Texas Register

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Texas Register, ISSN 0362-4781, is published semi-weekly 100 times a year except February 28, November 6, December 1, December 29, 1992. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78711. Subscriptions costs: one year - printed, $95 and electronic, $90; six-month - printed, $75 and electronic, $70. Single copies of most issues are available at $5 per copy.

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

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Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the ***Texas Register*** six months after proposal publication date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

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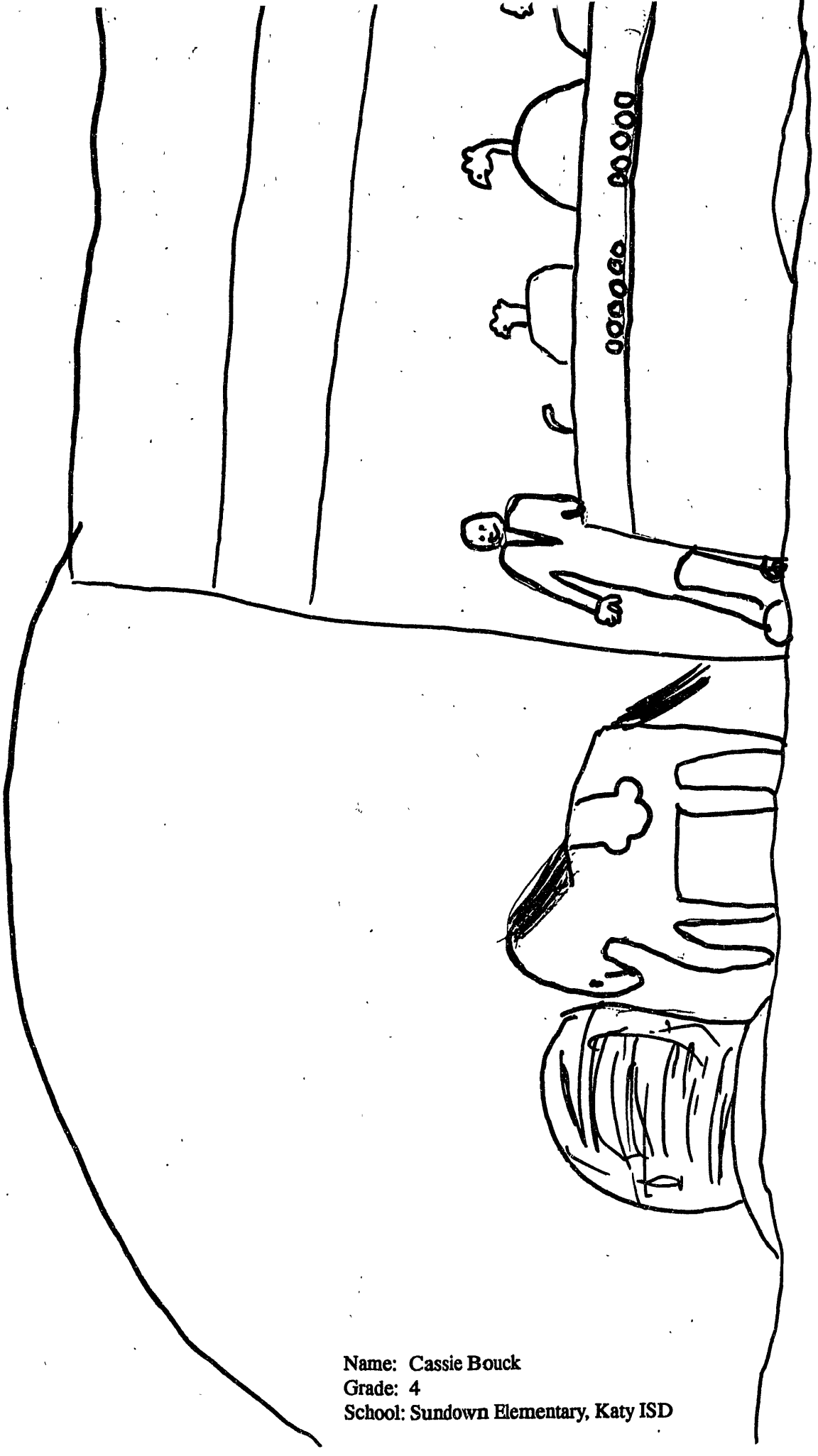

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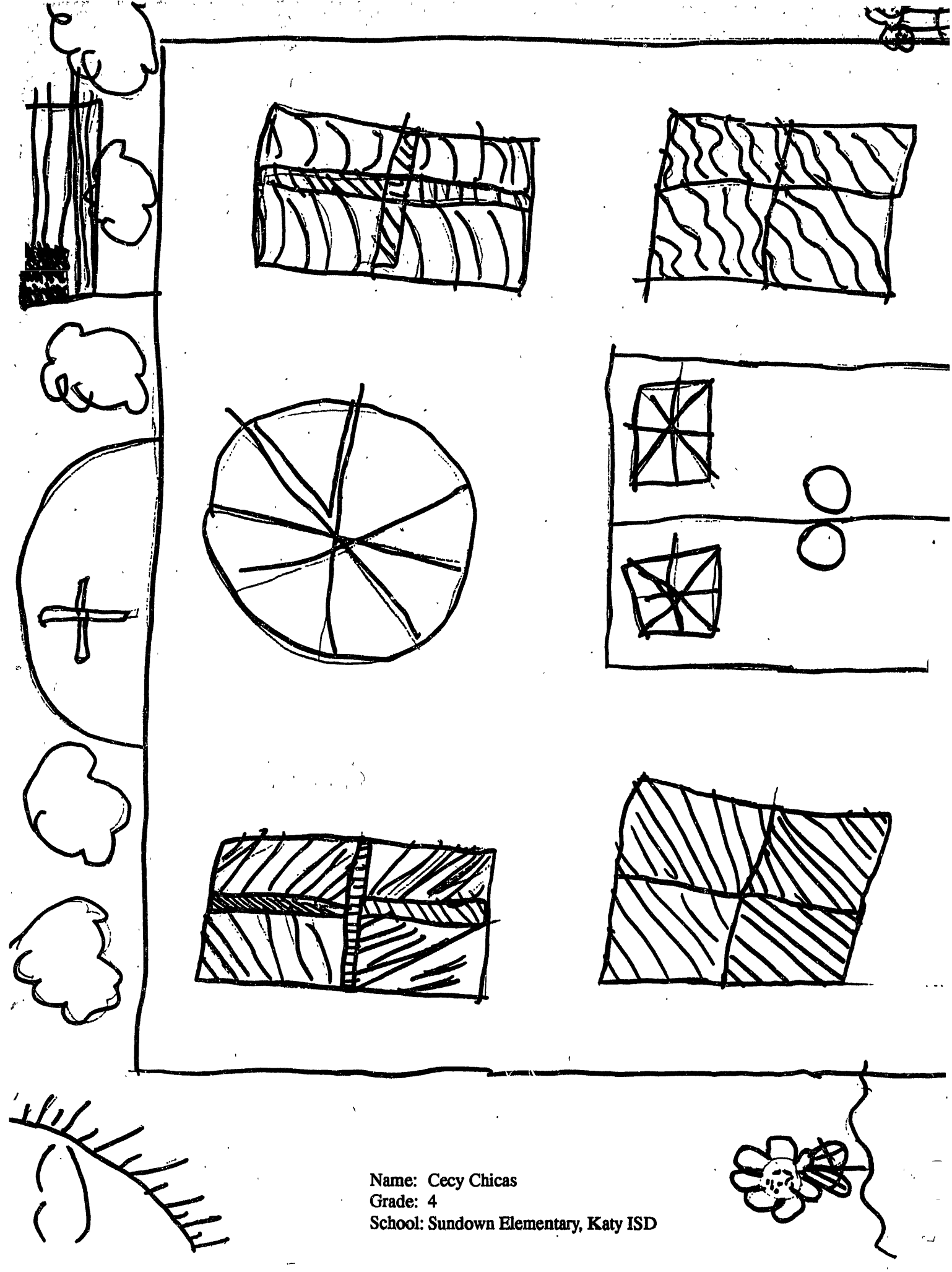

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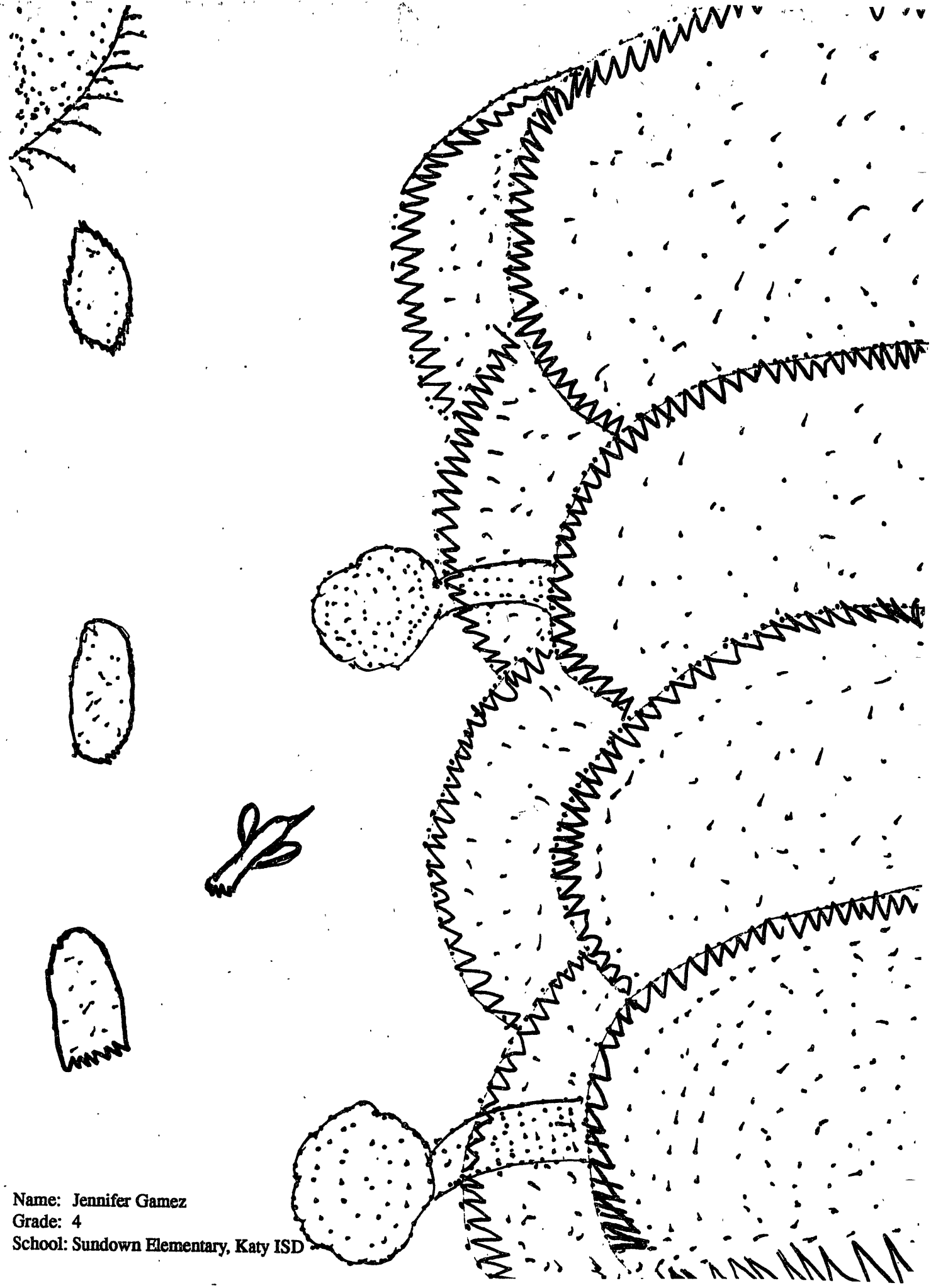

Name: Jennifer Gamez
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Name: Cassie Burnett
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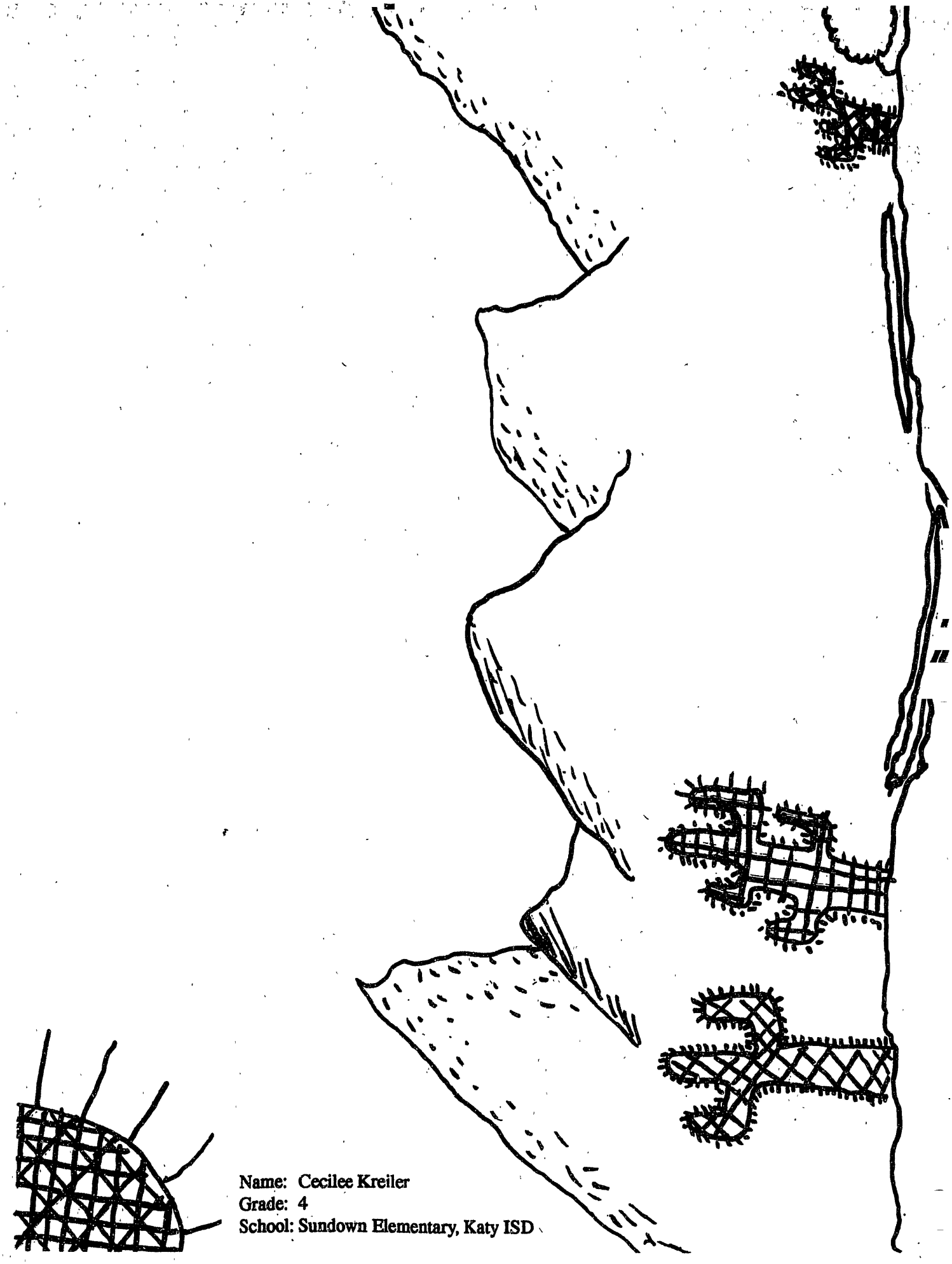
School: Sundown Elementary, Katy ISD



Name: Cecilee Kreiler
Grade: 4
School: Sundown Elementary, Katy 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) 463-1828.

Appointments Made December 7, 1992

To be Judge of the **Sixth Judicial District Court, Fannin, Lamar and Red River Counties** until the next General Election and until his successor shall be duly elected and qualified: Webb Biard, 6930 Morris Lane, Paris, Texas 75460. Mr. Biard will be replacing Judge Henry G. Braswell of Paris, who is deceased.

To be District Attorney of the **18th Judicial District, Johnson, and Somervell Counties** for a term to expire December 31, 1992: Dale Hanna, Route 3, Box 213, Cleburne, Texas 76031. Mr. Hanna will be filling the unexpired term of Dan M. Boulware of Cleburne, who resigned.

Appointments Made December 11, 1992

To be a member of the **Texas Commission on Alcohol and Drug Abuse** for a term to expire June 8, 1997: Sylvia Rodriguez Andrew, Ph.D., 5102 Wheatland, San Antonio, Texas 78219. Dr. Andrew will be replacing Robb Southerland of Austin who resigned.

To be a member of the **Texas State Board of Physical Therapy Examiners** for a term to expire January 31, 1995: Norma L. Deering Mancilla, 11376 Lake Erie, El Paso, Texas 79936. Ms. Mancilla will be filling the unexpired term of Dorene Goodson of Arlington, who resigned.

To be a member of the **Home Health Services Advisory Council** for a term to expire January 31, 1993: Irma L. Walker, 13113 Chiswick, Houston, Texas 77047. Ms. Walker is being appointed pursuant to Chapter 142, Vernon's Texas Codes Annotated, Health and Safety Code.

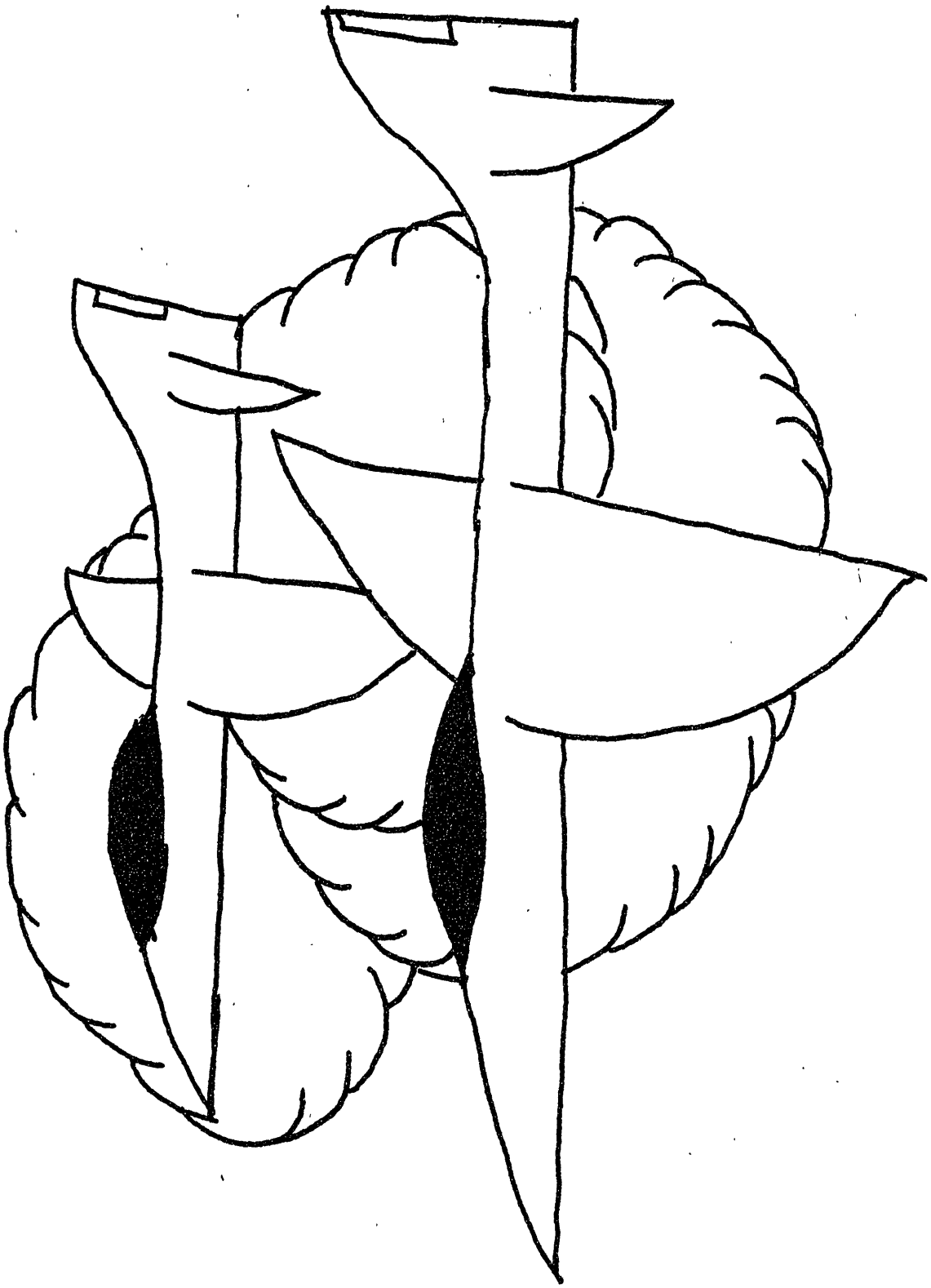
To be a member of the **Oil Spill Oversight Council** pursuant to Vernon's Natural Resources Code 40.303, Senate Bill Number 14, 72nd Legislature for terms to expire October 20, 1994: Wayne D. Johnson, United Texas Transmission Company, P.O. Box 4758, Houston, Texas 77210-4758; Richard A. Rabinow, Exxon Company, U.S.A., P.O. Box 2180, Houston, Texas 77252-2180; Rex Alan Redfern, Conoco, 600 North Dairy Ashford, Triangle Building, Room 2058, Houston, Texas 77079; Edward K. Roe, Clean Channel Association, Inc., P. O. Box 2489, Humble, Texas 77252-2489; David B. Sebree, E.I. du Pont de Nemours and Company, 1122 Colorado Street, Suite 2301, Austin, Texas 78701; Ann MacNaughton Turner, Attorney at Law, 1301 McKinney Street, Suite 500, Houston, Texas 77098. For terms to expire October 20, 1996: Linda Perez Sagnes, Madlin Shrimp Company, P.O. Box 852, Port Isabel, Texas 78578; Roy W. Hann, Jr., Ph.D., Director, Center for Oil Spill Technology, Texas A&M University, College Station, Texas 77843; Linda Rae Shead, Galveston Bay Foundation, Inc., 3027 Marina Bay Drive, Suite 105, League City, Texas 77573; Captain James Fred Wilkerson, Harbor Pilot, P.O. Drawer 38, Port Aransas, Texas 78373; Harry Wayne Brown, Maritime Safety Engineer, 523 24th Street, Galveston, Texas 77550;

Issued in Austin, Texas on December 14, 1992.

TRD-9216612

Ann W. Richards
Governor of Texas

♦ ♦ ♦



Name: Derrek LaBrosse
Grade: 4
School: Sundown Elementary, Katy 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 34. PUBLIC FINANCE

Part III. Teacher Retirement System of Texas

Chapter 23. Administrative Procedures

• 34 TAC §23.6

The Teacher Retirement System of Texas (TRS) adopts on an emergency basis new §23.6, concerning the trustee to trustee transfer of eligible rollover distributions from TRS. This section is being adopted on an emergency basis in order to comply with the requirements set forth in the Unemployment Compensation Amendments Act of 1992, requiring that qualified retirement plans permit such transfers for distributions made after December 31, 1992.

This section is intended to provide authority for TRS to make trustee to trustee transfers of eligible rollover distributions.

The new section is adopted on an emergency basis under the Texas Government Code, §825.102, which authorizes the Board of Trustees of the retirement system to adopt rules for the administration of the funds of the retirement system and for the transaction of business of the Board, and under the Texas Government Code, §825.506, which authorizes the Board of Trustees to adopt rules that modify the plan to the extent necessary for the retirement system to be a qualified plan.

§23.6. Trustee to Trustee Transfers.

(a) Effective for distributions made after December 31, 1992, the Teacher Retirement System of Texas shall permit the distributee of an eligible rollover distribution from the system to elect the have such distribution paid directly to an eligible retirement plan specified by the distributee in the form of a direct trustee to trustee transfer.

(b) The Teacher Retirement System of Texas shall develop procedures to implement this section in accordance with the Internal Revenue Code of 1986, §401(a)(31), as amended, and related regulations. Terms used in this section shall have the meaning assigned in the Internal Revenue Code of 1986, as amended.

Issued in Austin, Texas, on December 14, 1992.

TRD-9216618 Wayne Blevins
Executive Secretary
Teacher Retirement
System of Texas

Effective date: December 14, 1992

Expiration date: April 4, 1993

For further information, please call: (512) 370-0524

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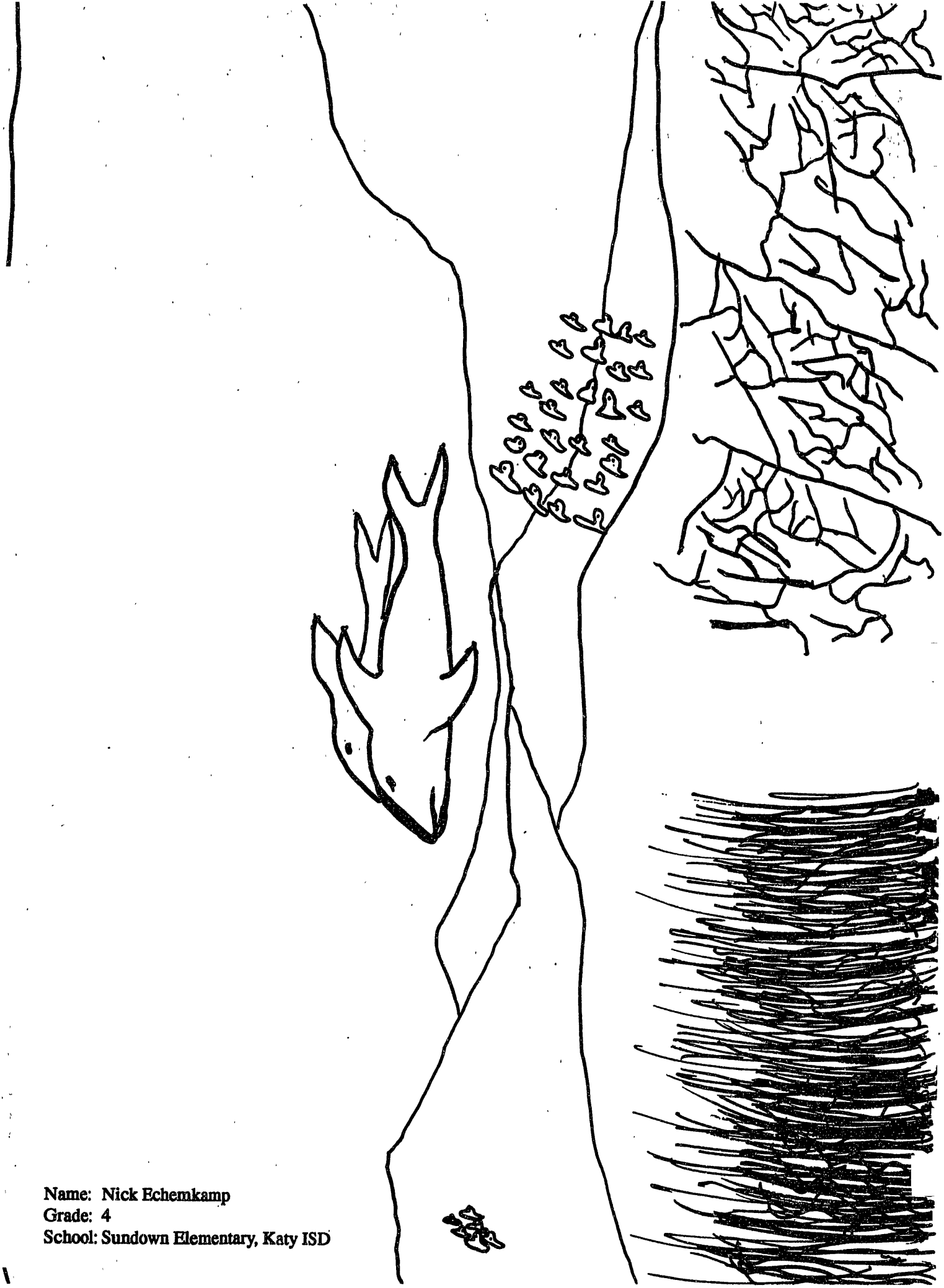

Name: Nick Echemkamp
Grade: 4
School: Sundown Elementary, Katy ISD

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 XII. Advisory Commission on State Emergency Communications

Chapter 251. Regional Plans-Standards

• 1 TAC §251.3

The Advisory Commission on State Emergency Communications proposes an amendment to §251.3, concerning guidelines for addressing funds. The policy and guidelines are for use in emergency communications regional planning and funding for statewide addressing projects. The section specifies the types of funds available for distribution, parties eligible for such funds, procedural requirements, and the approval process associated with requests for funds.

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

Ms. Boyd 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 improved effectiveness of 9-1-1 call delivery by more easily locating 9-1-1 callers in counties who utilize funds toward completion of rural address assignment. The effect on small businesses is known because of a lack of historical data. 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 Mary A. Boyd, Executive Director, Advisory Commission on State Emergency Communications, 1101 Capital of Texas Highway, South, Suite B-100, Austin, Texas 78746, (512) 327-1911.

The amendment is proposed under the Health and Safety Code, Chapter 771, §§771.051, 771.056, and 771.057, which provide the Advisory Commission on State Emergency Communications with the authority to develop and amend a regional plan for the establishment and operation of 9-1-1 service throughout a 9-1-1 region that meets the standards established by the commission according to the procedures determined by the commission.

§251.3. Guidelines for Addressing Funds.

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

(c) Policy and procedures. The commission authorizes and allocates addressing funds to include addressing pool funds and service fees. Addressing pool funds may include funds not actually provided ACSEC, but placed under its control by a third party specifically for the purposes of this program.

(1)-(8) (No change.)

(9) In accordance with this policy, counties or emergency communications districts which have already started addressing activities and incurred costs may request reimbursement of those documented addressing expenditures, if costs were incurred since January 1, 1991. [The commission may consider reimbursement of eligible expenses prior to that date on a case-by-case basis.]

(10) (No change.)

(d) Requesting addressing pool funds and service fees. A regional plan amendment from a COG or a request from an emergency communications district is required as a means of requesting funds under this program, as described following.

(1) A regional plan amendment or request for funds from a COG must contain the following:

(A)-(C) (No change.)

(D) If necessary, a request to amend the COG administrative budget for additional staff, whether through hiring or through personnel contract services; and.

(E) a county commissioners court order in support of the addressing request where a COG is performing addressing on behalf of the county.

(2) A request for funds from emergency communications districts must contain the following information:

(A) (No change.)

(B) a completed cost-estimate worksheet including identification of the required local match;[.]

(C) A county commissioners court order in support of the addressing request where a district is performing addressing on behalf of the county.

(3) (No change.)

(e) Reporting. **Addressing funds will be allocated to COGs and emergency communication districts on a reimbursement basis.** A performance and financial report is to be submitted to the commission in accordance with established commission policy. Where a COG or an emergency communication district is the primary contractor but a county is providing services under this program, said reports shall be provided to the commission prior to COG or emergency communications district reimbursement of related county expenses. Monthly financial reports are to be provided utilizing Form 269a, under the contractual column. Counties, emergency communications districts, and COGs are required to follow local government statutes as they apply to competitive proposals for purchase of services and equipment.

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

Issued in Austin, Texas, on December 14, 1992.

TRD-9216663

Mary A. Boyd
Executive Director
Advisory Commission on State Emergency Communications

Earliest possible date of adoption: January 22, 1992

For further information, please call: (512) 327-1911

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Chapter 255. Finance

• 1 TAC §255.8

The Advisory Commission on State Emergency Communications proposes new §255.8, concerning 9-1-1 District Funding Policy. The policy is established for consideration of funding requests from Emergency

Communication Districts as defined in the Health and Safety Code, Chapter 771, Subchapter A., §771. 001(2).

Mary A. Boyd, executive director, has determined that there will be fiscal implications as a result of enforcing or administering the section however because there is no historical data the agency cannot be specific.

Ms. Boyd 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 funding opportunities, where need exists, for improved 9-1-1 call delivery service and participation of emergency communication districts in other statewide special projects. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be that customers assess 2/10 of 1.0% for intrastate long-distance telephone service in areas not currently assessing the surcharge; emergency communication districts may elect to participate.

Comments on the proposal may be submitted to Mary A. Boyd, Executive Director, Advisory Commission on State Emergency Communications, 1101 Capital of Texas Highway South, Suite B-100, Austin, Texas 78746.

The new section is proposed under the Health and Safety Code, Subchapter D, §771.072, which provides the Advisory Commission on State Emergency Communications with the authority to assess equalization surcharge fees to customers receiving long-distance service and allocate such monies for 9-1-1 service statewide.

§255.8. 9-1-1 District Funding Policy. The Commission on State Emergency Communications will consider requests for funding assistance from Emergency Communications Districts as defined in the Health and Safety Code, Chapter 771, Subchapter A., §771.001(2). The Commission will evaluate and consider approval on requests for the 9-1-1 Equalization Surcharge funds based upon the Commission's established statewide funding priorities, available revenues, and consistency with funding policies regarding financial need of state regional plans. Emergency Communication Districts may submit applications for funding assistance directly to the Commission. Emergency Communication Districts receiving equalization surcharge assistance shall contribute to the Equalization Surcharge Fund in accordance with §771.072. The Commission may involve Emergency Communication Districts in other statewide special projects which are funded through the Equalization Surcharge Fund.

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

Issued in Austin, Texas, on December 14, 1992.

TRD-9216685 Mary A. Boyd
Executive Director
Advisory Commission on State Emergency Communications

Earliest possible date of adoption: January 22, 1993

For further information, please call: (512) 327-1911

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TITLE 22. EXAMINING BOARDS

Part XXIX. Texas Board of Professional Land Surveying

Chapter 661. General Rules of Procedures and Practices

Contested Case

- **22 TAC §661.74**

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

The Texas Board of Professional Land Surveying proposes the repeal of §661.74 concerning the presiding officer at hearings. This repeal is being made in order to comply with how a contested case is now required to be conducted pursuant to the State Office of Administrative Hearings.

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

Ms. Smith, also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to insure the fair and expeditious determination of every contested case in compliance with the rules of 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 repeal as proposed.

Comments on the proposal may be submitted to Sandy Smith, Executive Director, 7701 North Lamar Boulevard, Suite 400, Austin, Texas 78752. Written public comment is invited for 30 days from the date of this register.

The repeal is proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state and this Act.

§661.74. Presiding Officer at Hearings.

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

Issued in Austin, Texas, on December 15, 1992.

TRD-9216673 Sandy Smith
Executive Director
Texas Board of Professional Land Surveying

Earliest possible date of adoption: January 22, 1993

For further information, please call: (512) 452-9427

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Part XXX. Texas State Board of Examiners of Professional Counselors

Chapter 681. Professional Counselors

Subchapter E. Experience Requirements for Examination and Licensure

(Editor's note: Due to an error in the December 4, 1992, and December 8, 1992, issues of the Texas Register (17 TexReg 8401 and 8493), §§681.83, 681.84, and 681.174 are being republished for clarification.)

The Texas State Board of Examiners of Professional Counselors, with the approval of the Texas Board of Health, proposes amendments to §§681.83-681. 84 and 681.174, concerning licensed professional counselors. These sections cover supervisor requirements, other conditions for supervised experience, and types of acceptable continuing education.

The amendments establish criteria for acceptable supervisor training, clarify employment settings for interns, and clarify language concerning acceptable continuing education.

Kathy Craft, executive secretary, Texas State Board of Examiners of Professional Counselors, 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 as proposed.

Ms. Craft also has determined that for each year of the first five years the sections are in effect the public benefit anticipated is that counseling interns will receive a more consistent form of supervised experience ensuring a higher quality of counseling services. There is no anticipated economic cost to small or large businesses. There may be some cost to persons to comply with the sections as proposed depending on their present educational background. Persons presently meeting the new requirements will not experience any costs. Persons needing the 40 additional hours will experience costs for the additional course work. There is no effect on local employment.

Written comments on the proposal may be submitted to Kathy Craft, Executive Secre-

tary, Texas State Board of Examiners of Professional Counselors, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6658. Comments will be accepted for 30 days following the date of publication in the *Texas Register*.

• **22 TAC §681.83, §681.84**

The amendments are proposed under Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors, subject to the approval of the Texas Board of Health, with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act; and the Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§681.83. Supervisor Requirements.

(a) A supervisor acceptable to the board must be one of the following:

(1) a person licensed by the board or a person licensed as a counselor in another state [who has the academic training and experience or specialty designation to supervise the counseling services being provided by a counseling intern];

(2) a person licensed or certified by this state or any other state in a profession that provides counseling [with the academic training and experience to supervise the counseling services offered by the intern]. This person may be a licensed psychologist, a licensed physician with board certification as a psychiatrist, or a certified social worker advanced clinical practitioner. The person must submit to the board proof of licensure and certification, official graduate transcripts, and other appropriate documentation; or

(3) (No change.)

(b) A supervisor under subsection (a)(1) or (2) of this section must have met the following requirements.

(1) (No change.)

(2) A person who begins the supervision of a counseling intern on or after January 1, 1995, shall meet [in addition to] the requirements stated in paragraph (1) of this subsection and must have completed one of the following: [must have completed 40 clock hours of training in the supervision of counseling services through an accredited graduate course, training program, or clinical supervision provided by a person who meets the requirements of this section.]:

(A) successful completion of an examination offered for certification as a counselor supervisor or current certification as a counselor supervisor by a nationally recognized counseling association acceptable to the board;

(B) current certification in clinical supervision by a nationally recognized counseling association acceptable to the board;

(C) 40 clock hours of training in the supervision of counseling or mental health services through one or a combination of the following:

(i) a graduate course taken for credit at an accredited college or university;

(ii) continuing education programs meeting the requirements of §681.174 of this title (relating to types of Acceptable Continuing Education); or

(iii) clinical supervision of the proposed supervisor by a person:

(I) licensed by the board or as a counselor in another state; or

(II) licensed or certified by this state or another state as a mental health professional that would be acceptable under subsection (a)(2) of this section;

(D) a doctoral degree in counseling or a related field which was designed to train the person to provide direct services to individuals or groups in a counseling relationship in the resolution of personal-social, educational, or occupational problems. The degree must have been awarded before January 1, 1995, by a university described in the academic requirements for examination and licensure in §681.62(a) or (b) of this title (relating to General); or

(E) provided at least three years of clinical supervision in counseling of another person(s) through a university described in §681.62(a) or (b) of this title or a mental health facility licensed, accredited, or otherwise credentialed by the federal, state, or local government or a nationally recognized organization in the field of mental health. The three years must have been completed before January 1, 1995.

(3) The 40 clock hours shall include at least the following:

(A) defining and conceptualizing supervision and models of supervision for at least three clock hours;

(B) supervisory relationship and counselor development for at least three clock hours;

(C) supervision methods and techniques for at least 12 clock hours covering roles (teacher, counselor, and consultant), focus (process, conceptualization, and personalization), group supervision, multicultural supervision (racial and ethnic issues and gender issues), and evaluation methods;

(D) ethical, legal, and professional issues for at least 12 clock hours covering rules for supervision and standards of practice (Subchapter B of this chapter (relating to The Practice of Counseling); §681. 82 of this title (relating to Experience Requirements); and this section should be included), other codes of ethics, and ethical and legal dilemmas; and

(E) executive and administrative tasks for at least three clock hours covering supervision plan and contract, time for supervision and recordkeeping, and reporting.

(4) At the time of application for a license, a person must submit required documentation showing that the person's supervisor meets the requirements of this section.

(5)[(3)] Evidence of a supervisor meeting the requirmenets of this section may be submitted with a supervision contract or with the boards approved supervised experience documentation form. After July 1, 1996, applicants for license must apply for supervisory approval at the time of application. Approved supervisiors shall be listed on the roster of supervisors prepared by the board. Credentials must be submitted with the roster application form.

(c) (No change.)

§681.84. Other Conditions for Supervised Experience.

(a) A person may be employed or used in his or her supervisor's private practice of counseling as part of the person's internship. [A person who has commenced and is in the process of completing the 24 months or 2,000 hours of supervised experience may not practice within his or her own private independent practice of counseling as part of such months or hours and may not count the months or hours spent in the person's private independent practice of counseling as part of the supervised experience; however, the person may be employed in his or her supervisor's private practice of counseling as part of such months or hours].

(1) A person may not count the months or hours spent in the person's

own private independent practice of counseling as part of the internship.

(2) A person may not count the months or hours spent in the practice of counseling when the counseling setting is owned or operated by a corporation, partnership, company, or other legal entity which the intern organized; which the intern has an ownership interest; or of which the intern is an officer, director, shareholder, partner, or manager.

(b)-(l) (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 November 25, 1992.

TRD-9215831 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Proposed date of adoption: February 13, 1993

For further information, please call: (512) 834-6658

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Subchapter K. Continuing Education Requirements

• 22 TAC §681.174

The amendment is proposed under Texas Civil Statutes, Article 4512g, §6, which provides the Texas State Board of Examiners of professional counselors, subject to the approval of the Texas Board of Health, with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act; and the Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§681.174. Types of Acceptable Continuing Education. Continuing education undertaken by a counselor shall be acceptable if the experience falls in one or more of the following categories:

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

(6) participation or teaching in programs (e.g., institutes, seminars, workshops or conferences) which are approved or offered by an accredited college or university or by a nationally recognized professional organization in the mental health field or its state or local equivalent organization.

(A) The board shall maintain and make available on request a listing of nationally recognized [acceptable] professional organizations in the mental health field or their state or local equivalent organization.

(B) Continuing education hours meeting the requirements of this paragraph shall be accepted for renewals occurring on or after July 20, 1992 [This paragraph shall apply to continuing education hours required for any renewals occurring after the effective date of this paragraph].

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 November 25, 1992.

TRD-9215830 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Proposed date of adoption: February 13, 1993

For further information, please call: (512) 834-6658

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 330. Municipal Solid Waste

Subchapter Z. Waste Minimization and Recyclable Materials

Used Oil Reimbursement Fund

• 31 TAC §§330.1170-330.1174

The Texas Water Commission proposes new §§330.1170-330.1174, concerning the reimbursement of used-oil collection centers for costs associated with disposal of used oil that has been rendered hazardous waste because of contamination. The new sections now propose for permanent adoption the emergency §§330.1170-330.1174, which were adopted by the Commission on August 26, 1992, and published in the September 4, 1992, issue of the *Texas Register* (17 TexReg 6072). These proposed sections are identical to the emergency standards.

These sections are proposed to encourage the participation of both public and private entities in the Voluntary Used Oil Collection Program. They establish the conditions under which a collection center may be reimbursed for the disposal costs of accidental contamination by hazardous waste associated with the collection of used oil from the public.

Stephen Minick, division of budget and planning, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcement and administration of the sections. The effect on state government will be an increase in cost of up to $500,000 per year. There will be cost savings to operators of registered used oil collection centers. Operators will be eligible, within the proposed limits, for reimbursement of costs associated with collected used oil which has been contaminated and must be managed and disposed as a hazardous waste. The cost reimbursement shall not exceed $5,000 per occurrence. The total reimbursement for all operators authorized in any year shall be $500,000. Operators will include both local governments and small businesses. The potential cost savings to all operators is equal and will depend on amounts of contaminated oil received and the availability of funds from the Used Oil Recycling Fund.

Mr. Minick 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 effect the public benefit anticipated as a result of enforcement of or compliance with the sections will be increased availability of public used oil collection centers, a decrease in potential financial liabilities for public and private operators of collection centers which unknowingly or accidently accept contaminated oil from the public, and increased protection of human health and the environment through more comprehensive management of used oil. There are no known costs to persons who are required to comply with these sections as proposed.

Comments on the proposal may be submitted to Gary W. Davis, Manager, Automotive Waste Recycling Program, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711. The deadline for submitting written comments is at 5 p.m. 30 days following the date of this publication.

The new sections are proposed under the Texas Water Code (Vernon 1992), §5.103, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state. Additionally, these regulations are adopted pursuant to the Texas Solid Waste Disposal Act, (the Act), Texas Health and Safety Code, Chapter 371 (Vernon 1992), which provides the Texas Water Commission with the authority to regulate municipal solid waste and adopt rules as necessary to regulate the operation, management, and control of solid waste under its jurisdiction.

§330.1170. Purpose of Used Oil Reimbursement Program. The purpose of this subchapter is to create a procedure to reimburse registered used-oil collection centers for costs of proper transportation and disposal of hazardous waste, when that waste is generated by contaminated used motor oil the collection center has accepted from the do-it-yourselfers (DIY), which has been managed in accordance with this subchapter.

§330.1171. Applicability of Used Oil Reimbursement Program Rules. This subchapter applies to Registered Used Oil Collection Centers registered pursuant to the Texas Health and Safety Code, Chapter 371 and this chapter.

§330.1172. Definitions Pertaining to Used Oil Reimbursement Program. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Commission–The Texas Water Commission.

Hazardous waste–Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, 6901 et seq, as amended.

§330.1173. General Conditions and Limitations Regarding Used Oil Reimbursement.

(a) The commission, upon proper application for used oil reimbursement, shall reimburse a properly registered used oil collection center for those costs associated with the disposal of the following:

(1) do-it-yourself (DIY) oil which, unknown to the registered used oil collection center, contains hazardous wastes; or

(2) used oil, which, when commingled with contaminated DIY oils, is rendered unsuitable for recycling.

(b) A registered used oil collection center is eligible for reimbursement only if it demonstrates to the satisfaction of the commission the following:

(1) the center has established procedures to minimize the risk that the used oil it generates and accepts from the public will not be mixed with hazardous wastes, especially halogenated wastes; and

(2) the center can document to the satisfaction of the commission the volume of used oil it has received from the public during a given time period by:

(A) providing a process by which all do-it-yourselfers are required to log their name, address, and the approximate amount of used oil brought to the collection center, and ensuring that all DIY-collected oil is kept in a separate sealed and labeled container placed on an impermeable surface; or

(B) any other method approved by the commission.

(c) In any commission fiscal year, a registered used-oil collection center shall be reimbursed for not more than $5,000 in total disposal costs, subject to the availability of funds.

(d) Reimbursements made pursuant to this subchapter will be paid out of the used oil recycling fund in an aggregate amount not to exceed $500,000.

§330.1174. Procedures for Reimbursement.

(a) An owner or operator of a registered used oil collection center may file for reimbursement from the commission.

(b) Once forms are made available by the commission, an application for reimbursement filed pursuant to this subchapter shall be on a form approved or provided by the commission.

(c) The application shall contain the following information:

(1) the name, address, and telephone number of the applicant;

(2) the name, mailing address, location address, and TWC registration number of the registered used oil collection center from which the contaminated oil was removed;

(3) the name, address, telephone number, and TWC registration number of the hazardous waste transporter used to dispose of the contaminated used oil;

(4) a copy of the signed uniform hazardous waste manifest;

(5) a copy of the invoice(s) for which reimbursement is requested and evidence that the amount shown on the invoice(s) have been paid in full. Such evidence may be in the form of:

(A) canceled checks;

(B) business receipts from the person who performed the work; or

(C) any other documentation approved by the commission;

(6) a waste-characterization or similar documentation required by the disposal facility prior to acceptance of a hazardous waste; and

(7) any other information which the executive director may reasonably require.

(d) All claims for reimbursement filed under this subchapter are subject to the availability of funds in the used oil recycling fund. Nothing in this subchapter shall be construed to create an entitlement to monies in the used oil reimbursement fund or any other fund.

(e) All properly completed applications must be filed with: Texas Water Commission, Municipal Solid Waste Division, P.O. Box 13087, Austin, Texas 78711, Attention: Automotive Waste Recycling Manager. Incomplete applications may be returned by the commission without further processing.

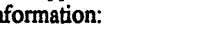
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on December 16, 1992.

TRD-9216674 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: January 22, 1993

For further information, please call: (512) 908-2045



Used Oil Filter Collection, Management, and Recycling

• 31 TAC §§330.1180-330.1191

The Texas Water Commission proposes new §§330.1180-330.1191, concerning the management of used oil filters. The new sections now proposed for permanent adoption the emergency §§330.1180-330.1191, which were adopted by the commission on August 26, 1992, and published in the September 4, 1992, issue of the *Texas Register* (17 TexReg 6073).

These sections are proposed in response to a landfill ban of used oil filters enacted by the Texas Department of Health and presently codified as 31 TAC §330.136 of this title (relating to Disposal of Special Waste). The sections delineate management standards for the storage, transportation, recycling, and disposal of used oil filters. Used oil filters contain a significant amount of used oil. Improper management of such filters could cause substantial harm to the environment and human health. These rules relate to persons or entities involved in storing, transporting, processing, marketing, or disposing of used oil filters and their components. The rules require safety standards, registration, and periodic reporting.

Mr. Stephen Minick, division of budget and planning, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcement and administration of the sections. Generally, these sections are proposed in response to a ban on the disposal of used oil filters enacted by the Texas Department of Health under prior jurisdiction. Certain costs related to the generation, storage, processing transportation, and disposal of used oil filters have accrued as a result of that ban. The management requirements and standards proposed in these sections may further define cost implications of the ban on land disposal, but will not represent new costs in every circumstance.

The effect on state government will be an increase in cost of approximately $150,000 per year. These costs are paid from existing sources of revenue related to the sale of motor oil and will result in increased costs to consumers above existing levels. Annual costs to operators of facilities electing to engage in the management of used oil filters will vary from $15, 000 to $125,000 depending on the population served, the number of collection sites, and access to recycling facilities. The actual cost of processing an oil filter will vary considerably, but is anticipated to average between $.24 and $.40 depending on the source and the facility or facilities involved in the process. Many of these costs will be offset through available grants from the state to support and encourage the operation of public used oil collection facilities and the recycling of used oil. These affected operators will include both local governments and small businesses. The costs for any operator will vary proportionately based on the previous factors.

Mr. Minick also has determined that for the first five years the sections are in effect the public benefit anticipated as a result of enforcement of or compliance with the sections will be increased protection from potential groundwater contamination resulting from land disposal of used oil filters, improved conservation of natural resources and energy resources through recycling of used filters, and conservation of waste management capacity in municipal waste disposal facilities. There are no additional costs anticipated to persons required to comply with these sections as proposed.

Comments on the proposal may be submitted to Gary W. Davis, Manager, Automotive Waste Recycling Program, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711. The deadline for submitting written comments is at 5 p.m. 30 days following the date of this publication.

The new sections are proposed under the Texas Water Code (Vernon 1992), §5.103, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state. Additionally, these regulations are adopted pursuant to the Texas Solid Waste Disposal Act, §361.011 and §361.024 (the Act), (the Texas Health and Safety Code (Vernon 1992), which provides the Texas Water Commission with the authority to regulate municipal solid waste and adopt rules as necessary to regulate the operation, management and control of solid waste under its jurisdiction.

§330.1180. Applicability. The sections in this subchapter are applicable to persons involved in storing, transporting, processing, marketing, or disposing of used oil filters and their components that are subject to regulation by the commission.

§§330.1181. Definitions. The following words, terms, and abbreviations, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions pertinent to these and other sections are contained in §330.5 of this title (relating to Definitions).

Aggregation point–A facility which generates or accepts used oil filters, and is used to accumulate used oil filters generated or accepted in small amounts at other locations owned and/or operated by that facility.

Do-it-yourself (DIY) used oil filter–Used oil filter that is generated by an individual who changes his/her own used oil filter.

Drained oil filter–A used oil filter which has been hot drained or otherwise processed to remove all of the free flowing used oil.

End user–Persons who utilize the used oil filter or its components as feedstock for their processes.

Free flowing oil–A noticeable stream of oil exiting the UOF when the filter is lifted by hand or by machinery.

Generator–Person whose act or process produces used oil filters, excluding do-it-yourselfers.

Hot draining–The process by which an oil filter is punctured and drained near engine operating temperatures for a sufficient period of time to remove the free flowing used oil.

Oil filter–An integral part of an oil flow system, the purpose of which is to remove contaminants from the flowing oil contained within the system.

Oil weight–The weight added to an oil filter through its use in an oil flow system. Oil weight may be calculated by deducting the weight of a new or unused filter from the weight of a used filter of identical style and type (used filter weight-new filter weight=oil weight).

Person–An individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any other interstate body.

Processing–The act of preparing the used oil filter and its components for recycling or proper disposal. Processing must include a means of removing all free flowing oil from the filter components, and must meet the processing standards set forth in §330.1188 of this title (relating to Processors).

Processor–A person who processes used oil filters, generated by others, for the purpose of preparing such filters for market acceptance or disposal. A processor is the first person to declare that used oil filters meet the processing standards.

Public used oil filter collection center (collection center)–A facility which accepts do-it-yourself used oil filters. Such centers include, but are not necessarily limited to:

(A) automotive service facilities that in the course of business accept, for processing, used oil filters from private citizens;

(B) facilities that store used oil filters in above ground containers and that in the course of business accept, for recycling, small quantities of used oil filters from private citizens; and

(C) publicly sponsored collection facilities that are designated and authorized by the Texas Water Commission to accept, for recycling, small quantities of used oil filters from private citizens.

Recycling–The process by which used oil filters and their components are legitimately re-used.

Shippable quantity–The quantity equivalent to a transportable amount depending upon the mode of transportation and the circumstances of the shipper.

Storage–The holding of UOFs for a temporary period, at the end of which time the UOFs are processed or properly disposed.

Storage facility–A facility which is used to accumulate shippable quantities of UOFs destined for processing, further storage, or disposal.

Terne–An alloy of tin and lead which may be used to plate oil filters. Terne-plated used oil filters may cause sections of a used oil filter to exhibit the characteristic of toxicity for lead.

Transporter–A person engaged in the off-site transportation of used oil filters.

Used oil–Any oil that has been refined from crude oil or a synthetic oil that, as a result of use, storage, or handling, has become unsuitable for its original purpose because of impurities or the loss of original properties, but that may be suitable for further use and is recyclable.

Used oil filter (UOF)–An oil filter that as a result of its use, storage, or handling has become contaminated with oil (non-terne-plated filters only).

§330.1182. General Prohibitions.

(a) All generators, transporters, storage facilities, processors, and disposers of used oil filters shall immediately remediate all spills and releases from used oil filters.

(b) A person may not sell, convey, or otherwise transfer to a metals recycling facility, a used oil filter which has not been processed to the processing standards set forth in §330.1188 of this title (relating to Processors) without first obtaining from the metals recycling facility operator a written acknowledgement that such unprocessed used oil filter is being sold, conveyed, or otherwise transferred to the metals recycling facility.

§330.1183. Public Used Oil Collection Centers and Used Oil Filter Generators.

(a) Operation and maintenance procedures at collection centers and generator facilities shall be as follows.

(1) A collection center and used oil filter (UOF) generator facility must have at least two "spill kits" and all necessary fire equipment on site. The spill kits should include the proper garments, instructions, and tools sufficient to respond to a spill or release.

(2) UOFs shall be stored by the collection center and the generator in a covered enclosure or in covered rainproof containers. All storage containers must be capable of containing any used oil that may be separate from the filters placed inside. Containers shall be placed on a sufficiently impervious surface which will retain a spill or release without any environmental risk for 48 hours.

(3) All containers used to store UOFs shall be clearly labeled with the phrase "Used Oil Filters" in letters at least four inches high. The name of the owner of the container and the owner's phone number shall be imprinted on the container and clearly legible.

(4) A container used for storage of UOFs that is found to be leaking or in poor condition shall be removed from service or repaired, ensuring that only serviceable containers are provided for UOF storage.

(5) Collection centers and generators shall ensure that the locations of all UOF containers comply with applicable local ordinances and codes, as well as with applicable state and federal regulations and safety requirements.

(6) A collection center and generator shall remove, or caused to be removed, stored UOFs within 30 days of achieving a shippable quantity. If a generator or collection center does not monitor the UOF storage area at least every 48 hours, a secondary containment system must be installed for stored quantities of greater than the equivalent of two 55 gallon drums and comply with provisions in §330.1187 of this title (relating to Storage Facilities). A generator or collection center who cannot reasonably comply with this requirement must contact the commission and seek a waiver from these storage requirements.

(7) Collection centers and generators shall ensure that all free flowing oil has been removed from UOFs stored onsite. Methods of removal of the free flowing oil include, but are not limited to, the following:

(A) puncturing the filter antidrain valve or the filter dome end and hot-draining;

(B) hot-draining and crushing;

(C) dismantling and hot-draining;

(D) flushing of the UOF; and

(E) any other equivalent method which will remove the free flowing oil.

(8) Collection centers and generators must obtain and keep copies of all manifests, bills of lading, and/or reports regarding the transportation, storage, processing, and disposal of all UFOs. All documentation shall be retained on-site for a minimum of 3 years. Collection centers and generators must receive from the processor or end-user documentation of receipt of the UOFs shipped within 30 days of shipment, unless the UOFs were delivered to a registered storage facility. If the UOFs are delivered to a registered storage facility, documentation must be received by the collection center or generator within 120 days after shipment from the generator or UOF collection centers. It is the responsibility of the transporter and/or the storage facility, whichever causes or enacts a change, to notify the generator or UOF collection center of any changes to the shipping documentation, including a change in destinations or designated facility. A written notification of such changes must be received by the generator or UOF collection center within two weeks. This written notification shall be attached to the shipping documentation and becomes a part of such for all purposes.

(9) Generators and collection centers are not required to register as a storage facility pursuant to §330.1187 of this title (relating to Storage Facilities).

(10) A generator or collection center that elects to process UOFs generated on-site or accepted from the do-it-yourselfer is not required to register as a UOF processor pursuant to §330.1188 of this title (relating to Processing); however, the generator or collection center must meet the process standards set forth therein, and comply with the general prohibitions of this section.

(b) In addition to complying with all of the requirements delineated in subsection (a)(1)-(10) of this section, all collection centers shall:

(1) annually register with the Texas Water Commission, using forms provided by the commission;

(2) annually report to the commission the amount of UOFs collected from the public and/or generated on-site, using forms available from the Commission;

(3) make a good faith effort to collect do-it-yourself (DIY) used oil filters and shall demonstrate their acceptance of DIY UOFs.

(c) A used oil collection center electing to process UOFs may ship directly to a competent end user utilizing a bill of lading or other acceptable shipping document in lieu of the non-hazardous waste manifest. Shipment to a competent end user is deemed to be accomplished upon delivery to one of the following:

(1) the end user's manufacturing facility;

(2) facilities owned or operated by the end user for the purpose of providing feedstock materials for its manufacture process; or

(3) an independent supplier of the end user. Such competent end user shall ask that facilities take all necessary and reasonable precautions pertaining to management of UOFs to protect the environment and human health.

(d) Businesses and public agencies that accept UOFs from the public are encouraged to post and maintain signs notifying the public that they accept UOFs.

(e) The commission shall be notified in writing within 30 days if the collection center ceases accepting UOFs from the public.

§330.1184. Shipping Requirements.

(a) All generators and used oil collection centers shall arrange with a properly registered transporter for the transport of used oil filters (UOFs) to a registered processor, storage facility, permitted disposal facility, or a competent end-user. A properly registered transporter, storage facility, or processor must be registered with the Municipal Solid Waste Division of the Texas Water Commission.

(b) Collection centers and generators may transport UOFs generated at their site or accepted from do-it-yourselfers at such site, to a registered transporter, storage facility, processor, permitted disposal facility, or a competent end-user without registering with the commission as a transporter. Collection centers and generators who elect to transport such UOFs from their facility must comply with the requirements of §330.1185 of this title (relating to Transporters of Used Oil Filters) with the exception of the registration requirements.

(c) Wholesale suppliers of petroleum products and/or vehicle maintenance items (such as oil filters), who elect to provide their customers the service of accumulating and storing UOFs may provide such service without registering as a transporter or storage facility; however, they must register as a UOF collection center and comply with all of the applicable rules.

(d) Generators and collection centers shall prepare each container for trans-

port by assuring that the containers are sealed and an identifying label/number is evident on the container which relates to the manifest or bill of lading utilized to document shipment. This identification number shall be easily recognizable, enabling the commission, or its representative, to assign the container to the required paperwork.

§330.1185. Transporters of Used Oil Filters.

(a) All persons who transport used oil filters (UOFs) shall register as UOF transporters annually with the commission in accordance with this section, utilizing registration forms prescribed by the commission.

(b) All transporters shall report annually to the commission, the sources of UOFs transported, marketed, or recycled during the preceding year, the quantity of UOFs received, and the destination of the UOFs.

(c) All transporters shall have necessary federal, state, and local permits as required.

(d) All transporters shall be registered with the Texas Railroad Commission, or provide proof of financial responsibility in a form and amount approved by the TWC. Proof of compliance shall be submitted to the commission with a UOF transporter registration form.

(e) All transporters shall comply with all applicable Federal, State, and local regulations, including the United States Department of Transportation (DOT) regulations, such as placarding and insurance requirements.

(f) All transporters shall ensure that all UOFs are properly manifested upon receipt from the shipper. A copy of all manifests shall be retained on-site for a minimum of three years.

(g) Transporters shall ensure that all UOFs are delivered to a currently registered processor, registered storage facility, registered secondary transporter, permitted disposal facility, or competent end-user.

(h) Transporters shall ensure that all accepted containers are properly labeled, sealed, and loaded in a manner which reduces shifting and loss of cargo.

(i) Transporters shall have at least one "spill kit" and all necessary fire equipment on board. The spill kit should include the proper garments, instructions, and tools needed in the event of a spill, fire, storm damage, or industrial accident.

(j) A container used for storage of UOFs that is found to be leaking or in poor condition shall be removed from service or repaired, ensuring that only serviceable containers are provided for UOF storage.

(k) Do-it-yourselfers are exempt from the requirements for transporters of UOFs.

(l) Transporters shall comply with all applicable federal, state, and local regulations.

§330.1186. Storage by Transporters. A transporter may store collected used oil filters for a period of seven days or less without being required to register as a storage facility.

§330.1187. Storage Facilities.

(a) Storage of unprocessed used oil filters (UOFs) must not exceed 60 days. At the end of such time, the stored UOFs must be either properly processed or disposed. The commission may, at its discretion, extend the 60-day time period upon a written request by the registered storage facility indicating reasonable need for extension. However, the storage facility must ship within three days upon resolution of the basis for such extension request.

(b) Storage of processed UOFs must not exceed 90 days. At the end of such time, the UOFs must be either disposed or shipped to an acceptable market. The commission may, at its discretion, extend the 90-day time period upon a written request by the registered storage facility indicating reasonable need for extension. However, the storage facility must ship within three days upon resolution of the basis for such extension request.

(c) The storage facility shall register annually as a UOF storage facility with the commission, utilizing registration forms prescribed by the commission.

(d) The storage facility shall annually report the amount of UOFs received, sources of UOFs, the name and location of processors and/or end-users which receive the UOFs, and the amounts shipped to the processors or end-user.

(e) The storage facility shall indicate on the manifest the name and address of the processor and/or end-user who receives a shipment of UOFs and the date of such receipt.

(f) When the storage facility arranges for the transport of accumulated UOFs to a processor or end user, the storage facility shall provide written evidence in the form of a manifest, bill of lading, or other reasonable documentation indicating the name and address of the registered processor, permitted disposal facility, or end user who received that generator's UOFs, and the date of such receipt.

(g) The storage facility shall ensure that all containers of UOFs are stored in covered, rainproof containers or in a covered enclosure and are placed on a sufficiently impervious surface. The storage area shall be able to contain an amount of used oil equal to the following:

(1) for crushed or processed UOFs, the amount of oil contained in the storage containers shall be assumed to be five gallons for every 55-gallon drum, or equivalent;

(2) for unprocessed drained UOFs, the amount of oil contained in the storage containers shall be assumed to be 10 gallons for every 55-gallon drum, or equivalent. The storage facility must comply with all storage tank requirements applicable to volume equivalents.

(h) The storage facility shall be required to provide evidence of financial responsibility as the commission deems necessary to assure the commission that the storage facility has sufficient assets to provide proper closure. This assurance may be in the form of performance bonds, letters of credit, trust funds, or insurance.

(i) Storage facilities shall have at least two "spill kits" and all necessary fire equipment on-site. The spill kits should include the proper garments, instructions, and tools needed in the event of a spill, fire, storm damage, or industrial accident.

(j) A container used for storage of UOFs that is found to be leaking or in poor condition shall be removed from service or repaired, ensuring that only serviceable containers are provided for UOF storage.

(k) Storage facilities shall comply with all applicable federal, state, and local regulations.

§330.1188. Processors.

(a) All processors must register as a used oil filter (UOF) processor annually with the commission, utilizing forms authorized by the commission. Such registration requires the processor to demonstrate to the satisfaction of the commission that there exist at least two competent markets capable and willing to accept recovered products on a regular, as-needed basis from the processor. If the processor is unable to identify such markets, he may apply to the commission, in writing, for a waiver. This application shall detail the efforts undertaken by the processor to secure competent, willing markets and the reason(s) such markets are inaccessible to the processor. The commission may, at its discretion, accept or reject such waiver application.

(b) All processors shall annually report the amount of UOFs received, sources of UOFs, the name and location of end-users, disposal facilities or any other facility receiving used oil filters, the amounts shipped, and date of shipment.

(c) All processors shall ensure that all UOFs are properly manifested upon receipt. All manifests shall be retained on-site for a minimum period of three years.

(d) Processors shall return the original signed copy of the manifest to the generator or collection center identified on the manifest. Additionally, if requested by the generator or collection center within three years of shipment by the processor, the processor shall provide written evidence to the generator or collection center in the form of a bill of lading, or other reasonable documentation, indicating the name and address of the recipient of reclaimed materials or waste products resulting from the processing of the generators or collection centers UOFs. Such written evidence shall clearly identify each component resulting from processing and the final destination of such components.

(e) Processors shall be required to provide evidence of financial responsibility as the commission deems necessary to assure the commission that the processor has sufficient assets to provide proper closure. This assurance may be in the form of performance bonds, letters of credit, trust funds, or insurance.

(f) Processors shall have at least two "spill kits" and all necessary fire equipment on site. The spill kits should include the proper garments, instructions, and tools needed in the event of a spill, fire, storm damage, or industrial accident.

(g) Processors shall ensure that all containers of UOFs are stored in covered, rainproof containers or in a covered enclosure, and are placed on a sufficiently impervious surface able to retain any release without environmental damage for 48 hours.

(h) A container used for storage of UOFs that is found to be leaking or in poor condition shall be removed from service or repaired, ensuring that only serviceable containers are provided for UOF storage.

(i) Processors may not exceed 30 days of storage for unprocessed filters and must meet the storage regulations set forth in §330.1187 of this title. The commission may, at its discretion, extend or shorten this time period. If a processor is unable to comply with this storage requirement, he may apply to the commission in writing for an extension to this storage requirement. A processor's storage time limits are initiated at the time the processor takes custody of the UOFs. A processor is deemed to have custody of the UOFs upon receipt of such filters by the processing facility, or by an off-site storage facility owned or operated by, or for the benefit of, the processor.

(j) A UOF must meet the following processing standards to be considered processed:

(1) the exterior gasket has been removed;

(2) the whole UOF has been compressed with a force sufficient to reduce the oil weight by 80% (the commission may, at its discretion, alter the percent oil weight reduction); or

(3) the UOF has been separated by dismantling, shredding, or any other acceptable procedure which separates the whole UOF into its components; or

(4) any standard which may be adopted by a recognized industry association, so long as the industry standards meet or exceed the standards contained herein; or

(5) any other standard which may be approved by the commission.

§330.1189. Rejection of Shipment. If a shipment of used oil filters is rejected by a processor or end-user, the processor or end-user shall report the rejected shipment to the Municipal Solid Waste Division of the Texas Water Commission. The report shall identify the day, month, and year such shipment was rejected, the shipper or supplier, giving the name, physical address, and the commission identification number (for used oil filter activity), the total quantity of the rejected shipment, and the reason(s) for such rejection.

§330.1190. Manifest Forms. Until such time that manifest forms are available from the commission, the information required herein must be retained on-site by the generator, collection center, transporter, storage facility, and processor in a form easily discernable by the commission or its representatives.

§330.1191. Penalties. Failure to comply with the rules established herein, may result in a loss of state contracts and in nonrenewal of the registration.

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

Issued in Austin, Texas, on December 16, 1992.

TRD-9216675 **Mary Ruth Holder**
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: January 22, 1993

For further information, please call: (512) 908-2045

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 7. Administration of State Lottery Act

Subchapter D. Lottery Game Rules

• 34 TAC §7.304

The Comptroller of Public Accounts proposes new §7.304, concerning on-line game rules (general). The purpose of the new section is to provide general game details and requirements for all Texas Lottery on-line games, including the sale of tickets, drawings, claim procedures, validated requirements, payment of prizes, and settlement procedures. An emergency section was filed November 6, 1992, and published in the *Texas Register* on November 13, 1992 (17 TexReg 7977).

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 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 new section will be in allowing the comptroller to implement the lottery on-line game 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.

§7.304. On-Line Game Rules (General).

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

(1) Certified drawing-A drawing in which the lottery drawing supervisor, security representative, and an independent certified public accountant attest that the drawing equipment functioned properly and that a random selection of a winning combination occurred.

(2) Claim center-A claims office of the Texas Lottery at which winners may redeem prizes.

(3) Claim form-The form provided by the Texas Lottery to be completed by prize winners when claiming a prize.

(4) Current draw period–The period of time in which the player selections are accumulated into a pool of plays eligible for winning in a drawing held at the end of the designated period.

(5) Direct prize category contribution–A specified percentage of net sales allocated to the prize categories as described in the rules of the specific game being played.

(6) Draw break–The period of time on a draw day when tickets cannot be produced on an on-line terminal.

(7) Drawing–The procedure by which the lottery randomly selects winning combinations of digits, numbers, or symbols in accordance with the rules of the game as set forth in the rules of the specific game being played and the drawing procedures for the specific game.

(8) Drawing pool–The amount of money available for all prize categories for a specific drawing.

(9) Duplicate ticket–A ticket produced by photograph, xerography, or any other method other than a ticket generated by an on-line terminal.

(10) Indirect prize category contribution–Amounts allocated from the prize reserve fund and roll-over for a specific drawing.

(11) Invalid ticket–Any ticket that fails to meet all validation requirements of the Texas Lottery.

(12) On-line game–A lottery game which utilizes a computer system to administer plays and in which a player selects a combination of numbers, the type of game, and amount of play for a specified drawing date. The lottery will conduct a drawing to determine the winning combination(s) in accordance with the rules of the specific game being played and the drawing procedures for the specific game.

(13) On-line retailer–A lottery retailer authorized by the lottery to sell on-line tickets. On-line retailers shall sell all on-line lottery games and at least two instant ticket games offered by the Texas lottery.

(14) On-line system–The lottery's on-line computer system consisting of on-line terminals, central processing equipment, and a communication network.

(15) On-line terminal–The computer hardware through which an on-line retailer enters the combination selected by a player and by which on-line tickets are generated and claims are validated.

(16) On-line ticket–A computer-generated ticket issued by an on-line retailer generated on an on-line terminal on official Texas Lottery paper stock to a player as a receipt for the combination of numbers a player has selected. That ticket shall be the only acceptable evidence of the combination of digits, numbers, or symbols selected. On-line tickets may be purchased only from on-line retailers.

(17) Present at the terminal–A player remains physically present at the on-line terminal from the time the player's order for the purchase of on-line lottery tickets is paid for and accepted by the lottery on-line retailer until the processing of the order is completed and the tickets are delivered to the player at the licensed on-line retailer terminal location.

(18) Prize amounts–The amount of money payable to each share or the annuitized future value of each share in a prize category for each drawing. Prize amounts are calculated by dividing the prize category contribution or annuitized future value of the prize category contribution by the number of shares determined for the prize category.

(19) Prize breakage–The money which is left over from the rounding down of the pari-mutuel prize levels to the next lowest whole dollar amount or money which is in excess of the amount needed to pay a prize.

(20) Prize category–The matching combinations of numbers and their corresponding prize levels as described in rules for the specific game being played.

(21) Prize category contributions–Refers to contributions for each drawing to each prize category including direct and indirect prize category contributions.

(22) Prize pool–The total amount of money available for prizes as a percentage of the total sales for the current draw period.

(23) Roll-over–The amount not won (no matching combinations) or prize breakage from the previous drawing in a prize category. The amount not won will be carried forward for the next drawing for that specific prize category.

(24) Shares–The total number of matching combinations within each prize category as determined for each drawing.

(25) Sign-on slip–The receipt produced by the on-line terminal when the retailer signs on to the system.

(26) Ticket bearer–The person who has signed the on-line ticket or who has possession of an unsigned ticket.

(27) Valid ticket–Any ticket that meets all of the validation requirements of the Texas Lottery.

(28) Validation–The process of determining whether an on-line ticket presented for payment is a winning ticket.

(29) Validation number–The 16-digit number printed on the front of each on-line ticket which is used for validation.

(30) Void ticket–Any ticket that is stolen, unissued, illegible, mutilated, altered, counterfeit in whole or part, misregistered, defective, incomplete, printed or produced in error, multiply printed, or fails any of the Texas Lottery's confidential validation tests.

(31) Winning combination–One or more digits, numbers, or symbols randomly selected by the lottery in a drawing which has been certified.

(b) Price of tickets and prizes.

(1) The purchase price of each on-line ticket shall be as set forth in the rules of the specific game being played.

(2) The total amount of prize money allocated to the prize pool for on-line games from total of on-line sales shall be a minimum of 50%.

(3) The prize pool for on-line games shall have contributions to prize categories as set forth in the rules of the specific game being played.

(c) Sale of tickets.

(1) On-line tickets shall be sold during all normal business hours of the lottery on-line retailer during on-line game operating hours unless the lottery director approves otherwise. On-line retailers must give prompt service to lottery customers present and waiting at the on-line terminal to purchase tickets for on-line games. Prompt service includes interrupting processing of on-line ticket orders for which the customer is not present at the terminal.

(2) On-line tickets shall be sold only at the location listed on each retailer's license from the lottery. For purposes of this section, the sale of an on-line lottery ticket at the licensed location means a lottery transaction in which all elements of the sale between the licensee and the purchaser must take place at the retailer location using their on-line terminal including the exchange of consideration, the exchange of the playslip if one is used, and the exchange of the on-line ticket. No part of the sale may take place away from the on-line terminal.

(d) Drawings and end of sales prior to drawings.

(1) The manner and frequency of drawings shall be as set forth in the rules of the specific game being played and the drawing procedures for the specific game.

(2) The drawings shall be conducted at times and locations to be announced by the lottery director.

(3) The director shall determine for each type of on-line game the time for the end of sales prior to the drawings. On-line terminals will not process on-line tickets for that drawing after the time established by the director.

(4) The director shall designate the type of drawing equipment to be used and shall establish drawing procedures to randomly select the winning combination for each type of on-line game. Drawing procedures shall include provisions for the substitution of backup drawing equipment in the event the primary drawing equipment malfunctions or fails for any reason.

(5) The lottery director shall designate a drawing supervisor who shall oversee each drawing. The drawing supervisor, along with a lottery security representative and an independent certified public accountant shall be responsible for conducting the drawing in compliance with the lottery's drawing procedures. The drawing supervisor, along with a lottery security representative and an independent certified public accountant, shall attest whether the drawing was conducted in accordance with proper drawing procedures at the end of each drawing.

(e) Procedures for claiming on-line prizes.

(1) All apparent winning tickets presented for payment to the lottery or an on-line retailer must meet the lottery's validation requirements as set forth in subsection (f) of this section.

(2) To claim an on-line game prize of $599 or less the claimant shall present the winning on-line ticket to an on-line retailer or to a lottery claim center. All tickets validated by a retailer must be paid by that retailer.

(3) If a claim of $599 or less is presented to an on-line retailer, the on-line retailer must validate the claim, and, if determined to be a winning ticket, make payment of the amount due the claimant. If the on-line retailer attempts to validate and cannot validate the claim, the claimant shall submit a completed claim form, if required for submission, with the ticket to the lottery by mail or in person. Upon determination that the ticket is a winning ticket, the lottery shall present or mail a check to the claimant in payment of the amount due. If the ticket is determined to be a non-winning ticket, the claim shall be denied and the claimant shall be promptly notified. Winning or non-winning tickets will not be returned to the claimant.

(4) If the claim is presented to the lottery, the claimant shall fill out a claim form, if required, and submit it with the apparent winning ticket to the lottery by mail or in person. Upon determination that the ticket is a winning ticket, the lottery shall present or mail a check to the claimant in payment of the amount due. If the ticket is determined to be a non-winning ticket, the claim shall be denied and the claimant shall be promptly notified. Winning or non-winning tickets will not be returned to the claimant.

(5) To claim an on-line prize of $600 or more, the claimant shall obtain and complete a claim form, sign the back of the ticket, and submit the form with the apparent winning ticket to the lottery by mail or in person. Upon determination that the ticket is a winning ticket, the lottery shall present or mail a check to the claimant in payment of the amount due, less the withholding required by the Internal Revenue Code and any offsets or other withholdings required by law. If the ticket is determined to be a non-winning ticket, the claim shall be denied and the claimant shall be promptly notified. Winning or non-winning tickets will not be returned to the claimant.

(6) The director shall recognize only one person as claimant of a particular prize. A claim may be made in the name of a person other than an individual only if the person possesses a federal employer identification number (FEIN) issued by the Internal Revenue Service and such number is shown on the claim form. Groups, family units, clubs, organizations, or other persons without an FEIN shall designate one individual in whose name the claim is to be filed. If a claim is erroneously entered with multiple claimants, the claimants shall designate one of them as the individual recipient of the prize. The claim shall then be considered as if it were originally entered in the name of the designated individual and payment of any prizes won shall be made to that single individual.

(f) Validation requirements.

(1) To be a valid winning on-line ticket, all of the following conditions must be met.

(A) All printing on the ticket shall be present in its entirety, be legible, and correspond, using the computer validation file, to the combination and data printed on the ticket. The ticket must have been produced prior to the drawing.

(B) The ticket shall be intact.

(C) The ticket shall not be mutilated, altered, reconstituted, misregistered, defective, incomplete, or tampered with in any manner.

(D) The ticket shall not be counterfeit or an exact duplicate of another winning ticket.

(E) The ticket must have been issued by an authorized on-line retailer in an authorized manner on official Texas lottery paper stock.

(F) The ticket must not have been stolen.

(G) The ticket must not have been previously paid.

(H) The ticket data shall have been recorded on the central computer system prior to the drawing, and the ticket data must match the computer record data in every respect.

(I) The ticket shall pass all other confidential security checks of the lottery.

(2) The lottery may pay the prize for a ticket that is partially mutilated or not intact if the on-line ticket can still be validated by the other validation requirements.

(3) Liability for void tickets, if any, limited to replacement of ticket or refund of sales price.

(4) A ticket shall be the only valid receipt for claiming a prize. A copy of a ticket or a playslip has no pecuniary or prize value and shall not constitute evidence of ticket purchase or of numbers selected.

(5) In submitting an official on-line ticket for validation, the player agrees to abide by applicable laws, all Texas lottery rules, regulations, policies, directives, instructions, conditions, and final decisions of the lottery director.

(6) All prizes shall be subject to tax withholdings, offsets, and other withholdings as provided by law.

(g) Payment of prizes by on-line retailers.

(1) An on-line retailer shall pay to the ticket bearer on-line game prizes of $599 or less for any valid claims presented to that on-line retailer. All tickets validated by a retailer must be paid by that retailer. These prizes shall be paid during hours as specified in writing by the lottery director, provided the on-line system is operational and claims can be validated. The on-line retailer shall not charge the claimant any fee for payment of the prize or for cashing a business check drawn on the licensed retailer's account.

(2) An on-line retailer may pay prizes in cash or by certified check, money order, or by business check if acceptable by the claimant. An on-line retailer that pays a

prize with a check which is dishonored may be subject to suspension or revocation of its license.

(h) Retailer settlement, obligations, and compensation.

(1) Each on-line retailer shall provide authorization for an account with EFT (Electronic Funds Transfer) capability to be used for weekly billing of all lottery products. This EFT account must be the same account as that currently being electronically swept for instant ticket sales.

(2) Each on-line retailer shall maintain an account balance sufficient to cover monies due the lottery for the established invoice period. The lottery shall withdraw by EFT the amount due the lottery on the day specified by the lottery director. In the event the day specified for withdrawal occurs on a legal holiday, withdrawal shall occur on the following business day.

(3) Retailers shall receive credit on their lottery account for redeeming winning on-line tickets.

(4) On-line retailers shall receive 5.0% compensation on all sales from on-line games. On-line retailers may not accept any compensation for the sale of lottery tickets other than compensation approved under this section, regardless of the source.

(5) If an on-line retailer fails to maintain a sufficient account balance to cover monies due the lottery for the established billing period, the retailer's license shall be summarily suspended. If an on-line retailer is suspended three times in a 12-month period for insufficient funds, the retailer's license shall be revoked. If a retailer's license is revoked, it shall not be reissued for at least 12 months from the date all monies due the lottery are paid.

(6) A retailer must retain all sign-on slips for a minimum of seven weeks from the date the sign-on slip is produced. Sign-on slips must be surrendered to lottery security personnel upon request.

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

Issued in Austin, Texas, on December 16, 1992.

TRD-9216667 Tres Lorton
Senior Legal Counsel,
General Law Section
Comptroller of Public
Accounts

Earliest possible date of adoption: January 22, 1992

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

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• 34 TAC §7.305

The Comptroller of Public Accounts proposes new §7.305, concerning "Lotto Texas" on-line game rule. The purpose of the new section is to provide specific game details and requirements for the Texas Lottery's on-line game "Lotto Texas," such as type of play, prizes, method of selecting winning numbers, drawings, and the allocation of revenues. An identical emergency section was filed November 6, 1992, and published in the *Texas Register* on November 13, 1992 (17 TexReg 7979).

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 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 new section will be in allowing the comptroller to implement the lottery on-line game 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.

§7.305. "Lotto Texas" On-Line Game Rule.

(a) Lotto Texas. A Texas Lottery on-line game to be known as "Lotto Texas" is authorized to be conducted by the director under the following rules and under such further instructions and directives as the director may issue in furtherance thereof. If a conflict arises between this section and §7.304 of this title (relating to On-Line Game Rules (General)), this section shall have precedence.

(b) Definitions. In addition to the definitions provided in §7.304 of this title (relating to On-Line Game Rules (General)), and unless the context in this section otherwise requires, the following definitions apply.

(1) Number–Any play integer from one through 50 inclusive.

(2) Play–The six numbers selected on each play board and printed on the ticket.

(3) Play board–A field of the 50 numbers found on the playslip.

(4) Playslip–An optically readable card issued by the Texas lottery used by players of Lotto Texas to select plays. There shall be five play boards on each play slip identified at A, B, C, D, and E. A playslip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

(c) Price of ticket. The price of each Lotto Texas play shall be $1.00. A player may purchase up to five plays on one ticket. Multiple draws are available for up to 10 consecutive draws beginning with the current draw.

(d) Play for Lotto Texas.

(1) Type of play. A Lotto Texas player must select six numbers in each play. A winning play is achieved only when three, four, five, or six of the numbers selected by the player match, in any order, the six winning numbers drawn by the lottery.

(2) Method of play. The player will use playslips to make number selections. The on-line terminal will read the playslip and issue ticket(s) with corresponding plays. If a playslip is not available, the on-line retailer may enter the selected numbers via the keyboard. However, the retailer shall not accept telephone or mail-in requests to manually enter selected numbers. If offered by the lottery, a player may leave all play selections to a random number generator operated by the computer, commonly referred to as "quick pick."

(3) One prize per play. The holder of a winning ticket may win only one prize per play in connection with the winning number drawn and shall be entitled only to the highest prize category won by those numbers.

(e) Prizes for lotto.

(1) Prize amounts. The prize amounts, for each drawing, paid to each lotto player who selects a matching combination of numbers will vary due to a parimutuel calculation, with the exception of the fourth prize, which is a guaranteed $3.00. The calculation of a prize shall be rounded down so that prizes can be paid in multiples of whole dollars. Each prize category breakage, with the exception of the fourth prize breakage, will carry forward to the next drawing for each respective prize category. The fourth prize category breakage will be placed in the reserve fund. No prize amount shall be less than $3.00. The prize amounts are based on the total amount in the prize category for that Lotto Texas drawing distributed equally over the number of matching combinations in each prize category.

MATCHING COMBINATIONS	PRIZE CATEGORY (ONE PLAY)	ODDS OF WINNING
All six matching numbers in one play	First Prize (Jackpot)	1:15,890,700
Any five but not six matching numbers in one play	Second Prize	1:60,192
Any four but not five or six matching numbers in one play	Third Prize	1:1,120
Any three but not four, five or six matching numbers in one play	Fourth Prize	1:60

(2) Prize pool. The prize pool for Lotto Texas prizes shall be a minimum of 50% of lotto sales.

(3) Prize categories.

(A) First prize (jackpot)-To determine the annuitized future value of each share (prize amount), the annuitized future value of the prize category is divided by the shares. A share is the matching combination, in one play, of all six numbers drawn (in any order). Each share will be paid in 20 installments. The initial payment shall be paid only upon completion of all internal validation procedures. The subsequent 19 payments shall be paid annually by monies generated by the purchase of securities which shall be purchased through the Treasurer, State of Texas, after each drawing for which lottery records reflect the sale of one or more winning Lotto Texas six of six plays, and the value of the 19 installments shall be determined by the face or market value of said securities at purchase. Annual installment payments shall be based on the annual maturity value of the securities purchased. The payment of annual annuities will be made on the anniversary of the month in which the ticket won. If the cash value of each share is equal to or greater than the amount required to pay an initial first-year cash installment and 19 subsequent annuitized annual installments yielding total payments of $2 million or greater, each share shall be paid in 20 installments in the same manner as described in this paragraph. If the cash value of each share is less than the amount required to pay an initial first year cash installment and 19 subsequent annuitized annual installments yielding total payments of $2 million, each share shall be paid the cash value of each share in one payment. The six of six jackpot prize must be claimed at the Austin claim center. The total prize category contribution for a drawing will include the following.

(i) The direct prize category contribution shall be 64% of the prize pool for the drawing.

(ii) The indirect prize category contribution, which may be increased by the lottery director, will include the roll-over from the previous drawing, if any.

(B) Second prize-The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of any five of the six numbers drawn (in any order). The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 5.0% of the prize pool for the drawing.

(ii) The indirect prize category contribution, which may be increased by the lottery director, will include the roll-over from the previous drawing, if any.

(C) Third prize-The prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of any four of the six numbers drawn (in any order). The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 18% of the prize pool for the drawing.

(ii) The indirect prize category contribution, which may be increased by the lottery director, will include the roll-over from the previous drawing, if any.

(D) Fourth prize-The prize amount is a guaranteed $3.00, but shall not exceed $3.00. Any roll-over amounts shall be added to the prize reserve fund. The total prize category contribution will include the following.

(i) The direct prize category contribution shall be 11% of the prize pool for the drawing.

(ii) The indirect prize category contribution as determined by the lottery director.

(4) Prize reserve fund.

(A) The Lotto Texas prize reserve is 2.0% of the prize pool.

(B) The Lotto Texas prize reserve fund may be increased or decreased by any amounts allocated to the prize pool and not paid to winners. For example,

rounding down, prizes not claimed within the 180-day claim period, and roll-over amounts from the fourth prize.

(C) In the event any player who has a valid winning ticket does not claim the prize within 180 days after the drawing in which the prize was won, the prize amount shall be added to the prize reserve and all rights to the prize shall terminate.

(D) The lotto prize reserve may be increased or decreased by any amounts allocated to the prize pool and not paid to winners. For example, rounding down, prizes not claimed within the 180-day claim period, and roll-over amounts from the fourth prize.

(f) Ticket purchases.

(1) Lotto tickets may be purchased only at a licensed location from a lottery retailer authorized by the lottery director to sell on-line tickets.

(2) Lotto tickets shall show the player's selection of numbers, boards played, drawing date, and validation and reference numbers.

(3) It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket. A ticket is a bearer instrument until signed.

(4) Except as provided in subsection (d)(2) of this section, Lotto Texas tickets must be purchased using official Lotto Texas playslips. Playslips which have been mechanically completed are not valid. Lotto Texas tickets must be printed on official Texas lottery paper stock and purchased at a licensed location through an authorized Texas lottery retailer's on-line terminal.

(g) Drawings.

(1) The Lotto Texas drawings shall be held each week on Wednesday and Saturday evenings at 9:58 p.m. Central Time except that the drawing schedule may be changed by the director, if necessary.

(2) Lotto Texas tickets will not be sold from 9:45 p. m. Central Time until 10 p.m. Central Time on Wednesday and Saturday nights.

(3) The drawings will be conducted by lottery officials.

(4) Each drawing shall determine, at random, six winning numbers in accordance with Lotto Texas drawing procedures. Any numbers drawn are not declared winning numbers until the drawing is certified by the lottery in accordance with the drawing procedures. The winning numbers shall be used in determining all lotto winners for that drawing.

(5) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by at least one lottery security representative, the drawing supervisor, and the independent certified public accountant immediately prior to a drawing and immediately after the drawing.

(6) A drawing will not be invalidated based on the financial liability of the lottery.

(h) Announcement of incentive or bonus program. The lottery director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award(s).

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

Issued in Austin, Texas, on December 16, 1992.

TRD-9216666 Tres Lorton
Senior Legal Counsel,
General Law Section
Comptroller of Public
Accounts

Earliest possible date of adoption: January 22, 1992

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

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TITLE 34. PUBLIC FINANCE

Part III. Teacher Retirement System of Texas

Chapter 23. Administrative Procedures

• 1 TAC §23.6

(Editor's Note: The Teacher Retirement System of Texas 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 Teacher Retirement System of Texas (TRS) proposes new §23.6, concerning the trustee to trustee transfer of eligible rollover distributions from TRS. These rules were initially promulgated on an emergency basis, effective December 14, 1992.

This section is intended to provide authority for TRS to make trustee to trustee transfers of eligible rollover distributions.

Wayne Fickel, TRS Controller, 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. Fickel also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that a plan participate is permitted to rollover an eligible TRS distribution directly to an eligible retirement plan. Without such a direct transfer, an eligible rollover distribution made after December 31, 1992, is subject to a mandatory federal income tax withholding of twenty percent. 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.

Any comment on the proposed section should be addressed to Wayne Blevins, Executive Secretary, Teacher Retirement System of Texas, 1000 Red River, Austin, Texas 78701.

The new section is proposed under Texas Government Code, §825.102, which authorizes the Board of Trustees of the retirement system to adopt rules unless for the administration of the funds of the retirement system and for the transaction of business of the Board, and under the Texas Government Code, §825.506, which authorizes the Board of Trustees to adopt rules that modify the plan to the extend necessary for the retirement system to be a qualified plan.

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

Issued in Austin, Texas, on December 14, 1992.

TRD-9216617 Wayne Blevins
Executive Secretary
Teacher Retirement
System of Texas

Earliest possible date of adoption: March 16, 1993

For further information, please call: (512) 370-0524

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Part X. Texas Public Finance Authority

Chapter 225. Master Equipment Lease Purchase Program, Series B

• 34 TAC §§225.1, 225.3, 225.5, 225.7

The Texas Public Finance Authority proposes new §§225.1, 225.3, 225.5, and 225.7, concerning the Master Lease Purchase Program. These sections define certain terms pertaining to the operation of the Program under Series B, identify the responsibilities of various parties in administering the Program under Series B, and establish basic procedures under which equipment users may participate in the Program under Series B.

Anne Schwartz, executive director, 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 sections. The effect on state government for the first five-

year period the sections are in effect will be an estimated reduction in cost. The Program will result in interest rate savings for the State estimated to be 2.0% for each piece of equipment financed hereunder or $1.5 million to $2 million for each year. There will be no effect on local government.

Ms. Schwartz 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 interest rate savings. This section is promulgated under the authority of the Texas Tax Code, Title 2; therefore no analysis of the effect on small businesses is required. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Evelyn A. Casper, Administrative Technician IV, Texas Public Finance Authority, P.O. Box 12906, Austin, Texas 78711-2047.

The new sections are proposed under Texas Civil Statutes, Article 601d, §9A, which provide the Texas Public Finance Authority with the authority to issue and sell obligations for a lease or other agreement concerning equipment and to promulgate rules for establishing the requirements for agencies wishing to use the program.

§225.1. Purpose of the Rules. The Texas Public Finance Authority proposes these new rules, as Chapter 225, concerning the administration of the State of Texas Master Lease Purchase Program authorized by Texas Civil Statutes, Article 601d, §9A, for which debt service payments only have been appropriated and are to be applied as lease payments. Therefore, the Comptroller's Intercept is not included herein. This chapter defines certain terms pertaining to the operation of the Texas Master Lease Purchase Program, identifies the responsibilities of various parties in administering the Texas Master Lease Purchase Program, and establishes basic procedures under which State agencies may participate in the Texas Master Lease Purchase Program.

§225.3. Definitions. Notwithstanding the definitions set forth in §221.3 and §223.3, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Act–The Texas Public Finance Authority Act, Texas Civil Statutes, Article 601d, as amended.

Administrative Costs–The reasonable costs incurred by the Authority in developing, administering, and monitoring the Program, which costs include, but are not limited to, fees for the paying agent, the dealer, the servicing agent, and the Authority's operational charges.

Amortization Schedule–A detailed schedule of principal and interest payments and Administrative Costs due for each Lease Payment as required under the Master Lease Agreement and contained in each Lease Supplement. The principal amount will include the purchase price of the Eligible Projects and the Costs of Issuance, which will be separately itemized.

Authority–The Texas Public Finance Authority, or any successors or assignees to its duties and functions.

Authorized Representative–That person(s) duly authorized by a Client Agency and the Authority to execute and deliver a Master Lease Agreement and Lease Supplement(s) and such other documents as are deemed necessary or appropriate to implement the Program.

Board–The board of directors of the Authority.

Bond Review Board–The board created by Texas Civil Statutes, Article 717k-7, or any successors or assignees to its duties and functions.

Bundled Purchases–Those purchases of multiple Eligible Projects individually valued at a minimum of $500 for and on behalf of one or more Client Agencies, which are aggregated into one vendor contract for acquisition.

Client Agency–Any State Agency which has the authority, pursuant to applicable law, to finance Eligible Projects through the Program.

Comptroller–The Comptroller of Public Accounts of the State of Texas, or any successors or assignees to its duties and functions .

Comptroller's Interagency Agreement–The provision contained in the Master Lease Agreement and in the Lease Supplements authorizing the Authority to access each Client Agency's appropriated funds to pay debt service on the Program by delivering payment vouchers to the Comptroller drawn on the Client Agency's designated funds.

Costs of Issuance–All costs associated with the Program, including, but not limited to, printing costs, costs of preparation of documents, and fees to rating agencies, financial advisor, credit and liquidity providers, bond counsel, and underwriters.

Debit Memo–The notice provided to each Client Agency within 30 days after each Lease Payment. The Debit Memo will include the name of the Client Agency, each Lease Supplement by identifying number, the Eligible Project, the total amount paid reflected as principal and interest payments, Administrative Costs, the payment date, credit, if any, and the remaining principal balance.

DIR–The Department of Information Resources of the State of Texas, or any successors or assignees to its duties and functions.

Eligible Project–Any physical structure that has been authorized by the Legislature for the Authority to finance and is used by a Client Agency to conduct official State business, together with the land and major equipment or personal property that is functionally related to the physical structure, or any other fixed asset used by a Client Agency to conduct official State business, including, without limitation, telecommunications devices or systems, automated information systems, computers and computer software, provided, that such property has a useful life of at least three years, and a value of at least $10,000, valued either individually or as a group of individual items of property, each having a minimum value of $500 per item.

Fees–The amount assessed each Client Agency for participating in the Program. Fees include the Costs of Issuance and Administrative Costs.

GSC–The General Services Commission of the State of Texas, or any successors or assignees to its duties and functions.

Interim Financing–The initial financing source by which Eligible Project may be financed if it is deemed advisable by the Authority. Interim Financing will occur when the Authority issues its Master Lease Purchase Program Tax-Exempt Commercial Paper Revenue Notes (the Notes) in various amounts, not to exceed $300 Million outstanding at any one time.

LBB–The Legislative Budget Board of the State of Texas, or any successors or assignees to its duties and functions.

Lease Payments–Those amounts specified in the Lease Supplements and made pursuant to the Comptroller's Intercept payable semi-annually on the first day of February and the first day of August. The term "Lease Payments" also includes all payments made while the Eligible Project is in the Interim Financing and to Lease Revenue Bond holders.

Lease Revenue Bonds–The long term bonds issued by the Authority either to refinance Eligible Project that has been initially financed through Interim Financing, or to fund the purchase of Eligible Project.

Lease Supplement–A form promulgated by the Authority to be executed by each Client Agency which incorporates the terms of the Master Lease Agreement and other agreements under the Program. The Lease Supplement shall specifically identify the Eligible Project to be financed, including the serial number or other state identification number, the exact amount to be paid, the payee, and any updates or corrections to the Request for Financing.

Master Lease Agreement–The Master Lease Agreement is the contract executed between the Authorized Representative of each Client Agency and the Authority, containing such terms and provisions necessary to authorize the Client Agency to participate in the Program and the Authority to make payments on behalf of the Client Agency for the purchase of

Eligible Project as specifically set forth in each Lease Supplement.

Program–The State of Texas Master Lease Purchase Program described in these rules to be carried out by the Authority for the purpose of financing or refinancing of Eligible Projects.

Progress Payments–Periodic payments for Eligible Projects to be made during installation of and prior to acceptance of such Eligible Project by the Client Agency which payments are set out in an agreement with the vendor. The agreement must provide for specific payments corresponding to completion of definitive components sufficient to create identifiable collateral.

Request for Financing–A written request from a Client Agency to the Authority to finance the acquisition of an Eligible Project through the Program. Such Request for Financing shall include an itemized description of the Eligible Project prepared by the Client Agency including the estimated cost of acquisition, the estimated useful life of the Project, the proposed date(s) of delivery and acceptance of the Eligible Project, the proposed use of the Eligible Project, and the source of funds to be used by the Client Agency to make the payments for the Eligible Project, and any one of the following documents:

(A) a copy of the purchase order for Eligible Project, issued by GSC which, when received by GSC, should be immediately forwarded by GSC to the Authority;

(B) a copy of the contract prepared and awarded by DIR for Eligible Project, or for Bundled Purchases, which when executed by DIR should be immediately forwarded by DIR to the Authority; or

(C) any awarded contract for Eligible Project, or for Bundled Purchases, a copy of which is sent to and received by the Authority and which may be generated by any Client Agency.

State Agency–A board, commission, department, office, agency, institution of higher education, or other governmental entity in the executive, judicial, or legislative branch of state government.

State Lease Fund–The fund by that name created by the Act, and the General Appropriations Act, 72nd Legislature, First Called Session.

Statement of Acceptance–A statement contained in the Lease Supplement, executed by the Client Agency, which states that the Eligible Project has been received, inspected, and found to be in fully acceptable condition by the Client Agency, that all approvals, if any, have been obtained and that all other requirements of law have been satisfied and authorizing the Authority to provide payment to the vendor.

Treasurer–The State Treasurer of the State of Texas, or any successors or assignees to its duties and functions.

§225.5. Procedures for Financing Eligible Projects.

(a) Upon receipt of a Request for Financing the Authority will review such request for completeness and compliance with Program rules. If the Request for Financing is found to be complete and in compliance, the Authority will accept the Request for Financing.

(b) Upon acceptance of the Request for Financing, if the Client Agency has not previously participated in the Program, the Authority will forward to the Client Agency a copy of the Master Lease Agreement to be executed by an Authorized Representative. The Master Lease Agreement is not subject to revision by the Client Agency and, when executed by the Client Agency's Authorized Representative and the Authority, will serve as the basis for all future purchases of Eligible Project under the Program.

(c) After acceptance of the Request for Financing by the Authority and execution of the Master Lease Agreement, the Client Agency will proceed to procure the Eligible Project in compliance with all applicable laws and rules governing such procurement, including obtaining the approval, if any is required, of the Bond Review Board, DIR, GSC, or other State Agency.

(d) After the Client Agency has taken delivery and acceptance of the Eligible Project and determined that it meets all requirements for payment in full to the vendor, the Client Agency will prepare the payment voucher together with all documents required by the Comptroller and will execute four copies of the Lease Supplement which also contains the Statement of Acceptance of the Eligible Project and will forward all copies along with the payment voucher and all other documents to the Authority. The Authority will immediately execute all four copies of the Lease Supplement, return one copy to the Client Agency, and forward one copy to the Comptroller.

(e) The Authority will make a determination to initially fund the Eligible Project through the Interim Financing or through the issuance of Lease Revenue Bonds. Such determination will be within the sole discretion of the Authority.

(f) The Authority will effect the payment in full to the vendor, or partial payment if the Eligible Project has been designated for Progress Payments.

(g) Upon receipt of the Lease Supplement, the Authority and the Comptroller will effect the Comptroller's Intercept to provide for the Lease Payments.

(h) No later than on or before 48 hours prior to a Lease Payment, the Authority will submit a voucher directing the Comptroller to transfer sufficient monies from each Client Agency into the State Lease Fund the Authority will provide a voucher to the Comptroller to effect debt service payment. The Treasurer will then transfer monies out of the State Lease Fund and make Lease Payments.

(i) Within 30 days following each Lease Payment, the Authority will provide a Debit Memo to each Client Agency.

(j) The Authority may issue Lease Revenue Bonds in order to refinance the Lease Supplements initially funded through the Interim Financing. The final maturity of Lease Revenue Bonds shall not exceed the latest maturity of the Lease Supplements being financed upon the occurrence of any of the following events:

(1) any date on which the aggregate volume of Lease Supplements then being financed through the Interim Financing reaches $75 Million; or

(2) 30 days prior to the end of any State biennial appropriation period which is currently August 31 of odd numbered years.

(k) The Authority may adjust the Lease Payments under a Lease Supplement as a result of a change in interest rates, or a refinancing, or a change in Administrative Costs. When such adjustment in Lease Payments is effected, the Authority will, concurrent with establishing the new interest rate, provide an amended Amortization Schedule reflecting the adjusted Lease Payments to the Comptroller and to each Client Agency.

(l) At least once during each fiscal year of the State the Authority will forward to the LBB a schedule, by Client Agency, of all Lease Payments. The Authority will use its best efforts to ensure that the Staff of the LBB will include in its budget recommendation sufficient appropriations to make all Lease Payments required under the Program.

(m) All books and records of the Authority will be available to the LBB, the Comptroller, the State Auditor's Office, Client Agencies, and other interested parties which may, from time to time, request access to information regarding the Program.

(n) All issuances of Lease Revenue Bonds under the Program will comply with all approvals required for the public issuance of debt by a State Agency, including review and approval by the Bond Review Board and the Attorney General.

§225.7. Recovery of Costs.

(a) The authority may recover its Administrative Costs by assessing each cli-

ent agency on a pro rata basis for reimbursement of Administrative Costs. This pro rata reimbursement shall be calculated on a semi-annual basis to cover the ongoing costs of the Program. The exact amount assessed each Client Agency shall be separately disclosed on the Debit Memo. In no event shall Administrative Costs assessed each Client Agency exceed 1 1/2% per annum of their pro rata participation in the Program.

(b) The Costs of Issuance shall be calculated on a pro rata basis for each Client Agency and included as an addition to principal along with the purchase price of Eligible Project.

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

Issued in Austin, Texas, on December 10, 1992.

TRD-9216662 Anne L. Schwartz
Executive Director
Texas Public Finance Authority

Earliest possible date of adoption: January 22, 1993

For further information, please call: (512) 463-5544

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part IX. Texas Commission on Jail Standards

Chapter 259. New Construction Rules

New Low-Risk and Medium-Risk, Design, Construction, and Furnishing Requirements

- **37 TAC §§259.214, 259.225, 259.229, 259.245, 259.246, 259.249, 259.250, 259.259-259.266**

The Texas Commission on Jail Standards proposes amendments to §§259.214, 259.225, 259.229, 259.245, 259.246, 259.249, 259.250, 259.259-259.266, concerning Low-risk and medium-risk housing design requirements.

Requirements for medium-risk housing need clarification due to questions raised by the public and design firms.

Jack E. Crump, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Crump 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 to allow the adoption of rules that are more easily understood and ensure that medium-risk facilities provide adequate security and life safety measures. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Jack E. Crump, Executive Director, P.O. Box 12985, Austin, Texas 78711.

The amendments are proposed under the Government Code Chapter 511, which provides the Texas 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.

§259.214. Inmate Entrance. The inmate entrance of a low-risk facility may be through a conventional vestibule into the receiving area. **The entrance of a medium-risk facility shall be through a safety vestibule into the receiving area.** This entrance shall allow for passage of patient evacuation equipment. The vestibule shall be designed and constructed to allow observation and identification of a person approaching the inmate entrance and shall maintain the security level appropriate to the facility. The security perimeter of a medium-risk facility shall not be compromised. Electronic surveillance equipment may be used.

§259.225. Visiting Areas. Visitor accommodations shall be provided. Contact visiting may be appropriate but is optional. **Means shall be provided for audible communication between visitors and inmates, designed to prevent passage of contraband in medium-risk facilities.** Provisions shall be made for handicapped visitors. Providing lockers in the lobby or other convenient area for storage of handbags or other articles which cannot be taken into the visiting area should be considered.

§259.229. Exercise Area. An exercise area shall be provided. **The exercise area for a medium-risk facility shall be secure.** This may be a rooftop exercise area, an outside exercise area, or one included inside the facility. Outdoor exercise areas should be covered with expended metal or some type of netting to prevent introduction of weapons/contraband. A water closet and drinking fountain should be readily available. This area should contain at least 1,500 square feet of space.

§259.245. Furnishings for Inmate Housing Areas.

(a) Bunks. A fire-resistive bunk not less than two feet three inches wide and six feet three inches long shall be provided for each inmate confined. **Bunks in a medium-risk facility shall be securely anchored.** Bunks should have clothes hooks and shelves located nearby.

(b) Water closets and lavatories. Water closets and lavatories in a low-risk facility need not be vandal-resistive. **Water closets and lavatories in a medium-risk facility shall be constructed in such a manner and of such material so as to resist vandalism. Institutional china fixtures may be used in medium-risk facilities when adequate visibility and supervision of cell areas is provided.**

(c)-(d) (No change.)

(e) Tables and seating. Tables and seating **shall be fire resistive and** should be constructed of materials which will reduce maintenance. [They shall be fire-resistive] **In medium-risk facilities tables and seating shall be securely anchored to floor or wall surfaces.** Benches shall be not less than 12 inches wide, and linear seating dimensions shall be not less than 18 inches per person to be seated at any one time. Stools shall not be less than 12 inches in diameter.

(f) (No change.)

§259.246. Lighting. Lighting shall be provided to permit reading, shaving, and normal activities within the inmate living area. Effective August 31, 1986, 20 footcandles shall be used as a guideline for adequate lighting. **In medium-risk facilities, light fixtures and heating/ventilation grills shall be detention type. In medium-risk facilities where light fixtures or other appurtenances are recessed in or otherwise made an integral part of walls or ceilings, provisions should be made to prevent destruction or removal. In medium-risk facilities, light controls and conduit shall be out of reach of inmates. However, lights used for reading, shaving, etc. may be controlled by inmates.** Exteriors of buildings shall be lighted at night sufficiently to observe a person approaching the entrance.

§259.249. Key Locks. **In low-risk facilities,** conventional locks may be used in lieu of **institutional** [detention-type] locks. **In medium-risk facilities, institutional keyed locks shall be manufactured especially for detention use. Mogul key cylinder type locks meet the requirement for medium-risk facilities.**

§259.250. Keys. **In low-risk facilities,** conventional-type keys may be used in lieu of **institutional** [detention] keys. **In medium-risk facilities, keys for institutional locks shall be heavy-duty and of sufficient size to prevent easy concealment and/or unauthorized duplication.**

§259.266. Mirrors. **In low-risk facilities,** mirrors need not be constructed of unbreakable material. **In medium-risk facilities, mirrors shall be constructed of unbreakable material.**

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 November 18, 1992.

TRD-9216645 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Earliest possible date of adoption: January 22, 1993

For further information, please call: (512) 463-5505

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Chapter 263. Life Safety

Additional Information/Recommendations

• 37 TAC §263.83

The Texas Commission on Jail Standards proposes an amendment to §263.83, concerning meaning of "jails" or "facilities."

Having added sections in the past year regarding alternative type facilities, additional titles need to be added to the meaning of "jails" and "facilities."

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

Mr. Crump 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 life safety rules that apply to all types of facilities the agency oversees. 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 Jack E. Crump, Executive Director, P.O. Box 12985, Austin, Texas 78711.

The amendment is proposed under the Government Code, Chapter 511, which provides the Texas 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.

§263.83. Meaning of "Jails" or "Facilities." The use of the terms "jails" or "facilities" in this chapter shall include lockups, low-risk and medium-risk facilities, podular/direct supervision facilities and county correctional centers.

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 November 18, 1992.

TRD-9216643 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Earliest possible date of adoption: January 22, 1993

For further information, please call: (512) 463-5505

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Chapter 297. Compliance and Enforcement

• 37 TAC §§297.1-297.10

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

The Texas Commission on Jail Standards proposes the repeal of §§297. 1-297.10, concerning compliance and enforcement rules.

The repeal of these rules will allow for revisions to these requirements to reflect actual current procedures of the Commission and coordinate enforcement action with the State Office of Administrative Hearings procedures.

Jake E. Crump, executive director, 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. Crump 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 to provide rules of procedures for compliance and enforcement action by the Commission based on county action and response and provide additional access for public hearings of compliance efforts. 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 Jake E. Crump, Executive Director, P.O. Box 12985, Austin, Texas 78711.

The repeals are proposed under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt, amend, and rescind rules for the conduct of its proceedings.

§297.1. Regular Local Inspections.

§297.2. Regular Commission inspections.

§297.3. Inspection Reports.

§297.4. Notice of Noncompliance.

§297.5. Response by County Officials.

§297.6. Remedial Order by Commission.

§297.7. Other Commission Remedies.

§297.8. Request for Hearing.

§297.9. County Contract with Private Entity for Jail Facilities.

§297.10. Municipal Contract with Private Entity for Jail Facilities.

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 November 18, 1992.

TRD-9216644 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Earliest possible date of adoption: January 22, 1993

For further information, please call: (512) 463-5505

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• 37 TAC §§297.1-297.13

The Texas Commission on Jail Standards proposes new §§297.1-297.13 concerning compliance and enforcement rules.

Adoption of these rules will allow for revisions to these requirements to reflect actual current procedures of the Commission and coordinate enforcement action with the State Office of Administrative Hearings.

Jack E. Crump, executive director has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Crump also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to provide rules of procedures for compliance and enforcement action by the Commission based on County action and response and provide additional access for public hearings of compliance efforts. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Jack E. Crump, Executive Director, P.O. Box 12985, Austin, Texas 78711.

The new sections are proposed under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt, amend, and rescind rules for the conduct of its proceedings.

§297.1. Regular Local Inspections. During intervals of at least four months and at least two times each year, the sheriff shall inspect each county jail facility for which he is responsible in his county, inquiring into the security, control, conditions, and state of compliance with the rule of the Commission. The commissioners' court of each county is encouraged to make similar periodic inspections.

§297.2. Regular Commission Inspections. Not less than once each year, the Executive Director or his authorized representatives, shall visit and inspect each county jail within this state, shall inquire into each jail's security, control, conditions, and compliance with the established minimum standards for jails. In addition to the regular Commission inspections, the Executive Director or his authorized representatives may visit and conduct special inspections to determine compliance with the established minimum standards for jails. The authorized persons in this section shall at any reasonable time have access to all parts of each county jail facility; the books, records, data, documents, and accounts pertaining to each county jail facility and to the inmate confined therein; and shall have the right and authority to examine, under oath, any of the officials of the jail or inmates therein; may issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records and documents. The sheriffs of each county shall assist the authorized persons by all means at their disposal to enable such persons to perform the functions, powers, and duties of their office.

§297.3. Inspection Reports. Within 45 days of each visit and inspection by the Executive Director or his authorized representatives, the commissioners' court and sheriff responsible for the jail inspected shall be furnished with a report of the results of the inspection, and a copy of such report shall be filed with the Commission.

§297.4. Certification. Upon completion of the regular or special Commission inspections, those jails which meet minimum jail standards shall be issued a certificate of compliance signed by the Executive Director and Inspector. The certificate of compliance shall be deemed in force until the next regular or special Commission inspection of the jail.

§297.5. Notice of Noncompliance.

(a) When the Commission finds that a county jail is not in compliance with state law or with the minimum standards prescribed by the Commission, it shall issue a Notice of Noncompliance to the commissioners' court and sheriff of the county responsible for the jail that is not in compliance. Such Notice of Noncompliance shall be sent to such county officials by certified mail, return receipt requested. A copy of such Notice of Noncompliance shall be sent to the Governor.

(b) The Notice of Noncompliance shall:

(1) specify the minimum standards established by state law or the rules of the Commission with which the jail facility fails to comply;

(2) shall provide a reasonable time, not to exceed 30 days, within which appropriate corrective measures shall be initiated by the county officials; and

(3) shall provide a reasonable time, not to exceed one year within which appropriate corrective measures shall be completed by the commissioners' court and sheriff responsible for the noncomplying jail facility.

§297.6. Response by County Officials. Upon receipt of a Notice of Noncompliance, the responsible sheriff and commissioners' court shall initiate appropriate corrective measures within the time prescribed by the Commission (which shall not exceed 30 days), and shall complete the same within a reasonable time (not to exceed one year) as prescribed by the Notice of Noncompliance. Within 30 days following receipt by the responsible sheriff and commissioners' court of the Notice of Noncompliance, such county official shall report to the Commission the corrective measures initiated and/or completed to correct the deficiency set forth in the Notice of Noncompliance.

§297.7. Commission Review of Compliance. If a response is not received from a county or if a response from a county does not offer remedies addressing all the items of noncompliance, the Commission may request that county officials appear at a regular or special meeting of the Commission to present evidence of corrective action to be taken. Following the county officials' presentation, the Commission may require the county officials to appear before the Commission at a future date to report on compliance progress, may issue a remedial order or may deem that no further action by the county is required.

§297.8. Remedial Order by Commission.

(a) If the Commission determines that the responsible sheriff and commissioners' court receiving a Notice of Noncompliance fail to initiate corrective measures within the time prescribed, the Commission may, by remedial order, delivered by certified mail, return receipt requested or by personal service to the responsible sheriff and commissioners' court, declare that the jail in question or any portion thereof be closed, that further confinement of inmates or classifications of inmates in the noncomplying jail or any portion thereof be prohibited, that all or any number of the inmates then confined be transferred to and maintained in another designated jail or detention facility, or that any payments under Chapter 300 of this title (relating to Fees and Payments) by the Commission to the county be suspended or any combination of such remedies.

(b) The remedial order of the Commission shall be in writing and shall specifically identify each minimum standard with which the jail has failed to comply. Such remedial order shall become final and effective 15 days after its receipt by either the responsible sheriff or commissioners' court; provided, however, that if a review of Commission action (§297.10 of this title (relating to Review of Commission Action)) or request for administrative hearing (§297.11 of this title (relating to Request for Administrative Hearing)) on such remedial order is requested, the enforcement of such remedial order shall be stayed until such time as the Commission has rendered its decision following its hearing thereon.

(c) If a remedial order is issued, the Commission shall furnish the sheriff with a list of qualified detention centers to which the prisoners may be transferred for their confinement. The sheriff of the county in which the noncomplying jail is situated shall immediately transfer the number of prisoners necessary to bring the jail into compliance to a detention facility that agrees to accept the prisoners. The agreement shall be in writing and shall be signed by the sheriff of the county transferring the prisoners and the sheriff of the county receiving the prisoners. A county transferring prisoners under this subsection shall immediately remove the prisoners from the receiving facility if the sheriff of the receiving county requests their removal. The county responsible for the noncomplying jail shall bear the liability for and the cost of transportation and maintenance of prisoners transferred to or from a noncomplying jail by order of the commission. The costs of transportation and maintenance shall be determined by agreement between the participating counties and shall be paid into the treasury of the entity operating the detention facility to which the prisoners are transferred.

§297.9. Other Commission Remedies. In addition to or in lieu of the remedial order remedies described in §297.8 of this title (relating to Remedial Order by Commission) the Commission may institute an action it its own name to enforce, or enjoin the violation of its orders, rules or proce-

dures, or the Local Government Code, Chapter 351. An action brought pursuant to this section is in addition to any other action, proceeding or remedy provided by law, and may be brought in a district court of Travis County. A suit brought under this section shall be given preferential setting and shall be tried by the Court, without a jury, unless the county requests a jury, in accordance with the Local Government Code, Chapter 351. The Commission shall be represented by the Attorney General in such actions.

§297.10. Review of Commission Action.

(a) Any sheriff or commissioners' court disagreeing with any remedial order or action on an application for variance of the Commission, within 15 days after the date thereof, may request an appearance before the Commission to review the action taken by the Commission-based on any fact or law with which he or the court disagrees. The request should include pertinent information on the county's efforts of corrective action or circumstances which the county may wish the Commission to consider.

(b) The request for review shall be effective if deposited in the United States mail within 15 days from the date of the remedial order or action on application for variance, or if it is otherwise received by the Commission within such 15-day time period. The request for review shall be directed to the Executive Director.

(c) Review of Commission action may determine that the remedial order or application for variance request may continue to be effective as issued, may be amended, or may be rescinded. Any action affected by this section shall be effective immediately.

§297.11. Request for Administrative Hearing.

(a) If a county or sheriff disagrees with a Commission action and has exhausted all remedies herein under §297.10 of this title (relating to Review of Commission Action), the county may request, within 15 days after the date thereof, an administrative hearing under §301 of this title (relating to Contested Cases), upon any matter of fact or law with which he or the court disagrees.

(b) The request for hearing shall be effective if deposited in the United States mail within 15 days from the date of the remedial order or action on application for variance, or if it is otherwise received by the Commission within such 15-day time period. The request for hearing shall be directed to the chairman of the Commission and shall contain the following statements:

(1) the legal authority and jurisdiction under which the hearing should be held;

(2) the particular statutes, sections of statutes, and rules involved;

(3) a short, plain recital of the errors of fact or law for which review is sought, stating in detail the facts justifying the amendment or reversal of the order or action of the Commission;

(4) the name and address of the person or representative to whom notices or other written communications shall be directed, and the name and address of the person or representative who will appear at the hearing and the name and address of the person or persons on whose behalf he will appear.

(c) While subsections (a) and (b) of this section will be reasonably construed, a request for hearing, if not made in the time and manner herein provided, shall be deemed waived, and in such event, the remedial order or action on application for variance of the commission shall become final.

(d) Upon the receipt of a timely request for hearing, the Commission shall request a hearing be scheduled by the Office of Administrative Hearings.

§297.12. County Contract with Private Entity for Jail Facilities.

(a) The commissioners court of a county may contract with a private vendor to provide for the financing, design, construction, leasing, operation, purchase, maintenance, or management of a facility for the confinement of persons accused or convicted of an offense.

(b) Contracts for these purposes shall comply with the Local Government Code, §§351.101-351.104 (concerning county contract with private entity for jail facilities).

(c) If the contract includes construction of a new facility or renovation of an existing facility, the construction documents shall be submitted and reviewed in accordance with Chapter 257 of this title (relating to Construction Approval Rules).

(d) A facility needs analysis shall be submitted by the county to the Commission for approval for all facilities intended for the housing of persons not committed to the facility by local jurisdictions. The Executive Director may require a facility needs analysis be submitted for all facilities. The facility needs analysis shall minimally:

(1) describe the origin, conviction status, risk/needs level, and anticipated length of stay of persons to be confined in the facility;

(2) identify the availability of persons to be confined and duration of such availability;

(3) describe the basis and methodology utilized in determining the need for the facility; and

(4) indicate the work force availability within the county to properly staff the facility.

(e) A statement of objectives shall be submitted by the county to the commission for approval, indicating:

(1) the management concept under which the facility will be operated including description of how required services will be provided;

(2) educational, vocational, or rehabilitative programs which will be provided at the facility; and

(3) the construction standards under which the facility will be constructed or operated.

(f) The commissioner's court and the sheriff shall review and approve the facility needs analysis, statement of objectives, and construction documents prior to submission to the commission.

(g) Facility operational plans, as required by the commission, shall be developed by the private operator of the facility in consultation with the sheriff and shall be approved by the sheriff, in writing, prior to submission to the commission for approval. Approval by the sheriff shall not be unreasonably withheld. Revised plans shall similarly be submitted when there is a change of sheriffs, operator, types of persons being confined, or operational procedures.

(h) The sheriff shall exercise regular on-site monitoring over the private jail facility, in accordance with the Local Government Code, §351.103 (concerning contract requirements). The specifics of such on-site monitoring, including the resolution of disputes, disagreements, or deficiencies shall be provided for in the contract and facility operational plans.

§297.13. Municipal Contract with Private Entity for Jail Facilities.

(a) The governing body of a municipality may contract with a private vendor to provide for the financing, design, construction, leasing, operation, purchase, maintenance, or management of a facility for the confinement of persons accused or convicted of an offense.

(b) Contracts for these purposes shall comply with the Local Government Code, §§361.061-361.067 (concerning municipal contract with private entity for jail facilities).

(c) If the contract includes construction of a new facility or renovation of an existing facility, the construction documents shall be submitted and reviewed in accordance with Chapter 257, of this title (relating to Construction Approval Rules).

(d) A facility needs analysis shall be submitted by the municipality to the commission for approval for all facilities intended for the housing of persons not committed to the facility by local jurisdictions. The Executive Director may require a facility needs analysis be submitted for all facilities. The facility needs analysis shall minimally:

(1) describe the origin, conviction status, risk/needs level, and anticipated length of stay of persons to be confined in the facility;

(2) identify the availability of persons to be confined and duration of such availability;

(3) describe the basis and methodology utilized in determining the need for the facility; and

(4) indicate the work force availability within the county to properly staff the facility.

(e) A statement of objectives shall be submitted by the municipality to the commission for approval, indicating:

(1) the management concept under which the facility will be operated, including description of how required services will be provided;

(2) procedures for regular on-site monitoring by the municipality, including frequency and scope of the monitoring;

(3) educational, vocational, or rehabilitative programs which will be provided at the facility; and

(4) the construction standards under which the facility will be constructed or operated.

(f) The municipality shall review and approve the facility needs analysis, statement of objectives, and construction documents prior to submission to the commission.

(g) Facility operational plans, as required by the commission, shall be developed by the private operator and approved by the municipality in writing, prior to submission to the commission for approval. Revised plans shall be submitted when there is a change of operators, types of persons being confined, or operational procedures.

(h) The municipality shall exercise regular on-site monitoring over the private operation of the facility, in accordance with the Local Government Code, §361.062 (concerning contract requirements). The specifics of such on-site monitoring, including the resolution of disputes, disagreements, or deficiencies shall be provided for in the contract and facility operational plans.

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 November 18, 1992.

TRD-9216648 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Earliest possible date of adoption: January 22, 1993

For further information, please call: (512) 463-5505

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Chapter 301. Rules of Practice in Contested Cases

• 37 TAC §§301.1-301.13

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

The Texas Commission on Jail Standards proposes the repeal of §§301. 1-301.13, concerning rules of practice in contested cases.

The repeal of these rules will allow for major revisions to these requirements made necessary by the adoption of Rules of Procedure, Chapter 155, State Office of Administrative Hearings.

Jack E. Crump, executive director, 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. Crump 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 to allow the adoption of new rules that encompass newly adopted Rules of Procedure 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 repeals as proposed.

Comments on the proposal may be submitted to Jack E. Crump, Executive Director, P.O. Box 12985, Austin, Texas 78711.

The repeals are proposed under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt, amend, and rescind rules for the conduct of its proceedings.

§301.1. Scope: Open Hearings.

§301.2. Notice of Hearing.

§301.3. Presiding Officer.

§301.4. Ex Parte Consultations.

§301.5. Informal Disposition.

§301.6. Appearances.

§301.7. Failure to Appear.

§301.8. Continuances.

§301.9. Written Answers; Brief; Stipulations.

§301.10. Rule of Evidence; Official Notice.

§301.11. Subpoenas and Depositions.

§301.12. Hearings and Dispositions.

§301.13. Record.

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 November 18, 1992.

TRD-9216647 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Earliest possible date of adoption: January 22, 1993

For further information, please call: (512) 463-5505

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• 37 TAC §301.1, §301.2

The Texas Commission on Jail Standards proposes new §§301.1-301.2, concerning rules of practice in contested cases.

The adoption of these rules will allow for necessary requirements in accordance with newly adopted Rules of Procedure by the State Office of Administrative Hearings.

Jack E. Crump, executive director has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Crump 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 adopt new rules that encompass newly adopted Rules of Procedure 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 sections as proposed.

Comments on the proposal may be submitted to Jack E. Crump, Executive Director, P.O. Box 12985, Austin, Texas 78711.

The new sections are proposed under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt, amend, and rescind rules for the conduct of its proceedings.

§301.1. Procedures. The Commission will follow the Rules of Procedure of the State Office of Administrative Hearings for contested cases, Title 1, Part VII, Texas Administrative Code, Chapter 155.

§301.2. Decision. The Commission will render a decision following receipt of the Proposal for Decision from the State Office of Administrative Hearings. The Commission may rule to agree, disagree, or modify the Proposal for Decision based on findings of fact or conclusion of law which substantiate the remedial action or other action by the Commission. The decision by the Commission shall be final and effective when rendered.

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 November 18, 1992.

TRD-9216646 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Earliest possible date of adoption: January 22, 1993

For further information, please call: (512) 463-5505

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Part XIII. Texas Commission on Fire Protection

Chapter 461. General Administration

Subchapter B. Powers and Duties of the Board

- **37 TAC §§461.41, 461.43, 461.45, 461.47, 461.49, 461.51, 461.53, 461.55, 461.57, 461.59, 461.61**

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

The Texas Commission on Fire Protection proposes the repeal of §§461.41, 461.43, 461.45, 461.47, 461.49, 461.51, 461.53, 461.55, 461.57, 461.59, and 461.61, concerning the powers and duties of the Fire Department Emergency Board. These sections proposed for repeal have been replaced by new sections relating to the duties of the Funds Allocation Advisory Committee.

Michael E. Hines, executive director, 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. Hines 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 in rewriting the rules to allow applying for a grant, loan, or scholarship in a less complicated manner, which will allow more fire organizations to take advantage of the program. There will be no effect on small businesses.

Comments on the proposal may be submitted to Michael E. Hines, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The repeals are proposed under the Texas Government Code, Title 4, Subtitle B, Chapter 419, Subchapter C, §419.053(3), which provides the Texas Commission on Fire Protection with the authority to adopt rules for the administration of the Fire Department Emergency Program.

§461.41. Board Committees.

§461.43. Regulation and Supervision.

§461.45. Power of Entry.

§461.47. Requirement of Books and Records; Financial Statements.

§461.49. Subpoena Power.

§461.51. Certified Documents.

§461.53. Fire Department Emergency Board Fund.

§461.55. Annual Report.

§461.57. Cooperation with Peace Officers.

§461.59. Reporting of Violations.

§461.61. Application of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas, on December 11, 1992.

TRD-9216641 Jack Woods
General Counsel
Texas Commission on Fire Protection

Earliest possible date of adoption: January 22, 1993

For further information, please call: (512) 873-1700

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Chapter 463. Criteria

Subchapter B. Application Requirements

- **37 TAC §§463.31, 463.33, 463.35**

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

The Texas Commission on Fire Protection proposes the repeal of §§463.31, 463.33, and 463.35, concerning the powers and duties of the Fire Department Emergency Board. These sections proposed for repeal have been replaced by new sections relating to the duties of the Funds Allocation Advisory Committee.

Michael E. Hines, executive director, 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. Hines 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 in rewriting the rules to allow applying for a grant, loan, or scholarship in a less complicated manner, which will allow more fire organizations to take advantage of the program. There will be no effect on small businesses.

Comments on the proposal may be submitted to Michael E. Hines, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The repeals are proposed under the Texas Government Code, Title 4, Subtitle B, Chapter 419, Subchapter C, §419.053(3), which provides the Texas Commission on Fire Protection with the authority to adopt rules for the administration of the Fire Department Emergency Program.

§463.31. Disclosure of Records and Financial Statements.

§463.33. Criteria for Issuance of Financial Assistance.

§463.35. Burden of Proof.

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

Issued in Austin, Texas, on December 11, 1992.

TRD-9216640 Jack Woods
General Counsel
Texas Commission on Fire Protection

Earliest possible date of adoption: January 22, 1993

For further information, please call: (512) 873-1700

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Subchapter C. Applications Procedures

• 37 TAC §§463.51, 463.53, 463.55, 463.57, 463.59, 463.61, 463.63

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

The Texas Commission on Fire Protection proposes the repeal of §§463.51, 463.53, 463.55, 463.57, 463.59, 463.61, and 463.63, concerning the powers and duties of the Fire Department Emergency Board. These sections proposed for repeal have been replaced by new sections relating to the duties of the Funds Allocation Advisory Committee.

Michael E. Hines, executive director, 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. Hines 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 in rewriting the rules to allow applying for a grant, loan, or scholarship in a less complicated manner, which will allow more fire organizations to take advantage of the program. There will be no effect on small businesses.

Comments on the proposal may be submitted to Michael E. Hines, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The repeals are proposed under the Texas Government Code, Title 4, Subtitle B, Chapter 419, Subchapter C, §419.053(3), which provides the Texas Commission on Fire Protection with the authority to adopt rules for the administration of the Fire Department Emergency Program.

§463.51. Application Procedure for Applicants.

§463.53. Application Form for Applicants.

§463.55. Financing and Development.

§463.57. Economic, Demographic, and Other Information.

§463.59. Modified Application Procedures and Forms.

§463.61. Additional Information.

§463.63. Board Approval of Sale or Conveyance.

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

Issued in Austin, Texas, on December 11, 1992.

TRD-9216639 Jack Woods
General Counsel
Texas Commission on Fire Protection

Earliest possible date of adoption: January 22, 1993

For further information, please call: (512) 873-1700

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 19. Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter C. Resident Rights

The Texas Department of Human Services (DHS) proposes the repeal of §19. 217 and §19.504, proposes new §19.217 and §19.504, and proposes amendments to §§19.502-19.503, 19.1911, 19.1912, and 19.1923, concerning directives and durable powers of attorney for health care, activities, social services general requirements, social services process, contents of the clinical record, additional clinical record service requirements, and incident or accident reporting. The purpose for the repeals, new sections, and amendments is to incorporate technical changes in the Long Term Care Nursing Facility Requirements which will make the intent of the rules clearer and more compatible with requirements of the Health Care Financing Administration (HCFA) .

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

Mr. Raiford also has determined that for each year of the first five years the proposal is in effect the public benefit anticipated as a result of enforcing the proposal will be that the sections affected will be in full compliance with requirements of the Omnibus Budget Reconciliation Act of 1987. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposal.

Questions about the content of the proposal may be directed to Susan Syler at (512) 450-3111 in DHS's Institutional Programs Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-303, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

• 40 TAC §19.217

The repeal 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.

§19.217. Directives and Durable Powers of Attorney for Health Care.

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

Issued in Austin, Texas, on December 15, 1992.

TRD-9216654 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Earliest possible date of adoption: March 1, 1993

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

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Subchapter C. Resident Rights

• 40 TAC §19.217

The new section 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.

§19.217. Directives and Durable Powers of Attorney for Health Care.

(a) Competent adults may issue advance directives in accordance with applicable laws.

(b) The nursing facility must maintain policies and procedures regarding the following rules with respect to all adult individuals receiving services provided by the facility.

(1) All individuals must be provided with the following written information:

(A) the individual's rights under Texas law (whether statutory or as

recognized by the courts of the state) to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives; and

(B) the nursing facility's policies respecting the implementation of such rights.

(2) The nursing facility must document in the resident's clinical record whether or not the individual has executed an advance directive.

(3) The nursing facility must not condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive.

(4) The facility must ensure compliance with the requirements of Texas law, whether statutory or as recognized by the courts of Texas, respecting advance directives.

(5) The facility must provide, individually or with others, for education for staff and the community on issues concerning advance directives. For the community, this may include, but is not limited to, newsletters, articles in the newspaper, local news reports, or commercials. For educating, this may include, but is not limited to, in-service programs.

(6) The facility must provide the attending physician with any information relating to a known existing Directive to Physicians and/or Living Will or Durable Power of Attorney for Health Care, and assist with coordinating physicians' orders with any resident directive.

(7) When an individual is in a comatose or otherwise incapacitated state, and therefore is unable to receive information or articulate whether he has executed an advance directive, the family, surrogate, or other concerned person must receive the information concerning advance directives. The facility must provide this information to the resident once he is no longer incapacitated.

(8) When the resident or a relative, surrogate, or other concerned or related individual presents the facility with a copy of the individual's advance directive, the facility must comply with the advance directive including recognition of a durable power of attorney for health care, to the extent allowed under state law. If no one comes forward with a previously executed advance directive and the resident is incapacitated or otherwise unable to receive information or articulate whether he has executed an advance directive, the facility must note that the individual was not able to receive information and was unable to communicate whether an advance directive existed.

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

Issued in Austin, Texas, on December 15, 1992.

TRD-9216655 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: March 1, 1993

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

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• 40 TAC §§19.502-19.504

The new and amended sections are 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.

§19.502. Activities.

(a) (No change.)

(b) The activities program must be directed by a qualified professional who:

(1) is a qualified therapeutic recreation specialist or an activities professional who [is]:

(A) is licensed or registered, if applicable, by the state in which practicing; and

(B) is eligible for certification as a therapeutic recreation specialist, **therapeutic recreation assistant,** or an activities professional by a recognized accrediting body, such as the National Council for Therapeutic Recreation Certification, on October 1, 1990; or

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

(4) has completed an activity director training course approved by any State. The Texas Department of Human Services (DHS) and Texas Department of Health (TDH) do not review or approve any courses. DHS and TDH accept only training courses approved by the National Certification Council for Activity Professionals or **the National Therapeutic Recreation Society.**

(c) **Activity directors must complete eight hours of approved continuing education or equivalent continuing education units each year. Approval bodies include organizations or associations recognized as such by certified therapeutic recreation specialists or certified activity professionals or registered occupational therapists.**

(d)[(c)] The facility must ensure that activities assessment and care planning are completed and reviewed or updated as provided in §19. 601 and §19.602 of this title (relating to Resident Assessment and Comprehensive Care Plans). **If indicated by the Resident Assessment Instrument and/or the resident's need, an in-depth activities assessment is required.**

§19.503. Social Services General Requirements.

(a) The facility must provide medically-related social services to attain the highest practicable physical, mental or psychosocial well-being of each resident. See also §19.701 of this title (relating to Quality of Care) for information concerning psychosocial functioning.

(1) (No change.)

(2) A facility of 120 beds or less must employ or contract with a **qualified** social worker to provide social services a sufficient amount of time to meet the needs of the residents.

(b) (No change.)

§19.504. Social Services Process.

(a) The facility must ensure that psychosocial assessment and care planning are completed and reviewed or updated as provided in §19.601 and §19.602 of this title (relating to Resident Assessment and Comprehensive Care Plans).

(b) Psychosocial assessment, intervention, and care planning require the appropriate participation of social work staff, according to the needs and condition of the resident. Identification of psychosocial and medically related social service needs is not limited to the Resident Assessment Instrument. The relevant needs of each resident must be identified and addressed by the direct provision of services or by arranging access to services.

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

Issued in Austin, Texas, on December 15, 1992.

TRD-9216657 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: March 1, 1993

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

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• 40 TAC §19.504

The repeal 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.

§19.504. Social Services Process.

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

Issued in Austin, Texas, on December 15, 1992.

TRD-9216656 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: March 1, 1993

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

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Subchapter F. Quality of Life

• 40 TAC §§19.1911, 19.1912, 19.1923

The amendments are 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.

§19.1911. Contents of the Clinical Record. The clinical record of each resident must contain:

(1)-(11) (No change.)

(12) Observation made by nursing personnel. Nursing personnel must record observations according to the time frames specified in §19.804 of this title (relating to Director of Nursing Services). Facility staff must ensure that the observations show at least the following:

(A) (No change.)

(B) current information including:

(i)-(iv) (No change.)

(v) the resident's ability to participate in activities of daily living as defined in §19.804(7)(A) [§19.804(6)] of this title (relating to Director of Nursing Services); and

(vi) (No change.)

(13)-(15) (No change.)

§19.1912. Additional Clinical Record Service Requirements.

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

(d) Periodic thinning of active clinical records is necessary to reduce bulkiness. The following items must remain in the active clinical record for the sake of completeness:

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

(3) **all Resident Assessment Instruments and Quarterly Reviews for the prior 24-month period** [The current Resident Assessment Instrument (RAI) and subsequent quarterly reviews],

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

(e)-(j) (No change.)

§19.1923. Incident or Accident Reporting.

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

(c) Accident or incident reports shall be retained for the period of time specified by facility policy, but at least for two years following the occurrence, and shall contain the following information:

(1) For incidents involving residents, the name of the resident; witnesses (if witnesses were present); date, time, and description of the incident; circumstances under which it occurred; action taken including documentation of notification of the responsible party and attending physician if appropriate; and final disposition that indicates the resident's condition has stabilized and/or is resolved. The final disposition shall include the date and time of entry, resident's vital signs and description of the resident's present health condition. The incident report shall be completed under the direction of the director of nurses or individual in charge of the shift of duty at the time the accident or incident occurred [The nursing staff is then to document in the nurses notes, on each shift, the condition of the resident for at least 24 hours or until the condition stabilizes].

(2) (No change.)

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

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

Issued in Austin, Texas, on December 15, 1992.

TRD-9216658 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: March 1, 1993

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

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Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's Note: As required by the Insurance Code, Article 5.96 and 5. 97, the Texas Register publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the Texas Register not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the Texas Register not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure and Texas Register Act, Article 6252-13a, Texas Civil Statutes, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

The State Board of Insurance, at a Board meeting scheduled for 9 a.m. January 28, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, will consider a proposal filed on behalf of the Texas Workers' Compensation insurance Facility (the Facility). The Facility proposes amendments to the rules and regulations governing the Employers' Rejected Risk Fund. The amendments were proposed in a petition (Reference Number W-1192-67), filed by the Facility on November 5, 1992.

According to the Facility's petition, these proposed amendments are designed to accomplish three objectives: first, to provide more flexibility in structuring deposit premium and payment plan terms; second, to differentiate between interim reporting plans and installment payment plans; and third, to clarify that interest is to be charged only on that premium which is deferred under installment plans and not charged on premium which is paid on monthly reporting plans.

A copy of the petition containing the full text of the proposed amendments is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition, please contact Angie Arizpe (512) 322-4147 (refer to Reference W-1192-67).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative

Procedures and Texas Register Act.

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

Issued in Austin, Texas, on December 16, 1992.

TRD-9216672 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

For further information, please call: (512) 463-6328

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The State Board of Insurance, of the Texas Department of Insurance, under Docket Number 1969, will hold a public hearing scheduled for January 28, 1993, at 9 a.m., to consider the adoption of a Workers' Compensation Financial Aggregate Statistical Plan (the Plan).

The Plan will implement the Insurance Code, Article 5.58(a), which requires that the Board develop reasonable statistical plans to be used by each workers' compensation insurer in the recording and reporting of its loss experience and other data in order that the total loss and expense experience of all workers' compensation insurers may be made available annually. As of January 1, 1993, the Board may not contract with or designate an insurer or advisory organization to gather or compile data for statistical plans. The Plan provides the necessary instructions and forms for workers' compensation carriers to report aggregate financial data on workers' compensation loss experience. The Plan will allow the Staff of the Texas Department of Insurance to gather and compile the necessary loss experience and other data to be furnished to the Board to allow the Board to comply with the requirements of Article 5.58(a).

Copies of the full text of the Workers' Compensation Financial Aggregate Statistical Plan are available for review in the Office of the Chief Clerk of the State Board of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 322-4147 refer to Reference Number W-1192-68-I).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas, on December 16, 1992.

TRD-9216671 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

For further information, please call: (512) 463-6328

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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 37. PUBLIC SAFETY

Part V. Texas Peace Officers' Advisory Committee

Chapter 141. Administrative Division

Substantive Rules

- **37 TAC §§141.1, 141.5, 141.10, 141.15, 141.20**

The Texas Peace Officers' Advisory Committee has withdrawn from consideration for permanent adoption a proposed new §§141.1, 141.5, 141.10, 141.15, and 141.20 which appeared in the July 21, 1992 issue of the *Texas Register* (17 TexReg 5074). The effective date of this withdrawal is December 14, 1992.

Issued in Austin, Texas, on December 14, 1992.

TRD-9216616 Johanna McCully-Bonner
General Counsel
Texas Peace Officers' Advisory Committee

Effective date: December 14, 1992

For further information, please call: (512) 406-3619

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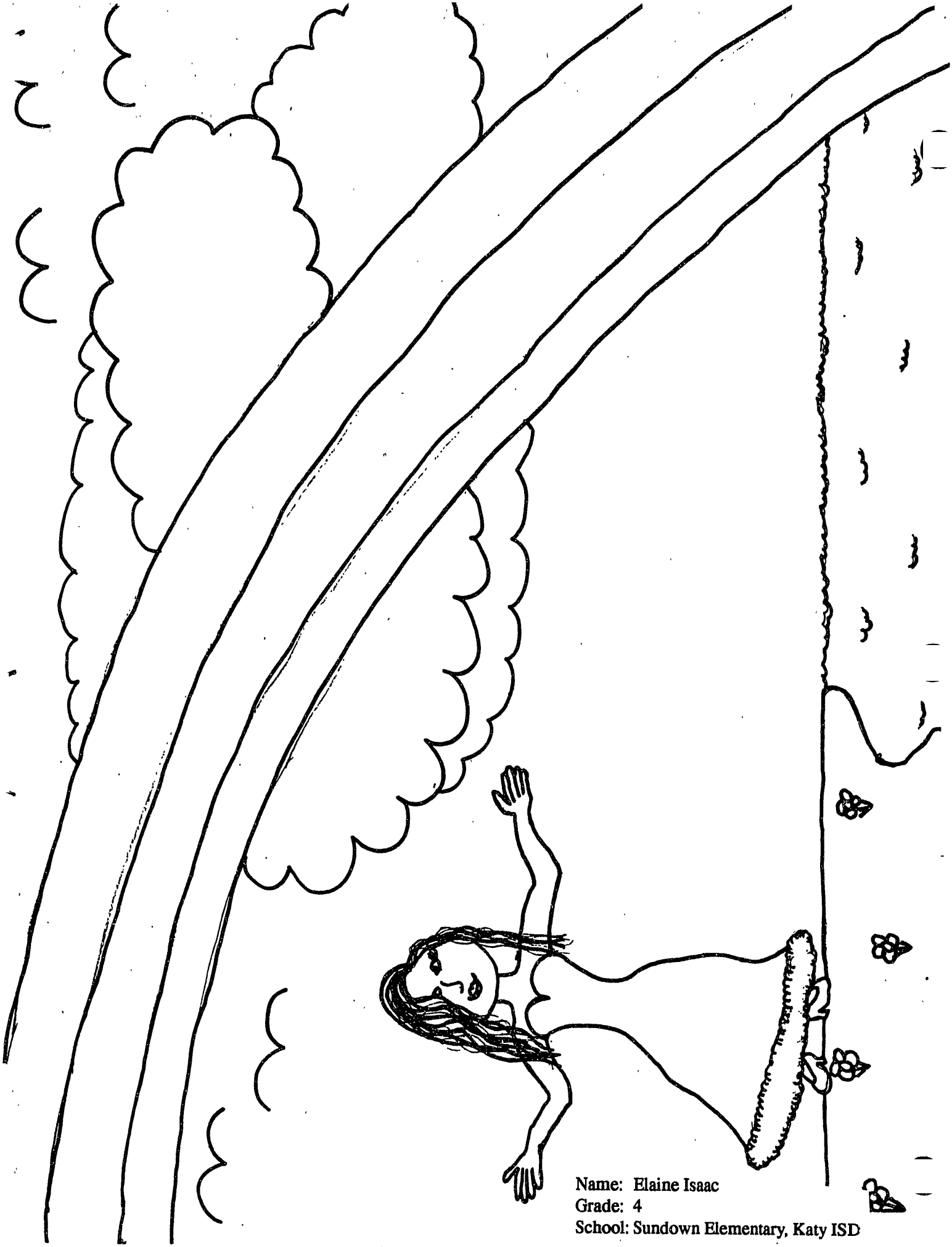

Name: Elaine Isaac
Grade: 4
School: Sundown Elementary, Katy ISD

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 1. ADMINISTRATION

Part II. Texas Ethics Commission

Chapter 10. Practice and Procedure

Subchapter A. General Provisions

- **1 TAC §§10.1, 10.3, 10.5, 10.7, 10.9, 10.11, 10.13, 10.15, 10.17, 10.19, 10.21, 10.23, 10.25, 10.27, 10.29, 10.31, 10.33, 10.35, 10.37, 10.39, 10.41, 10.43**

The Texas Ethics Commission adopts new §§10.1, 10.3, 10.5, 10.7, 10.9, 10.11, 10.13, 10.15, 10.17, 10.19, 10.21, 10.23, 10.25, 10.27, 10.29, 10.31, 10.33, 10.35, 10.37, 10.39, 10.41, and 10.43. Section 10.31 is adopted with changes to the proposed text as published in the November 3, 1992, issue of the *Texas Register* (17 TexReg 7729). The remaining sections are adopted without changes and will not be republished.

These sections set forth the rules and procedure concerning the filing of complaints alleging violations of statutes, and rules and regulations administered by the Texas Ethics Commission. The changes resulted from recommendations made during a public hearing on December 10, 1992.

These sections will provide the public with guidelines and necessary requirements to effectuate the filing of a complaint with the commission during the sworn complaint process. As to new §10.31, the changes included removing the word "non" from "non-jury" and substituting the word "offer" for "other types of rebuttal."

No comments were received regarding adoption of the new section.

The new sections are adopted under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning the filing, processing, and resolution of complaints filed with the commission alleging violations of law, and rules and regulations administered by the commission.

§10.31. Conduct of Hearings.

(a) The rules of evidence and privilege as applied in jury civil cases in the district courts of this state shall be followed in the resolution of a sworn complaint, except that evidence not reasonably susceptible to proof under those rules may be admitted if of the type commonly relied upon by reasonably prudent people.

(b) In a preliminary review hearing, informal hearing, or other type of resolution of a sworn complaint, a party may offer evidence, conduct cross-examination, or offer argument, and make opening and closing statements.

(c) With notice to the parties, the commission or its delegate may take official notice of all facts judicially cognizable or generally recognized by the commission and its staff in the exercise of its authority.

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

Issued in Austin, Texas, on December 11, 1992.

TRD-9216620 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Effective date: January 4, 1993

Proposal publication date: November 3, 1992

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

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Part XII. Advisory Commission on State Emergency Communications

Chapter 251. Regional Plans-Standards

- **1 TAC §251.4**

The Advisory Commission on State Emergency Communications adopts new §251.4 concerning guidelines for the provisioning of ancillary equipment, without changes to the proposed text as published in the October 20, 1992, issue of the *Texas Register* (17 TexReg 7303).

The guidelines will help clarify "ancillary equipment" which is required to help improve the effectiveness and reliability of 9-1-1 call delivery systems.

The guidelines will be used for evaluating plan amendment requests for ancillary equipment. Commission will normally approve expenditures for call delivery and will continue to expect local governments to fund all activities related to provisions of emergency services.

Comments were received from the Capital Area Planning Council to enhance their understanding of existing and proposed rules and ACSEC administrative procedures.

The Capital Area Planning Council commented in favor of the new section.

The new section is adopted under the Health and Safety Code, §§771.055, 771.056, 771.057, and 771.072, which provide the Advisory Commission on State Emergency Communications with the authority to amend a regional plan for the establishment and operation of 9-1-1 service in accordance with standards and procedures as set by 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 December 14, 1992.

TRD-9216684 Mark A. Boyd
Executive Director
Advisory Commission on State Emergency Communications

Effective date: January 6, 1993

Proposal publication date: October 20, 1992

For further information, please call: (512) 327-1911

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TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 28. Texas Agricultural Finance Authority: Loan Guaranty Program

- **4 TAC §§28.3, 28.7, 28.9**

The Board of the Texas Agricultural Finance Authority of the Texas Department of Agriculture adopts amendments to §§28.3, 28.7, and 28.9, concerning Texas agricultural finance authority: loan guaranty program, without changes to the proposed text as published in the October 2, 1992, issue of the *Texas Register* (17 TexReg 6730).

The amendments are adopted to clarify the types of projects that are eligible to partici-

pate in the Texas Agricultural Finance Authority Loan Guaranty Program.

The amendments clarify what business and projects are eligible to participate in the program and what project costs may be covered by the loan.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Agriculture Code, §58.022, which provides the board of the Texas Agricultural Finance Authority with the authority to adopt rules to establish rules and procedures for administration of the Texas Agricultural Finance Authority Loan Guaranty Program.

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

Issued in Austin, Texas, on December 15, 1992.

TRD-9216678 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: January 6, 1993

Proposal publication date: October 2, 1992

For further information, please call: (512) 463-7583

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TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Housing and Community Affairs

Chapter 35. Taxable Multi-Family Mortgage Revenue Bond Program

• 10 TAC §§35.1-35.15

The Texas Department of Housing and Community Affairs (The Department) adopts new §§35.1-35.15, concerning taxable multifamily mortgage revenue bond program, without changes to the proposed text as published in the November 3, 1992, issue of the *Texas Register* (17 TexReg 7734).

The proposed rules will establish the procedures by which the department will participate in the financing of new or existing multi-family rental properties for occupancy by persons or families of low or very low income and families of moderate income.

The rules will establish the provision of long term fixed rate financing to create and preserve affordable rental housing units for occupancy by very low, and moderate income Texans. There will be no effect on small businesses.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 4413(501), §3.02(2), which provide the department with the authority to make rules governing the administration of the housing finance division of the department and its program.

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

Issued in Austin, Texas, on December 15, 1992.

TRD-9216681 Susan J. Leigh
Executive Director
Texas Department of Housing and Community Affairs

Effective date: January 6, 1993

Proposal publication date: November 3, 1992

For further information, please call: (512) 475-3916

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Chapter 39. Tax-Exempt Multi-Family Mortgage Revenue Bond Program

• 10 TAC §§39.1-39.17

The Texas Department of Housing and Community Affairs adopts new §§39. 1-39.17 concerning tax-exempt multi-family without changes to the proposed text as published in the November 3, 1992, issue of the *Texas Register* (17 TexReg 7741).

The proposed rules will establish the procedures by which the department will participate in the financing of new or existing multi-family rental properties for occupancy by persons or families of low or very low income and families of moderate income.

The rules will establish the provision of long term fixed rate financing to create and preserve affordable rental housing units for occupancy by very low, and moderate income Texans. There will be no effect on small businesses.

No comments were received regarding adoption of the new section.

The new sections are adopted under Texas Civil Statutes, Article 4413(501), §3.02(2), which provide the department with the authority to make rules governing the administration of the housing finance division of the department and its 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 December 15, 1992.

TRD-9216682 Susan J. Leigh
Executive Director
Texas Department of Housing and Community Affairs

Effective date: January 6, 1993

Proposal publication date: November 3, 1992

For further information, please call: (512) 475-3916

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 7. Gas Utilities Division

Substantive Rules

• 16 TAC §§7.70-7.72, 7.80-7.82, 7.84, 7.86

The Railroad Commission of Texas adopts amendments to §§7.70-7.72, 7. 80-7.82, 7.84, 7.86, and new §7.73, concerning minimum safety standards and regulations applicable to natural gas pipeline facilities and natural gas transportation within the State of Texas; the transportation of hazardous liquids within the State; and master meter systems.

These proposals were published for public comment in the June 23, 1992, issue of the *Texas Register* (17 TexReg 4508); corrections were published in the July 10, 1992, issue of the *Texas Register* (17 TexReg 4981).

Sections 7.70, 7.71, 7.82, 7.84, and 7.86 are adopted with changes to the proposed text as published in the June 23, 1992, issue of the *Texas Register* (17 TexReg 4508). Sections 7.72, 7.73, 7.80, and 7.81 are adopted without changes and will not be republished.

Comments opposing various sections were submitted by Texas Mid-Continent Oil & Gas Association; Valero Transmission Company; Mitchell Energy & Development Corp.; Amoco Pipeline Company; Maxus Exploration Company; Lone Star Gas Company; Hoechst Celanese Corporation; Southern Union Gas Company; Mobil Pipe Line Company; Parker & Parsley Gas Processing Company; Sun Pipe Line Company; Phillips Petroleum Company; Rio Petroleum, Inc.; Chevron Pipe Line Company; Bass Engineering Company, Inc.; Texas Independent Producers and Royalty Owners Association; Houston Pipe Line Company; Entex; Energas Company; Association of Texas Intrastate Natural Gas Pipelines; Panhandle Producers & Royalty Owners Association; Permian Basin Petroleum Association; Texas Gas Association; Alpar Resources, Inc.; and a senator.

No comments were received regarding proposed changes to §7.70(a) and §7. 70(b). These are adopted without changes to the proposed text.

Texas Mid-Continent, Valero, Mitchell, Houston Pipe Line, and the Association of Texas Intrastate Natural Gas Pipelines opposed the proposed changes to §7.70(c). The amendments to this section were proposed to clarify the commission's jurisdiction regarding offshore pipeline facilities. Some of the commenters expressed the opinion that because the Cox Act, Article 6053-1, adopts the definitions in the Natural Gas Pipeline Safety Act of 1968, the commission does not have jurisdiction over offshore gathering lines; however, the commission does not agree. The Department of Transportation rule (49 Code of Federal Regulation, 192.1(b))

adopted pursuant to the Hazardous Materials Transportation Act exempts only onshore gathering lines from the safety requirements, and under the Natural Gas Pipeline Safety Act, §5, the commission is required to comply with the DOT rules. Further, the Texas Natural Resources Code, §91.101, gives the commission authority to adopt and enforce rules to prevent pollution of surface water or subsurface water in the state.

One commenter recommended that the Oil & Gas Division of the commission regulate production and flow lines similar to the regulation performed by the Minerals and Management Service for production and flow lines in federal waters. The commission finds that consistent interpretation and enforcement of the safety rules requires that the Pipeline Safety section regulate production and flow lines as well as gathering lines in Texas waters.

Most commenters expressed concern over the costs associated with compliance. The commission disagrees that cost will be a significant factor, however, because the only pipelines being added to the commission's safety jurisdiction are those located in the bay areas. The commission does agree that some period of time is necessary for transition and for establishing the necessary records for facilities located in bay areas and most of these pipelines are installed using industry standards. Also, the pipelines would be required to comply only with the operations and maintenance regulations, not the design and construction regulations. Therefore, §7.70(c) as adopted has been changed from the published version to give operators one year to comply with new regulations.

Valero, Lone Star, Houston Pipe Line, Entex, and the Association of Texas Intrastate Natural Gas Pipelines all objected to the proposed changes to §7. 70(g)(1), which would require reporting of incidents within two hours of discovery. This two-hour "rule of thumb" has been a part of Pipeline Safety's guidelines for many years; now it is being formally incorporated into the regulations as the maximum time for reporting. The rule still requires that the reports be made as soon as practical. These commenters were concerned that incidents which would previously have been considered non-reportable would now be required to be reported; however, that is not the case. There is no change to that part of the rule requiring a gas company to notify the commission of any event that involves a release of gas from its pipeline which meets the criteria set out in §7.70(g)(1)(A)(i)-(v). A gas company cannot make such a report until its personnel have confirmed that there has been a release of gas that meets one or more of the criteria. There is no requirement that false alarms be reported, or that alarms be reported before they can be judged true or false. Two commenters suggested that the two-hour time limit should be triggered by "determination" as opposed to "discovery." The commission disagrees that this standard should be changed because it could potentially hamper a thorough investigation by the commission. Texas Mid-Continent commented that the two-hour time seemed reasonable in most situations, but urged that the commission provide an opportunity for an operator to show that a report not received within two hours constitutes a violation of the reporting rules. The commission agrees that operators would be given such an opportunity. No changes have been made to the published version of §7.70(g) (1).

Section 7.70(g)(3) has been added to require the filing of safety related condition reports with the commission. The requirement for reporting safety related conditions is found in 49 Code of Federal Regulation, 191, and the reports are referenced in 49 Code of Federal Regulation, 192.605. Commenters Lone Star, Houston Pipeline, Entex, and the Association of Texas Intrastate Natural Gas Pipelines pointed out discrepancies between the proposed rule and the federal regulations. The commission agrees with these comments and has changed the language originally published in the *Texas Register* (17 TexReg 4508) to mirror the federal regulations.

Texas Mid-Continent, Valero, Mitchell, Maxus, Lone Star, Southern Union, Entex, and the Association of Texas Intrastate Natural Gas Pipelines opposed the proposed addition of paragraph (4) to §7.70(g), which requires notice to the commission 30 days prior to construction of new pipeline projects of one mile or more in length. Some of the commenters felt that the commission was trying to become involved in eminent domain issues and right-of-way agreements. The commission does not agree with these comments because there is no provision for commission approval of a project or its route; no permit is required. The report is intended only to provide the commission with general information about location and type and size of pipe to enable commission staff to respond to inquiries and, if necessary, monitor construction to correct any potential safety violations. Commenters opined that this rule would be burdensome because of the number of projects required to be reported, the confusion about what information must be provided, and the delay of construction pending commission approval. Again, no commission approval is required; construction can proceed according to schedule. The comments regarding the number of projects required to be reported and the type of information required to be reported are well-taken; the adopted version of §7.70(g)(4) differs from the proposed version in that the reporting requirement applies only to those new pipeline projects which are five miles or more in length, and specifies that the information to be reported are the points of origin and termination, the counties traversed and the size and type of pipe. There is no requirement to report a metes-and-bounds description or a specific route; the report is not a commitment to the reported route. Because of he general nature of the information to be reported, alterations in the route should not necessitate filing a new report.

New subsection §7.70(g)(5) has been changed from the proposed version in response to comments filed by Texas Mid-Continent and Valero. The comments suggested clarification that the offshore condition reports are to be filed after completion of underwater inspections.

Lone Star and Entex filed comments regarding the proposed change to §7. 70(h) modifying the records retention schedule. Lone Star felt that there was no compelling pipeline safety reason to increase the time limits for retention of ancillary records not related to physical conditions. Entex agreed with the proposal. No changes to the published version have been made, because the rule simply requires that each gas company be able to demonstrate compliance or noncompliance with the provisions of the minimum safety standards.

No comments were received on the proposed amendment to §7.70(i).

Maxus, Parker & Parsley, Phillips, Rio, TIPRO, Panhandle Producers & Royalty Owners Association, Permian Basin Petroleum Association, Alpar Resources, and a senator objected to the proposed amendment to §7.71(a) which added a definition of "lease user." Mitchell, Maxus, Lone Star, Parker & Parsley, Phillips, Rio, TIPRO, Panhandle Producers & Royalty Owners Association, Permian Basin Petroleum Association, and Alpar Resources opposed the proposed change to §7.71(b)(3), which would require the supplier to odorize gas in the case of lease users. Most of the comments concerned the producer's liability associated with he installation of odorization equipment and the potential confusion of existing producer/lessor contractual obligations. Other comments concerned the expense to install and maintain odorization equipment at all free gas locations. Pursuant to these comments, the adopted version has been changed to require the lease user to odorize gas; however, the producer may not provide gas unless the lease user has installed the odorization equipment. The commission intends that this rule will apply prospectively only, that is, only to new installations and not to existing lease user installations.

As proposed, the amendments to §7.71(d)(2) required identification numbers for each piece of odorization equipment. Comments by Valero, Lone Star, Southern Union, Parker & Parsley, Houston Pipe Line, Entex, and the Association of Texas Intrastate Natural Gas Pipelines questioned the purpose for what was considered to be a burdensome obstacle. In response to these comments, the adopted version has been changed to simply require the operator to maintain a list of all odorization equipment. This list will then be available for review during safety inspections.

Only one comment was made regarding §7.72. Mitchell suggested changing "service" to "pipeline operator." This change could not be made because no change was proposed to this section in the published version. Therefore §7. 72 is being adopted without changes to the published version.

Section 7.81 was changed to adopt certain amendments to the Natural Gas Pipeline Safety Act that have been enacted since the commission's last rule change. The only comment received on this section, made by Texas Mid-Continent, regards the enforcement of the federal regulations on carbon dioxide field injection systems. In response, the commission confirms that it will continue to pursue the jurisdictional status of these pipelines with the Department of Transportation and continue the moratorium on enforcement. The rule is adopted with no changes to the published version.

Section 7.82 broadens the interpretation of "offshore" by clarifying that bay areas will be considered within the commission's enforcement jurisdiction. Texas Mid-Continent, Valero, and Mitchell filed comments on this section. As in the comments concerning this same change in the natural gas regulations, commenters expressed concern that the commission does not have jurisdiction over gathering lines offshore because they are rural gathering lines. However, this commission does not agree, because 49 Code of Federal Regulations, 195.1(b)(5) exempts only onshore gathering lines. The exemption in 195.1(b)(5) does not include production and flow lines located in federal waters. Further, the Texas Natural Resources Code gives the commission jurisdiction over pipeline transportation of hazardous liquids and over all hazardous liquid pipeline facilities as provided in the Hazardous Liquid Pipeline Safety Act of 1979.

One commenter recommended that the Oil & Gas Division of the commission regulate production and flow lines similar to the regulation performed by the Minerals and Management Service for production and flow lines in federal waters. The commission finds that consistent interpretation and enforcement of the safety rules requires that the Pipeline Safety section regulate production and flow lines as well as gathering lines in Texas waters.

Commenters expressed the opinion that compliance costs will be burdensome. The commission disagrees that cost will be a significant factor, however, because the only pipelines being added to the Commission's safety jurisdiction are those located in the bay areas. The commission does agree hat some period of time is necessary for transition and for establishing the necessary records for facilities located in bay areas and most of these pipelines are installed using industry standards. Also, the pipelines would be required to comply only with the operations and maintenance regulations, not the design and construction regulations. Therefore, §7.82 as adopted has been changed from the published version to give operators one year to comply with new regulations.

With respect to §7.84(a), only one comment was filed. Texas Mid-Continent opined that the two-hour reporting time seemed reasonable in most situations, but urged that the commission provide an opportunity for an operator to rebut a presumption that a report not received within two hours constitutes a violation of the reporting rules. No changes have been made to the published version of §7.84(a).

The commission proposed to amend §7.86(4) to clarify current requirements that cathodic protection test stations be provided for crossings of foreign metallic structure crossings. Texas Mid-Continent, Amoco, Hoechst Celanese, Mobil, Sun Pipeline, Chevron, and Bass filed comments opposing the proposed change. Many commenters thought this amendment imposed a new and overly burdensome requirement. In response to these comments, §7.86(4) as adopted has been modified to reflect the intent that cathodic protection test station be provided at crossing points of other cathodically protected structures.

New §7.73 is adopted to address the peculiar enforcement issues raised with master meter systems. Entex agreed with the effort to make master meter operators subject to the safety requirements. Lone Star, Entex, and Energas expressed the opinion that the master meter operator should be responsible for the protection of his/her system. The commission does not agree because this practice is similar to the transmission/distribution agreement. Typically, the master meter operator is less experienced in natural gas operations than the local distribution company; therefore, the level of safety would be enhanced by having the local distribution companies be responsible for the overpressure equipment on master meter systems. Also, this requirement does not apply retroactively. The rule is adopted with no changes.

The amendments are proposed under Texas Civil Statutes, Article 6053-1, which provide the Railroad Commission of Texas with the authority to adopt by regulation safety standards and practices applicable to the transportation of gas and all gas pipeline facilities within the borders of this state to the maximum degree permissible under the Natural Gas Pipeline Safety Act of 1968, and to take any other requisite action in accordance with the Natural Gas Pipeline Safety Act of 1968, §5(a), 49 United States Code Annotated, §1674(a) (West 1968 and Supplement 1992).

Additionally, the amendments are proposed under the Texas Natural Resources Code, §117.001-117.101, which authorizes the commission to regulate the pipeline transportation of hazardous liquids and facilities related thereto under the Hazardous Liquid Pipeline Safety Act of 1979, and to take any other requisite action in accordance with the Hazardous Liquid Pipeline Safety Act of 1979, §205, 49 United States Code Annotated, app. §2004 (West Supplement 1992), and under the Texas Natural Resources Code, §91.101, which authorizes the commission to prevent pollution of surface water or subsurface water in the state by adopting and enforcing rules relating to the drilling of exploratory wells and oil and gas wells or any purpose in connection with them, and to the production of oil and gas.

§7.70. Natural Gas Pipeline Safety-General and Definitions.

(a) Minimum safety standards. All gas pipeline facilities and the transportation within his state, except those facilities and that transportation of gas which are subject to exclusive federal jurisdiction under the Natural Gas Pipeline Safety Act of 1968, 49 United States Code Annotated, §1674(a) (West 1968 and Supplement 1992), shall be designed, constructed, maintained, and operated in accordance with the Minimum Safety Standards, 49 Code of Federal Regulations, Part 192, and the Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations, 49 Code of Federal Regulations, Part 199, with amendments, effective 30 days after publication of this rule and with the additional regulations set out in this section.

(b) Definitions. The following words and terms, when used in this section, §7.71, and §7.73 of this title (relating to Odorization Equipment, Odorization of Natural Gas, and Odorant Concentration Tests and Master Metered Systems), shall have the following meanings, unless the context clearly indicates otherwise.

(1) -(7) (No change.)

(8) Master meter system–A pipeline system (other than a local distribution company) for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter, or by other means, such as by rents.

(c) Applicability. All gas pipeline facilities and facilities used in the transportation of natural gas shall be subject to the minimum safety standards, as amended, except for those facilities and transportation services subject to the jurisdiction of the Federal Energy Regulatory Commission pursuant to 15 United States Code, §717-§717z. In addition, all pipeline facilities originating in Texas waters (three marine leagues and all bay areas), shall be subject to the minimum safety standards. These pipeline facilities include those production and flow lines originating at the well. All new facilities included in this rule shall have one year after the date of the rule for achieving compliance with these regulations.

(d)-(f) (No change.)

(g) Reports and reporting.

(1) Reporting of accident, leaks, or incidents.

(A) At the earliest practical moment following discovery (within two hours), each gas company shall notify the commission by telephone of any event that involves a release of gas from its pipeline(s) which:

(i)-(v) (No change.)

(B) (No change.)

(C) The telephonic notice required by this paragraph shall be made to the Railroad Commission emergency line, Pipeline Safety Section at (512) 463-6788, and shall include the following:

(i)-(vi) (No change.)

(D) Except as provided in subparagraph (E) of this paragraph, each

gas company shall report, in writing, a summary of each accident or incident, under subparagraph (A)(i)-(iv) of this paragraph. The report shall be submitted to the Pipeline Safety Section as soon as practicable, but not more than 30 days after detection, on forms supplied by the Department of Transportation. This report is to be submitted in duplicate. The Pipeline Safety Section shall forward one copy to the Department of Transportation.

(E)-(F) (No change.)

(2) (No change.)

(3) Safety related condition reports. Each gas company shall submit in writing a safety-related condition report for any condition as outlined in 49 Code of Federal Regulations, Part 191. The report required under 191.25, sent to the Department of Transportation, must also be submitted to the Pipeline Safety Section.

(4) New construction report. Each operator shall file with the commission, at least 30 days prior to commencement of construction, the proposed originating and terminating points, counties to be traversed, size and type of pipe to be used, type of service, design pressure, and length of the proposed line. The new construction report is required for any installation of over five miles of total pipe.

(5) Offshore pipeline condition report. Each operator shall file with the commission, within 60 days of completion of underwater inspection, a report of the condition of all underwater pipelines subject to 49 Code of Federal Regulations, 192.612(a) which shall include the information required in 49 Code of Federal Regulations, 191.27.

(h) Records. On or after the effective date of these sections, each gas company operating gas facilities subject to the safety jurisdiction of this commission shall comply with the provisions of the minimum safety standards as amended, with respect to records required. Each gas company shall maintain records as the commission may require which are adequate to show compliance or noncompliance with such rules. All such records shall be kept open and readily available to the commission and/or its representatives at reasonable times. These documents and records shall be retained for the period established by 49 Code of Federal Regulations, Part 192 and §7.71 of this title (relating to Odorization Equipment, Odorization of Natural Gas, and Odorant Concentration Tests). If no time period has been established, the records must be kept for a period of no less than five years.

(i) Operation and maintenance procedures. Each gas company operating a gas facility subject the safety jurisdiction of this commission shall submit to the director of the Pipeline Safety Section the procedural plans required by 49 Code of Federal Regulations, Part 192.605. If the commission finds the plan is inadequate to achieve safe operation, it shall require the plan to be revised. Thereafter, any and all changes in such plan of inspection and maintenance shall be submitted 20 days before it becomes effective.

(j)-(k) (No change.)

§7.71. Odorization Equipment, Odorization of Natural Gas, and Odorant Concentration Tests.

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

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

(3) Lease user–A consumer who receives free gas in a contractual agreement with a pipeline operator or producer.

(4) All other applicable definitions are found in §7.70(b) of this title (relating to Pipeline Safety).

(b) Odorization of gas.

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

(3) If gas is delivered for use primarily in one of the previously exempted activities or facilities and is also used in one of those activities for space heating, refrigeration, water heating, cooking, and other domestic uses, or if such gas is used for furnishing heat or air conditioning for office or living quarters, such latter gas shall be odorized in accordance with these rules by the user. In the case of lease users, the supplier is required to ensure that the gas will be odorized before being used by the consumer.

(c) (No change.)

(d) Odorization equipment. All gas companies shall utilize odorization equipment approved by he commission as follows.

(1) Commercial manufacturers of equipment used for introducing malodorant required in this section may submit plans and specifications of such equipment to the Pipeline Safety Section with Form PS-25, for approval of standardized models and designs if the equipment is of a type commercially manufactured under accepted rules and practices of the industry. Commission-approved odorization equipment will be placed on a list of acceptable commercially available equipment.

(2) Each operator shall be required to maintain a list of odorization equipment used in the odorization of natural gas for their particular operations. The list will include the location of the odorization equipment, the brand name, model number, and the date last serviced. The list will be available for review during safety evaluations by the commission.

(3) All gas companies shall, before the installation of shop-made or other odorization equipment not approved according to paragraph (1) of this subsection, submit to the Pipeline Safety Section plans and specifications with the odorization equipment approval Form PS-25 describing the equipment to be used for introducing the malodorant required by this section. The commission shall indicate its approval or disapproval of such plans by written notification.

(4) Any odorization equipment previously approved for use need not be reapproved under the terms of this section.

(e)-(g) (No change.)

§7.82. Jurisdiction. The commission has authority to exercise jurisdiction over the intrastate pipeline transportation of hazardous liquids and over all intrastate pipeline facilities as provided in the Hazardous Liquid Pipeline Safety Act of 1979 (Public Law 96-126), and the Texas Natural Resources Code, §117.011. Additionally, all pipeline facilities originating in Texas waters (three marine leagues and all bay areas) , shall be subject to the minimum safety standards. These pipeline facilities include those production and flow lines originating at the well. All new facilities included in this rule shall have one year after the date of the rule for achieving compliance with these regulations.

§7.84. Required Records and Reporting.

(a) Accident reporting. In the event of any failure or accident involving an intrastate pipeline facility from which any hazardous liquid is released, if the failure or accident is required to be reported by 49 Code of Federal Regulations, Part 195, the operator shall report to the commission as follows.

(1) Incidents involving crude oil. In the event of an incident involving crude oil, the operator shall:

(A) notify, by telephone, the Pipeline Safety Section of the commission at the earliest practicable moment following discovery of the incident (within two hours) and then the Pipeline Safety Section will notify he appropriate Oil and Gas District office; and

(B) within 30 days of discovery of the incident, submit a completed Form H-8 (available from the commission)

to the Oil and Gas Division of the commission. In situations specified in the 49 Code of Federal Regulations, Part 195, the operator must also file duplicate copies of the required Department of Transportation form with the Pipeline Safety Section.

(2) Hazardous liquids other than crude oil. For incidents involving hazardous liquids other than crude oil, the operator shall:

(A) notify the Pipeline Safety Section of the commission of such incident by telephone at the earliest practicable moment following discovery (within two hours); and

(B) (No change.)

(3) Telephonic reporting. The telephonic notice required by this part shall be made to the Railroad Commission Emergency line, Pipeline Safety Section at (512) 463-6788, and shall include the following:

(A) company/operator name;

(B) location of leak or incident;

(C) time and date of accident/incident;

(D) fatalities and/or personal injuries;

(E) phone number of operator;

(F) other significant facts relevant to the accident or incident.

(b) Annual report. Each operator shall file with the commission an annual report listing line sizes and lengths, hazardous liquids being transported, and accident/failure data. The report must be filed with the commission on or before March 15 following the calendar year reported. An operator need only file additions or changes made to a pipeline system(s) following the first year filing. Reporting forms may be obtained from the Pipeline Safety Section.

(c) (No change.)

(d) Operations and maintenance procedure manual. Each operator shall prepare a manual outlining normal operating, maintenance, and emergency procedures for the facility as required by 49 Code of Federal Regulations, Part 195, or subsection (a) of this section and shall submit a copy of said manual to the director of the Pipeline Safety Section for review. Copies of changes or additions to the manual shall be submitted for review at least 20 days prior to the date on which they are scheduled to become effective.

(e) Records. Each operator shall maintain and have available for inspection he same documents and records required by 49 Code of Federal Regulations, Part 195, and such additional records as the commission from time to time may require. These documents and records shall be retained for the period established for interstate operators by the Code of Federal Regulations, Title 49, Part 195, or for a period of not less than five years if no such federal requirement has been established. These records shall include, but not be limited to, the following:

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

§7.86. Corrosion Control Requirements. The following requirements are applicable to the installation and construction of new pipeline metallic systems, the relocation or replacement of existing facilities, and the operation and maintenance of steel pipelines.

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

(4) Cathodic protection test stations. Each cathodically protected pipeline must have test stations or other electrical measurement contact points sufficient to determine the adequacy of cathodic protection. These locations shall include, but are not limited to, pipe casing installations and all foreign metallic cathodically protected structures. Test stations (electrode locations) used when taking pipe-to-soil readings for determining cathodic protection shall be selected to give representative pipe-to-soil readings. Readings taken at test stations (electrode locations) over or near one or more anodes shall not, by themselves, be considered representative.

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

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

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

Issued in Austin, Texas, on December 14, 1992.

TRD-9216611 Nolan Ward
Hearings Examiner, Legal Division, General Law
Texas Railroad Commission of Texas

Effective date: January 4, 1993

Proposal publication date: June 23, 1992

For further information, please call: (512) 463-7058

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• 16 TAC §7.73

The new section is proposed under Texas Civil Statutes, Article 6053-1, which provide the Railroad Commission of Texas with the authority to adopt by regulation safety standards and practices applicable to the transportation of gas and all gas pipeline facilities within the borders of this state to the maximum degree permissible under the Natural Gas Pipeline Safety Act of 1968, and to take any other requisite action in accordance with the Natural Gas Pipeline Safety Act of 1968, §5(a), 49 United States Code Annotated, §1674(a) (West 1968 and Supplement 1992).

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

Issued in Austin, Texas, on December 14, 1992.

TRD-9216614 Nolan Ward
Hearings Examiner, Legal Division-General Law
Railroad Commission of Texas

Effective date: January 4, 1993

Proposal publication date: June 23, 1992

For further information, please call: (512) 463-7058

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TITLE 22. EXAMINING BOARDS

Part VI. Texas State Board of Registration for Professional Engineers

Chapter 131. Practice and Procedure

Engineering Experience

• 22 TAC §131.81

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.81, concerning experience evaluation, without changes to the proposed text as published in the November 3, 1992, issue of the *Texas Register* (17 TexReg 7747).

The section was amended to allow applicants teaching in TAC/ABET-accredited curricula to claim teaching as meeting experience requirements for registration. One year of teaching experience may be claimed by those applying under the Texas Engineering Practice Act, §12(a)(1) and two years may be claimed by those applying under the Act, §12(a)(2).

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on December 15, 1992.

TRD-9216630 Charles E. Nemir, P.E.
Executive Director
Texas State Board of Registration for Professional Engineers

Effective date: January 5, 1993

Proposal publication date: November 3, 1992

For further information, please call: (512) 440-7723

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Board Review of Application

• 22 TAC §131.112

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.112, concerning approved applications, without changes to the proposed text as published in the November 3, 1992, issue of the *Texas Register* (17 TexReg 7748).

The section is amended to in order to expedite the approval process of applications for registration.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on December 15, 1992.

TRD-9216633 Charles E. Nemir, P.E.
Executive Director
Texas State Board of Registration for Professional Engineers

Effective date: January 5, 1993

Proposal publication date: November 3, 1992

For further information, please call: (512) 440-7723

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Registration

• 22 TAC §131.133

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.133, concerning certificates of registration, without changes to the proposed text as published in the November 3, 1992, issue of the *Texas Register* (17 TexReg 7748).

The amendment adds environmental to the list of recognized branches of engineering under which applications for registration will be accepted and for which a principles and practice examination will be available from the National Council of Examiners for Engineering and Surveying (NCEES).

One written comment was received from an individual who suggested that the amendment be adopted as environmental/safety engineering. The board did not concur as NCEES does not offer a principles and practice examination in safety engineering.

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

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

Issued in Austin, Texas, on December 15, 1992.

TRD-9216631 Charles E. Nemir, P.E.
Executive Director
Texas State Board of Professional Engineers

Effective date: January 5, 1993

Proposal publication date: November 3, 1992

For further information, please call: (512) 440-7723

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• 22 TAC §131.137

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.137, concerning disciplinary actions, without changes to the proposed text as published in the July 10, 1992, issue of the *Texas Register* (17 TexReg 4925).

The section was amended to establish clear and consise disciplinary guidelines under which the facts and circumstances of each disciplinary case will be assessed before any sanctions available to the board are ordered.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on December 15, 1992.

TRD-9216632 Charles E. Nemir, P.E.
Executive Director
Texas State Board of Professional Engineers

Effective date: January 5, 1993

Proposal publication date: July 10, 1992

For further information, please call: (512) 440-7723

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 145. Long Term Care

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

• 25 TAC §145.111

The Texas Department of Health (department) adopts an amendment to §145.111, with changes to the proposed text as published in the August 11, 1992, issue of the *Texas Register* (17 TexReg 5617). As a result of comments received, the department has also made some changes to the standards which are adopted by reference in §145. 111. The standards which the department adopts by reference are in Texas Department of Human Services rules in 40 TAC §§19.1-19.2216.

The department's amendment to §145.111 incorporates TDHS's adopted repeal of existing 40 TAC §19.2012 and new 40 TAC §§19.2201-19.2209 and §§19.2211-19.2216, concerning nursing facility remedies for contract violations being adopted by TDHS in this issue of the *Texas Register* to be effective February 1, 1993. This amendment was reproposed because of comments and recommendations by the joint TDHS and department committee. By adopting the reproposed TDHS repeal and new sections by reference, the department will utilize the TDHS rules in §§19.2201-19.2209 and §§19. 2211-19.2216 as penalty rules for nursing facilities which participate in the Medicaid program.

In addition, the department's amendment to §145.111 will incorporate TDHS's adopted amendments to existing 40 TAC §19.302, §19.810, §19.1401, and §19.1503, concerning transfer and discharge, nursing practices, infection control, and applicable codes and standards which were published in the September 22, 1992, issue of the *Texas Register* to be effective November 1, 1992. These amendments correct references to state/federal laws and health practitioners' licensing acts or clarify current standard wording.

During the public comment period, the department received 41 comments to the proposed standards that included comments of an editorial and clarification nature as well as substantive comments. Changes made by the department to the proposed standards for the purpose of editorial correction or strictly for clarification will not be addressed individually. The department is responding individually to comments on the proposed standards as follows.

Comment: Concerning the rules generally, a commenter expressed concern that the separation of licensure and certification remedies would interfere with the coordination of remedies between the Texas Department of Human Services and the Texas Department of Health.

Response: The department disagrees and has made no change. The organization of the remedies rules does not prohibit or detract from interagency coordination.

Comment: A commenter felt that the remedies rules provide a bifurcated system of penalties, while the law stipulates a "single set of standards" for nursing facilities.

Response: The department disagrees. The Health and Safety Code requires the department and the TDHS to jointly develop one set of standards in compliance with state licensing authority and federal regulations for Title XIX nursing facilities. The proposed remedies rules were developed pursuant to House Bill 7, 72nd Legislature, First Called Session and apply only to Title XIX nursing facilities. Licensure rules for administrative penalties are a separate issue and are established under a separate statutory authority. No change is made.

COMMENT: A commenter felt that the remedies rules should be consistent with the Health Care Financing Administration's (HCFA) proposed new enforcement rules.

Response: It is the department's intention that the state enforcement and remedies rules be consistent with the final federal rules. However, the proposed federal enforcement rules comment period has just ended. The department does not know when the federal rules will be final. The department's position is that it needs to finalize the state remedies rules now; further changes to conform with the federal rules will be made when appropriate.

Comment: Concerning §19.2202 subparagraph (C) under the definition of "Severity", regarding the definition of actual harm includes a reference to the ability of the resident "to achieve the highest practicable physical, mental and psychosocial well-being." A commenter felt that the reference should be deleted.

Response: The department disagrees. This language was taken directly from federal requirements and is contained in §19.1701(a). No change is made.

Comment: Concerning §19.2202, a commenter suggested that the definition of "Deficiency" is too broad.

Response: The department disagrees. This definition was developed by an interagency/public advisory committee with representation from the consumers, providers, and state agencies and was approved by the Board of Health. The definition is acceptable and provides guidance to providers, consumers and department staff. No change is made.

Comment: Concerning §19.2202, a commenter felt that the definition of "Scope" does not adequately convey the concept of scope and percentages should not be used in the definition.

Response: The department disagrees. This definition was also developed by the interagency/public advisory committee and was approved by the Board of Health. The definition is acceptable and provides guidance to the providers, consumers, and surveyors/investigators. No change is made.

Comment: Concerning §19.2202, a commenter suggested that the definition of "Severity" be clarified so that the second part of the definition specifies how to measure the negative outcome.

Response: The current language tracks the language in the proposed federal rules on remedies and the department does not see a need for change at this time. No change is made.

Comment: Concerning §19.2202, a commenter suggested the definition of "Severity" indicated that a resident rights violation would be serious before a remedy is applied.

Response: The department disagrees. Section 19.2203, Application of Remedies, and §19.2205, Monetary Penalties, already clarify this. No change is made.

Comment: Concerning §19.2202, a commenter felt that the definition of "Survey" should include the federal definition for "standard survey," and should be revised to reflect an administrative law judge's ruling that a complaint investigation cannot be called a survey, and should include a reference to the use of HCFA prescribed survey methods, procedures, and forms for all surveys and complaint investigations.

Response: The department agrees with part of this comment and has made changes to the definition of Survey to clarify that if the federal standards, protocols, forms, methods, and procedures for survey are not used, the survey performance is inadequate. The department disagrees with the comment regarding inclusion of the administrative law judge ruling and that the federal definition for "standard survey" be used. The definitions section is to define terms as they are used in these rules only. The term "Survey," in these rules includes any action which could result in the citing of deficiencies leading to contract violations and resultant remedies. Complaint investigations may result in the citing of such deficiencies and actions. There is no succinct federal definition of "standard survey." No change has been made to final rules regarding the last two parts of this comment.

Comment: Concerning §19.2203, a commenter suggested that the subsection on application of remedies does not define "health and safety hazards" which might allow the survey agency to use this term all inclusively.

Response: The department does not believe a change is necessary because the department has in place a quality assurance program for all surveyors which addresses the surveyor's application of the survey and certification rules, protocols, and procedures. No change is made.

Comment: Concerning §19.2203, a commenter felt that the rules conflict with federal regulations that a surveyor cite only current contract violations, and not past contract violations which have been corrected by the time of the survey.

Response: The department disagrees. The remedies rules for Title XIX nursing facilities operate in tandem with the survey process. Therefore, remedies cannot be applied in instances in which federal survey regulations prohibit citing contract violations. No change is necessary.

Comment: Concerning §19.2203, a commenter suggested that the reference to "immediate jeopardy to health and safety" should be changed to "immediate and serious threat."

Response: The department disagrees. The language tracks the federal regulations and no change is needed.

Comment: Concerning §19.2203, a commenter recommended that the subsection for application of remedies should contain wording that the facility can give input that will be considered prior to the recommendation/imposition of a remedy.

Response: The department agrees and has made an appropriate addition.

Comment: Concerning §19.2203, a commenter suggested that the requirement that a 90-day termination automatically require a directed plan of correction be deleted.

Response: The department disagrees. The department believes that the directed plan of correction is an important component of the remedies process and is appropriate when a 90-day termination is recommended based on cited deficiencies. No change is made except to cross reference §19.2204 relating to directed plan of correction for clarification.

Comment: Regarding §19.2203, a commenter suggested that the 23- day decertification track should be reserved for the most serious situations and the appointment of a temporary manager must be included as an option to the 23-day decertification.

Response: The department partially agrees. The rules already reflect that the 23-day termination proposal is used for serious findings that immediately jeopardize the health or safety of resident(s). The department agrees with TDHS that it is not necessary to include appointment of a temporary manager as a remedy option. No change is made.

Comment: Concerning §19.2204, a commenter suggested that the wording "may solicit information from the facility" should be changed to "must consider information and suggestion."

Response: The department disagrees. The current wording allows for the solicitation of information and an appeal process for facilities. No change is made.

Comment: Regarding §19.2204, a commenter recommended that a new definition for "state directed plans of correction" should be added to ensure that unrealistic, expensive plans will not be required.

Response: The department disagrees. The additional language is unnecessary as the current rules state that the directed plan addresses only the correction or action which applies to the specific deficiency(ies) out of compliance. No change is made.

Comment: Concerning §19.2205, a commenter felt the language which states "monetary penalties are assessed" should read "may be assessed."

Response: The department disagrees because §19.2203, Resident Related Contract Violations, clearly states that monetary penalties are an optional remedy. Section 19.2205 addresses how monetary penalties are to be applied when they are imposed.

Comment: Concerning §19.2205, a commenter felt that the monetary penalties are too high and punitive in nature and they should be reserved for only the most serious situation.

Response: The department disagrees. The proposed rules state that the remedies are for serious deficiencies or situations. The amounts of the monetary penalties were agreed upon by an

interagency/public advisory committee representing the providers, consumers, and state agencies and approved by the agencies' Boards.

Comment: Concerning §19.2205, a commenter asked what guidelines will the department use for determining monetary penalties.

Response: No change is necessary as the criteria for assessment of monetary penalties are covered in §19.2205.

Comment: Relating to §19.2205, a commenter suggested that the TDHS should be required to notify the owner of recommendations for remedies if his address is different from that of the facility.

Response: The department disagrees. It is the owner's responsibility to maintain communication with the facility regarding remedies and other certification recommendation/actions.

Comment: Concerning §19.2205, subsection (b)(2)(E), which doubles the monetary penalties when a facility erroneously reports that a contract violation has been corrected, a commenter suggested that this requirement should be deleted.

Response: The department disagrees. The proposed federal enforcement rules contain a provision for increased penalties in this situation. No change is made.

Comment: In §19.2005, a commenter suggested that "accountability periods" should be based solely on three annual standard surveys.

Response: The department disagrees. Any contract violation, whether found at an annual survey or otherwise, should begin an accountability period. No change is made.

Comment: Concerning §19.2206(b), a commenter suggested changing this provision to allow for an "informal hearing before a TDHS official who was not involved with the initial decision."

Response: The department disagrees. The initial decision to assess remedies is made by the department surveyor/investigator. The appeal process at TDHS is already before an official who was not involved in the initial decision. No change is made.

Comment: Concerning §19.2209(b), a commenter felt that the appeal provisions do not appear to apply to many of the remedies available to TDHS and the department.

Response: The department does not see a need for rewording. The federal proposed rules also do not allow appeals for every action. The state remedies rules track that concept. No change is made.

Comment: Concerning §19.2211, a commenter suggested changing the title of the section to "Scope" and deleting references to debarment, since these rules do not apply to nursing facilities.

Response: The department disagrees. This section relates to entities which are excluded from Medicaid contracts. The TDHS will retain the title of "Exclusions" and the reference to debarment since the proposed debarment rules do apply to Title XIX nursing facilities.

Commenters included individuals, as well as representatives of the Texas Association of Homes for the Aging and the Texas Health Care Association. All commenters were generally in favor of the rules; however, they made comments and offered specific suggestions for change.

The amendment is adopted under the Health and Safety Code, §222.0255, which provides the department and the Texas Department of Human Services with the authority to jointly develop one set of standards for nursing facilities that applies to licensure and to certification for participation in the medical assistance program under the Human Resources Code, Chapter 32, and to adopt by rule the standards and any amendments to them; and §12.001, which provides the Board with the authority to adopt rules for the performance of every duty imposed by law on the Board, the department, and the Commissioner of Health.

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

(a) The Texas Department of Health adopts by reference the Texas Department of Human Services rules 40 TAC §§19.1-19.2216, concerning Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification effective October 8, 1990, as amended: October 1, 1990, under federal mandate; September 1, 1991; March 17, 1992; April 1, 1992, under federal mandate; March 3, 1992 under federal mandate; April 1, 1992, and August 26, 1992, under federal mandates; and February 1, 1993.

(b) (No change.)

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

Issued in Austin, Texas, on December 16, 1992.

TRD-9216670

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

Effective date: February 1, 1993

Proposal publication date: August 11, 1992

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 330. Municipal Solid Waste

Subchapter Z. Waste Minimization and Recyclable Materials

- **31 TAC §§330.1200-330.1205**

The Texas Water Commission adopts new §§330.1200-330.1205. Section 330. 1200 and §330.1201 are adopted with changes to the proposed text as published in the October 6, 1992, issue of the *Texas Register* (17 TexReg 6886). Sections 330.1202-330.1205 are adopted without changes and will not be republished.

The Texas Water Commission is required to adopt rules governing the voluntary newsprint recycling program established under the Texas Health and Safety Code, §361.430. Under this program, Texas newspaper publishers will use increasing amounts of recycled newsprint in their publishing operations from the years 1993 through 2000. The Texas Health and Safety Code, §361.427 and §361.430, directs the Texas Water Commission to define recycled newsprint and to monitor the industry's compliance with the voluntary program. Section 361.430 also authorizes the commission to adopt mandatory enforcement measures if it determines that publishers are not meeting the goals of the voluntary program.

The new sections define for both newspaper publishers and newsprint manufacturers the standards by which the state will measure compliance with the voluntary newsprint recycling program as described in Chapter 361. Recycled newsprint is defined as that containing at least 25% postconsumer fiber, and an alternate method for achieving compliance with statutory goals is defined. The section's effect will be to allow publishers to meet the targets established under law, while giving them the flexibility to obtain newsprint containing recovered fiber from a variety of sources.

The agency received three written comments on the proposed rule during the comment period. One commenter commended the rules as published and made a commitment on behalf of the industry he represented to make the rules work. A second commenter declared the proposed rules to be consistent with "both the letter and the spirit of Senate Bill 1340." In particular, this commenter concurred with the rules' designation of "aggregatecontent" as an alternative way of measuring compliance with the legislative goals. He noted that this method gives publishers maximum flexibility in sourcing recycled-content newsprint and gives manufacturers an incentive to use whatever amount of recovered fiber they can accom-

modate, given available equipment. This second commenter also supported the inclusion of overprints in the definition of postconsumer recovered material, since these unsold papers are normally landfilled. Finally, this commenter applauded the flexibility allowed by the rules' labeling requirements, which permit manufacturers to base recycled-content claims on annual production.

The third commenter disagreed with the use of the 25% postconsumer-content standard for recycled newsprint. He noted that the United States Environmental Protection Agency has adopted a 40% standard, and that this standard has been endorsed by the Recycling Advisory Council, an Environmental Protection Agency (EPA)-funded citizen task force representing recyclers, regulators, and manufacturers charged with recommending product standards to EPA. The commenter also noted that states that have adopted minimum-content standards for recycled newsprint have used the 40% figure. This commenter thought the Texas standard should reflect this "national consensus," and that to deviate would undermine efforts to use content standards to challenge manufacturers to achieve greater utilization of recovered materials. This commenter recommended a change in the definition of "aggregate postconsumer recycled content" to clarify how the aggregate number is to be calculated. He also recommended changes in the definition of "postconsumer recovered material" to explicitly exclude papermaking waste and blank white news from the measurement of postconsumer content in newsprint. The commission agreed with both these changes and has incorporated them into the adopted rule.

In addition to the changes made pursuant to comments, the commission has deleted the phrase "on a monthly basis" from §330.1201(d)(1). This change was made to avoid giving the impression that manufacturers must give notice to publishers monthly, regardless of whether that publisher had ordered newsprint that month. Without this phrase, the subsection requires manufacturers to give notice of the average postconsumer recycled content of an order of newsprint whenever that order is delivered.

The following groups and associations submitted comments: The Texas Daily Newspaper Association; and Akin, Gump, Hauer and Feld, LLP, on behalf of Champion International Corporation.

The Texas Water Commission disagrees with the recommendation to change the content standard for recycled newsprint to 40%. At present, there are in effect no standards for recycled content for any products. The EPA has adopted standards for five products, including newsprint, but these standards apply only to purchases made by the federal government or by government contractors and grantees. Since the public sector is not a large purchaser of newsprint, the EPA newsprint standard is of limited applicability. The Recycling Advisory Committee's recommendations are likewise aimed solely at purchases by the government and its contractors. Though the EPA standard is the only one with national scope, its audience is too narrow to characterize the standard as "widely accepted" or as "the national consensus." Though California and Arizona have adopted the 40% standard in their state newsprint recycling programs, eight other states and the District of Columbia have opted not to use a minimum-content standard at all, but have relied instead upon the aggregate-content approach which the TWC rule uses as an alternative method of compliance. This trend toward aggregate-content standards results from states' recognition that paper mills need the flexibility to incorporate recycled fiber into the manufacturing process in ways that make economic and technological sense for them, and from the recognition that states should focus their efforts on the ultimate public-policy goal of diverting newspaper from the waste stream. Programs that use aggregate-content standards allow publishers to buy (and manufacturers, therefore, to produce) newsprint with varying amounts of recycled fiber, so long as the publishers achieve targets for overall or aggregate usage of recycled fiber. There is no magic to the 40% standard; some mills can produce a 100% recycled content newsprint. But those that cannot meet the 40% standard should not be discouraged from using recovered fiber at all. Texas has two newsprint mills, both owned by one company. This company has installed de-inking capacity at its Sheldon plant, which will allow the mill to generate newsprint containing 28% postconsumer fiber. In Texas, a 40% standard would place this product at a marketing disadvantage, since it could not be considered "recycled newsprint," despite the fact that the mill will be diverting from the state's landfills 175,000 tons per year of old newspaper and magazines.

The agency disagrees with the argument that a stringent standard is needed to induce manufacturers to invest in the retooling of plants to accommodate recovered materials. For the paper industry generally, and the newsprint industry in particular, that investment has already been made. Since 1990, an estimated $3 billion has been committed to paper manufacturing projects that will utilize waste paper. The Newspaper Association of America estimates that 36 mills will be producing recycled newsprint by the end of 1994.

In the agency's view, the state's waste-diversion goals would not be served by adopting a punitive minimum-content standard. The aggregate-content standards contained in the rule would result in greater waste diversion after 1993 than a 40% standard would have achieved. In exchange for flexibility in sourcing recycled-content paper, publishers are committing to using greater volumes of this paper. Diversion of waste should, therefore, be increased using this alternate method.

The new sections are adopted pursuant to the Texas Health and Safety Code, §361.427 and §361.430 (Vernon 1992), which provides the Texas Water Commission with the authority to define recycled products in terms of postconsumer content and to develop rules governing the newsprint recycling program. The rules are also proposed pursuant to the Texas Water Code, §5. 103 and §5.105 (Vernon 1992) which grants the Texas Water Commission general rulemaking authority.

§330.1200. Purpose and Definitions.

(a) Purpose. These sections set forth newsprint recycling requirements for newsprint manufacturers and newspaper publishers. The sections contain recordkeeping and reporting procedures with respect to the utilization of recycled-content newsprint in newspaper publishing operations. These sections are applicable to every newspaper printing and publishing operation in this state that publishes, sells, or distributes newspapers, as well as to those manufacturers and suppliers who provide newsprint for sale in Texas. These guidelines provide maximum flexibility to newspaper publishers in an effort to support the state's goals of encouraging newspaper publishers to purchase newsprint containing recycled postconsumer fiber, encouraging cooperation between and among local community organizations to establish and promote community newsprint collection efforts, and offering an incentive to private companies to build and operate de-inking and recycled newsprint mills in Texas. The overall purpose of these guidelines is to reduce the amount of old newsprint that must be disposed of in solid waste landfills.

(b) Definitions. The following words, terms, and abbreviations, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Aggregate postconsumer recycled content–Refers to the total amount of postconsumer recovered material by weight contained in total purchases of newsprint for a specified period. It is arrived at by multiplying the percentage of postconsumer recovered fiber in each shipment of newsprint purchased by the percentage of total newsprint purchases that shipment represents and summing the products thus calculated for all shipments received during the specified time period.

(2) Commission–The Texas Water Commission.

(3) De-inked fiber–A fiber which has undergone the de-inking process.

(4) De-inking process–A process by which most of the ink, filler, coating, and other extraneous (non-cellulose) material is removed from printed or unprinted paper.

(5) Metric ton–1,000 kilograms. To convert pounds to metric tons the number of pounds should be divided by 2,204.6.

(6) Newspaper–A publication that is printed on newsprint and published, sold, and distributed in the state, both daily and non-daily, to disseminate current news

and information of general interest to the public.

(7) Newspaper publisher–An individual or corporate group of newspaper publishers which uses newsprint in a newspaper publishing operation.

(8) Newsprint–Paper used for the printing of newspapers.

(9) Newsprint manufacturer–A business which makes newsprint.

(10) Overs–Also known as "overruns," are newspapers printed for sale to distributors or the public which remain unsold. Overs include inserts such as magazines and advertising supplements.

(11) Postconsumer recovered material–Includes paper, paperboard, and other fibrous products that have completed their normal cycle of production and use, but excludes all papermaking waste and blank white news, which is diverted for recycling prior to printing. Postconsumer recovered material may also include any deinked fiber, regardless of the source of such fiber except from sources specifically excluded previously. Overs are included within the definition of postconsumer recovered material.

(12) Postconsumer recycled content–That portion of manufactured newsprint that is comprised of postconsumer recovered material, usually expressed as a percentage of the total content.

(13) Recycled newsprint–Any newsprint certified by the manufacturer or supplier as containing at least 25% postconsumer recovered material, by fiber weight.

(14) Virgin newsprint–Newsprint which contains 100% new materials in its formation.

§330.1201. General Guidelines and Requirements.

(a) Target recycling percentages. In order to bring about a significant state-wide increase in newsprint recycling, newspaper publishers are encouraged to take whatever measures may be necessary to ensure that their publishing businesses meet or exceed the target recycling percentages set forth in paragraph (1) of this subsection. In the event a newspaper publisher chooses to purchase newsprint with less than 25% postconsumer recycled content, the commission will consider legislative intent to be achieved if that publisher meets or exceeds the alternative aggregate recycling content standards set forth in paragraph (2) of this subsection.

(1) Newspaper publishers should obtain and utilize newsprint such that the percentage of "recycled newsprint," as defined in §330.1200 of this title (relating to Purpose and Definitions), in the overall total amount of newsprint purchased each year, is at least:

(A) 10% by the end of calendar year 1993;

(B) 20% by the end of calendar year 1997; and

(C) 30% by the end of calendar year 2000.

(2) In the alternative, newspaper publishers may obtain and utilize newsprint such that the aggregate postconsumer recycled content, by fiber weight, in the overall total amount of newsprint purchased each year is at least:

(A) 2.5% by the end of calendar year 1993;

(B) 12% by the end of calendar year 1997; and

(C) 18% by the end of calendar year 2000.

(b) Certification. Newsprint manufacturers and suppliers shall certify the average percentage, based on annual production, of postconsumer recovered material contained in any newsprint sold and/or delivered to Texas newspaper publishers.

(c) Recordkeeping. Newsprint purchase and delivery records shall be maintained by all newspaper publishers. In addition, mill certification records showing the average percentage of postconsumer recovered material in purchased and/or utilized newsprint shall be kept by each publisher. Such records must contain sufficient information to enable the publisher to prepare those reports required under §330.1203 of this title (relating to Reports). An official Texas Daily Newspaper Association (TDNA) Newsprint Order Form may be used to maintain and verify required records. Newspaper publishers shall retain required records for three years.

(d) Notice of postconsumer content and labeling.

(1) Newsprint manufacturers or suppliers shall indicate, on invoices provided to newspaper publishers, suppliers, or commercial printers, or through another form of written notice to such consumers, the average postconsumer recycled content of each roll of newsprint which is the subject of such invoice or notice, and the amount of newsprint purchased from such newsprint manufacturer or supplier containing the minimum postconsumer recycled content required to meet the definition of "recycled newsprint" under §330.1200 of this title (relating to Purpose and Definitions).

(2) Newsprint which contains less than the minimum percentage of postconsumer recovered material required to qualify it as recycled newsprint may be identified as follows: "this product contains an average of ____% postconsumer recycled fiber, based on annual production," with the percentage indicated.

(e) Comparable price, quality, and availability. Texas newspaper publishers are urged to voluntarily increase utilization of "recycled newsprint" or other newsprint that has been certified as containing postconsumer recovered material, beyond the target recycling percentages set forth in subsection (a) of this section, in those instances where:

(1) availability of such products exist;

(2) the net cost of utilizing such products is comparable to that of utilizing virgin newsprint; and

(3) the quality of such products (considering such factors as brightness, opacity, and cross machine tear strength) is similar to that of virgin newsprint.

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

Issued in Austin, Texas, on December 9, 1992.

TRD-9216441 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Effective date: December 30, 1992

Proposal publication date: October 6, 1992

For further information, please call: (512) 908-2045

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TITLE 34. PUBLIC FINANCE

Part III. Teacher Retirement System of Texas

Chapter 49. Collection of Debts

• **34 TAC §§49.1-49.7**

The Teacher Retirement System of Texas (TRS) adopts new §§49.1-49.7, concerning the collection of debts owed to the Teacher Retirement System of Texas, without changes to the proposed text as published in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7855).

These rules are being adopted in order to comply with the requirements set forth in Senate Bill 3, First Called Session, 72nd Legislature, requiring rules and procedures to be adopted. These rules were initially promulgated on an emergency basis, effective September 1, 1992.

The sections are intended to provide general procedures for the collection of delinquent accounts owed to the retirement system, to assist in the development of in-house collection strategies, and for the referral of collection of collection matters to the Office of the Attorney General.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, §825.102, which authorizes the Board of Trustees of the retirement system to adopt rules for the administration of the funds of the retirement system and for the transaction of business of the board.

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

Issued in Austin, Texas, on December 14, 1992.

TRD-9216619 Wayne Blevins
Executive Secretary
Teacher Retirement System of Texas

Effective date: January 4, 1993

Proposal publication date: November 10, 1992

For further information, please call: (512) 370-0524

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part XIII. Texas Commission on Fire Protection

Chapter 427. Training Facilities

Subchapter B. Minimum Standards for Aircraft Fire Protection Personnel Training Facilities

- 37 TAC §427.215

The Texas Commission on Fire Protection adopts an amendment to §427.215, concerning aircraft crash and rescue training facilities, without changes to the proposed text as published in the September 11, 1992, issue of the *Texas Register* (17 TexReg 6270).

The amendment corrects the cross reference in the section to the minimum standards for intermediate fire protection instructor certification. The correction provides the correct cross reference to the minimum standards for intermediate fire protection instructor certification.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and the Texas Government Code, §419.028(b)(1), which provides the commission with authority to approve or revoke the approval of an institution or facility for a school operated by or for this state or a local government specifically for training fire protection personnel or recruits.

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

Issued in Austin, Texas, on December 14, 1992.

TRD-9216637 Jack Woods
General Counsel
Texas Commission on Fire Protection

Effective date: January 5, 1993

Proposal publication date: September 11, 1992

For further information, please call: (512) 873-1700

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 19. Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter U. State and Local Requirements

The Texas Department of Human Services (DHS) adopts the repeal of §19. 2012 and adopts new §§19.2201-19.2209 and §§19.2211-19.2216. New §§19.2202, 19.2203, 19.2205, and 19.2207-19.2209 are adopted with changes to the proposed text as published in the August 4, 1992, issue of the *Texas Register* (17 TexReg 5436). The repeal of §19.2012 and new §§19.2201, 19.2204, 19.2206, and 19.2211-19.2216 are adopted without changes and will not be republished.

The justification for the repeal and new sections is to establish a new system of remedies against nursing facilities found by the Texas Department of Health to be out of compliance with the Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification. The repeal and new sections result from an amendment to the Human Resources Code, §32.021, by House Bill 7, 72nd Texas Legislature, 1991, which authorizes DHS to assess and collect remedies.

The repeal and new sections will function by improving the quality of care in nursing facilities.

During the public comment period, DHS received comments from the Texas Association of Homes for the Aging (TAHA), Texas Department of Health (TDH), and the Texas Health Care Association (THCA). A summary of the comments and DHS's responses follow.

The following five comments were received from TAHA.

COMMENT 1-Preamble to the proposed rules-The commenter objects to the separation of licensure and certification remedies on the grounds that this would interfere with the coordination of remedies.

RESPONSE-DHS's position is that coordination of the remedies is not prohibited by the current organization of the rules.

COMMENT 2-§19.2202, Definitions ("Severity")-The commenter objects to the inclusion in this definition of "actual harm," referencing the ability of the resident "to achieve the highest practicable physical, mental, and psychosocial well-being." The commenter also noted that under subparagraph (D) of the definition of "severity" there is no definition for "actual life-threatening harm or resident death."

RESPONSE-This definition is taken directly from federal language and is already required by §19.1701(a). The definition for "actual life-threatening harm or resident death" has been added.

COMMENT 3-§19.2203, Resident-Related Contract Violations-The commenter stated that this section does not define "health and safety hazards," which might allow the survey agency to use this term all-inclusively.

RESPONSE-TDH's quality assurance program for surveyors addresses this potential.

COMMENT 4-§19.2205, Monetary Penalties-The commenter objects to the following statement in this section: "monetary penalties are assessed" rather than "may be assessed."

RESPONSE-Section 19.2203, Resident-Related Contract Violations, clearly states that monetary penalties are an optional remedy. Section 19.2205 stipulates how monetary penalties are to be applied when they are imposed.

COMMENT 5-§19.2214, Licensing Requirements-The commenter is opposed to the section on the basis that it rules out coordination between DHS and TDH regarding imposition of remedies.

RESPONSE-DHS's position is that this section does not prevent coordination between the two agencies.

The following 32 comments were received from THCA:

COMMENT 1-The commenter requested inclusion in the rules of a reference to Health Care Financing Administration's (HCFA's) prescribed survey methods, procedures, and forms for all surveys and complaint investigations.

RESPONSE-DHS has added language to the definition of "survey" in §19.2202 to require the use of HCFA forms and procedures.

COMMENT 2-The commenter states that the monetary penalties are too high and punitive in nature, and they should be reserved for only the most serious situations.

RESPONSE-The amounts of the monetary penalties were agreed upon by the Sanctions and Penalties Advisory Committee (SPAC), and it was the intention of the committee that these penalties are to be reserved for the most serious situations. DHS's believes no changes to the rule language are necessary.

COMMENT 3-The commenter requests addition of a definition for "state-directed plans of correction" to ensure that unrealistic, expensive plans will not be required.

RESPONSE-DHS believes that adding this definition is unnecessary. Directed plans of correction will require only the action necessary to bring facilities into compliance with the requirements.

COMMENT 4-The commenter objects to the use of percentages in the definition of "scope."

RESPONSE-SPAC considered this issue and approved the current definition; therefore, DHS is adopting the definition as proposed.

COMMENT 5-The commenter states that the rules conflict with federal regulations that surveyors cite only current contract violations and not past contract violations which have been corrected by the time of the survey.

RESPONSE-DHS's position is that the remedies rules operate in tandem with the survey process. Therefore, remedies cannot be applied when federal survey regulations prohibit citing contract violations. No change is necessary.

COMMENT 6-The commenter states that the rules provide a bifurcated system of penalties, while the law stipulates a "single set of standards."

RESPONSE-The Health and Safety Code requires TDH and DHS to establish joint procedures and jointly develop one set of standards in compliance with federal regulations for Title XIX nursing homes. The proposed rules were developed pursuant to House Bill 7 and apply only to Title XIX nursing homes. Licensure rules are a separate issue and are established under a separate statutory authority.

COMMENT 7-The commenter requests that DHS change "immediate jeopardy to health and safety" to "immediate and serious threat."

RESPONSE-"Immediate jeopardy to health and safety" is federal language; therefore, DHS is adopting the language as proposed.

COMMENT 8-The commenter requests a change to the definition of "severity" to clarify that the second part of the definition specifies how to measure the negative outcome.

RESPONSE-The language as proposed tracks the language in the proposed federal rules on remedies. DHS believes that it is appropriate to adopt the federal language.

COMMENT 9-The commenter requests a change to the definition of "severity" to indicate that a resident-rights violation would be considered serious before TDH imposes a remedy.

RESPONSE-DHS believes that §19.2203, Resident-Related Contract Violations, and §19.2205, Monetary Penalties, already make this clear.

COMMENT 10-The commenter requests a change to the definition of "survey" to reflect a recent administrative law judge's ruling that a complaint investigation cannot be called a survey.

RESPONSE-The purpose of the definitions section is to define terms as they are used in these rules. The term "survey," in these rules, includes any action which could result in the citing of deficiencies leading to contract violations and resultant remedies.

COMMENT 11-The commenter disagrees with the language in §19.2203, Resident-Related Contract Violations, which states that these remedies do not preclude the application of other lawful actions, particularly licensing actions.

RESPONSE-Licensing and certification remedies are two separate systems established by separate statutory authority and, as such, can operate concurrently.

COMMENT 12-The commenter requests addition of the following language to §19.2203(b): "The facility can give input that will be considered prior to the recommendation/imposition of a remedy."

RESPONSE-DHS agrees and has added language that allows the facility to provide input prior to the recommendation or imposition of remedies.

COMMENT 13-The commenter requests deletion of the requirement that a 90-day termination automatically requires a directed plan of correction.

RESPONSE-DHS believes that the directed plan of correction is an important component of the remedies process. The proposed federal rules also contain a requirement for a mandatory plan of correction.

COMMENT 14-The commenter requests addition of the federal definition for "standard survey."

RESPONSE-There is no succinct federal definition of "standard survey."

COMMENT 15-The commenter requests a change to §19.2204(b) from "may solicit information" to "must consider information and suggestions."

RESPONSE-DHS cannot mandate that TDH consider information.

COMMENT 16-The commenter asks what guidelines TDH will use for determining monetary penalties.

RESPONSE-This issue is fully addressed in §19.2205, Monetary Penalties.

COMMENT 17-The commenter requests that DHS require in §19.2205(1)(A)(i) that the owner be notified of recommendations for remedies if his address is different from that of the facility.

RESPONSE-DHS believes that it is the owner's responsibility to maintain communication with the facility. DHS is adopting the paragraph as proposed.

COMMENT 18-The commenter requests that DHS delete §19.2205(2)(E) which doubles monetary penalties when a facility erroneously reports that a contract violation has been corrected.

RESPONSE-There is a similar provision in the proposed federal rules for increased penalties in this situation; therefore, DHS is adopting the language as proposed.

COMMENT 19-The commenter requests that in §19.2206(b) DHS make a change to allow for an "informal hearing before a DHS official who was not involved with the initial decision."

RESPONSE: DHS believes that this change is unnecessary. The original finding of noncompliance would have to be made by TDH. Therefore, a hearing by DHS would always be before an official who was not involved in the initial decision.

COMMENT 20-The commenter requests addition of the following to the end of §19.2208(a)(2): "Accountability period will be based solely on three annual standard certification surveys."

RESPONSE-DHS believes that any contract violation, whether found as part of the annual survey, or otherwise, must begin an accountability period.

COMMENT 21-The commenter requests deletion from §19.2208(c) the phrase: "after the 30-day period."

RESPONSE-This language was deleted previously.

COMMENT 22-The commenter states that in §19.2209(b), the appeals provisions do not appear to apply to many of the remedies available to DHS and TDH.

RESPONSE-It is true that not all of the remedies have an avenue for appeal. The proposed federal rules also do not allow appeals of every action.

COMMENT 23-The commenter requests addition of clarifying language to §19. 2209.

RESPONSE-Additional clarification is unnecessary.

COMMENT 24-The commenter requested DHS to retitle §19.2211 "Scope" and delete references to debarment, since these rules do not apply to nursing facilities.

RESPONSE-DHS has retained the title "Exclusions" because this section is in reference to entities which are excluded from Medicaid contracts. The reference to debarment also is retained. DHS's proposed debarment rules do apply to nursing facilities.

COMMENT 25-The commenter suggests alternative language in §19.2209(a)(2) (A)(ii).

RESPONSE-DHS believes that the language as proposed is clear and is therefore adopting the clause without changes.

COMMENT 26-The commenter recommends deletion of "res judicata or" in §19. 2209(a)(2)(B).

RESPONSE-DHS has instead deleted "conclusive."

COMMENT 27-The commenter states that §19.2216, Transition Period, is an attempt to make the rules retroactive.

RESPONSE-There will be no retroactive application of the new rules. This section merely holds nursing facilities accountable for past violations, according to the rules in effect at the time of the violations. The purpose of this section is to prevent a nursing facility with a history of serious violations from having that history erased.

COMMENT 28-The commenter states that DHS's remedies rules must be consistent with HCFA's proposed enforcement rules.

RESPONSE-DHS's intention is that Texas' remedies rules will be consistent with the final federal rules.

COMMENT 29-The commenter states that the definition of "deficiency" is too broad.

RESPONSE-What constitutes a deficiency is a survey issue. DHS does not address the survey process.

COMMENT 30-The commenter states that the rules do not adequately convey the concept of scope.

RESPONSE-The definition of scope was agreed upon by SPAC; therefore, DHS believes that no changes are necessary.

COMMENT 31-The commenter states that the 23-day decertification track should be reserved for the most serious situations.

RESPONSE-DHS agrees, and §19.2203(b)(1)(A) as proposed reflects this.

COMMENT 32-The commenter states that the appointment of a temporary manager must be included as an option to the 23-day decertification.

RESPONSE-Appointment of a temporary manager is an option under the OBRA law. DHS has chosen not to offer that option.

The following 11 comments were received from TDH:

COMMENT 1-§19.2202, Definitions ("Accountability period")-The commenter requests clarification of the definition.

RESPONSE: DHS has clarified the definition by dropping the word "two" since more than two accountability periods could overlap.

COMMENT 2-§19.2202, Definitions ("Plan of correction")-The commenter suggests adding firing to the list of options.

RESPONSE: The list is not intended to be inclusive; therefore, DHS is adopting the definition as proposed.

COMMENT 3-§19.2202, Definitions ("Scope")-The commenter states that it is unclear whether the 20% of residents surveyed includes residents referenced in deficiencies written from observations made on the orientation tour, sample residents only, or residents surveyed on an extended or partially extended survey. The commenter suggests using the word "observed" instead of "surveyed" to describe the residents and suggests adding "including observations during the orientation tour, any extended, partially extended, or investigation of any complaint."

RESPONSE-DHS has changed the definition to read "the percentage of residents included in the survey" rather than "the percentage of residents surveyed." DHS is not adding the recommended language concerning observations because only deficiencies resulting from surveys which conform to the HCFA survey methods are addressed in these rules.

COMMENT 4-§19.2202, Definitions ("Survey")-The commenter suggests adding to the definition: incident investigation, follow-up visits, quality assurance visits, off-hour visits, and monitoring visits.

RESPONSE: The framework of these rules is based upon the HCFA survey method. Only surveys which are a part of the HCFA procedure are included under the definition of survey.

COMMENT 5-§19.2203(a), Remedy Options-The commenter requests additional language specifying other actions not precluded by these rules.

RESPONSE-DHS believes that the additional language is not needed.

COMMENT 6-§19.2203(b), Application of Remedies-The commenter expresses concern that the requirement that the facility be notified of recommendation for remedies at the on-site exit conference would limit TDH's options for imposing additional remedies at a later date.

RESPONSE: The rule requires that remedies be recommended at the exit conference. Imposition of the remedies must be within 10 days of the exit conference. The "recommendation" is not the final word, but rather the surveyor's best estimate of what will occur. The "imposition" is final and allows 10 days for the regional or central office review teams to consider the results and implications of the survey.

COMMENT 7-§19.2203(b)(1)(A), Immediate Jeopardy to Health and Safety-The commenter recommends substituting "justifiable" for "necessary."

RESPONSE: DHS believes that "necessary" is a more appropriate choice in this instance.

COMMENT 8-§19.2203(b)(1)(C), Violations Not Limiting the Rendering of Adequate Care-The commenter expresses concern that for violations falling into this category, aside from a state-directed plan of correction, there is nothing that can be done to enforce the requirement.

RESPONSE-DHS is adopting this section with a change to comply with the Omnibus Budget Reconciliation Act (OBRA) which requires the denial of payment for new Medicaid admissions whenever a facility fails to correct contract violations within three months of the date of the citation.

COMMENT 9-§19.2205, Monetary Penalties-The commenter expresses concern that no penalty exists if the facility does not pay.

RESPONSE-DHS believes that avenues already exist for addressing this eventuality.

COMMENT 10-§19.2206, Denial of Payment for New Medicaid Admissions-The commenter takes issue with the process for denial of payment for new Medicaid admissions.

RESPONSE-The language in this section is taken directly from federal regulations. DHS believes it is necessary to retain the language as proposed.

COMMENT 11-The commenter expresses a general concern that, because HCFA prohibits citing facilities for deficiencies which occurred but were fully corrected prior to a survey, no remedies are available to address such circumstances.

RESPONSE-These rules are based on the OBRA law which correlates with the survey process. Only violations which can be cited during a survey will be addressed by these rules.

In addition to changes resulting from comments received during the comment period, DHS is making the following editorial changes for clarity:

In §19.2203(b)(1)(B), DHS is adding a reference to §19.2204.

In §19.2205, DHS has clarified the language found in the introductory paragraph, reformatted paragraph (2)(D), incorporated subparagraph (E) into paragraph (2), and changed subparagraph (F) to (E).

In §19.2207(3), DHS has changed the term "provider agreement" to "contract" for consistency.

In §19.2208, DHS has deleted from subsection (b) the phrase "or fails to renew" and has made a technical change to subsection (c)(1) because of a new HCFA ruling that prohibits time-limited agreements. In subsection (b)(1), DHS has added the phrase "to community care" at the request of the SPAC to specifically identify community care as an alternative when residents are moved out of a nursing facility which loses its Medicaid contract.

In §19.2209(a)(1), DHS has added "excluding interest" in reference to the amount of the monetary penalty assessed against a nursing facility. In paragraph (2)(A), DHS has made an editorial change moving "unless" to the end of the subparagraph for clarity.

• 40 TAC §19.2012

The repeal is adopted under the Human Resources Code, Title 2, Chapter 32. 021(d)-(g) and 32.024(a), which provides the department with the authority to levy and collect remedies from nursing facilities that fail to meet Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification, as cited by surveyors for the Texas Department of Health.

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

Issued in Austin, Texas, on December 15, 1992.

TRD-9216659 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Effective date: February 1, 1993

Proposal publication date: August 4, 1992

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

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Subchapter W. Remedies for Violations of Title XIX Nursing Facility Provider Agreements

• 40 TAC §§19.2201-19.2209, 19.2211-19.2216

The new sections are adopted under the Human Resources Code, Title 2, Chapter 32.021(d)-(g) and 32.024(a), which provides the department with the authority to levy and collect remedies from nursing facilities that fail to meet Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification, as cited by surveyors for the Texas Department of Health.

§19.2202. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Accountability period–A 24-month period which begins each time a facility is cited for a resident-related contract violation. Accountability periods may overlap.

Compliance letter–Written notification to the facility by the state survey agency of a resident-related contract violation, which, if not corrected within a stated time frame, will result in the imposition of a more stringent remedy.

Contract violation–The failure of a Medicaid-contracted nursing facility to comply with any of the terms of the Medicaid provider agreement. These failures may include resident-related deficiencies, nonresident-related deficiencies, and administrative violations of other applicable agency rules or contractual provisions. All contract violations cited during a single survey are considered in the aggregate for purposes of proposing remedies under this subchapter.

Deficiency–Noncompliance with a regulatory requirement for participation. A deficiency may be cited if there are situations identified during the course of a survey of sufficient severity and/or frequency that indicate an individual requirement is not met.

Immediate jeopardy to health and safety–A situation in which there is a high probability that serious harm or injury to residents could occur at any time or already has occurred and may well occur again if residents are not protected effectively from the harm or if the threat is not removed.

New Medicaid admission–The admission of a Medicaid-eligible individual who has never been previously admitted to the facility or who, if previously admitted, was discharged or voluntarily left the facility. New admissions do not include individuals who:

(A) lived in the facility before the effective date of denial of payment for new admissions, even if the individuals become eligible for Medicaid after that date;

(B) are readmitted to beds reserved for them, after a temporary absence from the facility for a therapeutic visit as described in §19.1703 of this title (relating to Therapeutic Home Visits Away from the Facility); or

(C) are readmitted to the same facility after a hospital stay.

On-Site Monitoring–Regular observation, as needed, of a facility by the state survey agency until the facility has demonstrated that it is in compliance with the requirements for participation and that it will remain in compliance.

Plan of correction–A written strategy for correcting a contract violation. A plan of correction may be developed by the facility and, in certain situations, directed by the state survey agency. Directed plans of correction may include, but are not limited to, requiring the facility to hire nursing, dietary, pharmacy, or management consultants; to hire additional staff; and to make structural repairs or renovations. The preceding examples are listed without regard to priority.

Requirements for participation–The single set of standards that are adopted by the Texas Department of Human Services (DHS) and that govern participation in the Medicaid nursing facility program.

Scope–The percentage of the residents included in the survey who are affected by a facility's deficiencies cited in a single survey. The state survey agency determines the scope of a facility's deficiencies when recommending monetary penalties. Scope may vary as follows:

(A) "An isolated or occasional occurrence" affects up to and including 20% of the residents surveyed.

(B) "A pattern of occurrence," or "a widespread, pervasive occurrence" affects more than 20% of the residents surveyed.

Severity–The level of seriousness of the sum of deficiencies in a facility, considering the actual and/or potential resident harm that did or could occur in that facility. The state survey agency determines the level of severity of a facility's deficiencies when recommending monetary penalties. The levels of severity are:

(A) "No harm or likely potential for harm." No negative resident outcome or resident rights violation has occurred or is likely to occur, nor has the ability of the individual to achieve the highest practicable physical, mental, or psychosocial well-being been compromised or is likely to be compromised.

(B) "A potential for harm." If the deficiencies continue over time, a negative outcome or a resident rights violation would likely occur, and/or the ability of the individual to achieve the highest practicable physical, mental, or psychosocial well-being would, or would likely, be compromised.

(C) "Actual harm." A negative outcome or resident rights violation has occurred, and/or the ability of the individual to achieve the highest practicable physical, mental, or psychosocial well-being is, or has been, compromised.

(D) "Actual life-threatening harm or resident death." Life-threatening harm, severe impairment, or death has occurred.

Survey–All surveys, including standard, extended, partially extended, or those which result from a complaint. Survey performance is inadequate if the state survey agency fails to use federal standards and protocols and the forms, methods, and procedures specified by the Health Care Financing Administration (HCFA) in its State Operations Manual. Inadequate survey performance does not relieve a facility of its obligations to meet all the requirements for participation, nor does it invalidate adequately documented deficiencies.

Vendor hold–A remedy consisting of withholding vendor payment. Vendor hold is used for administrative contract violations such as trust fund violations, delayed cost reports, or late occupancy reports.

§19.2203. Resident-Related Contract Violations.

(a) Remedy options. The remedies described in this section do not preclude the application of other lawful actions, such as the licensing agency actions under Chapter 242 of the Texas Health and Safety Code.

Possible remedies for resident-related contract violations, listed without regard to priority, are as follows.

(1) State survey agency remedy options:

(A) facility-developed plan of correction as specified in subsection (b)(1)(C) of this section;

(B) compliance letter as specified in subsection (b)(1)(C) of this section;

(C) directed plan of correction as specified in §19.2204 of this title (relating to Directed Plan of Correction);

(D) on-site monitoring as specified in subsection (b)(1)(A) and (b)(1)(B) of this section;

(E) proposal to terminate certification for Medicaid participation as specified in subsection (b)(1)(A) and (b)(1)(B) of this section;

(F) termination of certification for Medicaid participation as specified in 25 Texas Administrative Code §§145.141-145.147.

(2) DHS remedy options:

(A) monetary penalties as specified in §19.2205 of this title (relating to Monetary Penalties);

(B) denial of payment for new Medicaid admissions as specified in §19. 2206 of this title (relating to Denial of Payment for New Medicaid Admissions);

(C) contract cancellation as specified in §19.2208 of this title (relating to Contract Cancellation for Resident-Related Contract Violations).

(b) Application of remedies. The state survey agency must notify the facility of recommendations for remedies during the on-site exit conference. The facility may give input that will be considered prior to the recommendation or imposition of remedies. Facilities will be notified by the state survey agency of the imposition of remedies within 10 days of the on-site exit conference. The state survey agency must observe the following guidelines to ensure standard and consistent recommendations for remedies.

(1) Facilities cited for resident-related contract violation. Each time a facility is cited for a resident-related contract violation, as described in subparagraphs (A) and (B) of this paragraph, an accountability period begins on the date the facility is cited.

(A) Immediate jeopardy to health and safety. When the surveyors determine that a facility's contract violation immediately jeopardizes the health or safety of its residents, the state survey agency takes immediate action to remove the jeopardy and correct the contract violation through a proposal to terminate the facility's Medicaid certification in 23 days. If a facility notifies the state survey agency that the threat has been corrected, the state survey agency makes an on-site verification. The facility's certification is terminated and the Medicaid contract expires on the 23rd day unless the state survey agency has conducted an on-site verification and confirmed that the jeopardy has been removed. Additionally, one or more of the remedies described in clauses (i)-(iii) of this subparagraph may also be applied if, in the judgment of the state survey agency, it is necessary to cause the facility to achieve and maintain compliance and/or to protect the health and safety of the residents:

(i) on-site monitoring to ensure continued compliance;

(ii) denial of payment by the Texas Department of Human Services (DHS) for all new Medicaid admissions;

(iii) monetary penalties as specified in §19.2205 of this title (relating to Monetary Penalties).

(B) No immediate jeopardy to health and safety. If the surveyors determine that a facility's contract violation does not immediately jeopardize the health or safety of its residents, but does, or did, pose a health and/or safety hazard, or limits, or limited, the facility's capacity to render adequate care, the state survey agency proposes to terminate the facility's Medicaid certification within 90 days from the date of the on-site exit conference. In addition, the state survey agency imposes a directed plan of correction, as specified in §19.2204 of this title (relating to Directed Plan of Correction), which addresses the facility's specific circumstances. The facility is responsible for paying all costs incurred to correct the deficiencies.

(i) Additionally, one or more of the remedies described in subparagraph (A) of this paragraph may also be applied if, in the judgment of the state survey agency, it is necessary to cause the facility to achieve and maintain compliance and/or to protect the health and safety of the residents.

(ii) If a facility has not corrected the contract violation within 90 days from the date of the exit conference, the facility's Medicaid certification is terminated.

(iii) If a facility has not corrected the contract violation within three months of the on-site exit conference, DHS denies payment for all new Medicaid admissions, as described in §19.2206 of this title (relating to Denial of Payment for New Medicaid Admissions).

(C) Violations not limiting rendering of adequate care. Violations which do not limit the facility's capacity to render adequate care result in a facility-developed plan of correction and/or a compliance letter. If a contract violation is not corrected within three months of the date of the citation, denial of payment for new Medicaid admissions and the additional remedy described in subsection (a)(1)(C) of this section are applied. Contract violations described in this subparagraph are not considered for purposes of contract cancellation as described in §19.2208 of this title (relating to Contract Cancellation for Resident-Related Contract Violations) or for monetary penalties as described in §19.2205 of this title (relating to Monetary Penalties).

(2) Second contract violation. The second time, within an accountability period, the state survey agency notifies DHS in writing of a resident-related contract violation and recommends or imposes remedies:

(A) for a contract violation as described in paragraph (1)(A) of this subsection, the same remedies apply, except for the monetary penalties which are increased as specified in §19.2205(1)(B) of this title (relating to Monetary Penalties);

(B) for a contract violation as described in paragraph (1)(B) of this subsection, the same remedies apply, except for the monetary penalties which are increased as specified in §19.2205(1)(B) of this title (related to Monetary Penalties).

(3) Third contract violation. The third time, within an accountability period, the state survey agency notifies DHS in writing of a resident-related contract violation, as described in paragraph (1)(A) or (B) of this subsection, and recommends or imposes remedies, the following occur:

(A) DHS terminates the Medicaid contract;

(B) if the recommended or imposed remedies are the result of three standard surveys, until the Medicaid termination is effective, DHS:

(i) denies payment for new Medicaid admissions; and

(ii) requires on-site monitoring of the facility.

(4) Remedies overturned on appeal. Remedy recommendations which have been overturned on an appeal to the appropriate state agency or a court of law are not considered for purposes of contract cancellation as described in §19. 2208(a)(2) of this title (relating to Contract Cancellation for Resident-Related Contract Violations) or for monetary penalties as described in §19.2205 of this title (relating to Monetary Penalties).

(5) Facility limitations on recipient charges. A facility must not charge Medicaid recipients, their families, or their responsible parties to recoup any vendor payments not received because of the imposition of remedies against the facility. The facility may collect only the applied income established in the resident's payment plan.

§19.2205. Monetary Penalties. Each time a facility is cited for resident-related contract violations, as specified in §19.2203(b)(1) of this title (relating to Resident-Related Contract Violations), an accountability period begins on the date the facility is cited. Monetary penalties may be imposed whether or not the facility has a plan of correction acceptable to the state survey agency.

(1) Application of monetary penalties.

(A) The first time a facility is cited for a resident-related contract violation, an accountability period begins, and monetary penalties are assessed as follows, based upon the recommendation of the state survey agency:

(i) Immediate jeopardy to health and safety. If the violation immediately jeopardizes the health or safety of its residents, the Texas Department of Human Services (DHS) notifies the facility in writing of the following monetary penalties.

(I) A severity of "actual life-threatening harm or resident death," in combination with any level of scope, results in monetary penalties of $10 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency.

(II) A severity of "actual harm":

(-a-) with a scope of more than 20% results in monetary penalties of $7. 50 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency;

(-b-) with a scope of up to and including 20% results in monetary penalties of $5.00 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency.

(III) A severity of "a potential for harm" with a scope of more than 20% results in monetary penalties of $5.00 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency.

(ii) No immediate jeopardy to health and safety. If the violation does not immediately jeopardize the health or safety of the facility's residents, but does or did pose a health and/or safety hazard, or limits or limited the facility's capacity to render adequate care, DHS notifies the facility in writing of the following monetary penalties.

(I) A severity of "actual harm":

(-a-) with a scope of more than 20% results in monetary penalties of $5. 00 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency;

(-b-) with a scope of up to and including 20% results in monetary penalties of $2.50 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency.

(II) A severity of "potential for harm" with a scope of more than 20% results in monetary penalties of $2.50 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency.

(iii) If a resident-related contract violation constitutes the second violation within an existing accountability period, monetary penalties are assessed according to subparagraph (B) of this paragraph.

(B) The second time a facility is cited for a resident-related contract violation within an accountability period, penalties are assessed as follows, upon recommendation of the state survey agency:

(i) Immediate jeopardy to health and safety. If the violation immediately jeopardizes the health or safety of its residents, DHS notifies the facility in writing of the following monetary penalties:

(I) A severity of "actual life threatening harm or resident death" in combination with any level of scope results in monetary penalties of $20 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency.

(II) A severity of "actual harm":

(-a-) with a scope of more than 20% results in monetary penalties of $15 per day per certified Medicaid bed, for every day thefacility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency.

(-b-) with a scope of up to and including 20% results in monetary penalties of $10 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency.

(III) A severity of "a potential for harm" with a scope of more than 20% results in monetary penalties of $10 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency.

(ii) No immediate jeopardy to health and safety. If the violation does not immediately jeopardize the health or safety of its residents, but does or did pose a health and/or safety hazard, and/or it limits or limited the facility's capacity to render adequate care, DHS notifies the facility in writing of the following monetary penalties:

(I) A severity of "actual harm":

(-a-) with a scope of more than 20% results in monetary penalties of $10 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days be-

ginning with the date of the on-site visit exit conference by the state survey agency;

(-b-) with a scope of up to and including 20% results in monetary penalties of $5.00 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency.

(III) A severity of "potential for harm," with a scope of more than 20% results in monetary penalties of $5.00 per day per certified Medicaid bed, for every day the facility is out of compliance, for a minimum of 15 days beginning with the date of the on-site visit exit conference by the state survey agency.

(2) Duration and payment of monetary penalties.

(A) Unless the penalties are appealed, payment of assessed monetary penalties must be received in full by DHS within 20 days of receipt of a certified letter from DHS to the facility stipulating the amount of monetary penalties.

(B) Unless the facility appeals as specified in §19.2209 of this title (relating to Appeals Process for Resident-Related Contract Violations), interest on the monetary penalties accrues from the 21st day of receipt of the certified letter until paid, and at the rate of interest in effect during the interest period for judgments of the courts of Texas, as provided in Texas Civil Statutes, Article 5069-1.05, §2.

(C) Monetary penalties cease the same date as decertification or contract cancellation.

(D) Unless the facility is decertified or its contract is canceled, monetary penalties continue for a minimum of 15 days or until the survey agency is assured that the contract violation is corrected, whichever is later. The state survey agency may be notified in writing by the facility that the contract violation was corrected. The state survey agency staff must find on a subsequent visit that the contract violation was in fact corrected.

(i) Monetary penalties as described in this section will cease on the 16th day or the date of notification to the state survey agency, whichever is later, if:

(I) the state surveyors are unable to revisit the facility within five days after the date that the facility provided notification that the contract violation was corrected; and

(II) the contract violation is later shown to be corrected based upon observation by the state survey agency and/or written documentation by the facility.

(ii) If, on a subsequent visit, the state survey agency determines that the contract violation was in fact not corrected, the state survey agency notifies DHS, and DHS will double the most recent assessment of monetary penalties, effective the date the contract violation was erroneously reported corrected, and DHS will continue the assessment until the contract violation is corrected.

(E) DHS applies all funds collected, as a result of monetary penalties, to the protection of the health and property of residents of nursing facilities that DHS or the Health Care Financing Administration (HCFA) finds deficient. Funds may be used for the cost of relocating residents to other facilities, for maintenance or operation of a facility pending correction of a contract violation or closure, and for reimbursement of residents for lost personal funds.

§19.2207. Administrative Contract Violations. If a facility has been cited in writing by the Texas Department of Human Services (DHS) for failure to meet nonresident-related requirements, other applicable agency rules, or contractual provisions, DHS takes the following action.

(1) DHS grants the facility a compliance period of no more than 30 days to correct a contract violation. At the end of the compliance period, if DHS determines that a contract violation is not corrected, but determines that the facility has made substantial progress toward correcting the contract violation, DHS may grant an additional one-time extension period of up to 15 days.

(2) If the contract violation is not corrected within the compliance period, DHS imposes vendor hold on state Medicaid payments to the facility.

(3) If a contract violation is not corrected within 60 days from the date the facility is placed on vendor hold, DHS cancels the facility's contract on the 61st day. A facility may request an informal reconsideration and/or an appeal hearing. A request for an informal reconsideration must be submitted in writing to Provider Services, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030. Regulations governing these appeals are specified in §79.1605(a) of this title (relating to Request for a Hearing). If the facility appeals the contract cancellation by DHS and the adverse action is sustained by an administrative law judge or judicial proceeding, the effective date of the contract cancellation is the date the administrative law judge's decision becomes final. Unless otherwise provided for in this section, DHS makes no payment for services provided by the facility after the effective date of the facility's contract cancellation. DHS may continue payments for no more than 30 days from the date DHS cancels or fails to renew a facility's contract if the state survey agency notifies DHS in writing, or DHS determines, that:

(A) reasonable efforts are being made to transfer the residents to another facility or to alternate care; and

(B) additional time is needed to effect an orderly transfer of the residents.

§19.2208. Contract Cancellation for Resident-Related Contract Violations.

(a) The Texas Department of Human Services (DHS) notifies the facility in writing of its intention to cancel the facility's contract when either of the following situations occur.

(1) The state survey agency terminates the facility's certification. DHS makes no payment for services provided by the facility after the effective date of the termination of a facility's certification.

(2) The facility has received three notifications within an accountability period of resident-related contract violations and recommendations for or imposition of remedies, excluding facility-developed plans of correction or compliance letters.

(A) If the contract cancellation is not appealed, the contract is canceled on the 20th day after the facility receives notice of DHS's decision to cancel the contract.

(B) If the contract cancellation is appealed, the contract will be canceled on the date the administrative law judge's decision upholding the cancellation becomes final.

(b) DHS may continue payments for no more than 30 days from the date DHS cancels a facility's contract if the state survey agency notifies DHS in writing that:

(1) reasonable efforts are being made to transfer the residents to another facility, to community care, or to other alternate care; and

(2) additional time is needed to effect an orderly transfer of the residents.

(c) When a facility's contract is canceled by DHS under the provisions of

subsection (a) of this section, there is a 30-day period of no vendor payment to the facility. If the facility reapplies for a contract, the state survey agency conducts an on-site visit and notifies DHS whether or not the facility is complying with Medicaid requirements. If the facility is complying with Medicaid requirements and a contract with the facility is not prohibited by DHS debarment rules, DHS enters into a 30-day probationary contract with the facility. After the probationary period, if the state survey agency notifies DHS that:

(1) the facility is complying with Medicaid requirements, DHS enters into a nonprobationary contract as specified in §19.2005(a)(1) or (3) of this title (relating to Contract Requirements);

(2) the facility is not complying with Medicaid requirements, no contract can be issued. An additional 30-day period of no vendor payment begins. The facility must be in compliance with Medicaid requirements before applying for a probationary contract with DHS, according to the procedures stated in this subsection.

§19.2209. Appeals Process for Resident-Related Contract Violations.

(a) Facilities may appeal the application of the Texas Department of Human Services (DHS) remedies listed in §19.2203(a)(2) of this title (relating to Resident-Related Contract Violations) by requesting an informal reconsideration and/or an appeals hearing. A request for an informal reconsideration must be submitted in writing to Provider Services, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030. Appeal procedures involving state statutes, monetary penalties, and Title XIX nursing facility contracts are held in accordance with §§79.1601-79.1614 of this title (relating to Contract Appeals).

(1) Monetary penalties. If a facility requests an appeals hearing, no monetary penalties are collected until the outcome of the hearing. The appeals hearing on the monetary penalties may not be held until the nursing facility has been notified of the total amount of the penalty (excluding interest). Interest on the assessed monetary penalties is calculated at the rate of interest in effect during the interest period for judgments of the courts of Texas, as provided in Texas Civil Statutes, Article 5069-1.05, §2. The interest period begins on the date of the written request by the facility for an appeals hearing and ends on the date the monetary penalties are paid.

(A) Assessed monetary penalties and any interest must be paid in full within 20 days of receipt of a certified letter from DHS of the amount of the monetary penalties.

(B) No monetary penalties or interest are charged the facility if the appeals hearing results in the administrative law judge (ALJ) or judicial proceeding overturning the initial decision.

(2) Contract cancellation.

(A) In an appeals hearing regarding contract cancellation resulting from three recommendations for remedies, as specified in §19.2208(a)(2) of this title (relating to Contract Cancellation for Resident-Related Contract Violations), the facility may challenge the contract violation(s) that are the basis for the cancellation, as specified in §§79.1601- 79.1614 of this title (relating to Contract Appeals), unless:

(i) the facility was given an opportunity for a hearing previously on the same violations and did not request a hearing within the required time limit; or

(ii) a final decision has been rendered by a DHS ALJ in a prior hearing on the same violations, and the ALJ upheld the violations. Prior failure to request a hearing or a final decision(s) in a prior hearing as described in this subparagraph are considered res judicata, that is, conclusive proof of the prior violations.

(B) In an appeals hearing involving contract cancellation resulting from decertification, as specified in §19.2208(a)(1) of this title (relating to Contract Cancellation for Resident-Related Contract Violations), the final decision rendered by the state survey agency in the termination of certification hearing is considered res judicata of the issue of decertification.

(b) Facilities may appeal termination of certification to the state survey agency under Texas Administrative Code, Chapter 45, §§145.141-145. 147 (relating to Procedures Covering Certification and Termination of Certification of Long-Term Care Facilities which Participate in the Title XIX Medical Assistance Program).

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

Issued in Austin, Texas, on December 15, 1992.

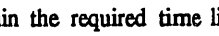
TRD-9216660

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

Effective date: February 1, 1993

Proposal publication date: August 4, 1991

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



Name: Deasy Phillips
Grade: 4
School: Sundown Elementary, Katy ISD

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the Office of the Secretary of State in lobby of 221 East 11th Street, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department of Agriculture

Tuesday, January 5, 1993, 10:30 a.m. The Texas Sheep and Goat Commodity Board of the Texas Department of Agriculture will meet at The Texas Sheep and Goat Raisers' Conference Room, 233 West Twohig, San Angelo. According to the complete agenda, the board will make opening remarks; discuss approval of December 1, 1992 meeting; discuss and act on: procedure for collection of funds; selection of bank for deposit of assessments; by laws; other requirements for the board; establishment of advisory committees; employment of personnel; discuss other business; discuss and act on scheduling of next meeting; and adjourn.

Contact: Sandy Whittley, P.O. Box 2290, San Angelo, Texas 76902, (915) 655-7388.

Filed: December 16, 1992, 9:51 a.m.

TRD-9216677

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Texas Department of Criminal Justice

Wednesday, December 16, 1992, 8 a.m. The Board of Criminal Justice of the Texas Department of Criminal Justice held an emergency meeting (telephone conference opened for public hearing), at 816 Congress Avenue, Suite 500, Austin, and Texas and TDCJ Administrative Headquarters, Spur 59 off U.S. Highway 75 North, Room 203, Huntsville. According to the agenda summary, the board, held an emergency meeting as authorized under Section 492.006(c) Government Code, discussed and possibly acted upon state's jail overcrowding. The emergency status was necessary as the Governor, the Lieutenant Governor and the Speaker had requested that the Board of Criminal Justice take immediate action to reduce the potential dollar impact of the fines imposed by court order in Alberti versus Harris County, et al, and make expeditious provision for the construction of facilities needed to reduce the state wide backlog of convicted felons in county jails.

Contact: Jackee Cox, 816 Congress Avenue, Suite 500, Austin, Texas 78701, (512) 463-9988.

Filed: December 15, 1992, 4:02 p.m.

TRD-9216664

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Texas Commission on Fire Protection

Wednesday-Friday, January 13-15, 1993, 9 a.m. The Texas Commission on Fire Protection will meet at 3006B Longhorn Drive, Austin. According to the agenda summary, the commission will meet in executive session to consider personnel matters; discuss pending litigation with attorney; discuss and possibly act on recommendations from the Funds Allocation Advisory Committee; discuss matters referred from the Volunteer Fire Fighter Advisory Committee; matters referred from the Fire Protection Personnel Advisory Committee; discuss and possibly act on: adoption of rules under 37 TAC, Chapter 531; adoption of rules under 37 TAC, Chapter 591; appeal of State Fire Marshal Order Number FM-301; proposed Key Rate Schedule; new appointments or reappointments to advisory committees or councils; and discuss matters from the executive director and from the public.

Contact: Jack Woods, 3006B Longhorn Boulevard, Austin, Texas 78759-6735, (512) 873-1700.

Filed: December 15, 1992, 2:14 p.m.

TRD-9216638

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Texas Department of Insurance

Monday, December 28, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application for amendment of the articles of incorporation of St. Paul Lloyds, Arlington, changing the attorney-in-fact. Docket Number 11643.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701 (512) 475-2983.

Filed: December 16, 1992, 10:02 a.m.

TRD-9216686

Monday, December 28, 1992, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application for amendment of the articles of incorporation of Germania Insurance Company, Brenham, increasing the authorized capital. Docket Number 11644.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701 (512) 475-2983.

Filed: December 16, 1992, 10:02 a.m.

TRD-9216687

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Texas State Board of Medical Examiners

Thursday, January 7, 1993, 9 a.m. The Hearings Division of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the complete agenda, the division will consider a request for termination of probation: Steven Paul Bowers, M.D.; Paris Bransford, M.D.; Juan U. Contin, M.D.; Gerald Wayne Johnson, M.D.; Rene Wolf, Jr., M.D.; and Ronald Monroe Blair, Jr., M.D.; and request for modification of probation for William Boyer Ledlie, M.D. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: December 16, 1992, 1:07 p.m.

TRD-9216691

Friday, January 8, 1993, 9 a.m. The Hearings Division of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the complete agenda, the division will consider a request for termination of probation on Nich Jay Newman, M.D. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: December 16, 1992, 1:07 p.m.

TRD-9216692

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Public Utility Commission of Texas

Wednesday, January 6, 1993, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11292-application of Entergy Corporation and Gulf States Utilities Company for sale, transfer, or merger.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 15, 1992, 2:40 p.m.

TRD-9216649

Thursday, January 7, 1993, 9 a.m. (Rescheduled from December 29, 1992, 9 a.m.) The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11566-application of United Telephone Company of Texas, Inc. for approval of new Advanced Business Connection (ABC) service.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 15, 1992, 2:41 p.m.

TRD-9216650

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Texas Real Estate Research Center

Monday, January 18, 1993, 2 p.m. The Advisory Committee of the Texas Real Estate Research Center will meet at the Texas V, Hyatt Regency Hotel, Austin. According to the complete agenda, the committee will make opening remarks; discuss approval of minutes; progress reports (administrative, communications, research); current budget report; discuss other business; and adjourn.

Contact: Gary Maler, Real Estate Center, The Texas A&M University, College Station, Texas 77843-2115, (409) 845-9691.

Filed: December 17, 1992, 9:34 a.m.

TRD-9216708

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School Land Board

Wednesday, December 30, 1992, 9:30 a.m. (Rescheduled from December 17, 1992). The School Land Board will meet at the Hilton and Conference Center, 2027 Airway Boulevard, Magnims Lounge, El Paso. According to the complete agenda, the board will hold an informational meeting for purposes of discussing Permanent School Fund lands in El Paso County and Acts 1989, 71st Legislature, Chapter 573, Section 4, and amended by Acts 1991, 72nd Legislature, Chapter 597, Section 111, with El Paso County Lower Valley Water District Authority Board directors and staff.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: December 16, 1992, 4:31 p.m.

TRD-9216700

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Texas Department of Transportation

Tuesday, January 5, 1993, 1 p.m. The Bicycle Rules Advisory Committee of the Texas Department of Transportation will meet at the Riverside Annex, 200 Riverside Drive, Room 101, Austin. According to the agenda summary, the committee will discuss approval of minutes; briefing on transportation enhancements program; preliminary review of proposed rulemaking concerning transportation enhancements program; and elect member as vice-chair.

Contact: Paul Douglas, 125 East 11th Street, Austin, Texas 78701, (512) 416-3125.

Filed: December 15, 1992, 1:59 p.m.

TRD-9216629

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University of Houston

Monday, December 21, 1992, 2 p.m. The Animal Care Committee of the University of Houston met at the University of Houston, S&R II, Room 201, 4800 Calhoun Boulevard, Houston. According to the agenda summary, the committee discussed and acted upon the following: approval of November minutes; renewal protocols; semi-annual inspections; policies and procedures manual; security system update; open meeting rule; OHP; final AAALAC report; date for January meeting; and selection of new member.

Contact: Julie T. Norris, 4800 Calhoun Boulevard, Houston, Texas 77204, (713) 743-9222.

Filed: December 15, 1992, 2:16 p.m.

TRD-9216642

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Regional Meetings

Meetings Filed December 15, 1992

The Dallas Area Rapid Transit Rail Planning and Development Committee held an emergency revised agenda at the DART Office, Conference Room C, 1401 Pacific Avenue, Dallas, December 15, 1992, at 3 p.m. The emergency status was necessary due to approval to proceed immediately to accomodate hazardous material tunneling conditions. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9216627.

The Dallas Area Rapid Transit Board of Directors' held an emergency revised agenda at the DART Headquarters, Board Room, 1401 Pacific Avenue, Dallas, December 15, 1992, at 4:30 p.m. The emergency status was necessary due to approval to proceed immediately to accomodate hazardous material tunneling conditions. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas Texas 75202, (214) 749-3347. TRD-9216628.

The East Texas Council of Governments JTPA Board of Directors held an emergency meeting at the Community Inn, Kilgore, December 17, 1992, at 5:30 p.m. The emergency meeting was necessary due to a need that existed for immediate action on a pending litigation matter. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9216665.

The Education Service Center Region 10 Board of Directors held a revised agenda in the Region 10 Board Room, 400 East Spring Valley Road, Richardson, December 18, 1992, at 9:30 a.m. Information may be obtained from Joe Farmer, 400 East Spring Valley Road, Richardson, Texas 75081, (214) 231-6301. TRD-9216626.

The North Central Texas Interlink, Inc. Board will meet at the Informart, 1950 Stemmons, Dallas, January 13, 1993, at 2 p.m. Information may be obtained from Candy Slocum, P.O. Box 610246, DFW Airport, Texas 75251, (214) 621-0400. TRD-9216624.

The Northeast Texas Municipal Water District Board of Directors met at Highway 250 South, Hughes Springs, December 21, 1992, at 10 a.m. Information may be obtained from J. W. Dean, Box 955, Hughes Springs, Texas 75656, (903) 639-7538. TRD-9216635.

The Upper Leon River Municipal Water District Board of Directors held an emergency meeting at the General Office of the Filter Plant, Lake Proctor, Comanche County, December 17, 1992, at 6:30 p.m. The emergency meeting was necessary due to failing to get notice sent in before 72 hours prior to meeting. Information may be obtained from Gary D. Lacy, P.O. Box 67, Comanche, Texas 76442, (817) 879-2258. TRD-9216625.

The Wheeler County Appraisal District Board of Directors met at the Maxey's Steakhouse, Wheeler, December 15, 1992, at 7:30 p.m. Information may be obtained from Larry M. Schoenhals, P.O. Box 1200, Wheeler, Texas 79096, (806) 826-5900. TRD-9216636.

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Meetings Filed December 16, 1992

The Bi-County Water Supply held an emergency meeting at the First State Bank, Conference Room, 237 Jefferson Street, Pittsburg, December 16, 1992, at 2 p.m. The emergency meeting was necessary to obtain all board members presents. Information may be obtained from Freeman Phillips, P.O. Box 848, Pittsburg, Texas 75686, (903) 856-5840. TRD-9216676.

The Bastrop Central Appraisal District Board of Directors met at the Bastrop Central Appraisal District, 1200 Cedar Street, Bastrop, December 21, 1992, at 7 a.m. Information may be obtained from Dana Ripley, P.O. Drawer 578, Bastrop, Texas 78602, (512) 321-3925. TRD-9216690.

The Central Texas Council of Gvoernments Executive Committee met at the Bell County Expo Center, Belton, December 17, 1992, at 11 a.m. The emergency status was necessary as item needed to be executed before January meeting. Information may be obtained from A. C. Johnson, P.O. Box 729, Belton, Texas 76513, (817) 939-1801. TRD-9216702.

The Lampasas County Appraisal District Board of Directors met at 109 East Fifth Street, Lampasas, December 21, 1992, at 6:30 p.m. (Rescheduled from December 17, 1992). Information may be obtained from Janice Henry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9216696.

The Lampasas County Appraisal District Board of Directors met at 109 East Fifth Street, Lampasas, December 21, 1992, at 7 p.m. (Rescheduled from December 17, 1992). Information may be obtained from Janice Henry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9216695.

The Region IV Education Service Center Board of Directors held an emergency meeting at 7145 West Tidwell, Board Room, Houston, December 18, 1992, at 10 a.m. The emergency status was necessary as the board had to approve action and needed to be taken prior to next regularly scheduled board meeting. Information may be obtained from W. L. McKinney, 7145 West Tidwell, Houston, Texas 77092, (713) 744-6534. TRD-9216699.

The 222nd Judicial District Community Justice Council will meet at the District Courtroom, Deaf Smith Courthouse, Hereford, January 12, 1993, at 7 p.m. Information may be obtained from Larry Sheffield, 235 East Third, Room 204, Hereford, Texas 79045, (806) 364-3791. TRD-9216698.

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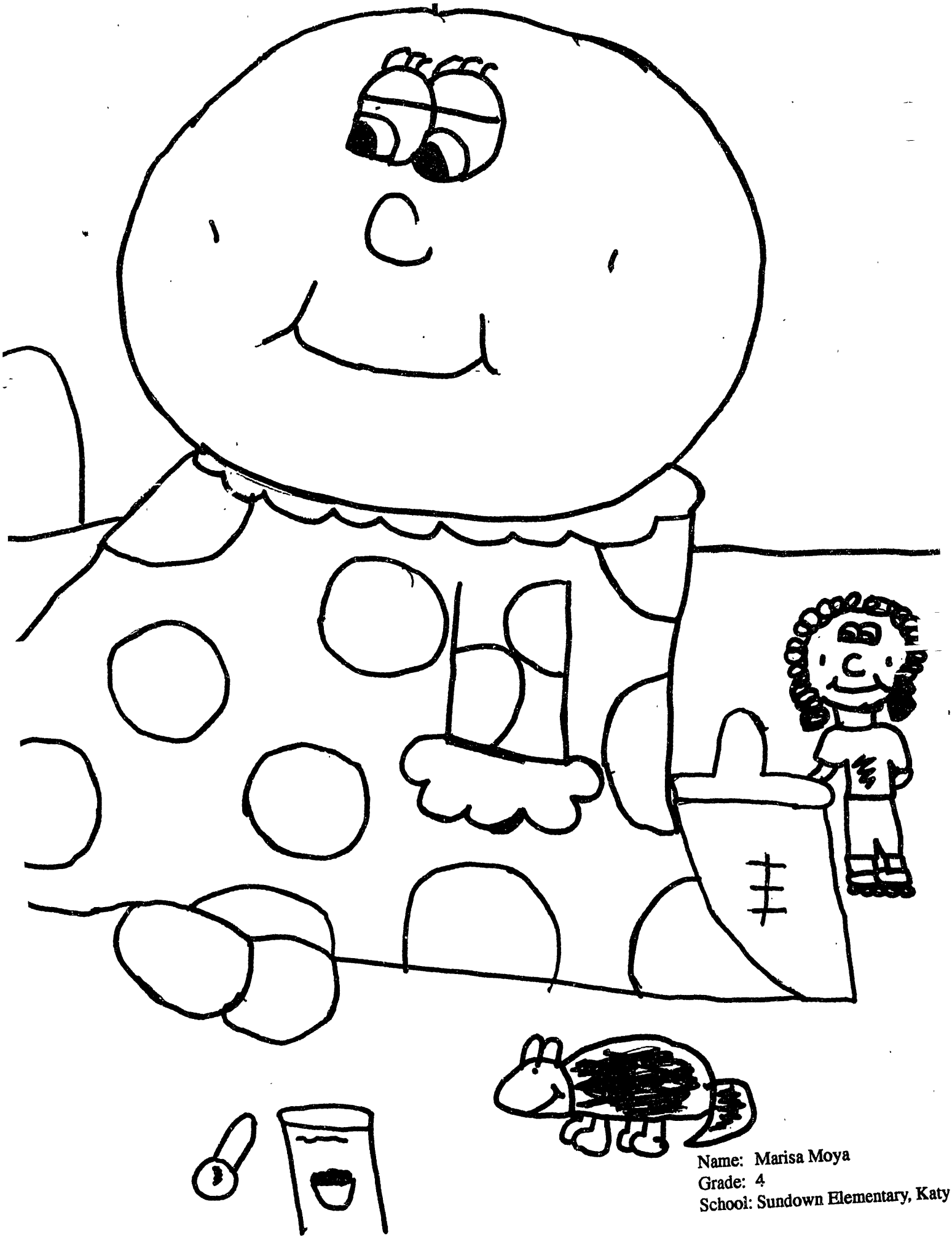

Name: Marisa Moya
Grade: 4
School: Sundown Elementary, Katy IS

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.

State Aircraft Pooling Board

Notification of Rates for Aircraft Use

The following rates, indicated in bold type, are now in effect for the various types of aircraft operated by the State Aircraft Pooling Board. These rates have been established in accordance with procedures developed by the Legislative Budget Board.

Also listed are approximate charges for a round trip flight to various cities in Texas. The charges have been calculated based on estimated flying times, and may differ from actual flight times due to weather conditions or alternate routing by traffic controllers.

Please call Lisa Morgan, Scheduler, at (512) 477-8900 with any questions, any need to schedule a flight, or any need for estimated charges for other locations.

Round trip: Austin to and return	Waco	Hunts-ville	Del Rio	Wichita Falls	Amarillo
Type of Aircraft **Rate*** Capacity**	190 Miles	260 Miles	408 Miles	518 Miles	824 Miles
King Air 200 **$525/hr.** 7 to 10	$593	$683	$1,013	$1,155	$1,733
King Air 90 **$475/hr.** 5 to 8	$618	$665	$983	$1,154	$1,758
Cessna 425 **$415/hr.** 5 to 7	$486	$569	$830	$996	$1,465
Cessna 402 **$265/hr.** 4 to 5	$363	$432	$655	$734	$1,105
Cessna 310 **$195/hr.** 3 to 4	$267	$318	$482	$540	$813

* Rates may change without notice due to increased fuel prices.
** The higher capacity for passengers allows minimal luggage and requires the use of the copilot's seat and/or jump seat(s).

Issued in Austin, Texas, on December 14, 1992.

TRD-9216622 Bob DuLaney
Executive Director
State Aircraft Pooling Board

Filed: December 15, 1992

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Office of the State Auditor

Consultant Proposal Request

Notice of Invitation For Proposal. Pursuant to Texas Civil Statutes, Article 6252-llc, the State Auditor's Office (SAO) invites private consultants to submit proposals to design and initiate a Career Development system for the SAO.

Determination of Need. The SAO is in the second year of a major reorganization involving the merger of two audit divisions and the flattening of the organizational structure. The SAO has selected the self-managed team concept as the most effective approach to our work. The objectives of a Career Development system are: to align the expertise, skills, abilities, and talents of the staff to the future needs of the SAO; to ensure that the SAO staff are developed to their fullest potential and used in the most appropriate and effective way; to assist managers in clearly defining their role in the staff development process and in learning the skills to perform coaching and mentoring roles; and to help employees explore career development opportunities beyond those available in traditional hierarchical organizations.

Scope of Work. The Career Development system should be customized to the specific needs and culture of the SAO. The following approach should be used:

Phase 1: Needs Assessment.

a. Diagnose the specific Career Development needs of the SAO through the use of interviews, focus groups, surveys, and/or other agreed upon diagnostic approaches.

b. Review existing human resource structures and functions in the SAO to determine how they will support the Career Development system. The Career Development system must be linked to the SAO's performance appraisal system, and the mission, statement of values, and strategic goals of the SAO.

c. Present a strategic plan for implementing a Career Development system in the SAO. This plan should be presented to the executive and management teams both orally and in writing, and should include: results of the needs assessment; recommendations for implementing a Career Development system unique to the needs of the SAO, including an identification of systems, practices, and structures needed to create a comprehensive, integrated Career Development system; plans for assessing the results, outcomes, and effectiveness of the Career Development system

Phase 2: Career Development Workshops. Develop and conduct workshops that teach managers and employees how to assume their own responsibilities in the career development process. This training should be tailored to the organization based on the information collected in the needs assessment phase of this project.

a. The training for approximately 20 executives and managers should be one to 1-1/2 days in length and should focus on their coaching and mentoring roles.

b. The training for approximately 20 staff should be one day in length and should focus on conducting self-assessments of career opportunities and formulating career goals that are realistic, specific, and attainable in the SAO organizational structure.

c. A train-the-trainer workshop for two members of the Professional Development department should be one day in length. The SAO will assume responsibility for conducting Career Development workshops for the remainder of the staff.

Client's Role. The SAO will work in partnership with the consultant on this project. A member of the Professional Development department will be available to assist the consultant 25% of the time.

Period of Performance. The period of performance is anticipated to begin in February, 1993, and extend through June, 1993.

1. The needs assessment should begin in February, culminating in a presentation to the executive and management teams by mid-March.

2. The Career Development workshops will be scheduled on dates to be agreed upon by the consultant and the SAO. However, the training should be complete by June, 1993.

Level of Funding. The level of funding for the requested services is not anticipated to exceed $12,500, inclusive of all travel, materials, and related consulting and developmental costs; however, the SAO expressly reserves the right to negotiate and execute amendments to any resulting contract to extend the period of performance or to obligate additional funds as the SAO determines necessary.

Deadline For Submission. Proposals must be received by 5 p.m. on January 15, 1993, provided that proposals received after that date which were postmarked on or before January 12, 1993, will be accepted.

Form and Format. Two copies of the proposal are requested and should be sent by registered mail or delivered in person to Kelly Huff, Texas State Auditor's Office, 206 East Ninth Street, Suite 1900, Austin, Texas 78711, no later than the deadline for submission of proposals specified above. The proposal should be typed, preferably double spaced, with all pages sequentially numbered and either stapled or bound together. Please include the following information in the proposal: description of how the consultant would provide: needs assessment, manager training, staff training, train-the-trainer, evaluation plan; description of the information and assistance expected from the SAO; description of the consultant's philosophy or approach to career development; breakdown of fees and related costs for each phase of the project; anticipated number of on-site visits to the SAO and length of each visit; description of how progress on this project will be communicated to the SAO; qualifications (education and experience) of the consultant or consultant's associates who would be working on this project; three clients/references.

Evaluation Factors. Each proposal will be evaluated utilizing the following criteria: methodology and action plan to best satisfy the project objective and scope of work; reasonableness of price; qualifications and related experience of those assigned to this project.

Proposal Preparation Materials. Copies of the SAO strategic plan and the performance appraisal system may be obtained from Kelly Huff at the address specified above.

Contact Person. Any other inquiries concerning this Invitation for Proposal should be made in writing to Kelly Huff at the address specified above.

General Information. The SAO reserves the right to accept or reject, in whole or in part, any proposals submitted. The information contained in this Invitation for Proposals is intended to serve only as a general description of the services desired by the SAO, and the SAO reserves the right to use responses to this Invitation for Proposals as a basis for further negotiation of specific project details with offerors. In the event that the SAO selects a consultant to provide the services described in this Invitation for Proposals, the SAO will not make its selection solely on the basis of cost. Other factors, including but not limited to the demonstrated competence and qualifications of the consultant to provide the requested services, and the quality of the proposal package submitted, will be considered in addition to the reasonableness of the fee. Issuance of this Invitation for Proposals does not obligate the SAO to purchase any services or to pay any costs associated with the preparation or presentation of a response.

Issued in Austin, Texas, on December 12, 1992.

TRD-9216604 Lawrence F. Alwin, CPA
State Auditor
Office of the State Auditor

Filed: December 14, 1992

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Texas Bond Review Board

Bi-Weekly Report on the 1992 Allocation of the State Ceiling on Certain Private Activity Bonds

The information that follows is a report of the allocation activity for the period of November 28, 1992-December 11, 1992.

On September 1, 1992, any amounts of state ceiling which remained in any subceiling were combined into one ceiling. The applications which had not received a reservation prior to that date were placed on one list in an order determined by a lot number, and for those applications without a lot number, by date of receipt of the application.

Total amount of the $867,450,000 state ceiling remaining unreserved as of December 11, 1992: $0.

Following is a comprehensive listing of applications which have received a reservation date pursuant to the Act from November 28, 1992-December 11, 1992: Brazos River Authority, Texas Utilities Electric Company, $3,855,000.

Following is a comprehensive listing of applications which have issued and delivered the bonds and received a Certificate of Allocation pursuant to the Act from November 28, 1992-December 11, 1992: None.

Following is a comprehensive listing of applications which were either withdrawn or cancelled pursuant to the Act from November 28, 1992-December 11, 1992: None.

Following is a comprehensive listing of applications which released a portion or their reserved amount pursuant to the Act from November 28, 1992-December 11, 1992: Gulf Coast Waste Disposal Authority, Champion International, $3,855,000.

Issued in Austin, Texas, on December 14, 1992.

TRD-9216597 Beverly S. Bunch
Interim Executive Director
Texas Bond Review Board

Filed: December 14, 1992

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Article 1.04, Title 79, Revised Civil Statutes of Texas, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes).

Types of Rate Ceilings	Effective Period (Dates are Inclusive)	Consumer (1)/Agricultural/ Commercial (2) thru $250,000	Commercial(2) over $250,000
Indicated (Weekly) Rate - Art. 1.04(a)(1)	12/21/92-12/27/92	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on December 14, 1992.

TRD-9216634 Al Endsley
Consumer Credit Commissioner

Filed: December 15, 1992

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Texas Department of Human Services

Cancellation of Invitation to Bid

The Texas Department of Human Services published an invitation to bid for over-the-counter food stamp issuance services in the December 11, 1992, issue of the *Texas Register* (17 TexReg 8768). This notice is being cancelled and will be republished in the January 8, 1992, issue of the *Texas Register*.

Issued in Austin, Texas, on December 16, 1992.

TRD-9216668 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Filed: December 16, 1992

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Request for Information

The Texas Department of Human Services (TDHS) is further amending its Request for Information (RFI) originally published in the November 1, 1991, issue of the Texas Register (16 TxReg 6233), and republished in the April 10, 1992, issue of the Texas Register (17 TxReg 2627) and the August 21, 1992, issue of the *Texas Register* (17 TxReg 5760). Those who have responded to these previous announcements need not resubmit.

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) and Food Stamps. Planning and analysis for the use of EBT technology to support Texas Medical Assistance (Medicaid) programs is expected to continue. TDHS planning has been an interagency effort, involving both the State Treasury and Office of the Comptroller. Additional input and direction has been provided by the EBT Steering Committee comprised of various agencies' executives; an EBT Citizens Task Force sponsored by the Office of the Comptroller of Public Accounts; the Department of Information Resources (DIR) and the General Services Commission (GSC).

In April 1992, the TDHS secured prior approval and federal financial participation (FFP) from Food and Nutrition Services, United States Department of Agriculture, and the Administration for Children and Families and Health Care Financing Administration, United States Department of Health and Human Services to conduct agency planning related to the proposed EBT Project. TDHS has proposed a phased approach to EBT implementation; pilot phase implementation is expected to begin in the beginning of FY 1994 and will encompass Houston (Harris County) and nearby rural Chambers county with statewide conversion beginning in FY 1995.

On November 23, 1992, the TDHS submitted its Implementation Advance Planning Document (IAPD), Cost Benefit Analysis, Feasibility Study, Alternatives Analysis, System Requirements Analysis, and the proposed RFP (DRAFT VERSION) for state and federal approval. Once required approvals are received, the General Services Commission (GSC) will initiate procurement with its issuance of a Request for Proposal (RFP) in January 1993. The RFP addresses EBT services required for statewide EBT implementation. Requested services are those considered necessary to deliver AFDC and Food Stamp benefits electronically, including but not be limited to EBT training, training scheduling, benefit card issuance and activation, retailer management, concentrator bank, financial settlement, reconciliation, and reporting.

Final RFI Information Release: On December 14, 1992, TDHS distributed to all previous RFI respondents a copy each of the RFP (DRAFT VERSION) and agency responses to "Information Packet #1" comments and inquiries (8/92). This release constitutes the final authorized RFI information. The documents are being provided for informational purposes only.

Anyone desiring a copy of this and previously released documentation should respond to this RFI in writing on official letterhead. TDHS will forward the names and addresses of all RFI respondents to the General Services Commission (GSC), following the receipt of state and federal approvals. The GSC will be responsible for notify all interested parties prior to the release of the RFP (FINAL VERSION), expected in January 1993.

Anyone wishing to submit comments or questions to the TDHS, should wait until the RFP (FINAL VERSION) is issued by the General Services Commission. The submittal of comments or questions should be in accordance with directions outlined in the RFP document, Section II. Contact Persons: Telephone inquiries about the TDHS project and procurement process should be forwarded to: Ms. Penny Tisdale, Assistant Project Director, Electronic Benefit Transfer Project, Texas Department of Human Services, P.O. Box 149030, MC# Y-902, Austin, Texas 78714-9030, (512) 483-3950.

Written and electronic information responses to this RFI should be forwarded to: Amelia Bunch, Systems Support Specialist, Electronic Benefit Transfer Project, Texas Department of Human Services, P.O. Box 149030, MC# Y-902, Austin, Texas 78714-9030. Letters should contain, at a minimum, a contact person's name and title, mailing address, physical address (if different from mailing address), telephone number with area code and, if available, a fax number with area code.

Issued in Austin, Texas, on December 15, 1992.

TRD-9216661 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Filed: December 15, 1992

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Public Utility Commission of Texas

Notices of Proceeding for Approval of Extended Area Services

Notice is given to the public of the filing with the Public Utility Commission of Texas of a joint petition on December 4, 1992, seeking approval of extended area service pursuant to §23.49(i) of the Public Utility Commission of Texas substantive rules. The following is a summary of the joint petition.

Project Title and Number. Joint Petition of Guadalupe Valley Telephone Cooperative, Inc. (GVTC) and Southwestern Bell Telephone Company (SWB) for Extended Area Service (EAS) Between GVTC's Smithsons Valley (885), Cranes Mill (899), Sattler (964), Hancock (935), and SWB's New Braunfels Exchange, Project Number 11649, before the Public Utility Commission of Texas.

The Joint Petition. In Project Number 11649, Guadalupe Valley Telephone Cooperative, Inc. and Southwestern Bell Telephone Company seek approval of a joint petition in which the Cranes Mill, Smithsons Valley, Sattler, and Hancock exchanges served by GVTC request optional extended area service (EAS) into the New Braunfels exchange served by SWB. The parties filed a joint agreement for two types of EAS: optional two-way flat rated EAS and optional one-way flat rated EAS.

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 Commission Public Information Office within 15 days of this notice at (512) 458-0256. The telecommunications device for the deaf (TDD) number for the Public Information Office is (512) 458-0221.

Issued in Austin, Texas, on December 14, 1992.

TRD-9216605 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 14, 1992

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Notice is given to the public of the filing with the Public Utility Commission of Texas of a joint petition on September 10, 1992, and September 22, 1992, seeking approval of extended area service pursuant to §23.49(i) of the Public Utility Commission of Texas substantive rules. The following is a summary of the joint petition.

Project Title and Number. Petition of the Christoval Exchange for Extended Area Service to the San Angelo Exchange and Petition of the Mertzon Exchange for Extended Area Service to the San Angelo Exchange, Docket Number 10025, before the Public Utility Commission of Texas.

The Joint Petition. In Docket Number 10025, the Christoval Exchange and the Mertzon Exchange, both served by GTE Southwest Incorporated, seek approval of a joint petition offering subscribers a choice of three extended area service plans to the San Angelo Exchange: the Community Calling Plan which provides for measured rates; the Premium Calling Plan which provides customers with a flat-rate one-way option; and the Premium Plus Calling Plan which allows customers to choose a flat-rate two-way plan. The rates for Christoval and Mertzon are identical.

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 Commission Public Information Office within 15 days of this notice at (512) 458-0221. The telecommunications device for the deaf (TDD) number for the Public Information Office is (512) 458-0221.

Issued in Austin, Texas, on December 15, 1992.

TRD-9216651 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 15, 1992

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Notices of Proceeding for Approval of Plexar Customer Service Pursuant to Public Utility Commission Substantive Rule 23.27

Notice is given to the public of the filing of an application on December 2, 1992, with the Public Utility Commission of Texas, seeking approval of customer-specific PLEXAR-Custom Service pursuant to Public Utility Commission of Texas Substantive Rule 23.27 for Cancer Therapy and Research Center, San Antonio.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Cancer Therapy and Research Center pursuant to Public Utility Commission of Texas Substantive Rule 23.27(k). Docket Number 11644.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Cancer Therapy and Research Center. The geographic service market for this specific service is the San Antonio area.

Persons who wish to comment upon action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on December 14, 1992.

TRD-9216653 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 15, 1992

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Notice is given to the public of the filing of an application on December 2, 1992, with the Public Utility Commission of Texas, seeking approval of customer-specific PLEXAR-Custom Service pursuant to Public Utility Commission of Texas Substantive Rule 23.27 for the City of Fort Worth, Fort Worth.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for the City of Fort Worth pursuant to Public Utility Commission of Texas Substantive Rule 23.27(k). Docket Number 11641.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for the City of Fort Worth. The geographic service market for this specific service is the Fort Worth area.

Persons who wish to comment upon action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on December 14, 1992.

TRD-9216652 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 15, 1992

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Texas Department of Transportation Public Notice

In accordance with Title 43, Texas Administrative Code, §11.88(e)(6), the Texas Department of Transportation is giving public notice of the availability of the Final Environmental Impact Statement (FEIS) for the proposed S.H. 121 Lewisville bypass. The public and interested organizations will have 30 days following publication of this notice to submit comments.

The proposed project will be a six-lane controlled access freeway with three-lane one-way frontage roads on new location. The construction will be in two stages: Stage 1 frontage roads, and Stage 2 main lanes. The proposed project location is in north central Texas and traverses Dallas and Denton Counties. The cities in the study corridor are Carrollton, Lewisville, Hebron, Coppell, and The Colony. The bypass will extend from existing S.H. 121, 0.4 miles west of Denton Creek to existing S.H. 121, .05 miles east of FM 423, a distance of approximately 10.4 miles.

Copies of the Final Environmental Impact Statement and other information about the project may be obtained at the Texas Department of Transportation District Office, 9700 East R. L. Thornton Freeway, in Dallas, or by writing to James M. Huffman, P.E., District Engineer, P.O. Box 3067, Dallas, Texas 75221, (214) 320-6627.

Issued in Austin, Texas, on December 14, 1992.

TRD-9216621 Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Filed: December 14, 1992

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Texas Water Development Board

Request for Proposals to Conduct Research Relating to Augmentation of Spring Flows at Comal and San Marcos Springs, Texas

The Texas Water Development Board requests the submission of water research proposals leading to the possible award of a February 1993 contract of 12-months duration to conduct research relating to the augmentation of spring flows at Comal and San Marcos Springs, Texas, pursuant to 31 Texas Administrative Code (TAC), §355.3. Guidelines for water research proposals, which include an application form, and a detailed Scope of Work for this project will be supplied by the Board.

Description of Research Goals and Objectives. The goal of this research study is to evaluate the feasibility of augmenting water flows from Comal and San Marcos Springs for the purpose of protecting endemic plant and animal species which now depend upon artesian spring flows from the Edwards Aquifer for their existence. The study will focus on crucial information needed to consider spring flow augmentation a viable means of protecting rare and endangered species associated with these large spring systems. Research objectives of the Phase I feasibility study include assessment of potential supplementary water sources; characterization of the geological properties of the Edwards Aquifer in the study area; identification of potential locations and alternative methods for augmenting spring flows; and analyses of the engineering, environmental, economic and institutional aspects (costs, benefits, and uncertainties). The Phase I study is meant to draw almost exclusively upon existing data and published studies of hydrology, biology, geology, and other relevant disciplines. The engineering, environmental, and economic analyses should be undertaken on the basis of this existing information, with a minimum of primary data collection. If there are significant gaps in the information required for the feasibility study, then the contractor shall make estimates or inferences based upon the best available data, and shall justify those estimates or inferences in the Phase I Final Report. Also, if the results of the Phase I feasibility study are favorable, then further study to refine the estimates of flow and other parameters will be undertaken in a future Phase II study.

Description of Funding Consideration. Up to $288,000 has been initially committed by the local sponsors for this Phase I study. In the event that no acceptable proposals are submitted, the Board retains the right not to award a research contract.

Deadline for Proposals, Evaluation Criteria, and Contact Person for Additional Information. Ten copies of a completed water research application form, including the required attachments, must be filed with the Board no later than 5 p.m. local time, January 22, 1993.

Proposals should be directed by mail to Gary Powell, Texas Water Development Board, 1700 North Congress Avenue, Austin, Texas 78711-3231, or delivered in person to Gary Powell, 611 South Congress Avenue, Room 116.

Applicants may not be under contract or on retainer for hydrogeological or biological research related to the Edwards Aquifer and/or Comal and San Marcos Springs. Applications will be evaluated in accordance with 31 TAC §355.5 and the proposal rating form included in the Board's Guidelines for Water Research Grants. All potential applicants must contact the Board to obtain these guidelines. Requests for the Board's rules, research guidelines, evaluation criteria, the project's Scope of Work, and related information may be obtained by writing to April Lander, Texas Water Development Board, 1700 North Congress Avenue, Austin, Texas, 78711-3231, or by calling Ms. Lander at (512) 475-3003.

Issued in Austin, Texas, on December 15, 1992.

TRD-9216669 Suzanne Schwartz
General Counsel
Texas Water Development Board

Filed: December 16, 1992

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1992 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the September-December 1992 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on February 28, November 6, December 1, and December 29. A bullet beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
93 Tuesday, December 15	Wednesday, December 9	Thursday, December 10
94 Friday, December 18	Monday, December 14	Tuesday, December 15
95 Tuesday, December 22	Wednesday, December 16	Thursday, December 17
96 Friday, December 25	Monday, December 21	Tuesday, December 22
Tuesday, December 29	NO ISSUE PUBLISHED	
1 Friday, January 1,1993	Monday, December 28	Tuesday, December 29

1993 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1993 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on July 30, November 5, November 30, and December 28. A asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 Friday, January 1	Monday, December 28	Tuesday, December 29
2 Tuesday, January 5	Wednesday, December 30	Thursday, December 31
3 Friday, January 8	Monday, January 4	Tuesday, January 5
4 Tuesday, January 12	Wednesday, January 6	Thursday, January 7
5 Friday, January 15	Monday, January 11	Tuesday, January 12
6 Tuesday, January 19	Wednesday, January 13	Thursday, January 14
Friday, January 22	1991 ANNUAL INDEX	
7 Tuesday, January 26	Wednesday, January 20	Thursday, January 21
8 Friday, January 29	Monday, January 25	Tuesday, January 26
9 Tuesday, February 2	Wednesday, January 27	Thursday, January 28
10 Friday, February 5	Monday, February 1	Tuesday, February 2
11 Tuesday, February 9	Wednesday, February 3	Thursday, February 4
12 Friday, February 12	Monday, February 8	Tuesday, February 9
13 Tuesday, February 16	Wednesday, February 10	Thursday, February 11
14 *Friday, February 19	Friday, February 12	Tuesday, February 16
15 Tuesday, February 23	Wednesday, February 17	Thursday, February 18
16 Friday, February 26	Monday, February 22	Tuesday, February 23
17 Tuesday, March 2	Wednesday, February 24	Thursday, February 25
18 Friday, March 5	Monday, March 1	Tuesday, March 2
19 Tuesday, March 9	Wednesday, March 3	Thursday, March 4
20 Friday, March 12	Monday, March 8	Tuesday, March 9
21 Tuesday, March 16	Wednesday, March 10	Thursday, March 11
22 Friday, March 19	Monday, March 15	Tuesday, March 16
23 Tuesday, March 23	Wednesday, March 17	Thursday, March 18
24 Friday, March 26	Monday, March 22	Tuesday, March 23
25 Tuesday, March 30	Wednesday, March 24	Thursday, March 25
26 Friday, April 2	Monday, March 29	Tuesday, March 30
27 Tuesday, April 6	Wednesday, March 31	Thursday, April 1
28 Friday, April 9	Monday, April 5	Tuesday, April 6
29 Tuesday, April 13	Wednesday, April 7	Thursday, April 8
Friday, April 16	FIRST QUARTERLY INDEX	
30 Tuesday, April 20	Wednesday, April 14	Thursday, April 15

31 Friday, April 23	Monday, April 19	Tuesday, April 20
32 Tuesday, April 27	Wednesday, April 21	Thursday, April 22
33 Friday, April 30	Monday, April 26	Tuesday, April 27
34 Tuesday, May 4	Wedesday, April 28	Thursday, April 29
35 Friday, May 7	Monday, May 3	Tuesday, May 4
36 Tuesday, May 11	Wednesday, May 5	Thursday, May 6
37 Friday, May 14	Monday, May 10	Tuesday, May 11
38 Tuesday, May 18	Wednesday, May 12	Thursday, May 13
39 Friday, May 21	Monday, May 17	Tuesday, May 18
40 Tuesday, May 25	Wednesday, May 19	Thursday, May 20
41 Friday, May 28	Monday, May 24	Tuesday, May 25
42 Tuesday, June 1	Wednesday, May 26	Thursday, May 27
43 *Friday, June 4	Friday, May 28	Tuesday, June 1
44 Tuesday, June 8	Wednesday, June 2	Thursday, June 3
45 Friday, June 11	Monday, June 7	Tuesday, June 8
46 Tuesday, June 15	Wednesday, June 9	Thursday, June 10
47 Friday, June 18	Monday, June 14	Tuesday, June 15
48 Tuesday, June 22	Wednesday, June 16	Thursday, June 17
49 Friday, June 25	Monday, June 21	Tuesday, June 22
50 Tuesday, June 29	Wednesday, June 23	Thursday, June 24
51 Friday, July 2	Monday, June 28	Tuesday, June 29
52 Tuesday, July 6	Wednesday, June 30	Thursday, July 1
53 Friday, July 9	Monday, July 5	Tuesday, July 6
Tuesday, July 13	SECOND QUARTERLY INIDEX	
54 Friday, July 16	Monday, July 12	Tuesday, July 13
55 Tuesday, July 20	Wednesday, July 14	Thursday, July 15
56 Friday, July 23	Monday, July 19	Tuesday, July 20
57 Tuesday, July 27	Wednesday, July 21	Thursday, July 22
Friday, July 30	NO ISSUE PUBLISHED	
58 Tuesday, August 3	Wednesday, July 28	Thursday, July 29
59 Friday, August 6	Monday, August 2	Tuesday, August 3
60 Tuesday, August 10	Wednesday, August 4	Thursday, August 5
61 Friday, August 13	Monday, August 9	Tuesday, August 10
62 Tuesday, August 17	Wednesday, August 11	Thursday, August 12
63 Friday, August 20	Monday, August 16	Tuesday, August 17
64 Tuesday, August 24	Wednesday, August 18	Thursday, August 19
65 Friday, August 27	Monday, August 23	Tuesday, August 24
66 Tuesday, August 31	Wednesday, August 25	Thursday, August 26
67 Friday, September 3	Monday, August 30	Tuesday, August 31
68 Tuesday, September 7	Wednesday, September 1	Thursday, September 2
69 *Friday, September 10	Friday, September 3	Tuesday, September 7

70 Tuesday, September 14	Wednesday, September 8	Thursday, September 9
71 Friday, September 17	Monday, September 13	Tuesday, September 14
72 Tuesday, September 21	Wednesday, September 15	Thursday, September 16
73 Friday, September 24	Monday, September 20	Tuesday, September 21
74 Tuesday, September 28	Wednesday, September 22	Thursday, September 23
75 Friday, October 1	Monday, September 27	Tuesday, September 28
76 Tuesday, October 5	Wednesday, September 29	Thursday, September 30
77 Friday, October 8	Monday, October 4	Tuesday, October 5
Tuesday, October 12	THIRD QUARTERLY INDEX	
78 Friday, October 15	Monday, October 11	Tuesday, October 12
79 Tuesday, October 19	Wednesday, October 13	Thursday, October 14
80 Friday, October 22	Monday, October 18	Tuesday, October 19
81 Tuesday, October 26	Wednesday, October 20	Thursday, October 21
82 Friday, October 29	Monday, October 25	Tuesday, October 26
83 Tuesday, November 2	Wednesday, October 27	Thursday, October 28
Friday, November 5	NO ISSUE PUBLISHED	
84 Tuesday, November 9	Wednesday, November 3	Thursday, November 4
85 Friday, November 12	Monday, November 8	Tuesday, November 9
86 Tuesday, November 16	Wednesday, November 10	Thursday, November 11
87 Friday, November 19	Monday, November 15	Tuesday, November 16
88 Tuesday, November 23	Wednesday, Novmber 17	Thursday, November 18
89 Friday, November 26	Monday, November 22	Tuesday, November 23
Tuesday, November 30	NO ISSUE PUBLISHED	
90 Friday, December 3	Monday, November 29	Tuesday, November 30
91 Tuesday, December 7	Wednesday, December 1	Thursday, December 2
92 Friday, December 10	Monday, December 6	Tuesday, December 7
93 Tuesday, December 14	Wednesday, December 8	Thursday, December 9
94 Friday, December 17	Monday, December 13	Tuesday, December 14
95 Tuesday, December 21	Wednesday, December 15	Thursday, December 16
96 Friday, December 24	Monday, December 20	Tuesday, December 21
Tuesday, December 28	NO ISSUE PUBLISHED	

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