

Texas Register

Volume 17, Number 18, March 10, 1992

Pages 1785-1835

In This Issue...

Emergency Sections

Texas Ethics Commission

Campaign Financing

1 TAC §§5.21, 5.23, 5.25..... 1795

Personal Financial Disclosure

1 TAC §7.3..... 1795

Texas Commission on Fire Protection

Flammable Liquids

37 TAC §§501.1-501.5, 501.7..... 1796

Proposed Sections

Texas Ethics Commission

Campaign Financing

1 TAC §§5.21, 5.23, 5.25..... 1797

Personal Financial Disclosure

1 TAC §7.3..... 1797

General Services Commission

Building and Property Services Division

1 TAC §§115.35, §115.36..... 1797

State Board of Registration for Professional Engineers

Practice and Procedure

22 TAC §131.173 1799

Texas Board of Veterinary Medical Examiners

Rules of Professional Conduct

22 TAC §573.4 1799

22 TAC §573.6 1799

22 TAC §573.10 1800

22 TAC §573.24 1800

22 TAC §573.28 1801

22 TAC §573.30 1801

Texas Department of Health

Chronic Diseases

25 TAC §§61.31-61.42..... 1801

Food and Drug

25 TAC §§229.141, 229.142, 229.144-229.147, 229.150-229.152..... 1804

25 TAC §229.148 1805

CONTENTS CONTINUED INSIDE

Texas Register

The *Texas Register* (ISSN 362-4781) is published semi-weekly 100 times a year except February 28, November 6, December 1, December 29, 1992. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78711.

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

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

Governor - Appointments, executive orders, and proclamations

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

Secretary of State - opinions based on the election laws

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Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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 accumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 17 (1992) is cited as follows: 17 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower left-hand corner of the page, would be written: "14 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 14 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, 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 approved, collected volumes of Texas administrative rules.

How to Cite: Under the TAC scheme, each agency 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 rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

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This program is sponsored by the *Texas Register* to promote the artistic abilities of Texas students, grades K-12, and to help students gain an insight into Texas government. The artwork is used to fill otherwise blank pages in the *Texas Register*. The blank pages are a result of the production process used to create the *Texas Register*. The artwork does not add additional pages and does not increase the cost of the *Texas Register*.

Texas Register Publications



a section of the
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Austin, Texas 78711-3824
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Subscriptions: Printed - one year (96 regular issues and four index issues), \$95; six months (48 regular issues and two index issues), \$75. Electronic - one year (96 regular issues and four index issues), \$90; six months (48 regular issues and two index issues), \$70. Single copies of most issues are available at \$5 per copy.

Occupational Health and Radiation Control	
25 TAC §289.120	1808
<i>Texas Commission on Fire Protection</i>	
General Administration	
37 TAC §§461.1, 461.3, 461.5, 461.7, 461.9, 461.11, 461.13, 461.15, 461.17, 461.19, 461.21, 461.23, 461.25, 461.27	1809
37 TAC §§461.1-461.4	1809
Application Criteria	
37 TAC §§463.1-463.6	1810
Application Provisions	
37 TAC §§463.1, 463.3, 463.5, 463.7, 463.9, 463.11, 463.13	1810
Equipment, Facilities, and Training Standards	
37 TAC §§465.1-465.3	1813
Flammable Liquids	
37 TAC §§501.1-501.5, 501.7	1813
Withdrawn Section	
<i>Texas State Board of Veterinary Medical Examiners</i>	
Licensing	
22 TAC §571.3	1815
Adopted Sections	
<i>General Services Commission</i>	
Telecommunication Services	
1 TAC §121.10	1817
<i>Texas Department of Health</i>	
Long-Term Care	
25 TAC §145.111	1817
<i>Texas Department of Human Services</i>	
Income Assistance Services	
40 TAC §3.704	1820
40 TAC §3.902	1820
40 TAC §3.1003	1820

Purchased Health Services	
40 TAC §29.1102, §29.1104	1821
40 TAC §29.1104	1822
Open Meetings	
Texas Department of Agriculture	1823
Texas Board of Architectural Examiners	1823
State Bar of Texas	1823
Texas Commission for the Blind (TCB)	1823
Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons	1824
Canadian River Compact Commission	1824
Texas Board of Criminal Justice	1824
Texas Education Agency	1824
Advisory Commission on State Emergency Communications	1826
Texas Historical Commission	1826
Texas Hospital Equipment Financing Council	1827
Texas Department of Human Services	1827
Texas Department of Insurance	1827
Texas Board of Professional Land Surveying	1827
Texas Department of Licensing and Regulation	1827
Texas Board of Licensure for Nursing Home Administrators	1828
State Preservation Board	1828
Public Utility Commission of Texas	1828
Texas Real Estate Commission	1828
Structural Pest Control Board	1828
Texas Appraiser Licensing and Certification Board	1828
Texas Catastrophe Property Insurance Association	1828
Texas On-site Wastewater Treatment Research Council	1829
Texas Water Commission	1829
Texas Water Development Board	1829
Regional Meetings	1829

In Addition Sections

Texas Air Control Board

Correction of Errors1831

***Texas Committee on Purchases of
Products and Services of Blind and
Severely Disabled Persons***

List of Suitable Products1832

***Texas Department of Housing and
Community Affairs***

Public Notices1832

Texas Department of Human Services

Consultant Proposal Request1833

***Lower Rio Grande Valley Development
Council***

Consultant Proposal Request 1833

Public Utility Commission of Texas

Notice of Intent To File Pursuant To PUC Substantive
Rule 23.27 1834

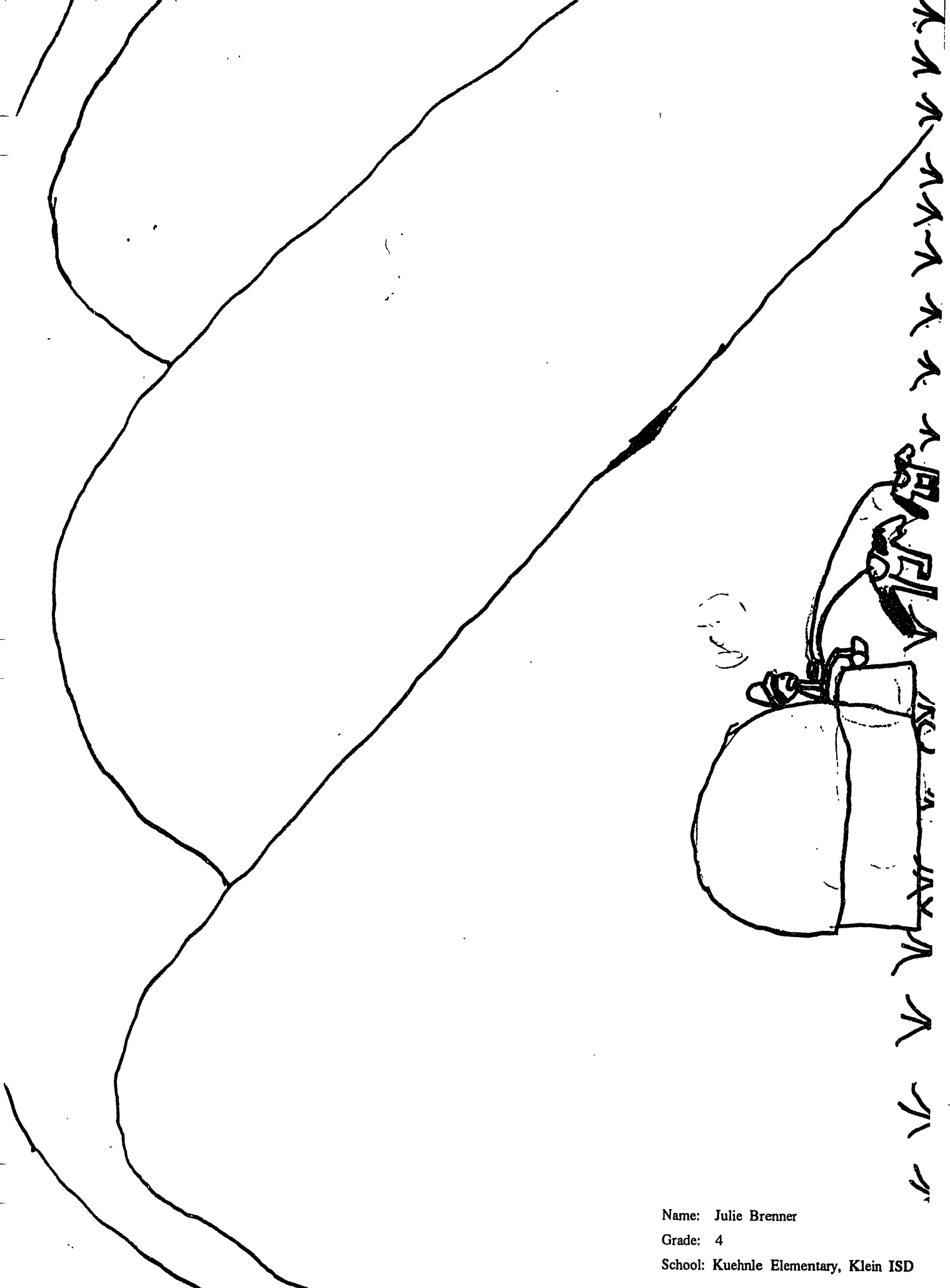
Railroad Commission of Texas

Correction of Error 1834

Texas Water Commission

Enforcement Order 1834

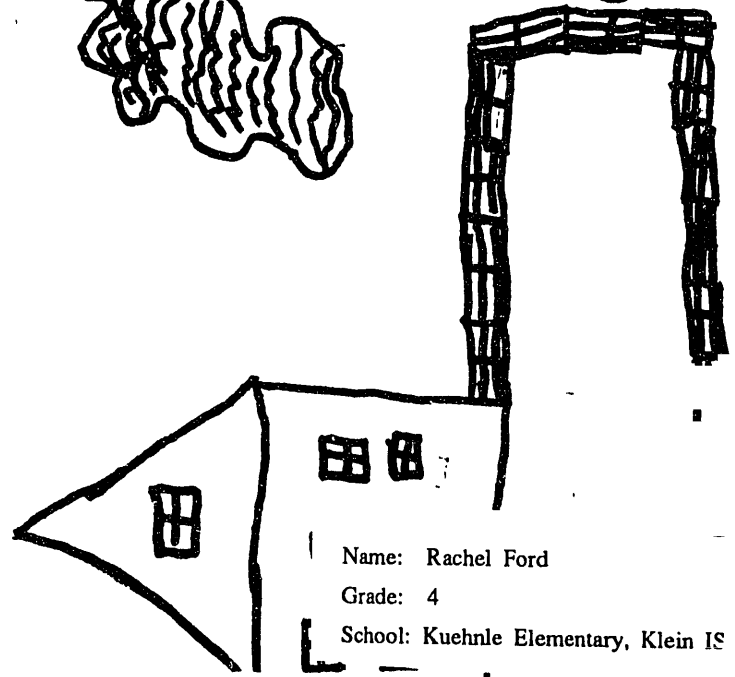
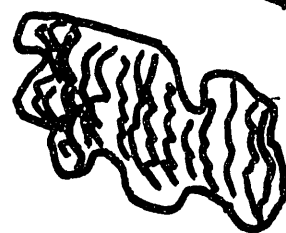
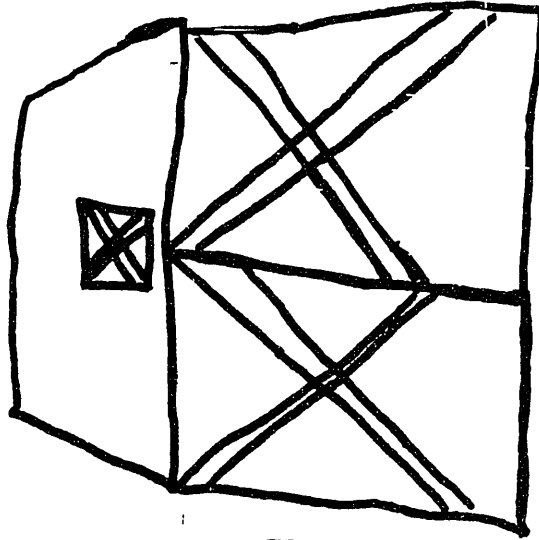
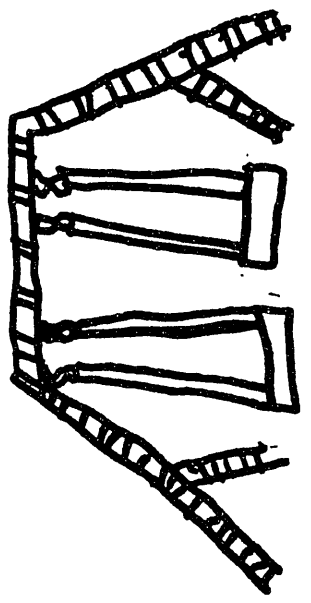
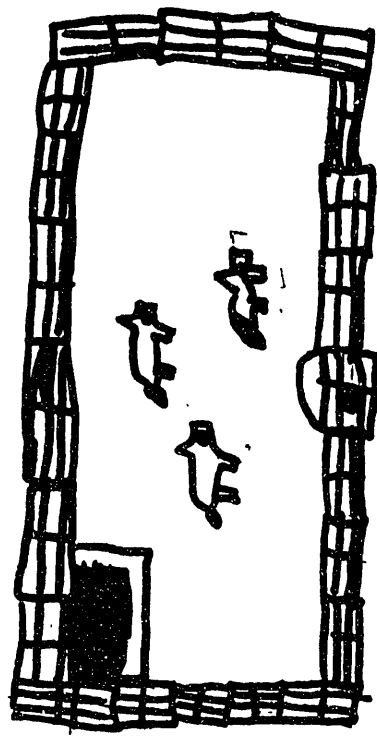
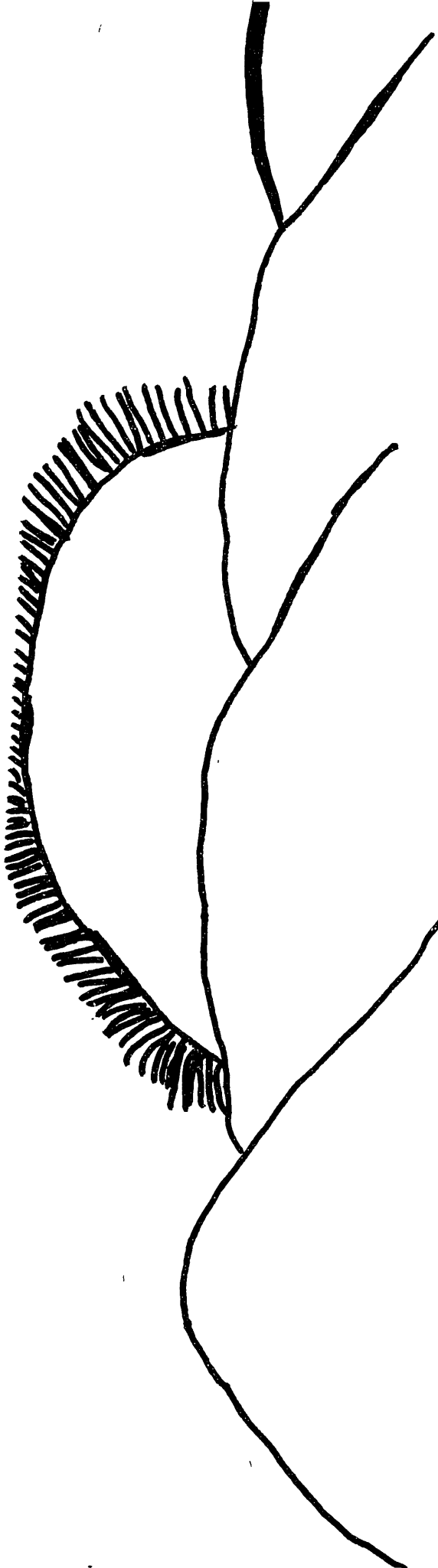
Notice of Application For Waste Disposal Permit...1834



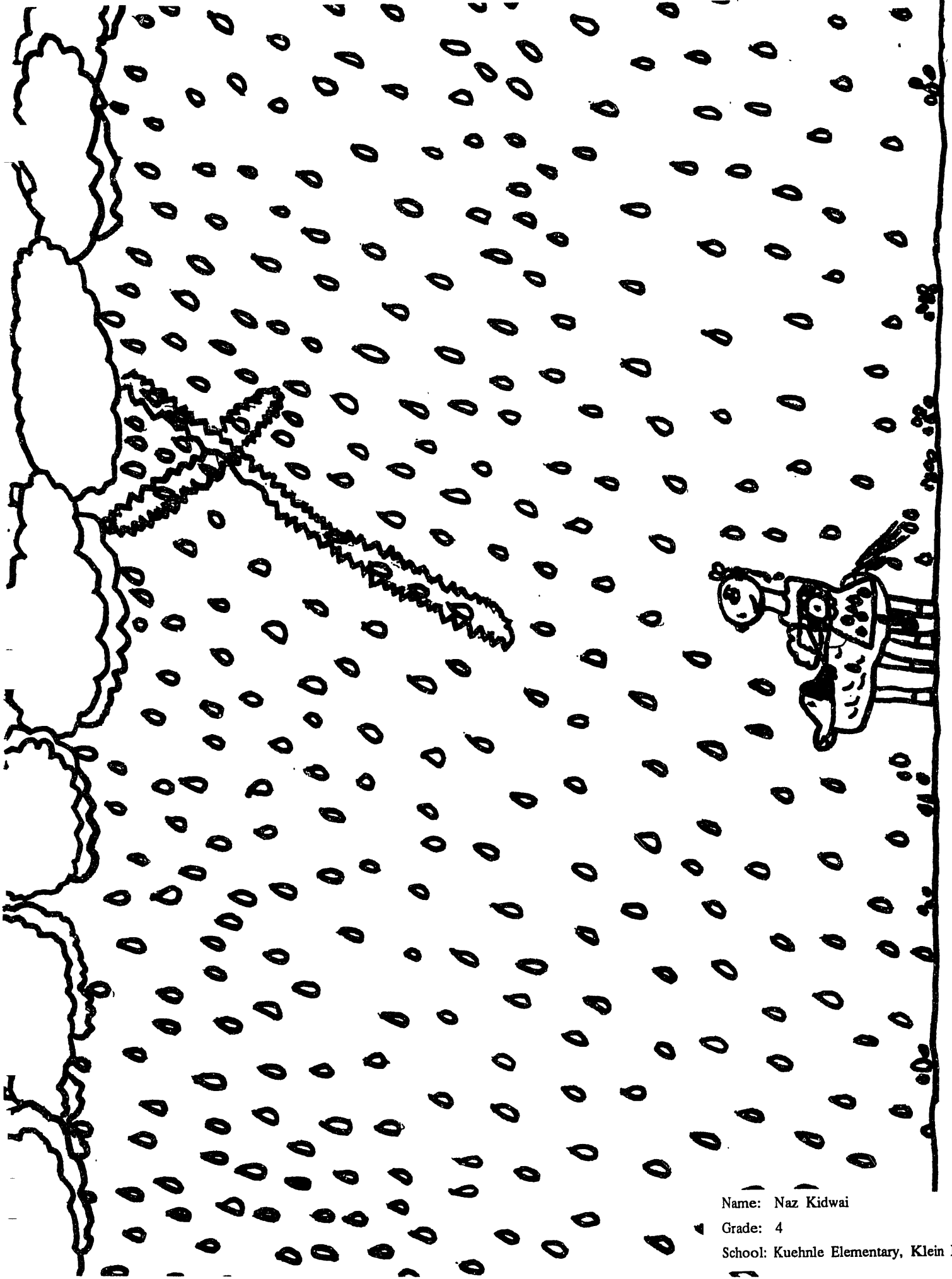
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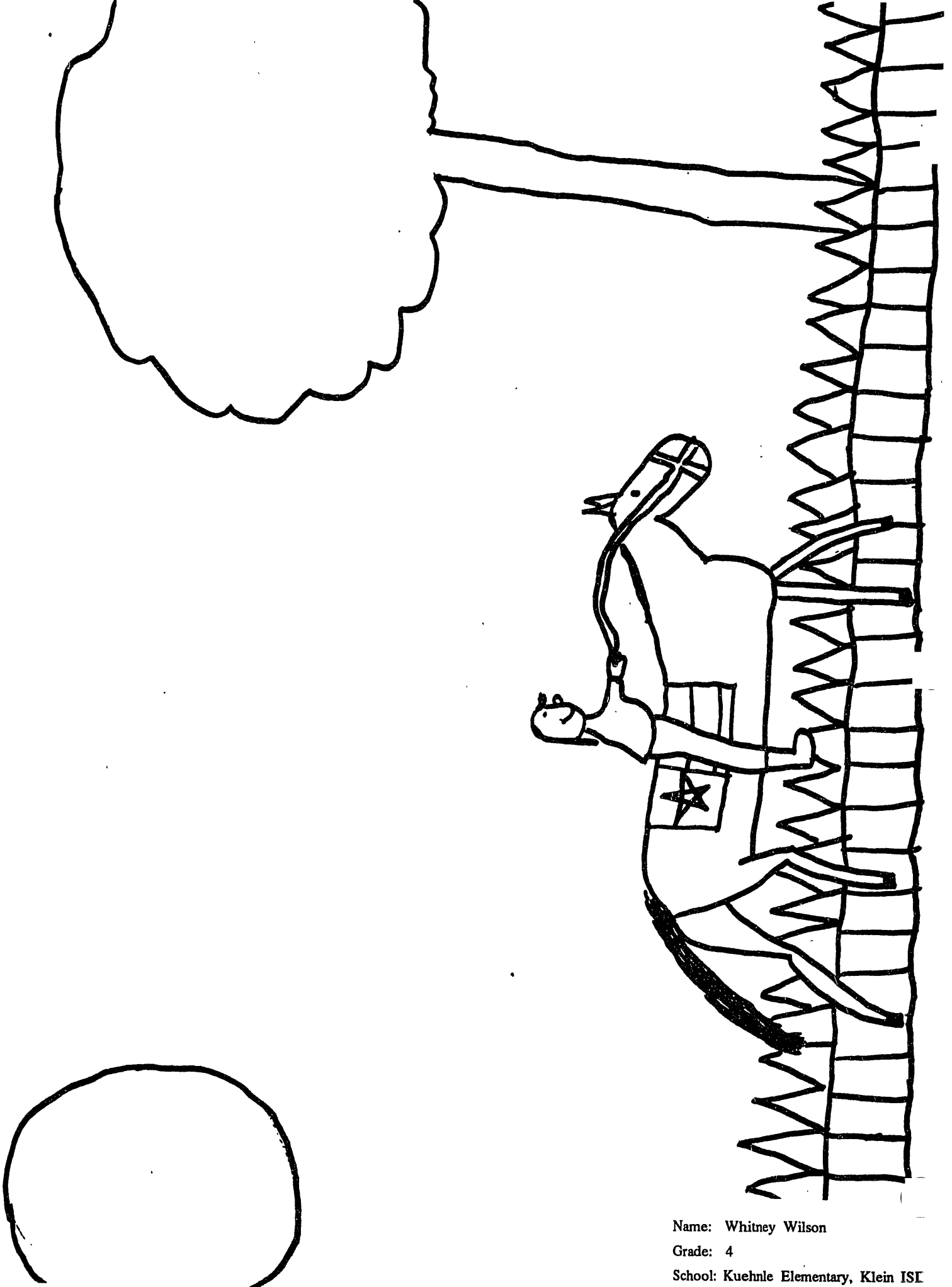
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Grade: 4

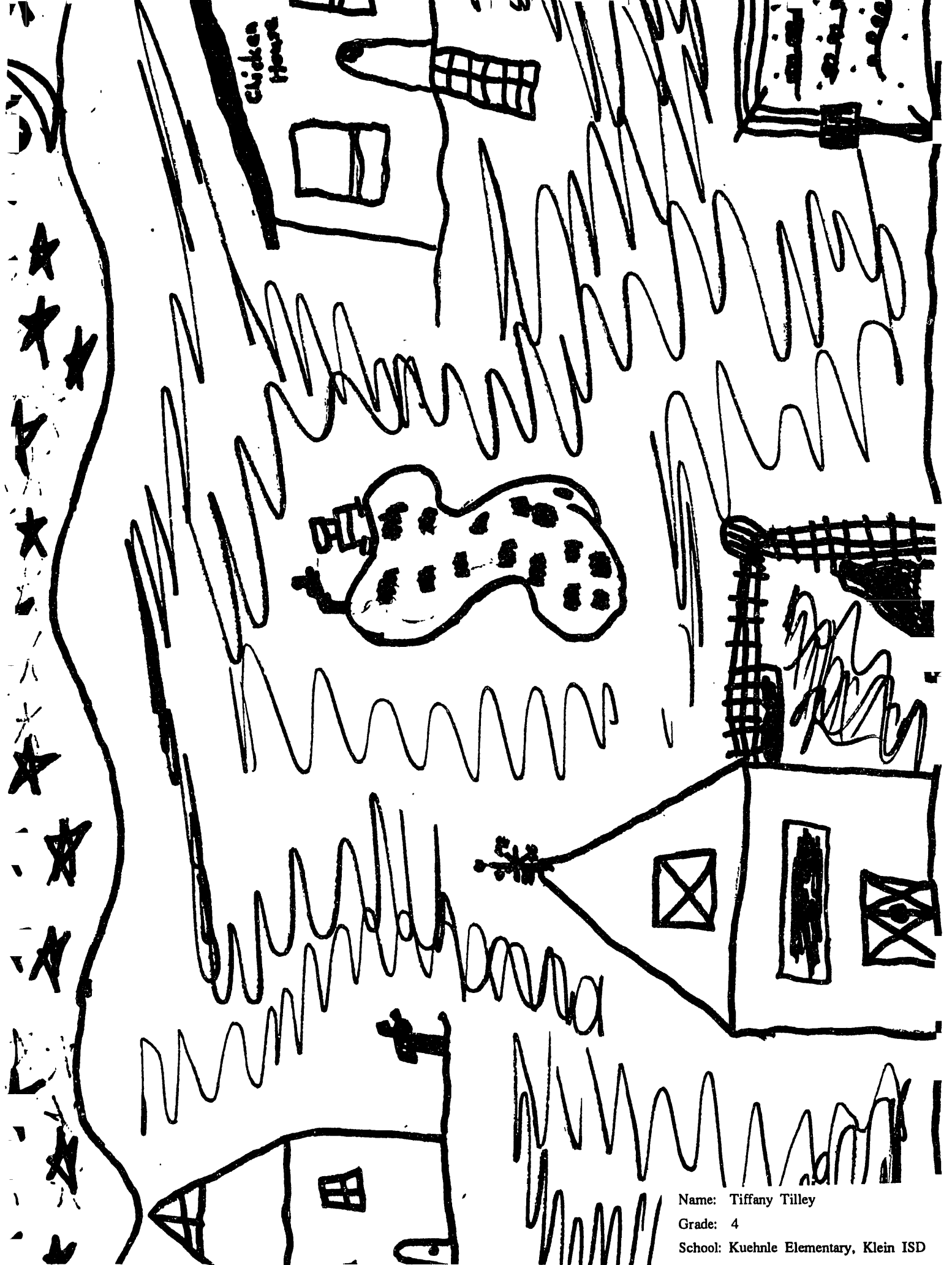
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Emergency Sections

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

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

TITLE 1. ADMINISTRATION

Part II. Texas Ethics Commission

Chapter 5. Campaign Financing

Subchapter C. Rules Concerning Reports

• 1 TAC §§5.21, 5.23, 5.25

The Texas Ethics Commission adopts on an emergency basis new §§5.21, 5.23, and 5.25 concerning an exception to reporting the name of each candidate or officeholder who benefits from a direct campaign expenditure by certain specific-purpose committees; the filing of reports after a special legislative session; and officeholder accounts.

The Texas Ethics Commission has determined that the emergency adoption of the new sections are necessary and in the public interest in order to comply with Title 15, Texas Election Code, §§251.031(a)(7), 254.0391, and 253.040, as amended by Senate Bill 1 of the 72nd Regular Session of the Texas Legislature, effective date January 1, 1992.

The Texas Ethics Commission finds that an emergency exists in that Title 15, Texas Election Code, has been amended effective January 1, 1992. The amendment requires certain information to be filed on or after January 1, 1992. Failure to disclose information correctly and accurately could result in civil penalties being imposed.

The Texas Constitution, Article III, §24a, created the Texas Ethics Commission gives the commission such powers and duties as the Legislature may provide. The Legislature has enacted Texas Civil Statutes, Article 6252-9d.1, effective January 1, 1992, which confers on the commission the power to administer and enforce Title 15, Texas Election Code, and the power to promulgate and adopt rules.

The new sections are adopted under Title 15, Texas Election Code, by Article 6252-9d.1, §1.11(b)(9), which confers upon the commission the authority to adopt rules.

§5.21. Exception Concerning the Reporting by Certain Specific-Purpose Committees the Name of Each Candidate or Officeholder Benefiting from a Direct Campaign Expenditure. A specific-purpose committee

which supports a candidate or officeholder for statewide office; a district office filled by voters of more than one county; state senator; state representative; or the State Board of Education is not required to report the name and the office sought or held by the candidate or officeholder who benefits from a direct campaign expenditure under the Texas Election Code, §254.031(a)(7).

§5.23. Filing of Report After Special Legislative Session. A sworn report of contributions required to be filed by the Texas Election Code, §254.0391, is not required to be filed if no contributions were accepted during the applicable filing period.

§5.25. Officeholder Accounts. Officeholders who maintain officeholder and campaign contributions in bank accounts must deposit the officeholder contributions in only those accounts containing campaign contributions. The Texas Election Code, §253.040, does not require all officeholder and campaign contributions to be deposited in one bank account.

Issued in Austin, Texas, on March 2, 1992.

TRD-9203068

Jim Mathieson
Staff Attorney
Texas Ethics Commission

Effective date: March 3, 1992

Expiration date: July 1, 1992

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

Chapter 7. Personal Financial Disclosure

Subchapter A. Disclosure Statements

Expenditures Previously Reported

• 1 TAC §7.3

The Texas Ethics Commission adopts on an emergency basis new §7.3 which excepts the double reporting of previously reported expenditures permitted under the Texas Penal Code, §36.07(b) (Vernon's Supplement 1991).

The Texas Ethics Commission has determined that the emergency adoption of the

new section is necessary and in the public interest in order to comply with Texas Civil Statutes, Article 6252-9d.1, (Vernon's Supplement 1991).

The Texas Ethics Commission finds that an emergency exists in that: Texas Civil Statutes, Article 6252-9b (Vernon's Supplement 1991), requires that certain information must be filed with the commission after January 1, 1992, and that it be done on certain forms promulgated by the Texas Ethics Commission. Further, this information can be reported pursuant to different statutory authority which may result in a duplication of filing resulting in a waste of resources, duplication of effort, and harm to the public.

The Texas Constitution Article III, §24a, created the Texas Ethics Commission and gives the commission such powers and duties as the legislature may provide. The legislature has enacted Texas Civil Statutes, Article 6252-9d.1, effective January 1, 1992, which confers on the commission the power to administer and enforce Texas Civil Statutes, Article 6252-9b, (Vernon's Supplement 1991), and the power to promulgate rules.

The new section is adopted on an emergency basis under Title 15, Texas Election Code, by Texas Civil Statutes, Article 6252-9d.1, §1.11(b)(9), which confers upon the commission the authority to adopt rules.

§7.3. Expenditures Reported under Title 15, Texas Election Code. Any person who has reported the receipt of conference transportation, meals, or lodging expenses permitted under the Texas Penal Code, §36.07, on that person's Candidate's Sworn Report of Contributions and Expenditures filed pursuant to Title 15, Texas Election Code, is not required to again list that information on that person's Financial Statement filed pursuant to Texas Civil Statutes, Article 6252-9b (Vernon's Supplement 1991).

Issued in Austin, Texas, on March 2, 1992.

TRD-9203069

Jim Mathieson
Staff Attorney
Texas Ethics Commission

Effective date: March 3, 1992

Expiration date: July 1, 1992

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

TITLE 37. PUBLIC SAFETY AND CORRECTION

Part XIII. Texas Commission on Fire Protection

Chapter 501. Flammable Liquids

• 37 TAC §§501.1-501.5, 501.7

The Texas Commission on Fire Protection adopts on an emergency basis §§501.1-501.5, and 501.7, concerning rules for the safe storage, handling and use of flammable liquids at retail service stations.

Adoption of these amendments on an emergency basis is necessary in order to provide continuous administrative regulation and guidelines for the safe storage, handling, and use of flammable liquids.

These sections ensure compliance with the most updated construction and installation practices available for underground and aboveground flammable liquids storage tanks in order to promote public fire safety.

The amendments are adopted on an emergency basis under the Health and Safety Code, Chapter 753, §753.003, which provides the State Fire Marshal with the authority to formulate, adopt, and promulgate rules and regulations for the safe storage, handling, and use of flammable liquids in accordance with this article.

§501.1. Purpose. The purpose of this subchapter is to administer [through the state fire marshal] the law set forth in the

Health and Safety Code, Chapter 753, regarding the safe storage, handling, and use of flammable liquids at retail service stations [and aircraft fueling facilities].

§501.2. Title. The sections of this subchapter shall be known as and may be cited as the rules for the safe storage, handling, and use of flammable liquids at retail service stations [and aircraft fueling facilities].

§501.3. Applicability of Sections. The sections of this subchapter shall apply to any person engaged in the business of the storage, handling, dispensing, and use of flammable liquids at retail service stations, [aircraft fueling facilities,] and bulk plants operated in conjunction with retail service stations.

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

[Aircraft fueling facility—Airport fueling system as defined by National Fire Protection Association Standard 407.]

§501.5. Adopted Standards. The commission [board] adopts by reference the following copyrighted standards and recommendations, except to the extent they are in conflict with sections of this subchapter or any Texas statutes or federal law. The standards are published by and are available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269:

(1) NFPA 30-1990 [1987], Flammable and Combustible Liquids Code;

(2) NFPA 30A-1990 [1987], Automotive and Marine Service Station Code, including the Tentative Interim Amendment (TIA Log Number 312R) adopted by the NFPA in 1991, except for Section 2-4.2 of the Tentative Interim Amendment concerning tank location and capacity.

(3) NFPA 407-1985, Aircraft Fuel Servicing.]

§501.7. Severability. If any provision of this subchapter or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of these rules [this subchapter] which can be given effect without the invalid provisions or application. To this end, all provisions of this subchapter are declared to be severable.

Issued in Austin, Texas, on March 2, 1992.

TRD-9203055

Jack Woods
General Counsel
Texas Commission on Fire Protection

Effective date: March 2, 1992

Expiration date: June 30, 1992

For further information, please call: (512) 322-3550



Proposed Sections

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

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

TITLE 1. ADMINISTRATION

Part II. Texas Ethics Commission

Chapter 5. Campaign Financing

Subchapter C. Rules Concerning Reports

• 1 TAC §§5.21, 5.23, 5.25

(Editor's Note: The Texas Ethics Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Ethics Commission proposes new §§5.21, 5.23, and 5.25, concerning the naming of certain persons who benefit from direct campaign expenditures; the filing of reports after a special legislative session; and officeholder accounts. The new sections set forth the exceptions and requirements relating to the filing of information with the commission.

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

Mr. Mathieson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to comply with Texas Civil Statutes, Article 6252-9d.1, (Vernon's Supplement 1991), and Title 15, Texas Election Code to avoid the imposition of civil penalties and by providing guidelines. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Jim Mathieson, 1101 Camino La Costa, Austin, Texas 78752. Only written comments will be accepted.

The new sections are proposed under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate rules concerning the naming of certain individuals who benefit from a direct campaign expenditure; the filing of reports after a special legislative session; and officeholder accounts.

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

Issued in Austin, Texas, on March 2, 1992.

TRD-9203067 Jim Mathieson
Staff Attorney
Texas Ethics Commission

Earliest possible date of adoption: April 10, 1992

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

Chapter 7. Personal Financial Disclosure

Subchapter A. Disclosure Statements

Expenditures Previously Reported

• 1 TAC §7.3

(Editor's Note: The Texas Ethics Commission proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Ethics Commission proposes new §7.3 concerning filing of certain information with the Commission. This section excepts certain information from being filed twice pursuant to different statutes.

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

Mr. Mathieson also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to comply with Texas Civil Statutes, Article 6252-9d.1, (Vernon's Supplement 1991), and to prevent a duplication of filing and reporting of certain information with the commission. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jim Mathieson, 1101 Camino La Costa, Austin, Texas 78752. Only written comments will be accepted.

The new section is proposed under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate rules governing the filing of information pursuant to Title 15,

Texas Election Code, and Texas Civil Statutes, Article 6252-9b, (Vernon's Supplement 1991).

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

Issued in Austin, Texas, on March 2, 1992.

TRD-9203070 Jim Mathieson
Staff Attorney
Texas Ethics Commission

Earliest possible date of adoption: April 10, 1992

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

Part V. General Services Commission

Chapter 115. Building and Property Services Division

State Leased Property

• 1 TAC §§115.35, §115.36

The General Services Commission proposes amendments to §§115.35 and §115.36, concerning evaluation of competitive bids for lease space and competitive sealed proposals for lease space. The proposed amendment to §115.35 sets forth the method for evaluation of bids in regard to cost, including the evaluation of escalation factors in such bids. The proposed amendment to §115.36 sets forth circumstances that will permit competitive sealed proposals and competitive negotiation for lease space, and details the procedure to be used in obtaining lease space by competitive sealed proposals.

John E. Hodges, director for the Facilities Construction and Space Management, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Hodges also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the section is clarity and uniformity in the evaluation of bids and improved quality and economy of space leases. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Judith M. Porras, General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, Article 601b, §6.12, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of Article 6.

§115.35. Leasing from a Private Source.

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

(d) Evaluation of bids.

(1)-(5) (No change.)

(6) The commission will evaluate all bids that meet or exceed advertised requirements, [All bids will be evaluated] based on the effective monthly cost to the state for the initial term of the lease as advertised [projected over the life of the lease]. (For purposes of this paragraph, options to renew and options to purchase will not be considered.) The commission will not consider a bid in which bid prices are subject to any escalation during the initial advertised lease term, if the maximum amount of such escalation cannot be computed when the bid is evaluated. Such bids will be disqualified. The commission will evaluate a bid that offers a predetermined limit of escalation by considering the maximum amount of any and all escalations as the bid price for the initial term.

(7)-(10) (No change.)

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

§115.36. Negotiation with a private source.

(a) Except as provided in subsection (b) of this section, negotiation [Negotiation] with a private source to secure a state lease is permitted [shall be utilized] only when the commission determines that competitive bidding is not possible [in cases where competition is not considered by the commission to be available]. Such cases [shall] include but are not [be] limited to the following:

[(1) requests for lease of radio tower space.]

(1)[(2)] emergency leases entered into under §115.33(a) of this title (relating to Receipt and Processing of Requisitions for Leased Space);

(2)[(3)] when only one bid meeting specifications is received, or when no bids are received, following advertisement[,] and the commission determines, after a review of advertised specifications, that no unduly restrictive specifications were used;

(3)[(4)] when the commission determines that specifications needed by the requesting agency are so restrictive as to effectively eliminate competition. Specifications of this restrictive [a] nature must be justified by the requesting agency in writing to the commission and must be approved by the commission as necessary to the essential function and purpose of the agency. (See §115.33(c)(7)(B) of this title (relating to Receipt and Processing of Requisitions for Leased Space)).

(b) Pursuant to Texas Civil Statutes, Article 601b, §6.051, if the commission finds that competitive bidding is not practical or is disadvantageous to the state, it may lease space from private sources by following the competitive sealed proposal procedures set forth in this subsection. As used in this subsection, "practical" means what can be accomplished or put into application and "disadvantageous" means a judgmental assessment of what is not in the state's best interest.

(1) Competitive bidding is not practical unless the nature of the requisition for space permits an award to a lowest price bidder who agrees to perform without condition or reservation in accordance with the space requirements, delivery or performance schedule, and all other terms and conditions of an invitation for bids. Factors that may be considered in determining that competitive bidding is not practical include, but are not limited to, the following:

(A) the need for oral or written discussions with potential offerors concerning technical and price aspects of their proposals;

(B) whether offerors may need an opportunity to revise their offers, including price;

(C) whether the state's failure to base an award upon an assessment of factors other than price is likely to result in a readvertisement of the requisition;

(D) whether the primary consideration in determining an award may not be price.

(2) A determination that competitive bidding is disadvantageous to the state may be based upon one or more of the following factors:

(A) the potential for excessive or inflated bid prices;

(B) the potential for an inadequate number or quality of bids;

(C) the likelihood that one or more of the factors which make competitive bidding impractical, as set forth in subsection (b)(1) of this section, would also result in a lease contract that is not the most advantageous for the state.

(3) The commission shall solicit proposals by issuing a request for proposals (RFP). Public notice of the RFP shall be given by publication in the *Texas Register* and in a newspaper of general circulation in the county where the space to be leased is located. Notice of the RFP may also be mailed to potential offerors that are on the bidders' list, in accordance with §115.35(b) of this title (relating to solicitation of bids.) Notice of the RFP must specify how persons who may be interested in submitting proposals may obtain a complete RFP and must identify the time and place at which proposals will be received and opened.

(4) At a minimum, an RFP must contain all information required in specifications by §115.33(b) of this title (relating to specifications); criteria that will be used to evaluate proposals; a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions; and a statement of how and when price information should be submitted. As used in this subsection, "discussions" means negotiation, amendment, clarification, modification, or any of these.

(5) Proposals shall be opened in a manner that does not disclose the contents of the proposals. At public opening of proposals only the name of the proposer shall be made public. The proposals may not be made public until a lease contract is awarded.

(6) Proposals shall be evaluated considering only the evaluation criteria set forth in the RFP and by comparing the proposal to the stated criteria, rather than comparing one proposal to another. An evaluation team may be designated to evaluate proposals.

(7) If discussions are to be conducted, the commission shall provide to each offeror whose offer meets the minimum requirements set forth in the request for proposals a reasonable opportunity for discussion and revision of its proposal. The commission shall invite a requisitioning agency to participate in such discussions and negotiations. During discussions, no information from a competing proposal may be revealed to an-

other competitor. Any procedure that amounts to an auction practice is prohibited as being inconsistent with fair competition. When all discussions have been concluded, a time and place will be established for the receipt of best and final offers. A proposal may not be modified or amended in any respect after the established time for receipt of best and final offers.

(8) An award shall be made to the offeror whose proposal is evaluated to be the most advantageous to the state, considering the evaluation factors of the RFP and price. No other factors shall be considered in evaluation. If the commission finds that no proposals are acceptable, it shall reject all proposals. When an award is made, the basis of the award shall be stated in writing and made a part of the lease file. The lease contract resulting from the RFP shall be embodied in the standard state lease contract form, which incorporates the advertised requirements and the proposal, including amendments made during discussions and the best and final offer.

(c) An institution of higher education to whom leasing authority has been delegated pursuant to Texas Civil Statutes, Article 601b, §6.111 and §115.40 of this title (relating to delegation of leasing authority) may enter into leases through competitive sealed proposal procedures in compliance with subsection (b) of this section.

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

Issued in Austin, Texas, on March 3, 1992.

TRD-9203071 Judith M. Porras
General Counsel
General Services
Commission

Earliest possible date of adoption: April 10, 1992

For further information, please call: (512) 463-3446

TITLE 22. EXAMINING BOARDS

Part VI. State Board of Registration for Professional Engineers

Chapter 131. Practice and Procedure

Complaints

• 22 TAC §131.173

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.173, concerning complaints.

The section as amended corrects language in the title to provide consistency between the language contained in Texas Civil Statutes, Article 3271a and the board rules of practice and procedure.

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

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

Comments on the proposal may be submitted to Charles E. Nemir, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.173. Complaints Against Registrants [Licensees].

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

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

Issued in Austin, Texas, on March 3, 1992.

TRD-9203085 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Proposed date of adoption: April 22, 1992

For further information, please call: (512) 440-3074

Part XXIV. Texas Board of Veterinary Medical Examiners

Chapter 573. Rules and Professional Conduct

General Professional Ethics

• 22 TAC §573.4

The Texas Board of Veterinary Medical Examiners proposes an amendment to §573.4, concerning adherence to the law. The amendment removes antiquated wording and allows the board to take action against a licensee when there is proof of a violation and does not require action be deferred until a final conviction is obtained.

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

Mr. Matthijetz also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will not be applicable. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

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

§573.4. Adherence to the law. No veterinarian shall commit any act that is in violation of the laws of the State of Texas, other states, or of the United States, if the act is connected with the veterinarian's practice of medicine. A complaint, indictment, or conviction of a law violation is not necessary, for the enforcement of this rule. Proof of the commission of the act while in the practice of, or under the guise of the practice of, veterinary medicine, is sufficient for action by the board under this rule. [render any service or advice involving disloyalty to the law. A veterinarian must also observe and advise clients to observe the law.]

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

Issued in Austin, Texas, on February 27, 1992.

TRD-9203041 Buddy Matthijetz
Executive Director
Texas Board of Veterinary
Medical Examiners

Earliest possible date of adoption: June 12, 1992

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

• 22 TAC §573.6

The Texas Board of Veterinary Medical Examiners proposes an amendment to §573.6, concerning restriction of partnerships to members of profession. The amendment adds an explanation as to why there is a restriction on partnerships.

Buddy Matthijetz, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal

implications for state or local government as a result of enforcing or administering the section.

Mr. Matthijetz also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to restrict partnerships to veterinary members since the business aspects of the partnership involve the ability and opportunity of each partner to influence the other partner's professional judgement in practicing veterinary medicine. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

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

§573.6. Restriction of Partnerships to Members of Profession. The business aspects of veterinary partnerships necessarily, and are presumed to, involve the ability and opportunity of each partner to influence the professional judgement of the other partners in the practice of veterinary medicine. In the formation of partnerships for the practice of veterinary medicine, no person shall be admitted as a partner who is not a member of the veterinary profession, duly authorized to practice, and amenable to professional discipline. No person shall be held out as a practitioner of veterinary medicine or a member of the firm who is not so admitted. In the selection and use of a firm name, no false or misleading name shall be used. Partnerships between veterinarians and members of other professions or non-professional persons shall not be formed or permitted if a part of the partnership employment consists of the practice of veterinary medicine.

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

Issued in Austin, Texas, on February 27, 1992.

TRD-9203038 Buddy Matthijetz
Executive Director
Texas Board of Veterinary
Medical Examiners

Proposed date of adoption: June 12, 1992

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

Supervision of Personnel

• 22 TAC §573.10

The Texas Board of Veterinary Medical Examiners proposes an amendment to §573.10, concerning direct supervision of lay personnel. The amendment expands the guidelines to include emergency care and/or hospitalized animals.

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

Mr. Matthijetz also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to allow for the emergency care of animals when the DVM is not on the premises; however, is available by telephone or radio, to give orders for the treatment that is essential for prevention of death or alleviation of extreme suffering. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

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

§573.10. Direct Supervision of Lay Personnel [Laymen].

(a) **Official health documents.** A licensee must personally sign any official health documents issued by said licensee. The issuance of any pre-signed official health documents by a licensee is a violation of this rule. [A licensed veterinarian shall not allow an unlicensed person to issue pre-signed certificates with the veterinarian's signature affixed thereto.]

(b) **Unauthorized practice by lay personnel.** The licensee shall not permit an unlicensed person to inoculate or treat animals unless the inoculation or treatment is not prohibited by law and is [are] done under the direct supervision of the licensed veterinarian; provided however, an unlicensed individual shall not perform the following health care services: surgery; dental surgery and dental procedures; diagnosis and prognosis of animal diseases; and prescribing of drugs, medicine, and appliances for domestic animals.

(c) **Emergency Care.** A licensee, in an emergency situation where prompt treatment is essential for the prevention of death or alleviation of extreme suffering, may, after determining the nature of the emergency, and the condition of the animal, issue treatment directions to an

unlicensed person by means of telephone or radio communication. The veterinarian assumed full responsibility for such treatment. However, nothing in this rule requires a licensee to accept a case under these circumstances.

(d) **Care of Hospitalized Animals.** It is permissible for an unlicensed person, in the absence of direct supervision, to follow the oral or written treatment orders of a licensed veterinarian in the care of hospitalized animals; provided however, that the veterinarian has examined the animal(s) and that a valid veterinarian/client/patient relationship exists.

(e) **Direct supervision.** Direct supervision, as defined by the board, requires the presence of the licensee on the premises and his [(b) "Direct supervision shall mean the supervision of those tasks or procedures that do not require the presence of a veterinarian in the room where performed, but require the presence of a licensee on the premises and] availability for prompt consultation and treatment; provided however, that in cases involving emergency treatment under subsection (c) of this section, direct supervision may be effected through radio or telephone communication. It is further provided, however, that once a veterinarian has established a veterinarian/client/patient relationship, and the veterinarian has determined the care necessary for hospitalized animals, an unlicensed person may provide routine inoculation and treatment that has been ordered by the veterinarian.

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

Issued in Austin, Texas, on February 27, 1992.

TRD-9203043 Buddy Matthijetz
Executive Director
Texas Board of Veterinary
Medical Examiners

Proposed date of adoption: June 27, 1992

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

Responsibilities to Clients

• 22 TAC §573.24

The Texas Board of Veterinary Medical Examiners proposes an amendment to §573.24, concerning issuance of certificates through direct knowledge only. The amendment expands the rule to require examination of animals for which any type of certificate attesting to their health is written.

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

a result of enforcing or administering the section.

Mr. Matthijetz also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to expand the rule to require examination of animals for which certificates are written. The rule previously limited examinations to certificates of health issued. The revision includes any certificate attesting to an animal's health require examination of the animal. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

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

§573.24. Issuance of Certificates [Of Health] Through Direct Knowledge Only. Licensed veterinarians in this state shall not issue any [a] certificate attesting to the physical condition and/or soundness of an animal without first having personally examined the individual animal and [of health unless they] know of their own knowledge, by actual inspection and appropriate tests [of the animals], that said animals meet the requirements for the issuance of such certificate.

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

Issued in Austin, Texas, on February 27, 1992.

TRD-9203037 Buddy Matthijetz
Executive Director
Texas Board of Veterinary
Medical Examiners

Proposed date of adoption: June 12, 1992

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

Responsibilities to Clients

• 22 TAC §573.28

The Board of Veterinary Medical Examiners proposes an amendment to §573.28, concerning maintenance of sanitary premises. The amendment will require that veterinary facilities be clean and sanitary without an accumulation of debris and trash.

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

Mr. Matthijetz also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure that veterinary clinics are clean, free of trash and debris, and sterilized instruments are utilized. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Texas State Board of Veterinary Medical Examiners, 1946 South IH-35, Suite 306, Austin, Texas 78794.

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

§573.28. Maintenance of Sanitary Premises. Licensed veterinarians must maintain their veterinary offices/clinics/hospitals in a clean and sanitary condition without any accumulation of trash, debris, or filth. Such premises shall be maintained in full compliance with all health requirements of the city or county in which located and in conformity with the health laws of the State of Texas; further, they shall use properly sterilized instruments and clean supplies. [Licensed veterinarians are required to maintain their entire premises in such state of sanitation as to comply with the public health requirements of the city and/or county in which located, and/or the public health laws of the State of Texas.]

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

Issued in Austin, Texas, on February 27, 1992.

TRD-9203039 Buddy Matthijetz
Executive Director
Texas Board of Veterinary
Medical Examiners

Earliest possible date of adoption: June 12, 1992

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

• 22 TAC §573.30

The Texas Board of Veterinary Medical Examiners proposes an amendment to §573.30, concerning advertising. The amendment will require that DVMs include their full name in advertising instead of the previously required surname.

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

Mr. Matthijetz also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the consumer will be able to readily identify the practitioner placing the advertisement. This is especially applicable in metropolitan areas where many DVMs have the same surname. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

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

§573.30. Advertising. Any advertising shall include, as a prominent part thereof, the full name [at least the surname] as it appears on the license of the licensee offering the advertised service. A veterinarian may not engage in advertising that is false, deceptive, or misleading. A false, deceptive, or misleading statement or claim includes, without limitations, a statement or claim which:

(1)-(6) (No change.)

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

Issued in Austin, Texas, on February 27, 1992.

TRD-9203040 Buddy Matthijetz
Executive Director
Texas Board of Veterinary
Medical Examiners

Proposed date of adoption: June 12, 1992

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

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 61. Chronic Diseases

Breast and Cervical Cancer Control Program

• 25 TAC §§61.31-61.42

(Editors note: The following sections are being published in series. The serialization note appeared in the March 6, 1992 issue of the Texas Register (17 TexReg 1713).)

The Texas Department of Health (department) proposes new §§61.31- 61.42, con-

cerning a breast and cervical cancer control program. The departments Chronic Disease Prevention Program has been awarded a grant by the United States Department of Health and Human Services, Centers for Disease Control (DHHS/CDC) to develop a statewide breast and cervical cancer early detection and control program. The program's goal is to reduce breast and cervical cancer mortality by increasing the availability of cancer screening and follow-up services among medically underserved women who are below 200% of the federal poverty level and who do not have third party payment for these services. Activities to be supported under this program include outreach, screening, tracking, referral for diagnosis and treatment, and client education.

The new sections will cover the following areas: purpose and scope; federal statutory and regulatory authority for the program; eligible applicants; target populations; program requirements; financial eligibility and screening guidelines; quality assurance standards; follow-up; maintenance of current services; reimbursement of costs; and client charges.

Stephen Seale, Chief Accountant III, Budget Division, has determined that for the first five-year period the new sections in effect there will be fiscal implications for state and local government as a result of enforcing or administering the new sections. Additional costs to state government will be approximately \$2.9 million per year; however, the state receives a grant of money from DHHS/CDC to cover these costs. Local governments will incur costs for each year which generally range from a minimum of \$16 to \$200 for services provided; however, local units of government will be reimbursed for services provided under the program up to the maximum unit costs as described in the body of the rules.

Mr. Seale also has determined that for the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to reduce breast and cervical cancer mortality. There will be no cost to persons and small businesses and there will be no impact on local employment.

Comments on the proposed new sections may be submitted to Margaret C. Mendez, 1100 West 49th Street, Austin, Texas 78756, (512) 835-8123. Comments will be accepted by the department for 30 days after publication of the proposed new sections in the *Texas Register*.

The new sections are proposed under the Breast and Cervical Cancer Mortality Prevention Act of 1990, Public Law 101-354, which establishes a program of grants to states for prevention and control of breast and cervical cancer; House Bill Number 1 (General Appropriations Act), 72nd Legislature, First Called Session, 1991, Article II, pages II-19 and II-24, which authorize the Board of Health to receive and disburse federal funds in accordance with plans acceptable to the federal agency providing the federal funds; and Health and Safety Code, §12.001, which provides the Board of Health with the authority to adopt rules to implement its duties and procedures.

§61.31. Purpose and Scope.

(a) The purpose of these sections is to establish requirements and procedures concerning the implementation of the Texas Breast and Cervical Cancer Control Program (program).

(b) The scope of the sections is that the sections cover federal requirements and procedures concerning the program and Texas Department of Health requirements and procedures concerning the implementation of screening and follow-up services for the program.

§61.32. Federal Authorization and Requirements.

(a) The Breast and Cervical Cancer Mortality Prevention Act of 1990 (Act), Public Law 101-354, establishes a program of grants to states for prevention and control of breast and cervical cancer. Under authority of the Act, the United States Department of Health and Human Services, Centers for Disease Control (DHHS/CDC), has published documents containing the requirements, guidelines and instructions covering the program. The documents are titled, "1991 Early Detection and Control of Breast and Cervical Cancer (Announcement Number 121); Program Guidance, Application Instructions and Information", "Quality Assurance Guidelines for Cervical Cytology Services Under Public Law 101-354 CDC Program Announcement Numbers 121, 122", and "Mammography Quality Assurance Guidelines for Facilities Participating in Breast and Cervical Prevention and Control Programs Supported by the Centers for Disease Control".

(b) In order to participate in the program, the Department of Health (department) is required to follow the provisions in the Act and in the DHHS/CDC document issued under authority of the Act. Accordingly, the department adopts by reference the provisions in the Act and the DHHS/CDC documents described in subsection (a) of this section. Copies of the Act and the DHHS/CDC document are available for public review in the office of the Chronic Disease Prevention Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, during regular business hours.

§61.33. Eligible Applicants. Eligible applicants for the Breast and Cervical Cancer Control Program include local health care providers serving women below 200% of the federal poverty level. These include community health centers, migrant health centers, local and regional health departments, family planning clinics, community cancer centers, hospitals, primary care programs, and other providers of health services to the target population.

§61.34. Target Population. The target population for the Breast and Cervical Cancer Control Program is medically underserved women who are below 200% of the federal poverty level and who do not have third-party payment for breast and cervical cancer screening services. Special efforts should be made to reach minority women.

§61.35. Selection Process. Funding of new and current applicants will be based on the merit of submitted proposals which will be evaluated using criteria in §61.36 of this title (relating to Program Requirements).

§61.36. Program Requirements. To be funded for the Breast and Cervical Cancer Control program, applicants must provide:

- (1) evidence of a population in need;
- (2) evidence of access to the targeted population and ability to reach high-risk clients;
- (3) demonstrated ability to comply with tracking, follow-up, and reporting requirements;
- (4) demonstrated ability to meet quality assurance standards;
- (5) evidence of coordination with existing breast and cervical cancer programs;
- (6) assurance that breast and cervical cancer control program elements are integrated into health care delivery systems;
- (7) evidence of identified diagnostic and treatment resources;
- (8) evidence of intent to adhere to American Cancer Society screening guidelines; and
- (9) evidence of ability to apply financial eligibility standards.

§61.37. Financial Eligibility and Screening Guidelines.

(a) Applicants must demonstrate ability to adhere to the following financial eligibility and screening services guidelines.

- (1) No person with income at or above 200% of the federal poverty level and/or who has third-party payment for screening services is eligible to receive services.
- (2) Only women age 40 or older will be eligible for screening mammography.
- (3) Screening will include a clinical breast examination and mammography according to American Cancer Society

(ACS) guidelines for women age 40 or older.

(4) All women who are, or have been sexually active, or who have reached the age of 18, will be eligible for an annual Pap test and pelvic examination.

(5) After a woman has had three or more consecutive satisfactory normal annual examinations, the Pap test may be performed less frequently at the discretion of her physician.

(b) Applicants shall provide the breast exam and may subcontract with local providers for screening and diagnostic mammography services (repeat mammography; diagnostic mammography), including interpretations. Applicants will provide the pelvic exam and take the Pap smear, will use state-contracted laboratories for interpretation of Pap smears, and will either provide or contract for diagnostic services related to Pap smears (i.e., colposcopy; biopsy).

§61.38. Quality Assurance Standards. Quality assurance is essential to ensure that superior standards for mammography and cytological laboratory procedures are followed by all program providers. All program providers must be in compliance with guidelines adopted by reference in §61.32 of this title (relating to Federal Authorization and Requirements).

§61.39. Follow-up. Providing follow-up and continuity of care is an essential component of any comprehensive breast and cervical cancer control program. A tracking system must be in place to assure appropriate screening, referrals, follow-up, and treatment for those women who receive services through the Breast and Cervical Cancer Control Program.

(1) Tracking system. Applicants shall maintain a tracking system to assure a minimum data set consistent with state efforts for monitoring the number and characteristics of women screened and outcomes of screening. The tracking system should be used to assure that recommended periodic screening occurs.

(2) Data collection and submission. The Breast and Cervical Cancer Control Program will provide a comprehensive data collection form for tracking clients from initial contact to treatment if indicated. All funded screening programs shall use this form so that data collected will be consistent with the needs for statewide program evaluation. Programs shall maintain collected data in a database and submit data in a standardized format and on a scheduled basis as specified by the Breast and Cervical Cancer Control Program.

(3) Client education. Every client shall be counseled and tracked to ensure compliance with recommended follow-up procedures and encouraged to repeat exams at intervals. Clients shall be provided information on the recommended frequency of breast and cervical screenings according to the American Cancer Society guidelines.

§61.40. Maintenance of Current Services. The intent of the Breast and Cervical Cancer Control Program is to expand screening services. Applicants shall not use program funds to supplant existing services.

§61.41. Reimbursement of Costs.

(a) Monthly reimbursement for services provided shall be on a unit cost basis. Unit costs will be subject to audit by the Texas Department Health (department). The unit cost for the following screening, follow-up, and diagnostic procedures will be determined by the applicant and shall not exceed the maximum cost as determined by the department:

- (1) breast and cervical cancer screening;
- (2) breast screening only;
- (3) cervical screening only;
- (4) repeat and diagnostic mammograms;
- (5) repeat pap tests;
- (6) colposcopy; and
- (7) colposcopy and biopsy.

(b) The maximum unit cost for each procedure includes costs for performing activities involving:

- (1) outreach;
 - (2) eligibility determination;
 - (3) client counseling/education;
- and
- (4) tracking and follow-up.

(c) Indirect costs shall be included in the unit cost calculation.

(d) Applicants may not include the following costs in determining their unit cost for each procedure:

- (1) diagnostic procedures, except those specified previously;
- (2) treatment or treatment services;
- (3) services already being provided;
- (4) building construction, alteration or renovations; and
- (5) purchased equipment except as justified in relation to conducting the screening program, and which has received specific written approval from department.

§61.42. Client Charges. Contractors may not charge fees for services to clients who are provided services under the Breast and Cervical Cancer Control Program.

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

Issued in Austin, Texas, on February 25, 1992.

TRD-9202797

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

Proposed date of adoption: May 16, 1992

For further information, please call: (512) 458-7534

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Chapter 229. Food and Drug Minimum Standards for Approved Narcotic Drug Treatment Programs

The Texas Department of Health (department) proposes amendments to §§229.141, 229.142, 229.144-229.147, and 229.150-229.152; the repeal of §229.148; and new §229.148, concerning minimum standards for approved narcotic drug treatment programs. The standards establish licensing and operating requirements for narcotic treatment programs pursuant to the requirements of the Texas Health and Safety Code, Chapter 466.

The amendments will update and clarify the existing language. The primary area of change in the amendments will be the elimination of the 30-day compliance period, which will in turn eliminate chronic violations of the Code and eliminate potential health hazards associated with these violations. The information reported to the Central Registry will also be amended in that transferred patients, transfer-out patients, readmitted patients, and temporary transfer patients are no longer addressed. Upon admission to a program, each patient will be considered a new patient. This will minimize transferring of patients from one clinic to another, thus reducing the chances of dual enrollments among clinics and subsequent street diversion of extra take-home doses of methadone.

Section 229.148 will be replaced by a new §229.148 as the existing section is no longer applicable and the new section will reduce the number of take-home doses that a patient is permitted to have, thus further reducing the chances of street diversion of the drug and subsequent methadone overdoses and deaths. In addition, the new section further defines the roles of program physicians and medical directors, especially in the areas of admitting patients to treatment and determining a patient's addiction.

Stephen Seale, Chief Accountant III, Budget Division, has determined that for the first five-year period the sections are in effect there

will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Seale also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to allow for swifter regulatory action against programs and to minimize the dangers of the drug to the public by reducing the number of take-home doses and thus reducing the possibilities of street diversion of the drug. There will be no effect on small or large businesses. There is no anticipated economic cost to persons who may be required to comply with the sections. There will be no effect on local employment.

Comments on the proposal may be submitted to Dennis E. Baker, Director, Division of Food and Drugs, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7248. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*. In addition, a public hearing on the proposed rules will be held on Tuesday, March 31, 1992, beginning at 9 a.m., in the Texas Department of Health Auditorium, 1100 West 49th Street, Austin.

• 25 TAC §§229.141, 229.142,
229.144-229.147, 229.150-229.152

The amendments are proposed under the Texas Health and Safety Code, Chapter 466, which provides for the Texas Board of Health (board) to adopt rules concerning narcotic treatment programs in Texas; and §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§229.141. General Provisions. The purpose of the sections in this chapter is to provide assurance that facilities holding an approved narcotic drug permit are regulated under a set of minimum standards for the establishment and operation of a narcotic treatment program pursuant to Texas Health and Safety Code, Chapter 466, as amended by House Bill 2706, 71st Legislature, 1989. Each facility shall be approved and monitored by the Texas Department of Health, Division of Food and Drugs, 1100 West 49th Street, Austin, Texas 78756.

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

Approved to treat-The maximum number of patients [the applicant or permit holder has determined] the NTP is allowed to [will] treat at any point in time under the approved permit. This number is based on a maximum of 50 patients for each counselor employed by the program.

Board's formal hearing procedures-The formal hearing procedures of the Texas Department of Health in Chapter 1 of this

title (relating to Texas Board of Health) [§§1.21-1.34 of this title (relating to Formal Hearing Procedures)] for conducting hearings on denial of application, suspension, or revocation of permit.

Hospital-A health care facility licensed by the department as a general hospital or a special hospital under Health and Safety Code, Chapter 241; or a health care facility licensed by the Texas [Department of] Mental Health and Mental Retardation as a private mental hospital under Texas Civil Statutes, Article 5547-88-5547-100; or a hospital directly operated under the authority of other statutes of the state.

State Methadone Authority-The Texas Department of Health, Division of Food and Drugs.

§229.144. State [of Texas Laws] and [Rules and] Federal Statutes and Regulations.

(a) (No change.)

(b) The permit holder shall assure that the NTP is in compliance with [the] Title 21, Code of Federal Regulations, [Title 21,] Part 291, titled [entitled] "Drugs Used for Treatment of Narcotic Addicts". To the extent that the Code of Federal Regulations conflicts with these sections, these sections shall prevail.

(c) The NTP sponsor must report to the Texas Department of Health (department) any patient death which may be [is considered to be] methadone related. The report shall be submitted in writing within two weeks of the death. A detailed account of any adverse reaction to methadone will be maintained in the patient treatment record.

(d) All citations in these sections to statutes or regulations include those statutes or regulations as amended.

§229.145. Application, Fees, Permits.

(a) Application.

(1) A complete narcotic drug treatment application provided by the Texas Department of Health (department) [and a copy of federal form FDA 2632 filed with the Food and Drug Administration (FDA), and a copy of federal form DEA 363 filed with the Drug Enforcement Administration (DEA)] must be submitted to the Department to apply for an approved narcotic drug permit to operate a narcotic treatment program (NTP).

(2) A complete application filed in accordance with this subsection for an [a] NTP will be reviewed and evaluated by the department, in accordance with §229.281 of this title (relating to Processing Permit Application Relating to Food and Drug Operation). An application shall not be considered complete until an application

for an [a] NTP has been submitted to the Drug Enforcement Administration (DEA) and to the Food and Drug Administration (FDA). If the application is denied, the applicant shall have an opportunity for a hearing pursuant to §229.147 of this title (relating to Denial of Application; Suspension or Revocation of Narcotic Drug Permit).

(3) (No change.)

(4) Currently addicted individuals, and individuals with a history of opiate usage (including methadone) within one year of employment application are not eligible for employment in and/or ownership of an NTP.

(5) The number of patients that a clinic is approved to treat is in direct proportion to the number of full-time counselors employed by that clinic. This proportion is a maximum of 50 patients for each full-time counselor.

(6) New clinics will not be permitted to operate within a three-mile radius of an existing clinic.

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

§229.146. Failure to Comply.

(a) The Texas Department of Health (department) may take any action provided in Texas Health and Safety Code (Code), Chapter 466, including emergency orders when it appears that a person violated, is violating, or is threatening to violate the Code, these sections, or an order or permit issued pursuant to the Code. [A permit holder who has failed to comply with the Health and Safety Code (Code) and the sections in this chapter shall be given notice of failure to comply and allowed a period of 30 days to comply. Failure to provide the department with a plan of correction or failure to accomplish the plan of correction by the designated completion date shall be cause, in accordance with §§1.21-1.34 of this title (relating to Formal Hearing Procedures), for the department to seek revocation of the permit and/or the assessment of an administrative penalty, criminal penalty, and/or civil penalties as provided in the Code.]

(b) [The department may take action under the Code, Chapter 466, §3.01 (emergency orders), as amended by House Bill 2706, 71st Legislature, 1989, when a violation of the Code or other state law is so severe as to affect the public health or the health and safety of the narcotic treatment program's (NTP's) patients and staff and an immediate and acceptable plan of correction cannot be obtained.] If an emergency order is issued to suspend or revoke the permit of an [a] NTP, the department may require other NTPs to accept patients to insure that treatment services for the patients are maintained.

(c) (No change.)

§229.147. Denial of Application; Suspension or Revocation of a Narcotic Drug Permit.

(a) Failure to comply with any of these sections shall be grounds for denial, suspension, or revocation of a narcotic drug permit. If it appears that an applicant or permit holder has failed to achieve or demonstrate compliance with these sections, [If the department determines that the applicant or permit holder has failed to achieve or demonstrate compliance after due notice in accordance with §229.146 of this title (relating to Failure to Comply),] the applicant or permit holder shall be given written notice of an opportunity for a hearing in accordance with the Texas Department of Health's (department) formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health) [§§1.21-1.34 of this title (relating to Formal Hearing Procedures)], prior to denying the application, or suspending or revoking the permit. If the applicant or permit holder requests a hearing, he/she shall so notify, in writing, the Texas Department of Health, Division of Food and Drugs, 1100 West 49th Street, Austin, Texas 78756, within 10 days of receipt of the notice of an opportunity for a hearing. If the applicant or permit holder does not request a hearing within the specified time, then the notice of an opportunity for a hearing shall be construed to be a notice of denial of the application, or suspension or revocation of the permit as stated in the notice.

(b) The department may take action under emergency orders of the Health and Safety Code, Chapter 466, [as amended by House Bill 2706, 71st Legislature, 1989,] to immediately suspend an approved narcotic drug permit when approval is withdrawn from the permit holder by the Food and Drug Administration (FDA) or a registration is revoked by the Drug Enforcement Administration (DEA). The suspension shall be effective until the permit is surrendered, revoked, or reinstated in accordance with the department's formal hearing procedures in Chapter 1. [provisions of §§1.21-1.34 of this title (relating to Formal Hearing Procedures)].

§229.150. Central Registry.

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

(e) Each NTP shall report to the central registry specific information.

(1) Each person admitted as a new patient [, readmitted to the same clinic, admitted from another NTP as a permanent transfer patient, transferred to another narcotic maintenance or detoxification pro-

gram, temporarily transferred to another program,] or discharged (terminated) from maintenance or detoxification treatment shall be identified and reported to the central registry located at the Texas Department of Health, Division of Food and Drugs, by telephone on the day the action occurs and written documentation must be submitted within a 24-hour period (or the next state working day immediately following weekends or holidays).

(2) Each NTP's verbal and written report to the central registry shall identify and provide the following information for each patient:

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

(C) action taken identified as:

- (i) new patient (NP); or
- (ii) terminated patient (TP); and [transfer in-patient (TIP);]
- [(iii) transfer outpatient (TOP);
- [(iv) terminated patient (TP);
- [(v) readmitted patient (RP); or
- [(vi) temporary transfer patient (TTP); and]

(D) patient identification as follows.

(i) The patient must be identified with a current state [valid document incorporating a photograph such as a valid] driver's license [or] containing a photograph of the patient or state-issued identification card [and/or other identification records such as a social security card and appropriate medical records] containing a photograph of the patient. Photocopies of each of these must be maintained in the patient's file.

(ii)-(iii) (No change.)

§229.151. Approved Hospital Narcotic Drug Detoxification Treatment.

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

(d) Compliance by existing hospital NTPs.

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

(5) Methadone, or any other drug approved in writing by the State Methadone Authority, is the only drug which is approved to be used in hospital in-patient detoxification treatment of patients with opiate addiction.

§229.152. Federal Regulations. The Texas Department of Health adopts by reference the federal regulations on "Drugs Used For Treatment of Narcotic Addicts" found in Title 21, Code of Federal Regulations, Part 291, as amended. A copy of these regulations are indexed and filed in the Division of Food and Drugs, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

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

Issued in Austin, Texas, on March 3, 1992.

TRD-9203098

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

Proposed date of adoption: May 16, 1992

For further information, please call: (512) 458-7248

◆ ◆ ◆
Synthetic Narcotic Drugs in the Treatment of Drug Dependent Persons

• 25 TAC §229.148

The repeal is proposed under the Texas Health and Safety Code, Chapter 466, which provides for the Texas Board of Health (board) to adopt rules concerning narcotic treatment programs in Texas; and §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§229.148. Compliance by Existing Narcotic Treatment Programs.

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

Issued in Austin, Texas, on, March 3, 1992.

TRD-9203099

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

Proposed date of adoption: May 16, 1992

For further information, please call: (512) 458-7248

◆ ◆ ◆
Minimum Standards for Approved Narcotic Drug Treatment Programs

• 25 TAC §229.148

The new section is proposed under the Texas Health and Safety Code, Chapter 466, which provides for the Texas Board of Health (board) to adopt rules concerning narcotic treatment programs in Texas; and §12.001, which provides the board with authority to

adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§29.148. State Operational Requirements.

(a) Upon admission to a program, each patient, whether a transfer patient from another program, a readmitted patient, or a new patient, is to be considered a new patient in accordance with Title 21, Code of Federal Regulations, §291.505(d)(1)(i), (ii), (iii)(A) and (B), (iv), (v), and (2) and (3).

(b) No patient may be placed on a permanent six-day take-home schedule. All patients must attend the clinic a minimum of two times per week with the maximum number of take-home doses that a patient may receive on a permanent basis being three, in accordance with Title 21, Code of Federal Regulations, §291.505(d)(6)(iv)(A) and (B), except as specified by subsection (t) of this section.

(c) All requests for exceptions to the mandatory take-home dosage schedules must be requested in writing and approved by the State Methadone Authority prior to administering the take-home doses.

(d) When given a take-home dose of medication, a patient may not return to the clinic to ingest that take-home dose as an observed dose.

(e) If a patient, after receiving a supply of take-home medication, has a test or analysis which confirms that the patient is positive for morphine-like drugs (except for the narcotic drug administered or dispensed by the program) or other drugs of abuse, or negative for the narcotic drug administered by the program, the program physician shall increase the frequency of the patient's clinic attendance for observation of doses to at least six times per week. The patient shall remain on a six-times-per-week clinic visit schedule until completion of at least three consecutive monthly tests or analyses which are neither positive for morphine-like drugs (except for the narcotic drug administered or dispensed by the program) or other drugs of abuse, nor negative for the narcotic drug administered or dispensed by the program, and the program physician again determines that the patient is responsible in handling narcotic drugs in accordance with Title 21, Code of Federal Regulations, §291.505(d)(6)(iv)(B)(1)-(8) and (d)(6)(v)(A)(1) and (2). When the patient has had three consecutive clean monthly drug screen tests or analyses, the patient may be returned to the previous level.

(f) Take-home medication may be given only to a patient who is responsible in handling narcotic drugs. Before the program physician reduces the frequency of a patient's clinic visits, the program physician or an appropriately trained health-care pro-

fessional supervised by the admitting program physician shall record the specific rationale for the decision in the patient's clinical record using the criteria in paragraphs (1)-(8) of this subsection. If this is done by a designated staff member, a program physician shall review, countersign, and date the patient's record within 72 hours where this information is recorded. The program physician shall consider the following criteria in determining whether a patient is responsible in handling narcotic drugs:

(1) absence of recent abuse of drugs (narcotic or nonnarcotic), including alcohol;

(2) regularity of clinic attendance;

(3) absence of serious behavioral problems at the clinic;

(4) absence of known recent criminal activity, e.g., drug dealing;

(5) stability of the patient's home environment and social relationships;

(6) length of time in maintenance treatment;

(7) assurance that take-home medication can be safely stored within the patient's home; and

(8) whether the rehabilitative benefit to the patient derived from decreasing the frequency of clinic attendance outweighs the potential risks of diversion of narcotic drugs.

(g) The requirement of time in treatment found in Title 21, Code of Federal Regulations, §291.505(d)(6)(v), is a minimum reference point after which a patient may be eligible for take-home privileges. The time reference is not intended to mean that a patient in treatment for a particular time has a specific right to take-home medication. Thus, regardless of time in treatment, a program physician must deny or rescind the take-home medication privileges of a patient if any of the eight criteria found in subsection (f) of this section are not met.

(h) In maintenance treatment it is required that a patient come to the clinic for observation daily or at least six days a week. If a patient demonstrates satisfactory adherence to program rules for at least three months, has made substantial progress in rehabilitation and responsibility in handling narcotic drugs in accordance with Title 21, Code of Federal Regulations, §291.505(d)(6)(iv)(B)(1)-(8), and would improve rehabilitative progress by decreasing the frequency of attendance at the clinic for observation, the patient may be permitted to reduce attendance at the clinic for observation to three times weekly. The patient may receive no more than a two-day take-home supply of medication.

(i) If a patient demonstrates satisfactory adherence to the rules in these sections for at least two years, has made substantial progress in rehabilitation and responsibility in handling narcotic drugs in accordance with Title 21, Code of Federal Regulations, §291.505(d)(6)(iv)(B)(1)-(8), and would improve rehabilitative progress by decreasing the frequency of attendance at the clinic for observation, the patient may be readmitted to reduce attendance at the clinic for observation to twice weekly. Such a patient may receive no more than a three-day take-home supply of medication.

(j) If a patient is found to have a physical disability which interferes with his or her ability to conform to the applicable mandatory schedule, the patient may be permitted a temporarily or permanently reduced schedule, provided that patient is also found to be responsible in handling narcotic drugs as provided in subsection (f) of this section. Such a patient may receive no more than a three-day supply of take-home medication. In such a case, the patient's file must contain specific documentation (current medical evaluations, etc.) of his physical disability from the attending physician, not a program physician.

(k) If a patient, because of exceptional circumstances such as illness, personal or family crises, travel, or other hardship, is unable to conform to the applicable mandatory schedule, the patient may be permitted a temporarily reduced schedule, provided that patient is also found to be responsible in handling narcotic drugs as provided in subsection (f) of this section. A travel hardship in this case does not pertain to the travel distance from the patient's home to the clinic, nor does it pertain to a patient who resides in another state and regularly attends a clinic located in the State of Texas. Examples of travel hardships are business trips and out-of-town family emergencies to locations where there are no nearby narcotic treatment programs to which a patient may temporarily transfer. An illness hardship will require a medical evaluation from an attending physician other than a program physician. The rationale for an exception to a mandatory schedule shall be recorded in the patient's record by the program physician, or by an appropriately trained health-care professional supervised by the program physician after consulting with the physician. In this situation, the physician shall review, countersign, and date the patient's record within 72 hours where this rationale is recorded. In any event, a patient may not be given more than a one-week supply of narcotic drugs at any time.

(l) If a treatment center program is not in operation due to the observance of an official State holiday, patients may be permitted one extra take-home dose to allow

them not to have to attend the clinic on that holiday. An official state holiday is a holiday on which most state offices are closed and routine state government business is not conducted.

(m) The program supervisory counselor shall review and countersign within 72 hours all the information and findings recorded in each patient's record under Title 21, Code of Federal Regulations, §291.505(d)(3)(iv).

(n) The admitting program physician or an appropriately trained health-care professional supervised by the admitting program physician shall record in the patient's record all findings from the admission medical evaluation. The admitting program physician shall record, date, and sign his or her findings, or date, review, and countersign the findings of the appropriately trained health-care professional in the patient's record within 72 hours to signify his or her review of and concurrence with the history and physical findings.

(o) The medical director or other authorized physicians shall sign or countersign all medical orders within 72 hours. (Such medical orders include, but are not limited to, the initial medication orders and all subsequent medication order changes, all changes in the frequency of take-home medication, and prescribing additional take-home medication for an emergency situation.)

(p) A person who has resided in a penal or chronic care institution for one month or longer may be admitted to maintenance treatment within 14 days prior to release or discharge, or within six months after release from such an institution without documented evidence to support findings of physiological dependence, provided the person would have been eligible for admission before he or she was incarcerated or institutionalized and treatment is medically justified. Documented evidence of the prior residence in a penal or chronic care institution and evidence of all other findings and the criteria used to determine the findings are required to be recorded in the patient's record by the admitting program physician, or by an appropriately trained health-care professional supervised by the admitting program physician. The admitting program physician shall date and sign these recordings. The health-care professional is required to consult with the admitting program physician before the initial dose is administered to the patient. In this case, the admitting program physician shall date and sign the recordings in the patient's record made by the health-care professional within 72 hours of administration of the initial dose to the patient.

(q) Pregnant patients, regardless of age, who have had a documented narcotic

dependency in the past and who may return to narcotic dependency, with all its attendant dangers during pregnancy, may be placed on a maintenance regimen. For such patients, evidence of current physiological dependence on narcotic drugs is not needed if a program physician certifies the pregnancy and finds treatment to be medically justified. Evidence of all findings and the criteria used to determine the findings are required to be recorded in the patient's record by the admitting program physician, or by an appropriately trained health-care professional supervised by the admitting program physician. The admitting program physician shall date and sign these recordings. The health-care professional is required to consult with the admitting program physician before the initial dose is administered to the patient. In this case, the admitting program physician shall date and sign the recordings in the patient's record made by the health-care professional within 72 hours of administration of the initial methadone dose to the patient. Pregnant patients are required to be given the opportunity for prenatal care either by the program or by referral to appropriate health-care providers.

(r) At least once a year, the program physician shall date, review, and countersign the treatment plan within 72 hours of the counselor's review of the treatment plan with the patient and ensure that each patient's progress or lack of progress in achieving the treatment goals is entered in the patient's record by the primary counselor. The treatment plan and progress notes must deal with the patient's mental and physical problems, apart from drug abuse.

(s) The periodic treatment plan is required to contain adequate documentation of any prescription drug, other than methadone, that a patient may be taking, including the name of the drug, the prescription number, the dose, the reason for prescribing, the name of the prescribing doctor, the pharmacy, the date it was prescribed, and the length of time the patient is to be taking the drug.

(t) There is a danger of drug dependent persons attempting to enroll in more than one NTP to obtain quantities of drugs for the purpose of self-administration or illicit marketing. Therefore, drugs shall not be provided to a patient who is known to be currently receiving drugs from another treatment program without prior approval from the State Methadone Authority.

(u) Patients who are known to be enrolled in more than one narcotic treatment program (NTP) at a time will be forced to choose one clinic for treatment. That patient must then begin treatment as a completely new patient, including attending the clinic on a daily basis or a minimum of six days per week.

(v) Employees who are formerly addicted to drugs of abuse are considered risks to the security of drug stocks and may not have access to the drugs or to the drug dispensing area. Currently addicted individuals, and individuals with a history of opiate usage (including methadone) within one year of employment application, are not eligible for employment and/or ownership of a NTP.

(w) A narcotic drug may be administered or dispensed only by a practitioner licensed under the appropriate state law and registered under the appropriate state and federal laws to order narcotic drugs for patients, or by an agent of such a practitioner, supervised by and under the order of the practitioner. This agent is required to be a pharmacist, registered nurse, or licensed practical nurse, or any other health care professional authorized by federal and state law to administer or dispense narcotic drugs. The licensed practitioner assumes responsibility for the amounts of narcotic drugs administered or dispensed and shall record and countersign all changes in dosage schedules within 72 hours.

(x) The program medical director shall ensure that the initial dose of methadone for a new patient does not exceed 30 milligrams and that the total dose for the first day does not exceed 40 milligrams, unless the program medical director documents in the patient's record that 40 milligrams did not suppress opiate abstinence symptoms. A patient is to be given an initial dose of 30 milligrams and then observed for one hour to see if opiate abstinence symptoms are suppressed. If not, an additional dose of up to 10 milligrams may be given. The patient is to be observed for an additional hour. If opiate abstinence symptoms are still not suppressed, then the patient may be given up to an additional 10 milligrams. This procedure, administering methadone in up to 10 milligram increments with a one-hour observance period after each addition, may be continued until abstinence symptoms are suppressed and within a scope that ensures patient safety.

(y) For recordkeeping purposes, if a patient misses appointments for two weeks or more without notifying the clinic, the episode of care is considered terminated and is to be so noted in the patient's record. This does not mean that the patient cannot return for care. If the patient does return for care and is accepted into the program, the patient is considered a new patient in accordance with Title 21, Code of Federal Regulations, §291.505(d)(1)(i), (ii), (iii)(A) and (B), (iv), (v), and (d)(2) and (3) and is to be so noted in the patient's record.

(z) A person may be admitted as a patient for a maintenance program only if a program physician determines that the person is currently physiologically dependent

upon a narcotic drug and became physiologically dependent at least one year before admission for maintenance treatment. A one-year history of addiction means that an applicant for admission to a maintenance program was physiologically addicted to a narcotic at a time at least one year before admission to a program and was addicted, continuously or episodically, for most of the year immediately before admission to a program. In the case of a person for whom the exact date on which physiological addiction began cannot be ascertained, the admitting program physician may admit the person to maintenance treatment, if from the evidence presented, observed, and recorded in the patient's record, it is reasonable to conclude that there was physiological dependence at a time approximately one year before admission.

(aa) All notations by NTP personnel on patient files and other files kept by the NTP for purposes of this chapter shall be typed, printed or legibly handwritten so that a reasonable person could read the writing, and shall be transcribed in printed format by the NTP on a weekly basis. Such transcription shall be attached to and made a part of the patient file.

(bb) A NTP may not refuse to allow an inspection or otherwise interfere with personnel of the State Methadone Authority in the performance of their duties, including the photocopying of patient records during an inspection. It is a violation for a NTP not to fully cooperate in any inspection by the State Methadone Authority.

(cc) Each NTP shall notify the State Methadone Authority in writing of any change in the employment status of any of its program personnel. This notice shall be provided within 20 days of the event.

(dd) NTP counselors must be approved by the Texas Commission on Alcohol and Drug Abuse (TCADA).

(ee) Any theft from or illegal break-in to the clinic must be reported in writing to the State Methadone Authority within 10 days of the event.

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

Issued in Austin, Texas, on March 3, 1992.

TRD-9203100 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: May 16, 1992

For further information, please call: (512) 458-7248



Chapter 289. Occupational Health and Radiation Control

Texas Regulations for Control of Radiation

• 25 TAC §289.120

The Texas Department of Health (department) proposes an amendment to §289.120, concerning Texas Regulations for the Control of Radiation. Section 289.120 adopts by reference Part 36 of the Texas Regulations for Control of Radiation titled, "Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies." The amendment is to Part 36 and concerns additions to the rule and clarification of existing portions of the rule, as follows.

The word "wireline" will be changed in the title and throughout the rule to include other technologies used in well logging operations, such as measurement-while-drilling. The word "subsurface" will be deleted from the title and throughout the rule because the rule applies to all aspects of tracer studies, not just those that are subsurface. References to tracer studies will be added and expanded throughout the rule to more adequately address the use, storage, handling, and disposition of tracer materials. Several definitions will be added or modified to address additions to the rule and to clarify existing portions of the rule.

The section of the rule concerning radiation survey instrumentation will be expanded to specify appropriate instrumentation, calibration, and who is qualified to perform calibrations. Also, the measurement range required for instrumentation will be increased. This requirement is designated as an item of compatibility by the Nuclear Regulatory Commission (NRC) and, in accordance with the agreement between the State of Texas and NRC, the department must adopt a similar rule. The rule also will be expanded to address requirements for uranium sinker bars and radioactive markers to comply with NRC compatibility requirements. Currently, the rule requires each sealed source used in downhole operations to individually meet the criteria of the American National Standards Institute (ANSI) N542. To comply with NRC compatibility requirements, the rule will be amended to specifically list applicable ANSI N542 criteria and require the prototype of each sealed source to meet the criteria.

The training requirements for logging supervisors and logging assistants will be expanded to specify the number of hours of formal training required, to require successful completion of a written examination administered by the licensee/registrant, and to require annual retraining of all logging personnel. Other sections of the rule will be changed or deleted to clarify and more adequately specify the requirements for well logging and/or tracer studies operations.

Stephen Seale, Chief Accountant III, Budget Division, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local

government as a result of enforcing or administering the section as proposed.

Mrs. Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure that sealed sources used in well logging operations will meet specific safety criteria and survey instrumentation will be properly calibrated and appropriate for the types of radiation to be detected. In addition, the section will ensure that logging supervisors and logging assistants are adequately trained to safely use radioisotopes. There will be a varying impact on small businesses and persons who are required to comply with the rule. Costs for the specified training hours could range from approximately \$200-\$350 for those companies or persons who are not currently providing the specified hours of training. Costs for appropriate instrumentation will be approximately \$1,000 for those companies or persons who do not currently possess an adequate number of appropriate survey instruments. No impact is anticipated on local employment as a result of implementing the section.

Comments on the proposal may be presented in writing to the Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, (512) 834-6688. Public comments will be accepted for 30 days following publication of the proposed amendment in the *Texas Register*. In addition, a public hearing will be held at 9 a.m., Thursday, March 19, 1992, in the conference room of the Bureau of Radiation Control, Texas Department of Health, located at the Exchange Building, 8407 Wall Street, Room S400-S401, Austin.

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

§289.120 Radiation Safety Requirements for Well Logging [Wireline] Service Operations and Tracer Studies.

(a) The Texas Department of Health adopts by reference Part 36, "Radiation Safety Requirements for Well Logging [Wireline] Service Operations and Tracer Studies" of the department's document titled "Texas Regulations for Control of Radiation", as amended in June 1992 [April 1984].

(b) (No change.)

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

Issued in Austin, Texas, on March 3, 1992.

Proposed date of adoption: May 16, 1992
For further information, please call: (512)
834-6688

◆ ◆ ◆
**TITLE 37. PUBLIC
SAFETY AND CORREC-
TIONS**

**Part XIII. Texas
Commission on Fire
Protection**

**Chapter 461. General
Administration**

**Subchapter A. Organization of
the Board**

- 37 TAC §§461.1, 461.3, 461.5,
461.7, 461.9, 461.11, 461.13,
461.15, 461.17, 461.19, 461.21,
461.23, 461.25, 461.27

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

The Texas Commission on Fire Protection proposes the repeal of §§461.1, 461.3, 461.5, 461.7, 461.9, 461.11, 461.13, 461.15, 461.17, 461.19, 461.21, 461.23, 461.25, 461.27, concerning the rules for the Fire Department Emergency Board. The Texas Commission on Fire Protection was created by Senate Bill 383, The Government Code, §419. These rules are being revised and proposed as new under the new agency.

Deloss Edwards, chairman FAAC, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Edwards also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be by re-writing the rules process for applying for a grant, loan, or scholarship is less complicated in order that more fire organizations might take advantage of the program. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Deloss Edwards, Chairman FAAC, P. O. Box 2286, Division 401, Austin, Texas 78768-2286.

The repeals are proposed under the Texas Government Code, §§419.051-419.064, which provides the Texas Commission of Fire Protection with the authority to establish rules

for the administration of Texas Government Code, §§419.051-419.064, for the Fire Department Emergency Program.

§461.1. Purpose.

§461.3. Offices.

§461.5. Meetings.

§461.7. Quorum.

§461.9. Board Officers.

§461.11. Employees.

§461.13. Program Director; Duties; Term.

§461.15. Legal Representation.

§461.17. Records.

§461.19. Vacancies on the Board.

§461.21. Fiscal Matters.

§461.23. Seal of the Board.

§461.25. Unofficial Statements.

§461.27. Acts in Board's Name.

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

Issued in Austin, Texas, on March 2, 1992.

TRD-9203136

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Earliest possible date of adoption: April 10, 1992

For further information, please call: (512)
322-3550

◆ ◆ ◆
• 37 TAC §§461.1-461.4

The Texas Commission of Fire Protection proposes new §§461.1-461.4, concerning general administration. The new sections are about the administration of the Fire Department Emergency Program regarding committee members, meetings, and commission inspections.

Deloss Edwards, Chairman FAAC, has determined that for the first-five year period the sections are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections are in effect

there will be a minimal increase in cost for 1992 and 1993. The effect on local government for the first five-year period the sections are in effect will be an estimated increase in revenue of \$500,000 per year for 1992 and 1993; thereafter, impact would be based on future appropriations.

Mr. Edwards also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to provide better fire protection for all of Texas as a long term effect. Adequately trained and equipped firefighters and more local fire protection will result in fewer deaths, injuries, and less property damage due to fire, and ultimately be reflected in lower fire insurance premiums. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be the minimal cost of completing a single application.

Comments on the proposal may be submitted to Deloss Edwards, Chairman FAAC, P. O. Box 2286, Austin, Texas 78768-2286.

The new sections are proposed under the Texas Government Code, §§419.051-419.064, which provides the Texas Commission on Fire Protection with the authority to establish rules for the administration of Texas Government Code, §§419.051-419.064, for the Fire Department Emergency Program.

§461.1. Committee Members.

(a) In addition to the chairman, the Funds Allocation Advisory Committee (FAAC) shall elect one member of the committee to serve as vice-chairman with a term of one year. Elections will be held at the first meeting of each calendar year.

(b) In the absence of the chairman and vice-chairman from a regular or special meeting of FAAC, the remaining members, provided there is a quorum, shall elect a pro-tem presiding officer who shall serve until the conclusion of the meeting or until the arrival of the chairman or vice-chairman.

(c) Current members of FAAC may not be used as references by an applicant for any applications made to the Fire Department Emergency Program.

(d) Current members of FAAC shall not participate or vote on applications from their prospective departments.

§461.2. Meetings.

(a) Robert's Rules of Order (Revised 1981) shall govern the proceedings of the Funds Allocation Advisory Committee (FAAC), except as otherwise provided by rule or statute.

(b) The order of business at all regular and special meetings of FAAC will, when practicable, be as follows:

(1) roll call and approval of previous meeting(s) minutes;

(2) report of commission staff and any action necessary;

(3) reading, consideration of, and action on pending applications;

(4) consideration and action on unfinished business;

(5) consideration and action on new business;

(6) adjournment.

§461.3. Commission Inspection.

(a) By submitting an application for Fire Department Emergency Program (FDEP) funds, applicants and recipients give permission to the commission to investigate the information provided by the applicant and to investigate any other matter regarding the request and/or receipt of FDEP funds deemed appropriate by the commission. This may include on site inspection of the applicant's facilities, equipment, and records by commission staff, the state auditor, or an authorized representative of the commission. Such inspections and investigations may be done unannounced, without prior notification to the applicant or recipient. Refusal by an applicant to allow such investigation shall be grounds for denial of funds. Refusal by a recipient to allow such investigation shall be grounds for instituting default proceedings under loan agreements and grounds for grant forfeiture by grant recipients.

(b) All recipients of FDEP funds shall keep books and records and submit financial statements, progress reports and other reports required by contract to the commission at times and in the format required by the contract executed with the commission pursuant to the assistance awarded. The failure to maintain or submit required books, records, or financial statements shall be grounds for instituting default or other proceedings.

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

Commission—The Texas Commission on Fire Protection.

Commission ID #—The identification number assigned to fire departments by the Standards and Education Division of the Commission on Fire Protection.

FAAC—The Funds Allocation Advisory Committee.

FDEP—The Fire Department Emergency Program.

ISO—The Insurance Service Organization.

Municipal fire department—A fire department which has its primary fire station located within an incorporated city.

NFPA—The National Fire Protection Association.

National Fire Academy—The federally funded training facility in Emmitsburg, Maryland.

TEXFIRS—The Texas Fire Incident Reporting System administered by the Commission on Fire Protection.

UL—The Underwriters Laboratory.

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

Issued in Austin, Texas, on March 2, 1992.

TRD-9203056

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Earliest possible date of adoption: April 10, 1992

For further information, please call: (512) 322-3550

Chapter 463. Application Provisions

Subchapter A. General Application Provisions

- 37 TAC §§463.1, 463.3, 463.5, 463.7, 463.9, 463.11, 463.13

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

The Texas Commission on Fire Protection proposes the repeal of §§463.1, 463.3, 463.5, 463.7, 463.9, 463.11, and 463.13, concerning the rules for the Fire Department Emergency Board. The Texas Commission on Fire Protection was created by Senate Bill 383, the Government Code, §419. These rules are being revised and proposed as new under the new agency.

Deloss Edwards, chairman FAAC, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Edwards also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be by rewriting the rules process for applying for a grant, loan, or scholarship is less complicated in order that more fire organizations might take advantage of the program. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Deloss Edwards, Chairman FAAC, P. O. Box 2286, Division 401, Austin, Texas 78768-2286.

The repeals are proposed under the Texas Government Code, §§419.051-419.064, which provides the Texas Commission on Fire Protection with the authority to establish new rules for the administration of the Texas Government Code, §§419-051-419.064 for the Fire Department Emergency Program.

§463.1. General.

§463.3. Application Files.

§463.5. Form of Application.

§463.7. Initial Review.

§463.9. References.

§463.11. Conditions of Loan, Grant or Scholarship.

§463.13. Effect of Legal Action on Application.

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

Issued in Austin, Texas, on March 2, 1992.

TRD-9203137

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Earliest possible date of adoption: April 10, 1992

For further information, please call: (512) 322-3550

Chapter 463. Application Criteria

- 37 TAC §§463.1-463.6

The Texas Commission on Fire Protection proposes new §§463.1-463.6, concerning application criteria. The new sections are about the application process; limitation on loans, scholarships, and grants; application form; competitive needs criteria; criteria for eligibility for loans; contract information.

Deloss Edwards, Chairman FAAC, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections are in effect will be a minimal increase in cost for 1992 and 1993. The effect on local government for the first five-year period the sections are in effect will be an estimated increase of \$500,000 per year for 1992 and 1993 thereafter, impact would be based on future appropriations.

Mr. Edwards also has determined that for each year of the first five years the sections

are in effect the public benefit anticipated as a result of enforcing the sections will be to provide better fire protection for all of Texas as a long term effect. Adequately trained and equipped firefighters and more local fire protection will result in fewer deaths, injuries, and less property damage due to fire, and ultimately be reflected in lower fire insurance premiums. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the sections as proposed will be the minimal cost of completing a single application.

Comments on the proposal may be submitted to Deloss Edwards, Chairman FAAC, P. O. Box 2286, Austin, Texas 78768-2286.

The new sections are proposed under the Texas Government Code, §§419.051-419.064, which provides the Texas Commission of Fire Protection with the authority to establish rules for the administration of Texas Government Code, §§419.051-419.064, for the Fire Department Emergency Program.

§463.1. Application Process.

(a) The process of requesting a loan, grant, or scholarship is initiated upon submission of a written application to the commission. An incomplete application shall be returned to the applicant.

(b) The Funds Allocation Advisory Committee (FAAC) has the right to determine the form of assistance to fulfill the needs of requests by applicants. Applications may be returned to applicants to request completion of information regarding the form of assistance FAAC may want to consider (e.g., an application for a grant may be returned to the applicant, requesting that the applicant provide information relative to a loan).

(c) In order to allow sufficient time for fair and responsible review, only completed applications received 45 days prior to the next meeting of FAAC shall be considered at that FAAC meeting, except in cases of emergencies, which, in the judgment of FAAC, constitute an immediate threat to the public safety. In such cases, FAAC may consider an application received up to the date of its meeting.

(d) Each application shall be completed on approved Fire Department Emergency Program (FDEP) forms which will be provided by the commission.

(e) Each application required by these regulations shall be submitted as a single package (no copies required). Each application shall be verified under oath by the applicant.

(f) An application will be considered complete when all information required on application forms furnished by FDEP has been received and accepted by commission or designated representative.

(g) If FAAC or the commission discovers an error was made in processing an application by staff, or in any of its other

activities, FAAC and/or the commission has the authority to correct the error.

(h) Applications shall expire upon Commission approval of FAAC recommendation or upon final committee action.

§463.2. Limitation on Loans, Scholarships, and Grants.

(a) Applications for loans will be given priority consideration for funding.

(b) Loans of less than or equal to \$15,000 will have terms not to exceed 10 years. Loans greater than \$15,000 will have terms not to exceed 20 years. The interest rate charged on loans will not exceed the prime rate.

(c) Specific loan terms and interest rates within the parameters of subsection (b) of this section will be established at each regularly scheduled meeting of the commission. It is provided, however, that the term and interest rate applicable to an application will be the term and interest rate in effect at the time of receipt of the application unless the most current commission-approved interest rate is lower than that in effect at the time of receipt of the application. In that case, the lower interest rate will be applicable.

(d) Grants and scholarships shall generally be limited to awards for training, education, personal protective clothing, and self contained breathing apparatus. Grants for equipment and facilities will not be awarded if, in the opinion of the commission, the applicant has the ability to repay a loan for the amount of assistance being requested.

(e) Applications from fire departments and organizations which are submitted collectively in order to request funds for a single project which exceeds the statutory amount of funds allowed to be awarded to any single applicant will not be considered for funding by the commission.

§463.3. Application Form.

(a) In addition to statutory requirements, the following information will be collected from every applicant to identify the organization and to compile comparative selection criteria established in §463.4 of this title (relating to Competitive Needs Criteria) and loan eligibility in §463.5 of this title (relating to Criteria for Eligibility for loans):

- (1) name of fire chief;
- (2) county location;
- (3) telephone and fax number (if available);
- (4) whether fire department is based within an incorporated city limits or in an unincorporated area;
- (5) commission ID number (if applicable);

(6) TEXFIRS ID number (if applicable);

(7) State Fireman's and Fire Marshals' Association number (if applicable);

(8) federal identification number (if applicable);

(9) corporate charter number of the fire department (if applicable);

(10) comptroller payee identification number (if applicable);

(11) number of volunteer and/or paid personnel;

(12) services area in square miles;

(13) population within service area;

(14) types of services provided;

(15) numbers of: fire stations; training facilities; apparatus; personal protective clothing (and whether or not is National Fire Protection Association (NFPA) approved); and self contained breathing apparatus (and whether or not NFPA approved);

(16) examples of how approval of request would be in the public interest;

(17) if applying for scholarships, description of the proposed education and training and the agency(s) approving curricula;

(18) a description of facilities requested (if applicable);

(19) a description of equipment requested (if applicable);

(20) applicant's annual income by tax base, reimbursement, donations, fund raisers, and other categories;

(21) existing debt information;

(22) information about matching funds;

(23) total budget breakdown by major category;

(24) resources for unexpected costs associated with request;

(25) credit references;

(26) description of current training programs;

(27) certification programs participated in by applicant;

(28) applicant's fire notification procedures;

(29) three-year response activity for structure, vehicle, ground cover, and other fires and EMS and rescue response and assists;

(30) TEXFIRS reporting activity;

(31) mutual aid activity;

(b) Each statement in the application and any other report or other document requested by the Funds Allocation Advisory Committee (FAAC) in support of the application shall be current, accurate, and complete. Any change shall be reported immediately to FAAC. At all times, a current copy of the application and the requested documents supporting the application shall be maintained in the commission office in Austin. The applicant has the responsibility to insure that information submitted to the commission is current.

§463.4. Competitive Needs Criteria.

(a) All applications must meet the following minimum standards.

(1) Applicants must train its members on a regular basis (at least monthly).

(2) Training provided must be approved under §465.3 of this title (relating to Education and Training Standards).

(3) Applicants must have at least 10 volunteer and/or paid personnel active in the organization.

(4) Applicants must provide fire protection services and/or fire fighting education and training.

(5) Applicants must report through the TEXFIRS system, or agree to report if awarded funding assistance.

(b) All applications for assistance will be competitively evaluated based on a comparison of the applications being considered for funding during a given meeting using one or more of the following criteria:

(1) per capita and family income in the applicants' area based upon most recent Census data. Priority will be given to those with the lowest area income levels;

(2) key insurance rates, and the likely effect funding a request would have on the applicants' key rate. Priority will be given to those which would likely have the largest reduction in key rate;

(3) applicants' tax burden data from the most recent reports from the Texas Comptroller of Public Accounts. Priority will be given to those with heaviest overall tax burdens;

(4) ratio of physical resources to fire response. Priority will be given to those with lowest ratios;

(5) ratio of applicants' area and population density compared to physical resources. Priority will be given to those with highest ratios;

(6) ratio of matching funds offered by applicant to amount of assistance requested. Priority will be given to those with highest ratios.

(c) In addition to subsection (b) of this section, applications from incorporated areas will be competitively evaluated using one or more of the following criteria:

(1) ratio of city general fund contribution for fire service to fire response activity.

(2) number of certification programs participated in.

(d) In addition to subsection (b) of this section, applications from rural and unincorporated areas will be competitively evaluated using one or more of the following criteria:

(1) ratio of existing debt to income. Priority will be given to those with the highest ratios;

(2) ratio of square miles of service area to income. Priority will be given to those with highest ratios;

§463.5. Criteria for Eligibility for Loans.

(a) In order to be eligible for a loan, an applicant must prove a consistent income based upon tax revenue, and show, to the satisfaction of the commission, that the income should continue at approximately the same level over the period of the loan being considered; or

(b) The applicant must prove, to the satisfaction of the commission, that the non tax-based income which applicant has produced for at least the past five years should reasonably continue at the same or higher level, and that amount of income would be sufficient to make the payments for the duration of the loan being considered; and

(c) The applicant must have favorable credit references in the opinion of the commission with no history of defaults on loans and/or debts incurred.

§463.6. Contract Information.

(a) A loan, grant, or scholarship awarded by the commission shall be issued upon the condition that applicant observes and complies with all Fire Department Emergency Program (FDEP) rules and regulations. The department or organization must also participate in a training certification program approved by the commission or the Texas Department of Insurance.

(b) If FDEP rules and regulations are amended, the loan, grant, or scholarship shall be conditioned upon compliance with the rules and regulations in effect at the time of award or loan. Any violation of commission rules or contract provisions

may be considered a default by a recipient. Cases involving default, in the judgment of the commission, will be referred to the executive director of the commission for appropriate action.

(c) All contracts with the commission for assistance under the FDEP will contain the following minimum provisions:

(1) parties to the contract;

(2) contract period;

(3) contractor performance requirements, including:

(A) performance statement, including the bidding process which must at least meet the minimum standards required by the state;

(B) budget;

(C) project implementation schedule;

(D) contractor's application for FDEP assistance;

(4) method of payment of funds to contractor;

(5) contractor's requirement to retain up-to-date records and make them accessible to commission staff and state auditor;

(6) contractor reporting requirements;

(7) commission monitoring plan;

(8) conveyance provisions;

(9) limitation of commission liability;

(10) conflict of interest and nepotism provisions;

(11) fixing venue for any litigation which may occur regarding FDEP funds in Travis County;

(12) provisions for changes and amendments to the contract;

(13) contract suspension provisions;

(14) contractor assurances and certifications;

(15) contractor's requirement to provide sufficient insurance on items obtained with FDEP funds;

(16) signatory page.

(d) In addition to the provisions in subsection (c) of this section, all contracts with the commission for loans will contain the following minimum provisions:

(1) payback schedule, including provisions for early pay off;

(2) provisions for late payment charges;

(3) collateral, including first or second liens by the commission on facilities, apparatus, and/or equipment being financed, or other security devices considered necessary by the commission to secure the loan;

(4) provisions for altering terms of contract based upon dire circumstances.

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

Issued in Austin, Texas, on March 2, 1992.

TRD-9203057

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Earliest possible date of adoption: April 10, 1992

For further information, please call: (512) 322-3550

Chapter 465. Equipment, Facilities, and Training Standards

• 37 TAC §§465.1-465.3

The Texas Commission on Fire Protection proposes new §§465.1-465.3, concerning equipment, facilities, and training standards. The Texas Commission on Fire Protection was created by Senate Bill 383, the Government Code, §419. These rules are being revised and proposed as new under the new agency.

Deloss Edwards, chairman FAAC, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections are in effect will be a minimal increase in cost for 1992 and 1993. The effect on local government for the first five-year period the sections are in effect will be an increase in revenue of \$500,000 per year for 1992 and 1993; thereafter, impact would be based on future appropriations.

Mr. Edwards also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to provide better fire protection for all of Texas as a long term effect. Adequately trained and equipped firefighters and more local fire protection will result in fewer deaths, injuries, and less property damage due to fire, and ultimately be reflected in lower fire insurance premiums. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the

section as proposed will be the minimal cost of completing a single application.

Comments on the proposal may be submitted to Deloss Edwards, Chairman FAAC, P. O. Box 2286, Austin, Texas 78768-2286.

The new sections are proposed under the Texas Government Code, §§419.051-419.064, which provides the Texas Commission of Fire Protection with the authority to establish rules for the administration of the Texas Government Code, §§419.051-419.064, for the Fire Department Emergency Program.

§465.1. Equipment Standards.

(a) All equipment purchased, either new or used, must meet or exceed National Fire Protection Association, Key Rate, Underwriters Laboratory, or Insurance Service Organization standards.

(b) Fire fighting equipment must be of a type customarily used in the suppression of fires related to fire suppression activities, for the applicant to meet its fire fighting responsibilities or to comply with federal and state laws (e.g., fire-fighting hand tools, self-contained breathing apparatus, personal protective clothing, ladders, hose, etc.).

(c) Transportation equipment shall be exempt from subsection (a) of this section but subject to commission approval. Transportation equipment must be of a type customarily and commonly used in responding to fires or related to fire fighting activities (e.g., pumpers, ladder trucks, booster and brush vehicles, etc.).

(d) Equipment may not be acquired with Fire Department Emergency Program funds which have not been expressly approved for purchase by the commission.

§465.2. Facility Standards.

(a) Fire Department Emergency Program (FDEP) funds may only be used to purchase facilities meeting the following minimum requirements.

(1) Facilities, either new or used, must be maintained in a habitable condition and adequate to house equipment and personnel in a safe and efficient manner.

(2) All facilities must comply with or meet applicable building standards and codes, zoning ordinances, and enforceable deed restrictions. Funded facilities shall not be located in unregulated flood plains.

(3) Funded facilities must be of a type customarily and commonly used to maintain fire fighting equipment and personnel required for suppression activities, or the applicant to meet its fire fighting responsibilities or to comply with state or federal laws.

(4) Training facilities must be of a type customarily and commonly used in training personnel to respond to fire or related to training personnel in fire suppression duties.

(b) Facilities may not be constructed or acquired with FDEP funds which have not been expressly approved by the commission.

§465.3. Education and Training Standards.

(a) All training and educational programs must be approved or recognized by one of the following entities:

(1) the Texas Commission on Fire Protection;

(2) the State Firemen's and Fire Marshal's Association;

(3) Texas A&M University Extension Services;

(4) National Fire Academy.

(b) Funded training and education must be of a type customarily and commonly used to train personnel to perform fire-fighting duties or to perform duties necessarily related to fire suppression and designed to educate and train the applicant's fire fighters to meet their fire-fighting responsibilities.

(c) Training and education programs cannot be supported or contracted for with Fire Department Emergency Program funds without the expressed approval of the commission.

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

Issued in Austin, Texas, on March 2, 1992.

TRD-9203058

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Earliest possible date of adoption: April 10, 1992

For further information, please call: (512) 322-3550

Chapter 501. Flammable Liquids

• 37 TAC §§501.1-501.5, 501.7

(Editor's Note: The Texas Commission on Fire Protection proposes for permanent adoption the amended sections it adopts on an emergency basis in this issue. The text of the amended sections is in the Emergency Rules section of this issue.)

The Texas Commission on Fire Protection proposes amendments to §§501.1-501.5, and 501.7, concerning rules for the safe stor-

age, handling, and use of flammable liquids at retail service stations. These amendments are the result of actions of the 71st Legislature and these rules are being amended under the new agency.

Ernest A. Emerson, state fire marshal, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections, and there will be no effect on local employment or local economy.

Mr. Emerson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to ensure compliance with the most updated

construction and installation practices available for underground flammable liquids storage tanks in order to promote public fire safety. There will be no effect on small businesses as a result of enforcing the sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Carol M. Menchu, Secretary to the General Counsel, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The amendments are proposed under the Health and Safety Code, Chapter 753, §753.003, which provides the State Fire Marshal with the authority to formulate, adopt,

and promulgate rules and regulations for the safe storage, handling, and use of flammable liquids in accordance with this article.

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

Issued in Austin, Texas, on March 2, 1992.

TRD-9203054

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Proposed date of adoption: April 10, 1992

For further information, please call: (512) 322-3550



Withdrawn Sections

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

TITLE 22. EXAMINING BOARDS

Part XXIV. Texas Board of Veterinary Medical Examiners

Chapter 571. Licensing

Examinations

- 22 TAC §571.3

The Texas Board of Veterinary Medical Examiners has withdrawn from consideration for permanent adoption a proposed amendment to §571.3, which appeared in the January 17, 1992, issue of the *Texas Register* (17 TexReg 460). The effective date of this withdrawal is March 2, 1992.

Issued in Austin, Texas, on March 2, 1992.

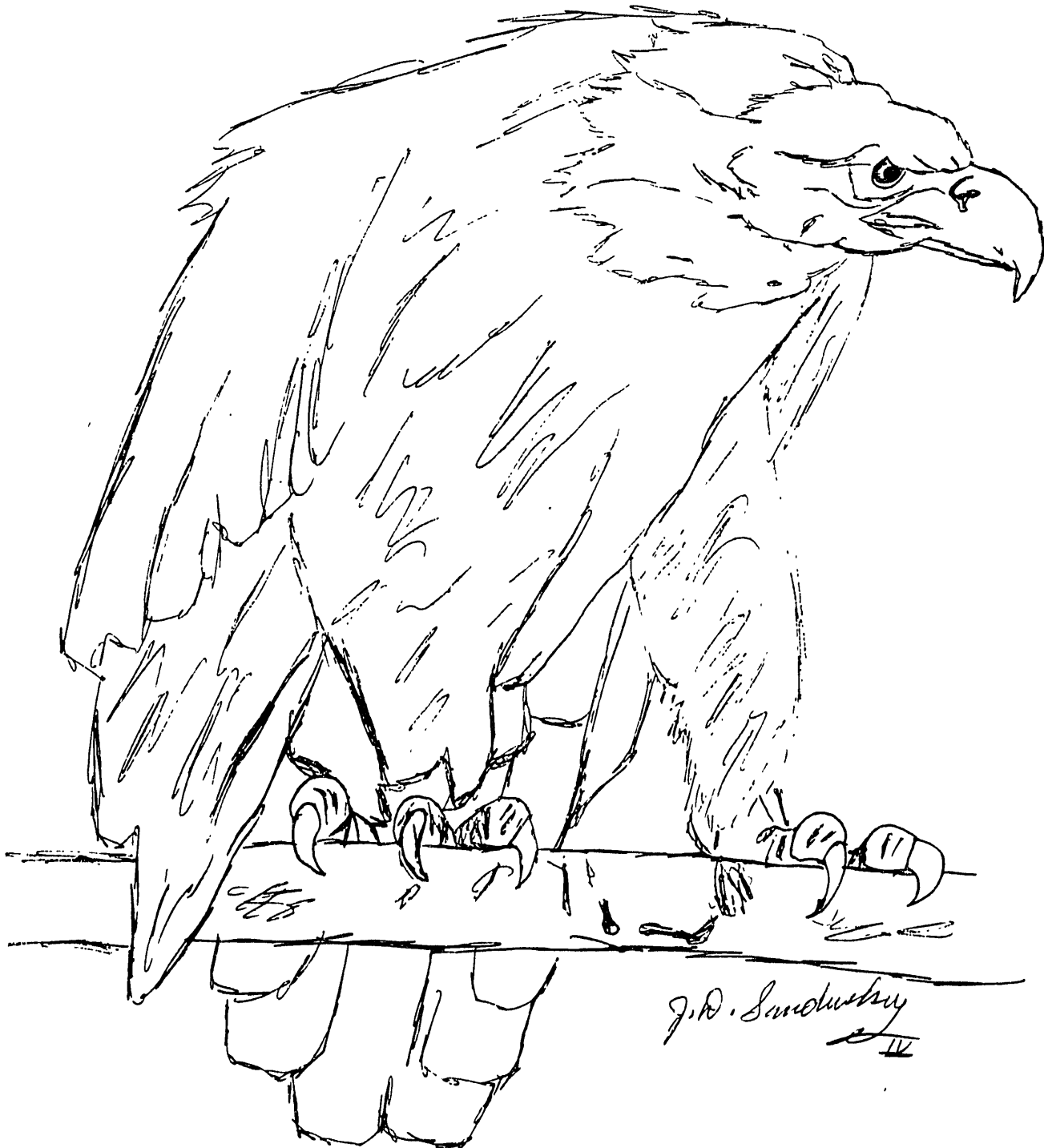
TRD-9203042

Judy C. Smith
Administrative Assistant
Texas Board of Veterinary
Medical Examiners

Effective date: March 2, 1992

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





Name: J.D. Sandusky IV

Grade: 10

School: Knox City High, Knox City O'Brien CISD

Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

Part V. General Services Commission

Chapter 121.

Telecommunication Services

• 1 TAC §121.10

The General Services Commission adopts an amendment to §121.10 concerning the usage of TEX-AN, without changes to the proposed text as published in the December 6, 1991, issue of the *Texas Register* (16 TexReg 6981).

The amendment is necessary to implement usage of the state's long distance telephone service by students of institutions of higher education.

The amendment defines institutions of higher education, authorizes such institutions to offer TEX-AN to their students, and sets forth terms and conditions applicable to such use, including accounting and payment responsibilities.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 601b, Article 10, which provides the General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 10.

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 March 3, 1992

TRD-9203072

Judith Monaco Porras
General Counsel
General Services
Commission

Effective date: March 24, 1992

Proposal publication date: December 6, 1991

For further information, please call: (512) 463-3446



TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 145. Long-Term Care

Subchapter G. Standards for Nursing Homes That Cover Licensure and Medicaid Certification

• 25 TAC §145.111

(The Texas Register inadvertently omitted this document from the March 3, 1992 issue.)

The Texas Department of Health (department) adopts an amendment to §145.111, concerning long-term care, with changes to the proposed text as published in the November 5, 1991, issue of the *Texas Register* (16 TexReg 6259). The department has also made some changes to the standards which are adopted by reference in §145.111.

Section 145.111 covers standards for nursing homes jointly developed by the department and the Texas Department of Human Services (TDHS) that apply to licensure and to Medicaid certification. The standards are in TDHS rules in 40 TAC §§19-1-19-2107 which were recently published as adopted rules in the December 17, 1991, issue of the *Texas Register* (16 TexReg 7361). Accordingly, department rule §145.111 incorporates the TDHS standards adopted in 40 TAC §19.2107, including the amendments published in the December 17, 1991, issue of the *Texas Register*. The amendments provide the following: substantive clarification and consolidation of previously adopted sections, conformance to new federal regulations under the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, and the Americans with Disabilities Act of 1990, Public Law 101-336; and conformance with Texas health care professionals' practice/licensing acts.

During the public comment period, the department received 30 comments to the proposed standards that included comments of a substantive nature as well as comments of an editorial and clarification nature. The department has responded individually to the substantive comments according to the section numbers of the TDHS standards. Changes made by the department to the proposed standards for the purpose of editorial or clarification change have not been addressed individually.

Comment: Concerning §19.101(E), the definition of "verbal abuse" does not require intervention by the state authorities, but instead requires management intervention by the facility. The commenter opposed the definition, suggested that the definition be deleted, and further suggested that "verbal abuse" be redefined as "mental/psychological/verbal abuse," using the definition used for mental/psychological abuse. The commenter believes that this change should trigger an investigation when mental anguish is suspected from verbal abuse.

ResFonse: The department disagrees and has made no change, for the following reasons. First, verbal abuse can be mental/psychological abuse, but not all mental/psychological abuse is verbal. The distinction is necessary when recommending and defending punitive actions. Second, allowing facility staff to determine when mental anguish is suspected from verbal abuse does not adequately protect the resident. There have been cases of alleged verbal abuse by administrators and directors of nurses. It is expecting too much to believe that such individuals would report themselves for causing mental anguish. Third, the definitions should remain unchanged because they were developed by a department committee on which the commenter was represented, and the definitions were approved by the department's Advisory Committee on Nursing Facility Affairs on which nursing facility resident advocates and the nursing home industry were represented. Finally, the definitions should remain unchanged so that they will conform with department's rules concerning the nurse/aide registry and competency program in 25 TAC §151.5.

Comment: Concerning §19.204(m), as regards quarterly statements, the proposed amendment to the subsection is inconsistent with the United States Health Care Facility Administration's (HCFA) final rules published in Title 42, Code of Federal Regulations, §483.10(c)(4)(ii) because they require quarterly statements on request. Accordingly, §19.204(m) should not be changed until HCFA changes become effective on April 1, 1992.

Response: The department concurs and has deleted the proposed change.

Comment: Concerning §19.217(3), as regards facility responsibility (resident self-determination), there are many facility responsibilities in these requirements. This section should more clearly indicate that it primarily regards resident self-determination.

Response: The department agrees and has added clarifying language.

Comment: Concerning §19.217(3)(E), as regards facility responsibility (resident self-determination), the second sentence is too prescriptive. Many other ways exist to provide education on issues concerning advanced directives (i.e., brochures, family nights, speeches, newspaper, open houses, video tapes) Since HCFA has not published regulations implementing the Patient Self-Determination Act, the department should not prescribe how the Act can be implemented, instead, the department should allow facilities to use and innovative methods

Response: In the State Medicaid Manual, Transmittal 73, HCFA provides a number of interpretations to the new Patient Self-Determination Act which are included in the proposed rule. The phrase the department proposed, "this can be accomplished by," is not considered to be prescriptive because of the use of the word "can" instead of "must." However, to make this language appear even less prescriptive, the department has made a clarifying change.

Comment: Concerning §19 217(3)(G), as regards facility responsibility (resident self-determination), the following requirement exceeds federal law: should an individual incapable of communication become capable, the information regarding advanced directives must be given to the individual. Accordingly, this requirement should be deleted

Response: HCFA's State Medicaid Manual, Transmittal 73, states that information regarding advanced directive must be given to such individuals. The department concurs with HCFA and has made no change.

Comment Concerning §19 217(3)(H), as regards facility responsibility (resident self-determination), this provision exceeds federal law and should be deleted

Response: HCFA's State Medicaid Manual, Transmittal 73, prescribes that if no one comes forward with a previously executed advanced directive, and the resident is incapable or otherwise unable to receive information or articulate whether he has executed an advanced directive, the facility must note that the individual was not able to receive information and was unable to communicate whether an advanced directive existed. The department has made no change.

Comment Concerning §19.217(3)(H), as regards facility responsibility (resident self-determination), the phrase "power of attorney" should be "durable power of attorney" because the former power is usually limited to financial matters. The commenter made the same comment concerning §19 219(d)(3).

Response: The department concurs and has clarified §19.217(3)(H). Regarding §19 219(d)(3), it is important for facility staff to be aware that a power of attorney may or may not have a durable section for health care decisions. The word durable means the power of attorney for health care is in effect beyond the point that the principal loses competence or the ability to communicate

Comment Concerning §19 401(a)(1), as regards resident behavior and facility practice, the wording "to prevent deterioration in any aspect of the resident's condition" is too general

Response: The department agrees and has deleted the words "any aspect of."

Comment: Concerning §19.502(b)(4), as regards activities, the last sentence should be deleted because the message is already provided in subsection (b)(l).

Response: The federal language, has completed an activity director training course approved by any state," may be misleading. Accordingly, leaving the language specifying that "TDHS and TDH do not approve courses" is necessary for clarity. The department has made no change.

Comment: Concerning proposed §19.804(9)(A), as regards the director of nursing services, several commenters addressed issues related to what documentation is necessary to support a physician's order to "do not resuscitate." One commenter said that a durable power of attorney for health care is in effect only for a qualified resident." A qualified resident is one who has been certified by two physicians as having a terminal condition. A commenter noted that in many cases, an individual may indeed not be in a terminal condition, but a physician's order to "do not resuscitate" is not only appropriate but may be desired by the resident. A commenter suggested that a case in point was a 66-year old individual with no specified terminal condition who is incapable of communicating his desire to not be resuscitated or for whom the physician believes that a do not resuscitate" order is appropriate

Response: Because of the complexity of the law regarding this issue, the department has deleted paragraph (9) and will generally refer to the following existing rules in responding to comments (It was the department's original intent and the Requirements Coordination Subcommittee of the department's Advisory Committee on Nursing Facility Affairs to encapsulate several other rules currently in the requirements into one area for better understanding): All residents must receive the necessary care and services to attain or maintain the highest practicable physical well being as defined by and in accordance with the comprehensive assessment and plan of care (§19 701); residents have the right to refuse treatment (§19.203(g); all residents have the right to choose treatment, that is, the right to self determination, and the facility must protect and promote such rights (§19.201); to ensure that the protection of the rights of a resident adjudicated incompetent determined to be incapable of exercising his rights and responsibilities for medical reasons, the administrator, the physician, and the resident care staff have specific responsibilities for documenting (§19.219); supporting documentation must be present when the physician assigns away the individual's right to choose or refuse to be resuscitated just as there must be supporting documentation for the physician to assign away the individual's right to be free of physical and chemical restraints; the facility must have written policies relating to the care of residents in emergencies (§19 1922); and the facility must include the resident and/or representative in comprehensive care planning (§19.602). The remaining paragraphs have been renumbered.

Comment: Concerning proposed §19.804(6)-(9), as regards the director of nursing services, these are the responsibilities of the charge nurse; therefore, they should be moved to §19 805.

Response: These paragraphs may also apply to staff nurses, and the director of nurses is ultimately responsible for the functions, activities, and training of the entire nursing services staff. Accordingly, the department has not moved the responsibilities to §19 805; however, the department has deleted paragraph (9) The remaining paragraphs have been renumbered

Comment: Concerning proposed §19.804(10), as regards the director of nursing services, and a registered nurse determining and pronouncing a person dead, can an registered nurse give telephone authorization if an licensed vocational nurse is taking vital signs?

Response: Under adopted §19 804(9), the registered nurse may not "authorize" a licensed vocational nurse to pronounce death. If facility policy has been developed according to the law, a registered nurse may "pronounce death" over the phone if the policy so specifies such permission. There is nothing in the law or these requirements that prohibits such a pronouncement, if local authority does not prohibit it.

Comment Concerning §19 902(5)(B), as regards staffing (dietary), does this requirement eliminate any current food service supervisors?

Response: No, this change is for clarification purposes only

Comment Concerning §19 904(c)(2), as regards dietary consultant requirements, the dietary consultant should only be required to meet this requirement if it is indicated by the resident's needs. The phrase "if indicated by the resident's needs" should be added before the proposed wording.

Response: The department agrees in part. The department believes that the Resident Assessment Instrument must be reviewed to determine what needs are present; however, the department concurs with inserting the requested language preceding the phrase "conduct of an in-depth nutritional assessment and resident counseling."

Comment Concerning §19 1002(5), as regards physician visits, the language is confusing regarding the exception for the physician not having to do a discharge summary when the resident is out of the facility temporarily for 30 days or less. Also, it is unclear about when the 20 days begin, and who notifies whom.

Response: The department concurs and has clarified the section

Comment: Concerning §19 1004(2), as regards availability of physician for emergency care, would this paragraph make cardiopulmonary resuscitation (CPR) certification mandatory for licensed nursing staff since administering CPR is within the purview of a licensed nurse and would fall under the broad category of emergency procedures? Also, the wording "or as prescribed by a physician"

leaves the door open for responsibilities far beyond the capability of the nursing facility.

Response: The requirement specifies only that emergency procedures be carried out as needed by the resident. Licensed nurses receive CPR instructions when in training. It is the responsibility of individual nurses to be proficient in whatever techniques are required by their job descriptions. The need for recertification may be determined by the individual nurse and/or the facility policy. CPR recertification is not required, but may be provided as in-service education.

Also, the word "prescribed" has been changed to "ordered" to more closely track other language regarding ongoing physician orders in a facility. The facility must not provide services for which facility staff are not prepared or capable of providing on a regular or emergency basis. However, if after reporting an emergency situation to a physician and he or she issues orders such as, "nothing by mouth," "elevate lower extremities," "compression dressing to wound," or any other action the physician deems safe to perform and that should be within the capabilities of nursing facility staff, then the facility staff must "follow orders." Because a situation is an emergency does not change the protocol of following physician orders.

Comment: Concerning §19.1101, as regards the provision of specialized rehabilitation services, the introductory sentence states that rehabilitation services must be provided or obtained for every resident admitted. This should be changed so that rehabilitative services are provided when the resident assessment/care plan indicates a need for therapy.

Response: The same issue was raised in 1990 prior to the implementation of the new requirements. The department believes that the introductory sentence should track federal language as closely as possible, which it does. The section further provides that rehabilitative services are provided for the residents with an identified need for therapy. Accordingly, the department has made no change.

Comment: Concerning §19.1304(b), as regards drug security, since there are additional items that could be stored in the medication storage room besides medications, the word only in the second sentence should be deleted.

Response: The department concurs and has made the change.

Comment: Concerning §19.1401(2)(E), as regards infection control, the use of the general term "screening" leaves the door open for all types of interpretations such as HIV screening, HBV, and HAV screening, etc. The language needs to be clarified.

Response: The department agrees and has made the appropriate clarification.

Comment: Concerning §19.1401(2)(E)(i), as regards infection control, only one physician should be required to make the decision for an employee to return to work.

Response: The department agrees and has clarified the language.

Comment: Concerning §19.1910(b), as regards clinical records, this section should specify other vital policies such as confidentiality, access to records, release of information and related charges for copies, record storage, record retention, the master signature legend, and file order of the chart (active, inactive, and discharged).

Response: The department concurs that clarification of the meaning of "all areas of operation in the clinical record service" is needed and has made the appropriate clarification.

Comment: Concerning §19.1910(e), as regards clinical records, the rule should specify who may authorize release of information in the case of a deceased resident.

Response: The department adopts this subsection without change because the release of records, whether they are of a living or deceased resident, is covered by subsection (e)(2). Texas probate law specifies who may act and how they may act on behalf of a deceased resident.

Comment: Concerning §19.1911(1)(D)-(E), as regards the contents of the clinical record, this is confusing. Is the TDHS resident number the same as the medicaid claim number?

Response: The "TDHS resident number" should be the "medicaid claim number," and the "medicaid claim number" should read "medicare claim number." The department has made the correction.

Comment: Concerning §19.1911(8), as regards the contents of the clinical record, the phrase "restorative potential should be changed to "discharge and rehabilitation potential, in order to be consistent with §19.1001(3)(D).

Response: The department concurs and has made the change.

Comment: Concerning §19.1912(e)(1); as regards additional clinical record service requirements, the clinical record can remain open for 30 days, but many times the facility staff will not know on the 20th day that a patient will not return, and a physician discharge summary is due.

Response: The physician's discharge summary is due within 20 days of the physician's notification by the facility that the discharge has occurred. See the department's response to comment on §19.1002(5).

The only change to the amendment to 25 TAC, §145.111 as proposed, is the effective date of the amendment.

The Texas Health Care Association and several individuals commented. They generally supported the rules, but had questions, concerns, and recommendations for change.

The amendment is adopted under the Health and Safety Code (Code), §242.037, which provides for the Texas Board of Health to adopt rules concerning the licensing of long term care facilities; §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health; and §222.0255, which provides the Texas Department of

Health and the Texas Department of Human Services with the authority to jointly develop one set of standards for nursing homes that applies to licensure and the certification for participation in the medical assistant program under the Human Resources Code, Chapter 32, and to adopt by rules the standards and any amendments to them.

§145.111. Standards for Nursing Home Jointly Developed by the Texas Department of Health and Texas Department of Human Services that apply to Licensure and to Medicaid Certification.

(a) The Texas Department of Health adopts by reference the Texas Department of Human Services rules in 40 TAC §§19.1-19.2107, concerning long-term care nursing facility requirements for licensure and Medicaid certification as amended March 1992.

(b) (No change.)

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

Issued in Austin, Texas, on February 25, 1992.

TRD-9202785

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

Effective date: March 17, 1992

Proposal publication date: November 5, 1991

For further information, please call: (512) 458-7709

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3. Income Assistance Services

Subchapter G. Resources

The Texas Department of Human Services (DHS) adopts amendments to §§3. 704, 3.902, and 3.1003, concerning income and resources that are excluded and income deductions that are applicable in determining eligibility for the Food Stamp Program.

The justification for the amendment to §3.704 is to comply with changes in the Mickey Leland Memorial Domestic Hunger Act. The amendment excludes resources of household members who receive Supplemental Security Income (SSI) or Aid to Families with Dependent Children (AFDC) Program benefits.

The justification for the amendment to §3.902 is to comply with changes in the Food Stamp Act of 1977 and the Mickey Leland Memorial Domestic Hunger Act. The amendment re-

sulting from changes in the Food Stamp Act excludes as income amounts of income necessary to maintain a Plan for Achieving Self-Support (PASS) account. The amendment resulting from the Hunger Act excludes any income which is designated by the school for educational expenses. Room and board are not considered educational expenses.

The justification for the amendment to §3.1003 is to comply with the Mickey Leland Memorial Domestic Hunger Act. The amendment allows a standard shelter deduction for homeless households that incur a shelter expense. The shelter allowance is \$128 per month.

The amendments will function by extending to food stamp applicants and recipients new income and resource exclusions and deductions which will benefit households with SSI and AFDC recipients, PASS accounts, educational expenses, and homeless persons with shelter expenses.

• 40 TAC §3.704

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs. The amendment is adopted in compliance with federal requirements effective February 1, 1992

§3.704. *Types.*

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

(d) Food stamps. Exclusions from resources for food stamps are those stipulated in United States Code, §2014(g) and (j).

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 March 4, 1992.

TRD-9203119 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: February 1, 1992

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

◆ ◆ ◆
Subchapter I. Income

• 40 TAC §3.902

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs. The amendment is adopted in compliance with federal requirements effective February 1, 1992.

§3.902. *Types.*

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

(d) Food stamps. DHS excludes as income the types of income stipulated in 7 Code of Federal Regulations, §273.9(c) except for child support payments, educational assistance, and certain types of income of SSI recipients. DHS excludes educational assistance and income of SSI recipients as stipulated in United States Code §2014, Part 5(d) and (e). DHS does not exclude any portion of child support payments.

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 March 4, 1992.

TRD-9203121 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: February 1, 1992

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

◆ ◆ ◆
Subchapter J. Budgeting

• 40 TAC §3.1003

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs. The amendment is adopted in compliance with federal requirements effective February 1, 1992.

§3.1003. *Deductions.*

(a) (No change.)

(b) Food stamps. DHS allows deductions from income as stipulated in 7 Code of Federal Regulations, §273.9(d) with the following exception. Beginning October 1, 1990, DHS allows deductions for reimbursed self-arranged JOBS and transitional child care costs. Regarding a standard utility deduction, DHS allows a single deduction as specified in 7 Code of Federal Regulations, §273.9(d)(6)(i)(B). Regarding a standard shelter deduction for homeless households, DHS allows the standard computed annually by the Food and Nutrition Service as specified in 7 Code of Federal Regulations, §273.9(d)(5)(i).

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 March 4, 1992.

TRD-9203122 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: February 1, 1992

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

Chapter 29. Purchased Health Services

Subchapter L. General Administration

The Texas Department of Human Services (DHS) adopts an amendment to §29.1102, adopts the repeal of §29.1104, and adopts new §29.1104. New §29.1104 is adopted with changes to the proposed text as published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7463). The amendment to §29.1102 and repeal of §29.1104 are adopted without changes to the proposed text, and will not be republished.

The justification for the amendment, repeal, and new section is to implement a reimbursement methodology which is based upon historical payments adjusted to account for the adequacy of access to health care services, or the resources required by the economically efficient provider to provide such services.

The repeal, amendment, and new section will function by implementing the new reimbursement methodology.

During the public comment period, DHS received comments from the Texas Society of Anesthesiologists, Texas Medical Association, Anesthesiology Associates, Texas Society of Pathologists, Southeast Texas Emergency Physicians, Texas Chapter of American College of Emergency Physicians, University of Texas Health Science Center at Houston, Houston Society of Emergency Medicine, Bexar County Medical Society, a pathologist, a pediatric ophthalmologist, and several emergency physicians. A summary of the comments and DHS's responses follow.

Comment: One commenter recommended that the Physician Payment Advisory Committee (PPAC) be established as a standing committee to the Medical Care Advisory Committee (MCAC).

Response: DHS has made this recommendation to the MCAC.

Comment: One commenter recommended the rapid implementation of primary care service fees and a four-year transition for other services.

Response: DHS does not agree that the services in which fees are being reduced should be phased in over a four-year period. Given the fiscal constraints that DHS must operate within, the increases proposed for "primary care services" could not occur without some offsetting reductions in other types of services.

Comment: One commenter recommended adoption of the Medicare conversion factor of \$31.001 versus the proposed Texas Medicaid Reimbursement Methodology (TMRM) conversion factor to \$26.873.

Response: Given the fiscal constraints, the higher conversion factor is not an option available to DHS. Not only does the \$31.001 Medicare conversion factor represent a national average which is subject to substantial

adjustment for Texas, but the Medicare program entails a five-year phase-in period for all fee changes.

Comment: One commenter recommended that the term "produce" be changed to "perform" in §29.1104(a)(1).

Response: DHS has agreed to use the term "provide" instead of "produce," and has substituted the terminology in §29.1104(a)(1) and (2).

Comment: One commenter recommended that the period for review in §29.1104(a)(1)(B) be changed from "at least every two years" to a quarterly review.

Response: The current wording does not prohibit quarterly review; therefore, DHS is adopting the section as proposed. DHS will monitor the impact of these rule changes very closely and will provide to the PPAC periodic reports and recommend any necessary adjustments.

Comment: One commenter recommended changing the definition of "access-based reimbursement fee" (ABRF) to the following: "Fees for individual services based upon historical payments or charges adjusted, as the department deems necessary, to meet the requirements of adequacy to health care services as defined in subparagraph (B)."

Response: DHS believes this change is unnecessary since the proposed methodology provides DHS with considerable flexibility in setting individual fees.

Comment: One commenter stated that access-based reimbursement fees (ABRF) are too broad and subject to great differences of opinions. The commenter recommended including additional specificity such as thresholds that would trigger access-based adjustments.

Response: This section was worded specifically to provide DHS with the flexibility to respond to the unique needs of the Texas Medicaid population. DHS is in the process of developing specific measures of "adequacy of access" such as physician participation. However, DHS is reluctant to add the type of specificity suggested since it would ultimately limit DHS's ability to respond.

Comment: One commenter recommended that DHS omit from §29.1104(a)(2)(D) any specific mention of the conversion factor of \$26.873 since the rule would have to be amended when the conversion factor changes.

Response: DHS is adopting the section with an added clarification that references the time period the initial conversion factor (\$26.873) will be in effect. The rule provides for the method and timing of subsequent adjustments which will eliminate the need to amend the rule when the figure changes.

Comment: One commenter recommended that adjustments to the conversion factor be made annually, if needed, and if funds are available. Section 29.1104(a)(2)(E) describes the biennium adjustment of the conversion factor.

Response: This change is unnecessary. The existing wording allows for more frequent adjustments than on a biennial basis.

Comment: One commenter expressed concern about the proposed reduction in the conversion factor from \$17.94 to \$13.94. The commenter recommended that a conversion factor of \$15.32 be applied to all services, and the commenter provided DHS with an initial list of priority procedures. Another commenter recommended that DHS develop specialty differentials to enable a higher rate of reimbursement for those areas where the Medicaid population accounts for at least 60% of its total reimbursement. The commenter further recommended a conversion factor of \$20.10 for anesthesiologists, development and application of pediatric modifiers, and retention of current fee profiles for Driscoll Children's Hospital pediatric surgeons.

Response: DHS is currently analyzing these recommendations and intends to recommend to the PPAC that the anesthesiology conversion factor for certain obstetrical and surgical sterilization procedures be maintained at the existing conversion factor of \$17.94. Once all of the various procedures have been analyzed, additional recommendations, if appropriate, will be presented to the PPAC. Comment: Several comments were received regarding the reimbursement rates for evaluation and management (E & M) services provided in an emergency room. Comments concerned the recommendation by the PPAC to deviate from the relative value unit determination offered by HCFA. Many commenters recommended that DHS adopt all of the relative value units developed by HCFA. Many commenters also recommended that §29.1104(a)(2)(A) be deleted because it does not clearly define "access-based reimbursement fees" nor does it clearly identify when TMRM may deviate from Medicare. These commenters recommended that DHS rely instead solely on the federal determination.

Response: As with a number of pediatric, obstetric, and surgical procedures, DHS staff and the PPAC have not agreed with the reimbursement methodology recommended by HCFA and have opted to deviate from the federal determinations. In essence, HCFA has developed reimbursement fees which include a significant overhead component for emergency room physician services. HCFA has indicated to DHS staff that this portion of the federal reform is flawed and is likely to change. DHS's initial analysis confirms that the HCFA analysis has overstated overhead costs, at least as it pertains to the Texas health care system. When DHS has analyzed all of the various procedures, DHS will present to the PPAC additional recommendations, if appropriate.

Comment: Two commenters cited a number of their frequently billed procedures which will receive substantial reductions under the TMRM as proposed. These commenters indicated that the reductions will result in these services not being offered to the Medicaid population.

Response: When DHS has analyzed all of the various procedures, DHS will present to the PPAC additional recommendations, if appropriate.

Comment: One commenter recommended maintaining specialty differentials.

Response: Specialty differentials have always been an integral part of the Resource Based Relative Value System (that is, coronary surgery is generally not performed by a family practitioner and, therefore, the relative value units for this particular procedure have included a specialty valuation). The primary difference in the proposed system is that Medicaid (and Medicare) will no longer pay specialists differently for providing the "same" service (that is, reimbursement to an internist for a limited office visit for an established patient will be identical to that of a general or family practitioner).

DHS received a number of comments which concerned matters that were outside the scope of the proposal, and these are not addressed in this preamble.

• 40 TAC §29.1102, §29.1104

The amendment and new section are 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.

§29.1104. Texas Medicaid Reimbursement Methodology (TMRM).

(a) Reimbursement for physicians and certain other practitioners.

(1) Introduction. Except as otherwise specified, the TMRM for covered services provided by physicians and certain other practitioners employs a prospective payment system which is based upon the Texas Department of Human Services' (DHS's) determination of adequacy of access to health care services as described in this section, or the actual resources required by an economically efficient provider to provide each individual service.

(A) There shall be no geographical or specialty reimbursement differential for individual services.

(B) The fees for individual services will be reviewed at least every two years and will be based upon either:

(i) historical payments, with adjustments, to ensure adequate access to appropriate health care services; or

(ii) actual resources required by an economically efficient provider to provide each individual service.

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

(A) Access-based reimbursement fees (ABRF)-Fees for individual services based upon historical payments adjusted, where the department deems necessary, to account for deficiencies relating to the adequacy of access to health care

services as defined in subparagraph (B) of this paragraph.

(B) Adequacy of access- Measures of adequacy of access to health care services include, but are not limited to, the following determinations:

(i) adequate participation in the Medicaid program by physicians and other practitioners; and/or

(ii) the ability of the eligible Medicaid population to receive adequate health care services in an appropriate setting.

(C) Resource-based reimbursement fees (RBRF)-Fees for individual services based upon DHS's determination of the resources required by an economically efficient provider to provide individual services. An RBRF is defined mathematically by the following formula: $RBRF1 = (RVUw-1 + RVUo-1 + RVUm-1) * CF$ where, RBRF1 = Resource-Based Reimbursement Fee for Service 1 RVUw-1 = Relative Value Unit for Work for Service 1 RVUo-1 = Relative Value Unit for Overhead for Service 1 RVUm-1 = Relative Value Unit for Malpractice for Service 1 CF = Conversion Factor

(D) Conversion factor - The dollar amount by which the sum of the three cost component RVUs is multiplied in order to obtain a reimbursement fee for each individual service. The initial value of the conversion factor is \$26.873 for fiscal years 1992 and 1993. The conversion factor will be updated based on the adjustments described in subparagraph (E) of this paragraph at the beginning of each state fiscal year biennium. DHS may, at its discretion, develop and apply multiple conversion factors for various classes of service such as obstetrics, pediatrics, general surgeries, and/or primary care services.

(E) Conversion factor adjustments-The biennium adjustment of the conversion factor is composed of the following two components.

(i) Inflation Adjustment- To account for general inflation, the conversion factor is adjusted by one-half of the forecasted rate of change of the implicit price deflator-personal consumption expenditures (IPD-PCE). To inflate the conversion factor for the prospective period, DHS uses the lowest feasible IPD-PCE forecast consistent with the forecasts of nationally recognized sources available to DHS at the time of preparation of the conversion factor(s).

(ii) Access-based adjustment-Adjustments to the conversion factor may also be made to ensure adequacy of access as defined in subparagraph (B) of this paragraph.

(F) Relative value units (RVUs)-The relative value assigned to each of the three individual components which comprise the cost of providing individual Medicaid services. The three cost components of each reimbursement fee are intended to reflect the work, overhead, and professional liability expense required to provide each individual service. The RVUs that are employed in the TMRM must, except as otherwise specified, be based upon the RVUs of the individual services as specified in the Medicare Fee Schedule. DHS will review any changes to or revisions of the various Medicare RVUs and, if applicable, DHS adopts the changes as part of the TMRM.

(3) Calculating the payment amounts. The fee schedule that results from the TMRM must be composed of two separate components:

(A) the access-based fees; and

(B) the resource-based fees which must be composed of RVUs for the work, overhead, and malpractice components. The sum of these components must then be multiplied by the conversion factor to produce a reimbursement fee for each individual service.

(b) Reimbursement for ambulance services. Ambulance services are reimbursed in accordance with a reasonable charge methodology. DHS or its designee defines and determines reasonable charges and payments based on reasonable charges as follows:

(1) A reasonable charge is a charge for a specific service which is the lowest of:

(A) the provider's customary charge for that service;

(B) the prevailing charges made for similar services in the geographic locality; or

(C) the actual charge of the eligible provider.

(2) DHS or its designee uses a statistical base for making reasonable charge determinations. The statistical base

is comprised of individual charges gathered from available sources, including Medicare (Title XVIII) and Medicaid (Title XIX).

(3) Determination of reasonable charges, as set forth in this section and established by the Texas Board of Human Services, is made in accordance with applicable federal requirements. Payments for services provided must not exceed the Medicare allowable charges.

(c) Reimbursement for clinical diagnostic laboratory services. Clinical diagnostic laboratory tests performed in a physician's office, by an independent laboratory, or by a hospital laboratory for its outpatients are reimbursed on the basis of the Medicare-established fee schedule.

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 March 4, 1992.

TRD-9203123 Nancy Murphy
Agency liaison, Policy and Document Support
Texas Department of Human Services

Effective date: April 1, 1992

Proposal publication date: December 20, 1992

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

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• 40 TAC §29.1104

The repeal 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.

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 March 4, 1992.

TRD-9203124 Nancy Murphy
Agency liaison, Policy and Document Support
Texas Department of Human Services

Effective date: April 1, 1992

Proposal publication date: December 20, 1991

For further information, please call: (512) 450-3765
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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 outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Texas Department of Agriculture

Thursday, March 19, 1992, 9 a.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture, 1700 North Congress Avenue, Stephen F. Austin Building, Room 928B, Austin. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of 4 TAC §§6.1-6.4 by David Kotzur and Frank Kotzur, TDA Docket Number 05-92-PM.

Contact: Ivry J. Pollard, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: March 3, 1992, 2:28 p.m.

TRD-9203087

Tuesday, March 31, 1992, 9 a.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture, 1700 North Congress Avenue, Stephen F. Austin Building, Room 928B, Austin. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of 4 TAC §§6.1-6.4 by S. R. Campbell, Efrain Valdez and Lawrence Ainsworth, TDA Docket Number 10-92-PM.

Contact: Ivry J. Pollard, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: March 3, 1992, 2:29 p.m.

TRD-9203088

Wednesday, April 1, 1992, 9 a.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture, 1700 North Congress Avenue, Stephen F. Austin Building, Room 928B, Austin. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of 4 TAC §§6.1-6.4 by Byron Vassberg and Michael Martin, TDA Docket Number 08-92-PM.

Contact: Ivry J. Pollard, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: March 3, 1992, 2:29 p.m.

TRD-9203089

Texas Board of Architectural Examiners

Friday, March 13, 1992, 9 a.m. The Texas Board of Architectural Examiners will meet at 8213 Shoal Creek Boulevard, Suite 107, Austin. According to the agenda summary, the board will call the meeting to order; recognize guests; take roll call; hear chairman's opening remarks; consider/act on the following categories: discuss approval of minutes; consent on director's report; committee matters; personal appearances; examinations; disciplinary matters; legislative matters; renewals; next scheduled meeting; and board member recognition and tribute.

Contact: Robert H. Norris, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

Filed: March 4, 1992, 3:09 p.m.

TRD-9203153

State Bar of Texas

Thursday-Friday, March 12-13, 1992, 10 a.m. and 8:30 a.m. respectively. The Commission for Lawyer Discipline of the State Bar of Texas will meet at the Texas Law Center, 1414 Colorado Street, Room 204, Austin. According to the agenda summary, the commission will call the meeting to order; conduct swearing in of members; introduce visitors; review status statistical reports; discuss special counsel program; review prior minutes; review Advisory Committee reports; discuss operating rules and procedures; discuss duties of the commission; review and discuss general counsel's budget; review appointments and membership of committees; discuss grievance committees; discuss commission procedures; review commission's compliance of State Bar Act-orders of the Supreme

Court; discuss toll-free hotline; discuss backlog of cases; discuss media plan; recovery of attorney's fees; discuss committee; commission judgment policy; discuss pending litigation pursuant to Article 6252-17(2)(e); discuss pending grievance matters pursuant to §4.06(e) and §2.15; discuss personnel matters; authorize settlement offers; authorize judgments; hear public comment; discuss resolved cases; and adjourn.

Contact: Lori Markham, 400 West 15th Street, Suite 1500, Austin, Texas 78701, (512) 463-1381.

Filed: March 4, 1992, 5:02 p.m.

TRD-9203175

Texas Commission for the Blind (TCB)

Friday-Saturday, March 13-14, 1992, 10 a.m. and 8 a.m. respectively. The Consumer Advisory Committee (CAC) of the Texas Commission for the Blind will meet on Friday at 4800 North Lamar Boulevard, CCRC, and on Saturday at the Doubletree Hotel, 6505 IH-35 North, Austin. According to the complete agenda, on Friday, the committee will review and discuss housekeeping, by CAC chairman; review and discuss approval of minutes; hear report from: TCB staff training officer; coordinator of consumer affairs; hear subcommittee assignments; report from TCB liaisons to subcommittees; report on the Americans with Disabilities Act; and report from executive director. On Saturday, the committee will review and discuss housekeeping by CAC chairman; subcommittee reports; CAC report to the executive director; and discuss regional issues.

Contact: Cecilia Berrios, 4800 North Lamar, Suite 320, Austin, Texas 78756, (512) 459-2611.

Filed: March 4, 1992, 11:07 a.m.

TRD-9203134

Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons

Friday, March 13, 1992, 9 a.m. The Pricing Subcommittee of the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons will meet at the General Services Commission, Central Services Building, #402, 1711 San Jacinto Street, Austin. According to the agenda summary, the subcommittee will call the meeting to order; introduce subcommittee members and guests; acceptance of minutes from November 19, 1991 meeting; discuss and make recommendations for action on new services; renewal services; new products; product changes and revisions; and adjourn.

Contact: Michael T. Phillips, P.O. Box 12866, Austin, Texas 78711, (512) 459-2604.

Filed: March 4, 1992, 9:28 a.m.

TRD-9203116

Canadian River Compact Commission

Tuesday, April 7, 1992, 11 a.m. The Canadian River Compact Commission will meet at the Office of Canadian River Municipal Water Authority, Sanford. According to the agenda summary, the commission will call the meeting to order; discuss approval of the minutes of the October 7, 1991; hear reports of the chairman; secretary; treasurer; engineering committee; states and federal agencies; and new business will be discussed.

Contact: Herman Settemeyer, P.O. Box 13087, Austin, Texas 78711, (512) 463-8497.

Filed: March 4, 1992, 3:15 p.m.

TRD-9203155

Texas Board of Criminal Justice

Thursday, March 12, 1992, 1 p.m. The Subcommittee on Substance Abuse of the Texas Board of Criminal Justice will meet at the First City Centre, 816 Congress Avenue, Suite 500, Austin. According to the agenda summary, the subcommittee will call the meeting to order; discuss approval of minutes; program plan for design of felony substance abuse treatment facilities; update on in-prison therapeutic community; report on the outpatient audit; discuss prior and pending, and new business; and adjourn.

Contact: Andrea Scott, P.O. Box 99, Huntsville, Texas 77342, (409) 294-2931.

Filed: March 4, 1992, 4:13 p.m.

TRD-9203161

Thursday, March 12, 1992, 2 p.m. The Subcommittee on Construction of the Texas Board of Criminal Justice will meet at First City Centre, 816 Congress Avenue, Suite 500, Austin. According to the agenda summary, the subcommittee will make a presentation on prevailing wages; current project status: 1,000 inmate units; 2,250 inmate units; psychiatric units; architect selection; review of projects for board approval; and discuss other items.

Contact: Susan Power-McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: March 4, 1992, 4:13 p.m.

TRD-9203162

Texas Education Agency

Wednesday, March 11, 1992, 9 a.m. The State Board of Education Task Force on High School Education of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete agenda, the task force will review charge to committee; policy statement on high school education; report on high school education; and discuss preparatory programs proposal.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 3, 1992, 3:40 p.m.

TRD-9203094

Wednesday, March 11, 1992, 1 p.m. The Joint Meeting of the State Board of Education Task Force on High School Education and Ad Hoc Committee on Student Outcome Goals of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete agenda, the committee will make introductions and hear chairs' opening remarks; outcomes of public education; outcomes-based education; perspectives on implementing outcomes-based education; and discuss outcomes-based education and education policy.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 3, 1992, 3:38 p.m.

TRD-9203093

Thursday, March 12, 1992, 9:30 a.m. The State Board of Education on Ad Hoc Committee on Textbooks of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-100, Austin. According to the agenda summary, the committee will review and discuss proposed amendments to 19 TAC Chapter 67, Subchapter A, State Textbook Program.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 4, 1992, 4:47 p.m.

TRD-9203164

Thursday, March 12, 1992, 1 p.m. The State Board of Education (SBOE) Committee of the Whole of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the agenda summary, the committee will hear public testimony; commissioner's overview of March SBOE meeting; expert session; outcome-based education; adoption of student assessment plan; waivers and exemptions; report on partnership schools initiative project; and discussion of pending litigation. The discussion of pending litigation will be held in executive session in accordance with Article 6252-17, §2(e), Vernon's Texas Civil Statutes, and the discussion will be held in Room 1-103.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 4, 1992, 4:47 p.m.

TRD-9203165

Thursday-Friday, March 12-13, 1992, 1 p.m. and 8:30 a.m. respectively. The Apprenticeship and Training Advisory Committee (ATAC) of the Texas Education Agency will meet at the Guest Quarters Suite Hotel, 303 West 15th Street, Austin. According to the agenda summary, on Thursday, the committee will welcome guests and make introductions; hear comments from ATAC chairman; discuss approval of minutes; presentation on "To Compete Globally, We Must Succeed Locally"; overview of the Super-conducting Super Collider Technical Training Project; update on apprenticeship program; report on second annual quality work force planning conference; and presentation on "Higher Education's Role in Developing a Skilled Work Force." On Friday, the committee will hear a report on postsecondary perspectives of Tech-Prep programs; presentation on "Individual's Rights Pertaining to Sexual Harassment in the Workplace"; action of recommendation of 1992-1993 apprenticeship-related instruction contact-hour rate; hear reports from subcommittees; election of officers; and adjourn.

Contact: Toni M. Dean, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9294.

Filed: March 3, 1992, 3:41 p.m.

TRD-9203096

Thursday, March 12, 1992, 2:30 p.m. The State Board of Education Committee on Personnel of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-111, Austin. According to the agenda summary, the committee will hear public testimony; planning and accreditation; teacher appraisal procedures; advanced academic training; alternative teacher certification programs; trustees for Lackland Independent School District (ISD) and Boys Ranch ISD; student absences for extracurricular activities and competitive athletics during the school day; funding for applications to address teacher shortages and support for minority teacher recruitment and training; centers for professional development and technology; request for rule to allow for private music lessons within school day; status report on the accreditation of school districts.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 4, 1992, 4:47 p.m.

TRD-9203166

Thursday, March 12, 1992, 2:30 p.m. The State Board of Education (SBOE) Committee on Students of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-100, Austin. According to the agenda summary, the committee will hear public testimony; pupil-school relations; grading and reporting requirements and extracurricular activities; 1992 Proclamation of the SBOE advertising for bids on textbooks; list of priority occupations; appointment to SBOE textbook proclamation advisory committees; discuss assessment rules; transition planning for students enrolled in special education; discuss restructuring of science education to include Science III and IV; presentation on the Texas School Health Project; and discuss alternatives for spelling instruction.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 4, 1992, 4:48 p.m.

TRD-9203167

Thursday, March 12, 1992, 2:30 p.m. The State Board of Education (SBOE) Committee on School Finance of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the

agenda summary, the committee will hear public testimony; discuss school finance; Texas State Plan for Federal Adult Education funding; recommendation of Apprenticeship and Training Advisory Committee for allocation of funds for instructional equipment; school facilities; proprietary schools and veterans education; driver training schools; 1992 proclamation of the SBOE advertising for bids on textbooks; list of priority occupations; funding for applications to address teacher shortages and support for minority teacher recruitment and training; appointments to 1992 State Textbook Subject Area Committees; appointment to Proprietary School Advisory Commission; appointment to Apprenticeship and Training Advisory Committee; transition planning for students enrolled in special education; school facilities standards; and report on proprietary schools financial stability requirements.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 4, 1992, 4:48 p.m.

TRD-9203168

Thursday, March 12, 1992, 4:15 p.m. The Apprenticeship and Training Advisory Committee (ATAC) Planning Subcommittee of the Texas Education Agency will meet at the Guest Quarters Suite Hotel, 303 West 15th Street, Austin. According to the complete agenda, the subcommittee will discuss possible topics, dates, and locations for future meetings.

Contact: Toni M. Dean, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9294.

Filed: March 3, 1992, 3:41 p.m.

TRD-9203097

Thursday, March 12, 1992, 4:15 p.m. The Apprenticeship and Training Advisory Committee (ATAC) Finance and Budget Subcommittee of the Texas Education Agency will meet at the Guest Quarters Suite Hotel, 303 West 15th Street, Austin. According to the complete agenda, the subcommittee will discuss recommendations of the contact-hour rate for apprenticeship programs for 1992-1993.

Contact: Toni M. Dean, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9294.

Filed: March 3, 1992, 3:40 p.m.

TRD-9203095

Friday, March 13, 1992, 8 a.m. The State Board of Education (SBOE) Committee of the Whole of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 2-115, Austin. According to the complete agenda, the committee will hold a work session on

the The State Board of Education 1992 meeting schedule.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 4, 1992, 4:48 p.m.

TRD-9203169

Friday, March 13, 1992, 8:30 a.m. The State Board of Education (SBOE) Committee on the Permanent School Fund (PSF) of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-109, Austin. According to the agenda summary, the committee will hear public testimony; recommended PSF investment program for March and April and funds available for the program; proposed commitment document between the PSF and the Board of Trustees of the Texas Growth Fund; appointments to the Investment Advisory Committee on the PSF; review of PSF securities transactions and the investment portfolio; and report of the PSF manager.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 4, 1992, 4:49 p.m.

TRD-9203171

Friday, March 13, 1992, 8:30 a.m. The State Board of Education (SBOE) Committee on Long-Range Planning of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the agenda summary, the committee will hear public testimony; discuss Texas Scholars Program; discuss potential legal options for regulating commercial access to students; status report of the work of the Task Force on Professional Preparation and Development; development of a strategic plan for the Texas Education Agency; report on the status of the Texas Children's Mental Health Plan; and presentation of "Career Success" video.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 4, 1992, 4:48 p.m.

TRD-9203170

Friday, March 13, 1992, 1:30 p.m. The State Board of Education (SBOE) of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the agenda summary, the board will hear public testimony; SBOE resolutions; discuss approval of consent agenda; state textbook program; student assessment plan; waivers and exemptions; planning and accreditation; teacher appraisal procedures; advanced academic training; alternative

teacher certification programs; pupil-school relations; grading and reporting requirements and extracurricular activities; 1992 textbook proclamation; textbook proclamation advisory committees; State Plan for Federal Adult Funding; Apprenticeship and Training Advisory Committee recommendation for allocation of funds for instructional equipment; school facilities; proprietary schools and veterans education; driver training schools; priority occupations; teacher shortages and support for minority teacher recruitment and training; investment of the Permanent School Fund (PSF) for March/April; commitment document between PSF and Texas Growth Fund; and information on agency administration.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 4, 1992, 4:49 p.m.

TRD-9203172

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**Advisory Commission on
State Emergency Commu-
nications**

Tuesday, March 10, 1992, 10 a.m. The Planning and Implementation Committee of the Advisory Commission on State Emergency Communications will hold an emergency meeting at the John H. Reagan Building, 15th and Congress Avenue, Room 104, Austin. According to the agenda summary, the committee will call the meeting to order and recognize guests; hear public comment; discuss and consider policy on uninterrupted power source (UPS) and generators; report on Statewide 9-1-1 participation and implementation schedule; authorization for telephone companies to begin billing fees in the City of Jolly; discuss administrative budgets and annual review process for Councils of Governments; consider for approval proposed plan amendment, review, and administrative budget for the Coastal Bend Council of Governments; consider and approve proposed plan amendments for various Councils of Governments; committee may recess for the day and reconvene on Wednesday, March 11, at 9 a.m.; and adjourn. The emergency status is necessary to coincide with meetings on March 11.

Contact: Glenn Roach, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: March 3, 1992, 4:28 p.m.

TRD-9203105

Tuesday, March 10, 1992, 2 p.m. The Administration Committee of the Advisory Commission on State Emergency Communications will hold an emergency meeting at the John H. Reagan Building, 15th and

Congress Avenue, Room 106, Austin. According to the complete agenda, the committee will call the meeting to order and recognize guests; hear public comment; discuss ACSEC's Five-Year Plan; and adjourn. The emergency status is necessary to coincide with meetings on March 11.

Contact: Glenn Roach, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: March 3, 1992, 4:28 p.m.

TRD-9203104

Wednesday, March 11, 1992, 9:30 a.m. The Administration Committee of the Advisory Commission on State Emergency Communications will meet at the John H. Reagan Building, 15th and Congress Avenue, Room 106, Austin. According to the complete agenda, the committee will call the meeting to order and recognize guests; hear public comment; ACSEC financial report; review and discuss ACSEC audits on telephone companies; report on Councils of Governments' 1991 administrative budgets and expenditures; and adjourn.

Contact: Glenn Roach, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: March 3, 1992, 4:29 p.m.

TRD-9203106

Wednesday, March 11, 1992, 10:30 a.m. The Public Education and Training Committee of the Advisory Commission on State Emergency Communications will meet at the John H. Reagan Building, 15th and Congress Avenue, Room 102, Austin. According to the complete agenda, the committee will call the meeting to order and recognize guests; hear public comment; report on 9-1-1 accessibility equipment as required by ADA; discuss TDD diverters versus TDD detectors; report on public education distribution process; report on planning activities for 9-1-1 day in Texas; and adjourn.

Contact: Glenn Roach, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: March 3, 1992, 4:29 p.m.

TRD-9203107

Wednesday, March 11, 1992, 11 a.m. The Addressing Committee of the Advisory Commission on State Emergency Communications will meet at the John H. Reagan Building, 15th and Congress Avenue, Room 103, Austin. According to the complete agenda, the committee will call the meeting to order and recognize guests; hear public comment; discuss and consider adoption of the addressing committee's plan amendment components and process (i.e. maps, hardware, software); discuss and consider allowable addressing expenditures; discuss

and consider addressing plan amendment for the Capital Area Planning Council; and adjourn.

Contact: Glenn Roach, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: March 3, 1992, 4:29 p.m.

TRD-9203108

Wednesday, March 11, 1992, 1:15 p.m. The Advisory Commission on State Emergency Communications will meet at the John H. Reagan Building, 15th and Congress Avenue, Room 104, Austin. According to the agenda summary, the commission will call the meeting to order and recognize guests; hear public comment; report on the joint meeting of the ACSEC Executive Committee and emergency communications districts; report on the restructure of ACSEC Committees; hear committee reports; discuss and consider any action items; consider any new business; consider approval of previous meeting minutes; and adjourn.

Contact: Glenn Roach, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: March 3, 1992, 4:29 p.m.

TRD-9203109

Wednesday, March 11, 1992, 3:30 p.m. The 9-1-1 Day Planning Committee of the Advisory Commission on State Emergency Communications will meet at the John H. Reagan Building, 15th and Congress Avenue, Room 104, Austin. According to the complete agenda, the committee will call the meeting to order and recognize guests; discuss 9-1-1 Day activities in Austin; discuss 9-1-1 Day activities throughout the state; report on nomination for telecommunicator award; and adjourn.

Contact: Glenn Roach, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: March 3, 1992, 4:30 p.m.

TRD-9203110

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Texas Historical Commission

Saturday, March 7, 1992, 9 a.m. The Christopher Columbus Quincentenary Texas Jubilee Committee of the Texas Historical Commission held an emergency meeting at the Gethsemane Church, 1510 Congress Avenue, Austin. According to the agenda summary, the committee called the meeting to order; took roll call, established quorum; discussed approval of minutes, November 16, 1991 meeting; committee reports; action items; discussion items; discussed other business; announcements; and adjourned. The emergency status was necessary as the

committee was unable to finalize agenda before deadline.

Contact: Cindy Laguna Dally, P.O. Box 12276, Austin, Texas 78711, (512) 463-6100.

Filed: March 4, 1992, 9:45 a.m.

TRD-9203118

Texas Hospital Equipment Financing Council

Thursday, March 12, 1992, 10 a.m. The Texas Hospital Equipment Financing Council will meet at the Texas State Treasury, LBJ Building, 111 East 17th Street, Austin. According to the complete agenda, the council will elect officers; hear final audit report-State Auditor; discuss investment alternatives-treasury staff; approve investment alternatives; financial report-First City-Austin; discuss responses from liquidity facilities; approve replacement liquidity facility; approve amendment to current standby purchase agreement; and discuss new business.

Contact: M. Brett Ledbetter, 1200 Smith Street, Suite 3600, Houston, Texas 77002, (512) 463-5971.

Filed: March 4, 1992, 11:59 a.m.

TRD-9203139

Texas Department of Human Services

Wednesday, March 11, 1992, 10:15 a.m. The CPS Advisory Committee of the Texas Department of Human Services will meet at 701 West 51st Street, Fourth Floor, West Tower, Conference Room 460-W, Austin. According to the complete agenda, the committee will call the meeting to order; discuss approval of minutes; vote on proposed by-laws amendment to add second vice-chair; PAL policy change; hear director's remarks regarding feedback on previous action; status of proposed federal legislation; transition planning; update on strategic plan; explanation of LAR process and program services plan proposals; discuss LAR and program services plan proposals; discuss presentation to TDHS Board in July; and adjourn.

Contact: Melodye Eveland, P.O. Box 149030, Austin, Texas 78714-9030, (512) 459-3412.

Filed: March 3, 1992, 11 a.m.

TRD-9203073

Texas Department of Insurance

Wednesday, March 11, 1992, 8:30 a.m.

The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, 333 Guadalupe Street, Room 100, Austin. According to the agenda summary, the board will discuss solvency; personnel; commissioner's orders; planning calendar; litigation; consider adoption of 28 TAC §§7.201-7.205 and §§7.209-7.213, concerning administrative regulation under the Insurance Holding Company System; consider appointment of member to the Advisory Committee to create incentives to depopulate the Catpool; consider appointment of an employer representative to the Utilization Review Advisory Committee; consider adoption of new 28 TAC §§3.3301-3.3325 concerning minimum standards for Medicare Supplement policies following passage of the Omnibus Budget Reconciliation Act of 1990; consider hearing office: regarding a request by Pennwell Publishing Company disputing an adjustment in the Tabular Plan Surcharge; proposal for decision in the appeal of Judith Fatjo and Carol G. Callaway from the action of the TCPIA; consider office hearing proposal for decision in the request by Warren Transport, Inc. for hearing on combination of Warren Transport, Inc. and Federal Express Corporation for purposes of rating and calculation of rates for Workers' Compensation Insurance; consider office hearing proposal for decision in the request by BB&J Painting Inc. for a hearing on calculation of experience modifiers applicable to Workers' Compensation Insurance; consider hearing office proposal for decision in the request by Summit Oilfield Corporation for a hearing on calculation of experience modifiers applicable to Workers' Compensation Insurance pending, contemplated litigation and how to seek attorney advice.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: March 3, 1992, 4:11 p.m.

TRD-9203101

Tuesday, April 21, 1992, 10 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, 333 Guadalupe Street, Room 100, Austin. According to the complete agenda, the board will hold a public hearing the consider the motion to dismiss for lack of jurisdiction filed by the staff of the Texas Department of Insurance, concerning the appeal from Commissioner's Order Numbers 91-1551 and 91-1744 by Sam R. Feinhandler.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: March 3, 1992, 11:28 a.m.

TRD-9203076

Texas Board of Professional Land Surveying

Friday, March 13, 1992, 8 a.m. The Texas Board of Professional Land Surveying will meet at 7701 North Lamar Boulevard, Suite 400, Austin. According to the complete agenda, the board will conduct a formal hearing before an Administrative Law Judge on Complaint Number 92-2 to determine whether any disciplinary action should be taken against Registered Professional Land Surveyor who holds license number 2057.

Contact: Sandy Smith, 7701 North Lamar Boulevard, Suite 400, Austin, Texas 78752, (512) 452-9427.

Filed: March 4, 1992, 2 p.m.

TRD-9203145

Texas Department of Licensing and Regulation

Thursday, March 12, 1992, 9 a.m. (rescheduled from January 22, 1992). The Inspections and Investigations, Tow Trucks of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, 920 Colorado Street, Third Floor Conference Room, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Robert Kretzman, Ace Wrecker for violation of Vernon's Texas Civil Statutes, Articles 6687-9b and 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 475-2899.

Filed: March 4, 1992, 8:43 a.m.

TRD-9203114

Thursday, March 26, 1992, 9 a.m. (rescheduled from January 23, 1992). The Inspections and Investigations, Tow Trucks of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, 920 Colorado Street, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Joe Boyd, Boyd's Wrecker Service for violation of Vernon's Texas Civil Statutes, Articles 6687-9b and 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 475-2899.

Filed: March 4, 1992, 8:43 a.m.

TRD-9203115

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**Texas Board of Licensure
for Nursing Home Admin-
istrators**

Friday, March 13, 1992, 11:30 p.m. The Texas Board of Licensure for Nursing Home Administrators will meet at the Doubletree Hotel, Meeting Room, 6505 North IH-35, Austin. According to the complete agenda, the board will call the meeting to order; take roll call; discuss approval of agenda and January 17, 1992 minutes; meet in executive session for discussion and possible action concerning duties and responsibilities of the executive director (Vernon Texas Civil Statutes, Article 6252-17, §2(g)); executive session to discuss possible litigation (Article 6252-17, §2(e)); discuss and approve strategic plan; deficit funding requests; executive director's report; staff reports; chairman's report; and adjourn.

Contact: K. Foutz, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756, (512) 458-1955.

Filed: March 4, 1992, 9:34 a.m.

TRD-9203117

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State Preservation Board

Monday, March 30, 1992, 10 a.m. The Personnel Committee of the State Preservation Board will meet at the Clements Building, 15th and Lavaca Streets, Austin. According to the agenda summary, the committee will call the meeting to order; discuss approval of minutes; and discuss order of business.

Contact: Dealey Herndon, 201 East 14th Street, Room 503, Austin, Texas 78701, (512) 463-5495.

Filed: March 3, 1992, 2:32 p.m.

TRD-9203090

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**Public Utility Commission of
Texas**

Tuesday, March 24, 1992, 10 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will hold a prehearing conference in Docket Number 10635-application of GTE Southwest Incorporated for approval of new service, ISDN-Basic Rate Interface Service.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 4, 1992, 3:33 p.m.

TRD-9203156

Monday, April 27, 1992, 10 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will hold a hearing on the merits in Docket Number 10881-application of new Era Electric Cooperative, Inc. for authority to change rates.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 3, 1992, 3:08 p.m.

TRD-9203092

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**Texas Real Estate Commis-
sion**

Monday-Tuesday, March 16-17, 1992, 10 a.m. and 9:30 a.m. respectively. The Texas Real Estate Commission will meet at the TREC Headquarters Office, 1101 Camino La Costa, Conference Room 235, Austin. According to the agenda summary, the commission will conduct a hearing on proposed amendments to 22 TAC §§537.11, 537.13, 537.23, 537.28, 537.29 and 537.33 concerning standard contract forms; discuss Senate Bill 3; discuss Texas Civil Statutes, Article 6573a, §2(3); discuss proposed amendments to 22 TAC §§533.10, 533.18, 533.25 concerning practice and procedure, to §535.41 concerning the commission, and to §535.141 concerning initiation of investigations; discuss and possibly act to approve MCE providers and courses; or to approve accredited schools or courses; meet in executive session to discuss pending litigation pursuant to §2(e), Article 6252-17, Texas Civil Statutes; authorize payments from recovery funds or other matters discussed in executive session; motions for rehearing and/or probation; entry of orders in contested cases.

Contact: Camilla Shannon, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: March 4, 1992, 4:19 p.m.

TRD-9203163

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**Structural Pest Control
Board**

Tuesday, March 10, 1992, 8:30 a.m. The Strategic Planning Committee of the Structural Pest Control Board will meet at the Thompson Conference Center, Room 1.122,

2405, East Campus Drive, Austin. According to the complete agenda, the committee will discuss the board's proposed strategic plan as mandated by House Bill 2009.

Contact: Benny M. Mathis, Jr., 9101 Burnet Road, #201, Austin, Texas 78758, (512) 835-4066.

Filed: February 27, 1992, 10:54 a.m.

TRD-9202875

◆ ◆ ◆
**Texas Appraiser Licensing
and Certification Board**

Thursday, March 12, 1992, 9 a.m. The Texas Appraiser Licensing and Certification Board will meet at the TREC Headquarters, Conference Room 235, Second Floor, 1101 Camino La Costa, Austin. According to the complete agenda, the board will call the meeting to order; hold a workshop concerning the development of the board's strategic plans for 1992-1998 as per House Bill 2009, 72nd Legislature, Regular Session, 1991 (Vernon's Annotated Civil Statutes, Article 6252-31; and adjourn.

Contact: Renil Liner, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3950.

Filed: March 4, 1992, 11:47 a.m.

TRD-9203138

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**Texas Catastrophe Property
Insurance Association**

Tuesday, March 17, 1992, 8:30 a.m. The Members of the Texas Catastrophe Property Insurance Association will meet at the TCPIA Offices, All Purpose Room, 2801 South Interregional Highway, Austin. According to the complete agenda, the members will call the meeting to order; discuss approval of the minutes of December 17, 1991, January 8, 1992, January 21, 1992, and February 6, 1992; hear reports of: tellers committee; chairman of the board; secretary-treasury; manager; underwriting director; counsel; underwriting committee; depopulation committee; reinsurance committee; Insurance Information Institute; nominating committee; election of five members to the Board of Directors; determination of length of terms for all directors; and adjourn.

Contact: F. R. "Buddy" Rogers, 2801 South Interregional, Austin, Texas 78741, (512) 444-7007.

Filed: March 3, 1992, 12:21 p.m.

TRD-9203078

Tuesday, March 17, 1992, 10 a.m. The Board of Directors of the Texas Catastrophe Property Insurance Association will meet at the TCPIA Offices, All Purpose Room,

2801 South Interregional Highway, Austin. According to the complete agenda, the meeting will be called to order, Manager Rogers; introduction of new board of directors; election of officers for 1992; resolution to include reports presented at the annual meeting of the members by officers, committee chairmen and staff in the minutes of meeting of the board of directors; appointment of committees and staff liaisons; report on Texas Department Advisory Committee; depopulation committee, Ron Cheshire; reinsurance committee, Jim Miner; report on TIAA reinsurance program, Jim Miner; discuss percentage of participation Caps, 20% minimum and 170% maximum; discuss any other business that may come before the board; location of next meeting; and adjourn.

Contact: F. R. "Buddy" Rogers, 2801 South Interregional, Austin, Texas 78741, (512) 444-7007.

Filed: March 3, 1992, 12:22 p.m.

TRD-9203079

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**Texas On-site Wastewater
Treatment Research Council**

Thursday, March 12, 1992, 1 p.m. The Texas Water Commission of the Texas On-site Wastewater Treatment Research Council will meet at the Center for Environmental Research, FM 973, Austin. According to the agenda summary, the commission will consider and take action on: the interagency contact between the council and the Texas Water Commission relating to support services for the council; the report of the technical review committee; vacancies on the council; the executive secretary report; and the report of the council's chairman.

Contact: Theodore Johns, 8407 West Wallstreet, Austin, Texas 78753, (512) 834-6663.

Filed: March 4, 1992, 3:14 p.m.

TRD-9203154

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Texas Water Commission

Wednesday, March 4, 1992, 10:30 a.m. The Texas Water Commission met at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the emergency revised agenda summary, the commission considered various matters within the regulatory jurisdiction of the commission, including specifically the adoption of new or amended agency regulations. In addition, the commission considered 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. An emergency existed due to the necessity of making the reimbursement program more effective immediately with respect to payments and overpayments.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: March 4, 1992, 7:36 a.m.

TRD-9203111

Wednesday, March 18, 1992, 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 various matters within the regulatory jurisdiction of the commission. 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, scheduling an item in the entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: March 4, 1992, 3:51 p.m.

TRD-9203159

Wednesday, March 18, 1992, 10 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 various matters within the regulatory jurisdiction of the commission, including specifically the adoption of new or amended agency regulations. 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: March 4, 1992, 3:51 p.m.

TRD-9203158

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Texas Water Development Board

Thursday, March 12, 1992, 9 a.m. The Texas Water Development Board will meet at the Worthington Hotel, Gulf Room, 200 Main Street, Fort Worth. According to the agenda summary, the board will consider: minutes; development fund manager's re-

port; extending commitment to Ft. Bend Flood Control WSC; financial assistance for cities of Bellaire, Needville, Big Spring, Ft. Worth, Del Rio, Pharr, Stanley Lake MUD, Wise County, Sabine River Authority, United Irrigation District and Panhandle Groundwater Conservation District; modifying reserve fund for Leander; transfer of funds from a 1989 commitment for Houston; board participation in Corps study on Brazos River Basin; delineating responsibility between TNRIS and DIR; extension for Canyon Lake WSC to execute contract; contracts to evidence approved grants for Edinburg, Mission, Brownsville PUB, and El Paso LVWDA; amendments to 31 TAC, Chapter 355, Subchapter B and §363.508; interest rate for Colonia Plumbing loans; EDAP policy issues; delegation of tasks by Executive Administrator to deputies; and resolution honoring Hobby McCall.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: March 4, 1992, 10:46 a.m.

TRD-9203127

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Regional Meetings

Meetings Filed March 3, 1992

The Aqua Water Supply Corporation met at 305 Eskew, Aqua Water Supply Corporation Office, Bastrop, March 9, 1992, at 7:30 p.m. Information may be obtained from Adlinie Rathman, P.O. Drawer P, Bastrop, Texas 78602, (512) 321-3943. TRD-9203081.

The Brazos Higher Education Authority, Inc Board of Directors held an emergency meeting at 2600 Washington Avenue, Waco, March 5, 1992, at 10 a.m. The emergency status was necessary due to closing on proposed issues for March 11, 1992, and vacation plans of Directors prevented quorum at a later date. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0913. TRD-9203082.

The Brazos Higher Education Service Corporation Board of Directors held an emergency meeting at 2600 Washington Avenue, Waco, March 5, 1992, at 10:30 a.m. The emergency status was necessary due to closing on proposed issues for March 11, 1992, and vacation plans of Directors prevented quorum at a later date. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0913. TRD-9203083.

The Brazos Student Finance Corporation Board of Directors held an emergency meeting at 2600 Washington Avenue, Waco, March 5, 1992, at 10:15 a.m. The emergency status was necessary due to clos-

ing on proposed issues for March 11, 1992, and vacation plans of Directors prevented quorum at a later date. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0913. TRD-9203080.

The Canyon Regional Water Authority met at the Marion I.S.D. Central Offices, FM 465 and FM 78, Marion, March 9, 1992, at 7:30 p.m. Information may be obtained from David J. Davenport, P.O. Box 188, Marion, Texas 78124, (512) 420-2323. TRD-9203077.

The Permlan Basin Regional Planning Commission Board of Directors will meet at the PBRPC Offices, Midland International Airport, Midland, March 11, 1992, at 1:30 p.m. Information may be obtained from Terri Moore, P.O. Box 60660, Midland, Texas 79711, (915) 463-1061. TRD-9203091.

The South Franklin Water Supply Corporation Board of Directors will meet at the South Franklin Water Supply Corporation Office, Highway 115 South, Mt. Vernon, March 10, 1992, at 7 p.m. Information may be obtained from Richard Zachary, P.O. Box 591, Mt. Vernon, Texas 75457, (903) 860-3400. TRD-9203086.

Meetings Filed March 4, 1992

The Bi-County Water Supply Corporation will meet at the Bi-County WSC Office, FM 2254, Arch Davis Road, Pittsburg, March 10, 1992, at 7 p.m. Information may be obtained from Freeman Phillips, P.O. Box 848, Pittsburg, Texas 75686, (903) 856-5840. TRD-9203152.

The Brazos Valley Development Council Board of Directors will meet at the Council Conference Room, Suite Two, 3006 East 29th Street, Bryan, March 12, 1992, at 1:30

p.m. Information may be obtained from Glenn J. Cook, P.O. Drawer 4128, Bryan, Texas 77805-4128. TRD-9203147.

The Capital Area Planning Council Executive Committee will meet at 2520 IH-35 South, Suite 100, Austin, March 11, 1992, at 1:30 p.m. Information may be obtained from Richard G. Bean, 2520 IH-35 South, Suite 100, Austin, Texas 78704, (512) 443-7653. TRD-9203140.

The Cass County Appraisal District Board of Directors met at the Cass County Appraisal District Office, 502 North Main Street, Linden, March 9, 1992, at 7 p.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9203150.

The Concho Valley Council of Governments Executive Committee will meet at 5014 Knickerbocker Road, San Angelo, March 11, 1992, at 7 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 76906, (915) 944-9666. TRD-9203151.

The Nolan County Central Appraisal District Board of Directors will meet at the Nolan County Courthouse, Third Floor, Sweetwater, March 10, 1992, at 7 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9203160.

The Nueces River Authority Finance Committee met at the Quality Hotel Bayfront, 601 North Water Street, Corpus Christi, March 9, 1992, at 10 a.m. Information may be obtained from Con Mims, P.O. Box 349, Uvalde, Texas 78802, (512) 278-6810. TRD-9203148.

The Nueces River Authority Board of Directors met at the Quality Hotel Bayfront,

601 North Water Street, Corpus Christi, March 9, 1992, at 11 a.m. Information may be obtained from Con Mims, P.O. Box 349, Uvalde, Texas 78802, (512) 278-6810. TRD-9203149.

The San Patricio County Appraisal District Board of Directors will meet at 1146 East Market Street, Sinton, March 12, 1992, at 9:30 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402. TRD-9203133.

The Texas Water Conservation Association Risk Management Fund Board of Trustees will meet at the Worthington Hotel, 200 Main Street, Fort Worth, March 11, 1992, at 8:30 a.m. Information may be obtained from Leroy Goodson, 206 San Jacinto Building, Austin, Texas 78701, (512) 472-7216. TRD-9203113.

The Texas Water Conservation Association Risk Management Fund Annual Membership Committee will meet at the Worthington Hotel, 200 Main Street, Fort Worth, March 11, 1992, at 3 p.m. Information may be obtained from Leroy Goodson, 206 San Jacinto Building, Austin, Texas 78701, (512) 472-7216. TRD-9203112.

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Meetings Filed March 5, 1992

The Brown County Appraisal District Board of Directors met at 403 Fisk Avenue, Brownwood, March 9, 1992, at 7 p.m. Information may be obtained from Doran E. Lemke, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676. TRD-9203179.

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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 Air Control Board

Correction of Errors

The Texas Air Control Board proposed amendments to 31 TAC Chapter 115, concerning Control of Air Pollution from Volatile Organic Compounds. The rules were published in the January 28, 1992, *Texas Register* (17 TexReg 618).

On page 625, in §115.117(b)(2), "794,850 liters" was incorrectly printed with a decimal instead of a comma. In (b)(3), "94,625 liters" was incorrectly printed with a decimal instead of a comma.

On page 631, in §115.137(a)(2), the proposed new language "Until July 31, 1993 in Brazoria, El Paso, Galveston, Harris, Jefferson, and Orange Counties, any..." should have been printed in bold type.

On page 633, in §115.212(c), the proposed new language "...Aransas, Bexar, Calhoun, Hardin, Matagorda, Montgomery, San Patricio and Travis Counties..." should have been printed in bold type.

On page 642, in §115.311(a)(1), the term "steam ejector" was printed incorrectly as "steam director".

On page 642, in §115.311, proposed new language was omitted. It should read as follows.

(b) For all affected persons in Gregg, Nueces, and Victoria Counties, the following emission specifications on vacuum-producing systems shall apply.

(1) No person may be allowed to emit any VOC from a steam ejector or mechanical vacuum pump in a petroleum refiner, unless the vent stream is burned properly in accordance with §115.312(b)(2) of this title (relating to Control Requirements).

(2) No person may be allowed to emit any VOC from a hotwell with a contact condenser, unless the hotwell is covered and the vapors from the hotwell are burned properly in accordance with §115.312(b)(2) (relating to Control Requirements).

On page 642, in §115.312(b)(1)(B), "psig" was printed incorrectly as "psia".

On page 642, in §115.315(a), the proposed new language "Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, ..." should have been printed in bold type.

On page 644, in the last sentence of §115.322(b)(4), a period was printed instead of a comma after "...when closing the line, the upstream..." Printing this as two sentences was an error which would change the meaning of the sentence.

On page 644, in §115.322(b)(5) the proposed new paragraph should have been printed in bold type. "(5) Pipeline valves and pressure relief valves in gaseous VOC ser-

vice shall be marked in some manner that will be readily obvious to monitoring personnel.

On page 645, in §115.326(b)(1), "copy" was printed incorrectly as "coy" and the comma before "a copy" was deleted in error.

On page 645, in §115.326(b)(4), the proposed new paragraph should have been printed in bold type. A comma after "Board" was deleted in error.

On page 646, in the heading for §115.332, The undesignated heading should read "Fugitive Emission Control in Petroleum Refineries."

On page 647, in §115.333, §115.343 is shown in the language proposed for deletion rather than §115.339. In §115.339, the undesignated head references should be "Synthetic Organic Chemical..."

In §115.412(b)(1)(D), "psig" is misspelled.

In §115.412(b)(2)(B), (3)(C), and (3)(E), "sump" is misspelled as "pump".

In §115.412(b)(2)(F)(iv), "30 seconds" was garbled as "n seconds".

In §115.412(b)(3)(I)(vii), "degreasers" is misspelled.

On page 651, in §115.415, the heading is shown incorrectly as §115.15.

In §115.427, an opening bracket was omitted. It should have read "... located at any facility [in Brazoria..."

In §115.427(b)(3)(C), "particle board" is misspelled.

In §115.526, the proposed new language "For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas..." should have been printed in bold type.



The Texas Air Control Board proposed an amendment to 31 TAC §101.1, concerning definitions. The rule was published in the January 31, 1992, *Texas Register* (17 TexReg 825).

Due to an error by the *Texas Register*, under the definition of "Fugitive emission," the proposed new language was not printed in bold type. It should read as follows. "Fugitive emission—Any gaseous or particulate contaminant entering the atmosphere which could not reasonably pass [without first passing] through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow."



Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons

List of Suitable Products

The purpose of the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons is to further the state's policy of encouraging and assisting disabled citizens to achieve maximum personal independence. This purpose is carried out by employing disabled persons in activities which provide products and services to state and local governments. As required by Title 40, Texas Administrative Code, §189.14, the committee has published a list of suitable products selected by the committee for placement in a catalog. This listing contains information regarding the products, delivery schedules, freight, and packaging.

The listing is available for public inspection at the Texas Commission for the Blind, 4800 North Lamar Boulevard, Administrative Building, Suite 320, Austin, (Attention: Michael T. Phillips) and at the General Services Commission, Central Services Building, 1711 San Jacinto, Third Floor, Austin, (Attention: Ron Arnett).

Issued in Austin, Texas, on February 24, 1992

TRD-9203036 Michael T Phillips
Committee Member
Texas Committee on Purchases of
Products and Services of Blind and
Severely Disabled Persons

Filed March 2, 1992

For further information, please call: (512) 459-2604

Texas Department of Housing and Community Affairs

Public Notices

The Texas Department of Housing and Community Affairs (department) hereby gives notice that the department will be submitting to the U.S. Department of Housing and Urban Development (HUD) a planning grant application under HUD's Homeownership Opportunities for People Everywhere (HOPE III). This application will be in compliance with program guidelines and notice of fund availability as published in the *Federal Register*, Volume 57, Number 9, dated Tuesday, January 14, 1992.

The department hereby invites organizations which are incorporated pursuant to the Internal Revenue Code of 1986, §501(c), as amended, to participate in partnership with the department in this application process.

The purpose of the HOPE III is to assist eligible applicants to develop homeownership opportunities for income families and individuals utilizing single family properties owned or held by certain federal, state, or local agencies. Recipients will create homeownership opportunities by enabling eligible families to purchase these properties at affordable prices. Under the HOPE III planning grant the applicant may apply for assistance in designing a homeownership program, including activities such as the completion of a feasibility study and the preparation of an application for an implementation grant and other technical assistance as listed in the notice of fund availability as published in the January 14, 1992, issue of the *Federal Register*, Volume 57, Number 9.

Interested parties are required to submit to the department a letter of intent with the following information: a three-page description of planning activities to be undertaken and project cost for each activity; a description of direct services/activities which the non-profit will provide the project; the proposed amount of administrative cost required by the non-profit; evidence of non-profit experience/capacity to carry out the project; description of conditions of available properties to be used in proposed project; evidence of compliance with HOPE III regulations as they pertain to applicants' non-profit status; evidence of support from local government and/or neighborhood organizations.

The department will utilize the following threshold criteria as a basis for selection of applicant(s): consistency of proposed project with HOPE III requirements; project feasibility; applicant's experience/qualifications; evidence of need for proposed project; consistency with state CHAS goals and priorities.

All interested parties must submit the previous information to the department no later than March 16, 1992. Responses should be no more than 10 pages in length. Questions or requests for additional information may be directed to Susan Leigh, Executive Director, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974 or 1-800-792-1119.

Issued in Austin, Texas, on March 3, 1992.

TRD-9203102 Mano Augilar
Attorney
Texas Department of Housing and
Community Affairs

Filed: March 3, 1992

For further information, please call: (512) 474-2974

The Texas Department of Housing and Community Affairs (department) hereby gives notice that the department will be submitting to the U.S. Department of Housing and Urban Development (HUD) an implementation grant application under HUD's Homeownership Opportunities for People Everywhere (HOPE). This application will be in compliance with program guidelines and notice of fund availability as published in the *Federal Register*, Volume 57, Number 9, dated Tuesday, January 14, 1992.

The department hereby invites organizations incorporated pursuant to the Internal Revenue Code of 1986, §501(c), as amended, to participate in partnership with the Department in this application process. The department will provide matching funds as required by HOPE III guidelines.

The purpose of the HOPE III is to assist eligible applicants to develop homeownership opportunities for income families and individuals utilizing single family properties owned or held by certain federal, state, or local agencies. Recipients of HOPE III funds will create homeownership opportunities by enabling eligible families to purchase these properties at affordable prices.

Interested parties are required to submit to the department a letter of intent with the following information: a three-page description of a proposed project; a description of the direct services/activities which the non-profit will provide to the project; the proposed amount of administrative cost required by the non-profit; evidence of non-profit experience/capacity to carry out the project; description of conditions of available properties to be used in proposed project; evidence of compliance with HOPE III regulations as they pertain to applicants' non-profit status.

The department will utilize the following threshold criteria as a basis for selection of applicant(s); consistency of proposed project with HOPE III requirements; project feasibility; applicants experience/qualifications; evidence of need for proposed project; consistency with state CHAS goals and priorities.

All interested parties must submit the previous information to the department by no later than March 16, 1992. Responses should be no more than 10 pages in length. Questions or requests for additional information may directed to Susan Leigh, Executive Director, Texas Department of Housing and Community Affairs, P. O. Box 13941, Austin, Texas 78711, (512) 474-2974 or 1-800-792-1119.

Issued in Austin, Texas, on March 3, 1992.

TRD-9203103 Mario Augilar
Attorney
Texas Department of Housing and
Community Affairs

Filed: March 3, 1992

For further information, please call: (512) 474-2974

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Texas Department of Human Services Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Services (TDHS) is inviting proposals for consultant services.

Description of Services. A study of the services provided to recipient agencies using a commercial delivery system to deliver United States Department of Agriculture (USDA) donated commodities. A pilot of commercial delivery is currently being conducted. Approximately 525 recipient agencies located in south and central Texas are participating in the pilot. The recipient agencies are schools and other organizations. The study is to be completed by July 31, 1992.

Contact Person. To obtain a proposal package please contact Rick Gresser, Texas Department of Human Services, P.O. Box 78714-9030, MC W-313, Austin, Texas 78714-9030, (512) 450-3147.

Closing Date for Receipt of Offers. The last date offers will be received is March 30, 1992.

Evaluation and Selection. Evaluation criteria will include cost of the proposed work to be performed, offeror's skill and experience in developing and performing evaluations, and offeror's ability to meet scheduled timeframes.

Issued in Austin, Texas, on March 4, 1992.

TRD-9203125 Nancy Murphy
Agency liaison, Policy and Document
Support
Texas Department of Human Services

Filed: March 4, 1992

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

Lower Rio Grande Valley Development Council

Consultant Proposal Request

This request by the Lower Rio Grande Valley Development Council (LRGVDC) for planning and/or engineering consultant service is filed under the provisions of the Texas Civil Statutes, Article 62 52-11c. Specifically, the LRGVDC is seeking planning and/or engineering consultant assistance to address short and long range transportation needs in the Harlingen/South Padre Island area.

Scope of Services. The consultant will assist the LRGVDC in developing a comprehensive transportation study to include: a description of the existing transportation road networks, examining both the current and any alternate vehicular routes; a description of the public and private transportation services offered between the Valley International Airport and the town of South Padre Island; an evaluation of the short and long range transportation needs of the Harlingen/South Padre Island area; existing and projected traffic volumes and origins for the stud area, IE Highway 100 and 48; a recommended plan of implementation for any alternate routes or new form of transportation, IE light rail. Recommendation shall provide consideration for the natural environmental impact of the area, employment and community services; a detailed cost analysis of recommended improvements; and alternative funding resources.

Contract Award Procedures. Proposals will be screened by staff and the LRGVDC Project Management Committee in accordance with guidelines for firm qualifications, determined by the committee. A minimum of three firms will be selected to be interviewed by the staff and the Project Management Committee. The LRGVDC is the point of contact and shall act for the City of Harlingen and the Town of South Padre Island in regards to this RFP. Final selection of the consultant firm will be made by the LRGVDC Board of Directors.

Regulations. In accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 42 United States Code 2000d-2000d-4, the LRGVDC affirmatively ensures that no firm or individual will be discriminated against on the grounds of their race, color, sex, age, or national origin in regard to participation in this request for proposal process nor in the consideration of the eventual award of the project.

Submittal of Proposal. Ten copies of the proposals must be delivered no later than 4 p.m. on the 17th day of April. Late proposals will not be accepted. Proposals should be mailed to the attention of Richard Hinojosa, at the Lower Rio Grande Valley Development Council, 4900 North 23rd Street, McAllen, Texas 78504.

Issued in McAllen, Texas, on February 25, 1992.

TRD-9203035 Kenneth N. Jones
Executive Director
Lower Rio Grande Valley Development
Council

Filed: March 2, 1992

For further information, please call: (512) 682-3481

Public Utility Commission of Texas
Notice of Intent to File Pursuant to PUC
Substantive Rules 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of custom-specific PLEXAR- Custom Service for Texas Air Control Board, Austin.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Texas Air Control Board Pursuant to Public Utility Commission Substantive Rules 23.27(k). Tariff Control Number 10977.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Texas Air Control Board. The geographic service market for this specific service is the Austin area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, March 2, 1992.

TRD-9203049 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: March 2, 1992

For further information, please call: (512) 458-0100

◆ ◆ ◆
Railroad Commission of Texas
Correction of Error

The Railroad Commission of Texas adopted 16 TAC §3.76, concerning conservation rules and regulations. The rule was published in the February 11, 1992, *Texas Register* (17 TexReg 1229).

Due to an error in the agency's submission, the preamble contained incorrect information. The last sentence of the second paragraph should read as follows.

"It is anticipated that those persons with an acceptable record of compliance with commission rules relating to safety and pollution will have an anticipated cost of \$100 a year plus an additional \$100 per inactive well per year to comply with the financial security requirements. Those who have no record or have an unacceptable record of compliance may have to bear the cost of a more expensive type of financial security option required by Texas Natural Resources Code Chapter 91.

In the third paragraph the word "proposed" should be omitted as follows. "The amendment sets out the types..." "The amendment establishes deadlines..." "Under the amendment, persons..."

In the 14th paragraph the reference to "P-4" should read "P-5, for the first time,".



Texas Water Commission
Enforcement Order

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Anheuser-Busch Inc. (Permit 02033) on February 19, 1992, assessing \$700,000 in administrative penalties. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Laura Ray, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on February 28, 1992.

TRD-9203075 Laurie J. Lancaster
Notices Coordinator
Texas Water Commission

Filed: February 3, 1992

For further information, please call: (512) 463-7898



Notice of Application For Waste
Disposal Permit

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of February 24, 1992-February 28, 1992.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application—new permit, amendment, or renewal.

Glen Armstrong; a dairy; the dairy is located approximately eight miles northwest of the intersection of FM Road 2156 and FM Road 219 in Erath County; new; 03467.

J. L. Crouch; a dairy; the dairy is located approximately 4.5 miles north of the intersection of FM Road 2156 and FM Road 219, on an unnamed county road approximately

one mile west of FM Road 219; and approximately two miles northwest of Bunyon in Erath County; new; 0339.

City of Dension; Iron Ore Wastewater Treatment Facilities; the plant site is north of Iron One Creek; approximately 3.5 miles due east of the intersection of U.S. Highway 75 and FM Road 691 in Grayson County; renewal; 10079-01.

E & D Waste Systems, Inc.; a landfill; the plant site is two miles east of the intersection of State Highway 6 and FM Road 35, on the north side of State Highway 6 near the City of Alvin, Galveston County; new; 03416.

Heart of Texas Baptist Encampment; a recreational camp; the wastewater treatment facility, effluent storage pond and irrigation sites are to be approximately four miles north of the intersection of FM Road 2632 and State Highway 279 in Brown County; new; 13576-01.

City of Lakeway, a wastewater treatment facility; is approximately 450 feet north-northeast of the intersection of Brooks Hollow Road and Hurst Creek Road in Travis County; renewal; 13180-01.

City of Lipan; the proposed wastewater treatment facility; the plant site is to be north of the City of Lipan, approximately 1.5 miles northeast of the intersection of FM Road 4 and FM Road 1189 in Hood County; new; 13590-01.

Robert Lueck doing business as Lueck Dairies-Lingleville; a dairy; the dairy is located approximately two miles south of the intersection of FM Road 219 in Erath County; new; 03439.

Mobil Oil Corporation; a petroleum refinery; the plant site is east of the intersection of Grove Street and Burt Street in the extraterritorial jurisdiction of the City of Beaumont, Jefferson County; new; 03426.

City of Muenster; the wastewater treatment facilities; are approximately 800 feet south of the intersection of Hickory and Eddy Streets, south of the City of Muenster and north of Brushy Elm Creek in Cooke; renewal; 10341-01.

Palo Pinto County; the wastewater treatment facilities; are located in the Town of Palo Pinto on the east bank of Town Branch Creek approximately 1,200 feet due north of the intersection of U.S. Highway 180 and FM Road 4 South in Palo Pinto County; renewal; 11698-01

Leonard Riley; wastewater treatment facilities; are adjacent to and northwest of the intersection of FM Road 691 and FM Road 131 in Grayson County; renewal; 10961-01.

Texas Department of Criminal Justice; the wastewater treatment facilities; are on the north bank of Oyster Creek, approximately three miles upstream of FM Road 1464 crossing Oyster Creek in Fort Bend County; renewal 11475-01.

Thousand Trails Incorporated; The Lake Conroe Wastewater Treatment Facilities; are approximately 3.1 miles west of the intersection of FM Road 830 and Interstate Highway 45, 1.3 miles west-southwest of the intersection of FM Road 830 and Old Willis-Montgomery Road and 1,000 feet northwest of the intersection of Old Willis-Montgomery Road with the shoreline of Lake Conroe in Montgomery County; renewal; 12349-01.

333 Construction, Inc.; the wastewater treatment facilities; are adjacent to and on the east side of Hardy Road, approximately 1,000 feet south of the intersection of Hardy Road and Richey Road in Harris County; renewal; 12238-01.

City of Trinidad; the wastewater treatment facilities; are located southeast of the Trinidad, approximately 1.2 miles south of the intersection of FM Road 1667 and U.S. Highway 31 in Henderson County; renewal; 10467-02.

Town of Van Horn; wastewater treatment facilities; the plant site is approximately one mile southeast of the intersection of Interstate Highway 10 and U.S. Highway 90 in Culberson County; amendment; 10721-01.

West Texas Utilities Company; steam electric generating station known as the Paint Creek Power Plant; the plant site is at the end of FM Road 2082 and at the northeast end of Lake Stamford in Haskell County; amendment; 00963.

Issued in Austin, Texas, on February 28, 1992.

TRD-9203074 Laurie J Lancaster
Deputy Chief Clerk
Texas Water Commission

Filed: February 3, 1992

For further information, please call: (512) 463-7906



Using Art to Help Children in Trouble with the Law

by Sunny Nash

"Cool" is a word on the streets. Children use it all the time to express their tastes in clothes or cars or situations. It's "cool" if they like it and "uncool" if they don't. If a person is not cool, the person is not accepted by his or her peers. Cool, unfortunately, is defined by the child's environment and peers. Children who are lacking in self esteem will see themselves as uncool. In many cases, these children will make alterations in their personalities and appearances to conform to the standards of their environment and peers.

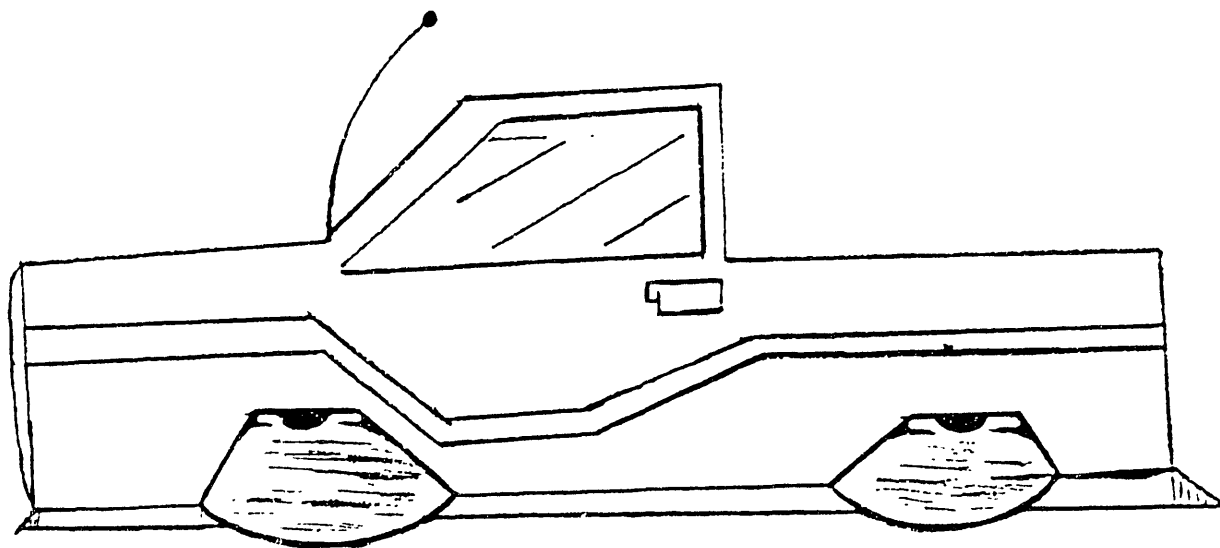
There have been other short-lived words and phrases that children and others use to express their preferences, but "cool" has been around for generations and crosses all racial, ethnic and color barriers.

For several weeks activities were conducted to illustrate how children in trouble with the law defined cool. Some of the children drew pictures of themselves with trendy hair styles and jewelry. A certain style of vehicle tended to be a popular illustration of cool.

For the next few months, this column

will examine what the children expressed in an activity designed to illustrate their notions of cool. Coming issues will show art that portrayed cemeteries with headstones engraved with the initials of enemies. Also in this collection there is an array of crosses and symbols in different styles. The most disturbing drawings, however, were those that contained guns, knives, daggers and explosives.

Ms. Nash works with children in the Brazos County Juvenile Detention Center, helping them express themselves through art. Her column is a regular feature of the Texas Register



1992 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1992 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on February 28, November 6, December 1, and December 29. A bullet beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 *Friday, January 3	Friday, December 27	Tuesday, December 31
2 *Tuesday, January 7	Tuesday, December 31	Thursday, January 2
3 Friday, January 10	Monday, January 6	Tuesday, January 7
4 Tuesday, January 14	Wednesday, January 8	Thursday, January 9
5 Friday, January 17	Monday, January 13	Tuesday, January 14
6 Tuesday, January 21	Wednesday, January 15	Thursday, January 16
Friday, January 24	1991 ANNUAL INDEX	
7 Tuesday, January 28	Wednesday, January 22	Thursday, January 23
8 Friday, January 31	Monday, January 27	Tuesday, January 28
9 Tuesday, February 4	Wednesday, January 29	Thursday, January 30
10 Friday, February 7	Monday, February 3	Tuesday, February 4
11 Tuesday, February 11	Wednesday, February 5	Thursday, February 6
12 Friday, February 14	Monday, February 10	Tuesday, February 11
13 Tuesday, February 18	Wednesday, February 12	Thursday, February 13
14 *Friday, February 21	Friday, February 14	Tuesday, February 18
15 Tuesday, February 25	Wednesday, February 19	Thursday, February 20
Friday, February 28	NO ISSUE PUBLISHED	
16 Tuesday, March 3	Wednesday, February 26	Thursday, February 27
17 Friday, March 6	Monday, March 2	Tuesday, March 3
18 Tuesday, March 10	Wednesday, March 4	Thursday, March 5
19 Friday, March 13	Monday, March 9	Tuesday, March 10
20 Tuesday, March 17	Wednesday, March 11	Thursday, March 12
21 Friday, March 20	Monday, March 16	Tuesday, March 17
22 Tuesday, March 24	Wednesday, March 18	Thursday, March 19
23 Friday, March 27	Monday, March 23	Tuesday, March 24
24 Tuesday, March 31	Wednesday, March 25	Thursday, March 26
25 Friday, April 3	Monday, March 30	Tuesday, March 31
26 Tuesday, April 7	Wednesday, April 1	Thursday, April 2
27 Friday, April 10	Monday, April 6	Tuesday, April 7
Tuesday, April 14	FIRST QUARTERLY INDEX	
28 Friday, April 17	Monday, April 13	Tuesday, April 14
29 Tuesday, April 21	Wednesday, April 15	Thursday, April 16

30 Friday, April 24	Monday, April 20	Tuesday, April 21
31 Tuesday, April 28	Wednesday, April 22	Thursday, April 23
32 Friday, May 1	Monday, April 27	Tuesday, April 28
33 Tuesday, May 5	Wednesday, April 29	Thursday, April 30
34 Friday, May 8	Monday, May 4	Tuesday, May 5
35 Tuesday, May 12	Wednesday, May 6	Thursday, May 7
36 Friday, May 15	Monday, May 11	Tuesday, May 12
37 Tuesday, May 19	Wednesday, May 13	Thursday, May 14
38 Friday, May 22	Monday, May 18	Tuesday, May 19
39 Tuesday, May 26	Wednesday, May 20	Thursday, May 21
40 *Friday, May 29	Friday, May 22	Tuesday, May 26
41 Tuesday, June 2	Wednesday, May 27	Thursday, May 28
42 Friday, June 5	Monday, June 1	Tuesday, June 2
43 Tuesday, June 9	Wednesday, June 3	Thursday, June 4
44 Friday, June 12	Monday, June 8	Tuesday, June 9
45 Tuesday, June 16	Wednesday, June 10	Thursday, June 11
46 Friday, June 19	Monday, June 15	Tuesday, June 16
47 Tuesday, June 23	Wednesday, June 17	Thursday, June 18
48 Friday, June 26	Monday, June 22	Tuesday, June 23
49 Tuesday, June 30	Wednesday, June 24	Thursday, June 25
50 Friday, July 3	Monday, June 29	Tuesday, June 30
51 Tuesday, July 7	Wednesday, July 1	Thursday, July 2
52 Friday, July 10	Monday, July 6	Tuesday, July 7
Tuesday, July 14	SECOND QUARTERLY INDEX	
53 Friday, July 17	Monday, July 13	Tuesday, July 14
54 Tuesday, July 21	Wednesday, July 15	Thursday, July 16
55 Friday, July 24	Monday, July 20	Tuesday, July 21
56 Tuesday, July 28	Wednesday, July 22	Thursday, July 23
57 Friday, July 31	Monday, July 27	Tuesday, July 28
58 Tuesday, August 4	Wednesday, July 29	Thursday, July 30
59 Friday, August 7	Monday, August 3	Tuesday, August 4
60 Tuesday, August 11	Wednesday, August 5	Thursday, August 6
61 Friday, August 14	Monday, August 10	Tuesday, August 11
62 Tuesday, August 18	Wednesday, August 12	Thursday, August 13
63 Friday, August 21	Monday, August 17	Tuesday, August 18
64 Tuesday, August 25	Wednesday, August 19	Thursday, August 20
65 Friday, August 28	Monday, August 24	Tuesday, August 25
66 Tuesday, September 1	Wednesday, August 26	Thursday, August 27
67 Friday, September 4	Monday, August 31	Tuesday, September 1
68 Tuesday, September 8	Wednesday, September 2	Thursday, September 3
69 *Friday, September 11	Friday, September 4	Tuesday, September 8

70 Tuesday, September 15	Wednesday, September 9	Thursday, September 10
71 Friday, September 18	Monday, September 14	Tuesday, September 15
72 Tuesday, September 22	Wednesday, September 16	Thursday, September 17
73 Friday, September 25	Monday, September 21	Tuesday, September 22
74 Tuesday, September 29	Wednesday, September 23	Thursday, September 24
75 Friday, October 2	Monday, September 28	Tuesday, September 29
76 Tuesday, October 6	Wednesday, September 30	Thursday, October 1
77 Friday, October 9	Monday, October 5	Tuesday, October 6
Tuesday, October 13	THIRD QUARTERLY INDEX	
78 Friday, October 16	Monday, October 12	Tuesday, October 13
79 Tuesday, October 20	Wednesday, October 14	Thursday, October 15
80 Friday, October 23	Monday, October 19	Tuesday, October 20
81 Tuesday, October 27	Wednesday, October 21	Thursday, October 22
82 Friday, October 30	Monday, October 26	Tuesday, October 27
83 Tuesday, November 3	Wednesday, October 28	Thursday, October 29
Friday, November 6	NO ISSUE PUBLISHED	
84 Tuesday, November 10	Wednesday, November 4	Thursday, November 5
85 Friday, November 13	Monday, November 9	Tuesday, November 10
*86 Tuesday, November 17	Tuesday, November 10	Thursday, November 12
87 Friday, November 20	Monday, November 16	Tuesday, November 17
88 Tuesday, November 24	Wednesday, November 18	Thursday, November 19
89 Friday, November 27	Monday, November 23	Tuesday, November 24
Tuesday, December 1	NO ISSUE PUBLISHED	
90 Friday, December 4	Monday, November 30	Tuesday, December 1
91 Tuesday, December 8	Wednesday, December 2	Thursday, December 3
92 Friday, December 11	Monday, December 7	Tuesday, December 8
93 Tuesday, December 15	Wednesday, December 9	Thursday, December 10
94 Friday, December 18	Monday, December 14	Tuesday, December 15
95 Tuesday, December 22	Wednesday, December 16	Thursday, December 17
96 Friday, December 25	Monday, December 21	Tuesday, December 22
Tuesday, December 29	NO ISSUE PUBLISHED	
1 (1993) Friday, January 1	Monday, December 28	Tuesday, December 29

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