

Texas Register

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

Governor - Appointments, executive orders, and proclamations

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

Secretary of State - opinions based on the election laws

Texas Ethics Commission - summaries of requests for opinions and opinions

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

Proposed Sections - sections proposed for adoption

Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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: "17 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 17 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 Administration 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).

Texas Register Art Project

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



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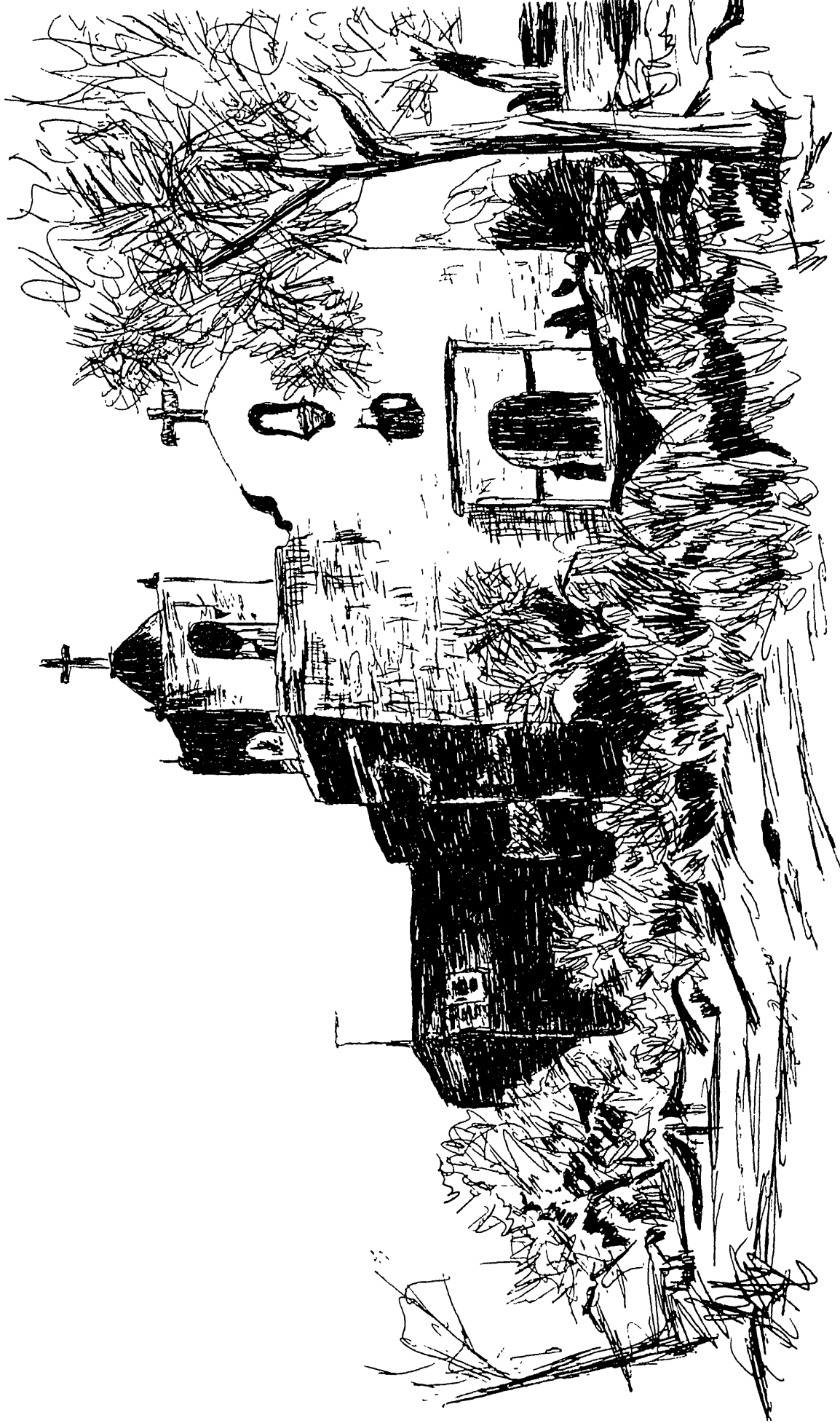
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Amy Limbaugh
12/5/91

Amy Limbaugh 12/5/91

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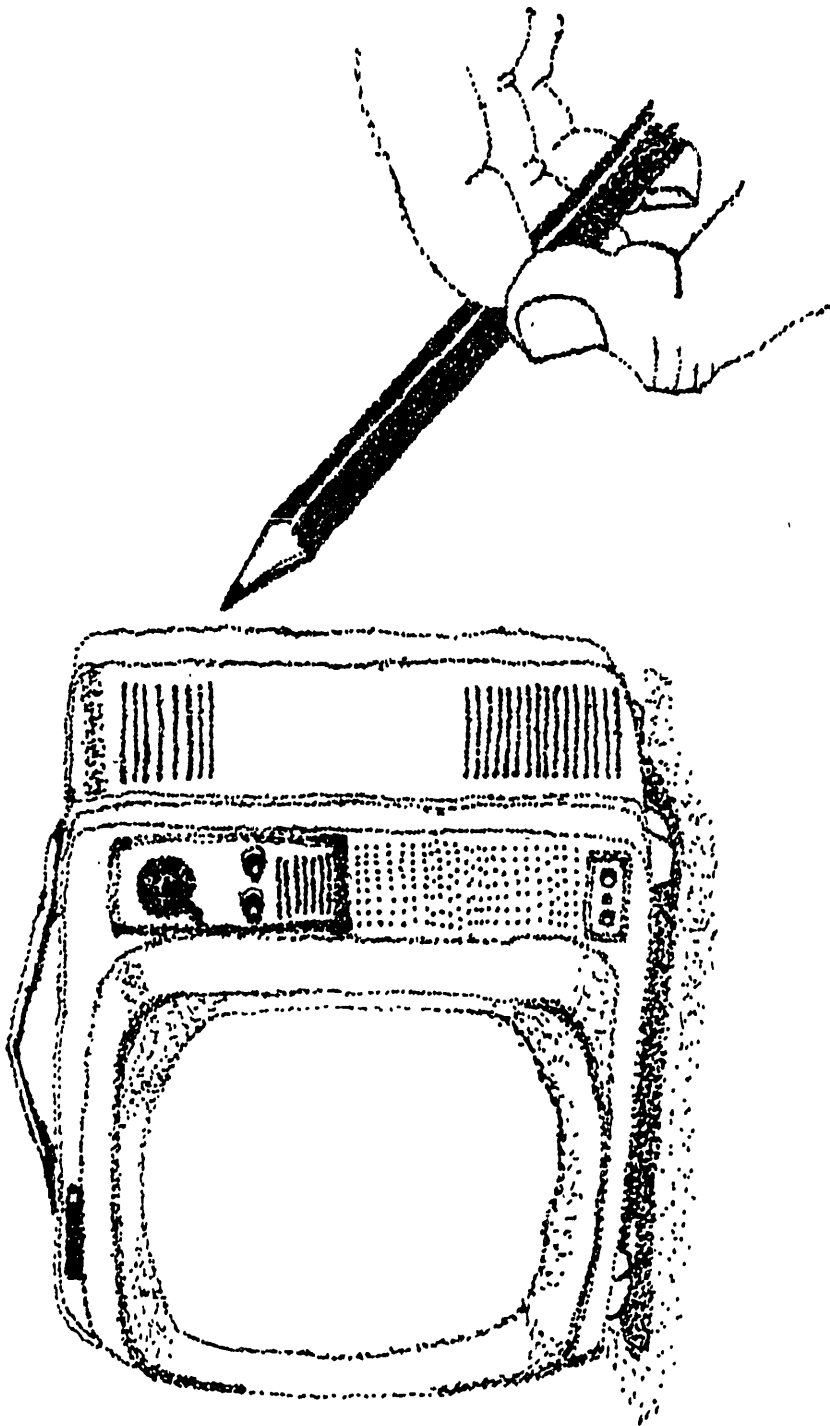


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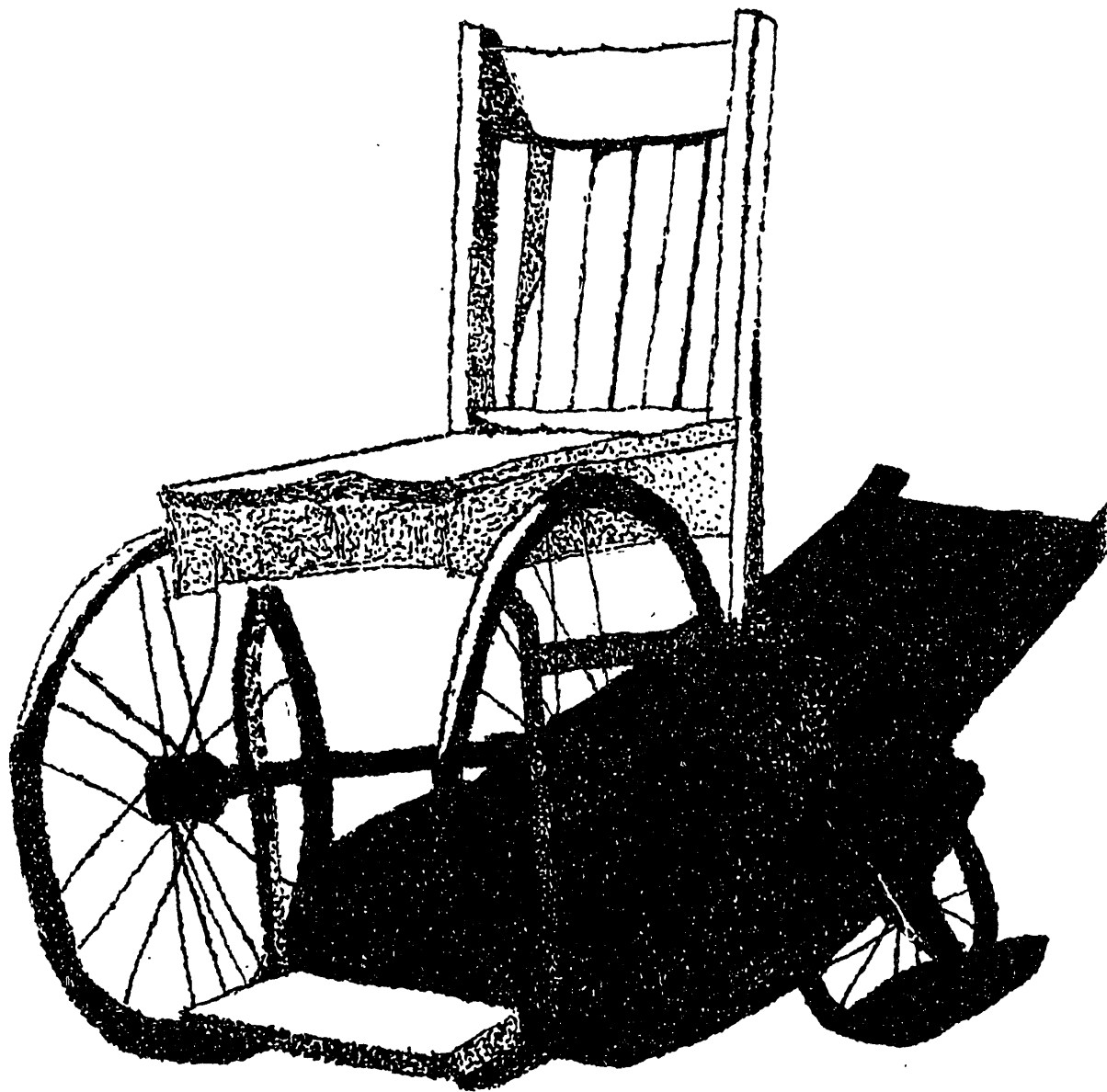
Name: Jaclyn Lindsay

School: McDonald Middle School, Mesquite ISD



Name: Jack Pritchett

School: McDonald Middle School, Mesquite ISD



Name: Mevish Shah
School: McDonald Middle School, Mesquite ISD

The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in Chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1814.

Appointments Made March 25, 1992

To be Judge of the **202nd Judicial District Court**, Bowie County, until the next General Election and until his successor shall be duly elected and qualified: Bill Peek, #1 Knightsbridge Place, Texarkana, Texas 75503. Mr. Peek will be replacing Judge Guy Jones of Texarkana, who retired.

Appointments Made March 26, 1992

To be a members of the **Governor's Law Enforcement Advisory Council** for terms at the pleasure of the Governor: Douglas Wayne Frazier, Fort Worth Police Department, 350 West Belknap, Fort Worth, Texas 76102, (replacing Monica M. Smith of Dallas as law enforcement representative); A. Wayne Henscey, Chief of Police, P.O. Box 424, Baytown, Texas 77522, (President, Texas Police Chiefs' Association, replacing Jerry McGlasson); Matthew Z. Herden, San Antonio Police Department, P.O. Box 830-388, San Antonio, Texas 78283-0388, (replacing Sam Granato of Corpus Christi as law enforcement representative); E. J. "Joe" King, Brazoria County Sheriff, 400 North Velasco, Suite 409-A, Angleton, Texas 77515, (President, Sheriffs' Association, replacing Jack Harwell of Waco); Joseph R. Lucas, El Paso County Attorney, 500 East San Antonio, #210, El Paso, Texas 79901-2419, (President, Texas County and District Attorneys Association, replacing Dan Boulware of Cleburne); Joan H. Veith, District Attorney's Office, 901 Leopard, Room 205, Corpus Christi, Texas 78401, (replacing David L. Warren as law enforcement representative); and Colonel James R.

Wilson, Director, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773, (replacing Joe E. Milner who resigned).

Appointments Made March 27, 1992

To be a Director of the **Music, Film, Television, and Multimedia Office** for a term at the pleasure of the Governor: Marlene Sharon Saritzky, 1807 West 36th, Austin, Texas 78731. Ms. Saritzky is being appointed pursuant to Senate Bill Number 41, 72nd Legislature, Second Called Session.

To be a member of the **Governing Board of the Texas School For the Deaf** for a term to expire January 31, 1997: Mary Lynch VanManen, 13619 Greywood Drive, Sugar Land, Texas 77578. Ms. VanManen will be replacing Gayle Lindsey of Austin, who resigned.

To be a member of the **Governing Board of the Texas School For the Deaf** for a term to expire January 31, 1997: Polly Piercy Walton, 6950 Westgate, Beaumont, Texas 77706. Ms. Walton is being reappointed.

Appointments Made April 1, 1992

To be a member of the **Texas Committee For The Humanities** for a term to expire December 31, 1993: Jay M. Vogelsson, 9316 Guernsey Lane, Dallas, Texas 75220. Mr. Vogelsson will be replacing Homer B. Reynolds, III of Plano whose term expired.

To be a member of the **Texas Committee For The Humanities** for a term to expire December 31, 1993: Amy Freeman Lee, 127 Canterbury Hill, San Antonio, Texas

78209. Ms. Lee will be replacing Bridget Barry of Fort Worth, whose term expired.

To be District Attorney of the **31st and 223rd Judicial Districts** until the next General Election and his successor shall be duly elected and qualified: John A. Mann, Route 1, Shamrock, Texas 79079. Mr. Mann will be replacing Harold L. Comer of Pampa, who resigned.

To be District Attorney of the **83rd Judicial District** until the next General Election and until his successor shall be duly elected and qualified: Albert G. Valadez, 107 East James, Fort Stockton, Texas 79735. Mr. Valadez will be replacing Richard Barajas who was elevated to the position of Justice of the 8th Court of Appeals.

To be a member of the **Texas Animal Health Commission** for a term to expire September 6, 1997: Jack R. Gardner, 2919 Lake Forest, Nacogdoches, Texas 75961. Mr. Gardner will be filling the unexpired term of Clay Kreuger of Center who resigned.

To be a member of the **Texas Committee For the Humanities** for a term to expire December 31, 1993: Jay M. Vogelsson, 9316 Guernsey Lane, Dallas, Texas 75220. Mr. Vogelsson will be replacing Homer B. Reynolds, III of Plano, whose term expired.

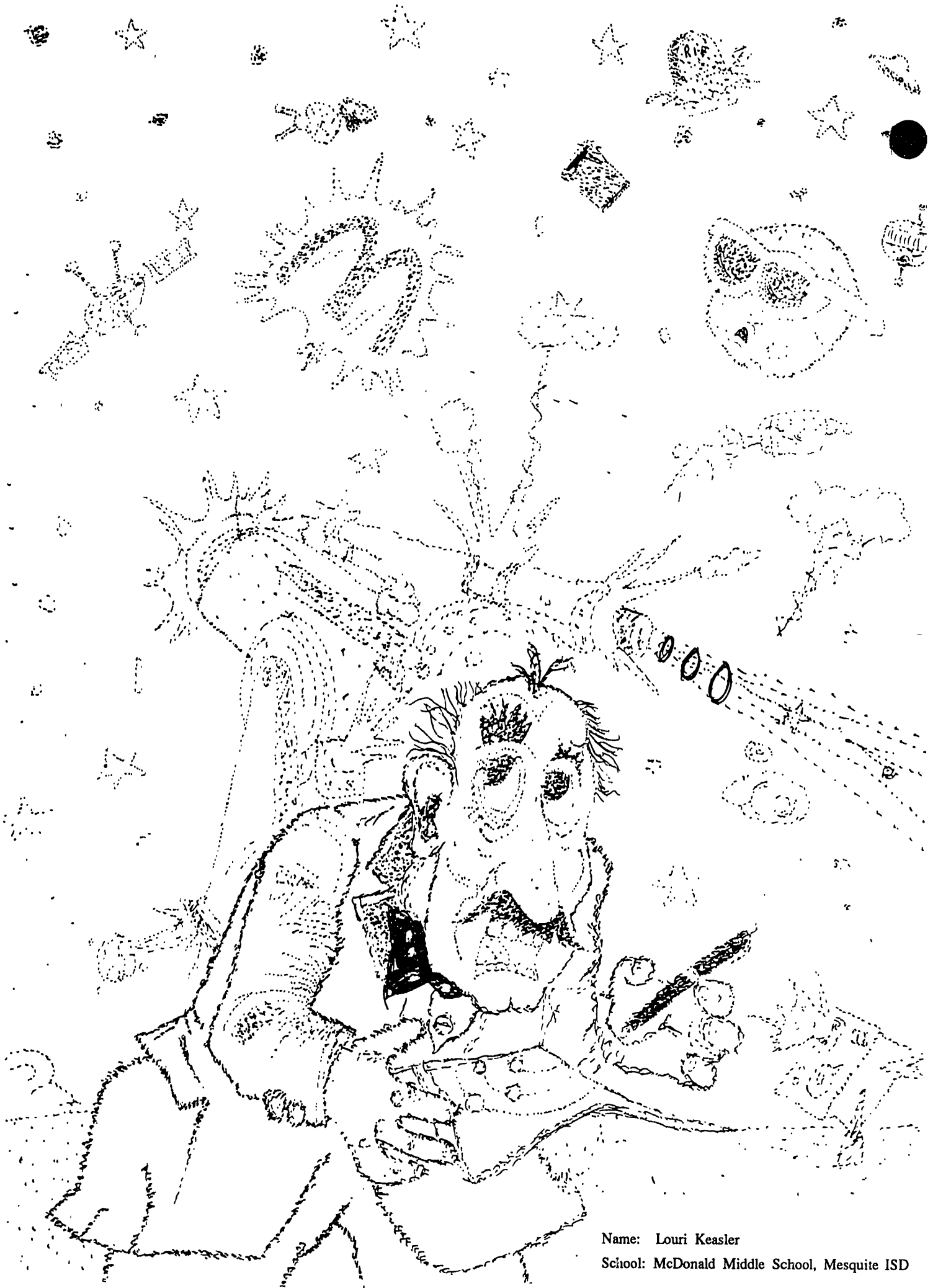
To be a member of the **Texas Committee For the Humanities** for a term to expire December 31, 1993: Amy Freeman Lee, 127 Canterbury Hill, San Antonio, Texas 78209. Ms. Lee will be replacing Bridget Barry of Fort Worth, whose term expired.

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

TRD-9204597

Ann W. Richards
Governor of Texas





Name: Louri Keasler

School: McDonald Middle School, Mesquite ISD

Texas Ethics Commission

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

Questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Request for Opinions

AOR-14. The Texas Ethics Commission has been asked to consider whether certain activities in regard to the filing of a trademark application with the secretary of state would be within the scope of the Government Code, Chapter 305 which regulates lobbying activity. The requestor states that the secretary of state sometimes rejects an application on the basis that the trademark is confusingly similar to an already registered trademark. In these circumstances, attorneys and legal support staff meet with staff members to discuss the reasons for the rejection. The requestor asks whether such activity is lobbying activity.

AOR-15. The Texas Ethics Commission has been asked to consider whether the Government Code, §305.024 or the Penal Code, §36.07 would prevent a non-profit organization that studies local government issues from inviting a member of the legislative or executive branch of state govern-

ment to speak at a meeting and paying for his or her transportation, meals, and lodging.

AOR-16. The Texas Ethics Commission has been asked several questions about a symposium sponsored by three non-profit organizations. The organizations would charge a registration fee of \$295. The registration fee would cover the program, the printed materials, and meals and receptions. The sponsors would like to waive the registration fee for certain members of the legislature and members of a governmental task force. The first question is whether such waiver would reportable as a gift under Texas Civil Statutes, Article 6252-9b. The second question is whether the waiver would constitute an expenditure for food and beverages under the Government Code, Chapter 305.

AOR-17. The Texas Ethics Commission has been asked to consider whether the Penal Code, §36.07, prohibits a public servant from allowing the payment of or solici-

iting honoraria in return for speaking engagements related to the public servant's official position if the honoraria are paid directly to a charitable, educational, or other tax-exempt organization and no tax deduction is claimed by the speaker.

AOR-18. The Texas Ethics Commission has been asked to consider whether an expert witness's paid testimony during a contested hearing before an administrative agency would constitute lobbying activity for purposes of the Government Code, Chapter 305.

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

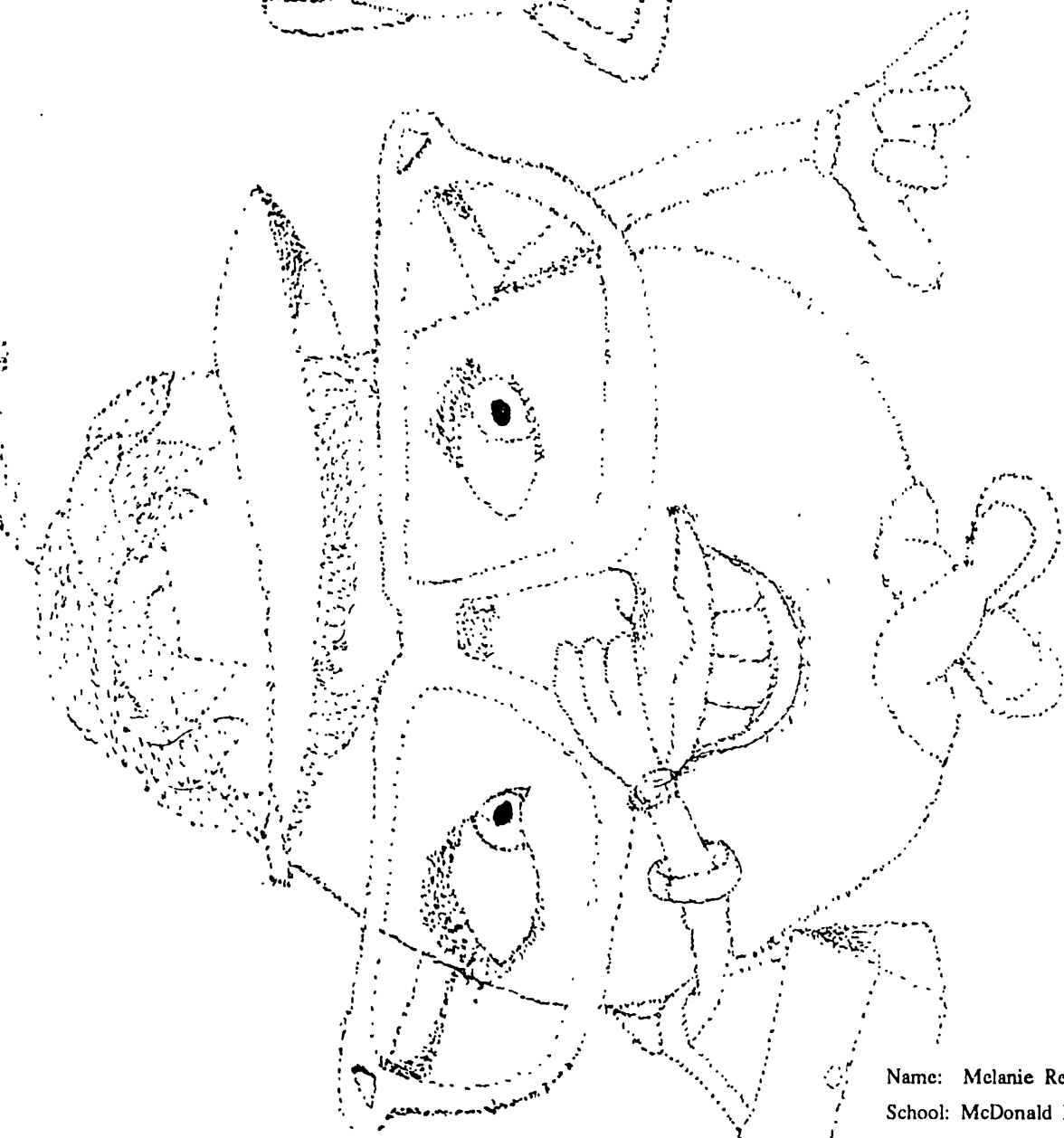
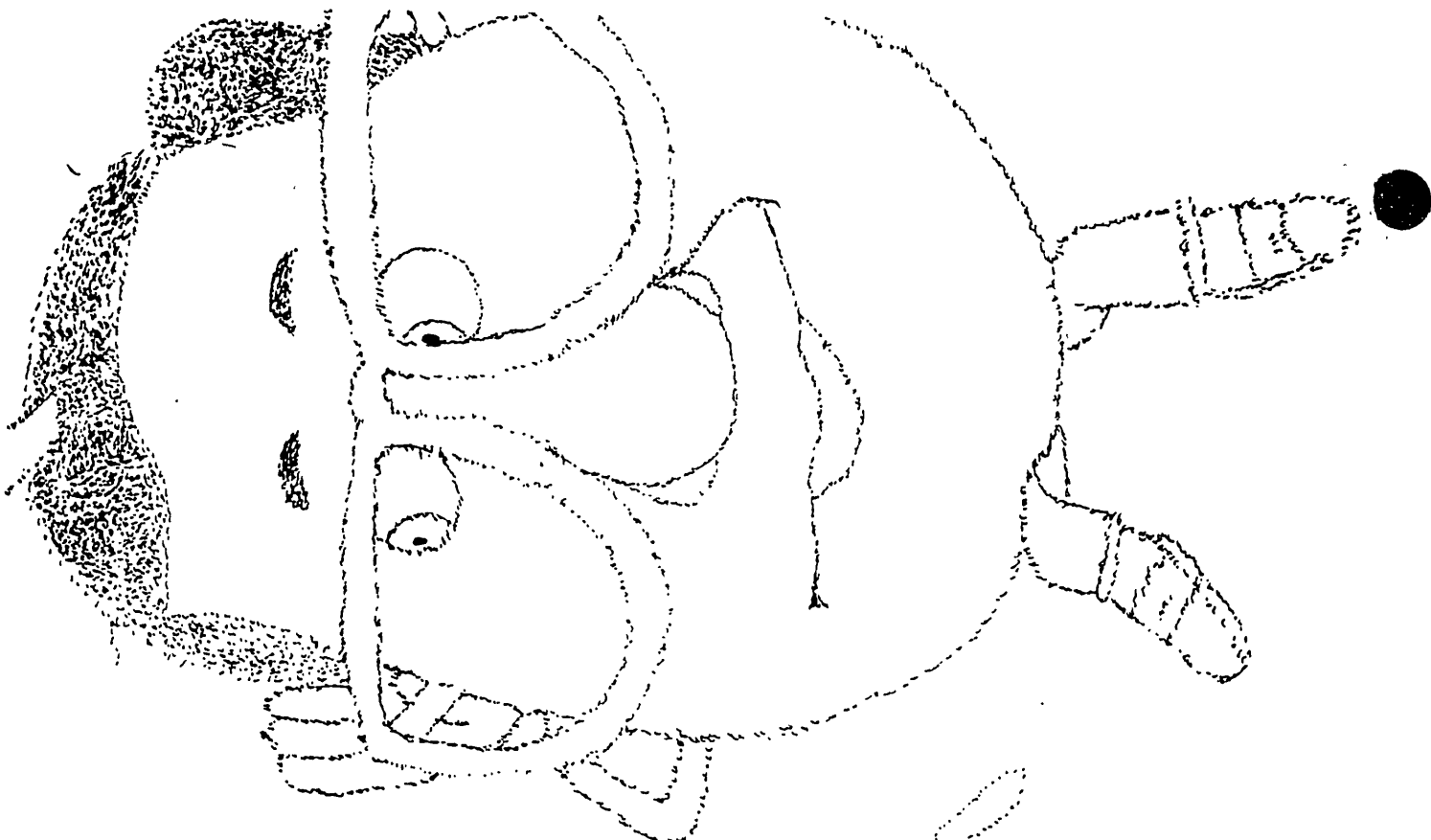
TRD-9204612

Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Filed: April 3, 1992

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

◆ ◆ ◆



Name: Melanie Rehak
School: McDonald Middle School, Mesquite ISD

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 VII. State Office of Administrative Hearings

Chapter 155. Rules of Procedure

- 1 TAC §§155.1, 155.3, 155.5, 155.7, 155.9, 155.11, 155.13, 155.15, 155.17, 155.19, 155.21, 155.23, 155.25, 155.27, 155.29, 155.31, 155.33, 155.35, 155.37, 155.39, 155.41, 155.43, 155.45, 155.47, 155.49, 155.51, 155.53

The State Office of Administrative Hearings adopts on an emergency basis new §§155.1, 155.3, 155.5, 155.7, 155.9, 155.11, 155.13, 155.15, 155.17, 155.19, 155.21, 155.23, 155.25, 155.27, 155.29, 155.31, 155.33, 155.35, 155.37, 155.39, 155.41, 155.43, 155.45, 155.47, 155.49, 155.51, 155.53, concerning rules of procedure. The new sections establish rules of procedure for contested cases conducted by the State Office of Administrative Hearings.

The State Office of Administrative Hearings has determined that the emergency adoption of the new sections is necessary and in the public interest in order to comply with Texas Civil Statutes, Article 6252-13f.

The State Office of Administrative Hearings finds that an emergency exists in that Article 6252-13f mandates the State Office of Administrative Hearings to conduct hearings on contested cases as of January 1, 1992, for all agencies which do not employ a person whose only duty is to preside as a hearings officer over matters related to contested cases before such agencies. The rules are necessary as rules of procedure to be followed by all participants in the hearing process. Time is of the essence in adopting procedural rules to afford all parties notice of the appropriate rules governing the contested cases to be heard by the State Office of Administrative Hearings. The rules are necessary to insure a fair and orderly process in implementing the hearing process.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13f, which confer upon the State Office of Administrative Hearings the authority to conduct contested cases and Article 6252-13a, §5(d).

§155.1. Scope.

(a) This chapter applies to contested hearings before the State Office of Administrative Hearings.

(b) These regulations shall be construed to insure the fair and expeditious determination of every action.

(c) These rules shall supplement the procedures required by law.

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

Administrative law judge or judge—An individual appointed by the chief administrative law judge of the Office under Texas Civil Statutes, Article 6252-13f, §3.

Agency—A state board, commission, department, or other agency that is subject to both Texas Civil Statutes, Article 6252-13a (APTRA) and Article 6252-13f, whose action gives rise to a contested case.

APTRA—The Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a).

Authorized representative—An attorney authorized to practice law in the State of Texas or, where permitted by applicable law, a person designated by a party to represent the party.

Chief judge—The chief administrative law judge of the Office.

Contested case—A proceeding, including, but not restricted to, ratemaking and licensing, in which the legal rights, duties, or privileges of a party are to be determined by an agency after an opportunity for adjudicative hearing.

Final decision maker—The person or persons authorized by law or delegation to render the final decision in a contested case.

Law—State and federal statutes, regulations, and relevant case law.

Office—The State Office of Administrative Hearings.

Party—A person or agency named, or admitted to participate, in a case before the office.

Person—Any individual, representative, corporation, or other entity, including any public or non-profit corporation, or any agency or instrumentality of federal, state, or local government.

Proposal for decision—A proposed

decision issued by an administrative law judge in accordance with APTRA, §15.

§155.5. General.

(a) Administrative hearings in contested cases conducted by the Office shall be conducted in accordance with APTRA and with the applicable law and rules of the agency for which the hearing is conducted.

(b) If there is any conflict between these rules and rules of the agency for which a hearing is being conducted the rules of the agency control.

(c) The agency for which an administrative hearing is conducted, shall provide the administrative law judge with a written statement of applicable rules or policies.

(d) The administrative law judge who conducts an administrative hearing shall consider any applicable agency rules or policies in conducting the hearing.

§155.7. Jurisdiction.

(a) A case shall be commenced in the agency with appropriate subject matter jurisdiction.

(b) The Office acquires jurisdiction over a case when an agency files a written request for setting of hearing or request for assignment of administrative law judge.

(c) A request for hearing or for assignment of administrative law judge shall be considered filed on the date the request is received by the Office.

§155.9. Request for Setting of Hearing or Assignment of Administrative Law Judge.

(a) An agency shall submit to the Office one of the following accompanied by copies of all pertinent documents (including, but not limited to, the complaint, petition, application, or other document describing agency action giving rise to a contested case):

(1) request for setting of hearing; or

(2) request for assignment of administrative law judge.

(b) If an agency requests a setting for hearing, the Office will provide the

agency with the date, time, and place of such setting.

(c) If any agency requests an assignment of an administrative law judge, the Office will assign a judge to consider motions and other prehearing matters.

(d) After a case has been set for hearing pursuant to a request for setting of hearing or has been assigned a judge pursuant to a request for assignment of administrative law judge, any party may move for appropriate relief, including, but not limited to, discovery and evidentiary rulings, continuances, and settings.

§155.11. Notice of Hearing.

(a) Subject to the provisions of §155.5(a) and (b) of this title (relating to General), an agency shall be responsible for providing notice to all parties as required under APTRA, §13, and other applicable law.

(c) An administrative law judge may issue notice of date, time, and place for hearings.

§155.13. Venue. Hearings shall be conducted at the site designated by the office in accordance with applicable law.

§155.15. Powers and Duties of Judges.

(a) The judge shall have the authority and duty to:

(1) conduct a full, fair, and impartial hearing;

(2) take action to avoid unnecessary delay in the disposition of the proceeding; and

(3) maintain order.

(b) The judge shall have the power to regulate the course of the hearing and conduct of the parties and authorized representative, including the power to:

(1) administer oaths;

(2) take testimony;

(3) rule on questions of evidence;

(4) rule on discovery issues;

(5) issue orders relating to hearing and prehearing matters, including orders imposing sanctions that the agency that the contested case is before may impose;

(6) limit unduly repetitious testimony and reasonably limit the time for presentations;

(7) grant a continuance;

(8) request parties to submit legal memoranda, proposed findings of fact and conclusions of law; and

(9) issue proposals for decision pursuant to APTRA, §15.

§155.17. Disqualification of Judges.

(a) A judge shall withdraw from participation in any proceeding in which personal bias or other reasons render the judge unable to provide an impartial hearing and decision, or when an appearance of impropriety may reasonably be inferred from the facts.

(b) A party may move for the disqualification of a judge promptly upon discovering facts which establish grounds for disqualification.

§155.19. Substitution of Judges.

(a) If for any reason a judge is unable to continue presiding over a pending hearing, or issue a proposal for decision after the conclusion of the hearing, another judge may be designated as a substitute, in accordance with law.

(b) The substitute judge may use the existing record and need not repeat previous proceedings, but may conduct further proceedings as are necessary and proper to conclude the hearing and render a proposal for decision.

§155.21. Appearance of Parties at Hearings; Representation.

(a) An individual may represent himself or herself.

(b) A party may be represented by an attorney authorized to practice law in the State of Texas or other representative when authorized by law.

(c) A party's representative shall enter his or her appearance with the Office.

(d) A party's representative of record shall be copied on all notices, pleadings, and other correspondence.

§155.23. Discovery. Parties to an administrative hearing before the Office shall have the discovery rights provided in APTRA and the agency's statute and rules.

§155.25. Prehearing Conferences.

(a) When appropriate, the judge may hold a prehearing conference to resolve matters preliminary to the hearing.

(b) A prehearing conference may be convened to address the following matters:

(1) issuance of subpoenas;

(2) factual and legal issues;

(3) stipulations;

(4) requests for official notice;

(5) identification and exchange of documentary evidence;

(6) admissibility of evidence;

(7) identification and qualification of witnesses;

(8) motions in limine and other motions;

(9) discovery disputes;

(10) order of presentation;

(11) scheduling;

(12) settlement conferences; and

(13) such other matters as will promote the orderly and prompt conduct of the hearing.

(c) At the discretion of the judge, all or part of the prehearing conference may be recorded.

§155.27. Prehearing Orders.

(a) The judge may issue a prehearing order reciting the actions taken or to be taken with regard to any matter addressed at the prehearing conference.

(b) The prehearing order shall be a part of the case record.

(c) If a prehearing conference is not held, the judge may issue a prehearing order to regulate the conduct of the proceedings.

§155.29. Settlement Conferences.

(a) Upon request of any party and approval by the judge, or in the judge's discretion, a conference may be held to address settlement possibilities.

(b) Settlement discussions shall not be made a part of the case record.

§155.31. Stipulations.

(a) The parties, by stipulation, may agree to any substantive or procedural matter.

(b) A stipulation may be filed in writing or entered on the record at the hearing.

(c) The judge may require additional development of stipulated matters.

§155.33. Motions.

(a) Unless otherwise provided by these regulations:

(1) a party may move for appropriate relief before or during a hearing;

(2) a party shall submit all motions in writing or orally at a hearing;

(3) written motions shall:

(A) be filed no later than 15 days before the date of the hearing;

(B) state concisely the question to be determined;

(C) be accompanied by any necessary supporting documentation; and

(D) be served on each party.

(4) an answer to a written motion shall be filed on the earlier of:

(A) 10 days after receipt of the motion; or

(B) on the date of the hearing.

(5) on written notice to all parties or with telephone consent of all parties, the judge may schedule a conference to consider a written motion;

(6) the judge may reserve ruling on a motion until after the hearing;

(7) the judge may issue a written decision or state the decision on the record;

(8) if a ruling on a motion is reserved, the ruling shall be in writing and may be included in the judge's proposed decision; and

(9) the filing or pendency of a motion does not alter or extend any time limit otherwise established by these regulations.

(b) Continuances may be granted by the Office in accordance with APTRA, the agency's statute and rules, and applicable case law.

§155.35. Dismissal for Lack of Prosecution. An action is subject to dismissal or a recommendation for dismissal for lack of prosecution in accordance with APTRA, the agency's statute and rules, and applicable case law.

§155.37. Conduct of Hearings. On a genuine issue in a contested case, each party is entitled to:

(1) call witnesses;

(2) offer evidence;

(3) cross-examine any witness called by a party; and

(4) make opening and closing statements.

§155.39. Telephone Hearings.

(a) The judge may, with consent of the parties, conduct all or part of the hearing by telephone, video, or other electronic means, if each participant in the hearing has an opportunity to participate in, hear, and, except when a telephone is used, see the entire proceeding.

(b) All substantive and procedural rights apply to telephone hearings, subject only to the limitations of the physical arrangement.

(c) Documentary evidence. For a telephone hearing documentary evidence to be offered shall be mailed by the proponent to all parties and the Office at least five days before the hearing.

(d) Default. For a telephone hearing, the following may be considered a failure to appear and grounds for default, if the conditions exist for more than 10 minutes after the scheduled time for hearing:

(1) failure to answer the telephone;

(2) failure to free the telephone for a hearing; or

(3) failure to be ready to proceed with the hearing as scheduled.

§155.41. Order or Proceedings.

(a) A case shall be called to order by the judge.

(b) The judge shall explain briefly the purpose and nature of the hearing.

(c) The judge may allow the parties to present preliminary matters.

(d) The judge shall state the order of presentation of evidence.

(e) Witnesses shall be sworn or put under affirmation to tell the truth.

§155.43. Waivers.

(a) Waiver of right to appear at hearing.

(1) A party may waive the right to appear at the hearing unless prohibited by law.

(2) A waiver shall be in writing and filed with the Office.

(3) A waiver may be withdrawn by a party on written notice received by the Office no later than seven days before the scheduled hearing.

(4) When a waiver is permitted by law, failure of a party to appear personally or by representation after filing written notice of waiver, may not result in a finding of default.

(b) Waiver of hearing. A hearing before the judge is not necessary if all

parties agree to the admission of the evidence and waive their right to appear.

§155.45. Evidence.

(a) General. Evidence shall be admitted in accordance with APTRA.

(b) Exclusion of witnesses.

(1) Upon request by any party, the judge shall exclude witnesses other than parties from the hearing room, except when testifying.

(2) The judge may order the witness, parties, attorneys, and all other persons present in the hearing room not to disclose to any witness excluded under this section the nature, substance, or purpose of testimony, exhibits, or other evidence introduced during the witness' absence.

(3) A party that is not a natural person may designate an individual to remain in the hearing room, even though the individual may be a witness.

(c) Prefiled testimony. Prefiled written testimony may be received pursuant to, and in accordance with, the agency's statute and rules.

(d) Official notice. The judge may take official notice of a fact that is judicially noticeable in accordance with APTRA.

§155.47. Failure to attend hearing and default. If, after receiving notice of a hearing, a party fails to attend a hearing, the judge may proceed in that party's absence or, where appropriate, may issue a proposal for decision against the defaulting party.

§155.49. Proceedings Open to the Public.

(a) Unless otherwise prohibited by federal or state law, all proceedings before the Office are open to the public.

(b) The judge may:

(1) remove persons whose conduct impedes the orderly progress of the hearing; and

(2) restrict attendance because of the physical limitations of the hearing facility.

§155.51. Proposal for Decision.

(a) A judge shall prepare a proposal for decision which shall contain:

(1) findings of fact and conclusions of law, separately stated; and

(2) if appropriate, a proposed order.

(b) The judge shall submit the proposal for decision to the final decision maker with a copy to each party.

§155.53. *Service.* Unless otherwise required by law, service of the following documents shall be made by personal delivery or by certified mail, return receipt requested:

- (1) notices of hearing;
- (2) default orders;
- (3) prehearing orders; and
- (4) proposal for decisions.

Issued in Austin, Texas, on April 6, 1992.

TRD-9204686 Steven L. Martin
Chief Administrative Law
Judge
State Office of
Administrative Hearings

Effective date: April 6, 1992

Expiration date: August 4, 1992

For further information, please call: (512) 475-4993

Chapter 157. Temporary Administrative Law Judges

• 1 TAC §157.1

The State Office of Administrative Hearings adopts on an emergency basis new §157.1, concerning temporary administrative law judges. The new section establishes the required qualifications for temporary administrative law judges and the selection process for such judges.

The State Office of Administrative Hearings 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 6252-13f.

The State Office of Administrative Hearings finds that an emergency exists in that Article 6252-13f mandates the State Office of Administrative Hearings to conduct hearings on contested cases as of January 1, 1992, for all agencies which do not employ a person whose only duty is to preside as a hearings officer over matters related to contested cases before such agencies. These rules establish the required qualifications and selection process for temporary administrative law judges. The use of temporary administrative law judges is authorized when employed judges are not available to hear contested cases within a reasonable time.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 6252-13f, which confer upon the State Office of Administrative Hearings the authority to conduct contested cases, and to utilize temporary administrative law judges where employed judges are not available in a reasonable time, and Article 6252-13a, §5(d).

§157.1. *Temporary Administrative Law Judge.*

(a) If judges employed by the State Office of Administrative Hearings (Office)

are not available to hear a case within a reasonable time, the chief judge may contract with qualified individuals to serve as temporary administrative law judges.

(b) To serve as a temporary administrative law judge, an individual must be licensed to practice law in the State of Texas and have experience conducting hearings under the Administrative Procedure and Texas Register Act (APTRA).

(c) The chief judge will also consider:

- (1) qualifications and experience;
- (2) expertise related to the subject matter of the hearing; and
- (3) the recommendation of the parties.

(d) To be considered to serve as a temporary administrative law judge an individual should submit to the chief judge a letter indicating such interest along with a resume detailing the individual's experience in conducting APTRA hearing.

Issued in Austin, Texas, on April 6, 1992.

TRD-9204685 Steven L. Martin
Chief Administrative Law
Judge
State Office of
Administrative Hearings

Effective date: April 6, 1992

Expiration date: August 4, 1992

For further information, please call: (512) 475-4993

TITLE 22. EXAMINING BOARDS

Part XI. Board of Nurse Examiners

Chapter 213. Practice and Procedure

• 22 TAC §213.20

The Board of Nurse Examiners adopts on an emergency basis an amendment to §213.20, concerning licensure of persons who have been hospitalized or treated for mental illness, or are chemically dependent. The emergency action of this amendment is necessary, in part, due to the passage of Texas Civil Statutes, Article 4519a, during the 72nd Legislative Session and the adoption of §213.21, regarding declaratory order of eligibility for licensure.

This amendment is a recommendation from the task force formed by the Board of Nurse Examiners to assist in clarifying the language and will further clarify procedures used in determining a candidate's eligibility to write the licensure examination due to mental or physical disability/illness and/or chemical dependency.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it, to establish standards of professional conduct for all persons licensed under the provisions of this law in keeping with its purpose and objectives.

§213.20. *Licensure of Persons Who Have Physical or [Been Hospitalized or Treated for] Mental Disability/Illness, or Who are Chemically Dependent.*

(a) [Purpose.] This section sets out the guidelines and criteria on the eligibility of persons with mental or physical disability/illness and/or chemical dependency to obtain a license as a registered nurse. The board [Board of Nurse Examiners] may refuse to admit persons to its licensure examinations, may refuse to issue a license or certificate of registration, or may refuse to issue a license or certificate of registration, or may refuse to issue a temporary permit to any individual with lack of fitness to practice by reason of mental [illness] or physical health or in-temperate use of alcohol or drugs that could result in injury to patients or the public.

(b) In evaluating a situation involving a physical disability/illness, the board shall consider:

(1) the nature and seriousness of the physical disability/illness and the likelihood of the disability/illness adversely affecting the safe practice of professional nursing; and

(2) whether a person with a physical disability/illness has failed to safely practice professional nursing because of the manifestations of the physical disability/illness.

[(b) Definition. For purposes of this rule "mental illness" is defined as an illness, disease, or condition which either substantially impairs the person's thought, perception of reality, emotional process, or judgment; or grossly impairs behavior as manifested by recent disturbed behavior. Mental illness does not include epilepsy, senility, alcoholism, or mental deficiency.]

[(1) The board may refuse to admit a person to its licensure examinations, may refuse to issue a license or certificate of registration, or may refuse to issue a temporary permit to any individual who is mentally ill or is chemically dependent, if this condition(s) directly effects the registered nurse's ability to practice professional nursing.]

(c)(2) In evaluating a situation involving [considering whether] mental disability/illness [and/or chemical dependence directly effects the practice of a registered nurse], the board shall consider:

(1)(A) the nature and seriousness of the mental disability/illness[.] and the likelihood of the mental disability/illness adversely affecting the safe practice of professional nursing; and [Excluded are problems which are short term in nature, such as a situational crisis in which there is an external event that threatens the ability of the individual to cope, the individual receives counseling and his/her functioning is no longer impaired. Examples of situational crises include, but are not limited to:

- (i) natural disasters such as earthquake, tornado, or hurricane;
- (ii) loss through death or divorce;
- (iii) loss of employment;
- (iv) rape; or
- (v) postpartum depression; and]

(2) whether a person with mental disability/illness has failed to safely practice professional nursing because of the manifestations of the mental disability/illness.

(d)(B) In evaluating a situation involving the intemperate use of drugs or alcohol, the board shall consider whether the individual is impaired by drug or alcohol abuse [use].

(c) Procedures for denying a license to a person with mental illness and/or chemical dependence.]

(e)(1) The executive director [secretary] shall give written notice to the person that the board proposes to deny the application for a license or permission to write the licensure examination [after a formal hearing].

(f)(2) If the board denies an application for a license under this section, the executive director [secretary] shall give the person written note[:]

[(A) of the reasons for the decision.[:]

[(B) that the person, after exhausting administrative appeals, may file an action in any of the district courts in the county of residence for review of the evidence presented to the board and its decision;

[(C) that the person must begin the judicial reviews by filing a petition with the court within 30 days after the board's action is final and appealable; and

[(D) of the earliest date that the person may appeal.]

Issued in Austin, Texas on April 1, 1992.

TRD-9204540

Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Effective date: April 2, 1992

Expiration date: July 31, 1992

For further information, please call: (512) 835-8650

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 229. Food and Drug Synthetic Narcotic Drugs in the Treatment of Drug Dependent Persons.

• 25 TAC §229.146

The Texas Department of Health is renewing the emergency effectiveness of the emergency adoption of an amendment to §229.146, concerning synthetic narcotic drugs in the treatment of drug dependent persons for an additional 60 days. The text of the amendment was originally published in the December 13, 1991, issue of the *Texas Register* (16 TexReg 7135).

Issued in Austin, Texas on January 1, 1988.

TRD-9204582

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

Effective date: April 7, 1992

Expiration date: June 6, 1992

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

TITLE 31. NATURAL RESOURCE AND CONSERVATION

Part I. General Land Office

Chapter 8. Gas Marketing Program

• 31 TAC §§8.1-8.10

The General Land Office adopts on an emergency basis new §§8.1-8.10, concerning the Gas Marketing Program. The sections are adopted on an emergency basis to insure a continuous supply of natural gas to state agencies for heating and other purposes.

The new sections are adopted on an emergency basis under the Act of July 30, 1991, 72nd Legislature, First Called Session, Chapter 3, Article 3, 1991 Texas Session Law Service 4, 71 (to be codified at Texas Natural Resource Code, §31.401 and §31.402), red

to as Senate Bill 2, which authorizes the commissioner to review and approve any contract entered into by a state agency for the acquisition of an annual average of 100 Mcf per day or more of natural gas used in the production of energy, the Act of August 13, 1991, 72nd Legislature, First Called Session, 19, §70, 1991 Texas Session Law Service 365, 1035, which requires any agency which leases land for mineral development to use, to the greatest extent practical, the resources produced from those lands, and the Act of August 13, 1991, 72nd Legislature, First Called Session, Chapter 19, §138, 1991 Texas Session Law Service 365, 1051, which requires the General Land Office to review and approve any contract for the acquisition of natural gas and report the savings achieved by substituting contracts using natural gas from state-leased properties to the comptroller.

§8.1. *Scope of Rules.* These rules shall govern the procedure for the review and approval of any contract for the acquisition of natural gas used in the production of energy by a state agency. For purposes of this chapter, state agency includes all of the entities described under Texas Civil Statutes, Article 6252-9b (Vernon 1980).

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

Comptroller—The Comptroller of Public Accounts;

Contract—Any new or existing contract, agreement, tariff, rate, or other arrangement for the acquisition, sale, supply, or transportation of natural gas.

(A) New contract—

(i) a contract that was not executed by all the necessary parties prior to September 1, 1991; or

(ii) the renewal of an existing contract, whether or not affirmative action is required for such renewal.

(B) Existing contract—A contract that was executed by all the necessary parties prior to September 1, 1991.

General Land Office or GLO—The General Land Office 1700 North Congress Avenue, Austin, Texas 78701-1495.

Mcf—Thousand cubic feet.

MMBtu equivalent—That volume of gas, measured in British Thermal units, that is equivalent to one Mcf.

Production of energy—Includes, but is not limited to, the production of heat or electricity through the direct burning of natural gas or its use as fuel in generators or boilers.

State gas—Natural gas produced from land leased from:

(A) the school land board;

(B) a board for lease other than the Board for Lease of University Lands; or

(C) the owner of the soil of lands subject to the Relinquishment Act of 1919 (Texas Civil Statutes, Articles 5367-5379, now codified at Texas Natural Resource Code, §§52.171-52.189 (Vernon 1978 and Supplement 1992)); or

(D) other gas acquired by the GLO for resale.

State gas price—The price offered or obtained by the GLO in its sales contracts.

§8.3. Contract Submission Requirements. All contracts and requests for proposal submitted for review should be submitted to the Gas Marketing Representative, General Land Office, 2656 South Loop West, Suite 500, Houston, 77054-2641.

(1) All correspondence should be directed to the attention of the Director of Royalty Management and Compliance, General Land Office, 1700 North Congress Avenue, Austin, Texas 78701-1495.

(2) Copies of all correspondence should be directed to the attention of the Gas Marketing Representative, General Land Office-Houston Office, 2656 South Loop West, Suite 500, Houston, Texas, 77054-2639.

(3) All contracts submitted to GLO for review must show the approval of an executive officer of the agency submitting the contract who has authority to enter into such contracts and the approval of the submitting agency's counsel.

§8.4. Review Criteria for All Contracts. The GLO will review all new and existing contracts entered into by a state agency for the acquisition of an average volume of 100 Mcf (or the MMBtu equivalent thereof) or more per day of natural gas, calculated on an annual basis, to ensure that the agency is using natural gas produced from state lands for the production of energy to the greatest extent practical.

(1) The GLO will not approve a contract using non-state gas if it determines that it can provide gas at the same, or a lower price.

(A) The cost of transporting state gas from the point of production to the agency's service address (or other mutually agreed point) shall be considered part of the cost of state gas.

(B) The amortized cost of laying a pipeline installing other equipment in order to deliver state gas may be considered a part of the cost of gas.

(2) The GLO will not approve a contract if it determines that the purchasing agency leases land for mineral development through a board for lease authorized by the Natural Resources Code, Chapters 34, 35, or 36, and such agency is not using, to the greatest extent practical, resources produced from land owned by the agency to meet its energy requirements.

(3) The final decision regarding the practicality of using gas provided by GLO to meet the agency's energy requirements will be with GLO.

§8.5. Unapproved Contracts; Requests for Waiver.

(a) If GLO does not approve the contract, it will offer the agency a state gas contract on comparable terms.

(b) If the agency declines GLO's contract it may make application for a waiver under §8.7 of this title (relating to Waivers for Contracts for the Acquisition of Non-state Gas).

(c) If the agency either is not granted a waiver under §8.7 of this title, or fails to submit a contract for approval, GLO will monitor the price difference between the contract for which application for waiver was made and declined or between any unsubmitted contract and the state gas contract that was offered or could have been offered and report the potential savings, if any, as provided under §8.10 of this title (relating to Reporting Contract Savings).

§8.6. Review of Existing Contracts.

(a) Existing contracts with termination provisions.

(1) If an agency is currently purchasing gas under an existing contract which makes provision for termination and GLO can provide the agency with state gas at a comparable or better price, GLO may offer the agency a state gas contract.

(2) If the agency declines GLO's contract it may make application for a waiver under §8.7 of this title (relating to Waivers for Contracts for the Acquisition of Non-state Gas).

(3) If the agency is not granted a waiver under §8.7 of this title, GLO will monitor the price difference and report the potential savings, if any, as provided under §8.10 of this title (relating to Reporting Contract Savings).

(b) Existing contracts without termination provisions.

(1) The GLO shall issue a waiver under §8.7 of this title, with respect to existing contracts for which GLO could substitute a state gas contract to provide gas at a comparable or lower price and that do not have a provision for termination upon a showing by the agency that:

(A) the contract does not contain a termination provision; and

(B) the current provider will not agree to terminate the contract.

(2) If the agency is unable to provide reasonable documentation of the conditions for waiver under this paragraph, the provisions of subsection (a) of this section will apply to the existing contract.

§8.7. Waivers for Contracts for the Acquisition of Non-state Gas.

(a) An agency requesting a waiver of approval for a contract for the purchase of non-state gas must make a written request to GLO for such waiver and provide the following information:

(1) letter from the agency requesting the waiver and stating the grounds justifying such waiver, including, without limitation, any ground for waiver set out in this chapter;

(2) copies of the existing or proposed gas purchase agreement and any related transportation agreements;

(3) in the case of a state agency desiring a contract to purchase natural gas on a month-to-month basis, a list of spot-prices for at least the immediate past 12-month period;

(4) any additional information required in the other sections of this chapter or other information requested by GLO;

(b) Unless determined otherwise, GLO will grant approval upon written application of the agency under the following circumstances:

(1) if GLO can provide state gas at the same or a lower price, but neither the agency nor GLO can arrange transportation at a price which, when added to the cost of state gas, is the same or less than the cost of gas and transportation under the proposed contract for non-state gas; or

(2) if, in its sole determination, GLO does not have sufficient state gas available to meet the agency's needs.

§8.8. Gas Usage Data Form.

(a) Each agency will submit a gas usage data form to GLO by July 31 of each year.

(b) Any state agency that does not have a current gas usage data form on file with GLO will complete one and file it with GLO on or before July 31, 1992.

§8.9. Requests for Proposals.

(a) Any state agency making a request for proposals for the supply and/or transportation of natural gas, shall submit such request in writing to GLO for review and approval prior to its release or publication.

(b) All such requests for proposal must state:

(1) that the proposal is subject to:

(A) the Act of July 30, 1991, 72nd Legislature, First Called Session, Chapter 3, 1991 Texas Session Law Service 4, 71 (to be codified at Texas Natural Resource Code, §31.401 and §31.402); and

(B) review by GLO prior to acceptance or rejection; and

(2) that if GLO finds, under the proposal, the agency will not be using natural gas produced from state lands to the greatest extent practical, then the resulting contract will be not be approved by GLO.

(c) All such requests for proposals shall include provisions that will permit proposals submitted by GLO with pricing provisions based on GLO weighted average cost of gas (WACOG) to be considered on an equal competitive basis with all other proposals. Any request for proposal that does not contain such provisions shall be deemed to contain such a provision.

§8.10. Reporting Contract Savings.

(a) Each month, GLO will determine the savings achieved by calculating the difference between the price that would have been paid under the agency's previous non-state gas contract and the price paid under the state gas contract.

(b) Each month, GLO will report all savings achieved to the comptroller.

Issued in Austin, Texas on April 1, 1992.

TRD-9204630 Garry Mauro
Commissioner
General Land Office

Effective date: April 3, 1992

Expiration date: August 1, 1992

For further information, please call: (512) 463-5394



Chapter 15. Planning Division

Certification of Coastal Wetlands

• 31 TAC §15.60

The General Land Office adopts on an emergency basis new §15.60, concerning approval of the Nueces County coastal management plan, including designation of critical dune areas in Nueces County, rules to protect critical dune areas, rules for preservation and enhancement of public beach access, and rules for protection from coastal floods. The section is adopted on an emergency basis due to the imminent peril to the public health, safety, and welfare caused by ongoing human activities which, if left unregulated by Nueces County and the state, are likely to alter or destroy critical dune areas, minimize or impair public beach access, and increase the potential for flood damage on the Texas coast. The General Land Office is required by recent amendments to state law to adopt rules governing the identification of critical dune areas, protection of dunes, maintaining and enhancing public beach access, and protection against flooding in the coastal area.

The new section is adopted on an emergency basis under the Natural Resources Code, §§61.011, 61.015(b), and 63.121 and the Water Code, §16.321.

§15.60. Dune Protection, Beach Access, and Flood Protection-Nueces County.

(a) Policy, definitions, and administration.

(1) Policy.

(A) General policy. The General Land Office recognizes that communities along the Texas coast have diverse natural resources requiring individual management techniques. Because of this diversity, the General Land Office will address dune protection, beach access, and flood protection for each coastal county and municipality on an individual basis. The General Land Office also recognizes that the different areas of the Texas coast have many natural resources and resource management techniques in common. The common elements will be addressed, to the greatest extent possible, by adopting minimum rules that apply to the whole coastal area consistent with recognition of local diversity. These rules and guidelines are intended to:

(i) set standards for dune protection, the preservation and enhancement of beach access, and floodplain protection;

(ii) assist local governments in protecting coastal natural resources;

(iii) aid coastal citizens in developing private property on the coast in

a manner compatible with preservation of public property, conservation of the natural environment, and ensuring public safety;

(iv) ensure consistent permitting; and

(v) serve as a stimulus for better management of the coastal area.

(B) Dune protection policy.

The General Land Office recognizes that the Texas coast is a fragile dynamic environment that is constantly changing in reaction to human and natural influences. Sand dunes on the seaward shore of the Gulf of Mexico are an irreplaceable part of that environment and serve a vital function by protecting public and private land on or adjacent to barrier islands, peninsulas, and mainland shores from storms and floods. Dunes store sand that replenishes eroded beaches after storms, act as buffers against windblown sand, salt, and spray, are areas of significant biological diversity, and are home to many species important to the natural beauty of the coast and the preservation of the food chain. It is the policy of the General Land Office to protect the beach/dune system by ensuring that damage to and destruction of dunes and dune vegetation is avoided to the greatest extent practicable. Damage that is unavoidable must be minimized. All damage must be compensated for by repairing the damaged dunes and the vegetation, creating new dunes and planting new indigenous vegetation, or enhancing existing dunes or existing vegetation. The General Land Office considers dunes and dune protection an important component of the natural balance of sand in the beach/dune system, flood protection, habitat preservation, and aesthetic values. The General Land Office recognizes that dune formation along the Texas coast varies and is dependent upon the local geology, sediment supply, and meteorological and wave processes.

(C) Beach access policy. The General Land Office recognizes that free and unrestricted access to and from the state-owned beaches bordering the seaward shore of the Gulf of Mexico is the right of the public, both individually and collectively. In addition, the public has acquired a common law right of use or easement to most beaches bordering on the seaward shore of the Gulf of Mexico, including generally the area extending from the line of mean high tide to the line of vegetation. It is the policy of the General Land Office to ensure that the public's right to use these beaches is maintained and, whenever practicable, enhanced. It is further the policy of the General Land Office to maintain, and whenever practicable, enhance public access to these beaches from public roads in areas landward of the beaches. Finally, it is

the policy of the General Land Office to prevent reduction in the size of public beaches caused by erosion of or encroachment on public beaches.

(D) Flood protection policy. The General Land Office recognizes that the communities located on the barrier islands, peninsulas, and mainland areas fronting on the Gulf of Mexico are extremely vulnerable to natural disasters which cause flood damage. The National Flood Insurance Act (42 United States Code, §§4001-4127) provides an insurance program supported by public funds through which the citizens of participating communities may recover losses caused by flood damage. It is the policy of the General Land Office to coordinate federal, state, and local involvement in this program in the coastal area. It is further the policy of the General Land Office to aid, advise, and cooperate with those citizens and communities desiring to participate in the federal program, to promote the public interest by establishing rules for appropriate protection against the perils of losses caused by coastal floods, and to encourage sound land use along the shore of the Gulf of Mexico by minimizing exposure of property to flood loss.

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

(A) Beach/dune system—The land from the line of mean low tide to the critical dune line (1,000 feet landward of mean high tide) and includes washover areas and areas adjacent to tidal inlets.

(B) Beachfront construction certificate—A certification by a local government that proposed beachfront construction adjacent to and landward of a public beach will preserve and enhance public access to the public beaches as required by the Natural Resources Code, §61.015(c)-(h).

(C) Beach profile—The intersection of the ground surface with a vertical plane; it may extend from the top of the foredune ridge to the seaward limit of sand movement.

(D) Beach-related services—Include, but are not limited to, beach cleaning, law enforcement, beach nourishment projects, public facilities, off-beach parking, and associated beach accessways. Beach-related services must serve only areas on or immediately adjacent to the public beach.

(E) Beach user fee—Any fee collected by a local government, as defined in the Natural Resources Code, §61.001 to fund beach-related services.

(F) Construction—Any building, bulkheading, filling, clearing, excavation, or any substantial improvement to land or the size of any structure, including any activity which is likely to result in the alteration of a dune or dune vegetation. Construction includes the removal of or damage to vegetation, clearing or grading the site, and the placing of construction materials on the site, as well as continuation of site work beyond the limits of the foundation including landscape work.

(G) Dune protection permit or permit—The authorization by local governments to allow construction in a specified location seaward of a dune protection line or within the critical dune area as required by the Natural Resources Code, §63.051. Dune protection permits shall be valid only for a six-month period.

(H) FEMA—The Federal Emergency Management Agency of the United States Government. This agency administers the National Flood Insurance Program and produces the flood insurance rate maps.

(I) Foredunes—Those dunes which offer the first significant means of dissipating storm-generated wave and current energy issuing from the open Gulf of Mexico. Because various heights and configurations of dunes may perform this function, no standardized physical description can be offered. However, where they occur, foredunes are distinguishable from surrounding dune types by their relative location and physical appearance. Foredunes are the first clearly distinguishable, usually grass-covered, stabilized large dunes encountered landward of the open Gulf of Mexico. Although they may be large and continuous, foredunes are typically hummocky and discontinuous and are often interrupted by breaks and washover channels.

(J) Foredune ridge—The high continuous line of dunes which are usually well vegetated and rise sharply landward of the foredune area but may rise directly from a flat, wave-cut beach immediately after a storm.

(K) Line of vegetation—The extreme seaward boundary of natural vegetation which spreads continuously inland generally defining the landward extent of the public beach as defined by the Open Beaches Act.

(L) Permit or certification condition—A statement or stipulation that is

part of a permit or certification, performance of which is necessary for compliance with the permit or certification.

(M) Public beach—Any beach that extends inland from the line of mean low tide to the natural line of vegetation bordering on the seaward shore of the Gulf of Mexico, or such larger contiguous area, to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial as recognized by law or custom. This definition does not include a beach that is not accessible by a public road or ferry as provided in the Natural Resources Code, §61.021.

(N) Structure—Any building or combination of related components in an ordered scheme that constitutes habitable major structures, nonhabitable major structures, nonhabitable minor structures, and coastal and shore protection structures.

(i) Habitable major structures are structures suitable for human habitation including, but not limited to, single or multi-family residences, mobile homes, apartment buildings, hotels, motels, condominium buildings, buildings for commercial purposes, and other types of residential, commercial, or public buildings. A habitable structure may be any structure which is, in fact, being used for habitation.

(ii) Nonhabitable major structures include, but are not limited to, swimming pools, riding stables, bathhouses, detached garages, cabanas, pipelines, piers, canals, lakes, ditches, drainage structures, and other water retention structures; roads, driveways, streets, highways, parking areas and other paved areas, underground storage tanks, and similar structures. Nonhabitable major structures also include slab patios, slab porches on new or existing structures, earth retaining walls, subgrade utilities (e.g., wells, septic tanks, and drain fields), and any other structures which may require material alteration of the topography.

(iii) Minor structures include, but are not limited to, pile-supported, elevated dune and beach walkover structures, beach access ramps and walkways; stairways; wooden viewing platforms, gazebos, and boardwalks; lifeguard support stands; cantilevered decks or porches on new or existing structures; sidewalks, ornamental garden structures, aviaries, and other ornamental projects; and similar structures and projects. Usage will not be the only criterion used to classify structures as minor, but it shall also be a characteristic of minor structures that they are considered to be expendable under wind, wave, and storm forces. Recreational vehicles and tents lo-

cated in the critical dune area for over 14 days are included in the category of minor structures.

(iv) Coastal and shore protection structures shall encompass non-rigid or flexible structures associated with beach nourishment projects, sand bypassing systems, and beach and dune restoration efforts, such as sand fencing and stabilization with dune plants, and other structures which are intended to prevent erosion or protect other structures from wave and hydrodynamic forces such as seawalls, bulkheads, revetments, mound structures, groins, and breakwaters.

(O) Variance—Any provision not in conformance with General Land Office rules, FEMA rules, or a local government's plan which is incorporated into a permit or a certification.

(P) Washover areas—Low areas which range from 1/4 mile to three miles wide that channel hurricane flood tides across barrier islands and peninsulas into bay areas. Many washovers occupy sites of abandoned tidal channels; others are caused by storm tides where foredunes are poorly developed or weakened by blowouts. During major storms, these are areas of intense current activity where large volumes of sand are displaced from the seaward side of the island and deposited in the channels and/or on the back side of the island.

(3) Administration.

(A) General. The General Land Office is, through this section, approving the Nueces County coastal management plan, designating as a critical dune area the area in Nueces County within 1,000 feet of the mean high tide on the seaward shore of the Gulf of Mexico, and adopting rules applicable in Nueces County for dune protection, beach access, and flood protection. This section is subject to revision upon the adoption of coastwide dune protection, beach access, and flood protection rules by the General Land Office or upon other determinations of state policy under the Open Beaches Act, the Dune Protection Act, and the Water Code, §16.321.

(B) Activities requiring permits/certifications.

(i) A beachfront construction certification is required for any proposed construction landward of a public beach and within the area up to 1,000 feet of mean high tide or up to the first public road, whichever distance is greater. Nueces County shall presume that any given beach is public unless the adjacent landowner has

obtained a final judgment otherwise under the Natural Resources Code, §61.019.

(ii) A dune protection permit is required for any proposed construction within 1,000 feet of mean high tide that is likely to result in damage or destruction to dunes or dune vegetation.

(iii) Activities which constitute proposed construction and require certifications or permits under this section include, for example, applications for plat approval, site plan approval, building permits, zoning approval for land uses requiring construction, and beach maintenance. Production of oil and gas is exempt from the requirement for a dune protection permit; however, activities related to exploration, development, or transportation of oil and gas are not exempt. Grazing livestock and recreational activity (other than operation of recreational vehicles) are also exempt; however, any construction or activities incidental to these is not exempt.

(C) Application and review. Nueces County shall require that applications for dune protection permits and beachfront construction certifications include:

(i) provisions for avoidance, minimization, and compensation for damaged or destroyed dunes and dune vegetation;

(ii) a description of the activity's impact on public beach access; and

(iii) a description of the activity's impact on flood protection.

(D) State agency comments. Nueces County shall submit all applications for dune protection permits and beachfront construction certifications, including variances, under review by Nueces County to the General Land Office for review and comment. The applications must be received by the General Land Office no later than 10 working days prior to the public hearing at which the Nueces County Commissioners Court is first scheduled to act on the permit. In addition, the Open Beaches Act requires Nueces County to submit applications for beachfront construction certifications to the Attorney General's Office for review and comment 10 working days prior to the hearing regarding any effect on beach access.

(E) Compliance with legal requirements. Nueces County may not issue a dune protection permit or beachfront construction certification that is inconsistent with this section. Nueces County should be aware of the different laws which affect the decision-making process and shall take these into account when deciding to issue

dune protection permits and beachfront construction certifications. Compliance with local, state, and federal laws is necessary for consistent management of the Texas coast.

(F) Reporting violations. Nueces County shall immediately inform the General Land Office of any possible violations of the Dune Protection Act, Open Beaches Act, or this section resulting from acts performed without a permit or certification and any acts in violation of a permit or certification.

(b) Dune protection.

(1) Dune protection line. Nueces County shall maintain a dune protection line which, at a minimum, protects the foredune ridge and all dunes seaward of the foredune ridge. Although foredunes and the foredune ridge are the primary focus of protection, they depend on the backdunes for support and preservation. Damage and destruction to foredunes, or to backdunes which would materially weaken foredunes and the foredune ridge, shall be avoided using the best available technology. Dune damage includes any manmade alteration of a dune or dune vegetation that individually or cumulatively with other actions is likely to materially weaken the dune system.

(2) Sand budget. Nueces County shall certify or permit only those activities which the General Land Office determines are not likely to result in the temporary or permanent removal of sand from the beach/dune system.

(3) Mitigation. Nueces County shall use the mitigation sequence as defined in this section as the decision-making basis for granting dune protection permits. The mitigation sequence consists of three steps.

(A) Avoid damage to dunes and dune vegetation, including manmade alteration of dunes or the beach profile, removal of or injury to vegetation, and removal of sand from the dunes. Permits allowing damage to dunes may be issued only if, using the best available technology, there is no practicable alternative to the proposed activity, proposed site, or proposed methods for conducting the activity. The cumulative impacts of other activities adjacent to the seaward shore of the Gulf of Mexico shall be identified and considered as part of the permitting process.

(B) Minimize damage to dunes. If an applicant for a dune protection permit or beachfront construction certification proves to the county commissioners that damage to dunes and dune vegetation is unavoidable, a permit allowing the unavoidable damage may be issued provided that there is a permit condition requiring that the

amount of damage is minimized to the greatest extent practicable.

(C) Compensate for all damage. All permits shall require that any damage to dunes and dune vegetation be compensated for by the creation of new dunes, the enhancement of existing dunes, and/or the repair of the damaged dunes as well as the planting of indigenous vegetation. The new, enhanced, and/or repaired dunes or dune vegetation shall be superior or equal to the damaged dunes in their ability to protect the community from potential flood damage, to support indigenous flora and fauna, and to protect the adjacent beach from erosion.

(D) Commissioners court permit issuance. The commissioners court may issue a permit only if it finds, after a full investigation, that the proposed construction and subsequent conduct will not materially weaken or damage any affected dune or dune vegetation by impairing the effectiveness of the affected dune to reduce its effectiveness a means of protection from high wind and water. In determining the effect of the activity on dune functions, the commissioners court shall consider cumulative impacts on other dunes or of other activities within the beach/dune system, the existing morphology vegetation of the existing dune, the feasibility and desirability of any proposed compensatory dune rebuilding or revegetation, and any significant environmental features of the dune.

(4) Compensatory mitigation. Compensation for damage to dunes and dune vegetation shall begin no later than 30 days after construction is complete. Compensation efforts shall be continuous until the new, enhanced, and/or repaired dunes and dune vegetation is equal or superior to the damaged dunes and dune vegetation. However, in no event shall the compensation process take more than one year. After one year, the permittee shall be liable for penalties if compensation is incomplete or inadequate.

(5) Open beaches requirements. Nueces County may not issue a dune protection permit which allows any construction on artificial dunes created on the public beach, except for dune walkovers or other walkways that serve only as accessways and encroach on the public beach to the minimum extent possible.

(c) Beach access.

(1) Maintaining beach access. Nueces County may not certify beachfront construction that allows any existing beach access points to be impaired, nor may the county restrict vehicular access to the beach, without providing or requiring equivalent or better public access.

(2) Fees. Any beach user fee imposed by Nueces County shall be reasonable in amount and shall recover only the minimum necessary cost of providing Nueces County's desired level of beach services to the beach users. The maximum beach user fees which may be charge by Nueces County are \$10 for a 12-month permit and \$5.00 for a 30-day permit. Nueces County may spend beach user fee revenues only on beach-related services or facilities and shall not commingle such revenues with any other funds. Nueces County shall send quarterly reports to the General Land Office stating the amount of beach user fee revenues and itemizing how beach user fee revenues are expended. The General Land Office may prescribe reporting forms or methods. Nueces County shall maintain some free public beach access by providing areas where no fee is charged for parking on or off beach or for pedestrian access.

(3) Dedication of access ways. Nueces County shall certify beachfront construction conditioned on the dedication of new public beach access or parking areas where the construction, alone or cumulatively, will likely result in impairment of existing beach access and where the commissioners court finds that requiring the dedication is reasonable taking into account the size and nature of the proposed construction.

(4) Encroachments on public beaches.

(A) Nueces County is not authorized and may not issue any beachfront construction certification, dune protection permit, or other authorization allowing construction within the public beach easement, except dune walkovers and other beach access walkways and the artificial promotion of sand dune formations consistent with applicable promotion of sand dune formations consistent with applicable attorney general enforcement policy. Any issuance or approval of an instrument contrary to this section is void.

(B) Except as provided following, Nueces County may not issue any beachfront construction certificate for construction outside the public beach easement that functionally supports or depends on, or is otherwise related to, proposed or existing structures that encroach on the public beach easement, regardless of whether the encroachment is on land that was previously outside of the public beach easement.

(i) Nueces County may issue a beachfront construction certificate for construction outside the public beach easement that functionally supports or depends on, or is otherwise related to, an existing major habitable structure within the

public easement that has been damaged less than 50 by a storm or other casualty. The certificate shall be conditioned on no related construction being done within the beach easement other than construction consistent with applicable attorney general enforcement policy to do the minimum repairs necessary to keep the structure habitable, and further that the structure be demolished if the repairs are not completed within a reasonable time.

(ii) As a condition to issuing any beachfront construction certificate for construction outside the public beach easement, Nueces County shall require the applicant, prior to initiation of the proposed construction, to remove all structures, debris, rubble, wreckage, waste, and salvageable material encroaching on the public beach easement within the tract or lot on which construction is proposed.

(C) To determine the location of the boundary of the public beach easement and to determine whether a structure constitutes an encroachment on the public beach, the General Land Office and Nueces County shall rely on determinations by the Attorney General's Office pursuant to the exercise of the attorney general's enforcement discretion over encroachments on the public beach.

(d) Floodplain protection. Federal flood protection regulations. In issuing dune protection permits and beachfront construction certifications, Nueces County shall comply with the FEMA's regulations governing construction in flood hazard areas. FEMA prohibits manmade alteration of sand dunes within Zones VI-30, V, and VE on Nueces County's flood insurance rate map which would increase the potential for flood damage. Nueces County shall expeditiously inform the General Land Office and the FEMA regional representative in Texas of the issuance of any variance from FEMA regulations or of any activity done in variance of the FEMA's regulations. Variances may affect participation in the Federal Flood Insurance Program.

(e) Penalties. A person who violates this section is liable for a civil penalty of not less than \$50 nor more than \$1,000 per violation per day. Each day the violation occurs or continues is a separate violation. Violations of the Dune Protection Act and the Open Beaches Act are separate violations and will be assessed separately.

(f) General provisions.

(1) Construction. The Nueces County coastal management plan shall be construed to be consistent with this emergency rule. If there is any irreconcilable conflict, this emergency rule controls. Approval of the Nueces County coastal management plan may not be construed to

expand or detract from the statutory or constitutional authority or limitations of Nueces County or any other governmental entity, nor may it be construed to authorize Nueces County or any other governmental entity to alienate public property rights in public beaches.

(2) Withdrawal of approval. The General Land Office may withdraw approval of the Nueces County coastal management plan if the county does not comply with it or this section.

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

TRD-9204632. Garry Mauro
Commissioner
General Land Office

Effective date: April 3, 1992

Expiration date: August 1, 1992

For further information, please call: (512) 463-5394

Part IX. Texas Water Commission

Chapter 290. Water Hygiene

Rules and Regulations for Public Water Systems

• 31 TAC §§290.38-290.49

The Texas Water Commission (TWC) adopts on an emergency basis the repeal of §§290.38-290.49 and new §§290.38-290.49, concerning rules and regulations for public water systems.

Senate Bill 2, First Called Session, 72nd Legislature, transferred all the powers, duties, rights, and obligations of the Texas Department of Health (TDH) pertaining to the setting of sanitary standards for drinking water and the protection of public water supplies and bodies of water to the TWC effective March 1, 1992. The TWC has determined that the absence of additional treatment, storage, and distribution standards, and in particular, the absence of controls regulating returning any water to the public water supply after it leaves the control of the utility presents an imminent peril to the public health, safety, and welfare. These rules, formerly codified as 25 TAC §§337.201-337.212, transferred to the TWC through recodification in 31 TAC §§290.38-290.49. The present rules are deficient in certain respects, in that they do not adequately address particular areas of system design, water treatment, water storage, and water distribution. More importantly, the provisions on water distribution expressly allow returning water to the public water supply after it leaves the control of the utility with little or no regard for the impacts to human health or the environment. The Texas Water Commission repeals §§290.38-290.49 and is replacing the repealed sections, on an emergency basis, with new §§290.38-290.49.

The distribution system design criteria located in new §290.44, now contains language that regulates the construction and installation of

devices which return process water generated by such devices back into the public water supply system. Additionally, several of the sections were rewritten to clarify the intent of new §290.44, to organize the sections into a more logical sequence, and to incorporate several revisions suggested by the public and commission staff.

A definition for "maximum daily demand" was added to §290.38 to codify a long-standing staff policy and to assist consulting engineers in estimating the production and treatment requirements of certain public water systems which do not maintain daily water usage data.

Section 290.39 was reorganized and includes some suggested grammatical changes. It also includes a new requirement that the planning material for a proposed well include the location of any abandoned wells in the vicinity of the new well site.

Section 290.41, underwent a major reorganization. Design criteria for springs and other similar sources of drinking water were added. Several sections were rewritten to clarify that the commission will recognize only water sample analysis which is conducted by a laboratory approved by the Texas Department of Health.

Section 290.42 was also reorganized. A section on the treatment required for water from springs and other similar sources was added. Requirements for parallel treatment facilities were added for those surface water treatment plants that produce more than 3.0 million gallons per day. Several provisions were rewritten to improve their clarity.

Since water storage design criteria, old §290.44, generally precedes water distribution design criteria, old §290.43, in the configuration of a public water system, the order of these two sections was interchanged. In the new §290.43, an inconsistency in the previous design requirements for storage tanks was eliminated and some of the rules were rewritten to clarify the intent of the earlier versions of these rules. Also, the design requirements for roof hatches were changed slightly to save many utilities the cost of retrofitting their existing storage tanks.

Section 290.45, which relates to the capacity requirements for public water systems, was reorganized. In addition, a long-standing policy regarding the relationship of excess elevated storage tank capacity and service pump capacity has been codified so that exceptions are no longer required for those types of water systems. A subsection was also added which requires water wholesalers to provide sufficient auxiliary power so that a minimal volume of water can be supplied to their customers in the event of the temporary failure of their primary power source.

A number of changes were made to §290.46, which deals with minimum operating practices for water systems. In response to a request by field staff, a provision was added to require water systems to allow commission personnel access to system facilities for the purpose of making sanitary survey inspections. In response to requests from rural utilities, the disinfectant monitoring requirements for small water systems were modified

Those parts of §§290.38-290.45 which deal with operations were relocated to this section to make the document more uniform.

The changes to §§290.47-290.49 were minor and were made to eliminate inconsistencies between these and the other revised sections.

These emergency rules are effective immediately upon filing with the *Texas Register*.

The repeals are adopted on an emergency basis under the Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers, duties, and policies and the Texas Health and Safety Code, Chapter 341, Subchapter C, which governs sanitary standards of drinking water, protection of public water supplies, and bodies of water.

§290.38. *Definitions.*

§290.39. *General Provisions.*

§290.40. *Prohibitions.*

§290.41. *Water Sources.*

§290.42. *Water Treatment.*

§290.43. *Water Distribution.*

§290.44. *Water Storage.*

§290.45. *Minimum Water System Capacity Requirements.*

§290.46. *Minimum Acceptable Operating Practices for Public Drinking Water Systems.*

§290.47. *Appendix A. State Approval Recognition.*

§290.48. *Appendix B. Minimum Required Water Main Sizes.*

§290.49. *Appendix C. Sample or Suggested Sanitary Control Easement Document for a Public Water Well.*

Issued in Austin, Texas on April 2, 1992

TRD-9204536 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

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Expiration date: April 23, 1992

For further information, please call: (512) 463-8069

The new sections are adopted on an emergency basis under the Texas Water Code,

§5.103, which authorizes the commission to adopt any rules necessary to carry out its powers, duties, and policies and the Texas Health and Safety Code, Chapter 341, Subchapter C, which governs sanitary standards of drinking water, protection of public water supplies, and bodies of water.

§290.38. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. If a word or term used in this title is not contained in the following list, its definition shall be as shown in Title 40 Code of Federal Regulations, §141.2. Other technical terms used shall have the meanings or definitions listed in the latest edition of "Glossary, Water and Wastewater Control Engineering," prepared by a joint editorial board representing the American Public Health Association, American Society of Civil Engineers, American Water Works Association, and the Water Pollution Control Foundation.

ANSI standards—The standards of the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

ASME standards—The standards of the American Society of Mechanical Engineers, 346 East 47th Street, New York, New York 10017.

ASTM standards—The standards of the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19102.

Auxiliary power—Either mechanical power or electric generators which can enable the system to provide water under pressure to the distribution system in the event of a local power failure. With the approval of the executive director, dual primary electric service may be considered as auxiliary power in areas which are not subject to large scale power outages due to natural disasters.

AWWA standards—The latest edition of the applicable standards as approved and published by the American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.

Commission—The Texas Water Commission.

Community water system—A public water system which has a potential to serve at least 15 residential service connections on a year-round basis or serves at least 25 residents on a year-round basis.

Connection—A single family residential unit or each commercial or industrial establishment to which drinking water is supplied from the system. As an example, the number of service connections in an apartment complex would be equal to the number of individual apartment units. When enough data is not available to accurately determine the number of connections to be served or being served, the population

served divided by three will be used as the number of connections for calculating system capacity requirements. Conversely, if only the number of connections is known, the connection total multiplied by three will be the number used for population served.

Contamination—The presence of any foreign substance (organic, inorganic, radiological, or biological) in water which tends to degrade its quality so as to constitute a hazard or impair the usefulness of the water.

Cross-connection—A physical connection between a public water system and either another supply of unknown or questionable quality, any source which may contain contaminating or polluting substances, or any source of water treated to a lesser degree in the treatment process.

Drinking water—All water distributed by any agency or individual, public or private, for the purpose of human consumption or which may be used in the preparation of foods or beverages or for the cleaning of any utensil or article used in the course of preparation or consumption of food or beverages for human beings. The term "drinking water" shall also include all water supplied for human consumption or used by any institution catering to the public.

Drinking water standards—The commission rules covering drinking water standards in §§290.1-290.19 of this title (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems).

Elevated storage capacity—That portion of water which can be stored at least 80 feet above the highest service connection in the pressure plane served by the storage tank.

Executive director—The executive director of the Texas Water Commission.

Health hazard—Any conditions, devices, or practices in the water supply system and/or its operation which create, or may create, a danger to the public health and well-being of the water consumer. An example of a health hazard is a structural defect in the water supply system, whether of location, design, or construction, which may regularly or occasionally prevent satisfactory purification of the water supply or cause it to be contaminated from extraneous sources.

Human consumption—Uses by humans in which water can be ingested into or absorbed by the human body. Examples of these uses include, but are not limited to, drinking, cooking, brushing teeth, bathing, washing hands, washing dishes, and preparing foods.

Interconnection—A physical connection between two public water supply systems.

Intruder-resistant fence—A fence six feet or more in height, constructed of wood, concrete, masonry, or metal with three

strands of barbed wire extending outward from the top of the fence at a 45 degree angle. In lieu of the barbed wire, the fence must be eight feet in height. The fence must be in good repair and close enough to surface grade to prevent intruder passage.

Maximum daily demand—In the absence of verified historical data, maximum daily demand means 2.4 times the average daily demand of the system.

mg/l—Milligrams per liter, a measure of concentration, equivalent to and replacing parts per million (ppm) in the case of dilute solutions.

NSF—The National Sanitation Foundation and refers to the listings developed by the Foundation, P.O. Box 1468, Ann Arbor, Michigan 48106.

Noncommunity water system—Any public water system which is not a community system.

Nontransient noncommunity water system—A public water system that is not a community water system and regularly serves at least 25 of the same persons at least six months out of the year.

psi—Pounds per square inch.

Peak hourly demand—In the absence of verified historical data, peak hourly demand means 1.25 times the maximum daily demand (prorated to an hourly rate) if a public water supply meets the commission's minimum requirements for elevated storage capacity and 1.85 times the maximum daily demand (prorated to an hourly rate) if the system uses pressure tanks or fails to meet the commission's minimum elevated storage capacity requirement.

Public health engineering practices—Requirements in these sections or guidelines promulgated by the commission.

Public water system—A system for the provision to the public of piped water for human consumption, which includes all uses described under the definition for drinking water. Such a system must have a potential for at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or more at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a

water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

Sanitary control easement—A legally binding document securing all land, within 150 feet of a public water supply well location, from pollution hazards. This document must fully describe the location of the well and surrounding lands and must be filed in the county records to be legally binding.

Service pump—Any pump that takes treated water from storage and discharges to the distribution system.

Transfer pump—Any pump which conveys water from one point to another within the treatment process or which conveys water to storage facilities prior to distribution.

§290.39. General Provisions.

(a) Authority for requirements. The Texas Health and Safety Code, Chapter 341, Subchapter C, prescribes the duties of the Texas Water Commission relating to the regulation and control of public drinking water systems in the state. These statutes require that the commission review completed plans and specifications for all contemplated public water systems, and that the commission be notified of any subsequent material changes, improvements, additions, or alterations in existing systems. In order to properly discharge these duties, the Texas Water Commission is authorized to develop rules governing the design of system facilities, as well as minimum acceptable operating practices necessary to protect the public health.

(b) Reason for these sections and minimum criteria. These sections have been adopted to insure the inclusion of all data essential for comprehensive consideration of the contemplated project, or improvements, additions, alterations, or changes thereto and to establish minimum standardized public health design criteria in compliance with existing state statutes and in accordance with good public health engineering practices. In addition, minimum acceptable operating practices must be specified to insure that facilities are properly operated to produce and distribute a safe, potable water.

(c) Authorization for examination of plans.

(1) Plans, specifications, and related documents will not be considered unless they have been prepared under the direction of a registered professional engineer. All engineering documents must have engineering seals, signatures, and dates affixed in accordance with the rules of the Texas State Board of Registration for Professional Engineers.

(2) Detailed plans must be submitted for examination at least 30 days prior to the time that approval, comments, or

recommendations are desired. From this, it is not to be inferred that final action will be forthcoming within the time mentioned.

(3) The limits of approval are as follows.

(A) The commission's Water Utilities Division furnishes consultation services as a reviewing body only, and its registered engineers may neither act as design engineers nor furnish detailed estimates.

(B) The commission's Water Utilities Division does not examine plans and specifications in regard to the structural features of design, such as strength of concrete or adequacy of reinforcing. Only the features covered by these sections will be reviewed.

(C) The consulting engineer and/or owner must provide surveillance adequate to assure that facilities will be constructed according to approved plans and must notify the commission's Water Utilities Division in writing upon completion of all work.

(d) Submission of planning material. In general, the planning material submitted shall conform to the following requirements.

(1) Engineering reports are required for new water systems and all surface water treatment plants. Engineering reports are also required when design deficiencies are identified in an existing system. The engineering report shall include, at least, coverage of the following items:

(A) statement of the problem or problems;

(B) present and future areas to be served, with population data;

(C) the source, with quantity and quality of water available;

(D) present and estimated future maximum and minimum water quantity demands;

(E) description of proposed site and surroundings for the water works facilities;

(F) type of treatment, equipment, and capacity of facilities;

(G) basic design data, including pumping capacities, water storage,

and flexibility of system operation under normal and emergency conditions; and

(H) the adequacy of the facilities with regard to delivery capacity and pressure throughout the system.

(2) All plans and drawings submitted may be printed on any of the various papers which give distinct lines. All prints must be clear, legible, and assembled to facilitate review.

(A) The relative location of all facilities which are pertinent to the specific project shall be shown.

(B) The location of all abandoned or inactive wells within one quarter mile of a proposed wellsite shall be shown or reported.

(C) If staged construction is anticipated, the overall plan shall be presented, even though a portion of the construction may be deferred.

(D) A general map or plan of the municipality, water district, or area to be served shall accompany each proposal for a new water supply system.

(3) Specifications for construction of facilities shall accompany all plans. If a process or equipment which may be subject to probationary acceptance because of limited application or use in Texas is proposed, the commission, at its discretion, may give limited approval. In such case, the owner must be given a bonded guarantee from the manufacturer covering acceptable performance. The specifications shall include a statement that such a bonded guarantee will be provided the owner and shall also specify those conditions under which the bond will be forfeited.

(4) Copies of each sanitary control easement shall accompany plans for all wells. See §290.49 of this title (relating to Appendix C-Sample Sanitary Control Easement Document for a Public Water Well) for a suggested form.

(e) Beginning and completion of work.

(1) The commission's Water Utilities Division, shall be notified in writing by the design engineer or the owner when construction is started.

(2) Upon completion of the water works project, the engineer or owner will notify the commission's Water Utilities Division, in writing, as to its completion and attest to the fact that the completed work is substantially in accordance with the plans and change orders on file with the commission.

(f) Changes in plans and specifications. Any addenda or change orders which may involve a health hazard or relocation of facilities, such as wells, treatment units, and storage tanks, shall be submitted to the executive director for review and approval.

(g) Changes in existing systems or supplies. Changes or additions to existing systems shall require written notification to the executive director. The executive director shall determine whether engineering plans and specifications will be required after initial notification of the extent of the modifications.

(h) Planning material acceptance. Planning material for improvements to an existing system which does not meet the requirements of all sections of these regulations will not be considered unless the necessary modifications for correcting the deficiencies are included in the proposed improvements, or unless the executive director determines that reasonable progress is being made toward correcting the deficiencies and no immediate health hazard will be caused by the delay.

(i) Exceptions. Requests for exceptions to one or more of these sections shall be considered on an individual basis. Any water system which requests an exception must demonstrate to the satisfaction of the executive director that the exception will not compromise the public health or result in a degradation of service or water quality.

(1) The exception must be requested in writing and must be substantiated by carefully documented engineering data. The request for an exception should precede the submission of engineering plans and specifications for a proposed project.

(2) Any exception granted by the commission is subject to revocation.

(3) Any request for an exception which is not approved by the commission in writing is denied.

§290.40. Prohibitions.

(a) Construction and operation prohibition. No person or entity may construct or operate a public drinking water system in violation of these sections or the drinking water standards.

(b) Distribution prohibition. No person or entity may distribute drinking water to the public in violation of these sections or the drinking water standards.

§290.41. Water Sources.

(a) Water quality. The quality of water to be supplied must meet the quality criteria prescribed by the commission's drinking water standards.

(b) Water quantity. Sources of supply, both ground and surface, shall have a safe yield capable of supplying the maximum daily demands of the distribution system during extended periods of peak usage and critical hydrologic conditions. The pipe lines and pumping capacities to treatment plants or distribution systems shall be adequate for such water delivery. Minimum capacities required are specified in §290.45 of this title (relating to Minimum Water System Capacity Requirements).

(c) Ground water sources and development.

(1) Ground water sources shall be located so that there will be no danger of pollution from flooding or from insanitary surroundings, such as privies, sewage, sewage treatment plants, livestock and animal pens, solid waste disposal abandoned and improperly sealed wells.

(A) No well site which is within 50 feet of a tile or concrete sanitary sewer, sewerage appurtenance, septic tank, or storm sewer; or which is within 150 feet of a septic tank perforated drainfield, absorption bed, evapotranspiration bed, or underground fuel storage tank will be acceptable for use as a public drinking water supply well. Sanitary or storm sewers constructed of ductile iron or PVC pipe meeting AWWA standards, having a minimum working pressure of 150 psi or greater, and equipped with pressure type joints may be located at distances of less than 50 feet from a proposed well site but in no case shall the distance be less than 10 feet.

(B) No well site shall be located within 500 feet of a sewage treatment plant or within 300 feet of a sewage wet well, sewage pumping station, or a drainage ditch which contains industrial waste discharges or the wastes from sewage treatment systems.

(C) No water wells shall be located within 500 feet of animal feed lots, solid waste disposal sites, lands on which sewage plant or septic tank sludge is applied, or lands irrigated by sewage plant effluent.

(D) Livestock in pastures shall not be allowed within 50 feet of water supply wells.

(E) Abandoned or inoperative wells within 1/4 mile of a proposed wellsite shall be reported to the commission along with existing or potential pollution hazards which may affect ground water quality. This information must be submitted prior to construction or as required by the executive director.

(F) A sanitary control easement covering that portion of the land within 150 feet of the well location shall be secured from all such property owners and recorded in the deed records at the county courthouse. The easement shall provide that none of the pollution hazards covered in subparagraphs (A)-(E) of this paragraph, or any facilities that might create a danger of pollution to the water to be produced from the well will be located thereon. Copies of the recorded easements shall be included with plans and specifications submitted for review.

(2) The premises, materials, tools, and drilling equipment shall be maintained so as to minimize contamination of the underground water during drilling operation.

(A) Water used in any drilling operation shall be of safe sanitary quality. Water used in the mixing of drilling fluids or mud shall contain a chlorine residual of at least 0.5 mg/l.

(B) The slush pit shall be constructed and maintained so as to minimize contamination of the drilling mud.

(C) No temporary toilet facilities shall be maintained within 150 feet of the well being constructed unless they are of a sealed, leakproof type.

(3) Special attention must be given to the construction, disinfection, protection, and testing of a well to be used as a public water supply source.

(A) Before placing the well into service, the commission's Water Utilities Division shall be furnished a copy of the well completion data, which includes the following items: the driller's log (geological log and material setting report); a cementing certificate; the results of a 36-hour pump test; the results of the microbiological and chemical analyses required by subparagraphs (F) and (G) of this paragraph; a copy of the sanitary control easement; and an original or legible copy of a United States Geological Survey 7.5-minute topographic quadrangle showing the accurate well location.

(B) The casing material used in the construction of wells for public use shall be new carbon steel, high-strength low-alloy steel, stainless steel, or plastic. The material shall conform to AWWA standards. The casing shall extend a minimum of 18 inches above the elevation of the finished floor of the pump room or natural ground surface and a minimum of one inch

above the sealing block or pump motor foundation block when provided. The casing shall extend at least to the depth of the shallowest water formation to be developed and deeper, if necessary, in order to eliminate all undesirable water-bearing strata.

(C) The space between the casing and drill hole shall be sealed by using enough cement under pressure to completely fill and seal the annular space between the casing and the drill hole. The well casing shall be cemented in this manner from the top of the shallowest formation to be developed to the earth's surface.

(D) When a gravel packed well is constructed, all gravel shall be of selected and graded quality and shall be thoroughly disinfected with a 50 mg/l chlorine solution as it is added to the well cavity.

(E) Safeguards shall be taken to prevent possible contamination of the water or damage by trespassers following the completion of the well and prior to installation of permanent pumping equipment.

(F) Upon well completion, or after an existing well has been reworked, the well shall be disinfected in accordance with current AWWA standards for well disinfection except that the disinfectant shall remain in the well for at least six hours.

(i) Before placing the well in service, the water containing the disinfectant shall be flushed from the well and then samples of water shall be collected and submitted for microbiological analysis until three successive daily raw water samples are free of coliform organisms. The analysis of these samples must be conducted by a laboratory approved by the Texas Department of Health.

(ii) Appropriate facilities for treatment of the water shall be provided where a satisfactory microbiological record cannot be established after repeated disinfection. The extent of water treatment required will be determined on the basis of geological data, well construction features, nearby sources of contamination and, perhaps, on the basis of quantitative microbiological analyses.

(G) A complete physical and chemical analysis of the water produced from a new well shall be made after 36 hours of continuous pumping at the design withdrawal rate. Shorter pump test periods can be accepted for large capacity wells producing from areas of known groundwater production and quality so as to prevent

wasting of water. Samples must be submitted to the Texas Department of Health laboratory for chemical analyses. Tentative approval may be given on the basis of tests performed by in-plant or private laboratories but final acceptance by the commission shall be on the basis of results from the Texas Department of Health laboratory. Appropriate treatment shall be provided if the analyses reveal that the water from the well fails to meet the water quality criteria as prescribed by the drinking water standards. These criteria include turbidity, color and threshold odor limitations, and excessive hydrogen sulfide, carbon dioxide, or other constituents or minerals which make the water undesirable or unsuited for domestic use.

(H) Below ground-level pump rooms and pump pits will not be allowed in connection with water supply installations. The pump room floor shall be at least two feet above the highest known watermark or 100-year flood elevation, if available, or adequately protected from possible flood damage by levees.

(I) The well site shall be fine graded so that the site is free from depressions, grades, or areas too rough for proper ground maintenance so as to ensure that surface water will drain away from the well. In all cases, arrangements shall be made to convey well pump drainage, packing gland leakage, and floor drainage away from the wellhead. Suitable drain pipes located at the outer edge of the concrete floor shall be provided to collect this water and prevent its ponding or collecting around the wellhead. This waste water shall be disposed of in a manner that will not cause any nuisance from mosquito breeding or stagnation. Drains shall not be directly connected to storm or sanitary sewers.

(J) In all cases, a concrete sealing block extending at least three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inches per foot shall be provided around the wellhead.

(K) Wellheads and pump bases shall be sealed by a gasket or sealing compound and properly vented to prevent the possibility of contaminating the well water. A well casing vent shall be provided with an opening that is covered with 16-mesh or finer corrosion-resistant screen, faced downward, elevated and located so as to minimize the drawing of contaminants into the well.

(L) If a well blow-off line is provided, its discharge shall terminate in a

downward direction and at a point which will not be submerged by flood waters.

(M) A suitable sampling cock shall be provided on the discharge pipe of each well pump prior to any treatment.

(N) Flow measuring devices shall be provided for each well to measure production yields and provide for the accumulation of water production data. These devices shall be located to facilitate daily reading.

(O) All completed well units shall be protected by intruder-resistant fences, the gates of which are provided with locks or shall be enclosed in locked, ventilated well houses to exclude possible contamination or damage to the facilities by trespassers. The gates or wellhouses shall be locked during periods of darkness and when the plant is unattended.

(P) An all-weather access road shall be provided to each well site.

(4) Pitless well units may be desirable in areas subject to vandalism or extended periods of subfreezing weather.

(A) Pitless units shall be shop fabricated from the point of connection with the well casing to the unit cap or cover, be threaded or welded to the well casing, be of watertight construction throughout, and be of materials and weight at least equivalent and compatible to the casing. The units must have a field connection to the lateral discharge from the pitless unit of threaded, flanged, or mechanical joint connection. Each unit must terminate at least 18 inches above the concrete sealing block and at least two feet above the highest known water mark or 100-year flood elevation, whichever is higher.

(B) The design of the pitless unit shall make provisions for an access to disinfect the well, a properly designed casing vent, a cover at the upper terminal of the well that will prevent the entrance of contamination, a sealed entrance connection for electrical cable, and at least one check valve within the well casing. The unit shall have an inside diameter as great as that of the well casing up to and including casing diameters of 12 inches.

(C) If the connection to the casing is by field weld, the shop-assembled unit must be designed specifically for field welding to the casing. The only field welding permitted will be that needed to connect a pitless unit to the well casing.

(D) Completed pitless well unit installations must be provided with above ground level raw water sampling cocks, concrete sealing blocks, and flow measuring devices.

(E) The well casing and pitless unit must be properly sealed and cemented in accordance with paragraph (3)(C) of this subsection.

(d) Springs and other water sources.

(1) Springs and other similar sources of flowing artesian water shall be protected from potential contaminant sources in accordance with the requirements of subsection (c)(1) of this section.

(2) Before placing the spring or similar source into service, completion data similar to that required by subsection (c)(3)(A) of this section must be submitted to the commission's Water Utilities Division for review and approval.

(3) Springs and similar sources shall be constructed in a manner which will preclude the entrance of surface water and debris.

(A) The site shall be fine graded so that it is free from depressions, reverse grades, or areas too rough for proper ground maintenance in order to ensure that surface water will drain away from the source.

(B) The spring or similar source shall be encased in an open-bottomed, watertight basin which intercepts the flowing water below the surface of the ground. The basin shall extend at least 18 inches above ground level. The top of the basin shall also be at least two feet above the highest known watermark or 100-year flood elevation, if available, or adequately protected from possible flood damage by levees.

(C) In all cases, a concrete sealing block shall be provided which extends at least three feet from the encasement in all directions. The sealing block shall be at least six inches thick and be sloped to drain away from the encasement at not less than 0.25 inches per foot.

(D) The top of the encasement shall be provided with a sloped, watertight roof which prevents the ponding of water and precludes the entrance of animals, insects, and other sources of contamination.

(E) The roof of the encasement shall be provided with a hatch that is not less than 30 inches in diameter. The hatch shall have a raised curbing at least four inches in height with a lockable cover that overlaps the curbing at least two inches in a downward direction. Where necessary, a gasket shall be used to make a positive seal when the hatch is closed. All hatches shall remain locked except during inspections and maintenance.

(F) The encasement shall be provided with a gooseneck vent or roof ventilator which is equipped with approved screens to prevent entry of animals, birds, insects, and heavy air contaminants. Screens shall be fabricated of corrosion-resistant material and shall be 16-mesh or finer. Screens shall be securely clamped in place with stainless or galvanized bands or wires.

(F) The encasement shall be provided with an overflow which is designed to prevent the entry of animals, birds, insects, and debris. The discharge opening of the overflow shall be above the surface of the ground and shall not be subject to submergence.

(4) Springs and similar sources must be provided with the appurtenances required by subsection (c)(3)(M)-(P) of this section.

(e) Surface water sources and development.

(1) To determine the degree of pollution from all sources within the watershed, an evaluation shall be made of the proposed surface water impoundment or flowing supply in the area of diversion and its tributary streams.

(A) Where surface water sources which are subject to continuous contamination by municipal, agricultural, or industrial wastes and/or treated effluent are contemplated for development for public water systems, the adverse effects of the contamination on the quality of the raw water reaching the treatment plant shall be determined by sanitary surveys and laboratory procedures. These findings shall be submitted with the planning material and will be used to determine whether or not the proposed raw water intake is adequately protected from all sources of contamination.

(B) The disposal of all liquid or solid wastes from any source on the watershed must be in conformity with applicable regulations and state statutes. Additionally, pesticides or herbicides which are used within the watershed shall be applied in strict accordance with the product label restrictions.

(C) Shore installations, marinas, boats, and all habitations on the watershed shall be provided with satisfactory sewage disposal facilities. Septic tanks and soil absorption fields, tile or concrete sanitary sewers, sewer manholes, or other approved toilet facilities shall not be located in an area within 75 feet horizontally from the lake water surface at the uncontrolled spillway elevation of the lake or 75 feet horizontally from the 50-year flood elevation, whichever is lower.

(D) Disposal of wastes from boats or any other watercraft shall be in accordance with the Texas Water Code, §§321.1-321.18.

(2) Intakes shall be located and constructed in a manner which will allow raw water to be taken from a variety of depths and which will permit withdrawal of water when reservoir levels are very low. Fixed level intakes are acceptable if water quality data is available to establish that the effect on raw water quality will be minimal.

(A) Insofar as possible, intakes shall be located in areas not subject to excessive siltation and areas not subject to receiving immediate runoff from wooded sloughs and swamps.

(B) Water intake works shall be provided with screens or grates to minimize the amount of debris entering the plant.

(C) No public boat launching ramps, marinas, docks, or floating fishing piers shall be located within 1,000 feet of the raw water intake.

(D) A restricted zone of 200 feet radius from the raw water intake works shall be established and all recreational activities and trespassing shall be prohibited in this area. Regulations governing this zone shall be in the city ordinances or the rules and regulations promulgated by a water district or similar regulatory agency. Provisions shall be made for the strict enforcement of such ordinances or regulations. The restricted zone shall be designated with signs recounting these restrictions. The signs shall be maintained in plain view of the public and shall be visible from all parts of the restricted area. In addition, special buoys may be required as deemed necessary by the executive director.

(E) The executive director shall make an on-site evaluation of any proposed raw water intake location. The evaluation must be requested prior to final

design and must be supported by preliminary design drawings. Once the final intake location has been selected, the commission's Water Utilities Division shall be furnished with an original or legible copy of a United States Geological Survey 7.5-minute topographic quadrangle showing the accurate intake location.

(3) The water treatment plant and all pumping units shall be located in well-drained areas not subject to flooding and away from seepage areas or where the underground water table is near the surface.

(A) Water treatment plants shall not be located within 500 feet of a sewage treatment plant or lands irrigated with sewage effluent. A minimum distance of 150 feet must be maintained between any septic tank drainfield line and any underground treatment or storage unit. Any sanitary sewers located within 50 feet of any underground treatment or storage units shall be constructed of ductile iron or PVC pipe with a minimum pressure rating of 150 psi and have watertight joints.

(B) Plant site selection shall also take into consideration the need for disposition of all plant wastes in accordance applicable regulations and state statutes including both liquid and solid waste or by-product material from operation and/or maintenance.

(C) The water treatment plant and all appurtenances thereof shall be enclosed by an intruder resistant fence. The gates shall be locked during periods of darkness and when the plant is unattended. A locked building in the fence line may satisfy this requirement or serve as a gate.

(D) An all weather road shall be provided to the treatment plant and to the raw water pump station.

(E) Flow measuring devices shall be provided to measure the raw water supplied to the plant and to measure the treated water discharged from the plant. These devices shall be located to facilitate use and to assist in the determination of chemical dosages, the accumulation of water production data, and the operation of plant facilities.

§290.42. Water Treatment.

(a) Capacity. Based on current acceptable design standards, the total capacity of the public water system's production and treatment facilities must always be greater than its anticipated maximum daily demand.

(b) Ground waters.

(1) Disinfection facilities shall be provided for all ground water supplies for the purpose of microbiological control and distribution protection and shall be in conformity with applicable disinfection requirements in subsection (e) of this section.

(2) Treatment facilities shall be provided for ground water if the water does not meet the drinking water standards. The facilities provided shall be in conformance with established and proven methods.

(A) Filters provided for turbidity and microbiological quality control shall be preceded by coagulant addition and shall conform to the requirements of subsection (c)(10) of this section. Filtration rates for iron and manganese removal, regardless of the media or type of filter, shall be based on a maximum rate of five gallons per square foot per minute.

(B) The removal of iron and manganese may not be required if it can be demonstrated that these metals can be sequestered so that the discoloration problems they cause do not exist in the distribution system.

(C) All processes involving exposure of the water to atmospheric contamination shall provide for subsequent disinfection of the water ahead of ground storage tanks. Likewise, all exposure of water to atmospheric contamination shall be accomplished in a manner such that insects, birds, and other foreign materials will be excluded from the water. Aerators and all other such openings shall be screened with 16-mesh or finer corrosion resistant screen.

(D) Appropriate laboratory facilities shall be provided for controls as well as to check the effectiveness of disinfection or any other treatment processes employed.

(c) Springs and other water sources.

(1) Water obtained from springs, infiltration galleries, wells in fissured areas, wells in carbonate rock formations, or wells that do not penetrate an impermeable strata and/or any other source subject to surface or near surface contamination of recent origin shall be evaluated for the provision of treatment facilities. Minimum treatment shall consist of coagulation with direct filtration and adequate disinfection. In all cases, the treatment process must achieve at least a three-log removal or inactivation of Giardia cysts and a four-log removal or inactivation of viruses before the water is supplied to any consumer.

(A) Filters provided for turbidity and microbiological quality control

shall conform to the requirements of subsection (d)(10) of this section.

(B) All processes involving exposure of the water to atmospheric contamination shall provide for subsequent disinfection of the water ahead of ground storage tanks. Likewise, all exposure of water to atmospheric contamination shall be accomplished in a manner such that insects, birds, and other foreign materials will be excluded from the water. Aerators and all other such openings shall be screened with 16-mesh or finer corrosion resistant screen.

(2) Any proposed change in the extent of water treatment required will be determined on the basis of geological data, well construction features, nearby sources of contamination, and on qualitative and quantitative microbiological and chemical analyses.

(3) Appropriate laboratory facilities shall be provided for controls as well as to check the effectiveness of disinfection or any other treatment processes employed.

(d) Surface water.

(1) All water secured from surface sources shall be given complete treatment at a plant which provides facilities for pretreatment disinfection, taste and odor control, continuous coagulation, sedimentation, filtration, covered clearwell storage, and terminal disinfection of the water with chlorine or suitable chlorine compounds. In all cases, the treatment process must achieve at least a three-log removal or inactivation of Giardia cysts and a four-log removal or inactivation of viruses before the water is supplied to any consumer.

(2) No cross-connection or interconnection shall be permitted to exist in a filtration plant between a conduit carrying filtered or post-chlorinated water and another conduit carrying raw water or water in any prior stage of treatment. Vacuum breakers provided on each hose bibb within the plant facility. No conduit or basin containing raw water or any water in a prior stage of treatment shall be located directly above, or be permitted to have a single common partition wall with another conduit or basin containing finished water.

(3) All drainage conduits shall be constructed so as to be thoroughly tight against leakage. Return of the decanted water and/or sludge to the raw water should be adequately controlled so that there will be a minimum of interference with the treatment process. Any discharge of wastewater shall be in accordance with the appropriate statutes and regulations.

(4) Reservoirs for pretreatment and/or selective quality control shall be provided where complete treatment facilities fail to operate satisfactorily at times of max-

imum turbidities or other abnormal raw water quality conditions exist. Recreational activities at such reservoirs shall be prohibited.

(5) Treatment plants shall be provided with efficient devices for measuring and applying chemicals to the water being treated.

(A) Each chemical feeder shall have a standby or reserve unit. Common standby feeders are permissible, but, generally, more than one standby feeder must be provided due to the incompatibility of chemicals or the state in which they are being fed (solid, liquid or gas).

(B) Accurate flow meters shall be provided for determining rate of treatment and total amount of water treated. All chemical feed equipment shall be capable of easily adjusting to variations in the flow of water being treated.

(C) Dry chemical feeders shall be in a separate room and be provided with facilities for dust control.

(D) Chemical feeders shall be provided with dissolving tanks when applicable.

(E) Where practical, the transport of chemical solutions between the feeder and the application point should be accomplished through open channels. If enclosed feed lines must be used, they shall be designed and installed so as to prevent clogging and facilitate cleaning.

(F) Coagulants shall be applied to the water in the mixing basins or chambers so as permit their complete mixing with the water. Coagulants shall be applied continuously during treatment plant operation.

(G) Chlorine feed units, ammonia feed units, and storage facilities shall be separated by solid, sealed walls.

(H) Make-up water supply lines to chemical feeder solution mixing chambers shall be provided with an air gap or other acceptable backflow prevention device.

(6) Chemical application points at the raw water source and beyond the mixing basin or chamber shall be provided for quality control, taste and odor control, stabilization, and disinfection for quality control.

(7) Chemicals shall be stored off the floor in a separate, dry, above ground

level room and protected against flooding or wetting from floors, walls, and ceilings.

(A) Storage facilities at the plant shall be adequate to store at least one month's supply of chemicals. However, local resupply ability may dictate the requirements for plant inventories.

(B) Chemical storage facilities shall be located so as to help in the handling of bulk chemicals by operators and the transfer of chemicals to the feeders. Also, the movement of chemicals from storage to feed machines shall be done in a manner that facilitates good housekeeping.

(C) When liquid chemicals are to be used, special precautions must be taken. The following concerns must be addressed both during the plan review and approval process for new facilities and during the operation of existing plants:

(i) issues involving bulk storage tank design such as the materials of construction, capacity (which must be at least 1.5 times the size of truck delivery), overflow, and containment;

(ii) issues involving transfer pump design including the bulk storage tank design, day tank capacity, type, materials of construction, and controls;

(iii) issues involving the day tanks such as the materials of construction, overflow, containment, capacity, and controls;

(iv) issues involving metering pump design such as the materials of construction, calibration, controls, capacity, and anti-siphon protection; and

(v) issues involving piping and valves including their compatibility with solutions.

(8) Flash mixing and flocculation equipment shall be provided which is capable of adequate flexibility or adjustment to provide optimum flocculation under varying raw water characteristics and rates of raw water treatment.

(A) Where special types of equipment for rapid mechanical mixing, softening, or sedimentation are proposed, the manufacturer must meet the design criteria in paragraph (9) of this subsection.

(B) Facilities for coagulation and sedimentation must be provided to clarify the water so that the settled water turbidity is low enough to produce a finished water which meets the turbidity limits established by the commission's drinking water standards.

(i) Settled water turbidity of less than 10 turbidity units is generally required to produce a filtered water turbidity which meets the requirements of the drinking water standards.

(ii) All turbidity measurements must be made in accordance with the method specified in the drinking water standards.

(C) Plants with a design capacity greater than 3.0 million gallons per day must provide at least two sets of flash mixing and flocculation equipment which are designed to operate in parallel.

(9) Basins for straight-flow sedimentation of coagulated waters shall provide a theoretical detention time of at least six hours for clarification plants and 4.5 hours for softening plants. The settling chamber of a solids contact clarification unit shall provide a theoretical detention time of at least two hours. Where shorter detention times are desired engineering data, pilot plant test data, full scale installation data, and other information as required by the commission shall be submitted to the commission to justify the alternate process.

(A) Facilities for sludge removal shall be provided by mechanical means or by the provision of hopper-bottomed basins with valves capable of complete draining of the units. Clarifiers shall be provided with facilities for determining the depth of sludge in the unit.

(B) Basins shall be designed to prevent the short-circuiting of flow or the destruction of floc. Coagulated water or water from flocculators shall be transported to sedimentation basins in such a manner as to prevent destruction of floc. Piping, flumes, and troughs shall be designed to provide a flow velocity of 0.5 to 1.5 feet per second. Gates, ports, and valves shall be designed at a maximum flow velocity of four feet per second in the transfer of water between units.

(C) Sedimentation basins may be square, rectangular, round, or other shapes approved by the executive director. The length of rectangular settling basins shall preferably be at least twice their width with a side water depth of 10 feet to 12 feet in nonsoftening water treatment. Square and round sedimentation basins may also be used for clarification and softening plants; however, the detention time must comply with the requirements of this paragraph.

(D) Sedimentation basins shall be provided with facilities for draining the basin within six hours. In the event that

the plant site topography is such that gravity draining cannot be realized, a permanently installed electric powered pump station shall be provided to dewater the basin.

(E) Plants with a design capacity greater than 3.0 million gallons per day must provide at least two sedimentation basins or clarification units which are designed to operate in parallel.

(10) Filters shall be gravity or pressure type.

(A) The design of gravity rapid sand filters shall be based on a maximum design filtration rate of two gallons per square foot per minute. At the beginning of filter runs for declining rate filters, a maximum filtration rate of three gallons per square foot per minute is allowed. The filter discharge piping shall be designed with an orifice or other permanently installed flow limiting device to ensure that the maximum filter rate cannot be exceeded.

(B) Where high-rate dual or multiple media gravity filters are used, a maximum design filtration rate of five gallons per square foot per minute must be used. At the beginning of filter runs for declining rate filters, a maximum filtration rate of 6.5 gallons per square foot per minute is allowed. The filter discharge piping shall be designed with an orifice or other permanently installed limiting device to ensure that the maximum filter rate cannot be exceeded.

(C) Pressure sand filters shall be subject to the loading provisions in subparagraph (A) of this paragraph for gravity sand filters. When used, the pressure filters shall be installed such that duplicate capacity is available to furnish the design capacity with one filter out of service. The use of pressure filters shall be limited to installations with less than 0.50 million gallons per day capacity.

(D) The depth of filter sand, anthracite or other filtering materials shall

be 24 inches or greater. This filtering material shall be free from clay, dirt, organic matter, and other impurities. Its effective size shall range from 0.35 to 0.45 mm for fine sand, 0.45 to 0.55 mm for medium sand, and 0.55 to 0.65 mm for coarse sand. Its uniformity coefficient shall not exceed 1.7. The grain size distribution shall also be as prescribed by AWWA standards. Material for dual or mixed media filters shall conform to AWWA standards.

(E) Under the filtering material, at least 12 inches of gravel shall be placed varying in size from 1/16 inch to 2.5 inches. The gravel may be arranged in three to five layers such that each layer contains material about twice the size of the material above it. Other support material may be approved on a case-by-case basis.

(F) The rate of flow of backwash water shall not be less than 20 inches vertical rise per minute (12.5 gpm/sq. ft.) and usually not more than 30 inches vertical rise per minute (18.7 gpm/sq. ft.). This shall expand the filtering bed 30 to 50%. The free board in inches shall exceed the wash rate in inches of vertical rise per minute.

(i) Only fully treated water shall be used to backwash the filters. This water may be supplied by elevated wash water tanks or by pumps which take suction from the clearwell and are provided for backwashing filters only. For installations having a treatment capacity no greater than 150,000 gallons per day, water for backwashing may be secured directly from the distribution system if proper controls and rate-of-flow limiters are provided.

(ii) The rate of filter backwashing shall be regulated by rate-of-flow controllers.

(G) When used, surface filter wash systems shall be installed with an atmospheric vacuum breaker or a reduced pressure principle backflow preventer in the supply line. If an atmospheric vacuum

breaker is used it shall be installed in a section of the supply line through which all the water passes and which is located above the overflow level of the filter.

(H) With the exception of declining rate filters, each filter unit shall be equipped with a manually adjustable rate-of-flow controller with rate-of-flow indication or control valves with indicators.

(I) Each filter unit shall be equipped with a device to indicate loss of head through the filter. In lieu of loss-of-head indicators, declining rate filter units may be equipped with rate-of-flow indicators to monitor filter condition.

(J) Filter-to-waste connections, if included, shall be provided with an air gap connection to waste.

(K) Filters shall be located so that common walls will not exist between them and aerators, mixing, and sedimentation basins or clear wells. This rule is not strictly applicable, however, to partitions open to view and readily accessible for inspection and repair.

(11) Pipe galleries shall be incorporated into the plant design with ample working room, good lighting, and good drainage provided by sloping floors, gutters, and sumps. Adequate ventilation to prevent condensation and to provide humidity control is also required.

(12) The identification of influent, effluent, waste backwash, and chemical feed lines shall be accomplished by use of labels or various colors of paint. Where labels are used, they shall be placed along the pipe at no greater than five-foot intervals. Where colors are used they shall follow the color code prescribed following. Color coding must be by solid color or banding. If bands are used, they shall be placed along the pipe at no greater than five-foot intervals. The color code is as follows.

LETTERS

COLOR OF PIPE

Potable Water	Light Blue
Compressed Air	Light Green
Instrument Air	Light Green with Dark Green Bands
Chlorine (gas, liquid, or vent)	Yellow
Chlorine (solution)	Yellow with Red Bands
Liquid Alum	Yellow with Orange Bands
Alum (solution)	Yellow with Green Bands
Ammonia	Yellow with Brown Bands
Settled Water	Green
Filter Effluent	Light Blue
Backwash	Light Blue
Drain	Dark Gray
Raw Water	Tan

(13) An adequately equipped laboratory must be available locally where daily microbiological and chemical tests can be made on water supplied by all plants serving 25,000 persons or more. For plants serving populations of less than 25,000, the facilities for making microbiological tests may be omitted and the required microbiological samples submitted to one of the Texas Department of Health's approved laboratories. All surface water treatment plants shall be provided with equipment for making at least the following determinations: pH, disinfectant residual, alkalinity, turbidity, "Jar" tests, and other tests deemed necessary to monitor specific water quality problems or to evaluate specific water treatment processes. All surface water treatment plants shall provide sampling taps for raw, settled, and filtered water.

(e) Disinfection.

(1) All waters obtained from surface sources must be disinfected prior to storage at a dosage sufficient to produce an adequate residual in the water leaving the plant.

(2) All ground water must be disinfected prior to distribution. The point of application must be ahead of the water storage tank(s) if storage is provided prior to distribution. Permission to use alternate disinfectant application points must be obtained in writing from the commission.

(3) All water stored in treated water storage tanks must contain a disinfectant residual. Disinfection facilities must be provided for all such locations where an adequate disinfectant residual is not maintained from prior treatment.

(4) Disinfection equipment shall be selected and installed so that continuous and effective disinfection can be secured under all conditions.

(A) Disinfection equipment shall have a capacity at least 50% greater than the highest expected dosage to be applied at any time. It shall be capable of satisfactory operation under every prevailing hydraulic condition.

(B) Automatic proportioning of the disinfectant dosage to the flow rate of the water being treated shall be provided at larger plants and at all plants where the rate of flow varies more than 50% above or below the average flow. Manual control shall be permissible only when the rate of flow is relatively constant or an attendant is

always on hand to promptly make adjustments.

(C) All disinfecting equipment on surface water treatment plants shall include at least one standby unit of each capacity for ensuring uninterrupted operation.

(D) Facilities shall be provided for determining the amount of disinfectant used daily as well as the amount of disinfectant remaining for use.

(E) When used, solutions of calcium hypochlorite shall be prepared in a separate mixing tank and allowed to settle so that only a clear supernatant liquid is transferred to the hypochlorinator container.

(F) Provisions shall be made for both pretreatment disinfection and post-disinfection in all surface water treatment plants. Additional application points shall be installed if they are required to adequately control the quality of the treated water.

(G) The use of disinfectants other than chlorine will be considered on a case-by-case basis under the exception guidelines of §290.39(h)(2) of this title (relating to General Provisions).

(5) A full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration (OSHA) standards for construction and operation, and a small bottle of fresh ammonia solution (or approved equal) for testing for chlorine leakage shall be provided and accessible outside the chlorinator room when chlorine gas is used.

(6) Housing for gas chlorination equipment and cylinders of chlorine shall be in separate buildings or separate rooms with impervious walls or partitions separating all mechanical and electrical equipment from the chlorine facilities. Housing shall be located above ground level as a measure of safety. Equipment and cylinders may be installed on the outside of the buildings when protected from adverse weather conditions and vandals.

(7) Adequate ventilation which includes both high level and floor level screened vents shall be provided for all enclosures in which gas chlorine is being stored or fed. Enclosures containing more than one open 150-pound cylinder of chlorine shall also provide forced air ventilation which includes screened and louvered floor level and high level vents, a fan which is located at and draws air in through the top vent and discharges through the floor vent,

and a fan switch located outside the enclosure.

(8) Hypochlorination solution containers and pumps must be housed and locked to protect them from adverse weather conditions and vandalism. The solution container top must be completely covered to prevent the entrance of dust, insects, and other contaminants.

(9) Safety equipment and training programs for all chemicals used in water treatment shall meet applicable standards established by the Occupational Safety and Health Administration (OSHA) or the Texas Hazard Communications Act, Health and Safety Code, Chapter 502.

(f) Special treatment processes. The adjustment of fluoride ion content, special treatment for iron and manganese reduction, special methods for taste and odor control, demineralization, and other proposals covering other than usual treatment will be considered as special projects. All treatment shall be accomplished prior to the storage tanks. Permission to use alternate treatment points must be obtained in writing from the executive director.

(g) Sanitary facilities for water works installations. Toilet and handwashing facilities provided in accordance with established standards of good public health engineering practices shall be available at all installations requiring frequent visits by operating personnel.

(h) Permits for waste discharges. Permits for discharging wastes from water treatment processes shall be obtained from the commission.

(i) Treatment, chemicals, and media. Effective January 1, 1993, all chemicals and any additional or replacement process media used in treatment of water supplied by public water systems must conform to American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 60 for direct additives and ANSI/NSF Standard 61 for indirect additives. Conformance with these standards must be obtained by certification of the product by an organization accredited by ANSI.

§290.43. Water Storage.

(a) Capacity. The minimum clear well, storage tank, and pressure maintenance capacity shall be governed by the requirements in §290.45 of this title (relating to Minimum Water System Capacity Requirements).

(b) Location of clear wells, standpipes, and ground storage and elevated tanks.

(1) No public water supply elevated storage or ground storage tank shall

be located within 500 feet of any municipal or industrial sewage treatment plant or any land which is spray irrigated with treated sewage effluent.

(2) Insofar as possible, clear wells or treated water tanks shall not be located under any part of any buildings and, when possible, shall be constructed partially or wholly above ground.

(3) No storage tank or clear well located below ground level is allowed within 50 feet of a sanitary sewer or septic tank. However, if the sanitary sewers are constructed of 150 psi pressure rated pipe with pressure-tested, watertight joints as used in water main construction, the minimum separation distance is 10 feet.

(4) No storage tank or clear well located below ground level is allowed within 150 feet of a septic tank soil absorption system.

(c) Design and construction of clear wells, standpipes, ground storage tanks, and elevated tanks. All facilities for potable water storage shall be covered and designed, fabricated, erected, tested, and disinfected in strict accordance with current American Water Works Association (AWWA) standards and shall be provided with the minimum number, size, and type of roof vents, manways, drains, sample connections, access ladders, overflows, liquid level indicators, and other appurtenances as specified in these rules. Bolted tanks shall be designed, fabricated, erected, and tested in strict accordance with current AWWA Standard D103. The roof of all tanks shall be designed and erected so that no water ponds at any point on the roof and, in addition, no area of the roof shall have a slope of less than 3/4 inch in 12 inches.

(1) Roof vents shall be goose-neck or roof ventilator and be designed by the engineer based on the maximum outflow from the tank. Vents shall be installed in strict accordance with current AWWA standards and shall be equipped with approved screens to prevent entry of animals, birds, insects, and heavy air contaminants. Screens shall be fabricated of corrosion-resistant material and shall be 16-mesh or finer. Screens shall be securely clamped in place with stainless or galvanized bands or wires and shall be designed to withstand winds of not less than tank design criteria (unless specified otherwise by the engineer).

(2) All roof openings shall be designed in accordance with current AWWA standards. The primarily used roof access opening shall not be less than 30 inches in diameter. Other roof openings required only for ventilating purposes during cleaning, repairing, or painting operations shall be not less than 24 inches in diameter or as specified by the design engineer. Each

access opening shall have a raised curbing at least four inches in height with a lockable cover that overlaps the curbing at least two inches in a downward direction. Where necessary, a gasket shall be used to make a positive seal when the hatch is closed. All hatches shall remain locked except during inspections and maintenance.

(3) Overflows shall be designed in strict accordance with current AWWA standards and shall terminate with a gravity hinged and weighted cover. The cover shall fit tightly with no gap over 1/16 inch. If the overflow terminates at any point other than the ground level, it shall be located near enough and at a position accessible from a ladder or the balcony for inspection purposes. The overflow(s) shall be sized to handle the maximum possible fill rate without exceeding the capacity of the overflow(s). The discharge opening of the overflow(s) shall be above the surface of the ground and shall not be subject to submergence.

(4) All clear wells and water storage tanks shall have a liquid level indicator located at the tank site. The indicator can be a float with a moving target, an ultrasonic level indicator, or a pressure gauge calibrated in feet of water. If an elevated tank or standpipe has a float with moving target indicator, it must also have a pressure indicator located at ground level. Pressure gauges must not be less than three inches in diameter and calibrated at not more than two-foot intervals. Remote reading gauges at the owner's treatment plant or pumping station will not eliminate the requirement for a gauge at the tank site unless the tank is located at the plant or station.

(5) Inlet and outlet connections shall be located so as to prevent short circuiting or stagnation of water.

(6) Clear wells and potable water storage tanks shall be thoroughly tight against leakage, shall be located above the ground water table, and shall have no walls in common with any other plant units containing water in the process of treatment. All associated appurtenances including valves, pipes, and fittings shall be tight against leakage.

(7) Each clearwell or potable water storage tank shall be provided with a means of preventing the accumulation of silt and deposits at all low points in the bottom of the tank. Drains shall not be connected to any waste or sewage disposal system and shall be constructed so that they are not a potential agent in the contamination of the stored water.

(8) All clear wells, ground storage tanks, standpipes, and elevated tanks shall be painted, disinfected, and maintained in strict accordance with current AWWA standards. However, no temporary

coatings, wax grease coatings, or coating materials containing lead will be allowed. No other coatings will be allowed which are not approved for use (as a contact surface with potable water) by the United States Public Health Service (USPHS), the United States Environmental Protection Agency (EPA), National Sanitation Foundation (NSF), or the United States Food and Drug Administration (FDA). Effective January 1, 1993, all newly installed coatings must conform to ANSI/NSF Standard 61 and must be certified by an organization accredited by ANSI.

(9) No tanks or containers shall be used to store potable water that have previously been used for any non-potable purpose. Where a used tank is proposed for use, a letter from the previous owner or owners must be submitted to the commission which states the use of the tank.

(10) Access manways in the riser pipe, shell area, access tube, bowl area, or any other location opening directly into the water compartment shall be located in strict accordance with current AWWA standards. These openings shall not be less than 24 inches in diameter. However, in the case of a riser pipe or access tube of 36 inches in diameter or smaller, the access manway may be 18 inches by 24 inches with the vertical dimension not less than 24 inches. The primary access manway in the lower ring or section of a ground storage tank shall be not less than 30 inches in diameter. Where necessary, for any access manway which allows direct access to the water compartment, a gasket shall be used to make a positive seal when the access manway is closed.

(d) Design and construction of pressure (hydropneumatic) tanks. All hydropneumatic tanks must be located wholly above grade and must be of steel construction with welded seams except as provided in paragraph (8) of this subsection.

(1) Metal thickness for pressure tanks shall be sufficient to provide at least a minimum of 1/8-inch corrosion allowance and to withstand the highest expected working pressures with a four to one factor of safety. Tanks of 1,000 gallon capacity or larger must meet the standards of the American Society of Mechanical Engineers (ASME) Section VIII, Division 1 Codes and Construction Regulations and must have an access port for periodic inspections. An ASME name plate must be permanently attached to those tanks. Tanks installed before July 1, 1988, are exempt from the ASME coding requirement, but all new installations must meet this regulation. Exempt tanks can be relocated within a system but cannot be relocated to another system.

(2) All pressure tanks shall be provided with a pressure release device and an easily readable pressure gauge.

(3) Facilities shall be provided for maintaining the air-water-volume at the design water level and working pressure. Air injection lines must be equipped with filters or other devices to prevent compressor lubricants and other contaminants from entering the pressure tank. A device to readily determine air-water-volume must be provided for all tanks greater than 1,000 gallon capacity. Galvanized tanks which are not provided with the necessary fittings and which were installed before July 1, 1988, shall be exempt from this requirement.

(4) Protective paint or coating shall be applied to the inside portion of any pressure tank. The coating shall be as specified in subsection (c)(8) of this section.

(5) No pressure tank that has been used to store any material other than potable water may be used in a public water system. A letter from the previous owner or owners must be provided as specified in subsection (c)(9) of this section.

(6) Pressure tank installations should be equipped with slow closing valves and time delay pump controls to eliminate water hammer and reduce the chance of tank failure.

(7) All associated appurtenances including valves, pipes, and fittings connected to pressure tanks shall be thoroughly tight against leakage.

(8) For systems utilizing seamless fiberglass tanks, a maximum of 300 gallons of this type tank capacity is allowed.

(9) No more than three pressure tanks can be installed at any one site without the prior approval of the executive director.

(e) Facility fencing. All potable water storage tanks and pressure maintenance facilities must be enclosed by an intruder resistant fence with lockable gates. Pedestal-type elevated storage tanks with lockable doors and without external ladders are exempt from this requirement. The gates and doors must be kept locked whenever the facility is unattended.

§290.44. Water Distribution.

(a) Design and standards. All potable water distribution systems including pump stations, mains, and both ground and elevated storage tanks, shall be designed, installed, and constructed in accordance with current American Water Works Association (AWWA) standards with reference to materials to be used and construction procedures to be followed. In the absence of AWWA standards, commission review may be based upon the standards of the American Society for Testing and Materials (ASTM), commercial, and other recognized standards utilized by design engineers.

(1) Effective January 1, 1993, all newly installed pipes and related products must conform to American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 61 and must be certified by an organization accredited by ANSI.

(2) All plastic pipe for use in public water systems must bear the National Sanitation Foundation Seal of Approval and have an ASTM design pressure rating of at least 150 psi or a standard dimension ratio of 26.

(3) No pipe which has been used for any purpose other than the conveyance of drinking water shall be accepted or relocated for use in any public drinking water supply.

(4) Water transmission and distribution lines must be installed in accord-

ance with the manufacturer's instructions. However, the top of the water line must be located below the frost line and in no case shall the top of the water line be less than 12 inches below ground surface.

(5) The hydrostatic leakage rate shall not exceed the amount allowed or recommended by AWWA formulas.

(b) Lead ban. The following provisions apply to the use of lead in plumbing.

(1) The use of pipes and pipe fittings that contain more than 8.0% lead or solders and flux that contains more than 0.2% lead is prohibited in the following circumstances:

(A) for installation or repair of any public water supply; and

(B) for installation or repair of any plumbing in a residential or nonresi-

dential facility providing water for human consumption and connected to a public drinking water supply system.

(2) This requirement will be waived for lead joints that are necessary for repairs to cast iron pipe.

(c) Minimum water line sizes. The following are minimum requirements for domestic flows only and do not consider fire flows. These requirements should be exceeded when the design engineer deems it necessary. It should be noted that the required sizes are based strictly on the number of customers to be served and not on the distances between connections or differences in elevation or the type of pipe. No new water line under two inches in diameter will be allowed to be installed in a public water system distribution system after April 1, 1992.

Maximum Number of Connections	Minimum Line Size (in inches)
10	2
25	2.5
50	3
100	4
150	5
250	6
>250	8 and larger

(d) Minimum pressure requirement. The system must be designed to maintain a minimum pressure of 35 psi at all points within the distribution network at flow rates of at least 1.5 gallons per minute per connection. When the system is intended to provide fire fighting capability, it must also be designed to maintain a minimum pressure of 20 psi under combined fire and drinking water flow conditions.

(1) Where the topography of the area to be served is such that air locks in the lines may occur, air release devices shall be

installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants.

(2) When service is to be provided to a multi-story building or to more than one pressure plane or when distribution system conditions and demands are such that low pressures develop, the method of providing increased pressure shall be by means of booster pumps taking suction from storage tanks. If an exception to this requirement is desired, the designing engineer must furnish for the commission's review all planning material for booster pumps taking suction from other than a

storage tank. The planning material must contain a full description of the supply to the point of suction, maximum demands on this part of the system, location of pressure recorders, safety controls, and other pertinent information. Where booster pumps are installed to take suction directly from the distribution system, a minimum residual pressure of 20 pounds per square inch (psi) must be maintained on the suction line at all times. Such installations must be equipped with automatic pressure cut-off devices so that the pumping units become inoperative at a suction pressure of less than 20 psi. In addition, a continuous pressure recording

device may be required at a predetermined suspected critical pressure point on the suction line in order to record the hydraulic conditions in the line at all times. If such a record indicates critical minimum pressures (less than 20 psi), adequate storage facilities must be installed with the booster pumps taking suction from the storage facility. Fire pumps used to maintain pressure on automatic sprinkler systems only for fire protection purposes are not considered as in-line booster pumps.

(3) Each community public water system shall provide accurate metering devices at each service connection for the accumulation of water usage data. Systems

where no direct charge is made for the water shall be exempted from this requirement.

(4) The system shall be provided with sufficient valves and blowoffs so that necessary repairs can be made without undue interruption of service over any considerable area and for flushing the system when required. The engineering report shall establish criteria for this design.

(5) The system shall be designed to afford effective circulation of water with a minimum of dead ends. All dead-end mains shall be provided with acceptable flush valves and discharge piping. All dead-end lines less than two inches in diameter

will not require flush valves if they end at a customer service. Where dead ends are necessary as a stage in the growth of the system, they shall be located and arranged with a view to ultimately connecting them to provide circulation.

(e) Location of water lines.

(1) When water lines and sanitary sewer lines are installed, they shall be installed no closer to each other than nine feet in all directions and parallel lines must be installed in separate trenches. Where the nine-foot separation distance cannot be achieved, the guidelines in this subsection shall apply. The guidelines are also listed in tabular form in the following table.

1 E I
Separation of Water & Sewer Lines

CONDITION	LOCATION	MATERIAL		SEPARATION (MIN)		COMMENTS
		WATER	SEWER	VERT	HORIZ	
<u>NEW WATER & NEW SEWER SYSTEM</u>						
Sewer Force Main and Gravity Sanitary Sewer Parallel to Water Main	Water Above Sewer	Std	CI DI PVC 150 PSI	2'	4'	Separate trenches
Gravity Sanitary Sewer Crossing Water Main	Water Above Sewer or Sewer Above Water	Std	CI DI PVC 150 PSI	6'	NA	Center one joint of sewer pipe on water main.
Gravity Sewer Crossing Water Main	Water Above Sewer	Std	ABS, Clay Conc Composite	2'	NA	Cement stabilize sand backfill initial backfill zone of sewer for 9 ft. each side of crossing. Center one joint of sewer pipe on water main.
<u>NEW WATER & EXISTING SANITARY SEWER</u>						
New Water Parallel Existing Sewer	Water Above Sewer	Std	Clay, Conc, ABS CI DI PVC	2'	4'	If sewer shows no sign of leakage, then leave sewer alone. If sewer shows signs of leakage, then repair or replace.
New Water Crossing Existing Sewer	Water Above Sewer	Std	ABS, Clay Conc, Composite	2'	NA	If sewer shows no sign of leakage, then leave sewer alone. If sewer shows signs of leakage, then repair or replace.
New Water Crossing Existing Sewer	Water Above Sewer	Std	ABS, Clay Conc, Composite	2'	NA	Replace existing sewer with one joint CI, DI, PVC-150 PSI, centering over waterline.
New Water Parallel to Existing Sewer	Sewer Above Water	Std	ABS, Clay Conc, composite	2'	4'	Replace existing sewer with CI, DI, PVC-150 PSI or cement stabilized sand backfill in initial backfill zone of sewer where parallel closer than 9 ft., or encase the water in 150 PSI Pipe two nominal sizes larger.
<u>EXISTING WATER & NEW SANITARY SEWER</u>						
New Sewer parallel Existing Water	Water Above Sewer or Sewer Above Water	Std	CI DI PVC 150 PSI	2'	4'	Separate trenches
New Sewer Crossing Existing Water	Water Above Sewer or Sewer Above Water	Std	CI, DI PVC 150 PSI	6'	NA	Center one joint of Sewer pipe in waterline.
New Sewer Crossing Existing Water	Water Above Sewer	Std	ABS, Clay Conc Composite	2'	NA	Cement stabilize sand backfill initial zone of sewer for 9 ft. each side of crossing. Center one joint of sewer pipe on water main.

(A) Where a sanitary sewer line parallels a water line, the sewer line shall be constructed of cast iron, ductile iron, or PVC meeting ASTM specifications with a pressure rating for both the pipe and joints of 150 psi. The vertical separation shall be a minimum of two feet between outside diameters and the horizontal separation shall be a minimum of four feet between outside diameters. The sewer line shall be located below the water line.

(B) Where a sanitary sewer line crosses a water line and the sewer line is constructed of cast iron, ductile iron, or PVC with a minimum pressure rating of 150 psi, an absolute minimum distance of six inches between outside diameters shall be maintained. In addition, the sewer line shall be located below the water line where possible and one length of the sewer pipe must be centered on the water line.

(C) Where a sewer line crosses under a water line and the sewer line is constructed of ABS truss pipe, similar semi-rigid plastic composite pipe, clay pipe, or concrete pipe with gasketed joints, a minimum two-foot separation distance shall be maintained. The initial backfill shall be cement stabilized sand (two or more bags of cement per cubic yard of sand) for all sections of sewer line within nine feet of the water line. This initial backfill shall be from one quarter diameter below the centerline of the pipe to one pipe diameter (but not less than 12 inches) above the top of the pipe.

(D) Where a sewer line crosses over a water line all portions of the sewer line within nine feet of the water line shall be constructed of cast iron, ductile iron, or PVC pipe with a pressure rating of at least 150 psi using appropriate adapters. In lieu of this procedure, the new conveyance may be encased in a joint of 150 psi pressure class pipe at least 18 feet long and two nominal sizes larger than the new conveyance. The space around the carrier pipe shall be supported at five-foot intervals with spacers or be filled to the spring line with washed sand. The encasement pipe should be centered on the crossing and both ends sealed with cement grout or manufactured seal.

(E) The sewer line need not be disturbed where a new water line is to be installed parallel to an existing sewer line that shows no evidence of leakage and the water line is installed above the sewer line a minimum of two feet vertically and four feet horizontally. Should excavation for the

water line produce evidence that the sewer is leaking, the sewer line must be repaired or replaced as described in subparagraphs (A) or (D) of this paragraph.

(F) The sewer line need not be disturbed where a new water line is to cross over (by two feet or more) existing sewer lines showing evidence of leakage. Should excavation for the water line produce evidence that the sewer line is leaking, then the sewer line must be repaired or replaced as described in subparagraphs (C) or (D) of this paragraph.

(2) Unless sanitary sewer manholes and the connecting sewer lines can be made watertight and tested for no leakage, they must be installed so as to provide a minimum of nine feet of horizontal clearance from an existing or proposed water line. Where the nine-foot separation distance cannot be achieved, an encasement pipe as described in paragraph (1)(D) of this subsection may be used for the water line.

(3) Fire hydrants shall not be installed within nine feet vertically or horizontally of any sanitary sewer line regardless of construction.

(4) No physical connection shall be made between a drinking water supply and a sewer line. Any appurtenance shall be designed and constructed so as to prevent any possibility of sewage entering the drinking water system.

(5) No sewer line carrying domestic or industrial wastes shall cross suction mains to pumping equipment. Water lines shall not be installed closer than 10 feet to septic tank drainfields. No raw water lines shall be installed within five feet of any tile or concrete sanitary sewer.

(f) Sanitary precautions and disinfection. Sanitary precautions, flushing, disinfection procedures, and microbiological sampling as prescribed in AWWA standards for disinfecting water mains shall be followed in laying water lines.

(1) Pipe shall not be laid in water or placed where it can be flooded with water or sewage during its storage or installation.

(2) Special precautions must be taken when water lines are laid under any flowing or intermittent stream or semipermanent body of water such as marsh, bay, or estuary. In these cases, the water main shall be installed in a separate watertight pipe encasement and valves must be provided on each side of the crossing with facilities to allow the underwater portion of the system to be isolated and tested to determine that there are no leaks in the underwater line. Alternately, and with the executive director's permission, the watertight pipe encasement may be omitted.

(3) New mains shall be thoroughly disinfected in accordance with AWWA Standard C651 and then flushed and sampled before being placed in service. Samples shall be collected for microbiological analysis to check the effectiveness of the disinfection procedure which shall be repeated if contamination persists. A minimum of one sample for each 1,000 feet of completed water line will be required or at the next available sampling point beyond 1,000 feet as designated by the design engineer.

(g) Interconnections.

(1) Each proposal for a direct connection between public drinking water systems under separate administrative authority will be considered on an individual basis.

(A) Documents covering the responsibility for sanitary control shall accompany the submitted planning material.

(B) Each water supply shall be of a safe, potable quality.

(2) Where an interconnection between systems is proposed to provide a second source of supply for one or both systems, the system being utilized as a second source of supply must be capable of supplying a minimum of 0.35 gallons per minute per connection for the total number of connections in the combined distribution systems.

(h) Backflow, siphonage.

(1) No water connection from any public drinking water supply system shall be made to any establishment where an actual or potential contamination or system hazard exists without an air gap separation between the drinking water supply and the source of potential contamination. The containment air gap is sometimes impractical and, instead, reliance must be placed on individual "internal" air gaps or mechanical backflow prevention devices. Under these conditions, additional protection shall be required at the meter in the form of a backflow prevention device (in accordance with AWWA Standards C510 and C511, and AWWA Manual M14) on those establishments handling substances deleterious or hazardous to the public health. The water purveyor need not require backflow protection at the water service entrance if an adequate cross-connection control program is in effect that includes an annual inspection and testing by a certified backflow prevention device tester. It will be the responsibility of the water purveyor to ensure that these requirements are met.

(2) No water connection from any public drinking water supply system shall be made to any condensing, cooling, or industrial process or any other system of nonpotable usage over which the public water supply system officials do not have sanitary control, unless the said connection is made in accordance with the requirements of paragraph (1) of this subsection. Public water systems may allow the use of heat exchangers which return water to the potable supply only after obtaining written permission from the executive director. Permission for installation of heat exchange units will be granted only after a demonstration to the executive director that the installation of heat exchange units will not adversely affect public health and will not impair the ability of the water supply system to provide adequate water service to all customers. The written permission granted may impose specific operational and monitoring requirements upon the water supply as deemed necessary by the executive director.

(3) Overhead bulk water dispensing stations must be provided with an air gap between the filling outlet hose and the receiving tank to protect against back siphonage and cross-contamination.

(4) All backflow prevention devices shall be tested upon installation by a backflow prevention device tester as designated by the water purveyor. It is recommended that the designated tester be certified by the manufacturer or as specified in the water purveyor's regulations. It is strongly recommended that all backflow prevention devices be tested annually with their "test and maintenance" report forms retained for a minimum of three years.

(5) The use of a backflow prevention device at the service connection shall be considered as additional backflow protection and shall not negate the use of backflow protection on internal hazards as outlined and enforced by local plumbing codes.

(i) Water hauling. When drinking water is distributed by tank truck or trailer, it must be accomplished in the following manner.

(1) Water shall be obtained from an approved source.

(2) The equipment used to haul the water must be approved by the executive director and must be constructed as follows.

(A) The tank truck or trailer shall be used for transporting drinking water only and shall be labeled "Drinking Water." Tanks which have been used previously for purposes other than transporting potable liquids shall not be used for hauling drinking water.

(B) The tank shall be watertight and of an approved material which is impervious and easily cleaned and disinfected. Any paint or coating and any plastic or fiberglass materials used as contact surfaces must be approved by the United States Environmental Protection Agency, the United States Food and Drug Administration, the United States Public Health Service, or the National Sanitation Foundation. Effective January 1, 1993, any newly installed surfaces shall conform to ANSI/NSF Standard 61 and must be certified by an organization accredited by ANSI.

(C) The tank shall have a manhole and a manhole cover which overlaps the raised manhole opening by a minimum of two inches and terminates in a downward direction. The cover shall fit firmly on the manhole opening and shall be kept locked.

(D) The tank shall have a vent which is faced downward and located to minimize the possibility of drawing contaminants into the stored water. The vent must be screened with 16-mesh or finer corrosion resistant material.

(E) Connections for filling and emptying the tank shall be properly protected to prevent the possible entrance of contamination. These openings must be provided with caps and keeper chains.

(F) A drain shall be provided which will completely empty the tank for cleaning or repairs.

(G) When a pump is used to transfer the water from the tank, the pump shall be permanently mounted with a permanent connection to the tank. The discharge side of the pump shall be properly protected between uses by a protective cap and keeper chain.

(H) Hoses used for the transfer of drinking water to and from the tank shall be used only for that purpose and labeled for drinking water only. The hoses shall conform to ANSI/NSF Standard 61 and must be certified by an entity recognized by the commission. Hoses and related appurtenances must be cleaned and disinfected on a regular basis during prolonged use or before start-up during intermittent use. Hoses must be properly stored between uses and must be provided with caps and keeper chains or have the ends connected together.

(I) The tank shall be disinfected monthly and at any time that contamination is suspected.

(J) At least one sample per month from each tank shall be collected and submitted for microbiological analysis to one of the Commission's approved laboratories for each month of operation.

(K) A minimum free chlorine residual of 0.5 mg/l or, if chloramines are used as the primary disinfectant, a chloramine residual of 1.0 mg/l (measured as total chlorine) shall be maintained in the water being hauled. Chlorine or chlorine containing compounds may be added on a "batch" basis to maintain the required residual.

(L) Operational records detailing the amount of water hauled, purchases, and source of water shall be maintained.

§290.45. Minimum Water System Capacity Requirements.

(a) General provisions. The following requirements are to be used in evaluating both the total capacities for public water systems and the capacities at individual pump stations and pressure planes. The capacities listed below are minimum requirements only. Additional supply, storage, service pumping, and pressure maintenance facilities will be required by the commission if a normal operating pressure of 35 psi cannot be maintained throughout the system. Additional capacities will also be required if the system is unable to maintain a minimum pressure of 20 psi during fire fighting, line flushing, and other unusual conditions. In all sections governing quantity requirements, total storage capacity does not include pressure tank capacity.

(b) Community water systems.

(1) Ground water supply requirements are as follows.

(A) If fewer than 50 connections without ground storage, the system must have the following:

(i) a well capacity of 1.5 gallons per minute per connection; and

(ii) a pressure tank capacity of 50 gallons per connection.

(B) If fewer than 50 connections with ground storage, the system must have the following:

(i) a well capacity of 0.6 gallon per minute per connection;

(ii) a total storage capacity of 200 gallons per connection;

(iii) a service pump capacity of 2.0 gallons per minute per connection; and

(iv) a pressure tank capacity of 20 gallons per connection.

(C) For 50 to 250 connections, the system must meet the following requirements.

(i) A well capacity of 0.6 gallon per minute per connection must be provided.

(ii) A total storage capacity of 200 gallons per connection must be provided.

(iii) Each pump station or pressure plane shall have two or more pumps having a total capacity of 2.0 gallons per minute per connection. For systems which provide an elevated storage capacity of 200 gallons per connection, two service pumps with a minimum combined capacity of 0.6 gallons per minute per connection are required at each pump station or pressure plane. If only wells and elevated storage are provided, service pumps are not required.

(iv) An elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection must be provided.

(D) For more than 250 connections, the system must meet the following requirements.

(i) Two or more wells having a total capacity of 0.6 gallons per minute per connection must be provided. Where an interconnection is provided with another acceptable water system capable of supplying at least 0.35 gallons per minute for each connection in the combined system under emergency conditions, an additional well will not be required as long as the 0.6 gallons per minute per connection requirement is met for each system on an individual basis. Each water system must still meet the storage and pressure maintenance requirements on an individual basis unless the interconnection is permanently open; in this case, the systems' capacities will be rated as though a single system existed.

(ii) A total storage capacity of 200 gallons per connection must be provided.

(iii) Each pump station or pressure plane shall have two or more pumps that have a total capacity of 2.0 gallons per minute per connection or that have a total capacity of at least 1,000 gallons per minute and the ability to meet peak hourly demands with the largest pump out of service, whichever is less. For systems which provide an elevated storage capacity of 200 gallons per connection, two service

pumps with a minimum combined capacity of 0.6 gallons per minute per connection are required at each pump station or pressure plane. If only wells and elevated storage are provided, service pumps are not required.

(iv) An elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection must be provided. If pressure tanks are used, a maximum capacity of 30,000 gallons is required. An elevated storage capacity of 100 gallons per connection is required for systems with more than 2,500 connections. Systems with more than 50,000 connections which utilize multiple production plants may, with the executive director's approval, substitute additional ground storage capacity, service pumping capacity, and auxiliary power for elevated storage in excess of five million gallons. Pressure tank installations are not recommended for systems serving between 1,000 and 2,500 connections and serious consideration should be given to the provision of elevated storage.

(v) Auxiliary power is required for systems which serve more than 250 connections and do not meet the elevated storage requirement. Sufficient auxiliary power must be provided to deliver a minimum of 0.35 gallons per minute per connection to the distribution system in the event of the loss of normal power supply. Alternately, an emergency interconnection can be provided with another public water system that has auxiliary power and is able to supply at connection in the combined system.

(E) Mobile home parks with a density of eight or more units per acre and apartment complexes which supply fewer than 100 connections without ground storage must have the following:

(i) a well capacity of 1.0 gallon per minute per connection; and

(ii) a pressure tank capacity of 50 gallons per connection with a maximum of 2,500 gallons required.

(F) Mobile home parks and apartment complexes which supply 100 or more connections, or fewer than 100 connections and utilize ground storage must meet the following requirements.

(i) A well capacity of 0.6 gallons per minute per connection must be provided. Systems with 250 or more connections must have either two wells or an approved interconnection which is capable of supplying at least 0.35 gallons per minute for each connection in the combined system.

(ii) A total storage of 200 gallons per connection must be provided.

(iii) A service pump capacity of 2.0 gallons per minute per connection must be provided. Systems with 250 or more connections must have two or more service pumps with a combined capacity of at least 2.0 gallons per minute per connection.

(iv) A pressure tank capacity of 20 gallons per connection must be provided.

(2) All surface water supplies must provide the following:

(A) a raw water pump capacity of 0.6 gallon per minute per connection with the largest pump out of service;

(B) a treatment plant capacity of 0.6 gallon per minute per connection under normal rated design flow;

(C) transfer pumps (where applicable) with a capacity of 0.6 gallon per minute per connection with the largest pump out of service;

(D) a covered clearwell storage capacity at the treatment plant of 50 gallons per connection or, for systems serving more than 250 connections, 5.0% of daily plant capacity;

(E) a total storage capacity of 200 gallons per connection;

(F) a service pump capacity that provides each pump station or pressure plane with two or more pumps that have a total capacity of 2.0 gallons per minute per connection or that have a total capacity of at least 1,000 gallons per minute and the ability to meet peak hourly demands with the largest pump out of service, whichever is less. For systems which provide an elevated storage capacity of 200 gallons per connection, two service pumps with a minimum combined capacity of 0.6 gallons per minute per connection are required at each pump station or pressure plane.

(G) an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection. If pressure tanks are used, a maximum capacity of 30,000 gallons is required. An elevated storage capacity of 100 gallons per connection is required for systems with more than 2,500 connections. Systems with more than 50,000 connections which utilize multiple production plants may, with the executive director's approval, substitute additional ground storage capacity, service pumping capacity, and auxiliary power for elevated storage in excess of five

million gallons. Pressure tank installations are not recommended for systems serving between 1,000 and 2,500 connections and serious consideration should be given to the provision of elevated storage;

(H) auxiliary power is required for systems which serve more than 250 connections and do not meet the elevated storage requirement. Sufficient auxiliary power must be provided to deliver a minimum of 0.35 gallons per minute per connection to the distribution system in the event of the loss of normal power supply. Alternately, an emergency interconnection can be provided with another public water system that has auxiliary power and is able to supply at least 0.35 gallons per minute for each connection in the combined system.

(c) Noncommunity water systems serving transient accommodation units. The following water quantity requirements apply to noncommunity water systems serving accommodation units such as hotel rooms, motel rooms, travel trailer spaces, campsites, and similar accommodations.

(1) Ground water supply requirements are as follows.

(A) If fewer than 100 accommodation units without ground storage, the system must have the following:

(i) a well capacity of 1.0 gallon per minute per unit; and

(ii) a pressure tank capacity of 10 gallons per unit with a minimum of 220 gallons.

(B) For systems serving fewer than 100 accommodation units with ground storage or serving 100 or more accommodation units, the system must have the following:

(i) a well capacity of 0.6 gallons per minute per unit;

(ii) a ground storage capacity of 35 gallons per unit;

(iii) two or more service pumps which have a total capacity of 1.0 gallon per minute per unit; and

(iv) a pressure tank capacity of 10 gallons per unit.

(2) All surface water supplies, regardless of size, must have the following:

(A) a raw water pump capacity of 0.6 gallons per minute per unit with the largest pump out of service;

(B) a treatment plant capacity of 0.6 gallons per minute per unit;

(C) a transfer pump capacity (where applicable) of 0.6 gallons per minute per unit with the largest pump out of service;

(D) a ground storage capacity of 35 gallons per unit with a minimum of 1,000 gallons as clearwell capacity;

(E) two or more service pumps with a total capacity of 1.0 gallon per minute per unit; and

(F) a pressure tank capacity of 10 gallons per unit with a minimum requirement of 220 gallons.

(d) Noncommunity water systems serving other than transient accommodation units.

(1) The following table is applicable to paragraphs (2) and (3) of this subsection and shall be used to determine the maximum daily demand for the various types of facilities listed. It should be noted that this table is used to determine minimum capacities only and that the overriding criteria will be the ability of the system to maintain a minimum pressure of 35 psi under normal operating conditions. Minimum distribution pressure shall not be less than 20 psi at any time.

Table A

Type of Establishment	Gallons/Person
Restaurants-----	18
Schools without cafeterias, gymnasiums or showers----	18
Schools with cafeterias, but no gymnasiums or showers	24
Schools with cafeterias, gymnasiums and showers-----	30
Youth camps without flush toilets, showers or dining halls-----	6
Youth camps with flush toilets but no showers or dining halls-----	24
Youth camps with flush toilets, showers and dining halls-----	42
Office Buildings-----	18
Hospitals (based on number of beds)-----	720
Institutions other than hospitals-----	240
Factories (exclusive of industrial processes)-----	24
Parks-----	6
Swimming pools-----	12
Country Clubs -----	120
Airports (per passenger)-----	6
Self-service laundries-----	60
Service stations/Stores-----	12

It should be noted that this table is used to determine minimum capacities only and that the overriding criteria will be the ability of the system to maintain a minimum pressure of 35 psi under normal operating conditions.

(2) Ground water supply requirements are as follows.

(A) If fewer than 300 persons per day are served, the system must have the following:

(i) a well capacity which can supply the maximum daily demand of the system during the hours of operation; and

(ii) a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the commission.

(B) If 300 or more persons per day are served, the system must have the following:

(i) a well capacity which can supply the maximum daily demand;

(ii) a ground storage capacity which is equal to 50% of the maximum daily demand;

(iii) a service pump capacity of at least three times the maximum daily demand; and

(iv) a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the commission.

(3) Each surface water supply, regardless of size, shall meet the following requirements:

(A) a raw water pump capacity which can meet the maximum daily demand of the system with the largest pump out of service;

(B) a treatment plant capacity which can meet the system's maximum daily demand;

(C) a transfer pump capacity (where applicable) sufficient to meet the maximum daily demand with the largest pump out of service;

(D) a clearwell capacity which is equal to 50% of the maximum daily demand;

(E) two or more service pumps with a total capacity of three times the maximum daily demand; and

(F) a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the commission.

(e) Water wholesalers. The following additional requirements apply to systems which supply wholesale treated water to other public water supplies.

(1) All wholesalers must provide enough production, treatment, and service pumping capacity to meet or exceed the combined maximum daily commitments specified in their various contractual obligations.

(2) Auxiliary power is required so that water can be provided to each wholesale customer. At least 20% of the wholesaler's total service pump capacity must be provided with an auxiliary power supply for use during loss of the normal power supply. This requirement shall apply individually to each pumping facility which is required for the provision of service to all customers.

(3) For systems supplying both retail and wholesale connections, the commission's requirements for the system's wholesale connections are in addition to the commission's requirements for the system's retail connections.

(f) Purchased water systems. The following requirements apply only to systems which purchase treated water to meet all or part of their production, storage, service pump, or pressure maintenance capacity requirements.

(1) The contract shall authorize the purchase of enough water to meet the monthly or annual needs of the purchaser.

(2) The contract shall also establish the maximum rate at which water may be drafted on a daily and hourly basis. In the absence of specific maximum daily or maximum hourly rates in the contract, a uniform purchase rate for the contract period will be used.

(3) The maximum authorized daily purchase rate specified in the contract plus the actual production capacity of the system shall be at least 0.6 gallons per minute per connection.

(4) For systems which purchase water under direct pressure, the maximum hourly purchase authorized by the contract plus the actual service pump capacity of the system must be at least 2.0 gallons per minute per connection or provide at least 1,000 gallons per minute and be able to meet peak hourly demands, whichever is less.

(5) All other minimum capacity requirements specified in this section shall apply.

§290.46. Minimum Acceptable Operating Practices for Public Drinking Water Systems.

(a) General. When a public drinking water supply system is to be established, plans shall be submitted to the executive director for review and approval prior to the construction of the system. All public water systems are to be constructed in conformance with these sections and maintained and operated in accordance with the following minimum acceptable operating practices. Owners and operators shall allow entry to members of the commission and employees and agents of the commission onto any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to public water systems in the state. Members, employees, or agents acting under this authority shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials.

(b) Microbiological. Submission of samples for microbiological analysis shall be as required by §§290.1-290.19 of this title (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems). Special samples may be required by the commission for monitoring purposes in addition to the routine samples required by the drinking water standards. These samples shall be submitted to the Texas Department of Health or one of its approved laboratories. (A list of the approved laboratories can be obtained by contacting the commission.)

(c) Chemical. Samples for chemical analysis shall be submitted as directed by personnel from the commission's Water Utilities Division or its district offices.

(d) Monthly operation reports. A monthly report of water works operation must be compiled. The report shall show the amounts of various chemicals, daily distribution system pumpages, dates of dead-end main flushes, cleanings of storage tanks, results of microbiological and chemical tests performed, and other pertinent data. Systems using surface water sources must also report raw and treated water analyses and daily turbidity analyses. A copy must be kept on file for review and made available during inspections.

(1) A copy of the monthly report must be submitted to the Texas Water Commission, Water Utilities Division, P.O. Box 13087, Austin, Texas 78711-3087 by the 15th day of the following month. The copy submitted to the commission must contain all the information required by the drinking water standards and the results of any special monitoring tests which have been required.

(2) Systems serving fewer than 100 connections which utilize ground water sources or purchase treated water only are not required to compile monthly reports.

(e) Operation by certified personnel. All systems which charge, either directly or indirectly, for drinking water and all systems utilizing surface water must be under the direct supervision of a certified water works operator. The operator shall ensure that the water system complies with the requirements of this section.

(1) No district, municipality, firm, corporation, or individual shall furnish to the public any drinking water for which any charge is made, unless the production, processing, treatment, and distribution is at all times under the direct daily supervision of a competent water works operator holding a valid certificate of competency issued under the direction of the commission. A Grade "D" certificate is valid for systems with 250 or fewer connections. Systems serving in excess of 250 connections must employ an operator with a Grade "C" or higher certificate. Systems serving in excess of 1,000 connections must employ at least two Grade "C" certified operators.

(2) Each surface water treatment plant must have at least a Grade "C" surface water operator on duty when the plant is in operation or be provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods in which the plant is unattended.

(f) Disinfectant residual and monitoring. Facilities shall be provided to maintain an adequate disinfectant residual throughout the distribution system and equipment shall be available for monitoring the concentration of the disinfectant.

(1) Mechanical disinfection facilities capable of maintaining an acceptable disinfectant residual shall be provided for all public water supplies. At all times, the disinfection equipment shall be operated to maintain the following minimum disinfectant residuals in the far reaches of the distribution system:

(A) a free chlorine residual of 0.2 mg/l; or

(B) a chloramine residual of 0.5 mg/l (measured as total chlorine) for those systems that feed ammonia.

(2) The disinfectant residual in the distribution system must be tested periodically using a test kit which employs a diethyl-p-phenylenediamine (DPD) indicator. The record of these test results shall be maintained for at least three years.

(A) Public water systems must conduct daily disinfectant residual tests at representative locations in the distribution system unless they utilize ground water or purchased water sources only or serve fewer than 250 connections or 750 persons daily.

(B) Systems which utilize ground water or purchased water sources only and those which serve fewer than 250 connections or 750 persons daily must test the disinfectant residual at representative locations in the distribution system at least once every seven days.

(C) Systems which utilize surface water or ground water under the influence of surface water must monitor the disinfectant residual of the water entering the distribution system in accordance with the requirements of the drinking water standards.

(g) Disinfection of new or repaired facilities. Disinfection by or under the direction of water system personnel must be performed when repairs are made to existing facilities and before new facilities are placed into service. Disinfection must be performed in accordance with AWWA requirements and water samples must be submitted to a laboratory approved by the Texas Department of Health. The sample results must indicate that the facility is free of microbiological contamination before it is placed into service.

(h) Calcium hypochlorite. A supply of calcium hypochlorite disinfectant shall be kept on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service.

(i) Plumbing ordinance. Public water systems must adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to insure that neither cross-connections nor other undesirable plumbing practices are permitted. See §290.48 of this title (relating to Appendix B-Sample Service Agreement). Should sanitary control of the distribution system not reside with the purveyor, the entity retaining sanitary control shall be responsible for establishing and enforcing adequate regulations in this regard. The use of pipes and pipe fittings that contain more than 8.0% lead or solders and flux that contain more than 0.2% lead is prohibited for installation or repair of any public water supply and for installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system. This requirement may be waived for lead joints that are necessary for repairs to cast iron pipe.

(j) Cross-connection control. Commission personnel, plumbing inspectors, and others shall inspect individual water facilities before providing service and periodically thereafter to prevent possible cross-connections between the potable (safe) water system and any nonpotable (unsafe) water. Continuous efforts shall be made by Water Commission personnel, plumbing inspectors, and others to locate possible cross-connections between privately owned water systems and the public water system. As these undesirable cross-connections are located, they shall be eliminated to prevent possible contamination of the water supplied by the public water system.

(k) Interconnection. No physical connection between the distribution system of a public drinking water supply and that of any other water supply shall be permitted unless the other water supply is of a safe, sanitary quality and the interconnection is approved by the executive director.

(l) Flushing of mains. All dead-end mains must be flushed at monthly intervals or more frequently if water quality complaints are received from water customers.

(m) Housekeeping and maintenance. A program shall be initiated to facilitate cleanliness and to improve the general appearance of all plant facilities.

(n) Distribution system map. The map of the distribution system shall be continuously updated so that valves and mains may be easily located during emergencies.

(o) Well logs. Copies of well material setting data, geological log, sealing information (pressure cementing and surface protection), disinfection information, microbiological sample results, and a chemical analysis report of a representative sample of water from the well shall be kept on file.

(p) Maintenance requirements for pressure filters and for ground storage, elevated storage, and pressure tanks. Each pressure filter and each of the system's ground, elevated and pressure tanks shall be inspected annually by water system personnel or a contracted inspection service. The results of these inspections shall be recorded and maintained for at least five years. The results must be available for review by commission staff during inspections.

(1) Ground and elevated storage tank inspections must determine that the vents are in place and properly screened, the roof hatches closed and locked, flap valves and gasketing provide adequate protection against insects, rodents, and other vermin, the interior and exterior coating systems are continuing to provide adequate protection to all metal surfaces, and that the tank remains in a watertight condition.

(2) Pressure tank inspection must determine that the pressure release device and pressure gauge are working properly, the air-water ratio is being maintained at the proper level, the exterior coating systems are continuing to provide adequate protection to all metal surfaces, and that the tank remains in a watertight condition. Pressure tanks provided with an inspection port must have the interior surface inspected every five years.

(3) When pressure filters are used, a visual inspection of the filter media and internal filter surfaces shall be conducted annually to ensure that the filter media is in good condition and the coating materials continue to provide adequate protection to internal surfaces.

(q) Filter backwashing at surface water treatment plants. Filters must be backwashed when a loss of head differential of six to 10 feet is experienced between the influent and effluent loss of head gauges or as often as necessary to maintain acceptable filtered water turbidity levels.

(r) Data on water system ownership and management. The commission shall be provided with information regarding water system ownership and management.

(1) When a water system changes ownership, a written notice of the transaction must be provided to the commission. When applicable, notification shall be in accordance with Chapter 291 of this title (relating to Water Rates and Services). Those systems not subject to Chapter 291 of this title shall notify the commission of changes in ownership by providing the name of the current and prospective owner or responsible official, the proposed date of the transaction, and the address and phone number of the new owner or responsible official. The information listed previously and the system's public drinking water supply identification number, and any other information necessary to properly identify the transaction shall be provided to the commission 120 days before the date of the transaction.

(2) On an annual basis, each certified operator which supervises more than one water system shall provide the executive director written notices containing its certificate number, address, and telephone number, and the name and identification number of each public water system which they supervise. Each operating company shall provide this information for itself and for each of its operators.

(s) Boil water notice. In the event of numerous or prolonged periods of low distribution pressures, water outages, repeated unacceptable microbiological samples, or failure to maintain adequate chlorine residuals, a boil water notice or other protective measures may be required

at the discretion of the executive director. Once a water system has been notified by the executive director to issue a boil water notice, the system must notify its customers within 24 hours using specific language and procedures approved by the executive director. Boil water notices shall remain in effect until lifted by the executive director. Once the notice is lifted, the customers must be notified in a manner similar to the original notice. A copy of these notices shall be provided to the executive director.

(t) Water leakage. All water storage facilities, distribution system lines, and related appurtenances shall be maintained in a watertight condition.

(u) Minimum pressures. All public water systems shall be operated to provide a minimum pressure of 35 psi throughout the distribution system under normal operating conditions. The system shall also be operated to maintain a minimum pressure of 20 psi during emergencies such as fire fighting.

(v) Testing equipment. Testing equipment or some other means of monitoring the effectiveness of any chemical treatment processes used by the system must be provided.

(w) System ownership. All community water systems shall post a legible sign at each of its production, treatment, and storage facilities. The sign shall be located in plain view of the public and shall provide the name of the water supply and an emergency telephone number where a responsible official contacted.

§290.47. Appendix A. Recognition as a Superior Public Water System.

(a) Requirements. Public water supply systems which achieve and maintain recognition as a "Superior Public Water System" must exceed the minimum acceptable standards of the commission in these sections. To attain this recognition, the following additional requirements must be met.

(1) Physical facilities shall comply with the requirements in these sections.

(2) There shall be a minimum of two certified operators with additional operators required for larger systems.

(3) The system's microbiological record for the previous 24 months period shall indicate no violations (frequency, number, or MCL) of the drinking water standards.

(4) The chemical quality of the water shall comply with all primary and secondary constituent levels listed in the drinking water standards.

(5) The system's operation shall comply with applicable state statutes and

minimum acceptable operating, in §290.46 of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Supplies).

(6) The system's capacities shall meet or exceed minimum water system capacity requirements set forth in §290.45 of this title (relating to Minimum Water System Capacity Requirements).

(7) The system shall have at least two wells, two raw water pumps, or a combination of these with enough capacity to provide average daily consumption with the largest well or pump out of service. This requirement shall also apply to treatment plant pumps necessary for operation in accordance with §290.42 of this title (relating to Water Treatment).

(8) The water system shall be well maintained and the facilities shall present a pleasing appearance to the public.

(b) Signs. Systems which have met the requirements for recognition as a superior system may erect signs denoting this honor.

(c) Inspections. To receive or maintain recognition as a superior water system, the system must be inspected and evaluated by commission personnel as to physical facilities, appearance, and operation. Systems which fail to meet or exceed the requirements in this section will be denied recognition or will have their recognition revoked. The signs shall be immediately removed on notice from the executive director.

§290.48. Appendix B. Sample Service Agreement.

SERVICE AGREEMENT

I. PURPOSE. The NAME OF WATER SYSTEM is responsible for protecting the drinking water supply from contamination or pollution which could result from improper plumbing practices. The purpose of this service agreement is to notify each customer of the plumbing restrictions which are in place to provide this protection. The utility enforces these restrictions to ensure the public health and welfare. Each customer must sign this agreement before the NAME OF WATER SYSTEM will begin service. In addition, when service to an existing connection has been suspended or terminated, the water system will not re-establish service unless it has a signed copy of this agreement.

II. PLUMBING RESTRICTIONS. The following undesirable plumbing practices are prohibited by State regulations.

A. No direct connection between the public drinking water supply and a potential source of contamination is permitted. Potential sources of contamination shall be isolated from the public water system by an air-gap or an appropriate backflow prevention device.

B. No cross-connection between the public drinking water supply and a private water system is permitted. These potential threats to the public drinking water supply shall be eliminated at the service connection by the installation of an air-gap or a reduced pressure-zone backflow prevention device.

C. No connection which allows water to be public drinking water supply is permitted.

D. No pipe or pipe fitting which contains more than 8.0% lead may be used for the installation or repair of plumbing at any connection which provides water for human use.

E. No solder or flux which contains more than 0.2 percent lead can be used for the installation or repair of plumbing at any connection which provides water for human use.

III. SERVICE AGREEMENT. The following are the terms of the service agreement between the NAME OF WATER SYSTEM (the Water System) and NAME OF CUSTOMER (the Customer).

A. The Water System will maintain a copy of this agreement as long as the Customer and/or the premises is connected to the Water System.

B. The Customer shall allow his property to be inspected for possible cross-connections and other undesirable plumbing practices. These inspections shall be conducted by the Water System or its designated agent prior to initiating service and periodically thereafter. The inspections shall be conducted during the Water System's normal business hours.

C. The Water System shall notify the Customer in writing of any cross-connection or other undesirable plumbing practice which has been identified during the initial inspection or the periodic reinspection.

D. The Customer shall immediately correct any undesirable plumbing practice on his premises.

E. The Customer shall, at his expense, properly install, test, and maintain any backflow prevention device required by the Water System. Copies of all testing and maintenance records shall be provided to the Water System.

IV. ENFORCEMENT.

If the Customer fails to comply with the terms of the Service Agreement, the Water System shall, at its option either terminate service or properly install, test, and maintain an appropriate backflow prevention device at the service connection. Any expenses associated with the enforcement of this agreement shall be billed to the Customer.

CUSTOMER'S SIGNATURE: _____ DATE: _____

§290.49. Appendix C. Sample Sanitary Control Easement Document for a Public Water Well.

THE STATE OF TEXAS COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS:

That _____ being the owners of Lot ___ and Lot ___ of the _____ survey, in _____ County, Texas, as shown on the map or plat recorded in Vol. _____, page _____ of the Deed Records of _____ County, Texas, do hereby declare such property bound by the hereinafter set out restrictions and covenants and agree that said purchasers and subsequent owners of said lots or parts thereof shall comply with same. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for two years from the date that these covenants are recorded, after which time said covenants shall be automatically extended until the use of this water well as a source of water for a public water system ceases.

Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

Invalidation of any one of these covenants by judgment or court order shall not in any way affect any of the other provisions which shall remain in full force and effect.

Such restrictions are as follows, to wit:

1. Sanitation control upon all of that area of land of said Lot ___ and Lot ___ as is included within a 150 foot radius of a proposed deep water well located _____ feet at a radial of _____ degrees

from the _____ corner of said Lot(s) _____ and specifically prohibiting the construction and/or operation of underground petrochemical storage tanks, stock pens, feed lots, dump grounds, privies, cesspools, septic tank drainfields, drilling of improperly constructed water wells of any depth and all other construction or operation that could create an insanitary condition within, upon or across the above described tract of land;

2. Tile or concrete sanitary sewers, sewer appurtenances, septic tanks and storm sewers are specifically prohibited within a 50 foot radius of the deep water well described and located above.

3. This sanitation control permits the construction of homes or buildings upon same, provided, however, that all underground petrochemical storage tanks, stock pens, feed lots, privies, tile or concrete sanitation sewers, cesspools, septic tanks, storm sewers, septic tank drainfields, drilling of improperly constructed wells of any depth and other construction and/or operations that could create an insanitary condition within, upon or across same are specifically prohibited within the designated distances.

4. Normal farming and ranching operations are permitted except that livestock shall not be allowed within 50 feet of the proposed well.

IN WITNESS WHEREOF the said owners have executed this instrument this _____ day of _____ 19__.

THE STATE OF TEXAS COUNTY OF _____

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person(s) whose name(s) are subscribed to the foregoing instrument and acknowledged to me that they (he/she) executed the same for the purpose and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the _____ day of _____ 19__.

Notary Public in and for _____ County, Texas

Recorded at _____ Courthouse, _____ Texas on _____ 19__.

Issued in Austin, Texas on April 2, 1992. TRD-9204535 Mary Ruth Holder Director, Legal Division Texas Water Commission

Effective date: April 2, 1992 Expiration date: April 23, 1992 For further information, please call: (512) 463-8069

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 VII. State Office of Administrative Hearings

Chapter 155. Rules of Procedures

• 1 TAC §§155.1-155.53

(Editor's Note: The State Office of Administrative Hearings 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 State Office of Administrative Hearings proposes new §§155.1-155.57, concerning rules of procedures. The new sections will establish rules of practice and procedure for contested cases conducted by the State Office of Administrative Hearings.

Steven L. Martin, chief administrative law judge, has determined that for the first five-year period the sections are in effect there are no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 the uniformity of practice and a clearer understanding on the part of the public of the procedural requirement, in the conduct of contested cases by the State Office of Administrative Hearings. 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: Steven L. Martin, Chief Administrative Law Judge, State Office of Administrative Hearings, Insurance Annex, 221 East 11th, Room 404A, Austin, Texas 78702, or by mail to: P.O. Box 13025, Austin, Texas 78711-3025

The new sections are proposed under Texas Civil Statutes, Article 6252-13f, which authorize the State Office of Administrative Hearings to conduct contested cases for all agencies which do not have a person whose only duty is to preside as a hearings officer over matters related to contested cases before the agency and Texas Civil Statutes, Article 6252-13, §4(a) which require agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures

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 April 6, 1992.

TRD-9204688 Steven L. Martin
Chief Administrative Law
Judge
State Office of
Administrative Hearings

Earliest possible date of adoption: May 11, 1992

For further information, please call: (512) 475-4993

Chapter 157. Temporary Administrative Law Judges

• 1 TAC §157.1

(Editor's Note: The State Office of Administrative Hearings 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 State Office of Administrative Hearings proposes new §157.1, concerning temporary administrative law judges. The new section establishes required qualifications for temporary administrative law judges and the selection process for such judges.

Steven L. Martin, chief administrative law judge, 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 administering the section.

Mr. Martin also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the provision of qualified and experienced temporary administrative law judges to conduct contested cases on behalf of the State Office of Administrative Hearings when employed judges are not available. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to: Steven L. Martin Chief Administrative Law Judge State Office of Administrative Hearings, Insurance Annex, 221 East 11th, Room 404A, Austin, Texas 78702, or by mail to: P.O. Box 13025, Austin, Texas 78711-3025.

The new section is proposed under Texas Civil Statutes, Article 6252-13f, §3(c) which authorize the chief administrative law judge of the State Office of Administrative Hearings to adopt rules relating to the qualification requirements for temporary administrative law judges.

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 April 6, 1992.

TRD-9204687 Steven L. Martin
Chief Administrative Law
Judge
State Office of
Administrative Hearings

Earliest possible date of adoption: May 11, 1992

For further information, please call: (512) 475-4993

Part X. Department of Information Resources

Chapter 201. Planning and Management Information Resources Technologies

• 1 TAC §201.11

The Department of Information Resources proposes new §201.11, concerning the procedure for adoption of information resources standards and policies by the department for implementation statewide. The new section defines preparation of proposed standards and policies, the use of advisory committees, acceptance of public comment before adoption either in writing or via public hearings, adoption by the board, amendment by the board, and the continuation of existing standards and policies.

Larry Lehmann, associate deputy director for support operations, 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. Lehmann, 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 formalization of the process for public input rulemaking by the department. 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 Debra J. Williams, "Formal comment to proposed action enclosed" Department of Information Resources, P.O. Box 13564, Austin, Texas 78711-3564.

The new section is proposed under Texas Civil Statutes, Article 4413(32j), which provide the Department of Information Resources with the authority to adopt rules as necessary to carry out its responsibility under this article.

§201.11. Procedure for Adoption of Information Resources Standards and Policies.

(a) Preparation. The department shall prepare proposals for information resources standards and policies as authorized by the Information Resources Management Act. Official information resources standards and policies may be embodied either in administrative rule or State Strategic Plan for Information Resources Management.

(b) Advisory committees. The department may appoint advisory committees to provide additional expertise to the department in the development or refinement of information resources standards and policies.

(c) Public comments. The department will allow all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing, concerning the proposed information resources standards and policies, prior to adoption by the board.

(1) Notice and invitation for comment. The department will give a minimum of 30-days' notice and invitation for comment in the *Texas Register* of its intended action to adopt information resources standards and policies. Written comments received after the end of that period will not be considered by the board in its deliberations. Written comments concerning proposed actions must be received by the party named in the *Texas Register* prior to 5 p. m. on the expiration day of the notice and comment period. The transmittal envelope must be clearly marked "FORMAL COMMENT TO PROPOSED ACTION ENCLOSED." Any written comments received after 5 p.m. on the final day of the notice and comment period will be returned to sender unopened.

(2) Hearings. An opportunity for separate public hearing on proposed information resources standards and policies will be granted if requested within 10 days after the close of the comment period by at least 25 persons, a governmental subdivision or agency, or by an association having at least 25 members. Multiple requests for public hearings will be consolidated; hearings re-

quested will be announced as open meetings in the *Texas Register*. Public hearings may be conducted by staff; board members may elect whether to attend. Public testimony will also be accepted by the department at regularly scheduled board meetings in accordance with procedures specified by the Texas Open Meetings Act. The board reserves the right to limit the length of oral presentations in public hearings.

(d) Adoption. The board will adopt information resources standards and policies by a majority vote. Publication and statewide dissemination by the department will commence upon board approval.

(e) Amendments. Amendments to the information resources standards and policies may be adopted by the board at any time, using these procedures, in response to technological advancements, changes in legislation, practical experience, or new issues relating to information resources management.

(f) Continuation of existing standards and policies. Existing information resources standards and policies adopted by board action prior to the date of final adoption of this rule are deemed to have been subjected to sufficient public comment and will continue in effect until amended without further required action by the department.

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 26, 1992.

TRD-9204509

Ann S. Fuelberg
Executive Director
Department of Information
Resources

Earliest possible date of adoption: May 11, 1992

For further information, please call. (512) 475-4714

TITLE 16. ECONOMIC REGULATION Part IV. Texas Department of Licensing and Regulation

Chapter 61. Boxing

- 16 TAC §§61.1, 61.10, 61.20-61.22, 61.40, 61.50, 61.60, 61.61, 61.70-61.73, 61.80, 61.90-61.94, 61.100-61.109

(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 Department of Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Licensing and Regulation proposes the repeals of §§61.1, 61.10, 61.20-61.22, 61.40, 61.50, 61.60, 61.61, 61.70-61.73, 61.80, 61.90-61.94, and 61.100-61.109, concerning boxing. These sections are being repealed to allow for the adoption of edited, renumbered, and reorganized sections.

James D. Brush II, director, policies and standards division, 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. Brush 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 clarification of existing rules. 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 James D. Brush II, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P. O. Box 12157, 920 Colorado, Room 801, Austin, Texas 78711, (512) 463-7352.

The repeals are proposed under Texas Civil Statutes, Article 8501-1 and Article 9100, which provide the Texas Department of Licensing and Regulation with the authority to regulate boxing.

§61.1. Authority.

§61.10. Definitions.

§61.20. Licensing Requirements—General.

§61.21. Licensing Requirements—Boxers.

§61.22. Licensing Requirements—Promoters.

§61.40. Bond Requirements.

§61.50. Reporting Requirements

§61.60. Responsibilities of the Department—Safety.

§61.61. Responsibilities of the Department—Instruction.

§61.70. Responsibilities of the Licensees—Approval of Contests.

§61.71. Responsibilities of the Licensees—Conduct of Contest.

§61.73. Responsibilities of Licensees—Safety.

§61.80. Annual Application Fees.

§61.90. Sanctions—Administrative Sanctions.

§61.91. Sanctions—Administrative Penalty/Fine.

§61.92. Sanctions—Injunctive Relief and Civil Penalty.

§61.93. Sanctions—Criminal Penalty.

§61.94. Sanctions—Revocation or Suspension because of Criminal Conviction.

§61.100. Technical Requirements—Contracts.

§61.101. Technical Requirements—Tickets.

§61.102. Technical Requirements—Ring and Equipment.

§61.103. Technical Requirements—Safety.

§61.104. Technical Requirements—Conduct of Promotion.

§61.105. Technical Requirements—Championship Contests.

§61.106. Technical Requirements—Amateur Contests.

§61.107. Technical Requirements—Conduct of Contest.

§61.108. Technical Requirements—Post-Contest Procedures.

§61.109. Technical Requirements—General.

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 April 1, 1992.

TRD-9204681 Jack Garison
Acting Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: May 11, 1992

For further information, please call: (512) 463-3127

• 16 TAC §§61.1, 61.10, 61.20-61.27, 61.40, 61.50-61.53, 61.60-61.62, 61.70-61.80, 61.90, 61.91, 61.100-61.114

The Texas Department of Licensing and Regulation proposes new §§61.1, 61.10, 61.20-61.27, 61.40, 61.50-61.53, 61.60-61.62, 61.70-61.80, 61.90, 61.91, and 61.100-61.114, concerning boxing. The new sections are being proposed to reorganize, renumber, and clarify sections published for proposal in the October 18, 1991, issue of the *Texas Register* (16 TexReg 5767) which have been withdrawn due to substantive reorganization of the proposal. These changes are being proposed after appropriate consideration of response received during public hearings.

James D. Brush II, director, policies and standards 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. Brush 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 help insure the health and welfare of the boxing industry and public and to clarify existing rules. 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 will be \$240 upon initial licensing and \$140 per year boxer.

Comments on the proposal may be submitted to James D. Brush II, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P. O. Box 12157, 920 Colorado, Room 801, Austin, Texas 78711, (512) 463-7352.

The new sections are proposed under Texas Civil Statutes, Article 8501-1 and Article 9100, which provide the Texas Department of Licensing and Regulation with the authority to regulate boxing.

§61.1. Authority. These rules are promulgated under the authority of the Texas Boxing and Wrestling Act, Texas Civil Statutes, Article 8501-1, and Texas Civil Statutes, Article 9100.

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

Bout—A boxing contest, match, or exhibition.

Chief second—The second designated by the contestant as the primary advisor or assistant to the contestant.

Commission—The Texas Commission of Licensing and Regulation.

Contest—A boxing bout, match, or exhibition.

Deadwood—The numerical difference between tickets printed and tickets used.

Event—An organized series of individual boxing contests or bouts.

He—Gender neutral pronoun shall be used to mean he or she.

Individual—A natural person as distinguished from a partnership, corporation, or association.

License—A document issued by the commissioner permitting a person to perform at a boxing event.

Manager—A person to be licensed by the commissioner who, under contract, agreement, or other arrangement with any boxer undertakes to directly or indirectly, control, or administer the boxing affairs of boxers.

Matchmaker—A person to be licensed by the commissioner who is not a promoter who brings together professional boxers or procures matches for professional boxers.

Physician—An individual licensed to practice medicine by the Texas State Board of Medical Examiners.

Second—A person to be licensed by the commissioner who is present at any boxing event to provide assistance or advice to a boxer during the contest.

Special added attraction—The appearance of any person or persons in any capacity at any boxing event whose reputation or ability is calculated to increase attendance.

Timekeeper—A person to be licensed by the commissioner who is the official timer of the length of rounds and the intervals between same.

Working pass—An entry permit issued by a promoter to individuals employed for the event.

§61.20. Licensing—Promoter.

(a) Before a person acts as a boxing promoter, he must be licensed by the commissioner. A licensed promoter may not act as, and cannot be licensed as, a second, boxer, referee, timekeeper, or judge. If he is so licensed, he must submit any other licenses for cancellation. A promoter may be licensed as a manager.

(b) Each promoter applicant shall submit:

(1) a completed application form;

(2) proof of financial ability to pay purses, arena rental, personnel, advertising, and other expenses as required by §61.40 of this title (relating to Bond Requirements for Promoters);

(3) other licenses listed in subsection (a) of this section, for cancellation, if applicable;

(4) the required fee; and

(5) to an interview by the commissioner, if applying for a promoter's license for the first time.

§61.21. Licensing-Referee.

(a) Before an individual performs as a referee, he shall be licensed by the commissioner. A licensed referee shall keep the license in his possession.

(b) Each referee applicant shall submit:

- (1) a completed application form;
- (2) two recent passport-sized photographs;
- (3) results of an annual physical and an ophthalmological examination;
- (4) a current C.P.R. card;
- (5) license fee; and
- (6) on initial application, evidence of at least three years active participation in the sport of boxing.

(c) An individual may not act as a referee for a boxing event if the referee has a direct or indirect financial interest in any boxer.

§61.22. Licensing-Matchmaker.

(a) Before an individual performs as a matchmaker, he shall be licensed by the commissioner. A licensed matchmaker shall keep the license in his possession.

(b) Each matchmaker applicant shall submit:

- (1) a completed application form;
- (2) two recent passport-sized photographs; and
- (3) license fee.

(c) No matchmaker shall hold any other type boxing-related license or manage a boxer, either directly or indirectly.

§61.23. Licensing-Judge.

(a) Before an individual performs as a judge, he shall be licensed by the commissioner. A licensed judge shall keep his license in his possession at all times.

(b) Each judge applicant shall submit:

- (1) a completed application form;
- (2) two recent passport-sized photographs;
- (3) license fee; and
- (4) proof of at least three years of active participation in the sport of boxing.

(c) An individual may not act as a judge for a boxing event if the judge has a direct or indirect financial interest in any boxer.

§61.24. Licensing-Timekeeper.

(a) Before an individual performs at a contest as a timekeeper, he shall be licensed by the commissioner. A licensed timekeeper shall keep the license in his possession.

(b) Each timekeeper applicant shall submit:

- (1) a completed application form;
- (2) two recent passport-sized photographs; and
- (3) license fee.

(c) No one licensed as a timekeeper shall have a financial interest in a boxer.

§61.25. Licensing-Manager.

(a) Before an individual performs as a manager, he shall be licensed by the commissioner. A licensed manager may act as a second without a second's license. A licensed manager shall keep the license in his possession. A manager may be licensed as a promoter.

(b) Each manager applicant shall submit:

- (1) a completed application form;
- (2) two recent passport-sized photographs; and
- (3) license fee.

§61.26. Licensing-Second.

(a) Before an individual performs as a second, he shall be licensed by the commissioner. A licensed second shall keep the license in his possession. A licensed manager may act as a second without a second's license.

(b) Each second applicant shall submit:

- (1) a completed application form;
- (2) a current C.P.R. card;
- (3) two recent passport-sized photographs; and
- (4) license fee.

§61.27. Licensing-Boxer.

(a) Before an individual performs as a boxer, he shall be licensed by the commissioner. A licensed boxer shall keep the license in his possession.

(b) Each boxer applicant shall submit:

- (1) a completed application form;

(2) two recent passport-sized photographs;

(3) license fee; and

(4) proof of a comprehensive medical examination as required by §61.109 of this title (relating to Technical Requirements - Boxer).

(c) The department will not issue a license to anyone under age 17. Minors age 17 but not yet 18 or over applying for a boxer's license must submit written consent from parent or guardian.

(d) The department will not issue a license to any boxer who has attained age 35 without a hearing. Before issuing any license to a boxer who has attained age 35, the department shall require physical testing including, but not limited to, neurological examination, ophthalmologic examination, EEG, EKG, and stress tests.

(e) Anyone applying for a boxer's license without significant professional or amateur boxing experience may be required to show proof of proper training as a boxer. A boxer without previous ring experience shall furnish the department written certification outlining his training routine for the four weeks before fight date.

§61.40. Bond Requirements for Promoters.

(a) Financial responsibility may be shown by submitting a financial statement, prepared by a certified public accountant, showing liquid working capital of \$10,000 or more, or a \$10,000 performance bond guaranteeing payment of all obligations relating to the promotional activity is required.

(b) A \$5,000 surety bond, written by a bonding company authorized to do business in the State of Texas, which shall remain in effect for four years after the effective cancellation date.

§61.50. Reporting Requirements-Promoter. A promoter shall submit the tax report and the 3.0% gross receipts tax payment for a show within 72 hours after holding the show.

§61.51. Reporting Requirements-Ringside Physician. If a boxer is disqualified during a pre-fight physical examination, the physician shall notify the department and promoter immediately.

§61.52. Reporting Requirements-Manager.

(a) If a boxer's physical exam shows him unfit for competition because of any weakness or disability, the boxer shall not participate in a contest. An immediate report of the facts shall be made to the

promoter and the department by the manager or boxer.

(b) If a boxer becomes ill or injured and cannot take part in a contest for which he is under contract, he or his manager shall contact the promoter and the department immediately.

§61.53. Reporting Requirements-Boxer.

(a) Boxer applicants shall submit all required medical reports, and any other reports required by the department, to the department's office in Austin. A boxer's manager shall also be responsible for the boxer's medical and boxing records.

(b) If a boxer becomes ill or injured and cannot take part in a contest for which he is under contract, he or his manager shall contact the promoter and the department immediately.

§61.60. Responsibilities of the Department for Timekeepers. The department shall assign two timekeepers for each show, one to keep time and one to count for the knockdowns.

§61.61. Responsibilities of the Department for Medical Consultants.

(a) The department shall have three consulting physicians at all times. The commissioner shall seek the advice of the Texas Board of Medical Examiners for a list of medical doctors licensed by the board and qualified to act as department medical consultants. From this list the commissioner shall select one physician with neurological training and one ophthalmologist. All three physicians should have a sports medicine background. The commissioner may appoint additional personnel as necessary. All medical consultants serve at the pleasure of the commissioner.

(b) The medical consultants shall be paid actual and per diem expenses incurred while performing official duties.

§61.62. General Prohibitions.

(a) No promoter, manager, matchmaker, second, or boxer shall officiate at any contest.

(b) The referee or commissioner may disqualify a boxer and give the contest to the opposing boxer for the use of profanity, including gestures, by a boxer, his manager, or his second, if used after a warning by the referee or department representative.

§61.70. Responsibilities of Promoter.

(a) A licensed promoter for an approved boxing event shall be responsible for all promotion responsibilities as required by

rule and shall bear all financial responsibility for such boxing event.

(b) Written department approval of any boxing event shall be obtained before beginning ticket sales, or advertising any show, show date, contest, or match.

(c) The department must receive written notice from the promoter of all proposed boxing event dates, ticket prices, and participants of main event, at least 21 days before the proposed event date.

(d) Requests for boxing card approval shall be received in writing from the promoter by the Department at least 10 working days before the event date. The request shall contain the full legal name and address, date of birth, social security number, ring name, weight, previous record, and number of rounds to be fought for each contestant, also the name of the manager or agent of each contestant. In addition, the department may require submission of a certified birth certificate.

(e) Notice of any change in the card shall be received by the department before the scheduled weigh-in. Only department-approved substitutes shall be permitted. Notices announcing changes or substitutions in the card must also be conspicuously posted at the box office and announced from the ring before the opening contest.

(f) All departmental approval must be in writing.

(g) Notice of any change in announced or advertised locations or times or cancellations, shall be submitted to the department before the scheduled weigh-in. Notices announcing changes or substitutions shall also be conspicuously posted at the box office and announced from the ring before the opening contest.

(h) The promoter shall provide and compensate two department-approved ringside physicians for each event. At least one ringside physician shall conduct the pre-fight physical.

(i) No promoter, matchmaker or any other person shall arrange, match or advertise any boxing contest between persons of the opposite sex.

(j) No promoter shall conduct an event where concessionaires dispense beverages in containers other than plastic or paper cups.

(k) Only a licensed promoter or licensed matchmaker shall arrange matches.

(1) Promoters shall file the following information with the department relating to his matchmakers:

(A) the matchmaker's name, address, telephone number, and license number; and

(B) notice of any change in his arrangement with any matchmaker.

(2) If a matchmaker is employed by a promoter, the matchmaker and the promoter shall be jointly responsible to the department for matches made and for the timely submission of contracts, license applications, and license fees to the department.

(l) Immediately after the event, the promoter shall compensate the ringside physicians and the department-assigned timekeepers, judges and referees, including travel expenses, and overnight lodging if required.

(m) The promoter should provide a private dressing room for officials.

(1) The promoter shall provide no less than two private dressing rooms of adequate managers, trainers and seconds. boxers and their

(2) The promoter shall provide female boxers with adequate separate dressing rooms.

(3) The only people allowed in the boxer's dressing room shall be the promoter, the promoter's matchmaker, boxer, manager, second, press, ringside physician, ring officials, and department representatives.

(4) No alcoholic beverages, drugs, or other illegal substances shall be allowed in the dressing rooms.

(n) The weigh-in shall take place at a specific time set by the promoter and approved by the department between the hours of 2 p.m. the day before the contest and 2 p.m. the day of the contest. The promoter shall provide a private area for the ringside physician to perform weigh-in examinations. The department shall present the rules at the weigh-in.

(o) It shall be the promoter's responsibility to ensure the safety of the boxers, officials, and spectators.

(1) The promoter shall provide all ringside emergency equipment required by §61.101 of this title (relating to Technical Requirements-Ring and Equipment).

(2) There shall be a pre-fight plan and route to remove an injured fighter from the ring and arena. Upon request, the promoter shall inform the department of these plans. The plan shall include the name and location of a local hospital emergency room.

(3) Security shall be sufficient to maintain

(4) The promoter shall provide insurance to cover medical, surgical, and hospital care with a minimum limit of

\$20,000 for injuries sustained while participating in a boxing contest and \$20,000 to a boxer's estate if he dies of injuries received while participating in a contest. The insurance premium may not be deducted from the boxer's purse. The promoter shall provide a certificate of insurance showing proper coverage at the same time he provides the department his contracts with those participating in the event.

§61.71. Responsibilities—Medical Consultants. Responsibilities of medical consultants are as follows:

- (1) act as medical consultants to the department;
- (2) attend and participate in department-approved boxing seminars;
- (3) recruit and train ringside physicians;
- (4) recommend safety policies;
- (5) attend hearings if needed;
- (6) develop safety bulletins for the department; and
- (7) obtain specialty consultation for the department when needed.

§61.72. Responsibilities—Ringside Physician. The responsibilities of ringside physicians are as follows:

- (1) perform comprehensive medical examinations;
- (2) participate in the solutions to boxing-related medical problems;
- (3) attend periodic training that may be offered by the department;
- (4) remain at ringside at all times during the scheduled bouts; and
- (5) immediately examine a boxer who suffers a knockout, concussion, or other head injury and report to the department on the severity.

§61.73. Responsibilities—Referee.

(a) The referee shall conduct a rules meeting before the first bout of the event. All boxers, managers, seconds, and referees must attend the rules meeting.

(b) The referee or the commissioner may reject any second who violates department rules and disqualify the second's contestant.

(c) The department shall assign referees to officiate at boxing contests. If three judges are not available, the referee may act as a judge. The referee is the chief contest official and has general supervision over the contest.

(d) If an assigned referee is unable to officiate, he shall notify the department

at least five hours before the contest unless it is a true emergency.

(e) The referee may stop any contest where there is any reason to believe that continuing it might result in serious injury to either boxer. Should the ringside physician believe that the bout should be stopped he shall mount the apron and signal the referee. The referee shall call time and confer with the ringside physician before making his decision.

§61.74. Responsibilities—Judge.

(a) The department shall assign judges to officiate at boxing contests. If three judges are not available, the referee may act as a judge. A majority vote of the judging officials shall decide the outcome of the contest.

(b) If an assigned judge is unable to officiate, he shall notify the department at least five hours before the contest unless it is a true emergency.

(c) The judges shall score the contest by the terms of §61.105 of this title (relating to Technical Requirements—Referee).

§61.75. Responsibilities—Matchmakers.

(a) No one licensed as a matchmaker shall have a financial interest in a boxer.

(b) Only a licensed promoter or licensed matchmaker shall arrange matches.

§61.76. Responsibilities—Manager.

(a) Managers shall be responsible for their boxers' conduct and shall ensure they comply with all applicable laws and rules.

(b) A boxer's manager shall be responsible for the boxer's medical and boxing records.

§61.77. Responsibilities—Second.

(a) Each boxer must have two seconds unless the department permits otherwise. Each contestant shall have one chief second. The seconds shall dress neatly.

(b) The referee, or the department may eject any second who violates Department rules and disqualify the seconds' contestant. A second shall:

(1) remain seated in the chairs provided during the rounds;

(2) not excessively coach a boxer during a round and shall remain silent when instructed to do so by a department representative or the referee;

(3) not throw water on his contestant or help him in any way other than during rest periods. Excessive use of water

in a corner on a contestant shall result in one warning by the referee or department. The corners shall be kept clean, dry, and free from objects by the seconds;

(4) not toss a towel or any other object into the ring in token surrender of his boxer. He may not get on the ring apron as a sign of surrender;

(5) not use any unapproved solution during the contest; and

(6) not swing a towel instead of a fan during rest periods between rounds.

§61.78. Responsibilities—Boxers.

(a) A boxer shall not perform under any name that does not appear in departmental records.

(b) Boxers shall box in proper ring attire including protection cup, which shall be firmly adjusted before entering the ring. The trunks' waistband shall extend above the waistline and the hem may not extend below the knee. Mouthpieces shall be worn at the beginning of each round. If a mouthpiece is knocked out, the referee shall call time, the boxer's second will clean and reinsert the mouthpiece. If the mouthpiece is spit out the same procedure will be followed and the referee can charge the boxer with a foul. Shoes shall be of soft material and shall not be fitted with spikes, cleats, or hard heels.

(c) All contestants shall be in the dressing room at least 45 minutes before the show is scheduled to begin, unless excused by the department. The contestants shall be ready to enter the ring immediately after the preceding contest is finished.

§61.79. Responsibilities of the Licensee—Female Boxer.

(a) A negative pregnancy test shall be obtained the day before or the day of the fight. Results shall be submitted to the department before the weigh-in.

(b) Evidence of fibrocystic disease, nipple discharge, or other evidence of breast disease may result in disqualification. Mammography may be requested by the examining physician.

(c) The examining physician may request a buccal smear if there is any doubt regarding the contestant's sex.

(d) A pelvic exam shall be required, and any evidence of ovarian disease will result in disqualification.

(e) If the female boxers are a main event, or billed as such, they shall be examined seven days before the fight because of higher risk for disqualification.

(f) Contestants shall wear a mouthpiece, breast protection, and 10-ounce gloves.

§61.80. Fees—Annual Application Fees.

(a) The promoter's license fee shall be \$500.

(b) Each license application shall be accompanied by the annual license fees as follows:

- (1) boxer—\$ 15;
- (2) manager—\$75;
- (3) second—\$ 10;
- (4) matchmaker—\$75;
- (5) referee—\$25;
- (6) judge—\$15;
- (7) timekeeper—\$10.

§61.90. Sanctions; Administrative Penalties. If a person violates the Act, or a rule or order adopted or issued by the commissioner relating to the Act, the commissioner may institute proceedings to impose administrative sanctions and/or recommend administrative penalties in accordance with Texas Civil Statutes, Article 9100, and 16 Texas Administrative Code, Chapter 60.

§61.91. Sanctions—Revocation, Suspension, or Denial because of a Criminal Conviction. Pursuant to Texas Civil Statutes, Article 6252-13c, the commissioner, after a hearing, may suspend or revoke an existing license, or disqualify a person from receiving a license, because that person has a felony or misdemeanor conviction that directly relates to the duties and responsibilities involved in the area in which the applicant will be licensed. The commissioner may also, after hearing, suspend, revoke, or deny a license because of a person's felony probation revocation, parole revocation, or revocation of mandatory supervision.

§61.100. Technical Requirements—Conduct of Promotion.

(a) Licensed promoters shall schedule no less than 25 rounds of boxing for each event. All professional boxing contests shall have three-minute rounds with on periods between rounds. No boxing or sparring event shall exceed 10 rounds, except a championship contest, which shall not exceed 12 rounds.

(b) Purses shall be paid to the boxer by the promoter immediately after each exhibition. Payment of percentage contracts shall be made when the amount can be determined. Payments shall be made in the presence of an authorized department representative.

(c) The announcer shall announce the decision after the fight. A draw shall be

called if each official votes differently or any two vote a draw. In all contests, the total points the referee and judges give each contestant may be announced.

§61.101. Technical Requirements—Ring and Equipment.

(a) The ring shall be a square with sides not less than 16 feet nor more than 24 feet inside the ropes. The ring floor shall extend at least 24 inches beyond the ropes on all sides. The ring floor shall be of at least 3/4-inch material, shall be adequately supported, and shall be padded with ensolite or similar closed-cell foam that is at least one-inch thick. The padding shall extend over the edge of the ring platform and have a top covering of canvas, duck, or similar material approved by the department. The covering shall be clean and be tightly stretched and laced to the ring platform and may not have tears, holes, or overlapping seams. The ring platform shall have at least three sets of steps into the ring during a contest: one set for each boxer's corner; and one set in the neutral corner on the department side. These steps shall be used for the ringside physician and the department. The ring corners shall be protected inside the ring with a urethane pad at least six inches wide. It shall be covered with material similar to the ring floor covering, and the covering must be long enough to cover all the rope joints. Ring posts shall be made of a strong material, preferably steel, and shall be at least three inches in diameter. The posts shall be secured under the ring to prevent spreading.

(b) There shall be four ring ropes at least one inch in diameter that are evenly spaced, one foot apart. The lower rope shall be 18 inches above the ring floor. The ropes shall be attached to the ring posts with turnbuckles and shall be stretched taut during all contests. The bottom rope shall be padded with at least 1/2 inch of soft material.

(c) The promoter shall ensure the presence of a department approved bell. It shall be large enough to make a sound the contestants and the referee can hear.

(d) The promoter shall furnish an appropriate receptacle for spitting for each boxer's corner. Such receptacles may include the use of a funnel attached to a hose and bucket or a bucket may be used. The second or manager shall ensure that the contestants use these receptacles when washing out their mouths. The promoter shall provide enough water buckets for the contestants to use. Each bucket shall be clean before being used. Promoters shall also provide stools and other articles required to conduct the contests. The ring shall be set up at least two hours before fight time. The promoter shall provide three

chairs in each contestant's corner. These chairs shall be labeled "seconds" and shall be used only by the contestant's official seconds.

(e) The promoter shall furnish scales to be used for weighing in boxers. The department may require that the scales be certified.

(f) Contestants may use six inches of one-inch wide, medical diachylon tape across the back of each hand before bandaging the hands. This tape shall not touch the contestant's knuckles. On each hand, contestants shall use soft surgical bandage not more than 15 yards long two inches wide, that is held in place by not more than two yards of one-inch medical diachylon tape. These bandages shall be applied in the dressing room, under the examination of a department representative, no sooner than 45 minutes before fight time. Hands shall be wrapped dry, and no liquid may be applied to any bandage or tape. If any other material or substance is used on the boxer's hands other than mentioned in this paragraph, the boxer and manager shall face disciplinary action by the department.

(g) Gloves for all main events shall be new and made to fit the hands of any contestant whose hands may be an unusual size. If gloves used in preliminary contests have been used before, they shall be whole, clean, in sanitary condition, and subject to inspection by the referee or department representative. Any gloves found unfit shall be discarded immediately and replaced with acceptable gloves. There shall be an extra set of eight-ounce and an extra set of ten-ounce gloves on hand to be used in case gloves are broken or in any way damaged during a contest. Contestants in all weight categories up to, and including welterweights shall use eight-ounce gloves. In heavier classes, they may wear eight-ounce or ten-ounce gloves. Gloves shall be kept in the possession of the boxing promoter and shall be made available for inspection by the department for a minimum of seven days after a bout.

(h) The ring apron shall be kept clear at all times of objects including, but not limited to: cameras, microphones, advertisements. The promoter shall provide a separate camera platform at a neutral corner of the ring for use by television cameramen. Television cameramen may be allowed on the ring apron only during the one minute rest period or between bouts. No seats may be sold at the ring apron.

(i) There shall be a barrier and free area between the ringside and the first row of seats. There must be at least eight feet between the edge of the ringside table farthest from the ring and the first row of seats. No alcoholic beverages are permitted within the barrier.

(j) There shall be a physician at ringside at all times.

(k) The promoter shall insure that an emergency medical technician and appropriate medical equipment are located within the ring barrier during the event. The promoter shall ensure that there is a resuscitator, oxygen, and a stretcher at ringside. The promoter shall also provide a certified ambulance with an emergency medical technician on site for all contests.

(l) The judges' chairs shall be high enough that their shoulders shall be no lower than the ring floor. The method of elevating the chairs must be practical and safe. The promoter shall provide seats for ringside physicians in neutral corner(s).

(m) The promoter shall have at least one, but may have no more than three, authorized representative(s) at ringside at all times. Only the promoter's representative(s), department officials, the press, physicians, and judges shall sit at the ringside tables.

§61.102. Technical Requirements—Contract between Promoter and Boxer.

(a) Promoters shall have contracts with boxers executed in triplicate on department forms showing the amount of guarantee or percentage promised, the number and time limit of rounds, when and where the boxers are scheduled to appear, weight, and other pertinent details governing the event. The contract must define and provide for agreement on compensation if the opponent fails to appear at the weigh-in or bout.

(b) The promoter shall furnish one executed copy of the contract to the boxer or his manager, retain one executed copy, and submit one executed copy to the department.

(c) All required information must be typed or legibly printed, and any changes or addenda shall be initialed by the boxer and promoter.

(d) Promoters shall fulfill the terms of their contracts with boxers.

(e) Boxers shall fulfill the terms of their contracts. When a contestant fails to appear according to his contract, he shall satisfactorily prove he was ill, had a valid reason for not appearing, or was otherwise prevented from carrying out the agreement. A doctor's certificate shall be required for illness. Affidavits are required to support other circumstances.

§61.103. Technical Requirement—Tickets.

(a) All tickets shall have the price, including any service surcharge or handling fee, identify the promoter by license number, and date of the event printed plainly on each half.

(b) Roll tickets with consecutive numbers shall be sold only at the box office on the day of the show.

(c) Tickets of different prices shall be printed on different colored ticket stock.

(d) If a promoter is using a computerized and bonded ticket service, the Department may waive subsection (b) of this section.

(e) When he receives tickets, including roll tickets from the printer, the promoter shall submit a sworn inventory to the department of tickets delivered to any outlet or event sponsor. This inventory shall account for any known overprints, changes,

(f) Tickets shall not be sold for more than the actual capacity of the location where the event is being held.

(g) Licensed promoters shall not sell tickets for any price other than the price printed on them, change the ticket price at any time after tickets have been placed on sale, or sell any ticket at any time during the show at a lesser price than tickets for the same seats were sold or offered before the show.

(h) All tickets shall be torn in half and one half returned to the ticket holder at the entrance gate. The other half shall be immediately deposited in a sealed container, where it shall remain until the opening of the container is witnessed by a department representative. No one shall pass through the gate without having their ticket torn or shall occupy a seat unless holding a ticket half or having been issued a working pass.

(i) A purchaser shall present his ticket half to the promoter for a refund at face value if the advertised main event or special added attraction is postponed or does not take place as advertised. No tickets shall be refunded after the show has taken place. Tickets in the hands of ticket services shall be returned to the promoter not later than when the box office at the boxing event site has closed.

(j) Accounting for tickets.

(1) Department representatives shall check the number of ticket containers at gates and their locations. They shall also check the containers for seals or padlocks. Tickets shall be accounted for after the show, and a department representative may review the accounting.

(2) Promoters shall hold tickets of every description used for any boxing event for at least 30 days after the event. The tickets shall be kept in separate packages for each show so the Department can do an audit.

(k) When computing gross receipts, the face value of tickets, except deadwood, shall be included whether the tickets were

sold for cash, given away, or bartered for services provided.

§61.104. Technical Requirements—Ringside Physician.

(a) The pre-fight medical examinations shall be administered on the day of the event at the weigh-in. The department shall provide forms for recording the results of these examinations. The required annual comprehensive medical exam may not be done at the weigh-in.

(b) Only the boxer and his manager, ringside physician, and department representatives are allowed in the examination room during the physical.

(c) If, in an attempt to make weight, the boxer shows evidence of dehydration, having taken diuretics, or other drugs, or having used any other harsh modality, the examining physician shall disqualify him.

(d) The boxer and manager shall furnish all information required by the department and conduct themselves professionally at all times.

(e) When the ringside physician enters a boxer's corner, the second in the ring shall yield immediately to the physician's examination. Boxers, managers, and seconds must cooperate with the ringside physician.

(f) The referee may end any contest where there is any reason to believe that continuing it might result in serious injury to either boxer. The ringside physician may signal the referee during the progress of a contest, or between rounds, to recommend that the referee end any boxing contest to prevent serious injury to either contestant.

(g) The ringside physician shall do a post contest examination after a contest. The physician's recommendations, including rest periods, medical disqualifications, and any other exam results, shall be reported on the department inspector's report. It is the boxer's and manager's joint responsibility to comply with all requirements, including rest periods and medical suspensions. A boxer shall automatically receive medical suspensions/rest periods for the following:

(1) cut—medical suspension time based on physician's recommendation;

(2) technical knockout—minimum of 30 day medical suspension;

(3) knockout—60 day minimum medical suspension for the first knockout. If a boxer has had two knockouts within 12 months, he will receive a 120 day medical suspension. If he has had three knockouts within 12 months, or three consecutive knockouts, he will be medically disqualified

from further competition. In addition, the physician may require neurological testing and consultation at any time;

(4) mandatory rest—all contestants shall receive a minimum mandatory rest period of three days for each round or portion of a round fought in any contest. The ringside physician may require longer rest periods. In no event shall the rest period be less than seven days; and

(5) six consecutive losses—a contestant who receives six consecutive losses shall receive an automatic indefinite suspension.

(h) If a boxer disagrees with a medical disqualification, medical suspension or rest period set at the discretion of a ringside physician or a disqualification set by the department, he may request a hearing to show proof of fitness. The hearing shall be provided at the earliest opportunity after the department receives a written request from the boxer or his manager.

(i) Medical disqualification of a boxer is for his safety and may be made at the discretion of the Department or the ringside physician.

(j) The department shall recognize and honor other states' medical suspensions. Any Texas boxer who boxes outside the State of Texas and receives a medical suspension shall report the fight results and medical suspension to the department within 72 hours after the event.

(k) The administration or use of any drugs or alcohol either before to or during a contest is prohibited except medication administered by a physician. The department may order a drug screen at any time for good cause. If a drug screen is performed, the boxer or his manager must pay for it.

§61.105. Technical Requirements—Referee.

(a) Before each bout, the referee shall call the contestants and their chief seconds together for final instructions. The referee shall hold the chief second responsible for his contestant's conduct during the contest. Referees must instruct contestants that wrestling and rough tactics will not be tolerated and to protect themselves at all times. The contestants, after receiving final instructions, shall shake hands and retire to their corners. They shall not shake hands again until the beginning of the last round.

(b) The referee may stop a fight during or between rounds because of an injury or a contestant's poor physical condition. He may also stop a fight and make a decision to disqualify both contestants if he feels they are not boxing in earnest.

(c) When a low blow incapacitates a contestant, the referee shall give him a

reasonable time to recover. The referee may confer with the ringside physician. No contestant may be awarded a contest on a low-blow foul claim. If a contestant falls ring floor or otherwise shows an unwillingness to continue because of a low-blow claim, he shall be declared the loser by a technical knockout.

(d) When a punch knocks a contestant down, the referee shall order the opponent to go to the ring's farthest neutral corner, pointing to the corner, and immediately pick up the timekeeper's count. He shall audibly announce the passing of the seconds, accompanying the count with upward motions of his arm for each second and indicating the count with visual finger counts after each second. The referee shall stop counting if the opponent does not remain in the neutral corner until the count is complete. No contestant who is knocked down shall be allowed to resume boxing until the referee has finished counting to eight. If a contestant who is down rises before the count of eight and goes down again without being struck, the referee shall resume the count where he stopped. When a round, other than the last round, ends before a contestant who was knocked down rises, the bell shall not ring, and the count shall continue. If he rises before the count of eight, the bell shall ring and end the round. The referee's count is the official one.

(e) If a contestant leaves the ring during the one minute period between rounds and is not in the ring to resume boxing when the bell rings, the referee shall count that contestant out as if he were down.

(f) If a contestant who has been knocked out of the ring or has fallen out of the ring during the contest fails to return immediately, the referee shall count him out as if he were down. Seconds shall not help contestants back into the ring.

(g) If during the first three rounds a contestant is pushed, knocked, or falls out of the ring, is injured by the fall and is unable to return, the referee will declare the bout a technical draw. If it happens during later rounds, all completed rounds shall be scored and the boxer ahead on points shall be declared the winner by technical decision.

(h) When the referee's or judges's decision has been announced, both contestants and their seconds shall leave the ring immediately.

§61.106. Technical Requirements—Judge Scoring.

(a) A contestant shall be deemed down when:

(1) any part of his body other than his feet is on the ring floor; manner; or

(2) he is hanging over the ropes in a defenseless

(3) he is rising from a down position.

(b) Fouls are defined as:

(1) hitting below the belt;

(2) holding an opponent with one hand and hitting him with the other;

(3) hitting an opponent who is down or is getting up after being down;

(4) holding an opponent or deliberately maintaining a clinch;

(5) butting with the head or shoulder or using the knee;

(6) hitting with the inside or butt of the hand, the wrist or the elbow;

(7) hitting or "flicking" with open gloves;

(8) wrestling or roughing at the ropes;

(9) purposely going down without being hit;

(10) striking deliberately at the area of the body around the kidneys;

(11) jabbing an opponent's eyes with the thumb of a glove;

(12) using abusive or profane language;

(13) hitting at the back of the head or neck (rabbit punches);

(14) failing to obey the referee; and

(15) engaging in any physical action or contact other than sportsmanlike boxing, which may injure another contestant.

(c) In scoring a contest, the elements of offense, defense, clean hitting, ring generalship, and sportsmanship shall be carefully considered. Scoring shall be by the 10-point must system. The winner of any round is marked 10; the loser is marked nine or less. When a round is even, each contestant shall receive 10 points. A clean knockdown shall be scored heavily. The referee shall call time and then advise the judges of a foul when it occurs and the number of points they should deduct. Referees and judges shall clearly write their decision and sign them individually. A draw shall be called if each official votes differently or any two vote a draw.

(d) When a boxer is knocked down three times in any round, the contest shall be automatically stopped. The boxer scoring the knockdowns shall be the winner by a technical knockout. The referee may stop a contest at any time if the boxer cannot defend himself.

(e) If a boxer is accidentally butted in a fight but can continue, the referee may stop the contest, for a reasonable time, and inform the judges and the boxer's seconds of the head butt. If a contest is stopped before the end of the third round because of an accidental butt, the contest shall be declared a technical draw. If after the third round an accidental butt injury occurs or worsens and the contest is stopped, all completed rounds shall be scored. The boxer ahead on points shall be declared the winner by technical decision.

(f) If the contestant who is knocked down does not rise before the count of 10, the referee shall declare him the loser by a knockout.

(g) When a contestant does not answer the bell signifying the start of a round, the referee shall give a 10 count and declare him the loser by a technical knockout.

§61.107. Technical Requirements—Timekeeper.

(a) All professional boxing events shall have three-minute rounds with one-minute rest periods between rounds. The timekeeper shall blow his whistle 10 seconds before the end of each one-minute rest period. The timekeeper shall sound the bell only at the beginning and end of each round.

(b) When a boxer is down, the timekeeper shall rise and start his count, continuing until he reaches the count of 10 seconds.

(c) If the referee is absent from the ring or temporarily incapacitated, the timekeeper shall immediately sound the bell to temporarily stop the contest.

(d) The timekeeper shall furnish a department-approved bell and a whistle or buzzer. It must be large enough to make a sound the contestants and the referee can hear.

§61.108. Technical Requirements—Between-round Care.

(a) If a second deliberately worsens a cut by spreading or tearing it, the boxer

may be disqualified at the discretion of the referee.

(b) Only one second shall be allowed in the ring with the boxer between rounds, and he shall leave the ring enclosure at the sound of the timekeeper's whistle. Two seconds shall be allowed on the apron. All seconds shall leave the ring platform promptly when the bell sounds for the beginning of each round, removing all obstructions including stools, buckets, and equipment.

(c) Only ice, water, cotton swabs, gauze pads, clean towels, Adrenalin 1:1000, Avitene, Thrombin, Vaseline or other surgical lubricant, medical diachylon tape, and Enswell shall be allowed in the corner. All containers shall be properly labeled with the manufacturers' label and not contaminated by any foreign substance. The use of unapproved substances shall result in disciplinary action. No loose ice may be used in the corner; all ice must be in an ice bag or other suitable container.

(d) Excessive use of any lubricant on the boxer's body, arms, or face is prohibited.

(e) Only water shall be permitted for dehydration of a boxer between round. Honey, glucose, or sugar, or any other substance may not be mixed with the water. Electrolyte solutions are prohibited.

(f) When the ringside physician enters a boxer's corner, the second in the ring shall yield immediately to the physician's examination. The department may disqualify a boxer, manager, and/or second for unprofessional conduct in failing to cooperate with the ringside physician.

(g) When the referee's or judges' decision has been announced, both contestants and their seconds shall leave the ring immediately.

§61.109. Technical Requirements—Boxer.

(a) All boxers applying for a license shall pass a comprehensive medical

examination before they can be licensed. The examination consists of a medical history, boxing history, a physical examination, and a report of a negative HIV and HBV test. The results of such test will be provided only to the fighter. Upon application for the boxer's first Texas license, he must also provide a report of a normal EEG. This examination shall be given by a physician and the physician shall report the examination results on a department-approved form. Out-of-state boxers may get the department comprehensive medical examination form and have it completed by a physician. The examining physician may require tests such as CAT scans, MRI, and EKGs. The boxer and manager are jointly responsible for ensuring this examination is completed.

(b) All boxers applying for a license shall undergo a complete medical eye exam by an ophthalmologist and submit the results on a department-approved form. Exams by optometrists do not meet this requirement.

(c) Boxers shall fulfill the terms of their contracts. When a contestant fails to appear according to with his contract, he shall satisfactorily prove he was ill, had a valid reason for not appearing, or was otherwise prevented from carrying out the agreement. A doctor's certificate shall be required for illness. Affidavits are required to support other circumstances.

§61.110. Technical Requirements—Boxer's weigh-in & Time Requirements.

(a) Contestants failing to meet the weight allowances shown on the schedule in subsection (c) of this section shall have two hours within which to meet the allowances and will be reweighed.

(b) Every contestant shall undergo a weigh-in physical examination.

(c) No contestants shall engage in a boxing contest where the weigh-in weight difference exceeds the allowance shown in the following schedule.

WEIGHT	ALLOWANCE
112 lbs. or under	3 lbs.
112-118 lbs.	4 lbs.
119-126 lbs.	5 lbs.
127-135 lbs.	6 lbs.
136-147 lbs.	8 lbs.
148-160 lbs.	10 lbs.
161-175 lbs.	12 lbs.
161-190 lbs	15 lbs.
190 lbs. or over	No limit

(d) The manager or chief second shall accompany the boxer to the weigh-in. No boxer shall be weighed-in unless he presents a Texas boxing license.

(e) If a boxer's body weight at weigh-in is 5.0% or more over his contracted weight, he shall be disqualified for the contest.

(f) Only the boxer, manager, ringside physician, or department representatives shall be allowed in the examination room during the physical.

(g) If, in an attempt to make weight, the boxer shows evidence of dehydration, having taken diuretics, or other drugs, or having used any other harsh modality, the examining physician shall disqualify him and recommend disciplinary action.

(h) The boxer, his manager, or chief second shall furnish all information required by the department, conduct themselves professionally at all times, and cooperate fully with the ringside physician and the department. Failure to do so may result in disqualification of the boxer.

(i) If a boxer's physical examination shows him unfit for competition because of any weakness or disability, the boxer may not participate in a contest. An immediate report of the facts shall be made to the promoter and the department by the manager or boxer.

§61.111. Waiver of Rules. Any waiver of these rules by the commissioner must be in writing. In addition, if a rule is to be waived by the designated representative of the commissioner, this designation must also be in writing.

§61.112. Technical Requirements—Post-Contest Procedures.

(a) The announcer shall announce the decision after the fight. In all contests, the total points the referee and judges give each contestant may be announced.

(b) A decision rendered after any boxing contest shall not be changed unless the department determines that the compilation of the referee's and judges' scorecard shows a clerical or mathematical error that caused the decision to be given to the wrong boxer.

§61.113. Technical Requirements—Championship Contests. Only championship contests sanctioned by department-recognized sanctioning organizations shall be approved by the department as championship contests. Before championship contests can be advertised, the contestants' contracts shall be on file with, and approved by the department.

§61.114. Technical Requirements—Amateur Contests.

(a) Any club seeking nonprofit amateur tax-exempt status under this law, shall complete a department information form

concerning ownership, affiliation, and other relevant information.

(b) All amateur contests where an admission fee is charged shall be conducted under the conditions contained in the Texas Boxing and Wrestling Act, §7(c).

(c) All amateur contests shall be conducted under the rules of the amateur associations, as approved by the department.

(d) Departmental approval shall be in writing.

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 31, 1992.

TRD-9204682

Larry E. Kosta
Acting Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: May 11, 1992

For further information, please call: (512) 463-3127

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**TITLE 22. EXAMINING
BOARDS**
**Part XI. Board of Nurse
Examiners**
**Chapter 213. Practice and
Procedure**

• **22 TAC §213.20**

(Editor's Note: The Board of Nurse Examiners 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 Board of Nurse Examiners proposes an amendment to §213.20, concerning licensure of persons who have been hospitalized or treated for mental illness, or are chemically dependent. The board is proposing an amendment to this section due, in part, to the passage of Texas Civil Statutes, Article 4519a, during the 72nd Legislative Session and the adoption of §213.21, regarding declaratory order of eligibility for licensure. This amendment is the result of recommendations made by a task force formed by the board to study the issue of mental/physical disability/illness.

Louise Waddill, Ph.D., R.N., executive director, has determined that there will be no fiscal implications as a result of enforcing or administering the section.

Ms. Waddill also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide detailed procedures for a candidate/prospective candidate requesting verification of eligibility to write the licensure examination who has previously been hospitalized or treated for a mental/physical disability/illness, or chemical dependency. 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 Louise Waddill, R.N., Ph.D., Executive Director, Board of Nurse Examiners, Box 140466, Austin, Texas 78714.

The amendment is proposed under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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 April 1, 1992.

TRD-9204541 Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Proposed date of adoption: May 19, 1992

For further information, please call: (512) 835-8650

**TITLE 31. NATURAL RE-
SOURCES AND CON-
SERVATION**
**Part I. General Land
Office**

**Chapter 8. Gas Marketing
Program**

• **31 TAC §§8.1-8.10**

(Editor's Note: The General Land Office 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 General Land Office proposes new §§8.1-8.10, concerning the Gas Marketing Program. The new chapter will bring the agency into compliance with Act of July 30, 1991, 72nd Legislature, First Called Session, Chapter 3, 1991 Texas Session Law Service 4, 71 (to be codified at Texas Natural Resource Code, §31.401 and §31.402), sometimes referred to as Senate Bill 2, which act requires the General Land Office to review and approve contracts entered into by a state agency for the acquisition of an annual average of 100 Mcf per day or more of natural gas used in the production of energy. Identical emergency action is being filed for simultaneous publication.

Walt Rosenbusch, deputy commissioner, energy resources, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the new chapter. The effect on state government for the first five-year period the chapter is in effect will be an overall net savings for state government. There will be costs totalling \$1.5 million for the five-year period for the General Land Office in operating the gas marketing program. However, the estimated savings of \$21,450,000 to participating state agencies in the program result in net overall savings totalling \$19,950,000 for state government for the five-year period. There will be no effect on local government.

Mr. Rosenbusch 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 reduced cost of gas utilities for state agencies in an amount over \$21 million. There will be no effect on small businesses. There is no anticipated economic cost for persons who are required to comply with the chapter, as proposed.

Comments on the proposal may be submitted to Mike Dunn, General Land Office, 1700 North Congress Avenue, Austin, Texas 78701-1495.

The new sections are proposed under the Act of July 30, 1991, 72nd Legislature, First Called Session, Chapter 3, Article 3, 1991 Texas Session Law Services 4, 71 (to be codified at Texas Natural Resources Code, §31.401 and §31.402), sometimes referred to as Senate Bill 2 which authorizes the commissioner to review and approve any contract

entered into by a state agency for the acquisition of an annual average of 100 Mcf per day or more of natural gas used in the production of energy, the Act of August 13, 1991, 72nd Legislature, First Called Session, Chapter 19, §79, 1991 Texas Session Law Services 365, 1035, which requires any agency which leases land for mineral development to use, to the greatest extent practical, the resources produced from those lands, and the Act of August 13, 1991, 72nd Legislature, First Called Session, Chapter 19, §138, 1991 Texas Session Law Services 365, 1051, which requires the General Land Office to review and approve any contract for the acquisition of natural gas and report the savings achieved by substituting contracts using natural gas from state-leased properties to the comptroller.

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 April 1, 1992.

TRD-9204631 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption: May 11, 1992

For further information, please call: (512) 463-5394

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**Part VII. Texas Water
Well Drillers Board**
Chapter 234. Pump Installers
**Subchapter A. General Provi-
sions**

The Texas Water Well Drillers Board proposes new §§234.1-234.7, 234.10-234.16, 234.20-234.24, and 234.30-234.44, concerning the licensing, continuing education, professional conduct, and the enforcement of all rules promulgated pursuant to the Water Well Pump Installers Act, Texas Civil Statutes, Article 8905 Supplementary Pamphlet to Volume 23.

Section 234.1 states the purpose of the rules. Section 234.2 contains the definitions to the new chapter. Section 234.3 contains the mailing address of the Board. Section 234.4 requires the keeping of minutes. Section 234.5 states the effect of an invalid rule. Section 234.6 contains a provision to waive the rules upon a showing of good cause. Section 234.7 states the fee requirements. Section 234.10 states when a license is required and the classes of licenses. Section 234.11 contains the information which must be included in an application for a license. Section 234.12 states the board shall review and judge each applicant's qualifications in accordance with this chapter and the Act. Section 234.13 states the various examination requirements. Section 234.14 contains various requirements in regard to the issuance of licenses. Section 234.15 contains the requirements in regard to the renewal of licenses. Section 234.16 contains the requirements in regard to apprentice

pump installers. Section 234.20 contains the pre-requisites a pump installer must meet prior to offering to perform services. Section 234.21 states the representations a pump installer may make. Section 234.22 states those practices a licensee shall not engage in. Section 234.23 states a licensee shall adhere to all permitting laws within the state and all local codes and ordinances. Section 234.24 contains the marking requirements for all vehicles used in installing pumps. Section 234.30 requires the executive director of the Texas Water Commission to keep an information file concerning each complaint filed with the commission relating to an entity regulated by the board or commission pursuant to the Act. Section 234.31 contains the confidentiality and public disclosure of enforcement information. Section 234.32 states the remedies available to the board in enforcement proceedings. Section 234.33 states that an enforcement action brought under these rules may be initiated by a petition filed by the executive director of the Texas Water Commission with the board. Section 234.34 states the notice requirements in regard to the executive director's petition. Section 234.35 contains the requirements of the answer which must be filed in response to the executive director's petition. Section 234.36 contains information in regard to show-cause enforcement procedures. Section 234.37 states the board may order a hearing with respect to violations of the provisions of the Act, rules adopted by the board and the commission pursuant to the Act, or an order of the board. Section 234.38 states the board may remand certain matters to a hearings examiner for purposes of holding a evidentiary hearing. Section 234.39 states a respondent may waive public hearing and consent to the board entering an order. Section 234.40 states the board may issue appropriate orders enforcing and directing compliance with the provisions of the Water Well Pump Installers Act, rules adopted by the board and the commission pursuant to the Act, and other orders of the board. Section 234.41 states a person affected by any ruling, order, decision, or other act of the board may appeal by filing a petition in a state district court of Travis County. Section 234.42 contains information in regard to the administrative penalty. Section 234.43 states the requirements for reinstatement after disciplinary action. Section 234.44 contains information in regard to civil proceedings.

Steve Wiley, head, drillers board assistance unit, has determined that there will be fiscal implications as a result of enforcing or administering the sections. The estimated effect on state government for the five-year period will be \$400,000 per year. The estimated increase in revenue will be \$160,000 per year. There will be no effect on local government for administering these sections.

Mr. Wiley 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 will be proper pump installation, qualified installers and cleaner ground water and, better public health. The cost of compliance with these sections for small businesses will be \$125 per year for each licensed pump installer and a one time examination fee of \$100.

Comments on the proposal may be submitted to Larry Persky, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087.

• 31 TAC §§234.1-234.7

The new sections are proposed under §7 of House Bill 1648, 72nd Legislature, (1991), which provides the Texas Water Well Drillers Board with the authority to adopt rules as necessary to enforce the Water Well Pump Installers Act.

§234.1. Purpose of Rules. The purpose of these rules is to provide procedural and substantive requirements for the licensing, continuing education, and professional conduct of water well pump installers and the enforcement of such provisions adopted by the board as well as rules adopted by the commission pursuant to the Water Well Pump Installers Act, Texas Civil Statutes, Article 8905, 1992 Supplementary Pamphlet to Volume 23.

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

Act—The Water Well Pump Installers Act, Texas Civil Statutes, Article 8905, 1992 Supplementary Pamphlet to Volume 23.

Board—The Texas Water Well Drillers Board.

Commission—The Texas Water Commission.

Executive director—The executive director of the Texas Water Commission.

Installer—A person who installs or repairs water well pumps and equipment for hire or compensation. The term excludes the following from testing and licensing:

(A) an individual who installs or repairs water well pumps and equipment on his own property for his own use;

(B) an individual who installs or repairs water well pumps and equipment on property that he has leased or rented for his own use;

(C) an individual who assists in the procedure of pump installation under the direct supervision of a licensed installer and who is not primarily responsible for the installation; or

(D) an individual who is a full-time ranch or farm employee that has general duties that include installing or repairing a water well pump or equipment on his employer's property for his employer's use.

Licensed installer—A person who holds a license issued under this chapter.

Person—An individual, firm, partnership, association, corporation, or any other private legal entity.

Pollution—The alteration of the physical, thermal, chemical, or biological quality of water in a way that makes the water harmful to humans, animals, vegetation, property, or that impairs the public enjoyment of water for a reasonable purpose.

Public Water System Well—A water well supplying water to a number of connections or individuals as defined by current rules and regulations of the Texas Department of Health.

Well—Any artificial excavation constructed for the purpose of exploring for or producing groundwater for human consumption, agriculture and livestock, industrial or municipal use. The term, however, shall not include any test or blast holes in quarries or mines, or any well or excavation for the purpose of exploring for, or producing oil, gas, or any other minerals unless the holes are used to produce groundwater. The term shall not include any injection water source well regulated by the Railroad Commission of Texas pursuant to the Natural Resources Code, §91.101.

Well pumps and equipment—Equipment and materials used to obtain water from a well, including the seals and safeguards necessary to protect the water from contamination.

§234.3. Business Office and Mailing Address. The board has no office; however, it does meet primarily in the City of Austin, in the Stephen F. Austin State Office Building at 17th and Congress Avenue. The board's mailing address is: Texas Water Well Drillers Board, in care of Texas Water Commission, P.O. Box 13087, Austin, Texas 78711.

§234.4. Minutes of the Board. The minutes of the board are kept by the executive director in a form and manner that the board prescribes from time to time under existing laws.

§234.5. Effect of Invalidation of Rule. If any provision of any rule or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the rule which can be given effect without the invalid provision or application, and to this end the provisions of the rule are severable.

§234.6. Variance of Rules.

(a) Upon written request, and notice and opportunity for hearing, the board may grant a variance to or waive a rule, in whole or in part, upon the showing of good cause and when in the discretion of the board, the particular facts or circumstances

render such waiver of the rule appropriate in a given instance. Good cause includes, but is not limited to, situations that are materially different from those normally encountered or anticipated in this area of regulation and which justify a departure from this chapter in order to avoid undue hardship or the use of regulatory resources which would not provide protection for the consumer or groundwater resources as contemplated by the Act.

(b) A person desiring a variance to the provisions of this chapter shall file a written request with the board stating:

- (1) the nature of the variance requested;
- (2) the justification for granting the variance; and
- (3) any other reasonable and necessary information that the executive director requests.

(c) The person wishing a variance has the burden of demonstrating that sufficient good cause exists for granting the variance.

§234.7. Fees.

(a) Any fee required by this chapter shall be due immediately upon submission of the applicable document or receipt of the applicable document or service unless expressly provided otherwise in this chapter.

(b) Any fee required by this chapter shall be paid by certified check, payable to the Texas Water 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 April 6, 1992.

TRD-9204664
Larry Persky
Staff Attorney
Texas Water Commission

Earliest possible date of adoption: May 11, 1992

For further information, please call: (512) 463-8069

Subchapter B. Licensing

• 31 TAC §§234.10-234.16

The new sections are proposed under §7 of House Bill 1648, 72nd Legislature, (1991) which provides the Texas Water Well Drillers Board with the authority to adopt rules as necessary to enforce the Water Well Pump Installers Act.

§234.10. License Required.

(a) A person may not act as, or offer to perform the service of, an installer unless the person holds a license issued by

the board or is a registered apprentice under the direct supervision of a licensee as provided by this chapter. A person who is a licensed installer or registered apprentice under this chapter shall carry the license or registration, as applicable, on his or her person at all times while performing services as a pump installer.

(b) Licenses shall correspond to the type or types of pumps authorized to be installed by the qualified licensee and shall consist of the following five different classes:

- (1) I—Master License, including certification for all of the classes listed in this section;
- (2) J—Pump Installation, Domestic Fractional to 5 H.P.;
- (3) K—Pump Installation, Submersible, 5 H.P. and over;
- (4) L—Windmills, Hand Pumps, and Pump Jacks; and
- (5) N—Line-Shaft Turbine Pumps.

§234.11. Application.

(a) A written, sworn application for a license must be submitted to the board and must contain the following:

- (1) applicant's full name, including first name, middle name or initial, and last name;
- (2) applicant's business address;
- (3) applicant's permanent mailing address;
- (4) applicant's telephone number;
- (5) applicant's state of residence and the length of residence, including specific dates;
- (6) previous or current license numbers, if any, for water well drilling and pump installation and name and address of licensing authority;
- (7) whether the applicant's license has been revoked or suspended, or the applicant been subject to any other disciplinary action relating to water well drilling or pump installation;
- (8) applicant's signature;
- (9) one letter of reference each from at least one licensed water well pump installer who has directly supervised the applicant or is otherwise familiar with the applicant's qualifications (required after August 31, 1993);
- (10) two references from at least two customers (name, address, and telephone number) served by the applicant in the installation or repairs of water well

pumps for each class of license applying for;

(11) a summary of the applicant's experience in the installation, maintenance, and repair of water well pumps; and

(12) a summary of the applicant's experience in the installation, maintenance, and repair of water well pumps;

(13) any other information that the board requires.

(b) At the time of application, an applicant shall pay to the commission a nonrefundable examination fee of \$100.

(c) Applications shall be made on forms which may be obtained from the commission.

(d) For the application to be considered and acted upon by the board at its next regularly scheduled meeting, the application must be received by the commission not later than 28 days prior to such meeting.

(e) An application shall be null and void, and the examination fee shall be forfeited, if the examination is not taken within 180 days after the board's certification of the application.

§234.12. Application Review and Certification.

(a) The board shall review and judge each applicant's qualifications in accordance with this chapter.

(b) In assessing an applicant's qualifications, the board shall examine the required letters of reference; the applicant's experience and competence in pump installation, maintenance, and repair; the applicant's knowledge of applicable board and commission rules; and any other relevant information which is provided by the applicant or is made known to the applicant and to which the applicant has had an opportunity to respond.

(c) At the discretion of the board, an application may not be certified by the board if:

(1) there exists a pending enforcement action against the applicant pursuant to this chapter; or

(2) the revocation of the applicant's license or other disciplinary action relating to the applicant has occurred within one year previous to the submission of the application.

(d) The executive director shall notify each applicant within 10 days of the issuance of a final decision by the board concerning the disposition of the application, and informing the person of the action taken, any deficiencies noted, and any additional information or requirements necessary. Successful applicants shall also be

notified of the times and locations of the administering of examinations.

§234.13. Examinations.

(a) The board shall administer examinations in such a manner as to disqualify any person lacking in the necessary knowledge of pump installation to the extent that the performance by such person of services as a pump installer would create a risk of polluting water.

(b) Each applicant shall have the right to have such examination given orally, in lieu of in writing. To exercise this right, an applicant must submit a petition to the board, in writing, a month before a scheduled examination.

(c) An applicant shall have the right to be given the examination in Spanish.

(d) Examinations shall be offered once a month by the commission at a time and place designated by the executive director.

(e) Additional examinations shall be offered if more than 10 applicants petition the board in writing.

(f) An applicant may take the examination not more than twice within any 12-month period.

§234.14. Licenses.

(a) Upon successfully completing an examination and upon the submission of the license fee to the commission, the board shall issue to the applicant a pump installer's license.

(b) Upon qualifying for a license, an applicant shall pay to the commission the license fee of \$125. An applicant for both a pump installer's license and a water well driller's license, or a combined license as the case may be, may pay a single combined license fee of \$175 to the commission, after qualifying for both licenses.

(c) A license issued under this chapter expires on August 31 of each year.

(d) The board shall maintain a current register of licenses.

(e) A license issued under this chapter is not transferable or assignable.

(f) The board shall issue a duplicate license to replace a lost or destroyed license upon proper written request and payment of a \$10 fee.

§234.15. Renewal of Licenses.

(a) On or before the expiration date of the license, the licensee shall pay to the commission a renewal fee in the amount of \$125 and submit an application for renewal on a form prescribed by the executive direc-

tor. The fee for renewal of a combination license is \$175.

(b) If a person's renewal fee is received after August 31st, the person may renew the license by paying to the commission the renewal fee in addition to one-half the examination fee.

(c) The board shall notify each licensee in writing of the impending license expiration not later than August 1 of each year.

(d) If a person's license has been expired for less than two years, the person may renew the license by paying to the commission all unpaid renewal fees and a late fee of \$50. If a person's license has been expired for two years or more, the person may not renew the license. Rather, the person may obtain a new license by submitting to reexamination and complying with the requirements for obtaining an original license.

(e) When a licensee has made timely and sufficient application for the renewal of a pump installer's license, the existing license does not expire until final action has been taken by the board on the application. In the case of an application that is denied on the terms of a new license or application therefor, the expiration of the old license is limited or stayed until the last day for seeking review of the board order or a later date fixed by the reviewing court.

§234.16. Apprentices.

(a) Training program. A person who wishes to undertake a training program under the supervision of a licensed pump installer may apply to register his name with the board and provide proof that the licensed pump installer has agreed to accept the responsibility of supervising the pump installer in apprentice. Progress reports on apprentice must be submitted to the board by the supervising installer every six months. Approval of such applications shall be considered by the board. Registered pump installers shall have not more than three apprentices unless approved by the board.

(b) Requirements for obtaining pump installer apprentice status. A registration form and \$50 annual fee must be submitted by each person desiring to register as a pump installer apprentice.

(1) Registration shall be on forms which may be obtained from the commission.

(2) Registration forms shall include:

(A) the name, business address, and permanent mailing address of the pump installer apprentice;

(B) the name and business address of the licensed pump installer who will supervise the pump installer apprentice;

(C) a description of the apprentice program which the pump installer will provide;

(D) the effective commencement and termination dates of the apprentice program (No apprentice program may be shorter in duration than one year.);

(E) a statement by the licensed pump installer that he accepts financial responsibility for the activities of the pump installer apprentice associated with the apprentice program or undertaken on behalf of the licensed pump installer;

(F) the signatures of the pump installer apprentice and the licensed pump installer and the notarized statement of both that the information provided is true and correct.

(c) Commencement of registration. The board shall review pump installer apprentice registration forms submitted since the last board meeting.

(1) If the application is found to conform to the rules and the apprentice program meets board requirements, the board will notify the apprentice and the supervising pump installer that the apprentice has been accepted as a registered pump installer apprentice and that the registration form shall remain in the board's files for the stated duration of the apprentice period.

(2) If the application and apprentice program are not sufficient and the registration is not approved, the apprentice and the licensed pump installer shall be so notified.

(d) Termination of pump installer apprentice status. The registration of a pump installer apprentice shall remain on file only for the stated duration of the apprentice program. Upon completion of the apprentice program, a pump installer apprentice may decide to apply to the board to obtain the appropriate pump installer's license. Either the supervising pump installer or the pump installer may terminate the apprentice program by written notice to the board. No reason for termination is required and, upon receipt of a letter stating that the apprentice program has been discontinued, the staff shall terminate the apprentice's status as a licensed pump installer.

(e) Required activities of pump installer apprentice. A registered pump installer apprentice shall:

(1) represent his supervising pump installer during operations at the well site;

(2) co-sign pump installation reports with the supervising pump installer;

(3) perform services associated with pump installation or repairs under the direct supervision of a licensed installer by on-site oversight or by radio or other direct communication at all times.

(f) Prohibited activities of pump installer apprentice. It is unlawful for a registered pump installer in apprentice program to act as or to offer to perform services as a pump installer on his own behalf. A registered pump installer in apprentice may not perform any services associated with pump installation except under the supervision of a licensed pump installer and/or according to the supervising pump installer's expressed directions. A pump installer apprentice registration may be revoked if the pump installer apprentice is found to have engaged in prohibited activities.

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 April 6, 1992.

TRD-9204663 Larry Persky
Staff Attorney
Texas Water Commission

Earliest possible date of adoption: May 11, 1992

For further information, please call: (512) 463-8069

Subchapter C. Standards of Professional Conduct

• 31 TAC §§234.20-234.24

The new sections are proposed under §7 of House Bill 1648, 72nd Legislature, (1991) which provides the Texas Water Well Drillers Board with the authority to adopt rules as necessary to enforce the Water Well Pump Installers Act.

§234.20. Offer to Perform Services.

(a) Competence in the performance of services by a licensee requires that the licensee's knowledge and skill encompass the necessary current knowledge of surface completion, pump installation, pump repair, and plugging techniques as set forth in 31 TAC Part IX, §287.48 and of the occurrence and availability of groundwater, to the extent that the performance of services by the installer will not create a risk of polluting water.

(b) No licensee shall offer to perform services unless that person is licensed to install or repair pumps, as the case may

be, and such services can be competently performed.

(c) A licensee shall neither perform nor offer to perform services for which he or she is not qualified by experience or knowledge in any of the technical fields involved.

(d) A licensee shall not evade contractual responsibility.

§234.21. Representations.

(a) Licensees shall not mislead others in any way regarding their personal qualifications or capabilities regarding the installation or repair of a water well pump. A licensee shall accurately and truthfully represent to a prospective client his qualifications and the capabilities of his or her equipment to perform the services to be rendered.

(b) A licensee shall not indulge in publicity that is false, misleading, or deceptive.

(c) A licensee shall make known all adverse, or suspicions of adverse, conditions concerning the quantity or quality of groundwater in the area of the prospective client's interest. If there is any uncertainty regarding the quality of water in a water well, the licensee should recommend that the client have the suspect water analyzed.

§234.22. Unauthorized Practice.

(a) A licensee shall make known to the board any unauthorized practice of which the licensee has personal knowledge.

(b) A licensee shall not assist an unlicensed person to unlawfully install, repair or offer to install, or repair pumps.

(c) A licensee shall, upon request of the board or its authorized representatives, furnish any information the licensee might possess concerning any alleged violation of the Water Well Pump Installers Act or rules of the board or the commission pursuant to the Act.

§234.23. Adherence to Statutes and Codes.

(a) A licensee shall abide by, and conform to, all permitting laws within the state including the applicable provisions of the Texas Water Code and all local codes and ordinances.

(b) A licensee shall not engage in any conduct that adversely affects his or her ability to perform or fitness to practice as a water well pump installer.

§234.24. Marking Vehicles. All licensed pump installers shall see that all pump installer vehicles used by them or their employees in the pump installer business are

marked with legible and plainly visible information and identification numbers at all times, provided as follows.

(1) The identification number to be used on pump installer vehicles shall be the license number of:

(A) the pump installer responsible for installing or repairing the pump;

(B) the owner of the business if the person has a pump installer's license; or

(C) the designated licensed supervising pump installer.

(2) The pump installer's license number shall be displayed in block numbers at least two inches high, on both sides of all pump installer vehicles used by the installer or his or her employees in the pump installer business. Any other pertinent or required information shall be plainly legible.

(3) The name of the company, the business or company location, and the telephone number with area code shall all be placed on pump installer vehicles.

(4) A pump installer shall have 90 days from the date a license is issued to him or her to see that all vehicles used by the licensed installer or the licensed installer's employees in the pump installing business are marked in the manner as provided in 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 April 6, 1992.

TRD-9204665 Larry Persky
Staff Attorney
Texas Water Commission

Earliest possible date of adoption: May 11, 1992

For further information, please call: (512) 463-8069

Subchapter D. Enforcement

• 31 TAC §§234.30-234.44

The new sections are proposed under §7 of House Bill 1648, 72nd Legislature, (1991) which provides the Texas Water Well Drillers Board with the authority to adopt rules as necessary to enforce the Water Well Pump Installers Act.

§234.30. Complaint File.

(a) The executive director shall keep an information file concerning each complaint filed with the commission relat-

ing to an entity regulated by the board or commission pursuant to the Act.

(b) If a written complaint is filed with the board relating to a regulated person, the executive director at least as frequently as quarterly and until final disposition of the complaint shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

(c) The executive director shall maintain a public file of all documented cases of groundwater contamination that are reasonably suspected of having been caused by activities regulated by the board or the commission pursuant to the Act. Such report shall be in conformance with the Texas Water Code, §26.406 and corresponding rules of the Texas Groundwater Protection Committee.

§234.31. *Confidentiality of Enforcement Information.* All records, reports, documents, data, and other information collected by the board, executive director, or staff in the performance of enforcement duties are the property of the state. Unless the executive director considers information to be confidential and not subject to disclosure in accordance with the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, or the Texas Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, all such records, reports, documents, data, and other information collected by the executive director shall be made available to the public during regular office hours.

§234.32. *Remedies.* Remedies available to the board in enforcement proceedings conducted pursuant to these rules include all those found in the Water Well Pump Installers Act and the Administrative Procedure and Texas Register Act. Nothing herein shall be construed so as to preclude the executive director from seeking any remedy in law or equity not specifically mentioned in these rules.

§234.33. *Executive Director's Petition.*

(a) An enforcement action brought under these rules may be initiated by a petition filed by the executive director with the board.

(b) The petition shall include a brief statement of the nature of the violation, the statute or statutes violated, the facts relied upon by the executive director in concluding that a violation has occurred, a recommendation if applicable, that an administrative penalty be assessed, the amount of the recommended penalty and an analysis of the following factors upon which the proposed penalty shall be based:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited acts with special emphasis on the hazard or potential hazard created to the health or safety of the public;

(2) the impact of the violation on groundwater, on the property owners over an aquifer, and on water users of groundwater;

(3) with respect to the alleged violator:

(A) the history and extent of previous violations and enforcement actions, if any;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and actions taken to mitigate any environmental damage;

(D) any economic benefit gained through the violations;

(E) the amount necessary to deter future violations; and

(4) any other matters that justice may require.

§234.34. *Notice of Executive Director's Petition.*

(a) The executive director shall notify the alleged violator by certified mail, "return receipt requested," of the filing of the executive director's petition with the board concerning a violation or noncompliance and the recommendation, if any, that an administrative penalty be assessed. The notice shall include the petition, a statement of the time and place of the initial hearing before the board and, if a penalty is recommended, the right of the person charged to an evidentiary hearing on the occurrence of the violation or the amount of the penalty, or both. The notice must be given not later than the 20th day before the date set for the hearing on the petition.

(b) If the person charged requests an evidentiary hearing or the board sets an evidentiary hearing on its own motion, the executive director shall notify the person charged not less than 20 days prior to the evidentiary hearing by certified mail, "return receipt requested," of the time and place of the hearing. If this notice is sent to a person who has failed to respond to the

previous notice of the initial hearing before the board, a copy of the petition shall be included.

(c) The executive director shall transmit to any person assessed an administrative penalty by the board written notice of any decision and order by the board in assessing the penalty. The notice shall include a copy of the decision and order, the amount of the penalty and a statement that the person assessed has a right to judicial review of the order. The executive director shall file notice of the board's decision and order in the *Texas Register* not later than the 10 days after the date on which the decision is adopted.

§234.35. *Answer to Executive Director's Petition.*

(a) If the executive director has recommended in the petition that a penalty be assessed, the person charged must submit to the board a sworn answer, not later than 20 days after the date on which notice of the initial hearing before the board is received, containing either written consent to the executive director's petition, including the recommended penalty, or a written request for an evidentiary hearing.

(b) If the person charged consents to the petition, including the recommended penalty, the answer shall affirmatively so state.

(c) If the person charged requests an evidentiary hearing to contest either the occurrence of the violation, the recommended penalty, or both, the answer shall:

(1) admit or deny all factual matters; and

(2) affirmatively allege any and all claims, defenses, or mitigating factors the person charged may have and the reasoning in support thereof.

(d) Supplemental pleadings may be filed by the person charged, but only in the event good cause can be shown as to why claims, defenses, or mitigating factors were not affirmatively alleged or factual matters not controverted in the original answer.

(e) Except for good cause shown:

(1) factual matters not controverted shall be presumed admitted;

(2) failure to raise a claim, defense, or mitigating factor shall be presumed to be a waiver of such claim, defense, or mitigating factor; and

(3) new matters alleged in the answer shall be presumed to be denied by the executive director unless admitted in subsequent pleading or stipulation by the executive director.

(f) Nothing shall preclude the person charged from amending the answer at any time so as to consent to the executive director's petition and recommended penalty. Further, the executive director and person charged may reach an agreement such that an agreed order is entered wherein the person charged admits to any or all of the violations alleged in the executive director's petition and consents to the assessment of a specific administrative penalty. Such settlement of the matters raised by the executive director's petition is subject to the approval of the board.

(g) If a person charged with a violation fails to timely file an answer as required by this section, the board shall either assess the recommended penalty or remand the cause for an evidentiary hearing on the findings and recommendations contained in the executive director's petition.

§234.36. Show-Cause Enforcement Procedures.

(a) A person who has personal knowledge or substantial evidence that a person has violated or is violating the Act, this chapter, or rules adopted by the commission pursuant to the Act, shall file a sworn written complaint with the board which states:

(1) the alleged violator's (respondent's) name, address, and, if known, the alleged violator's (respondent's) business name and address;

(2) the nature of the alleged violation; including all relevant facts and applicable rules and statutes;

(3) the approximate date on which the alleged violation took place; and

(4) the complainant's name and address.

(b) At least 10 days prior to the board meeting at which the board will review the complaint to determine whether or not grounds exist to set the complaint for a subsequent evidentiary hearing, the alleged violator (respondent) shall be informed of the complaint and of the time, date, and place of the board meeting at which the board will review the complaint. Such notice shall include a copy of the filed complaint.

(c) If the board, after its preliminary review of the complaint, determines that there is probable cause to believe that grounds exist for enforcement action, the board shall, except as otherwise provided in these rules, set the matter for a evidentiary hearing and issue written notice to the alleged violator (respondent) and any other named party.

(1) The notice shall state:

(A) the charges made against the respondent and the specific rule or provision of the Water Well Pump Installers Act allegedly violated;

(B) the time and place at which the hearing will be held;

(C) the nature of the hearing and the possible action which may be taken by the board;

(D) the legal authority and jurisdiction under which the hearing will be held; and

(E) the respondent's right to appear and to present testimony and cross examine witnesses of the other parties.

(2) The board shall give said notice at least 20 days prior to the date set for hearing.

(3) The board shall serve this notice by registered mail to the last known business address of the respondent; but if no business address is known, then notice shall be sent to the most recent address found on the respondent's applications or other documents submitted to the board.

(d) The executive director is a party to any hearing relating to a complaint.

(e) At the evidentiary hearing, respondent, complainant, the executive director, and any other party to the proceeding shall be entitled to present evidence, oral or written, which may be relevant to the allegations contained in the complaint.

(f) The complainant shall have the burden of proof of demonstrating the occurrence of the violation by the respondent.

(g) Upon finding a violation by the respondent to have occurred, the board may issue any appropriate enforcement order against the respondent provided by the Act and this chapter.

(h) As an alternative to the petition process provided by §234.33 of this title (relating to Executive Director's Petition), the executive director may file a complaint and request a show-cause hearing as provided by this section.

§234.37. *Hearings on Violations.* The board on its own motion may order a public hearing with respect to violations of the provisions of the Act, rules adopted by the board and the commission pursuant to the Act, or an order of the board. The board may receive pertinent and relevant evidence from any party who appears at the hearing, may compel the attendance of witnesses, shall make findings of fact and conclusions of law, and is authorized to issue orders and

make determinations necessary to effectuate the purposes of the Water Well Pump Installers Act.

§234.38. *Remand to Hearings Examiner.* Whenever the board determines to set a matter for evidentiary hearing, the board may remand such matter to a hearings examiner for the purpose of developing an evidentiary record and recommendations prior to a hearing before the board.

§234.39. Consent Order.

(a) At any time after the filing of a complaint alleging a violation of a provision of the Water Well Pump Installers Act or applicable rules of the board or the commission, a person so charged with an alleged violation may elect to waive his or her right to an opportunity to be heard, notice of an opportunity to be heard, the opportunity to present matters in evidence in his or her behalf, the right to appeal a decision of the board, if adverse to his or her interest after the opportunity to be heard has been afforded, and may elect, in lieu thereof, to consent to the imposition by the board of disciplinary action or the assessment of an administrative penalty against him or her, or both.

(b) The payment of an administrative penalty shall be by certified check made payable to the commission within 10 days after waiving the right to a hearing or the date the agreement is final, whichever is later. The payment of an agreed administrative penalty may be accepted by the board, in its discretion, in satisfaction of an alleged violation or violations of the provisions of the Water Well Pump Installers Act or applicable rules of the board or the commission, and may be considered to be a waiver of the respondent's right to a public hearing in such cases.

§234.40. Board Action.

(a) The board may issue appropriate orders enforcing and directing compliance with the provisions of the Water Well Pump Installers Act, rules adopted by the board and the commission pursuant to the Act, and other orders of the board.

(b) Such orders may include, but not be limited to, one, all, or a combination thereof, of the following: the assessment of an administrative penalty in an amount not to exceed \$2,500 for each violation; reprimand of a licensee; license suspension or revocation; and placing a licensee on probation.

(c) In determining the amount of the administrative penalty to be imposed for a violation, the board shall consider the person's history of previous violations and the seriousness of the person's failure to comply, including the following factors:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited acts with special emphasis on the hazard or potential hazard created to the health or safety of the public;

(2) the impact of the violation on groundwater, on the property owners over an aquifer, and on water users of groundwater;

(3) with respect to the alleged violator:

(A) the history and extent of previous violations and enforcement actions, if any;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and actions taken to mitigate any environmental damage;

(D) any economic benefit gained through the violations;

(E) the amount necessary to deter future violations; and

(4) any other matters that justice may require.

(d) A copy of every such order shall be sent by certified mail to the person to whom it is directed. However, when the time factor is critical, the order may be delivered in person, transmitted by telephone or by telegraph, or delivered by any other satisfactory method, but it shall be promptly followed by the written order sent by certified mail as aforesaid. When the person to whom the order is directed receives it, regardless of how he initially receives it, he shall immediately comply with the order according to its terms.

§234.41. Appeal of Board Action.

(a) A person affected by any ruling, order, decision, or other act of the board may appeal by filing a petition in a state district court of Travis County, as provided in the Water Well Pump Installers Act and the Administrative Procedure and Texas Register Act, §19(b)(1).

(b) The appellant-respondent must file the petition of appeal within 30 days after the board's action, or, in the case of a ruling, order, or decision, within 30 days after its effective date.

(c) The appellant-respondent must serve the Board with a citation of the appeal within 30 days after the petition of appeal is filed.

(d) A citation may be served on the executive director or on any board member.

(e) The appellant-respondent shall pursue the appeal with reasonable diligence.

§234.42. Appeals of Administrative Penalties.

(a) Within the 30-day period immediately following the day on which the board's order is final, the person charged with a penalty shall pay the penalty in full.

(b) The person assessed a penalty by the board may suspend enforcement of the penalty while seeking judicial review by forwarding the amount of the penalty to the commission for placement in an escrow account or posting with the commission a supersedeas bond payable to the Texas Water Commission for the amount of the penalty, within the 30-day period immediately following the day on which the board's order is final.

(c) Failure to pay the penalty in full, or failure to forward the amount of the penalty for placement in an escrow account or post a supersedeas bond within the 30-day period immediately following the day on which the commission's order is final, shall result in a waiver of all legal rights to judicial review. In the event the person assessed fails to take any of the actions in subsections (a) and (b) and this subsection, the executive director upon approval of the board may forward the matter to the attorney general for enforcement.

(d) In the event that the final appellate determination is against the person assessed a penalty, he or she shall pay the commission the full amount of the penalty, and the commission shall deposit the amount of the penalty in the state treasury to the credit of fund 097 of the Water Well Drillers Fund.

(e) In the event that the final appellate determination is in favor of the person assessed, he or she shall be absolved of all liability for payment of the amount of the penalty, and the commission shall return the amount of the penalty assessed with a certificate of its return.

(f) Any supersedeas bond or escrow account filed with the commission for the purpose of appeal of the final decision of the commission shall be drawn according to a form on file in the office of the chief clerk. Upon request, the executive director shall certify the receipt of the amount of any penalty received by the commission for the purpose of appeal.

§234.43. Reinstatement After Disciplinary Action.

(a) A licensee whose license has been suspended, or who has been placed on probation after suspension, must pay all accrued fees upon the expiration of the suspension or probation period to regain the status of a licensed installer in good standing.

(b) An installer whose license has been revoked must apply for a new license and comply with all requirements and procedures for obtaining an original license.

§234.44. Civil Proceedings.

(a) The board may enforce, in a court of competent jurisdiction, any of its rules or rules promulgated by the commission pursuant to the Act, decisions, determinations, and orders, by injunction or other appropriate remedy.

(b) The board may institute an action for civil penalties for failure to comply with the provisions of the Water Well Pump Installers Act or of this chapter or rules promulgated by the commission pursuant to the Act.

(c) An action to recover civil penalties may be instituted in a court of competent jurisdiction in the county where the alleged violation is occurring or where the defendant resides.

(d) The board may direct the executive director to request that the attorney general institute and conduct a suit in the name of the State of Texas for injunctive relief and/or to recover civil penalties.

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 April 6, 1992.

TRD-9204666

Larry Persky
Staff Attorney
Texas Water Commission

Earliest possible date of adoption: May 11, 1992

For further information, please call: (512) 463-8069

Chapter 305. Consolidated Permits

Subchapter C. Application for Permit

The Texas Water Commission (TWC) proposes amendments to §305.50 and §305.51, concerning consolidated permits and new §§305.571-305.573 under Subchapter C, concerning permits for boilers and industrial furnaces burning hazardous waste. The amendments to §305.50 and §305.51 are

proposed in order to conform to the federal hazardous waste regulations as published and adopted in the March 7, 1989, issue of the *Federal Register* (54 FedReg 9608), the February 21, 1991, issue of the *Federal Register* (56 FedReg 7239), and the July 17, 1991, issue of the *Federal Register* (56 FedReg 32688). New Subchapter Q under Chapter 305 is proposed to establish permitting and interim status requirements for facilities with boilers or industrial furnaces burning hazardous waste, in order to conform to certain federal hazardous waste regulations as published and adopted in the February 21, 1991, issue of the *Federal Register* (56 FedReg 7239) and the July 17, 1991, issue of the *Federal Register* (56 FedReg 32688).

Section 305.50 is proposed to be amended at §305.50(4) to reflect additional hazardous waste permit application requirements under 40 Code of Federal Regulations (CFR), §270.22, relating to specific Part B information requirements for boilers and industrial furnace facilities burning hazardous waste. Section 305.50 is also proposed to be amended by the addition of new §305.50(13) which provides certain additional application requirements for boiler or industrial furnace facilities employing direct waste feed transfer operations. Section 305.51 is proposed to be amended by the addition of §305.51(a)(5) and §305.51(c) relating to changes during interim status, including certain limitations to such changes.

New §305.571 explains the applicability of the remaining sections under proposed Subchapter Q. Proposed new §305.572 would adopt by reference certain federal regulations concerning permit operating periods and trial burn requirements for new (i.e., non-interim status) boilers and industrial furnaces. Proposed new §305.573 explains the trial burn requirements along with references to federal regulations and other state rules, that apply to existing boilers and industrial furnaces.

Ms. Norma Nance, director of budget, planning and evaluation division, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering the sections. There will be an increased cost to state government of \$234,000 in fiscal year 1993 and a cost increase of \$159,000 each of the fiscal years 1994-1997. There are no fiscal impacts to local governments anticipated. These rules will have fiscal impacts on operators of the facilities subject to new requirements. These sections are proposed in order to incorporate existing federal regulations and are not anticipated to have fiscal impacts that do not currently result from compliance with federal requirements. EPA has estimated the total national cost effect of these regulations to be approximately \$15.2 million per year before taxes.

Ms. Nance 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 improvements in the standards for combustion facilities which burn hazardous waste, reduce emissions of hazardous constituents from boilers and industrial furnaces, and consis-

tency of state and federal regulations regarding hazardous wastes burned for energy recovery. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with these rules as proposed.

Comments on the proposal may be submitted to Margaret Ligarde, Staff Attorney, Legal Division, P.O. Box 13087, Austin, Texas 78711. The deadline for submission of written comments will be 30 days after the date of publication of this proposal in the *Texas Register*. To facilitate public comment on the proposed amendments and new sections in Chapter 305, the commission has scheduled several public hearings in various locations for the receipt of comments as follows: Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, on April 27, 1992, at 10 a.m., Austin; Midlothian High School, 925 South Ninth Street, Auditorium, on April 27, 1992, at 6:30 p.m., Midlothian; New Braunfels Civic Center, 390 South Seguin, on April 29, 1992, at 6:30 p.m., New Braunfels; Texas City Nessler Center, Captain's Room, 2010 Fifth Avenue North, on April 30, 1992, at 6:30 p.m., Texas City. Persons participating in the public hearing are encouraged to summarize their testimony in written presentations.

• 31 TAC §305.50, §305.51

The amendments are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, which gives the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The amendments are also proposed under the Solid Waste Disposal Act, §3 and §4, which gives the commission the authority to regulate industrial solid wastes and hazardous municipal wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

§305.50. Additional Requirements for an Application for a Solid Waste Permit. Unless otherwise stated, an application for a permit to store, process, or dispose of solid waste shall meet the following requirements.

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

(4) An application for a permit, permit amendment, or permit modification to store, process, or dispose of hazardous waste shall be subject to the following requirements, as applicable.

(A) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall contain any additional information required by 40 Code of Federal Regulations (CFR), §§270.13-[270.21 and] 270.23, except that closure cost estimates shall be prepared in accordance with 40 CFR, §264.142(a)(1), (3), (4), (b), and (c) and §335.178 of this title (relating to Cost Estimate for Closure).

(B)-(D) (No change.)

(E) At any time after the effective date of the requirements contained in Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), the executive director may require the owner or operator of an existing hazardous waste management facility to submit that portion of his application containing the information specified in 40 CFR, §§270.14-[270.21 and] 270.23. Any owner or operator shall be allowed a reasonable period of time from the date of the request to submit the information. An application for a new hazardous waste management facility must be submitted at least 180 days before physical construction of the facility is expected to commence.

(5)-(12) (No change.)

(13) An application for a boiler or industrial furnace burning hazardous waste at a facility at which the owner or operator uses direct transfer operations to feed hazardous waste from transport vehicles (containers, as defined in Title 40 CFR, §266.11) directly to the boiler or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by 40 CFR, §266.111 and §335.225 of this title (relating to Additional Standards for Direct Transfer).

§305.51. Revision of Applications for Hazardous Waste Permits.

(a) Owners or operators of hazardous waste management facilities, who qualify for interim status pursuant to 40 Code of Federal Regulations (CFR), Part 270, Subpart G, who have continuing authority to store, process, and/or dispose of hazardous waste pursuant to Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), and who filed a Part A permit application pursuant to 40 CFR, §270.10 shall file a revised Part A application with the executive director for any of the following changes during interim status:

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

(3) changes in the processes for management of the waste occur or additional processes are added; [or]

(4) changes in the ownership or operational control of a facility are made; or[.]

(5) newly regulated units for the storage, processing, or disposal of hazardous waste are added.

(b) (No change.)

(c) Except as specifically allowed under this subsection, changes listed under subsection (a) of this section may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50% of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

(1) changes made solely for the purposes of complying with the requirements of 40 CFR, §265.193 for tanks and ancillary equipment;

(2) If necessary to comply with federal, state, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of the Resource Conservation and Recovery Act (RCRA), §3004(o), as amended;

(3) changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been stored, processed, or disposed of at the facility prior to the effective date of the United States Environmental Protection Agency (EPA) regulation establishing the new listing or identification;

(4) changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan;

(5) changes necessary to comply with an interim status corrective action order issued by the EPA under the RCRA, §3008(h), as amended, or other federal authority, by an authorized state under comparable state authority, or by a court in a judicial proceeding brought by the EPA or an authorized state, provided that such changes are limited to the storage, processing, or disposal of solid waste from releases that originate within the boundary of the facility;

(6) changes to store or process, in tanks or containers, hazardous wastes subject to land disposal restrictions imposed by 40 CFR Part 268 or by the RCRA, §3004, provided that such changes are made solely for the purpose of complying with 40 CFR Part 268 or the RCRA, §3004, as amended; and

(7) addition of newly regulated units under subsection (a)(5) 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 April 6, 1992.

TRD-9204654

Mary Ruth Holder
Director, Legal Services
Texas Water Commission

Earliest possible date of adoption: May 11, 1992

For further information, please call: (512) 463-8069

Subchapter Q. Permits for Boilers and Industrial Furnaces Burning Hazardous Waste

• 31 TAC §§305.571-305.573

The new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, which gives the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The new sections are also proposed under the Solid Waste Disposal Act, §3 and §4, which gives the commission the authority to regulate industrial solid wastes and hazardous municipal wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

§305.571. Applicability. Owners and operators of new boilers and industrial furnaces (those not operating under the interim status standards of 40 Code of Federal Regulations (CFR), §266.103 and §335.224 of this title (relating to Additional Interim Status Standards for Burners)) are subject to §305.572 of this title (relating to Permit and Trial Burn Requirements). Owners and operators of existing boilers and industrial furnaces operating under the interim status standards of 40 CFR, §266.103 and §335.224 of this title are subject to §305.573 of this title (relating to Interim Status and Trial Burn Requirements).

§305.572. Permit and Trial Burn Requirements. Except to the extent that they are clearly inconsistent with the Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 (Vernon Pamphlet 1992), or the Texas Clean Air Act, Texas Health and Safety Code Annotated, Chapter 382 (Vernon Pamphlet 1992), or the rules of the commission or the Texas Air Control Board, the following regulations contained in 40 Code of Federal Regulations (CFR), Part 270 are adopted by reference, as amended and adopted in the CFR through June 1, 1990 (see 55 FedReg 22685), and as published and adopted in the February 21, 1991, and July 17, 1991, issues of the *Federal Register* (see 56 FedReg 7239 and 56 FedReg 32688):

(1) §270.66(b)—Permit Operating Periods for New Boilers and Industrial Furnaces, except that any permit amend-

ment or modification shall proceed according to the applicable requirements of Chapter 305, Subchapter D of this title (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(2) §270.66(c)—Requirements for Trial Burn Plans;

(3) §270.66(d)—Trial Burn Procedures, except that all required submissions must be certified on behalf of the applicant by the signature of a person authorized pursuant to §305.44 of this title (relating to Signatories to Applications);

(4) §270.66(e)—Special Procedures for DRE Trial Burns; and

(5) §270.66(f)—Determinations Based on Trial Burn.

§305.573. Interim Status and Trial Burn Requirements. For the purpose of determining feasibility of compliance with the performance standards of 40 Code of Federal Regulations (CFR), §§266.104-266.107 and of determining adequate operating conditions under 40 CFR, §266.103 and §335.224 of this title (relating to Additional Interim Status Standards for Burners), applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of 40 CFR §266.103 and §335.224 of this title must either prepare and submit a trial burn plan for approval by the executive director and perform a trial burn in accordance with the approved trial burn plan and in accordance with 40 CFR, §270.66 and §305.572 of this title (relating to Permit and Trial Burn Requirements) or submit other information as specified in 40 CFR, §270.22(a)(6). Applicants who submit a trial burn plan and receive approval before submission of the Part B permit application must complete the trial burn and submit the results specified in 40 CFR, §270.66(f) with the Part B permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant must contact the executive director to establish a later date for submission of the Part B application or the trial burn results. If the applicant submits a trial burn for approval by the executive director with Part B of the permit application, the approved trial burn must be conducted and the results submitted within a time period prior to permit issuance to be specified by the executive director.

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

Issued in Austin, Texas, on April 6, 1992.

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Mary Ruth Holder
Director, Legal Services
Texas Water Commission

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For further information, please call: (512) 463-8069

Part IX. Texas Water Commission

Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

The Texas Water Commission (TWC) proposes amendments to §§335.1, 335.6, 335.45, 335.112, 335.151, 335.152, 335.205, 335.221, the repeal of §§335.222-335.226, and proposes new §§335.222-335.229. The amendments, repeals, and new sections are proposed in order to adopt certain federal hazardous waste regulations as published and adopted in the February 21, 1991, issue of the *Federal Register* (56 FedReg 7239) and the July 17, 1991, issue of the *Federal Register* (56 FedReg 32688) and to clarify existing rules.

Section 335.1 is proposed to be amended to add new definitions for "carbon regeneration unit," "infrared incinerator," "plasma arc incinerator," "sludge dryer," and to revise the definitions of "incinerator" and "industrial furnace." Section 335.6 is proposed to be amended by the addition of §335.6(i) which requires notification by owners and operators of facilities qualifying for the small quantity burner exemption.

Section 335.45, relating to the effect on existing facilities, is proposed to be amended in order to allow "continuing status" for certain existing offsite boilers and industrial furnaces.

Section 335.112(a) is proposed to be amended to incorporate changes in the federal regulations into the interim status closure standards.

Section 335.151 and §335.152, relating to hazardous waste permitting standards, are proposed to be amended in order to meet current state law citation requirements and in order to conform to new federal hazardous waste regulations. Additionally, §335.151 and §335.152 are proposed to be amended to update the reference to the Texas Health and Safety Code. Section 335.152 is proposed to be amended to incorporate by reference the federal permitting standards as amended and adopted in the Code of Federal Regulations as published in the February 21, 1991, issue of the *Federal Register* (56 FedReg 7239) and the July 17, 1991, issue of the *Federal Register* (56 FedReg 32688). These proposed amendments encompass changes to the permitting closure regulations.

The TWC proposes amendments to §335.205, relating to prohibitions on permit issuance, in order to add new definitions for "new commercial hazardous waste management facility" and "waste-derived fuel."

The TWC proposes amendments to §335.221, proposes the repeal of §§335.222-335.226, and proposes new §§335.222-

335.229 relating to requirements concerning hazardous waste burned in boilers and industrial facilities, in order to adopt certain federal hazardous waste regulations as published and adopted in the February 21, 1991, issue of the *Federal Register* (56 FedReg 7239) and the July 7, 1991, issue of the *Federal Register* (56 FedReg 32688), and to provide additional standards for commercial combustion facilities which burn hazardous waste.

Under these proposed amendments and new sections, the current requirements for hazardous waste burned for energy recovery would be replaced by requirements for hazardous waste burned in boilers and industrial furnaces. In other words, the current general exemption from regulation for burning hazardous waste in boilers and industrial furnaces for energy recovery would be replaced by controls on hazardous waste combustion to regulate air emissions from the burning of hazardous waste in boilers and industrial furnaces. These controls would be imposed through the adoption by reference of federal hazardous waste regulations applicable to boiler and industrial furnace facilities burning hazardous waste, and through the adoption of additional requirements applicable to such facilities and to commercial hazardous waste combustion facilities. The proposed amendments to §335.221(a) set forth applicability and standards for owners and operators of boilers and industrial furnaces burning hazardous waste, through adoption by reference of certain federal regulations under Title 40 Code of Federal Regulations Part 266. These federal regulations include provisions relating to applicability, permit standards for burners, interim status standards for burners, small quantity and low-risk waste exemptions, a waiver for boilers operating under special conditions, standards for direct transfer, and regulation of residue derived from the burning or processing of hazardous waste in a boiler or industrial furnace. Section 335.221(b) is proposed to be amended to include the federal exemptions for landfill gases burned for energy recovery and for coke ovens burning hazardous waste K087.

Proposed new §335.222 specifies the standards applicable to management of hazardous waste that is to be burned in a boiler or industrial furnace, including standards for generators, transporters, blenders, distributors, and other storage or processing facility owners or operators. Proposed new §335.223 sets out additional permit standards for burners which reflect federal permit standards under Title 40 Code of Federal Regulations (CFR), §266.102 which could not be proposed for adoption by reference because specific reference to other state rules is necessary. Proposed new §335.224 contains additional interim status standards for burners which reflect federal interim status standards under 40 CFR 266.103 which could not be proposed for adoption by reference because specific reference to other state rules is necessary, and which reflect certain proposed state requirements which are either the equivalent or more stringent than the federal interim status standards. Proposed new §335.224(1) would adopt the federal definition of the terms "existing" or "in existence" as it applies to facilities with boilers and industrial

furnaces, except for commercial off-site facilities. Proposed new §335.224(2) would limit "existing" or "in existence" as it applies to commercial off-site boiler and industrial furnace facilities to those in operation on or before August 21, 1991 burning hazardous waste for which the owner or operator had obtained all required federal, state, and local approvals or permits. Proposed §335.224(3) and (4) address applicability of §335.224 and other state and federal rules and regulations to certain types of hazardous waste and facilities, while §335.224(5) contains the additional interim status standards from 40 CFR 266.103 which need specific references to state rules in order to incorporate these standards, as discussed previously.

Proposed new §335.224(6) would require submittal of a certification of precompliance to the executive director of the TWC, and §335.224(7) specifies public notice requirements for the certification of precompliance. Proposed new §335.224(8)-(14) set forth the procedures for emissions testing to document compliance with emission standards, requirements for submittal of certifications of compliance and recertification of compliance, and requirements for closure if the certification is rejected by the executive director are received or if the specified interim status compliance schedule is not met. Proposed new §335.225 includes standards for direct transfer of hazardous waste to a boiler or industrial furnace without the use of a storage unit, in addition to the federal standards proposed to be adopted by reference under §335.221(a). Proposed new §§335.226-335.229 would apply requirements, in addition to the applicable requirements under proposed §§335.221-335.225, to commercial combustion facilities which are not regulated as incineration units. Proposed §335.226(a) -(c) specify emission standards, together with destruction and removal efficiency requirements, while §335.226(d)-(i) set forth trial burn requirements, restrictions on burning chlorinated hazardous waste or hazardous waste containing certain toxic metals, and other operational requirements. Proposed new §335.227 would require certain test methods to be used in demonstrating compliance with proposed §335.226, relating to standards for burning hazardous waste in commercial combustion facilities. Proposed new §335.228 specifies monitoring and recordkeeping requirements, including those for waste feed rate, combustion gas velocity, opacity, oxygen content, carbon monoxide content, total hydrocarbon content, and temperature of the exhaust gas of the combustion device. Finally, proposed new §335.229 references certain operating requirements for commercial hazardous waste combustion facilities.

Norma Nance, director of budget, planning, and evaluation division, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering the sections. There will be an increased cost to state government of \$234,000 in fiscal year 1993 and a cost increase of \$159,000 each of the fiscal years 1994-1997. There are no fiscal impacts to local governments anticipated. These rules will have fiscal impacts on operators of the facilities subject to new require-

ments. These sections are proposed in order to incorporate existing federal regulations and are not anticipated to have fiscal impacts that do not currently result from compliance with federal requirements. EPA has estimated the total national cost effect of these regulations to be approximately \$15.2 million per year before taxes.

Ms. Nance has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be improvements in the standards for combustion facilities which burn hazardous waste, reduce emissions of hazardous constituents from boilers and industrial furnaces, and consistency of state and federal regulations regarding hazardous wastes burned for energy recovery. There will be no effect on small businesses. There no anticipated economic cost to persons who are required to comply with these rules as proposed.

Comments on the proposal may be submitted to Margaret Ligarde, Staff Attorney, Legal Division, P.O. Box 13087, Austin, Texas 78711. The deadline for submission of written comments will be 30 days after the date of publication of this proposal in the *Texas Register*. To facilitate public comment on the proposed amendments and new sections in Chapter 335, the commission has scheduled several public hearings in various locations for the receipt of comments as follows: Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, on April 27, 1992, at 10 a.m., Austin; Midlothian High School, 925 South Ninth Street, Auditorium, on April 27, 1992, at 6:30 p.m., Midlothian; New Braunfels Civic Center, 390 South Seguin, on April 29, 1992, at 6:30 p.m., New Braunfels; Texas City Nessler Center, Captain's Room, 2010 Fifth Avenue North, on April 30, 1992, at 6:30 p.m., Texas City. Persons participating in the public hearing are encouraged to summarize their testimony in written presentations.

Subchapter A. Industrial Solid Waste and Municipal Hazardous Waste Management in General

• 31 TAC §335.1, §335.6

The amendments are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, which gives the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The sections are also proposed under the Solid Waste Disposal Act, §3 and §4, which gives the commission the authority to regulate industrial solid wastes and hazardous municipal wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

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

Act—The Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (Vernon Pamphlet 1992) [Texas Civil Statutes, Article 4477-7].

Carbon regeneration unit—Any enclosed thermal treatment device used to regenerate spent activated carbon.

Incinerator—Any enclosed device that:

(A) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(B) Meets the definition of infrared incinerator or plasma arc incinerator. [An enclosed device using controlled flame combustion that neither meets the criteria for classification as a boiler nor is listed as an industrial furnace.]

Industrial furnace—Includes any of the following enclosed devices that use thermal treatment to accomplish recovery of materials or energy:

(A) cement kilns;

(B) lime kilns;

(C) aggregate kilns;

(D) phosphate kilns;

(E) coke ovens;

(F) blast furnaces;

(G) smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(H) titanium dioxide chloride process oxidation reactors;

(I) methane reforming furnaces;

(J) pulping liquor recovery furnaces;

(K) combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(L) halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3.0%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazard-

ous waste fed to the furnace has a minimum halogen content of 20% as generated; and

(M) other devices the commission may list, after the opportunity for notice and comment is afforded to the public. [Includes cement kilns, lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces, smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces, titanium dioxide chloride process oxidation reactors, methane reforming furnaces, pulping recovery furnaces, combustion devices used in the recovery of sulfur values from spent sulfuric acid, and other devices the commission may list.]

Infrared incinerator—Any enclosed device that uses electric powered resistance heaters as a source of radiant heat and which is not listed as an industrial furnace.

Plasma arc incinerator—Any enclosed device using a high intensity electrical discharge or arc as a source of heat and which is not listed as an industrial furnace.

Sludge dryer—Any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating valve of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

§335.6. Notification Requirements.

(a)-(h) (No change.)

(i) The owner or operator of a facility qualifying for the small quantity burner exemption under CFR, §266.108 must provide a one-time signed, written notification to the United States Environmental Protection Agency and to the executive director indicating the following:

(1) the combustion unit is operating as a small quantity burner of hazardous waste;

(2) the owner and operator are in compliance with the requirements of 40 CFR, §266.108, §335.221(a)(19) of this title (relating to Applicability and Standards), and this subsection; and

(3) the maximum quantity of hazardous waste that the facility may burn as provided by §266.108(a)(1).

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 April 6, 1992.

TRD-9204656

Mary Ruth Holder
Director, Legal Services
Texas Water Commission

Earliest possible date of adoption: May 11, 1992

For further information, please call: (512) 463-8069

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Subchapter B. Hazardous Waste Management General Provisions

• **31 TAC §335.45**

The amendment is proposed under the Texas Water Code, §§5.103, 5.105, and §26.011, which give the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The sections are also proposed under the Solid Waste Disposal Act, §3 and §4, which give the commission the authority to regulate industrial solid wastes and hazardous municipal wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

§335.45. Effect on Existing Facilities.

(a) (No change.)

(b) Effect on off-site facilities without a permit to reuse, recycle, or reclaim hazardous waste, [.] or to burn hazardous waste in boilers or industrial furnaces. Any person who has commenced the off-site storage, processing, or disposal of hazardous wastes, or activities that are listed, identified or described by the administrator of the United States Environmental Protection Agency in 40 Code of Federal Regulations Part 261, on or before the effective date of statutory or regulatory amendments under the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code §§6901 et seq, relating to the reuse, recycling, or reclamation of hazardous waste, or relating to the burning of hazardous waste in boilers or industrial furnaces, that render such wastes or activities subject to the requirements to have a hazardous waste permit, shall file an application with the commission on or before the effective date of such amendments, which includes the applicable information required by §335.44 of this title (relating to Application for Existing On-site Facilities). Any person who has commenced off-site storage, processing, or disposal of hazardous waste on or before the effective date of such amendments, who has filed a hazardous waste permit application with the commission on or before the effective date of such amendments in accordance with the rules and regulations of the commission, and who complies with requirements in this chapter applicable to such activities, may continue the off-site storage, processing, or disposal of the newly listed or identified wastes or waste activities until such time as the Texas Water Commission approves or denies the

application. Facilities that have received a permit for the reuse, recycling, or reclamation of hazardous waste in accordance with Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) are not required to comply with this subsection and may operate pursuant to their existing permit. Such permits, however, are subject to amendment under §305.62 of this title (relating to Amendment) to reflect new regulatory requirements.

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

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Subchapter E. Interim Standards for Owners and Operators of Hazardous Waste Storage

Processing or Disposal Facilities

• **31 TAC §335.112**

The amendment is proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, which give the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The amendment is also proposed under the Solid Waste Disposal Act, §3 and §4, which give the commission the authority to regulate industrial solid wastes and hazardous municipal solid wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

§335.112. Standards.

(a) [Except to the extent that they are clearly inconsistent with the express provisions of the Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (Vernon Supplement 1991), or the rules of the commission (including the provisions set forth in this subchapter), the] The following regulations contained in 40 Code of Federal Regulations Part 265 (including all appendices to Part 265) (except as otherwise specified herein), are adopted by reference as amended and adopted in the Code of Federal Regulations through June 1, 1990 (see 55 FedReg 22685) and as published and adopted in the February 21, 1991 and July 17, 1991 issues of the *Fede-*

ral Register (see 56 FedReg 7239 and 56 FedReg 32688):

(1)-(16) (No change.)

(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.

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Mary Ruth Holder
Director, Legal Services
Texas Water Commission

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For further information, please call: (512) 463-8069

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Subchapter F. Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities

• **31 TAC §§335.151-335.152**

The amendments are proposed under the Texas Water Code, §5.103, §5.105, and 26.011, which give the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The sections are also proposed under the Solid Waste Disposal Act, §3 and §4, which give the commission the authority to regulate industrial solid wastes and hazardous municipal solid wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act

§335.151. Purpose, Scope, and Applicability.

(a) The purpose of this subchapter is to establish minimum standards to define the acceptable management of hazardous waste. These standards are to be applied in the evaluation of an application for a permit to manage hazardous waste, pursuant to the Texas Solid Waste Disposal Act, Chapter 361 Texas Health and Safety Code (Vernon Pamphlet 1992) [Texas Civil Statutes, Article 4477-7], and in the evaluation of an investigation report to implement groundwater protection requirements relating to compliance monitoring and corrective action; and in the evaluation of corrective action measures to be instituted pursuant to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units). For facilities that store, process, or dispose of industrial solid waste, in addition to hazardous waste, nothing herein shall be construed to restrict or abridge the commission's authority to implement the provisions of the Texas Water Code, Chapter 26, and §335.4 of this title (relating to

General Prohibitions), with respect to those activities.

(b) (No change.)

§335.152. *Standards.*

(a) [Except to the extent that they are clearly inconsistent with the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (Vernon Pamphlet 1992) and the rules of the commission (including the provisions set forth in this subchapter), the] The following regulations contained in 40 Code of Federal Regulations, Part 264 (including all appendices to Part 264), are adopted by reference as amended and adopted in the Code of Federal Regulations through June 1, 1990 (see FedReg 22685) and as published and adopted in the February 21, 1991 and July 17, 1991 issues of the *Federal Register* (see 56 FedReg 7239 and 56 FedReg 32688):

(1)-(14) (No change.)

(b)-(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.

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Director, Legal Services
Texas Water Commission

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Subchapter G. Location Standards for Hazardous Waste Storage, Processing, or Disposal

• 31 TAC §335.205

The amendment is proposed under the Texas Water Code, §5.104 and §26.011, which give the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The section is also proposed under the TSWDA, §3 and §4, which give the commission the authority to regulate industrial solid wastes and hazardous municipal solid wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

§335.205. *Prohibition of Permit Issuance.*

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

(c) No permit shall be issued for a new commercial hazardous waste management facility as defined in §335.205(j) of this title (relating to Definitions)

[§335.202 of this title (relating to Definitions)] or the subsequent areal expansion of such a facility or unit of that facility if the boundary of the unit is to be located within 1/2 mile (2,640 feet) of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(d)-(i) (No change.)

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

(1) **New commercial hazardous waste management facility**—All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste or waste-derived fuel as defined in this section. The term includes a commercial hazardous waste management facility as defined in §335.202 of this title (relating to Definitions), including, but not limited to, a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities or a combination of units, for which a permit is required by §335.2 or §335.43, but for which no such permit had been issued as of June 7, 1991.

(2) **Waste-derived fuel**—Any material resulting from the blending or inclusion of hazardous waste that is to be burned for energy recovery. Such fuel does not include material derived from nonhazardous waste such as nonhazardous waste garbage, rubbish, refuse, tires, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, or other nonhazardous waste solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, or agricultural operations or from community or institutional activities.

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

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Director, Legal Services
Texas Water Commission

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For further information, please call: (512) 463-8069

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Subchapter H. Standards for the Management of Specific Wastes and Specific Types of Facilities

• 31 TAC §§335.222-335.226

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

The repeals are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, which give the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. These repeals are also proposed under the Solid Waste Disposal Act, §3 and §4, which give the commission the authority to regulate industrial solid wastes and hazardous municipal solid wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

§335.222. *Prohibitions.*

§335.223. *Standards Applicable to Generators of Hazardous Waste Fuel.*

§335.224. *Standards Applicable to Transporters of Hazardous Waste Fuel.*

§335.225. *Standards Applicable to Marketers of Hazardous Waste Fuel.*

§335.226. *Standards Applicable to Burners of Hazardous Waste Fuel.*

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

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Director, Legal Services
Texas Water Commission

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For further information, please call: (512) 463-8069

Part IX. Texas Water Commission

Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

Subchapter H. Standards for the Management of Specific Wastes and Specific Types of Facilities

• 31 TAC §§335.221-335.229

The amendments and new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, which give the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The new sections and amendments are also proposed under the Solid Waste Disposal Act, §3 and §4, which give the commission the authority to regulate industrial solid wastes and hazardous municipal solid wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

§335.221. *Applicability and Standards.*

(a) The following regulations contained in 40 Code of Federal Regulations (CFR), Part 266 (including all appendices to Part 266) are adopted by reference, as amended and adopted in the Code of Federal Regulations through June 1, 1990 (see FedReg 22685) and as published and adopted in the February 21, 1991 and July 17, 1991 issues of the Federal Register (see 56 FedReg 7239 and 56 FedReg 32688):

(1) §266.100—Applicability, except §266.100(b);

(2) §266.102(a)—Permit Standards for Burners—Applicability, excepting those portions of §266.102(a) containing references to §§264.56(d), 264.71-264.72, 264.75-264.77, 264.90, 264.101, and 264.142(a)(2);

(3) §266.102(b)—Permit Standards for Burners—Hazardous Waste Analysis;

(4) §266.102(c)—Permit Standards for Burners—Emission Standards;

(5) §266.102(d)—Permit Standards for Burners—Permits;

(6) §266.102(e)—Permit Standards for Burners—Operating Requirements;

(7) §266.103(a)(1)-(3)—Interim Status Standards for Burners—Purpose, Scope, and Applicability—General; Exemptions; and Prohibition on Burning Dioxin-Listed Wastes, respectively, except §§266.103(a)(1)(ii)-(iii) and 266.103(a)(2);

(8) §266.103(a)(4)—Interim Status Standards for Burners—Purpose, Scope, and Applicability—Applicability of Part 265 Standards, excepting those portions of §266.103(a)(4) containing references to §§265.56(d), 265.71-265.72, 265.75-265.77, 265.142(a)(2); facilities qualifying for a corporate guarantee for liability are subject to §265.147(g)(2) and §264.151(h)(2), as amended;

(9) §266.103(a)(5)-(6)—Interim Status Standards for Burners—Purpose, Scope, and Applicability: Special Requirements for Furnaces; and Restrictions on Burning Hazardous Waste That is Not a Fuel;

(10) §266.103(b)—Interim Status Standards for Burners—Certification of Precompliance, except §266.103(b)(1) and §266.103(b)(6);

(11) §266.103(c)—Interim Status Standards for Burners—Certification of Compliance, except §266.103(c)(3)(i);

(12) §266.103(f)—Interim Status Standards for Burners—Start-Up and Shut-Down;

(13) §266.103(g)(1)-(2)—Interim Status Standards for Burners—Automatic Waste Feed Cutoff;

(14) §266.103(h)-(i)—Interim Status Standards for Burners: Fugitive Emissions; Changes; Monitoring and Inspections; Recordkeeping; and Closure, respectively;

(15) §266.104—Standards to Control Organic Emissions, except §266.104(i);

(16) §266.105—Standards to Control Particulate Matter, except §266.105(c) and except as provided by §335.226 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities);

(17) §266.106—Standards to Control Metals Emissions, except §266.106(i);

(18) §266.107—Standards to Control Hydrogen Chloride (HCl) and Chlorine Gas (Cl₂) Emissions, except §266.107(h);

(19) §266.108—Small Quantity On-Site Burner Exemption, except §266.108(d), and except that hazardous wastes subject to §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators) may not be burned in an off-site device under the exemption provided by §266.108;

(20) §266.109—Low-Risk Waste Exemption;

(21) §266.110—Waiver of DRE Trial Burn for Boilers;

(22) §266.111—Standards for Direct Transfer; and

(23) §266.112—Regulation of Residues. [The regulations of §§335.221-335.226 of this title (relating to Hazardous Waste Burned for Energy Recovery) apply to hazardous wastes that are burned for energy recovery in any boiler or industrial furnace that is not regulated under the provisions governing incinerators that are adopted by reference in §335.112(a)(14) of this title (relating to Standards), or §335.152(a)(13) of this title (relating to Standards), except as provided by subsection (b) of this section. Such hazardous wastes burned for energy recovery are termed "hazardous waste fuel." Fuel produced from hazardous waste by processing, blending, or other treatment is also hazardous waste fuel. (Sections 335.221-335.226 of this title (relating to Hazardous Waste Burned for Energy Recovery) do not apply, however, to gas recovered from hazardous waste management activities when such gas is burned for energy recovery.)]

(b) The following hazardous wastes and facilities are not regulated under §§335.221-335.229 of this title (relating to Hazardous Waste Burned in Boilers and Industrial Furnaces [for Energy recovery]):

(1) used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in 40 Code of Federal Regulations Part 261, Subpart C. Such used oil is subject to regulation by the United States Environmental Protection Agency under 40 Code of Federal Regulations Part 266, Subpart E. This exception does not apply if the used oil has been mixed with hazardous waste, or if the used oil is considered to be a hazardous waste by EPA under 40 Code of Federal Regulations §266.40(c). Used oil exhibiting a characteristic of hazardous waste [as well as hazardous waste fuels,] remains subject to the requirements of §335.24(g) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials; [and]

(2) hazardous wastes that are exempt from regulation under the provisions of 40 Code of Federal Regulations §261.4, and §335.24(c)(5)-(9) of this title (relating to Requirements for Recyclable Materials and Non-Hazardous Recyclable Materials), and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under the provisions of §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); [.]

(3) gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery; and

(4) coke ovens, if the only hazardous waste burned is EPA Hazardous Waste Number K087, decanter tank tar sludge from coking operations.

§335.222. Management Prior To Burning.

(a) Generators. Generators of hazardous waste that is burned in a boiler or industrial furnace are subject to the requirements of Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste).

(b) Transporters. Transporters of hazardous waste that is burned in a boiler or industrial furnace are subject to the requirements of Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste).

(c) Storage facilities. The provisions listed under paragraph (1) of this subsection apply to storage or processing by burners and by intermediaries such as processors, blenders, and distributors between the generator and the burner.

(1) Owners and operators of facilities that store or process hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of the following, except as provided by paragraph (2) of this subsection:

(A) Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General);

(B) Subchapter B of this chapter (relating to Hazardous Waste Management General Provisions);

(C) Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), except §335.112(a)(12)-(19) of this title (relating to Standards);

(D) Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities, except §335.152(11)-(16) of this title (relating to Standards);

(E) Chapter 305 of this title (relating to Consolidated Permits).

(2) Owners and operators of facilities that burn, in an on-site boiler or industrial furnace exempt from regulations under the small quantity burner provisions

of 40 Code of Federal Regulations §266.108, only hazardous waste that they generate are exempt from regulation under the provisions listed above in paragraph (1) of this subsection, with respect to the storage or processing of mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks that feed the fuel mixture directly to the burner. Storage or processing of hazardous waste by such owners and operators prior to mixing with the primary fuel is subject to regulation as prescribed in paragraph (1) of this subsection.

§335.223. Additional Permit Standards for Burners.

(a) In addition to the permit standards for burners under §335.221(a)(2)-(6) of this title (relating to Applicability and Standards), owners and operators of boilers and industrial furnaces that burn hazardous waste are subject to the following provisions, including the applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), as follows:

(1) §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(2) §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(3) §335.153 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator);

(4) §335.154 of this title (relating to Reporting Requirements for Owners and Operators);

(5) §335.155 of this title (relating to Additional Reports);

(6) §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response);

(7) §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(8) §335.178 of this title (relating to Cost Estimate for Closure).

(b) For the purposes of permit enforcement, compliance with the operating requirements specified in the permit, pursuant to 40 Code of Federal Regulations (CFR) §266.102; §335.221(a)(1)-(6) of this title (relating to Applicability and Stan-

dards); and subsections (a)(1)-(8) of this section, will be regarded as compliance with 40 CFR §§266.104-266.107. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of 40 CFR §§226.104-266.107 may be "good cause" for justifying suspension or revocation of a permit under §305.66 of this title (relating to Permit Denial, Suspension, and Revocation).

§335.224. Additional Interim Status Standards for Burners. In addition to the interim status standards for burners under §335.221(a)(7)-(14) of this title (relating to Applicability and Standards), owners and operators of existing boilers and industrial furnaces that burn hazardous waste are subject to the following provisions, including the applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General) and Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), as follows.

(1) Except as provided in paragraph (2) of this section, a boiler or industrial furnace is "existing" or "in existence" if, on or before August 21, 1991, the boiler or industrial furnace either was in operation burning or processing hazardous waste or was under construction (including the ancillary equipment and/or facility units needed to burn or to process the hazardous waste). A unit or equipment was under construction if the owner or operator had obtained the federal, state, and local approvals or permits necessary to begin physical construction; and either:

(A) a continuous on-site, physical construction had begun; or

(B) the owner or operator had entered into contractual obligations which could not be canceled or modified without substantial loss-for physical construction of the facility to have been completed within a reasonable time.

(2) A boiler or industrial furnace at a facility that accepts, for burning, hazardous waste from off-site source(s) which involves a commercial transaction or a change in ownership of the waste is "existing" or "in existence" if, on or before August 21, 1991, the boiler or industrial furnace was in operation burning hazardous waste for which the owner or operator had obtained all required federal, state, and local approvals or permits.

(3) If a boiler or industrial furnace is located at a facility that already has a permit or interim status, then the owner or

operator must comply with the applicable rules and regulations dealing with permit amendments or modifications under Chapter 305 of this title (relating to Consolidated Permits) and 40 Code of Federal Regulations §270.42, or revisions of applications for hazardous waste permits and changes during interim status under Chapter 305 of this title (relating to Consolidated Permits) and 40 Code of Federal Regulations §270.72.

(4) The requirements of this section and §335.221(a)(7)-(14) of this title (relating to Applicability and Standards) do not apply to hazardous wastes and facilities exempt under §335.221(b) of this title (relating to Applicability and Standards), or exempt under 40 Code of Federal Regulations §266.108, as adopted under §335.221(a)(19) of this title (relating to Applicability and Standards).

(5) Owners and operators of existing boilers and industrial furnaces that burn hazardous waste are subject to the following provisions:

(A) §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(B) §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(C) §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator);

(D) §335.114 of this title (relating to Reporting Requirements);

(E) §335.115 of this title (relating to Additional Reports);

(F) §335.127 of this title (relating to Cost Estimate for Closure);

(6) The owner or operator must provide complete and accurate information specified in 40 Code of Federal Regulations (CFR) §266.103(b)(2) to the executive director on or before August 21, 1992, and must establish limits for the operating parameters specified in 40 CFR §266.103(b)(3). Such information is termed a "certification of precompliance" and constitutes a certification that the owner or operator has determined that, when the facility is operated within the limits specified in 40 CFR §266.103(b)(3), the owner or operator believes that, using best engineering judgment, emissions of particulate mat-

ter, metals, Hcl and C12 are not likely to exceed the limits provided under 40 CFR §§266.105, 266.106, and 266.107. The facility may burn hazardous waste only under the operating conditions that the owner or operator establishes under 40 CFR §266.103(b)(3) until the owner or operator submits a revised certification of precompliance under 40 CFR §266.103(b)(8) or a certification of compliance under 40 CFR §266.103(c), or until a permit is issued.

(7) On or before August 21, 1992, the owner or operator must submit a notice for publication in a newspaper regularly published, and generally circulated within the county and area wherein the facility is located and send a copy of the notice of those persons and entities listed under §305.103(b)(2)-(12) of this title (relating to Notice by Mail). The owner and operator must provide to the executive director, with the certification of precompliance, evidence of submittal of the notice for publication. The public notice requirements of this subsection do not apply to recertifications under 40 Code of Federal Regulations §266.103(b)(8). The notice shall be entitled "Notice of Certification of Precompliance with Hazardous Waste Burning Requirements of 40 CFR 266.103(b) and 31 TAC §335.224(6)-(7)." The notice shall include:

(A) name and address of the owner and operator of the facility as well as the location of the device burning hazardous waste;

(B) date that the certification of precompliance was submitted to the executive director;

(C) brief description of the regulatory process required to comply with the interim status requirements of this section, §335.221(a)(7)-(14) of this title (relating to Applicability and Standards), and 40 Code of Federal Regulations (CFR) §266.103, including required emissions testing to demonstrate conformance with emissions standards for organic compounds, particulate matter, metals, and Hcl and C12;

(D) types and quantities of hazardous waste burned including, but not limited to, source(s), whether solids or liquids, as well as an appropriate description(s) of the waste(s);

(E) type of device(s) in which the hazardous waste is burned including a physical description and maximum production rate of each device;

(F) types and quantities per year of other fuels and industrial furnace feedstocks fed to each unit;

(G) brief description of the basis for this certification of precompliance as specified in 40 CFR §266.103(b)(2);

(H) locations where the operating record for the facility can be viewed and copied by interested parties. These locations shall at a minimum include:

(i) the local Texas Water Commission district office; and

(ii) the facility site where the device is located;

(I) notification of the establishment by the facility owner or operator of a facility mailing list whereby interested parties shall notify the facility owner or operator that they wish to be placed on the mailing list to receive future information and notices about this facility; and

(J) location (mailing address) of the local Texas Water Commission (TWC) district office, where further information can be obtained on TWC regulation of hazardous waste burning.

(8) On or before August 21, 1992, the owner or operator shall conduct emissions testing to document compliance with the emissions standards of 40 Code of Federal Regulations (CFR) §§266.103(a)(5)(i)(D), 266.104(b)-(e), 266.105, 266.106, and 266.107, under the procedures prescribed by paragraphs (8)-(10) of this section and 40 CFR §266.103(c), except under extensions of time provided by 40 CFR §266.103(c)(7). Based on the compliance test, the owner or operator shall submit to the executive director a complete and accurate "certification of compliance," in accordance with 40 CFR §266.103(c)(4), with those emission standards establishing limits on the operating parameters specified in 40 CFR §266.103(c)(1). Upon review, the executive director may reject the certification of compliance or require additional information to be submitted within specified time frames.

(9) Compliance testing must be conducted under conditions for which the owner or operator has submitted a certification of precompliance under 40 Code of Federal Regulations §266.103(b) and paragraphs (6)-(7) of this section, and under conditions established in the notification of compliance testing required by 40 CFR §266.103(c)(2).

(10) If the owner or operator chooses to submit a revised certification of compliance (recertification of compliance)

under 40 Code of Federal Regulations (CFR) §266.103(c)(8), or if the owner or operator is required to submit a recertification of compliance under paragraphs (11) or (13) of this section, then the owner or operator shall submit the recertification of compliance to the executive director under the procedures in 40 CFR §266.103(c) (8)(i)-(iv). Upon review, the executive director may reject the recertification of compliance or require additional information to be submitted within specified time frames.

(11) The owner or operator must conduct compliance testing and submit to the executive director a recertification of compliance under the provisions of paragraph (10) of this section and 40 Code of Federal Regulations (CFR) §266.103(c), within 90 days of rejection by the executive director under paragraphs (8), (10), or (11) of this section. Upon review, the executive director may reject the recertification of compliance or require additional information to be submitted within specified time frames. Except for the activities necessary for the owner or operator to conduct the compliance testing in accordance with 40 CFR §266.103(c)(8)(i)-(iv), upon rejection by the executive director and until a subsequent recertification of compliance is approved under paragraph (10) of this section, the owner or operator shall not burn hazardous waste in the unit for which a certification of compliance or recertification of compliance was rejected.

(12) Upon receipt of the third rejection by the executive director of a certification of compliance and/or recertification of compliance for the burning of hazardous waste in a boiler or industrial furnace, the owner or operator shall stop burning hazardous waste in the unit for which the certification and/or recertification were rejected, begin closure activities under 40 Code of Federal Regulations §266.103(l), and shall not resume the burning of hazardous waste except under an operating permit issued under Chapter 305 of this title (relating to Consolidated Permits).

(13) Notwithstanding any requirement for a recertification under paragraph (11) of this section, the owner or operator must conduct compliance testing and submit to the executive director a recertification of compliance under the provisions of paragraph (10) of this section and

40 Code of Federal Regulations §266.103(c) within three years from submitting the previous certification or recertification (excluding recertification(s) submitted under paragraph (11) of this section). If the owner or operator seeks to recertify compliance under new operating conditions, then the owner or operator must comply with the requirements of paragraph (10) of this section. Upon review, the executive director may reject the recertification of compliance or require additional information to be submitted within specified time frames.

(14) If the owner or operator does not comply with the interim status compliance schedule provided by paragraphs (6), (7), (8), (11), or (13) of this section, hazardous waste burning must terminate on the date of the deadline, closure activities must begin under 40 Code of Federal Regulations §266.103(l), and hazardous waste burning may not resume except under an operating permit issued under Chapter 305 of this title (relating to Consolidated Permits).

(15) During the compliance test required by paragraph (9) of this section and 40 Code of Federal Regulations (CFR) §266.103(c)(3), and upon certification of compliance under 40 CFR §266.103(c), a boiler or industrial furnace must be operated with a functioning system that automatically cuts off the hazardous waste feed when the applicable operating conditions specified in 40 CFR §266.103(c)(1)(i) and (v)-(xiii) deviate from those established in the certification of compliance, and the boiler or industrial furnace must be operated in accordance with 40 CFR 266.103(g)(1)-(2).

§335.225. Additional Standards for Direct Transfer.

(a) The requirements of this section and 40 Code of Federal Regulations (CFR) §266.111, adopted by reference at §335.221(a)(22) of this title (relating to Applicability and Standards), apply to owners and operators of boilers and industrial furnaces subject to 40 CFR §266.102 or §266.103, if hazardous waste is directly transferred from a transport vehicle to a boiler or industrial furnace without the use of a storage unit.

(b) The direct transfer of hazardous waste to a boiler or industrial furnace shall

be conducted so that it does not adversely affect the capability of the boiler or industrial furnace to meet the standards provided by §335.226 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities).

§335.226. Standards for Burning Hazardous Waste in Commercial Combustion Facilities. In addition to the applicable requirements under §§335.221-335.225 of this title (relating to Applicability and Standards; Management Prior to Burning; Additional Permit Standards for Burners; Additional Interim Status Standards for Burners; and Additional Standards for Direct Transfer, respectively), no person shall cause, suffer, allow, or permit the burning of hazardous waste in a combustion unit at any facility that accepts such hazardous waste from off-site sources which involves a commercial transaction or a change in ownership of the waste and for which the combustion unit is not regulated by the United States Environmental Protection Agency at 40 Code of Federal Regulations (CFR) Part 264 or 265, Subpart O, or by the Texas Water Commission at 31 Texas Administrative Code (TAC) §335.112(a)(14) or §335.152(a)(13), unless the following requirements are met.

(1) Particulate emissions shall not exceed 0.18 gram per dry standard cubic meter or 0.08 grain per dry standard cubic foot, to include particulate matter caught by impinger train, when corrected for 7.0% oxygen in the stack gas according to the formula specified in §111.121(1) of this title (relating to Single-, Dual-, and Multiple-Chamber Incinerators).

(2) Hydrogen chloride (HCl) emissions greater than 1.8 kilograms (four pounds) per hour shall be controlled with a minimum removal efficiency of 95%.

(3) Except as provided by 40 CFR §266.104(a)(3)-(5), destruction and removal efficiency (DRE) shall be at least 99.99% for each principal organic hazardous constituent (POHC) in each waste feed. The POHCs shall be selected according to the method at 40 CFR Part 264.342 and shall be approved in advance by the executive director. DRE shall be determined using the following formula:

$$DRE = \left[1 - \frac{W_{out}}{W_{in}} \right] \times 100\%$$

in which

W_{in} = the mass feed rate of an approved POHC in the waste stream feeding the combustion facility;

and

W_{out} = the mass emission rate of the same POHC, expressed in the same units as the mass feed rate used in W_{in} , present in exhaust emissions of the combustion device prior to release to the atmosphere;

(4) The facility shall perform a trial burn according to the requirements listed at 40 CFR Part 270.62 to determine compliance with subsections (a)-(c) of this section. The operating conditions and waste feed composition during a trial burn demonstrating compliance with the requirements of subsections (a)-(c) shall be maintained as limits for subsequent operation of the facility. Substitution of new hazardous waste constituents and increases in the concentration of any hazardous waste constituent compared to the conditions existing during the trial burn will require retesting unless such change or substitution has received written approval from the executive director. The operating limits shall be monitored

continuously and shall include the following:

(A) maximum carbon monoxide level in the exhaust gas of the combustion device;

(B) minimum oxygen level in the exhaust gas of the combustion device;

(C) maximum waste feed rate to the combustion device;

(D) minimum combustion temperature;

(E) an appropriate indicator of combustion gas velocity;

(F) maximum total hydrocarbons in the exhaust gas of the combustion device; and

(G) any other operating limit determined necessary by the executive director to ensure that the requirements of paragraphs (1)-(3) of this section are met.

(5) The facility shall not burn any chlorinated hazardous waste or hazardous waste containing any of the following metals unless an enforceable emission limit has been established which is designed to protect public health for each metal and for toxic products of incomplete combustion.

Metals

Arsenic

Antimony

Barium

Beryllium

Cadmium

Chromium

Lead

Mercury

Silver

Thallium

(6) The facility shall maintain an automatic waste feed cutoff system which shall activate if the facility is not operating within the limits determined in accordance with paragraph (4) of this section and shall remain activated until the facility is operating within the limits determined in accordance with paragraph (4) of this section.

(7) During start-up or shutdown of the facility, hazardous waste fuels must not be fed into the combustion zone unless the facility is operating within the limits determined in accordance with paragraph (4) of this section.

(8) Fugitive emissions from the combustion zone shall be controlled by maintaining the combustion zone pressure lower than atmospheric pressure or by keeping the combustion zone totally sealed to prevent fugitive emissions.

(9) Compliance with the requirements of paragraphs (1)-(4) and (6)-(8) of this section shall be accomplished prior to the burning of any hazardous waste, except for such burning which is necessary to conduct the required trial burn. Compliance with paragraph (5) shall be as soon as practicable but no later than July 31, 1992. This paragraph applies to facilities burning hazardous waste under state or federal interim status prior to the effective date of this section. Facilities not burning hazardous waste under interim status which are permitted after that date will be subject to compliance dates specified by permit.

§335.227. Testing Requirements for Commercial Hazardous Waste Combustion Facilities. Compliance with §335.226 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities) shall be demonstrated by application of the test methods included in §111.125 of this title (relating to Testing Requirements). Test reports prepared to demonstrate compliance with §335.226

shall clearly document the operating conditions and waste feed composition existing during the test.

§335.228. Monitoring and Recordkeeping Requirements for Commercial Hazardous Waste Combustion Facilities.

(a) The owner or operator of a commercial combustion facility subject to the requirements of §335.226 or §111.125 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities, and Testing Requirements, respectively), shall maintain written records of all monitoring and testing results, hours of operation, and quantity of waste burned. Such records shall be retained for a period of not less than three years. Such records shall be made available upon request by authorized representatives of the commission, the Texas Air Control Board, the United States Environmental Protection Agency (EPA), or local air pollution control agencies.

(b) The owner or operator of a commercial combustion facility subject to the requirements of §335.226 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities) shall install, calibrate, maintain, and operate a monitoring device that continuously measures and records the waste feed rate, combustion gas velocity, opacity, oxygen content, carbon monoxide (CO) content, total hydrocarbon (THC) content, and temperature of the exhaust gas of the combustion device. CO and THC shall be corrected to 7.0% oxygen, reported on a dry basis, and measured in the same location. The oxygen, THC, CO, combustion gas velocity, and opacity devices must be certified for use following procedures outlined in 40 Code of Federal Regulations Part 60. Such certification must be approved by the executive director or by his designated representative. Compliance determinations may be made based on results of monitoring with a certified monitor.

§335.229. Operating Requirements For Commercial Hazardous Waste Combustion Facilities. The owner or operator of commercial combustion facilities subject to the requirements of §§335.226, 111.125, or 335.228 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities; Testing Requirements; and Monitoring and Recordkeeping Requirements for Commercial Hazardous Waste Combustion Facilities), respectively, shall meet the requirements of §111.129 of this title (relating to Operating Requirements).

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

Issued in Austin, Texas, on April 6, 1992.

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Mary Ruth Holder
Director, Legal Services
Texas Water Commission

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For further information, please call: (512) 463-8069

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 7. Administration of State Lottery Act

Subchapter D. Lottery Game Rules

• 34 TAC §7.303

The Comptroller of Public Accounts proposes new §7.303, concerning grand prize drawing rule. This new section sets forth the procedures to be utilized when an instant ticket game provides for a grand prize drawing.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no significant

revenue impact on the state or local government as a result of enforcing the section.

Dr. Plaut 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 in allowing the comptroller to implement the lottery in a regulated and timely manner. There will be no significant effect on small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the new section may be submitted to Nora Linares, Director, Lottery Division, 111 East 17th Street, Austin, Texas 78701.

The new section is proposed under the State Lottery Act, §2.02, which provides the comptroller with the authority to adopt all rules necessary to administer the State Lottery Act.

§7.303. Grand Prize Drawing Rule.

(a) This section shall not apply to individual games that do not provide for a grand prize drawing.

(b) Eligibility for a grand prize drawing shall be determined by, but not limited to, a direct entry to a grand prize drawing or an entry into a preliminary draw as provided in the game procedures. The director shall determine any prizes to be awarded and the method of payment which shall be stated in the game procedures.

(c) Preliminary draws and grand prize drawings shall be conducted at times and places and pursuant to the methods stated in the draw procedures.

(d) An entry to a preliminary or grand prize drawing submitted by a player in accordance with the applicable game procedures is eligible to be included in a drawing as provided in the draw procedures.

(e) Entries to a preliminary or grand prize drawing shall be delivered to the address designated on the applicable game ticket no later than the last day of the time frames specified in the game procedures.

(f) The number of preliminary draw and grand prize drawing winners selected to advance or to win a prize shall be specified in the draw procedures. The odds of winning an entry into these drawings for a prize of a specific amount need not be uniform throughout the game and are subject to change by the director.

(g) Each grand prize drawing finalist shall submit a completed claim form and the winning ticket to the Texas Lottery within the required claim filing period. Failure to submit these items within the claim filing period and failure to have a valid ticket will be cause for ineligibility to the grand prize drawing.

(h) Each grand prize drawing finalist will be notified by the Texas Lottery of

the date of his/her appearance on the grand prize drawing.

(i) If a dispute arises between the Texas Lottery and a ticket claimant concerning whether the ticket is a winning ticket and if the ticket prize has not been paid, the director may, exclusively at his/her determination, reimburse the claimant for the cost of the disputed ticket. This shall be the claimant's exclusive remedy.

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

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Charles Johnstone
Senior Legal Counsel,
General Law Section
Comptroller of Public
Accounts

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

Subchapter E. Retailer Rules

• 34 TAC §§7.351-7.366

The Comptroller of Public Accounts proposes new §§7.351-7.366, concerning proceeds from ticket sales; settlement procedures; sales commissions; sale of lottery tickets on credit; restricted sales; sales price of tickets; Texas Lottery as retailer; promotional tickets; location of sales; payment of prizes; required purchases of lottery tickets; security procedures; retailer records; training; merchandising; and compliance with all applicable laws. These new sections establish rules that lottery retailers must be in compliance with in order to maintain their license.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the sections are in effect there will be no significant revenue impact on the state or local government as a result of enforcing the sections.

Dr. Plaut 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 in allowing the comptroller to implement the lottery in a regulated and timely manner. There will be no significant effect on small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed sections.

Comments on the new sections may be submitted to Nora Linares, Director, Lottery Division, 111 East 17th Street, Austin, Texas 78701

The new sections are proposed under the State Lottery Act, §2.02, which provides the comptroller with the authority to adopt all rules necessary to administer the State Lottery Act.

§7.351. *Proceeds from Ticket Sales.* All proceeds from the sale of lottery tickets received by a retailer shall constitute a trust fund until paid to the Texas Lottery either directly or through the Texas Lottery's authorized collection representative. A retailer shall have a fiduciary duty to preserve and account for lottery proceeds and retailers shall be personally liable for all proceeds. Proceeds shall include unsold instant tickets received by a retailer and cash proceeds of sale of any lottery products, net of allowable sales commissions and credit for lottery prizes to winners by retailers. Sales proceeds and unused instant tickets shall be delivered to the Texas Lottery or its authorized collection representative on demand. Retailers shall place all lottery proceeds due the Texas Lottery in accounts in institutions insured by the Federal Deposit Insurance Corporation not later than the close of the next banking day after the date of their collection by the retailer until the date that they are paid over to the Texas Lottery.

§7.352. Settlement Procedures.

(a) The Texas Lottery may require a retailer to establish a single separate electronic funds transfer account, where available, for the purpose of receiving monies from ticket sales, making payments to the Texas Lottery, and receiving payments from the Texas Lottery. Failure to have sufficient funds available to cover an electronic funds transfer to the Texas Lottery's account shall be a cause for suspension or termination of a retailer's license. Further, if a check or electronic transfer of funds to the Texas Lottery is dishonored, the Texas Lottery may take any and all actions authorized by law, including requiring the retailer to pay a service charge and other collection and litigation expenses.

(b) Retailers shall file with the Texas Lottery, or its designated representative, reports of the retailer's receipts and transactions in the sale of lottery tickets on a form or in a manner as prescribed by the director.

§7.353. *Sales Commissions.* A retailer shall receive a sales commission equal to 5.0% of the gross proceeds from the sale of lottery tickets. In addition to the 5.0% sales commission, the Texas Lottery may develop a system of bonuses and sales incentives based on dollar volume of business, the sale of winning tickets, or such other criteria as the Texas Lottery may develop from time to time.

§7.354. *Sale of Lottery Tickets on Credit.* The retailer shall not directly extend credit to the purchaser of lottery tickets and shall not accept a credit card or debit card for the payment of lottery tickets.

§7.355. Restricted Sales.

(a) Retailers shall not sell lottery tickets by mail, phone, fax, or other similar method of communications.

(b) Retailers shall not sell tickets to persons under the age of 18. Any ticket purchased by or sold to an individual under the age of 18 years shall be void and the prize otherwise payable on the ticket is treated as an unclaimed prize under §7.302(j)(3) of this title (relating to Instant Game Rules).

(c) Retailers shall not accept a food stamp coupon for the purchase of a lottery ticket.

(d) Retailers shall not sell a ticket or pay a lottery prize to another person that the retailer knows is:

(1) an officer or an employee of the comptroller;

(2) an officer, member, or employee of a lottery operator;

(3) an officer, member, or employee of a contractor or subcontractor that is excluded by the terms of its contract from playing lottery games;

(4) the spouse, child, brother, sister, or parent of a person described by paragraph (1), (2), or (3) of this subsection who resides within the same household as that person.

§7.356. Sales Price of Tickets. No person shall sell a lottery ticket at a price other than established by the Texas Lottery, unless authorized in writing by the director. No person other than a duly licensed retailer shall sell lottery tickets, but this shall not be construed to prevent a person who may lawfully purchase tickets from making a gift of lottery tickets to another.

§7.357. Texas Lottery as Retailer. Nothing in these retailer sections shall be construed to prohibit the Texas Lottery from designating certain of its agents and employees to sell lottery tickets directly to the public.

§7.358. Promotional Tickets. Lottery tickets may be given by merchants as a means of promoting goods or services to customers or prospective customers subject to the prior written approval by the Texas Lottery.

§7.359. Location of Sales. No retailer shall sell a lottery ticket except from the locations listed in the retailer's license.

§7.360. Payment of Prizes. Retailers shall pay any lottery prize of \$49 or less, after

complying with established validation procedures. A retailer may pay prizes greater than \$49 and less than \$600, after complying with proper validation procedures. Prizes of \$600 or more shall be paid by the Texas Lottery by mail or at a designated lottery claim center.

§7.361. Required Purchases of Lottery Tickets. Failure of a retailer to order one pack of lottery tickets for any 30-day period shall result in the retailer's license being placed on probation, and the Texas Lottery shall notify retailer of such probation. If the retailer does not order one pack of lottery tickets within 30 days after the date the notice of probation is sent by the Texas Lottery, the retailer's license shall be suspended, and the retailer shall pay all debts due the Texas Lottery within 30 days of such suspension.

§7.362. Security Procedures. A retailer shall provide reasonable security for all lottery tickets and other Texas Lottery property and is responsible for all lottery tickets delivered to it upon the retailer's acknowledgment of receipt thereof. A retailer shall notify the Texas Lottery within 24 hours of any lost, stolen, missing, or counterfeit tickets. The Texas Lottery shall not be liable for any event not reported within such time period and may reimburse or credit a retailer for any tickets affected thereby.

§7.363. Retailer Record. Each retailer shall keep accurate and complete records of all transactions with the Texas Lottery, and such records shall be open to inspection by the Texas Lottery at all times during normal business hours. The Texas Lottery may make summaries or notes of any such records and may copy any such records either at the retailer's place of business, or if more convenient, off such premises so long as such records are returned within 48 hours of the time they are withdrawn from such place of business.

§7.364. Training. Retailers shall be required to send at least one and no more than three persons to lottery training to be sponsored by the Texas Lottery and the lottery operator. All representatives of the same retailer shall attend the same session. All expenses or costs of attendance by employees of a retailer shall be paid by such retailer, including, but not limited to, costs of salaries, travel, lodging, meals, and materials.

§7.365. Merchandising. Each retailer agrees to offer no less than two instant games for sale to the public at all times if two or more instant games are available from the Texas Lottery. The retailer shall

use a lottery ticket dispenser for the sale of lottery tickets, and shall place the dispenser in a prominent location in the retail establishment near the cash register or check-out area. The retailer shall prominently display point-of-sale materials supplied by the Texas Lottery, including door decals, game posters, display tickets, danglers, change mats, and lighted interior signs, unless the Texas Lottery agrees otherwise in writing. The retailer shall make lottery tickets available and shall provide for redemption.

§7.366. Compliance with All Applicable Laws. Each retailer agrees to operate in a manner consistent with the State Lottery Act, applicable federal laws, Texas laws, and local ordinances, the rules and regulations promulgated by the comptroller and with his/her or its license agreement with the Texas Lottery.

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 April 6, 1992.

TRD-9204671

Charles Johnstone
Senior Legal Counsel
Comptroller of Public
Accounts

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

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 87. Treatment

Program Planning

• **37 TAC §87.25**

The Texas Youth Commission (TYC) proposes new §87.25, concerning Title IV-E foster care youth. The agency will commence participating in Title IV-E program to generate federal funds.

John Franks, director of fiscal affairs, 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. Franks 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 greater use of available federal funding. 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 Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under the Human Resources Code, §61.0761 which gives the commission authority to develop programs that encourage family involvement in the rehabilitation of the child.

§87.25. Title IV-E Foster Care Youth.

(a) Policy. The Texas Youth Commission (TYC) participates in the Federal Title IV-E foster care funding program. All youth placed in halfway houses or assigned contract care facilities are screened for eligibility for Title IV-E foster care maintenance payments.

(b) Rules.

(1) Screen all admissions to eligible facilities and notify TYC/TDHS eligibility worker.

(2) All Title IV-E youth are enrolled in the medicaid program and medicaid providers are utilized for health care needs.

(3) All Title IV-E youth must have six-month administrative reviews held by a TYC case analyst who is not connected with that youth's case.

(4) All Title IV-E youth must have a dispositional review hearing after 18 months. This hearing is held by a TYC hearing examiner.

(5) All TYC policies implementing case management and family involvement are equally applicable to Title IV-E youth.

(6) All Title IV-E youth must be afforded protection and assistance required by federal law.

(c) Procedures.

(1) Assessment. The primary service worker (PSW) accomplishes the following:

(A) upon admittance to a TYC halfway house or eligible contract care program, reviews the youth's case to determine whether the parents are recipients of Aid to Families with Dependent Children (AFDC) or whether deprivation exists in the home:

(i) determines if the parent receives AFDC by reviewing:

(I) Common Application (Financial Section 8 page 15);

(II) Common Application (page 1)—whether youth has a DHS number; or

(III) personal interview with the youth;

(ii) determines if deprivation exists in the home if one or more of the following conditions are found:

(I) parents never married;

(II) one parent absent from the home due to divorce, death, or incarceration;

(III) primary wage earner unemployed;

(IV) parent incapacitated (incapacitation must be verified through Texas Rehabilitation Commission or Texas Department of Human Services);

(V) youth living with one parent due to separation or desertion of other parent; or

(VI) youth living with a relative who qualifies for AFDC;

(B) refers youth to TYC/TDHS eligibility worker if youth meets above conditions or PSW thinks the youth should qualify;

(C) completes Title IV-E e-form;

(D) submits e-form to eligibility worker within five working days after youth's arrival;

(E) updates common application if needed.

(2) Certification of youth.

(A) The eligibility worker accomplishes the following:

(i) reviews information presented;

(ii) requests additional information from youth's worker if needed;

(iii) contacts youth's parole officer for additional financial information needed from family or to confirm current information;

(B) The parole officer updates common application with additional financial information regarding family and/or other resources available in the home community and notifies eligibility worker.

(C) The eligibility worker accomplishes the following:

(i) certifies or denies youth's eligibility. Completes certification form and begins file on youth;

(ii) completes Foster Care, Adoption and Conservatorship Tracking System (FACTS) Form and enters into TDHS (RMS) system;

(iii) enters youth into TYC tracking system;

(iv) informs youth's PSW of eligibility status;

(v) assigns TYC case analyst to youth;

(vi) Re-certifies youth every six months;

(3) IV-E individual case plan development.

(A) The primary service worker completes ICP: IV-E Eligible Youth Form (CCF-114 2b) after the youth is determined eligible for Title IV-E services and within 30 days after admission to the program. PSW insures that the document is completed and includes the following information:

(i) determines if placement is in close proximity to parents home, youth's school, and is the least restrictive placement available that can provide services to meet the youth's needs. Gives reasons if this criteria is not met;

(ii) includes reason for youth's placement. If youth enters the program from another program, the reason for the placement should be documented in the referring program's ICP: Review Release Summary;

(iii) indicates why the placement is appropriate;

(iv) indicates any support services needed to assist the care giver or child care worker in working with the youth. If none needed indicates by writing N/A;

(v) if youth is over the age of 16, indicates what steps are being taken for independent living preparation or for the return home;

(vi) indicates if the youth's health and education records are present in the masterfile or have been given to the contract care provider; and

(vii) insures program administrator and person completing the ICP: IV-E Eligible Youth form sign the document and the document is placed in the youth's file.

(B) TYC case analyst contacts the youth's parole officer and requests copy of the detention order which removed the youth from the home prior to his/her commitment to TYC.

(C) The parole officer or designee obtains order and forwards to case analyst.

(D) TYC case analyst insures order is placed in youth's masterfile.

(E) TYC case analyst monitors Title IV-E youth case management to ensure compliance with federal guidelines.

(4) Administrative reviews.

(A) TYC case analyst schedules IV-E Administrative Review three weeks prior to actual review date to insure all parties have enough time to receive notice and plan participation.

(B) TYC case analyst informs PSW program administrator, and parole officer of date and time of review so that they plan their participation.

(C) TYC case analyst sends certified letter to parents, copy PSW, and masterfile.

(D) The primary service worker updates ICP Review Release Summary. Contacts parents and parole office for input into plan and includes the following:

(i) compliance with ICP case plan objectives;

(ii) need for continued placement and appropriateness of placement;

(iii) long range goal for reentry/ family reunification or independent living;

(iv) feedback from parole officer as to whether parents followed up on counseling or support services offered; and

(v) confirmation of parents participation and document in masterfile chronological.

(E) If youth is transferred to another program or sent home, primary service worker notifies eligibility worker via Title IV E e-Form.

(F) TYC case analyst holds administrative review and determines the following.

(i) How has youth progressed on case plan objectives?

(ii) Are permanency plan objectives realistic and achievable?

(iii) What is reason for continued placement?

(iv) Is placement appropriate?

(v) Is progress made toward alleviating or mitigating the causes for youth being placed out of the home?

(vi) The administrative review includes a thorough review of all previous ICP and monthly reviews while in placement.

(G) TYC case analyst documents TYC administrative review form and insures the following people receive copies:

(i) youth;

(ii) parent;

(iii) primary service worker; and

(iv) parole officer.

(H) Primary service worker places original in youth's masterfile.

(I) TYC case analyst holds administrative reviews on youth every six months except when an 18-month dispositional review hearing is needed.

(5) Dispositional hearing.

(A) Two months prior to a dispositional review hearing date, TYC case analyst contacts the legal department to schedule a hearing.

(B) TYC legal department sets hearing and informs TYC case analyst of date and time.

(C) TYC legal department appoints attorney for the youth and informs PSW and TYC case analyst.

(D) TYC legal department verifies approval to hold hearing from the committing court.

(E) TYC case analyst informs primary service worker of date and time of hearing and requests updated review release ICP to answer following questions.

(i) Has youth complied with case plan objectives?

(ii) What is reason for continued placement?

(iii) If over 16, what are plans for independent living?

(iv) What is permanent plan for placement, including why the youth cannot return home?

(v) What has TYC done to try to place the youth back in the home?

(vi) What are recommendations for continued placement?

(F) The Primary service worker forwards review release ICP to TYC case analyst.

(G) TYC case analyst completes administrative/ dispositional review report and sends a copy of the hearings examiner and youth's attorney. Sends copy to primary service worker and masterfile.

(H) The primary service worker discusses hearing with youth and the youth's attorney to determine if on-site hearing and youth's presence is required.

(I) The primary service worker informs TYC case analyst and hearings examiner via telex. Documents in youth's chronological.

(J) TYC case analyst contacts parents and/or legal conservator of hearing time and date via certified letter.

(K) TYC case analyst forwards copy of certified letter to youth's masterfile and notifies program, primary service worker, and parole officer via telex of finalized hearing date.

(L) The hearings examiner holds the dispositional review hearing.

(M) The hearings examiner signs the dispositional review hearing order at the hearing.

(N) The primary service worker places the order in the masterfile.

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 April 1, 1992.

TRD-9204521 Ron Jackson
Executive Director
Texas Youth Commission

Proposed date of adoption: May 11, 1992

For further information, please call: (512) 483-5244



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 29. Purchased Health Services

Subchapter G. Hospital Services

• 40 TAC §29.609

The Texas Department of Human Services (DHS) proposes an amendment to §29.609, concerning additional reimbursement to disproportionate share hospitals, in its Purchased Health Services rules. Section 29.609 is being amended to specify that hospitals that do not qualify for disproportionate share payments or that believe the amount of payment is incorrect may request and receive a review by the department. This process will apply to the department's first disproportionate share program. Adjustments, if appropriate, will be made when the second lump-sum payment is made to hospitals.

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

Mr. Raiford 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 amendment will be continued access to medical care through appropriate reimbursement to disproportionate share hospitals. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Questions about the content of the proposal may be directed to Joseph B Branton, Jr., at (512) 338-6505 in DHS's Purchased Health Services. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-054, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed 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.

§29.609. Additional Reimbursement to Disproportionate Share Hospitals.

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

(d) Calculating a hospital's disproportionate patient percentage.

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

(3) The department arrays each hospital's disproportionate patient percent-

age in descending order. The department selects hospitals that meet the two-physician requirement or one of the exceptions to the requirement, beginning with the hospital with the highest disproportionate patient percentage and continuing until at least 25% of the Medicaid participating hospitals have been selected. Those hospitals selected are defined by the department as disproportionate share hospitals. The department makes disproportionate share payments to qualifying hospitals in two lump-sum payments each fiscal year. The department notifies hospitals of their eligibility and the amount of payment or ineligibility when the first lump-sum payment is made. Hospitals that do not qualify or that believe the amount of payment is incorrect may request a review by the department. The hospital's written request for a review must be made to Director, Acute Care Services and must be received by the department within 10 days after the hospital receives notification of its eligibility or ineligibility. The hospital's request must contain specific documentation supporting its contention that factual or calculation errors were made which if corrected would result in the hospital qualifying for payments or receiving payment in a corrected amount. The department's review will be limited to allegations of factual or calculation errors, will be limited to a review of documentation submitted by the hospital or used by the department in making its original determination, and will not be conducted as an adversary hearing. The department conducts the review as quickly as possible and makes adjustments, if appropriate, when the second lump-sum payment is made. Hospitals which have requested a review are notified at the time of the second lump-sum payment of the results of the review. Any adjustments made as a result of such reviews will not exceed the limits of available funds for implementing the applicable disproportionate share program. Once the second lump-sum payment is made, no additional review or appeal is available to hospitals.

(e)-(h) (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 April 2, 1992.

TRD-9204526 Nancy Murphy
Agency liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: June 1, 1992

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

Chapter 72. Memoranda of Understanding with Other State Agencies

Memorandum of Understanding for Child Protective Services

• 40 TAC §72.902

The Texas Department of Human Services (DHS) proposes an amendment to §72.902, concerning service delivery to runaway children, in its memoranda of understanding with other state agencies chapter. Section 72.902 adopts 37 TAC §341.21 (relating to Memorandum of Understanding on Service Delivery to Runaways) by reference. The Texas Juvenile Probation Commission (TJPC) has proposed an amendment to 37 TAC §341.21 after conducting an annual review of the section with DHS as required by law. TJPC's proposed amendment to 37 TAC §341.21 was published in the March 20, 1992, issue of the *Texas Register* (17 TexReg 2116). The TJPC's proposed amendment includes changes in dates, staff titles, statutory references, and in the mean number of runaways reported for each county in Texas. The purpose of the amendment proposed here is to ensure that §72.902 remains up to date after TJPC adopts the proposed amendment to 37 TAC §341.21.

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

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the improvement of local coordination of services to runaway children. There will be no effect on small businesses as a result of enforcing or administering the section. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Thomas Chammond at 450-3309 in the Protective Services for Families and Children Department. Comments on the proposal may be submitted to Nancy Murphy, Policy and Document Support-091, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and Chapter 141, which authorizes the department to enter into a memorandum of understanding with the TJPC regarding service delivery to runaway children.

§72.902. Memorandum of Understanding on Service Delivery to Runaway Children. The Texas Department of Human Services (DHS) adopts by reference 37 TAC §341.21 (relating to Memorandum of

Understanding on Service Delivery to Run-aways) as amended effective June 1, 1992. This memorandum of understanding between the Texas Juvenile Probation Commission (TJPC) and DHS provides for TJPC and DHS coordination of services to run-away children at the community level.

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

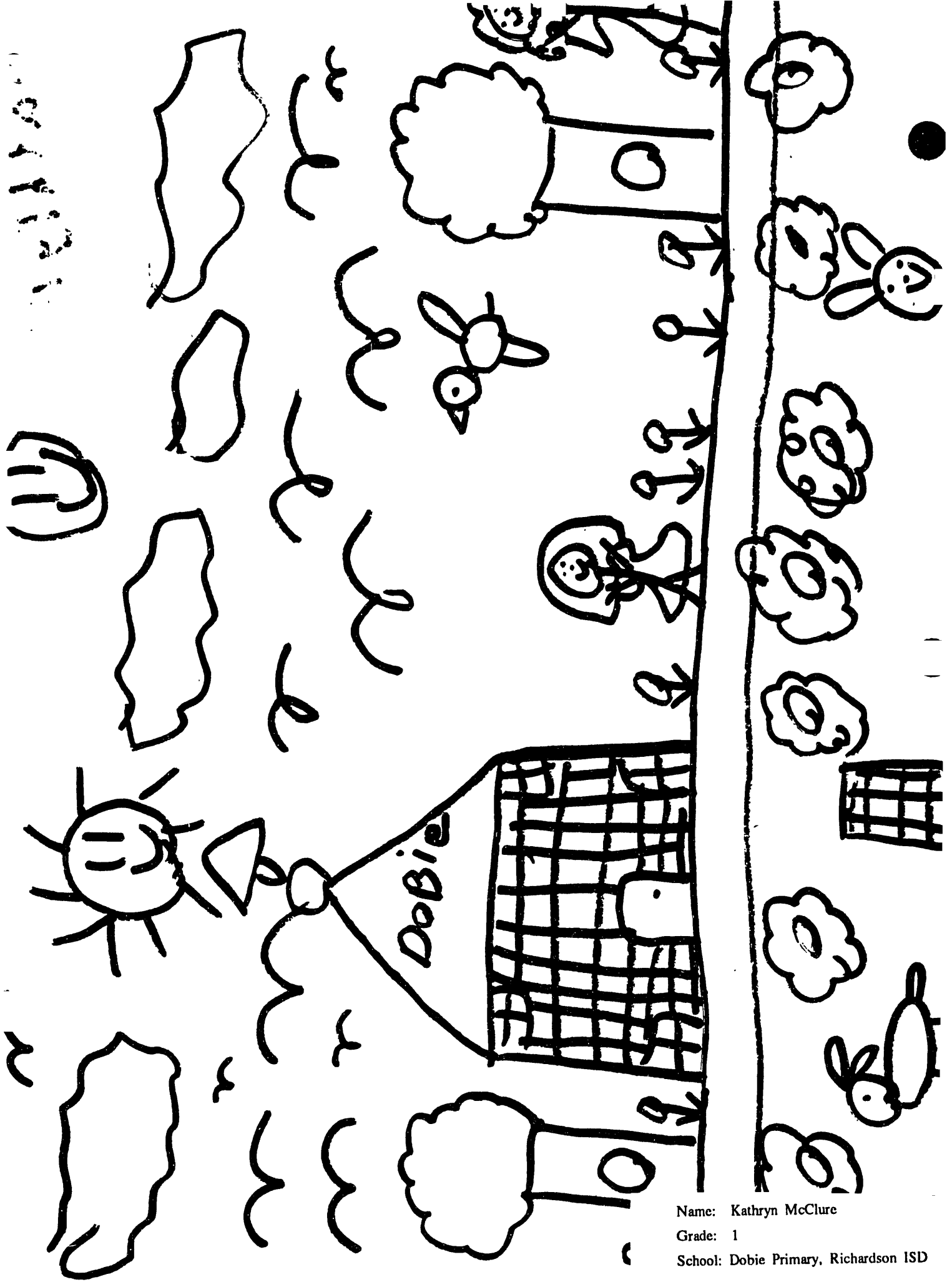
Issued in Austin, Texas, on April 6, 1992.

TRD-9204683

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

Proposed date of adoption: June 15, 1992
For further information, please call: (512)
450-3765

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Name: Kathryn McClure

Grade: 1

School: Dobie Primary, Richardson ISD

Withdrawn Sections

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

TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 76. Boxing

- 16 TAC §§76.1, 76.10,
76.20-76.27, 76.40, 76.50-76.53,
76.60, 76.61, 76.70-76.80,
76.90-76.92, 76.100-76.116

The Texas Department of Licensing and Regulation has withdrawn from consideration for permanent adoption proposed new §§76.1, 76.10, 76.20-76.27, 76.40, 76.50-76.53, 76.60, 76.61, 76.70-76.80, 76.90-76.92, 76.100-76.116 which appeared in the October 18, 1991, issue of the *Texas Register* (16 TexReg 5767). The effective date of this withdrawal is April 6, 1992.

Issued in Austin, Texas, on April 6, 1992

TRD-9204680

Elvis Schulze
General Counsel
Texas Department of
Licensing and
Regulation

Effective date: April 6, 1992

For further information, please call: (512)
463-3127

TITLE 22. Examining Boards

Part XI. Board of Nurse Examiners

Chapter 213. Practice and Procedure

- 22 TAC §213.20

The Board of Nurse Examiners has withdrawn from consideration for permanent adoption proposed amended §213.20 which appeared in the October 18, 1991, issue of the *Texas Register* (16 TexReg 5809). The effective date of this withdrawal is April 2, 1992.

Issued in Austin, Texas, on April 2, 1992

TRD-9204538

Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Effective date: April 2, 1992

For further information, please call: (512)
835-8650

The Board of Nurse Examiners has withdrawn the emergency effectiveness of amended §213.20, concerning the practice and procedure. The text of the emergency amended §213.20 appeared in the October 18, 1991, issue of the *Texas Register* (16 TexReg 5742). The effective date of this withdrawal is April 2, 1992.

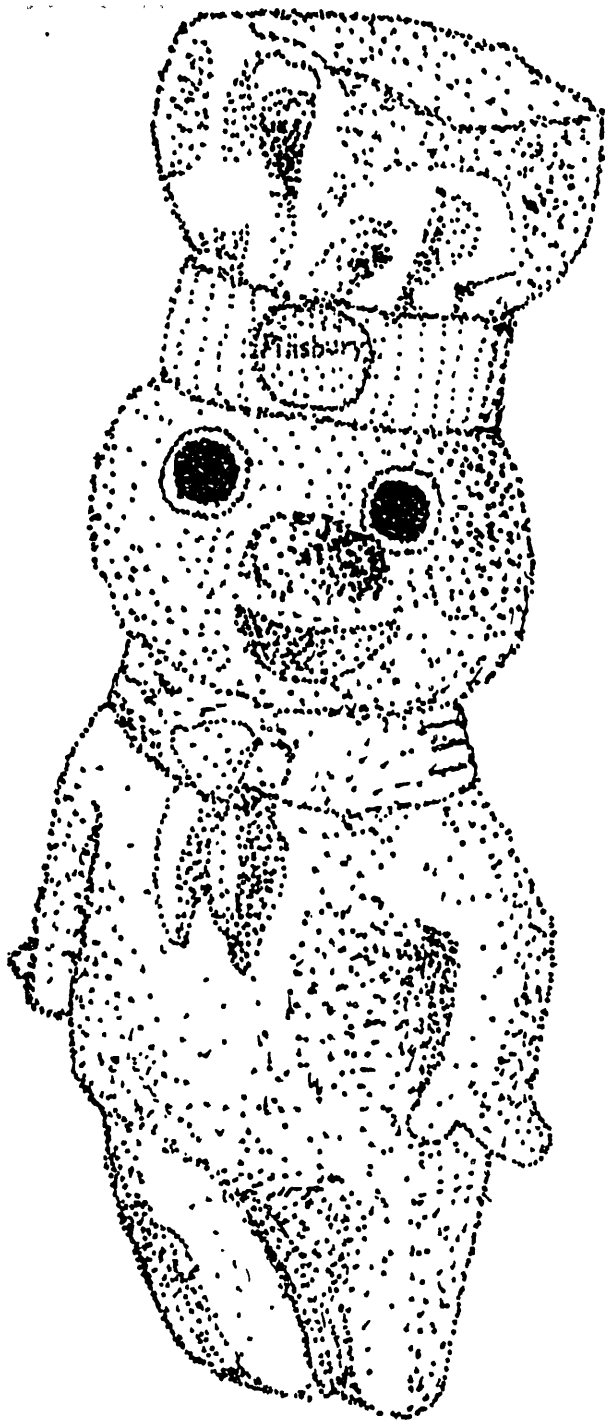
Issued in Austin, Texas, on April 6, 1992.

TRD-9204539

Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Effective date: April 2, 1992

For further information, please call: (512)
835-8650



Name: Richard Simpson

School: McDonald Middle School, Mesquite ISD

Adopted Sections

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

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

TITLE 22. EXAMINING BOARDS

Part XI. Board of Nurse Examiners

Chapter 215. Nurse Education

• 22 TAC §215.8, §215.17

The Board of Nurse Examiners adopts amendments to §215.8, §215.17, concerning faculty policies and clinical resources, without changes to the proposed text as published in the February 21, 1992, issue of the *Texas Register* (17 TexReg 1443).

The amendments are being adopted to remove unnecessary language from the rules concerning use of cooperating agencies for student clinical experiences; thereby increasing accessibility of learning opportunities and eliminating duplication of regulatory functions.

By removing unnecessary language from the rules, the board is removing additional barriers governing the use of clinical agencies by programs of professional nursing. This will increase a student's accessibility to learning experiences.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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

Issued in Austin, Texas, on April 1, 1992.
TRD-9204542 Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Effective date: April 23, 1992

Proposal publication date: February 21, 1992

For further information, please call: (512) 835-8650

Chapter 217. Licensure and Practice

• 22 TAC §217.2

The Board of Nurse Examiners adopts an amendment to §217.2, concerning licensure by examination, without changes to the pro-

posed text as published in the February 21, 1992, issue of the *Texas Register* (17 TexReg 1444).

This amendment is being adopted to allow those persons admittance to the licensure examination who have met all baccalaureate degree nursing requirements as a prerequisite of a MSN.

Qualified applicants may write the licensure examination upon completion of all requirements for the baccalaureate in nursing degree, but prior to being awarded the MSN which would be their first degree in nursing. Successful candidates will then become licensed 1-1 1/2 years prior to completion of the degree, thereby increasing the supply of RNs.

Two favorable comments were received. One commenter wrote: "I support the proposed amendment allowing persons who have met baccalaureate nursing degree requirements as a prerequisite to the MSN degree to be admitted to the licensure examination." Another commenter wrote: "I fully support this change. I am one of the students and this change will directly benefit my practice as a nurse."

The favorable comments were received from College of Nursing, UTEP and a student.

The amendment is adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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

Issued in Austin, Texas, on April 1, 1992.
TRD-9204543 Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Effective date: April 23, 1992

Proposal publication date: February 21, 1992

For further information, please call: (512) 835-8650

• 22 TAC §217.12

The Board of Nurse Examiners adopts an amendment to §217.12, concerning designations for registered nurse/titles deemed misleading, without changes to the proposed text as published in the February 21, 1992, issue of the *Texas Register* (17 TexReg 1444).

The amendment is being adopted to cause the registered nurse to know that when using RN in connection with his or her name and/or practice, the board considers the nurse accountable for his or her actions and for compliance with the Nurse Practice Act and Standards of Nursing Practice.

Any RN who advertises to the public that he/she is a registered nurse will be required to function within the Nurse Practice Act and Standards of Nurse Practice, regardless of the practice he/she is engaged in. This will protect the public from fraud or deceit in situations where a nurse desires to use his/her license to solicit clients.

One favorable comment was received. The commenter agreed with the proposed change and was supportive of the attempt to maintain quality in nursing practice.

The favorable comments were received from the College of Nursing, UTEP.

The amendment is adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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

Issued in Austin, Texas, on April 1, 1992.
TRD-9204544 Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Effective date: April 23, 1992

Proposal publication date: February 21, 1992

For further information, please call: (512) 835-8650

• 22 TAC §217.14

The Board of Nurse Examiners adopts an amendment to §217.14, concerning overpayment, without changes to the proposed text as published in the February 21, 1992, issue of the *Texas Register* (17 TexReg 1445).

The amendment is being adopted to assist in expediting the transaction of the individual submitting payment for services by not delaying the action due to overpayment of funds not to exceed \$10

An individual submitting payment for a service provided by the board who inadvertently submits a fee from \$1.00 to \$10 in excess of

that required will not receive a refund. This procedure will eliminate the delay in the transaction which would have occurred if a refund voucher had to be processed. If, however, and error was made and the individual was billed in excess of the amount owed, a refund would be made.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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

Issued in Austin, Texas, on April 1, 1992.

TRD-9204545 Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Effective date: April 23, 1992

Proposal publication date: February 21, 1992

For further information, please call: (512) 835-8650

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TITLE 34. PUBLIC FINANCE
Part I. Comptroller of Public Accounts
Chapter 3. Tax Administration
Subchapter V. Franchise Tax
• 34 TAC §3.572

The Comptroller of Public Accounts adopts new §3.572, concerning the 1992 transition period, with changes to the proposed text as published in the November 26, 1991, issue of the *Texas Register* (16 TexReg 6847).

This new section explains how corporations are affected by the franchise tax law because of the changes made by House Bill 11, 72nd Legislature, 1991.

Comments were received from the Certified Public Accounting firm of Wheeler & Bull. The firm felt that the section as proposed should be revised to clarify that only transactions designed to escape the franchise tax such as those between the same owners or corporations doing nothing more than changing charters should be included and not bona fide transactions between unrelated parties. The comptroller agreed and substantial changes were made to subsection (b) of the proposed section to effect a clarification.

Comments on the new section were received from the law firm of Thompson & Knight of Dallas, Texas. The firm takes exception to the proposed section on the basis that it exceeds the rulemaking authority of the comptroller by imposing a supplemental tax, operates retroactively with respect to changes in the tax laws effective January 1, 1992, and the terms

"reorganization" and "transfer of assets" are overly broad or ambiguous. The comptroller made changes to subsection (b) of the proposed section to reflect that franchise tax will be due only from corporations entering into transactions for the primary purpose of avoiding or evading franchise tax. Tax avoidance transactions will be disregarded and the franchise tax will continue to apply as though the transactions had not occurred. Under the Tax Code, §111.002, the comptroller has the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code and the transition rule establishes guidelines the comptroller will use in determining whether transactions should be disregarded as shams. In addition, the new section does not have a prohibited retroactive effect. The section does not apply a new tax; it clarifies that the comptroller will enforce the provisions of the franchise tax to corporations which entered into transactions for the primary purpose of avoiding or evading the franchise tax. Further, the comptroller interprets the terms "reorganization" and "transfer of assets" to be commonly understood as encompassing the restructuring of the ownership of the assets or stock of a business.

Comments were received from Luby's Cafeterias, Inc., of San Antonio, stating that the rule was inconsistent with the new franchise tax law. Luby's asked that the rule be withdrawn. The comptroller declined to withdraw the rule but did make changes to subsection (b).

J.C. Penney Company, Inc., of Dallas, also commented that there were alternative approaches that could be taken to the one in the comptroller's proposed regulation. The comptroller feels that the contents of the adopted rule comply with J.C. Penney's request for alternatives by the expansion of subsection (b).

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

§3.572. 1992 Transition.

(a) Definition. "Beginning date" means:

(1) for a Texas corporation, the charter date; and

(2) for a foreign corporation, the earlier of:

(A) the certificate of authority date; or

(B) the date the corporation begins doing business in Texas.

(b) Mergers, reorganizations, and transfers of assets.

(1) A corporation, including a limited liability company and a state or

federal savings and loan association as provided in the Tax Code, §171.001(a) (2), which is the surviving corporation in any merger, reorganization, or transfer of assets occurring after August 13, 1991, and on or before December 31, 1991, will be subject to tax on the net taxable earned surplus of the nonsurviving corporation which is earned from the day after the date upon which the nonsurviving corporation's previous franchise tax report was based through the date of the merger, reorganization, or transfer of assets from the nonsurviving corporation to the surviving corporation if the principal purpose of the merger, reorganization, or transfer of assets was the evasion or avoidance of franchise tax.

(A) The provisions of subsection (b)(1) of this section will not apply to a corporation which merged, reorganized, or transferred assets pursuant to a binding contract entered into prior to August 13, 1991. For these purposes, a contract is binding if it is in writing, fully executed, and legally enforceable.

(B) If the beginning date of the nonsurviving corporation is after October 3, 1990, and before December 31, 1991, the tax will be based on the net taxable earned surplus earned by the nonsurviving corporation from its beginning date through the date of the merger, reorganization, or transfer of assets to the surviving corporation.

(2) The phrase "evasion or avoidance" is not limited to cases involving criminal penalties, or civil penalties for fraud. Further, if the purpose to evade or avoid franchise tax exceeds in importance any other purpose, it will be considered to be the principal purpose. The determination of the principal purpose of a merger, reorganization, or transfer of assets will be based upon the facts and circumstances of the entire transaction, including any series of steps in the course of conduct of the surviving and nonsurviving corporations which are interrelated. Transactions which are determined to have been undertaken for the principal purpose of evasion or avoidance of franchise tax will be disregarded as shams.

(3) Facts and circumstances which will, in the absence of additional evidence to the contrary, indicate that the principal purpose of the merger, reorganization, or transfer of assets was the evasion or avoidance of franchise tax will include, but not be limited to, the following:

(A) mere change in identity, form, or place of organization of the nonsurviving corporation, however effected; or

(B) continuation by the surviving corporation immediately following the merger, reorganization, or transfer of assets of:

(i) substantially the same trade or business in this state as conducted by the nonsurviving corporation immediately prior to the merger, reorganization, or transfer of assets; and

(ii) substantially the same ownership of the stock or assets of the nonsurviving corporation as that owned immediately prior to the merger, reorganization, or transfer of assets.

(4) In determining whether a corporation has continued to carry on a trade or business substantially the same as that conducted before the merger, reorganization, or transfer of assets, all the facts and circumstances of the transactions occurring between the nonsurviving corporation and the surviving corporation and any affiliated entities of either involved in the transactions will be taken into account. Among the relevant factors to be taken into account will be changes in the corporation's employees, plant, equipment, product, location, customers, and any other items that are significant in determining whether there has been a continuation of the trade or business of the nonsurviving corporation.

(5) In determining whether a continuation of ownership has occurred, all the facts and circumstances of the transactions occurring between the shareholders of the nonsurviving corporation and the surviving corporation or its shareholders and any affiliated entities or the shareholders of affiliated entities involved in the transactions will be taken into account. A continuation of ownership will be deemed to have occurred only if immediately following the merger, reorganization, or transfer of assets, the surviving corporation owns, directly or indirectly, 80% or more in value of the stock or assets previously held by the nonsurviving corporation immediately prior to the merger, reorganization, or transfer of assets. The constructive ownership rules of the Internal Revenue Code of 1986, §318, as amended, will be applied in determining whether stock is owned directly or indirectly by a shareholder, except that the references to 50% in the Internal Revenue Code, §318(a)(2)(C) and (3)(C) will be read as 80%.

(6) The tax due from the surviving corporation in a merger, reorganization, or transfer of assets under paragraph (1) of this subsection is due May 15, 1992, on a form specified by the comptroller. If the amount of tax due is less than \$100, no tax will be due. The tax will be due from the surviving corporation as though no merger, reorganization, or transfer of assets had oc-

curred. For example, if an existing regular annual reporting corporation with a December 31 year end was merged into a new corporation on December 1, 1991, the new corporation would be required to file a regular franchise tax report on May 15, 1992, which would reflect all taxable capital of the surviving corporation as of December 31, 1991, and the taxable earned surplus of the nonsurviving corporation from January 1, 1991 through December 1, 1991, combined with the taxable earned surplus of the surviving corporation from December 1, 1991, through December 31, 1991.

(7) The surviving corporation of a merger, reorganization, or transfer of assets which was not undertaken for the principal purpose of evasion or avoidance of franchise tax may file a disclosure statement on or before May 15, 1992, on a form specified by the comptroller. A surviving corporation which files a disclosure statement no later than May 15, 1992, will not be required to file a regular annual report on May 15, 1992. No penalties will accrue on any franchise tax liability finally determined if a disclosure statement is timely filed under this paragraph. On or before July 1, 1992, the comptroller will notify each surviving corporation which has filed a disclosure statement of whether the transaction has been determined to have been undertaken for the principal purpose of evasion or avoidance of franchise tax.

(A) If the early determination of the comptroller is that the principal purpose of the transaction was not the evasion or avoidance of franchise tax, the nonsurviving corporation will not be liable for franchise tax for the franchise tax year 1992 and, unless a redetermination based on fraud or misrepresentation of fact is made by the comptroller, the surviving corporation will not be liable for any franchise tax liability based on the earned surplus of the nonsurviving corporation other than as a transferee.

(B) If the early determination of the comptroller is that the principal purpose of the transaction was the evasion or avoidance of tax, by August 1, 1992, the surviving corporation must either:

(i) file the franchise tax annual report in the manner described in paragraph (6) of this subsection; or

(ii) submit to the comptroller such additional information as it deems necessary or appropriate concerning the facts and circumstances of the transactions between the surviving corporation and the nonsurviving corporation and all affiliated entities. Penalties, will be assessed on all franchise tax due under subparagraph (B) of this paragraph after August 1, 1992,

unless additional information is submitted by August 1, 1992.

(C) All early determination notices issued by the comptroller will be subject to change upon audit in the event of fraud or misrepresentation of fact in the information submitted to the comptroller in the disclosure statement or any additional information submitted to the comptroller in connection with issuing the early determination.

(c) Shortened privilege periods. All second and regular annual privilege periods which would have ended April 30, 1992, except for changes made by the legislature during 1991, will now end December 31, 1991.

(d) Tax rates.

(1) The tax rate for the regular annual privilege period beginning May 1, 1991, and ending December 31, 1991, will be \$5.25 for each \$1,000 or fraction of \$1,000 of taxable capital allocated to this state.

(2) The tax rate for corporations with a beginning date after April 30, 1990, but before October 4, 1990, will be \$5.25 for each \$1,000 or fraction of \$1,000 of taxable capital allocated to this state per year of privilege period.

(3) Except for a corporation which is the nonsurvivor of a merger, reorganization, or transfer of assets occurring after August 13, 1991, and before January 1, 1992, the tax rate for corporations with a beginning date after October 3, 1990, is 0.25% per year of privilege period of net taxable capital and 4.5% of net taxable earned surplus for the entire initial report.

(4) In addition to the supplemental tax provided for in this section, the tax rate for a corporation with a beginning date after October 3, 1990, which ceases to exist before January 1, 1992, will be \$5.25 for each \$1,000 or fraction of \$1,000 of taxable capital allocated to this state per year of privilege period.

(e) Loss of nexus before end of privilege period. If a corporation has nexus for one day of a privilege period, it must pay for the entire privilege period.

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

Issued in Austin, Texas, on April 6, 1992.

TRD-9204651 Martin Cherry
 Chief, General Law
 Section
 Comptroller of Public
 Accounts

Effective date: April 27, 1992

Proposal publication date: November 26, 1991

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

◆ ◆ ◆
TITLE 37. PUBLIC SAFETY AND CORRECTIONS
Part IX. Texas Commission on Jail Standards
Chapter 259. New Construction Rules

The Texas Commission on Jail Standards adopts the repeal of §§259.18, 259.54-259.57, 259.207, 259.238-259.241, 259.307, and 259.343-259.246, concerning new construction rules, without changes to the proposed text as published in the March 3, 1992, issue of the *Texas Register* (17 TexReg 1600).

The repeal of these rules regarding design, construction, and furnishing requirements of new jail, new low-risk, and podular/direct supervision facilities will allow for major revisions to these requirements made necessary by the enactment of House Bill 93 (72nd Legislature, 1991, Second Called Session). In addition, cumbersome language and duplicate information will be eliminated.

Repeals of these sections will allow the adoption of new rules that encompass current legislation and that are more easily understood

No comments were received regarding adoption of the repeals

New Jail Design, Construction, and Furnishing Requirements

- 37 TAC §§259.18, 259.54-259.57

The repeals are adopted under the Government Code, Chapter 511, which provides the Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

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

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

TRD-9204608 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Effective date: April 24, 1992

Proposal publication date: March 3, 1992

For further information, please call: (512) 463-5505

◆ ◆ ◆
The Texas Commission on Jail Standards adopts new §§259.18, 259.54-259.57, 259.207, 259.238-259.241, 259.307, and 259.343-259.246, concerning new construc-

tion rules, without changes to the proposed text as published in the March 3, 1992, issue of the *Texas Register* (17 TexReg 1601).

In order to comply with the requirements of House Bill 93 (72nd Legislature, 1991, Second Called Session), provisions are made for adequate separation of different classifications of inmates in new jail, low-risk, and podular/direct supervision facilities. The size, capacity, and furnishing of cells, dormitories, and day rooms are specified.

Jail inmates and staff will be provided with a safe, secure, and suitable environment.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Government Code, Chapter 511, which provides the Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

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

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

TRD-9204611 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Effective date: April 24, 1992

Proposal publication date: March 3, 1992

For further information, please call. (512) 463-5505

◆ ◆ ◆
New Low Risk Design, Construction, and Furnishing Requirements

- 37TAC §§259.207, 259.238-259.241

The repeals are adopted under the Government Code, Chapter 511, which provides the Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

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

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

TRD-9204607 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Effective date: April 24, 1992

Proposal publication date: March 3, 1992

For further information, please call: (512) 463-5505

◆ ◆ ◆
The new sections are adopted under the Government Code, Chapter 511, which provides the Commission on Jail Standards with

the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

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

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

TRD-9204610 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Effective date: April 24, 1992

Proposal publication date: March 3, 1992

For further information, please call: (512) 463-5505

◆ ◆ ◆
Podular/Direct Supervision Design, Construction, and Furnishing Requirements

- 37 TAC §§259.307, 259.343-259.346

The repeals are adopted under the Government Code, Chapter 511, which provides the Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

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

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

TRD-9204606 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Effective date: April 24, 1992

Proposal publication date: March 3, 1992

For further information, please call (512) 463-5505

◆ ◆ ◆
The new sections are adopted under the Government Code, Chapter 511, which provides the Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

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

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

TRD-9204609 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Effective date: April 24, 1992

Proposal publication date: March 3, 1992

For further information, please call: (512) 463-5505

Chapter 300. Fees and Payments

Emergency Overcrowding Relief

• 37 TAC §§300.21-300.27

The Texas Commission on Jail Standards adopts new §§300.21-300.27, concerning emergency overcrowding relief. Sections 300.21-300.23 are adopted with changes to the proposed text as published in the March 3, 1992, issue of the *Texas Register* (17 TexReg 1603). Sections 300.24-300.27 are adopted without changes and will not be republished.

In order to comply with the Government Code, Chapter 499, §499.124, procedures are delineated for calculating and making payments to qualifying counties for certain inmates awaiting transfer to the Texas Department of Criminal Justice-Institutional Division. Changes to the proposed text are made on the advice of legal counsel to clarify the responsibilities of the commission.

Overcrowding relief in the form of monetary payments to counties incarcerating certain inmates awaiting transfer to the state prison system will be provided in a timely manner through proper documentation of records.

One comment was received which was technical in the nature of the wording of the sections. The comment was incorporated into the adoption.

Commenting in favor was the Office of the Attorney General.

The new sections are adopted under the Government Code, Chapter 511, which provide the Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

§300.21. General. The commission is required by the Government Code, Chapter 499, §499.124 (concerning Emergency Overcrowding Relief) to make payments to qualifying counties for certain inmates awaiting transfer to the Texas Department of Criminal Justice-Institutional Division (TDCJ-ID), until September 1, 1995.

§300.22. Qualifying County. A qualifying county is defined by the Government Code, Chapter 499, §499.126 (concerning the Definition of Qualifying County).

§300.23. Method of Calculation. Qualifying counties will be paid based on percentages of a base number equal to the number of inmates confined in the jail on April 1, 1991, who were awaiting transfer to the

TDCJ-ID as determined under the Government Code, Chapter 499, §499.123(a) (concerning Payment). The applicable percentages and calculations shall be as follows.

(1) From September 1, 1991 until August 31, 1993, the commission will pay a qualifying county the sum of \$20 for each day of confinement for each inmate awaiting transfer in excess of 50% but less than or equal to 210% of the base number and the sum of \$30 for each day of confinement for each inmate awaiting transfer in excess of 210% of the base number.

(2) From September 1, 1993, until September 1, 1995, the commission will pay a qualifying county the sum of \$20 for each day of confinement for each inmate awaiting transfer in excess of 25% but less than or equal to 210% of the base number and the sum of \$30 for each day of confinement for each inmate awaiting transfer in excess of 210% of the base number.

(3) The commission will pay the sum of \$20 for each day of confinement for each inmate awaiting transfer to a qualifying county for which the base number is equal to zero.

(4) Percentage calculations are mathematically rounded up to whole integers. Payments are based on the number of inmates in excess of the rounded-up percentage requirements.

(5) Payments, when appropriate, will be made to qualifying counties for each calendar month.

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

Issued in Austin, Texas, on April 4, 1992.

TRD-9204605 Jack E. Crump
Executive Director
Texas Commission on Jail
Standards

Effective date: April 24, 1992

Proposal publication date: March 3, 1992

For further information, please call: (512) 463-5505

Transfer of Felony Backlog

• 37 TAC §§300.51-300.63

The Texas Commission on Jail Standards adopts new §§300.51-300.63, concerning fees and payments. Sections 300.51-300.55 are adopted with changes to the proposed text as published in the March 3, 1992, issue of the *Texas Register* (17 TexReg 1604). Sections 300.56-300.63 are adopted without changes and will not be republished.

In order to comply with the Government Code, Chapter 499, §499.125, procedures are delineated for transferring inmates await-

ing transfer to the Texas Department of Criminal Justice-Institutional Division (TDCJ-ID) from applicable county jails to appropriate facilities. Changes to the proposed text are made on the advice of legal counsel to clarify the responsibilities of the commission.

Orderly transfer of inmates to appropriate facilities from applicable county jails will help prevent further lengthy and costly litigation involving overcrowding issues. Inmates involved will be provided with safe, secure, suitable, and sanitary facilities.

One comment was received which was technical in the nature of the wording of the sections. The comment was incorporated into the adoption.

Commenting in favor was the Office of the Attorney General.

The new sections are adopted under the Government Code, Chapter 511, which provide the Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

§300.51. General. The commission is required by the Government Code, Chapter 499, §499.125 (concerning the Transfer of Felony Backlog) to transfer inmates awaiting transfer to the Texas Department of Criminal Justice-Institutional Division (TDCJ-ID) from an applicable county jail to appropriate facilities.

§300.52. Applicable County Jail. A jail is an applicable county jail when the commission determines that a jail meets the following criteria:

(1) a state or federal court determines that conditions in a county jail are unconstitutional; and

(2) on or after October 1, 1991, the percentage of inmates in the jail awaiting transfer to the TDCJ-ID is 20% or more of the total number of inmates in the jail.

§300.53. Appropriate Facility. The executive director will develop a list of facilities which are appropriate to house the transferred inmates following determination by the commission that a jail is an applicable county jail. An appropriate facility may include a jail, detention center, work camp, or correctional facility.

§300.54. Administrative Order. The commission will issue to the sheriff and commissioners court (by and through the county judge) of an applicable county jail upon determination by the commission that the jail meets the criteria of §300.52 of this title (relating to Applicable County Jail) a written administrative order to transfer felony backlog inmates to appropriate facilities.

§300.55. *Request for Hearing.* The sheriff or commissioners court of an applicable county jail to which the commission has issued an administrative order may, within 15 days after the date of the order, request a hearing upon any matter of fact or law with which he or the court disagrees. The request for hearing shall be in writing and shall comply with §297.8 of this title (relating to Request for Hearing). Upon receipt of a timely request for hearing, the commission may schedule a hearing to be conducted at a regular or special meeting of the commission.

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

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

TRD-9204604

Jack E. Crump
Executive Director
Texas Commission on Jail
Standards

Effective date: April 24, 1992

Proposal publication date: March 3, 1992

For further information, please call: (512) 463-5505



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. Community Care for Aged and Disabled

In-home and Family Support Program

• 40 TAC §48.2703

The Texas Department of Human Services (DHS) adopts an amendment to §48.2703 concerning income eligibility, without changes to the proposed text as published in the February 25, 1992, issue of the *Texas Register* (17 Tex Reg 1528).

Justification for the amendment is implementation of an equitable copayment system which reflects the family's ability to pay.

The amendment will function by revising the copayment schedule based on updated state median income figures compiled by the United States Department of Health and Human Services.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department 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 April 6, 1992.

TRD-9204684

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

Effective date: May 1, 1992

Proposal publication date: February 25, 1992

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



Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board 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

Friday, April 10, 1992, 10 a.m. The Texas Agricultural Finance Authority of the Texas Department of Agriculture will meet at the Texas Department of Agriculture, 1700 North Congress Avenue, Stephen F. Austin Building, Room 924A, Austin. According to the agenda summary, the department will discuss and act on: minutes of previous meeting; loan applications recommended by the Credit Review Committee; loan applications appealed to the board, committed but not closed applications; report on Young Farmer Endowment Program; discuss and act on: responses to request for proposal for Revenue Bond Program; Rural Microenterprise Support Program; legal counsel for TAFE; proposed rules; and discuss other business.

Contact: Robert Kennedy, P.O. Box 12847, Austin, Texas 78711, (512) 463-7639.

Filed: April 2, 1992, 10:36 a.m.

TRD-9204530

Monday, April 13, 1992, 1 p.m. (Rescheduled from April 2, 1992). 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 violations of 4 TAC §§7.18, 7.22 and 11.8 and Texas Agricultural Code Annotated §§76.114, 76.111, and 75.006 (Vernon 1992) by Jesse Thompson.

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

Filed: April 3, 1992, 4:27 p.m.

TRD-9204637

Wednesday, April 15, 1992, 1 p.m. The Texas Department of Agriculture will meet at the Archer County Activity Building, 500 West Cottonwood, Archer City. According to the complete agenda, the department will hold a public hearing to receive comment

regarding: proposed special exemptions to the Texas Herbicide Law, Chapter 75, Texas Agriculture Code for Archer, Clay and Wichita Counties as follows: that permits not be required for application of regulated herbicides; applications of 2,4-D esters be prohibited in Archer, Clay and Wichita Counties from May 1 to September 15 of each year.

Contact: Jimmy Bush, P.O. Box 12847, Austin, Texas 78711, (512) 463-7550.

Filed: April 2, 1992, 10:37 a.m.

TRD-9204531

State Board of Barber Examiners

Monday, April 6, 1992, 2:30 p.m. The State Board of Barber Examiners held an emergency meeting at 9101 Burnet Road, Suite 103, Austin. According to the complete agenda, the board met in executive session pursuant to Article 6252-17a §2(e) to consider settlement offers and act in executive session, then act as required in open session. The emergency status was necessary as there was an unexpected development requiring the immediate attention of the agency.

Contact: Jo King McCrorey, 9101 Burnet Road, Suite 103, Austin, Texas 78758, (512) 835-2040.

Filed: April 3, 1992, 10:49 a.m.

TRD-9204576

Texas Bond Review Board

Tuesday, April 14, 1992, 10 a.m. The Staff of the Texas Bond Review Board will meet at the Reagan Building, Room 102, 105 West 15th Street, Austin. According to the agenda summary, the staff will call the meeting to order; discuss approval of minutes; discuss proposed issues; other business; and adjourn.

Contact: Tom K. Pollard, 506 Sam Houston Building, 201 East 14th Street, Austin, Texas 78701, (512) 463-1741.

Filed: April 6, 1992, 4:41 p.m.

TRD-9204740

Criminal Justice Policy Council

Monday, April 27, 1992, 9 a.m. The Criminal Justice Policy Council will meet at the Tarrant County Junior College, Northeast Campus, Student Union Building, 828 Harwood Road, Center Corner Room, Hearst. According to the agenda summary, the 71st Texas State Legislature established the new Criminal Justice Information System (CJIS), as codified in Chapter 60, Code of Criminal Procedure. Chapter 60 mandates enhancements to the existing Computerized Criminal History (CCH) system; creation of a new Corrections Tracking System (CTS); and establishes new reporting requirements for arrests and case dispositions. Chapter 60, Code of Criminal Procedure, also mandates the Criminal Justice Policy Council in conjunction with the Department of Public Safety and the Department of Criminal Justice, to conduct regional public hearings on improvements to the proposed CJIS. The purpose is to allow state and local law enforcement officers, prosecutors, courts personnel and other interested parties to provide input on future CJIS development and design improvements.

Contact: Christine Burkhardt, P.O. Box 13332, Austin, Texas 78711-3332, (512) 463-1810.

Filed: April 2, 1992, 10:30 a.m.

TRD-9204529

Texas Commission for the Deaf and Hearing Impaired

Friday, April 10, 1992, 9:30 a.m. (Rescheduled from April 10, 1992). The Texas Commission for the Deaf and Hearing Impaired will meet at the TCCD Board Room, 2201 Post Road, Austin. According to the complete agenda, the commission will call the meeting to order; discuss approval of minutes; operations projects reports on rules/regulations; statutes; personnel manual; human rights policy; budget/financial; data information and House Bill 7 Transition; program projects reports on consumer contribution advisory committee; SOHIT program development; contract development; interpreter certification; interagency contracts; publications and message relay funding; activities reports on board response to projected agency budget cuts; the T.A.S.P.; disaster recovery plan; legislative budget board program audit; staff introductions/assignments; and education project study.

Contact: Carla Stephenson, 1524 South IH-35, #200, Austin, Texas 78711, (512) 444-3323.

Filed: April 2, 1992, 2:53 p.m.

TRD-9204549

Friday, April 10, 1992, 2:30 p.m. The Commissioners Search Committee of the Texas Commission for the Deaf and Hearing Impaired will meet at the TCCD Board Room, 2201 Post Road, Austin. According to the complete agenda, the committee will meet immediately upon adjournment of regular commission meeting to review executive director position.

Contact: Carla Stephenson, 1524 South IH-35, #200, Austin, Texas 78711, (512) 444-3323.

Filed: April 2, 1992, 2:53 p.m.

TRD-9204550

Educational Economic Policy Center

Monday, April 13, 1992, 9:30 a.m. The Director Search Subcommittee of the Educational Economic Policy Center will meet at the Thompson Conference Center, 2315 Red River, Room 1.124, Austin. According to the complete agenda, the subcommittee will call the meeting to order; meet in executive session; and adjourn.

Contact: Mary Ward, UT-Austin, SRH 3.310, Austin, Texas 78712, (512) 471-7561.

Filed: April 3, 1992, 4:54 p.m.

TRD-9204646

Monday, April 13, 1992, 10 a.m. The Policy Center Committee of the Educational Economic Policy Center will meet at the Joe C. Thompson Conference Center, 2315 Red River, Room 1.124, Austin. According to the complete agenda, the committee will discuss approval of the minutes of January 16, 1992 meeting; meet in executive session to discuss personnel matters; status of accountability study; innovative education grant program; discuss and approve proposed administrative cost study; comparison of school finance options; center operating budget; discuss other business; and adjourn.

Contact: Mary Ward, UT-Austin, SRH 3.310, Austin, Texas 78712, (512) 471-7561.

Filed: April 3, 1992, 4:54 p.m.

TRD-9204647

Texas Education Agency

Tuesday, April 14, 1992, 8:30 a.m. The State Board of Education Task Force on Professional Preparation and Development 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 academic excellence indicator system (AEIS) information; review state salary schedule, funding and the concept of base salary (schedule); review incentives, concerns and issues; finalize document content and format; review of public hearings schedule and procedures for conducting public hearings.

Contact: Richard Swain, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9328.

Filed: April 6, 1992, 3:16 p.m.

TRD-9204727

Wednesday, April 15, 1992, 9 a.m. The Vocational and Applied Technology Education Committee of Practitioners of the Texas Education Agency will meet at the Texas Higher Education Coordinating Board, 7745 Chevy Chase Drive (Intersection of I-35 and U.S. 183), Austin. According to the complete agenda, the committee will discuss results of projects to design the statewide system of core standards and measures of performance for vocational and applied technology education; and make recommendations to the State Board for Vocational Education (State Board of Education) for developing and implementing the system at the secondary and postsecondary levels.

Contact: Robert S. Patterson, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9446.

Filed: April 6, 1992, 3:17 p.m.

TRD-9204728

Texas Employment Commission

Tuesday, April 14, 1992, 8:30 a.m. The Texas Employment Commission will meet at the TEC Building, 101 East 15th Street, Room 644, Austin. According to the agenda summary, the commission will discuss approval of prior meeting notes; meet in executive session to discuss Administaff, Inc. versus James Kaster, et al and Ben Hogan versus Texas Employment Commission; actions, if any, resulting from executive session; relocation of agency headquarters; consideration and possible selection of project manager; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 15; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: April 6, 1992, 4:20 p.m.

TRD-9204736

Texas Commission on Fire Protection

Friday, April 10, 1992, 9 a.m. The Texas Commission on Fire Protection will meet at the Embassy Suites North, 5901 North IH-35, Austin. According to the agenda summary, the commission will have a discussion and possibly final adoption of rules under Title 37, TAC Chapters 461, 463, and 465, concerning the Fire Department Emergency Program providing financial assistance to eligible local fire departments and firefighting organizations; discussion of and possible action regarding operating budget of the agency; and procedures for administration of a training assistance program.

Contact: Jack Woods, P.O. Box 2286, Austin, Texas 78768-2286, (512) 322-3550.

Filed: April 2, 1992, 4:51 p.m.

TRD-9204560

Office of the Governor, Criminal Justice Division

Tuesday, April 14, 1992, 9 a.m. The Governor's Drug Policy Advisory Board of the Criminal Justice Division of the Office of the Governor will meet at the Sam Houston Building, 201 East 14th Street, Third Floor Conference Room, Austin. According to the complete agenda, the board will welcome

and make introductions; hear opening remarks; review and discuss 1992 Texas Narcotics Control Program (TNCP) application summary; 1992 TNCP application review; 1992 TNCP grant recommendations; 1992 high intensity drug trafficking area (a review of the 1992 proposal as submitted to the Office of National Drug Control Policy); open discussion and comments; and closing remarks.

Contact: John Coffel, 201 East 14th Street, Austin, Texas 78701, (512) 463-1919.

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

TRD-9204616

Governor's Health Policy Task Force

Wednesday, April 15, 1992, 5 p.m. The Governor's Health Policy Task Force will hold a public hearing at the Holiday Inn Civic Center, 200 West Expressway 83, McAllen. According to the complete agenda, the task force will take public testimony from persons wishing to address the members with regard to health care issues. Persons requesting interpreter services for the hearing impaired, please contact this office.

Contact: Pamela Crail, P.O. Box 149133, Austin, Texas 78714-9133, (512) 463-6473.

Filed: April 2, 1992, 3:11 p.m.

TRD-9204553

Texas Department of Health

Friday, April 10, 1992, 1:30 p.m. The Texas Board of Health Internal Audit Subcommittee of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room M-741, Austin. According to the complete agenda, the committee will discuss in executive session and discuss and possibly act on in open session: approval of minutes of previous meeting; review of the HIV Division; review of the San Antonio State Chest Hospital; and status of the independent single audit reviews.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: April 2, 1992, 4:06 p.m.

TRD-9204558

Friday, April 10, 1992, 2:30 p.m. The Texas Board of Health Public Health Promotion Committee of the Texas Department of Health will meet at 1100 West 49th Street, Room M-721, Austin. According to the complete agenda, the committee will consider and possibly act on: update on three year public information plan; plans

and expectations for public health promotion in the Texas Department of Health; follow-up with Texas Education Agency on sex education curriculum development; and proposal for new legislation on health professionals liability when working for Texas Department of Health as volunteers.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: April 2, 1992, 4:06 p.m.

TRD-9204557

Friday, April 10, 1992, 2:45 p.m. The Texas Board of Health Budget and Finance Committee of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room M-741, Austin. According to the complete agenda, the committee will consider and possibly act on: approval to provide information in public hearings on the preventive health and health services and maternal and child health block grant funds; and capital asset replacement plan for the San Antonio State Chest Hospital and the South Texas Hospital.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: April 2, 1992, 4:06 p.m.

TRD-9204556

Friday, April 10, 1992, 3:30 p.m. The Texas Board of Health Family Health Services Committee of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room M-741, Austin. According to the complete agenda, the committee will consider and possibly act on: re-approval of Driscoll Foundation Children's Hospital, Corpus Christi and initial approval of Children's Hospital of Austin at Brackenridge as CIDC Cardiovascular Diagnostic and Treatment Centers; proposed amendments to rule concerning CIDC program eligibility, orthotists and prosthetists, and monitoring of CIDC speciality centers; and CIDC program update.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: April 2, 1992, 4:05 p.m.

TRD-9204555

Friday, April 10, 1992, 4:30 p.m. The Texas Board of Health Strategic Planning Committee of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room M-652, Austin. According to the complete agenda, the committee will consider and possibly act on: Texas Department of Health Strategic Plan for 1992-1998.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: April 2, 1992, 4:05 p.m.

TRD-9204554

Saturday, April 11, 1992, 8 a.m. The Texas Board of Health Executive Committee of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room M-749, Austin. According to the complete agenda, the committee will consider and possibly act on items of procedure for the April 11, 1992 Texas Board of Health meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: April 3, 1992, 3:46 p.m.

TRD-9204629

Saturday, April 11, 1992, 8:30 a.m. The Texas Board of Health Environmental Health Committee of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room M-652, Austin. According to the complete agenda, the committee will consider and possibly act on: proposed repeal of existing rules and adoption of new rules concerning the regulation of asbestos abatement projects; final adoption of rules for licensure of wholesale distribution of drugs; and amendment to Texas Regulations for Control of Radiation, Part 12, "Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services".

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: April 3, 1992, 3:45 p.m.

TRD-9204628

Saturday, April 11, 1992, 9:30 a.m. The Texas Board of Health Disease Control Committee of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room M-721, Austin. According to the complete agenda, the committee will consider and possibly act on: proposed repeal of existing communicable disease rules, proposed new rules concerning disease reporting and proposed amendments to rules concerning the list of reportable diseases; and final adoption of amendment to the State HIV Education, Prevention and Risk Reduction Advisory Committee rules concerning modification of an existing membership category.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: April 3, 1992, 3:45 p.m.

TRD-9204627

Saturday, April 11, 1992, 10 a.m. The Health Provider, Licensure and Certification Committee of the Texas Board of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room M-741, Austin. According to the complete agenda, the committee will consider and possibly act on final adoption of rules concerning licensing and regulation of marriage and family therapists.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: April 3, 1992, 3:45 p.m.

TRD-9204626

Saturday, April 11, 1992, 10:30 a.m. The Hospital and Ambulatory Care Services Committee of the Texas Board of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room M-652, Austin. According to the complete agenda, the committee will consider and possibly act on: proposed amendments to rules concerning abortion facility reporting and licensing; capital asset replacement plan for San Antonio State Chest Hospital and South Texas Hospital.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: April 3, 1992, 3:45 p.m.

TRD-9204625

Saturday, April 11, 1992, 11:30 a.m. The Texas Board of Health Long Term Care Committee of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room M-721, Austin. According to the complete agenda, the committee will consider and possibly act on: proposed rule to adopt by reference, Texas Department of Human Services sanction rules as administrative penalties for medicaid certified nursing homes; final adoption of amendments to rules concerning long term care facilities licensing standards regarding accessibility provisions; final adoption of amendments to the rules concerning minimum licensing standards for personal care facilities; and conduct a discussion concerning "Adopt a Nursing Home".

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: April 3, 1992, 3:45 p.m.

TRD-9204624

Saturday, April 11, 1992, 12:30 p.m. The Texas Texas Board of Health Legislative Committee of the Texas Department of Health will meet at the Texas Department

of Health, 1100 West 49th Street, Room M-652, Austin. According to the complete agenda, the committee will consider and possibly act: proposed legislation and draft legislation for the 73rd legislative session; and regional issues and data accountability.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: April 3, 1992, 3:44 p.m.

TRD-9204623

Saturday, April 11, 1992, 1:30 p.m. The Texas Board of Health Personnel and Search Committee of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room M-721, Austin. According to the complete agenda, the committee will discuss in executive session and discuss and possibly act on in open session: dissolution of on-site sewerage facility installer and sanitarian advisory committees; disposition of advisory committees relating to Water Hygiene Program, the Bureau of Solid Waste Management, and the Disposal Authority of the Bureau of Radiation Control; and final adoption of amendment to the State HIV Education, Prevention, and Risk Reduction Advisory Committee rules concerning modification of an existing membership category.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: April 3, 1992, 3:44 p.m.

TRD-9204622

Saturday, April 11, 1992, 2 p.m. The Texas Board of Health of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room M-739, Austin. According to the agenda summary, the board will discuss approval of minutes of previous meeting and consider and possibly act on: commissioners' report; board resolutions; committee reports; preventive health and health services and maternal and child health block grant funds; rules (communicable diseases; HIV Advisory Committee; asbestos; wholesale distribution of drugs; CIDC rules; marriage and family therapists; abortion facilities; administrative penalties for nursing homes; accessibility to long term care facilities; personal care facilities); approval of hospitals as CIDC cardiovascular diagnostic and treatment centers; draft and proposed legislation; dissolution of on-site sewerage facility installer and sanitarian advisory committees; and commissioner of health's authority concerning employment of public health region directors; discuss in executive session duties of commissioner of health and commissioner of health's authority concerning employment of public health region directors; and hear in open session announcements and comments.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: April 3, 1992, 3:43 p.m.

TRD-9204620

Statewide Health Coordinating Council

Friday, April 10, 1992, 10 a.m. The Statewide Health Coordinating Council will hold an emergency meeting at the R. E. Thomason Hospital, 4815 Alameda Avenue, El Paso. According to the complete agenda, the committee will discuss approval of the minutes of the January 16, 1992 meeting; discuss and possibly act on: report of chief, Bureau of State Health Data and Policy Analysis, Texas Department of Health; report from Ad Hoc Bylaws Committee; report from the Ad Hoc Committee on Health Concerns of the Elderly; report of the Plan Development Committee; report from the Legislative Committee; and hear speakers from Texas Legislature (The Honorable Peggy Rosson of the Senate; and The Honorable Nancy McDonald and Jack Vowell of the House of Representatives). The emergency status is necessary due to unforeseeable circumstances.

Contact: Don Kretsinger, 1100 West 49th Street, Austin, Texas 78756, Austin, Texas 78756, (512) 458-7261.

Filed: April 3, 1992, 3:44 p.m.

TRD-9204621

Texas Hospital Equipment Financing Council

Monday, April 13, 1992, 11 a.m. (Rescheduled from April 3, 1992). 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 accept board member Miguel San Juan's resignation; discuss approval of minutes of February 20, 1992 meeting; accept final audit report; authorization of payment of state auditor's fee; financial report; authorize chairman to execute documents regarding investment and management of THEFC funds and accounts; authorize treasury staff to compile THEFC information packets for distribution to potential Replacement Liquidity Facilities; elect officers; and discuss possible agenda items for next meeting.

Contact: Rose-Michel Munguia, Texas State Treasury, LBJ Building, Austin, Texas 78701, (512) 463-5971.

Filed: April 3, 1992, 4:26 p.m.

TRD-9204636

Texas Department of Housing and Community Affairs

Friday, April 10, 1992, 1 p.m. The Programs Committee of the Texas Department of Housing and Community Affairs will meet at 811 Barton Springs, Suite 700, Conference Room "A", Austin. According to the agenda summary, the committee will consider and possibly act on the following items: The 1989 A and B GNMA Collateralized Home Mortgage Purchase Program; extension or refunding of the 1990 A and B Collateralized Home Mortgage Revenue Bonds; the 1991 B and C Collateralized Home Mortgage Revenue Bond issues; down payment assistance proposed demonstration program in the colonias; program structure for new money issue; income limit adjustments for multi-family project; multi-family program; issuance of an RFP to solicit credit underwriting services for multi-family programs; San Jacinto Gardens; Troubled Project Policy; Housing Trust Fund Rules; REO management contractor and consider in-house proposal; status of statutory duties of board; contracts; and Texas A&M study;

Contact: Susan J. Leigh, 811 Barton Springs Road, Suite 300, Austin, Texas 78711, (512) 474-2974.

Filed: April 2, 1992, 5:01 p.m.

TRD-9204562

Friday, April 10, 1992, 3:30 p.m. The Audit Committee of the Texas Department of Housing and Community Affairs will meet at 811 Barton Springs, Suite 700, Conference Room "A", Austin. According to the agenda summary, the committee will consider and possibly act on the following audits and reports: Office of the State Auditor; Texas Housing Agency; Reports Numbers 0-078, 1-118, 2-010 and 2-031; Report 2-009, Texas Department of Community Affairs; Report 1-103, Texas Department of Commerce; KPMG Peat Marwick's examination; department's internal audit examinations; State Auditor's examination of Texas Housing Agency, Community Development Block Grant and Texas Department of Community Affairs.

Contact: Susan J. Leigh, 811 Barton Springs Road, Suite 300, Austin, Texas 78711, (512) 474-2974.

Filed: April 2, 1992, 5:01 p.m.

TRD-9204561

Texas Department of Human Services

Wednesday, April 15, 1992, 9:30 a.m. The Physician Payment Advisory Committee of the Texas Department of Human Services will meet at the Texas Department of Health, Moreton Building, 1100 West 49th Street, Sixth Floor, Room M-652, Austin. According to the complete agenda, the committee will make opening comments; hear deputy commissioner's comments; discuss approval of previous meeting's minutes; advisory committee inquiries/follow-up; measuring access; pediatric modifiers; open discussion; schedule next meeting; and adjourn.

Contact: Carolyn Howell, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3053.

Filed: April 3, 1992, 8:26 a.m.

TRD-9204568

Texas Department of Insurance

Tuesday, April 14, 1992, 1:30 p.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 under Docket Number 1873 to consider proposed amendments to 28 TAC §21.202-21.204 concerning unfair claim settlement practices, as published in the January 17, 1992 issue of the *Texas Register* (17 TexReg 387). The comment period expired on February 17, 1992.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: April 3, 1992, 8:13 p.m.

TRD-9204567

Tuesday, April 14, 1992, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby III, Eighth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of Unified Life Insurance Company, Houston, to acquire control of Murray Life Insurance Company, Dallas, pursuant to the provisions of Texas Insurance Code, Article 21.49-1 §5 and (2) Unified Life Insurance Company to invest in the common stock of Murray Life Insurance Company pursuant to Texas Insurance Code, Article 21.49-1 §§4 and 6(b)(4). Docket Number 11453.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby III, Austin, Texas 78701, (512) 475-2983.

Filed: April 6, 1992, 4:11 p.m.

TRD-9204731

Wednesday, April 15, 1992, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby III, Eighth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application for amendment to the Articles of Incorporation of Traders and General Insurance Company, Fort Worth, decreasing the authorized capital stock. Docket Number 11460.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby III, Austin, Texas 78701, (512) 475-2983.

Filed: April 6, 1992, 4:11 p.m.

TRD-9204732

Thursday, April 16, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby III, Eighth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether the application of Old American Investments, Inc., a Delaware corporation, to acquire by assignment a management service contract, effective September 30, 1991, and thereby control of Old American County Mutual Fire Insurance Company, Dallas, pursuant to the provisions of Texas Insurance Code, Article 21.49-1 §5. Docket Number 11452.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby III, Austin, Texas 78701, (512) 475-2983.

Filed: April 6, 1992, 4:12 p.m.

TRD-9204733

Thursday, April 16, 1992, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby III, Eighth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of John R. Kaisner, Carrollton, for a Group I, Legal Reserve Life Insurance Agent's license. Docket Number 11449.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby III, Austin, Texas 78701, (512) 475-2983.

Filed: April 6, 1992, 4:12 p.m.

TRD-9204735

Monday, April 20, 1992, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby III, Eighth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of John Michael Mallory, Tyler, for a Group I, Legal Reserve Life Insurance Agent's license. Docket Number 11450.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby III, Austin, Texas 78701, (512) 475-2983.

Filed: April 6, 1992, 4:12 p.m.

TRD-9204734

Wednesday, April 22, 1992, 2 p.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 consider a report by the Advisory Committee to create incentives to depopulate the Cat Pool.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: April 3, 1992, 8:12 a.m.

TRD-9204563

Tuesday, April 28, 1992, 9 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 under Docket Number 1875 to consider a request by Texas Citrus and Vegetable Exchange for a hearing concerning the effective date of Texas Citrus and Vegetable Insurance Exchange's exemption from membership in the Texas Workers' Compensation Insurance Facility, formerly the Texas Workers' Compensation Assigned Risk Pool.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: April 3, 1992, 8:13 a.m.

TRD-9204565

Tuesday, April 28, 1992, 1:30 p.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 under Docket Number 1876 to consider proposed amendments to 28 TAC §§11.1-11.2, General Provisions; §§11.201, 11.203-11.206, 11.208, Application for Certificate of Authority; §§11.301-11.306, Regulatory Requirements for a HMO subsequent to issue a Certificate of Authority; §§11.403-11.409, Licensing and Regulation of HMO Agents; §§11.502-11.504, 11.506, 11.509, Evidence of Coverage; §§11.602-11.603, Advertising and Sales Material; §§11.701-11.707, Schedule of Changes; §11.801, Financial Requirements; §11.901, Requirements of TDH; §11.1001, Forms Adopted by Reference; §§11.1301-11.1306, HMO Solvency Surveillance Committee plan of Operation; and §11.1401, §11.1402, Administrative Procedures.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: April 3, 1992, 8:13 a.m.

TRD-9204566

Thursday, April 30, 1992, 1:30 p.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 under Docket Number R1880 to consider new proposed rules 28 TAC §§3.7001-3.7010 concerning the minimum reserve standards for individual and group accident and health insurance. The proposed rules were published in the December 13, 1991 issue of the *Texas Register* (16 TexReg 7155). The comment period expired on January 13, 1992.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: April 6, 1992, 12:04 p.m.

TRD-9204698

Tuesday, May 5, 1992, 2 p.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 under Docket Number 1877 concerning proposed amendments to 28 TAC §7.7, concerning subordinated indebtedness, surplus debentures, surplus notes, premium income notes, bonds or debentures, and other contingent evidence of indebtedness.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: April 3, 1992, 8:12 a.m.

TRD-9204564

Lamar University System

Thursday, April 9, 1992, 9 a.m. The Committees of the Board of Regents of Lamar University System met at the John Gray Institute, Map Room, 855 Florida Street, Beaumont. According to the agenda summary, the following committees met to review and discuss: building and grounds; finance and audit; academic affairs; athletic/building and grounds; personnel; met in executive session (held under provisions of Vernon's Civil Statutes, Article 6252-17, Section 2, Paragraph 3, e, legal; and g, personnel.

Contact: George McLaughlin, Chancellor, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: April 3, 1992, 3:11 p.m.

TRD-9204618

Thursday, April 9, 1992, 1 p.m. The Board of Regents of Lamar University System met at the John Gray Institute, Map Room, 855 Florida Street, Beaumont. According to the agenda summary, the board called the meeting to order; gave invocation; discussed approval of minutes; heard chairman's comments; chancellor's comments; considered recommendations of the following committees: building and grounds; finance and audit; academic affairs; athletic/building and grounds; personnel; heard regents' comments and suggestions; and adjourned.

Contact: George McLaughlin, Chancellor, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: April 3, 1992, 3:11 p.m.

TRD-9204617

Legislative Education Board

Tuesday, April 7, 1992, 2 p.m. The Legislative Education Board held an emergency meeting at the Senate Meeting Room One, One Capitol Square, 300 West 15th Street, Austin. According to the complete agenda, the board considered the position of executive director; reported on topics relevant to a special session: priorities for school finance studies and update on current year funding; status of Superintendent's Advisory Committee; comparison of school reforms in Texas and Kentucky; and discussed other business. The emergency status was necessary as the board needed to receive reports and act on other agenda items in order to prepare for an anticipated special session in early May.

Contact: Gail Nelson, Room 400, John H. Reagan Building, Austin, Texas 78701, (512) 463-1143.

Filed: April 2, 1992, 10:48 a.m.

TRD-9204532

Texas Department of Licensing and Regulation

Thursday, April 16, 1992, 8:30 a.m. The Texas Commission of Licensing and Regulation of the Texas Department of Licensing and Regulation will meet at the Westin Del Norte, 101 South El Paso Street, Pancho Villa Room, El Paso. According to the agenda summary, the commission will call the meeting to order; take roll call and certification of quorum; consider contested cases; consider agreed orders; update by department staff on the elimination of architectural barriers advisory board; consider

staff proposals; property tax consultants Advisory Council; hear public comment; report from Office of the Governor, Ombudsman; and meet in executive session. Starting at 12 p.m. the meeting will be held in the Kohlberg Room of the Westin Del Norte Hotel.

Contact: Jack Garrison, 920 Colorado Street, Austin, Texas 78701, (512) 463-3173.

Filed: April 6, 1992, 8 a.m.

TRD-9204650

Thursday, April 16, 1992, noon. The Texas Commission of Licensing and Regulation of the Texas Department of Licensing and Regulation will meet at the Westin Del Norte, 101 South El Paso Street, Kohlberg Room, El Paso. According to the agenda summary, the commission will conduct a strategic planning session; discuss date, time and location of next commission meeting; and adjourn.

Contact: Jack Garrison, 920 Colorado Street, Austin, Texas 78701, (512) 463-3173.

Filed: April 6, 1992, 8 a.m.

TRD-9204649

Friday-Saturday, April 24-25, 1992, 8:30 a.m. The Texas Commission of Licensing and Regulation of the Texas Department of Licensing and Regulation will meet at the Guest Quarters Suite Hotel, 303 West 15th Street, Suite 213, Austin. According to the agenda summary, the commission will call the meeting to order; take roll call and certification of quorum; meet in executive session; and adjourn.

Contact: Jack Garrison, 920 Colorado Street, Austin, Texas 78701, (512) 463-3173.

Filed: April 6, 1992, 8 a.m.

TRD-9204648

Texas State Board of Medical Examiners

Friday, April 10, 1992, 8:30 a.m. (Revised agenda). The Examination Committee of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the agenda summary, the committee will consider a request for extension of a Visiting Professor Permit. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484).

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728.

Filed: April 2, 1992, 4:16 p.m.

TRD-9204559

Texas Board of Licensure for Nursing Home Administrators

Thursday, April 23, 1992, 7 p.m. The Policy and Procedures Committee of the Texas Board of Licensure for Nursing Home Administrators will meet at the Holiday Inn North, 6911 North IH-35, Austin. According to the complete agenda, the committee will review public comments on proposed disciplinary and application rules; develop board policy on public comments; develop board policy on definition of a quorum; and discuss proposed rules on definition of a nursing home administrator and practice of nursing home administration. The Education Committee will meet to review education waiver requests; consider requests for approval of continuing education sponsors; discuss qualifications for continuing education sponsors; discuss acceptance of Health Care Administration/long term care/gerontology degrees from accredited colleges other than those on TBLNHA's approved list; review test results from the January and March exams; review preceptor curriculum; and discuss future acceptance of video/audio continuing education credit given by approved sponsors.

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

Filed: April 7, 1992, 7:54 a.m.

TRD-9204743

Friday, April 24, 1992, 8 a.m. The Texas Board of Licensure for Nursing Home Administrators will meet at the Holiday Inn North, Meeting Room, 6911 North IH-35, Austin. According to the complete agenda, the board will call the meeting to order; take roll call; approve agenda; discuss approval of minutes from the March 13, 1992 meeting; meet in executive session to discuss and possibly act on personnel issues and potential litigation (8 a.m.-10 a.m., Vernon's Texas Civil Statutes, Article 6252-17. §2(g); review final strategic plans; committee reports: budget request for additional funding; report on public comments regarding proposed disciplinary and application rules and final action on adoption of these rules; proposed rules on definition of a Nurse Home Administrator and Practice of Nursing Home Administration; discuss task force activities; executive director and staff reports; chair's report; guest speaker-Fred Brinkley, Executive Director of the Pharmacy Board (2:30 p.m.); and adjourn.

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

Filed: April 7, 1992, 7:55 p.m.

TRD-9204744

State Preservation Board

Tuesday, April 14, 1992, 2 p.m. The Permanent Advisory Committee of the State Preservation Board will meet at the Lorenzo de Zavala Library and Archives Building, Room 314, Austin. According to the agenda summary, the committee will call the meeting to order; discuss approval of minutes; discuss old unfinished or new business; and adjourn.

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

Filed: April 6, 1992, 3:37 p.m.

TRD-9204729

Public Utility Commission of Texas

Tuesday, April 14, 1992, 10 a.m. (Rescheduled from April 6, 1992, 1:30 p.m.). The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 9728-application of Texas-New Mexico Power Company for a certificate of convenience and necessity for a transmission line within Galveston County.

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

Filed: April 2, 1992, 2:38 p.m.

TRD-9204548

Thursday, April 16, 1992, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10544-application of T.U. Electric for approval of standby rate.

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

Filed: April 3, 1992, 2:16 p.m.

TRD-9204615

Thursday, April 16, 1992, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin.

According to the complete agenda, the division will hold a prehearing conference in Docket Number 11048-petition of Medina Electric Cooperative, Inc. for reduction of fuel factor and for a partial waiver of Substantive Rule 23.23(b)(2)(D)(iii).

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

Filed: April 6, 1992, 3:10 p.m.

TRD-9204720

Friday, April 17, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10996-application of Big Bend Telephone Company, Inc. for a new local exchange tariff.

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

Filed: April 6, 1992, 3:11 p.m.

TRD-9204723

Monday, April 20, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11033-application of Muenster Telephone Corporation of Texas to revise its general exchange tariff in compliance with PUC Substantive Rule 23.54(f).

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

Filed: April 6, 1992, 3:11 p.m.

TRD-9204725

Monday, July 27, 1992, 10 a.m. (Rescheduled from Monday, July 13, 1992, 10 a.m.) The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 9655-petition of Southwestern Electric Power Company for a declaratory order and for revision of avoided cost rates.

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

Filed: April 6, 1992, 3:11 p.m.

TRD-9204722

Railroad Commission of Texas

Monday, April 13, 1992, 9:30 a.m. The Railroad Commission of Texas will meet at the William B. Travis Building, 1701 North Congress Avenue, 12th Floor Conference Room (12-126), Austin. Agendas follow.

The commission will consider and act on the Investigation Division Director's report on division administration, investigations, budget, and personnel matters.

Contact: Walter H. Washington, Jr., P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6828.

Filed: April 3, 1992, 12 p.m.

TRD-9204580

The commission will consider category determination under §§102(c)(1)(B), 102(c)(1)(C), 103, 107 and 108 of the Natural Gas Policy Act of 1978.

Contact: Margie Osborn, P.O. Box 12967, Austin, Texas 78711, (512) 463-6755.

Filed: April 3, 1992, 12:01 p.m.

TRD-9204581

The commission will consider and act on the Administrative Services Division Director's report on division administration, budget, procedures and personnel matters.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711, (512) 463-7257.

Filed: April 3, 1992, 12:03 p.m.

TRD-9204584

The commission will consider and act on the Office of Information Services Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78711, (512) 463-6710.

Filed: April 3, 1992, 12:03 p.m.

TRD-9204585

The commission will consider and act on the Personnel Division Director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711, (512) 463-7187.

Filed: April 3, 1992, 12:03 p.m.

TRD-9204586

The commission will consider and act on Automatic Data Processing Division Director's report on division administration, budget, procedures, equipment acquisitions and personnel matters.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78711, (512) 463-7251.

Filed: April 3, 1992, 12:04 p.m.

TRD-9204587

The commission will consider and act on the Division Director's report on budget and personnel matters related to organization of the Alternative Fuels Research and Education Division.

Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

Filed: April 3, 1992, 12:04 p.m.

TRD-9204588

The commission will consider and act on the Office of the Executive Director's report on commission budget and fiscal matters, administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants. The commission will discuss the implementation of individual operating budgets for each individual commissioner's office. Consideration of appointment, reassignment and/or termination of various positions, including division directors; Consideration of reorganization of the well plugging program. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel, and pending litigation.

Contact: Walter H. Washington, Jr., P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7274.

Filed: April 3, 1992, 12:04 p.m.

TRD-9204589

The commission will consider various matters within the 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 action, including, but not limited to, scheduling an item in its entirety or for particular action at a future time or date. The commission may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The commission will meet in executive session as authorized by the Open Meetings Act, including to receive legal advice regarding pending and/or contemplated litigation.

Contact: Walter H. Washington, Jr., P.O. Box 12967, Austin, Texas 78711, (512) 463-7274.

Filed: April 3, 1992, 12:04 p.m.

TRD-9204590

Monday, April 13, 1992, 1:30 p.m. The Railroad Commission of Texas will meet at the William B. Travis Building, 1701 North Congress Avenue, 12th Floor Conference Room, Austin. According to the agenda summary, the commission will hold a State-wide hearing on oil and gas.

Contact: Paula Middleton, P.O. Box 12967, Austin, Texas 78711, (512) 463-6729.

Filed: April 3, 1992, 11:58 a.m.

TRD-9204579

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Texas Real Estate Commission

Monday-Tuesday, April 13-14, 1992, 9:30 a.m. and 1 p.m. respectively. The Texas Real Estate Commission will meet at the TREC Headquarters Office, Conference Room 235, 1101 Camino La Costa, Austin. According to the agenda summary, the commission will discuss and possibly act to adopt proposed amendments to 22 TAC §§533.10, 533.18, and 533.25 concerning practice and procedure; §535.41 concerning the commission; §535.141 concerning initiation of investigations; approve proposed mediation addendum for voluntary use; publish proposed amendments to 22 TAC §535.19 concerning locating property; §535.21 concerning lot sales and publications; 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; motions for rehearing and/or probation; entry of orders in contested cases; hear public comments; discuss and possibly revise agency strategic plan; discuss or possibly act on agenda item from previous day.

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

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

TRD-9204639

Monday-Tuesday, April 13-14, 1992, 9:30 a.m. and 1 p.m. respectively. The Texas Real Estate Commission will meet at the TREC Headquarters Office, Conference Room 235, 1101 Camino La Costa, Austin. According to the emergency revised agenda summary, the commission will discuss and possibly act to publish proposed amendments to 22 TAC §535.19 concerning locating property; §535.21 concerning lot sales and publications; and to §535.92 concerning renewals and satisfaction of MCE requirements. The emergency status is necessary as information relating to proposed rules on satisfaction of education requirements was unavailable until after the original agenda was filed.

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

Filed: April 6, 1992, 4:23 p.m.

TRD-9204737

Tuesday, April 14, 1992, 9 a.m. The Agency Task Force of the Texas Real Estate Commission will meet at the TREC Headquarters Office, Conference Room 235, 1101 Camino La Costa, Austin. According to the complete agenda, the task force will call the meeting to order; discuss and possibly act to recommend new agency disclosure notice, agency confirmation notice, and dual agency disclosure notice for consideration by the Texas Real Estate Commission; and adjourn.

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

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

TRD-9204638

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Texas Real Estate Research Center

Wednesday, April 15, 1992, 2 p.m. The Advisory Committee of the Texas Real Estate Research Center will meet at the Conference Room, Citijet, Dallas Love Field, Dallas. According to the complete agenda, the committee will make opening remarks; discuss approval of minutes; discuss current budget report; 1992-1993 recommended budget; date of next meeting; discuss other business; and adjourn.

Contact: Gary Halder, Texas A&M University, College Station, Texas 77843-2115, (409) 845-9691.

Filed: April 3, 1992, 9:23 a.m.

TRD-9204570

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Texas County and District Retirement System

Thursday, April 16, 1992, 11 a.m. The Board of Trustees of the Texas County and District Retirement System will meet at 400 West 14th Street, Austin. According to the agenda summary, the board will consider and act upon personnel matters related to the potential recruitment or selection of a director for the system.

Contact: J. Robert Brown, 400 West 14th Street, Austin, Texas 78701, (512) 476-6651.

Filed: April 4, 1992, 12:30 p.m.

TRD-9204595

Texas State Occupational Information Coordinating Committee

Monday, April 13, 1992, 10 a.m. The Technical Steering Group of the Texas State Occupational Information Coordinating Committee will meet at the TEC Building, 12th and Trinity Streets, Room 520T, Austin. According to the agenda summary, the group will discuss project ideas and activities for FY 1992-1993.

Contact: Richard Froeschle, 12th and Trinity Streets, Room 526T, TEC Building, Austin, Texas 78778, (512) 463-2399.

Filed: April 3, 1992, 2:04 p.m.

TRD-9204603

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Texas Title Insurance Guaranty Association

Tuesday, April 14, 1992, 10 a.m. The Board of Directors of the Texas Title Insurance Guaranty Association will meet at the William P. Hobby Building, 12th Floor, 333 Guadalupe Street, Austin. According to the agenda summary, the board will consider approval of last meeting minutes; consider and possibly approve plan of operation for the association; discuss and possibly take action regarding House Bill 62 Transition; discuss financial disclosure for board members; discuss and possibly act on requirements of the association regarding notice of meetings, open meetings and open records; receive liquidation reports (Guaranty Fund reports, discussion and approval for outside cash audit of guaranty funds and receivership reports); receive Title Manager's report; and set date for next meeting.

Contact: Sandy Autry, 333 Guadalupe Street, Mail Code 113-2A, (512) 322-0223.

Filed: April 6, 1992, 4:43 p.m.

TRD-9204741

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University of North Texas

Friday, May 10, 1992, 7:30 a.m. The Role and Scope Committee, Board of Regents of the University of North Texas will meet at the Wabash Room, Tower Club, 1601 Elm Street, 48th Floor, Dallas. According to the complete agenda, the committee and board will meet in executive session to discuss employee briefing on real estate and legal issues affecting the North Texas Research Institute; and convene into open meeting to discuss proposed recommendation to the full board of regents in regard to the North Texas Research Institute.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: April 6, 1992, 11:27 a.m.

TRD-9204691

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**University of Texas Health
Science Center at San Antonio**

Wednesday, April 15, 1992, 3 p.m. The Institutional Animal Care and Use Committee of the University of Texas Health Science Center at San Antonio will meet at the History of Medicine Conference Room, 5.070LIB, 7703 Floyd Curl Drive, San Antonio. According to the agenda summary, the committee will discuss approval of minutes; protocols for review; subcommittee reports; and discuss other business.

Contact: Molly Greene, 7703 Floyd Curl Drive, San Antonio, Texas 78284-7822, (512) 567-3717.

Filed: April 6, 1992, 1:35 p.m.

TRD-9204701

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University of Texas System

Wednesday-Thursday, April 8-9, 1992, 10 a.m. The Board of Regents and Standing Committees of the University of Texas System met on Wednesday at the Las Fuentes Room, Sheraton Fiesta San Antonio, 37 NE Loop 410, and on Thursday in Room 4.03.12, John Peace Library Building, U. T. San Antonio, 6900 North Loop 1604 West, San Antonio. According to the revised agenda summary, the board will consider amendments to RRR; Chancellor's Docket (submitted by system administration); review and discuss: medical, dental and health maintenance organization insurance rates; degree programs; fees; housing rates; graduate tuition rates; appointments to endowed academic positions; agreements; buildings and grounds matters including approval for projects; preliminary and final project plans; and award of contracts; investment matters; acceptance of gifts, bequests and estates, establishment of endowed positions and funds; potential litigation real estate matters; and personnel matters.

Contact: Arthur H. Dilly, P.O. Box N, U. T. Station, Austin, Texas 78713-7328, (512) 499-4402.

Filed: April 3, 1992, 12:20 p.m.

TRD-9204591

Wednesday-Thursday, April 8-9, 1992, 1 p.m. and 10 a.m. respectively. The Board of Regents and Standing Committees of the University of Texas System met on Wednesday at the Las Fuentes Room, Sheraton Fiesta San Antonio, 37 NE Loop 410, and on Thursday at the John Peace Library

Building, U. T. San Antonio, 6900 North Loop 1604 West, Room 4.03.12, San Antonio. According to the complete emergency revised agenda, the committees amended the convening time of the April 8, 1992 meeting from 10 a.m. to 1 p.m. The emergency status was necessary as one finalist candidate withdrew on April 5, 1992, so interviews began later than originally scheduled.

Contact: Arthur H. Dilly, P.O. Box N, U. T. Station, Austin, Texas 78713-7328, (512) 499-4402.

Filed: April 6, 1992, 11:34 a.m.

TRD-9204695

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Texas Water Commission

Monday, April 13, 1992, 8:30 a.m. The Texas Water Commission will meet at 4207 River Place Boulevard, Colorado Room, Austin. According to the agenda summary, the commission will meet in executive session.

Contact: Gloria A. Vasquez, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: April 3, 1992, 4:25 p.m.

TRD-9204635

Tuesday, April 14, 1992, 10 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 5-101, Austin. According to the agenda summary, the commission will consider assessment of administrative penalties and requiring certain actions of the Javelina Corporation.

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 2, 1992, 1:59 p.m.

TRD-9204546

Wednesday, April 15, 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: April 3, 1992, 4:43 p.m.

TRD-9204644

Wednesday, April 15, 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: April 3, 1992, 4:43 p.m.

TRD-9204645

Wednesday, April 15, 1992, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1701 North Congress Avenue, Room 118, Austin. According to the revised 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: April 7, 1992, 7:39 a.m.

TRD-9204742

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**Texas Workers' Compensation
Commission**

Friday, April 10, 1992, 9 a.m. The Medical Advisory Committee of the Texas Workers' Compensation Commission will meet at the Southfield Building, Rooms 910-911, 4000 South IH-35, Austin. According to the agenda summary, the committee will call the meeting to order; review and discuss approval of the March 13, 1992 minutes; update on commission rules; discuss Rule 134.600; discuss, consider and make recommendation regarding: proposal for development of a commission draft utilization review program; discuss dental fee guideline; initial review of physical medicine treatment guideline; discuss HCFA 1500 instructions; discuss creation of new codes for frequently used "Unlisted" treatments and services; establish next meeting date; establish draft agenda; and adjourn.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 448-7962.

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

TRD-9204640

Texas Workers' Compensation Research Center

Monday, April 13, 1992, 9 a.m. The Subcommittee C on Rules and Practices of the Texas Workers' Compensation Research Center will meet at 3636 Executive Center Drive, Second Floor Conference Room, Colorado Building, Austin. According to the complete agenda, the committee will discuss rules and practices for the Texas Workers' Compensation Research Center.

Contact: Annette Gula, 3636 Executive Center Drive, Suite G-22, Austin, Texas 78731, (512) 346-6197.

Filed: April 6, 1992, 12:21 p.m.

TRD-9204700

Friday, April 24, 1992, 9 a.m. The Board of Directors of the Texas Workers' Compensation Research Center will meet at the Senate Committee Room Two, One Capital Square, 300 West 15th Street, Austin. According to the complete agenda, the board will call the meeting to order; discuss approval of minutes; hear committee reports; report from the executive director; discuss research agenda; set schedule for future meetings; and adjourn.

Contact: Annette Gula, 3636 Executive Center Drive, Suite G-22, Texas 78731, (512) 346-6197.

Filed: April 6, 1992, 12:20 p.m.

TRD-9204699

Regional Meetings

Meetings Filed April 2, 1992

The Coleman County Water Supply Corporation Annual Membership meeting was held at the Hospitality Room of the First Coleman National Bank, 110 Commercial, Coleman, April 7, 1992, at 1:30 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, (915) 625-2133. TRD-9204551.

The Coleman County Water Supply Corporation Board of Directors met at the Corporation's Office, 214 Santa Anna Avenue, Coleman, April 7, 1992, at 3 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, (915) 625-2133. TRD-9204552.

The Hays County Appraisal District Board of Directors met at 632 A East Hopkins, Municipal Building, San Marcos, April 9, 1992, at 3:30 p.m. Information may be obtained from Lynnell Sedlar, 632 A. E. Hopkins, San Marcos, Texas 78666, 512) 754-7400. TRD-9204547.

Meetings Filed April 3, 1992

The Archer County Appraisal District Board of Directors met at the Appraisal District Office, 211 South Center, Archer City, April 8, 1992, at 5 p. m. Information may be obtained from Edward H. Trigg, III, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172. TRD-9204592.

The Barton Springs/Edwards Aquifer Conservation District Board of Directors met at 1124-A Regal Row, Austin, April 9, 1992, at 5 p.m. Information may be obtained from Bill E. Couch, 1124-A Regal Row, Austin, Texas 78748, (512) 282-8441. TRD-9204596.

The Brazos Valley Development Council Executive Committee met at the Council Offices, 3006 East 29th Street, Suite #2, Bryan, April 9, 1992, at 1: 30 p.m. Information may be obtained from Glenn J. Cook, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 776-2277. TRD-9204575.

The Brazos Valley Development Council Executive Committee met at the Council Offices, 3006 East 29th Street, Suite #2, Bryan, April 9, 1992, at 1: 30 p.m. (revised agenda). Information may be obtained from Glenn J. Cook, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 776-2277. TRD-9204578.

The Brazos Valley Development Council Regional Solid Waste Management Advisory Committee will meet at the Council Offices, 3006 East 29th Street, Suite #2, Bryan, April 13, 1992, at 1:30 p.m. Information may be obtained from Glenn J. Cook, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 776-2277. TRD-9204574.

The Carson County Appraisal District Appraisal Review Board met at the Holiday Inn, I-40, Amarillo, April 7, 1992, at 7:30 a.m. Information may be obtained from Dianne Lavake, P.O. Box 970, Panhandle, Texas 79068, (806) 537-3569. TRD-9204577.

The Dallas Area Rapid Transit Audit Committee met at the DART Office, 601 Pacific Avenue, Board Conference Room, Dallas, April 7, 1992, at 11: 30 a.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9204600.

The Dallas Area Rapid Transit Rail Planning and Development Committee met at the DART Office, 601 Pacific Avenue, Board Conference Room, Dallas, April 7, 1992, at 2 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9204599.

The Dallas Area Rapid Transit Board of Directors met at the DART Office, 601 Pacific Avenue, Board Conference Room, Dallas, April 7, 1992, at 6: 30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9204601.

The Gonzales County Appraisal District Board of Directors met at 928 St. Paul Street, Gonzales, April 9, 1992, at 6 p.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879. TRD-9204642.

The Hansford Appraisal District met at 709 West Seventh Street, Spearman, April 8, 1992, at 9 a.m. Information may be obtained from Alice Peddy, P.O. Box 519, Spearman, Texas 79081, (806) 659-5575. TRD-9204613.

The Johnson County Rural Water Supply Corporation Board of Directors met at the JCRWSC Office, Highway 171 South, Cleburne, April 8, 1992, at 6 p.m. Information may be obtained from Charlene SoRelle, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9204619.

The Kendall County Education District Board of Trustees met at 121 South Main Street, Boerne, April 6, 1992, at 5 p.m. Information may be obtained from J. P. Davis, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9204634.

The Lavaca County Central Appraisal District Appraisal Review Board will meet at the Lavaca County Central Appraisal District, 113 North Main, Hallettsville, April 10, 1992, at 9 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9204571.

The Mills County Advisory Board met at the Mills County Appraisal District Office, Courthouse, Goldthwaite, April 9, 1992, at 10 a.m. Information may be obtained from Cynthia Partin, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD-9204572.

The North Central Texas Council of Governments for the Local Government Investment Fund for Texas will meet at 616 Six Flags Drive, Centerpoint Two, Arlington, April 10, 1992, at noon. Information may be obtained from Marcia Sobotka, P.O. Drawer COG, Arlington, Texas 76005-5888, (817) 640-3300, ext. 111. TRD-9204602.

The Panhandle Ground Water Conservation District Number Three Board of Directors held a public meeting at the Water District Office, 300 South Omohundro Street, White Deer, April 8, 1992, at 8 p.m. Information may be obtained from C. E. Williams, P.O. Box 637, White Deer, Texas 79097, (806) 883-2501. TRD-9204633.

The Sabine Valley Center Personnel Committee will meet at the Administration Building, 107 Woodbine Place, Bramlette Lane, Longview, April 13, 1992, at 6 p.m. Information may be obtained from Mack O. Blackwell, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9204643.

The Sabine Valley Center Board of Trustees will meet at the Administration Building, 107 Woodbine Place, Bramlette Lane, Longview, April 13, 1992, at 7 p.m. Information may be obtained from Mack O. Blackwell, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9204641.

The San Patricio County Appraisal District Board of Directors met at 1146 East Market, Sinton, April 9, 1992, at 9:30 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402. TRD-9204614.

The Sulphur River Basin Authority Board of Directors will meet at the Mt. Pleasant Chamber of Commerce Building, 1604 North Jefferson, Mt. Pleasant, April 14, 1992, at 3 p.m. Information may be obtained from William O. Morriss, P.O. Box 240, Texarkana, Texas 75504, (903) 793-5511. TRD-9204573.

The Tyler County Appraisal District Appraisal Review Board will meet at 806 West Bluff, Woodville, April 14, 1992, at 4 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9204593.



Meetings Filed April 6, 1992

The Bexar-Medina-Atascosa Counties Water Control Improvement District Number One Board of Directors will meet at the District Office, Highway 81, Natalia, April 13, 1992, at 8 a.m. Information may be obtained from C. A. Mueller, P.O. Box 170, Natalia, Texas 78059, (512) 663-2132. TRD-9204675.

The Brazos River Authority Water Utilization Committee, Board of Directors will meet at 4400 Cobbs Drive, Waco, April 14, 1992, at 10 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9204668.

The Brazos River Authority Administrative Policy Committee, Board of Directors

will meet at 4400 Cobbs Drive, Waco, April 14, 1992, at 1 p.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9204669.

The Brazos River Authority Lake Management Committee, Board of Directors will meet at the Lake Supervisor's Office, Possum Kingdom Lake, April 16, 1992, at 9 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9204670.

The Brazos River Authority Water Quality Committee, Board of Directors will meet at 4400 Cobbs Drive, Waco, April 20, 1992, at 9 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9204673.

The Cass County Appraisal District Board of Directors will meet at the Cass County Appraisal District, 502 North Main Street, Linden, April 13, 1992, at 7 p.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9204679.

The High Plains Underground Water Conservation District Number One Board of Directors will meet at the Conference Room, 2930 Avenue Q, Lubbock, April 14, 1992, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue O, Lubbock, Texas 79405, (806) 762-0181. TRD-9204717.

The Jones County Appraisal District Board of Directors will meet at the District's Office, 1137 East Court Plaza, Anson, April 16, 1992, at 8:30 a.m. Information may be obtained from John Steele, 1137 East Court Plaza, Anson, Texas 79501, (915) 823-2422. TRD-9204677.

The Kendall County Appraisal District Appraisal Review Board met at 121 South Main Street, Kendall Appraisal Office, Boerne, April 9, 1992, at noon. Information may be obtained from J. P. Davis, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9204738.

The Kendall County Appraisal District Agricultural Appraisal Advisory Committee will meet at 121 South Main Street, Boerne, April 14, 1992, at noon. Information may be obtained from J. P. Davis, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9204739.

The Manville Water Supply Corporation Board of Directors met at Spur 277, Coupland, April 9, 1992, at 7 p.m. Information may be obtained from LaVerne Rohlack, Spur 277, P.O. Box 248, Coupland, Texas 78615, (512) 856-2488. TRD-9204689.

The Nortex Regional Planning Commission Executive Committee will meet at the

Wichita Falls Activities Center, Room 214, 10th and Indiana Streets, Wichita Falls, April 16, 1992, at noon. Information may be obtained from Dennis Wilde, 2101 Kemp Boulevard, Wichita Falls, Texas 76307, (817) 322-5281. TRD-9204674.

The Palo Pinto Appraisal District Board of Directors will meet at the Palo Pinto County Courthouse, Palo Pinto, April 15, 1992, at 3 p.m. Information may be obtained from Jackie F. Samford, P.O. Box 250, Palo Pinto, Texas 76484-0250. TRD-9204705.

The Permian Basin Quality Work Force Planning Committee (PBOWFPC) will meet at Room 130, Electronics Technology Building, Odessa College, 201 West University, Odessa, April 14, 1992, at 10:30 a.m. Information may be obtained from Georgia D. Hankins, 3600 North Garfield, Midland, Texas 79705, (915) 685-4673. TRD-9204667.

The San Antonio River Authority Board of Directors will meet at SARA General Offices, Second Floor Conference Room, 100 East Guenther, San Antonio, April 15, 1992, at 2 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027. TRD-9204692.

The San Antonio River Authority Salary Review and Personnel Committee will meet at the SARA General Offices, Second Floor Conference Room, 100 East Guenther, San Antonio, April 15, 1992, at 3:30 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027. TRD-9204696.

The South East Texas Regional Planning Commission Executive Committee will meet at the City of Beaumont Council Chambers, Beaumont, April 15, 1992, at 7 p.m. Information may be obtained from Jackie Vice, P.O. Drawer 1387, Nederland, Texas 77627, (409) 727-2384. TRD-9204678.

The Texas Political Subdivisions Self-Insurance Funds Board of Trustees met at the Hyatt Regency Hotel-D/FW Airport, Dallas, Fort Worth, April 9, 1992, at 9 a.m. Information may be obtained from Tom P. Vick, P.O. Box 2759, Dallas, Texas 75221, (214) 760-6185. TRD-9204690.

The Toledo Bend Project Joint Operation Operating Board will meet at the Texas Damsite Office, Burkeville, April 21, 1992, at 10 a.m. Information may be obtained from Donnie Henson, P.O. Box 579, Orange, Texas 77630, (409) 746-2192. TRD-9204702.

The Trinity River Authority Utility Services Committee will meet at 5300 South Collins, Arlington, April 13, 1992, at 10 a.m. Information may be obtained from J. Sam Scott, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9204697.

The Wise County Appraisal District Board of Directors met at 206 South State Street, Decatur, April 9, 1992, at 7:30 p.m. Information may be obtained from Brenda Jones, 206 South State Street, Decatur, Texas 76234, (817) 627-3081, ext. 04. TRD-9204703.



Meetings Filed April 7, 1992

The Brazos River Authority Lake Management Committee, Board of Directors will meet at the Lake Supervisor's Office, Possum Kingdom Lake, April 16, 1992, at 9 a.m. (revised agenda). Information may be

obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9204749.

The Gregg Appraisal District Board of Directors will meet at 2010 Gilmer Road, Longview, April 10, 1992, at 1:30 p.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (903) 759-0015. TRD-9204748.

The Gregg Appraisal District Board of Directors will meet at 2010 Gilmer Road, Longview, April 13, 1992, at 9 a.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (903) 759-0015. TRD-9204747.

The Tarrant Appraisal District Appraisal Review Board will meet at 2329 Gravel Road, Fort Worth, April 16, 1992, at 8 a.m. Information may be obtained from Suzanne Williams, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884. TRD-9204746.

The Tyler County Appraisal District Appraisal Review Board will meet at 806 West Bluff, Woodville, April 16, 1992, at 5 p.m. (revised agenda). Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9204745.





Name: Walid Allan

School: McDonald Middle School, Mesquite ISD

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Commission on Alcohol and Drug Abuse

Notice of Request for Proposals

The Texas Commission on Alcohol and Drug Abuse, under the authority of the Texas Health and Safety Code, Title 6, Subtitle B, Chapter 464, gives notice of a Correctional and Community Based Treatment Request for Proposals (RFP). The RFP is soliciting applications for Substance Abuse Felony Punishment Facilities and community based chemical dependency treatment services which are innovative, multifaceted, comprehensive, and coordinated, and which are adapted to the special needs of the criminal justice populations to be served in this program.

To request a copy of the RFP, call the Funding Processes Section at (512) 867-8113, or write to: Texas Commission on Alcohol and Drug Abuse, Funding Processes Section, 720 Brazos Street, Suite 403, Austin, Texas 78701.

The closing date for receipt of applications by the commission is 5 p.m. on May 15, 1992. The period for awards executed through this RFP will be October 1, 1992-August 31, 1993.

The amount of funds that will be available for the award period is not known at the time the RFP is released. The commission currently administers two sources of public funds that can be used for treatment services: Public Health Services Act, Part B, Alcohol and Drug Abuse and Mental Health Services Block Grant, Fiscal Year 1992 Award-\$74,187,781, estimated; and General Appropriations Act, Article II, Fiscal Year 1992 Amount-\$14,791,641. The General Appropriations Act does not provide for an increase of state funds for this purpose for Fiscal Year 1993.

Eligible providers are private nonprofit or public organizations that provide treatment services. The RFP contains additional provider eligibility requirements.

Technical assistance will be offered through a workshop to be conducted by TCADA and the Texas Department of Criminal Justice (TDCJ). The workshop will be held on April 15, 1992, from 9 a.m. to 4 p.m., Austin, Balcones Research Center, Commons Building, 10100 Burnet Road. The workshop will be devoted to discussion of RFP requirements, technical assistance with application preparation, and discussion of sites where the TDCJ will house the Substance Abuse Felony Punishment Facilities portion of the program.

It is TCADA's intent that all applicants receive the same information and assistance. Therefore, the workshop will be the single opportunity for applicants to ask questions, and all questions asked and answered will be in the presence of all attending. There will be no other opportunities for applicants to receive assistance regarding this RFP.

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

TRD-9204569

Bob Dickson
Executive Director
Texas Commission on Alcohol and Drug Abuse

Filed: April 3, 1992

For further information, please call: (512) 867-8700

Texas Education Agency Notice of Contract Award

Description. After publication of a consultant proposal request (#701-92-032) in the January 7, 1992, issue of the *Texas Register* (17 TexReg 137) for a firm to conduct a study on the cost of funding special education programs within the Foundation School Program, the Texas Education Agency has awarded a contract to MGT of American, Inc., 2425 Torreya Drive, Tallahassee, Florida, 32303.

Dates of Project. The contract will begin on March 10, 1992, and end on August 15, 1992.

Project Amount. The amount of the contract is \$74,725.

Final Report. The report will identify special education programs and services and will determine per pupil costs for those services. The project will be completed on August 15, 1992.

Further Information. For further information about the study, please contact Pat Valls-Trelles, Program Analyst, Legislative Budget Board, at (512) 463-1200.

Issued in Austin, Texas, on April 1, 1992.

TRD-9204534

Pat Valls-Trelles
Program Analyst, Legislative Budget Board
Texas Education Agency

Filed: April 2, 1992

For further information, please call: (512) 463-1200

Office of the Governor Budget Execution Proposal-Texas Commission on Alcohol and Drug Abuse

Pursuant to Texas Government Code, 317.002(b)(2) relating to budget execution authority, I make the following budget execution proposal:

The Texas Commission on Drug and Alcohol Abuse (TCADA) requests authority to use Alcohol, Drug Abuse, and Mental Health Services Block Grant (ADAMHS) funds received by TCADA in excess of \$62,108,116 for community-based chemical dependency treatment programming, giving priority to substance abusers who have

now, or who have in the past, entered the criminal justice system as provided in House Bill 1, Seventy-second Legislature, First Called Session, 1991.

I find that the Department of Criminal Justice is unlikely to make use of these funds in fiscal year 1992 for the purposes intended by House Bill 93, Seventy-second Legislature, Second Called Session, 1991, which would cause these funds to lapse to the federal government and therefore be unavailable for use in prevention and treatment services for other TCADA clients, thus creating an emergency.

I therefore propose that during fiscal year 1992 TCADA be authorized to allocate for community-based chemical dependency treatment programs, funds in excess of \$62,108,226, which were originally appropriated to TCADA for fiscal year 1992 solely for the operation of treatment programming at substance abuse felony punishment facilities operated by the Department of Criminal Justice.

Issued in Austin, Texas, on April 7, 1992.

TRD-9204769 • Ann W. Richards
Governor

Filed: April 7, 1992

For further information, please call: (512) 463-1778

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**Budget Execution Proposal-Texas Racing
Commission**

Pursuant to Texas Government Code, Section 317.002(b)(2), relating to budget execution authority, I make the following budget execution proposal:

The Texas Racing Commission has requested that the limitation on use of out-of-state travel of \$10,000 per year in House Bill 1, 72nd Legislature, First Called Session, 1991, be increased to \$30,000.

I find that an emergency exists, in that out-of-state travel is essential to the adequate processing of pending applications and investigation of out-of-state applicants.

Funding for this proposal will be made from existing appropriations and the commission has committed to identifying additional savings to be returned to the General Revenue Fund in amount equal to funds spent on additional out-of-state travel.

I propose that the ceiling set in Rider 4, LIMITATION, OUT-OF-STATE TRAVEL, House Bill 1, 72nd Legislature, First Called Session, 1991, be raised to \$30,000 each year of the biennium, by allowing other appropriations to be utilized for this additional purpose.

Issued in Austin, Texas, on April 7, 1992.

TRD-9204768 • Ann W. Richards
Governor

Filed: April 7, 1992

For further information, please call: (512) 463-1778

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**Texas Department of Health
Correction of Errors**

The Texas Department of Health adopted an amendment to 25 TAC §145.111, concerning long-term care. The rule

appeared in the March 10, 1992, *Texas Register* (17 TexReg 1817).

On the first page of the preamble, in the second paragraph, the third sentence of the preamble contains an incomplete reference. The sentence should read as follows. "Accordingly, department rule §145.111 incorporates the TDHS standards adopted in 40 TAC §§19.1-19.2107, including the amendments...".

On the first page of the preamble, the second comment concerning §19.204(m) also contains an incomplete reference. The sentence should read as follows. "Accordingly, §19.204(m) should not be changed...".

On the second page of the preamble, the last sentence of the first comment concerning §19.217(3)(E) is missing the word "creative". The sentence should read as follows. "...can be implemented; instead, the department should allow facilities to use creative and innovative methods."

On the second page of the preamble, in the middle column, the last sentence of the second comment contains errors and should read as follows. "A 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."

On the second page of the preamble, in the middle column, halfway into the third response, the word "or" is missing between the words "incompetent determined". The sentence should read as follows. "...must protect and promote such rights (§19.201); to ensure that the protection of the rights of a resident adjudicated incompetent or determined to be incapable of exercising his rights and responsibilities for...".

On the third page of the preamble, in the middle column, the third response is missing open and closing quotation marks. The sentence should read as follows. "The TDHS resident number should be the "medicaid claim number," and the "medicaid claim number" should read "medicare claim number.""

On the third page of the preamble, in the middle column, the fourth comment is missing closing quotation marks. The sentence should read as follows. 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)."

◆ ◆ ◆
The Texas Department of Health adopted new 25 TAC §§129.1-129.5 and 129. 7-129.13, concerning the opticians' registry. The rules were published in the March 3, 1992, *Texas Register* (17 TexReg 1630).

In §129.7(g)(1), the word "spectacle" is missing between the words "registered dispensing". The sentence should read "A registered spectacle dispensing optician may..."

In §129.8(b)(6), the reference to "§129.5(i)" is incorrect. The correct reference is "§129.5(g)".

In §129.11(c)(3), the last sentence should read as follows. "If the complaint is made by a visit to the administrator's office, the form may be given to the complainant at that time; however, it must be completed and returned to the department before further action can be taken."

Sections §§129.10-129.13 were published twice. The duplicate sections on pages 17 TexReg 1637 and 1638 should be deleted.

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Heart of Texas Council of Governments, Job Training Partnership Act

Plan Announcement

The Heart of Texas Council of Governments (HOTCOG) announces the availability of its FY92 Title IIA Adult and Youth Services Plan and the Title III, Economic Dislocation and Worker Adjustment Assistance Services Plan funded under the Job Training Partnership Act. Copies of the plans are available for review at the HOTCOG office, 300 Franklin Avenue, Waco, Texas 76701 between the hours of 8:30 a.m. and 4:30 p.m., Monday-Friday.

The Heart of Texas Council of Governments is the administrative entity for the Heart of Texas Service Delivery Area and serves Bosque, Falls, Freestone, Hill, Limestone, and McLennan Counties.

Written comments on the plan may be addressed to: Attn: Dan Blankey, Acting Director of Employment and Training, Heart of Texas Council of Governments, 300 Franklin Avenue, Waco, Texas 76701.

Issued in Waco, Texas, on April 3, 1992.

TRD-9204676 Leon A. Willhite
Heart of Texas Council of Governments

Filed: April 6, 1992

For further information, please call: (817) 756-7822

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Texas Department of Human Services

Notice of Amended Request for Information

The Texas Department of Human Services (TDHS) has amended its Request for Information that was published in the November 1, 1991, issue of the *Texas Register* (16 TxReg 6233). Businesses and persons who have responded in writing to the original publication need not resubmit service and product information.

TDHS plans to introduce electronic benefit transfer (EBT) and point of sale (POS) technologies as a cost-effective means of delivering client services and benefits, specifically those related to the aid to families with dependent children (AFDC), food stamps, and Texas medical assistance (Medicaid) programs. TDHS planning will be an interagency effort, involving both the State Treasury and Office of the Comptroller; additional input and direction will come from the EBT Steering Committee, comprised of agencies' executives, and an EBT Citizens Task Force sponsored by the Office of the Comptroller.

Description: TDHS is interested in obtaining information about how it can best utilize electronic benefit transfer (EBT) and point of sale (POS) technologies to deliver food stamps, AFDC, and AFDC-related Medicaid benefits statewide. Specifically, TDHS is interested in learning how future expansion of EBT/POS to support other TDHS-administered programs (i.e., child care, foster care, transportation, energy assistance, etc.) could contain and further

reduce manual issuance and escalating administrative costs. Therefore, the purpose of this RFI is threefold, namely: to update its information about current POS equipment, software, networks, and capabilities; to obtain information about current industry product and performance standards related to POS transactions, processing, and liabilities; and to identify and gain useful information about potential EBT contractors, specifically their area(s) and level of expertise, available products and/or services, and experience in developing/providing innovative POS applications, such as the proposed client EBT. TDHS currently administers benefits delivery using the standard WelNet office LAN configuration in local TDHS field offices statewide. State and local offices include IBM-compatible 286 and 386 workstations configured in a token ring local area network (LAN) connected to the 2200/644 Unisys mainframe via a multi-station access unit, communications servers, and a terminal multiplexor. LAN software versions are Netware 2.15 and 3.11.

TDHS requests general and product-specific information it considers will be useful for EBT/POS planning and analysis. Examples of needed information include, but are not limited to, the following: hardware product description, technical and functional specifications, unit and quantity pricing, integration/compatibility, file/transaction information transfer and storage capacity, performance (MTBF); software product description, technical and functional specifications, unit and quantity pricing, integration/compatibility, file/transaction information transfer and storage capacity, performance/failure rates; possible hardware/software configurations, including process flow diagrams depicting processing alternatives and considerations; plastic card technology functional and technical specifications, manufacturer design and use options, unit and quantity pricing, operating system standards and requirements; acquisition options and their costs, i.e., purchase, lease, maintenance and "turn-key" system; and standard and product-specific "software ownership" contract clauses.

TDHS is a government agency subject to the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a. Information submitted to TDHS will be considered public information unless the specific parts thereof can be shown to fall within one or more of the 16 exceptions listed in the Act. Respondents must specify those parts and the exception(s) believed to apply with specific and detailed reasons. Vague and general claims to confidentiality are not acceptable.

Additionally, TDHS is interested in obtaining detailed spreadsheet-style information about existing telecommunications networks, installed ATM/POS equipment, and retail/vendor ownership for use in responding to federal funding agencies' inquiries related to client access. At a minimum, TDHS must acquire and analyze the following types of equipment and network information for the required feasibility study, alternatives and cost benefits analysis, and implementation advance planning document (APD). TDHS requests respondents interested in providing any of the following information do so electronically. EBT project staff are equipped to accept 5 1/4 inch DS/HD diskettes using either ASC-delimited file structure or DBASE-IV, PARADOX, WP51, and Lotus, Version 2.3 or earlier. Equipment and information needed are as follows: type of equipment (ATM, POS, or other); manufacturer name and model; name of vendor/retailer site (if applicable); name of vendor/retailer owner/lessor, if different than site; principal goods, services, industry; physical

location of equipment (street address or #-block series, city, county, zip code (Five-digit)); telecommunications network(s) membership/affiliate; hours of operation; special conditions or limitations for use; and other considerations/information considered useful.

TDHS has submitted an advance planning document (APD) for agency planning to secure prior approval and federal financial participation (FFP) from Food and Nutrition Services, U.S. Department of Agriculture, and the Administration for Children and Families and Health Care Financing Administration, U.S. Department of Health and Human Services. It the planning APD, TDHS has proposed a phased-in approach to EBT implementation. Phase I will target Houston (Harris County) and a nearby rural county; statewide conversion is expected to begin in fiscal year 1995.

TDHS now plans to issue a request for proposal (RFP) as early as August 1992 for a pilot followed by a statewide client service delivery system, including, but not limited to, equipment, software, training, and related services. RFI respondents will automatically receive a copy of all written information about TDHS systems and the proposed EBT project, as available. TDHS anticipates this information may be useful when preparing and submitting a responsive proposal.

Contact Person: Telephone inquiries about the TDHS project; written and electronic information responses to this RFI; and representative firm, product, and services literature, should be forwarded to: Ms. Karen Son, Technical Committee, Electronic Benefit Transfer Project, Texas Department of Human Services, P.O. Box 149030, MC Y-902, Austin, Texas 78714-9030, (512) 483-3967.

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

TRD-9204527 Nancy Murphy
Agency liaison, Policy and Document
Support
Texas Department of Human Services

Filed: April 2, 1992

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

Commission on Jail Standards Correction of Error

The Texas Commission on Jail Standards proposed new sections under 37 TAC Chapter 259, concerning New Construction Rules. The rules appeared in the March 3, 1992, issue of the *Texas Register* (17 TexReg 1600).

The *Texas Register* made several typographical errors.

- In §259.55 "fee" should be "feet".
- In §259.57 "inmate" should be plural.
- In §259.57 "comingled" was misspelled.
- In §259.207 "or" should be "of".
- In §259.238 "contained" should be "contain".
- In §259.239 "multiple-occupancy" was misspelled.
- In §259.241 "room" and "inmate" should be plural.
- In §259.346 "room" should be plural.
- In §259.346 "room" should be plural.
- In §259.346 "comingled" was misspelled.

In §259.346 "fee" should be "feet".

In §259.346 "in" should be "at".

Public Utility Commission of Texas Notice of Application To Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 26, 1992, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number. Application of Southwestern Public Service Company to Amend Certificated Service Area Boundaries within Hartely, Hutchinson, and Moore Counties, Docket Number 11031 before the Public Utility Commission of Texas.

The Application. In Docket Number 11031, Southwestern Public Service Company requests approval of its application to amend certificated service area boundary with Rita Blanca Electric Cooperative, Inc.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on April 1, 1992.

TRD-9204507 Mary Foss McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: April 1, 1992

For further information, please call: (512) 458-0100

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 26, 1992, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number. Application of Southwestern Public Service Company to Amend Certificated Service Area Boundaries within Cochran and Hockley Counties, Docket Number 11038 before the Public Utility Commission of Texas.

The Application. In Docket Number 11038, Southwestern Public Service Company requests approval of its application to amend its current service area boundary with Lamb County Electric Cooperative, Inc.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on April 1, 1992.

TRD-9204506

Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: April 1, 1992

For further information, please call: (512) 458-0100

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The Texas A&M University System
Public Notice

Pursuant to Senate Bill 404, and House Bill 1654, Acts of the 71st Legislature of the State of Texas, the following candidates are finalists for the position of Director of the Texas Engineering Extension Service, The Texas A&M University System, and upon the expiration of 21 days final action is to be taken by the Board of Regents of The Texas A&M University System: Dr. G. Kemble Bennett, Associate Dean, College of Engineering, Texas A&M University and Assistant Director, Texas Engineering Experiment Station; Dr. Philip V. Compton, Dean, College of Engineering, Texas A&I University; Dr. W. Bryon Witmer, Hazardous Materials Program Coordinator, Occupational and Environmental Safety Division, Texas Engineering Extension Service.

Issued in College Station, Texas, on April 1, 1992.

TRD-9204533

Vickie Running
Secretary of the Board of Regents
The Texas A&M University System

Filed: April 2, 1992

For further information, please call: (409) 845-9600

◆ ◆ ◆
Texas Water Commission
Notice of Availability and Request for
Comments

Agencies: Texas Water Commission (TWC), Texas Parks and Wildlife Department (TPWD), Texas General Land Office (GLO), Department of the Interior (DOI), and National Oceanic and Atmospheric Administration (NOAA).

Action: Notice of availability of a draft oil spill agreement and of a 30-day period for public comment on the proposed draft agreement.

Summary: Notice is hereby given that the document entitled "High Island Spill Agreement," dated March 31, 1992, is available for public review and comment. This document describes the agreement proposed by state and federal natural resource trustees (TWC, TPWD, GLO, DOI, and NOAA) as compensation for natural resource damages from the oil spill occurring in the Gulf Intracoastal Waterway (GIWW) on September 5, 1991, from an Amoco pipeline.

The proposed agreement between the natural resource trustees and Amoco Pipeline Company calls for Amoco to reconstruct a water control structure located on Jackson Ditch on the Anahuac National Wildlife Refuge. The reconstruction of this structure will allow for better control

of freshwater levels on the refuge, for decreasing the amount of saltwater intrusion into the refuge, and for the protection of the refuge from future oil spills in the GIWW. The enhancement of fish and wildlife resources that will result from this project is intended to compensate for those resources lost during the spill.

The opportunity for public review of this proposed agreement announced by this notice, parallels the provisions included in 43 Code of Federal Regulations, 11.32(c) of the Natural Resource Damage Assessment regulations.

Dates: Comments must be submitted in writing on or before May 10, 1992, to Will Roach of the United States Fish and Wildlife Service (USFWS), 17629 El Camino Real, Suite 211, Houston, Texas 77058, (713) 286-8282. All written comments will be considered by state and federal natural resource trustees in finalizing the draft agreement.

Supplementary Information: On September 5, 1991, a 10-inch oil pipeline ruptured as Amoco workers tried to transfer light crude oil from their High Island terminal to a barge in the GIWW. The rupture resulted in the discharge of approximately 10,040 gallons of light crude oil into a small marsh adjacent to the GIWW. Some oil was contained in the drainage ditches and barge slip, but an unknown quantity reached the GIWW. A combination of strong tidal currents (flood) and southeasterly winds moved the oil westwardly in the GIWW and to Anahuac National Wildlife Refuge, located on the north side of the GIWW.

The incident is subject to the authority of the Federal Water Pollution Control Act, 33 United States Code, §1321 et seq. TWC, TPWD, GLO, DOI, and NOAA are trustees for natural resources pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, the Federal Water Pollution Control Act of 1972 (FWPCA), the Oil Pollution Act of 1990 (OPA), Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 Code of Federal Regulations 300.72-300.74 and, in the case of the federal trustees, Executive Order 12850.

These state and federal agencies (the co-trustees) have determined that natural resources subject to their trust authority under these Acts were exposed to light crude oil as a result of the discharge. The quantity and concentration of the oil discharged was sufficient to result in injury to trust resources and information available to the trustees indicates that trust resources were affected. Consequently, the trustees are seeking the compensation for natural resource damages as identified in the proposed agreement. Interested members of the public are invited to request a copy of the proposed agreement from J. P. Schmidt of the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8559.

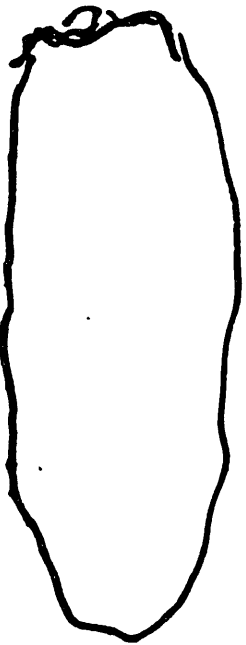
Issued in Austin, Texas, on April 6, 1992.

TRD-9204652

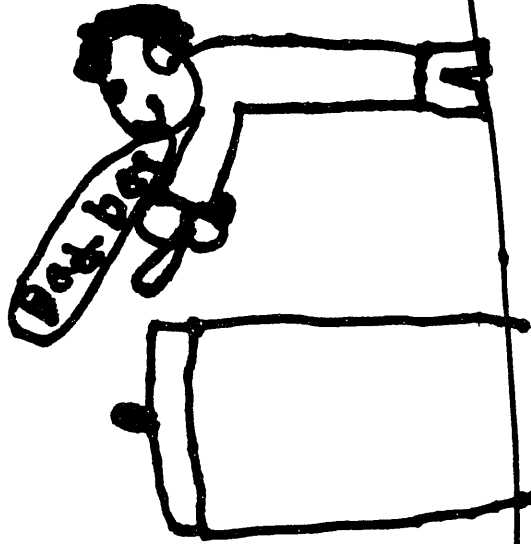
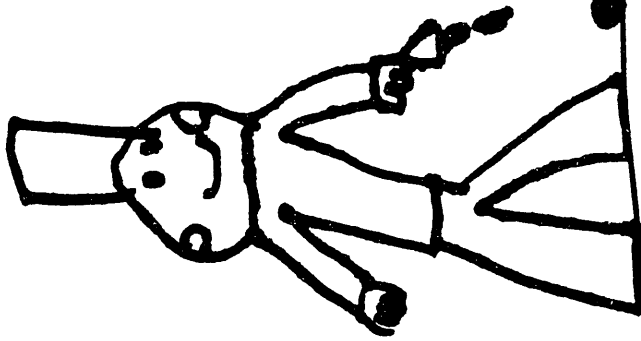
Mary Ruth Holder
Legal Division Director
Texas Water Commission

Filed: April 6, 1992

For further information, please call: (512) 463-8559



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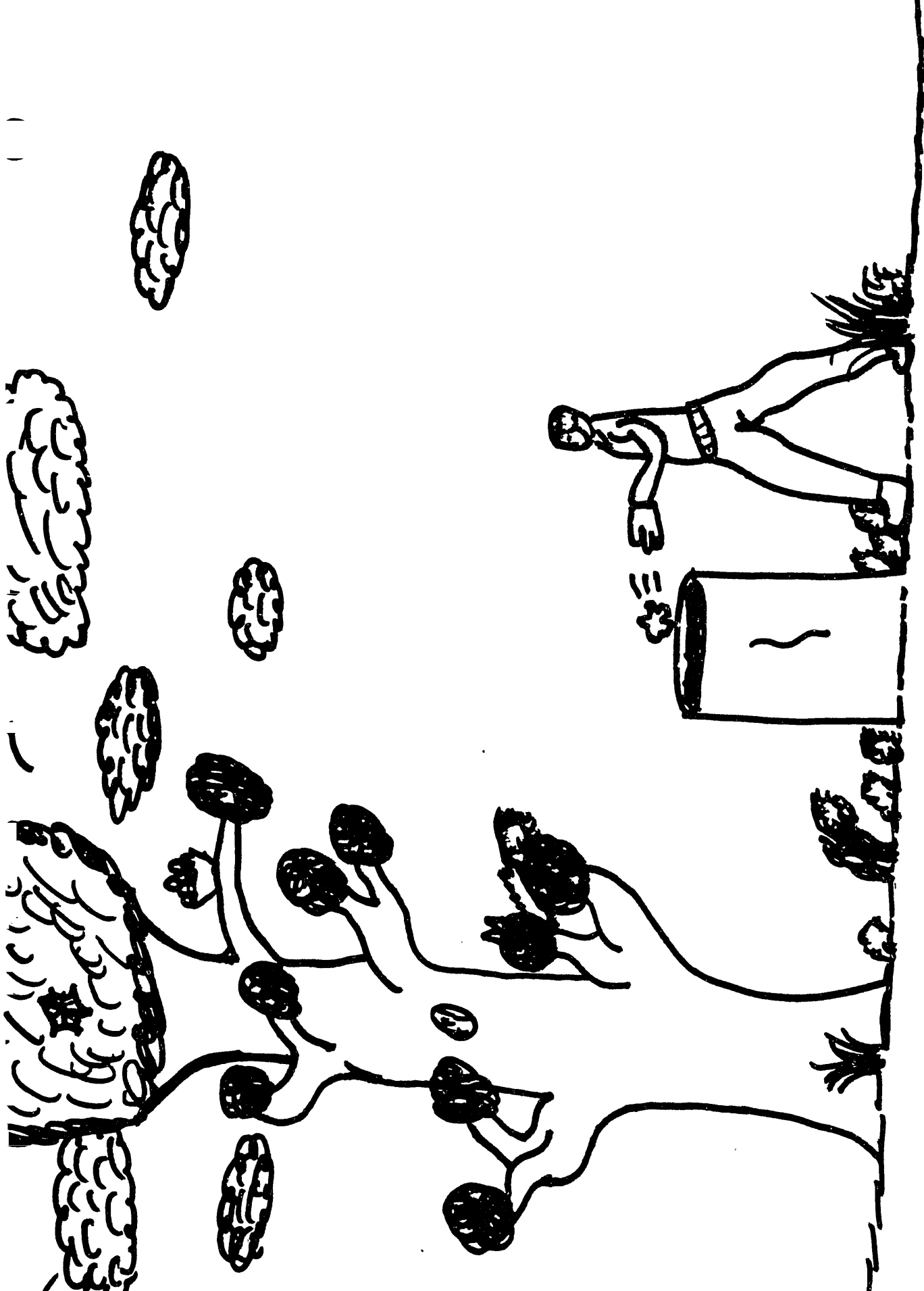


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Name: Latessica Watts

Grade: 1

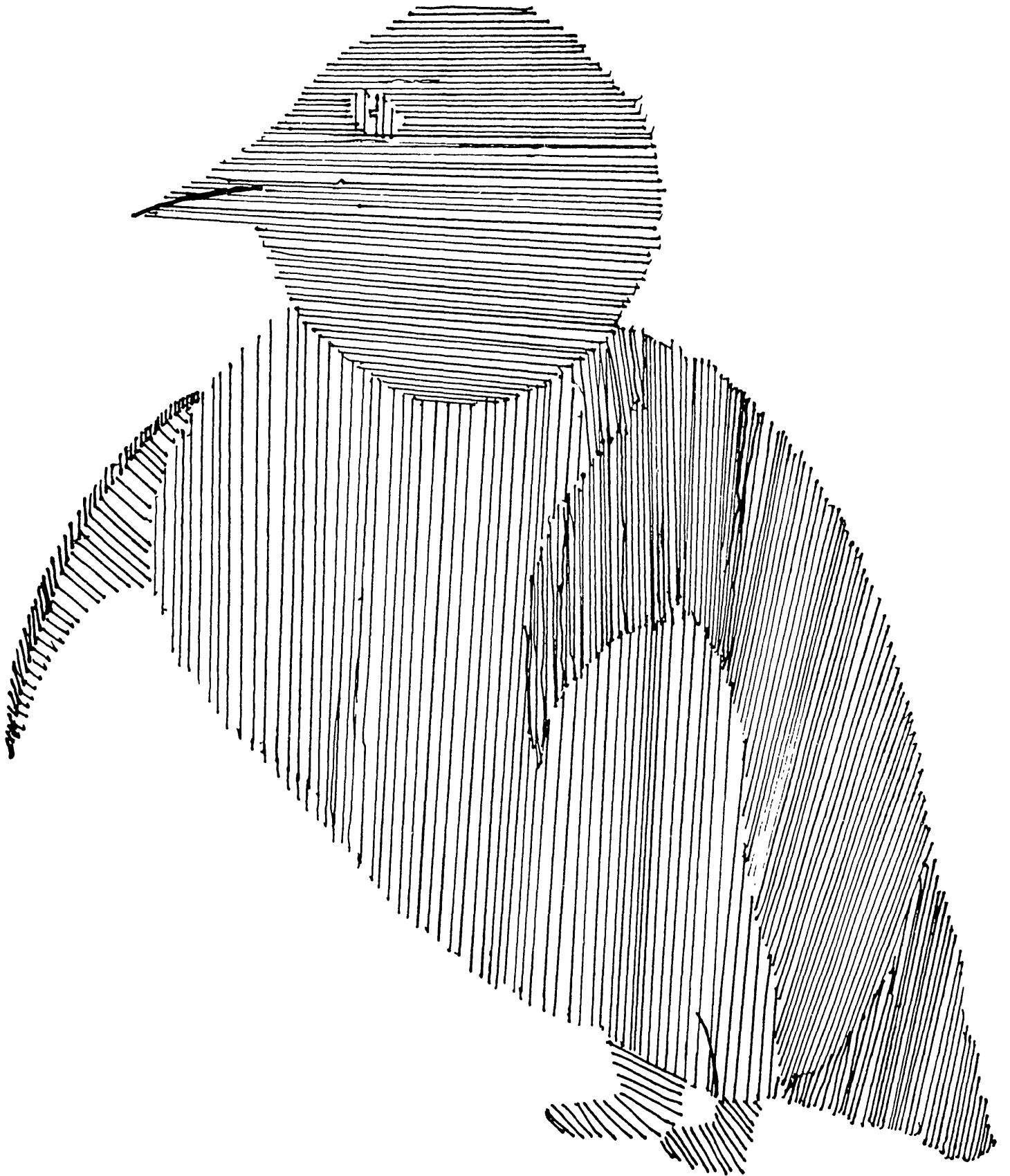
School: Dobia Primary, Richardson ISD



Name: Bruno Gandara

Grade: 1

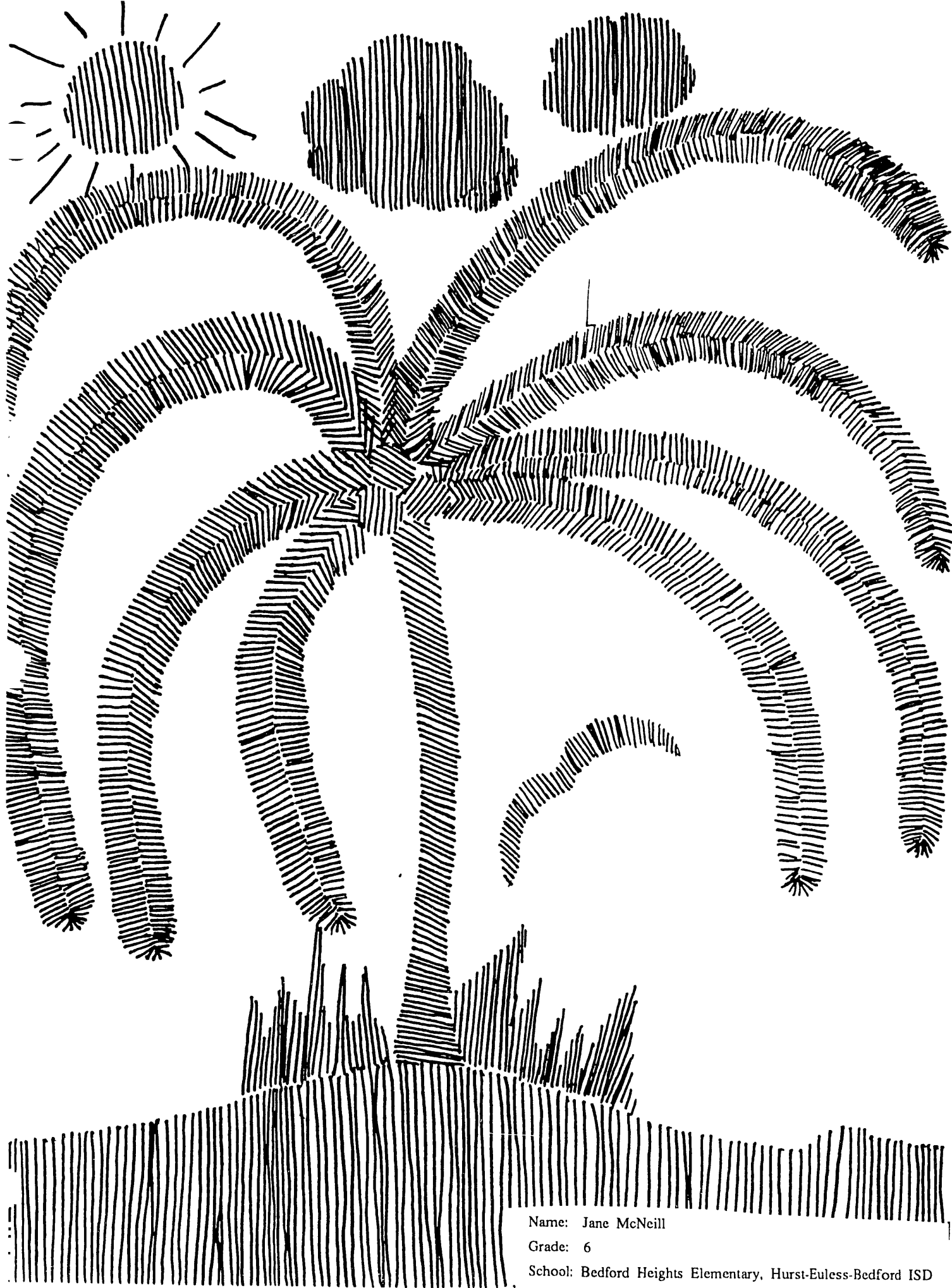
School: Dobie Primary, Richardson ISD



Name: Holly Stanton

Grade: 6

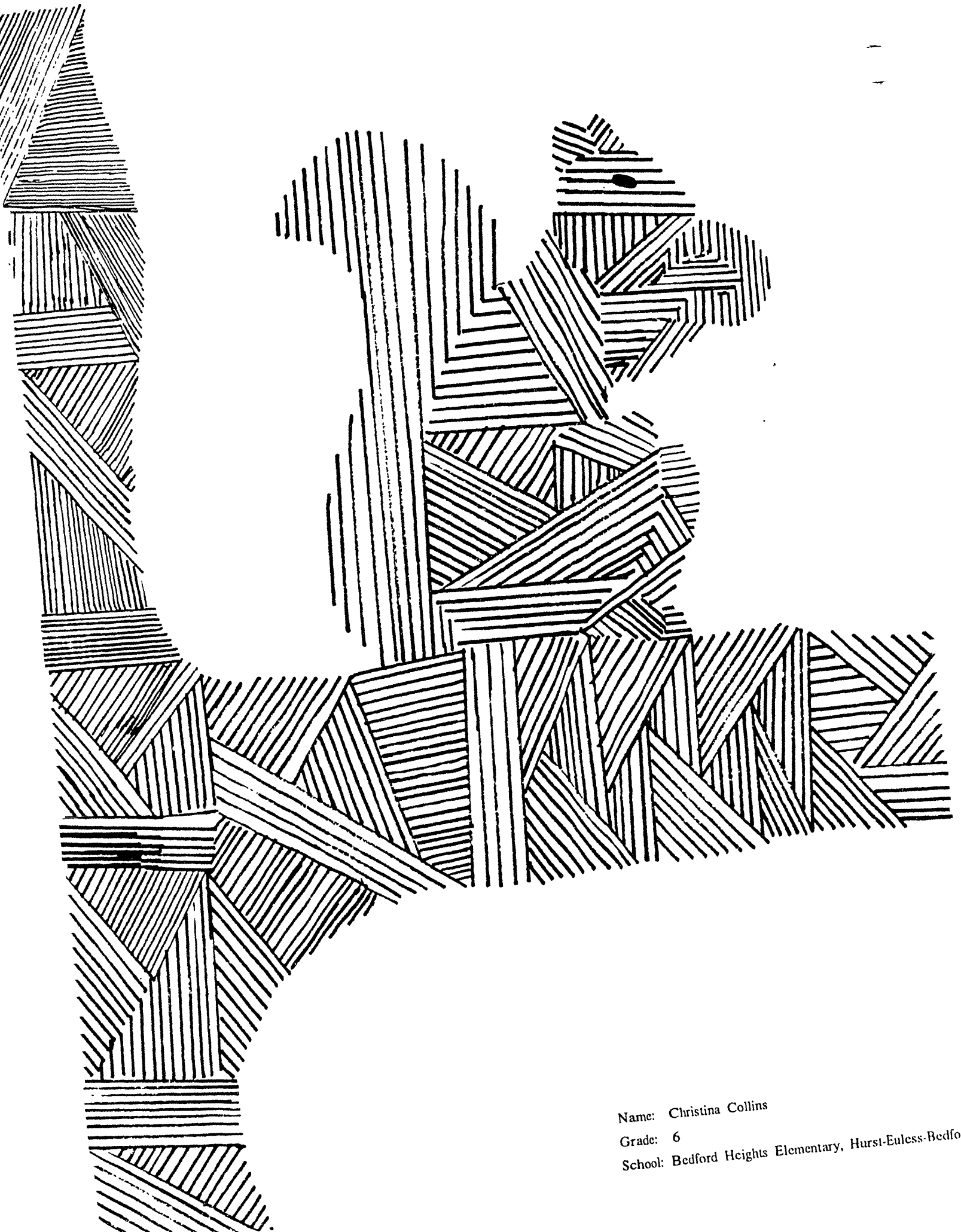
School: Bedford Heights Elementary, Hurst-Euless-Bedford ISD



Name: Jane McNeill

Grade: 6

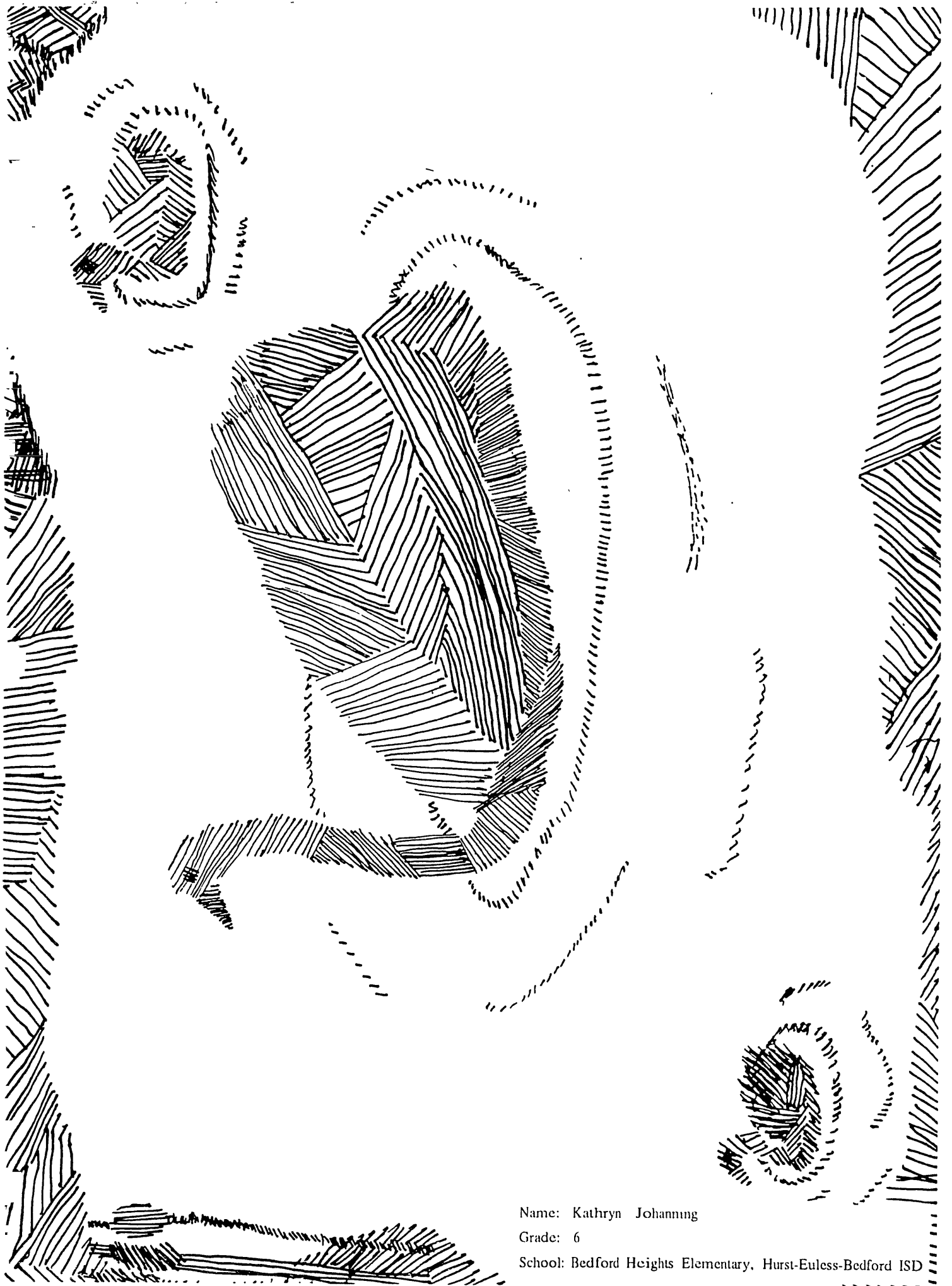
School: Bedford Heights Elementary, Hurst-Euless-Bedford ISD



Name: Christina Collins

Grade: 6

School: Bedford Heights Elementary, Hurst-Euless-Bedford



Name: Kathryn Johanning

Grade: 6

School: Bedford Heights Elementary, Hurst-Euless-Bedford ISD

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