

Texas Register

Volume 18, Number 31, April 23, 1993

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Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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

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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.

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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
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

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

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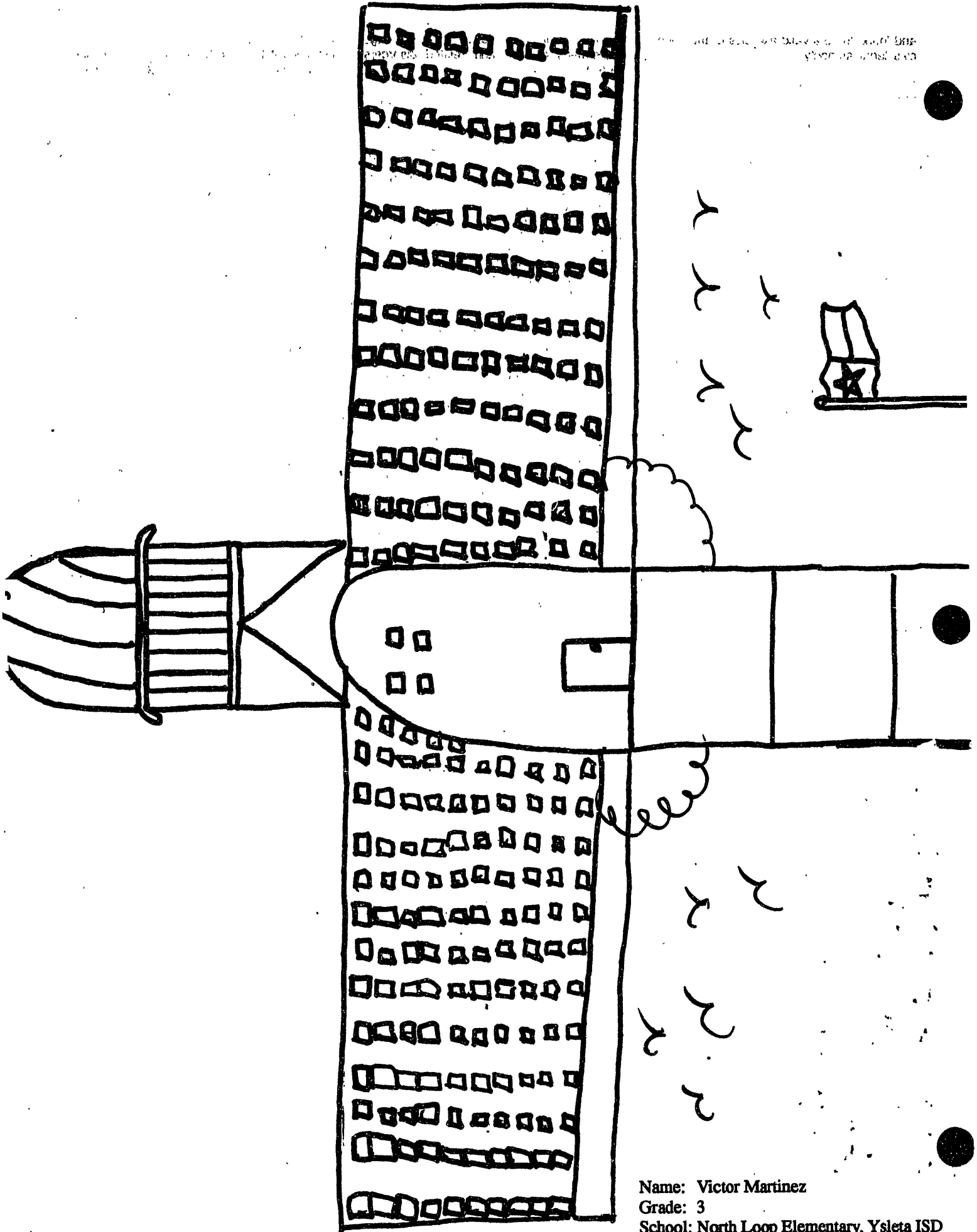
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and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 9, 1993.

TRD-8321478

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

Effective date: September 1, 1993

Proposal publication date: October 20, 1992

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

Chapter 146. Personal Care Facilities

Subchapter A. Introduction

The Texas Department of Health (department) adopts the repeal of existing sections in 25 TAC Chapter 145 concerning personal care facilities and adopts new §§146.1-146.4, 146.11-146.19, 146.21, 146.41, 146.61-146.63, 146.81-146.82, 146.101-146.107, 146.121-146.129, and 146.151-146.156 concerning personal care homes. Sections 146.2-146.3, 146.11-146.13, 146.16-146.19, 146.41, 146.61-146.63, 146.81-146.82, 146.105-146.107, 146.123-146.125, 146.151-146.153 are adopted with changes to the proposed text as published in the October 20, 1992 issue of the *Texas Register* (17 TexReg 7397). Sections 146.1, 146.4, 146.14-146.15, 146.21, 146.101-146.104, 146.121-146.122, 146.126-146.129, 146.155-146.156 are adopted without changes and will not be republished. The only section proposed but not adopted is §146.20, concerning financial assurances, which the department has withdrawn. The new sections will replace the existing sections on personal care facilities in Chapter 145 that are being repealed in this issue.

The department received numerous comments from individuals, groups, agencies and associations concerning the proposed rules. A summary of the comments and the department's responses are as follows.

COMMENT: Chapter 146 preamble. Paragraphs 4 and 5 concerning fiscal implications and financial burdens seem to be inconsistent.

RESPONSE: The department agrees that clarification is necessary and has modified the rules appropriately. This issue is addressed further in comments to specific sections and the department's responses to those comments.

COMMENT: Chapter 146 preamble. Clarify how the department arrived at the \$2,000-\$5,000 figure concerning financial assurance and how this requirement can be fair to both large and small businesses.

RESPONSE: The department agrees that this issue needs to be clarified and has done so in comments to specific sections and the department's responses to the comments.

COMMENT: Chapter 146 generally. Modify the chapter to allow a personal care facility to

receive voluntary certification for early-stage Alzheimer's disease and related disorders' care.

RESPONSE: The department disagrees because the Health and Safety Code, Chapter 247, does not authorize certification for Alzheimer's disease.

COMMENT: §146.1(a). The purpose states that the rules are intended to promote public health and to provide for the safe care of personal care facility residents; yet, the rules themselves seem to interfere more in business operations rather than be actual "care" rules. The rules should focus more on enforcement or closing those unlicensed homes which truly are a threat and danger to those they purport to serve.

RESPONSE: The department's response is that it believes that the rules as written do promote public health and provide for the adequate care of the residents; however, the department has modified and clarified the final rules throughout Chapter 146, as appropriate, in order to strengthen the stated purpose.

COMMENT: §146.2(a). The scope of the rules indicates that they apply only to facilities that house 4 or more residents. Accordingly, facilities with less than four residents are not covered and anything goes. Such facilities also should be regulated by the department so that the caregivers cannot be allowed to operate without proper knowledge, skill, and supervision.

RESPONSE: The department's response is that the Health and Safety Code, Chapter 247, only authorizes the department to regulate only those facilities that house 4 or more residents. As such, the department has no authority to adopt rules regulating facilities with three or less residents.

COMMENT: §146.2(b)(3)(B)(i). Specify more what types of assistance the facility will provide to the residents.

RESPONSE: The department disagrees because the rule covers assistance with meals, dressing, movement, bathing, or other personal needs or maintenance.

COMMENT: §146.2(b)(3)(C). This rule indicates that if the attending physician does not concur that services beyond facility assistance are needed, the resident or responsible party may make the decision to provide such services. If this is true, then any resident, regardless of condition, may remain in the facility.

RESPONSE: The department agrees but emphasizes that the rule still requires the resident to meet the physical characteristics of a personal care resident. No change has been made.

COMMENT: §146.2(b)(3)(D)(iv). The rule allows a resident to contract for professional medical, nursing, or other care as found in specialized facilities such as hospitals and nursing homes. To what extent may facility staff assist a resident between such contracted professional care?

RESPONSE: The department's response is that facility staff can provide personal care services but not medical care.

COMMENT: §146.2(c)(2). Clarify provision by changing it to read: "A resident may exhibit symptoms of mental or emotional disturbance, but is not considered at risk of imminent harm to self or others".

RESPONSE: The department agrees and has made the change.

COMMENT: §146.2(c)(5). Delete word "occasional" because it adds nothing to rule and could lead to misunderstanding and confusion.

RESPONSE: The department disagrees because the word is appropriate to the provision.

COMMENT: §146.2(c)(9). Clarify requirement by deleting phrase "brief periods of time" because it is not defined.

RESPONSE: The department agrees and has deleted the phrase.

COMMENT: §146.2(c)(11). Clarify provision by changing it to read: A resident may be incontinent without pressure sores.

RESPONSE: The department agrees and has made the change.

COMMENT: §146.3. Concerning the definition of "Controlling person", a commenter recommends deleting the word "not" from the second sentence because all types of ownership should be covered by the rule. Another commenter questions whether anyone owning 5.0% of a business should be considered a controlling person because such a person does not have anything approaching control.

RESPONSE: The department's response is that it has decided to replace the definition of "controlling person" with the more appropriate definition of "person with a disclosable interest". Corresponding changes have been made to the definition of "affiliate" and to applicable provisions in the rules. Also, the department has retained the 5.0% ownership requirement in the rules for disclosure purposes.

COMMENT: §146.3. Delete definition of "Licensing Agency" because it is unnecessary.

RESPONSE: The department agrees because the term was changed throughout the rules to the Texas Department of Health for consistency.

COMMENT: §146.3. Add definition of "Personal Care Administrator" as being the person responsible for the overall operation of a facility.

RESPONSE: The department agrees and has made the change.

COMMENT: §146.3. Concerning the definition of "Service plan," change the term "A written description" to "A documented description." The change will clarify that the service plan does not require an essay type written description.

RESPONSE: The department disagrees because the term is clear as written.

COMMENT: §146.3. Concerning the definition of "Service plan", delete the term "medical care" because it is inappropriate to include medical care in the service plan.

RESPONSE: The department disagrees because the service plan should include a written description of the medical care or the supervision and nonmedical care needed by a resident, and this is how the rule is written.

COMMENT: §146.4. One commenter suggested dividing Type A small facilities into classes 1 and 2 and modifying architectural requirements in Class 1 (10 or fewer beds) to make them slightly more liberal and affordable for providers. This change would not compromise resident safety. Another commenter suggested dividing the facilities into six different types in order to provide a wider range of options for housing that will accommodate the needs of residents with differing functional capacities and be more cost effective.

RESPONSE: The department disagrees with both suggestions because this would be a major rule change and the rules primarily are a recodification of existing rules. Also, such changes might conflict with Americans with Disabilities Act requirements. §146.4(1). Clients that ambulate and are able to walk out of a facility in case of emergency should be in a Type A, Level I facility. The department disagrees because such a requirement would be inappropriate for a Type A facility.

COMMENT: §146.11(c). What will constitute "affirmative" action by the applicant to demonstrate compliance with the provisions of this subsection?

RESPONSE: The department's response is that an affidavit will suffice; however, the department has clarified the subsection by deleting "change of ownership" in (b) and (c) because the requirement is inappropriate; deleting the requirement in paragraphs (2), (3), and (7) of subsection (c) because it is inappropriate; and changing "controlling" to "disclosable" in paragraph (1) for clarity.

COMMENT: §146.11(c)(1). One commenter suggests deleting the provisions in §146.11(c)(1) concerning convictions because it is unenforceable, does not relate to resident care, and funds are not currently available for the department to investigate the criminal history of the named applicants. Another commenter suggests rephrasing the provision to read, "All employees working on the premises have had no conviction of felony or crime involving moral turpitude in this state or any other state". This commenter believes that funds are not currently available to investigate criminal history of named applicants; that when funds do become available, criminal history checks should be limited to the past five years; and the rule should concentrate on employees and not applicants in order to allow individuals to outlive past mistakes.

RESPONSE: The department disagrees with both comments because the rule on convictions is enforceable, it does relate to resident care, and the department will only be asking for an affidavit from the applicant.

COMMENT: §146.11(c)(2). The financial assurance requirement is unacceptable because it will be very costly, will discourage small homes since they receive no financial support from state or federal contracts, will

not adequately describe the financial stability of a facility since this is not a static condition, and does not address outside forces which affect the financial stability of a facility.

RESPONSE: The department agrees and has deleted §146.11(c)(2). The department has made related changes elsewhere in the rules by deleting §146.13(c)(5) and withdrawing §146.20 in its entirety.

COMMENT: §146.12(4). A problem exists with this provision in that the facility has no jurisdiction over local authorities and thus cannot be assured when they will perform their duties. Remove this problem by adding this sentence at the end of the paragraph: "The facility will not be held responsible for the failure of the local health or fire authority to act within the time specified".

RESPONSE: The department disagrees because it does not believe that the suggested addition is appropriate for the rule.

COMMENT: §146.13(c)(5). The financial resources requirement is unacceptable for the same reasons that §146.11(c)(2) is unacceptable

RESPONSE: The department agrees and has deleted §146.13(c)(5). The department also has strengthened subsection (c) by adding new paragraph (6) and (7) concerning a certificate of good standing and a certificate of incorporation.

COMMENT: §146.13(d). What is the general purpose of this requirement? Is this simply to protect the department in case they fail to act on the disclosure in the original application? Does this mean that they are concerned that they may not be able to adequately enforce requirements in processing the original application for license?

RESPONSE: The department's response is that the purpose is to examine the track record of applicants to assist the department in determining if an application for a license should be approved. This information is reasonable and relevant; however, the department has made changes to individual paragraphs in subsection (d), as discussed in the following comments.

COMMENT/RESPONSE: §146.13(d). A number of comments were received about individual paragraphs in subsection (d), as follows: Delete all requirements in paragraphs (1)-(10), as they do not necessarily relate to resident care and are inappropriate. The department disagrees because this information is reasonable and relevant to the operation of a facility. Substitute "Texas" for "in any state" in paragraph (1) because rules differ from state to state and it is unrealistic to compare performance in programs in different states. The department disagrees because performance in other states does relate to ability to perform in Texas. Delete provision on disclosure of federal or state liens and unsatisfied final judgments in paragraphs (4)-(5) because they are a violation of a providers civil rights and a negative intrusion into each and everyone's operation. The department disagrees because this information is relevant, is not a violation of civil rights, and is not a negative intrusion into facility operations.

COMMENT/RESPONSE: §146.13(d). Additional comments received about this section are as follows. Change five-year period to two-year period in paragraph (5) for consistency with other proposed rules. The department agrees and has made the change. What type of judgments does §146.13(d)(5) refer to, and what will be the department's position if a judgment exists but is not yet payable? The department response is that the paragraph covers all types of legal judgments and the conditions of a judgment may be to allow payment over a period of time; such is acceptable to the department. Change "unresolved" to "resolved" in paragraph (9) because a facility should not be penalized until action is final. The department agrees that this paragraph needs clarification but that it is more appropriate to remove the word "final" from the paragraph. Change "facility" to "health care facility" in paragraph (10) for clarity; The department disagrees because "facility" is defined in §146.3. Change "facility" to "health care or related facility in Texas" in paragraph (10) because utilizing performance of facilities in other states is unreasonable. The department disagrees because track records in other states are important and relevant; however, the department has clarified the term "facility". The department also has changed "controlling" to "disclosable".

COMMENT: §146.13(e)(5). The requirement that a provider may not sell 5.0% or more interest in a home or make anyone an officer, director, or general partner without "prior written approval of the department" is an unwarranted invasion of a provider's personal business. Additionally, the rule will cost the state and facility time and money, preclude a publicly held corporation from freeing trading on listed stock exchanges, and could block a privately held corporation from issuing stock to raise needed capital.

RESPONSE: The department agrees and has deleted all of proposed paragraph (5).

COMMENT: §146.13(e)(6). Delete provision that managers must be approved by department because provision authorizes department to screen ownership and the owners should make this decision. Also, the department is not in a position to make such business judgments. Ownership should make this decision and facility performance should be ownership's criteria for making judgment.

RESPONSE: The department agrees and has deleted the approval requirements; however, the department has added a provision in adopted §146.13(e)(5) about notice of change in a facility manager.

COMMENT: §146.13(f). The fiduciary exemptions are unreasonable because all ownership should have to comply with the rules, including fiduciaries.

RESPONSE: The department disagrees and has retained the exemption; however, the department has added a provision concerning disclosure relating to the manager of a facility.

COMMENT: §146.16. One commenter suggested deleting the entire section. Another commenter suggested deleting the 60 day requirement because in the real world the

seller may not have 60 days in which to notify the department of a sale. Another commenter requested a method to expedite a sale in an emergency, such as when the owner or owners of a business meet an untimely death or become otherwise incapacitated, they would need to be able turn the business over to a prospective purchaser as soon as possible.

RESPONSE: The department's response is that the provisions are necessary and that a provision for expeditious sale is necessary; accordingly, the department has reduced the 60 days to 30 days to expedite sales.

COMMENT: §146.17(b)(2). Clarify the term "evasive".

RESPONSE: The department disagrees because the term is self explanatory.

COMMENT: §146.17(e)(2). A commenter questions the necessity for the entire provision. Is it to protect the department in case it fails to act on the disclosure in the original application? Is the department concerned that it may not be able to adequately enforce requirements in processing the original application for licensure?

RESPONSE: The department's response is that the track record is important and relevant in enabling the department in determining whether to issue a license. The department does believe that the structure of the section as proposed needs to be modified for clarity and has done so in the final version.

COMMENT: §146.17(e)(2). A commenter wants to substitute "Texas" for "any state" in subparagraph (A) and add "in Texas" at the end of subparagraphs (B) and (C). The commenter believes that these changes should be made because there is no uniformity in the regulation of personal care facilities in the United States. Even the definitions are not uniform. So, it is unreasonable to use information about what happens in other states.

RESPONSE: The department disagrees because it believes that such information is relevant and important. A commenter wants to delete subparagraphs (D), (E), and (F), as they do not relate to provision of patient care. The department disagrees because such information does directly relate to patient care. A commenter requests clarification of "final judgement" in subparagraph (E). The department disagrees because the term is self-explanatory. A commenter wants to delete the word "unresolved" from subparagraph (F). The department agrees that clarification is needed but has deleted the word "final" to accomplish this purpose.

COMMENT/RESPONSE: §146.18(a)(1). A commenter says that fees are excessive for small providers. The department disagrees because the number of beds decision is taken from the Life Safety Code. A commenter says the phrase "minimum of \$400" should be "maximum of \$400". The department agrees and has made the change. A commenter said that the requirement that a manager be a high-school graduate or have a GED, should be deleted because no evidence exists that this education requirement is relevant to operating a facility. At least, all of the present facilities

should be grandfathered from this requirement. The department disagrees because it is important that facility managers have at least a high-school degree or a GED.

COMMENT/RESPONSE: §146.18(b). A commenter said that the amount of the fee to be charged to facilities is unclear and should be stated in the rule. The department disagrees because the trust fund has a cap of \$100,000 and assessments are set based on what is needed to meet the \$100,000. A commenter asked if the \$100,000 amount for the trust fund is to be used for nursing homes as well as for personal care homes, and is this why the department uses the word "institution" in the rule? The department's response is the trust fund is used by personal care facilities and nursing facilities. The word "institution" is taken from the wording in the Health & Safety Code, Chapter 242, regarding trust fund.

COMMENT/RESPONSE: §146.19(j). Several commenters said that the fees generally are exorbitant, the \$1,000 minimum is unfair, the \$5,000 a bed is too high, and it is not fair that a five-bed facility should have to pay as much as a 30-bed facility. The department disagrees because it believes that the fees are reasonable. A commenter suggested changing the title in Section II of the fee schedule to read: "II. Facility Plan Review: Personal Care Facilities (based on other than health care occupancy, Chapter 21 of the Life Safety Code). This change will make the wording consistent with the current rules. The department agrees and has made the change.

COMMENT: §146.20. A number of commenters requested that the financial assurance provision be deleted for the following reasons: it is too expensive, an invasion of privacy, a violation of civil rights, a burden on small homes, and the requirements are too vague; an audited financial statement is too expensive, is not indicative of a facility's financial stability, and confidentiality of facility financial records will be endangered if such statements are public records; and auditing expenses are monies that could be used for resident care.

RESPONSE: Upon review of all of the comments received, the department has decided not to adopt the financial assurance requirements in §146.20 and has withdrawn the section in its entirety.

COMMENT/RESPONSE: §146.41(a). A commenter asked if provision in paragraph (1)(D) means that the manager on duty must be physically present, on call, or available. The department refers the commenter to the provisions in §146.52(k)(1)(H). A commenter said that the staffing requirements in paragraph (2) (B) are too stringent, the ratio of attendant-to-resident is cost prohibitive, and the requirement for an attendant 24 hours a day is excessive. Another commenter said that the staff-to-resident ratio is inadequate and that one staff member to 15 residents cannot be conducive to the health, well-being, or comfort of any but the most stable, independent resident. The department believes that the staff-resident ratio is not too restrictive, but is a reasonable minimum and the facility may increase it.

COMMENT: §146.41(b). A weekly social event is not adequate for most residents.

RESPONSE: The department's response is that the rule is a minimum requirement.

COMMENT: §146.41(d)(2)(A). Because a physical examination is required of new clients to a facility, the department should accept physicals completed by the hospital if the client is transferring from a hospital to a facility rather than to require a new physical examination. Also, if a client is transferring from one facility to another, the same medical information should be acceptable to the department if there is evidence of a physical exam in the medical records.

RESPONSE: The department agrees with comment because the provision is in the existing rules and has made the change.

COMMENT: §146.41(e)(1)(D). Change provision to read: "The recorded information shall include, but is not limited to, the medication name, strength, dosage, amount received, directions for use, route of administration, prescription number, pharmacy name, and the date each medication was issued by the pharmacy". This change will make the provision comply with established medical records procedures.

RESPONSE: The department agrees and has made the change.

COMMENT: §146.41(i). Delete "tuberculosis (TB) screening" in paragraph (4) because screenings are no longer required by local health authorities and there is no public funding for TB screenings, delete paragraph (4)(C) because it will be too expensive for small facilities, and delete requirements in paragraph (6)(B)(iv)-(v) because facilities are already required to give HIV training.

RESPONSE: The department disagrees with each comment because the department believes that each provision is a reasonable one and needs to be retained.

COMMENT: §146.61(a)(1) and (2). A residence with 5-25 residents should be considered small, 25-50 resident beds should be considered intermediate, and over 50 beds should be considered a large facility.

RESPONSE: The department disagrees because the bed division is taken from the Life Safety Code.

COMMENT: §146.61(b)(4)(C)-(D). Delete postpartum care provisions because such care does not apply to personal care facilities.

RESPONSE: The department agrees and has deleted the provisions.

COMMENT: §146.61(c). Clarify the criteria on which these numbers are based because they appear to be arbitrary.

RESPONSE: The department disagrees that the numbers are arbitrary because they are based on giving a facility reasonable time to achieve compliance.

COMMENT: §146.61(c). Define "Facilities" as "Existing facilities, i.e. facilities with residents at the time of the initial inspection" to improve clarity without changing meaning.

RESPONSE: The department agrees and has made the change.

COMMENT: §146.62(a). Clarify National Fire Protection Association 101, Chapter 21, by adding phrase, "titled Residential Board and Care Occupancies".

RESPONSE: The department agrees and has made the change.

COMMENT: §146.62(c)(2). Clarify last sentence by rephrasing it to read, "All fire drills shall be documented on a form furnished by the department."

RESPONSE: The department agrees and has made the change.

COMMENT: §146.62(d)(1). Clarify provision on partition by modifying it to read: (The partition shall be as defined by the National Fire Protection Association Standards).

RESPONSE: The department agrees and has made the change.

COMMENT: §146.62(d)(5). Correct the meaning of the exception provision by modifying it to read: "An exception is that for existing 16 beds or less, at least one main stair may be Class B."

RESPONSE: The department agrees and has made the change.

COMMENT: §146.62(e)(1). Add the following statement to provide a wider range of options for housing that will accommodate the needs of residents with differing functional capacities and be more cost effective: "An exception is that a Type A, Small, Class I, facility need not have a manual fire alarm provided smoke detectors are installed in all areas as listed in subsection (e) (1)(A). These detectors shall be powered by the facility electrical system, provide an audible signal of 85 decibels at 10 feet from the unit and every detector shall alarm upon activation of any one detector. Additionally, there must be at least one manual fire alarm pull per floor arranged to continuously sound the smoke detector alarms".

RESPONSE: The department disagrees because rules are primarily recodifications of existing rules and are not intended to add substantive changes.

COMMENT: §146.62(g)(11). It is unreasonable to call a 17-bed facility a large facility and require the same physical standards as for large facilities.

RESPONSE: The department's response is that the bed division is taken from the Life Safety Code.

COMMENT: §146.62(g)(6). Clarify provision by replacing "stated" with "is that".

RESPONSE: The department agrees and has made the change.

COMMENT: §146.62(h)(1). Combine this rule with the one in proposed §146.62(h)(11) since both rules address the same subject.

RESPONSE: The department agrees, has transferred the provisions in proposed (h)(11) to (h)(1), and has modified the combination for clarity.

COMMENT: §146.62(h)(6). Revise provision to allow facility maintenance personnel to

make the annual inspection of the gas heating system prior to its use each year.

RESPONSE: The department disagrees because there is no assurance that facility personnel are qualified.

COMMENT: §146.62(h)(6). Gas pressure tests should be conducted annually because they are neither expensive, time consuming, nor detrimental to the public good or safety.

RESPONSE: The department disagrees because it is unnecessary to conduct such tests on a yearly basis.

COMMENT/RESPONSE: §146.62(h)(11). Eliminate the use of extension cords altogether. The department disagrees because no basis exists for eliminating extension cords altogether. As previously mentioned in the comments concerning §146.62(h)(1), the department has combined subsections (h)(1) and proposed (h)(11).

COMMENT: §146.62(h)(12). Delete the provision on floor, ceiling, and wall finish materials because it is unnecessary.

RESPONSE: The department disagrees because the provision is reasonable and necessary.

COMMENT: §146.62(i). Insert language to cover storage and waste containers. These provisions are in existing rules and need to be retained.

RESPONSE: The department agrees but has placed language in adopted §146.62(j).

COMMENT: §146.62(j)(1). The department and a municipality should not require different types of fire extinguishers.

RESPONSE: The department's position is that it has no legal jurisdiction over the types of fire extinguishers required by local ordinances.

COMMENT: §146.62(k)(1)(B). Add language to clarify that 10 feet is the smallest allowed dimension in a bedroom.

RESPONSE: The department agrees and has added appropriate language in adopted subsection (l)(2)(B).

COMMENT: §146.62(k)(2)(B). The ratio of bathrooms to residents is too stringent and nursing facilities are only required to have one tub or shower for each 20 occupants.

RESPONSE: The department disagrees because the ratio is reasonable and appropriate and nursing facility resident needs differ from personal care resident needs.

COMMENT: §146.62(k)(2)(B). Clarify "fraction thereof".

RESPONSE: The department's response is that a fraction is a portion less than six and has added this clarifying language to the rule.

COMMENT: §146.62(k)(3)(A). The total space required for social diversion should be larger.

RESPONSE: The department disagrees because the rule only addresses the minimum square footage required.

COMMENT: §146.62(k)(6)(A). A commenter stated that it will cost a facility \$50,000 to

completely commercialize an adequate, sanitary, and efficient kitchen.

RESPONSE: The department's response is that the rules do not address expenditures but that the rules are necessary and minimum requirements for kitchens. Another commenter wants to know what requirements an outside kitchen has to meet. The department's response is that all kitchens must meet local codes.

COMMENT: §146.62(k)(6)(B)(i). Clarify rule by adding at end of provision the phrase, "and compliance with the requirements of §146.41(h)(18)".

RESPONSE: The department agrees and has made the change in adopted §146.62(l)(6)(B)(i).

COMMENT: §146.62(k)(6)(B)(xii). In an existing building, it would be extremely disruptive, difficult, and expensive to add a floor drain.

RESPONSE: The department disagrees as the rule provides for an exception for existing facilities.

COMMENT: §146.62(k)(7)(A)(ii)(I)-(IV). It may not be feasible in an existing building (especially a home type structure housing more than 16 but fewer than 25 residents). The cost for such changes is indeed prohibitive.

RESPONSE: The department disagrees because it does not believe that the requirement will be unreasonably expensive.

COMMENT: §146.63(a)(1). Change subsection (b)(4) to subsection (c)(4) because more appropriate.

RESPONSE: The department agrees and has made the change.

COMMENT: §146.63(a)(4) and (d)(2)(C). If written approval of the local authorities is necessary, why have approval by the department in Austin?

RESPONSE: The department response is that local authorities enforce local ordinances and not state standards.

COMMENT: §146.63(c)(3). The numbering of resident rooms in a small, homelike facility is not necessary or desirable.

RESPONSE: The department's response is that room numbers are only required when submitting floor plans.

COMMENT: §146.63(d)(2)(A). Since the local health department makes recommendations to the department regarding licensure, the approval of the local health department should not be required.

RESPONSE: The department disagrees because the requirement assures that local ordinances are met.

COMMENT: §146.63(d)(2)(B). Modify provision to allow a facility to accept three residents between the time it receives initial approval from architectural section and the time the license is issued. This is allowed in the existing rules and should be retained.

RESPONSE: The department agrees and has made the change.

COMMENT: §146.63(e). Clarify what the fees will be.

RESPONSE: The department's response is that §146.19 contains the fee schedule.

COMMENT: §146.81(c). Delete provision on night inspections in a facility with 50 residents or less because this will awaken and terrify residents.

RESPONSE: The department disagrees because it has not found this to be true.

COMMENT: §146.81(d)(5)(B). Delete this provision concerning inspections for purchased care systems because this procedure is not performed in personal care facilities.

RESPONSE: The department agrees and has deleted the provision.

COMMENT: §146.81(d)(5)(A)-(C). Delete these requirements because announced inspections are not necessary in personal care facilities.

RESPONSE: The department agrees to delete subparagraph (B) concerning inspection of purchased care systems but has retained subparagraph (A) and subparagraph (C) because the department believes that announced inspections in these areas are appropriate. Subparagraph (C) has been redesignated as subparagraph (B).

COMMENT: §146.81(e). Clarify that the books, records, and documents are those belonging to residents and employees.

RESPONSE: The department agrees and has made the change.

COMMENT: §146.81(e)(3). Using a staff member to accompany a state official to copy records could leave the facility "short staffed".

RESPONSE: The department disagrees because it believes that this requirement is reasonable and will not short staff the facility.

COMMENT: §146.82(c). Specify time limit in which department must notify facility of an additional violation and allow more time than three days for the facility to communicate a reply regarding a possible violation.

RESPONSE: The department agrees with both suggestions and has made appropriate changes.

COMMENT: §146.101(D). Clarify "involuntary seclusion".

RESPONSE: The department's position is that the term is clear as written and does not need further clarification.

COMMENT: §146.104(b). Investigations of neglect or abuse should not be ruled out because a specific individual is named. If an individual is named, it is a more accurate report.

RESPONSE: The department disagrees because it believes that it is fair and appropriate not to conduct an investigation under these circumstances.

COMMENT: §146.105(b). Clarify language by changing "reports" to "complaints" and "Texas Department of Human Services" to "Texas Department of Protective and Regulatory Services".

RESPONSE: The department agrees and has made the changes.

COMMENT: §146.105(d). Clarify language by inserting "complaint" before "investigations" in first sentence.

RESPONSE: The department agrees and has made the changes.

COMMENT: §146.105(f). Change to read "If the initial phase of an incident or complaint investigation concludes, no further investigation will be undertaken".

RESPONSE: The department agrees and has made the change.

COMMENT: §146.105(g). Change first sentence to read, "In cases concluded to be abuse, neglect, or exploitation, the written report of the investigation, along with its recommendations, shall upon request".

RESPONSE: The department agrees and has made the change.

COMMENT: §146.106(a). Clarify paragraphs (1) and (2) by deleting "The department's" at the beginning of each paragraph, and clarify (2) by deleting phrase "on cases concluded".

RESPONSE: The department agrees and has made the changes.

COMMENT: §146.106(b). Who determines if such reports are malicious or were made in bad faith?

RESPONSE: The department's response is that it is responsible for making this determination.

COMMENT: §146.107. Modify resident death-reporting requirements so that the language will follow the language in §145.217, relating to resident death reporting.

RESPONSE: The department agrees that the two sections should contain similar reporting requirements and, accordingly, has modified §146.107 appropriately.

COMMENT: §146.107. In considering a hospital a licensed facility, this rule would encourage a disreputable facility to discharge a resident who is close to death to his or her home and family at a time when such a resident should not be moved.

RESPONSE: The department's response is that it does not believe that the rule would produce the result feared by the commenter.

COMMENT: §146.123(a)(b). It would serve the public's best interest to clearly spell-out rules to begin with instead of later issuing interpretive memoranda to explain them.

RESPONSE: The department disagrees because it should be able to interpret the rules on an ongoing basis through the use of interpretive memoranda, as appropriate.

COMMENT: §146.124(c)(4). Are public records listed by specific headings or names and what is the procedure for obtaining a copy of a facility's record under the Open Records Act?

RESPONSE: The department's response is that records are kept by the department by facility and the procedure for obtaining the records is described in §146.124.

COMMENT: §146.124(f). What is an appropriate charge to inspect records and could such a charge be used to discourage people from inspecting records?

RESPONSE: The department's response is that it charges according to rates established for all department records in accordance with rates set by the department in coordination with the State Board of Purchasing. The rates established are required by law to be limited to the department being reimbursed for its costs in producing copies and is not intended to discourage applications for records.

COMMENT: §146.125(a)(3)(X). Add the phrase as "documented in the medical record by the attending physician or his designee, for each of the four items under subparagraph (X)".

RESPONSE: The department disagrees because such language is not necessary and (Y) relates to notification of physician and responsible party.

COMMENT: §146.125(a)(3). Add to resident rights a provision that a resident shall have access to the State Long Term Care Ombudsman in the Department of Aging.

RESPONSE: The department agrees and has added new (3)(BB) concerning access to the ombudsman.

COMMENT: §146.126(a)(1). Replace "within 60 days" with "between 1 and 60 days" for clarity.

RESPONSE: The department disagrees because it does not believe that the change would clarify the provision.

COMMENT: §146.126(a)(2)(C). The criteria for issuing a license within certain time periods is too subjective.

RESPONSE: The department disagrees because it believes that the time periods are explicit.

COMMENT: §146.151(a). Clarify provision in paragraph (3) by requiring that notices be sent by certified mail.

RESPONSE: The department agrees and has made the appropriate change. The department has made similar changes to §§146.152, 146.153, and 146.155. The department also has clarified subsection (a) concerning department personnel and has changed "recommend" to "authorized".

COMMENT: §146.152 and §146.153. Clarify "serious violation" in both sections. The department agrees that the more serious action of revocation in §146.153 requires criteria and has added such criteria in subsection (b) of this section.

RESPONSE: The department also has changed "recommend" to "revoke".

COMMENT: §146.153 and §146.154. Include a provision for notification of the State Ombudsman regarding these actions. This would facilitate coordination of efforts between department regional offices and regional ombudsman programs.

RESPONSE: The department's response is that it is more appropriate to have such an arrangement by interagency agreement rather than by rule.

COMMENT: §146.155(b). Delete provision because a majority of facilities do not have a telecopier.

RESPONSE: The department disagrees because use of a telecopier is not required.

COMMENT: §146.155(d)(1). The right of choice will be lost if the department continues to issue stringent, expensive rules on a yearly basis.

RESPONSE: The department disagrees because it is necessary to issue rules to protect resident health and safety, as appropriate, and the department does not believe that these rules are too stringent or expensive.

COMMENT: §146.156(a). Add provision about hearings being requested under §146.20 concerning financial assurances.

RESPONSE: The department disagrees because the department has withdrawn §146.20.

The following agencies, associations, and organizations commented on proposed Chapter 146: Villa Residential Care Homes, Inc.; Texas Organization of Residential Care Homes; Texas Association of Retirement Communities; Mental Health Association of Texas; Alamo Residential Care Homes; Retirement Management, Inc.; Community Residential Program, Department of Veteran's Affairs; Evergreen Hill of Euless; Texas Department of Aging; Guzman's Personal Care Home of San Antonio; Sunshine Home of El Paso; Sisters Care of Dallas; Antique Oaks Personal Care Home; Silver Creek Home of Azle; and Meadow View of Arlington. In addition, numerous individuals commented on the proposed rules. The commenters ranged from those who opposed various sections and provisions in the proposal to those who supported various sections and provisions. Also, commenters expressed numerous concerns and made numerous suggestions for change throughout the proposed rules.

• 25 TAC §§146.1-146.4

The new sections are adopted under the Personal Care Facility Licensing Act, Health and Safety Code, Chapter 247, which provides the Texas Board of Health (board) with the authority to adopt rules concerning personal care homes; and §12.001, which provides the board with authority to adopt rules to implement every duty imposed on the board, the department, and the commissioner of health.

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

Act—The Personal Care Facility Licensing Act, Health and Safety Code, Chapter 247.

Affiliate—With respect to a:

(A) partnership, each partner thereof;

(B) corporation, each officer, director, principal stockholder, subsidiary,

and each person with a disclosable interest, as the term is defined in this section.

(C) natural person:

(i) each person's spouse;

(ii) each partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) each corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

Applicant—A person required to be licensed under Health and Safety Code, Chapter 247.

Attendants—Any individual who is providing service to residents, and can include, but is not limited to, aides, cooks, janitors, porters, maids, laundry workers, security personnel, bookkeepers, managers, etc., as they also are of service.

Authority having jurisdiction (AHJ)—Texas Department of Health.

Co-mingles—The laundering of wearing apparel and/or linens of two or more individuals together.

Dietitian—A dietitian is as follows.

(A) A registered dietitian is a dietitian who is currently registered by the Commission on Dietetic Registration.

(B) A licensed dietitian is a dietitian who is currently licensed by the Texas State Board of Examiners of Dietitians and who has 15 hours of dietetic continuing education annually.

Facility—An institution coming under the scope of Personal Care Facility Licensing Act, the Health and Safety Code, Chapter 247, and furnishes room, board, and one or more services of a personal care or protective nature.

Governmental unit—The state or any county, municipality or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

Immediately available—The capacity of facility staff to immediately respond to an emergency situation after being notified through a communication and/or alarm system. The staff is to be no more than 600 feet from the farthest resident.

Impractical resident—An impractical resident is:

(A) a resident with a physical disability of a nature that he/she is not capable of maneuvering in a wheelchair, walker, etc., unaided;

(B) a resident who will not take or cannot understand instructions from a staff member; or

(C) a resident who is taking medication which will make it difficult for a staff member to rouse the person quickly.

Long-term care facility—A personal care facility, a nursing facility, a facility serving persons with mental retardation or related conditions, maternity facility, personal care facility, or similar facility.

Manager—A person having a contractual relationship to provide management services to a facility.

Management services—Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services shall not include contracts solely for maintenance, laundry, or food services.

Medication—Medication is:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, Texas Drug Code Index or official National Formulary, or any supplement to any of these official documents;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;

(C) any substance (other than food) intended to affect the structure or any function of the body;

(D) any substance intended for use as a component of any substance specified in this definition. It does not include devices or their components, parts, or accessories.

Medication administration—The direct application of a medication or drug to the body of a resident by an individual licensed to administer medication in the State of Texas.

Medication assistance or supervision—The assistance or supervision of the medication regimen by facility staff. Refer to §146.41 of this title (relating to Standards for Personal Care Facilities).

Medication (self-administration)—The capability of resident's to administer their own medication/treatments without assistance from the facility staff.

NFPA 101—The 1988 publication titled "NFPA 101 Life Safety Code" published by the National Fire Protection Association, Inc., Batterymarch Park, Quincy, Massachusetts 02269.

Person—Any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

Person with a disclosable interest—A person with a disclosable interest is any person who owns five percent interest in any corporation, partnership, or other business entity that is required to be licensed under Health and Safety Code, Chapter 247. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless such entity participates in the management of the facility.

Personal care—Acts of a protective nature. Personal care is understood to mean adult and responsible supervision of or assistance with routine living functions in instances of a resident's condition necessitating such supervision or assistance. Personal care includes a wide variety of services which would require or result in the presence of an intermediary for the protection and care of the resident. Refer to §146.2 of this title (relating to Scope).

Personal care administrator—The person responsible for the overall care of a personal care facility.

Physician—A practitioner licensed by the Texas State Board of Medical Examiners.

Resident—Anyone accepted for care in the personal care facility.

Respite—The provision by a facility of room, board, and care at the level ordinarily provided for permanent residents of the facility to a person for not more than 60 days for each stay in the institution.

Safety—Action taken to protect from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the hazardous presence of toxic fumes and materials.

Sanitation—Action taken to protect from illness, the transmission of disease, or loss of life due to unclean surroundings, the presence of disease-transmitting insects, or rodents, unhealthful conditions or practices in the preparation of food and beverage, or the care of personal laundry.

Service plan—A written description of the medical care or the supervision and nonmedical care needed by a person.

Standards—The minimum licensing standards in Subchapter C of this chapter (relating to Standards for Licensure) intended to protect the health and safety of the residents.

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 April 16, 1993.

TRD-9321767

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Deputy Commissioner
Texas Department of
Health

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Subchapter B. Application Procedures

• 25 TAC §§146.11-146.19, 146.21

The new sections are adopted under the Personal Care Facility Licensing Act, Health and Safety Code, Chapter 247, which provides the Texas Board of Health (board) with the authority to adopt rules concerning personal care homes; and §12.001 which provides the Board with authority to adopt rules to implement every duty imposed on the board, the department, and the commissioner of health.

§146.11. Criteria for Licensing.

(a) A person or governmental unit, acting jointly or severally, must be licensed to establish, conduct, or maintain a facility in this state.

(b) An applicant for a license must submit a complete application form and license fee to the Texas Department of Health (department).

(c) An applicant for a license must affirmatively show that:

(1) the applicant, person with a disclosable interest, affiliate, and manager has had no conviction of a felony or crime involving moral turpitude in this state or any other state;

(2) the facility meets the standards of the Life Safety Code;

(3) the facility meets the construction standards in Subchapter D of this chapter (relating to Facility Construction); and

(4) the facility meets the standards for operation based upon an on-site survey.

(d) The applicant must provide all information requested on the application form and submit the appropriate fees as a prerequisite for the department to conduct a feasibility inspection or plan review, as requested or required.

(e) A license shall be issued to a facility meeting all requirements of this chapter and shall be valid for one year. Each license shall specify the maximum allowable number of residents to be cared for at any one time. No greater number of residents shall be kept at any one time than is authorized by the license.

§146.12. Building Approval. All applications for license shall include written approval of the local fire authority having jurisdiction based on the facility and opera-

tion meeting local applicable fire ordinances; such approval shall be on forms or in a manner as determined by the Texas Department of Health (department). The local health authority may provide recommendations regarding licensure utilizing the following procedure and process.

(1) New facility. The sponsor of a new facility under construction or a previously unlicensed facility will provide to the department a copy of a dated notice to the local health authority that construction or modification has been or will be completed by a specific date. The sponsor will also provide a copy of a dated notice of the approval for occupancy by the local fire marshal or local building code authority, if applicable. The local health authority may provide recommendations to the department regarding the status of compliance with local codes, ordinances, or regulations. Local health authority comments and recommendations must be received by the department within 10 days after the date of the sponsor's notice of the fire marshal or building code authority approval for occupancy. The local health authority may recommend that a state license be issued or denied; however, the final decision on licensure status remains with the department.

(2) Resident increase. The license holder shall request an application for increase in capacity from the department. The department shall provide the license holder with the application form, and the department shall notify the local fire marshal and the local health authority of the request. The license holder shall arrange for the inspection of the facility by the local fire marshal. Upon completion of the inspection, the license holder shall notify the local health authority and the department in writing if the facility meets local code requirements. The local health authority may provide recommendations to the department regarding the status of compliance with local codes, ordinances, or regulations. Local health authority comments and recommendations must be received within 10 days after the date of the facility's notice of the local fire marshal or building code authority approval. The local health authority may recommend that an increase in capacity be granted or denied; however, the final decision on the increase remains with the department. The department will approve the application only if the facility is found to be in compliance with the standards. Approval to occupy the increased capacity may be granted by the department prior to the issuance of the license covering the increased capacity after inspection by the department if standards are met.

(3) Change of ownership. The applicant for a change of ownership license will provide to the department a copy of a letter to the local health authority of the

request for a change of ownership under §145.16 of this title (relating to Change of Ownership). The local health authority may provide recommendations to the department regarding the status of compliance with local codes, ordinances, or regulations. Local authority recommendations must be received within 10 days of the dated notice from the new owner or date of change of ownership, whichever is later, if local health official recommendations are to be considered by the department.

(4) **Renewal.** The local health authority having jurisdiction shall receive a copy of the license renewal notice specifying the expiration date of the facility's current license. The local health authority may provide recommendations to the department regarding the status of compliance with local codes, ordinances, or regulations. The local authority may also recommend that a state license be issued or denied; however, the final decision on licensure status remains with the department. Local health authority comments and recommendations must be received at least 30 days prior to expiration of the license for consideration by the department.

(5) **Inspection plan review.** Any existing building being considered for licensure must either submit plans for review and approval or request a feasibility inspection to be performed by a representative of the department to determine construction or renovation requirements.

§146.13. Applicant Disclosure Requirements.

(a) **Scope of section.** No person shall apply for a license, change of ownership, increase in capacity, or renewal of a license to operate or maintain a facility without making a disclosure of information as required in this section. The disclosure is required if the person is applying for a license for the first time or if the person owned, operated, or managed another facility in this or any other state, using the same or any other business name.

(b) **Disclosure form.** All applications shall be made on forms prescribed by and available from the Texas Department of Health (department). Applications include initial applications, change of ownership and renewal applications. Each application must be completed in accordance with department instructions, and signed and notarized.

(c) **General information required.** An applicant shall file with the department an application which shall contain:

- (1) the name of the applicant and, if an individual, whether the applicant has attained the age of 18 years;
- (2) the type of facility;

- (3) the location of the facility;
- (4) the name of the administrator;

(5) evidence of the right to possession of the facility at the time the application will be granted, which may be satisfied by the submission of applicable portions of a lease agreement, deed or trust, or appropriate legal document. If the applicant is not the owner of the real estate, the lease agreement must clearly state that the applicant/lessee has the right to renovate, repair, and maintain the real estate as may be required to meet the licensing standards. The names and addresses of any persons or organizations listed as owner of record in the real estate, including the buildings and grounds appurtenant to the buildings, shall be disclosed to the department.

(6) certificate of good standing as issued by the Comptroller of Public Accounts; and

(7) the certificate of incorporation as issued by the Secretary of State for a corporation or a copy of the partnership agreement for a partnership.

(d) **Disclosure requirements.** Applicants must disclose the following information for the two-year period preceding the application date, concerning the applicant, persons with a disclosable interest, facility lessor, officers, affiliates, and manager, without regard to whether the data required relates to current or previous events:

(1) denial or revocation of a license to operate a nursing facility, facility serving persons with mental retardation or related conditions, maternity facility, personal care facility, or similar facility in any state;

(2) federal or state Medicaid or Medicare sanctions or penalties;

(3) state or federal criminal convictions for any offense that provides a penalty of incarceration;

(4) federal or state liens;

(5) unsatisfied final judgments;

(6) operation of a facility that has been decertified in any state under Medicare or Medicaid;

(7) debarment, exclusion, or contract cancellation in any state from Medicare or Medicaid;

(8) eviction involving any property or space used as a facility in any state;

(9) unresolved state or federal Medicare or Medicaid audit exceptions; and

(10) orders from any court restraining or enjoining the applicant, manager, or any person with a disclosable interest from operating a health care, long-

term care, or personal care facility in any state.

(e) **Ownership and management information required.**

(1) Each applicant for a license to operate a facility shall disclose to the department the name and business address of:

(A) each limited partner and general partner if the applicant is a partnership;

(B) each director and officer if the applicant is a corporation; and

(C) each person having a beneficial ownership interest of 5.0% or more in the applicant corporation, partnership, or other business entity.

(2) If any person described in this section has served or currently serves as an administrator, general partner, limited partner, trustee or trust applicant, sole proprietor, or any applicant or licensee who is a sole proprietorship, executor, or corporate officer or director of or has held a beneficial ownership interest of 5.0% or more in any other long-term care facility, the applicant shall disclose the relationship to the department, including the name and current or last address of the facility and the date such relationship commenced and, if applicable, the date it was terminated.

(3) If the applicant or licensee is a subsidiary of another organization, the information shall include the names and addresses of the parent organization and the names and addresses of the officers and directors of the parent organization.

(4) If the facility is operated by, or proposed to be operated under, a management contract, the names and addresses of any person or organization, or both, having an ownership interest of 5.0% or more in the management company shall be disclosed to the department.

(5) The information required by this section shall be provided to the department upon initial application for licensure, and changes in the information shall be provided to the department on an annual basis, except that a licensee shall notify the department within 30 days of any change of the facility's manager.

(f) **Exemptions.** The provisions of this section shall not apply to a bank, trust company, financial institution, title insurer, escrow company, or underwriter title company to which a license is issued in a fiduciary capacity except for provisions that require disclosure relating to the manager of the facility.

§146.16. Change of Ownership.

(a) During the license term, a license holder may not transfer the license as a part of the sale of the facility. Prior to the sale of the facility, the license holder shall notify the Texas Department of Health (department) that a change of ownership is requested. The prospective purchaser shall submit to the department a complete application for a license under §146.11 of this title (relating to Criteria for Licensing) at least 30 days prior to the anticipated date of sale. The applicant shall meet all requirements for a license.

(b) Pending the review of the prospective purchaser's application, the license holder shall continue to meet all requirements for operation of the facility.

§146.17. Criteria for Denying a License or Renewal of a License.

(a) The Texas Department of Health (department) may deny a license or a renewal of a license if an applicant, license holder, manager, or affiliate:

(1) substantially fails to comply with the requirements described in §146.41 of this title (relating to Standards for Personal Care Facilities);

(2) provides the following false or fraudulent information:

(A) knowingly submits false or misleading statements in the application or any accompanying attachment;

(B) uses subterfuge or other evasive means of filing;

(C) engages in subterfuge or other evasive means of filing on behalf of another who is unqualified for licensure;

(D) knowingly conceals a material fact; or

(E) is responsible for fraud.

(3) fails to provide the required information, facts, and/or references;

(4) fails to pay the following fees, taxes, and assessments when due:

(A) licensing fees as described in §146.18 of this title (relating to License Fees); or

(B) franchise taxes, if applicable;

(5) discloses any of the following actions within the two-year period preceding the application:

(A) operation of a facility that has been decertified and/or had its contract cancelled under the Medicare or Medicaid program in any state;

(B) federal or state Medicare or Medicaid sanctions or penalties;

(C) state or federal criminal convictions for any offense that provides a penalty of incarceration;

(D) federal or state liens;

(E) unsatisfied final judgments;

(F) eviction involving any property or space used as a facility in any state;

(G) unresolved state or federal Medicare or Medicaid audit exceptions; or

(H) suspension of a license to operate a health care facility, long-term care facility, personal care facility, or a similar facility in any state;

(b) Concerning subsection (a)(5) of this section, the department may consider exculpatory information provided by the applicant, license holder, manager, or affiliate to grant a license under subsection (a) (5) of this section if the department finds the applicant, license holder, manager or affiliate able to comply with the rules of this chapter.

(c) The department shall not issue a license to operate a new facility if the applicant discloses any of the following actions during the two-year period preceding the application:

(1) revocation of a license to operate a health care facility, long term care facility, personal care facility, or similar facility in any state;

(2) debarment or exclusion from the Medicare or Medicaid programs in any state; or

(3) a court injunction prohibiting the applicant, manager, or affiliate from operating a facility.

(d) If the department denies a license or refuses to issue a renewal of a license, the applicant or licensee may request an administrative hearing in accordance with §146.156 of this title (relating to Administrative Hearings).

§146.18. License Fees.

(a) Basic fees.

(1) Initial and renewal license. The license fee shall be \$100 plus \$3.00 for each bed space, with a maximum of \$400, for which a license is sought. The fee must be paid with each initial application and annually with each application for renewal of the license.

(2) Increase in bed space. An approved increase in bed space is subject to an additional fee of \$3.00 for each unit of capacity or bed space.

(b) Trust fund fee.

(1) In addition to the basic license fee described in subsection (a) of this section, the Texas Department of Health (department) has established as trust fund for the use of a court-appointed trustee as called for under the Health and Safety Code, Chapter 242, Subchapter D, and Chapter 247, §247.003(b).

(2) The trust fund will be established by charging and collecting an annual fee from each institution licensed under Health and Safety Code, Chapters 242 and 247. All institutions licensed as of May 1 of each year will be charged with a fee established by the department. The fee will be based on a monetary amount specified for each unit of capacity or bed space licensed. The initial amount will be calculated so as to establish a fund of \$100,000; each subsequent May 1, an annual amount will be determined by the department that will cause the unencumbered balance of the fund to equal \$100,000 based on the licensed facilities as of that May 1. In calculating the fee, the amount will be rounded to the next whole cent.

§146.19. Fees for Plan Reviews, Construction Inspection Services, and Feasibility Inspection Services.

(a) The Health and Safety Code, §12.031 and §12.032, authorizes the Texas Department of Health (department) to charge fees for providing services mentioned in this section. Pursuant to this authority, the department establishes the fees, as shown in the fee schedule in subsection (j) of this section, to cover plan review services, construction inspection services, and feasibility inspection services. The fees are designed not to exceed the costs to the department to provide these services.

(b) When the department finds in a licensed facility a violation of standards and when plans are submitted for the purpose of showing how the violation will be corrected, there will be no fee for such plan review. There will similarly be no fee for a construction visit made pursuant thereto.

(c) The plan review fees shown in the schedule cover the review of plans in all the stages of development.

(d) In determining the cost of additions or remodeling, only the direct construction costs need to be considered, i.e., construction contract amount plus any add-on costs by contractor or owner during construction. Costs do not include land acquisition, architectural/engineering fees, financing, legal fees, fund raising fees, furnishings, or movable equipment.

(e) Remodeling is the construction, removal, or relocation of walls and partitions, or construction of foundations, floors, or ceiling-roof assemblies, including expanding of safety systems (i.e., sprinkler systems, fire alarm systems), that will change the existing plan and use areas of the facility.

(f) General maintenance and repairs of existing material and equipment, repainting, applications of new floor, wall, or ceiling finishes, or similar projects are not included as remodeling, unless as a part of new construction. The department must be provided flame spread documentation for new materials applied as finishes.

(g) Fees are due for payment as follows.

(1) When plan development has reached the preliminary plan stage and preliminary plans are submitted for review, 30% of the plan review fee must accompany the plans. Before final plans are reviewed, the full fee, if preliminary plans were not submitted, or the balance of the plan review fee must be paid.

(2) Construction inspection fees for new facilities and for additions or re-

modeling of existing licensed facilities are due for payment before the facility is licensed or otherwise accepted by the department under licensure.

(3) Feasibility inspection fees are due for payment prior to the inspection being made.

(h) Payment of fees shall be by check or money order made payable to the Texas Department of Health.

(i) Should the facility or institution request construction inspections beyond those called for in the schedule, the appropriate additional fees shall be submitted. If the department elects to make additional construction inspections, there will be no charge for such inspections.

(j) The fee schedule is as follows.

I. Facility Plan Review: Personal Care Facilities (based on health care occupancy of the Life Safety Code, Chapter 12).

- A. New Facility**
- | | |
|----------------|--------------------------------|
| Single Story | \$12 per bed (Minimum \$1,000) |
| Multiple Story | \$15 per bed (Minimum \$1,500) |
- B. Existing Licensed Facility**
1. Additions or remodeling of \$100,000 or more:
- | | |
|----------------|--|
| Single Story | 1% of project cost, not to exceed \$2,000* |
| Multiple Story | 1% of project cost, not to exceed \$2,500* |
2. Additions or remodeling:
- | | |
|-------------------|-------|
| \$25,000-\$99,999 | \$200 |
| under \$25,000 | \$100 |

* **NOTE:** If project cost is not available, the following construction cost figures will be utilized to calculate fee:

Construction with bed addition:	\$15,000 per bed
Construction without bed addition:	\$60 per gross square foot (single story wood frame)
	\$70 per gross square foot (non-combustible or multi-story)

II. Facility Plan Review: Personal Care Facilities (based on other than health care occupancy, Chapter 21 of the Life Safety Code).

- A. New Facility**
- | | |
|------------------|------------------------------|
| 4 - 16 beds | \$200 |
| 17 beds and over | \$10 per bed (Minimum \$350) |
- B. Existing Licensed Facility**
1. Additions or remodeling of \$10,000 or more:
- | | |
|----------------|--|
| Single story | 1% of project cost not to exceed \$1,000** |
| Multiple story | 1% of project cost not to exceed \$1,200** |
2. Additions or remodeling under \$10,000: \$100

** **NOTE:** If project cost is not available, the following construction cost figures will be utilized to calculate the fee:

Construction with bed addition:	\$5,000 per bed
Construction without bed addition:	\$35 per gross square foot

III. Inspections: All facilities.

A. Construction

Preliminary inspections (each)	\$5 per bed (Minimum \$150)
Final inspections (each)	\$12 per bed (Minimum \$150)

B. Feasibility

Each feasibility inspection and each subsequent visit including final survey prior to licensure	\$10 per bed (Minimum \$250)
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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 April 16, 1993.

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Deputy Commissioner
Texas Department of
Health

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

◆ ◆ ◆
Subchapter C. Standards for Licensure

• **25 TAC §146.41**

The new section is adopted under the Personal Care Facility Licensing Act, Health and Safety Code, Chapter 247, which provides the Texas Board of Health (board) with the authority to adopt rules concerning personal care homes; and §12.001 which provides the Board with authority to adopt rules to implement every duty imposed on the board, the department, and the commissioner of health.

§146.41. Standards for Personal Care Facilities.

- (a) Staffing.
 - (1) Manager.

(A) Each facility shall designate, in writing, a manager to have authority over the operation.

(B) The manager shall have proof of graduation from an accredited high school or certification of equivalency of graduation.

(C) The manager of a licensed facility shall show evidence of six hours of annual continuing education that includes at least one of the following areas:

- (i) resident and provider rights and responsibilities, abuse/neglect, and confidentiality;
- (ii) basic principles of supervision;
- (iii) skills for working with residents, families, and other professional service providers;
- (iv) resident characteristics and needs;
- (v) community resources;
- (vi) accounting and budgeting; or
- (vii) basic emergency first aid (e.g., CPR, choking, etc.).

(D) The manager shall be on duty 40 hours per week.

(E) An individual competent and authorized to act in the absence of the manager shall be designated in writing. In a small facility if a resident is designated, he/she shall be competent and shall only work a maximum of three hours per day in the absence of the manager.

(2) Attendants.

(A) There shall be an attendant in the facility at all times when residents are in the facility. Additionally, there shall be other attendant personnel as needed to:

- (i) maintain order, safety, and cleanliness;
- (ii) assist with medication regimens;
- (iii) prepare and service meals;
- (iv) assist with laundry; and
- (v) assure that each resident receives the kind and amount of supervision and care required to meet his basic needs.

(B) The following staff-resident ratio shall be maintained in a Type A or Type B facility. The shift time designations in this section are for illustration purposes only. The facility management has the authority to use other shift designations to define day, evening, and night shift start and end times.

- 15;
- (i) 7 a.m.-3 p.m. = 1 to
- 20; and
- (ii) 3 p.m.-11 p.m. = 1 to
- 40;
- (iii) 11 p.m.-7 a.m. = 1 to

(I) Type A facility: 11 p.m.-7 a.m. staff in a 40 or less licensed bed capacity facility only needs to be immediately available. In a 41+ licensed bed capacity facility the staff must be awake; and

(II) Type B facility: 11 p.m. -7 a.m. staff must be awake regardless of the number of licensed beds; and

(iv) when the time schedules and staff-resident ratios as described in clauses (i)-(iii) of this subparagraph result in all residents being away from the facility, an attendant in the facility is not required.

(C) The attendants shall have the following knowledge prior to assuming responsibilities: needs of the resident(s) and tasks to be provided, resident's health conditions and how it may affect provision of tasks, and conditions about which the attendant should notify the facility manager, and a job description.

(b) Social services. The facility shall provide an activity and/or social program at least weekly for the residents.

(c) Resident assessment. A facility that is licensed under these chapters shall care for a person according to a service plan that is filed at the facility and agreed upon between the facility and the person arranging the care before the facility admits the person for the care.

(d) Operational policies, admission policies, and records.

(1) Operational policies.

(A) Each facility shall prepare and make available for distribution detailed written operational policies. Copies shall be furnished to staff personnel and to residents and/or residents' responsible parties at time of admission.

(B) The statement of policies shall cover such details as residents accepted, services provided, charges, refunds, responsibilities of facility and residents, privileges of residents, and other rules and regulations.

(2) Admission policies.

(A) Each resident shall have a health examination by a physician performed within 30 days prior to admission or

14 days after admission, unless a transferring hospital or facility has a physical examination in the medical record.

(B) The personal care facility shall secure at the time of admission of a resident the following identifying information: full name of resident; social security number; usual residence (where resident lived before admission); sex; color or race; marital status; date of birth; place of birth; usual occupation (during most of working life); family and physician for emergency notification; pharmacy preference; and Medicaid/Medicare number, if available.

(3) Records.

(A) There shall be a written admission agreement between facility and resident. The agreement shall specify such details as services to be provided and charges therefor, and shall be based on the operational policies.

(B) Records pertaining to residents shall be treated as confidential and properly safeguarded, and shall be made available only to authorized persons and agencies.

(e) Medications.

(1) Administration.

(A) Residents who choose not to or can not self-administer their medications must have their medications administered by a person who:

(i) holds a current license under state law which authorizes the licensee to administer medication; or

(ii) holds a current medication aide permit and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(B) All resident's prescribed medication shall be dispensed through a pharmacy or by the resident's treating physician or dentist.

(C) Physician sample medications may be given to a resident by the facility provided the medication has specific dosage instructions for the individual resident.

(D) Each resident's medications shall be listed on an individual resident's medication profile record. The recorded information obtained from the prescription label shall include, but is not limited to, the medication name, strength, dosage, amount received, directions for use,

route of administration, prescription number, pharmacy name, and the date each medication was issued by the pharmacy.

(2) Supervision. Supervision of a resident's medication regimen by facility staff may be provided to residents who are incapable of self-administering to include and limited to:

(A) reminders to take their medications at the prescribed time;

(B) opening containers or packages and replacing lids;

(C) pouring prescribed dosage according to medication profile record;

(D) returning medications to the proper locked areas;

(E) obtaining medications from a pharmacy; and

(F) listing on a individual resident's medication profile record the medication name, strength, dosage, amount received, directions for use, route of administration, prescription number, pharmacy name, and the date each medication was issued by the pharmacy.

(3) Self-administration.

(A) Residents who self-administer their own medications and keep them locked in their room shall be counseled at least once a month by facility staff to ascertain if the residents continue to be capable of self-administering their medications/treatments and if security of medications can continue to be maintained. A written record of counseling shall be kept by the facility.

(B) Residents who choose to keep their medications locked in the central medication storage area may be permitted entrance or access to the area for the purpose of self-administering their own medication/treatment regimen. A facility staff member shall remain in or at the storage area the entire time any resident is present.

(4) General.

(A) Facility staff will immediately report to the resident's physician and responsible party any unusual reactions to medications or treatments.

(B) When the facility supervises or administers the medications, a written record shall be kept when the resident

does not receive or take his/her medications/treatments as prescribed. The documentation shall include the date and time the dose should have been taken, and the name and strength of medication missed; however, the recording of missed doses of medication does not apply when the resident is away from the personal care facility.

(5) Storage.

(A) The facility shall provide a locked area for all medications. Examples of areas, but not limited to, are:

- (i) central storage area;
- (ii) medication cart; and
- (iii) resident room.

(B) Each resident's medication shall be stored separately from other resident's medications within the storage area.

(C) A refrigerator shall have a designated and locked storage area for medications requiring refrigeration.

(D) Poisonous substances and medications labeled for "external use only" must be stored separately within the locked medication area.

(6) Disposal.

(A) Medications no longer being used by the resident for the following reasons are to be kept separate from current medications and are to be disposed of by a registered pharmacist licensed in the State of Texas:

- (i) medications discontinued by order of the physician;
- (ii) medications which remain after a resident is deceased; or
- (iii) medications which have passed the expiration date.

(B) Needles and hypodermic syringes with needles attached shall be disposed as required by §§1.131-1.137 of this title (relating to the Definition, Treatment, and Disposal of Special Waste from Health Care Related Facilities).

(C) Medications kept in a central storage area are released to discharged residents when a receipt has been signed by the resident or responsible party.

(f) Accident, injury, or acute illness.

(1) In the event of accident or injury requiring emergency medical, dental

or nursing care, or in the event of apparent death, the personal care facility will:

(A) make arrangements for emergency care and/or transfer to an appropriate place for treatment (i.e., physician's office, clinic, hospital, etc.);

(B) immediately notify the resident's physician and next of kin, responsible party, or agency who placed the resident in the facility; and

(C) describe and document the injury, accident, or illness on a separate report. The report shall contain a statement of final disposition and be maintained of file.

(2) The facility shall stock and maintain in a single location first aid supplies to treat burns, cuts, and poisoning.

(3) Residents who need the services of professional nursing or medical personnel due to a temporary incapacitating illness or injury may have those services delivered by persons qualified to deliver the necessary service.

(g) Personal belongings and finances.

(1) Each individual shall have the right to keep and maintain any personal belongings in his possession except items which might be harmful to himself or others. The facility has no responsibility for such possessions.

(2) Each individual shall have the right of keeping and maintaining his own finances. The personal care facility shall keep a simple financial record on all charges billed to the resident for care and these records shall be available to the department, while in the facility. If the resident entrusts the handling of any personal finances to the personal care facility, a simple financial record shall be maintained to document accountability for receipts and expenditures, and these records must be available to the department.

(h) Dietary service.

(1) A person designated by the facility is responsible for the total food service of the facility.

(2) At least three meals or their equivalent shall be served daily, at regular times, with no more than a 16-hour span between a substantial evening meal and breakfast the following morning. All exceptions shall be specifically approved by the department.

(3) Menus shall be planned one week in advance. Menus shall be prepared to provide a balanced and nutritious diet, such as that recommended by the National

Food and Nutrition Board. Food shall be varied. Records of menus as served shall be filed and maintained for 30 days after the date of serving.

(4) Therapeutic diets which can customarily be observed by a person in a family setting are permissible to be served by the personal care facility. Any individual in need of a therapeutic diet that requires professional calculation shall have the diet calculated by a qualified dietitian.

(5) Supplies of staple foods for a minimum of a four-day period and perishable foods for a minimum of a one-day period shall be maintained on the premises.

(6) Food shall be obtained from sources that comply with all laws relating to food and food labeling. If food, subject to spoilage, is removed from its original container, it shall be kept sealed, and labeled. Food subject to spoilage shall also be dated.

(7) Plastic containers with tight fitting lids are acceptable for storage of staple foods in the pantry.

(8) Potentially hazardous food, such as meat and milk products, shall be stored at 45 degrees Fahrenheit or below. Hot food shall be kept at 140 degrees Fahrenheit or above during preparation and serving.

(9) Freezers shall be kept at a temperature of 0 degrees Fahrenheit or below and refrigerators shall be 45 degrees Fahrenheit or below. Thermometers shall be placed in the warmest area of the refrigerator and freezer to assure proper temperature.

(10) Food shall be prepared and served with the least possible manual contact, with suitable utensils, and on surfaces that prior to use have been cleaned, rinsed, and sanitized to prevent cross-contamination.

(11) Raw foods shall be washed with potable water before preparation.

(12) Food service employees, while infected with a disease in a communicable form that can be transmitted by foods, or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, shall not work in the food service area in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

(13) Effective hair restraints shall be worn to prevent the contamination of food.

(14) Tobacco products shall not be used in the food preparation and service areas.

(15) Employees shall maintain a high degree of personal cleanliness and

shall conform to good hygienic practice during all working periods in food service.

(16) Dishwashing chemicals used in the kitchen may be stored in plastic containers if they are the original in which the manufacturer packaged the chemicals.

(17) Sanitary dishwashing procedures and techniques shall be followed.

(18) Facilities housing 17 or more residents shall comply with §§229.161-229.173 of this title (relating to Food Service Sanitation) and local health ordinances or requirements shall be observed in the storage, preparation, and distribution of food; in the cleaning of dishes, equipment, and work area; and in the storage and disposal of waste.

(i) Infection control.

(1) Each facility must establish and maintain an infection control policy and procedure designated to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection.

(2) The facility shall comply with departmental rules regarding special waste in §§1.131-1.137 of this title (relating to Definition, Treatment, and Disposition of Special Waste from Health Care Related Facilities).

(3) The name of any resident of a facility with a reportable disease as specified in: §§97.1-97.23 of this title (relating to Control of Communicable Diseases) shall be reported immediately to the city health officer, county health officer, or health unit director having jurisdiction, and appropriate infection control procedures shall be implemented as directed by the local health authority.

(4) The facility must have written policies for the control of communicable disease in employees and residents, which includes tuberculosis (TB) screening and provision of a safe and sanitary environment for residents and employees.

(A) If employees contract a communicable disease that is transmissible to residents through food handling or direct resident care, the employee must be excluded from providing these services as long as a period of communicability is present. The decision to return to work must be made by the facility's executive director in conjunction with the employee's personal physician or the facility's medical director, the local or state health authority if the disease is reportable, and in accordance with generally accepted practices.

(B) The facility must maintain evidence of compliance with local

and/or state health codes or ordinances regarding employee and resident health status.

(C) The facility must screen all employees within two weeks of employment and annually for tuberculosis. All persons providing services under an outside resource contract must, upon request of the facility, provide evidence of compliance with this requirement.

(5) Personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

(6) Universal precautions shall be used in the care of all residents because a reliable source cannot identify all those persons infected with blood-borne pathogens.

(A) Universal precautions apply to blood and other body fluids containing visible blood.

(B) General principles of universal precautions.

(i) All health-care workers shall routinely use appropriate barrier precautions to prevent skin and mucous-membrane exposure when contact with blood or other body fluids of any resident is anticipated.

(I) Gloves shall be worn for touching blood and blood contaminated body fluids, mucous membranes, or non-intact skin of all residents for handling items or surfaces soiled with blood or body fluids, and for performing venipuncture and other vascular access procedures.

(II) Gloves shall be changed after contact with each resident.

(III) Masks and protective eyewear of face shields shall be worn during procedures that are likely to generate droplets of blood or other body fluids to prevent exposure of mucous membranes of the mouth, nose, and eyes.

(IV) Gowns or aprons shall be worn during procedures that are likely to generate splashes of blood or other body fluids.

(ii) Hands and other skin surfaces shall be washed immediately and thoroughly if contaminated with blood or other body fluids. Hands shall be washed immediately after gloves are removed.

(iii) All health-care workers shall take precautions to prevent injuries caused by needles, scalpels, and other sharp instruments after procedures.

(iv) Although saliva has not been implicated in human immunodeficiency virus (HIV) transmission, to minimize the need for emergency mouth-to-mouth resuscitation, mouthpieces, resuscitation bags, or other ventilation devices shall be available for use in areas in which the need for resuscitation is predictable.

(v) Pregnant health-care workers are not known to be at greater risk of contracting HIV infection than health-care workers who are not pregnant; however, if a health-care worker develops HIV infection during pregnancy, the infant is at risk of infection resulting from perinatal transmission. Because of this risk, pregnant health-care workers should be especially familiar with and strictly adhere to precautions to minimize the risk of HIV transmission.

(C) The facility must have policies that provide for:

(i) orientation and training at the time of employment and continuing education, at least annually, for health-care workers;

(ii) provision of equipment and supplies necessary to minimize the risk of infection from blood-borne pathogens; and

(iii) monitoring adherence to recommended protective measures.

(D) The facility shall implement infection control procedures, including, but not limited to, universal precautions.

(E) Facility employees and residents shall be protected from direct exposure to blood and body fluids that are visibly contaminated with blood to prevent exposure to HIV and hepatitis B virus (HBV).

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

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

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



Subchapter D. Facility Construction

• 25 TAC §§146.61-146.63

The new sections are adopted under the Personal Care Facility Licensing Act, Health and Safety Code, Chapter 247, which provides the Texas Board of Health (board) with the authority to adopt rules concerning personal care homes; and §12.001, which provides the Board with authority to adopt rules to implement every duty imposed on the board, the department, and the commissioner of health.

§146.61. Introduction and Application.

(a) Classification of facilities.

(1) A small facility is a building(s) consisting of one or more floors providing sleeping accommodations for 16 or fewer residents, exclusive of "live-in" houseparents, family, or staff.

(2) A large facility is a building(s) consisting of one or more floors providing sleeping accommodations for 17 or more residents, exclusive of "live-in" staff.

(b) Applicability of requirements for construction and life safety.

(1) All buildings or structures, new or existing, used as licensed personal care facilities shall be in accordance with these standards. Any exceptions are specifically mentioned.

(2) For existing buildings and structures which are converted to personal care occupancy, no residents will be admitted until all standards are met and approval for occupancy is granted by the licensing officer of the department.

(3) A licensed nursing facility or licensed hospital, meeting Chapter 12 or Chapter 13 of National Fire Protection Association 101 (NFPA 101), may be considered as a personal care occupancy without additional fire safety features as may be specified in this subchapter.

(4) Buildings and structures shall conform to the 1988 edition, of NFPA 101, as published by the National Fire Protection Association, Inc., Batterymarch Park, Quincy, Massachusetts 02269, as follows.

(A) Type A small facilities shall conform to Chapter 21.

(B) Type A large facilities shall conform to Chapter 21.

(C) Type B small ("Impractical") facilities shall conform to Chapter 21.

(D) Type B large ("Impractical") shall conform to Chapters 21 and 12

(limited care requirements, as defined by the NFPA 101, may be used).

(E) Other chapters, sections, subsections, or paragraphs of the NFPA 101 such as Chapters 1-7 and Chapter 31, shall apply as referenced or intended for their relation to Chapters 21, 12, and 18.

(F) Buildings which contain living units with independent cooking and bathroom facilities shall conform with NFPA 101, Chapters 21 and 18, New Apartment Buildings, Option #2, "Buildings provided with a complete automatic fire detection and notification system," as a minimum.

(5) New construction shall be subject to local codes. (The description of the occupancy may vary with local codes.) In the absence of local codes or their enforcement for new construction, the department will require conformance to the fundamentals of the following codes:

(A) the Uniform Building Code, 1988 edition, by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601, 'R' Occupancy, Divisions 1 and 3 for Type A facilities, and 'I' Occupancy for Large Type B facilities;

(B) the Uniform Plumbing Code, 1988 edition, as published by the International Association of Plumbing and Mechanical Officials, 5032 Alhambra Avenue, Los Angeles, California 90032;

(C) the National Electrical Code as specified under NFPA 101;

(D) illumination systems shall be designed and installed in accordance with the Lighting Handbook of the Illuminatory Engineering Society (IES) of North America, except as may be modified in this subchapter.

(6) An existing building either occupied as a personal care facility at the time of initial inspection by the department or converted to occupancy as a personal care facility shall meet all local requirements pertaining to that building for that occupancy. The department shall require the facility sponsor or licensee to submit evidence that local requirements are satisfied. When local laws, codes, or ordinances are more stringent than these standards for personal care, the more stringent requirements shall govern.

(7) Buildings shall be structurally sound with regard to actual or expected

dead, live, and wind loads according to applicable building codes.

(8) The facility shall meet the provisions and requirements concerning accessibility for individuals with disabilities in the following laws: the Americans with Disabilities Act of 1990 (Public Law 101-336; Title 42, United States Code, Chapter 126); Title 28, Code of Federal Regulations, Part 35; Texas Civil Statutes, Article 9102; and Title 16, Texas Administrative Code, Chapter 68. Plans for new construction, substantial renovations, modifications, and alterations shall be submitted to the Texas Department of Licensing and Regulation (Attn: Elimination of Architectural Barriers Program) for accessibility approval under Article 9102.

(c) Existing facilities, i. e., facilities with residents at the time of the inspection, of eight beds or less that have residents but are not licensed as a personal care facility will be given 12 months, from the date of the initial architectural inspection, to meet the Life Safety Code and physical plant requirements of these standards. Facilities of nine beds or more that have residents but are not licensed as a personal care facility will be given six months, from the date of the initial architectural inspection, to meet the Life Safety Code and physical plant requirements of these standards.

§146.62. General Requirements.

(a) General. The concept of the National Fire Protection Association (NFPA) 101 Life Safety Code requirements for fire safety with regard to the residents is based on evacuation capability. These standards are written with the premise that the residents will be capable of self-evacuation without continuous staff assistance. Residents not normally capable of self-evacuation nor capable of negotiating stair's unassisted shall not be housed above or below the floor of exit discharge unless the facility meets the construction requirements of NFPA 101, Chapter 12, titled "Health Care Occupancies For Large Facilities" and the "impractical" requirements for small facilities, as found in NFPA 101, Chapter 21, titled "Residential Board and Care Occupancies". Examples of residents that may not be capable of self-evacuation are as follows:

(1) a person with a physical disability of a nature that he is not capable of maneuvering in a wheelchair, walker, etc., unaided;

(2) a person who will not take or cannot understand instructions from a staff member, or;

(3) a person that is taking medication which will make it difficult for a staff member to rouse the person quickly.

(b) Evacuation procedures. Residents that are housed in buildings that are licensed as small or large Type A facilities shall be able to demonstrate to the authority having jurisdiction (AHJ) that they can travel from their living unit to a centralized space, such as lobby, living, or dining room on the level of discharge within a 13-minute period without continuous staff assistance. Elevators cannot be used as an evacuation route.

(c) Operational features.

(1) All fires causing damage to the facility and/or equipment shall be reported to the department within 72 hours. Any fire causing injury or death to a resident shall be reported immediately. A telephone report shall be followed by a written report on a form which will be supplied by the department.

(2) Fire drills shall be conducted at least four times a year on each shift. The drills may be announced in advance to the residents. The drills shall involve the participation of the staff in accordance with the emergency plan. Residents shall be informed of evacuation procedures and locations of exits. All fire drills shall be documented on a form provided by the department.

(3) Smoking regulations shall be established, and smoking areas shall be designated for residents and staff. Ashtrays of noncombustible material and safe design shall be provided in smoking areas.

(4) The facility shall post an emergency evacuation floor plan. An exception is that small, one-story facilities are not required to post such plans.

(5) The administration shall have in effect and available to all supervisory personnel written copies of a plan for the protection of all persons in the event of fire and for their remaining in place, for their evacuation to areas of refuge, and from the building when necessary. The plan shall include special staff actions including fire protection procedures needed to ensure the safety of any resident and shall be amended or revised when needed. All employees shall be periodically instructed and kept informed with respect to their duties and responsibilities under the plan. A copy of the plan shall be readily available at all times within the facility.

(d) Construction.

(1) There shall be separation from other occupancies. A common wall between a personal care facility and another occupancy shall be not less than a two-hour fire-rated partition. (The partition shall be as defined by National Fire Protection Association Standards.) A licensed nursing facility or licensed hospital is not considered another occupancy for this purpose. An ex-

ception is where an unlicensed occupancy occurs in the same building or structure and is so intermingled that separate safeguards are impracticable. The means of egress, construction, protection, and other safeguards shall comply with the NFPA 101 requirements of the licensed occupancy.

(2) Interior wall and ceiling surfaces shall have as the finished surface or as substrate or sheathing a fire resistance of not less than that provided by 3/8-inch gypsum board (20-minute fire rating), unless approved otherwise by the department. A sprinkler system will not substitute for the minimum construction requirements. An exception is Type B large facilities shall meet the construction requirements of NFPA 101, Chapter 12, §12-1.6.

(3) Flame spread-rate requirements shall be as specified in NFPA 101. Flame spread is the rate of fire travel along the surface of a material. (This is different than other requirements for time-rated "burn through" resistance ratings, such as one-hour rated.) Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200).

(4) Doors between resident rooms and corridors or public spaces shall be not less than 1-3/4-inch thick solid core wood construction or 20-minute fire-rated, self-closing or automatic-closing, and latch in their frames. Exceptions are as follows.

(A) Small Type A facilities can have smoke resisting doors with automatic closures provided the interior finish is Class 'B' or better and there are two remote exit routes.

(B) Small Type A facilities that have 20-minute fire-rated doors (or 1-3/4-inch solid core wood), Class 'B' or better interior finish, and two remote exit routes are not required to be self-closing or automatic-closing.

(C) In Small and Large Type A facilities protected throughout by an approved automatic sprinkler system, doors to resident bedrooms are not required to be self-closing or automatic-closing, except a three-story or larger building which does not meet construction requirements of NFPA 101, Chapter 12.

(5) Upper floors shall have at least two separate approved stairs. Each stair shall be arranged and located so that it is not necessary to go through another room (such as bedroom or bath) to reach the stair. All stairs shall be provided with handrails and with normal lighting. Refer to NFPA 101 for Class 'A' stair details. An exception is that for existing 16 beds or less: at least

one main stair may be Class 'B'. Such stairs may be constructed of wood.

(6) All hazardous areas, as defined in the NFPA 101, Chapter 21 or 12, if considered severe shall be one-hour fire-separated or provided with sprinkler protection or both. Gasoline, volatile materials, oil base paint, or similar products shall not be stored in the building housing residents.

(7) Exit signs, with emergency power, shall be provided in all large facilities and installed in accordance with NFPA 101, Section 5-10.

(8) Emergency lighting shall be provided in all buildings with 25 or more bedrooms; in apartment buildings with 12 or more living units or which are 3 or more stories in height; and in all large facilities that are designed for Type B. The System shall be installed in accordance with NFPA 101, Section 5-9.

(e) Fire alarm and sprinkler systems.

(1) Fire alarm and smoke detection system. An Underwriter's Laboratory (UL) listed manual fire alarm initiating system, with an interconnected automatic smoke detection and alarm initiation system, shall be provided in accordance with the NFPA 101, Section 7-6. The operation of any alarm initiating device will sound an audible/visual alarm(s) at the site.

(A) Smoke detectors shall be installed in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, and public or common areas. Service areas, such as kitchens, laundries and attached garages used for car parking may have heat detectors in lieu of smoke detectors. Exceptions are as follows.

(i) Large facilities with apartment units may use listed smoke detectors with an alarm device and separate heat detector contacts in the living area. The smoke detectors must provide an audible signal within the apartment, and annunciate at the main staff station or location. The heat detector contacts shall be connected to the fire alarm system and provide a general alarm when activated.

(ii) A facility constructed to meet NFPA 101, Chapter 12, need only meet Section 12-3.4.5.1. for smoke detector locations.

(B) The fire alarm control panel shall be visible to staff at or near the staff area that is attended 24 hours a day.

(C) The primary power source for the complete fire alarm system must be commercial electric and permanently wired for power on a dedicated cir-

cuit in accordance with the National Electrical Code.

(D) Emergency power source shall be from approved storage batteries or on-site engine-driven generator set.

(E) The facility shall have a written contract with a fire alarm company or person licensed by the State of Texas to maintain the alarm system semiannually.

(F) In large facilities, the fire alarm panel shall indicate as a separate zone, each floor and/or smoke compartment. Each zone shall have an alarm and trouble indication.

(G) In large Type B facilities the fire alarm shall automatically notify the fire department in accordance with NFPA 101, Section 7-6.4.

(2) Sprinkler systems. When installed or required, sprinkler systems shall meet the following criteria.

(A) Facilities housing 16 or fewer residents may have a system that meets NFPA 13D requirements.

(B) Large Type B facilities must have a complete NFPA 13 system.

(C) Large Type A facilities may have an NFPA 13R system (up to and including three stories).

(f) Site and location.

(1) The facility shall be serviced by a paid or volunteer fire fighting unit as approved by the department. Water supply for fire fighting purposes shall be as required and approved by the fire fighting unit.

(2) Any site or building conditions that are a fire hazard, health hazard, or physical hazard shall have corrections made as determined by the department.

(3) The facility shall provide or arrange for nearby parking spaces for private vehicles of residents and visitors. A minimum of one space shall be provided for each four beds or fraction thereof, or per local code, whichever is more stringent.

(4) Ramps, walks, and steps shall be of slip-resistive texture and uniform, without irregularities. Ramps shall not exceed 1:12 slope, and shall meet handicap standards for width. Guardrails, fences, or handrails shall be provided where grades make an abrupt change in level.

(5) All outside areas, grounds, adjacent buildings, etc., on the site shall be

maintained in good condition and kept free of rubbish, garbage, untended growth, etc., that may constitute a fire or health hazard. Site grades shall provide for water drainage away from the structure to prevent ponding or standing water at or near the building.

(g) Sanitation and housekeeping.

(1) Waste water and sewage shall be discharged into a state-approved municipal sewerage system; any exception shall be as approved by the department.

(2) The water supply shall be of safe, sanitary quality, suitable for use, and adequate in quantity and pressure, and shall be obtained from a water supply system, the location, construction, and operation of which are approved by the department.

(3) Waste, trash, and garbage shall be disposed of from the premises at regular intervals in accordance with state and local practices. Excessive accumulations are not permitted. The facility shall comply with §§1.131-1.137 of this title (relating to Definition, Treatment, and Disposal of Special Waste from Health Care Related Facilities).

(4) Operable windows shall be insect screened.

(5) An ongoing pest control program shall be provided by facility staff or by contract with a licensed pest control company. The least toxic and least flammable effective chemicals shall be used.

(6) All bathrooms, toilet rooms, and other odor-producing rooms or areas for soiled and unsanitary operations shall be ventilated with operable windows or powered exhaust to the exterior for odor control. An exception is that existing small facilities may vent into an attic provided that the attic is vented.

(7) In kitchens and in laundries, there shall be procedures utilized by facility staff to avoid cross-contamination between clean and soiled utensils and linens.

(8) The facility shall be kept free of accumulations of dirt, rubbish, dust, and hazards. Floors shall be maintained in good condition and cleaned regularly; walls and ceilings shall be structurally maintained, repaired, and repainted or cleaned as needed. Storage areas and cellars shall be kept in an organized manner. No storage will be permitted in the attic spaces.

(9) The facility shall be capable of being ventilated through the use of windows, mechanical ventilation, or a combination of both. Interior areas designated for smoking within the building shall have mechanical ventilation directed to the exterior to remove smoke at the rate of 10 air changes per hour.

(10) In addition to janitor closet(s) called for in specific departments of large facilities, other janitor closet(s) shall be provided throughout the facility to maintain a clean and sanitary environment. Each janitor closet shall have a service sink and forced air ventilation ducted to the outside.

(11) A public/staff toilet, i.e. commode and lavatory, complying with accessibility standards is required for every large facility up to and including 60 beds. Facilities over 60 beds shall have separate public and staff toilets in addition to the staff toilet(s) required for the dietary staff.

(12) If the facility provides linens to the residents, the quantity of available linen shall meet the sanitary and cleanliness needs of the residents. Clean linens shall be stored in a clean area.

(h) General safety features.

(1) The building shall be kept in good repair; electrical, heating, and cooling shall be maintained in a safe manner. The department may require the facility sponsor or licensee to submit evidence to this effect, consisting of a report from the fire marshal, city/county building official having jurisdiction, licensed electrician, or a registered professional engineer. Use of electrical appliances, devices, and lamps shall be such as not to overload circuits or cause excessive lengths of extension cords.

(2) All draperies and other window coverings in public or common areas, and in bedrooms and/or living units in which smoking is permitted shall be flame resistant.

(3) All new floor carpet installed in public or common spaces after the initial inspection by the department shall be Class I or II based on the "Critical Radiant Flux" ratings. Proper documentation must be provided.

(4) Open-flame heating devices are prohibited. All fuel-burning heating devices shall be vented. Working fireplaces are acceptable if of safe design and construction and if screened or otherwise enclosed.

(5) There shall be at least one telephone in the facility available to both staff and residents for use in case of an emergency. Emergency telephone numbers, including at least fire, police, ambulance, EMS, and poison control center, shall be posted conspicuously at or near the telephone.

(6) An initial pressure test of facility gas lines from the meter shall be provided. Additional pressure tests will be required when the facility has major renovations or additions where the gas service is interrupted. All gas heating systems shall be checked prior to the heating season for

proper operation and safety by persons who are licensed or approved by the State of Texas to inspect such equipment. A record of this service shall be maintained by the facility. Any unsatisfactory conditions shall be corrected promptly.

(7) Exterior and interior stairs shall have handrails that are firmly secured to prevent falls.

(8) Cooling and heating shall be provided for occupant comfort. Conditioning systems shall be capable of maintaining the comfort ranges of 68 degrees Fahrenheit to 82 degrees Fahrenheit in resident-use areas.

(9) The Illumination Engineering Society of North America recommendations shall be followed to achieve proper illumination characteristics and lighting levels throughout the facility. Minimum illumination shall be 10 footcandles in resident rooms during the day and 20 footcandles in corridors, staff stations, dining rooms, lobbies, toilets, bathing facilities, laundries, stairways, and elevators during the day. Illumination requirements for these areas apply to lighting throughout the space and should be measured at approximately 30 inches above the floor anywhere in the room. Minimum illumination for medication preparation or storage areas, kitchens, and staff station desks shall be 50 footcandles during the day. Illumination requirements for these areas apply to the task performed and should be measured on the tasks.

(10) All buildings three floors or higher, and facilities that provide services, treatment, or social activities on floors above or below the level of discharge and which house mobility impaired residents, shall have a passenger elevator. The lowest level of discharge will be the first floor for determining floor level.

(11) Floor, ceiling, and wall finish materials shall be complete and in place to provide a sanitary and structurally safe environment.

(i) Portable fire extinguishers.

(1) At least one portable Underwriters Laboratory (UL) or factory mutual (FM)-approved five-pound Class B:C dry-chemical fire extinguisher, rechargeable type, is required in each laundry, kitchen, and walk-in mechanical room. ABC-type extinguishers shall not be used in kitchens. An exception is that in small facilities, ABC-type extinguishers will be acceptable for these spaces.

(2) Portable UL or FM-approved 2-1/2 gallon stored-pressure water-type fire extinguishers (Class A) must be provided in areas serving resident bedrooms. One such unit shall be located within 75 feet of any resident bedroom

door. Acidic base (ABC) and dry-chemical types are not acceptable.

(3) Extinguishers must be readily accessible. Units must be installed on hangers or brackets, mounted in special cabinets, or set on appropriate shelves. Operating instructions shall face outward. Mounting heights shall not exceed five feet above the floor for extinguishers weighing 40 pounds or more. Alternative locations and arrangements for fire extinguishers may be as approved by the department for small facilities, facilities consisting of separated small building units, or unusual building arrangements.

(4) Regular monthly inspections or "quick checks" must be made by facility representatives to assure that extinguishers are in the proper location, condition, and working order. Annual maintenance or "thorough checks" must be accomplished in accordance with National Fire Protection Association Standard Number 10A (NFPA 10A) by competent personnel licensed or certified by the State Fire Marshal to perform servicing. Unserviceable extinguishers must be replaced.

(j) Waste and storage containers.

(1) Metal waste baskets of substantial gauge or any UL or FM approved containers must be provided in all areas where smoking is permitted.

(2) Garbage, waste, or trash containers provided for kitchens, janitor closets, laundries, mechanical or boiler rooms, general storage, and similar places must be made of metal or any UL or FM approved material, and have a close fitting cover. Disposable plastic liners may be used in these containers for sanitation.

(k) Accessibility provisions.

(1) The physical plant of all large facilities and all other facilities housing residents with physical disabilities and/or mobility impairments must comply with applicable federal, state, and local requirements for persons with disabilities.

(2) A minimum of 5.0% of the resident living units of large facilities shall meet the accessibility provisions.

(l) Resident accommodations.

(1) Resident bedrooms.

(A) Bedroom usable floor space for Type A facilities shall not be less than 80 square feet for a one-bed room and not less than 60 square feet per bed for a multiple-bed room. A bedroom shall be not less than eight feet in the smallest dimension, unless specifically approved otherwise by the department. Bedrooms for persons with physical disabilities and/or mobility impairment shall meet accessibility stan-

dards for access around the bed or beds, i.e., a minimum of three feet clear-width for access aisles.

(B) Bedroom usable square footage for Type B facilities shall be not less than 100 square feet per bed for a single-bed room and not less than 80 square feet per bed for a multiple-bed room. Bedrooms for persons with physical disabilities and/or mobility impairment shall meet accessibility standards for access around the bed or beds, i.e., a minimum of three feet clear-width for access aisles. A bedroom shall not be less than ten feet in the smallest dimension unless specifically approved otherwise by the department.

(C) In facilities that have living units consisting of separate living/dining spaces and bedrooms, 10% of the required bedroom square-footage may be included as part of the living/dining space.

(D) No more than four beds shall be in a bedroom, and not more than 50% of the beds shall be in bedrooms of three or more.

(E) Each bedroom shall have at least one operable window with outside exposure. The window sill shall be no higher than 44 inches from the floor and shall be at or above grade level. The window will be operable from the inside, without the use of tools or special devices, and provide an operable section with a clear opening of not less than 5.7 square feet (minimum width of 20 inches by 41.2 inches high and minimum height of 24 inches by 34.2 inches wide). Windows required for evacuation will not be blocked by bars, shrubs, or any obstacle that would impede evacuation. Exceptions are as follows.

(i) In large Type B facilities, the windowsill height from the floor shall be no more than 36 inches.

(ii) In large Type B facilities, the bedroom window size shall not be less than 8.0% of the bedroom size.

(iii) In small existing facilities, if the window is not required for the secondary means of escape, the window size and sill height requirements will not apply provided the primary means of escape for each sleeping room is not exposed to the common living spaces, such as the living room, dining room, and kitchen and the bedroom has an operable window for view and ventilation.

(F) In the event the resident does not provide his or her own furnishings, the facility must provide for each resident a

bed with mattress, chair, table or dresser, and enclosed closet space for clothing and personal belongings. Drawer space shall be provided. Furnishings provided by the facility must be maintained in good repair.

(G) All resident rooms shall open upon an exit, corridor, living area, or public area and shall be arranged for convenient resident access to dining and recreation areas.

(H) A staff or attendant area shall be provided on each floor or in each separate building. The area shall consist of a desk or writing surface and telephone. An exception is that Type A facilities of two stories or less in height, with separate buildings grouped together and connected by covered walks, need not have staff or attendant areas on each floor or in each building, provided that the areas are not more than 200 feet walking-distance from the furthest resident living unit. The areas must have a communication system and fire alarm announcement indicating the units served.

(I) Facilities which consist of two or more floors or separate buildings

shall have a communication system from each resident living unit to a central staff location. This communication system may be a direct telephone, nurse call, or intercom.

(2) Resident toilet and bathing facilities.

(A) All bedrooms shall be served by separate private, connecting, or general toilet rooms for each sex (if facility houses both sexes). General toilet room or bathing room shall be accessible from a corridor or public space. A lavatory shall be readily accessible to each water closet. At least one water closet, lavatory, and bathing unit shall be provided on each sleeping floor accessible to residents of that floor.

(B) One water closet and one lavatory for each six occupants or fraction thereof (portion less than six) is required. One tub or shower for each ten occupants or fraction thereof is required.

(C) Privacy partitions and/or curtains shall be provided at water closets and bathing units in rooms for multi-resident use.

No. of Beds

- 04-16
- 17-39
- 40-59
- 60+

(D) Tubs and showers shall have non-slip bottoms or floor surfaces, either built-in or applied to the surface.

(E) Resident-use hot water for lavatories and bathing units will be maintained between 100 degrees Fahrenheit and 125 degrees Fahrenheit.

(F) Towels, soap, and toilet tissue shall be available at all times for individual resident use.

(3) Resident living areas.

(A) Social-diversional spaces such as living rooms, day rooms, lounges, sun rooms, etc., shall be provided and have appropriate furniture. A minimum of 120 square feet shall be provided in at least one space regardless of number of residents. This space must have exterior windows providing a view of the outside.

(B) The total space requirement for social/diversional areas shall be provided on a sliding scale as follows:

**Area Per Bed
Minimum**

- 15 sq. feet
(min. 120 sq. ft.)
- 13 sq. feet
- 12 sq. feet
- 10 sq. feet

(4) Resident dining areas.

(A) A dining area shall be provided and have appropriate furnishings. A minimum of 120 square feet shall be provided in at least one space, regardless of number of residents. This space must have exterior windows providing a view of the outside.

(B) Access to a dining area from the resident living units or bedrooms shall be covered.

(C) The total space requirement for a dining area shall be provided on a sliding scale as follows:

**No. of Beds Area Per Bed
Minimum**

- 04-16 15 sq. feet
(min. 120 sq. ft.)
- 17-39 13 sq. feet
- 40-59 12 sq. feet
- 60+ 10 sq. feet

(C) Where a required way of exit (or a service way) is through such living or dining area, a pathway equal to the corridor width will normally be deducted for calculation purposes and discounted from that area. Such exit pathways must be kept clear of obstructions.

(D) The total living/dining area(s) can be a single or interconnecting

space with a minimum of 240 square feet of area.

(5) Storage areas. The facility shall provide sufficient separate storage spaces or areas for the following:

(A) administration for records and office supplies;

(B) locked areas for medications and medical supplies. Poisons shall be stored in a locked area and separate from all medications and preparation;

(C) equipment supplied by the facility for resident needs such as wheelchairs, walkers, beds, mattresses, etc.;

(D) cleaning supplies (janitorial needs);

(E) food storage;

(F) clean linens and towels if furnished by the facility;

(G) lawn and maintenance equipment, if needed;

(H) janitor(s) closet with deep sink and hot and cold water (large facilities only); and

(I) soiled linen storage or holding room(s), if the facility furnishes linen.

(6) Kitchen.

(A) The facility shall have a kitchen or dietary area to meet the general food service needs of the residents. It shall include provisions for the storage, refrigeration, preparation, and serving of food; for dish and utensil cleaning; and for refuse storage and removal. Exception: Food may be prepared off-site or in a separate building provided that the food is served at the proper temperature and transported in a sanitary manner.

(B) Kitchens (main/dietary) for large facilities shall be as follows.

(i) Kitchens will be evaluated on the basis of their performance in the sanitary and efficient preparation and serving of meals to residents and compliance with provisions covering dietary service in §146.41(h)(18) of this title (relating to Standards for Personal Care Facilities).

(I) Consideration shall be given to planning for the type of meals served, the overall building design, the food service equipment, arrangement,

and the work flow involved in the preparation and delivery of food.

(II) Plans shall include a detailed kitchen layout designed by a registered or licensed dietitian or architect having knowledge in the design of food service operations.

(ii) Kitchens shall be designed so that room temperature, at peak load (summertime), shall not exceed a temperature of 85 degrees Fahrenheit measured over the room at the five-foot level. The amount of supply air shall take into account the large quantities of air that may be exhausted at the range-hood and dishwashing area.

(iii) Facilities for washing and sanitizing dishes and cooking utensils shall be provided. The kitchen shall contain a multi-compartment pot sink large enough to immerse pots and pans, and a mechanical dishwasher for washing and sanitizing dishes. Separation of soiled and clean dish areas shall be maintained, including air flow.

(iv) A vegetable preparation sink shall be provided. It shall be separate from the pot sinks.

(v) A supply of hot and cold water shall be provided. Hot water for sanitizing purposes shall be 180 degrees Fahrenheit or the manufacturer's suggested temperature for chemical sanitizers.

(vi) The kitchen shall be provided with a hand-washing lavatory in the food preparation area with hot and cold water, soap, towel dispenser, and waste receptacle. The dish room area shall have ready access to a handwashing lavatory.

(vii) Staff rest room facilities with lavatory shall be directly accessible to kitchen staff without traversing resident use areas. The rest room shall not open directly into the kitchen (i.e., provide a vestibule). An exception is that staff rest rooms in existing facilities must be provided, but may be located outside of the kitchen area.

(viii) Janitorial facilities shall be provided exclusively for the kitchen and shall be located in the kitchen area. An exception is that Janitorial closets in existing facilities may be located outside of the kitchen area provided sanitary procedures are used to reduce the possibility of cross-contamination.

(ix) Non-absorbent smooth finishes or surfaces shall be used on kitchen floors, walls, and ceilings. Such surfaces shall be capable of being routinely cleaned and sanitized to maintain a healthful environment. Counter and cabinet sur-

faces, inside and outside, shall also have smooth, cleanable, non-porous finishes.

(x) Doors between kitchen and dining or serving areas shall have a 1/4-inch, fixed, wire-glass view panel mounted in a steel frame.

(xi) A garbage can or cart washing area with drain and hot water shall be provided either on the interior or exterior of the facility.

(xii) Floor drains shall be provided in the kitchen and dishwashing areas. Exception: Floor drains are not required in existing facilities provided the floors are kept clean.

(xiii) A commercial range shall be provided and equipped with a commercial range hood and exhaust designed and installed in accordance with NFPA 96.

(xiv) Grease traps shall be provided as required.

(C) Food storage areas for large facilities shall be as follows.

(i) Food storage areas shall provide for storage of a four-day minimum supply of non-perishable foods at all times.

(ii) Shelves shall be adjustable wire-type. An exception is that existing facilities with wood shelves may continue to use the shelves provided they are kept sealed and clean.

(iii) Walls and floors must have a non-absorbent finish to provide a cleanable surface.

(iv) No foods shall be stored on the floor. Dollies, racks, pallets, or wheeled containers may be used to elevate foods not stored on shelving.

(v) Dry foods storage shall have an effective venting system to provide for positive air circulation.

(vi) The maximum room temperature for food storage shall not exceed 85 degrees Fahrenheit at any time. The measurement shall be taken at the highest food storage level, but not less than five feet from the floor.

(vii) Food storage areas may be located apart from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(D) Auxiliary serving kitchens (not contiguous to food preparation/serving area) shall be as follows.

(i) Where service areas other than the kitchen are used to dispense

foods, these shall be designated as food service areas and shall have equipment for maintaining required food temperatures while serving.

(ii) Separate food service areas shall have handwashing facilities as part of the food service area.

(iii) Finishes of all surfaces, except ceilings, shall be the same as those required for dietary kitchens or comparable areas.

(7) Laundry/linen services.

(A) A large personal care facility which co-mingles and processes laundry on-site in a central location shall comply with the following.

(i) The laundry shall be separated and provided with sprinkler protection if located in the main building. (Separation shall consist of a one-hour fire-rated partition carried to the underside of the floor or roof deck above.) Access doors shall be from the exterior or interior non-resident use areas, such as a small vestibule or service corridor.

(ii) The laundry shall be provided with the following physical features:

(I) a soiled linen receiving, holding, and sorting room with a floor drain and forced exhaust to the exterior which shall operate at all times there is soiled linen being held in this area. (This may be combined with the washer section.);

(II) a general laundry work area which is separated by partitioning two areas—a washer section and a dryer section;

(III) a storage area for laundry supplies;

(IV) a folding area;

(V) adequate air supply and ventilation for staff comfort without having to rely on opening a door that is part of the fire wall separation; and

(VI) provisions to exhaust heat from dryers and to separate dryer make-up air from the habitable work areas of the laundry.

(B) If linen is processed off the site, the following shall be provided on the premises:

(i) a soiled linen holding room (provided with adequate forced exhaust ducted to the exterior); and

(ii) a clean linen receiving, holding, inspection, sorting or folding, and storage room(s).

(C) Resident-use laundry, if provided, shall utilize residential type washers and dryers. If more than three washers and three dryers are located in one space, the area shall be one-hour fire-separated or provided with sprinkler protection.

§146.63. Plans, Approvals, and Construction Procedures.

(a) Submittal of preliminary plans.

(1) When construction is contemplated for new buildings, additions, conversion of buildings not licensed by the department, or remodeling of existing licensed facilities, one copy of the preliminary proposed plans shall be submitted to the department (architectural section) for review prior to the preparation of working drawings. For additions, an overall plan similar to subsection (c)(4) of this section shall be included.

(2) Fees for plan review will be required in accordance with §146.19 of this title (relating to Fees for Plan Reviews, Construction Inspection Services, and Feasibility Inspection Services).

(3) The project will be considered abandoned and the plans will be destroyed if final plans are not submitted to the department within 24 months from the submittal date of the preliminary plans for review and approval. Resubmittal of plans and additional plan review fees will be required if, after the abandonment period, the project will be constructed.

(4) The plans shall be drawn to scale, shall indicate the usage of all spaces, sizes of areas and rooms, and the type and location of fixed equipment. New construction or additions shall include a site plan showing all pertinent conditions including grades and all structures on the site. Written approval of the local health authority, building department, and of the local fire marshal having jurisdiction shall be submitted.

(5) A general description of the surrounding area and vicinity (commercial, residential, rural, shopping, available transportation, etc.) shall be furnished for new locations.

(b) Submittal of final plans.

(1) Before construction is begun, one copy of working drawings and specifications (contract documents) in sufficient detail to interpret compliance with these standards and assure proper construction shall be submitted to the department for review within 60 days of receipt of such documents and required plan review fee. These documents shall be prepared accord-

ing to accepted architectural practice and shall include general construction, special conditions, schedules, and any other pertinent information that the department may require. In addition, two extra copies of the floor plan (only) shall be submitted with the complete set of plans.

(2) The project will be considered abandoned and the plans destroyed if the project is not under construction and continuing construction progress shown within 12 months from the date of the final review of the plans. Resubmittal of plans and full plan review will again be required if, after the abandonment period, the project will be constructed. Fees will be as required in accordance with §146.19 of this title.

(3) Final copies of plans shall have (in the reproduction process by which plans are reproduced) a title block showing name of facility, person, or organization preparing the sheet, sheet numbers, facility address, and drawing date. Certain parts of final plans, designs, and specifications shall bear the seal of a registered professional engineer approved by the State Board of Registration for Professional Engineers to operate in Texas. These certain parts include sheets and sections covering structural, electrical, mechanical, and sanitary engineering. Contract documents for additions, remodeling, and construction of an entirely new facility shall be prepared by an architect licensed by the Texas State Board of Architectural Examiners. Drawings shall bear the seal of the architect.

(4) A final plan for a major addition to a facility shall include a basic layout to scale of the entire building onto which the addition connects. North direction shall be shown. Usually the entire basic layout can be to scale such as 1/16-inch per foot or 1/32-inch per foot for very large buildings.

(5) Plans and specifications for conversions or remodeling shall be complete for all parts and features involved.

(6) It is the sponsor's responsibility to employ qualified personnel to prepare the contract documents for construction. If the contract documents have errors or omissions to the extent that conformance with standards cannot be reasonably assured or determined, a revised set of documents for review may be requested. For additions and remodeling to existing licensed facilities, construction shall not be started until the final contract documents are reviewed and approved in writing by the department within 60 days of receipt of final drawings and required plan of review fee.

(7) The review of plans and specifications by the department is based on general utility, the minimum licensing standards, and conformance to the Life Safety

Code, and is not to be construed as all-inclusive approval of the structural, electrical, or mechanical components.

(c) Contract documents.

(1) Site-plan documents shall include grade contours; streets (with names); North arrow; fire hydrants, fire lanes, utilities, public or private; fences; and unusual site conditions, such as ditches, low water levels, other buildings on-site, and indications of buildings five feet or less beyond site property lines.

(2) Foundation plan documents shall include general foundation design and details.

(3) Floor plan documents shall include room names, numbers, and usages; doors (numbered) including swing; windows; legend or clarification of wall types; dimensions; fixed equipment; plumbing fixtures; kitchen basic layout; and identification of all smoke barrier walls (outside wall to outside wall) or fire walls.

(4) For both new construction and additions or remodeling to existing buildings, an overall plan of the entire building shall be drawn or reduced to fit on an 8 1/2-inch by 11-inch sheet; submit two reduced plans for file record.

(5) Schedules shall include door materials, widths, types; window materials, sizes, types; room finishes; and special hardware.

(6) Elevations and roof plan shall include exterior elevations, including material note indications and any rooftop equipment; roof slopes, drains, gas pipes, etc.; and interior elevations where needed for special conditions.

(7) Details shall include wall sections as needed (especially for special conditions); cabinet and built-in work, basic design only; cross sections through buildings as needed and miscellaneous details and enlargements as needed.

(8) Building structure documents shall include structural framing layout and details (primarily for column, beam, joist, and structural building); roof framing layout (when cannot be adequately shown on cross section); and cross sections in quantity and detail to show sufficient structural design and structural details as necessary to assure adequate structural design and calculated design loads.

(9) Electrical documents shall include electrical layout, including lights, convenience outlets, equipment outlets, switches, and other electrical outlets and devices; service, circuiting, distribution, and panel diagrams; exit light system (exit signs and emergency egress lighting); emergency electrical provisions (such as generators and panels); staff communication system; fire

alarm and similar systems (such as control panel, devices, and alarms); and sizes and details sufficient to assure safe and properly operating systems.

(10) Plumbing documents shall include plumbing layout with pipe sizes and details sufficient to assure safe and properly operating systems, water systems, sanitary systems, gas systems, and other systems normally considered under the scope of plumbing, fixtures, and provisions for combustion air supply.

(11) Heating, ventilating and air-conditioning systems (HVAC) documents shall include sufficient details of HVAC systems and components to assure a safe and properly operating installation including, but not limited to, heating, ventilating, and air-conditioning layout, ducts, protection of duct inlets and outlets, combustion air, piping, exhausts, and duct smoke and/or fire dampers; and equipment types, sizes, and locations.

(12) Sprinkler system documents shall include plans and details of National Fire Protection Association (NFPA) designed systems; plans and details of partial systems provided only for hazardous areas; and electrical devices interconnected to the alarm system.

(13) Other layout, plans, or details as may be necessary for a clear understanding of the design and scope of the project, including plans covering private water or sewer systems shall be reviewed by local health or wastewater authority having jurisdiction. If there is no local authority, then the plans will be reviewed by the department.

(14) Specifications shall include installation techniques; quality standards and/or manufacturers; references to specific codes and standards; design criteria; special equipment; hardware; painting; and any others as needed to amplify drawings and notes.

(d) Construction and initial survey of completed construction.

(1) Construction phase.

(A) The department shall be notified in writing of construction start.

(B) All construction shall be done in accordance with the completed plans and specifications as submitted for review and as modified in accordance with review requirements. Any deviations therefrom must have prior approval of the department. Revised drawings may be required if the change is significant.

(C) A preliminary-stage construction inspection is required unless other-

wise instructed by the department. A minimum of three weeks notification prior to applying interior wall and ceiling surfaces (except for smoke barrier wall surfaces which shall be completed) must be given so that the inspector may schedule the preliminary visit.

(2) Initial survey of completed construction.

(A) Upon completion of construction, including grounds and basic equipment and furnishings, a final construction inspection (initial survey) of the facility is required to be performed by the department (architectural section) prior to admitting residents. A minimum of three weeks advance notice is needed. The completed construction shall have the written approval of the local authorities having jurisdiction, including the fire marshal, health department, and building inspector.

(B) After the completed construction has been surveyed by a representative of the architectural section of the department and found acceptable, this information will be conveyed to the licensing officer of the department as part of the information needed to issue a license to the facility. In the case of additions or remodeling of existing facilities, a revision or modification to an existing license may be necessary. Note that the building, grades, drives, and parking must essentially be 100% complete at the time of this initial visit for occupancy approval and licensing, including basic furnishings and operational needs. A facility may accept up to three residents between the time it receives initial approval from the architectural section and the time the license is issued.

(C) The following documents must be available to the department's NFPA 101 inspecting surveyor at the time of the survey of the completed building:

(i) written approval of local authorities as called for in subparagraph (A) of this paragraph;

(ii) written certification of the fire alarm system by the installing agency (Form FML-009) of the Texas State Fire Marshal;

(iii) documentation of materials used in the building which are required to have a specific limited fire or flame spread-rating, including special wall finishes or floor coverings, flame retardant curtains (including cubicle curtains), rated ceilings, etc. This must include a signed letter from the installer, in the case of carpeting, etc., verifying that the carpeting installed is named in the laboratory test document;

(iv) approval of the completed sprinkler system installation by the Texas Department of Insurance or designing engineer. A copy of the material list and test certification shall be available;

(v) service contracts for maintenance and testing of alarm systems, sprinkler systems, etc.;

(vi) a copy of gas test results of the facility's gas lines from the meter;

(vii) a written statement from an architect/engineer stating that, to the best of his/her knowledge, the building was constructed in accordance with the approved drawings; and

(viii) any other such documentation as needed and called for.

(3) Nonapproval of new construction.

(A) If, during the initial on-site survey of completed construction, the surveyor finds certain basic requirements not met, he may recommend to the department that the facility not yet be licensed and approved for occupancy. Such basic items may include the following:

(i) substantial changes made during construction which were not submitted to the department for review and which may require revised "as-built" drawings to cover the changes. This may include architectural, structural, mechanical, and electrical items (reference subsection (b)(3) of this section);

(ii) construction which does not meet minimum code or licensure standards for basic requirements such as corridors being less than required width, ceilings installed at less than the minimum seven-foot six-inch height, resident bedroom dimensions less than required, and other such features which would disrupt or otherwise adversely affect the residents and staff if corrected after occupancy;

(iii) no written approval by local authorities;

(iv) fire protection systems not completely installed or not functioning properly, including, but not limited to, fire alarm systems, emergency power and lighting, and sprinkler systems;

(v) required exits not all usable according to NFPA 101 requirements;

(vi) telephone not installed or not properly working;

(vii) sufficient basic furnishings, essential appliances, and equipment are not installed or not functioning; and

(viii) any other basic operational or safety feature which the surveyor, as the authority having jurisdiction, encounters which in his judgment would preclude safe and normal occupancy by residents on that day.

(B) If the surveyor encounters only less-basic (and less important) deficiencies, licensure may be recommended based on an approved written plan of correction from the facility's administrator.

(C) Copies of reduced size floor plans (on an 8 1/2-inch by 11-inch sheet) shall be submitted in duplicate to the department for record/file use and for the facility's use for evacuation plan, fire alarm zone identification, etc. The plan shall contain basic legible information such as scale, room usage names, actual bedroom numbers, doors, windows, and any other pertinent information.

(e) Feasibility inspections. A feasibility inspection may be requested on any existing structure that is proposed to be converted to personal care use. This inspection shall be requested through the department. A fee will be charged as required by §146.19 of this title (relating to Fees for Plan Reviews Construction Inspection Services, and Feasibility Inspection Services)

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

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Subchapter E. Inspections, Surveys, and Visits

• 25 TAC §146.81, §146.82

The new sections are adopted under the Personal Care Facility Licensing Act, Health and Safety Code, Chapter 247, which provides the Board of Health (board) with the authority to adopt rules concerning personal care homes; and §12.001 which provides the Board with authority to adopt rules to implement every duty imposed on the board, the department, and the commissioner of health.

§146.81. Procedural Requirements.

(a) Texas Department of Health (department) inspection and survey personnel will perform inspections and surveys,

follow-up visits, complaint investigations, investigations of abuse or neglect, and other contact visits from time to time as they deem appropriate or as required for carrying out the responsibilities of licensing.

(b) An inspection may be conducted by an individual inspector or surveyor or by a team, depending on the purpose of the inspection or survey, size of facility, levels of care and service provided by the facility, and other factors. The team composition may vary from two members to several members. However, an inspection by a single person may be necessary from time to time.

(c) To determine standard compliance which cannot be verified during regular working hours, night or weekend inspections may be conducted to cover specific segments of operation and will be completed with the least possible interference to staff and residents while satisfying the intent of the inspection.

(d) With respect to being unannounced or announced, inspections, surveys, and other visits shall meet the following.

(1) All inspections, surveys, and other visits that are routine in nature and that are made for the purpose of determining the appropriateness of resident care and day-to-day operations of a facility will be unannounced; any exceptions must be justified.

(2) Call-back visits will be unannounced, although it is recognized that the schedule of a call-back visit often relates to a date of correction made known to or by a facility in advance; any exceptions must be justified.

(3) Any nonroutine or special inspection, survey, and other visit involving that appropriateness of some aspect of resident care will be unannounced unless particular circumstances justify otherwise.

(4) Complaint investigations will be unannounced.

(5) Some inspections or visits may be announced, such as:

(A) inspections or visits to determine the progress or completion of physical plant construction or repairs, equipment installation or repairs, or systems installation or repairs; and

(B) conditions when certain emergencies arise, such as fire, windstorm, or malfunctioning or nonfunctioning of electrical or mechanical systems.

(6) Consultation visits should be arranged with the facility in advance; inspections to determine how a physical plant

may be expanded or upgraded may be considered consultation visits.

(7) The inspections, surveys, and visits described in paragraphs (1)-(6) of this subsection are listed as examples and are not intended to be all-inclusive.

(e) The facility shall make all resident and employee books, records, and other documents maintained by or on behalf of a facility accessible to the department upon request.

(1) The department is authorized to photocopy documents, photograph residents, and use any other available recordation devices to preserve all relevant evidence of conditions found during an inspection, survey, or investigation that the department reasonably believes threaten the health and safety of a resident.

(2) Examples of records and documents which may be requested and photocopied or otherwise reproduced are admission sheets, medication profiles, observation notes, medication refusal notes, and menu records.

(3) When the facility is requested to furnish the copies, the facility may charge the department at the rate not to exceed the rate charged by the department for copies. Collection shall be by billing the department. The procedure of copying will be the responsibility of the administrator or his designee. If copying requires the records be removed from the facility, a representative of the facility will be expected to accompany the records and assure their order and preservation.

(4) The department will protect the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state laws, and department policy.

(f) The department shall provide for a special team to conduct validation surveys or verify findings of previous licensure surveys.

(1) At the department's discretion, based on record review, random sample, or any other determination, the department may assign a team to conduct a validation survey. The department may use the information to verify previous determinations or identify training needs to assure consistency in deficiencies cited and in punitive actions recommended throughout the state.

(2) Facilities will be required to correct any additional deficiencies cited by the validation team but will not be subject to any new or additional punitive action.

§145.82. Determinations and Actions Pursuant to Inspections.

(a) The Texas Department of Health (department) will determine if a facility meets the licensing rules, including both physical plant and facility operation requirements.

(b) Violations of regulations will be listed on forms designed for the purpose of the inspection or will be listed in letter form when administrative penalties are being proposed.

(c) At the conclusion of an inspection or survey, the violations will be discussed in an exit conference with the facility's management. A written list of the violations will be left with the facility at the time of the exit conference; any additional violation that may be determined during review of field notes or preparation of the official final list (when the official final list was not issued at the exit conference) will be communicated to the facility in writing within 10 working days of the exit conference, and the facility will have 10 working days to communicate a reply before such additional violation is added to or made a part of the permanent record. Copies of any narratives or similar papers written to further describe the conditions found will be furnished to the facility.

(d) Violations found during complaint investigations will be discussed with the facility management and a plan of correction obtained; the violations will be furnished in writing to the facility, as well as any supporting narratives, but shall not reveal the source of the complaint.

(e) A clear and concise summary, in nontechnical language, of each licensure inspection, inspection of care, and/or complaint investigation will be provided by the department. That summary will be in a form outlining significant violations noted at the time of the visit, but not to include names of residents, staff, or any other statement that would identify individual residents or other prohibited information under general rules of public disclosure. The summary will be provided to the facility at the time the report of contact or similar document is provided.

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

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Subchapter F. Abuse, Neglect and Exploitation; Complaint and Incident Reports and Investigations

• 25 TAC §§146.101-146.107

The new sections are adopted under the Personal Care Facility Licensing Act, Health and Safety Code, Chapter 247, which provides the Texas Board of Health (board) with the authority to adopt rules concerning personal care homes; and §12.001 which provides the Board with authority to adopt rules to implement every duty imposed on the board, the department, and the commissioner of health.

§146.105. Investigations of Incidents and Complaints.

(a) In accordance with the memorandum of understanding which is adopted by reference in §111.1 of this title (relating to Memorandum of Understanding Concerning Protective Services for the Elderly), the Texas Department of Health (department) will receive and investigate reports of abuse, neglect, and exploitation of elderly and disabled persons residing in facilities licensed under this chapter.

(b) The department will only investigate complaints of abuse, neglect, or exploitation when the act occurs in the facility, when such licensed facility is responsible for the supervision of the resident at the time the act occurs, or when the alleged perpetrator is affiliated with the facility. Other complaints of abuse, neglect, or exploitation not meeting this criteria will be referred to the Texas Department of Protective and Regulatory Services.

(c) The primary purpose of an investigation is the protection of the resident. If the department determines that, for protection of the resident from further abuse or neglect, the resident should be removed from the facility, the department will petition a court for temporary care and protection of the resident.

(d) Complaint investigations shall include a visit or visits to the resident and the facility and an interview with the resident. If the facility fails to admit department staff for such investigations, the department will seek a probate or county court order for admission.

(e) Investigations of reports do not exonerate facilities, who may still be subject to the provisions of subchapter H of this chapter (relating to Enforcement).

(f) If the initial phase of an incident or complaint investigation concludes that no abuse or neglect adversely affecting the physical or mental health or welfare of a resident has occurred, no further investigation will be undertaken.

(g) In cases concluded to be abuse, neglect, or exploitation, the written report of the investigation by the department, along with its recommendations, shall be submitted to the appropriate district attorney and law enforcement agency, as well as to the appropriate state agencies, upon request. The investigation shall include:

(1) the nature, extent and cause of such abuse or neglect;

(2) the identity of the person responsible for the abuse or neglect;

(3) the names and conditions of the other institution residents who are affected or likely to be affected by the investigation as they relate to the abuse or neglect alleged, not necessarily their medical diagnoses;

(4) the evaluation of the persons responsible for the care of the institution residents including the adequacy of the persons in numbers and the competence of persons to deliver the care intended, including specific evaluation individually of those persons directly involved in causing abuse or neglect; and

(5) the adequacy of the institution environment which may include general operation, competence of staff, attitude of staff, physical environment, and other considerations.

§146.106. General Provisions.

(a) Confidentiality. All reports, records, and working papers used or developed by the Texas Department of Health (department) in an investigation are confidential, and may be released only as provided in this subsection.

(1) Completed written investigation reports on cases concluded to be abuse or neglect shall be furnished to the district attorney and appropriate law enforcement agency. The department also may release these reports to any other public agency the department deems appropriate to the investigation.

(2) Completed written investigation reports are open to the public, provided the report is deidentified. The process of deidentification means removing all names and other personally identifiable data, including any information from witnesses and others furnished to the department as part of the investigation.

(3) The reporter and the facility will be notified of the results of the department's investigation of a reported case of abuse or neglect, whether the department concluded that abuse or neglect occurred or did not occur.

(b) Immunity. A person who reports suspected instances of abuse or ne-

glect shall, in the absence of bad faith or malicious conduct, be immune from civil or criminal liability which might have otherwise resulted from making the report. Such immunity shall extend to participation in any judicial proceeding resulting from the report.

(c) Privileged communications. In a proceeding regarding a report or investigation conducted under this subchapter, evidence shall not be excluded on a claim of privileged communication except in the case of a communication between an attorney and a client.

(d) Central registry. The department shall maintain a central registry of reported cases of abuse and neglect at the central office in Austin.

§146.107. Reports Relating to Resident Deaths.

(a) All licensed facilities shall submit to the Texas Department of Health (department) a report of all deaths of any persons residing in the facility. This report shall include those persons transferred from the facilities to a hospital who expire within 24 hours after transfer.

(b) The department shall prepare a standard form that shall be completed by the facility and submitted to the department within 10 working days after the last day of the month in which a resident death occurs. The form shall include:

- (1) name of deceased;
- (2) social security number of the deceased;
- (3) date of death; and
- (4) name and address of the facility.

(c) These reports are confidential under the Health and Safety Code, §242.134; however, licensed facilities shall make available historical statistics provided to them by the department and shall provide the statistics if requested by applicants for admission or their representative. In addition, data may be taken from the reports as noted in subsection (d) of this section.

(d) The department shall produce statistical information of official causes of death to determine patterns and trends of incidents of death among the elderly and in specific facilities and make this information available to the public upon request.

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

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Subchapter G. Miscellaneous Provisions

• 25 TAC §§146.121-146.127

The new sections are adopted under the Personal Care Facility Licensing Act, Health and Safety Code, Chapter 247, which provides the Texas Board of Health (board) with the authority to adopt rules concerning personal care homes; and §12.001 which provides the Board with authority to adopt rules to implement every duty imposed on the board, the department, and the commissioner of health.

§146.123. Interpretive Memoranda.

(a) The Texas Department of Health (department) will issue in a consistent and formal manner and publish when appropriate in the *Texas Register* interpretive memoranda for the purpose of explaining, clarifying, determining sense and meaning, or determining application of various elements of rules and standards involved in the department's licensing functions relating to regulation of facilities providing long-term health care.

(b) Each facility will be notified of applicable new rules at the time such rules are filed with the *Texas Register*; these notifications are intended to provide notice of rules in advance of inspections, unless otherwise required. Similarly, each facility will be notified of new applicable interpretive memoranda in codified form as soon as such memoranda are in final form and are released for use or are filed with the *Texas Register*. Where interpretive memoranda are effective for use at the time of release or publication, unless otherwise required, an additional time of not less than 20 days will be given prior to application to the facility of the content of an interpretive memorandum in those cases where an additional obligation would be imposed upon the facility. Rules or interpretive memoranda pertaining to the internal operations of the department are exempted.

§146.124. Procedures for Inspection of Public Records.

(a) Procedures for inspection of public records will be in accordance with the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, and as further described in this section.

(b) The Bureau of Long-Term Care (bureau), Texas Department of Health (department), will be responsible for the maintenance and release of records on licensed facilities, and other related records.

(c) The application for inspection of public records is subject to the following criteria.

(1) The application shall be made to the Bureau of Long Term-Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(2) The requestor shall identify himself/herself.

(3) The requestor shall give reasonable prior notice of the time for inspection and/or copying of records.

(4) The requestor shall specify the records requested.

(5) On written applications, if the bureau is unable to ascertain the records being requested, the bureau may return the written application to the requestor for further specificity.

(6) The bureau shall provide the requested records as soon as possible. However, if the records are in active use, or in storage, or time is needed for proper deidentification or preparation of the records for inspection, the bureau shall so advise the requestor and set an hour and date within a reasonable time when the records will be available.

(d) Original records may be inspected or copied, but in no instance will original records be removed from department offices.

(e) Records maintained by the bureau are open to the public, with the following exceptions:

(1) incomplete reports, audits, evaluations, and investigations made of, for, or by the department are confidential;

(2) reports of abuse and neglect are confidential;

(3) all names and related personal, medical, or other identifying information about a resident are confidential;

(4) information about any identifiable person which is defamatory or an invasion of privacy is confidential;

(5) information identifying complainants or informants is confidential;

(6) itineraries of surveys and inspections are confidential; and

(7) to implement this subsection, the bureau may not alter or deidentify original records. Instead, the bureau will make available for public review or release only a properly deidentified copy of the original record.

(f) Charging for copies of records shall be in accordance with the following criteria.

(1) If the requestor simply wants to inspect records, the requestor will specify

the records to be inspected and the bureau will make no charge for this service, except where the bureau chief determines that a charge is appropriate based on the nature of the request.

(2) If the requestor wants to request copies of a record, the requestor will specify in writing the records to be copied on an appropriate bureau form, and the bureau will complete the form by specifying the cost of the records which the requestor shall pay in advance. Checks and other instruments of payment will be made payable to the Texas Department of Health.

(3) Any expenses for standard-size copies incurred in the reproduction, preparation, or retrieval of records shall be borne by the requestor on a cost basis in accordance with costs established by the State Purchasing and General Services Commission or the department for office machine copies.

(4) For documents that are mailed, the department will charge for the postage at the time it charges for the reproduction. All applicable sales taxes will be added to the cost of copying records.

(5) When a request involves more than one facility, each facility will be considered a separate request.

(g) The bureau will make a reasonable effort to furnish records promptly and will extend to the requestor all reasonable comfort and facility for the full exercise of the rights granted by the Open Records Act.

§146.125. Resident's Bill of Rights and Provider Bill of Rights.

(a) Resident's bill of rights.

(1) Each personal care facility shall post the resident's bill of rights, as provided by the department, in a prominent place in the facility and be written in the primary language of each resident.

(2) In addition to other rights a resident has as a citizen, a resident has the rights provided by this section.

(3) The resident's bill of rights must provide that each resident in the personal care facility has the right to:

(A) not be physically or mentally abused or exploited;

(B) not be physically or chemically restrained unless the restraint:

(i) is necessary in an emergency to protect the resident or others from injury after the individual harms or threatens to harm himself or another; or

(ii) is authorized in writing by a physician for a limited and specified period of time.

(C) if mentally retarded, participate in a behavior modification program involving use of restraints or adverse stimuli only with the informed consent of a guardian.

(D) be treated with respect, consideration, and recognition of his or her dignity and individuality. A resident shall receive personal care and private treatment in a safe and decent living environment.

(E) not be denied appropriate care on the basis of his or her race, religious practice, color, national origin, sex, age, handicap, marital status, or source of payment.

(F) not be prohibited from communicating in his or her native language with other individuals or employees for the purpose of acquiring or providing any type of treatment, care, or services;

(G) be encouraged and assisted in the exercise of his or her rights. A resident may present grievances on behalf of the resident or others to the manager, state agencies, or other persons without threat of reprisal in any manner. The person providing services shall develop procedures for submitting complaints and recommendations by residents and for assuring a response by the person providing services;

(H) receive and send unopened mail;

(I) unrestricted communication, including personal visitation with any person of the resident's choice, including family members and representatives of advocacy groups and community service organizations, at any reasonable hour;

(J) make contacts with the community and to achieve the highest level of independence, autonomy, and interaction with the community of which the resident is capable;

(K) manage his or her financial affairs, or shall be given at least a quarterly accounting of financial transactions made on his or her behalf by the facility should the facility accept his or her written delegation of this responsibility to the facility for any period of time in conformance with state law;

(L) have confidential records which cannot be released without his or her written permission. A resident may inspect

his or her personal records maintained by the person providing services;

(M) have the person providing services answer questions concerning the resident's health, treatment, and condition unless a physician determines that the knowledge would harm the resident. The physician must record the determination in the resident's record;

(N) choose a personal physician;

(O) participate in planning his or her service plan and medical treatment;

(P) be given the opportunity to refuse treatment after the possible consequences of refusing treatment are fully explained;

(Q) unaccompanied access to a telephone at a reasonable hour or in case of an emergency or personal crisis;

(R) privacy (not a single bedroom);

(S) retain personal clothing and possessions as space permits. The number of personal possessions may be limited for health and safety reasons which are documented in the resident's medical record. The number of personal possessions may be limited for the health and safety of other residents;

(T) determine his or her dress, hair style, or other personal effects according to individual preference, except the resident has the responsibility to maintain personal hygiene;

(U) retain and use personal property in his or her immediate living quarters and to have an individual locked area (cabinet, closet, drawer, footlocker, etc.) in which to keep personal property;

(V) refuse to perform services for the facility, except as contracted for by the resident and operator;

(W) be informed, in writing, by the person providing services of available services and the applicable charges if the services are not covered by Medicare, Medicaid, or other forms of health insurance;

(X) not be transferred or discharged unless:

(i) the resident's medical needs require transfer;

(ii) the resident's health and safety or the health and safety of another resident requires transfer or discharge;

(iii) the resident fails to pay for services, except as prohibited by federal law; or

(iv) the resident repeatedly abuses alcohol, drugs, facility smoking regulations, or manifests severe and intentional anti-social behavior.

(Y) not be transferred or discharged, except in an emergency situation. The responsible party of the resident and the attending physician shall be notified immediately;

(Z) leave the facility temporarily or permanently, subject to contractual or financial obligations; and

(AA) not be deprived of any constitutional, civil, or legal right solely by reason of residence in a personal care facility;

(BB) have access to the service of a representative of the State Long-Term Care Ombudsman Program, Texas Department on Aging.

(b) Provider's bill of rights.

(1) Each personal care facility shall post a providers' bill of rights in a prominent place in the facility.

(2) The providers' bill of rights must provide that a provider of personal care services has the right to:

(A) be shown consideration and respect that recognizes the dignity and individuality of the provider and personal care facility;

(B) terminate a resident's contract for just cause after a written 30-day notice;

(C) terminate a contract immediately, after notice to the department, if the provider finds that a resident creates a serious or immediate threat to the health, safety, or welfare of other residents of the personal care facility;

(D) present grievances, file complaints, or provide information to state agencies or other persons without threat of reprisal or retaliation;

(E) refuse to perform services for the resident or the resident's family other than those contracted for by the resident and the provider;

(F) contract with the community to achieve the highest level of independence, autonomy, interaction, and services to residents;

(G) access patient information concerning a client referred to the facility, which must remain confidential as provided by law;

(H) refuse a person referred to the facility if the referral is inappropriate;

(I) maintain an environment free of weapons and drugs; and

(J) be made aware of a resident's problems, including self-abuse, violent behavior, alcoholism, or drug abuse.

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 April 16, 1993.

TRD-9321780

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

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For further information, please call: (512) 834-6770

Subchapter H. Enforcement

• 25 TAC §§146.151-146.156

The new sections are adopted under the Personal Care Facility Licensing Act, Health and Safety Code, Chapter 247, which provides the Texas Board of Health (board) with the authority to adopt rules concerning personal care homes; and §12.001 which provides the Board with authority to adopt rules to implement every duty imposed on the board, the department, and the commissioner of health.

§146.151. Enforcement Generally.

(a) Determining degree of noncompliance and determining disciplinary actions.

(1) Texas Department of Health (department) personnel will determine the extent to which violations adversely affect the licensure status of the facility.

(2) A facility may have violations which are not serious and do not impose an immediate threat to the residents

and yet be considered to be in substantial compliance as long as those violations can be reasonably expected to be corrected with acceptable methods and within an acceptable time.

(3) When department personnel determine that a facility is out of compliance with requirements to a degree that the facility must be specially warned beyond the routine methods of apprising the facility of its violations, a warning letter will be sent by certified mail to the facility.

(b) Enforcement procedures. When a violation of Health and Safety Code, Chapter 247, the rules of this chapter, or an order adopted or license issued under the Chapter 247 occurs, the department is authorized to:

- (1) suspend a license;
- (2) revoke a license; or

(3) refer the violation to the Attorney General for injunction and/or the assessment of civil penalties.

§146.152. Suspension.

(a) When a serious violation occurs or when a series of violations occur such that the event or series of events may (or could) jeopardize the health and safety of residents, the Texas Department of Health (department) may suspend the license.

(b) Suspension of a license may occur simultaneously with any other enforcement provision available to the department.

(c) Unless accompanied by an Emergency Closure Order, the facility will be notified by certified mail of the department's intent to suspend the license. The facility shall have 20 days from receiving the certified mail notice within which to request a hearing, in accordance with §146.156 of this title (relating to Administrative Hearings).

(d) If the department suspends a license, the suspension shall remain in effect until the department determines that the reason for suspension no longer exists. The department shall conduct an on-site investigation prior to making a determination. During the time of suspension, the suspended licensee shall return the license to the department.

§146.153. Revocation.

(a) When a serious violation occurs, such that the health and safety of residents is jeopardized, the Texas Department of Health (department) may revoke the license.

(b) The department may revoke a license if the licensee:

(1) submitted false or misleading statements in the application for a license or any accompanying attachments;

(2) used subterfuge or other evasive means to obtain the license; or

(3) concealed a material fact in the application for a license or failed to disclose information required in §146.13 of this title (relating to Applicant Disclosure Requirements) that would have been the basis to deny the license under §146.17 of this title (relating to Criteria for Denying a License or Renewal).

(c) Revocation of a license may occur simultaneously with any other enforcement provision available to the department.

(d) Unless accompanied by an Emergency Closure Order, the facility will be notified by certified mail of the department's intent to revoke a license. The facility shall have 20 days from receiving the certified mail notice within which to request a hearing, in accordance with §146.156 of this title (relating to Administrative Hearings).

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

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Robert A. MacLean, M.D.
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Texas Department of
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For further information, please call: (512) 834-6770

Chapter 152. Certification of Long-Term Care Facilities

• 25 TAC §§152.1-152.9

The Texas Department of Health (department) adopts new §§152.1-152.9, concerning certification of long-term care facilities. Section 152.7 is adopted with changes to the proposed text as published in the October 20, 1992, issue of the *Texas Register* (17 TexReg 7423). Sections 152.1-152.6 and 152.8-152.9 are adopted without changes and will not be republished.

The new sections cover procedures and practices the department follows in certifying, terminating certification, or taking action relating to long term care facilities participating in the federal Medicare and Medicaid programs. The new sections replace, modify, and update the existing rules in Chapter 145 which are being repealed in this issue of the *Texas Register*.

The department received several comments on the proposed new sections from individuals, groups, associations, and agencies. A

summary of the comments and the department's responses are as follows.

COMMENT: §152.5, specify that Chief, Bureau of Long-Term Care is responsible for final decisions because decisions to certify or decertify should be centralized.

RESPONSE: The department disagrees as this is an internal management procedure which should not be included in rules.

COMMENT: §152.6(b)(1), this procedure denies a facility the right to appeal specific deficiencies that are unwarranted unless there is punitive action; accordingly, there is not due process.

RESPONSE: The department disagrees because the rules elsewhere adequately provide for appeals and due process.

COMMENT: §152.7, delete all references to automatic cancellation clause (ACC) in the appeals process because the Health Care Financing Administration no longer uses an ACC in its procedures.

RESPONSE: The department disagrees because ACC still is a federal procedure covering intermediate care facilities for the mentally retarded (ICF/MR facilities). As such, the appeals process in §152.7 needs to include ACC actions in the appeals process. Accordingly, the department has appropriately modified subsections (a) and (b) to show that the formal hearing process still applies to an ACC action for ICF/MR facilities.

COMMENT: §152.7(b)(1). Expedite the formal hearing process. Otherwise, all individuals could be discharged and then, after the hearing, it may be determined that an error had been made.

RESPONSE: The department disagrees because existing rules provide for due process. The following association and organization commented on proposed Chapter 152: Texas Health Care Association and Exceptional Living, Inc. The commenters expressed concern about specific provisions and suggested changes to the proposal.

The new sections are adopted under the Social Security Act, Titles XVIII and XIX, which provides that the state licensing agency will be the survey agency in the State of Texas to survey facilities which participate in the Medicare and Medicaid program; and Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with authority to adopt rules to implement every duty imposed on the board, the department, and the commissioner of health.

§152.7. Appeals.

(a) Informal reconsideration for facilities other than intermediate care facilities for the mentally retarded.

(1) Prior to the effective date of any termination of certification, the Texas Department of Health (department) shall give the facility an opportunity for an informal reconsideration.

(2) Elements of the informal reconsideration are as follows.

(A) The department shall give the facility written notice of the proposed termination of certification and the findings upon which the action is based.

(B) The facility shall have the opportunity to refute the department's findings in writing. If the facility does not respond during the specified period, the action will be taken. If there is no response by the facility, the department is not required to take any other action on the appeals process prior to the proposed action.

(C) If the facility does respond as required in subparagraph (B) of this paragraph, the department will give the facility a written affirmation or reversal of the proposed action.

(b) Formal hearing for all facilities.

(1) The facility shall have the opportunity for a formal hearing after the effective date of the termination of certification, denial of certification, or other adverse certification recommendation.

(2) A facility desiring a formal hearing shall make a request to the department, in writing, within 20 days after the effective date of the action. Upon receipt of the request, the department will notify the department's Office of General Counsel to institute formal hearing procedures. Failure of the facility to request a formal hearing within the 20 days shall constitute a waiver of the right to such hearing.

(3) The formal hearing will be conducted in accordance with to the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health). This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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 April 9, 1993.

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Robert A. MacLean, M.D.
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For further information, please call: (512) 834-6770

Chapter 153. Adult Day Care and Adult Day Health Care Facilities

Subchapter A. Introduction

The Texas Department of Health (department) adopts new §§153.1-153.2, 153.11-153.18, 153.20, 153.41-153.43, 153.61, 153.81, 153.82, 153.101-153.104, 153.121, and 153.122 concerning adult day care and adult day care health care facilities. Sections 153.2, 153.11-153.16, 153.42, and 153.101-153.103 are adopted with changes to the proposed text as published in the October 20, 1992, issue of the *Texas Register* (17 TexReg 7426). Sections 153.1, 153.17-153.18, 153.20, 153.41, 153.43, 153.61, 153.81-153.82, 153.104, 153.121, and 153.122 are adopted without changes and will be not republished. The only section that was proposed but will not be adopted is §153.19 concerning financial assurances and the department is withdrawing that section.

The sections concern minimum licensing standards for adult day care and adult day health care facilities and replace the sections in Chapter 145.

The department received several comments on the proposed rules. A summary of the comments, including the department's responses to them, are as follows.

COMMENT: §153.2. The department has replaced the definition of "controlling person: with "person with a disclosable interest" and has made corresponding changes to the definition of "affiliate" and to §153.13.

RESPONSE: The department made these changes to make Chapter 153 consistent with similar provisions in Chapters 145 and 146.

COMMENT: §153.11. The department has deleted requirements concerning change of ownership, financial assurances, and inability to comply because these changes will make Chapter 153 consistent with similar provisions in Chapter 145 and 146.

RESPONSE: The department also has replaced "controlling interest" with "disclosable interest" in (c)(1) and modified the language in (d) for clarity.

COMMENT: §153.12. Add paragraph (5) to cover storage and waste containers. These provisions are in existing rules and need to be retained.

RESPONSE: The department agrees; however, the department believes that the provisions should be in §153.42(c)(1)(L) because that is a more appropriate location.

COMMENT/RESPONSE: §153.12. The department added a new paragraph (5) concerning inspection plan review because this provision is in the existing rules.

COMMENT: §153.13(c)(5). Expand this provision to require an affidavit attesting that applicant possesses sufficient financial resources to operate the facility for minimum of 30 days.

RESPONSE: The department has decided to delete the entire provision on financial assur-

ances because it is inappropriate.

COMMENT: §153.13(d). Change the five year period to a two year period to be consistent with proposed disclosure time in other proposed long term care rules.

RESPONSE: The department agrees and has made the change.

COMMENT: §153.13(d)(1-10). Delete paragraphs (4), (5) and (8) as they do not relate to provision of resident care. Also, delete "unresolved" in (9) to not penalize facility until any audit action is final.

RESPONSE: The department disagrees with the first comment because the department believes that the paragraphs do relate to resident care. The department disagrees with the second comment but has deleted "final" instead because this change provides more clarification. The department also has clarified (d) by defining the word "facility", by replacing the word "controlling" with "disclosable", and by adding provisions concerning disclosure of and notification about the facility manager.

COMMENT: §153.13(e)(5). Delete this provision because information is not relevant to provision of resident care and duplicative of license renewal information.

RESPONSE: The department agrees and has deleted the provision.

COMMENT: §153.13(e)(6). Delete last sentence as there is no criteria for approval and, accordingly, subparagraphs (A) and (B) should be deleted also.

RESPONSE: The department agrees and has deleted all provisions concerning approval by the department.

COMMENT: §153.13(f). Do not exempt listed financial institutions, thereby assuring uniformity for all ownerships.

RESPONSE: The department disagrees because it believes that these institutions should be exempt; however, this exemption does not apply to a management company hired by an exempt entity to operate a facility.

COMMENT/RESPONSE: §153.14. The department has clarified the procedure for submission to the department of a complete application for increase in capacity.

COMMENT: §153.15(a). Delete requirement that application be received by department 60 days before anticipated date of sale.

RESPONSE: The department's position is that the 60 day period should be reduced to 30 days and the department has made this change.

COMMENT/RESPONSE: §153.16. The department has rewritten the section in its entirety for clarity and to conform to rule changes; however, no substantive changes have been made.

COMMENT: §153.16(b)(1) and (4). Add "knowingly" to each of these provisions so that the facility will not be held in violation for accidental errors.

RESPONSE: The department agrees and has made the change.

COMMENT: §§153.16(a)(2)(D)-(G). Delete subparagraphs (D), (E), and (F) as they do not relate to provision of resident care. Also, delete "unresolved" from subparagraph (G) so as not to penalize facility until action is final on an audit.

RESPONSE: The department disagrees with the first comment because it believes that these provisions are relevant to resident care; The department's response to the second comment is to delete "final" instead of "unresolved" because that change is more reasonable.

COMMENT: §153.19(b)-(c). In subsection (b), require one-year business plan for each facility rather than audited financial statement. This will be less costly to provider and will protect confidential financial affairs by providing pertinent information to specific facility. Subsection (c) is unnecessary.

RESPONSE: The department's response is that it has decided that the financial assurance rule is inappropriate and has withdrawn §153.19 in its entirety.

COMMENT: §153.42(c)(2)(I)-(K). Expand the provisions concerning facility rooms, examination room, and outdoor recreation area for clients.

RESPONSE: The department disagrees because it believes that the rules are reasonable as written.

COMMENT: §153.42(c)(2)(L)-(M). Expand provisions concerning medications and drugs. Also, add provision that facility must have first aid supplies, as recommended by the American Red Cross, on the premises.

RESPONSE: The department disagrees as the law does not authorize the department to have jurisdiction in this area.

COMMENT/RESPONSE: §153.101. The department has clarified the language by replacing "inspection" with "department", replacing "notice letter" with "warning letter by certified mail", and replacing "recommend" with "authorized".

COMMENT: §§153.102 and 153.103. Clarify "serious violation" in the two sections.

RESPONSE: The department's response is to clarify the more serious violation of revocation in §153.103 by adding revocation criteria. The department also has added notice provisions to §153.102, has replaced "recommend" with "suspend" in §153.102, and "recommend" with "revoke" in §153.103. Finally, the department has included a certified mail provision in §153.103. The following agencies, association and organizations commented on proposed Chapter 153: Retirement Villages Management, Inc.; Resaca Palms Adult Day Care of San Benito; and Texas Department of Human Services, Community Care Section. In addition, one individual commented on the proposal. The commenters expressed opposition and concern about specific provisions and made suggestions for change.

• 25 TAC §153.1, §153.2

The new sections are adopted under the Human Resources Code, Chapter 103, which provides the Board of Health (board) with the

authority to adopt rules establishing minimum licensing standards for adult day care and adult day health care licensing facilities; and the Health and Safety Code, §12.001 which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

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

Adult day care facility—A facility which provides counseling, recreation, or food, or any combination of these services on a daily or regular basis, but not overnight, to four or more elderly or handicapped persons who are not related by blood, marriage, or adoption to the owner of the facility.

Adult day health care facility—A facility that provides health care or physical therapy or both and that may also provide adult day care services on a daily or regular basis, but not overnight, to four or more elderly or handicapped persons who are not related by blood, marriage, or adoption to the owner of the facility.

Affiliate—With respect to a:

(A) partnership, each partner thereof;

(B) corporation, each officer, director, principal stockholder, subsidiary, and person with a disclosable interest;

(C) natural person:

(i) each person's spouse;

(ii) each partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) each corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

Ambulatory—Mobility not relying on walker, crutch, cane, other physical object, or use of wheelchair.

Applicant—A person required to be licensed under Health and Safety Code, Chapter 103.

Client—A person who receives the services of an adult day care facility or an adult day health care facility.

Department—Texas Department of Health.

Director—The person responsible for the overall operation of a facility.

Elderly person—A person 65 years of age or older.

Existing building—In these standards, except where defined otherwise, a building either occupied as an adult day care facility or an adult day health care facility at the

time of initial inspection by the department or converted to occupancy as an adult day care facility or an adult day health care facility.

Facility—An adult day care facility or an adult day health care facility.

Handicapped person—A person whose functioning is sufficiently impaired to require frequent medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

Long-term care facility—A facility that provides care and treatment or personal services to four or more unrelated persons, including a nursing facility, a personal care facility, and a facility serving persons with mental retardation and related conditions.

Manager—A person having a contractual relationship to provide management services to a facility, but does not include a licensed nursing home administrator.

Management services—Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services shall not include contracts solely for maintenance, laundry, or food services.

Person with a disclosable interest—A person with a disclosable interest is any person who owns five percent interest in any corporation, partnership, or other business entity that is required to be licensed under Human Resources Code, Chapter 103. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company unless such entity participates in the management of the facility.

Safety—Action taken to protect from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the presence of hazardous materials.

Sanitation—Action taken to protect from illness, the transmission of disease, or loss of life due to unclean surroundings, the presence of disease transmitting insects or rodents, unhealthful conditions or practices in the preparation of food and beverage, or the care of personal belongings.

Semiambulatory—Mobility relying on walker, crutch, cane, other physical object, or independent use of wheelchair.

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

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

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For further information, please call: (512) 834-6770

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Subchapter B. Application Procedures

• **25 TAC §§153.11-153.18, 153.20**

The new sections are adopted under the Human Resources Code, Chapter 103, which provides the Texas Board of Health (board) with the authority to adopt rules establishing minimum licensing standards for adult day care and adult day health care licensing facilities; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules to implement every duty imposed on the board, the department, and the commissioner of health.

§153.11. Criteria for Licensing.

(a) A person or governmental unit, acting jointly or severally, must be licensed to establish, conduct or maintain a facility in this state.

(b) An applicant for a license must submit a complete application form and license fee to the Texas Department of Health (department).

(c) An applicant for a license must affirmatively show the following:

(1) the applicant, person with a disclosable interest, affiliate, and manager has had no conviction of a felony or crime involving moral turpitude;

(2) the facility meets the standards of the Life Safety Code;

(3) the facility meets the construction standards in Subchapter D of this chapter; and

(4) the facility meets the standards for operation based upon an on-site survey.

(d) The applicant must provide all information requested on the application form and submit the appropriate fees as a prerequisite for the department to conduct a feasibility inspection or plan review, as requested or required.

(e) A license shall be issued to a facility meeting all requirements of this chapter and shall be valid for one year. Each license shall specify the maximum allowable number of clients to be cared for at any one time. No greater number of clients shall be kept at any one time than is authorized by the license.

§153.12. Building Approval. All applications for license shall include written approval of the local fire authority having jurisdiction based on the facility and opera-

tion meeting local applicable fire ordinances; such approval shall be on forms or in a manner as determined by the licensing agency. The local health authority may provide recommendations regarding licensure utilizing the following procedure and process.

(1) New facility. The sponsor of a new facility under construction or a previously unlicensed facility will provide to the licensing agency a copy of a dated written notice to the local health authority that construction or modification has been or will be completed by a specific date. The sponsor will also provide a copy of a dated written notice of the approval for occupancy by the local fire marshal or local building code authority, if applicable. The local health authority may provide recommendations to the licensing agency regarding the status of compliance with local codes, ordinances, or regulations. Local health authority comments and recommendations must be received by the licensing agency within 10 days after the date of the sponsor's notice of the fire marshal or building code authority approval for occupancy. The local health authority may recommend that a state license be issued or denied; however, the final decision on licensure status remains with the licensing agency.

(2) Client increase. The license holder shall request an application for increase in capacity from the licensing agency. The licensing agency shall provide the license holder with the application form, and the Texas Department of Health (department) shall notify the local fire marshal and the local health authority of the request. The license holder shall arrange for the inspection of the facility by the local fire marshal. Upon completion of the inspection, the license holder shall notify the local health authority and the licensing agency in writing if the facility meets local code requirements. The local health authority may provide recommendations to the licensing agency regarding the status of compliance with local codes, ordinances, or regulations. Local health authority comments and recommendations must be received within 10 days after the date of the facility's notice of the local fire marshal or building code authority approval. The local health authority may recommend that an increase in capacity be granted or denied; however, the final decision on the increase remains with the licensing agency. The licensing agency will approve the application only if the facility is found to be in compliance with the standards. Approval to occupy the increased capacity may be granted by the licensing agency prior to the issuance of the license covering the increased capacity after inspection by the licensing agency if standards are met.

(3) Change of ownership. The applicant for a change of ownership license

will provide to the licensing agency a copy of a letter to the local health authority of the request for a change of ownership under §145.16 of this title (relating to Change of Ownership). The local health authority may provide recommendations to the licensing agency regarding the status of compliance with local codes, ordinances, or regulations. Local authority recommendations must be received within 10 days of the dated notice from the new owner or date of change of ownership, whichever is later, if local health official recommendations are to be considered by the licensing agency.

(4) Renewal. The local health authority having jurisdiction shall receive a copy of the department license renewal notice specifying the expiration date of the facility's current license. The local health authority may provide recommendations to the licensing agency regarding the status of compliance with local codes, ordinances, or regulations. The local authority may also recommend that a state license be issued or denied; however, the final decision on licensure status remains with the licensing agency. Local health authority comments and recommendations must be received at least 30 days prior to expiration of the license for consideration by the licensing agency.

(5) Inspection/plan review. Any existing building being considered for licensure must either submit plan for review and approval or request a feasibility inspection to be performed by a representative of the department to determine construction or renovation requirements.

§153.13. Applicant Disclosure Requirements.

(a) Scope of section. No person shall apply for a license, change of ownership, increase in capacity, or renewal of a license to operate or maintain a facility without making a disclosure of information as required in this section. The disclosure is required if the person is applying for a license for the first time or if the person owned, operated, or managed another facility in this or any other state, using the same or any other business name.

(b) Disclosure form. All applications shall be made on forms prescribed by and available from the department. Applications include initial applications, change of ownership, and renewal applications. Each application must be completed in accordance with department instructions, and signed and notarized.

(c) General information required. An applicant shall file with the department an application which shall contain:

(1) the name of the applicant and, if an individual, whether the applicant has attained the age of 18 years;

- (2) the type of facility;
- (3) the location of the facility;
- (4) the name of the administrator;

(5) evidence of the right to possession of the facility at the time the application will be granted, which may be satisfied by the submission of applicable portions of a lease agreement, deed or trust, or appropriate legal document. If the applicant is not the owner of the real estate, the lease agreement must clearly state that the applicant, lessee has the right to renovate, repair, and maintain the real estate as may be required to meet the licensing standards. The names and addresses of any persons or organizations listed as owner of record in the real estate, including the buildings and grounds appurtenant to the buildings, shall be disclosed to the department;

(6) the certificate of good standing issued by the Comptroller of Public Accounts; and

(7) the certificate of incorporation issued by the Secretary of State for a corporation or a copy of the partnership agreement for a partnership.

(d) Disclosure requirements. Applicants must disclose the following information for the two-year period preceding the application date, concerning the applicant, persons with a disclosable interest, facility lessor, officers, affiliates, and manager, without regard to whether the data required relates to current or previous events:

(1) denial or revocation of a license to operate a health care, long term care, personal care, or day care facility in any state;

(2) federal or state Medicaid or Medicare sanctions or penalties;

(3) state or federal criminal convictions for any offense that provides a penalty of incarceration;

(4) federal or state liens;

(5) unsatisfied final judgments;

(6) operation of a facility that has been decertified in any state under Medicare or Medicaid;

(7) debarment, exclusion, or contract cancellation in any state from Medicare or Medicaid;

(8) eviction involving any property or space used as a facility in any state;

(9) unresolved state or federal Medicare or Medicaid audit exceptions; and

(10) orders from any court restraining or enjoining the applicant, manager, or any person with a disclosable

interest from operating a health care, long term care, personal care, or day care facility in any state.

(e) Ownership and management information required.

(1) Each applicant for a license to operate a facility shall disclose to the department the name and business address of each limited partner and general partner if the applicant is a partnership, of each director and officer if the applicant is a corporation, and each person having a beneficial ownership interest of five percent or more in the applicant corporation, partnership, or other business entity.

(2) If any person described in this section has served or currently serves as an administrator, general partner, limited partner, trustee or trust applicant, sole proprietor, or any applicant or licensee who is a sole proprietorship, executor, or corporate officer or director of or has held a beneficial ownership interest of five percent or more in any other health care, long term care, personal care, or day care facility, the applicant shall disclose the relationship to the department, including the name and current or last address of the facility and the date such relationship commenced and, if applicable, the date it was terminated.

(3) If the applicant or licensee is a subsidiary of another organization, the information shall include the names and addresses of the parent organization and the names and addresses of the officers and directors of the parent organization.

(4) If the facility is operated by, or proposed to be operated under, a management contract, the names and addresses of any person or organization, or both, having an ownership or discloseable interest of five percent or more in the management company shall be disclosed to the department.

(5) The information required by this section shall be provided to the department upon initial application for licensure, and changes in the information shall be provided to the department on an annual basis, except that a licensee shall notify the department within 30 days of any change of the facility's manager.

(f) The provisions of this section shall not apply to a bank, trust company, financial institution, title insurer, escrow company, or underwriter title company to which a license is issued in a fiduciary capacity except for provisions that require disclosure relating to the manager of the facility.

§153.14. Increase in Capacity.

(a) During the license term, a license holder may not increase capacity

without approval from the Texas Department of Health (department). The license holder shall submit to the department to complete application for increase in capacity on a form provided by the department.

(b) Upon approval of an increase in capacity, the department shall issue a new license.

§153.15. Change of Ownership.

(a) During the license term, a license holder may not transfer the license as a part of the sale of the facility. Prior to the sale of the facility, the license holder shall notify the Texas Department of Health (department) that a change of ownership is requested. The prospective purchaser shall submit to the department a complete application for a license under §153.11 of this title (relating to Criteria for Licensing) at least 30 days prior to the anticipated date of sale. The applicant shall meet all requirements for a license.

(b) Pending the review of the prospective purchaser's application, the license holder shall continue to meet all requirements for operation of the facility.

§153.16. Criteria for Denying a License or Renewal of a License.

(a) The department may deny a license or a renewal or a license if an applicant, manager, or affiliate:

(1) substantially fails to comply with the requirements described in §§153.41-153.43 of this title (relating to Standards for Adult Day Care and Adult Day Health Care Facilities);

(2) provides the following false or fraudulent information:

(A) knowingly submits false or misleading statements in the application or any accompanying attachment;

(B) uses subterfuge or other evasive means of filing;

(C) engages in subterfuge or other evasive means of filing on behalf of another who is unqualified for licensure;

(D) knowingly conceals a material fact; or

(E) is responsible for fraud;

(3) fails to provide the required information, facts and or references;

(4) fails to pay the following fees, taxes and assessments when due:

(A) licensing fees as described in §153.17 of this title (relating to License Fees);

(B) franchise taxes, if applicable;

(5) discloses any of the following actions within the two year period preceding the application:

(A) operation of a facility that has been decertified and or had its contract cancelled under the medicare or medicaid program in any state;

(B) federal or state medicare or medicaid sanctions or penalties;

(C) state or federal criminal convictions for any offense that provides a penalty of incarceration;

(D) federal or state liens;

(E) unsatisfied final judgments;

(F) eviction involving any property or space used as a facility in any state;

(G) unresolved state or federal medicare or medicaid audit exceptions; or

(H) suspension of a license to operate a health facility, long term care facility, personal care facility, or a similar facility in any state.

(b) Concerning subsection (a)(5) of this section, the department may consider exculpatory information provided by the applicant, manager, or affiliate to grant a license under the subsection if the department finds the applicant, manager or affiliate able to comply with the rules in this chapter.

(c) The department shall not issue a license to an applicant to operate a new facility if the applicant discloses any of the following actions during the two year period preceding the application:

(1) revocation of a license to operate a health care facility, long term care facility, personal care facility, or similar facility in any state;

(2) debarment or exclusion from the medicare or medicaid programs in any state; or

(3) a court injunction prohibiting the applicant, manager, or affiliate from operating a facility.

(d) Hearing. If the department denies a license or refuses to issue a renewal of a license, the applicant or licensee may request an administrative hearing in accordance with §153.104 of this title (relating to Administrative Hearings).

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

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**Subchapter C. Standards for
Adult Day Care and Adult
Day Health Care Facilities**

• 25 TAC §§153.41-153.43

The new sections are adopted under the Human Resources Code, Chapter 103, which provides the Board of Health (board) with the authority to adopt rules establishing minimum licensing standards for adult day care and adult day health care licensing facilities; and the Health and Safety Code, §12.001 which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

§153.42. Safety.

(a) Environmental safety.

(1) The physical plant safety requirements are designed to provide safety to the clients, participants, or adult individuals receiving day care or day health care identified in the Texas Department of Human Services' rules referenced in §153.41(b) of this title (relating to General Requirements).

(2) The facility shall conform to all applicable state laws and local ordinances as pertain to this occupancy. When such laws, codes, and ordinances are more stringent than these standards, the more stringent requirements shall govern. Should state laws or local codes or ordinances be in conflict with the requirements of these standards, the licensing agency shall be so informed so that these conflicts may be legally resolved.

(3) The facility shall meet the provisions and requirements concerning accessibility for individuals with disabilities in the following laws: the Americans with Disabilities Act of 1990 (Public Law 101-336; Title 42, United States Code,

Chapter 126); Title 28, Code of Federal Regulations, Part 35; Texas Civil Statutes, Article 9102; and Title 16, Texas Administrative Code, Chapter 68. Plans for new construction, substantial renovations, modifications, and alterations shall be submitted to the Texas Department of Licensing and Regulation (Attn: Elimination of Architectural Barriers Program) for accessibility approval under Article 9102.

(4) The jurisdiction of the licensing agency will extend beyond the licensed facility when the licensed area is only a part of a building or floor that is not fire separated in accordance with the Life Safety Code, §10-7.1.2.

(b) Life Safety Code.

(1) The principles of the Life Safety Code, of the National Fire Protection Association (NFPA), 1988 edition, under §10-7 "Day Care Centers," and operating features under §31-3.4 "Day Care Centers," shall be used in establishing life safety requirements for adult day care facilities and adult day health care facilities, with the interpretation and exceptions as listed in paragraphs (2) and (3) of this subsection.

(2) Interpretations of the Life Safety Code, 1988, §10-7, are as follows.

(A) The principles of §10-7 shall apply to any size facility requiring licensing with four or more clients or participants.

(B) The principles of §10-7.1.1.3 relating to children six years of age and over shall apply.

(C) The manual fire alarm system and automatic smoke detection system shall be installed in accordance with NFPA 72 series and state fire marshal licensing requirements.

(3) Exceptions to the Life Safety Code, 1988, §10-7, are as follows.

(A) All required smoke detectors will be powered by the facility electrical system and be interconnected with the fire alarm system.

(B) Reference to apartment buildings in §10-7.1.2 shall be deleted. Any floor above or below the floor of exit discharge which is used by semiambulatory clients, or those whose disability prevents them from taking appropriate action for self-preservation in emergencies, will be provided with smoke compartmentation.

(C) Emergency lighting shall not be required for means of egress if the

facility operation is during daylight hours and if natural light, direct or borrowed, is provided so that the means of egress is usable in emergencies.

(D) Special protective electrical receptacle covers will not be required.

(E) NFPA 96 publication relating to Vapor Removal Cooking Equipment shall not be applicable if the facility has residential-type cooking equipment.

(F) Public corridors shall not be used for return or supply air systems.

(G) Residential-type heating units or heating units designed for attic installations shall not be considered to be units requiring furnace room construction as specified under §10-7.3.2.1.

(H) New additions or remodeling shall be as required for new construction in accordance with paragraph (4) of this subsection.

(I) Sprinkler system for janitor's closet as specified under §10-7.2.2 shall not be required unless the building has a complete NFPA 13 system.

(4) For new construction, the licensing agency will require conformance to the following codes, except that the licensing agency may accept other nationally recognized codes that are locally enforced.

(A) If the municipality has a building code and a plumbing code, then those codes shall govern in those areas of construction. Where local codes or ordinances are applicable, the most restrictive parts concerning the same subject item shall apply unless otherwise determined by the authority having jurisdiction for local codes and the licensing agency.

(B) In the absence of such governing municipal codes, nationally recognized codes shall be used, such as the Standard Building Code and the Standard Plumbing Code, both of which are part of the Southern Building Code, published by Congress International, Inc. Such nationally recognized codes, when used, shall all be publications of the same group or organization to assure the intended continuity.

(C) Heating, ventilating, and air-conditioning (HVAC) systems shall be designed and installed in accordance with NFPA 90A, relating to the Standard for the Installation of Air Conditioning and Ventilating Systems, and NFPA 90B, relating to

the Standard for the Installation of Warm Air Heating and Air Conditioning Systems, as applicable, and the American Society of Heating, Ventilating, and Air-Conditioning Engineers (ASHRAE), except as may be modified in this subchapter.

(D) Electrical and illumination systems shall be designed and installed in accordance with NFPA 70, relating to the National Electrical Code, and the Lighting Handbook of the Illuminating Engineering Society (IES) of North America except as may be modified in this subchapter.

(5) An existing building either occupied as an adult day care center or an adult day health care center at the time of initial inspection by the licensing agency, or converted to occupancy as an adult day care or an adult day health care facility, shall meet all local requirements pertaining to the building for that occupancy. The licensing agency may require the facility sponsor or licensee to submit evidence that local requirements are satisfied.

(6) Adult day or adult day health care facilities shall be of recognized permanent type construction as distinguished from movable buildings or construction. Buildings shall be structurally sound with regard to actual or expected dead, live, and wind loads. The licensing agency may require submission of evidence to this effect.

(7) Electrical and mechanical systems shall be safe and in working order. The licensing agency may require the facility sponsor or licensee to submit evidence to this effect, consisting of a report from the fire marshal or city/county building official having jurisdiction or a report from a registered professional engineer.

(8) Modifications to requirements are as follows.

(A) For facilities operating as adult day care or adult day health care facilities at the time of their first application for licensure under this program, the licensing agency may modify those requirements which, if strictly applied, would clearly be impractical in the judgment of the licensing agency. Any such modifications will be allowed only to the extent that reasonable life safety against the hazards of fire, explosion, structural, or other building failure and panic are provided and maintained.

(B) For existing buildings and structures which are converted to adult day care or adult day health care occupancy, the licensing agency may modify those requirements which, if strictly applied, would clearly be impractical in the judgment of the licensing agency. Any such

modifications will be allowed only to the extent that reasonable life safety against the hazards of fire, explosion, structural, or other building failure and panic are provided and maintained.

(c) Personal safety.

(1) Fire safety.

(A) Fire safety shall be observed at all times.

(B) Storage items shall be neatly arranged and placed to minimize fire hazard. Gasoline, volatile materials, paint, and similar products shall not be stored in the building housing clients except as may be approved by the local fire marshal. Accumulations of extraneous material and refuse shall not be permitted.

(C) The building shall be kept in good repair; electrical, heating, and cooling systems shall be maintained in a safe manner. Use of electrical appliances, devices, and lamps shall be such as not to overload circuits. Any extension cords in excess of six feet shall be shielded or protected.

(D) All fires shall be reported to the licensing agency within 72 hours; however, any fire causing injury or death to a client shall be reported immediately. A telephone report shall be followed by a written report on a form which will be supplied by the licensing agency.

(E) The facility shall develop and conspicuously post throughout the facility an emergency evacuation plan approved by the local fire marshal having jurisdiction and the licensing agency. The emergency evacuation plan shall be updated and resubmitted for approval every two years.

(F) Smoking regulations shall be established and conspicuously posted in the facility. All smoking shall be supervised. Ashtrays of noncombustible material and safe design shall be provided.

(G) The facility shall have an emergency fire lane for access of fire apparatus if required by local authorities.

(H) There shall be at least one telephone in the facility available to either staff or clients to use in case of an emergency. Emergency telephone numbers shall be posted conspicuously at or near the telephone.

(I) An initial pressure test of facility gas lines from the meter shall be provided. Additional pressure tests will be required when the facility has major renovations or additions where the gas service is interrupted. All gas heating systems shall be checked for proper operation and safety prior to the heating season. Any unsatisfactory conditions shall be corrected promptly.

(J) Curtains and/or draperies in public spaces and individual rooms in which smoking is allowed shall be flame retardant.

(K) Provide 2 1/2 gallon pressurized water type portable fire extinguishers in client use areas. A portable Underwriters Laboratory or Factory Mutual approved five-pound Class B:C dry chemical fire extinguisher, rechargeable type, shall be required in each laundry, kitchen, and walk-in mechanical room. An ABC type extinguisher may be used in serving kitchens.

(L) Metal wastebaskets of substantial gauge or any UL or FM approved containers must be provided in all areas where smoking is permitted. Garbage, waste, or trash containers provided for kitchens, janitor closets, laundries, mechanical or boiler rooms, general storage, and similar places must be made of metal or any UL or FM approved material, having a close fitting cover. Disposable plastic liners may be used in these containers for sanitation.

(2) General requirements.

(A) All exterior site conditions shall be designed, constructed, and maintained in the interest of clients' safety. Newly constructed ramps shall not exceed 1:12 slope. Ramps, walks, and steps shall be of slip-resistive texture and be smooth and uniform, without irregularities. Guard rails, fences, and hand rails shall be provided as required.

(B) All stairways shall have substantial hand rails properly secured.

(C) Tubs or showers for client use shall have non-slip bottoms or floor surfaces, either built in or applied to the surface.

(D) Elevators for client use shall be in safe operating condition.

(E) An adequate supply of hot water shall be provided. The hot water system connected to all client-use fixtures

shall deliver warm water no hotter than 120 degrees Fahrenheit at the fixture. Hot water for other sanitary usages shall be provided at the temperatures required for the appliance or fixture served, or for the operation involved.

(F) There shall be no occupancies or activities adversely affecting the safety of the clients in the buildings or on the premises of the facility.

(G) There shall be provided not less than 35 square feet for each ambulatory client and not less than 50 square feet for each semiambulatory client. This space shall be exclusive of the kitchen and food service area, rest rooms, bath areas, office, corridors, stairways, storage areas, and outdoor space.

(H) An office area shall be provided in a central location to record and maintain files for each client.

(I) An area for rest must be provided with a sufficient number of reclining lounge chairs or beds to accommodate the needs of clients. A room or rooms with beds must be provided for those clients who prefer privacy. The facility must have sufficient chairs and tables to seat all clients at one time.

(J) The facility must have at least one room available as a treatment/examination room for use by the nursing staff or the client's physician.

(K) The facility must have a safe, secure, and suitable outdoor recreation/relaxation area for clients.

(L) The medication room or cabinet medication storage area must have a separate, permanently attached cabinet, box, or drawer with a lock to store drugs covered by Schedule II of the Controlled Substances Act of 1970.

(M) Medications requiring refrigeration must be stored in the medication room in a refrigerator used only for medicine storage or kept in a separate, permanently attached, and locked medication storage box in a refrigerator.

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

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Subchapter D. Facility Construction Procedures

• 25 TAC §153.61

The new sections are adopted under the Human Resources Code, Chapter 103, which provides the Board of Health (board) with the authority to adopt rules establishing minimum licensing standards for adult day care and adult day health care licensing facilities; and the Health and Safety Code, §12.001 which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

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

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Subchapter E. Inspections, Surveys, and Visits

• 25 TAC §153.81, §153.82

The new sections are adopted under the Human Resources Code, Chapter 103, which provides the Board of Health (board) with the authority to adopt rules establishing minimum licensing standards for adult day care and adult day health care licensing facilities; and the Health and Safety Code, §12.001 which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

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

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Subchapter F. Enforcement

• 25 TAC §§153.101-153.104

The new sections are adopted under the Human Resources Code, Chapter 103, which provides the Board of Health (board) with the authority to adopt rules establishing minimum licensing standards for adult day care and adult day health care licensing facilities; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

§153.101. Enforcement Generally.

(a) Determining degree of noncompliance and determining disciplinary actions.

(1) Texas Department of Health (department) personnel will determine the extent to which violations adversely affect the licensure status of the facility.

(2) A facility may have violations which are not serious and do not impose an immediate threat to the recipients and yet be considered to be in substantial compliance as long as those violations can be reasonably expected to be corrected with acceptable methods and within an acceptable time.

(3) When department personnel determine that a facility is out of compliance with requirements to a degree that the facility must be specially warned beyond the routine methods of apprising the facility of its violations, a warning letter by certified mail will be issued to the facility.

(b) Enforcement procedures. When a violation of Human Resources Code, Chapter 103, or these rules occurs, the department is authorized to suspend or revoke the license.

§153.102. Suspension.

(a) When a serious violation occurs or when a series of violations occur such that the event or series of events may (or could) jeopardize the health and safety of recipients, the Texas Department of Health (department) may suspend the license.

(b) The facility will be notified by certified mail of the department's intent to suspend the license. The facility shall have 20 days from receiving the certified mail notice within which to request a hearing, in accordance with §153.104 of this title (relating to Administrative Hearings).

(c) If the department suspends a license, the suspension shall remain in effect until the department determines that the reason for suspension no longer exists. The department shall conduct an on-site investigation prior to making a determination. During the time of suspension, the sus-

pending licensee shall return the license to the department.

§153.103. Revocation.

(a) When a serious violation occurs, such that the health and safety of clients is jeopardized, the Texas Department of Health (department) may revoke the license.

(b) The department may revoke a license if the licensee:

(1) submitted false or misleading statements in the application for a license or any accompanying attachments;

(2) used subterfuge or other evasive means to obtain the license; or

(3) concealed a material fact in the application for a license or failed to disclose information required in §153.13 of this title (relating to Applicant Disclosure Requirements) that would have been the basis to deny the license under §153.16 of this title (relating to Criteria for Denying a License or Renewal of a License).

(c) Revocation of a license may occur simultaneously with any other enforcement provision available to the department.

(d) The facility will be notified by certified mail of the department's intent to revoke a license. The facility shall have 20 days from receiving the certified mail notice within which to request a hearing, in accordance with §153.104 of this title (relating to Administrative Hearings).

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

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Subchapter G. Miscellaneous Provisions

• 25 TAC §§153.121-153.122

The new sections are adopted under the Human Resources Code, Chapter 103, which provides the Board of Health (board) with the authority to adopt rules establishing minimum licensing standards for adult day care and adult day health care licensing facilities; and the Health and Safety Code, §12.001 which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 288. Water Conservation Plans, Guidelines and Requirements

Subchapter A. Water Conservation Plans

• 31 TAC §§288.1-288.7

The Texas Water Commission (commission) adopts new §§288.1-288.7, concerning water conservation plans. Sections 288.1-288.5 and 288.7 were adopted with changes to the proposed text as published in the October 30, 1992, issue of the *Texas Register* (17 TexReg 7647 et seq). Section 288.6 was adopted without changes and will not be published.

The purpose of this new chapter is to provide requirements and guidance for the development and contents of water conservation plans submitted to the commission pursuant to its water-related regulatory programs. These programs include the granting and administration of water rights, the regulation of certain water utilities, and the issuance of permits for the discharge of treated wastewater pursuant to the Texas Water Code, Chapters 11, 13, and 26.

Section 288.1 defines words and terms used in the chapter. Sections 288.2-288.6 describe the information required to be provided in a water conservation plan in accordance with the applicable category of water use. These categories of use include: municipal; industrial or mining; irrigation; wholesalers of water; and other uses of water. Section 288.7 describes additional information required to be contained in a water conservation plan submitted with an application to appropriate state water, as required by §295.9 of this title (relating to Conservation Plan, Requirements of Water Use Permit Application).

Water conservation is increasingly recognized as an integral element of water resources planning and management. Water conservation can play an important role in meeting current and future water supply, util-

ity infrastructure, and environmental needs. Potential benefits of water conservation include extending available water supplies, optimizing water and wastewater infrastructure capacity, reducing energy consumption, and reducing both point and non-point sources of water pollution. Accordingly, this chapter will be used to effect an integrated approach to water resources planning and management by incorporating water conservation into the commission's water-related regulatory programs.

These rules were carefully developed over a two-year period. During this period, commission staff thoroughly studied the conservation initiatives of other states and worked closely with affected entities and groups in Texas in re-examining existing rules and guidelines to determine whether and how they could be amended to better assist water resource planners and managers in achieving water conservation goals. Additionally, the Clean Water Council, a commission-sponsored public advisory group, submitted recommendations to the commission on water resource management issues, including water conservation. Applicable recommendations of the Council have been incorporated into the rules. Another commission-sponsored advisory group, the Agriculture Advisory Committee, also assisted in the review and development of the rules.

In addition to the minimum 30-day notice and comment period required by the Administrative Procedure and Texas Register Act, the commission provided an extended period for public comment on the proposed rules through December 18, 1992. Also, the commission held a public hearing on Monday, January 25, 1993, to receive additional comment on the proposed sections.

A total of twenty different groups and entities submitted comments on the proposed rules. These commenters reflected a broad range of interests, representing cities, agriculture, industry, business, state and local water resource management agencies, and environmental and public interest groups. Most comments were generally favorable to the new rules. Suggested changes have been incorporated into the rules where appropriate.

There were three main categories of comments: those in general support of the rules but would like greater specificity and more minimum requirements; those generally opposed the rules as unnecessary, burdensome, and beyond the commission's authority; and those who would like some portions clarified and other sections deleted.

Commenters which expressed general support of the proposed rules include: the Texas Water Development Board, the Lower Colorado River Authority, the City of Austin, the City of Corpus Christi, the City of Winnsboro, the Texas Water Conservation Association, the Environmental Defense Fund, the Sierra Club, and the Save Barton Creek Association.

Commenters which expressed general opposition to the rules include: the City of Tyler, the Texas Municipal League, and the Texas Farm Bureau.

Other groups and entities which provided comments without expressing general support or opposition to the proposed rules include: the Hidalgo and Cameron Counties Irrigation District, the Harlingen Irrigation District, the City of Dallas Water Utilities, the City of Fort Worth, the City of Leon Valley, the Texas Irrigation Council, Texas Utilities Service, and Oxychem.

Those in general support of the rules would also like to see the commission require water conservation plans as a condition of wastewater discharge permits as well as require plans from each water right holder of the state. The commission agrees with this comment to the extent that it is not duplicative of the requirements for the water rights program. The commission is currently considering the proposal of a section which would require a water conservation plan be submitted by a wastewater discharge permittee when the permittee's treatment plant's capacity exceeds 75% of the permitted average daily flow for three consecutive months, unless such plan has been previously submitted to the commission in connection with a water rights application. The purpose of the proposed section would be to protect and enhance water quality by minimizing wastewater discharges and to adequately determine the need for the possible expansion of the wastewater treatment facility and corresponding increases in discharge amounts. The proposed change would also seek to prevent unnecessary capital outlays and indebtedness of wastewater treatment facility owners. Additionally, the commission is developing a water conservation program for its water utilities programs.

Those generally opposed to the rules have stated that the commission is attempting to define a new state policy on water conservation. The commission respectfully disagrees with this comment. The conservation of water resources is an explicit policy of the state (Texas Constitution, Article XVI, §59; the Texas Water Code, §1.003). Provisions in the Texas Water Code direct the commission to ensure the achievement of the maximum conservation of the state's water resources (the Texas Water Code, §5.120). The commission may not approve an application relating to the appropriation of water unless the applicant can demonstrate that due diligence will be used in avoiding waste and achieving water conservation (the Texas Water Code, §11.134(b)(4)). Section 11.1271 of the Texas Water Code specifically authorizes the commission to require a water conservation plan and the implementation of water conservation measures by users of state water. Accordingly, the commission has been requiring the submission of a water conservation plan with an application for a new or amended water right since the 1985 enactment of this provision (31 Texas Administrative Code, §295.9). These rules simply clarify existing plan content requirements and procedures for the review and approval of these plans.

The Texas Legislature also enacted laws in 1985 requiring the Texas Water Development Board to administer a water conservation program in connection with its financial assistance programs. Specifically, recipients of state financial assistance for water supply

and wastewater projects are required to implement a conservation program (Texas Water Code, §15.108(b)).

Finally, in the 1990 state water plan, *Water for Texas: A Comprehensive Plan for the Future*, and in the 1992 update, published by the Texas Water Development Board, water conservation is an expressed state policy to be considered in the planning and management of the state's water resources.

By the adoption of these rules, the commission is implementing state water conservation policy as provided by law and in conjunction with efforts of the Texas Water Development Board.

The commission intends to explore with the Texas Water Development Board the possible development of an interagency agreement providing for the reciprocal review of water conservation plans to avoid unnecessary duplication of regulatory requirements and agency efforts.

In reviewing a conservation plan submitted with an application, commission staff has worked with the applicant in developing a plan which would best meet the water supply and management needs of the applicant as well as conserve water to meet the alternative and future needs of the state. This cooperative assistance has helped water users save water, energy, and money. This is especially important to the small cities and communities facing increasing costs associated with new and modified water and wastewater facilities. Through carefully designed water conservation plans, these communities reduced energy costs because less water was pumped and treated and less heated for home and industrial use. This was accomplished without significantly changing the lifestyles or the quality of life of the citizens.

With regard to provisions in Chapter 288 generally, there was some confusion regarding to whom sections apply and which conservation strategies are mandatory. Chapter 288, by itself, does not mandate each and every water user of the state to submit a water conservation plan to the commission for approval. The chapter merely sets forth minimum requirements which must be contained in a water conservation plan if an entity is required to submit a water conservation plan to the commission. Currently, only §295.9 of the commission's rules requires, with some exceptions, the submission of a water conservation plan with a water right application. As amended concurrently with the adoption of Chapter 288, §295.9 requires that each plan be prepared in accordance with Chapter 288.

With regard to the definitions in §288.1, the commission finds that the proposed definitions for "beneficial use" and "waste" are specific to the appropriation of state water and are, therefore, unnecessary to the general purposes of Chapter 288 relating to all water-related regulatory programs. Therefore, the proposed definitions have been deleted.

With respect to the definition of "conservation," the commission has amended the definition to provide only the express statutory wording for this term as contained in the Texas Water Code, §11.002(8)(B) and

§15.001(9)(B). The proposed definition contained guidance as to the commission's interpretation and application of the statutory definition relating to the appropriation of state water. Such guidance is the purpose of the rulemaking function. However, to ensure consistency between the water conservation programs of the commission and the Texas Water Development Board, only the express statutory definition will be used.

With respect to definitions which contained the word "water," one commenter wanted the word "state" inserted before "water".

The commission disagrees with this comment. This proposed change does not take into account the applicability of Chapter 288 to all water-related regulatory programs of the commission, and not just to the appropriation of state water.

One commenter stated that the definition of "irrigation water use efficiency" should explicitly address "allowable" channel and other losses. The commission feels this can only be done in a meaningful way on a case-by-case analysis, and therefore, the definition is not modified.

One commenter stated that the definition of "reuse" was too restrictive and did not recognize return flows which may provide for environmental needs. The commission disagrees in part with this comment. Reuse may be limited by the terms of a water right to provide return flows to meet environmental water needs and senior water rights. Since the comment is specific to the appropriation of state water, the commission declines to include this change in general water conservation provisions applicable to all water-related regulatory programs of the commission.

The proposed definition of "per capita water use" has been modified to read "municipal per capita water use". The reason for this change is to clarify that per capita water use is not an applicable measurement for agricultural and industrial water use. This definition is also in accordance with water management accounting by the Texas Water Development Board, which is responsible for projecting water demands for the state of Texas.

Finally, with respect to §288.1, definitions for "industrial use," "irrigation use," "mining use," and "municipal use" have been added to clarify the different categories of use provided in the rules.

Some commenters interpreted proposed §288.2 to mandate that all content elements listed in the rules be included in a water conservation plan. This was not the intent of the proposed rules. Rather, many of the conservation strategies are intended to be additional, depending upon the particular circumstances of the applicant. Minor changes have been made to proposed §288.2(2) and (5) in order to clarify which elements listed are mandatory and which may be additional.

Section 288.2 has been clarified by setting out minimum requirements for all water users supplying water to the municipal sector and additional minimum requirements for suppliers serving a population of 5,000 or more. Section 288.2(3) has been clarified to

explicitly identify all strategies which are optional, that is, the choice to implement these strategies is dependent upon the particular circumstances of the applicant. The decision to have a tiered approach of minimum requirements of "small" and "large" water suppliers was first proposed by the Clean Water Council, which was created to advise the commission on a variety of water issues. This approach has also been supported by the Texas Water Development Board. Finally, the decision to leave many strategies optional was also supported by the Clean Water Council.

With respect to proposed §288.2(1)(A), concerning utility profile data, many commenters felt that financial data of the water supplier is unnecessary for the purposes of this section. The commission agrees and has deleted this provision. Another commenter stated that the utility profile should not duplicate populations already serviced by other water suppliers, or if duplicated, should list all other suppliers servicing the target populations. The commission agrees but does not feel that this need be explicit in the rules. Commission staff has developed utility profile forms which allow for explicit consideration of the total water use and water supply characteristics of a service area.

With respect to proposed §288.2(1)(B), concerning water conservation goals, some commenters wanted the commission to delineate what are acceptable per capita water conservation goals. Where per capita water use is higher than the regional average, another commenter stated that the commission should require the water entity to establish a goal which reduces per capita water use to at least the regional average.

The commission disagrees with these comments. This chapter does not set forth explicit quantitative legal standards for per capita water use because different water supply systems have different constraints on their water supply and wastewater systems and different water demands. What may be appropriate for one utility, for example, a 25% reduction in per capita water use, may be excessive or unrealistic for another. Each utility faces a unique set of circumstances, and depending on those circumstances, water conservation plans will serve different purposes.

In reviewing a water conservation plan, the commission will determine whether the per capita goals seek to address a water or wastewater problem (e. g., approaching maximum treatment capacity). This will be evidenced by the applicant through a system audit to quantify the potential water savings in each water use sector. The goals selected should be based on the feasibility of implementing strategies to reduce water use.

If it is not feasible to reduce per capita water use, then the goal should be to maintain per capita water use at current levels. The water supplier's choice of water conservation goals should include a cost analysis supporting any proposition that reductions in municipal per capita water use are a least-cost alternative or a complement to water supply and/or wastewater investments.

Alternatively, if the goal is to maintain municipal per capita water use at current levels, a cost analysis should be provided which supports the conclusion that reductions in per capita water use are not economically feasible. Commission review of goals would merely determine that data is provided that provides a substantiated basis for the goals. The review of the goals would help examine whether goals are too restrictive so as to endanger public health and safety (e.g., an annual average of 50 gallons per day per person) or superficial (e.g., a 5% reduction from current use levels when 15% could be obtained without significant additional costs).

Regarding the proposed requirement that a plan address measures to control unaccounted-for uses of water and a program of leak-detection, repair, and water loss accounting, some commenters wanted the latter to be a minimum requirement of all water entities. The commission feels this may be a burdensome requirement to small entities, and the changes made to the rules make the latter a requirement for only those entities serving 5,000 people or more. For smaller entities, measures to control unaccounted-for uses of water should be adequate; examples have been added.

Also, regarding measures to control unaccounted-for water, one commenter states that maximum acceptable goals or guidelines for this parameter should be explicit. This parameter, like municipal per capita water use, is highly variable, depending on the size of the utility system and its age. Like per capita water use, goals for this parameter should be set by the water entity.

Some commenters stated that drought management should be addressed in the water conservation plan. The commission agrees with this comment and has amended the sections accordingly.

Regarding proposed §288.2(1)(H), one commenter recommended that a plan not be required to be officially adopted by the applicant. The commission disagrees. In order to assure that reasonable diligence will be used by the applicant to achieve water conservation, a plan must have a means of implementation and enforcement. Formal adoption of the plan is evidence of this. Moreover, this requirement is consistent with the Texas Water Development Board's requirements for municipal conservation plans. This provision was reworded slightly to provide more clarity.

Minimum requirements to be included in a plan for those suppliers providing water to the larger population have been clarified in §288.2. Additionally, strategies which are optional have also been clarified in §288.2(3).

Regarding proposed §288.2(2)(B), the phrase "a record management system" has been substituted for "bookkeeping of water use" in response to a comment recommending clarification of this provision.

Regarding the requirement in proposed §288.2 and §288.5 that each wholesale water contract provide that end users implement water conservation measures, some commenters wanted this provision deleted as too intrusive in water sale agreements. The

commission disagrees with this comment. The water conservation plan for a wholesale water supplier would be meaningless and ineffective unless the water supplier implements the plan by affecting the actual use of water by the buyer. Therefore, this requirement is reasonable and necessary to effectuate the purposes of this chapter. Furthermore, many wholesalers in the state are currently requiring water conservation provisions in their water supply contracts.

Some commenters specifically wanted conservation-oriented rates and rate structures to be recognized and implemented as a water conservation measure. Other commenters wanted it clearly indicated that specific rates and rate structures not be mandated by the commission. The commission agrees with these comments. Accordingly, the rules have been amended to provide that the commission shall not approve a plan by a utility that has a "promotional" water rate structure, i.e., a rate structure which is not cost-based and encourages excessive use of water.

One commenter felt that the reuse and recycling option should explicitly require that all high-volume urban irrigators use tertiary water, instead of potable water. The commission notes that such use may be done in accordance with commission rules contained in Chapter 310 of this title, which may not always allow for the reuse of tertiary water, and therefore, this provision remains optional.

Two commenters wanted an explicit reporting requirement. The commission does not feel that Chapter 288 is the appropriate place for such a requirement; rather, such requirement should be specified in administrative rules for a particular permitting process or program area. For example, water right holders are currently required to annually report their water use. These reports must include information on the implementation of the water conservation plan and whether its goals are being achieved.

Two commenters wanted the provision on plumbing ordinances to be deleted due to the 1991 State plumbing fixtures bill. This strategy is optional and remains included in the rules so that a water user who, prior to the enactment of this bill, implemented a water conservation and plumbing ordinance may be credited for doing so. Another commenter wanted this provision to be mandatory. The commission notes that making this provision mandatory would make it inconsistent with Water Development Board requirements for municipal plans.

Regarding the optional monitoring of the effectiveness and efficiency of the water conservation plan, one commenter wanted clarification of this proposed rule. This provision is meant to be a self-monitoring and program evaluation system to be implemented by the water supplier. It can be expected that only very large water supply systems will have the funds available to do plan and program evaluation. Therefore, the provision is optional.

Regarding proposed §288.3, commenters recommended that "water" should be defined and that once-through cooling should be ex-

empted. The commission disagrees with these comments. The commission refers to the Water Code and applicable rules relating to a particular program area to define "water." To exempt once-through cooling would be contradictory to most industrial water conservation efforts.

Regarding proposed §288.4, Water Conservation Plans for Irrigation Use, one commenter wanted this section to explicitly allow Soil and Conservation Service plans to be allowed to be substituted for this provision. The commission agrees, in part, with this comment. The commission has amended the rule to provide that, as long as such plans provide the equivalent information requested in §288.4 and other applicable commission rules, then such substitution would be feasible and therefore allowed pursuant to a memorandum of understanding between the agency and the commission. The commission also notes that the Agricultural Advisory Committee to the commission has reviewed §288.4 prior to publication and has formerly and favorably reviewed all of the proposed rules.

Also regarding §288.4, one commenter stated that drought management plans should be provided from individual irrigators. The commission feels that this provision is unduly burdensome, unrealistic, and unnecessary. These plans are more appropriate for larger municipal users and wholesale water suppliers.

With respect to §288.2 and §288.5, relating to plans submitted for municipal use and by a wholesale water supplier, respectively, a requirement has been added that water conservation achievable by reservoir system operations be addressed in the water conservation plan, if applicable.

Section 288.7 was amended to clarify that the review and action on a water conservation plan submitted with a water rights application shall include the evaluation of feasible alternatives to new water development.

The new sections are adopted under the Texas Water Code, §§5.103, 5.105, and 5.120, which provide the commission with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

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

Conservation—Those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

Industrial use—The use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including commercial feedlot operations,

commercial fish production, and the development of power by means other than hydroelectric.

Irrigation use—The use of water for the irrigation of crops, trees, and pastureland, including, but not limited to, golf courses and parks which do not receive water through a municipal distribution system.

Irrigation water use efficiency—The percentage of that amount of irrigation water which is beneficially used by agriculture crops or other vegetation relative to the amount of water diverted from the source(s) of supply. Beneficial uses of water for irrigation purposes include but are not limited to evapotranspiration needs for vegetative maintenance and growth and salinity management and leaching requirements associated with irrigation.

Mining use—The use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.

Municipal per capita water use—The sum total of water diverted into a water supply system for residential, commercial, and public and institutional uses divided by actual population served.

Municipal use—The use of potable water within or outside a municipality and its environs, whether supplied by a person, privately-owned utility, political subdivision, or other entity, as well as the use of sewage effluent for certain purposes, including the use of treated water for domestic purposes, fighting fires, sprinkling streets, flushing sewers and drains, watering parks and parkways, and recreational purposes, including public and private swimming pools, the use of potable water in industrial and commercial enterprises supplied by a municipal distribution system without special construction to meet its demands, and for the watering of lawns and family gardens.

Pollution—The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

Reuse—The authorized use for one or more beneficial purposes of use of water that remains unconsumed after the water is used for the original purpose of use and before that water is either disposed of or discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.

Water conservation plan—a strategy or combination of strategies for reducing the volume of water withdrawn from a water supply source, for reducing the loss or waste of water, for maintaining or improving the efficiency in the use of water, for

increasing the recycling and reuse of water, and for preventing the pollution of water. A water conservation plan may be a separate document identified as such or may be contained within another water management document(s).

§288.2. Water Conservation Plans for Municipal Uses by Public Water Suppliers.

(a) A water conservation plan for municipal water use by public water suppliers shall provide information, where applicable, in response to the following:

(1) Minimum requirements. All water conservation plans for municipal uses by public drinking water suppliers shall include the following elements:

(A) a utility profile including, but not limited to, information regarding population and customer data, water use data, water supply system data, and wastewater system data;

(B) specification of conservation goals including, but not limited to, municipal per capita water use goals, the basis for the development of such goals, and a time frame for achieving the specified goals;

(C) metering device(s), within an accuracy of plus or minus 5.0% in order to measure and account for the amount of water diverted from the source of supply;

(D) a program for universal metering of both customer and public uses of water, for meter testing and repair, and for periodic meter replacement;

(E) measures to determine and control unaccounted-for uses of water (for example, periodic visual inspections along distribution lines; annual or monthly audit of the water system to determine illegal connections, abandoned services, etc.);

(F) a program of continuing public education and information regarding water conservation;

(G) a water rate structure which is not "promotional," i.e., a rate structure which is cost-based and which does not encourage the excessive use of water;

(H) a drought management plan including:

(i) an education and information program concerning the plan;

(ii) notification procedures to identify the initiation and termination of the drought and the corresponding implementation and termination of the drought measures;

(iii) trigger conditions signaling the start of any identified drought period; and

(iv) drought water-use measures (e.g., curtailment of non-essential water uses and other water use restrictions, etc.) corresponding to each trigger condition;

(I) a reservoir systems operations plan, if applicable, providing for the coordinated operation of reservoirs owned by the applicant within a common watershed or river basin in order to optimize available water supplies; and

(J) a means of implementation and enforcement which shall be evidenced by:

(i) a copy of the ordinance, resolution, or tariff, indicating official adoption of the water conservation plan by the water supplier; and

(ii) a description of the authority by which the water supplier will implement and enforce the conservation plan.

(2) Additional content requirements. Water conservation plans for municipal uses by public drinking water suppliers serving a current population of 5,000 or more and/or a projected population of 5,000 or more within the next 10 years subsequent to the effective date of the plan shall include the following elements:

(A) a program of leak detection, repair, and water loss accounting for the water transmission, delivery, and distribution system in order to control unaccounted-for uses of water;

(B) a record management system to record water pumped, water deliveries, water sales, and water losses which allows for the desegregation of water sales and uses into the following user classes:

- (i) residential;
- (ii) commercial;
- (iii) public and institutional; and
- (iv) industrial; and

(C) a requirement in every wholesale water supply contract entered into or renewed after official adoption of the plan (by either ordinance, resolution, or

tariff), and including any contract extension, that each successive wholesale customer develop and implement a water conservation plan or water conservation measures using the applicable elements in this chapter; if the customer intends to resell the water, then the contract between the initial supplier and customer must provide that the contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures in accordance with applicable provisions of this chapter.

(3) Additional conservation strategies. Any combination of the following strategies shall be selected by the water supplier, in addition to the minimum requirements above, if they are necessary to achieve the stated water conservation goals of the plan. The commission may require that any of the following strategies be implemented by the water supplier if the commission determines that the strategy is necessary to achieve the goals of the water conservation plan:

(A) conservation-oriented water rates and water rate structures such as uniform or increasing block rate schedules, and/or seasonal rates, but not flat rate or decreasing block rates;

(B) adoption of ordinances, plumbing codes, and/or rules requiring water-conserving plumbing fixtures to be installed in new structures and existing structures undergoing substantial modification or addition;

(C) a program for the replacement or retrofit of water-conserving plumbing fixtures in existing structures;

(D) reuse and/or recycling of wastewater and/or greywater;

(E) a program for pressure control and/or reduction in the distribution system and/or for customer connections;

(F) a program and/or ordinance(s) for landscape water management;

(G) a method for monitoring the effectiveness and efficiency of the water conservation plan; and

(H) any other water conservation practice, method or technique which the water supplier shows to be appropriate for achieving the stated goal or goals of the water conservation plan.

(b) A water conservation plan prepared in accordance with rules of the Texas Water Development Board and substantially meeting the requirements of this section and other applicable commission rules may be submitted to meet application requirements pursuant to a memorandum of understanding between the commission and the Texas Water Development Board.

§288.3. Water Conservation Plans for Industrial or Mining Use. A water conservation plan for industrial or mining uses of water shall provide information, where applicable, in response to each of the following elements:

(1) a description of the use of the water in the production process, including how the water is diverted and transported from the source(s) of supply, how the water is utilized in the production process, and the estimated quantity of water consumed in the production process and therefore unavailable for reuse, discharge, or other means of disposal;

(2) specification of conservation goals, the basis for the development of such goals, and a time frame for achieving the specified goals;

(3) a description of the device(s) and/or method(s), within an accuracy of plus or minus 5.0% to be used in order to measure and account for the amount of water diverted from the source of supply;

(4) leak-detection, repair, and water loss accounting for water transmission, delivery, and distribution system;

(5) application of state-of-the-art equipment and/or process modifications to improve water use efficiency; and

(6) any other water conservation practice, method, or technique which the user shows to be appropriate for achieving the stated goal or goals of the water conservation plan.

§288.4. Water Conservation Plans for Irrigation Use.

(a) A water conservation plan for irrigation uses of water shall provide information, where applicable, in response to each of the following subsections.

(1) For an individual user:

(A) a description of the agricultural production process which shall include, but is not limited to, the type of crops and acreage of each crop to be irrigated, monthly irrigation diversions, any seasonal or annual crop rotation, and soil types of the land to be irrigated;

(B) a description of the irrigation method or system and equipment

including pumps, flow rates, and plans and/or sketches of the system layout;

(C) a description of the device(s) and/or method(s) within an accuracy of plus or minus 5.0%, to be used in order to measure and account for the amount of water diverted from the source of supply;

(D) specification of conservation goals including, where appropriate, quantitative goals for irrigation water use efficiency and a pollution abatement and prevention plan;

(E) water-conserving irrigation equipment and application system or method, including but not limited to, surge irrigation, low pressure sprinkler, drip irrigation, and nonleaking pipe;

(F) leak-detection, repair, and water-loss control;

(G) scheduling the timing and/or measuring of the amount of water applied, for example, soil moisture monitoring;

(H) land improvements for retaining or reducing runoff, and increasing the infiltration of rain and irrigation water, including but not limited to, land leveling, furrow diking, terracing, and weed control;

(I) tailwater recovery and reuse; and

(J) any other water conservation practice, method or technique which the user shows to be appropriate for preventing waste and achieving conservation.

(2) For a system providing irrigation water to more than one user:

(A) a system inventory for the supplier's;

(i) structural facilities including the supplier's water storage, conveyance, and delivery structures;

(ii) management practices including the supplier's operating rules and regulations; water pricing policy, and a description of practices and/or devices used to account for water deliveries; and

(iii) a user profile including square miles of the service area, the number of customers taking delivery of water by the system, the types of crops, the types of irrigation systems, the types of drainage systems, and total acreage under irrigation, both historical and projected.

(B) specification of water conservation goals including maximum allowable losses for the storage and distribution system;

(C) a description of the practice(s) and/or device(s) which will be utilized to measure and account for the amount of water diverted from the source(s) of supply;

(D) a monitoring and record management program of water deliveries, sales, and losses;

(E) a leak-detection, repair, and water loss control program;

(F) a program to assist customers in the development of on-farm water conservation and pollution prevention plans and/or measures;

(G) a requirement in every wholesale water supply contract entered into or renewed after official adoption of the plan (by either ordinance, resolution or tariff), and including any contract extension, that each successive wholesale customer develop and implement a water conservation plan or water conservation measures using the applicable elements in this chapter; if the customer intends to resell the water, then the contract between the initial supplier and customer must provide that the contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures in accordance with applicable provisions of this chapter;

(H) official adoption of the water conservation plan and goals, by ordinance, rule, resolution, or tariff, indicating that the plan reflects official policy of the supplier;

(I) a drought contingency plan providing:

(i) an education and information program concerning the plan;

(ii) notification procedures to identify the initiation and termination of the drought and the corresponding implementation and termination of the drought measures;

(iii) trigger conditions signaling the start of any identified drought period; and

(iv) drought water-use measures (e.g., curtailment of non-essential water uses and other water use restrictions, etc.) corresponding to each trigger condition; and

(J) any other water conservation practice, method, or technique which the supplier shows to be appropriate for achieving conservation.

(b) A water conservation plan prepared in accordance with the rules of the Soil Conservation Service, the State Soil and Water Conservation Board, or other federal or state agency and substantially meeting the requirements of this section and other applicable commission rules may be submitted to meet application requirements pursuant to a memorandum of understanding between the commission and that agency.

§288.5. Water Conservation Plans for Wholesale Water Suppliers. A water conservation plan for a wholesale water supplier shall provide information, where applicable, in response to each of the following paragraphs.

(1) Minimum requirements. All water conservation plans for wholesale water suppliers shall include the following elements:

(A) a description of the wholesaler's service area, including population and customer data, water use data, water supply system data, and wastewater data;

(B) specification of conservation goals including, where appropriate, target per capita water use goals for the wholesaler's service area, maximum acceptable unaccounted-for water, the basis for the development of said goals, and a time frame for achieving those goals;

(C) a description as to which practice(s) and/or device(s) will be utilized to measure and account for the amount of water diverted from the source(s) of supply;

(D) a monitoring and record management program for determining water deliveries, sales, and losses;

(E) a program of metering and leak detection and repair for the wholesaler's water storage, delivery and distribution system;

(F) a requirement in every wholesale water supply contract entered into or renewed after official adoption of

the water conservation plan (by either ordinance, resolution, or tariff) and including any contract extension, that each successive wholesale customer develop and implement a water conservation plan or water conservation measures using the applicable elements of this chapter; if the customer intends to resell the water, then the contract between the initial supplier and customer must provide that the contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures in accordance with applicable provisions of this chapter;

(G) a drought management plan including:

(i) an education and information program concerning the plan;

(ii) notification procedures to identify the initiation and termination of the drought and the corresponding implementation and termination of the drought measures;

(iii) trigger conditions signaling the start of any identified drought period; and

(iv) drought water-use measures corresponding to each trigger condition; and

(H) a reservoir systems operations plan, if applicable, providing for the coordinated operation of reservoirs owned by the applicant within a common watershed or river basin in order to optimize available water supplies; and

(I) a means for implementation and enforcement which shall be evidenced by: a copy of the ordinance, rule, resolution, or tariff, indicating official adoption of the water conservation plan by the water supplier; and a description of the authority by which the water supplier will implement and enforce the conservation plan.

(2) Additional conservation strategies. Any combination of the following strategies shall be selected by the water wholesaler, in addition to the minimum requirements above, if they are necessary in order to achieve the stated water conservation goals of the plan. The commission may require by commission order that any of the following strategies be implemented by the water supplier if the commission determines that the strategies are necessary in order for the goals of the water conservation plan to be achieved.

(A) conservation-oriented water rates and water rate structures such as

uniform or increasing block rate schedules, and/or seasonal rates, but not flat rate or decreasing block rates;

(B) a program to assist customers in the development of conservation pollution prevention and abatement plans;

(C) a program for reuse and/or recycling of wastewater and/or greywater; and

(D) any other water conservation practice, method, or technique which the wholesaler shows to be appropriate for achieving the stated goal or goals of the water conservation plan.

§288.7. Plans submitted with a water right application for new or additional state water.

(a) A water conservation plan submitted with an application for a new or additional appropriation of water must include data and information which:

(1) supports the applicant's proposed use of water with consideration of the water conservation goals of the water conservation plan;

(2) evaluates conservation as an alternative to the proposed appropriation; and

(3) evaluates any other feasible alternative to new water development including, but not limited to, waste prevention, recycling and reuse, water transfer and marketing, regionalization, and optimum water management practices and procedures.

(b) It shall be the burden of proof of the applicant to demonstrate that no feasible alternative to the proposed appropriation exists and that the requested amount of appropriation is necessary and reasonable for the proposed use.

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

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Director, Legal Division
Texas Water Commission

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For further information, please call: (512) 463-8069

Chapter 295. Water Rights, Procedural

Subchapter A. Requirements of Water Use Permit Applica- tion

• 31 TAC §295.9

The Texas Water Commission (commission) adopts an amendment to §295.9, concerning water rights, procedural, without changes to the proposed text as published in the October 30, 1992, issue of the *Texas Register* (17 TexReg 7851 et seq). The amendment will clarify existing content and review requirements for water conservation plans submitted with applications for new or amended water rights pursuant to the Texas Water Code ("Code"), §11.1271 and §11.134(b).

Concurrently, the TWC adopts new Chapter 288 of this title, relating to general content requirements for water conservation plans applicable to all water-related regulatory programs. The commission also concurrently adopts amendments to §297.1 and new §§297.53, 297.54, 297.55, and 297.56, water rights, substantive, of this title. The changes to Chapter 297 clarify the issuance and conditions of use of state water as it relates to water conservation.

Section 295.9, as amended, provides that a water conservation plan submitted with an application for a new or amended water right must conform to requirements contained in Chapter 288. Exemptions from the requirement to submit a plan are provided for applications for in-place use, emergency use, and the temporary use of water. However, all water right holders must beneficially use the water appropriated in accordance with the water right and must exercise reasonable diligence to avoid waste.

Section 11.134(b)(4) of the Code provides that the commission may not grant an application for a water appropriation unless the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation.

Section 11.1271 of the Code provides that the commission may require the formulation and submission of a water conservation plan and the adoption of reasonable water conservation measures. Conservation measures are defined by the Code, §11.002(8)(B), as those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

The water conservation plan provides evidence that reasonable diligence will be used to avoid waste and achieve conservation of state water so that appropriated waters will be beneficially used for the authorized purposes in accordance with the Code, §11.025 and §11.026.

The new and amended rules reflect the commission's commitment to and responsibility for solutions which seek to alleviate potential

and existing problems throughout the state where water demand exceeds available or long-term supply, new reservoir sites are scarce and environmentally sensitive, supplies of groundwater are overdrafted and sometimes not of necessary quality for the intended use, or the development of new sources of water supply may result in unnecessary capital outlay and corresponding rate increases. Where water conservation programs are the least costly methods of insuring a sufficient and affordable supply of water, such programs should precede the development of additional water supply sources. Costs to be considered also include environmental impacts and values. The rules are intended to promote the development and implementation of a water conservation plan as either an alternative to, or a complement to, the traditional emphasis on only augmenting the stock of water supplies.

In addition to the minimum 30-day notice and comment period, the commission provided an extended period for public comment through December 18, 1992. Also, the commission held a public hearing on Monday, January 25, 1993, to receive additional comment on the proposed rules.

A total of 11 different groups and entities submitted comments on the proposed amendment to §295.9. These commenters reflected a broad range of interests representing cities, agriculture, industry, business, state, and local water resource management agencies, and environmental and public interest groups. Most comments were generally favorable to the amendment.

There were three main categories of comments: those in general support of the amendment but would like to see greater applicability of this requirement; those generally opposed to the amendment; and those who would like some portions clarified and other sections deleted.

Commenters which have expressed general support of the proposed amendment include: the Texas Water Development Board; the Lower Colorado River Authority; the Environmental Defense Fund; the Sierra Club; and the Save Barton Creek Association.

Commenters which expressed general opposition to the proposed amendment include: the Harlingen Irrigation District; the City of Tyler; the City of Winnsboro; the Texas Municipal League; and the Texas Farm Bureau.

Other groups and entities which provided comments on the proposed amendment include the Texas Irrigation Council.

Several commenters requested that the submission of a plan not be mandatory. These commenters also believe that this requirement is too costly and burdensome. The commission respectfully disagrees with these comments. The plan is necessary in order for the applicant to demonstrate that reasonable diligence will be used to achieve water conservation and avoid waste. It is also necessary for the commission to have some basis for determining whether the requested amount is necessary and reasonable for the proposed use.

The submission of a water conservation plan is not a new requirement. Since the enactment of related statutory provisions in 1985, the commission has required the submission of a plan with applications for new and amended water rights. The time, effort, and cost of developing a plan has corresponded to the amount and purpose of the requested appropriation. In developing forms and technical manuals for the applicant, as well as having technical specialists assist the applicant with any questions, the commission has made this requirement as economical as possible. Assistance with plan development for agricultural uses may be obtained from agencies such as the Soil Conservation Service. It should also be noted that the plan will assist the applicant in developing optimum water management practices to increase available yields, prevent unnecessary energy costs, and avoid costly development of additional water supplies.

Several commenters wished for the requirement of submitting a plan to be applied to all water right holders. The commission disagrees with this comment at this time. There are thousands of existing water right holders. To require each to submit a plan for review and approval would be administratively impossible. Rather, the requirement will be applied to existing water right holders when they submit an application to amend their right. With respect to other existing appropriators, the commission imposes by rule the requirement that the water appropriated must be beneficially used without waste pursuant to Code provisions and conditions of the water right. Additionally, new amendments to Chapter 297 of the commission's rules creating new §297.56 are intended to provide adequate market incentives to existing water right holders to implement water conservation measures.

Finally, some commenters have incorrectly interpreted the amendment to provide that existing water right holders must implement new or additional water conservation measures. If they fail to do so, they reason, the commission may determine that a portion of the right is not being beneficially used and may be subject to cancellation.

The commission disagrees with this interpretation. The term "beneficial use" is defined by the Code, §11.002(4), to mean the use of an amount of water "which is economically necessary" for a purpose authorized by law "when reasonable intelligence and reasonable diligence are used in applying the water" to that purpose. Therefore, amounts of water used in excess of those amounts which are necessary and reasonable for the authorized use are not beneficially used. This could include amounts unreasonably lost because of failure to diligently and reasonably maintain diversion and distribution systems, i.e., waste. The beneficial use standard applies to every water right and has been a condition of every water right since the establishment of the prior appropriation system in Texas.

The definition for "conservation" provided by the Code, §11.002(8)(B), includes measures to reduce the loss of water. If such loss results in the use of an amount of water in excess of that which is economically neces-

sary for the authorized purpose when reasonable intelligence and reasonable diligence are used in applying the water, then the implementation of this water conservation measure to reduce the loss of water would be necessary for the water to be beneficially used in accordance with the water right. It is a well established rule of law that the right to use water cannot be perfected unless it is beneficially used in accordance with the water right. (Texas Water Code, §§11.025 and §11.026.) Failure to beneficially use water in accordance with the right may subject the right to use that amount not beneficially used to cancellation. (Texas Water Code, §11.171 et seq.)

The amendment is adopted under the Texas Water Code §§5.103, 5.105, and 5.120, which provides the commission with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

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

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Mary Ruth Holder
Director, Legal Division
Texas Water Commission

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For further information, please call: (512) 463-8069

Chapter 297. Water Rights, Substantive

Subchapter A. Definitions

The Texas Water Commission (TWC) adopts amendments to §297.1 and new §§297.53-297.56, with changes to the proposed text as published in the October 30, 1992, issue of the *Texas Register* (17 TexReg 7653 et seq).

The purpose of these rules is to clarify the procedure for review and approval of a water conservation plan submitted with an application for a new or amended water right pursuant to the Texas Water Code (Code), §§11.1271 and §11.134, and to clarify existing conditions of water use providing that appropriated water must be beneficially used without waste, pursuant to the Code, §§11.025, 11.026, 11.092, and 11.093.

The amendments to §297.1 add new definitions for the terms "instream use," "irrigation water use efficiency," "municipal per capita water use," "pollution," "reservoir system operations," "reuse," "waste," and "water conservation plan."

New §297.53 and §297.54 clarify existing conditions of water use providing that appropriated water must be beneficially used without waste pursuant to the Code, §§11.025, 11.026, 11.092, and 11.093.

New §297.55 clarifies the existing review procedure for water conservation plans submit-

ted with an application for a new or amended water right. The plan will be used to assist the commission in determining whether any feasible alternative to the requested appropriation exists, whether the requested amount of appropriation as measured at the point of diversion is reasonable and necessary for the proposed use, the term and other conditions of the water right, and to ensure that reasonable diligence will be used to avoid waste and achieve water conservation. Based upon its review, the commission shall determine whether to deny or grant, in whole or in part, the requested appropriation. The burden of proof with regard to these issues rests with the applicant.

New §297.56 seeks to encourage existing water right holders who were not subject to water conservation plan requirements when they obtained their water rights to implement water conservation measures. The rule provides that the amount of water appropriated which is conserved as a result of the implementation of water conservation measures shall not be subject to cancellation or forfeiture for non-use if the conserved water is shown to be held to meet additional water needs of the permittee or is sold or transferred. This provision is intended to provide adequate market incentive for water conservation by the holders of older, established water rights and facilitate the transfer and marketing of conserved water to meet alternative and future needs.

The rule also establishes a market place for water by providing that the watermaster or executive director may make information provided by water right holders as to the availability of water for sale of lease to prospective buyers upon request and payment of allowable fees.

Finally, this rule provides that consideration shall be given to the need for instream uses for water quality, aquatic and riparian wildlife habitat, bays and estuaries, and other public purposes in the commission's review and action on an amendment to a water right, including an amendment relating to the sale or transfer of conserved water provided by this section. The commission may reserve from appropriation water necessary to protect these instream uses by placing limitations and conditions on the amended water right.

The Code, §11.134(b)(4) provides that the commission may not grant an application for a water appropriation unless the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation.

The Code, §11.1271 provides that the commission may require from a water right applicant the formulation and submission of a water conservation plan and the adoption of reasonable water conservation measures. Such measures are defined by the Code, §11.002(8)(B) as those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

The Code, §11.025 provides that the right to use state water under any permit, certified

filing, or certificate of adjudication is limited to the amount which is being or can be beneficially used for the authorized purposes, but not to exceed the amount specifically appropriated. Beneficial use is defined by the Code, §11.002(4) to mean that amount of water which is "economically necessary" for an authorized purpose "when reasonable intelligence and reasonable diligence are used" in applying the water to that purpose. The Code, §11.026 and §11.171 et seq provides that the right to appropriate that amount of water not beneficially used cannot be perfected and is subject to limitation, cancellation, and forfeiture as provided by law.

The water conservation plan provides evidence that reasonable diligence will be used to avoid waste and achieve conservation of state water so that appropriated waters will be beneficially used for the authorized purposes. It also provides the commission with some basis for determining whether the requested new or amended appropriation is necessary and reasonable. Finally, prohibiting waste ensures that water will be beneficially used in accordance with the conditions of the water right.

In developing forms and technical manuals for the applicant, as well as having technical specialists assist the applicant with any questions, the commission has made the submission of a water conservation plan as economical as possible. The plan will also assist the applicant in developing optimum water management practices to increase available yields, prevent unnecessary energy costs, and avoid costly development of additional water supplies.

These rules reflect the Commission's continuing efforts to assist water resource managers in developing new water development strategies to meet the state's future water needs. Water demands have been traditionally met by the appropriation of more water and the construction of new reservoirs. However, obtaining a permit for this has become more costly, time-consuming, and faces environmental and legal challenges.

The average time to plan, obtain all necessary state and federal permits, and complete construction of a major reservoir in Texas today is approximately 25-30 years. The withdrawal of federal dollars to support construction of new reservoirs means that the financial burden of future projects will fall increasingly to local ratepayers. New reservoir construction today costs about \$300 per acre-foot, or about three times the cost of conserving the same amount.

In addition, Texas rivers and streams have almost all reached full appropriation. In many areas of the state, the available yield of existing surface and ground water supplies may not be sufficient to meet existing and future water demands, particularly during a severe or extended drought period. Even in areas where there may be sufficient available unappropriated water for construction of a reservoir, favorable or appropriate sites are difficult to find.

In a time of ever-increasing water resource scarcity and more stringent environmental regulation, there must be a shift in water

planning from water development to water management. Existing and remaining water supplies must now be managed as an increasingly scarce, finite resource. Water conservation and other alternatives to traditional water development strategies are quickly gaining acceptance as the best financial, environmental, equitable, and political means of extending the state's finite water supply to meet future needs and continue to allow strong economic growth.

These rules were carefully developed over a two-year period. During this period, commission staff thoroughly studied the conservation initiatives of other states and worked closely with affected entities and groups in Texas in re-examining existing rules and guidelines to determine whether and how they could be amended to better assist water resource planners and managers in achieving water conservation goals. Additionally, the Clean Water Council, a commission-sponsored public advisory group, submitted recommendations to the commission on water resource management issues, including water conservation. Applicable recommendations of the Council have been incorporated into the rules. Another commission-sponsored advisory group, the Agriculture Advisory Committee, also assisted in the review and development of the rules.

In addition to the minimum 30-day notice and comment period provided by the Administrative Procedures and Texas Register Act, the commission provided an extended period for public comment on the proposed rules through December 18, 1992. Also, the commission held a public hearing on Monday, January 25, 1993, to receive additional comment on the proposed rules.

A total of 19 different groups and entities submitted comments on the proposed rules. These commenters reflected a broad range of interests representing cities, agriculture, industry, business, state and local water resource management agencies, and environmental and public interest groups. Suggested changes have been incorporated into the rules where appropriate.

Commenters which expressed general support of the proposed rules include: the Texas Water Development Board; the Environmental Defense Fund; the Sierra Club; and the Save Barton Creek Association.

Commenters which expressed general opposition to the proposed rules include: the Lower Colorado River Authority; the Harlingen Irrigation District; the Hidalgo and Cameron Counties Irrigation District; the City of Tyler; the City of Corpus Christi; the Texas Municipal League; the Texas Irrigation Council; the Texas Water Conservation Association; and the Texas Farm Bureau.

Other groups and entities which provided comments to the proposed rules include: the City of Dallas Water Utilities; the City of Fort Worth; the City of Houston; the City of Leon Valley; Texas Utilities Service; and Oxychem.

With respect to the new definitions provided in §297.1 which contained the word "water," one commenter wanted the word "state" inserted before water. The commission finds

this change unnecessary and redundant of the existing definition of the term "water" contained in §297.1, which includes only state water, and is applicable to the term "water" wherever it is found in the rules.

One commenter stated that the definition of "irrigation water use efficiency" should explicitly address "allowable" channel and other losses. The commission feels this can only be done in a meaningful way on a case-by-case analysis, and therefore, the definition is not modified.

One commenter recommended that the term "pollution" be qualified with "water." This proposed change is unnecessary since the definition of the term relates it to water pollution. Additionally, in response to comments, this term as it is used in §297.54 relating to Waste has been clarified as to not apply to the beneficial use of water for residential, domestic, or other uses where the water is properly treated prior to reuse or discharge into or adjacent to water in the state so that the water may be subsequently beneficially used.

A commenter suggested that the definition of the term "waste" be modified to relate to the "unlawful" diversion of water. This proposed change is unnecessary because the rules themselves make unlawful a diversion which results in waste.

One commenter stated that the definition of "reuse" was too restrictive and did not recognize return flows which may provide for environmental needs. The commission disagrees in part with this comment. Reuse may be limited by the terms of a water right to provide return flows to meet environmental water needs and senior water rights.

With respect to the term "per capita water use", the proposed definition has been amended to now read "municipal per capita water use". The reason for this change is to clarify that per capita water use is an inapplicable measurement for agricultural and industrial water use. This definition is also in accordance with water management accounting by the Texas Water Development Board, which is responsible for projecting water demands for the State of Texas.

With respect to proposed amendments to definitions of "beneficial use" and "conservation" and the proposed new definition for "waste" in §297.1, and proposed new §297.53 and §297.54, some commenters have incorrectly interpreted these rules together to provide that existing water right holders must implement new or additional water conservation measures not presently required under their existing water rights. If they fail to do so, they reason, the commission may determine that a portion of the right is not being beneficially used and may be subject to cancellation.

The commission disagrees with this interpretation. The term "beneficial use" is defined by the Code, §11.002(4) to mean the use of an amount of water "which is economically necessary" for a purpose authorized by law "when reasonable intelligence and reasonable diligence are used in applying the water" to that purpose. Therefore, amounts of water used in excess of those amounts which are necessary and reasonable for the authorized

use are not beneficially used. This could include amounts unreasonably lost because of failure to diligently and reasonably maintain diversion and distribution systems, i.e., waste. The beneficial use standard applies to every water right and has been a condition of every water right since the establishment of the prior appropriation system in Texas.

The definition for "conservation" provided by the Code, §11.002(8)(B) includes measures to reduce the loss of water. If such loss results in the use of an amount of water in excess of that which is economically necessary for the authorized purpose when reasonable intelligence and reasonable diligence are used in applying the water, then the implementation of this water conservation measure to reduce the loss of water would be necessary for the water to be beneficially used in accordance with the water right. It is a well established rule of law that the right to use water cannot be perfected unless it is beneficially used in accordance with the water right (Texas Water Code, §11.025 and §11.026). Failure to beneficially use water in accordance with the right may subject the right to use that amount not beneficially used to cancellation (Texas Water Code, §11.171 et seq).

The proposed rules seek to provide existing interpretation and application of these statutory definitions and provisions. To address these comments and to avoid misinterpretation of the rules, however, proposed amendments for the terms "beneficial use" and "conservation" are not adopted and the definition for "waste" is amended. Additionally, proposed §297.53 relating to Conservation and Beneficial Use is amended to provide that a water right holder must use those measures necessary to ensure the beneficial use of water without waste in accordance with the terms and conditions of the water right and in accordance with applicable law.

Proposed §297.54, relating to Waste, has been amended to clarify what is meant by the faulty design or negligent operation of a water works, to specify procedures for the abatement of waste defined to be a public nuisance, and to clarify rules providing that the pollution of water in violation of applicable standards and rules constitutes the waste of water.

With respect to proposed §297.55, relating to Consideration of Water Conservation Plans, clarification has been added to the provision relating to the consideration of feasible alternatives to the requested appropriation by the commission in its review and action on an application, and a definition for the term "reservoir system operations" found in §297.55 has been added to §297.1.

With respect to proposed §297.56, relating to Conserved Water, additional language has been added to indicate that the right to conserved water shall be retained and protected if a water management plan is submitted in accordance with the Code, §11.173(b)(2). Additionally, a definition for the term "instream uses" found in §297.56(b) has been provided in §297.1 to provide more clarity and meaning for this term and the commission's review and action on an application for an amendment of a water right including an amendment

relating to the sale or transfer of conserved water.

With respect to proposed §297.56(b), one commenter stated that it was beyond the commission's authority to consider environmental impacts relating to the sale or transfer of water. This commenter stated that the water right holder had a vested right to the water and commission approval of the sale or transfer of water was unnecessary.

The commission respectfully disagrees with this comment. A person only has a vested right to that water which has been beneficially used in accordance with the existing right, not to some future or different use of the water (Texas Water Code, §11.025 and §11.026). Amendments to water rights to effect a sale or transfer of a water right must be approved by the commission (Texas Water Code, §11.122). This requirement has been upheld by the state's courts (*Clark v. Briscoe Irrigation Company*, 200 S.W.2d 674 (Texas Civil Appeals-Austin 1947, writ dismissed, n.r.e.)).

Commission rules contained in §295.71 of this title provide that an application shall be prepared in the same manner as an original application for a permit. This provides for §11.134, Texas Water Code, criteria to be applied to applications for amendments. Those criteria provide for the consideration of beneficial use, availability of unappropriated water, protection of existing rights, avoidance of waste, and conservation in evaluating an amendment. Additionally, the public welfare standard may determine the social value of the new use compared to the existing use. Also, the new use would have to satisfy current standards of conservation, waste avoidance, water quality, and instream flow maintenance for environmental protection and estuaries, or for fish and wildlife habitat in accordance with the Code, §§11.134, 11.147, 11.150, and 11.152. In response to the comment, proposed §297.56 has been amended to clarify the commission's authority to approve amendments to water rights.

• 31 TAC §297.1

The amendments are adopted under the Water Code, §§5.103, 5.105, and 5.120, which provides the commission with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

§297.1. Definitions. The following words and terms, when used in this chapter, and in Chapter 295 of this title (relating to Water Rights, Procedural), shall have the following meanings, unless the context clearly indicates otherwise.

Instream use—The beneficial use of instream flows for such purposes including, but not limited to, navigation, recreation, hydropower, fisheries, game preserves, stock raising, park purposes, aesthetics, water quality protection, aquatic and riparian wildlife habitat, freshwater inflows for bays and estuaries, and any other instream use recognized by law. An instream use is a beneficial use of water. Water necessary to protect instream uses for water quality,

aquatic and riparian wildlife habitat, recreation, navigation, bays and estuaries, and other public purposes may be reserved from appropriation by the commission.

Irrigation water use efficiency—the percentage of that amount of irrigation water which is beneficially used by agriculture crops or other vegetation relative to the amount of water diverted from the source(s) of supply. Beneficial uses of water for irrigation purposes include but are not limited to evapotranspiration needs for vegetative maintenance and growth and salinity management and leaching requirements associated with irrigation.

Municipal per capita water use—The sum total of water diverted into a water supply system for residential, commercial, and public and institutional uses, divided by actual population served.

Pollution—The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of any water in the state that renders the water harmful or detrimental to humans, animal life, vegetation, or property, or the public health, safety or welfare, or impairs the usefulness of the public enjoyment of the waters for any lawful or reasonable purpose.

Reservoir system operations—The coordinated operation of reservoirs within a common watershed or river basin or owned or operated by the same entity in order to optimize available water supplies.

Reuse—The authorized use for one or more beneficial purposes of use of water that remains unconsumed after the water is used for the original purpose of use and before that water is either disposed of or discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.

Waste—The diversion of water if the water is not used for a beneficial purpose; the use of that amount of water in excess of that which is economically reasonable for an authorized purpose when reasonable intelligence and reasonable diligence are used in applying the water to that purpose. Waste may include, but not be limited to, the unreasonable loss of water through faulty design or negligent operation of a water delivery, distribution, or application system, or the diversion or use of water in any manner that causes or threatens to cause pollution of water. Waste does not include the beneficial use of water where the water may become polluted because of the nature of its use, such as domestic or residential use, but is subsequently treated in accordance with all applicable rules and standards prior to its discharge into or adjacent to water in the state so that it may be subsequently beneficially used.

Water conservation plan—A strategy or combination of strategies for reducing the volume of water withdrawn from a water supply source, for preventing or reducing the loss or waste of water, for

maintaining or improving the efficiency in the use of water, for increasing the recycling and reuse of water, and for preventing the pollution of water. A water conservation plan may be a separate planning document or may be contained within another water management document(s).

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

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Mary Ruth Holder
Director, Legal Division
Texas Water Commission

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For further information, please call: (512) 463-8069

Subchapter E. Issuance and Conditions of Water Permit or Certificate of Adjudication

• 31 TAC §§297.53-297.56

The new sections are adopted under the Water Code, §§5.103, 5.105, and 5.120, which provides the commission with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

§297.53. Conservation and Beneficial Use.

(a) The right to use state water under any permit, certified filing, or certificate of adjudication is limited to the amount which is being or can be beneficially used for the authorized purpose but not to exceed the amount specifically appropriated.

(b) Only that amount of water that may be beneficially used for the authorized purpose may be diverted. Water which is taken in excess of that needed for the authorized purpose is considered surplus water, not appropriated, and must be returned to the stream of origin if reasonably practicable to do so by gravity flow.

(c) The right to appropriate that amount of water not beneficially used cannot be perfected and is subject to limitation, cancellation, or forfeiture as provided by law.

(d) A water right holder using state water shall use those measures necessary to ensure the beneficial use of water without waste in accordance with these rules and the terms and conditions of the water right and applicable law.

§297.54. Waste.

(a) The waste of water is prohibited and is an unlawful use of state water.

(b) The use of that amount of water in excess of that which is economically reasonable for an authorized purpose when reasonable intelligence and reasonable diligence are used in applying the water to that purpose constitutes waste. Waste also includes the diversion or use of water in any manner that causes or threatens to cause pollution of water in violation of applicable rules and standards.

(c) A person who permits an unreasonable loss of water through faulty design or negligent operation of any waterworks commits waste, and the commission may declare the waste to be a public nuisance. Faulty design or negligent operation shall include, but not be limited to, the design or operation of waterworks not in accordance with applicable state or federal law, commission rules, plumbing fixture codes or ordinances, or other applicable law or, in the absence of such law, not in accordance with commonly accepted industry standards, engineering principles, and best management practices.

(d) The commission or a person injured by the waste of water as provided by subsection (c) may seek civil action in the appropriate state district court to have the nuisance abated and the commission may direct the person supplying the water to close the gates of the person wasting the water and keep them closed until the commission determines that the unlawful use of water is corrected.

§297.55. Consideration of Water Conservation Plans.

(a) Review. Information in the water conservation plan provided by a water right applicant shall be considered by the commission in determining whether any feasible alternative to the requested appropriation exists, whether the requested amount of appropriation as measured at the point of diversion is reasonable and necessary for the proposed use, the term and other conditions of the water right, and to ensure that reasonable diligence will be used to avoid waste and achieve water conservation. Based upon its review, the commission shall determine whether to deny or grant, in whole or in part, the requested appropriation.

(b) Burden of proof regarding need for appropriation. A water conservation plan submitted with an application requesting an appropriation for new or additional state water must include data and information which:

(1) supports the applicant's proposed use of water with consideration of the water conservation goals of the water conservation plan;

(2) evaluates conservation as an alternative to the proposed appropriation; and

(3) evaluates other feasible alternatives to new water development, including but not limited to, waste prevention, recycling and reuse, water transfer and marketing, reservoir system operations, and optimum water management practices and procedures. It shall be the burden of proof of the applicant to demonstrate that no feasible alternative to the proposed appropriation exists and that the requested amount of appropriation is necessary and reasonable for the proposed use.

(c) Implementation. Any water conservation measures prescribed by the commission shall be implemented as required by the terms and conditions of a commission order or water right, or by rule.

§297.56. Conserved Water.

(a) The right to use that amount of water appropriated which is conserved as a result of the implementation of water conservation measures shall not be subject to cancellation or forfeiture if, subsequent to the effective date of having implemented the conservation measure(s), the water right holder submits to the executive director a sworn water management plan providing evidence that:

(1) the conserved water is needed in order to meet additional, specifically identified water needs of the water right holder; or

(2) the conserved water is being sold for a specific beneficial use or that portion of the water right is being transferred for beneficial use(s); or

(3) the water right holder requests that the watermaster or executive director make available to interested buyers or lessors at their request information indicating that the conserved water is available for lease or sale.

(b) A water management plan submitted in accordance with subsection (a) of this section may be submitted with the annual use report provided by §295.202 of this title (relating to Reports) and may be considered for the purposes of the Texas Water Code, §11.173(b)(2). To qualify for purposes of the Texas Water Code, §11.173(b)(2), a plan submitted pursuant to subsection (a) of this section may not result in more than a consecutive 10-year period of non-use of the conserved water.

(c) Based upon information contained in water right holders' water management plans provided by subsection (a) of this section or other information provided by the water right holders, the executive director or watermaster may construct maps

and compile information indicating where and how much water, including conserved water, may be available for lease or purchase and make such information available to interested persons upon their request and payment of allowable fees. Fees may be assessed for the administrative and reproduction costs for this information in accordance with state law.

(d) The commission's review and action on an application to amend a water right, including an amendment relating to the sale or transfer of conserved water, shall consider the needs of instream uses for water quality, aquatic and riparian wildlife habitat, bays and estuaries, and other public purposes. Accordingly, the commission may reserve from appropriation water necessary to protect these instream uses by placing limitations and conditions on the amended water right. Such reservation is superior to the appropriative right and shall not be subject to the appropriative right except as expressly provided in the water right or by an order issued by the commission pursuant to the Texas Water Code, §11.148.

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

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Mary Ruth Holder
Director, Legal Division
Texas Water Commission

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TITLE 34. PUBLIC FINANCE

Part II. Texas State Treasury

Chapter 11. Cigarette and Tobacco Products Tax

• 34 TAC §11.52

The Texas State Treasury adopts new §11.52 concerning importation of 200 or fewer cigarettes, without changes to the proposed text as published in the March 12, 1993 issue of the (18 TexReg 1659).

The new section is needed in order to stop the importation of tax-free cigarettes by persons younger than 18 years of age at ports of entry; and to collect any additional taxes due where more than 200 cigarettes are imported.

The new section provides definitions of terms used in this section, defines factual situations to which the section applies, and provides for enforcement by the Texas Alcoholic Beverage Commission employees at ports of entry.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Tax Code, §154.024(c) and §111.002, which provides the treasurer with the authority to adopt rules that do not conflict with the laws or the constitution of this state or the United States for the enforcement and collection of taxes and other revenue under Title 2, Texas Tax Code.

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

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TRD-9321379

Alicia M. Fectel
General Counsel
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services Chapter 6. Disaster Assistance Case Decision, Review, and Closing

• 40 TAC §6.303

The Texas Department of Human Services (DHS) adopts the repeal of §6.303 and adopts 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, without changes to the proposed text as published in the February 23, 1993, issue of the *Texas Register* (18 TexReg 1152).

The justification for 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.

The repeal and new section will function by providing a hearing by a DHS hearings officer to persons who want to appeal a decision on their IFGP application. Previously, IFGP applicants who appealed received only an administrative review of their case.

No comments were received regarding adoption of the repeal and new section.

The repeal is adopted 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 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 April 8, 1993.

TRD-9321421

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

Effective date: May 1, 1993

Proposal publication date: February 23, 1993

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

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

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

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Nancy Murphy
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Proposal publication date: February 23, 1993

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

Chapter 27. Intermediate Care Facilities for the Mentally Retarded (ICFs-MR)

Subchapter E, Eligibility and Review

• 40 TAC §27.518

The Texas Department of Human Services (DHS) adopts new §27.518, concerning reconsideration of level-of-care determination and effective dates in its Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) rule chapter. The new section is adopted with changes to the proposed text published in the February 12, 1993, issue of the *Texas Register* (18 TexReg 923).

The justification for the new section is to allow ICF-MR facilities to request reconsideration of a client's level-of-care determination and effective dates for periods of time when the level-of-care expired or was incorrect. If the facility documents that services were provided for the period of time that reconsideration is requested, recoupment of funds may be possible.

The section will function by enabling ICF-MR facilities to recoup funds for services rendered to eligible clients for periods of time not covered by an effective level-of-care or an incorrect level-of-care assignment.

During the public comment period, comments were received from the Tarrant County Men-

tal Health and Mental Retardation Services; Mission Road Developmental Center; Stepping Stone Residential Resources; Volunteers of America; Advo Companies, Inc.; Harmony Living Centers, Inc.; and Grace Residential Enterprises. A summary of the comments and responses follows:

COMMENT: All of the commenters objected to the section that limits the requests for reconsideration of level-of-care determinations to those instances that occur after January 1, 1993. Several commenters requested that DHS consider changing the date to cover instances that occurred beginning January 1, 1988, or January 1990.

RESPONSE: DHS will accept claims for payment of Medicaid services rendered from January 1, 1988, to December 1, 1992, for periods of time that have not been claimed or have been previously denied due to expired levels of care. In paragraph (2)(B), DHS has added language to clarify that DHS will accept claims for payment for the period of January 1, 1988, to December 31, 1992, if received not later than August 31, 1993, according to the procedures in its policy letter of February 22, 1993. For instances that occur after January 1, 1993, DHS will process claims in accordance with the requirements in the rule.

In addition to the change resulting from public comments, DHS is adopting paragraph (4), third sentence, with a minor editorial correction, and is adopting paragraph (6) with a change to reference DHS's Legal Services rule chapter instead of its Fair Hearings, Fraud, and Civil Rights Handbook.

The new section 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), §18, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

§27.518. Reconsideration of Level-of-Care Determination and Effective Dates. When a facility provides care for an individual for a period of time not covered by an effective level-of-care (LOC) determination or an incorrect LOC assignment, the Texas Department of Human Services (DHS) will reconsider the LOC effective dates.

(1) Individuals eligible for reconsideration of LOC effective dates must have the following, prior to the submission of a request for reconsideration:

(A) financial eligibility established;

(B) admission to the Medicaid ICF-MR Vendor Payment System on DHS's Resident Transaction Notice form; and

(C) a current LOC determination using DHS's Level-of-Care form.

(2) Requests for reconsideration are limited to days that:

(A) are not covered by a valid LOC determination, and

(B) occur after January 1, 1993. For the period of January 1, 1986, through December 31, 1992, DHS will process claims for payment if received not later than August 31, 1993, according to the procedures in its policy letter dated February 22, 1993.

(3) Requests for reconsideration for periods of time already denied an LOC determination by DHS's appeal process are not accepted.

(4) The request for reconsideration must be stamped in by the ICF-MR Section, Texas Department of Mental Health and Mental Retardation (TXMHMR) before the 95th day after the last day services were provided without the individual having LOC effective dates. The ICF-MR Section, TXMHMR, will accept a request after the 95th day and up to one year following the last day that service was provided only when the facility experiences circumstances beyond its control. These circumstances must be documented in a letter to the manager of the DHS Institutional Program Section, who will determine whether the criteria stated in this section are met when submission of a request is received after the 95th day.

(5) To be eligible for reconsideration of LOC determination, the following documentation must be submitted to the ICF-MR Section, TXMHMR:

(A) a letter requesting reconsideration, signed by the Qualified Mental Retardation Professional;

(B) a completed DHS Level-of-Care form, using Purpose Code E, that describes the individual's need for care during the period of time services were delivered and there was no valid LOC determination in effect. The requested effective dates must include the beginning and ending dates to be considered in the comment section of DHS's Level-of-Care form. A physician's signature is required to certify that the person required ICF-MR and/or ICF-MR/RC services during the time the person did not have a valid LOC determination. The physician must initial the requested effective dates on the DHS Level-of-Care form, thereby acknowledging the reconsideration request.

(C) a copy of the following information from the client's record during the period for which reconsideration is requested:

(i) all Interdisciplinary Team (IDT) meeting notes and recommendations, including the Individual Program Plan (IPP);

(ii) all progress notes and program review records regarding objectives contained in the IPP that validate the provision of active treatment; and

(iii) all orders by the physician.

(6) The TXMHMR must notify the facility of the results of the reconsideration within 45 days. The facility may initiate an appeal, when reconsideration is denied, by submitting a request in writing as outlined in Chapter 79 of this title (relating to Legal Services). The facility must initiate the appeal within 10 workdays of receipt of notification that a reconsideration was denied.

(7) The facility may neither charge nor take any other recourse against Medicaid recipients, their family members, or their representatives for any claim denied or reduced because of the facility's failure to comply with any DHS rule, regulation, or procedure pertaining to reimbursement.

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 April 15, 1993.

TRD-9321675

Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Effective date: June 1, 1993

Proposal publication date: February 12, 1993

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

Chapter 67. Social Work Certification

Certification Requirements

The Texas Department of Human Services (DHS) adopts new §§67.101-67.106, 67.201-67.208, 67.301-67.305, and 67.401-67.410. New §§67.103, 67.106, 67.203, and 67.204 are adopted with changes to the proposed text as published in the December 25, 1992, issue of the *Texas Register* (17 TexReg 9096). The new §§67.101, 67.102, 67.104, 67.105, 67.201, 67.202, 67.205-67.208, 67.301-67.305, and 67.401-67.410 are adopted without changes and will not be republished. DHS is also adopting in this issue of the *Texas Register*

the repeal of its previous social work certification rules, which were in Chapter 85.

The justification for the new sections is to make DHS's social work certification program rules clearer and more concise, particularly the requirements for recognition as a clinical social worker and private practice practitioner.

The new sections will function by making DHS's social work certification program rules clearer and more concise, particularly the requirements for recognition as a clinical social worker and private practice practitioner.

The department received 12 written comments on the proposed new sections during the public comment period and one oral comment at a public hearing on January 6, 1993. The department received comments from these businesses and organizations: Texas Health Care Association, United Way of Texas, National Association of Social Workers/Texas, Catholic Health Facilities, and Tarrant County Mental Health/Mental Retardation Services.

The following are comments, recommendations, and DHS responses.

Comment concerning §67.102: A commenter suggested added wording to the definitions for "client", "contract termination, detrimental to a client" and "private practice."

Response: DHS has determined that the intent of the added wording was already met in the existing wording.

Comment concerning §67.102: A commenter suggested that the definition for "social work services" would require agencies to hire certified social workers and raise agency costs.

Response: DHS has determined that the intent of the definition is to describe what social workers do and does not attempt to regulate people who may do something that a social worker does. The law only regulates individuals who hold themselves out to the public as a social worker.

Comment concerning §67.103(8): A commenter suggested that language was needed to make it clear that only impaired services were being controlled.

Response: DHS accepted this suggestion and added words to §67.103(8) to clarify that a social worker must not provide services while under the influence of alcohol or other mind-altering or mood-altering drugs that impair services.

Comment concerning §67.103(9) and (10): A commenter suggested adding words to this section.

Response: DHS determined that the intent of the added wording was covered in the proposed language.

Comment concerning §67.106(a)(1)(B): One commenter opposed the three year experience requirement for advanced clinical practitioner (ACP) recognition.

Response: DHS determined to continue the three year experience requirement as proposed.

Comment concerning §67.106(a)(2): One commenter raised the issue that there is confusion regarding ACP recognition and the need to also have recognition for private practice.

Response: Because the basic requirements are the same, DHS has agreed to make private practice recognition automatic with ACP and advanced practitioner (AP) recognition.

Comment concerning §67.106(b)(2): Several commenters opposed the continuous supervision after AP recognition.

Response: DHS accommodated the recommendation by automatically granting private practice recognition along with the AP.

Comment concerning §67.106(b)(3): Three commenters inquired about a grandfather clause for those who have already met the AP requirements.

Response: DHS accepted this recommendation and included a grandfathering clause that would allow those who have already met the AP requirements to qualify for AP recognition without examination for a period of six months from the effective date of the adopted rules.

Comment concerning §67.203(a)(4)(E): One commenter objected to the requirement of supplying process notes on the grounds of confidentiality.

Response: DHS has deleted this requirement.

Comment concerning §67.204(a)(2) and (e)(3): Three commenters objected to the malpractice insurance requirements.

Response: DHS has deleted this requirement.

Comment concerning §67.203(b)(3): One commenter noted that it was not possible to obtain the required number of hours of supervision for private and specialty practice recognition under the provision of the rule.

Response: DHS has increased the restriction of the number of hours to five hours per month.

Comment concerning §67.204(e)(1): Several commenters questioned who could provide supervision.

Response: DHS added the category of advanced practitioner to those who could provide supervision. Non-social work supervision was not included because this could be accommodated under the established variance procedures.

The department made the following minor clarifications.

§67.103(12)—Added the words "any violation by another professional to the appropriate licensing authority" to clarify reporting requirements when violations occur.

§67.106(a)—Added an additional sentence that states, "Only recognized social workers who meet the minimum qualifications for examination for recognition as an ACP may use this title.", to clarify the requirements for recognition as an ACP.

§67.106(c)—Deleted requirements associated with private practitioners to allow for the auto-

matic granting of private practice recognition with the AP recognition.

§67.204(a)(1)—Added that submission of a supervisory contract can be made within six months of the effective date of the adopted rules to clarify requirements for the supervisory contracts.

§67.204(a)(4)(D)—Added that the use of a social work title and/or supervision by a certified social worker will be considered evidence of the required qualifying experience to clarify the educational requirements.

§67.204(f)—Added paragraph (f) to clarify that supervision completed before the effective date of the new sections will be evaluated on the basis of the rules previously in effect.

• 40 TAC §§67.101-67.106

The new sections are adopted under the Human Resources Code, Title 2, Chapter 50, which authorizes the department to establish rules for social work certification.

§67.103. *Code of Ethics.* A certificate holder must observe and comply with a code of ethics. Engaging in unethical conduct or conduct that discredits the profession of social work is grounds for disciplinary action. A social worker must:

(1) provide services without regard for age, sex, race, color, religion, national origin, disability, sexual orientation, or political affiliation;

(2) obtain informed, written consent from a client before releasing confidential information from the social work setting, except as required by law;

(3) not engage in sexual acts with a client or with a person who has been a client within the preceding 12 months;

(4) not provide professional social work services to a previous sexual partner;

(5) provide a clear description of services, reports, fees, billing, and schedules to each client;

(6) not give or receive any form of commission, rebate, or other remuneration for client referrals;

(7) obtain informed, written consent before involving a client in research, and inform the client of the purpose of the research and its implications to the client;

(8) not provide social work service while under the influence of alcohol or other mind-altering or mood-altering drugs that impair services;

(9) advocate for clients and uphold a position of trust with the client by avoiding any act detrimental to a client;

(10) make referrals appropriate to the client's needs;

(11) not misrepresent qualifications, credentials, or services in any advertising, including notices of employment status; and

(12) report any violation of the requirements in Chapter 50 of the Human Resources Code or as specified in this chapter, or any violation by another professional to the appropriate licensing authority.

§67.106. *Certificates of Recognition.*

(a) Advanced clinical practitioner (ACP). The Texas Department of Human Services (DHS) grants the title of ACP to an individual as recognition in the specialty practice of clinical social work. Only recognized social workers who meet the minimum qualifications for examination for recognition as an ACP may use this title. The minimum qualifications are:

(1) certification as a certified social worker (CSW) in Texas;

(2) three additional years of full-time clinical social work practice experience, as defined in §67.102 if this title (relating to Definitions), in an agency, institution, or other legal employment. This experience must have occurred after the qualification for certification as a certified social worker was met;

(3) two of the three years of experience or 3,000 hours which must be under qualified supervision as specified in §67.204(e) of this title (relating to Supervision for Private and Specialty Practice Recognition); and

(4) identification with and documentation of continued participation in the social work profession over the preceding three years.

(b) Advanced practitioner (AP). DHS grants the title of AP to an individual as recognition in specialty practice of non-clinical social work. Only recognized social workers may use this title.

(1) A person who meets the qualifications for advanced clinical practitioner in subsection (a) of this section in a nonclinical setting is eligible for recognition as an AP.

(2) An individual who is qualified and applies for AP recognition may be granted recognition without examination and upon application within six months from the effective date of these rules (May 1, 1993).

(c) Private practitioner. DHS grants the title of AP or ACP for independent or private practice.

(1) A certificate holder must not engage in independent or private practice of social work without private practice recognition from DHS. Approval by another reg-

ulatory body in a related area of practice does not negate this requirement.

(2) Provisional certification is not applicable for private practitioner recognition.

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 April 8, 1993.

TRD-9321423

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

Effective date: May 1, 1993

Proposal publication date: December 25, 1992

For further information, please call: (512) 450-3785

Application Process

• 40 TAC §§67.201-67.208

The new sections are adopted under the Human Resources Code, Title 2, Chapter 50, which authorizes the department to establish rules for social work certification.

§67.203. Qualifications for Certification or Recognition. The applicant must meet the following requirements for certification or recognition.

(1) Age. An applicant must be at least 18 years of age.

(2) Conduct. The applicant must not have committed any act contrary to the requirements in Chapter 50 of the Human Resources Code or as specified in this chapter that would be considered evidence that the applicant is not worthy of the public trust and confidence.

(3) Education. The applicant's education must be documented by official college transcripts or a high school diploma or GED certificate. Educational requirements must be met by completion of educational programs accredited by the appropriate state educational agency. Social work degrees must be from social work programs accredited by the Council for Social Work Education. The Texas Department of Human Services (DHS) will designate an agency to provide verification of equivalency of degrees from foreign countries when appropriate. Social work educational programs in candidacy for accreditation by the Council for Social Work Education may request a waiver of these education requirements. The waiver must be renewed annually in August for the subsequent academic year and cannot be renewed more than three times.

(4) Experience.

(A) Experience required for certification as a social work associate or for recognition as a private practitioner, advanced clinical practitioner or advanced practitioner must be in the employment of an agency, institution, or other employer. Required documentation includes:

- (i) names and addresses of employers;
- (ii) dates of employment;
- (iii) job description;
- (iv) average number of hours of social work activity per week; and
- (v) annual evaluations.

(B) Documentation of experience in private employment must include verification of the following:

- (i) the employer's administrative authority over the provision of social work services;
- (ii) the applicant's compensation for services paid by the employer; and
- (iii) the employment relationship as reflected in all advertising, informational material, and written policy.

(C) DHS may credit part-time experience on a prorated basis.

(D) Experience must be in a position with primary responsibility for providing social work services as defined in Chapter 50 of the Human Resources Code and as specified in this chapter and must have been satisfactorily performed. Use of a social work title and/or supervision by a certified social worker will be considered evidence of the qualifying experience.

(E) The applicant must maintain and, upon request, provide to DHS documentation of employment contracts, pay vouchers, and/or supervisory evaluations.

(5) References. An applicant must submit to DHS references from three individuals familiar with the applicant's professional qualifications. The references must attest to the applicant's worthiness of public trust and confidence.

§67.204. Supervision for Private and Specialty Practice Recognition.

(a) A certificate holder who plans to apply for specialty practice recognition must:

- (1) submit a supervisory contract to the Texas Department of Human

Services (DHS) for approval 30 days before the beginning of supervision or within six months from the effective date of these rules (May 1, 1993);

(2) submit annual supervisory evaluations to DHS at the end of each year of supervision or the end of the supervisory contract;

(3) submit a notice of the end of the supervisory contract to DHS within 30 days of the end of supervision; and

(4) notify DHS in writing before changing supervisors.

(b) Individual supervision must:

(1) consist of no less than 100 hours of face-to-face meetings between the supervisor and the supervised individual;

(2) be completed over two consecutive years; and

(3) be accomplished in one or two hour blocks not exceeding five hours per month.

(c) Telephone supervision substituted for face-to-face supervision must include:

(1) an initial face-to-face supervisory session of at least two hours; and

(2) quarterly, face-to-face sessions of at least two hours.

(d) Group supervision is subject to the following restrictions.

(1) Group supervision may be substituted for a maximum of 30 hours of the required 100 hours of individual supervision.

(2) Two hours of group supervision must be credited as one hour of individual face-to-face supervision.

(3) A maximum of six supervised persons is allowed in one group supervision session.

(4) Group supervision must be in blocks of not less than two hours in one group session and not exceeding eight actual hours per month.

(e) There may be no more than three supervisors during the two years of required supervision. On written request, DHS will issue a letter of approval to a qualified supervisor. A supervisor must:

(1) be certified as a certified social worker, advanced clinical practitioner, or advanced practitioner;

(2) take professional responsibility for the clinical services provided within the supervisory contract;

(3) have completed one graduate course in supervision, two years of clinical supervisory experience, or a supervisor's training course acceptable to DHS; and

erated by the provisions of the...
(5) demonstrate continuing participation in and identification with the social work profession.

(f) Supervision completed before the effective date of these rules (May 1, 1993) will be evaluated on the basis of the rules previously in effect.

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 April 8, 1993.

TRD-9321427 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: May 1, 1993

Proposal publication date: December 25, 1992

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

Certificate Expiration and Renewal

• 40 TAC §§67.301-67.305

The new sections are adopted under the Human Resources Code, Title 2, Chapter 50, which authorizes the department to establish rules for social work certification.

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 April 8, 1993.

TRD-9321424 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: May 1, 1993

Proposal publication date: December 25, 1992

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

Administrative Actions

• 40 TAC §§67.401-67.410

The new sections are adopted under the Human Resources Code, Title 2, Chapter 50, which authorizes the department to establish rules for social work certification.

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 April 8, 1993.

TRD-9321426 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: May 1, 1993

Proposal publication date: December 25, 1992

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

Chapter 85. General Licensing Procedures

Subchapter III. Social Work Certification

• 40 TAC §§85.6001, 85.6003-85.6016, 85.6018-85.6029

The Texas Department of Human Services (DHS) adopts the repeal of §§85.6001, 85.6003-85.6016, and 85.6018-85.6029, without changes to the proposed text as published in the December 25, 1992, issue of the *Texas Register* (17 TexReg 9096).

The justification for the repeals, which constitute all of the remaining sections in Chapter 85, is to enable DHS to propose new sections to make DHS's social work certification program rules clearer and more concise, particularly the requirements for recognition as a clinical social worker and private practice practitioner. DHS is adopting new sections in new Chapter 67, in this issue of the *Texas Register*.

The repeals will function by enabling DHS to adopt new rules in Chapter 67 that will provide consumers and practitioners a clearer, more concise statement of social work certification requirements.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Human Resources Code, Title 2, Chapter 50, which authorizes the department to establish rules for social work certification.

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.

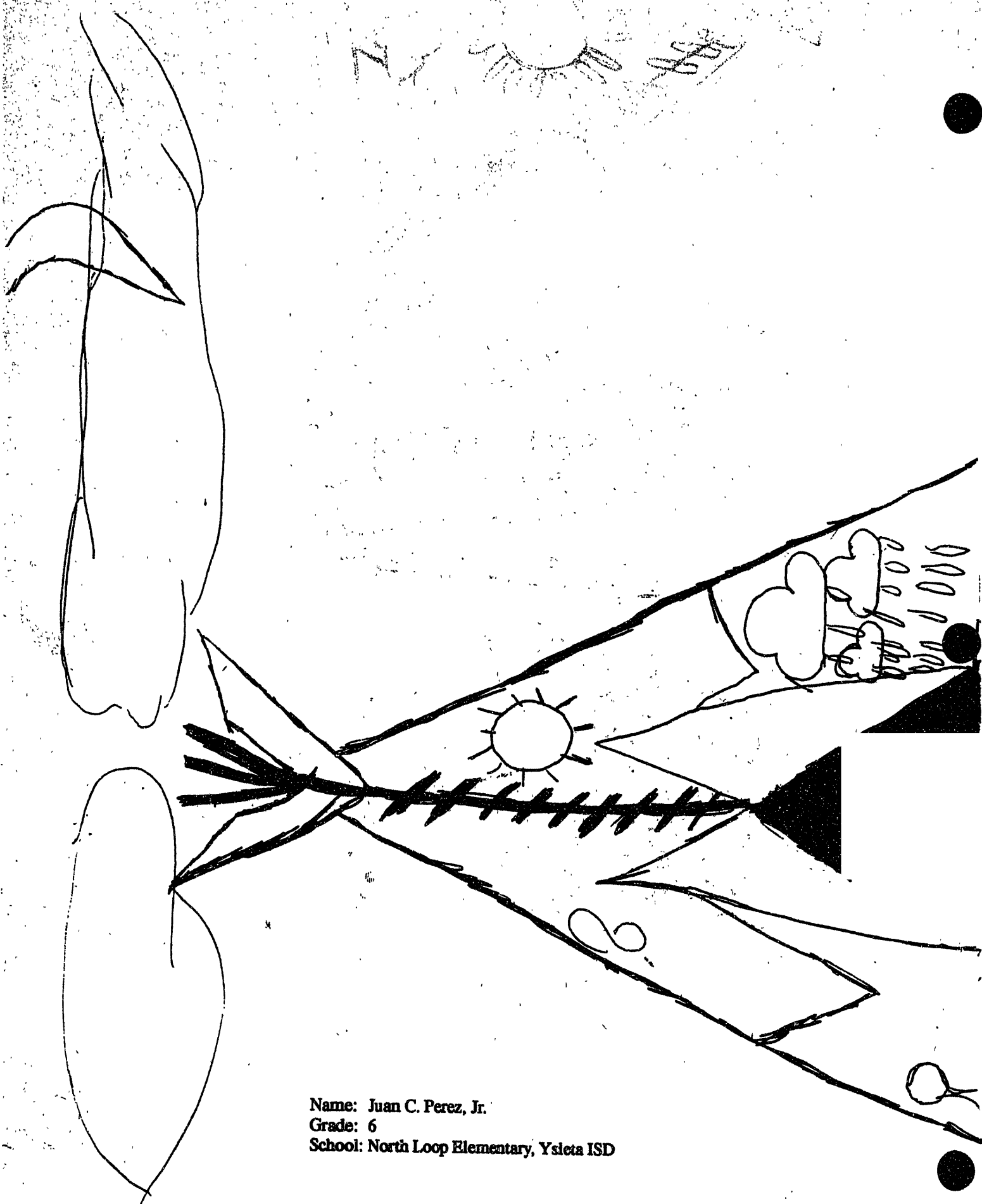
Issued in Austin, Texas, on April 8, 1993.

TRD-9321425 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

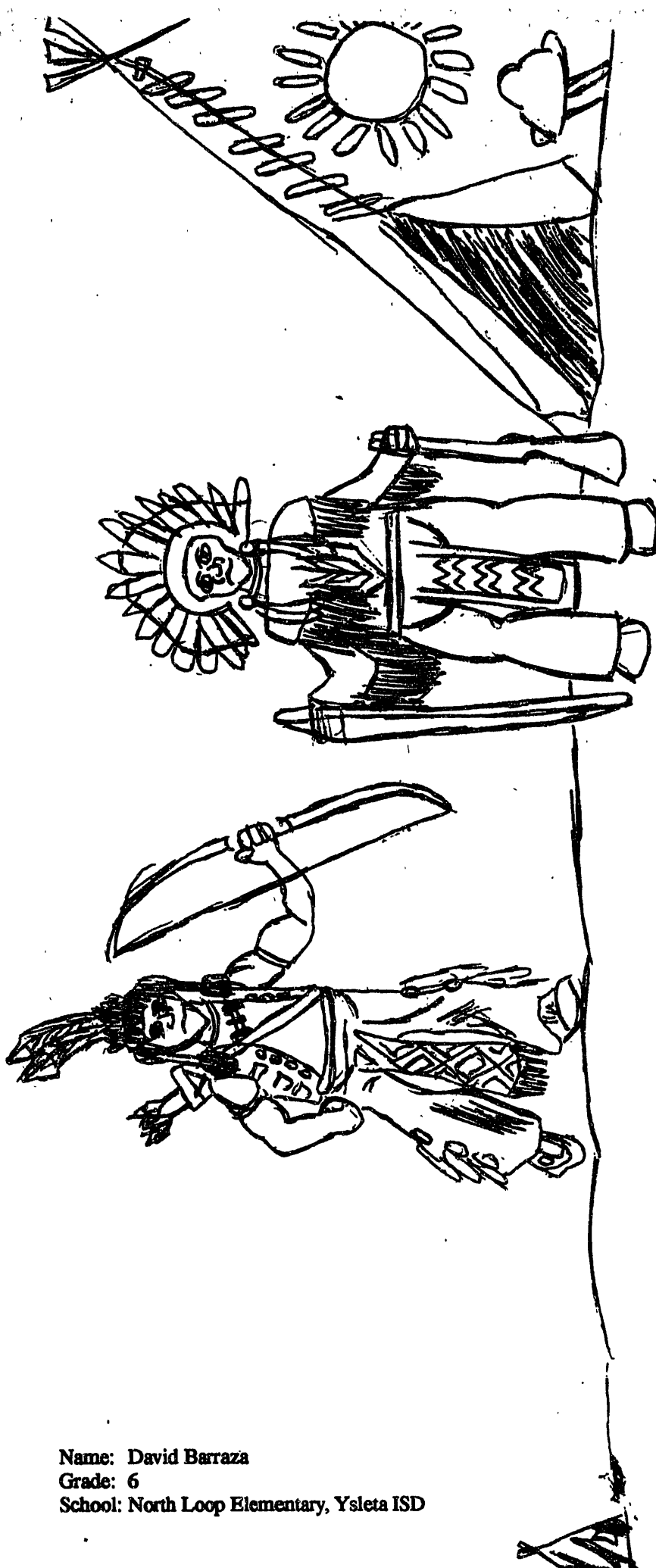
Effective date: May 1, 1993

Proposal publication date: December 25, 1992

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



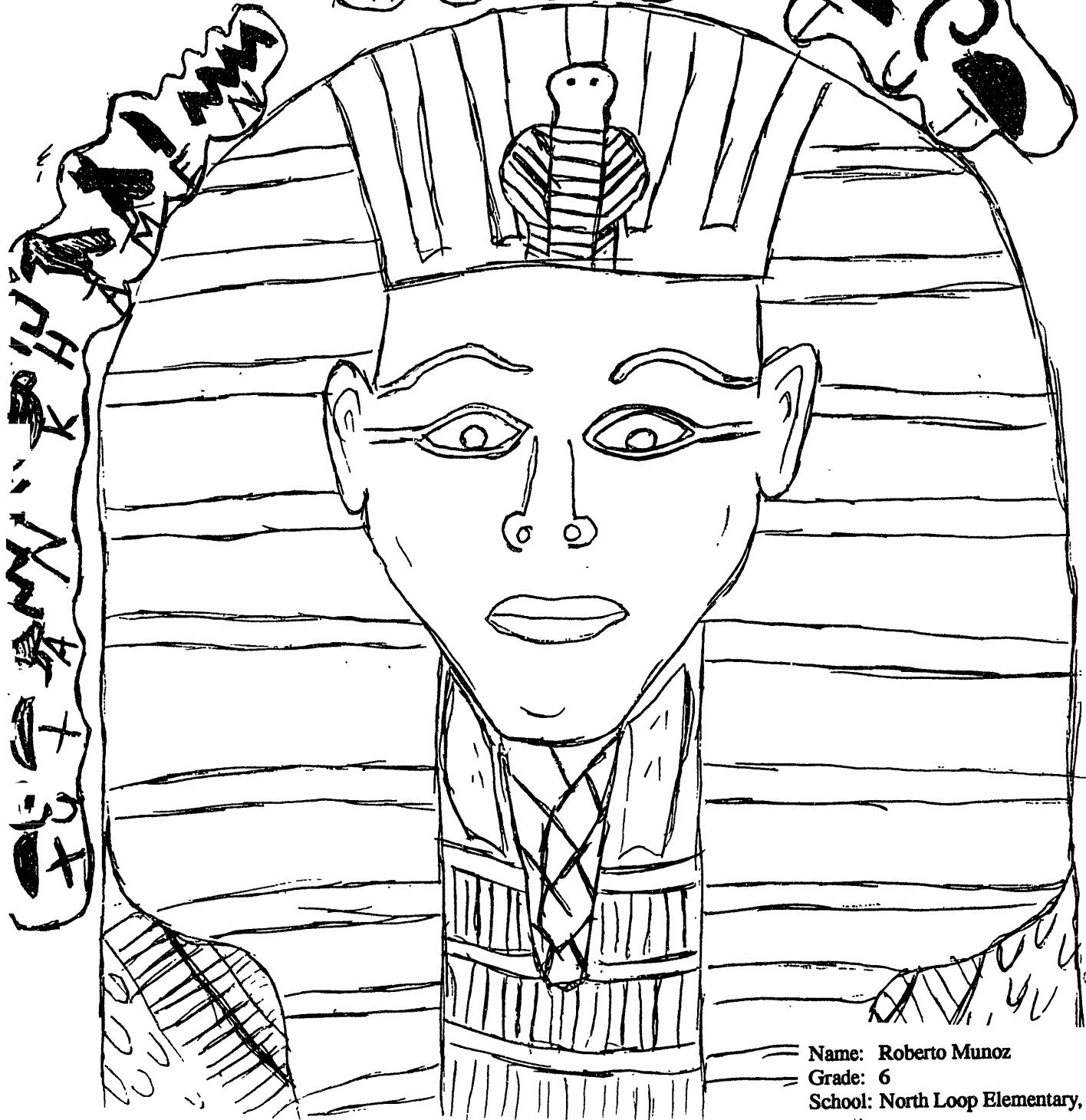
Name: Juan C. Perez, Jr.
Grade: 6
School: North Loop Elementary, Ysleta ISD



Name: David Barraza
Grade: 6
School: North Loop Elementary, Ysleta ISD



K I N G



Name: Roberto Munoz
Grade: 6
School: North Loop Elementary, Ysleta ISD

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours 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 on Aging

Friday, April 30, 1993, at 10 a.m. The Networking/Advocacy/Legislation Committee of the Board on Aging will meet at 1949 South IH-35, Third Floor Large Conference Room, Austin. According to the complete agenda, the committee will call the meeting to order, approve the minutes of the April 7, 1993 meeting, consider staff recommendations on House Bill (HB) 2685, by Naishtat-Relating to guardianships of the person or estate of incapacitated persons, review staff recommendations on other legislation that may require staff, committee or board action, and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: April 19, 1993, 4:36 p.m.

TRD-9321857

Friday, May 6, 1993, at 1:15 p.m. The Planning Committee of the Texas Department on Aging will meet at 1949 South IH-35, Third Floor Small Conference Room, Austin. According to the complete agenda, the committee will call the meeting to order, approve minutes of February 4, 1993 meeting, review quarterly legislative budget board report, review quarterly state plan report summary, review quarterly discretionary grants/projects report, needs assessment subcommittee report, review planning process and format for regional plans and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: April 19, 1993, 4:36 p.m.

TRD-9321856

Texas Department of Agriculture

Tuesday, April 27, 1993, 9 a.m. The Schleicher Cotton Producers Board of the Texas Department of Agriculture will meet at the Schleicher County Agent's Office, Schleicher County Courthouse Annex, Eldorado. According to the complete agenda, the board will discuss approval of previous minutes; De Lux options for settlement with Tri-State Chemical; approve 1993 budget; discuss director elections; TDA report; discuss other business and comments; and adjourn.

Contact: Mitch Jurecek, Route 1, Eldorado, Texas 76936, (915) 853-2231.

Filed: April 19, 1993, 4:10 p.m.

TRD-9321853

Thursday, May 20, 1993, 1 p.m. The Office of Hearings of the Texas Department of Agriculture will meet at the Texas Department of Agriculture, Expressway 83, Two Blocks West of Morningside Road, San Juan. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code Annotated §103.001 et seq. (Vernon 1982) by Sunshine Produce, Inc. as petitioned by Garden Fresh Produce Company.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: April 16, 1993, 2:54 p.m.

TRD-9321797

Thursday, May 20, 1993, 2 p.m. The Office of Hearings of the Texas Department of Agriculture will meet at the Texas Department of Agriculture, Expressway 83, Two

Blocks West of Morningside Road, San Juan. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code Annotated §103.001 et seq. (Vernon 1982) by Sunshine Produce, Inc. as petitioned by Charles Wetegrove Company, Inc.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: April 16, 1993, 2:54 p.m.

TRD-9321796

Thursday, May 20, 1993, 3 p.m. The Office of Hearings of the Texas Department of Agriculture will meet at the Texas Department of Agriculture, Expressway 83, Two Blocks West of Morningside Road, San Juan. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code Annotated §103.001 et seq. (Vernon 1982) by Paradise Produce, Inc. as petitioned by Benny Hall.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: April 16, 1993, 2:54 p.m.

TRD-9321795

Thursday, June 10, 1993, 9 a.m. The Office of Hearings of the Texas Department of Agriculture will meet at the Texas Department of Agriculture, Stephen F. Austin Building, 1700 North Congress Avenue, Room 928B, Austin. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code, §76.071 and §76.041 and 4 TAC §§7.8, 7.4, and 7.24, by Bidall Corporation.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: April 19, 1993, 2:36 p.m.

TRD-9321835

Texas Alcoholic Beverage Commission

Tuesday, April 27, 1993, 2 p.m. The Texas Alcoholic Beverage Commission will meet at 5806 Mesa Drive, Suite 180, Austin. According to the complete agenda, the commission will discuss approval of the minutes of March 23, 1993 meeting; administrator's report on agency activity; recognition of TABC employees with 20 and above years of service; discuss and possibly act on date and time of future meetings of the commission; amendment of 16 TAC §55.550 as published in the *Texas Register* (18 TexReg 1845); briefing on "Cops in Shops"; presentation by Agent Juan J. Gonzales regarding spring break activities on South Padre Island; discuss and possibly act on bingo hearings; and hear public comments.

Contact: Dick Durbin, P.O. Box 13127, Austin, Texas 78711, (512) 458-2500.

Filed: April 19, 1993, 12:41 p.m.

TRD-9321828

Texas Bond Review Board

Friday, April 23, 1993, 9 a.m. The Texas Bond Review Board will meet at the Clements Building, Committee Room Number Five, Fifth Floor, 300 West 15th Street, Austin. According to the complete agenda, the board will call the meeting to order; discuss approval of minutes; consider proposed issues: Texas Department of Criminal Justice-lease purchase of prison facility; General Services Commission-lease purchase of office space; Texas Public Finance Authority-general obligation bonds for Texas Department of Criminal Justice and Texas Youth Commission; discuss other business; and adjourn.

Contact: Jim Thomassen, 300 West 15th Street, Clements Building, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: April 15, 1993, 3:56 p.m.

TRD-9321696

Children's Trust Fund of Texas Council

Wednesday, April 28, 1993, at 10 a.m. The Program Design and Implementation Committee of the Children's Trust Fund of

Texas Council will meet at the University of Texas Medical School Room G.0024, 6431 Fannin Street, Houston. According to the complete agenda, the committee will hear introductions and overview of agenda, program services division report, staff assignments and adjourn.

Contact: Sarah Daehling, 8929 Shoal Creek Boulevard, Suite 200, Austin, Texas 78758, (512) 458-1281.

TRD-9321958

Texas Department of Criminal Justice

Monday, April 26, 1993, 10 a.m. The Board of Criminal Justice, Subcommittee on Construction of the Texas Department of Criminal Justice will meet at the TDCJ Austin Office, 816 Congress Avenue, Suite 500, Austin. According to the agenda summary, the board will discuss current project status, 2,250 man units, 1,000 man units, psychiatric unit, and Alberti units; review of construction projects for board approval; date and location of next meeting; and other items.

Contact: Susan Power-McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: April 16, 1993, 4 p.m.

TRD-9321811

Texas Education Agency

Tuesday, April 20, 1993, 6:30 p.m. The State Board of Education (SBOE) Task Force on Elementary and Early Childhood Education of the Texas Education Agency held an emergency meeting at the Humble High School Teaching Theater, 1700 Wilson Road, Humble. According to the complete agenda, the task force held a public hearing to receive public comment on a range of issues. The task force was examining the quality and effectiveness of student learning in elementary schools and early childhood education. The panel's work was similar to successful practices already undertaken in middle school and high school education. Registration was on a first-come, first-served basis and speakers were limited to three minutes, and were asked to bring 10 copies of any handouts they wished to distribute. The emergency status was necessary as the agency found it of urgent public necessity for this public hearing to be held to obtain public input on the development of the SBOE's policy on elementary and early childhood education.

Contact: Dan Arrigona, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: April 19, 1993, 3:44 p.m.

TRD-9321845

Tuesday, April 27, 1993, 6:30 p.m. The State Board of Education (SBOE) Task Force on Elementary and Early Childhood Education of the Texas Education Agency will meet at the Tyler Independent School District, Administration Building, Room B-1, 319 West Eighth Street, Tyler. According to the complete agenda, the task force will hold a public hearing to receive comments on a range of issues. The task force is examining the quality and effectiveness of student learning in elementary schools and early childhood education. The panel's work will be similar to successful practices already undertaken in middle school and high school education. Those individuals wishing to pre-register may do so by calling (512) 463-9701 by noon on Tuesday, April 27. Registration will be on a first-come, first-served basis and speakers will be limited to three minutes. There will also be on-site registration of speakers. Speakers are asked to bring 10 copies of any handouts they wish to distribute.

Contact: Dan Arrigona, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: April 19, 1993, 3:43 p.m.

TRD-9321844

Texas Employment Commission

Tuesday, April 27, 1993, 9 a.m. The Texas Employment Commission will meet at the TEC Building, Room 644, 101 East 15th Street, Austin. According to the agenda summary, the commission will discuss approval of prior meeting notes; consider proposed or pending legislation and possible action with respect thereto; internal procedures of commission appeals; consider and possibly act on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 17; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: April 19, 1993, 4:08 p.m.

TRD-9321852

General Land Office

Monday, April 26, 1993, 2 p.m. The Oil Spill Prevention and Response Division of the Texas General Land Office will hold an emergency meeting at the John Gray Institute, Seminar Room A-B, 855 East Florida Avenue, Beaumont. According to the complete agenda, the division will hold a public

workshop to discuss development of regulations on submission requirements to the Texas General Land Office for those vessels not required to have a federal plan. The affected vessels are those with the capacity to carry 10,000 gallons or more of oil as fuel or cargo. The emergency status is necessary due to schedule problems.

Contact: Tricia Clark, 1700 North Congress Avenue, Room 740, Austin, Texas 78701, (512) 475-1574.

Filed: April 19, 1993, 3:52 p.m.

TRD-9321847

Tuesday, April 27, 1993, 2 p.m. The Oil Spill Prevention and Response Division of the Texas General Land Office will meet at the University of Houston-Clear Lake, Room 2512, Bayou Building, 2700 Bay Area Boulevard, Houston. According to the complete agenda, the division will hold a public workshop to discuss development of regulations on submission requirements to the Texas General Land Office for those vessels not required to have a federal plan. The affected vessels are those with the capacity to carry 10,000 gallons or more of oil as fuel or cargo.

Contact: Tricia Clark, 1700 North Congress Avenue, Room 740, Austin, Texas 78701-1495, (512) 475-1574.

Filed: April 19, 1993, 3:52 p.m.

TRD-9321848

Wednesday, April 28, 1993, 3 p.m. The Veterans Land Board of the General Land Office will meet at the Stephen F. Austin Building, Room 831, Austin. According to the agenda summary, the board will discuss approval of the February 19, 1993 minutes; consideration authorizing staff to proceed with negotiation and execution of forward supply contracts with acquisition of certain United States Government securities incident to restructuring the escrow funds relating to defeasance of certain Veterans' Land Bonds and 1992 escrow agreement relating to defeasance of certain Veterans' Housing Bonds and negotiation and execution of amendments; consideration to undertake issuance of debt to enhance the Veterans' Housing Assistance Program; requests to reinstate forfeited Accounts Numbers 642-132870 and 448-106278; request to pay in full Account Number 410-051946; and consideration of bids on forfeited land sale to be held on April 27, 1993, at 1 p.m.

Contact: Mae Vrazel, 17th and Congress Avenue, Austin, Texas 78701, (512) 463-5340.

Filed: April 19, 1993, 1:57 p.m.

TRD-9321830

Tuesday, May 4, 1993, 2 p.m. The Oil Spill Prevention and Response Division of the Texas General Land Office will meet at

the Baurer Community Center, Room Two, 2300 Highway 35, Port Lavaca. According to the complete agenda, the division will hold a public workshop to discuss development of regulations on submission requirements to the Texas General Land Office for those vessels not required to have a federal plan. The affected vessels are those with the capacity to carry 10,000 gallons or more of oil as fuel or cargo.

Contact: Tricia Clark, 1700 North Congress Avenue, Room 740, Austin, Texas 78701-1495, (512) 475-1574.

Filed: April 19, 1993, 3:53 p.m.

TRD-9321849

Wednesday, May 5, 1993, 2 p.m. The Oil Spill Prevention and Response Division of the Texas General Land Office will meet at the City Council Chambers, City Hall, 1201 Leopard Street, Corpus Christi. According to the complete agenda, the division will hold a public workshop to discuss development of regulations on submission requirements to the Texas General Land Office for those vessels not required to have a federal plan. The affected vessels are those with the capacity to carry 10,000 gallons or more of oil as fuel or cargo.

Contact: Tricia Clark, 1700 North Congress Avenue, Room 740, Austin, Texas 78701-1495, (512) 475-1574.

Filed: April 19, 1993, 3:53 p.m.

TRD-9321850

General Services Commission

Tuesday, April 27, 1993, 9:30 a.m. The General Services Commission will meet at 1711 San Jacinto, Central Services Building, Room 402, Austin. According to the agenda summary, the commission will consider and discuss the commission's delegation of authority to the executive director; consider proposed \$125.25 regarding scheduling of state conference rooms and repeal of corresponding \$115.8; briefing on the Statewide Telecommunications Network (TEX-AN III); operating budget report; and discuss and consider Employees Assistance Program for General Services Commission Employees.

Contact: Judith M. Porras, 1711 San Jacinto, Austin, Texas 78701, (512) 463-3446, Fax (512) 463-3311.

Filed: April 16, 1993, 2:52 p.m.

TRD-9321792

Office of the Governor

Friday, April 23, 1993, 9:30 a.m. The Automobile Theft Prevention Authority of

the Office of the Governor will meet at the John Reagan Building, Room 104, 105 West 15th Street, Austin. According to the complete agenda, the authority will call the meeting to order; make introductions; hear report by the Department of Public Safety on Status of Statewide Registration Program; report on grantees and programs, by executive director Linda Young; report on schedule for grant process for September 1 grant cycle; appointment of personnel review committee members; border solutions committee report by board member Mateale Rittgers; legislative committee report by board member Mart Hanna; marketing committee report by board member Bob Springer; announce next meeting; and adjourn.

Contact: Linda Young, 221 East 11th Street, Austin, Texas 78701, (512) 463-1919.

Filed: April 15, 1993, 4:06 p.m.

TRD-9321701

Texas Department of Health

Friday, April 23, 1993, 9 a.m. The Family Health Services Committee of the Texas Board of Health of the Texas Department of Health will meet at the Texas Department of Health, Room M-721, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss approval of the minutes of the March 20, 1993 meeting; discuss and possibly act on adoption under federal mandate of rules concerning amendments to the USDA supplemental food program for women, infants and children (WIC) federal regulations and WIC policy and procedure manual; and chronically ill and disabled children's services update.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: April 15, 1993, 4:43 p.m.

TRD-9321706

Friday, April 23, 1993, 10 a.m. The Health Provider, Licensure and Certification Committee of the Texas Board of Health of the Texas Department of Health will meet at the Texas Department of Health, Room M-741, 1100 West 49th Street, Austin. According to the agenda summary, the committee will discuss approval of the minutes of the February 13, 1993 meeting; discuss and possibly act on proposed amendments to the rules concerning respiratory care practitioners; final adoption of rules concerning licensure and regulation of speech-language pathologists and audiologists; and

final adoption of rules concerning the regulation of licensed professional counselors.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: April 15, 1993, 4:42 p.m.

TRD-9321705

Friday, April 23, 1993, 10:30 a.m. The Disease Control Committee of the Texas Board of Health of the Texas Department of Health will meet at the Texas Department of Health, Room M-741, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss approval of the minutes of the March 20, 1993 meeting; discuss and possibly act on repeal of existing rules and proposed new rules and regulations for the control of communicable diseases in man.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: April 15, 1993, 4:43 p.m.

TRD-9321708

Friday, April 23, 1993, 1 p.m. The Public Health Promotion Committee of the Texas Board of Health of the Texas Department of Health will meet at the Texas Department of Health, Room M-721, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss approval of the minutes of the March 20, 1993 meeting; discuss and possibly act on progress report on the fiscal year 1993 public information plan and open discussion concerning committee activities.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: April 15, 1993, 4:43 p.m.

TRD-9321710

Friday, April 23, 1993, 2 p.m. The Texas Board of Health Budget and Finance Committee of the Texas Department of Health will meet at the Texas Department of Health, Room M-741, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss approval of the minutes of the previous meeting; discuss and possibly act on a presentation of federal Medicaid and Title XX reimbursements to the Texas Department of Health for fiscal years 1988-1992.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: April 15, 1993, 4:43 p.m.

TRD-9321709

Friday, April 23, 1993, 3 p.m. The Texas Board of Health Long Term Care Committee of the Texas Department of Health will meet at the Texas Department of Health, Room M-721, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss approval of the minutes of the March 20, 1993 meeting; and discuss and possibly act on final adoption of amendments to nurse aid registry rules.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: April 15, 1993, 4:42 p.m.

TRD-9321704

Saturday, April 24, 1993, 7:30 a.m. The Executive Committee of the Texas Board of Health of the Texas Department of Health will meet at the Texas Department of Health, Room M-741, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss and possibly act on items of procedure for the April 24, 1993 Texas Board of Health meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: April 16, 1993, 3:24 p.m.

TRD-9321802

Saturday, April 24, 1993, 8 a.m. The Environmental Health Committee of the Texas Board of Health 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 approval of the minutes of the March 20, 1993 meeting; discuss and possibly act on: proposed amendments to the rules concerning registration of manufacturers of food, including good manufacturing practices; proposed amendments to the rules for licensing of wholesale distributors of drugs, including good manufacturing practices; proposed amendments to the minimum standards for approved drug treatment programs; proposed amendment to the fees for services for drinking water systems rules to established a certification program for envi-

ronmental laboratories; and hear comments and announcements not requiring committee action.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: April 16, 1993, 3:24 p.m.

TRD-9321801

Saturday, April 24, 1993, 11 a.m. The Personnel Committee of the Texas Board of Health of the Texas Department of Health will meet at the Texas Department of Health, Room M-721, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss in executive session and discuss and possibly act on in open session: appointments to the Family Planning Interagency Council; the Kidney Health Care Advisory Committee; the Community Advisory Committee; the HIV Education; Prevention and Risk Reduction Advisory Committee; and the Advisory Council of the Opticians' Registry.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: April 15, 1993, 4:43 p.m.

TRD-9321707

Saturday, April 24, 1993, noon. The Strategic Planning Committee of the Texas Board of Health of the Texas Department of Health 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 approval of the minutes of the March 20, 1993 meeting; discuss and possibly act on: report of the Commissioner's Task Force on Human Resources; report of the Commissioner's Task Force on Public Health Regions; report of Commissioner's Task Force on Maternal and Child Health; and tracking of resident physicians receiving funding through the resident Physician Compensation Program.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: April 16, 1993, 3:25 p.m.

TRD-9321803

Saturday, April 24, 1993, 1 p.m. The Texas Board of Health of the Texas Department of Health will meet at the Texas Department of Health, Room M-739, 1100

West 49th Street, Austin. According to the agenda summary, the board will discuss approval of the minutes of the March 21, 1993 meeting; consider and possibly act on: commissioner's report; board resolutions; rules (control of communicable diseases, registration of manufacturers of food, licensing of wholesale distributors of drugs, standards for approved drug treatment programs, drinking water fees/certification program for environmental laboratories, USDA supplemental food program for women, infant and children (WIC) program and WIC policy and procedure manual, respiratory care practitioners, licensure and regulation of speech-language pathologists and audiologists, regulation of licensed professional counselors, and nurse aide registry); committee reports (budget/finance; disease control; emergency and disaster; environmental health; family health services; health provider, licensure and certification; hospital and ambulatory care services; long term care; public health promotion; legislative committee; strategic planning; and personnel); strategic planning committee (report from Commissioner's Task Force on: human resources, public health regions and maternal child health); personnel appointments (Family Planning Interagency Council, Kidney Health Care Advisory Committee, Community Advisory Committee, HIV Education, Prevention and Risk Reduction Advisory Committee; and Advisory Council of Opticians' Registry); and hear in open session announcements and comments.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: April 16, 1993, 3:25 p.m.

TRD-9321804

Saturday, April 24, 1993, 3:30 p.m. The Legislative Committee of the Texas Board of Health of the Texas Department of Health 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 the legislative update.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: April 15, 1993, 4:42 p.m.

TRD-9321703

Wednesday, April 28, 1993, 3 p.m. The Naturally Occurring Radioactive Materials (NORM) Committee of the Texas Radiation Advisory Board of the Texas Department of Health will meet at the Exchange Building, 8407 Wall Street, Room S-400, Austin. According to the complete agenda, the committee will discuss and possibly act on:

consideration of *Texas Regulations for Control of Radiation, Part 46* for final adoption; Texas Water Commission's progress and plans for rulemaking for disposal of naturally occurring radioactive materials (NORM); legislation regarding NORM regulation; and other items not requiring board action.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6688. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: April 16, 1993, 3:24 p.m.

TRD-9321800

Texas Department of Housing and Community Affairs

Wednesday-Thursday, April 28-29, 1993, 9 a.m. The Programs Committee of the Board of Directors of the Texas Department of Housing and Community Affairs will meet at 811 Barton Springs Road, Suite 300, Austin. According to the agenda summary, the committee will consider and possibly act upon RFP for CHDO Training Manual; HOME funds applications; multi-family financing fees, refunding policies, amendment to Remington Hill and High Point Refunding Resolution and income limit adjustments; direct lending by TDHCA; single family lease purchase program; amendments to multi-family rules; appeals process for HOME, Housing Trust Fund and LIHTC (Timeline); and Tax Credit Equity Fund (Timeline); and adjourn. Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822 or Relay Texas at 1 (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: Henry Flores, 811 Barton Springs Road, Austin, Texas 78794, (512) 475-3937.

Filed: April 19, 1993, 8:54 a.m.

TRD-9321814

Texas Incentive and Productivity Commission

Thursday, April 29, 1993, 10 a.m. The Texas Incentive and Productivity Commission will meet at the Insurance Building, 11th and San Jacinto Streets, Room 442, Austin. According to the revised agenda summary, the commission will add additional agencies to Agenda Item IV, "Con-

sideration of 1993 Productivity Plans;" Third Court of Appeals and Texas Workers' Compensation Commission.

Contact: M. Elaine Powell, P.O. Box 12482, Austin, Texas 78711, (512) 475-2399.

Filed: April 16, 1993, 10:18 a.m.

TRD-9321734

Texas Department of Insurance

Wednesday, April 28, 1993, 9 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 100, 333 Guadalupe Street, Austin. According to the agenda summary, the board will review and discuss personnel; litigation; commissioner's orders; solvency; budget; hear staff reports; legislative update; consider filings by the following companies: Insurance Corporation of America; Maryland Casualty Company et al, British American Insurance Company; Pacific Indemnity Company et al, Oumis Insurance Society, Inc., Employers Insurance of Wausau and Wausau Underwriters Insurance Company, Nationwide Mutual Fire Insurance Company; Travelers Lloyds Insurance Company; Allendale Mutual Insurance Company; Arkwright Insurance Company and Arkwright Mutual Insurance Company; The Home Indemnity Company; Protection Mutual Insurance Company; Ranger Insurance Company and Ranger Lloyds; Mutual Service Casualty Insurance Company; and Reliance Insurance Company et al.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: April 16, 1993, 10:52 a.m.

TRD-9321755

Wednesday, May 12, 1993, 1:30 p.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 100, 333 Guadalupe Street, Austin. According to the complete agenda, the board will hold a public hearing under Docket Number 1980 to consider the appeal from Commissioner's Orders Numbers: 92-1002, 92-1110, 93-0022 and 93-0126 concerning Richard A. Hunter.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: April 16, 1993, 2:43 p.m.

TRD-9321789

Texas Commission on Law Enforcement Officer Standards and Education

Tuesday, May 4, 1993, 10 a.m. The Texas Peace Officers' Memorial Advisory Committee of the Texas Commission on Law Enforcement Officer Standards and Education will meet at the TCLEOSE Headquarters, 1033 LaPosada, Austin. According to the complete agenda, the committee will call the meeting to order; take roll call of members; recognition of visitors; discuss approval of the minutes of the March 15, 1993, meeting; introduction of regional directors present; review and take action on recommendations for distribution of the Memorial-Capitol Complex prints and window decals; announce and make presentations of Memorial-Capitol Complex prints; receive legislative update; receive the director's activity report to include results of regional director's workshop and regional directors' report; public comments on any subject without discussion will be received; and adjourn.

Contact: Edward T. Laine, 1033 LaPosada, Suite 175, Austin, Texas 78752, (512) 450-0188.

Filed: April 16, 1993, 5:12 p.m.

TRD-9321813

Texas Department of Licensing and Regulation

BOARD, COMMITTEE: Inspections and Investigations: Air Conditioning
DATE OF MEETING: Wednesday, April 28, 1993 9:00 a.m.
STREET LOCATION: 920 Colorado, E.O. Thompson Bldg., 10th Floor Conference Room
CITY LOCATION: Austin, Texas 78701
COMPLETE AGENDA: X

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 Joe Higginbotham dba Higginbotham Refrigerant Service for violation of Texas Revised Civil Statutes Annotated Article 6687-9b, 16 T.A.C., Sections 80.20 and 80.100(a) and Article 9100.

ADDITIONAL INFORMATION OBTAINED FROM: Paula Hamje, Hearings Examiner, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701 (512) 463-3192

Filed: April 19, 1993, 11:54 a.m.

TRD-9321826

BOARD, COMMITTEE: Inspections and Investigations: Tow Truck
DATE OF MEETING: Thursday, April 29, 1993 9 a.m.

STREET LOCATION: 920 Colorado, E.O. Thompson Bldg., 10th Floor Conference Room

CITY LOCATION: Austin, Texas 78701
COMPLETE AGENDA: X

AGENDA: 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 Ceasar Vargas dba Ceasar & Sons Automotive for violation of Texas Revised Civil Statutes Annotated Article 6687-9b, 16 T.A.C., Sections 80.20 and 80.100(a) and Article 9100.

ADDITIONAL INFORMATION

OBTAINED FROM: Paula Hamje, Hearings Examiner, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701(512) 463-3192

Filed: April 19, 11:53 a.m.

TRD-9321825

BOARD, COMMITTEE: Inspections and Investigations: Auctioneers
DATE OF MEETING: Wednesday, May 19, 1993 9 a.m.

STREET LOCATION: 920 Colorado, E.O. Thompson Bldg., 10th Floor Conference Room

CITY LOCATION: Austin, Texas 78701
COMPLETE AGENDA: X

AGENDA: 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 Robert Rick Sayko dba Rick Sayko Auctioneers for violation of Texas Revised Civil Statutes Annotated Article 8700, 16 T.A.C., Section 67.101(4) and Article 9100.

ADDITIONAL INFORMATION

OBTAINED FROM: Paula Hamje, Hearings Examiner, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701 (512) 463-3192

Filed: April 19, 1993, 11:53 a.m.

TRD-9321824

Texas Board of Pardons and Paroles

Monday-Friday, April 26-30, 1993, 1:30 p.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 2503 Lake Road, Suite Two, Huntsville. According to the agenda summary, the panel(s) (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees

subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: April 16, 1993, 8:47 a.m.

TRD-9321715

Tuesday-Wednesday, April 27-28, 1993, 1:30 p.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1550 East Palestine Street, Suite 100, Palestine. According to the agenda summary, the panel(s) (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: April 16, 1993, 8:48 a.m.

TRD-9321716

Thursday, April 29, 1993, 8 a.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1212 North Velasco, Suite 201, Angleton. According to the agenda summary, the panel(s) (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: April 16, 1993, 8:48 a.m.

TRD-9321717

Thursday, April 29, 1993, 9 a.m. (Rescheduled from April 29, 1993, 8 a.m.). The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1212 North Velasco, Suite 201, Angleton. According to the agenda summary, the panel(s) (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to

include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: April 19, 1993, 10:22 a.m.

TRD-9321822

Thursday-Friday, April 29-30, 1993, 9 a.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1550 East Palestine Street, Suite 100, Palestine. According to the agenda summary, the panel(s) (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: April 16, 1993, 8:47 a.m.

TRD-9321713

Thursday-Friday, April 29-30, 1993, 12:30 p.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at Route 5, Box 258-A, Gatesville. According to the agenda summary, the panel(s) (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: April 16, 1993, 8:47 a.m.

TRD-9321714

Texas State Board of Pharmacy

Tuesday-Wednesday, April 27-28, 1993, 9 a.m. The Public Hearing and Board Business Meeting of the Texas State Board of Pharmacy will meet at 1812 Centre Creek, Room 203, Austin. According to the agenda summary, the board will hear testimony regarding proposed amendments to Chapters 291 and 303 as published in the March 9, 1993 *Texas Register*. Following public testi-

mony the board will greet new personnel and new Assistant Attorney General; consider for approval September 15, 1992 board business meeting minutes; review Fiscal Year 1993 expenditures; review and approve Fiscal 1993-1995 cash flow analysis and licensure fee projections; discuss and take action on possible amendments to §295.5 relating to pharmacist licensure renewal fees; hear report on status of Fiscal 1994-1995 appropriations request; discuss Attorney General Letter Opinion Number 93-26 relating to revenues collected by TSBP; hear report on legislation introduced to the 73rd Legislative Session relating to TSBP or pharmacy practice; discussion relating to OBRA requirements; discuss physical requirements for counseling areas and consider and take action on possible amendments to §§291.33(b)(1) and 291.36(d)(2)(A) relating to patient counseling areas; review Fiscal Year 1994 calendar of events; consider petition for extension of time for reporting CE; discuss professional practice issues relating to compounding/manufacturing; discuss Board Advisory Committee on Class C Pharmacy Rules; discuss issues relating to pharmacy technicians; hear presentation on procedures relating to the State Office of Administrative Hearings; discuss Texas Ethics Commission and Ethics Legislation; hear report on Texas Guaranteed Student Loan defaulters; hear reports on recent meetings; discuss upcoming conferences and events; consider a Motion for Rehearing from Freddy Cooper; consider and take action on Proposed Agreed Board Orders; commence into executive session to consider and take action on Fiscal Year 1994-1995 contract and consider achievement bonus for the Executive Director; and discuss Agreed Board Orders involving impaired pharmacists during executive session.

Contact: Gay Dodson, 1812 Centre Creek, Austin, Texas 78754, (512) 832-0661.

Filed: April 16, 1993, 3:43 p.m.

TRD-9321809

Public Utility Commission of Texas

Monday, April 26, 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 hearing on the merits in Docket Number 11826-application of Guadalupe Blanco River Authority for a reconciliation of costs of the Canyon Hydroelectric Division for fiscal year 1992.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 15, 1993, 3:14 p.m.

TRD-9321693

Monday, May 3, 1993, 9 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a prehearing conference in Docket Number 11892-General Counsel's original petition for generic proceeding regarding purchased power.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 16, 1993, 3:39 p.m.

TRD-9321807

Tuesday, May 25, 1993, 10 a.m. (Rescheduled from Monday, May 24, 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 fourth prehearing conference in Docket Number 10832-Houston Lighting and Power Company standard avoided cost calculation for the purchase of firm energy and capacity from qualifying facilities, pursuant to Substantive Rule 23.66(h)(3).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 16, 1993, 3:39 p.m.

TRD-9321806

Monday, August 11, 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 11643-application of Wood County Electric Cooperative, Inc. to amend certificate of convenience and necessity for proposed transmission line within Wood and Smith Counties.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 15, 1993, 3:14 p.m.

TRD-9321692

Railroad Commission of Texas

Tuesday, April 20, 1993, 2 p.m. The Railroad Commission held an emergency meeting at the William B. Travis Building, 1701 North Congress Avenue, Room 12-126, Austin. The emergency status was necessary as the statute requires that the commission determine the market demand for gas before the 20th day of each month. This determination must be made pursuant to the Open Meeting Act. According to the agenda

summary, the commission held its monthly statewide hearing on oil and gas to determine the lawful market demand for oil and gas and to consider and/or take action on matters posted.

Contact: Paula Middleton, P.O. Box 12967, Austin, Texas 78711, (512) 463-6729.

Filed: April 19, 1993, 10:34 a.m.

TRD-9321823

Monday, April 26, 1993, 9:30 a.m. The Railroad Commission of Texas will meet in the First Floor Conference Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin. Agendas follow.

The commission will consider and act on the Administrative Services Division Director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711, (512) 463-7257.

Filed: April 16, 1993, 10:28 a.m.

TRD-9321739

The commission will consider and act on the Personnel Division Director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711, (512) 463-6710.

Filed: April 16, 1993, 10:30 a.m.

TRD-9321745

The commission will consider and act on the Office of the Executive Director's report on commission budget and fiscal matters, administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants. The commission will discuss a proposed training agreement for the Gas Utilities Section of the Legal Division. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel, and pending litigation. Consideration of a contract for public information services.

Contact: Walter H. Washington, Jr., P.O. Box 12967, Texas 78711-2967, (512) 463-7274.

Filed: April 16, 1993, 10:30 a.m.

TRD-9321746

The commission will consider and act on the Automatic Data Processing Division Director's report on division administration, budget, procedures, equipment acquisitions and personnel matters.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78711, (512) 463-7251.

Filed: April 16, 1993, 10:29 a.m.

TRD-9321744

The commission will meet in consideration of category determinations under sections 102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108 of the Natural Gas Policy Act of 1978.

Contact: Margie Osborn, P.O. Box 12967, Austin, Texas 78711, (512) 463-6755.

Filed: April 16, 1993, 10:29 a.m.

TRD-9321743

The commission will consider and act on the Office of Information Services Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78701, (512) 463-6710.

Filed: April 16, 1993, 10:29 a.m.

TRD-9321742

The commission will consider and act on the Investigation Division Director's report on division administration, investigations, budget, and personnel matters.

Contact: Marcelo R. Montemayor, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6828.

Filed: April 16, 1993, 10:29 a.m.

TRD-9321741

The commission will consider various applications and other matters within the jurisdiction of the agency including oral arguments. The commission may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The commission will meet in executive session as authorized by the Open Meetings Act.

Contact: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-6921.

Filed: April 16, 1993, 10:30 a.m.

TRD-9321747

The commission will consider and act on the Division Director's report on budget, personnel and policy matters related to operation of the Alternative Fuels Research and Education Division.

Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

Filed: April 16, 1993, 10:29 a.m.

TRD-9321740

Texas Rehabilitation Commission

Monday, April 26, 1993, 9:30 a.m. The Texas Advisory Board of Occupational Therapy of the Texas Rehabilitation Commission will hold an emergency meeting at 4900 North Lamar Boulevard, Austin. According to the agenda summary, the commission will call the meeting to order; discuss election of chair and vice-chair; appointment to committees; approval of the minutes of January 8, 1993; recess to committee meetings; reconvene to board meeting; report from application review committee; requested appearance of Emma Barria; report from complaint review committee; report from Texas Occupational Therapy Association; office report; review of proposed TAROT rule revisions; and adjourn. The emergency meeting is necessary due to confirmation of appearance of licensee before the board.

Contact: Linda Vaclavik, 4900 North Lamar Boulevard, Austin, Texas 78751-2399, (512) 483-4072.

Filed: April 19, 1993, 4:48 p.m.

TRD-9321859

Monday, April 26, 1993, 9:45 a.m. The Application Review Committee/Texas Advisory Board of Occupational Therapy of the Texas Rehabilitation Commission will hold an emergency meeting at 4900 North Lamar Boulevard, Austin. According to the agenda summary, the committee will call the meeting to order; review and discuss applications; and adjourn. The emergency meeting is necessary due to confirmation of appearance of licensee before the board.

Contact: Linda Vaclavik, 4900 North Lamar Boulevard, Austin, Texas 78751-2399, (512) 483-4072.

Filed: April 19, 1993, 4:49 p.m.

TRD-9321860

Monday, April 26, 1993, 10:15 a.m. The Complaint Review Committee/Texas Advisory Board of Occupational Therapy of the Texas Rehabilitation Commission will hold an emergency meeting at 4900 North Lamar Boulevard, Austin. According to the agenda summary, the committee will call the meeting to order; review and discuss complaints; and adjourn. The emergency meeting is necessary due to confirmation of appearance of licensee before the board.

Contact: Linda Vaclavik, 4900 North Lamar Boulevard, Austin, Texas 78751-2399, (512) 483-4072.

Filed: April 19, 1993, 4:54 p.m.

TRD-9321861

Texas National Research Laboratory Commission

Monday, April 26, 1993, 11 a.m. The Site Acquisition and Development Committee will meet at the Dallas Love Field Airport Administration Offices, Mezzanine Level, Conference Room A. According to the agenda summary, the committee will convene meeting; take roll call of members; consider and act as may be appropriate: approval of minutes; TxDOT development schedule for road improvements; contract with TRA for raw water system project; progress report on water and wastewater services; socioeconomic monitoring services; UFS contract change order; personnel actions; public comments; and adjourn.

Contact: Karen L. Chrestay, 1801 North Hampton, Suite 400, DeSoto, Texas 75115, (214) 709-3800.

Filed: April 16, 1993, 2:51 p.m.

TRD-9321790

Center for Rural Health Initiatives

Friday, April 23, 1993, 9:30 a.m. The Outstanding Rural Scholar Recognition Program Advisory Committee of the Center for Rural Health Initiatives will meet at the Southwest Tower Building Seventh Conference Room, 211 East Seventh Street, Austin. According to the complete agenda, the committee will discuss the projected budget; and selection and ranking of nominees for recognition.

Contact: Claudia Slegel, 211 East Seventh Street, #915, Austin, Texas 78701, (512) 479-8891.

Filed: April 15, 1993, 10:30 a.m.

TRD-9321670

Wednesday, May 5, 1993, 1:30 p.m. The Executive Committee of the Center for Rural Health Initiatives will meet at the Eastland Memorial Hospital Conference Room, 304 South Daugherty Street, Eastland. According to the complete agenda, the committee will discuss the outstanding rural scholar recognition and awards; healthfind; rural health clinic contracts; give legislative update; changes in prescription limitation for Medicaid clients; rural health summit; and agency strategic planning.

Contact: Claudia Slegel, 211 East Seventh Street, #915, Austin, Texas 78701, (512) 479-8891.

Filed: April 16, 1993, 9:01 a.m.

TRD-9321718

Board for Lease of State-Owned Lands

Friday, April 23, 1993, 9 a.m. The Board for Lease of Texas Department of Criminal Justice of the Board for Lease of State-Owned Lands will meet at the General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 833, Austin. According to the agenda summary, the board will discuss approval of the minutes of the previous board meeting; and consider and discuss approval of tracts, terms, conditions, and procedures for special oil and gas lease sale for June 1, 1993.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: April 15, 1993, 4:23 p.m.

TRD-9321702

Texas Department of Transportation

Tuesday, April 27, 1993, 9:30 a.m. The Texas Transportation Commission of the Texas Department of Transportation will meet at the Dewitt C. Greer Building, 125 East 11th Street, Austin. According to the agenda summary, the commission will discuss approval of minutes; execute contract awards/rejections/defaults/assignments; routine minute orders; authorize: environmental projects; Interstate Highway, U.S. Highway, State Highway and FM Road projects; state-wide public hearing for transportation planning; funding for transit projects; consider resolution relating to mass transportation; aviation project; response to previous delegation appearance; transportation corporation matters; new district headquarters matters; revised policies for private consultants and professional services contracting; rulemaking: 43 TAC Part 1, Chapters 11 and 17; meet in executive session with legal counsel and for realty matters; hear staff reports; and hold open comment period.

Contact: Myrna Klipple, 125 East 11th Street, Austin, Texas 78701, (512) 463-8576.

Filed: April 16, 1993, 11:40 a.m.

TRD-9321756

Texas Turnpike Authority

Friday, April 23, 1993, 9 a.m. The Contract Awards Committee of the Texas Turnpike Authority will meet at the Texas Turnpike Authority Administration Building, 3015 Raleigh Street, Dallas. According to the revised complete agenda, the committee will take roll call of the directors; meet in executive session-pursuant to Texas Civil

Statutes, Article 6252-17: consultation with attorney and staff concerning VIVID contract and threatened litigation; discuss VIVID contract and presentations by interested parties; and adjourn.

Contact: Harry Kabler, P.O. Box 190369, Dallas, Texas 75219, (214) 522-6200.

Filed: April 15, 1993, 3:13 p.m.

TRD-9321691

The University of Texas at Austin

Monday, April 19, 1993, 3:30 p.m. The Council for Intercollegiate Athletics for Women of the University of Texas at Austin met at the Ex-Students' Association, Moffett Library, 21st and San Jacinto Streets, University of Texas, Austin. According to the agenda summary, the council called the meeting to order; discussed approval of the minutes of previous meeting; old business; new business; announcements/information reports; met in executive session; and adjourned.

Contact: Jody Conradt, UT Austin, 33800 BEL 718, Austin, Texas 78712, (512) 471-7693.

Filed: April 15, 1993, 2:27 p.m.

TRD-9321683

Texas Veterans Commission

Friday, May 7, 1993, 9 a.m. The Texas Veterans Commission will meet at the E. O. Thompson Building, Sixth Floor, Tenth and Colorado Streets, Austin. According to the complete agenda, the commission will consider reports of commission; discuss approval of minutes of second quarterly meeting; discuss matters concerning the legislative session, proposed veterans legislation; and make decisions regarding administrative matters pertaining to veterans counseling and assistance.

Contact: Douglas K. Brown, P.O. Box 12277, Austin, Texas 78711, (512) 463-5538.

Filed: April 19, 1993, 2:36 p.m.

TRD-9321836

Texas Water Commission

Thursday, April 22, 1993, 6 p.m. The Sayle Creek Sediment Remediation Committee of the Texas Water Commission met at the Fire Sub-station, Corner of Ross and Pritchard Road, Commerce. According to the agenda summary, the committee discussed appropriate responses to the contamination in Sayle Creek.

Contact: Barbara Ferguson, P.O. Box 13087, Austin, Texas 78711-3087, (800) 633-9363.

Filed: April 16, 1993, 2:17 p.m.

TRD-9321773

Tuesday, April 27, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 123, Austin. According to the agenda summary, the commission will consider an innovative technology policy in which the agency encourages technologies which result in a reduction of waste materials and emissions to the environment.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: April 15, 1993, 3:58 p.m.

TRD-9321697

Wednesday, April 28, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider approving the following matters: Class 2 modification; municipal solid waste permit; water quality permits; amendments to water quality permits; minor amendments to water quality permits; renewal to water quality permits; water right permits; district matters; water rate matters; emergency order; superfund; contracts; regulating on-site sewage facilities; examiner's memorandums and orders; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: April 15, 1993, 3:58 p.m.

TRD-9321698

Wednesday, April 28, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider approving the following matters: water quality enforcement orders; hazardous waste enforcement; rate enforcement; municipal waste enforcement; petroleum storage tank enforcement; rules; meet in executive session; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to rescheduling an item in its

entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: April 15, 1993, 4 p.m.

TRD-9321699

Wednesday, May 12, 1993, 6 p.m. The Texas Water Commission will meet at the Harker Heights Police Station, Courtroom, 120 South Harley Drive, Harker Heights. According to the agenda summary, the commission will hold a public meeting to consider an application for municipal solid waste facility permit by Waste Management of Texas, Inc., Proposed Permit Number MSW2213. The facility is to be 30 feet southwest of the intersection of Lookout Ridge Boulevard and Edwards Drive, within the City limits of Harker Heights, Bell County.

Contact: Ann Scudday, P.O. Box 13087, Austin, Texas 78711, (512) 908-6688.

Filed: April 19, 1993, 2:39 p.m.

TRD-9321842

Thursday, May 13, 1993, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1028A, Austin. According to the agenda summary, the commission will hold a hearing on Bayview Irrigation District Number 11's appeal filed with the Texas Water Commission under Sections 11.041 and 12.013 of the Texas Water Code, concerning wholesale water rates charged by Cameron County Irrigation District Number Six.

Contact: Jim Bateman, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 16, 1993, 9:36 a.m.

TRD-9321726

Wednesday, May 19, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will hold a hearing on Colorado River Municipal Water District's Application Number 5457 for a permit to complete construction and maintain a dam creating a reservoir (Sulphur Draw Reservoir) on Sulphur Springs Draw, tributary of Beals Creek, tributary of Colorado River, Colorado River Basin. Applicant is also requesting authority to enlarge an existing nearby off-channel playa lake, thereby creating an impoundment referred to as Red Lake Reservoir, which will be hydraulically connected to Sulphur Draw Reservoir by a gated earthen channel. The reservoirs will be in Martin County, approximately 13 miles north of Stanton. Applicant is also requesting to divert and use not to exceed

1.250 acre-feet of water per annum from the perimeter of each reservoir (for industrial and/or mining purposes) at a maximum diversion rate of 3,100 gallons per minute from each reservoir.

Contact: Terry Slade, P.O. Box 13087, Austin, Texas 78711, (512) 475-4586.

Filed: April 16, 1993, 9:39 a.m.

TRD-9321732

Friday, May 21, 1993, at 10 a.m. The Office of the Hearings Examiner of the Texas Water Commission will meet at the Sam Houston State Office Building Room 117, 201 East 14th Street, Austin. According to the agenda summary, the commission will review public hearing on appeal pursuant to §26.177 of the Texas Water Code on the Ordinance known as the "Save Our Springs Initiative". The appeals were filed by One Austin Capital Group, Robert L. James, Ramon C. Noches, Shirley and Leonard Melcher, Joye C. and William L. Brooks, William J. Mathews and H. Ken Rigsbee.

Contact: Deborah Thomas, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 20, 1993, 9:21 a.m.

TRD-9321865

Monday, May 24, 1993, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1028A, Austin. According to the agenda summary, the commission will hold a hearing on Encanto Real Utility District of Harris County's applications for approval of standby fees to supplement the debt service account and to cover operation and maintenance expenses. The nature and purpose of standby fees is to distribute a fair portion of the cost burden for operation and maintenance of the District's facilities and/or for financing capital costs of the District's facilities to owners of property who have not constructed improvements but have water and/or wastewater facilities or capacity available.

Contact: Jim Bateman, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 16, 1993, 9:36 a.m.

TRD-9321727

Thursday, May 27, 1993, 9 a.m. The Texas Water Commission will meet at the Texas A&M Research and Extension Service Auditorium, Highway 44, Corpus Christi. According to the agenda summary, the commission will consider Texas Ecologists, Inc. application to the commission for a major amendment to Permit Number HW50052-001 in order to authorize revisions to the design of the leachate collection system and the liner system for future dis-

posal cells at its hazardous waste management facility. Pursuant to 31 TAC §305.69(d), TECO has also applied for a Class 3 modification to authorize construction of an above-grade continuous cell in the western 1/3 of the property covered by this permit. Individual cells currently authorized under the existing permit would be constructed as one continuous cell. The facility is located on a 240-acre tract of land on Petronila Road, approximately 0.5 mile southeast of the intersection of FM Road 2826 and Petronila Road, and approximately 3.5 miles south of Robstown, Nueces County.

Contact: Elizabeth Bourbon, P.O. Box 13087, Austin, Texas 78701, (512) 463-7875.

Filed: April 19, 1993, 2:38 p.m.

TRD-9321838

Wednesday, June 23, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will hold a hearing on Application Number 5455 submitted by David C. "Charlie" Zunker for a water rights permit to divert 3 acre-feet of water per annum from the San Antonio River, San Antonio River Basin. The water will be used to irrigate 1.81 acres of land owned by the applicant (to grow grass in a sloped area to help control erosion), in Karnes County, approximately 10 miles northwest of Karnes City.

Contact: Lann Bookout, P.O. Box 13087, Austin, Texas 78711, (512) 463-8195.

Filed: April 16, 1993, 9:37 a.m.

TRD-9321731

Wednesday, June 23, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will hold a hearing on Application Number 3913-A to amend Permit Number 3663 for William V. and Aurora N. Walker and Joe G. Smyth. Permit Number 3663 was issued to Joe G. Smyth, Jr. and J. Beaumont Smyth on April 10, 1979, and authorizes owners to maintain a dam creating Big Tank Lake on Wood Slough, tributary of Turkey Creek, tributary of Soldier Slough, tributary of Nueces River, Nueces River Basin, and impound therein 1,281 acre-feet of water for domestic and livestock purposes. The dam and reservoir (Big Tank Lake) are located approximately 13 miles southwest of Uvalde in Uvalde County. The applicants are requesting that a 20 year term imposed under a Special Condition in the permit be removed, so that there are no term limitations.

Contact: Lann Bookout, P.O. Box 13087, Austin, Texas 78711, (512) 463-8195.

Filed: April 16, 1993, 9:37 a.m.

TRD-9321728

Wednesday, June 23, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will hold a hearing on Application Number 5454 for Sabine Mining Company for a permit to impound 100 acre-feet of water per annum in an existing on-channel reservoir (Pond 91-D1-012) on an unnamed tributary of Hatley Creek, tributary of the Sabine River, Sabine River Basin. The water will subsequently be diverted for industrial purposes (dust suppression and earth fill compaction) from the perimeter of the on-channel reservoir at a maximum rate of 4.46 cfs (2,000 gpm). The reservoir is located in Harrison County, approximately 4 1/2 miles southeast of Hallsville, and approximately 11 miles southwest of Marshall.

Contact: Mark Evans, P.O. Box 13087, Austin, Texas 78711, (512) 475-4584.

Filed: April 16, 1993, 9:37 a.m.

TRD-9321729

Wednesday, July 14, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will hold a hearing on Application Number 5408-A for the Woodlands Corporation to amend Water Use Permit Number 5408, issued on June 26, 1992 authorizing (with a March 10, 1992 priority date) the impoundment of not to exceed 92 acre-feet of water on an unnamed tributary of Decker Branch, San Jacinto River Basin, approximately 15 miles southwest of Conroe in Montgomery County. The water is authorized for recreational purposes, with no right of diversion. Applicant is requesting authorization to add two additional reservoirs for recreational use, with no right of diversion. The first reservoir is an existing impoundment on Goodson Branch, tributary of Decker Branch, tributary of Mill Creek, tributary of Spring Creek, tributary of the West Fork San Jacinto River, tributary of the San Jacinto River, San Jacinto River Basin, approximately 16 miles southwest of Conroe in Montgomery County. The second reservoir will be on Cow Branch, tributary of Decker Branch, tributary of Mill Creek, tributary of Spring Creek, tributary of the West Fork San Jacinto River, tributary of the San Jacinto River, San Jacinto River Basin, approximately 12 miles southwest of Conroe in Montgomery County.

Contact: Mark Evans, P.O. Box 13087, Austin, Texas 78711, (512) 475-4584.

Filed: April 16, 1993, 9:37 a.m.

TRD-9321730

Texas Water Resources Finance Authority

Tuesday, April 27, 1993, 10 a.m. The Texas Water Resources Finance Authority will meet at the Stephen F. Austin Building, Room 513-F, 1700 North Congress Avenue, Austin. According to the complete agenda, the authority will consider necessary authorizations to proceed with Interim Program Asset Sale and any alternatives in connection therewith.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78701, (512) 463-7847.

Filed: April 19, 1993, 4 p.m.

TRD-9321851

Texas Workers' Compensation Commission

Thursday, April 22, 1993, 10 a.m. The Texas Workers' Compensation Commission met in Room 910-911, Southfield Building, 4000 South IH-35, Austin. According to the agenda summary, the commission called the meeting to order; discussed approval of the minutes; rules for amendments: Chapter 126 and Chapter 128; rules for proposal: Chapter 129 and Chapter 145; acted on rulemaking petition and applications for self-insurance; met in executive session; acted on matters considered in executive session; discussed and staffed direction on any issues regarding policy or rules; general reports and action; future public meetings; and adjourned.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 448-7978.

Filed: April 16, 1993, 11:41 a.m.

TRD-9321757

Regional Meetings

Meetings Filed April 15, 1993

The Deep East Texas Council of Governments Solid Waste Task Force met at the Shelby County Courthouse, Community Room-Second Floor, 200 San Augustine Street, Center, April 22, 1993, at 10 a.m. Information may be obtained from Katie Bayliss, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9321678.

The Harris County Appraisal District Board of Directors met at 2800 North Loop West, Eighth Floor, Houston, April 20,

1993, at 9:30 a.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292-0975, (713) 957-5291. TRD-9321671.

The Heart of Texas-Region Mental Health and Mental Retardation Center Board of Trustees met at 110 South 12th Street, Waco, April 20, 1993, at 11:45 a.m. Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas 76703, (817) 752-3451. TRD-9321687.

The Kendall Appraisal District Board of Directors met at 121 South Main Street, Kendall Appraisal Office, Boerne, April 22, 1993, at 5 p.m. Information may be obtained from J. P. Davis, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012. TRD-9321689.

The Lamar County Appraisal District Regular Board will meet at the Lamar County Appraisal District Office, 521 Bonham Street, Paris, April 27, 1993, at 5 p.m. Information may be obtained from Joe Welch, 521 Bonham Street, Paris, Texas 75460, (903) 785-7822. TRD-9321681.

The Lamb County Appraisal District Appraisal Review Board will meet at 330 Phelps Avenue, Littlefield, May 18, 1993, at 8 a.m. Information may be obtained from Vaughn McKee, P.O. Box 552, Littlefield, Texas 79339, (806) 385-6474. TRD-9321680.

The Mental Health and Mental Retardation Authority of Brazos Valley Board of Trustees met at 804 Texas Avenue, Conference Room A, Bryan, April 21, 1993, at 1:30 p.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77803, (409) 822-6467. TRD-9321700.

The Middle Rio Grande Development Council Executive Committee met at the MRGDC Central Office, 1904 North First Street, Carrizo Springs, April 20, 1993, at 5 p.m. Information may be obtained from Michael Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9321690.

The Parmer County Appraisal District Board of Director will meet at 305 Third Street, Bovina, May 13, 1993, at 7:30 p.m. Information may be obtained from Ron Procter, Box 56, Bovina, Texas 79009, (806) 238-1405. TRD-9321682.

The Tax Appraisal District of Bell County Board of Directors met at the Tax Appraisal District Building, 411 East Central Avenue, Belton, April 21, 1993, at 7 p.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-5841, Ext. 29. TRD-9321694.

The TML Group Benefits Risk Pool Board of Trustees, Group Benefits Risk

Pool met at the Grove Park Inn, Asheville, North Carolina, April 22, 1993, at 9 a.m. Information may be obtained from Suzanne Steindorf, 211 East Seventh Street, Austin, Texas 78701, (512) 320-7861. TRD-9321688.

The Trinity River Authority of Texas Central Regional Wastewater System Right-of-Way Committee met at 5300 South Collins, Arlington, April 22, 1993, at 11 a.m. Information may be obtained from James L. Murphy, 5300 South Collins, Arlington, Texas 76018, (817) 467-4343. TRD-9321673.

◆ ◆ ◆
Meetings Filed April 16, 1993

The Austin Travis County Mental Health and Mental Retardation Center Planning and Operations Committee met at 1430 Collier Street, Board Room, Austin, April 21, 1993, at 7:30 a.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9321749.

The Austin Travis County Mental Health and Mental Retardation Center Finance and Control Committee met at 1430 Collier Street, Austin, April 21, 1993, at noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9321748.

The Austin Travis County Mental Health and Mental Retardation Center Board of Trustees, Personnel Committee met at 1430 Collier Street, Board Room, Austin, April 21, 1993, at 6 p.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764, (512) 440-4031. TRD-9321711.

The Austin Travis County Mental Health and Mental Retardation Center Board of Trustees met at 1430 Collier Street, Board Room, Austin, April 22, 1993, at 7 a.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764, (512) 440-4031. TRD-9321812.

The Central Texas Council of Governments Transportation Planning Policy Board will meet in the CTCOG Conference Room, 302 East Central, Belton, April 27, 1993, at 1:30 p.m. Information may be obtained from Jerry Bunker, P. O. Box 729, Belton, Texas 76513, (817) 939-1801. TRD-9321723.

The Dallas Area Rapid Transit (DART) Administrative Committee met at 1401 Pacific Avenue, DART Headquarters, Conference Room B, Dallas, April 20, 1993, at 11 a.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9321738.

The Dallas Area Rapid Transit (DART) Rail Committee met at 1401 Pacific Avenue, DART Headquarters, Conference Room C, Dallas, April 20, 1993, at 1 p.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9321736.

The Dallas Area Rapid Transit (DART) Committee-of-the-Whole met at 1401 Pacific Avenue, DART Headquarters, Conference Room C, Dallas, April 20, 1993, at 3 p.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9321735.

The Dallas Area Rapid Transit (DART) Officers' and Chairs will meet at 1401 Pacific Avenue, DART Headquarters, Conference Room C, Dallas, April 23, 1993, at noon. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9321737.

The Ellis County Appraisal District Board of Directors met at 406 Sycamore Street, Waxahachie, April 22, 1993, at 7 p.m. Information may be obtained from R. Richard Rhodes, Jr., P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552. TRD-9321799.

The Golden Crescent Private Industry Council Oversight Committee met at 2401 Houston Highway, Victoria, April 19, 1993, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9321772.

The Golden Crescent Private Industry Council Executive Committee met at 2401 Houston Highway, Victoria, April 20, 1993, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9321771.

The Heart of Texas Council of Governments Criminal Justice Advisory Committee met at 300 Franklin Avenue, HOTCOG Board Room, Waco, April 21, 1993, at 10 a.m. Information may be obtained from Elizabeth Guthrie, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822. TRD-9321770.

The Jack County Appraisal District Board of Directors met at 210 North Church Street, Jacksboro, April 20, 1993, at 7 p.m. Information may be obtained from Gary L. Zeitler or Vicky Easter, P.O. Box 958, Jacksboro, Texas 76458, (817) 567-6301. TRD-9321791.

The Johnson County Rural Water Supply Corporation Tarriff Committee met at the JCRWSC Office, Highway 171 South, Cleburne, April 21, 1993, 2 p.m. Information may be obtained from Charlene

SoRille, P.O. Box 509, Cleburne, Texas 76033, (817) 643-6646. TRD-9321798.

The Kendall Appraisal District Board of Directors met at 121 South Main Street, Kendall Appraisal Office, Boerne, April 22, 1993, at 5 p.m. Information may be obtained from J. P. Davis, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012. TRD-9321750.

The Lower Colorado River Authority Ad Hoc Committee on Board Fees and Expenses met at 3701 Lake Austin Boulevard, Hancock Building, Austin, April 20, 1993, at 2 p.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9321758.

The Lower Colorado River Authority Ad Hoc Committee on Board Fees and Expenses met at 3701 Lake Austin Boulevard, Hancock Building, Austin, April 21, 1993, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9321766.

The Lower Colorado River Authority Planning and Public Policy Committee met at 3701 Lake Austin Boulevard, Hancock Building, Austin, April 21, 1993, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9321760.

The Lower Colorado River Authority Natural Resources Committee met at 3701 Lake Austin Boulevard, Hancock Building, Austin, April 21, 1993, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9321761.

The Lower Colorado River Authority Conservation and Environmental Protection Committee met at 3701 Lake Austin Boulevard, Hancock Building, Austin, April 21, 1993, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9321762.

The Lower Colorado River Authority Energy Operations Committee met at 3701 Lake Austin Boulevard, Hancock Building, Austin, April 21, 1993, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9321763.

The Lower Colorado River Authority Finance and Administration Committee met at 3701 Lake Austin Boulevard, Hancock Building, Austin, April 21, 1993, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9321764.

The Lower Colorado River Authority Audit Committee met at 3701 Lake Austin Boulevard, Hancock Building, Austin, April 21, 1993, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box

220, Austin, Texas 78767, (512) 473-3283. TRD-9321765.

The Lower Colorado River Authority Board of Directors met at 3701 Lake Austin Boulevard, Hancock Building, Austin, April 21-22, 1993, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9321759.

The Lower Rio Grande Valley Development Council Board of Directors met at the Harlingen Chamber of Commerce, 311 East Tyler, Harlingen, April 22, 1993, at 1:30 p.m. Information may be obtained from Kenneth N. Jones, Jr., 4900 North 23rd Street, McAllen, Texas 78504, (210) 682-3481. TRD-9321724.

The Middle Rio Grande Development Council (Revised Agenda.) Private Industry Council met at the Civic Center, 405 North Seventh Street, Carrizo Springs, April 21, 1993, at 1 p.m. Information may be obtained from Michael M. Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 278-4151. TRD-9321810.

The North Central Texas Council of Governments Executive Board met at the Centerpoint Two, 616 Six Flags Drive, Second Floor, Arlington, April 22, 1993, at 12:45 p.m. Information may be obtained from Edwina J. Shires, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 640-3300. TRD-9321722.

The North Texas Private Industry Council of Nortex Regional Planning Commission will meet at the Nortex Regional Planning Commission, 4309 Jacksboro Highway, Wichita Falls, April 28, 1993, at 12:15 p.m. Information may be obtained from Tom O'Neil, Drawer A, Archer City, Texas 76351, (817) 574-4507. TRD-9321720.

The Region III Education Service Center (Revised Agenda.) Board of Directors met at 1905 Leary Lane, Victoria, April 19, 1993, at 1:30 p.m. Information may be obtained from Dr. Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573-0731. TRD-9321769.

The Region 14, Quality Work Force Planning Committee will meet the Lufkin Industries, 409 Ellis Avenue, Lufkin, April 27, 1993, at 9:30 a.m. Information may be obtained from Jerry Whitaker, P.O. Box 1768, Lufkin, Texas 75902, (409) 633-5370 or (409) 633-5371. TRD-9321721.

The Tarrant Appraisal District Tarrant Appraisal Review Board met at 2329 Gravel Road, Fort Worth, April 21, 1993, at 8:30 a.m. Information may be obtained from Suzanne Williams, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884. TRD-9321733.

The Texas Municipal League Intergovernmental Risk Pool Board of Trustees/Finance Committee will meet at the Stouffer Hotel, 9721 Arboretum Boulevard, Austin, April 23, 1993, at 2:30 p.m. Information may be obtained from Marvin Townsend, 211 East Seventh Street, Austin, Texas 78701, (512) 320-1325. TRD-9321751.

The Texas Municipal League Intergovernmental Risk Pool Board of Trustees/Underwriting and Claims Committee will meet at the Stouffer Hotel, 9721 Arboretum Boulevard, Austin, April 23, 1993, at 3:30 p.m. Information may be obtained from Marvin Townsend, 211 East Seventh Street, Austin, Texas 78701, (512) 320-1325. TRD-9321752.

The Texas Municipal League Intergovernmental Risk Pool Board of Trustees/Executive Committee will meet at the Stouffer Hotel, 9721 Arboretum Boulevard, Austin, April 23, 1993, at 3:30 p.m. Information may be obtained from Marvin Townsend, 211 East Seventh Street, Austin, Texas 78701, (512) 320-1325. TRD-9321753.

The Texas Municipal League Intergovernmental Risk Pool Board of Trustees will meet at the Stouffer Hotel, 9721 Arboretum Boulevard, Austin, April 24, 1993, at 8:30 a.m. Information may be obtained from Marvin Townsend, 211 East Seventh Street, Austin, Texas 78701, (512) 320-1325. TRD-9321754.

◆ ◆ ◆ Meetings Filed April 19, 1993

The Cash Water Supply Corporation held an emergency meeting at the D. C. Cannon School on Business 34, Quinlan, April 20, 1993, at 7 p.m. The emergency status was necessary as agenda was lost in mail between Cash Water Supply Corporation and Secretary of State's Office. Information may be obtained from Donna Mohon, P.O. Box 8129, Greenville, Texas 75404, (903) 883-2695. TRD-9321827.

The Deep East Texas Council of Governments Grants Application Review Committee met at the Shelby County Courthouse, Community Room, Second Floor, 200 San Augustine Street, Center, April 22, 1993, at 11 a.m. Information may be obtained from Rusty Phillips, 274 East Lamar, Jasper, Texas 75951, (409) 384-5704. TRD-9321815.

The Grayson Appraisal District Board of Directors will meet at 205 North Travis, Sherman, April 28, 1993, at 7:15 a.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9321816.

The Gulf Coast State Planning Region Transportation Policy Council will meet at

3555 Timmons Lane, Second Floor Conference Room A, Houston, April 30, 1993, at 9:30 a.m. Information may be obtained from Rosalind Hebert, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9321832.

The Middle Rio Grande Development Council Board of Directors will meet at the Holiday Inn, 920 East Main Street, Uvalde, April 28, 1993, at 1 p.m. Information may be obtained from Michael Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9321829.

The Northeast Texas Municipal Water District Board of Directors will meet at Highway 250 South, Hughes Springs, April 26, 1993, at 10 a.m. Information may be obtained from J. W. Dean, Box 955, Hughes Springs, Texas 75656, (903) 639-7538. TRD-9321817.

The Tarrant Appraisal District Appraisal Review Board will meet at 2329 Gravel Road, Fort Worth, May 5, 1993, at 8:30

a.m. Information may be obtained from Suzanne Williams, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884. TRD-9321831.

The Upper Leon River Municipal Water District Board of Directors met at the General Office of the Filter Plant, Comanche County, Lake Proctor, April 22, 1993, at 6:30 p.m. Information may be obtained from Gary D. Lacy, P. O. Box 67, Comanche, Texas 76442, (817) 879-2258. TRD-9321846.

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Meetings Filed April 20, 1993

The Austin-Travis County Mental Health and Mental Retardation Center Finance and Control Committee held an emergency revised agenda at 1430 Collier Street, Austin, April 21, 1993, at noon. The emergency status was necessary as the property purchase was not discussed so closed session was not needed. Information may be obtained from Sharon Taylor, 1430 Collier

Street, Austin, Texas 78704, (512) 447-4181. TRD-9321867.

The Education Service Center Region XV Regional Advisory Committee will meet at the ESC Region XV, Conference Center, 612 South Irene Street, San Angelo, April 27, 1993, at 10 a.m. Information may be obtained from Clyde Warren, P.O. Box 5199, San Angelo, Texas 76902, (915) 658-6571. TRD-9321867.

The Education Service Center Region XV Board of Directors will meet at the ESC Region XV, Conference Room Number 1, 612 South Irene Street, San Angelo, April 27, 1993, at 1:30 p.m. Information may be obtained from Clyde Warren, P.O. Box 5199, San Angelo, Texas 76902, (915) 658-6571. TRD-9321868.

The Lee County Appraisal District Board of Directors will meet at 218 East Richmond Street, Giddings, April 28, 1993, at 9 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9321864.

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In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Commerce Request for Proposal

In accordance with House Bill 1888, the Texas Literacy Council, an adjunct to the Texas Department of Commerce (Commerce), announces a Request for Proposals (RFP) to solicit responses to select a number of organizations to develop family literacy projects. The family literacy projects are solicited in order to break the intergenerational cycle of illiteracy by supporting the development of literacy programs that build families of readers in the State of Texas.

Detailed information regarding the project format is set forth in the Request for Proposal Instructions which will be available on April 20, 1993, at the following location: Texas Department of Commerce, Texas Literacy Council, First City Centre, 816 Congress Avenue, Suite 1300, P.O. Box 12728, Austin, Texas 78711.

The deadline for receipt of proposals in response to this request will be Thursday, May 20, 1993, at 4 p.m. Responses received after this deadline will not be considered. Commerce reserves the right to accept or reject any or all proposals submitted. Commerce is under no legal requirement to execute a resulting contract on the basis of this advertisement and intends the material provided only as a means of identifying the various contractor alternatives. Commerce intends to use responses as a basis for further negotiation of specific project details with potential contractors. Commerce will base its choice on demonstrated competence, qualifications, and evidence of superior conformance with criteria.

This RFP does not commit Commerce to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates Commerce to award a contract or to pay any costs incurred in the preparation of a response. Commerce specifically reserves the right to vary all provisions set forth any time prior to execution of a contract where Commerce deems it to be in the best interest of the State of Texas.

Availability of funds for the family literacy projects is subject to the approval of the Texas Literacy Council.

For further information regarding this notice, or to obtain copies of the RFP Instructions, please contact: Martha Alworth, Texas Department of Commerce, Texas Literacy Council, First City Centre, 816 Congress Avenue, Suite 1300, P. O. Box 12728, Austin, Texas 78711, (512) 320-9498 (voice), (512) 320-9698 (TDD).

Issued in Austin, Texas, on April 15, 1993.

TRD-9321712
Cathy Bonner
Executive Director
Texas Department of Commerce

Filed: April 16, 1993

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Article 1.04, as amended (Texas Civil Statutes, Articles 5069-1.04).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer ⁽¹⁾/Agricultural/ Commercial ⁽²⁾ thru \$250,000</u>	<u>Commercial⁽²⁾ over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	04/19/93-04/25/93	18.00%	18.00%

⁽¹⁾Credit for personal, family or household use. ⁽²⁾Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on April 12, 1993
TRD-8321643
Al Endsley
Consumer Credit Commissioner
Filed: April 14, 1993

Interagency Council on Early Childhood Intervention Request for Proposal

The Texas Interagency Council on Early Childhood (ECI) announces a Request for Proposal (RFP) for funding early childhood services in Cameron, Hidalgo, Willacy, and Starr counties in fiscal year 1994. The scope of services include a comprehensive array of services to 65 families

for the period beginning September 1, 1993 and ending August 31, 1994. The funds available for request may not exceed \$260,585. All applicants must comply with all program requirements under the Human Resource Code, Chapter 73, and 25 TAC §§621. 21-621.64.

The RFP is available to all interested providers upon request from the Early Childhood Intervention Program, 1100 West 49th Street, Austin, Texas 78756, or by calling (512) 458-7673. All applications to be considered for funding must be received by the Early Childhood Intervention Program by 5 p.m. on June 18, 1993, or postmarked by June 17, 1993. Questions should be directed to the Early Childhood Intervention office at (512) 458-7673.

Issued in Austin, Texas, on April 16, 1993.

TRD-9321805 Tammy Tiner, Ph.D.
Chairperson
Interagency Council on Early Childhood
Intervention

Filed: April 16, 1993

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**Advisory Commission on State
Emergency Communications
Public Bid Notice**

The request is filed under the provisions of Health and Safety Code, Chapter 771, §771.075.

Description of Services. Bid specifications call for the production and delivery of children stickers (SuperTele) and telephone stickers to be used as public education for 9-1-1 emergency telephone communications.

Contact Person. To obtain bid proposal, contact Carey Spence, Advisory Commission on State Emergency Communications, 1101 Capital of Texas Highway, South; Suite B-100; Austin, Texas 78746; (512) 327-1911.

Closing Date: May 7, 1993.

Contractor Selection Process. Proposals will be evaluated by the Advisory Commission on State Emergency Communications and selection will be based on experience, qualifications, availability, and reasonableness of proposed cost of service in relation to the material described. Preference will be given, all other considerations being equal, to a business whose place of business is within the state or who will manage the contracted project entirely from its office within the state.

Issued in Austin, Texas, on April 15, 1993.

TRD-9321679 Mary A. Boyd
Executive Director
Advisory Commission on State Emergency
Communications

Filed: April 15, 1993

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**Texas Department of Human Services
Notice of Public Hearing**

The Texas Department of Human Services (TDHS) will conduct a public hearing to receive comments on the department's proposed reimbursement rates for the Day Activity and Health Services (DAHS) program. The hearing is held in compliance with 40 TAC §24.102(j), which requires a public hearing on proposed reimbursement rates for medical assistance programs. The public hearing will

be held on May 6, 1993, at 9 a.m. in the Public Hearing Room (Board Room) of the John H. Winters Center (701 West 51st Street, Austin, First Floor, East Tower). Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed reimbursement rates on or after April 22, 1993, by contacting Sherri Williams, MC E-601, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4817.

Issued in Austin, Texas, on April 15, 1993.

TRD-9321676 Nancy Murphy
Section Manager, Policy and Document
Support
Texas Department of Human Services

Filed: April 15, 1993

◆ ◆ ◆
Public Notice of Closed 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 closing the solicitation for new Medicaid beds in Zapata County, County Number 253, which appeared in the April 9, 1993, issue of the *Texas Register* (18 TexReg 2434). The solicitation is being closed effective the date of this public notice.

Issued in Austin, Texas, on April 15, 1993.

TRD-9321677 Nancy Murphy
Section Manager, Policy and Document
Support
Texas Department of Human Services

Filed: April 15, 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.

1. Application for Admission in Texas for Matthew Thornton Benefits Administrators (assumed name for Health Initiatives, Inc.), a foreign third party administrator. The home office is in Nashua, New Hampshire.
2. Application for Admission in Texas for MCC Behavioral Care, Inc., a foreign third party administrator. The home office is in Eden Prairie, Minnesota.
3. Application for name change in Texas for Pacific Infidelity Life Insurance Company, a foreign life insurance company. The home office is in San Francisco, California. The proposed new name is PaineWebber Life Insurance Company.
4. Application for name change in Texas for Windsor Lloyds, a domestic lloyds insurance company converting to a domestic fire insurance company. The home office is in Dallas. The proposed new name is Young America Insurance Company.

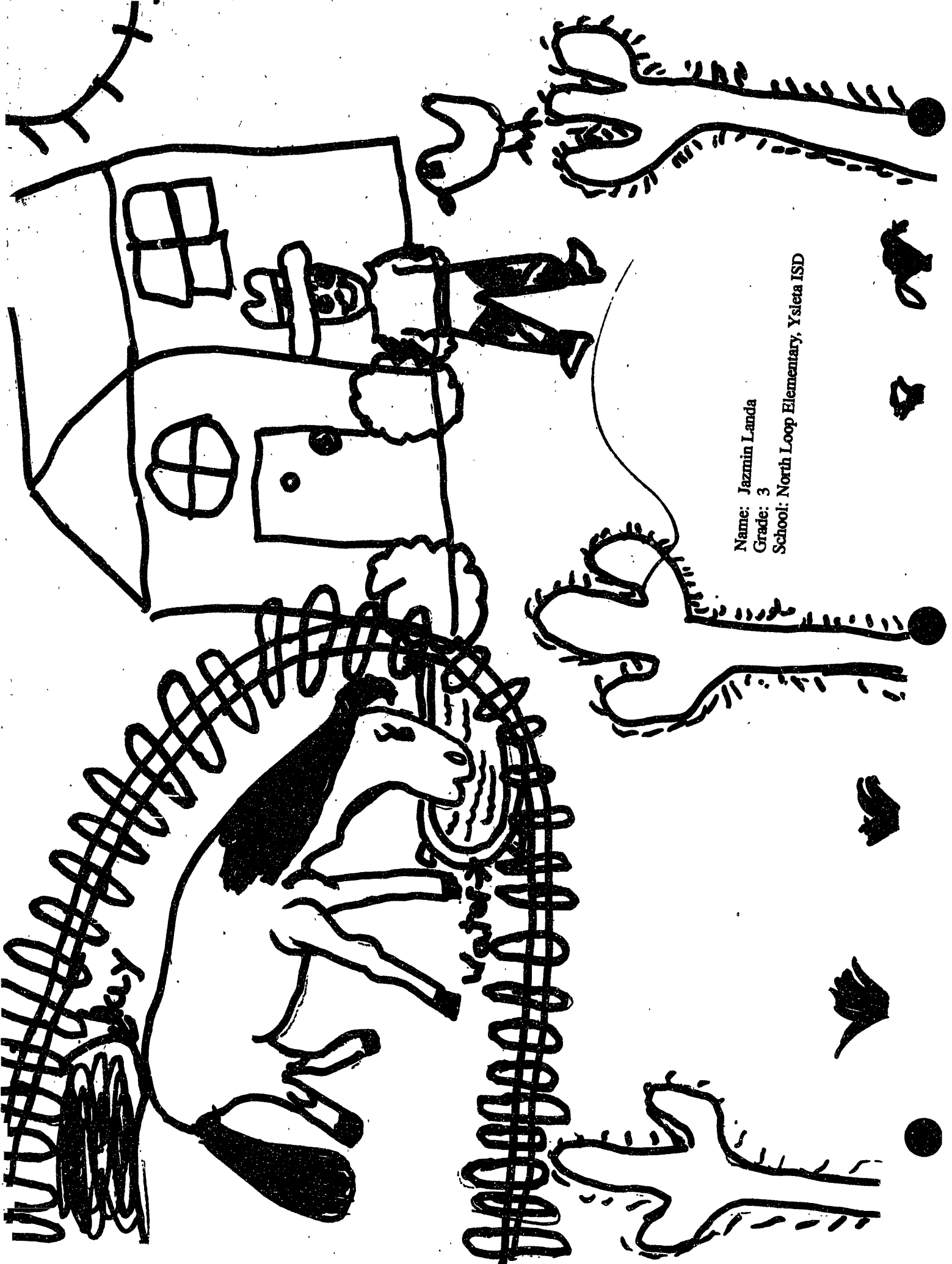
Issued in Austin, Texas, on April 19, 1993.

TRD-9321819 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

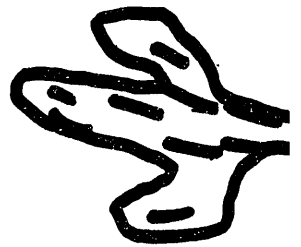
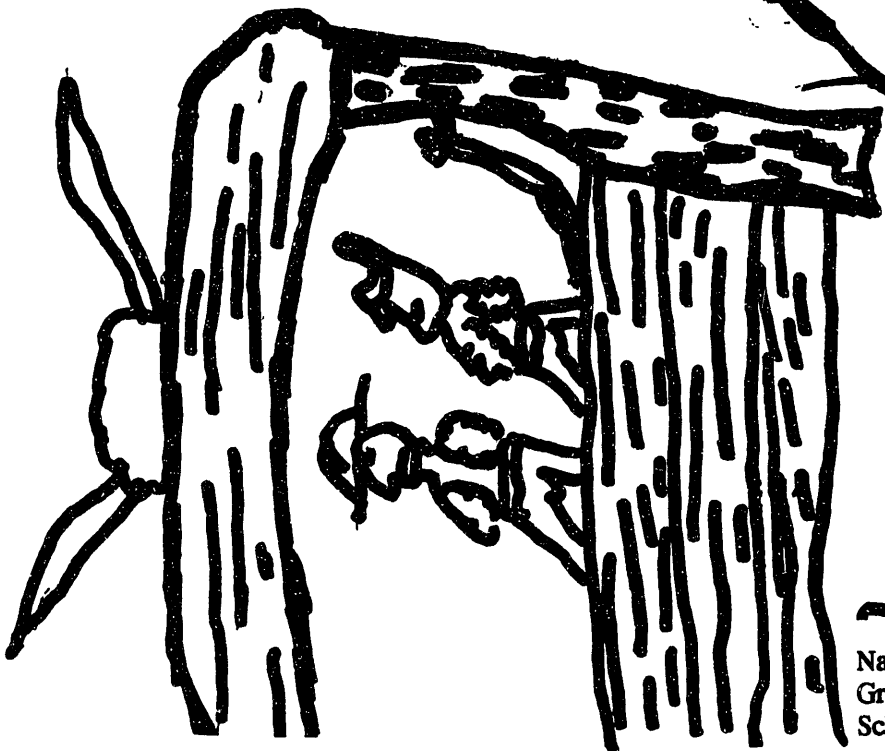
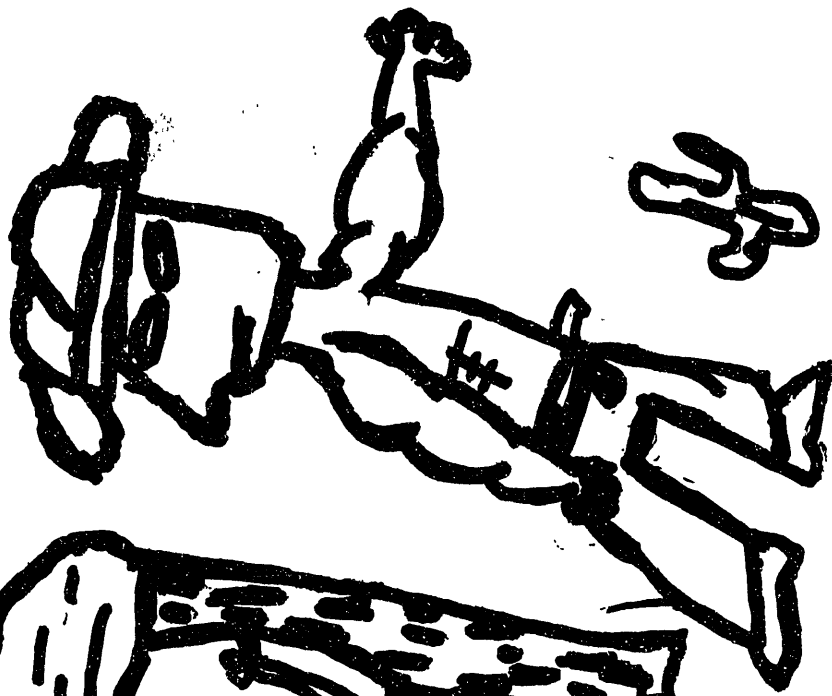
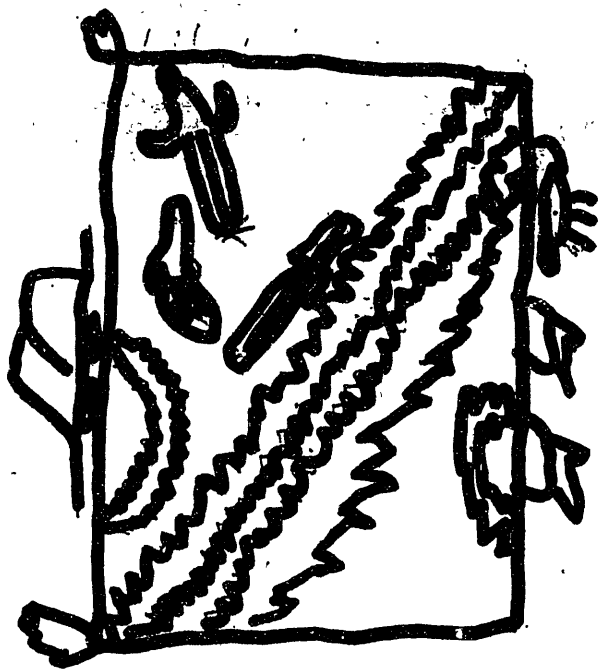
Filed: April 19, 1993

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

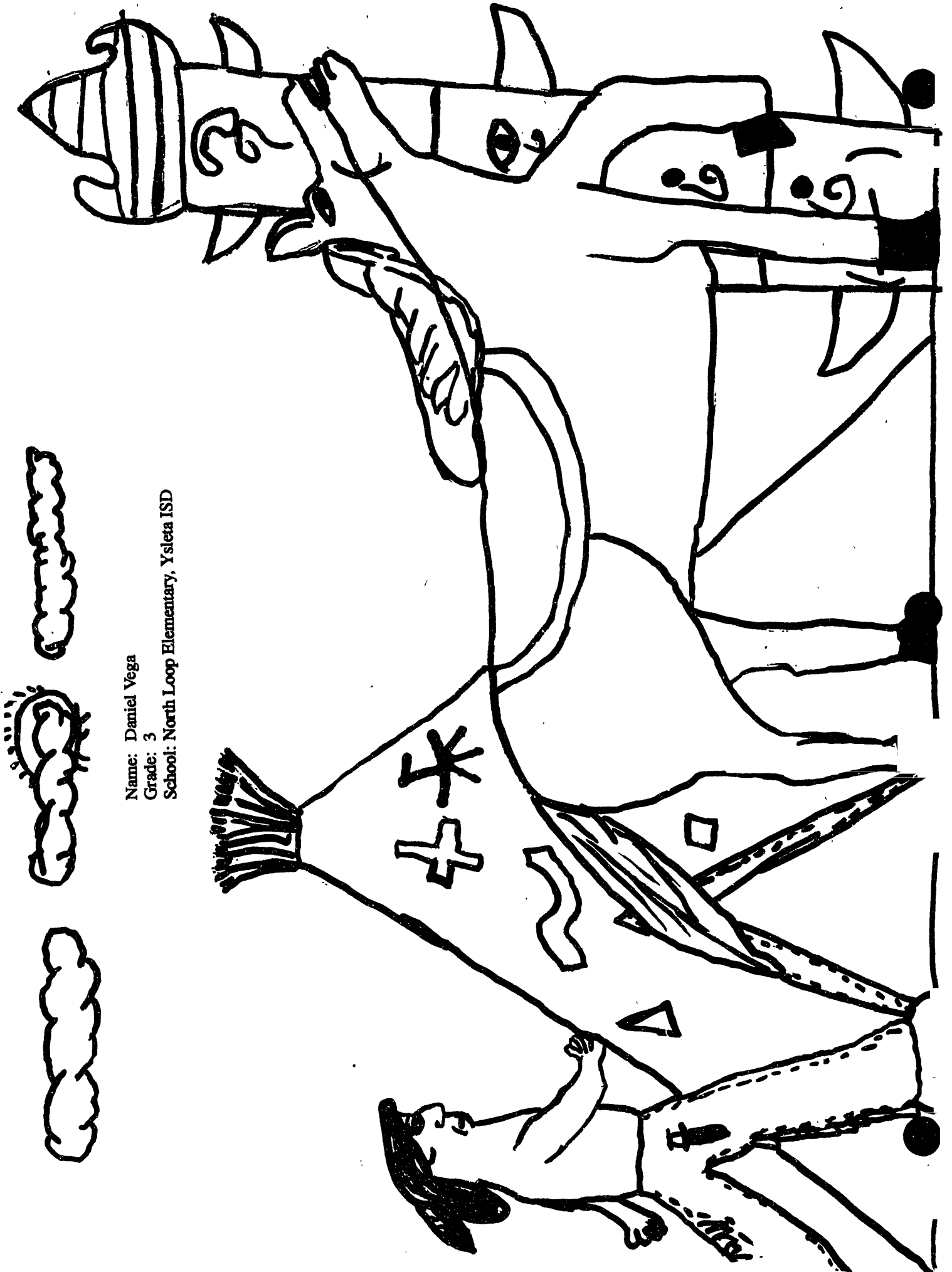
70 Tuesday, September 14	Wednesday, September 8	Thursday, September 9
71 Friday, September 17	Monday, September 13	Tuesday, September 14
72 Tuesday, September 21	Wednesday, September 15	Thursday, September 16
73 Friday, September 24	Monday, September 20	Tuesday, September 21
74 Tuesday, September 28	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	



Name: Jazmin Landa
Grade: 3
School: North Loop Elementary, Ysleta ISD



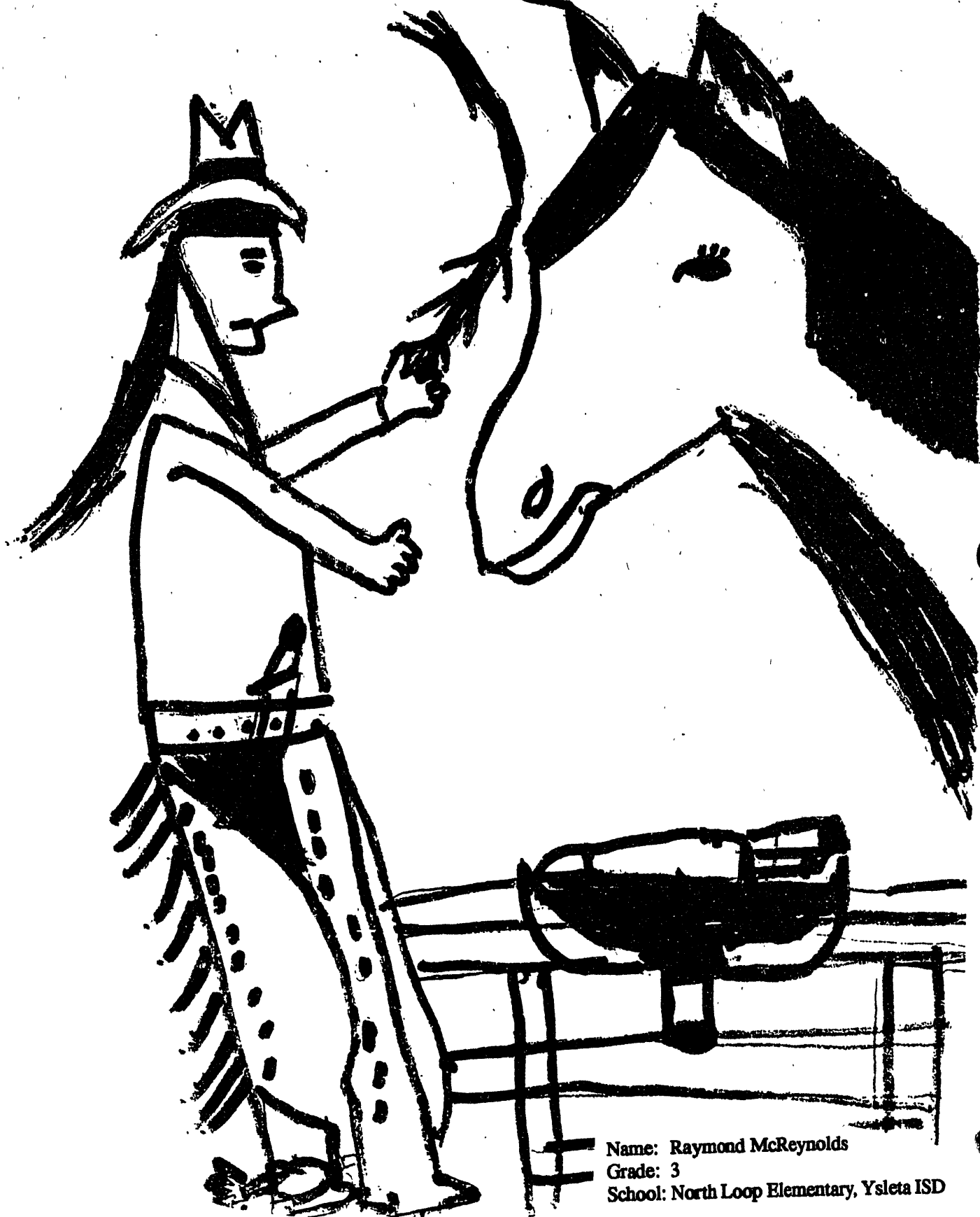
Name: Joshua Marquez
Grade: 3
School: North Loop Elementary, Ysleta ISD



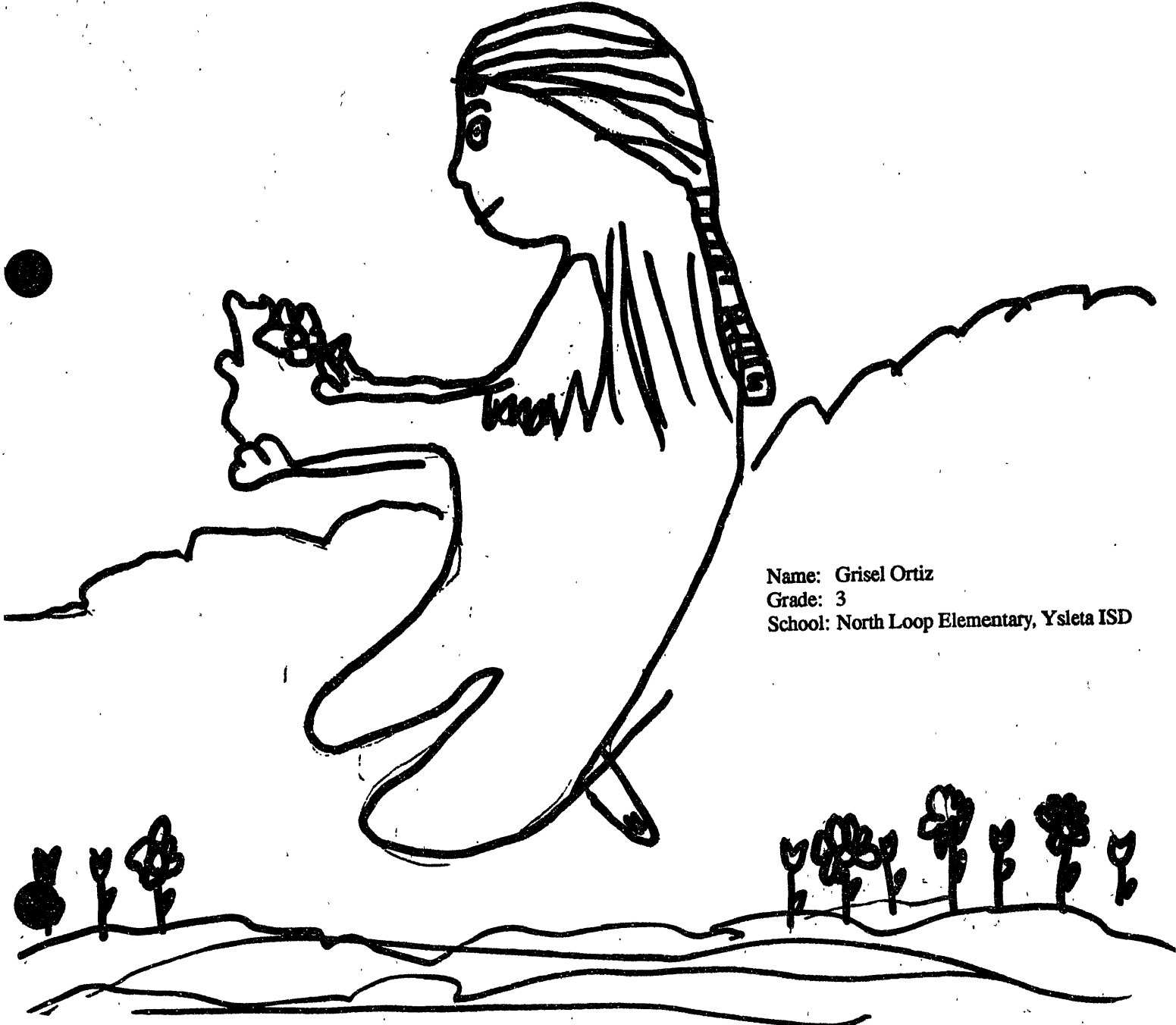
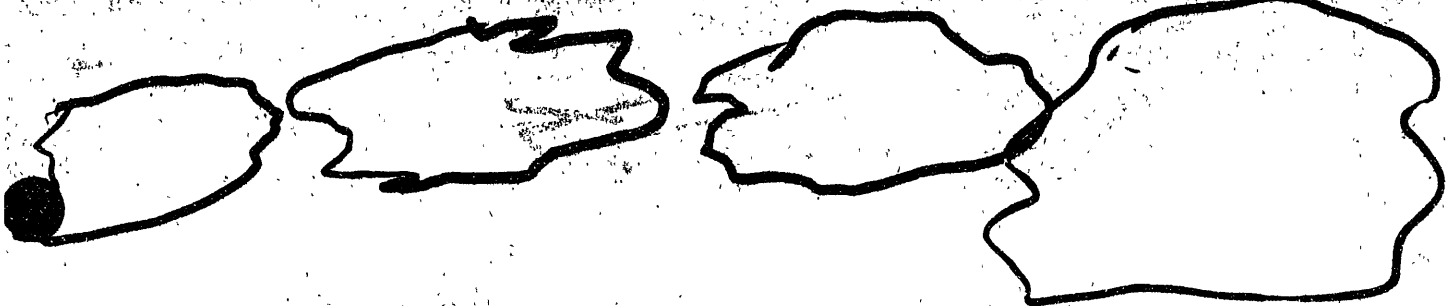
Name: Daniel Vega

Grade: 3

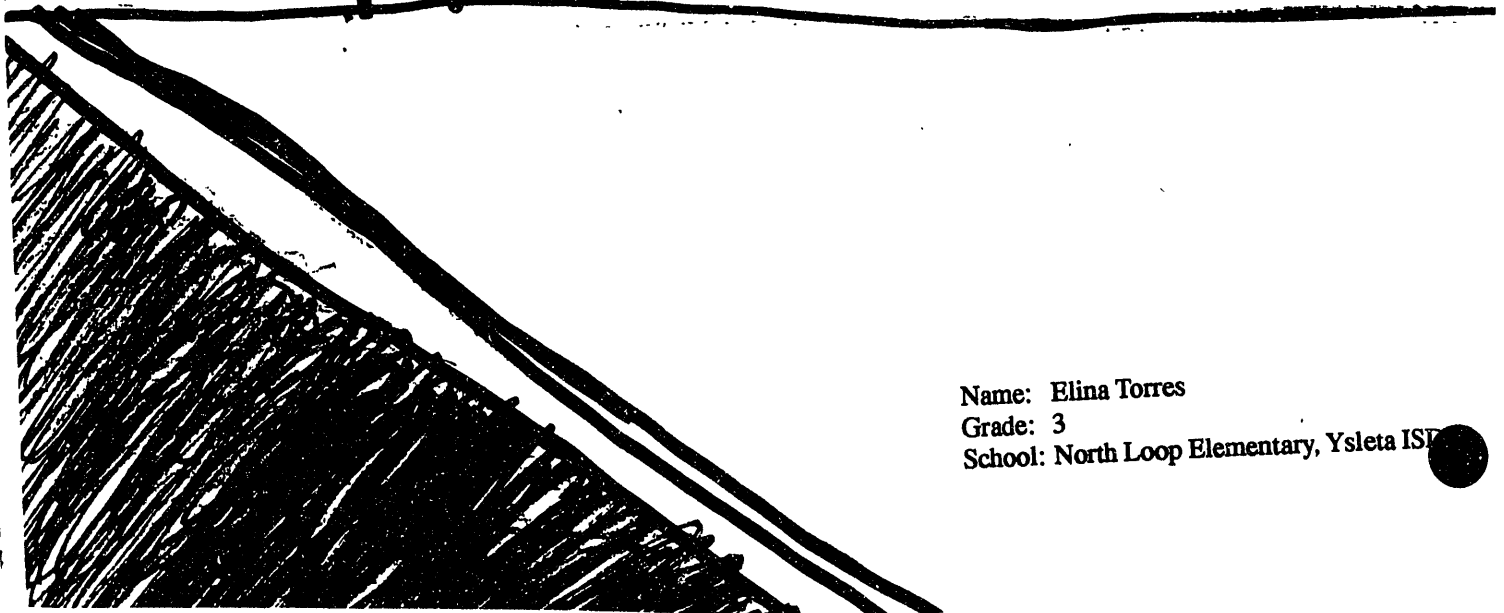
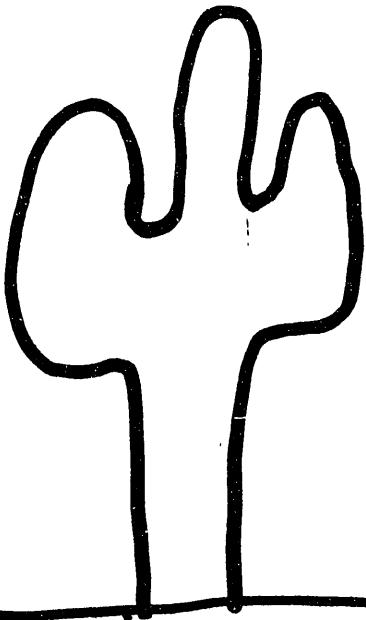
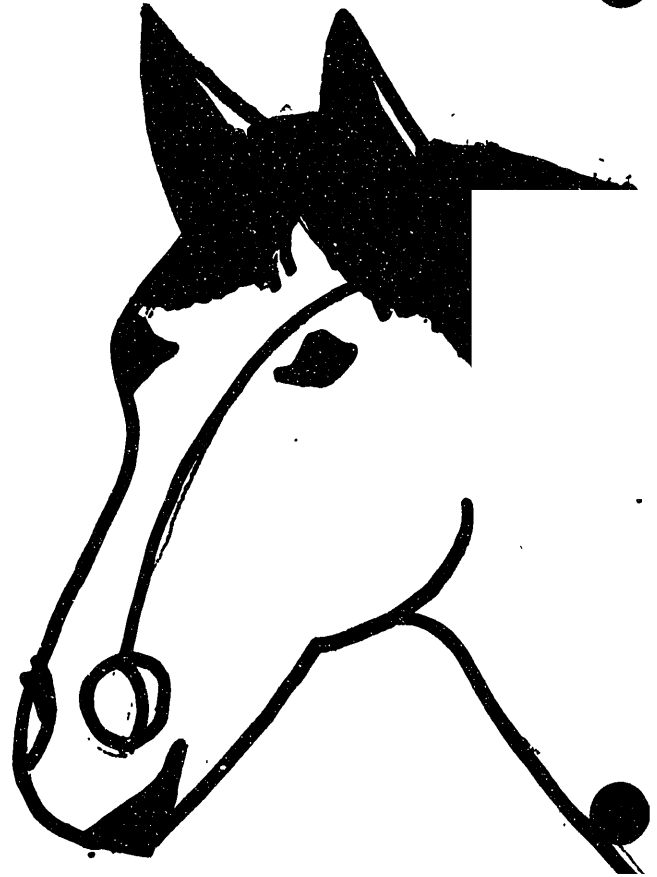
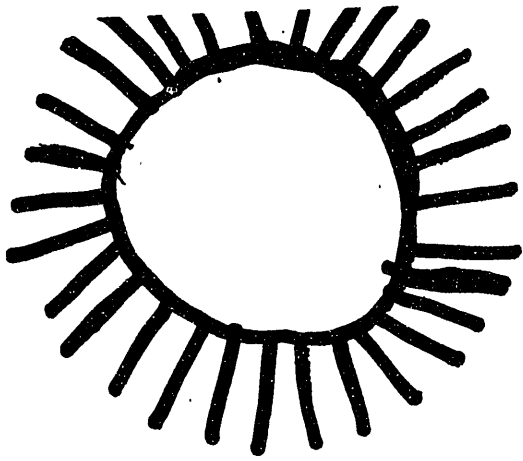
School: North Loop Elementary, Ysleta ISD



Name: Raymond McReynolds
Grade: 3
School: North Loop Elementary, Ysleta ISD



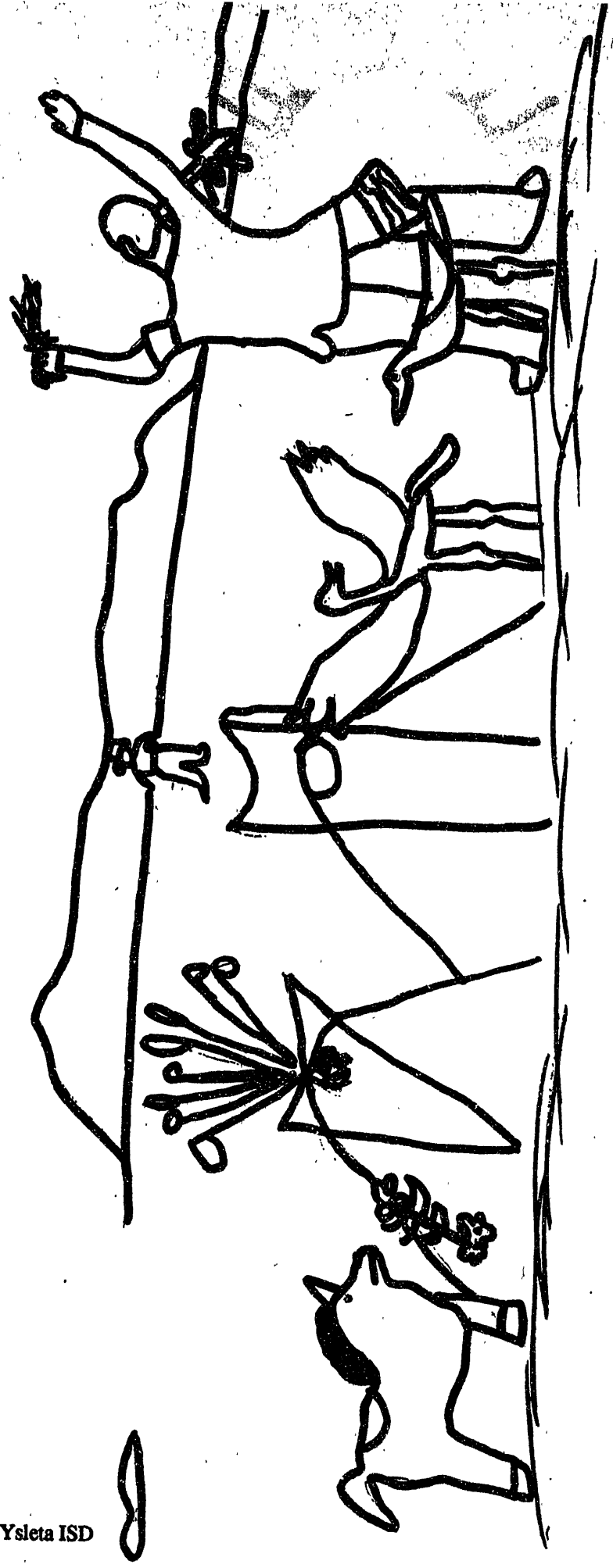
Name: Grisel Ortiz
Grade: 3
School: North Loop Elementary, Ysleta ISD

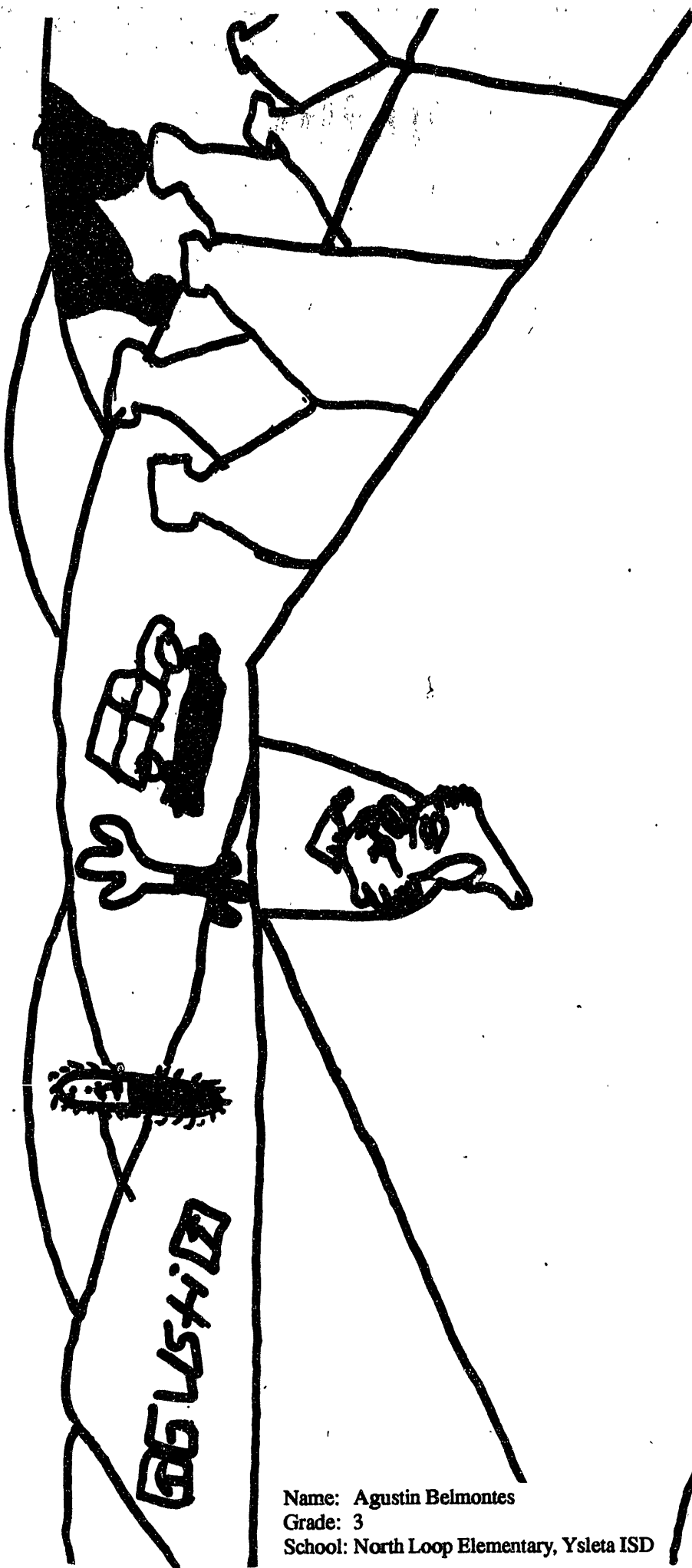


Name: Elina Torres
Grade: 3
School: North Loop Elementary, Ysleta ISD



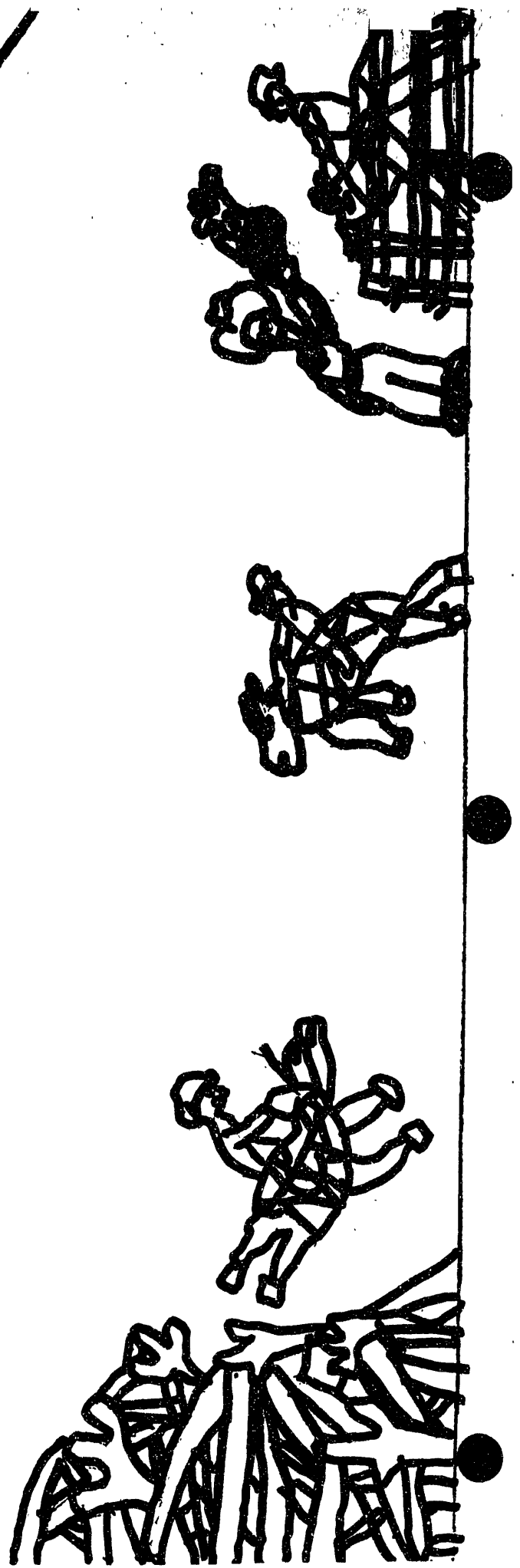
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Grade: 3
School: North Loop Elementary, Ysleta ISD

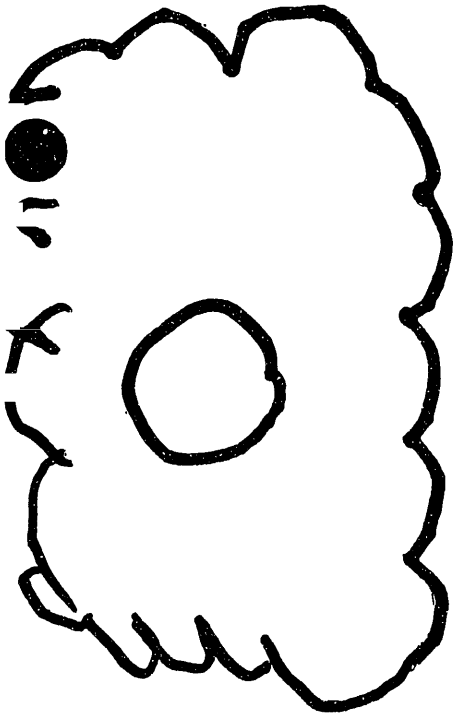
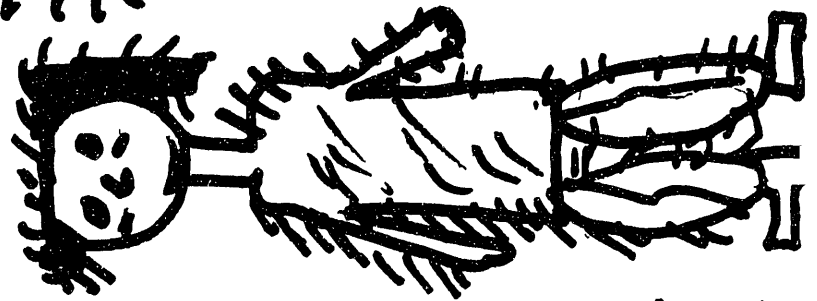
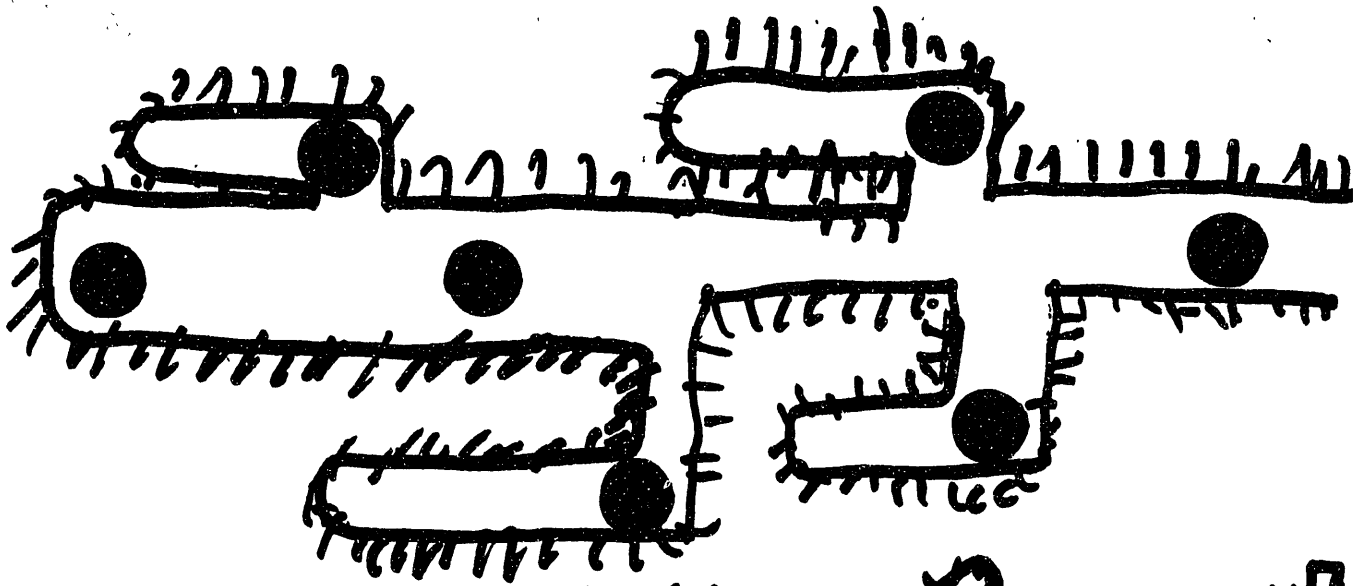




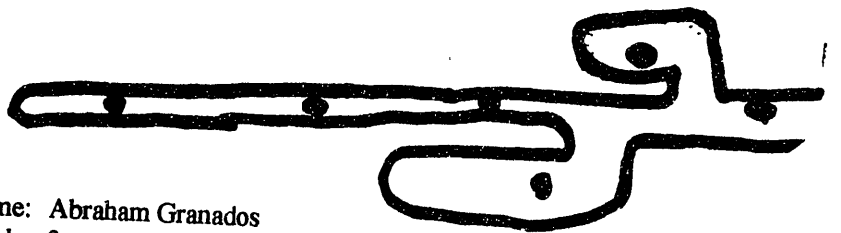
BUSH

Name: Agustin Belmontes
Grade: 3
School: North Loop Elementary, Ysleta ISD



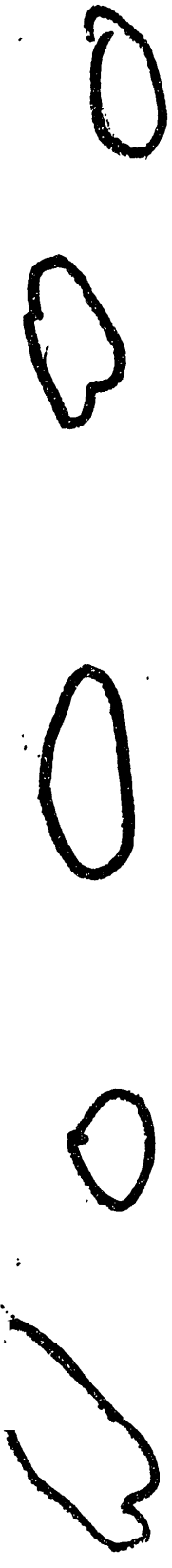


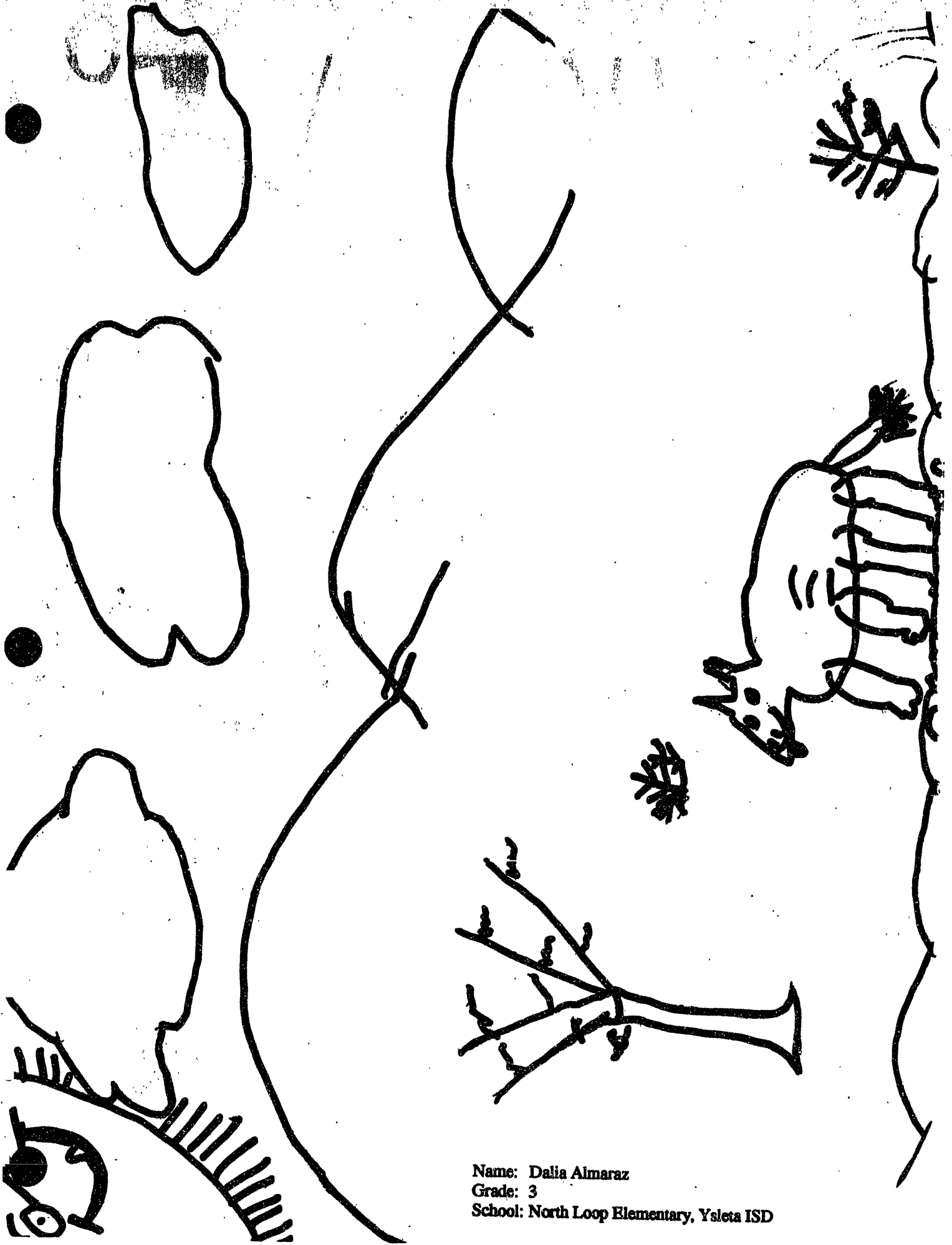
ISIBORIS HEM



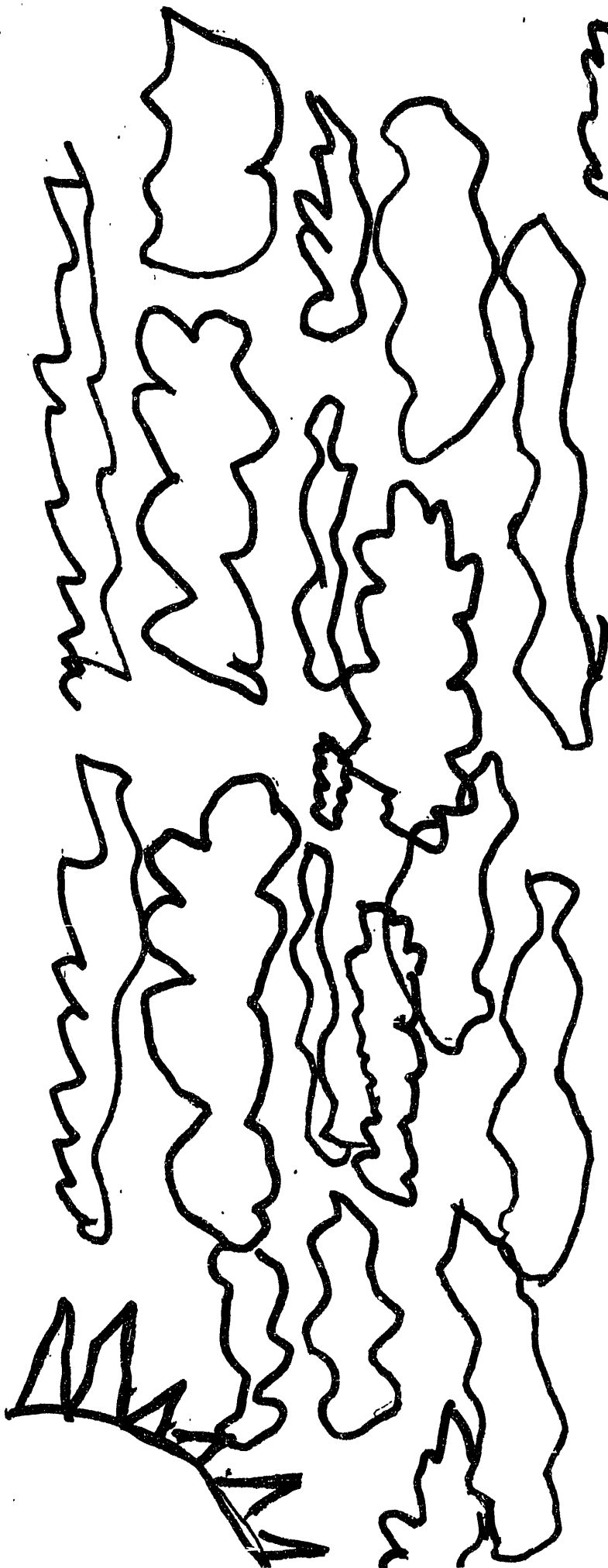
Name: Abraham Granados
Grade: 3
School: North Loop Elementary, Ysleta ISD

Name: Paola Rivera
Grade: 3
School: North Loop Elementary, Ysleta ISD

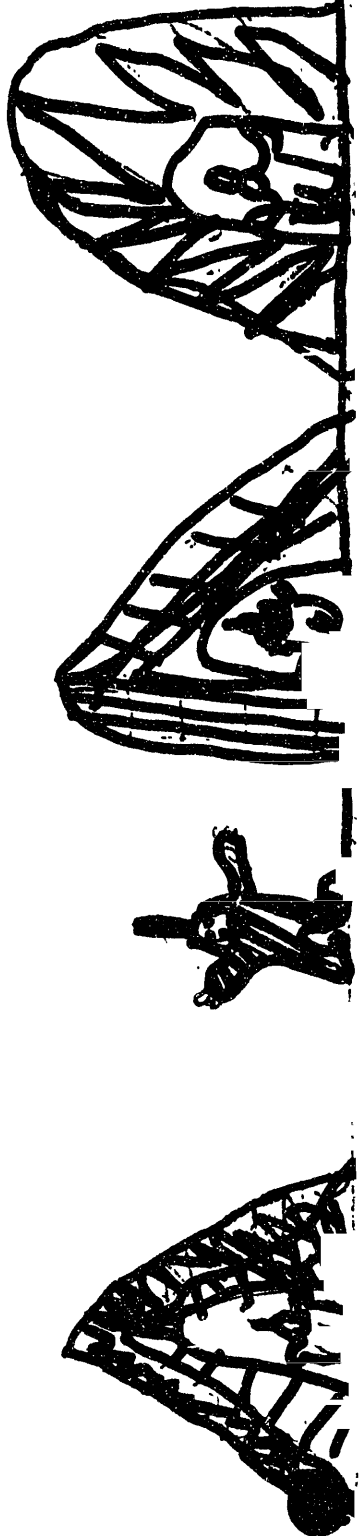




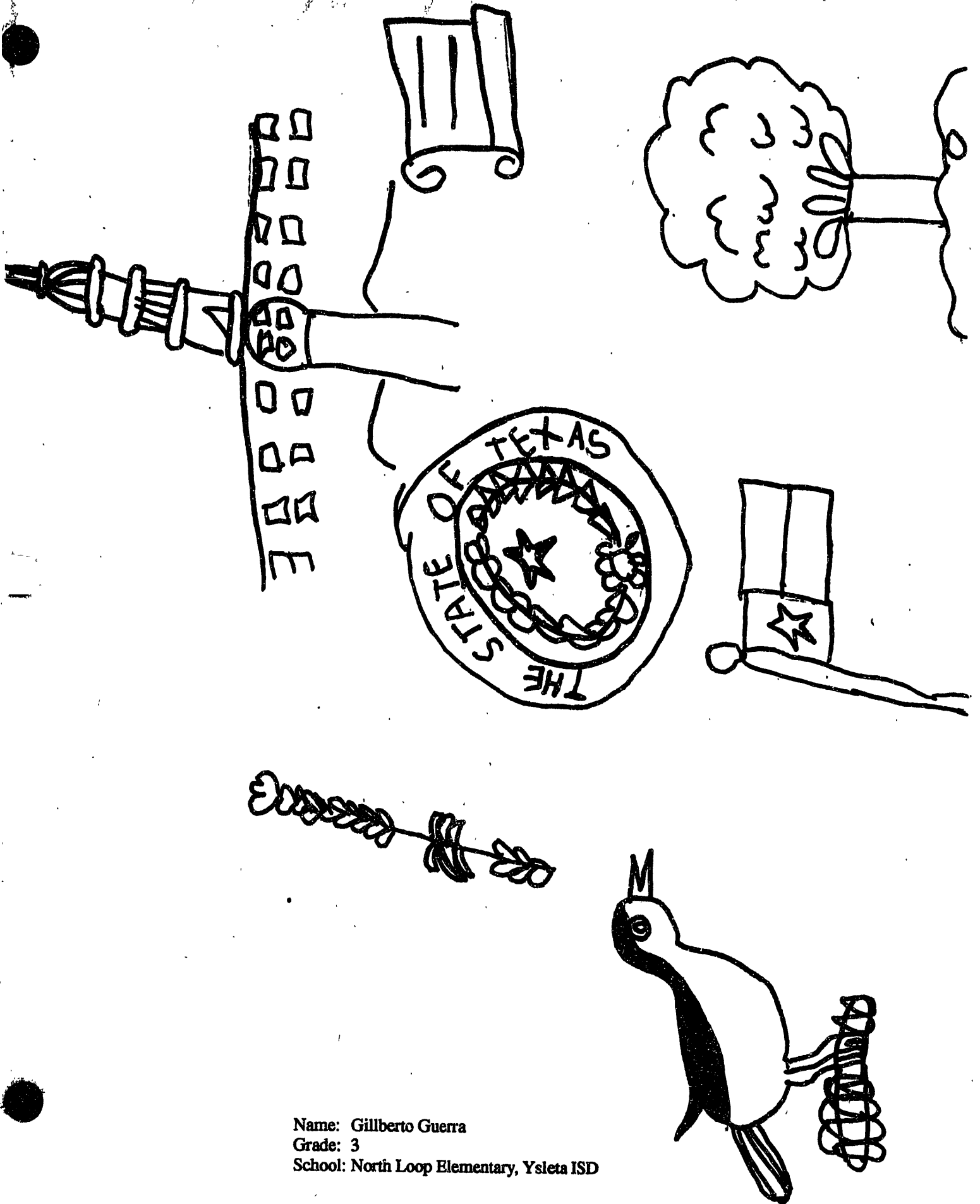
Name: Dalia Almaraz
Grade: 3
School: North Loop Elementary, Ysleta ISD



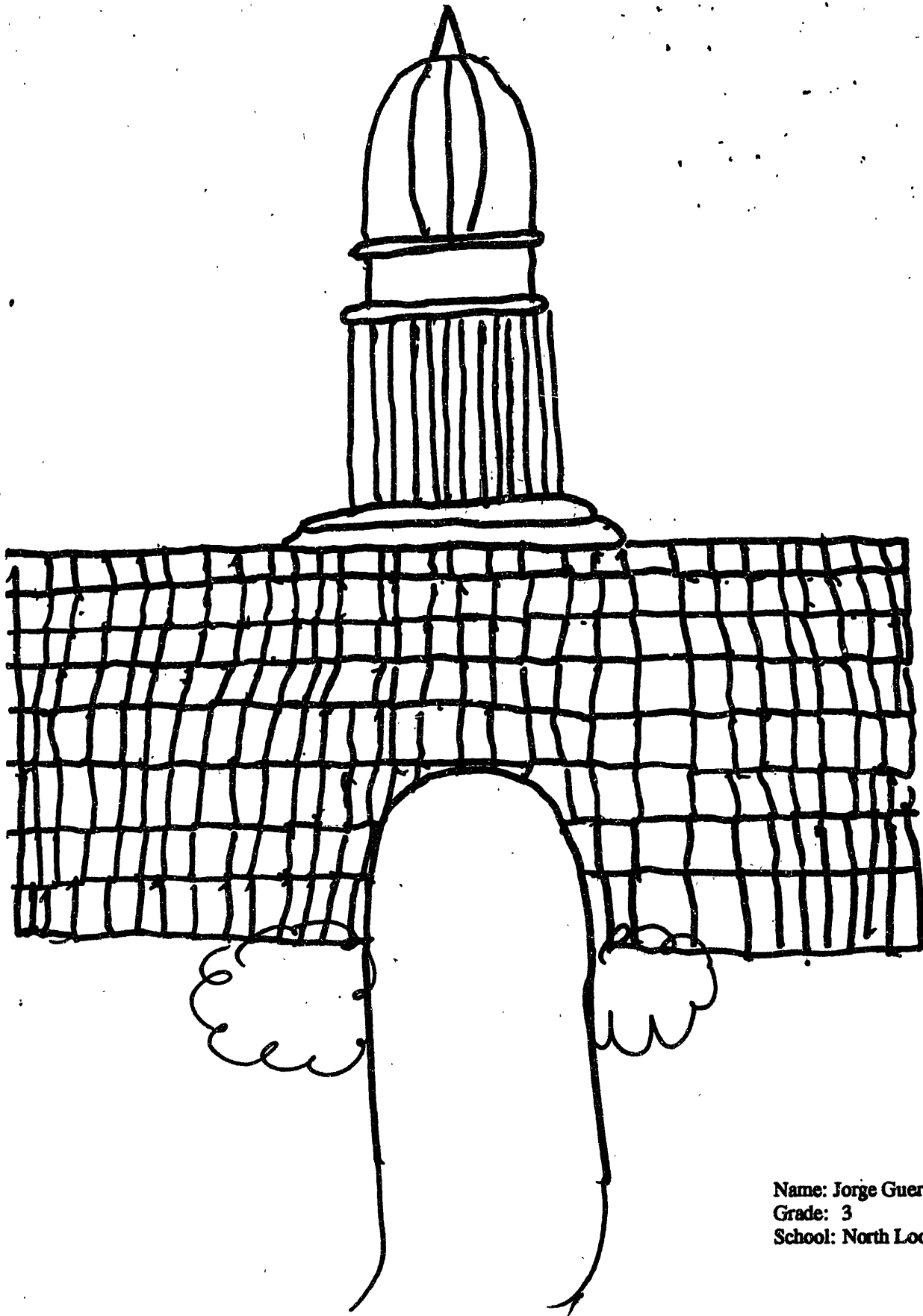
All the Indians were on the side of the party.



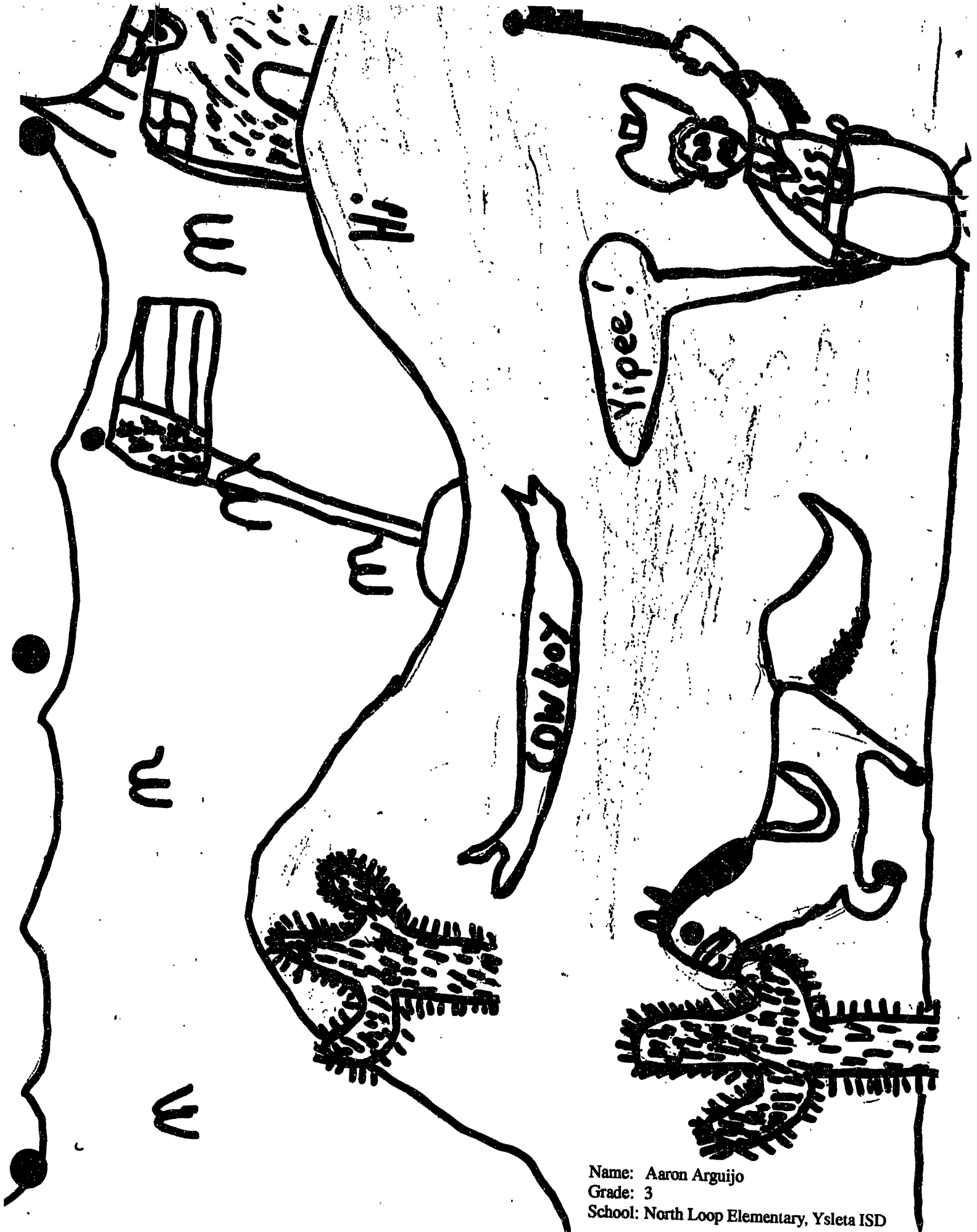
Name: Manuel Villicos
Grade: 3
School: North Loop Elementary, Ysleta ISD



Name: Gilberto Guerra
Grade: 3
School: North Loop Elementary, Ysleta ISD



Name: Jorge Guerra
Grade: 3
School: North Loop Elementary, Ysleta ISD

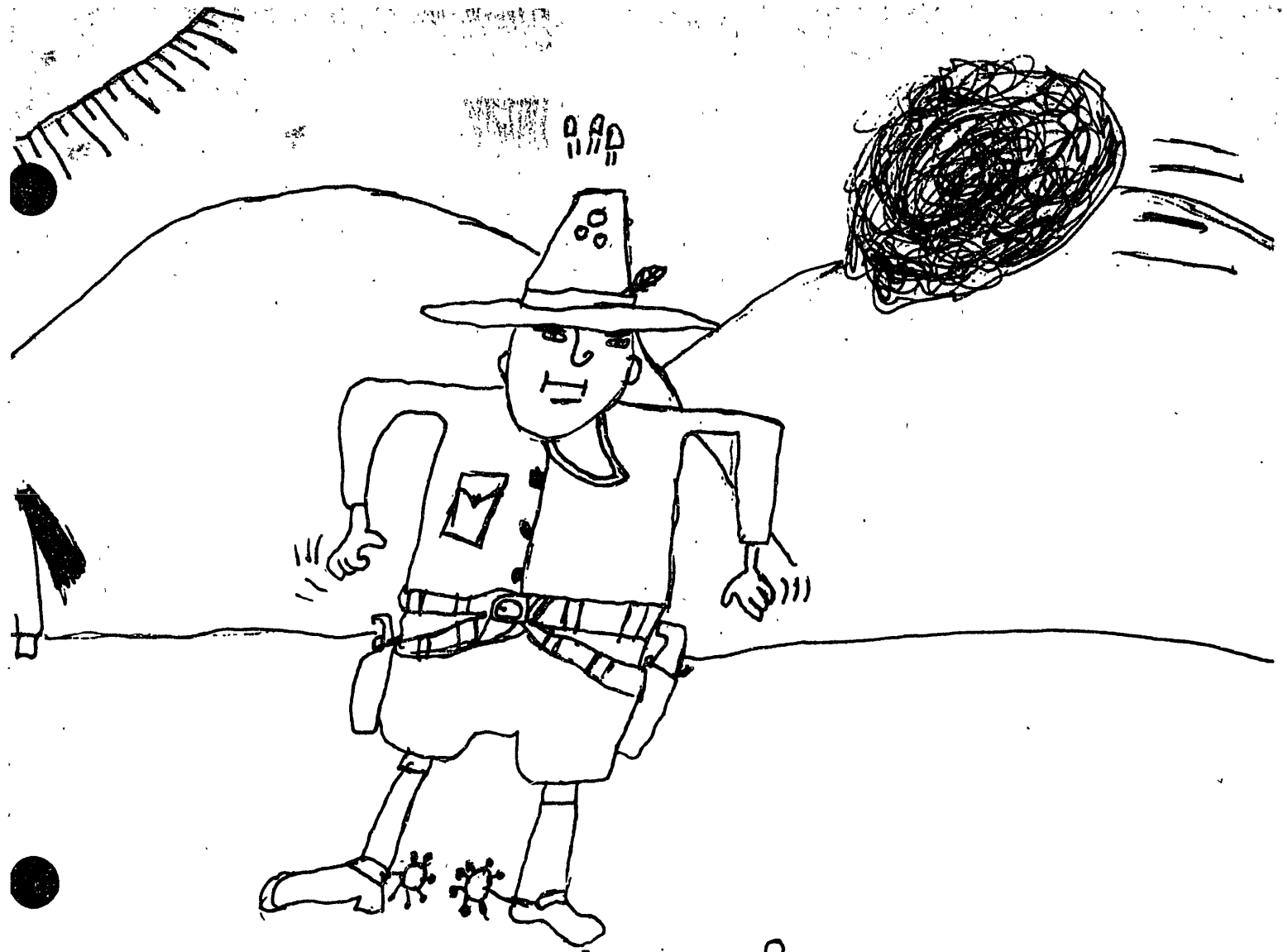


Name: Aaron Arguijo
Grade: 3
School: North Loop Elementary, Ysleta ISD



Pony Express

Name: Danny Morales
Grade: 6
School: North Loop Elementary, Yaleta ISD



Name: Adam Newport
Grade: 6
School: North Loop Elementary, Ysleta ISD



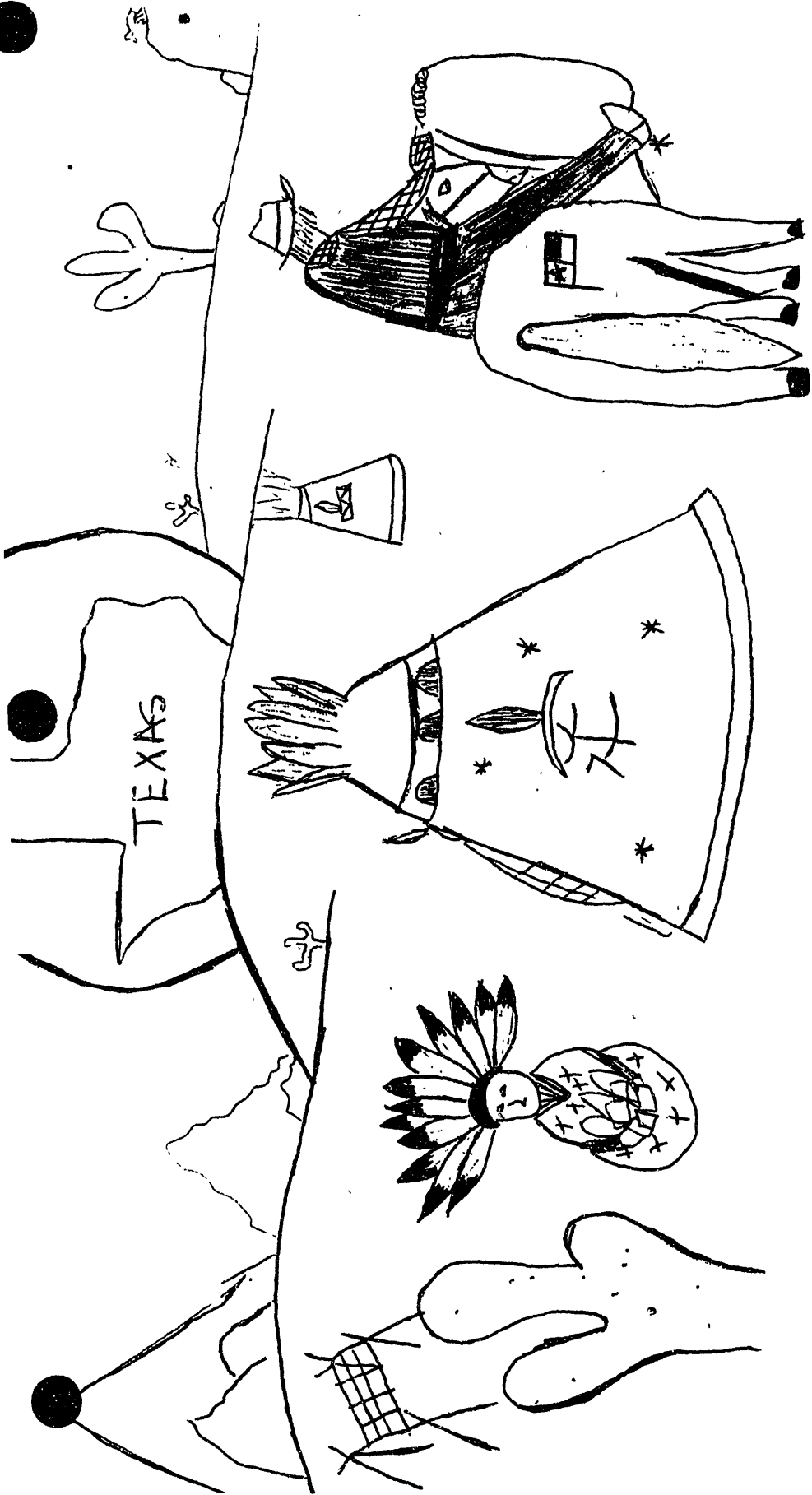
TEXAS



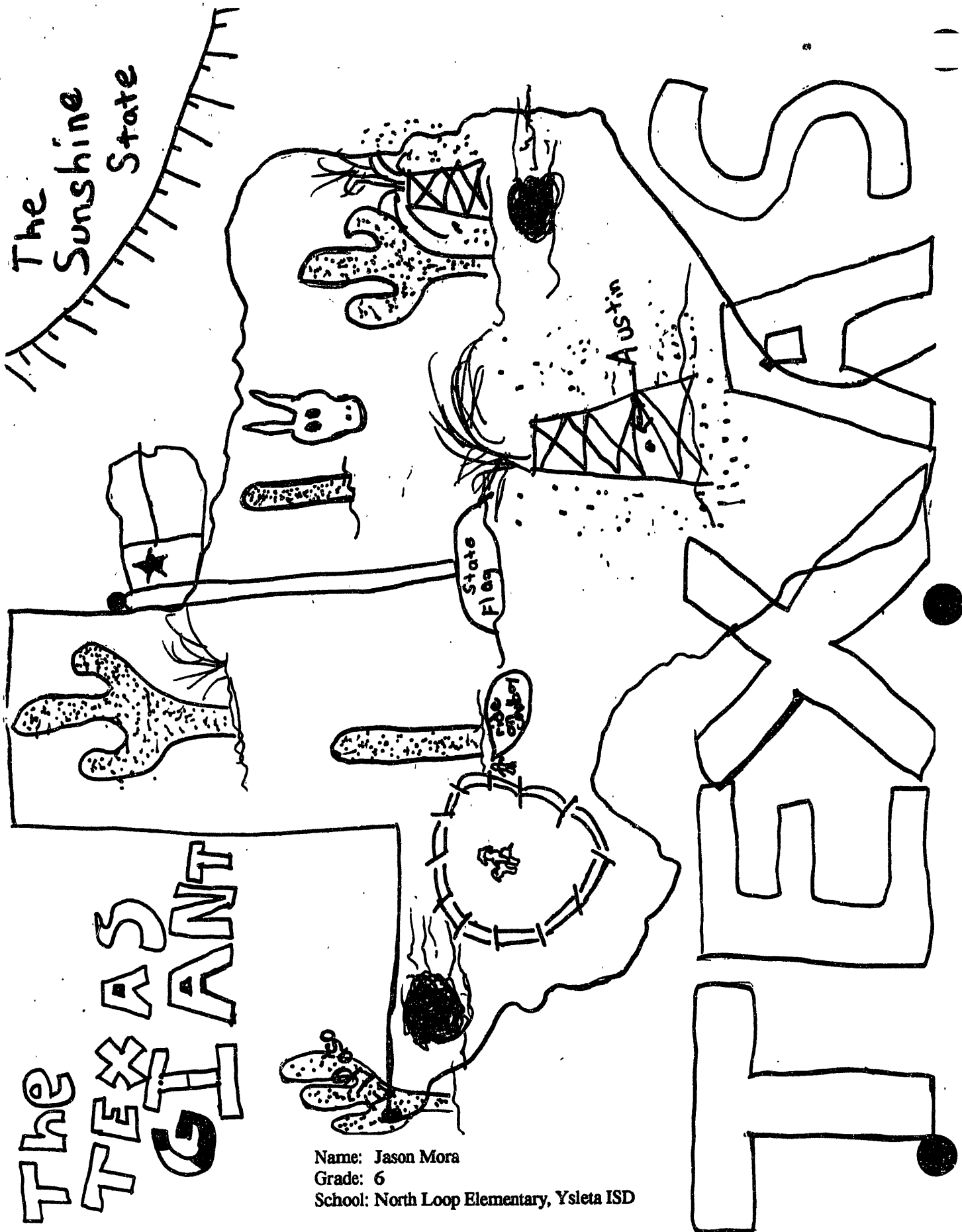
Name: Jerry Vasquez
Grade: 6
School: North Loop Elementary, Ysleta ISD



Name: Adriana Villagran
Grade: 6
School: North Loop Elementary, Ysleta ISD



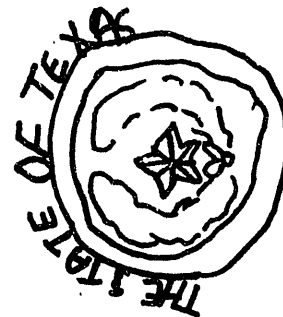
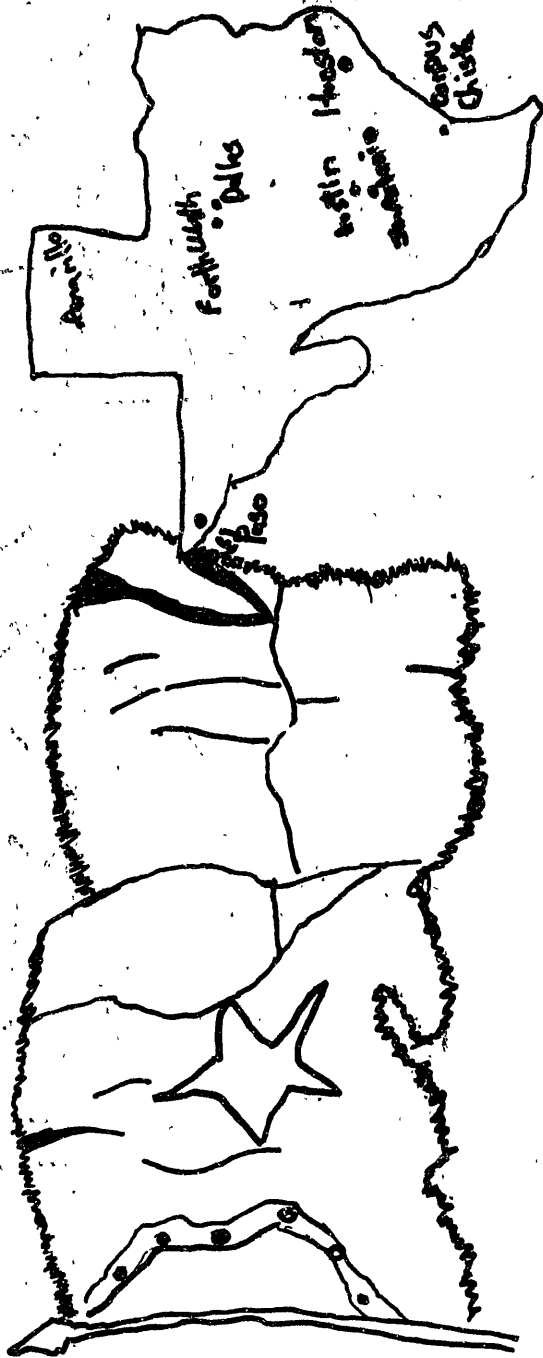
Name: Rosa Cardona
Grade: 6
School: North Loop Elementary, Ysleta ISD



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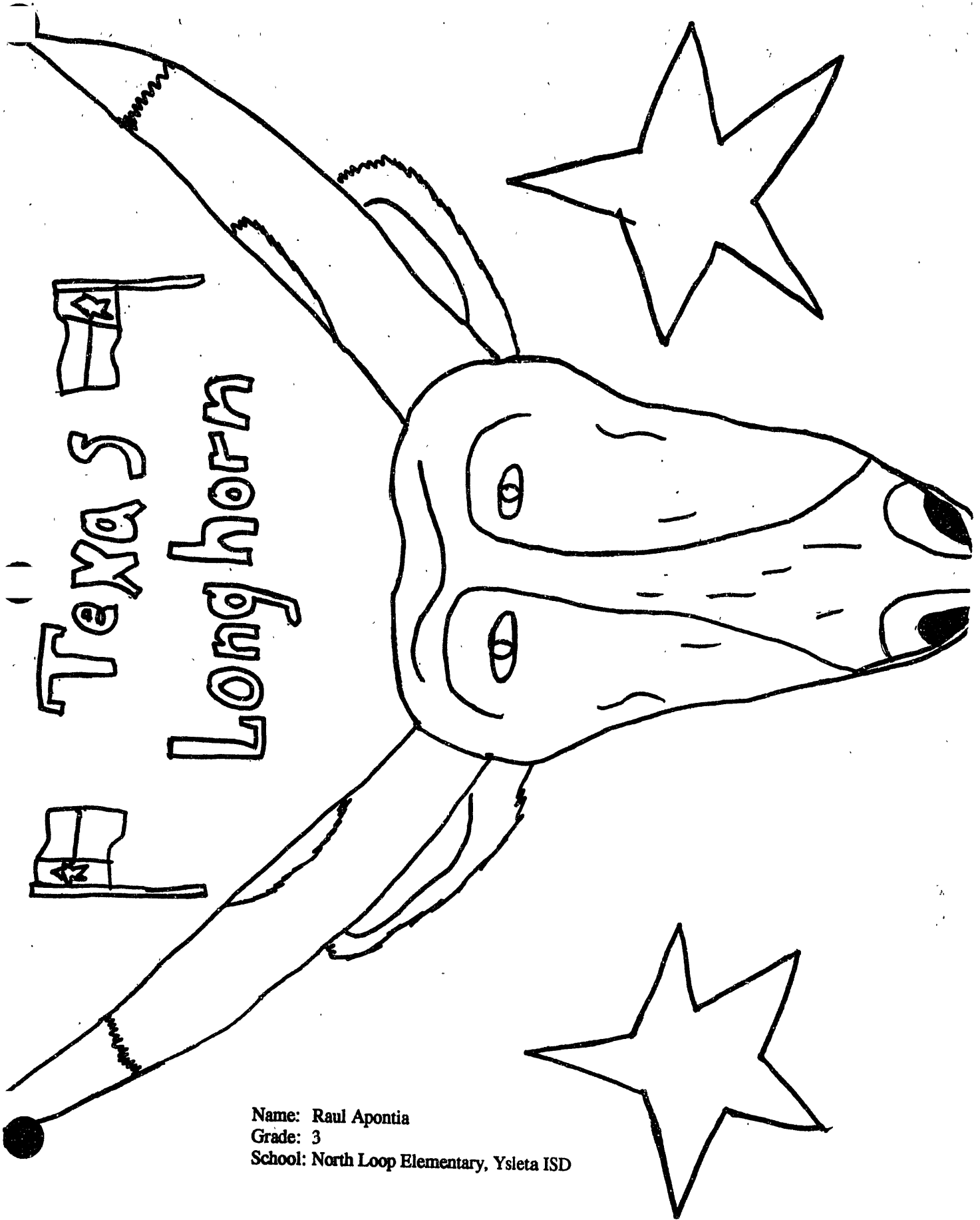
Name: Jason Mora
Grade: 6
School: North Loop Elementary, Ysleta ISD



Name: Alex Torres
Grade: 6
School: North Loop Elementary, Ysleta ISD



Name: Monica Ramirez
Grade: 6
School: North Loop Elementary, Ysleta ISD



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Grade: 3
School: North Loop Elementary, Ysleta ISD

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