b>Total Current Assets</b>	<b>1,366,011,424</b>	<b>75,457,630</b>	<b>106,928</b>	<b>1,044,102</b>	<b>795,152</b>	<b>45,124</b>	<b>1,443,460,360</b>
<b>Long-Term Investments</b>							
At Cost (Total Market, 1992 \$7,637,675,121)	<b>6,257,450,840</b>	<b>241,773,534</b>		<b>8,345,694</b>			<b>6,507,570,068</b>
<b>Fixed Assets</b>							
Motor Vehicle	20,123						20,123
Land and Land Improvements	874,889						874,889
Building	6,717,216						6,717,216
Office Furniture and Equipment	3,248,473				11,199		3,259,672
Subtotal Fixed Assets	10,860,701				11,199		10,871,900
Less Accumulated Depreciation	(3,671,071)				(1,843)		(3,672,914)
<b>Net Fixed Assets</b>	<b>7,189,630</b>				<b>9,356</b>		<b>7,198,986</b>
<b>Total Assets</b>	<b>7,630,651,894</b>	<b>317,231,164</b>	<b>106,928</b>	<b>9,389,796</b>	<b>804,508</b>	<b>45,124</b>	<b>7,958,229,414</b>

- to next page



EMPLOYEES RETIREMENT SYSTEM OF TEXAS

SCHEDULE 1

COMBINING BALANCE SHEET -- PENSION TRUST FUNDS  
August 31, 1992  
(concluded)

	Employees Retirement Fund (955)	Law Enforcement and Custodial Officer Supplemental Retirement Fund (977)	Judicial Retirement System Plan One (901)	Judicial Retirement System Plan Two (993)	Deferred Compensation Administrative Trust Fund (945)	TexasSaver Administrative Trust Fund (946)	Total August 31, 1992
<b>LIABILITIES AND FUND BALANCES</b>							
Current Liabilities							
Payables:							
Accounts Payable	26,022,579	6,703	92,733	103,570	20,379	1,490	26,247,454
Deferred Revenue	19,410						19,410
Due To Other Funds	95,657	47,518	14,195	15,387	8,402	187	181,346
Compensable Leave Payable	349,073				10,164		359,237
<b>Total Current Liabilities</b>	<b>26,486,719</b>	<b>54,221</b>	<b>106,928</b>	<b>118,957</b>	<b>38,945</b>	<b>1,677</b>	<b>26,807,447</b>
<b>Total Liabilities</b>	<b>26,486,719</b>	<b>54,221</b>	<b>106,928</b>	<b>118,957</b>	<b>38,945</b>	<b>1,677</b>	<b>26,807,447</b>
Fund Balances Reserved:							
For Encumbrances	2,365,595						
For Annuity Reserves	2,486,359,102	9,833		844	267	825	2,377,364
For Retirement Trust Funds	5,115,440,478	24,689,064		9,269,995	765,296	42,622	2,511,048,166
<b>Total Fund Balances</b>	<b>7,604,165,175</b>	<b>317,176,943</b>	<b>-</b>	<b>9,270,839</b>	<b>765,563</b>	<b>43,447</b>	<b>7,931,421,967</b>
<b>Total Liabilities and Fund Balances</b>	<b>7,630,651,894</b>	<b>317,231,164</b>	<b>106,928</b>	<b>9,389,796</b>	<b>804,508</b>	<b>45,124</b>	<b>7,958,229,414</b>

**EMPLOYEES RETIREMENT SYSTEM OF TEXAS**

**SCHEDULE 2**

**COMBINING BALANCE SHEET - EXPENDABLE TRUST FUNDS  
August 31, 1992**

	<i>Employees Life, Accident and Health Insurance and Benefits Fund (973)</i>	<i>State Employees Cafeteria Plan Trust Fund (943)</i>	<i>Totals August 31, 1992</i>
	\$	\$	\$
<b>ASSETS</b>			
<b>Current Assets</b>			
<b>Cash and Temporary Investments:</b>			
Cash on Hand	107,602		107,602
Cash in State Treasury	184,694,813	2,141,286	186,836,099
<b>Receivables:</b>			
Accounts Receivable	12,551,956	673,979	13,225,935
Interest Receivable	847,986	9,942	857,928
Due From Other Funds	58,105	91	58,196
Consumable Inventories	25,802	449	26,251
<b>Total Assets</b>	<b>198,286,264</b>	<b>2,825,747</b>	<b>201,112,011</b>
<b>LIABILITIES AND FUND BALANCES</b>			
<b>Current Liabilities</b>			
<b>Payables:</b>			
Accounts Payable	99,334,204	1,259,717	100,593,921
Deferred Revenue	298,211	4,791	303,002
Due To Other Funds	244,136	43,480	287,616
<b>Total Liabilities</b>	<b>99,876,551</b>	<b>1,307,988</b>	<b>101,184,539</b>

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**EMPLOYEES RETIREMENT SYSTEM OF TEXAS**

**SCHEDULE 2**

**COMBINING BALANCE SHEET - EXPENDABLE TRUST FUNDS**

August 31, 1992

(concluded)

	<i>Employees Life, Accident and Health Insurance and Benefits Fund (973)</i>	<i>State Employees Cafeteria Plan Trust Fund (943)</i>	<i>Totals August 31, 1992</i>
	\$	\$	\$
<b>Fund Balances</b>			
Reserved:			
For Encumbrances	1,186,777	60,108	1,246,885
For Consumable Inventories	25,802	449	26,251
For Contingency Reserves	57,833,380		57,833,380
For State Contribution	22,200,000		22,200,000
Unreserved, Designated:			
For Premium Rate Supplementation & Group Insurance Administration	17,163,754		17,163,754
For Cafeteria Plan Administration		1,457,202	1,457,202
<b>Total Fund Balances</b>	<u>98,409,713</u>	<u>1,517,759</u>	<u>99,927,472</u>
<b>Total Liabilities and Fund Balances</b>	<u><u>198,286,264</u></u>	<u><u>2,825,747</u></u>	<u><u>201,112,011</u></u>

**EMPLOYEES RETIREMENT SYSTEM OF TEXAS**

**SCHEDULE 3**

**COMBINING BALANCE SHEET - SPECIAL REVENUE FUNDS  
August 31, 1992**

	<i>Social Security Administration Fund (929)</i>	<i>Death Benefits Program for Commissioned Peace Officers, Firemen, etc.(001)</i>	<i>Judicial Return To Work Fund (001)</i>	<i>Uniform Statewide Accounting System Implementation Account (001)</i>	<i>Totals August 31, 1992</i>
	\$	\$	\$	\$	\$
<b>ASSETS</b>					
<b>Current Assets</b>					
Cash and Temporary Investments:					
Cash in State Treasury	204,203				204,203
Legislative Appropriations		138,772	331,538		470,310
Receivables:					
Accounts Receivable		600	292,889		293,489
Due From Other Funds		1,902			1,902
<b>Total Assets</b>	<b>204,203</b>	<b>141,274</b>	<b>624,427</b>	<b>-</b>	<b>969,904</b>
<b>LIABILITIES AND FUND BALANCES</b>					
<b>Current Liabilities</b>					
Payables:					
Accounts Payable	5,597	600	291,489		297,686
Due To Other Funds	592	590			1,182
<b>Total Liabilities</b>	<b>6,189</b>	<b>1,190</b>	<b>291,489</b>	<b>-</b>	<b>298,868</b>
<b>Fund Balances</b>					
Reserved:					
For Lapsing - Unencumbered General Revenue Fund Appropriations		140,084	332,938		473,022
Unreserved:					
Undesignated: Available for Subsequent Years' Expenditures	198,014				198,014
<b>Total Fund Balances</b>	<b>198,014</b>	<b>140,084</b>	<b>332,938</b>	<b>-</b>	<b>671,036</b>
<b>Total Liabilities and Fund Balances</b>	<b>204,203</b>	<b>141,274</b>	<b>624,427</b>	<b>-</b>	<b>969,904</b>

EMPLOYEES RETIREMENT SYSTEM OF TEXAS

SCHEDULE 4

COMBINING BALANCE SHEET - AGENCY FUNDS  
August 31, 1992

	Unappropriated Receipts General Revenue Fund (001)	Social Security Trust Fund (913)	Employee Savings Bond Fund (901)	Deferred Compensation Trust Fund (945)	TexasSaver Trust Fund (946)	Higher Education Group Insurance Fund (973)	Totals August 31, 1992
<b>ASSETS</b>							
Current Assets							
Cash on Hand	124,129		775				124,904
Cash in Bank					20,425		20,425
Cash in State Treasury	13,735		100				13,835
Investments—Deferred Compensation Plan 457 At Market Value				204,074,202			204,074,202
Accounts Receivable	3,729		50				3,779
<b>Total Assets</b>	<b>141,593</b>	<b>—</b>	<b>925</b>	<b>204,074,202</b>	<b>20,425</b>	<b>—</b>	<b>204,237,145</b>
<b>LIABILITIES</b>							
Current Liabilities							
Accounts Payable	141,593		925		20,425		162,943
Deferred Compensation Benefits Payable				204,074,202			204,074,202
<b>Total Liabilities</b>	<b>141,593</b>	<b>—</b>	<b>925</b>	<b>204,074,202</b>	<b>20,425</b>	<b>—</b>	<b>204,237,145</b>

# Towers Perrin

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December 22, 1992

Board of Trustees  
Employees Retirement System of Texas

## ACTUARIAL CERTIFICATION FOR FUNDED PROGRAMS

Towers Perrin performed actuarial valuations of the Employees Retirement Fund of the Employees Retirement System of Texas including a separate valuation of the Law Enforcement and Custodial Officer Supplemental Retirement Fund of the ERS, and the Judicial Retirement System of Texas Plan Two. Liabilities for the Benefit Increase Reserve Account have been included with other ERS liabilities. No actuarial valuation was performed for the Judicial Retirement System of Texas Plan One because it is not advance funded.

This letter with attachments represents Towers Perrin's certification as required for the financial report for the fiscal year ended August 31, 1992 for the Employees Retirement and Judicial Retirement System of Texas. This is the third set of valuations completed by Towers Perrin. For fiscal years prior to 1990, all calculations were completed by another actuary representing another actuarial firm.

## EMPLOYEES RETIREMENT FUND

The following information follows the format for the Actuary's Certification Letter as outlined in the Guidelines for the Preparation of a Public Employee Retirement System Comprehensive Annual Financial Report.

The contribution levels of the Fund are set by legislation. Most members contribute 6% of pay and the State is contributing 6.43% of payroll through August 31, 1993 and 7.4% thereafter. The actuarial valuation was completed using the entry age actuarial cost method which generates a normal cost expected to remain level as a percent of payroll. To the extent that an unfunded actuarial accrued liability (UAAL) exists, it is amortized as a level percent of projected payroll.

The following "Actuarial Balance Sheet" and "Summary of Actuarial Valuation Results" exhibits indicate the level of funding for the Fund. Both August 31, 1992 and August 31, 1991 results are shown.

Since the 1991 actuarial valuation was performed, there have been no changes in the nature of the benefits provided, the actuarial assumptions, or the actuarial method.

The actuarial valuation is completed annually with the most recent conducted as of August 31, 1992.

The method used to value plan assets for actuarial valuation purposes is as follows:

All bonds are valued at adjusted cost, with amortization of premiums and discounts on the effective interest rate.

Equities are valued on an adjusted market basis using the ratio of average values of the Standard & Poor's 500 Index for 24 consecutive months to the value as of the valuation date, adjusted so that the actuarial value falls within an 85% to 115% corridor of the actual market value.

Commercial notes are valued at cost.

Fixed assets are valued at cost, net of depreciation.

We relied upon the participant data and assets provided by the staff of the ERS. Please refer to the active member valuation data and retiree and beneficiary data following this certification. This data was compared to information provided in the 1991 actuarial valuation for reasonableness. Otherwise, the data provided was assumed to be correct.

The actuarial assumptions used for this valuation are discussed in the following "Actuarial Cost Method and Assumptions" exhibit and are also outlined in the "Summary of Actuarial Assumptions and Methods." These assumptions are based on an Experience Investigation which reviewed data from 1985 to 1989. The revised assumptions were adopted by the ERS Board of Trustees on September 13, 1990 with additional changes in disabled mortality and retirement rates approved on November 7, 1991. In our opinion, these assumptions generate valuation results which in the aggregate relate reasonably to the past and anticipated experience of the Fund.

The valuation shows that the normal cost is 12.346% of payroll and there is an overfunded actuarial accrued liability of \$198.5 million. The funded ratio is 1.026 as of August 31, 1992. Total contributions of 12.430% of payroll are available through August 31, 1993 with 13.4% thereafter to finance the liabilities of the Fund, which exceeds the amount needed for the normal cost. Therefore, we are of the opinion that the financing of the Employees Retirement Fund is adequate and the Fund is actuarially sound.

#### LAW ENFORCEMENT AND CUSTODIAL OFFICER SUPPLEMENTAL RETIREMENT FUND

Information regarding the Employees Retirement Fund is also applicable for the Law Enforcement and Custodial Officer Supplemental Retirement Fund, except for the following paragraphs provided specifically for the LECOSRF:

The contribution levels of the Fund are set by legislation. Under existing law, there are two sources of financing: 1) an amount per motor vehicle inspection and 2) state appropriations as needed. The current financing for the supplemental fund is \$2.25 for each annual renewal motor vehicle inspection and \$3.75 for each two-year motor vehicle inspection for new cars or trucks. The actuarial valuation was completed using the entry age actuarial cost method which generates a normal cost expected to remain level as a percent of payroll.

Since the 1991 actuarial valuation was performed, there have been no changes in the benefits provided, actuarial assumptions, or the actuarial method.

The valuation shows that the normal cost is 2.13% of payroll and there is an overfunded actuarial accrued liability of \$168.7 million. The funded ratio has improved to 2.136 as of August 31, 1992. The present financing arrangement will be adequate through fiscal year 2019. After that date, the financing will remain adequate only if additional financing is provided.

#### JUDICIAL RETIREMENT SYSTEM OF TEXAS PLAN TWO

Information regarding the Employees Retirement Fund is also applicable for the Judicial Retirement System of Texas Plan Two. The following paragraphs provide information specifically for JRSII.

The contribution levels of the Fund are set by legislation. Members contribute 6% of pay and the State is currently contributing 9.39% of payroll. The actuarial valuation was completed using the entry age

Board of Trustees  
Employees Retirement System of Texas  
December 22, 1992  
Page 3.

Towers Perrin

actuarial cost method which generates a normal cost expected to remain level as a percent of payroll. To the extent that an unfunded actuarial accrued liability exists, current State statutes require that it be financed fully in the biennium, based on a valuation in even-numbered years.

Since the 1991 actuarial valuation was performed, there have been no changes in the benefits provided, the actuarial assumptions, or the actuarial method.

The valuation shows that the normal cost is 14.23% of payroll and there is an unfunded actuarial accrued liability of \$562,180. The funded ratio has increased to 0.943 as of August 31, 1992. Total contributions of 15.39% of payroll are currently available to finance the liabilities of the Fund, which exceeds the amount needed for the normal cost. We are of the opinion that the financing of the Judicial Retirement System of Texas Plan Two is adequate and the Fund is actuarially sound because the contribution funds the normal cost and amortizes the unfunded liability over 3.0 years.

Leslie P. Finertie

Leslie P. Finertie  
Fellow of the Society of Actuaries  
Enrolled Actuary

Steven R. Rusher

Steven R. Rusher  
Fellow of the Society of Actuaries  
Enrolled Actuary

LPF:SRR:kah

Enclosures



**EMPLOYEES RETIREMENT FUND**

**ACTUARIAL BALANCE SHEET**

	<u>August 31, 1992</u>	<u>August 31, 1991</u>
<b><u>Actuarial Assets:</u></b>		
Actuarial Value of Assets	\$ 7,909,542,740	\$ 7,077,803,464
Actuarial Present Value of Future Contributions		
By current members	2,157,265,559	2,004,891,461
Employer normal costs	2,146,838,776	1,858,899,693
Unfunded/(overfunded) actuarial accrued liability	<u>(198,451,157)</u>	<u>5,275,425</u>
Total	<u>\$ 4,105,653,178</u>	<u>\$ 3,970,166,579</u>
<b>Total</b>	<b>\$12,015,195,918</b>	<b>\$11,047,970,043</b>

**Actuarial Liability:**

**Actuarial Present Value of Benefits:**

<b>Active Members</b>		
- service retirement	\$ 8,389,215,274	\$ 7,784,091,855
- nonoccupational disability	286,406,583	280,394,478
- occupational disability	52,078,917	47,859,374
- preretirement death	232,616,808	217,898,160
- termination	<u>413,654,508</u>	<u>385,357,888</u>
- total	<u>\$ 9,383,972,088</u>	<u>\$ 8,705,401,755</u>
<b>Inactive Members</b>	97,255,348	86,542,218
<b>Annuitants</b>	<u>2,533,968,502</u>	<u>2,246,026,060</u>
<b>Total</b>	<b>\$12,015,195,918</b>	<b>\$11,047,970,043</b>

**SUMMARY OF ACTUARIAL VALUATION RESULTS**

<b>Total contribution rate</b>		
- fiscal years 1992 and 1993	12.430%	12.430%
- thereafter	13.400	13.400
<b>Normal cost - dollars</b>	\$ 407,674,398	\$ 372,813,321
- percent of payroll	12.346%	12.347%
<b>Contribution Available to Amortize UAAL</b>		
- fiscal years 1992 and 1993	0.084%	0.083%
- thereafter	1.054	1.030
<b>Actuarial Accrued Liability</b>	\$7,711,091,583	\$7,083,078,889
<b>Amortization Period in Years</b>	0.0	2.1
<b>Funded Ratio</b>	1.026	0.999
<b>Valuation Payroll</b>	\$3,302,000,827	\$3,019,525,363
<b>Contributing Members</b>	138,113	131,020

*Towers Perrin*

12/22/92

**LAW ENFORCEMENT AND CUSTODIAL OFFICERS SUPPLEMENTAL RETIREMENT FUND**

**ACTUARIAL BALANCE SHEET**

August 31, 1992

August 31, 1991

**Actuarial Assets:**

Actuarial Value of Assets

\$317,224,956

\$268,453,453

Actuarial Present Value of Future Contributions:

Employer normal costs

174,939,606

173,956,514

Unfunded/(overfunded) actuarial accrued liability

(168,715,972)

(129,918,279)

Total

\$ 6,223,634

\$ 44,038,235

Total

\$323,448,590

\$312,491,688

**Actuarial Liability:**

Actuarial Present Value of Benefits:

Active Members

- service retirement

\$289,850,168

\$283,690,631

- death benefit plan

4,814,998

4,522,757

- occupational disability

4,050,606

4,154,213

- total

\$298,715,772

\$292,367,601

Inactive vested members

43,754

54,664

Annuitants

24,689,064

20,069,423

Total

\$323,448,590

\$312,491,688

**SUMMARY OF ACTUARIAL VALUATION RESULTS**

Expected Contribution

\$ 26,518,739

\$ 27,406,346

Normal cost - dollars

\$ 13,620,527

\$ 13,629,332

- percent of payroll

2.13%

2.36%

Contribution Available to Amortize UAAL

\$ 12,898,212

\$ 13,777,014

Actuarial Accrued Liability

148,508,984

138,535,174

Amortization Period In Years

0.0

0.0

Funded Ratio

2.136

1.938

Valuation Payroll

\$639,672,631

\$576,707,395

Active Members

24,152

22,176

**Towers Perrin**

12/22/92

JUDICIAL RETIREMENT SYSTEM OF TEXAS PLAN TWO

**ACTUARIAL BALANCE SHEET**

	<u>August 31, 1992</u>	<u>August 31, 1991</u>
<b>Actuarial Assets:</b>		
Actuarial Value of Assets	\$ 9,325,621	\$ 6,438,093
<b>Actuarial Present Value of Future Contributions</b>		
By current members	11,886,816	10,885,878
Employer normal costs	14,684,579	13,351,298
Unfunded/(overfunded) actuarial accrued liability	<u>562,180</u>	<u>626,035</u>
Total	<u>\$27,133,575</u>	<u>\$24,863,211</u>
<b>Total</b>	\$36,459,196	\$31,301,304
<b>Actuarial Liability:</b>		
Actuarial Present Value of Benefits:		
Active Members		
- service retirement	\$29,767,565	\$25,485,301
- disability	1,628,215	1,401,308
- preretirement death	1,375,347	1,200,459
- termination	<u>3,632,888</u>	<u>3,159,190</u>
- total	\$36,404,015	\$31,246,258
Inactive Members	55,181	55,046
Annuitants	<u>0</u>	<u>0</u>
<b>Total</b>	\$36,459,196	\$31,301,304

**SUMMARY OF ACTUARIAL VALUATION RESULTS**

Total Contribution Rate	15.39%	15.39%
Normal Cost - dollars	\$ 2,431,769	\$2,144,084
- percent of payroll	14.23%	14.10%
Contribution Available to Amortize UAAL	1.16%	1.29%
Actuarial Accrued Liability	\$ 9,887,801	\$7,064,128
Amortization Period In Years	3.0	3.4
Funded Ratio	0.943	0.911
Valuation Payroll	\$17,092,062	\$15,211,043
Contributing Members	201	184

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12/22/92

## ACTUARIAL COST METHOD AND ASSUMPTIONS

### EMPLOYEES RETIREMENT FUND

The actuarial cost method used was the entry age actuarial cost method. The calculation of the years required to amortize the unfunded actuarial accrued liability assumes that the unfunded actuarial accrued liability is amortized as a level percent of payroll which is the total contribution rate minus the normal cost contribution rate. The total contribution rate is set by statute, so the variable from year to year is the amortization period. Actuarial gains and losses are recognized as they occur each year, and they decrease or increase the unfunded actuarial accrued liability. The payroll is assumed to increase 7.00% annually. When the fund has an overfunded actuarial accrued liability, there is no amortization period.

Included in the actuarial assumptions are an assumed rate of interest of 8.5% per year and assumed rates of salary increase. The salary increase assumption is for individual members and includes expected inflationary increases of 4.50% per year plus merit, promotion, longevity, and real wage growth increases. This assumption differs from the payroll increase assumption of 7.00% per year, which is for the aggregate payroll of all contributing members and which consists of 4.50% for inflationary salary increases plus 1.00% for growth in number of members plus 1.50% for the aggregate effect of changes in salary distribution and of merit, promotion, and longevity increases.

### LAW ENFORCEMENT AND CUSTODIAL OFFICER SUPPLEMENTAL RETIREMENT FUND

The actuarial cost method used was the entry age actuarial cost method. The unfunded actuarial accrued liability is to be amortized over a period of not more than the 36 years which began September 1, 1979. As of the valuation date, the fund had no unfunded actuarial accrued liability. Actuarial gains and losses are recognized as they occur each year, and they increase or decrease the overfunded actuarial accrued liability.

The actuarial assumptions include an assumed rate of interest of 8.00%. The other actuarial assumptions are the same as those used for the commissioned peace officers and custodial officers (CPO/CO) in the actuarial valuation of the ERF. They include assumed rates of salary increase of 4.50% for inflation plus adjustments for merit, promotion, longevity and real wage growth.

### JUDICIAL RETIREMENT SYSTEM OF TEXAS PLAN TWO

The actuarial cost method used was the entry age actuarial cost method. Actuarial gains and losses are recognized as they occur each year, and they decrease or increase the unfunded actuarial accrued liability.

Included in the actuarial assumptions are an assumed rate of investment return of 8.5% per year and assumed rates of salary increase of 7% per year over a member's career. The payroll growth assumption of 7.75% per year is the aggregate of the across-the-board increase assumption of 6.75% plus an expected 1.00% for growth in number of members.

*Glossary of Actuarial Terminology*

Selected items from the Actuarial Balance Sheets have been defined in this section.

**Employees Retirement System (ERS) Fund**

1. *Actuarial Value of Assets* represents the actuarial value of the assets held by the System as of the valuation date, as shown in the annual report for the year ended with the valuation date. Schedule 1 shows the distribution of the assets of the System by type, and it includes the Benefit Increase Reserve Account (BIRA). The actuarial value of assets is adjusted market value for corporate stocks, cost for commercial notes, and adjusted cost for bonds (original cost adjusted for amortization of premium or accrual of discount).
2. *Actuarial Present Value of Future Contributions:*
  - a. *Actuarial Present Value by Current Members* is equal to the actuarial present value of future contributions (6% of pay) to be made by present members of the System and represents the value of future normal cost contributions to be borne by present members. Actuarial present value is the value of an amount or series of amounts payable or receivable at various times in the future, determined as of a given date (the valuation date) by the application of the actuarial assumptions.
  - b. *Actuarial Present Value of Employer Normal Costs* is equal to the actuarial present value of that portion of the future normal cost contributions to be made by the State of Texas on behalf of present members of the System. The sum of 2(a) and 2(b) is the total actuarial present value of future normal cost contributions for present members.
  - c. *Unfunded (Overfunded) Actuarial Accrued Liability* is equal to the excess (deficit) of the total actuarial present value of benefits (Item 3) over (under) the sum of the assets (Item 1) and the actuarial present value of future normal cost contributions [Items 2(a) and 2(b)].
3. *Actuarial Present Value of Benefits:*
  - a. *Active Members* represents the actuarial present value of future benefits to be paid to present contributing members who will become beneficiaries in the future. The actuarial present values are shown for each of five types of benefits for the Employees Retirement System (ERS).
  - b. *Inactive Members* represents the actuarial present value of future benefits to be paid to members who were inactive as of the valuation date and who will become beneficiaries in the future. The liability for inactive vested members includes prospective service retirement and death benefits. The liability for inactive nonvested members is equal to the members' accumulated contributions.
  - c. *Annuitants* represents the actuarial present value of future benefit payments on account of retirees, survivors of a retiree, and survivors of a deceased member.

*Employees Retirement System of Texas*

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*Glossary of Actuarial Terminology  
(continued)*

**Employees Retirement System (ERS) Fund**

*Total Contribution Rate* consists of an employee contribution rate of 6% of compensation and a state contribution rate of 6.43% of the compensation of all members, as called for in the state law governing the System. The state contribution rate was 7.4% for the biennium ended August 31, 1991, and is expected to return to 7.4% beginning September 1, 1993.

*Normal Cost* is that portion of the actuarial present value of benefits which is allocated to a valuation year by the Entry Age Actuarial Cost Method. It is expressed as both a percent of compensation and in total dollars. When expressed as a percent of compensation, it is equal to the actuarial present value at hire of projected benefits divided by the actuarial present value at hire of anticipated future compensation. It is calculated for each entry age group, and the average is determined for all members, weighted by compensation.

Refer to the table at the end of this glossary of terms for the distribution of the normal cost by type of benefit, expressed as a percent of pay for each System.

*Contribution Available to Amortize the Unfunded Actuarial Accrued Liability* represents the difference between the total contribution rate and the normal cost which goes toward amortizing the unfunded actuarial accrued liability, if any exists.

*Actuarial Accrued Liability* equals the total actuarial present value of future benefits (Item 3) minus the actuarial present value of future normal cost contributions [Items 2(a) and 2(b)]. Actuarial accrued liability is that portion, as determined by the Entry Age Actuarial Cost Method, of the actuarial present value of benefits which is not provided for by future normal cost contributions.

*Amortization Period in Years* represents the number of years that the percent of payroll available to amortize the unfunded actuarial accrued liability would have to be applied against any unfunded liability before it would be fully amortized. The amortization period assumes that contribution rates remain the same and the actuarial assumptions prove to be reasonable in the aggregate over the period of years. When the fund has an overfunded actuarial accrued liability, there is no amortization period.

*Funded Ratio* is the ratio of assets (Item 1) to the actuarial accrued liability.

*Valuation Payroll* represents the payroll of the members as of the valuation date multiplied by 12 months. The payroll is involved only in the determination of the period required to amortize any unfunded actuarial accrued liability.

*Contributing Members* excludes those members who retired on August 31, 1992, because they were included as retirees in the valuation.

*Employees Retirement System of Texas*

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*Glossary of Actuarial Terminology  
(continued)*

**Law Enforcement and Custodial Officer Supplemental Retirement (LECOS) Fund**  
*(Includes only those items which are different from the ERS Fund)*

2. *Actuarial Present Value of Future Contributions:*

Item 2(a) under the ERS does not apply to the LECOS because the LECOS members do not contribute to the plan. All contributions are derived from a portion of the motor vehicle inspection fee.

- a. *Actuarial Present Value of Employer Normal Costs* is equal to the actuarial present value of that portion of the future normal cost contributions to be made by the State of Texas on behalf of the present active LECOS members.
- b. *Unfunded (Overfunded) Actuarial Accrued Liability* is equal to the excess (deficit) of the total actuarial present value of benefits (Item 3) over (under) the sum of the assets (Item 1) and the actuarial present value of future normal cost contributions [Item 2(a)].

3. *Actuarial Present Value of Benefits:*

- a. *Active Members* portion of the actuarial present values of benefits are shown for each of three types of benefits in the LECOS Fund.
- b. *Inactive Vested Members* represents the actuarial present value of future benefits to be paid to members who were inactive as of the valuation date and who will become beneficiaries in the future. The liability for inactive vested members includes prospective service retirement and death benefits. The LECOS does not have any Inactive Nonvested Members.

*Expected Contribution* is based on estimated motor vehicle inspections.

*Normal Cost* - Refer to the table at the end of this glossary of terms for the distribution of the normal cost by type of benefit expressed as a percent of pay for each System.

*Contribution Available to Amortize the Unfunded Actuarial Accrued Liability* represents the difference between the total expected contribution and the normal cost (expressed in dollars) which goes toward amortizing the unfunded actuarial accrued liability, if any exists.

*Actuarial Accrued Liability* equals the total actuarial present value of future benefits (Item 3) minus the actuarial present value of future normal cost contributions [Item 2(a)].

*Employees Retirement System of Texas*

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*Glossary of Actuarial Terminology  
(concluded)*

**Judicial Retirement System of Texas Plan Two (JRS II) Fund**  
*(Includes only those items which are different from the ERS Fund)*

3. *Actuarial Present Value of Benefits:*

- a. *Active Members* represents the actuarial present value of future benefits to be paid to present contributing members who will become beneficiaries in the future. The actuarial present values are shown for each of four types of benefits.
- c. *Annuitants* represents the actuarial present value of future benefit payments on account of retirees, survivors of a retiree, and survivors of a deceased member. The JRS II had no retirees or annuitants as of the August 31, 1992 valuation date.

*Total Contribution Rate* consists of an employee contribution rate of 6% of compensation and a state contribution rate that is actuarially redetermined for each biennium. For the biennium ending August 31, 1993, the state's contribution rate is 9.39%.

*Normal Cost* - Refer to the table at the end of this glossary of terms for the distribution of the normal cost by type of benefit expressed as a percent of pay for each System.



**Distribution of Normal Cost as a percent of payroll for each System as of August 31, 1992:**

<u>Benefit</u>	<u>System</u>		
	<u>ERS</u> %	<u>LECOS</u> %	<u>JRS II</u> %
Service Retirement	9.807	1.99	11.56
Nonoccupational Disability	0.384	-	0.56
Occupational Disability	0.098	0.06	-
Death	0.322	0.03	0.51
Termination	1.360	-	1.33
Expenses	0.375	0.05	0.27
Total	<u>12.346</u>	<u>2.13</u>	<u>14.23</u>

Issued in Austin, Texas, on February 10, 1993.

TRD-9318952

Charles D. Travis  
Executive Director  
Employees Retirement System of Texas

Filed: February 12, 1993

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## Texas Department of Health

### Interpretive Guidelines on Prevention of Transmission of HIV and Hepatitis B Virus by Infected Health Care Workers

The Texas Department of Health proposes the following Interpretive Guidelines on Prevention of Transmission of HIV and Hepatitis B Virus by Infected Health Care Workers. These guidelines were approved for publication by the Texas Board of Health on February 13, 1993. Comments on these interpretive guidelines will be accepted for 30 days after publication from interested individuals and parties. Comments may be submitted to Charles E. Bell, M.D., Chief, Bureau of HIV and STD Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7463.

**Background Information:** In 1987, the Centers for Disease Control and Prevention (CDC) established guidelines to prevent the transmission of infections in the workplace which recommended adherence to universal precautions, evaluation of an infected health care worker's (HCW) case on an individual basis, and involvement of the HCW's personal physician and the medical director and the personal health service staff of the employing institution or hospital. ("Recommendations for Prevention of human immunodeficiency virus (HIV) Transmission in Health Care Settings," Morbidity and Mortality Weekly Report (MMWR), Volume 36, Number 2S, 1987.) As a result of the incident in which five patients were infected with HIV by a dentist in Florida, the CDC published new guidelines on July 12, 1991. ("Recommendations for Preventing Transmission of HIV and HBV to Patients During Exposure-Prone Invasive Procedures," MMWR, July 12, 1991; Volume 40, Number RR-8:1-9.) The CDC guidelines requested medical/surgical/dental organizations and institutions to identify exposure-prone invasive procedures.

During the first Special Session of the 72nd Legislature these guidelines were adopted as law under House Bill 7 and later codified as a part of the Health and Safety Code, §85.201, Subchapter I, Prevention of Transmission of HIV and Hepatitis B Virus By Infected HCWs. In August and November 1991, leading national medical and public health organizations met to develop a list(s) of "exposure-prone" invasive procedures. With one exception, all of the medical and public health organizations in attendance at these meetings refused to assist the CDC in developing a list of "exposure-prone" invasive procedures. In the fall of 1991, as the result of wide opposition to the CDC's proposal for the development of a list of exposure-prone invasive procedures, the CDC began to review their guidelines and eventually rescinded the request and decided to develop new guidelines. In June of 1992, CDC distributed a letter to each state's Commissioner of Health which stated that: "After careful review and consideration, we have decided not to modify the July 12, 1991, recommen-

datations. Our review of state guidelines, with respect to their equivalency to the July 12 recommendations, will give appropriate consideration to those states that decide that exposure-prone invasive procedures are best determined on a case-by-case basis, taking into consideration the specific procedure as well as the skill, technique, and possible impairment of the infected health-care worker."

The 102nd Congress has, by legislation, made the Commissioner of Health responsible for certifying that guidelines in Texas are the same as, or equivalent to those issued by CDC (Public Law 102-141, §633). The commissioner has certified compliance by a letter dated October 23, 1992. Because the initial version of the CDC guidelines has been adopted as law in the State of Texas, the language in the current statute differs from the latest CDC recommendations. To prevent any misunderstandings which may result from this discrepancy, the Board of Health (Board) interprets several sections of the Health and Safety Code, Chapter 85, as follows:

#### §85.202 Definitions:

Under the current law, "exposure-prone procedure" is defined as a specific invasive procedure that poses a direct and significant risk of transmission of HIV or hepatitis B virus (HBV), as designated by a health professional association or health facility, as provided by §85.204(b)(4). The board interprets exposure-prone procedures as those procedures deemed by an expert review panel to pose a direct and significant risk of transmission of HIV or hepatitis B virus from an infected HCW to patient. The expert review panel described in §85.204 will make the determination of whether an individual HCW poses a significant risk to patients which warrants job modification, limitation, or restriction on a case-by-case evaluation and the HCW will be reevaluated periodically.

The evaluation of the HCW should be based on the premise that HIV or hepatitis B (HBeAg positive) infection alone is not sufficient justification to limit a HCW's professional duties. The following factors should be considered when making the determination of a HCW's ability to provide quality health care: physical or mental condition that may interfere with the worker's ability to perform assigned tasks or regular duties; the presence of exudative or weeping lesions, particularly on exposed areas such as the hands or forearms; lack of compliance with established guidelines to prevent the transmission of disease and/or documentation or evidence of previous exposure incidents which had the potential to transmit HIV and HBV; the appropriateness of techniques as related to performance procedures.

Since the CDC has rescinded their request for professional associations and health facilities to develop a list of "exposure-prone" invasive procedures, it is inappropriate for professional associations and health facilities to develop such a list.

**§85.203. Infection Control Standards:** Currently, §85.203(b) states, "HCWs with exudative lesions or weeping dermatitis shall refrain from all direct patient care and from handling patient care equipment and devices used in performing invasive procedures until the condition resolves. The board interprets this provision to mean that HCWs who have exudative lesions or weeping dermatitis on the hands, forearms, or other locations that may come in contact with patients and/or equipment/devices used in performing invasive procedures shall refrain from all direct patient care and handling such equipment/devices

until the condition resolves. §85.204. Modifications of Practice: §85.204(b)(2) states that: "An expert review panel should include the health care worker's personal physician and experts with knowledge of infectious diseases, infection control, and the epidemiology of HIV and hepatitis B virus, and procedures performed by the health care worker." The Board interprets this provision to mean that the purpose of the expert review panel is to provide timely advice and consultation on an individual's risk of transmitting HIV and HBV through his/her practice, and to recommend practice limitations, modifications, or restrictions where the evidence suggests there is a significant risk to patients. The role of the expert review panel is consultative not disciplinary. All HCWs infected with HIV and/or HBV (HBeAg positive) are entitled to protection under the State of Texas HIV confidentiality laws. Each member of the expert panel will be apprised of and adhere to all laws pertaining to the confidentiality of client information. Each expert review panel should include the infected HCWs personal physician, a health authority or his/her designee, experts with knowledge of infectious diseases, infection control, the epidemiology of HIV and HBV, and the practitioner's area of practice.

§85.204(b)(4) states that: "Health professional associations and health care facilities should develop guidelines for expert review panels and identify exposure-prone procedures as defined in this subchapter." The Board interprets this provision to mean that the TDH should establish guidelines which will include steps to be taken in establishing expert review panels referenced in §85.202, and the criteria for evaluating HIV/HBV (HBeAg positive) infected HCWs to determine if practice limitations are warranted. The criteria for the evaluation of a HCW will be based on the premise that HIV and HBV (HBeAg positive) infection alone is not sufficient justification to limit a HCW's professional duties.

§85.205. Disciplinary Procedures: This section states that: "A health care worker who fails to comply with this subchapter is subject to disciplinary procedures by the appropriate licensing agency." The Board interprets this provision to mean that the TDH will assist each of the licensing boards to establish rules for disciplinary action against infected HCWs who do not comply with this portion of the Health and Safety Code, Chapter 85.

Issued in Austin, Texas, on February 17, 1993.

TRD-9319130

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

Filed: February 17, 1993.

## Heart of Texas Council of Governments

### Title IIB Summer Youth Employment and Training Proposal

The Heart of Texas Council of Governments (HOTCOG) invites proposals for contract awards under the CY93 Title IIB Summer Youth Employment and Training Program. This program is funded by the Job Training Partnership Act. The contracts to be awarded will serve individuals in the HOTCOG region which includes Bosque, Falls, Freestone, Hill, Limestone, and McLennan Counties.

CY93 Title IIB proposals will be considered for outreach, recruitment, eligibility assessment, work experience and

classroom training. Approximately 400 youth, ages 14-21, will be served during the CY93 program period (June 1, -August 31, 1993).

There is no local match requirement for these JTPA funds.

Requests for Proposals can be obtained at HOTCOG, 300 Franklin Avenue, Waco, Texas 76701 Attention: Chief Financial Officer) between the hours of 8:30 a.m. and 4:30 p.m., Monday-Friday. Responses must be received by HOTCOG no later than 4:30 p.m. Friday, March 5, 1993. HOTCOG reserves the right to reject any or all proposals received in response to this RFP.

Issued in Waco, Texas on January 28, 1993.

TRD-9319065

Leon A. Willhite  
Executive Director  
Heart of Texas Council of Governments

Filed: February 16, 1993

## Texas Department of Human Services Public Notice Open Solicitation

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2004, in the September 11, 1990, issue of the *Texas Register* (15 TexReg 5315), the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days (starting the date of this public notice) for the construction of a 90-bed nursing facility in the county identified in the February 18, 1992, issue of the *Texas Register* (17 TexReg 8977). That county is also listed in this public notice. Potential contractors desiring to construct a 90-bed nursing facility in the county identified in this public notice must submit a written reply (as described in 40 TAC §19.2004) to TDHS, Gary L. Allen, Institutional Programs Section, Mail Code W-519, P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS by 5 p.m., March 26, 1993, the last day of the open solicitation period. Potential contractors will be allowed 90 days to qualify and qualified potential contractors will be placed on a secondary-selection waiting list in the order that their applications are received. To qualify, potential contractors must demonstrate an intent and ability to begin construction of a facility and to complete contracting within specified time frames. They must submit a letter of application to TDHS with the following documentation: First, there must be acceptable written documentation showing the ownership of or an option to buy the land on which the proposed facility is or will be located. Second, documentation must include a letter of finance from a financial institution. Third, documentation must include a signed agreement stating that, if selected, the potential contractor will pay liquidated damages if the 180-day and/or 18-month deadline(s) described in 40 TAC §19.2004(q) are not met. The signed agreement must also require the potential contractor to provide, within 10 working days after the date of selection, a surety bond or other financial guarantee acceptable to TDHS ensuring payment in the event of default. If the 180-day deadline is not met, liquidated damages are 5.0% of the estimated total cost of the proposed or completed facility. If the 18-month deadline is not met, liquidated damages are 10% of the estimated total cost of the proposed or completed facility. Fourth, there must be acceptable written documentation that the preliminary architectural plans for the proposed or completed facility have been submitted to the Texas Department of Health (TDH). Each application must be com-

plete at the time of its receipt. TDHS accepts the first qualified potential contractor on the secondary-selection waiting list. If no potential contractors submit replies

during this open solicitation period, TDHS will place another public notice in the *Texas Register* announcing the reopening of the open solicitation period until a potential contractor replies.

Occupancy rates for identified threshold counties are listed below:

County Number	County Name	Number of Months Over	JUL	AUG	SEP	OCT	NOV	DEC
154	Madison	6	94.0	93.6	95.3	94.8	95.2	96.5

Issued in Austin, Texas, on February 16, 1993.

TRD-9319074 Nancy Murphy  
Agency Liaison, Policy and Document  
Support  
Texas Department of Human Services

Filed: February 16, 1993

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**Texas Department of Insurance  
Company Licensing**

The following applications have been filed with the Texas Department of Insurance and are under consideration.

Application for Admission in Texas for Associated Insurance Companies, Inc., a foreign fire insurance company. The home office is in Indianapolis, Indiana.

Application for name change in Texas for Interfaith Life Insurance Company, a foreign life insurance company. The home office is in Broomall, Pennsylvania. The proposed new name is Equitable Beneficial Life Insurance Company.

Application for Admission in Texas for Foundation Health Preferred Administrators, a foreign third party administrator. The home office is in Rancho Cordova, California.

Application for name change in Texas for Atlantic Casualty & Fire Insurance Company, a foreign fire insurance company. The home office is in Columbia, South Carolina. The proposed new name is Nobel Insurance Company.

Application for Admission in Texas for J.N. Morcos and Company (assumed name for J.N. Morcos Insurance Agency, Ltd.), a foreign third party administrator. The home office is in Aurora, Illinois.

Issued in Austin, Texas, on February, 16, 1993.

TRD-9319115 Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of Insurance

Filed: February 16, 1993

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**North Central Texas Council of  
Governments  
Consultant Contract Award**

In accordance with Texas Civil Statutes, Article 6252-11c, the North Central Texas Council of Govern-

ments publishes this notice of consultant contract award. The consultant proposal request appeared in the May 22, 1992, issue of the *Texas Register* (17 TexReg 3805). The consultant is to prepare an Air Carrier System Plan for North Central Texas.

The consultant selected to perform this study is KPMG Peat Marwick, P.O. Box 8007, San Francisco International Airport, San Francisco, California 94128-8007. The maximum amount of this contract is \$495,090. The contract begins February 11, 1993, and will terminate in approximately 12 months.

At the conclusion of this project, the consultant will prepare a final report which documents the estimated long range air carrier demand and capacity for North Central Texas and the various alternatives that will be identified to meet any demand overflow. Depending on the outcome of this analysis, the project scope, budget and schedule will be expanded to include the evaluation of alternatives and the development of an implementation plan.

Issued in Arlington, Texas, on February 10, 1993.

TRD-9319059 R. Mike Eastland  
Executive Director  
North Central Texas Council of  
Governments

Filed: February 16, 1993

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**Request for Proposals**

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

NCTCOG is requesting consultant proposals for development of the Energy and Environment Immediate Action Plan for Alternative Fuels for the Dallas-Fort Worth Metropolitan Area.

**Contract Award Procedures.** The firm selected to perform this study will be recommended by the Consultant Selection Committee. The Committee will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The Executive Board will review the Consultant Selection Committee's recommendation and, if found acceptable, will issue an award of contract.

**Regulations.** NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in

Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, or national origin in consideration of an award.

**Due Date.** Proposals must be submitted no later than noon, Monday, March 8, 1993, to Everett Bacon, North Central Texas Council of Governments, 616 Six Flags Drive, Suite 200, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. Proposer interviews, if necessary, will be held March 15, 1993, at the NCTCOG offices. For more information and copies of the Request for Proposals, contact Everett Bacon, (817) 640-3300.

Issued in Arlington, Texas, on February 10, 1993.

TRD-9318091 R. Michael Eastland  
Executive Director  
North Central Texas Council of  
Governments

Filed: February 16, 1993

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**Public Utility Commission of Texas**  
**Notices of Application to Amend**  
**Certificate of Convenience and**  
**Necessity**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 2, 1993, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

**Docket Title and Number.** Application of Brazos Electric Power Cooperative, Inc. to amend Certificate of Convenience and Necessity for a Proposed Transmission Line within Milam and Robertson Counties, Docket Number 11760 before the Public Utility Commission of Texas.

**The Application.** In Docket Number 11760, Brazos Electric Power Cooperative, Inc. requests approval of its application to construct approximately 4.17 miles of 69-kV transmission line in Milam and Robertson Counties.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on February 11, 1993.

TRD-9318028 John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: February 12, 1993

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 15, 1992, to amend a Certificate of Convenience and

Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

**Docket Title and Number.** Application of Houston Lighting and Power Company and Gulf States Utilities Company to amend Certificated Service Area Boundaries within Montgomery County, Docket Number 11531 before the Public Utility Commission of Texas.

**The Application.** In Docket Number 11531, Houston Lighting and Power Company and Gulf States Utilities Company request approval of the joint application to amend service area boundaries.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on February 11, 1993.

TRD-9319027 John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: February 12, 1993

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 4, 1993, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

**Docket Title and Number.** Application of West Texas Utilities Company to amend Certificate of Convenience and Necessity for a Proposed Transmission Line within Pecos County, Docket Number 11770 before the Public Utility Commission of Texas.

**The Application.** In Docket Number 11770, West Texas Utilities Company requests approval of its application to construct 1.2 miles of 69-kV transmission line in Pecos County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on February 11, 1993.

TRD-9319026 John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: February 12, 1993

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**Notices of Intent to File Pursuant to**  
**Public Utility Commission Substantive**  
**Rule 23.27**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for City of Temple, Temple.

**Docket Title and Number.** Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for City of Temple pursuant to Public Utility Commission Substantive Rule 23.27(k). Docket Number 11761.

**The Application.** Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for City of Temple. The geographic service market for this specific service is the Temple area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on February 11, 1993.

TRD-9319025      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: February 12, 1993

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for City of TeamBank, Fort Worth.

**Docket Title and Number.** Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for TeamBank pursuant to Public Utility Commission Substantive Rule 23.27(k). Docket Number 11779.

**The Application.** Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for TeamBank. The geographic service market for this specific service is the Fort Worth area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on February 11, 1993.

TRD-9319021      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: February 12, 1993

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for United States District Courts, Houston.

**Docket Title and Number.** Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for United States District Courts pursuant to Public Utility Commission Substantive Rule 23.27(k). Docket Number 11778.

**The Application.** Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for United States District Courts. The geographic service market for this specific service is the Houston area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on February 11, 1993.

TRD-9319024      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: February 12, 1993

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**Texas Water Commission**  
**Notice of Application For Waste**  
**Disposal Permit**

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of February 8-12, 1993.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7906.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application—new permit, amendment, or renewal.

City of Aubrey; the wastewater treatment facilities; are approximately 2,000 feet west of the intersection of U.S. Highway 377 and FM Road 428 in Denton County; new; 13647-01.

Brazos River Authority; the wastewater treatment facilities; are on the southwest bank of the Brazos River approximately 4.5 miles downstream from the crossing Interstate Highway 35 and the Brazos River in McLennan County; renewal; 11071-01.

City of Canton; the Caney-Mill Creek Wastewater Treatment Facilities; the plant site is approximately 4,000 feet northeast of the intersection of Interstate Highway 20 and State Highway 19 and approximately 5,000 feet northwest of the intersection of Interstate Highway 20 and FM 17 in Van Zandt County; amendment; 10399-02.

Center for the Retarded, Inc.; the Willow River Farms Wastewater Treatment Facilities; the plant site is four miles north of the intersection of Interstate Highway 10

and FM Road 1458 on FM Road 3318 in Waller County; renewal; 13466-01.

City of Charlotte; the wastewater treatment facility; the plant site is approximately 1,500 feet south and 3,100 feet west of the intersection of State Highway 140 and State Highway 97 in Atascosa County; renewal; 10142-02.

Elf Atochem North America, Inc.; an agriculture chemicals manufacturing plant which includes a stormwater treatment plant; and a surface water (Finfeather Lake) recovery and treatment plant; the plant site is immediately southwest of the intersection of the Missouri-Pacific Railroad and Dodge Street in the City of Bryan in Brazos County; amendment; 01393.

Evans Meat Company of Texas; a meat packing plant by irrigation on 190 acres of land; the plant site is at 2150 East 37th Street in the City of San Angelo, Tom Green County; new; 03574.

City of Franklin; the wastewater treatment facilities; are approximately 1,000 feet southeast of U.S. Highway 79 and one mile southwest of the intersection of U.S. Highway 79 and FM Road 46 in City of Franklin in Robertson County; renewal; 10440-01.

Hoechst Celanese Corporation; a Sodium Formate Reclamation Plant by evaporation; the plant site borders the northeast corner of the Celanese Plant at the intersection of the Missouri Pacific Railroad and County Road 4, on the north side of Business Highway 77 (State Highway 428), approximately one mile southwest of the Town of Bishop, Nueces County; renewal; 02083.

Hoechst Celanese Chemical Group, Inc., Clear Lake Plant; from an organic chemical manufacturing plant; the plant site is in the Bayport Industrial Park at 9502 Bayport Boulevard in the City of Pasadena in Harris County; renewal; 02571.

Hurst Creek Municipal Utility District; the wastewater treatment facilities; are approximately 600 feet south of World of Tennis Boulevard and 1,200 feet west of Lohmans Ford Road in the Lakeway Development Complex in Travis County; renewal; 12215-01.

MC6 Cattle Feeders, Inc.; a feedlot operation; the feedlot operation is approximately two miles east of the intersection of U.S. Highway 385 and FM Road 1412, approximately 18 miles north of the City of Hereford in Deaf Smith County; amendment; 03196.

Occidental Chemical Corporation; a chloro-alkali manufacturing plant; the plant site is on the east side of State Park Road 1836 (Vista Road), approximately 1,000 feet north of the intersection with State Highway 134 (Battle-ground Road) in the City of La Porte, Harris County; amendment; 01539.

Runnels Septic Service, Inc.; the wastewater treatment facility and irrigation site; are approximately 1,500 feet northwest of the intersection of McRae Creek and FM Road 1484, approximately 2,500 feet northwest of the end of pavement at Runnels Road in Montgomery County; new; 13622-01.

Bruce Soap; the wastewater treatment facility; the plant site is approximately 1.5 miles southeast of the intersection of FM Roads 2354 and 1405, on the south side of FM Road 2354 in Chambers County; new; 13643-01.

Stewart and Stevenson Services, Inc., Tactical Vehicle Systems; a military vehicle assembly plant; the plant site is at the northeast corner of the intersection of Interstate

Highway 10 and Pyka Road, approximately three miles west of the City of Sealy in Austin County; amendment; 02462.

Texas Utilities Electric Company; the River Crest Steam Electric Station; the plant is adjacent to River Crest Reservoir which is approximately 5.4 miles southeast via U.S. Highway 271 of the City of Bogata in Red River County; renewal; 00945.

Treschwig Joint Powers Board; the Treschwig Central Wastewater Treatment Facilities; are on the north bank of Cypress Creek approximately one mile north of FM Road 1960 and 2 1/2 miles east of the Missouri Pacific Railroad in northern Harris County; renewal; 11141-01.

A. W. Walker; the Business Park III Wastewater Treatment Facilities; the plant site is at 8805 Solon road, at a point approximately 700 feet east of Ann Lane and approximately 50 feet north of Greens Bayou in Harris County; renewal; 12326-01.

Issued in Austin, Texas, on February 12, 1993.

TRD-9319036

Gloria A. Vasquez  
Chief Clerk  
Texas Water Commission

Filed: February 12, 1993

## Request for Proposal

This Request for Proposal (RFP) is filed pursuant to the Professional Services Procurement Act, Texas Civil Statutes, Article 664-4.

The Texas Water Commission (TWC) requests offers from qualified companies/organizations for auditing services to establish an audit program, train, and perform audits for the TWC.

**Scope of Services.** The successful candidate will be required to develop a audit plan and provide the following services: identify a procedure to select applications/companies for audit; develop an audit plan; prepare an audit program, perform 10 audits; train TWC staff on audit procedures; serve as an expert witness or other capacities as needed to settle the audits performed under the contract.

The applicant should propose a separate plan for each of the following criteria: first, consultant will provide the above described services; TWC will not provide any personnel to assist in these services; second, the TWC will provide staff to perform auditing services with the consultant. In addition, the TWC requests that a separate plan for training and assistance for setup of the program.

**Qualifications.** Each company/organization submitting an offer must present evidence or otherwise demonstrate to the satisfaction of TWC that such entity: has the qualifications and experience to prepare and setup this type of audit program; has a thorough understanding of auditing and the petroleum storage tank industry required to complete this program in the specified time frame.

Applicant will be required to provide evidence of the preceding requirements and a proposal which includes: a detailed description of the plan to provide requirements identified in the scope of services and proposed time frame for completion; information on proposed staff for providing these services. Proposal requirement will be set forth more fully in a Request for Proposal for Auditing Services

to be obtained by contacting the individual listed in the section entitled Obtaining Request for Proposal.

**Proposal Closing.** Responses must be received no later than 5 p.m., March 17. Responses received after this date and time will not be considered. We anticipate entering into the contract within seven days of the proposal closing date. Successful applicant will be notified by telephone and/or fax.

**Disclosure by Former Employees of a State Agency.** Any individual who responds to this RFP and offers auditing services for the TWC, and who has been employed by the TWC or by another agency at any time during the two years preceding the making of the offer shall disclose in the offer: the other agency, the date of termination of the employment; and the annual rate of compensation for the employment at the time of resignation.

The TWC reserves the right to accept or reject any or all offers submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any offer received. TWC is under no legal obligation to enter into a contract with any proposer on the basis of this request and intends any material provided herein only as a means of identifying the scope of services requested.

The TWC assumes no responsibility for expenses incurred in preparing a proposal response to this solicitation.

**Obtaining Request for Proposal.** Copies of the RFP, including proposal guidelines and an explanation of the selection criteria, may be obtained in any of the following manners: by sending a regular or certified letter requesting a copy of the RFP package for auditing services to: Dianna Gordon, Texas Water Commission, 1700 North Congress Avenue, P.O. Box 13087, Austin, Texas 78711-3087; by sending an overnight or expedited delivery letter requesting a copy of the RFP package for auditing services with a prepaid, self-addressed, overnight or expedited delivery return envelope to: Dianna Gordon, 1700 North Congress Avenue, Suite 542, Austin, Texas 78701; by appearing in person with a signed letter or receipt at 1700 North Congress Avenue, Suite 542, Austin, Texas 78701.

Please address your responses to Diana Gordon, Texas Water Commission, P.O. Box 13087, Austin, Texas 78701, (512) 463-8272.

Issued in Austin, Texas, on February 17, 1993.

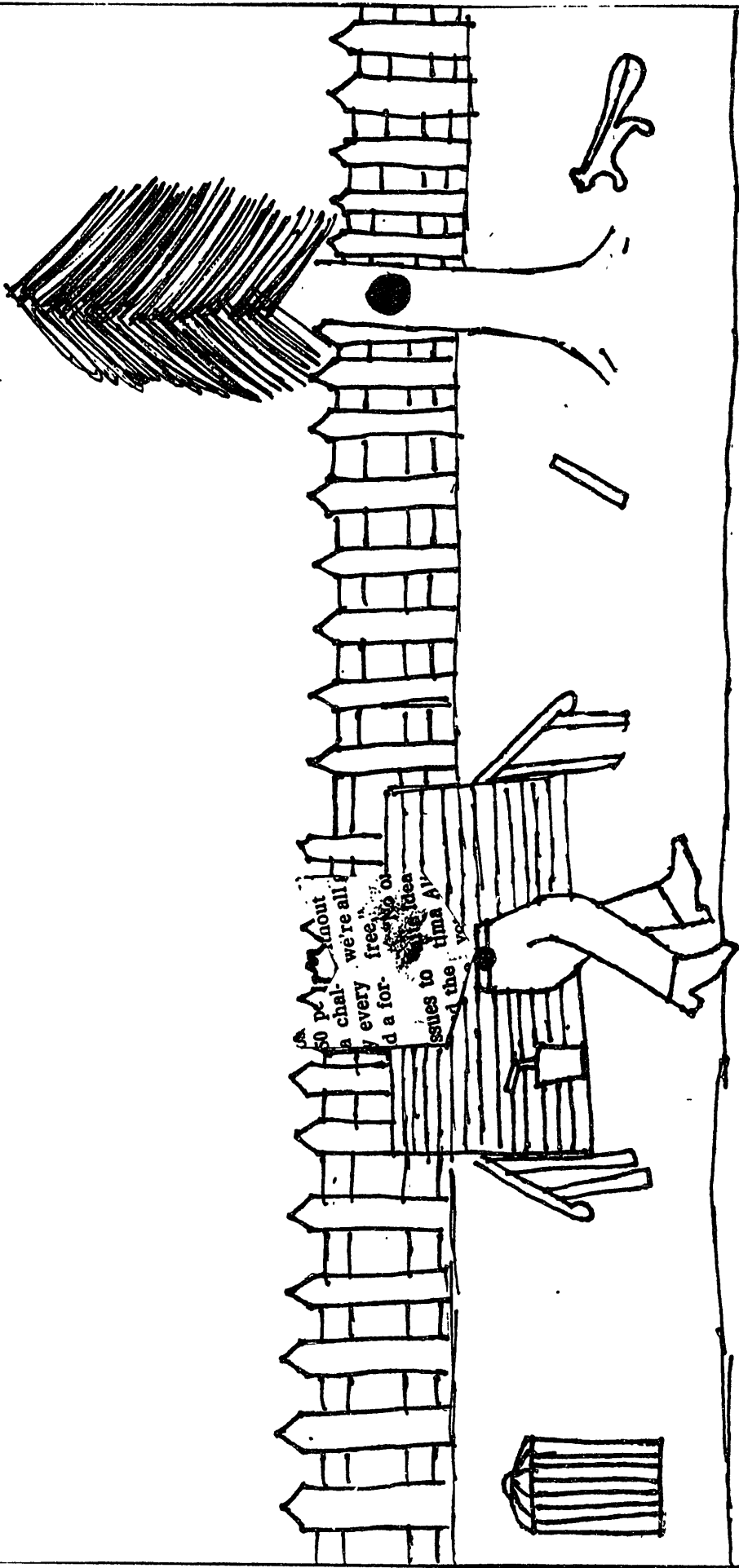
TRD-9319129

Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

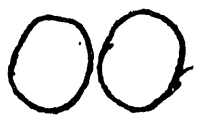
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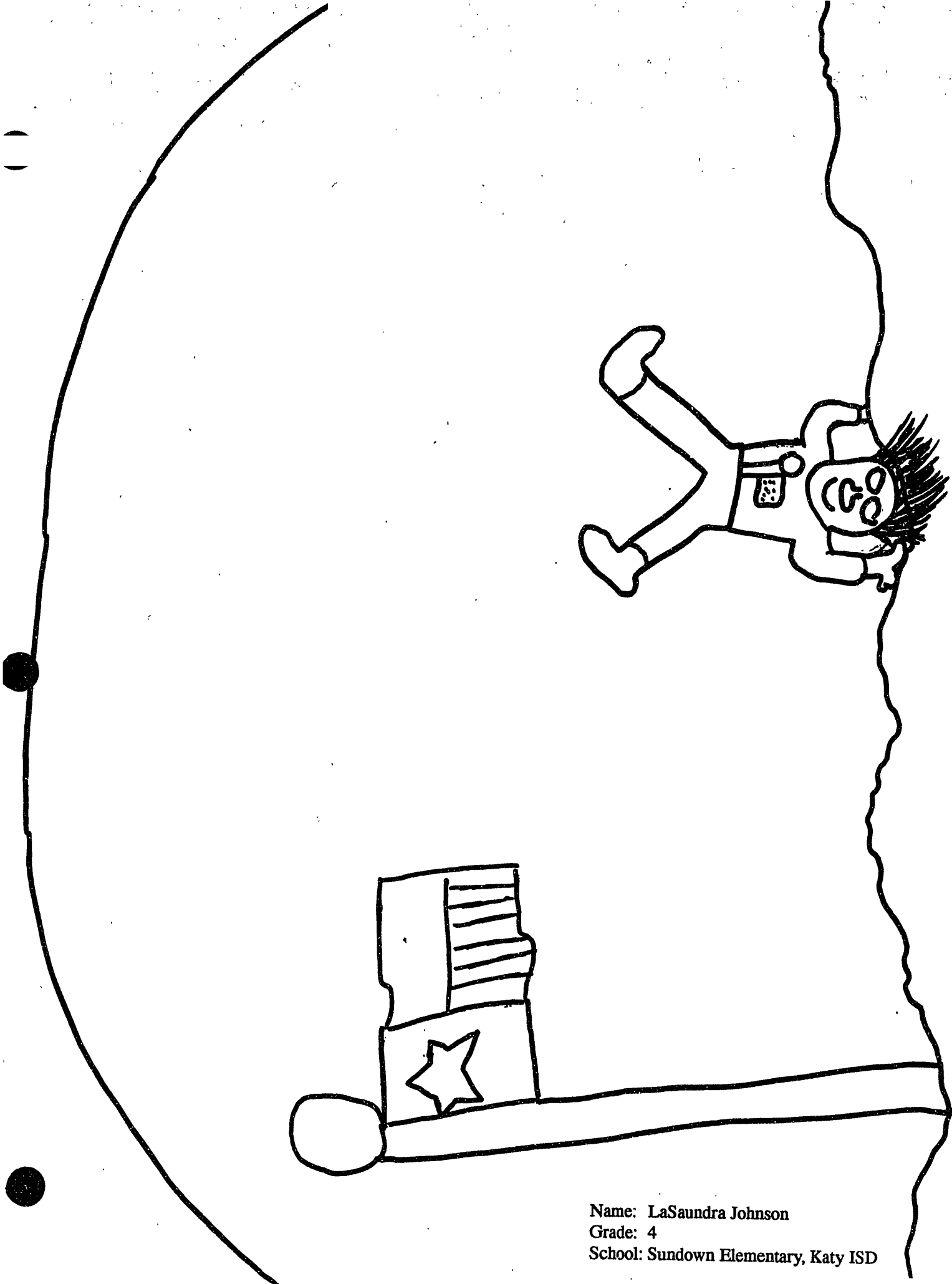




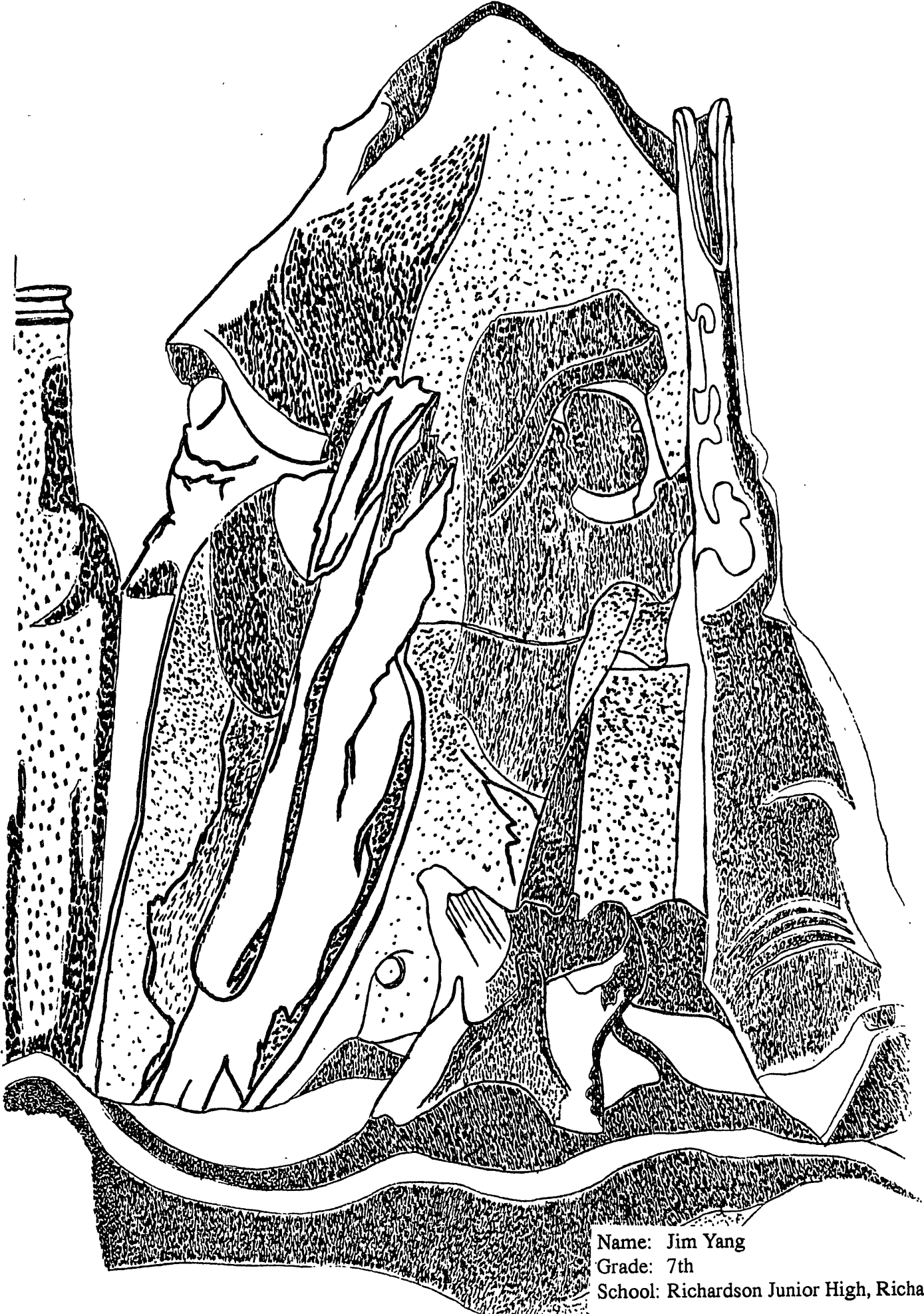
Name: Shaun Tillison  
Grade: 4  
School: Northside Elementary School, Henderson ISD







Name: LaSaundra Johnson  
Grade: 4  
School: Sundown Elementary, Katy ISD



Name: Jim Yang  
Grade: 7th  
School: Richardson Junior High, Richardson ISD

# 1993 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1993 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on July 30, November 5, November 30, and December 28. A asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 Friday, January 1	Monday, December 28	Tuesday, December 29
2 Tuesday, January 5	Wednesday, December 30	Thursday, December 31
3 Friday, January 8	Monday, January 4	Tuesday, January 5
4 Tuesday, January 12	Wednesday, January 6	Thursday, January 7
5 Friday, January 15	Monday, January 11	Tuesday, January 12
6 Tuesday, January 19	Wednesday, January 13	Thursday, January 14
Friday, January 22	1992 ANNUAL INDEX	
7 Tuesday, January 26	Wednesday, January 20	Thursday, January 21
8 Friday, January 29	Monday, January 25	Tuesday, January 26
9 Tuesday, February 2	Wednesday, January 27	Thursday, January 28
10 Friday, February 5	Monday, February 1	Tuesday, February 2
11 Tuesday, February 9	Wednesday, February 3	Thursday, February 4
12 Friday, February 12	Monday, February 8	Tuesday, February 9
13 Tuesday, February 16	Wednesday, February 10	Thursday, February 11
14 *Friday, February 19	Friday, February 12	Tuesday, February 16
15 Tuesday, February 23	Wednesday, February 17	Thursday, February 18
16 Friday, February 26	Monday, February 22	Tuesday, February 23
17 Tuesday, March 2	Wednesday, February 24	Thursday, February 25
18 Friday, March 5	Monday, March 1	Tuesday, March 2
19 Tuesday, March 9	Wednesday, March 3	Thursday, March 4
20 Friday, March 12	Monday, March 8	Tuesday, March 9
21 Tuesday, March 16	Wednesday, March 10	Thursday, March 11
22 Friday, March 19	Monday, March 15	Tuesday, March 16
23 Tuesday, March 23	Wednesday, March 17	Thursday, March 18
24 Friday, March 26	Monday, March 22	Tuesday, March 23
25 Tuesday, March 30	Wednesday, March 24	Thursday, March 25
26 Friday, April 2	Monday, March 29	Tuesday, March 30
27 Tuesday, April 6	Wednesday, March 31	Thursday, April 1
28 Friday, April 9	Monday, April 5	Tuesday, April 6
29 Tuesday, April 13	Wednesday, April 7	Thursday, April 8
Friday, April 16	FIRST QUARTERLY INDEX	
30 Tuesday, April 20	Wednesday, April 14	Thursday, April 15

31 Friday, April 23	Monday, April 19	Tuesday, April 20
32 Tuesday, April 27	Wednesday, April 21	Thursday, April 22
33 Friday, April 30	Monday, April 26	Tuesday, April 27
34 Tuesday, May 4	Wednesday, April 28	Thursday, April 29
35 Friday, May 7	Monday, May 3	Tuesday, May 4
36 Tuesday, May 11	Wednesday, May 5	Thursday, May 6
37 Friday, May 14	Monday, May 10	Tuesday, May 11
38 Tuesday, May 18	Wednesday, May 12	Thursday, May 13
39 Friday, May 21	Monday, May 17	Tuesday, May 18
40 Tuesday, May 25	Wednesday, May 19	Thursday, May 20
41 Friday, May 28	Monday, May 24	Tuesday, May 25
42 Tuesday, June 1	Wednesday, May 26	Thursday, May 27
43 *Friday, June 4	Friday, May 28	Tuesday, June 1
44 Tuesday, June 8	Wednesday, June 2	Thursday, June 3
45 Friday, June 11	Monday, June 7	Tuesday, June 8
46 Tuesday, June 15	Wednesday, June 9	Thursday, June 10
47 Friday, June 18	Monday, June 14	Tuesday, June 15
48 Tuesday, June 22	Wednesday, June 16	Thursday, June 17
49 Friday, June 25	Monday, June 21	Tuesday, June 22
50 Tuesday, June 29	Wednesday, June 23	Thursday, June 24
51 Friday, July 2	Monday, June 28	Tuesday, June 29
52 Tuesday, July 6	Wednesday, June 30	Thursday, July 1
53 Friday, July 9	Monday, July 5	Tuesday, July 6
Tuesday, July 13	SECOND QUARTERLY INDEX	
54 Friday, July 16	Monday, July 12	Tuesday, July 13
55 Tuesday, July 20	Wednesday, July 14	Thursday, July 15
56 Friday, July 23	Monday, July 19	Tuesday, July 20
57 Tuesday, July 27	Wednesday, July 21	Thursday, July 22
Friday, July 30	NO ISSUE PUBLISHED	
58 Tuesday, August 3	Wednesday, July 28	Thursday, July 29
59 Friday, August 6	Monday, August 2	Tuesday, August 3
60 Tuesday, August 10	Wednesday, August 4	Thursday, August 5
61 Friday, August 13	Monday, August 9	Tuesday, August 10
62 Tuesday, August 17	Wednesday, August 11	Thursday, August 12
63 Friday, August 20	Monday, August 16	Tuesday, August 17
64 Tuesday, August 24	Wednesday, August 18	Thursday, August 19
65 Friday, August 27	Monday, August 23	Tuesday, August 24
66 Tuesday, August 31	Wednesday, August 25	Thursday, August 26
67 Friday, September 3	Monday, August 30	Tuesday, August 31
68 Tuesday, September 7	Wednesday, September 1	Thursday, September 2
69 *Friday, September 10	Friday, September 3	Tuesday, September 7

70 Tuesday, September 14	Wednesday, September 8	Thursday, September 9
71 Friday, September 17	Monday, September 13	Tuesday, September 14
72 Tuesday, September 21	Wednesday, September 15	Thursday, September 16
73 Friday, September 24	Monday, September 20	Tuesday, September 21
74 Tuesday, September 28	Wednesday, September 22	Thursday, September 23
75 Friday, October 1	Monday, September 27	Tuesday, September 28
76 Tuesday, October 5	Wednesday, September 29	Thursday, September 30
77 Friday, October 8	Monday, October 4	Tuesday, October 5
Tuesday, October 12	THIRD QUARTERLY INDEX	
78 Friday, October 15	Monday, October 11	Tuesday, October 12
79 Tuesday, October 19	Wednesday, October 13	Thursday, October 14
80 Friday, October 22	Monday, October 18	Tuesday, October 19
81 Tuesday, October 26	Wednesday, October 20	Thursday, October 21
82 Friday, October 29	Monday, October 25	Tuesday, October 26
83 Tuesday, November 2	Wednesday, October 27	Thursday, October 28
Friday, November 5	NO ISSUE PUBLISHED	
84 Tuesday, November 9	Wednesday, November 3	Thursday, November 4
85 Friday, November 12	Monday, November 8	Tuesday, November 9
86 Tuesday, November 16	Wednesday, November 10	Thursday, November 11
87 Friday, November 19	Monday, November 15	Tuesday, November 16
88 Tuesday, November 23	Wednesday, November 17	Thursday, November 18
89 Friday, November 26	Monday, November 22	Tuesday, November 23
Tuesday, November 30	NO ISSUE PUBLISHED	
90 Friday, December 3	Monday, November 29	Tuesday, November 30
91 Tuesday, December 7	Wednesday, December 1	Thursday, December 2
92 Friday, December 10	Monday, December 6	Tuesday, December 7
93 Tuesday, December 14	Wednesday, December 8	Thursday, December 9
94 Friday, December 17	Monday, December 13	Tuesday, December 14
95 Tuesday, December 21	Wednesday, December 15	Thursday, December 16
96 Friday, December 24	Monday, December 20	Tuesday, December 21
Tuesday, December 28	NO ISSUE PUBLISHED	

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