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NON-CIRCULATING

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DOCUMENTS COLLECTION

Texas Register

Volume 17, Number 96, December 25, 1992

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3rd Floor Reference

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- Secretary of State - opinions based on the election laws
- Texas Ethics Commission - summaries of requests for opinions and opinions
- Emergency Sections - sections adopted by state agencies on an emergency basis
- Proposed Sections - sections proposed for adoption
- Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
- Adopted Sections - sections adopted following a 30-day public comment period
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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.

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

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The *Texas Administrative Code* (TAC) is the approved, collected volumes of Texas administrative rules.

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

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

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

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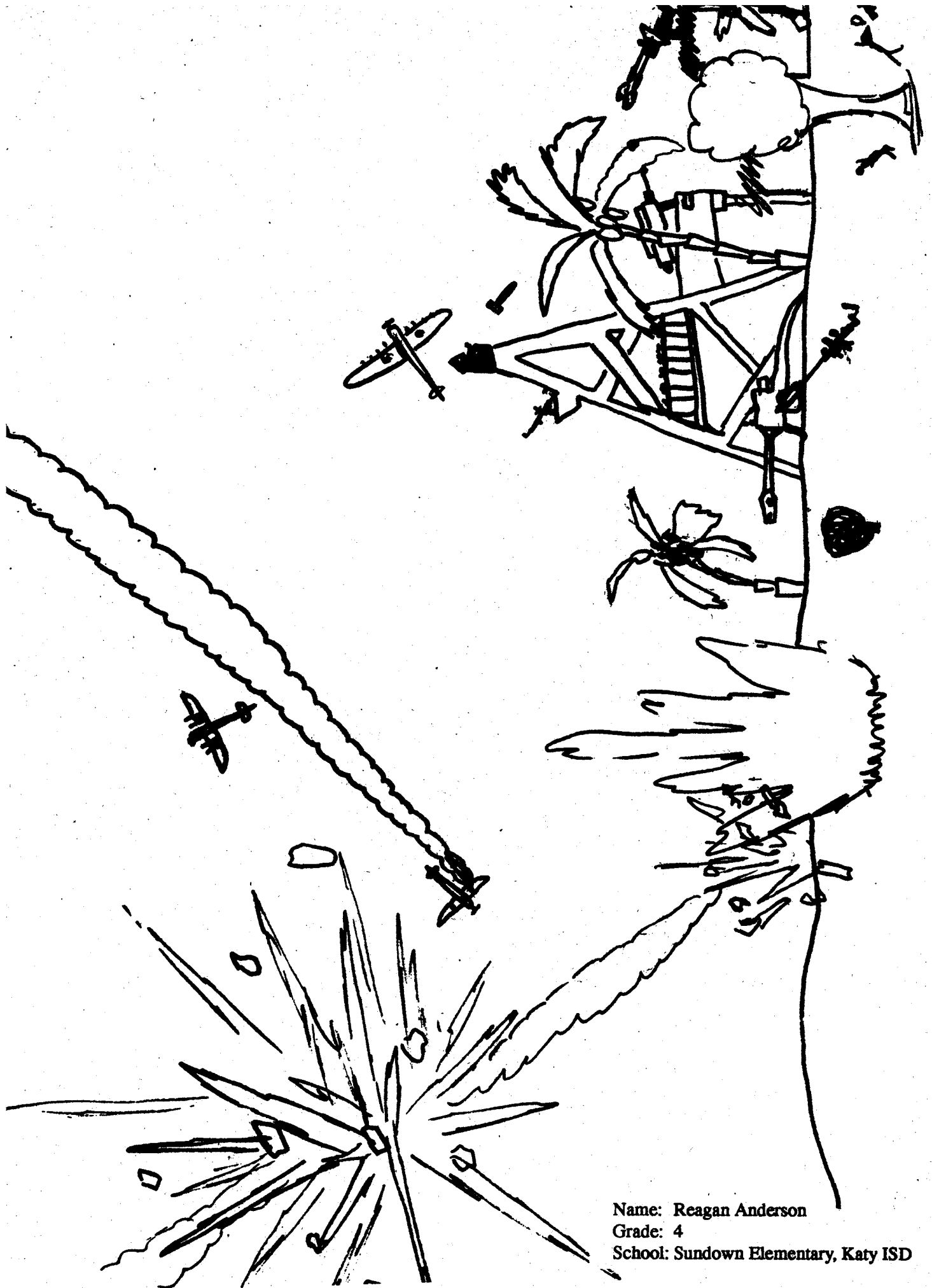
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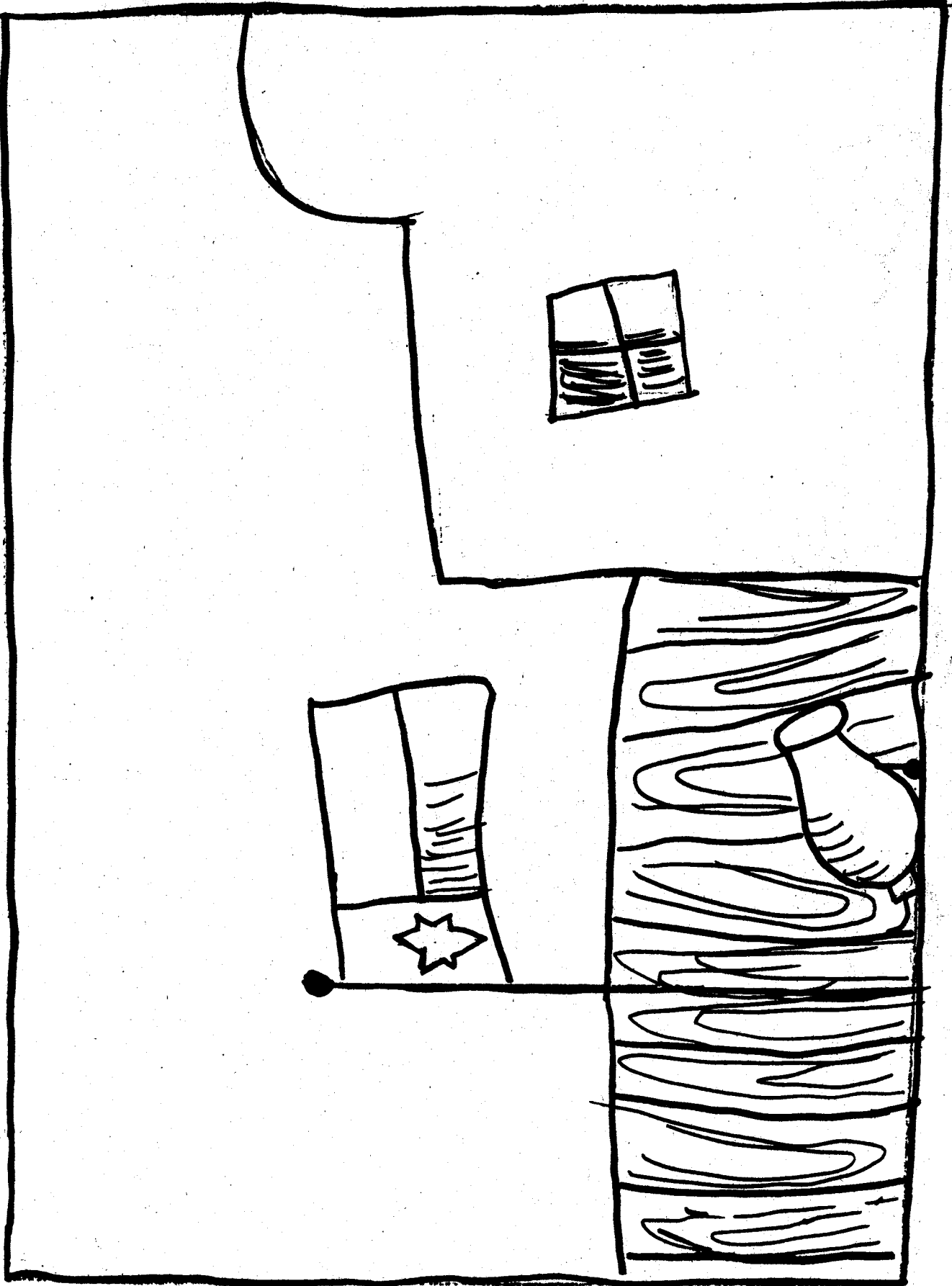
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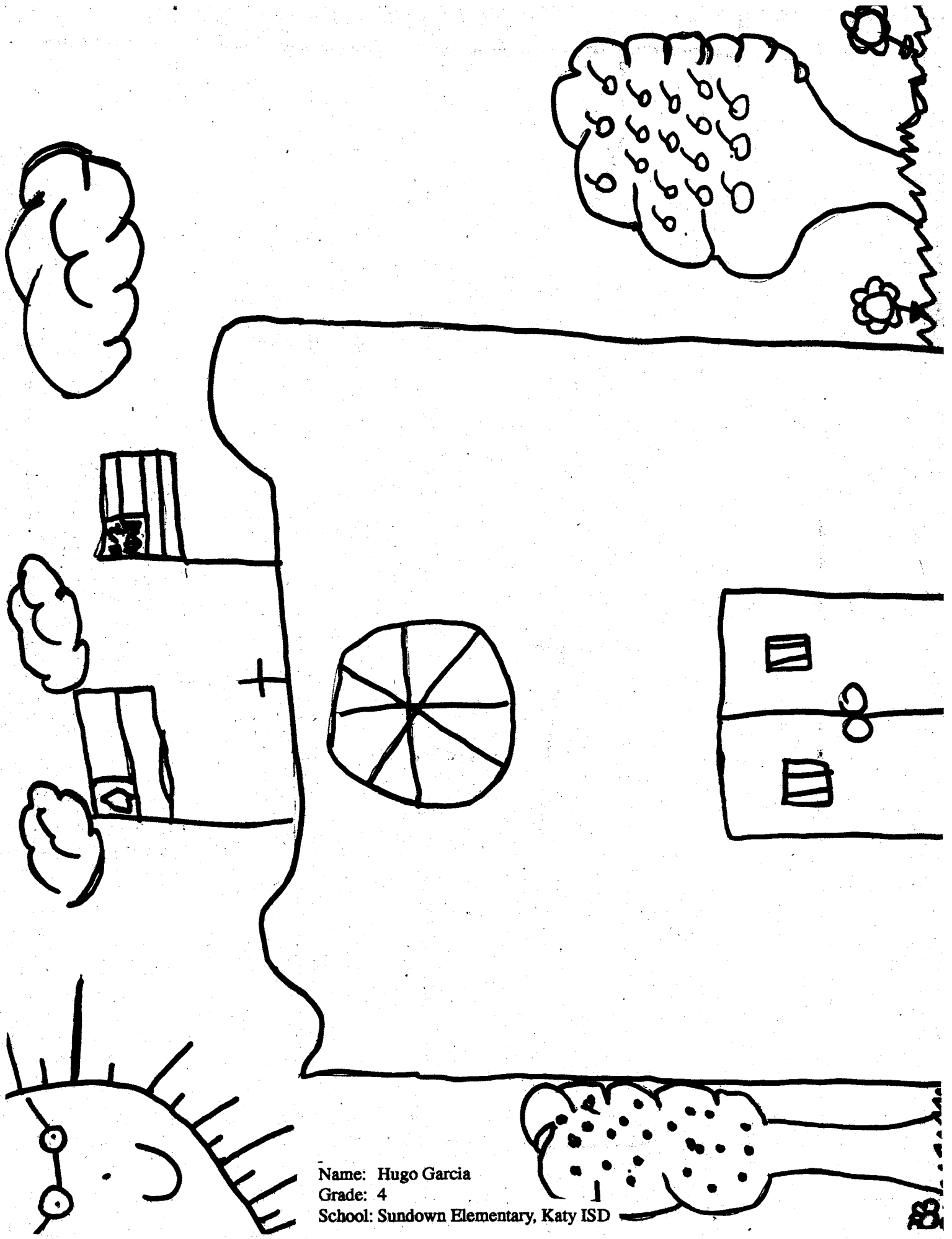
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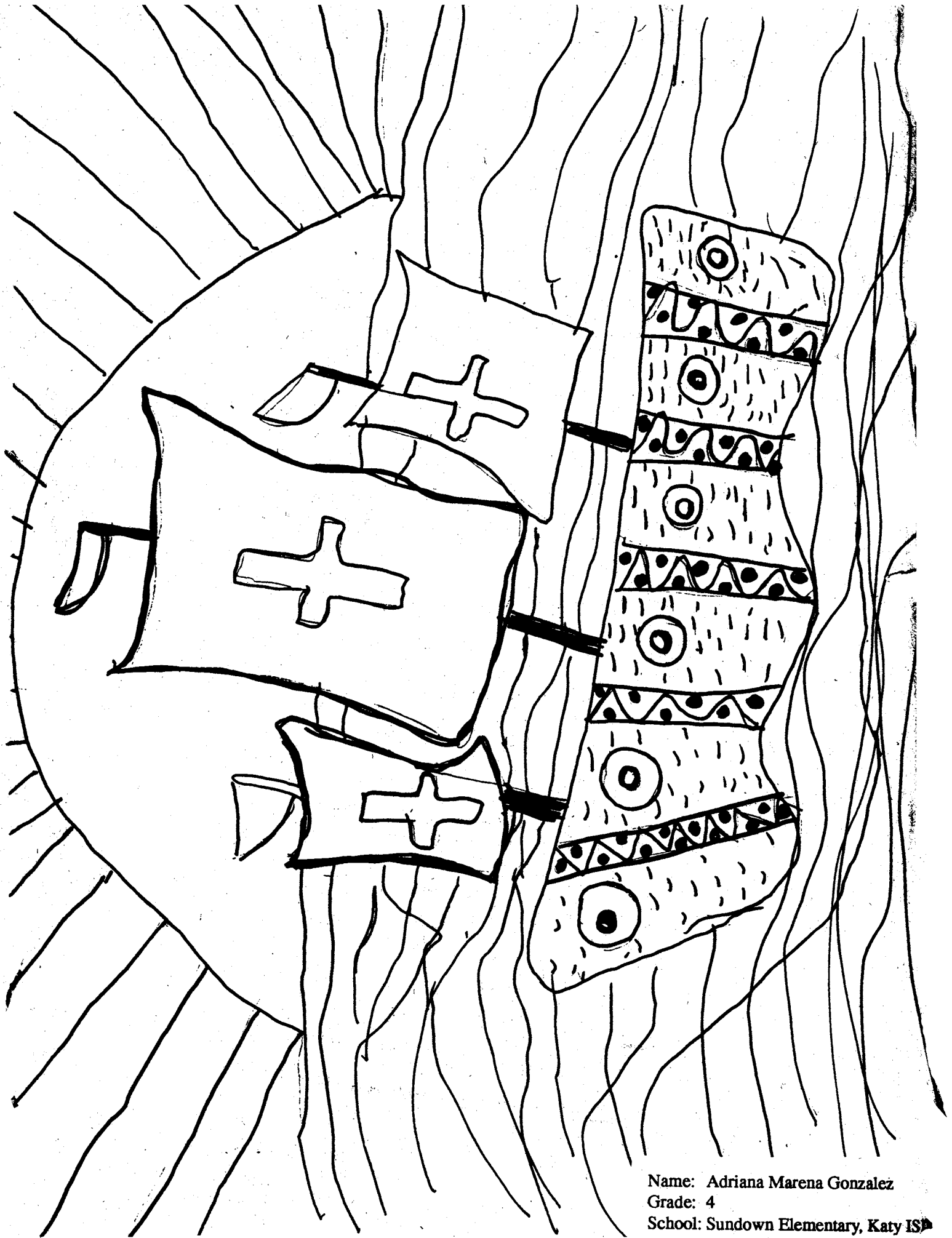
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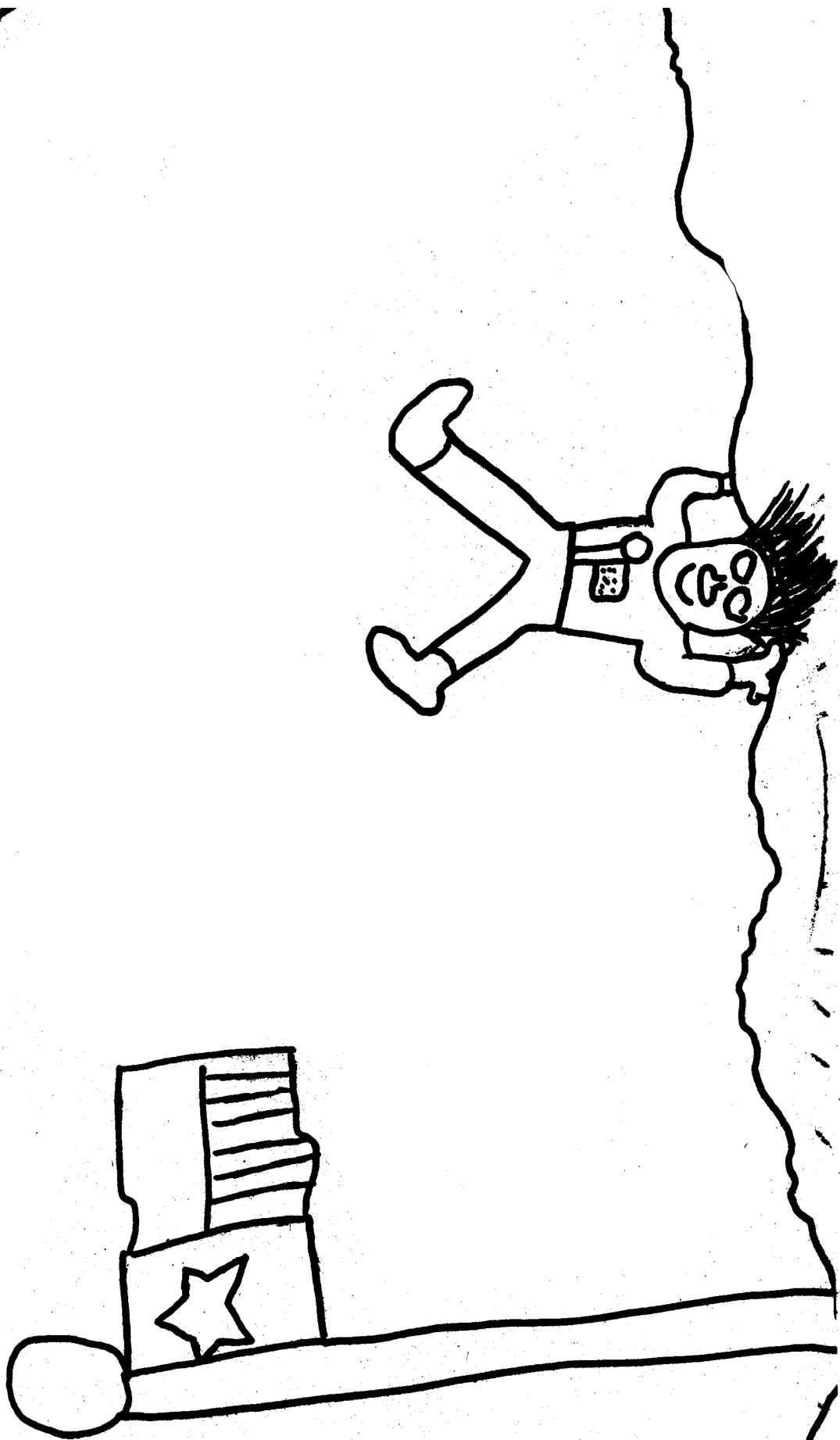
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Grade: 7
School: Murchison Middle School, Austin ISD

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 16. ECONOMIC REGULATION Part VIII. Texas Racing Commission

Chapter 321. Pari-mutuel Wagering

Subchapter B. Distribution of Pari-mutuel Pools

• 16 TAC §321.119

The Texas Racing Commission adopts on an emergency basis new §321.119, concerning odd-even. The section establishes the odd-even pari-mutuel wager.

The section is adopted on an emergency basis to facilitate and expedite the receipt of state revenue from pari-mutuel wagering.

The new section is adopted under Texas Civil Statutes, Article 179e, §3. 02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and under §11.01, which authorize the commission to adopt rules relating to pari-mutuel wagering.

§321.119. *Odd-Even.*

(a) The odd-even is not a parlay and has no connection with or relation to the win, place, and show pools shown on the totalisator board. The odd-even is a separate pool and shall be calculated as a win pool.

(b) A person purchasing an odd-even ticket shall designate "odd" or "even". An "odd" ticket represents a wager on each race animal with an odd number as listed in the official program. An "even" ticket represents a wager on each race animal with an even number as listed in the official program.

(c) If the race animal finishing first has an odd program number, the odd-even pool shall be distributed to the holders of tickets designating odd. If the race animal finishing first has an even program number, the odd-even pool shall be distributed to the holders of tickets designating even.

(d) Except as otherwise provided by this subsection, if after wagering has begun an animal entered in an odd-even race is scratched, declared out, or prevented

from racing, there will be no refund. The association, with the approval of the racing judges, may cancel the odd-even pool and refund all money wagered into that pool if there are less than three odd program number race animals or less than three even program number race animals participating in a race.

(e) Except as otherwise provided by this subsection, if a race ends in a dead heat for first place between a race animal with an odd program number and a race animal with an even program number, the program number of the third place finishing animal will determine the winners of the odd-even pool. If there is a dead heat for third place between a race animal with an odd program number and a race animal with an even program number, the program number of the fifth place finishing animal will determine the winners of the odd-even pool. If a race ends a dead heat for the flirts place between three race animals, the type of program number of the majority of the animals involved in the dead heat will determine the winners of the odd-even pool.

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

TRD-9216773 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: December 18, 1992

Expiration date: April 17, 1993

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

TITLE 22. EXAMINING BOARDS Part I. Texas Board of Architectural Examiners

Chapter 3. Landscape Architects

Subchapter C. Written Exami- nations

• 22 TAC §3.46

The Texas Board of Architectural Examiners adopts on an emergency basis an amendment to §3.46, concerning reproduction of the graphic portion of the registration examination.

An emergency exists due to the necessity for security of the graphic portions of the examination.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§3.46. *Scoring.*

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

[(c) Each candidate may obtain a copy of his/her graphic portions of tests 3, 4, 5, and 6 upon written request and payment of \$5.00 per test. (Checks should be made payable to the Texas Board of Architectural Examiners.)]

Issued in Austin, Texas, on December 18, 1992.

TRD-9216788 Robert H. Norris
Executive Director
Texas Board of
Architectural Examiners

Effective date: December 21, 1992

Expiration date: April 20, 1993

For further information, please call: (512)
458-1363

Chapter 5. Interior Designers Subchapter B. Registration

• 22 TAC §5.31

The Texas Board of Architectural Examiners adopts on an emergency basis an amendment to §5.31, concerning requisite qualifications for registration.

This amended section is adopted on an emergency basis to allow implementation of the registration process for interior designers in accordance with Texas Civil Statutes, Article 249e, which became effective September 1, 1991.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§5.31. *Eligibility.*

(a) The board shall accept for interior designer registration without examination:

(1) an applicant who files an application with this board no later than August 31, 1992, and who prior to September 1, 1992, had six or more years' total experience credits working independently or in the course of regular employment as a [full-time]:

(A)-(D) (No change.)

(2) (No change.)

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

Issued in Austin, Texas, on December 18, 1992.

TRD-9216786

Robert H. Norris
Executive Director
Texas Board of
Architectural Examiners

Effective date: December 21, 1992

Expiration date: April 20, 1993

For further information, please call: (512) 458-1363

TITLE 34. PUBLIC FINANCE

Part IX. Texas Bond Review Board

Chapter 190. Allocation of the State's Limit on Certain Private Activity Bonds

Subchapter A. Program Rules

• 34 TAC §§190.1-190.5, 190.8

The Texas Bond Review Board proposes amendments to 34 TAC, §§190.1-190.5, and 190.8. The amendments will clarify the application process and require additional information to accompany an initial application for reservation. The Texas Bond Review Board amends these sections to facilitate maximum efficiency in the usage of allocation for private activity bonds. This emergency action is necessary because the program year begins on January 1, and applications will be filed beginning January 4. The previously published rules will not be in effect on that date.

The amended sections are proposed under Texas Civil Statutes, Article 5190.9a, which gives the Texas Bond Review Board the authority to propose rules pertaining to the adoption, implementation and administration of the allocation of the state's ceiling on private activity bonds.

§190.1. General Provisions.

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

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

(1)-(32) (No change.)

(33) Local population—The population in the local governmental unit or units on whose behalf a housing finance corporation is created as determined by the most recent federal census estimate. If two local governmental units which overlap have each created housing finance corporations, prior to the submission of either the application for reservation or the application for carryforward by either housing finance corporation, there shall be excluded from the population of the larger local governmental unit that portion of the population of any smaller local governmental unit having a population as determined by the most recent federal census estimate of 20,000 or more which is within the larger local governmental unit, unless the smaller local governmental unit assigns its authority to issue qualified mortgage bonds, based upon its population, to the larger local governmental unit. A resolution assigning authority to issue qualified mortgage bonds must have been adopted within the twelve months preceeding the date of submission of the application to the board.

(34)-(52) (No change.)

(53) Unexpended proceeds—Proceeds remaining from a prior issue of bonds, including, in the case of qualified mortgage bonds, any unused portion of mortgage credit certificates.

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

§190.2. Allocation and Reservation System.

(a) (No change.)

(b) On or after January 2, the board will accept applications for reservation from issuers authorized to issue private activity bonds. The board shall not grant a reservation to any issuer prior to January 10. If two or more issuers file an application for reservation of the state ceiling in any of the categories described in the Act, §2(b), the board shall conduct a lottery establishing the order of priority of each such application for reservation. Once the order of priority for all applications for reservation filed on or before January 10 is established, reservations for each issuer within the categories described in the Act, §2(b)(2)-(5) shall be granted in the order of priority established by such lottery. Each issuer of state voted issues granted a reservation initially shall be granted a reservation date which is the business day immediately following the date of such lottery. If more than 10 applications by issuers, other than issuers of state voted issues, are granted a reservation initially, an additional lottery will be held immediately to determine staggered reservation dates for such issuers. The order of priority for reservations in the category described in the Act, §2(b)(1), shall further be determined as provided in the Act, §3(c).

(1)-(3) (No change.)

(4) Within each category of priority, reservations shall be granted in reverse calendar year order of the most recent closing of qualified mortgage bonds by each housing finance corporation, with the most recent closing being the last to receive a reservation and with those housing finance corporations that have never received a reservation for mortgage revenue bonds being the first to receive a reservation, and, in the case of closings occurring on the same date, reservations shall be granted in an order determined by the board by lot. [All applications for a reservation filed after January 10 by any issuer for the issuance of bonds shall be accepted by the board in their order of receipt.]

(c) (No change.)

(d) All applications for a reservation filed after January 10 by any issuer for the issuance of bonds shall be accepted by the board in their order of receipt.

(e)[(d)] An application for a reservation may not be submitted after December 14.

(f)[(e)] The amount of the state's ceiling that has not been reserved prior to December 15 and any amount previously reserved that becomes available on or after that date because of the cancellation of a reservation or any other reason, may be designated, by the board, as carryforward for the carryforward purposes outlined in the code through submission of the application for carryforward and any other required documentation.

(g)[(f)] An issuer may submit an application for carryforward to the board at any time during the year through the last business day in December.

(h)[(g)] Issuers will be eligible for carryforward according to the priority classifications listed in the Act.

§190.3. Filing Requirements For Applications For Reservation.

(a) (No change.)

(b) Application filing. The issuer shall submit one original and two copies of the application for reservation. Each application must be accompanied by the following:

(1) (No change.)

(2) the certificate regarding fees, on the form prescribed by the board;

(3) (No change.)

(4) a copy of the issuers articles of incorporation as certified by the secretary of state of Texas and by-laws, including amendments thereto and re-

statements thereof, or alternatively, a certification that there have been no amendments to the articles of incorporation or by-laws since the last submission of these items to the board;

(5) a copy of the issuer's certificate of continued existence from the secretary of state of Texas or a copy of the issuer's certificate of good standing from the comptroller of public accounts of Texas, dated within 30 days of submission of application;

(6)[(4)] a statement by the issuer, other than an issuer of a state-voted issue, that the bonds are not being issued for the same stated purpose for which the issuer has received sufficient carryforward during a prior year or for which there exists unexpended proceeds from a prior issue or issues of bonds issued by the same issuer;

(7)[(5)] if unexpended proceeds exist from a prior issue or issues of bonds, other than a state-voted issue, issued by the issuer or on behalf of the issuer for the same stated purpose for which the bonds are the subject of this application, a statement by the trustee as to the current amount of unexpended proceeds that exists for each such issue. The issuer shall certify to the current amount of unexpended proceeds that exists for each issue should a trustee not administer the bond issues;

(8) [(6)] if unexpended proceeds other than prepayments exist from a prior issue or issues of bonds, other than a state-voted issue, issued by issuer or on behalf of issuer for the same stated purpose for which the bonds are the subject of this application, a definite and binding financial commitment agreement which must accompany the application in such form as the board finds acceptable, to expend the unexpended proceeds within 12 months after the date of receipt by the board of an application for reservation. For purposes of this paragraph, the commitment by lenders to originate and close loans within a certain period of time shall be deemed a definite and binding agreement to expend bond proceeds within such period of time and any additional period of time during which such origination period may be extended under the terms of such agreement; provided however, that any such extension provision may be amended, prior to date on which the bond authorization requirements described in subsection (c) of this section must be satisfied, to provide that such period shall not be extended beyond 12 months after the date of receipt by the board of an application for reservation;

(9) [(7)] if unexpended proceeds exist from a prior issue or issues of bonds, other than a state-voted issue, issued by the issuer or on behalf of the issuer for the same stated purpose for which the bonds are

the subject of the pending application, a written opinion of legal counsel, addressed to the board, to the effect, that the board may rely on the representation contained in the application to fulfill the requirements of the Act and that the agreement referred to in paragraph (8) [(5)] of this subsection constitutes a legal and binding obligation of the issuer, if applicable, and the other party or parties to the agreement;

(10) [(8)] a written opinion of legal counsel, addressed to the board, to the effect that the bonds are required to be included under the state ceiling and that the issuer is authorized under the laws of the state to issue bonds for projects of the same type and nature as the project which is the subject of the application. This opinion shall cite by constitutional or statutory reference, the provision of the Constitution or law of the state which authorizes the bonds for the project; [and]

(11)[(9)] a qualified mortgage bond issuer that submits an application for reservation as described in the Act, §3(c), shall provide a statement certifying to the most recent closing of qualified mortgage bonds or the most recent date of a reservation received for mortgage revenue bonds and state the governmental unit(s) for which the local population was based for the issuance of bonds or for receipt of a reservation; and

(12) For a qualified residential rental project issue, an issuer that submits an application as described in the Act, §3(c), shall provide a copy of an executed earnest money contract between the borrower and the seller of the project. This earnest money contract must be in effect at the time of submission of the application to the board.

(c) Bond authorization requirements. Not later than 35 calendar days after an issuer's reservation date, the issuer shall submit to the board:

(1) (No change.)

(2) the certificate regarding fees, on the form prescribed by the board;

(3)-(4) (No change.)

(5) if applicable, an amended agreement pursuant to subsection (b)(8)[(5)] of this section;

(6) (No change.)

(d) (No change.)

(e) Closing documents. Not later than the fifth calendar day after the day on which the bonds are closed the issuer shall file with the board:

(1) a certificate regarding fees, on the form prescribed by the board;

(2)-(7) (No change.)

(8) [(f)] For [Closing documents for] mortgage credit certificates the issuer shall file item (1) of subsection (e) and the following [include]:

(A)[(1)] a certified copy of the issuer's resolution electing to convert state ceiling to mortgage credit certificates;

(B)[(2)] issuer's mortgage credit certificate election; and

(C)[(3)] program plan.

(f)[(g)] Additional information. The board may require additional information at any time before granting a certificate of reservation or certificate of allocation.

(g)[(h)] Application restrictions.

(1)-(3) (No change.)

(4) No issuer may submit an application for reservation in excess of \$50,000,000 except for the housing finance division of the Texas Department of Housing and Community Affairs and the Texas Higher Education Coordinating Board.

§190.4. Filing Requirements For Applications For Carryforward.

(a) (No change.)

(b) Filing. The issuer shall submit one original and two copies of the application for carryforward. Each application must be accompanied by the following:

(1) (No change.)

(2) the certificate regarding fees, on the form prescribed by the board;

(3)-(7) (No change.)

(c) (No change.)

(d) Closing documents. Not later than the fifth calendar day after the day on which the bonds are closed the issuer shall file with the board:

(1) a closing documents checklist, on the form prescribed by the board;

(2) a certificate of delivery on the form prescribed by the board;

(3) a certified copy of the bond resolution authorizing the issuance of bonds, and setting forth the specific principal amount of the bond issue;

(4) if one is required, a copy of the approval of the governmental unit or governmental units, certified by a public official with the authority to certify such approval. This requirement shall not apply to any bonds for which the code does not require such a public hearing and

approval of a governmental unit or governmental units;

(5) other documents relating to the issuance of bonds, including a statement of the bonds';

(A) principal amount;

(B) interest rate or the formula by which the interest is calculated;

(C) maturity schedule;

(D) purchaser or purchasers; and

(6) an official statement.

§190.5. Consideration of Qualified Applications By the Board.

(a)-(e) (No change.)

(f) If at any time none of the state's ceiling remains available for certificates of reservation in a specific category, but additional amounts become available in such specific category before June 1 because of cancellations or any other reason, those amounts shall be aggregated and reservations shall be granted from that category on June 1 to qualified applications in an order determined by lot number with respect to those applications having such numbers, and otherwise by date and time of receipt by the board. If any portion of state ceiling becomes available after June 1 and before August 25 in any specific category those amounts shall be aggregated and reservations shall be granted from that category on August 25 to qualified applications in an order determined by lot number with respect to those applications having such numbers, and otherwise by date and time of receipt by the board. The board may grant a reservation at any time on or after January 10 if the amount of state ceiling available in any category exceeds the amount of state ceiling applied for in that category by the next applicant.

(g)-(j) (No change.)

§190.8. Notices, Filings, and Submissions.

(a) (No change.)

(b) Applications, notices, and other written communication to, and filings with the board, should be addressed or delivered to the Bond Review Board, William P. Clements State Office Building, 300 West 15th Street, Suite 409, [Sam Houston Building, 201 East 14th Street, Room 506.] Austin, Texas 78701.

(c) (No change.)

Issued in Austin, Texas, on December 18, 1992.

TRD-9216776

Beverly S. Bunch
Interim Executive Director
Texas Bond Review Board

Effective date: January 1, 1993

Expiration date: January 31, 1993

For further information, please call: (512) 463-1741

Part X. Texas Public Finance Authority

Chapter 225. Master Equipment Lease Purchase Program, Series B

• 34 TAC §§225.1, 225.4, 225.5, 225.7

The Texas Public Finance Authority adopts on an emergency basis new §§225.1, 225.3, 225.5, and 225.7, concerning the master lease purchase program and recovery of costs associated with that program. This chapter is adopted on an emergency basis to ensure a continuous and timely financing for projects of state agencies so as to enable state agencies to operate without disruption of service to the public.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 601d, which authorize the Texas Public Finance Authority to finance projects by one or more State agencies.

§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 of this title (relating to Notice of Request for Bond Issue and Definitions), 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 exe-

cuted 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 client 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 one and (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.

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

TRD-9216732

Anne L. Schwartz
Executive Director
Texas Public Finance
Authority

Effective date: December 17, 1992

Expiration date: April 16, 1993

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



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 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 28. Texas Agricultural Finance Authority: Loan Guaranty Program

• 4 TAC §28.14

The Texas Department of Agriculture proposes new §28.14 concerning the collection, settlement, and enforcement of guaranteed loans. The new section is proposed to allow for expeditious action in the event of a default by a borrower. The new section provides that the staff of the TDA loan guaranty program may act with the approval of the commissioner, or his designee, on behalf of the TAFE Board in the collection, settlement, and enforcement of loans guaranteed by TAFE under the program.

Robert Kennedy, deputy assistant commissioner for agricultural finance, 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. Kennedy 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 expeditious action in the event of a default of a loan made under the TAFE loan guaranty program in order to protect the public's interest in the loan. 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 Robert Kennedy, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

The new section is proposed under the Texas Agriculture Code, §58.022, which provides the board of the Texas Agricultural Finance Authority (TAFE), with the authority to adopt rules to establish procedures for administration of the TAFE Loan Guaranty Program.

§28.14. *Loan Guaranty Administration.*

(a) Except as otherwise provided by state law, by these rules or by resolution of the board, the staff, with the approval of the commissioner of agriculture or the deputy commissioner of agriculture or the official

of the department designated by the commissioner of agriculture as being responsible for the department's agricultural finance programs, shall have the authority to act on behalf of the Authority, without specific board approval, in regard to the collection, settlement and enforcement of each and every loan guaranteed by the Authority under the program. Such authority shall include, without limitation, the actions required to be taken by the Authority under any loan agreement, any participation agreement and any other agreement entered into by the Authority concerning a loan guaranteed by the Authority under the program.

(b) Nothing in this section shall prevent the staff or the commissioner of agriculture, the deputy commissioner, or official of the department designated by the commissioner of agriculture from submitting any matter to the board for its consideration and approval.

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 17, 1992.

TRD-9216746

Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Earliest possible date of adoption: January 25, 1993

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

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules Rates

• 16 TAC §23.21

The Public Utility Commission of Texas proposes an amendment to §23.21, concerning inclusion of expense associated with post-retirement benefits other than pensions in cost of service. Under the proposed amendment, post-retirement benefits other than

pensions (OPEB expense) shall be included in a utility's cost of service for ratemaking purposes based on actual payments made to retired employees. A utility may request a one time conversion to inclusion of current OPEB expense in cost of service for ratemaking purposes on an accrual basis in accordance with generally accepted accounting principles. For ratemaking purposes, OPEB expense shall not include the transition obligation. The proposed amendment also provides that amounts included in rates shall be placed in an external trust dedicated to the payment of OPEB expenses.

Paula Mueller, assistant general counsel, 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 new section.

Ms. Mueller also has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be promotion of consistent ratemaking treatment, decreased litigation of issues in rate cases, and greater certainty regarding the regulatory treatment to be afforded OPEB expense. There will be no effect on small businesses as a result of enforcing the section. There may be some degree of economic cost to persons required to comply with the rule as proposed because utilities whose rates are set by the Public Utility Commission will not recover the transition obligation through rates. It is difficult to predict the precise cost because there are many variables involved in making such a prediction, including the estimated amount of the transition obligation and the period over which a given utility would expense the transition obligation for financial reporting purposes.

Ms. Mueller also has determined that for each of the first five years the section is in effect, there will be no impact on employment in the geographical areas affected by implementing the requirements of the section.

Comments on the proposal (13 copies) may be submitted to John M. Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. Comments should refer to Project Number 11125.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§23.21. Cost of Service.

(a) (No change.)

(b) Allowable expenses. Only those expenses which are reasonable and necessary to provide service to the public shall be included in allowable expenses. In computing a utility's allowable expenses, only the utility's historical test year expenses as adjusted for known and measurable changes will be considered, except as provided for in any section of these rules dealing with fuel expenses.

(1) Components of allowable expenses. Allowable expenses, to the extent they are reasonable and necessary, and subject to the rules in this section, may include, but are not limited to, the following general categories:

(A)-(G) (No change.)

(H) Post-retirement benefits other than pensions (OPEB). For ratemaking purposes, expense associated with post-retirement benefits other than pensions (OPEB) shall be treated as follows.

(i) OPEB expense shall be included in a utility's cost of service for ratemaking purposes based on actual payments made.

(ii) A utility may request a one time conversion to inclusion of current OPEB expense in cost of service for ratemaking purposes on an accrual basis in accordance with generally accepted accounting principles (GAAP).

(iii) A utility shall not be allowed to recover current OPEB expense on an accrual basis until GAAP requires that utility to report OPEB expense on an accrual basis.

(iv) For ratemaking purposes, OPEB expense shall not include the transition obligation.

(v) Amounts included in rates shall be placed in an external trust fund dedicated to the payment of OPEB expenses. The utility shall, to the extent permitted by the Internal Revenue Code, establish a post-retirement benefit plan that allows for current federal income tax deductions for contributions and allows earnings on the trust funds to accumulate tax free.

(2) (No change.)

(c)-(d) (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 18, 1992.

TRD-9216759

John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: January 25, 1993

For further information, please call: (512) 458-0100

◆ ◆ ◆
**Part III. Texas Alcoholic
Beverage Commission**
Chapter 37. Legal

Penalties

• **16 TAC §37.60**

The Texas Alcoholic Beverage Commission proposes new §37.60, concerning standard penalty chart. The new section sets out methods for determining and imposing penalties upon alcoholic beverage licensees and permittees regulated by the Commission.

Don Walden, staff attorney, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. State government should realize increased revenues as a result of enforcing the portion of the proposed rule determining civil penalties, which establishes standards for assessment of civil penalties that exceed the statutory minimum of \$150 per day. However, the amount of increased revenues is not foreseeable because penalties will be based upon the permittee's or licensee's economic condition at the time of a violation.

Mr. Walden also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be greater certainty and statewide uniformity in the penalties imposed for the violations listed. Individual small businesses may be affected on an isolated basis, both negatively and positively, by implementation of this section. However, there is no method by which specific businesses might be identified. It is estimated that the combination of negative and positive effects on isolated small businesses will balance out to a neutral net effect. There is a negligible anticipated economic cost to persons required to comply with the proposed new section.

Comments on the proposal may be submitted to Don Walden, Staff Attorney, P. O. Box 13127, Austin, Texas 78711-3127. The telephone number is (512) 206-3493.

The new section is proposed under the Texas Alcoholic Beverage Code, §5.31, which authorizes the Commission to prescribe and publish rules necessary to carry out the provisions of this Code.

§37.60. *Standard Penalty Chart.*

(a) The imposition of penalties against licensees and permittees regulated by the Commission shall be made in com-

pliance with the following standard penalty chart.

(b) Nothing in this rule shall limit the authority of the administrator to assess a penalty not prescribe by this chart when aggravating or mitigating circumstances are demonstrated. For example, a previous violation of similar nature shall be considered an aggravating circumstance and may justify the assessment of a more severe penalty than that prescribe by the chart.

(c) For purposes of this Rule, the term "administrator" shall include any person to whom the Administrator has delegated authority, including without limitation, the assistant administrator, a commission attorney, enforcement agency, or an auditor. Prior to assessing a penalty different than the penalty prescribed by this Rule for a violation listed in this Rule, a commission attorney or enforcement agent must have the approval of a deputy assistant chief or the legal division director, and a commission attorney or auditor must have the approval of the assistant director or auditor or legal division director. A commission enforcement agent, auditor, or attorney may assess a penalty by written agreement with a permittee or licensee without a hearing. Notwithstanding anything to the contrary in this Rule, the administrator, as defined herein, shall have the authority to issue a "warning" for any first violation of any provision of the Texas Alcoholic Beverage Code or Texas Alcoholic Beverage Commission Rules.

(d) Each suspension of a permit or license shall begin on a Wednesday and shall run for consecutive days. An alcoholic beverage licensee or permittee penalized by the commission may pay a civil penalty in lieu of a suspension as provided by the Texas Alcoholic Beverage Code, §11.64, but no permittee or licensee may pay a civil penalty in lieu of a fraction of its suspension. In other words, any penalty assessed must be either a suspension or a civil penalty, but not a combination of both.

(e) Where this Rule provides different penalties for violations committed by an employee, the term "employee" shall mean agent, servant, or employee, as defined by Texas law.

(f) Except where the chart specifically states otherwise, repeat enforcement violation by an alcoholic beverage licensee or permittee justifies the penalty for a second or third violation if it occurs within 12 months of the first violation. A fourth violation occurring in any two-year period shall be penalized in the same manner as a third violation within a 12-month period. Notwithstanding the foregoing, the Texas Alcoholic Beverage Code, §106.13, shall apply to repeat violations of any prohibition of the sale or delivery of alcoholic beverages to a

minor or permitting a minor to possess or consume an alcoholic beverage.

(g) A penalty for an alleged repeat violation shall not be assessed unless the alleged violation occurs after the permittee or licensee, as those terms are defined in the Texas Alcoholic Beverage Code, §1.04(11), has been notified, in writing, of the first alleged violation. Notwithstanding the preceding sentence, if an alleged violation is discovered during an undercover operation, then no notice of any prior alleged violations shall be necessary to assess a penalty

for a repeat violation. The requirement that written notice be given to a permittee or licensee shall not be interpreted to require that a Notice of Hearing for the violation be delivered to the permittee or licensee.

(h) If an alcoholic beverage permittee or licensee is cited for more than one violation, then the penalty assessed shall be the highest penalty among those available. The following days shall be added to that penalty:

(1) one day for one to two additional violations;

(2) four days for three to five additional violations;

(3) eight days for six or more additional violations.

(i) Pursuant to the Texas Alcoholic Beverage Code, §11.64(a), the civil penalty assessed against an alcoholic beverage permittee or licensee shall be determined in accordance with the following table, as determined by the permittee or licensee executing an affidavit in a form substantially similar to Exhibit "A".

Permit or License	Dollar Amount of Alcoholic Beverage Purchases for two calendar months prior to month of violation.	Daily Civil Penalty
AB, P, MB, Q, PT, NE, N, Y, V, BF, BE, BG, BQ	\$160,000 or more	\$1,000
	80,000 to 159,999.99	750
	40,000 to 79,999.99	500
	20,000 to 39,999.99	300
	less than 20,000.00	150
Permit of License	Dollar Amount of Taxes Paid for two calendar months prior to month of violation	Daily Civil Penalty
W, X, LX, Z, G, BC, BB, BD	\$270,00 or more	\$1500
	150,000 to 269,999.99	1000
	50,000 to 149,999.99	500
	less than 50,000	150
Permit or License	Daily Civil Penalty	
B,D,U,S,BA,BS	\$2500	
All other permits	\$150	

(j) The Standard Penalty Chart applies to cancellations and suspensions of alcoholic beverage permits and licenses. It does not apply to the denial of any applica-

tion for an alcoholic beverage permit or license.

(k) The list of violations on this chart is not an exclusive list of violations of the Texas Alcoholic Beverage Code and Texas Alcoholic Beverage Commission

Rules. The administrator is authorized to assess penalties for any violation of any of the foregoing statutes or rules that are not listed on the chart and for any violation of the foregoing statutes or rules for which a penalty is not provided on the chart.

STANDARD PENALTY CHART

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Sale to minor - \$106.03, 61.71(a)(5) Permitting Minor to Possess/Consume -\$106.06			
17-20 yrs. old	8-10	11-15	Cancel
under 17 yrs. old	10-13	15-18	Cancel
Cash Law violation - \$61.73 & 102.31	1	2	2
Credit Law violation - \$102.32	1	2	2
Sale to Intoxicated person - \$11.61(b)(14), 61.71(a)(6) & 101.63	5-7	15	Cancel
Intoxicated Permittee/Licensee/Employee on Licensed Premise \$11.61(b)(13) & 104.01(5)	3-5 Employee ----- 5-7 Permittee	7-10 Employee ----- 12-15 Permittee	25-30 Employee ----- Cancel Permittee
Open Saloon - \$32.17(a)(1), 32.01(2)	5-7	8-10	20
Soliciting Drinks by Licensee/Permittee/Employee - \$104.01(4)	3	5	7
Purchase A/B' from Another Retail Dealer for Resale \$61.71(a)(2), 69.09 & 71.05	3	8	15
Delinquent Filing of Gross Receipt Tax Return - \$202.03	Warning (4th) 20	3 (5th) 40	10 (6th) Cancel
Permitting Public Lewdness \$104.01(6)	7-10	15-20	Cancel
Failure to File Gross Receipts Tax \$202.03	Cancel		
Failure to File Other Monthly Reports Rule Ch. 41	Cancel		
Failure to Remit Tax to Comptroller \$11.61(c), \$61.712	Cancel		
Possession of narcotics by Permittee/Licensee, as opposed to employee \$104.01	Cancel		
Sale or delivery of narcotics by Permittee/Licensee, as opposed to employee \$104.01	Cancel		
Permitting sale or deliver of narcotics by permittee/licensee, as opposed to employee \$104.01	Cancel		
Subterfuge \$109.53	Cancel		
Knowing filing of false report or record \$202.08	Cancel		

EXHIBIT "A"

AFFIDAVIT

Before me, the undersigned authority, personally appeared _____,
who, being by me duly sworn, deposed as follows:

"My name is _____. I am of sound mind, capable of making this
affidavit, and personally acquainted with the facts herein stated:

I am the holder of _____ (permit no.) _____ issued by the Texas Alcoholic
Beverage Commission (the "Commission") for the premises located at
_____ (address) _____ and known as _____ (tradename) _____.
The Commission has charged _____ (tradename) _____ with certain
administrative violations, and, in connection therewith, seeks to impose a civil penalty against
_____ (tradename) _____. I hereby swear and affirm that during the sixty day
period beginning on _____, 19__, and ending on _____, 19__,
_____ (tradename) _____ expended \$ _____ for the purchase of alcoholic
beverages. I am aware that the Commission may inspect the records of
_____ (tradename) _____ at any time to determine the accuracy of the
representation made in the immediately preceding sentence. I am also aware that the
Commission may verify the accuracy of such representation in any other lawful manner.

I am aware that making a false statement or misrepresentation on this affidavit is (1) a felony punishable by imprisonment of not less than two nor more than ten years under Section 101.69 of the Texas Alcoholic Beverage Code, and (2) a ground for cancellation of the permit or permits described in this affidavit."

Affiant

SWORN TO AND SUBSCRIBED before me on the ____ day of _____, 19__.

My Commission expires:

Notary Public State of Texas
Notary's printed name:

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

Issued in Austin, Texas, on December 17, 1992.

TRD-9216743

Dick Durbin
Administrator
Texas Alcoholic Beverage
Commission

Earliest possible date of adoption: January 25, 1993

For further information, please call: (512) 206-3204

TITLE 19. EDUCATION
Part I. Texas Higher
Education Coordinating
Board

Chapter 5. Program
Development

Subchapter H. Approval of
Off-Campus and Out-of-
District Instruction for Pub-
lic Colleges and Universities

• 19 TAC §5.154

The Texas Higher Education Coordinating Board proposes an amendment to §5.154, concerning Criteria and Procedures for Considering Lower-Division Courses Proposed Off-Campus by Senior Institutions and Out-of-

District by Community and Technical Colleges. The change to the rule is necessary because a rider to the General Appropriations Bill (House Bill 1) requires the establishment of Uniform Service Regions for the purposes of regulation or delivery of services. On May 29, 1992, in accordance with the rider and in conjunction with the Commissioner of Health and Human Services, the State Comptroller divided Texas into 10 uniform service regions of state government to replace all previous regional divisions of state agencies. The State Comptroller identified definition criteria that permit regional subdivisions by an agency when necessary into as many as 24 regions, the boundaries of which should match those of the 24 Quality Work Force Planning regions. The changes to the rules must be in place by March 1, 1993. The amendments will assist us to conform to the 10 uniform service regions and to identify the institutions of higher education which will be members of the new regions.

Dale Campbell, assistant commissioner for community and technical colleges, 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. Campbell 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 a more "efficient and proper provision of services by the state to its citizens." Use of the uniform service regions for higher education benefit the public in planning and reporting to support the tri-agency work force development initiatives. 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 Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendment is proposed under Article V, Page V-79, Rider 120, House Bill 1, 72nd Legislature (First Called Session), which provides the Texas Higher Education Coordinating Board with the authority to adopt rules regarding Criteria and Procedures for Considering Lower-Division Courses Proposed Off-Campus by Senior Institutions and Out-of-District by Community and Technical Colleges.

§5.154. Criteria and Procedures for Considering Lower-Division Courses Proposed Off-Campus by Senior Institutions and Out-of-District by Community and Technical [Junior] Colleges [and Technical Institutes].

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

(c) Regional higher education council membership. The Coordinating Board recognizes regional higher education councils in **10** [eight] **uniform service** [major] regions of the state. The council membership consists of the president, or his/her representative, of each institution listed for each region. If an institution desires to participate in an adjoining regional council(s) in addition to the one in which it is designated a member by the Coordinating Board, the institution is encouraged to do so. Further, regionally accredited independent colleges and universities will be invited to participate in the councils in the interest of regional cooperation and planning. Upper-level institutions which are members of the councils shall not vote on matters pertaining to the approval or disapproval of lower division credit course offerings or the selection of the appropriate institution to offer such courses. The council member institutions are as follows:

(1) **High Plains-Region 1.** [the East Texas Higher Education Council.] **Amarillo College, Clarendon College, Frank Phillips College, South Plains Col-**

lege, Texas State Technical College-Amarillo, Texas Tech University, and West Texas State University [Angelina College, East Texas State University, Kilgore College, Northeast Texas Community College, Panola Junior College, Paris Junior College, Stephen F. Austin State University, Texarkana Community College, Trinity Valley Community College, Tyler Junior College, and the University of Texas at Tyler];

(2) **Northwest Texas-Region 2.** [the Southeast Texas Higher Education Council.] **Cisco Junior College, Midwestern State University, Ranger Junior College, Texas State Technical College-Sweetwater, Vernon Regional Junior College, and Western Texas College** [Alvin Community College, Brazosport College, College of the Mainland, Galveston College, Houston Community College, Lamar University, Lee College, North Harris County College District, Prairie View A&M University, Sam Houston State University, San Jacinto College District, Texas Southern University, University of Houston, University of Houston at Clear Lake City, and Wharton County Junior College];

(3) **Metroplex-Region 3.** [the South Texas Higher Education Council.] **Collin County Community College, Cooke County College, Dallas County Community College District, East Texas State University, Grayson County College, Navarro College, Tarleton State University, Tarrant County Junior College District, Texas Woman's University, University of North Texas, University of Texas at Arlington, University of Texas at Dallas, and Weatherford College** [Alamo Community College District, Bee County College, Corpus Christi State University, Del Mar College, Laredo Junior College, Laredo State University, Pan American University, Southwest Texas Junior College, Texas A&I University, Texas Southmost College, The University of Texas at San Antonio, Texas State Technical Institute-Harlingen, and Victoria College];

(4) **Upper East Texas-Region 4.** [the North Texas Higher Education Council.] **East Texas State University-Texarkana, Kilgore College, Northeast Texas Community College, Panola Junior College, Paris Junior College, Texarkana College, Trinity Valley Community College, Tyler Junior College, and University of Texas at Tyler** [Collin County Community College, Cooke County College, Dallas County Community College District, Grayson County College, North Texas State University, Tarrant County Junior College District, Texas Woman's University, The University of Texas at Arlington, and The University of Texas at Dallas];

(5) **Southeast Texas-Region 5.** [the Central Texas Higher Education Council.] **Angelina College, Lamar University Institute of Technology-Beaumont, Lamar University-Port Arthur, Lamar University-Orange, and Stephen F. Austin State University** [Austin Community College, Blinn College, Central Texas College, Hill College, McLennan Community College, Navarro College, Southwest Texas State University, Temple Junior College, Texas A&M University, Texas State Technical Institute-Waco, and The University of Texas at Austin];

(6) **Gulf Coast-Region 6.** [the Northwest Texas Higher Education Council.] **Alvin Community College, Brazosport College, College of the Mainland, Galveston College, Houston Community College System, Lee College, North Harris Montgomery Community College District, Prairie View A&M University, Sam Houston State University, San Jacinto College District, Texas Southern University, University of Houston, University of Houston at Clear Lake City, University of Houston-Downtown, University of Houston-Victoria, and Wharton County Junior College** [Cisco Junior College, Midwestern State University, Ranger Junior College, Tarleton State University, Vernon Regional Junior College, and Weatherford College];

(7) **Central Texas-Region 7.** [the West Texas Higher Education Council.] **Austin Community College, Blinn College, Central Texas College, Hill College, McLennan Community College, Southwest Texas State University, Temple Junior College, Texas A&M University, Texas State Technical College-Waco, and the University of Texas at Austin** [Angelo State University, El Paso Community College District, Howard College, Midland College, Odessa College, South Plains College, Sul Ross State University, Texas Tech University, Texas State Technical Institute-Sweetwater, The University of Texas at El Paso, The University of Texas of the Permian Basin, and Western Texas College];

(8) **South Texas-Region 8.** [the Panhandle Higher Education Council.] **Alamo Community College District, Bee County College, Corpus Christi State University, Del Mar College, Laredo Junior College, Laredo State University, Southwest Texas Junior College, Texas A&I University, Texas Southmost College, Texas State Technical College-Harlingen, University of Texas at San Antonio, University of Texas-Pan American-Brownsville, University of Texas-Pan American-Edinburg, and the Victoria College** [Amarillo College, Clarendon College, Frank Phillips College, Texas State Technical Institute-Amarillo, and West Texas State University].

(9) West Texas-Region 9. Angelo State University, Howard County Junior College District, Midland College, Odessa College, and University of Texas of the Permian Basin;

(10) Upper Rio Grande-Region 10. El Paso Community College District, Sul Ross State University, and University of Texas at El Paso.

(d)-(h) (No change.)

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

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

TRD-9216703 James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Earliest possible date of adoption: January 25, 1993

For further information, please call: (512) 483-6160

Chapter 9. Public Junior Colleges

Subchapter D. Basic Standards

• 19 TAC §9.62

The Texas Higher Education Coordinating Board proposes an amendment to §9.62, concerning Organization and Purpose. The proposed changes in the rules follow the current statutory language for community colleges purpose, but add responsibilities for workforce development and for adult literacy.

Dale Campbell, assistant commissioner for community and technical colleges, 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. Campbell, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification in the Community Colleges statutory mission of the significant contribution they already make in work force development, adult literacy, and other basic skills education. 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 Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendment is proposed under the Texas Education Code, §130.003, which provides the Texas Education Coordinating Board with

the authority to adopt rules regarding Basic Standards (Organization and Purpose).

§9.62. Organization.

(a) A public junior college is an institution of higher learning, controlled by a local board of trustees or regents, and operated under statutory provisions. A public junior college may confer associate degrees, but does not grant the baccalaureate degree.

(b) The purpose of each public community college shall be to provide:

(1) technical programs up to two years in length leading to associate degrees or certificates;

(2) vocational programs leading directly to employment in semi-skilled and skilled occupations;

(3) freshman and sophomore courses in arts and sciences;

(4) continuing adult education programs for occupational or cultural upgrading;

(5) compensatory education programs designed to fulfill the commitment of an admissions policy allowing the enrollment of disadvantaged students;

(6) a continuing program of counseling and guidance designed to assist students in achieving their individual educational goals;

(7) workforce development programs designed to meet local and statewide needs; and

(8) literacy and other basic skills (ABE, ESL, GED) programs to prepare adults to live more functionally.

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-9216704 James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Earliest possible date of adoption: January 25, 1993

For further information, please call: (512) 483-6160

Chapter 13. Financial Planning

Subchapter A. General Provisions

• 19 TAC §13.1

The Texas Higher Education Coordinating Board proposes an amendment to §13.1,

concerning Formulas. The proposed rule would authorize the commissioner to utilize a 24-month base period in cases in which enrollments during two 12-month base periods exceed the enrollment during the intervening 12-month non-base-period by 5.0% or more. It is proposed that this rule be used in determining the appropriation for the 1994-95 biennium.

Roger Elliott, assistant commissioner for research and financial planning 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. Elliott 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 authorization to the commissioner to utilize a two-year base period in calculating hours to be presented for formula funding in certain community/junior colleges and technical colleges. 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 Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendment is proposed under the Texas Education Code, §61.059, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules regarding Formulas.

§13.1. Formulas. Each public senior college and university shall prepare its appropriation request for each biennium in accordance with the Formulas Designated by the Coordinating Board [for the Public Senior Colleges and Universities] for that biennium, and with the Definitions of the Elements of Institutional Costs designated by the Coordinating Board for that biennium. Copies are available in the Coordinating Board offices, P.O. Box 12788, Austin, Texas 78711. In the event that the average number of hours presented by an institution for formula funding in two consecutive 12-month base periods exceeds the hours for the intervening 12-month period by 5.0%, the Commissioner is authorized to use a 24-month base period in determining the Board's formula funding recommendation for that institution.

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-9216705 James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Earliest possible date of adoption: January 25, 1993

For further information, please call: (512) 483-6160

Chapter 21. Student Services

Subchapter C. Hinson-

Hazlewood College Student Loan Program for all Loans which are Subject to the Provisions of the Federal Family Education Loan Program, [Guaranteed Student Loan Program], the College Access Loan Program, the Health Education Assistance Loan Program, and the Health Education Loan Program

• 19 TAC §§21.53, 21.55-21.57, 21.59, 21.61-21.65

The Texas Higher Education Coordinating Board proposes amendments to §§21.53, 21.55-21.57, 21.59, and 21.61-21.65, concerning the Hinson-Hazlewood College Student Loan Program. The amendments are necessary in order to comply with changes in the federal guaranteed student loan as mandated by the Higher Education Amendments of 1992. The changes must be made if the Hinson-Hazlewood College Student Loan Program is to continue to qualify for federal loan guarantees.

Mack Adams, assistant commissioner for student services, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering the sections. The federal loan guarantees are worth millions of dollars to the loan program. The fiscal impact of losing the guarantees would be great. The loss for each year would be in the millions, but the exact amount is impossible to estimate.

Mr. Adams 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 that the rules for the Hinson-hazlewood program will be in compliance with changes in federal law. Eligible students will receive below-market-interest-rate loans. 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 Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendments are proposed under the Texas Education Code, §52.54, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules

regarding the Hinson-Hazlewood College Student Loan Program.

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

Authorized Student Financial Aid Official—Any person or persons qualified to administer the Federal Family Education Loan Program [Guaranteed Student Loan Program], College Access Loan Program, the Health Education Assistance Loan Program, and/or the Health Education Loan Program at a postsecondary educational institution in Texas.

Default Rate—The federal cohort default rate is used for the Federal Family Education Loan Programs when appropriate; otherwise, the default rate shall be calculated as follows: The sum of bankrupt accounts unpaid, default claims paid, default claims pending, default claims unpaid, and claims due filing divided by the grand total of all accounts.

FFELP—The Federal Family Education Loan Program, formerly the Guaranteed Student Loan Program authorized by the Higher Education Amendments of 1965 as amended, also known as the Title IV, "Part B", programs. Included in the FFELP are Federal Stafford Loans and Federal Supplemental Loans for Students.

FSL—The Robert T. Stafford Federal Student Loan Program to be known as "Federal Stafford Loans," formerly known as Stafford Loans and Guaranteed Student Loans, which included Federal Insured Student Loans. The FSL are made under provisions of the Federal Family Education Loan Program; but, for purposes of this subchapter, the acronym FSL will designate those rules specific to FSL.

FSLs—Federal Supplemental Loans for Students, formerly known as Supplemental Loans for Students and Auxiliary Loans for Students. The FSLs are made under provisions of the Federal Family Education Loan Program; but, for purposes of this subchapter, the acronym FSL will designate those rules specific to FSLs.

[GSL or GSLP—The Federal Guaranteed Student Loan Program and/or the Stafford Student Loan Program.]

[SLS or SLSP—The Supplemental Loans for Students Program. Supplemental Loans for Students are made under provisions of the Guaranteed Student Loan Program; but for purposes of this subchapter, the acronym SLS will designate those sections specific to SLS.]

§21.55. Eligible Institution.

(a) Criteria. An eligible institution shall be any Texas institution of higher education within the State of Texas which:

(1)-(10) (No change.)

(11) for purposes of the FFELP, is not currently subject to an emergency action or limitation, suspension, or termination proceeding of any guaranty agency or the Secretary of the United States Department of Education [has a default rate of less than 30%].

(b) Student attending other institutions. Any student attending an institution other than an eligible institution as set forth in subsection (a) of this section may be eligible for a loan made from the fund under the governing provisions of the FSL [GSLP] and FSLs providing the postsecondary institution:

(1) is an eligible school under provisions of the FFELP [federal Guaranteed Student Loan Program] (the Higher Education Act, Title IV, Part B, 1965, as amended);

(2) (No change.)

(3) is an institution which has its parent campus within the state of Texas [, whose parent campus has a default rate of less than 30%, with no branch campuses in Texas having a default rate of 30% or greater, and which has no branch campuses outside of Texas having a default rate of 15% or greater];

(4) is not owned by the owner of another postsecondary institution outside of Texas whose default rate is 15% or greater;

(5) has been eligible for, and has participated in, the FFELP during the most recent 18 consecutive months;

(6)[(4)] does not employ recruiters of students on a commission basis;

(7)[(5)] does not employ the owner(s) or anyone related to the owner(s) by blood or marriage as student financial aid administrators; and

(8)[(6)] has a good credit rating as determined by the Board.

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

(e) Discrimination by institution prohibited. The Civil Rights Act of 1964, Title VI, and the Americans with Disabilities Act of 1990 state [states], that "No person in the United States shall, on the grounds of race, color, [or] national origin, sex, religion, age, or disability, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal assistance." Therefore, all transactions with respect to the fund shall be made in compliance with the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990, and further provide that students transferring from any other institution

shall be considered for loans the same as students attending the eligible institution.

(f) (No change.)

§21.56. Qualifications for Loans.

(a) Criteria. The commissioner may authorize, or cause to be authorized, Hinson-Hazlewood College Student Loans to students at any eligible institution which certifies that the applicant meets program qualifications if the applicant:

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

(7) in the case of FSL and FSLs, has provided the Board with the signature of a cosigner who has a credit record and who has received a favorable credit evaluation by the Board if the postsecondary institution's default rate is 20% or greater; but, if the institutions's default rate is 15% or greater and if, at the beginning of the loan period, the borrower will not have progressed satisfactorily beyond the first two semesters or an equivalent enrollment period in a postsecondary institution, the borrower must provide the Board with the signature of a cosigner who meets the same qualifications; [has provided the board with the signature of a cosigner for any of the following loans:]

[(A) Guaranteed Student Loans and supplemental loans to students loans, if at the beginning of the loan period the borrower will not have progressed satisfactorily beyond the first two semesters or an equivalent enrollment period in a postsecondary institution, and the institution that the borrower attends has a default rate of 15% or greater. This default rate will be an average of the default rate at all of the institution's campuses;

[(B) Guaranteed Student Loans and Supplemental Loans for Students Loans, if at the beginning of the loan period the borrower will have progressed satisfactorily beyond the first two semesters or an equivalent enrollment period in a postsecondary institution but not beyond the third or fourth semesters or an equivalent enrollment period in a postsecondary institution, and the institution that the borrower attends has a default rate of 20% or greater. This default rate will be an average of the default rate at each institution's campuses;

[(C) college Access Loans;]

(8) in the case of a CAL, has obtained a cosigner who has received a favorable evaluation of credit reports by the Board regardless of the institution's default rate [in the case of GSL, HEAL or HELP, has received a favorable evaluation

of credit reports by the board and, in the case of a CAL, has obtained a cosigner for whom the board has received a favorable evaluation of credit reports];

(9) in the case of HEAL and HELP, has received a favorable evaluation of credit reports by the Board;

(10)[(9)] in the case of a FSLs [SLS]:

(A) has exhausted the annual loan limit for a FSL [GSL];

(B) has received a favorable evaluation of credit reports by the Board;

(11)[(10)] in the case of a CAL, needs a loan to supplement the expected family contribution and in the case of a CAL or HELP is recommended by the Hinson-Hazlewood College Student Loan Program Officer at the institution attended;

(12)[(11)] meets the citizenship and residency status requirements as set forth in the FFELP [GSLP] regulations in the case of a CAL;

(13) [(12)] is attending an institution that does not employ recruiters of students on a commission basis; and

(14)[(13)] has complied with other provisions of these sections as are required of the student.

(b) Criteria for students attending other institutions as defined in §21.55(b) of this title (relating to Eligible Institution). The commissioner may authorize, or cause to be authorized, FSL's [GSL's] and FSLs's [SLS's] to students attending other institutions, as set forth in subsections (a) of this section, provided the applicant meets all of the criteria in subsection (a) of this section, has a high school diploma or has received a certificate of high school equivalency for successfully completing the tests of general educational development (GED), and is unable to obtain a guaranteed student loan from a commercial lender. If the applicant is enrolled in a degree program approved by the Board, evidence of inability to obtain a guaranteed student loan from a commercial lender is not required.

§21.57. Loan Limits.

(a) (No change.)

(b) Annual Loan Limit. The maximum loan amounts allowed for any qualified applicant during an academic year is stated in paragraphs (1)-(5) of this subsection for each type of Hinson-Hazlewood loan. Under no circumstances may the annual loan amount for the FSL and FSLs exceed the amounts prorated for less than full-time enrollment specified in the Higher Education Act of 1965, Title

IV, Part B, as amended. When the student progresses satisfactorily to the next classification level, that student may be eligible for another FSL [GSL], FSLs [SLS], or CAL.

(1) FSL [GSL]. The annual loan limit is \$2,625 for [each of] the first [two] year [years] of undergraduate study, [and] \$3,500 [and \$4,000] for the second year, and \$5,500 for each subsequent year of undergraduate study. The minimum loan amount to applicants described in §21.55(b) of this title (relating to Eligible Institution) and §21.56(b) of this title (relating to Qualifications for Loans) is \$200. The annual loan limit for qualified applicants enrolled in graduate or post-baccalaureate professional school is \$8,500 [\$7,500].

(2) FSLs [SLS]. The annual loan limit is \$4,000 for the first two years of undergraduate study and \$5,000 for each subsequent year of undergraduate study [per academic year].

(3) CAL. The amount of a CAL plus other student financial aid may not exceed the cost of education. The annual loan limit is the lesser of the following:

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

(C) \$5,000 per academic year; [.]

(D) annual loan amounts must be disbursed in a minimum of two disbursements.

(4)-(5) (No change.)

(c) Aggregate loan limits. The aggregate amount allowed for any qualified applicant for Hinson-Hazlewood College Student Loans is outlined in the following paragraphs.

(1) FSL [GSL]. For undergraduate students the aggregate loan limit is \$23,000 [\$17,250], and for graduate and professional students is \$65,500 [\$54,750] (including amounts borrowed at the undergraduate level).

(2) FSLs [SLS]. The aggregate loan limit is \$23,000 for undergraduate study and \$73,000 for graduate study [\$20,000].

(3)-(5) (No change.)

§21.59. Borrower Information.

(a) (No change.)

(b) The borrower and the institution shall notify the board immediately when:

(1) a FSL [Guaranteed Student Loan] borrower through the program ceases to be enrolled at least one-half time;

(2) a **FSL** [Supplemental Loans for Students] borrower through the program ceases to be enrolled full-time if the first **FSL** [Supplemental Loans for Students Loan] was made before July 1, 1987;

(3) a **FSL** [Supplemental Loans for Students] borrower through the program ceases to be enrolled at least one-half time and meets the following criteria: the borrower made his/her first **FSL** [supplemental loans for students] through any lender after July 1, 1987, and the borrower is receiving a **FSL** [guaranteed student loan] or a **FSL** [supplemental loans for students] loan for the same enrollment period;

(4) a **FSL** [Supplemental Loans for Students] borrower through the program ceases to be enrolled full-time and meets the following criteria: the borrower made his/her first **FSL** [Supplemental Loans for Students] through any lender after July 1, 1987, and the borrower is not receiving a **FSL** [Guaranteed Student Loan] or **FSL** [Supplemental Loans for Students] loan for the enrollment period;

(5) a **HEAL** [Health Education Assistance] Loan or **HELP** [Health Education Loan] borrower through the program ceases to be enrolled full-time; or

(6) a **CAL** [College Access Loan] borrower through the program ceases to be enrolled at least half time

(c) (No change.)

§21.61. Loan Origination Fees and Insurance Premiums.

(a) **FSL** [GSL].

(1) The **FSL** [GSL] origination fee is set from time to time by the United States Department of Education and is deducted from the loan proceeds at the time of disbursement

(2) (No change.)

(b) **FSL** [SLS].

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

(c)-(f) (No change.)

§21.62. Loan Interest.

(a) **FSL** [GSL]. The interest rate charged for loans shall be set from time to time by the Commissioner, shall be simple interest, and shall accrue on the outstanding principal balance from the date of disbursement. It shall not exceed the rate set by Commissioner from the date of disbursement through the period of repayment. **FSL** [Guaranteed Student Loans] made pursuant to this subchapter are eligible for interest subsidy and interest is charged to the borrower in accordance with the Higher Educa-

tion Act of 1965, Public Law 89-329, as amended, and 34 Code of Federal Regulations, Parts 682 and 683.

(b) **FSL** [SLS]. The interest rate charged for loans shall be set from time to time by the Commissioner, shall be simple interest, and shall accrue on the outstanding principal balance from the date of disbursement. It shall not exceed the rate set by the Commissioner from the date of disbursement through the period of repayment. Principal and interest become due and payable 60 days after the date of loan disbursement but may be forborne during in-school periods. These loans are not eligible for interest subsidy.

(c)-(f) (No change.)

§21.63. Deceased or Disabled Borrowers.

(a) (No change.)

(b) Verification of death and determination of permanent and total disability of a borrower through the **FSL**[GSL], **FSL** [SLS], and **CAL** programs shall be made in accordance with the governing provisions of the **FSL** [GSL] program.

(c) (No change.)

(d) The final verification of death and determination of permanent and total disability of a borrower shall be made by the appropriate official for each loan program as follows:

(1) for **FSL** [GSL], the United States Secretary of Education;

(2) for **FSL** [SLS], the United States Secretary of Education;

(3)-(5) (No change.)

§21.64. Repayment of Loans.

(a) Period of loans.

(1) **FSL** [GSL]. The principal amounts of all authorized loans shall be repaid in installments over a period of not less than five years, and no more than 10 years from the beginning of the repayment period, unless the minimum monthly payment amount required would repay the loan within a shorter period of time. In every case, the principal amount and all charges must be repaid within 15 years after the loan is made. The repayment period shall begin no earlier than six months, nor later than one year after the date on which the student ceases to carry, at an eligible institution in the **FFELP** [GSLP], at least one half the normal full time academic workload as determined by the institution

(2) **FSL** [SLS]. The principal amounts of all authorized loans shall be repaid in installments over a period of not less than five years and no more than 10 years from the beginning of the repayment

period unless the minimum monthly payment amount required would repay the loan within a shorter period of time. In every case, the principal amount and all charges must be repaid within 15 years after the loan is made. The repayment period begins on the date of disbursement.

(3)-(5) (No change.)

(b) Minimum repayment amount.

(1) **FSL** [GSL]. The Board shall provide a repayment schedule calling for the minimum payment amount sufficient to repay all **FSL** [GSL] loans made under this Subchapter over the maximum authorized period. In no case will the minimum annual repayment be less than \$600 on all **FSL** [GSL] loans.

(2) **FSL** [SLS]. The Board shall provide a repayment schedule calling for the minimum payment amount sufficient to repay all **FSL** [SLS] loans made under this Subchapter over the maximum authorized period. In no case will the minimum annual repayment be less than \$600 on all **FSL** [SLS] loans.

(3)-(5) (No change.)

(c) (No change.)

(d) Deferments.

(1) The Commissioner will grant deferments of loan repayment in accordance with the federal law and federal rules as follows:

(A) For **FSL** [GSL], **FSL** [SLS], and **CAL** deferments which are described in the Higher Education Act of 1965, Title IV, Part B, as amended, and 34 Code of Federal Regulations, Parts 682 and 683; and

(B) (No change.)

(2) Interest on the non-subsidized loans (**FSL** [SLS], **HEAL**, **HELP**, and **CAL**) which accrues during authorized deferment periods will be charged to the borrower. Interest on **FSL** [GSL] which accrues during authorized deferment periods will be charged to the United States Department of Education unless the borrower has lost eligibility for federal interest subsidy benefits as described in federal law.

(3) Authorized deferments for **FSL** [GSL], **FSL** [SLS], and **CAL** loans shall extend the maximum repayment period.

(4) (No change.)

(e) (No change.)

(f) Late charges.

(1) **FSL** [GSL], **FSL** [SLS], and **CAL**. A charge of 5.0% of the scheduled monthly payment or \$5.00, whichever

is less, shall be assessed if the past due amount is not received within 20 days of the scheduled due date. These charges shall be collected out of the first payments made in excess of interest charges then due.

(2) (No change.)

(g)-(i) (No change.)

§21.65. Enforcement of Collection. When any person who has received a loan authorized by the Act shall have failed or refused to make as many as five monthly payments due in accordance with an executed note, the full amount of remaining principal, accrued interest, and other charges shall become due and payable immediately. When as many as six payments have been missed, the Attorney General, at the request of the commissioner, may file suit for the outstanding balance. Default claims may be filed on FSL [GSL] and FSLs [SLS] loans with the appropriate guarantor and on HEAL loans with the United States Secretary of Health and Human 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 16, 1992.

TRD-9216706

James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Earliest possible date of adoption: January 25, 1993

For further information, please call: (512) 483-6160

Subchapter CC. Tuition Credit Program

• 19 TAC §§21.954, 21.956, 21.957

The Texas Higher Education Coordinating Board proposes amendments to §§21.954, 21.956, and 21.957, concerning the Tuition Credit Program. The proposed amendments are to emphasize that the student should be fully ready for college; also, to simplify the procedures for students enrolling at eligible private institutions.

Mack Adams, assistant commissioner for student services, 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. Adams, 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 that students will be encouraged to complete high school in three years and to enter college immediately. Procedures will be simplified for students enrolling at eligible private institutions. 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 Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendments are proposed under Article III, Page III-9, Rider 23, House Bill 1, 72nd Legislature (First Called Session), which provides the Texas Higher Education Coordinating Board with the authority to adopt rules regarding the Tuition Credit Program.

§21.954. Eligible Students. To be eligible to receive an award through the Tuition Credit Program, a person must:

(1) (No change.)

(2) **have followed a high school curriculum designed to prepare students for entry into a college academic or technical course of study;**

(3)[(2)] receive the award while enrolled in an eligible institution during the 12 months following graduation from high school; and

(4)[(3)] provide the Program Officer proof of eligibility, usually in the form of a high school diploma and an academic achievement record (transcript).

§21.956. Award Amounts. The amount awarded a student through this program may not exceed the lesser of: the student's actual tuition charges for college credit courses (tuition for remedial or other non-college credit courses is not covered); or \$1,000 in the 12 months immediately following the student's graduation from high school. Students attending eligible independent institutions must receive an equal amount of institutional tuition assistance during the 12-month period.

§21.957. Disbursement of Funds. Individuals applying for assistance through the Tuition Credit Program must provide proof of eligibility to the Tuition Credit Program at the institution to be attended. The institution may recommend the student for an award by submitting a board-approved application for payment to the board. The application is to certify the student's eligibility and indicate the amount of tuition charged the student for the relevant term. Applications submitted by independent institutions must indicate the institution has awarded the student a scholarship equal to the amount requested from the state [be accompanied by a deposit of a like amount to be disbursed along with state funds as the student's matched award]. As soon as possible after proper documentation [and deposits (if required)] are received, the board will

request the issuance of a state warrant for a Tuition Credit Program award. [(For students attending independent institutions, the warrant will include state and matching funds.)] A separate application is required for each registration period for which payment of funds is requested.

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-9216707

James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Earliest possible date of adoption: January 25, 1993

For further information, please call: (512) 483-6160

TITLE 22. EXAMINING BOARDS Part I. Texas Board of Architectural Examiners Chapter 3. Landscape Architects

Subchapter C. Written Examinations

• 22 TAC §3.46

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

The Texas Board of Architectural Examiners proposes an amendment to §3.46, concerning scoring. The amendment regards the reproduction of graphic portions of the registration examination for landscape architect candidates in the State of Texas.

Robert H. Norris, AIA, 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. Norris also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be greater security for graphic performance problems for the registration examination. 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 Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard #107, Austin, Texas 78758, (512) 458-1363.

The amendment is proposed under Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

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 18, 1992.

TRD-9216789 Robert H. Norris
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: January 25, 1993

For further information, please call: (512) 458-1363

Chapter 5. Interior Designers

Subchapter B. Registration

• 22 TAC §5.31

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

The Texas Board of Architectural Examiners proposes an amendment to §5.31, concerning the registration of applicants. The amendment is necessary to provide clarification of the requirements for registration under this section.

Robert H. Norris, AIA, 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. Norris also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the registration and regulation of interior designers in compliance with the state law. 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 Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard #107, Austin, Texas 78758, (512) 458-1363.

The amendment is proposed under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

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 18, 1992.

TRD-9216787

Robert H. Norris
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: January 25, 1993

For further information, please call: (512) 458-1363

Part IX. Texas State Board of Medical Examiners

Chapter 163. Licensure

• 22 TAC §163.9

The Texas State Board of Medical Examiners proposes an amendment to §163.9, concerning procedural rules for all licensure applicants. The amendment is necessary to delete a subsection of the licensure rules which is no longer pertinent, in view of the fact National Boards Examinations are now accepted for licensure in Texas.

Ivan Hurwitz, director of licensure, 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.

Pat Wood, secretary to the executive director, 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 clarify the rules by deletion of the subsection which is no longer needed. 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 Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later date.

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

§163.9. Procedural rules for All Licensure Applicants.

(a)-(h) (No change.)

[(i) An applicant who elects to file for licensure by examination under §163.3(a) of this title (relating to Examinations Required by the Board for Licensure) cannot subsequently file for licensure by reciprocal endorsement under §163.3(b) of this title (relating to Examinations Required by the Board for Licensure).]

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-9216697 Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: January 25, 1993

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

TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 1. General Administration

Subchapter D. Maintenance Tax for the Texas Workers' Compensation Commission and the Maintenance Tax Surcharge for the Texas Workers' Compensation Insurance Fund, 1993

• 28 TAC §1.413

The State Board of Insurance of the Texas Department of Insurance proposes new §1.413, concerning assessment of a maintenance tax for the Texas Workers' Compensation Commission and a maintenance tax surcharge which will be used to establish funding for the Texas Workers' Compensation Insurance Fund. The section is proposed to provide a method of assessment and record the rate of assessment for a maintenance tax surcharge for 1993 on the basis of gross premium receipts for calendar year 1992. Section 1.413 sets a rate of assessment which applies to workers' compensation insurance companies.

Michael Davis, the director of accounting, has determined that for the first five-year period the section is in effect there will be no fiscal implications for local government as a result of enforcing or administering the section, and there will be no effect on local employment or the local economy. The anticipated cost to small businesses required to comply with this section is the amount each business will pay based on the rates provided in the section. There is no difference in the rate of assessment between large and small businesses. The anticipated fiscal impact on state government will be an estimated \$36,009,130 which is generated from the Texas Workers' Compensation Commission maintenance tax, and an estimated income of \$38,000, 223, generated from the maintenance tax surcharge, which will be used to pay bond debt service for the \$300 million in bonds issued by the Texas Public Finance Authority on behalf of the Texas Workers' Compensation Insurance Fund.

Mr. Davis also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the facilitation in the collection of a maintenance tax surcharge assessment for the Texas Workers' Compensation Insurance Fund. There is no anticipated economic cost to persons as the assessment is imposed on business entities.

Comments on the proposal to be considered by the State Board of Insurance must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Linda K. von Quintus-Dom, Chief Clerk, P.O. Box 149104, MC# 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Michael Davis, Director of Accounting, Mail Code #108-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The new section is proposed under the Insurance Code, Articles 5.76-5, 5.76-3, 5.68, and 1.04(b) and Texas Civil Statutes, Articles 8308-2.22, 8308-2.23, and 6252-13a, §4 and §5. The Insurance Code, Article 5.76-5, establishes the maintenance tax surcharge. Article 5.76-3 establishes the Texas Workers' Compensation Insurance Fund. Article 5.68 establishes the maintenance tax based on premiums for workers' compensation coverage. Article 1.04(b) authorizes the State Board of Insurance to determine rules and regulations in accordance with the laws of this state for uniform application. Texas Civil Statutes, Articles 8308-2.22 and 8308-2.23, establish the maintenance tax for workers' compensation insurance companies. Article 6252-13a, §4 and §5 authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures, and prescribe the procedures for adoption of rules by a state administrative agency. The proposed new section affects regulation relating to workers' compensation insurance maintenance tax surcharges for 1993, under the Insurance Code, Article 5.76-5. 6.

§1.413. Assessment of Maintenance Tax for the Texas Workers' Compensation Commission and the Maintenance Tax Surcharge for Texas Workers' Compensation Insurance Fund, 1993.

(a) The maintenance tax and the maintenance tax surcharge are assessed against each insurance company writing workers' compensation insurance in this state in the following manner:

(1) the maintenance tax as set by the Texas Workers' Compensation Commission at the rate of .850% of the correctly reported gross workers' compensation insurance premiums for the calendar year 1992;

(2) the maintenance tax surcharge at the rate of .897% of the correctly reported gross workers' compensation insurance premiums for the calendar year 1992 to cover debt service for bonds issued on behalf of the Texas Workers' Compensation Insurance Fund.

(b) Except as specifically otherwise provided in this subsection, the maintenance tax and surcharges assessed under subsection (a) of this section shall be due and payable to the Texas Department of Insurance as follows: 50% on April 15, 1993 and 50% on October 15, 1992, provided that any insurance company may pay, at its option, the entire amount assessed on April 15, 1992. The maintenance tax and surcharges assessed for those insurers whose maintenance tax liability under the Insurance Code, Article 5.68, for the previous tax year was less than \$2,000 are due and payable on April 15, 1992, and these insurers shall remit 100% of such taxes on April 15, 1992.

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 17, 1992.

TRD-9216740

Linda K. von Quintus-Dom
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: January 25, 1993

For further information, please call: (512) 463-6327

◆ ◆ ◆
**Chapter 7. Corporate and
Financial Regulation**
**Subchapter A. Examination
and Corporate Custodian and
Tax**

◆ ◆ ◆
• 28 TAC §7.18 •

The State Board of Insurance of the Texas Department of Insurance proposes the repeal of §7.18, concerning the treatment of salvage and subrogation, of Chapter 7, concerning corporate and financial regulation. The repeal of this section is necessary to eliminate unnecessary provisions and allow the board to simultaneously propose new §7.62 concerning the filing requirements for annual and quarterly statements and other reporting forms. The section was adopted to be effective in 1983 and to be consistent with the National Association of Insurance Commissioners' instructions to the annual statement regarding the treatment of salvage and subrogation. In June 1992 the NAIC changed the annual statement instructions and those changes are incorporated in the proposed §7.62. Notification appears elsewhere in this issue of the *Texas Register* of the proposed new section.

Sandra Autry, associate commissioner for the financial program, 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. There will be no effect on local employment or local economy.

Ms. Autry 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 more efficient administrative regulation of insurance. There will be no effect on small businesses as a result of enforcing the repeal. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal, to be considered by the State Board of Insurance, must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Linda K. von Quintus-Dom, Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Betty Patterson, Manager-Financial Analysis Unit, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, Austin, Texas 78714-9099. Request for a public hearing on this proposal should be submitted separately to the Chief Clerk's Office.

The repeal is proposed under the Insurance Code, Articles 1.11, 21.43, and 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 1.11, authorizes the Board to change the form of the statement blanks and other reporting forms as shall seem to it best adapted to elicit a true exhibit of the financial condition and the methods of transacting the business of insurers and other regulated entities. Article 21.43 provides the conditions under which foreign insurers are permitted to do business in this state and requires foreign insurers to comply with the provisions of the Insurance Code. Article 1.04 authorizes the State Board of Insurance to determine rules in accordance with the laws of this state for uniform application. Texas Civil Statutes, Article 6252-13a, §4 and §5, authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures, and prescribe the procedures for adoption of rules by a state administrative agency. The proposed repeal affects the filing of the annual statement and other reporting forms to elicit the financial condition of insurers under the Insurance Code, Article 1.11.

◆ ◆ ◆
§7.18. Salvage and Subrogation.

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 21, 1992.

TRD-9216778

Linda K. von Quintus-Dom
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: January 25, 1993

For further information, please call: (512) 463-6327

Subchapter A. Examination and Financial Analysis

• 28 TAC §7.62

(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 Rudder Building, 1019 Brazos Street, Austin.)

The State Board of Insurance of the Texas Department of Insurance proposes the repeal of §7.62, concerning the annual statement blanks, instructions, and other forms for calendar year 1983, of Chapter 7, concerning corporate and financial regulation. The repeal of this section is necessary to eliminate unnecessary provisions and to enable the board simultaneously to adopt new §7.62, which replaces the repealed section with other provisions concerning the filing requirements for annual and quarterly statements and other reporting forms for calendar year 1992 and subsequent years. Notification appears elsewhere in this issue of the *Texas Register* of the proposed new section which replaces this repealed section.

Sandra Autry, associate commissioner for the financial program, 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. There will be no effect on local employment or local economy.

Ms. Autry 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 more efficient administrative regulation of insurance. There will be no effect on small businesses as a result of enforcing the repeal. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal, to be considered by the State Board of Insurance, must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Linda K. von Quintus-Dorn, Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Betty Patterson, Manager-Financial Analysis, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing on this proposal should be submitted separately to the Chief Clerk's Office.

The repeal is proposed under the Insurance Code, Articles 1.11, 1.10, 3.07, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.54, 22.06, 22.18, 23.02, 23.26, 21.21, 21.43, and 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The referenced articles of the Insurance Code authorize the State Board of Insurance to promulgate rules and regulations necessary to accomplish the purposes of those articles and to protect the public interest concerning the regulation of insurance. The In-

surance Code, Article 1.11, authorizes the Board to change the form of the statement blanks and other reporting forms as shall seem to it best adapted to elicit a true exhibit of the financial condition and the methods of transacting the business of insurers and/or other regulated entities and requires certain insurers and/or other regulated entities to make filings with the National Association of Insurance Commissioners. Article 1.10, §9, requires the department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements. Articles 3.07, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.54, 22.06, 22.18, 23.02, and 23.26 require the filing of financial reports and other information by insurers and other regulated entities, and specify particular rulemaking authority of the Board relating to those insurers and other regulated entities. Article 21.21 prohibits any person engaged in the business of insurance from filing with any public official any false statement of financial condition of an insurer with intent to deceive and requires that all statements made by persons in the business of insurance be truthful and not misleading. Article 21.43 provides the conditions under which foreign insurers are permitted to do business in this state and requires foreign insurers to comply with the provisions of the Insurance Code. Article 1.04(b) authorizes the Board to determine rules in accordance with the laws of this state for uniform application. Texas Civil Statutes, Article 6252-13a, §4 and §5 authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures, and prescribe the procedures for adoption of rules by a state administrative agency. The proposed repeal affects the filing of the annual statement and other reporting forms for calendar year 1983 to elicit the financial condition of insurers under the Insurance Code, Article 1.11.

§7.62. Annual Statement Blanks, Instructions, and Other Forms.

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 17, 1992.

TRD-9216741 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: January 25, 1993

For further information, please call: (512) 463-6327

The State Board of Insurance of the Texas Department of Insurance proposes new §7.62, concerning annual and quarterly statement blanks, other reporting forms, diskettes and instructions to be used by insurers and

certain other entities regulated by the Texas Department of Insurance when reporting their financial condition and business operations and activities, and the requirement to file such completed statement blanks and other reporting forms, including diskettes. These statement blanks, other reporting forms, and diskettes are required for reporting, in 1993, the financial condition and business operations and activities conducted during the 1992 and 1993 calendar years. The proposal of new §7.62 is simultaneous with the proposed repeal of present §7.62. Notice of the proposed repeal appears elsewhere in this issue of the *Texas Register*. The new section defines terms relevant to the statement blanks and reporting forms, provides the dates by which certain reports are to be filed, and adopts by reference the annual and quarterly statement blanks, other reporting forms, and instructions for reporting the financial condition and business operations and activities and requires that insurance companies and certain other regulated entities file such annual and quarterly statements and other reporting forms with the department and/or the National Association of Insurance Commissioners as directed. Copies of the adoption by reference materials are available for inspection in the office of the Financial Analysis Unit of the Texas Department of Insurance, William P. Hobby State Office Building, 333 Guadalupe, Building 3, Third Floor, Austin. The department has filed with the Office of the Secretary of State, *Texas Register Section*, copies of the annual and quarterly statement blanks, other reporting forms, and manuals proposed for adoption by reference.

Sandra Autry, associate commissioner for the financial program, has determined that for the first five-year period the section is in effect the fiscal implications to state or local government as a result of enforcing or administering this section will be fees paid to the National Association of Insurance Commissioners for filing requirements of this section, when those fees are not paid by such insurers. There will be no effect on local employment or local economy. For small businesses and larger businesses, the cost of compliance with this section will be the administrative expense in completing the statement blanks, other reporting forms, and diskette filings. The cost of completing the diskette filings depends on the method of compliance the regulated entity selects. If a regulated entity elects to purchase electronic data processing equipment and to prepare diskettes internally, the anticipated maximum cost of compliance would be \$7,500 for the first year, and \$1,200 for each of the next four years. If a regulated entity chooses to use an independent consultant or vendor to prepare diskettes adequate to comply with the requirements of this section, the anticipated possible economic cost of compliance would be between \$600 and \$3,500 for each year of the first five years that the proposed section is in effect, with the exact cost depending on the fee schedule of the independent consultant or vendor whom the regulated entity chooses to utilize. On the basis of cost per hour of labor, there is no expected difference in cost of compliance between small businesses and larger businesses affected by this section.

Ms. Autry also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the ability of the department to provide financial information to the public and other regulatory bodies, as requested, and to monitor the financial condition of insurers and other regulated entities licensed in Texas to better assure financial solvency. The anticipated economic cost to insurers and other regulated entities required to comply with this proposed section will be the administrative expense in completing the statement blanks, other reporting forms, and diskette filings. The cost will depend on each company's record-keeping practices, type of operations, and the method of complying with diskette filing requirements selected by the regulated entity as described previously in the Fiscal Note.

Comments on the proposal, to be considered by the State Board of Insurance, must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Linda K. von Quintus-Dom, Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Betty Patterson, Manager-Financial Analysis Unit, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, Austin, Texas 78714-9099. Request for a public hearing on this proposal should be submitted separately to the Chief Clerk's Office.

The new section is proposed under the Insurance Code, Articles 1.11, 1.10, 3.07, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.54, 22.06, 22.18, 23.02, 23.26, 21.21, 21.43, and 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 1.11, authorizes the Board to change the form of the statement blanks and other reporting forms as shall seem to it best adapted to elicit a true exhibit of the financial condition and the methods of transacting the business of insurers and/or other regulated entities and requires certain insurers and/or other regulated entities to make filings with the National Association of Insurance Commissioners. Article 1.10, §9, requires the department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements. Articles 3.07, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.54, 22.06, 22.18, 23.02, and 23.26 require the filing of financial reports and other information by insurers and other regulated entities, and specify particular rulemaking authority of the Board relating to those insurers and other regulated entities. Article 21.21 prohibits any person engaged in the business of insurance from filing with any public official any false statement of financial condition of an insurer with intent to deceive and requires that all statements made by persons in the business of insurance be truthful and not misleading. Article 21.43 provides the conditions under which foreign insurers are permitted to do

business in this state and requires foreign insurers to comply with the provisions of the Insurance Code. Article 1.04(b) authorizes the Board to determine rules in accordance with the laws of this state for uniform application. Texas Civil Statutes, Article 6252-13a, §4 and §5 authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures, and prescribe the procedures for adoption of rules by a state administrative agency. The proposed section affects the filing of the annual statement, other reporting forms, and diskettes to elicit the financial condition of insurers under the Insurance Code, Article 1.11.

§7.62. Requirements for filing the 1992 Annual and 1993 Quarterly Statements, Other Reporting Forms, and Diskettes.

(a) Scope. This section provides insurers and other regulated entities with the filing requirements for the 1992 annual statement, 1993 quarterly statements, other reporting forms, and diskettes necessary to report information concerning the financial condition and business operations and activities of insurers. This section applies to all insurers and other regulated entities authorized to do the business of insurance in this state and includes, but is not limited to, life, life and accident, life and health, accident and health insurers; life, accident and health insurers; mutual life insurers; stipulated premium insurers; group hospital service corporations; fire insurers; fire and marine insurers; general casualty insurers; fire and casualty insurers; mutual insurers other than life; county mutual insurers; Lloyd's plans; reciprocal and inter-insurance exchanges; risk retention groups; joint underwriting associations; title insurers; fraternal benefit societies; local mutual aid associations; statewide mutual assessment companies; mutual burial associations; exempt associations; farm mutual insurers; health maintenance organizations; and nonprofit legal services corporations. The Texas Department of Insurance adopts by reference the 1992 annual and 1993 quarterly statement blanks, instruction manuals, and other reporting forms specified in this section. The annual and quarterly statement blanks and other reporting forms are available from the Texas Department of Insurance, Financial Analysis, Mail Code 303-1A, P.O. Box 149099, Austin, Texas 78714-9099. Insurers and other regulated entities shall properly report to the Texas Department of Insurance and the National Association of Insurance Commissioners (NAIC), using the appropriate annual and quarterly statement blanks, other reporting forms, and machine-readable diskettes and following the applicable instructions as outlined in subsections (e) through (l) of this section.

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

(1) Board—The State Board of Insurance of the State of Texas.

(2) Department—The Texas Department of Insurance.

(3) Commissioner—The Commissioner of Insurance of the Texas Department of Insurance, appointed under the Insurance Code, Article 1.09.

(4) Texas edition—Blanks and forms promulgated by the State Board of Insurance of the Texas Department of Insurance.

(5) NAIC—The National Association of Insurance Commissioners.

(6) Association edition—Blanks and forms promulgated by the National Association of Insurance Commissioners.

(7) Insurer—A person or business entity legally organized in and authorized by its domiciliary jurisdiction to do the business of insurance.

(c) Filing requirements for life, accident, and health insurers. Each life, life and accident, life and health, accident and health, mutual life, or life, accident, and health insurance company, stipulated premium insurance company, and group hospital services corporation shall file the following blanks, forms, and diskettes for the 1992 calendar year and the first three quarters of the 1993 calendar year. The forms, reports and diskettes identified in subparagraphs (1) (A)-(G); (2)(A)-(C); and (3)(A)-(D) of this subsection shall be completed in accordance with the current NAIC **Accounting Practices and Procedures Manual for Life, Accident and Health Insurance Companies**, and the current NAIC **Annual Statement Instructions, Life Accident and Health**. The diskettes identified in subparagraphs (3)(C) and (D) of this subsection shall be completed in accordance with the current NAIC **Annual Statement Diskette Filing Specifications—Life/Health**. Since Texas domestic companies have historically not been required to establish a Mandatory Securities Valuation Reserve (MSVR), they are not required at the present time to establish an Asset Valuation Reserve (AVR) or Interest Maintenance Reserve (IMR) unless the company is licensed in a state that requires an AVR or IMR, in which case the reserve must be calculated in accordance with the instructions established by the NAIC. The Insurance Code and the department's rules and instructions take precedence when there are discrepancies with the listed manuals for statements and forms filed with the department.

(1) Reports to be filed with the department and the NAIC include the following:

(A) Annual Statement (association edition, Form 1, Form 1A, or Form 11), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before March 1, 1993;

(B) Annual Statement of the Separate Accounts (association edition, Form 1-S) (required of companies maintaining separate accounts), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before March 1, 1993;

(C) Long-Term Care Insurance Exhibit (association edition) (required of companies writing long-term care business), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before March 1, 1993;

(D) Schedule DS (association edition) (required of companies that have included equity in the undistributed income of consolidated subsidiaries in its net gain/(loss) from operations), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before March 1, 1993;

(E) Interest Sensitive Life Insurance Products Report (association edition) (required of companies writing interest sensitive products), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before April 1, 1993;

(F) Life, Health, and Annuity Guaranty Association Model Act Assessment Base Reconciliation Exhibit (association edition), 8 1/2-inch times 14-inch size, to be filed on or before June 30, 1993; and

(G) Life and Accident and Health Quarterly Statement (association edition), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before May 15, August 15, and November 15, 1993. However, a Texas stipulated premium company, unless specifically requested to do so by the department, is not required to file quarterly statements with the department or the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its Certificate of Authority;

(ii) it collected premiums in the prior calendar year of less than \$1 million; and

(iii) it had a profit from operations in the prior two calendar years.

(2) Reports to be filed only with the department:

(A) Schedule SIS, Stockholder Information Supplement (association edition) (required of domestic stock companies which have 100 or more stockholders), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before March 1, 1993;

(B) Schedule DM (association edition) (shows statement value and fair market value of all bonds and preferred stock owned), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before March 1, 1993;

(C) Accident and Health Policy Experience Exhibit (association edition) (required of companies writing accident and/or health business), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before June 30, 1993;

(D) Annual Statement (Texas edition, green) (required of companies authorized to write prepaid legal business), 8 1/2-inch times 14-inch size, to be filed on or before March 1, 1993;

(E) Supplemental and Balance Sheet Data (TEXSPEC19), to be filed in duplicate on or before March 1, 1993;

(F) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1993; and

(G) Analysis of Surplus, for life, accident, and health insurers, to be filed on or before March 1, 1993.

(3) Reports and diskettes to be filed only with the NAIC:

(A) Officers and Directors Information (association edition) (required of companies upon their initial filing with the NAIC and to report any changes in previously filed information), to be filed on or before March 1, 1993;

(B) Credit Insurance Experience Exhibit (association edition) (required of companies writing credit business), nine-inch times 14-inch size, to be filed on or before May 1, 1993;

(C) Machine-readable diskettes containing computerized annual statement data, to be filed on or before March 1, 1993, (not required of companies filing annual statement Form 1A or Form 11); and

(D) Machine-readable diskettes containing computerized quarterly statement data, to be filed on or before May 15, August 15, and November 15, 1993 (not required of companies filing annual statement Form 1A or Form 11). However, a Texas stipulated premium company, unless specifically requested to do so by the department, is not required to file diskettes with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its Certificate of Authority;

(ii) it collected premiums in the prior calendar year of less than \$1 million; and

(iii) it had a profit from operations in the prior two calendar years.

(d) Requirements for property and casualty insurers. Each fire, fire and marine, general casualty, fire and casualty or county mutual insurance company, mutual insurance company other than life, Lloyd's plan, reciprocal or inter-insurance exchange, risk retention group, life insurance company that is licensed to write workers' compensation, any farm mutual insurance company that filed on a Form 2 for the 1991 calendar year, and joint underwriting association shall file the following blanks, forms, and diskettes for the 1992 calendar year and the first three quarters of the 1993 calendar year. The forms, reports, and diskettes identified in subparagraphs (1)(A)-(F); (2)(A)-(C); and (3)(A)-(D) of this subsection shall be completed in accordance with the current NAIC Accounting Practices and Procedures Manual for Fire and Casualty Insurance Companies, and the current NAIC Annual Statement Instructions, Property and Casualty, except that companies shall not take credit against any open claim or loss reserve nor as an admitted asset in any annual statement or interim statement filed with this department for salvage or subrogation recoveries until such recoveries shall have been reduced to cash or to an item which qualifies as an admitted asset under the Insurance Code. No loss reserve discounts, other than as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims for which specific segregated investments have been established, shall be allowed; provided, however, any company that claimed loss reserve discounts, other than as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims, as of December 31, 1991, shall be allowed to claim such reserve discounts at the applicable percentage. The applicable percentage for claiming such loss reserve discounts shall be 100% for 1992, 75% for 1993, 50%

for 1994, 25% for 1995, 0% for 1996, and subsequent years. In no event shall the dollar amount of discounts, other than as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims, claimed as of December 31, 1991, and subject to the applicable percentage, be increased as of December 31, 1992 and thereafter. The commissioner shall have the authority to determine the appropriateness of, and may disapprove, discounts taken as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims. The diskettes identified in subparagraphs (3) (C) and (D) of this subsection shall be completed in accordance with the current NAIC **Annual Statement Diskette Filing Specifications-Property/Casualty**. The Insurance Code and the department's rules and instructions take precedence when there are discrepancies with the listed manuals for statements and forms filed with the department.

(1) Reports to be filed with the department and the NAIC:

(A) Annual Statement (association edition, Form 2), either the 12-inch times 19-inch size or 9-inch times 14-inch size, to be filed on or before March 1, 1993;

(B) Long-Term Care Insurance Exhibit (association edition) (required of companies writing long-term care business), either the 12-inch times 19-inch size or 9-inch times 14-inch size, to be filed on or before March 1, 1993;

(C) Financial Guaranty Insurance Exhibit (association edition) (required of companies writing financial guaranty business), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before March 1, 1993;

(D) Supplement "A" to Schedule T, Exhibit of Medical Malpractice Premiums Written (association edition) (required of companies writing medical malpractice business), either the 12-inch times 19-inch size or nine-inch x 14-inch size, to be filed on or before March 1, 1993;

(E) Insurance Expense Exhibit (association edition), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before April 1, 1993; and

(F) Fire and Casualty Quarterly Statement (association edition), either the 12-inch times 19-inch size or nine-inch

times 14-inch size, to be filed on or before May 15, August 15, and November 15, 1993.

(2) Reports to be filed only with the department:

(A) Schedule SIS, Stockholder Information Supplement (association edition) (required of domestic stock companies which have 100 or more stockholders), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before March 1, 1993;

(B) Schedule DM (association edition) (shows statement value and fair market value of all bonds and preferred stock owned), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before March 1, 1993;

(C) Accident and Health Policy Experience Exhibit (association edition) (required of companies writing accident and/or health business), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before June 30, 1993;

(D) Annual Statement (Texas edition, green) (required of companies authorized to write prepaid legal business), 8 1/2-inch times 14-inch size, to be filed on or before March 1, 1993;

(E) Texas Supplemental State Page (14TS), either 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed in duplicate on or before March 1, 1993;

(F) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1993;

(G) Analysis of Surplus, for property and casualty insurers (required of all licensed companies, except Texas domestic county mutual companies), to be filed on or before March 1, 1993; and

(H) Supplement for County Mutuals (attach to page 16 of the annual statement as required by subparagraph (e)(1) (A) of this section, required of Texas domestic county mutual companies), to be filed on or before March 1, 1993.

(3) Reports and diskettes to be filed only with the NAIC:

(A) Officers and Directors Information (association edition) (required

of companies upon their initial filing with the NAIC and to report any changes in previously filed information), to be filed on or before March 1, 1993;

(B) Credit Insurance Experience Exhibit (association edition) (required of companies writing credit business), nine-inch times 14-inch size, to be filed on or before May 1, 1993;

(C) Machine-readable diskettes containing computerized annual statement data, to be filed on or before March 1, 1993; and

(D) Machine-readable diskettes containing computerized quarterly statement data, to be filed on or before May 15, August 15, and November 15, 1993.

(e) Requirements for fraternal benefit societies. Each fraternal benefit society shall file the following blanks, forms, and diskettes for the 1992 calendar year and the first three quarters of the 1993 calendar year. The forms, reports, and diskettes identified in subparagraphs (1)(A)-(D); (2)(A)-(C); and (3)(A) and (B) of this subsection shall be completed in accordance with the current NAIC **Accounting Practices and Procedures Manual for Life, Accident and Health Insurance Companies**, and the current NAIC **Annual Statement Instructions, Fraternal**. The diskettes identified in subparagraph (3)(B) of this subsection shall be completed in accordance with the current NAIC **Annual Statement Diskette Filing Specifications-Fraternal**. The Insurance Code and the department's rules and instructions take precedence when there are discrepancies with the listed manuals for statements and forms filed with the department.

(1) Reports to be filed with the department and the NAIC:

(A) Annual Statement (association edition, Form 4), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before March 1, 1993;

(B) Annual Statement of the Separate Accounts (association edition, Form 1-S) (required of companies maintaining separate accounts), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before March 1, 1993;

(C) Long-Term Care Insurance Exhibit (association edition) (required of companies writing long-term care business), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before March 1, 1993; and

(D) Interest Sensitive Life Insurance Products Report (association edition) (required of companies writing interest sensitive products), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before April 1, 1993.

(2) Reports to be filed only with the department:

(A) Schedule DM (association edition) (shows statement value and fair market value of all bonds and preferred stock owned), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before March 1, 1993;

(B) Accident and Health Policy Experience Exhibit (association edition) (required of companies writing accident and/or health business), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before June 30, 1993;

(C) Fraternal Quarterly Statement (association edition), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before May 15, August 15, and November 15, 1993;

(D) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1993; and

(E) Analysis of Surplus, for fraternal benefit societies, to be filed on or before March 1, 1993.

(3) Reports and diskettes to be filed only with the NAIC:

(A) Officers and Directors Information (association edition) (required of companies upon their initial filing with the NAIC and to report any changes in previously filed information), to be filed on or before March 1, 1993; and

(B) Machine-readable diskettes containing computerized annual statement data, to be filed on or before March 1, 1993.

(f) Requirements for title insurers. Each title insurance company shall file the following blanks and forms for the 1992 calendar year and the first three quarters of the 1993 calendar year. The reports and forms identified in paragraphs (1) and (3) and subparagraphs (2)(A) and (B) of this subsection shall be completed in accordance with the Title Insurance Accounting Princi-

ples Supplement section of the current NAIC Accounting Practices and Procedures Manual for Fire and Casualty Insurance Companies, and the current NAIC Annual Statement Instructions, Title. The Insurance Code and the department's rules and instructions take precedence when there are discrepancies with the listed manuals for statements and forms filed with the department.

(1) Reports to be filed with the department and the NAIC: Annual Statement (association edition, Form 9), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before March 1, 1993.

(2) Reports to be filed only with the department:

(A) Schedule DM (association edition) (shows statement value and fair market value of all bonds and preferred stock owned), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before each March 1, 1993;

(B) Title Quarterly Statement (association edition), either the 12-inch times 19-inch size or nine-inch times 14-inch size, to be filed on or before May 15, August 15, and November 15, 1993;

(C) Texas Supplemental State Page (42TS), to be filed in duplicate on or before March 1, 1993;

(D) Texas Overhead Assessment Form (required of Texas domestic Companies only), to be filed on or before March 1, 1993; and

(E) Analysis of Surplus, for title insurers, to be filed on or before March 1, 1993.

(3) Reports to be filed only with the NAIC: Officers and Directors Information (association edition) (required of companies upon their initial filing with the NAIC and to report any changes in previously filed information), to be filed on or before March 1, 1993.

(g) Requirements for health maintenance organizations. Each health maintenance organization shall file the following blanks and forms for the 1992 calendar year and the first three quarters of the 1993 calendar year only with the department. The forms or reports identified in paragraphs (1) and (2) of this subsection shall be completed in accordance with the current NAIC Accounting Practices and Procedures Manual for Health Maintenance Organizations, and the current NAIC Annual Statements Instructions, Health Mainte-

nance Organizations. The Insurance Code and the department's rules and instructions take precedence when there are discrepancies with the listed manuals for statements and forms filed with the department.

(1) Annual Statement (association edition, HMO), 8 1/2-inch times 14-inch size, to be filed on or before March 1, 1993;

(2) HMO Quarterly Statement (association edition), 8-1/2 inch times 14-inch size, to be filed on or before May 15, August 15, and November 15, 1993;

(3) HMO Supplement, 8 1/2-inch times 14-inch size, to be filed on or before March 1, 1993;

(4) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1993; and

(5) Exhibit Z, 8 1/2-inch times 14-inch size, to be filed on or before May 15, August 15, and November 15, 1993.

(h) Requirements for farm mutual insurers not subject to the provisions of subsection (d) of this section. Each farm mutual insurance company shall file the following completed blanks and forms for the 1992 calendar year with the department only:

(1) Annual statement (Texas edition, tan), 8 1/2-inch times 14-inch size, to be filed on or before March 1, 1993; and

(2) Texas Overhead Assessment Form, to be filed on or before March 1, 1993.

(i) Requirements for mutual assessment companies, mutual aid and mutual burial associations, and exempt companies. Each statewide mutual assessment company, local mutual aid association, local mutual burial association, and exempt company shall file the following completed blanks and forms for the 1992 calendar year only with the department:

(1) Annual Statement (Texas edition, orange), 8 1/2-inch times 14-inch size, to be filed on or before April 1, provided, however, exempt companies are not required to complete lines 22, 23, 24, 25, and 26 on page 3, the special instructions at the bottom of page 3, and pages 4, 5, 6, 7, and 19. All other pages are required;

(2) Texas Overhead Assessment Form, to be filed on or before April 1, 1993;

(3) Release of Contribution Form, to be filed on or before April 1, 1993;

(4) Reserve Valuation (3 1/2% Chamberlain Reserve Table), to be filed on or before April 1, 1993; and

(5) Inventory of Insurance in Force by Age of Issue, to be filed on or before April 1, 1993.

(j) Requirements for nonprofit legal service corporations. Each nonprofit legal service corporation shall file the following completed blanks and forms for the 1992 calendar year only with the department:

(1) Annual Statement (Texas edition, green), 8 1/2-inch times 14-inch size, to be filed on or before March 1, 1993; and

(2) Texas Overhead Assessment Form, to be filed on or before March 1, 1993.

(k) Requirements for Mexican casualty companies. Each Mexican casualty company shall file the following blanks and forms for the 1992 calendar year only with the department. The form identified in paragraph (1) of this subsection shall be completed in accordance with the current NAIC **Accounting Practices and Procedures Manual for Fire and Casualty Insurance Companies**, and the current NAIC **Annual Statement Instructions, Property and Casualty**. All submissions shall be printed or typed in English and all monetary values shall be clearly designated in U. S. dollars. The Insurance Code and the department's rules and instructions take precedence when there are discrepancies with the listed manuals for statements and forms filed with the department.

(1) Annual Statement (association edition, Form 2), 12-inch times 19-inch size, provided, however, only pages 1-4, 14, and 16 are required to be completed, to be filed on or before March 1, 1993;

(2) Texas Supplemental State Page (14TS), 12-inch times 19-inch size, to be filed in duplicate on or before March 1, 1993;

(3) A copy of the balance sheet and the statement of profit and loss from the Mexican financial statement (printed or typed in English), to be filed on or before March 1, 1993;

(4) A copy of the official documents issued by the COMISION NACIONAL BANCARIA Y DE SEGUROS approving the current year's annual statement, to be filed on or before March 1, 1993; and

(5) A copy of the current license to operate in the Republic of Mexico, to be filed on or before March 1, 1993.

(1) Other financial reports. Nothing in this section prohibits the department from requiring any insurer or other regulated entity from filing other financial reports with the department.

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

Issued in Austin, Texas, on December 17, 1992.

TRD-9216739

Linda K. von Quintus-Dom
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: January 17, 1993

For further information, please call: (512) 463-6327

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 16. Commercial Driver's License

Sanctions and Disqualifications

• 37 TAC §16.93

The Texas Department of Public Safety proposes an amendment to §16.93, concerning serious traffic violations and habitual violators. This section provides for disqualification action against holders of commercial driver licenses (CDL) who commit "serious traffic violations." The proposed amendment adds subsection (g) which will clarify "serious traffic violations" by defining "improper or erratic traffic lane change" as that term is used in Texas Civil Statutes, Article 6687b-2, §25.

Melvin C. Peeples, Assistant Chief of Fiscal Affairs, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Helen Stauffer, Manager, Driver Improvement Bureau, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure uniformity of sanctions and disqualification action imposed against commercial driver licensees as provided for and intended by the Commercial Motor Vehicle Safety Act of 1986. 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 John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The amendment is proposed under Texas Civil Statutes, Article 6687b-2, §29, and the Texas Government Code, §411.006(4) which provide the Texas Department of Public Safety with the authority to adopt rules and regulations necessary to carry out the provisions of the Texas Commercial Driver's Li-

cence Act and the Federal Commercial Motor Vehicle Safety Act of 1986. The director shall adopt rules, subject to commission approval, considered necessary for the control of the department.

§16.93. *Serious Traffic Violations and Habitual Violators.*

(a) A driver who, during any three-year period, is convicted in any jurisdiction in the United States of two serious traffic violations in separate incidents, will be disqualified from driving a commercial motor vehicle (CMV) for a period of 60 days.

(b) A driver who, during any three-year period, is convicted in any jurisdiction in the United States of three serious traffic violations in separate incidents[,] is disqualified from driving a CMV for a period of 120 days.

(c) Convictions which were the basis for initiation of disqualification action taken pursuant to subsection (a) of this section, may be used again as the basis of disqualification action taken pursuant to subsection (b) of this section.

(d) Convictions which were the basis for initiation of disqualification action taken pursuant to subsections (a) and (b) of this section[,] will also be used as the basis for suspension of the privilege to drive a non-CMV because the person is a habitual violator of the traffic law as defined in Texas Civil Statutes, Article 6687b, §22(b)(4).

(e) Convictions which occurred in the operation of a CMV that were the basis for proceedings initiated or administrative actions taken pursuant to the habitual violator provisions of Texas Civil Statutes, Article 6687b, §22(b)(4), may also be used as the basis for disqualification action pursuant to subsections (a) and (b) of this section.

(f) The term "serious traffic violation" as used in this chapter has the same definition as that found in Texas Civil Statutes, Article 6687b-2, §3(26).

(g) The Commercial Driver's License Act (Texas Civil Statutes, Article 6687b-2) defines certain motor vehicle offenses as "serious traffic violations" for the purpose of administering the Act. An improper or erratic traffic lane change is one of the definitions of a "serious traffic violation" as set out in the Act. Since an improper or erratic lane change is not an offense title in Texas, the department has designated the following sections of the Uniform Act Regulating Traffic on the Highways (Texas Civil Statutes, Article 6701d) as improper or erratic traffic lane changes for disqualification purposes pursuant to Texas Civil Statutes, Article 6687b-2 §25. The following interpretation is also meant to apply to the defensive

driving section of the Uniform Act Regulating Traffic on Highways, Texas Civil Statutes, Article 6701d, §143A. A conviction of either of these offenses will be considered by the department as a "serious traffic violation":

(1) Texas Civil Statutes, Article 6701d, §60(a)-"Changed Lane when Unsafe;"

(2) Texas Civil Statutes, Article 6701d §60A-"Failure to Yield Right-of-Way-Changing Lanes."

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-9216755

James R. Wilson
Director
Texas Department of
Public Safety

Earliest possible date of adoption: January 25, 1993

For further information, please call: (512) 465-2000

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Part VII. Texas
Commission on Law
Enforcement Officer
Standards and Education
Chapter 229. Texas Peace
Officers' Memorial Advisory
Committee Division

• 37 TAC §§229.1, 229.5, 229.10,
229.15, 229.20

The Texas Peace Officers' Memorial Advisory Committee to the Texas Commission on Law Enforcement Officer Standards and Education proposes new §229.1, concerning the definitions to be used in this chapter; §229.5 concerning general eligibility of deceased Texas Peace Officers; §229.10 concerning specific eligibility of deceased Texas Peace Officers; §229.15 concerning deaths not included; and §229.20 concerning determination standards. The new sections as proposed will establish a set of criteria for selecting qualified deceased Texas Peace Officers to be included on the memorial.

Johanna McCully-Bonner, general counsel, has determined that for the first five-year period the proposed new sections are in effect there will be no major fiscal implications for state or local government as a result of enforcing or administering this section.

Ms. McCully-Bonner has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing these new sections will be a set of criteria for determining whether a deceased Texas Peace Officer is qualified to be included on the peace officer memorial. There will be no effect on small

businesses. There is no anticipated increased economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal must be received at the Commission and may be submitted to Ed Laine, The Texas Peace Officers' Memorial Advisory Committee, c/o Texas Commission on Law Enforcement Officer Standards and Education, 1033 La Posada, Suite 240, Austin, Texas 78752.

The new section is proposed under the Texas Government Code, Subchapter F, Chapter 415, §§415.111-415.123, which provides the Texas Peace Officers' Memorial Advisory Committee with the authority to pass rules for the administration of subchapter F, Chapter 415, and Texas Civil Statutes, Article 6252-13a, when taken together establish the procedures for the rule making requirements for the Committee.

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

Agency—A law enforcement unit or other entity, whether public or private, authorized by Texas law to appoint a Texas peace officer or reserve peace officer.

Certified copy—A true and correct copy of a document or record certified to by the custodian of the records of the submitting entity.

Committee—The Texas Peace Officers' Memorial Advisory Committee, a governing body authorized under Chapter 415, subchapter F, Government Code, or its successor.

Director—Director of the Texas Peace Officers' Memorial Advisory Committee or designee.

Individual—A human being who has been born and is or was alive.

Killed in the line of duty—A Texas peace officer who has died as a directly attributed result of a personal injury sustained in the line of duty.

Law—Including but not limited to the constitution or a statute of this state, or the United States; a written opinion of a court of record; a municipal ordinance; an order of a county commissioners court; or a rule authorized by and lawfully adopted under a statute.

Line of duty—Any lawful, expected action which a Texas peace officer is authorized by law, rule, regulation, or written condition of employment service to perform, or for which the Texas peace officer is compensated by the agency for which the Texas peace officer serves.

Texas Peace Officer—An individual elected, employed, or appointed under Texas law, and an individual appointed under Texas law as a reserve peace officer who had been officially called to duty.

Verification (verified)—The confirmation of the correctness, truth, or authenticity of a document, report, or information by sworn affidavit, oath, or deposition.

§229.5. General Eligibility of Deceased Texas Peace Officers.

(a) A deceased Texas peace officer, killed in the line of duty, is eligible for inclusion on the Texas peace officers' memorial if:

(1) the Texas peace officer was among those listed under the Texas Code of Criminal Procedure, Article 2.12;

(2) the Texas peace officer was among those licensed by the Texas Commission on Law Enforcement Officer Standards and Education, under the Government Code, Chapter 415;

(3) the Texas peace officer was officially called to duty as a Texas reserve peace officer;

(4) the Texas peace officer was among those listed under the Texas Education Code, §51.212 or §51.214;

(5) the Texas peace officer was among those named as such by other Texas law; or

(6) the Texas peace officer who, in historical perspective, would be eligible under any of the preceding criteria.

(b) If the supported finding is that the Texas peace officer died as a result of infectious disease contracted while lawfully performing official duties, or by exposure to hazardous materials or conditions while lawfully performing official duties, the Texas peace officer is eligible for inclusion.

(c) The effective date of this section shall be April 30, 1993.

§229.10. Specific Eligibility of Deceased Texas Peace Officers.

(a) A deceased Texas peace officer is eligible for inclusion on the memorial if the fatal incident;

(1) was a direct result of a line of duty, on duty incident;

(2) was an indirect result but directly attributed to a line of duty, on duty incident;

(3) was a direct result of a line of duty, off duty incident, except for reserve Texas peace officers;

(4) was an indirect result of but directly attributed to a lawful line of duty, off duty incident, except for reserve Texas peace officers;

(5) was a direct result of a felonious assault on the Texas peace officer, perpetrated because of the status as a Texas peace officer regardless of duty status.

(b) The effective date of this section shall be April 30, 1993.

§229.15. Deaths Not Included.

(a) A Texas peace officer whose death is attributed to natural causes, is not eligible for inclusion, except when a medical condition arises out of a specific response to a violation of the law or an emergency situation causing a Texas peace officer's death, or causing the Texas peace officer's death during or after a period of hospitalization following the specific response to the violation of the law or emergency situation.

(b) A Texas peace officer whose death is attributed to any of the following is not eligible for inclusion.

(1) when caused as a result of or during the Texas peace officer's commission of a crime;

(2) as a direct result of the Texas peace officer's voluntary alcohol or controlled substance abuse; or

(3) when caused by the Texas peace officer's intention to bring about the Texas peace officer's own death.

(c) The effective date of this section shall be April 30, 1993.

§229.20. Determination Standards.

(a) The committee, through its director, will receive documents and reports to establish a deceased Texas peace officer's eligibility for inclusion on the memorial.

(b) The director of the memorial shall make every effort to confirm the authenticity of documents and information submitted to the committee and shall cause research to be conducted concerning the reported deaths of Texas peace officers.

(c) Examples of documents, reports, and petitions which the committee and the director of the memorial should attempt to obtain include, but are not limited to:

(1) certified copy of the Law Enforcement Agency incident report or other records;

(2) certified copy of the Coroner's report;

(3) sworn affidavit from the law enforcement agency chief executive officer describing and detailing the incident and death;

(4) certified copy of statements of witnesses to the fatal incident;

(5) an original letter or petition of a family member with verified supporting documents;

(6) reproduced documents verified by a state or county historical commission chairperson;

(7) news articles or other published materials supported by documents listed above; or

(8) any other documentation which would reasonably substantiate a finding by the committee.

(d) The committee shall review the recommendations of the director of the memorial concerning names of deceased Texas peace officers for inclusion on the memorial at a regularly scheduled meeting and make its final determination.

(e) The effective date of this section shall be April 30, 1993.

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-9216663

Johanna McCully-Bonner
General Counsel
Texas Commission on Law
Enforcement Officer
Standards and
Education

Earliest possible date of adoption: January 22, 1992

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

◆ ◆ ◆
**TITLE 40. Social Services
and Assistance**
**Part I. Texas Department
of Human Services**
**Chapter 15. Medicaid
Eligibility**
**Subchapter A. General Infor-
mation**

The Texas Department of Human Services (DHS) proposes amendments to §§15.100, 15.442, 15.455, 15.460, 15.503, and 15.610 concerning Medicaid eligibility rules regarding inheritances, spousal impoverishment, client-purchased annuities, three months prior coverage for program transfers, and an income exclusion in its Medicaid Eligibility chapter. The purpose of the amendments is to clarify Medicaid eligibility rules about the effective dates of inheritances and disclaimers of inheritances; spousal impoverishment; client-purchased annuities as income and resources; prior Medicaid coverage for clients transferring from limited Medicaid program to full Medicaid benefits; and a new income exemption for payments to an ICF-MR client by the MR facility intended to enhance the client's social skills and functional abilities.

Burton F. Raiford, commissioner, has determined that for each year of the first five years the sections as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of enforcing or administering the sections.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that Medicaid policies regarding effective dates of inheritances and disclaimers of inheritances, spousal impoverishment, client-purchased annuities, the exploration of three months prior Medicaid coverage for clients transferring from limited to full Medicaid program benefits, and the added income exemption for payments made to clients by the MR facility intended to enhance the clients social skills and functional abilities are applied statewide. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Judy Coker at (512) 450-3227 in DHS's Long Term Care Program. Comments on the proposal may be submitted to Nancy Murphy, Policy and Document Support-299, 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 §15.100

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

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

Inheritance—Cash, other liquid resources, noncash items, or any right in real or personal property received at the death of another. An individual may not have access to his inheritance pending legal action. **An inheritance is income in the month of receipt unless the inherited item would be an excluded resource.**

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 17, 1992.

TRD-9216714

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

◆ ◆ ◆
Subchapter D. Resources
• 40 TAC §15.442

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§15.442. *Personal Property.*

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

(g) **Annuities.** A client may purchase an annuity to provide income. An annuity can be revocable or irrevocable. The terms of an annuity contract or agreement determine if the principal of the annuity is an available resource. If the actuarial value of an irrevocable annuity is not equal to the countable resource used to purchase the annuity, there is a transfer of resources and the appropriate penalty period applies.

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 17, 1992.

TRD-9216714 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



Subchapter E. Income

• 40 TAC §15.455, §15.460

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§15.455. *Unearned Income.*

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

(d) **Annuities, pensions, and retirement plans.** The following paragraphs describe sources of unearned income.

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

(5) **There are two types of annuities.**

(A) **Annuities can be periodic payments calculated on an annual basis which are returns on prior services.** A civil service payment is an example of this type of annuity. It is treated the same as pension or retirement income.

(B) **An annuity can also be a contract or agreement for an amount to be paid yearly or at other regular intervals in return for prior payments made by the individual.** For this type of annuity, the language of the annuity dictates whether disbursements are countable income and describes the payment schedule.

(e) **Other unearned income.** Other sources of unearned income include:

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

(5) **gifts, inheritances, support, and alimony.** Expenses involved in obtaining the income are excluded:

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

(D) **effective date of receipt of inheritance and disclaimers;**

(i) **real property.** The effective date of receipt is the date of death unless there is a contested will. If there is a contested will, the effective date of receipt is the date the will is probated;

(ii) **personal property.** The effective date of receipt is the date the client actually takes possession of the property;

(iii) **disclaimer to an inheritance.** A disclaimer to an inheritance is not considered as a transfer of resources if transacted prior to receipt of an inheritance. The disclaimer must be a written statement acknowledged before a notary or other person authorized to take acknowledgement of conveyances of real property.

(6)-(10) (No change.)

§15.460. *Income Exemptions.*

(a) (No change.)

(b) **The department exempts income that a client receives from any of the following sources:**

(1)-(33) (No change.)

(34) **payments to an ICF-MR client by the MR facility, intended to enhance the client's social skills and functional abilities.** The use of such payments must be included in the client's active treatment 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 17, 1992.

TRD-9216715 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



Subchapter F. Budget and Payment Plans

• 40 TAC §15.503

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§15.503. *Protection of Spousal Income and Resources.*

(a) (No change.)

(b) **Effective September 30, 1989,** Public Law 100-360 provides for the protection of resources for the community spouse when the other spouse is institutionalized. The resource provisions under this law apply to people with continuous periods of institutionalization beginning September 30, 1989. People living in nursing facilities on September 29, 1989, must be discharged for 30 consecutive days and readmitted before these special resource provisions apply.

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

(5) **Spousal impoverishment provisions apply as long as the institutionalized spouse is a Texas resident and is living in a Texas facility, even if the community spouse lives in another state or outside the United States.** An ineligible spouse living in a nursing or medical care facility is not a community spouse, regardless of the certification status (Title XVIII, Title XIX, or no certification) of the facility or section of the facility where the ineligible spouse lives. Personal care facilities are not medical care facilities if medical care and services are not provided or covered by the cost of care.

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

(e) **Effect of Denial on Protected Resources.**

(1) **The PRA must not be deducted for people who are found eligible, who are certified, and who are subsequently denied.** Only those resources in the name of the institutionalized spouse are considered at reapplication.

(2) **The eligibility period must be valid for the PRA policy (described in paragraph (1) of this subsection) to apply.** If a client should never have been certified because of unreported resources and the case is denied, the original PRA is not used when the client reapplies for Medicaid. A new PRA that includes the previously unreported resources must be calculated.

(f)-(h) (No change.)

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

Issued in Austin, Texas, on December 17, 1992.

TRD-9216716

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

Subchapter G. Application for Medicaid

• 40 TAC §15.610

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§15.610. Medicaid Coverage.

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

(c) Three-months prior coverage. The three months considered in determining eligibility are those months immediately before the month in which the individual filed a formal application for SSI or MAO, transferred from a limited Medicaid program such as QMB, or the three months before the month an application is received from a decedent's agent. The department considers as potentially eligible for retroactive Medicaid coverage the following individuals:

(1)-(3) (No change.)

(d) SSI-MAO eligibility requirements.

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

(3) prior coverage for MAO applicants.

(A) To apply for medical assistance only, a client must complete the application. Individuals who have unpaid or reimbursable, Title XIX-covered medical expenses for services provided during the three months before applying also must complete the application attachment to report income and resources for the prior period. Applicants may be eligible for Medicaid coverage during any or all of the three months before the month of application for MAO. An applicant must have unpaid or reimbursable charges or bills for Title XIX-covered services during each month for which prior coverage is requested. He must meet all requirements applicable to the SSI or SSI-related MAO programs during each of the months he is eligible.

(B) The department also explores possible three month's prior

coverage based on the date of change in the client's circumstances for clients transferring from limited Medicaid programs to full Medicaid benefit programs.

(4) (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 17, 1992.

TRD-9216717

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

Chapter 67. Social Work Certification

Certification Requirements

The Texas Department of Human Services (DHS) proposes new §§67.101-67.106, 67.201-67.208, 67.301-67.305, and 67.401-67.410, concerning social work certification, in its new Chapter 67, Social Work Certification. The purpose of the new sections is to make DHS's social work certification program rules clearer and more concise, particularly the requirements for recognition as a clinical social worker and private practice practitioner. Supervision and qualifying education requirements are more specific. DHS is also proposing in this issue of the *Texas Register* the repeal of its previous social work certification rules, which were in Chapter 85.

Burton F. Raiford, commissioner, has determined that for the first five years the sections are in effect there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect is an estimated loss in revenue of \$1,500 in fiscal year (FY) 1993; \$1,500 in FY 1994; \$1,500 in FY 1995; \$1,500 in FY 1996; and \$1,500 in FY 1997. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that consumers and practitioners will have a clearer, more concise statement of the social work certification rules, the requirements for recognition as a clinical social worker and private practice practitioner will be consistent with those requirements in other states, and supervision and qualifying education requirements will be more specific. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Michael Doughty at (512)

450-3248 or 1-(800)-232-3162 in DHS's Licensing Department. Comments on the proposal may be submitted to Nancy Murphy, Policy and Document Support-230, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*. DHS will hold a public hearing to accept comments on the proposal. The hearing will be held at 6:15 p.m. on January 6, 1993, in the public hearing room, 701 West 51st Street, Austin, Texas.

• 40 TAC §§67.101-67.106

The new sections are proposed under the Human Resources Code, Title 2, Chapter 50, which authorizes the department to establish rules for social work certification.

§67.101. *Certification Required.* An individual identified to the public as a social worker must be certified according to the requirements specified in this chapter.

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

Accredited education—A training program approved for credit by a college or university, a recognized professional regulatory body, or a provider approved by The Texas Department of Human Services (DHS) to provide training.

Advertising—Audio, visual, or printed material presented to the public.

Certificate holder—A person certified or recognized by DHS for social work practice.

Client—A person who enters into a contract and receives social work services. A person remains a client until the termination of the contract.

Clinical social work—The practice of providing evaluation, diagnosis, and treatment to individuals, families, or groups with mental or emotional conditions or disorders or who are adversely affected by social or psychological stress or health impairment.

Conditions of exchange—The term of the contract for service between the social worker and the client that includes the services, reports, fees, billing, and schedules the client may expect.

Confidential information—Facts about a client including the client's identity.

Contract termination—A mutual agreement between the social worker and the client to end professional services, meetings, and billing for services or the actual cessation of such professional services, meetings, and billing for services.

Council for Social Work Education (CSWE)—The national accrediting agency for social work education and is so recognized by the United States Department of Education and the Council on Post-Secondary Accreditation programs.

Detrimental to the client—An act or omission of a professional responsibility that is damaging to the physical, mental, or financial status of the client.

Full-time experience—Social work services totalling 30 or more hours per week.

Part-time—Social work services totalling less than 30 hours per week.

Private practitioner—A social worker solely responsible for services provided and for establishing the conditions of exchange with clients.

Recognition—Authorization to engage in private or specialty practice of social work.

Sexual acts—As defined in the Texas Penal Code, §21.01.

Social work services—The professional activity of helping individuals, groups, or communities enhance or restore their capacity for social functioning and creating societal conditions favorable to this goal.

Supervision—The professional relationship between a supervisor and the social worker which provides critical evaluation and direction over the services provided by the social worker that promotes professional development of knowledge, skills, and abilities to provide social work services.

Variance request—The request for an exception to a rule relating to social work certification.

§67.103. Code of Ethics. A certificate holder must observe and comply with a code of ethics. Engaging in unethical conduct or conduct that discredits the profession of social work is grounds for disciplinary action. A social worker must:

(1) provide services without regard for age, sex, race, color, religion, national origin, disability, sexual orientation, or political affiliation;

(2) obtain informed, written consent from a client before releasing confidential information from the social work setting, except as required by law;

(3) not engage in sexual acts with a client or with a person who has been a client within the preceding 12 months;

(4) not provide professional social work services to a previous sexual partner;

(5) provide a clear description of services, reports, fees, billing, and schedules to each client;

(6) not give or receive any form of commission, rebate, or other remuneration for client referrals;

(7) obtain informed, written consent before involving a client in research, and inform the client of the purpose of the research and its implications to the client;

(8) not provide social work service while under the influence of alcohol or other mind-altering or mood-altering drugs;

(9) advocate for clients and uphold a position of trust with the client by avoiding any act detrimental to a client;

(10) make referrals appropriate to the client's needs;

(11) not misrepresent qualifications, credentials, or services in any advertising, including notices of employment status;

(12) report any violation of the requirements in Chapter 50 of the Human Resources Code or as specified in this chapter, or professional ethics to the appropriate regulatory authority.

§67.104. Categories of Certification.

(a) The Texas Department of Human Services (DHS) has authority to grant the certifications for certified social worker, social worker, and social work associate.

(b) The minimum qualifications for certification are as follows.

(1) Certified social worker—a doctoral or master's degree in social work from an accredited college or university approved by DHS.

(2) Social worker—a bachelor's degree in social work from an accredited college or university approved by DHS.

(3) Social work associate—a bachelor's degree and one year of experience, an associate's degree and three years of experience, or a high school diploma and five years of experience.

(c) All degrees must be from educational programs approved by DHS. All experience must be approved by DHS.

§67.105. Provisional Certification.

(a) The Texas Department of Human Services (DHS) grants requests for provisional certification to an applicant who meets all the requirements for certification as a social worker except completion of the examination. DHS issues letters of verification for a period of one year that authorize individuals to work in social work positions.

(b) A provisionally certified person uses the appropriate certification title or initials followed by the word "Provisional." The provisionally certified person must cease use of any social work title if all certification requirements are not met within the required time.

§67.106. Certificates of Recognition.

(a) Advanced clinical practitioner (ACP). The Texas Department of Human Services (DHS) grants the title of ACP to an individual as recognition in the specialty practice of clinical social work. Only recognized social workers may use this title.

(1) Minimum qualifications for examination for recognition as an ACP are:

(A) certification as a certified social worker (CSW) in Texas;

(B) three additional years of full-time clinical social work practice experience, as defined in §67.102 if this title (relating to Definitions), in an agency, institution, or other legal employment. This experience must have occurred after the qualification for certification as a certified social worker was met;

(C) two of the three years of experience or 3,000 hours which must be under qualified supervision as specified in §67.204(e) of this title (relating to Supervision for Private and Specialty Practice Recognition); and

(D) identification with and documentation of continued participation in the social work profession over the preceding three years.

(2) An ACP must not practice independently until recognized as a private practitioner.

(b) Advanced practitioner (AP). DHS grants the title of AP to an individual as recognition in specialty practice of non-clinical social work. Only recognized social workers may use this title.

(1) A person who meets the qualifications for advanced clinical practitioner in subsection (a) of this section in a nonclinical setting is eligible for recognition as an AP.

(2) Advanced practitioners must continue in practice under supervision until recognized as a private practitioner.

(c) Private practitioner. DHS grants the title of private practitioner to an individual as recognition in the specialty practice of a social worker solely responsible for the services provided and for establishing the conditions of exchange with clients.

(1) The minimum examination qualifications for recognition as a private practitioner are:

(A) certification as a CSW in Texas;

(B) three additional years of full-time social work services, as defined in §67.102 of this title (relating to Definitions) in an agency, institution, or other legal employment. This experience must occur after the qualification for certification as a CSW is met;

(C) two of the three years of experience or 3,000 hours which must be under qualified supervision as specified in §67.204(e) of this title (relating to Supervision for Private and Specialty Practice Recognition);

(D) documentation of continued participation in and identification with the social work profession over the preceding three years.

(2) A certificate holder must not engage in independent or private practice of social work without private practice recognition from DHS. Approval by another regulatory body in a related area of practice does not negate this requirement.

(3) The independent practice of clinical social work requires recognition as both an ACP and a private practitioner.

(4) Provisional certification is not applicable for private practitioner recognition.

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 17, 1992.

TRD-9216718

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

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

Application Process

• 40 TAC §§67.201-67.208

The new sections are proposed under the Human Resources Code, Title 2, Chapter 50, which authorizes the department to establish rules for social work certification.

§67.201. Fees.

(a) Applicants and certificate holders must pay the following non-refundable fees to the Texas Department of Human Services (DHS):

- (1) application fee for all certifications-\$15;
- (2) certification and official roster fees:

(A) social work associate-\$15;

(B) social worker-\$25;

(C) certified social worker-\$35; and

(D) recognition-\$10;

(3) additional or replacement certificates-\$5; and

(4) renewal fee: equal to certification and roster fee.

(b) An applicant or certificate holder must immediately replace any check not honored by the financial institution on which it is issued.

§67.202. Application Requirements.

(a) The application process begins when the Texas Department of Human Services (DHS) receives a completed application form along with appropriate non-refundable fees.

(b) An applicant must provide documentation of qualification to DHS which includes the following:

- (1) education;
- (2) experience;
- (3) references; and
- (4) information relating to any felony conviction.

(c) DHS determines an applicant's eligibility for examination within 10 workdays from the receipt of the application. The applicant is notified of eligibility or the need for additional evidence of qualification.

(d) DHS mails the examination results to the applicant within five workdays of DHS's receipt of the examination results from the testing organization.

(e) DHS sends notice of approval or denial of the application within 10 workdays from DHS's receipt of all application requirements.

(f) The applicant may request a refund of the application fees if DHS does not process the application within the established processing period of time. DHS will respond to the request for refund within 30 days from the date it is received.

(g) DHS sends notice to the applicant when the application is incomplete 60 days after the receipt of the examination results.

(h) Falsification or misrepresentation of qualifications is grounds for disciplinary action.

(i) DHS may consider an application as lapsed and invalid if it remains incomplete for more than 12 months. Reapplication may be required.

§67.203. Qualifications for Certification or Recognition. The applicant must meet the following requirements for certification or recognition.

(1) Age. An applicant must be at least 18 years of age.

(2) Conduct. The applicant must not have committed any act contrary to the requirements in Chapter 50 of the Human Resources Code or as specified in this chapter that would be considered evidence that the applicant is not worthy of the public trust and confidence.

(3) Education. The applicant's education must be documented by official college transcripts or a high school diploma or GED certificate. Educational requirements must be met by completion of educational programs accredited by the appropriate state educational agency. Social work degrees must be from social work programs accredited by the Council for Social Work Education. The Texas Department of Human Services (DHS) will designate an agency to provide verification of equivalency of degrees from foreign countries when appropriate. Social work educational programs in candidacy for accreditation by the Council for Social Work Education may request a waiver of these education requirements. The waiver must be renewed annually in August for the subsequent academic year and cannot be renewed more than three times.

(4) Experience.

(A) Experience required for certification as a social work associate or for recognition as a private practitioner, advanced clinical practitioner or advanced practitioner must be in the employment of an agency, institution, or other employer. Required documentation includes:

- (i) names and addresses of employers;
- (ii) dates of employment;
- (iii) job description;
- (iv) average number of hours of social work activity per week; and
- (v) annual evaluations.

(B) Documentation of experience in private employment must include verification of the following:

(i) the employer's administrative authority over the provision of social work services;

(ii) the applicant's compensation for services paid by the employer; and

(iii) the employment relationship as reflected in all advertising, informational material, and written policy.

(C) DHS may credit part-time experience on a prorated basis.

(D) Experience must be in a position with primary responsibility for providing social work services as defined in Chapter 50 of the Human Resources Code and as specified in this chapter and must have been satisfactorily performed.

(E) The applicant must maintain and, upon request, provide to DHS documentation of employment contracts, pay vouchers, progress notes, or performance evaluations.

(5) References. An applicant must submit to DHS references from three individuals familiar with the applicant's professional qualifications. The references must attest to the applicant's worthiness of public trust and confidence.

§67.204. Supervision for Private and Specialty Practice Recognition.

(a) A certificate holder who plans to apply for private or specialty practice recognition must:

(1) submit a supervisory contract to the Texas Department of Human Services (DHS) for approval 30 days before the beginning of supervision;

(2) submit documentation of adequate malpractice insurance;

(3) submit annual supervisory evaluations to DHS at the end of each year of supervision or the end of the supervisory contract;

(4) submit a notice of the end of the supervisory contract to DHS within 30 days of the end of supervision; and

(5) notify DHS in writing before changing supervisors.

(b) Individual supervision must:

(1) consist of no less than 100 hours of face-to-face meetings between the supervisor and the supervised individual;

(2) be completed over two consecutive years; and

(3) be accomplished in one or two hour blocks not exceeding four hours per month.

(c) Telephone supervision substituted for face-to-face supervision must include:

(1) an initial face-to-face supervisory session of at least two hours; and

* (2) quarterly, face-to-face sessions of at least two hours.

(d) Group supervision is subject to the following restrictions.

(1) Group supervision may be substituted for a maximum of 30 hours of the required 100 hours of individual supervision.

(2) Two hours of group supervision must be credited as one hour of individual face-to-face supervision.

(3) A maximum of six supervised persons is allowed in one group supervision session.

(4) Group supervision must be in blocks of not less than two hours in one group session and not exceeding eight actual hours per month.

(e) There may be no more than three supervisors during the two years of required supervision. On written request, DHS will issue a letter of approval to a qualified supervisor. A supervisor must:

(1) be certified as a certified social worker or advanced clinical practitioner;

(2) take professional responsibility for the clinical services provided within the supervisory contract;

(3) have current malpractice insurance;

(4) have completed one graduate course in supervision, two years of clinical supervisory experience, or a supervisor's training course acceptable to DHS; and

(5) demonstrate continuing participation in and identification with the social work profession.

§67.205. Felony Conviction Statement. An applicant or certificate holder with a felony conviction must notify the Texas Department of Human Services (DHS) of the conviction. DHS notifies the applicant of additional information required and the time limit for submitting the information.

§67.206. Examination Requirement. An applicant for certification or recognition must pass an examination designated by the Texas Department of Human Services (DHS).

§67.207. Exemption from Examination. The Texas Department of Human Services (DHS) may grant an applicant an exemption from the examination requirements. The minimum requirements for exemption from the examination are that the applicant have:

(1) a current social work certification or licensure in another jurisdiction; and

(2) a passing score on a comparable examination, as judged by DHS.

§67.208. Certification by Endorsement. An applicant certified or licensed in another jurisdiction may request certification based on endorsement. The applicant must document that the requirements met in the other jurisdiction are equivalent to the requirements in Texas. An applicant for certification by endorsement must:

(1) submit an application for certification;

(2) pay appropriate fees; and

(3) provide documentation of the requirements met in the other jurisdiction.

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 17, 1992.

TRD-9216719

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

Certificate Expiration and Renewal

• 40 TAC §§67.301-67.305

The new sections are proposed under the Human Resources Code, Title 2, Chapter 50, which authorizes the department to establish rules for social work certification.

§67.301. Expiration and Renewal.

(a) Certificates expire annually on the last day of the month of the certificate holder's birth. The Texas Department of Human Services (DHS) prorates fees and continuing educational requirements if the initial period of certification is less than 12 months.

(b) A certificate holder must notify DHS within 30 days of any change in address or employment.

(c) DHS sends an application for renewal to the certificate holder 30 days before the expiration date of the certificate. The form includes:

(1) the expiration date;

(2) the amount of the renewal fee due;

(3) the continuing education requirements to be documented; and

(4) a statement regarding continuing compliance with regulations.

(d) A certificate holder must complete, sign, and return the form to DHS within 30 days of the renewal date. All fees and documentation of continuing education must be enclosed.

(e) A penalty fee of \$10 and \$20 is required for renewal after 30 and 90 days, respectively.

§67.302. Continuing Education Requirements.

(a) A certificate holder must complete a total of 30 clock hours of continuing education or training annually. At least 10 of the 30 clock hours must be in accredited education programs as defined in §67.102 of this title (relating to Definitions). The other 20 clock hours may be in accredited or unaccredited continuing education or training programs.

(b) Certificate holders must complete at least three hours of continuing education in professional ethics and standards of practice during each two-year period. Other continuing education or training must be in areas related to social work practice.

§67.303. Inactive Status.

(a) A certificate holder not employed as a social worker or not a resident of Texas is eligible for inactive status.

(b) The fee for inactive status is \$10. Inactive status is granted for a one-year period. Inactive status may be extended each year as long as the certificate holder remains eligible. Continuing education is not required while on inactive status.

§67.304. Emeritus Certification.

(a) A retired certificate holder over the age of 55 or a disabled certificate holder is eligible for emeritus certification.

(b) Emeritus certification is valid for the lifetime of the certificate holder. No fee or continuing education is required for emeritus certification.

(c) The emeritus certificate holder may use their certified title followed by "Emeritus" in the provision of social work services as a volunteer.

§67.305. Variances.

(a) An applicant or certificate holder may request a variance of any rule established by the Texas Department of Hu-

man Services (DHS). The request for a variance must be in writing and must include the following:

(1) the rule to which the exception would be applied;

(2) the reason an exception is required;

(3) a proposed alternative to the rule;

(4) a statement of how the alternative would meet the intent of the rule; and

(5) any supporting documentation or justification.

(b) DHS notifies the applicant of the approval or denial of the request in writing.

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

Issued in Austin, Texas, on December 17, 1992.

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Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
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Proposed date of adoption: March 1, 1993

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

◆ ◆ ◆ Administrative Actions

• 40 TAC §§67.401-67.410

The new sections are proposed under the Human Resources Code, Title 2, Chapter 50, which authorizes the department to establish rules for social work certification.

§67.401. Issuance of Certificates.

(a) The Texas Department of Human Services (DHS) issues certificates to applicants who have met qualifications established by DHS.

(b) The certified title or its initials must be included in all professional uses of the certificate holder's name. The certificate must be displayed at the certificate holder's place of business.

(c) A copy of the code of ethics listed in §67.103 of this title (relating to Code of Ethics) is issued with the certificate. The copy of the code of ethics also includes information regarding the client complaint process. The copy of the code of ethics must be displayed by the certificate holder.

(d) DHS sends copies of its client's rights brochure to certificate holders recognized for private practice. These brochures must be made available to all clients.

§67.402. Application Denial. The Texas Department of Human Services (DHS) denies applications if the requirements for certification or recognition are not documented. DHS notifies the applicant when certification or recognition is denied and what deficiencies exist.

§67.403. Use of a Title Without Certification. The Texas Department of Human Services (DHS) will notify any individual illegally using a protected title of the requirements for certification and will seek legal penalties if the violation continues.

§67.404. Complaint Procedures.

(a) Any individual who believes a social worker has violated the requirements in Chapter 50 of the Human Resources Code or as specified in this chapter may file a written and notarized complaint with the Texas Department of Human Services (DHS).

(b) DHS initiates an investigation if the complaint is against an individual subject to the requirements in Chapter 50 of the Human Resources Code and as specified in this chapter. The investigation may include any violation uncovered during the investigation process.

(c) DHS informs the parties to the complaint of the progress of the investigation if not completed within 30 days.

(d) DHS evaluates the validity of the complaint based on the preponderance of evidence and notifies the parties to the complaint of DHS's proposed action.

§67.405. Disciplinary Action.

(a) The Texas Department of Human Services (DHS) may take disciplinary action against an applicant or certificate holder who violates the requirements in Chapter 50 of the Human Resources Code or as specified in this title, or is convicted of a felony.

(b) Disciplinary actions include:

- (1) denial of an application;
- (2) denial of certification renewal;
- (3) certification revocation;
- (4) certification suspension;
- (5) issuance of a letter of reprimand; and
- (6) probation.

(c) DHS may take disciplinary action against an applicant or certificate holder convicted of:

(1) a felony in Texas;

(2) a felony in another state or jurisdiction that also would be considered a felony under Texas law; or

(3) a felony in a federal court.

(d) An applicant or certificate holder must notify DHS in writing within 30 days after a felony conviction.

§67.406. Notification of Intent to Discipline.

(a) The Texas Department of Human Services (DHS) notifies the applicant or certificate holder of the DHS's intent to take disciplinary action. The notice includes the following:

(1) the specific reason for the proposed disciplinary action;

(2) the disciplinary action DHS proposes;

(3) the right to request an administrative review;

(4) a statement that the proposed action will be final within 15 days if a request for an administrative review is not received;

(5) the right to an appeal hearing if the disciplinary action becomes final;

(6) a copy of the rules and the appeal procedures; and

(7) the right to withdraw from certification in lieu of an appeal.

(b) DHS may deny an application for an individual against whom disciplinary action has been proposed or taken and who has withdrawn from certification in lieu of disciplinary action.

§67.407. Probation.

(a) Certificate holders subject to disciplinary action may submit a written petition to the Texas Department of Human Services (DHS) for probation. The petition must be submitted prior to any request for an appeal hearing and must include the following:

(1) the certificate holder's history of good conduct;

(2) the names of individuals or other social work certificate holders who may attest to the certificate holder's good character;

(3) written statements supporting probation; and

(4) a statement of the certificate holder's intent to comply with the certification requirements in Chapter 50 of the Human Resources Code or as specified in this chapter.

(b) DHS notifies the petitioner of the acceptance or denial of the request for

probation. If accepted, the terms of the probation are included. The petitioner must sign the agreement and return it to DHS within 15 days of its receipt. If it is not returned within the time limit, the disciplinary procedures are continued.

(c) DHS may immediately rescind the probationary agreement on receipt of evidence of any violation of requirements in Chapter 50 of the Human Resources Code or as specified in this chapter. If probation is rescinded, the original disciplinary action is enforced.

§67.408. Procedures for Establishing Proof of Rehabilitation.

(a) An applicant who was denied certification because of a felony conviction and who wishes to qualify for certification may submit a request to the Texas Department of Human Services (DHS) for a review to establish proof of rehabilitation.

(b) The request should include the following:

(1) court records related to the conviction;

(2) documents related to the sentence imposed by the court;

(3) documentation of completion of the sentence;

(4) documentation of satisfactory completion of probation or parole;

(5) information about subsequent good conduct;

(6) letter of support from employers or others who have knowledge of the applicant's accomplishments following a felony conviction; and

(7) any other information that supports the applicant's qualifications for certification.

(c) DHS notifies the applicant of the decision within 30 days for the receipt of the request.

§67.409. Administrative Review.

(a) A certified social worker whose certification is being considered for revocation, suspension, or denial may request an informal administrative review to show compliance with the requirements in Chapter 50 of the Human Resources Code or as specified in this chapter.

(b) The applicant or certificate holder must ensure that the written request for the administrative review is received by the Texas Department of Human Services (DHS) within 15 days of the receipt of DHS's notification of intent to revoke, suspend or deny the application or certification. DHS notifies the applicant or

certificate holder of the date and time of the review in writing within 30 days of the date of DHS's receipt of the request for a review.

(c) The applicant or certificate holder is permitted to:

(1) submit written statements, affidavits, briefs, or other documentary evidence to support compliance requirements;

(2) make an oral argument in support of their position.

(3) be represented by legal counsel at the review.

(d) DHS considers all material and arguments submitted at the review and provides a written statement to the applicant or certificate holder of DHS's decision to proceed with the denial, revocation, suspension, to enter into a probationary agreement, or terminate further proceedings.

(e) The applicant or certificate holder may request a formal administrative hearing if not satisfied with the results of the administrative review. The request must be in writing and addressed to DHS's Hearings Department. The request must be received within 15 days of the date the written notice of the results of the administrative review was received.

§67.410. Appeals.

(a) The appeal hearing is conducted according to Article 6252-13(a) of the Administrative Procedures and Texas Register Act. A panel of five certified social workers designated by the Council for Social Work Certification serves as an advisory panel for the administrative hearing. An Administrative Law Judge (ALJ) will set the hearing and notify the appellant of the date, time, and place of the hearing.

(b) The ALJ renders a decision based upon the recommendation of the panel and applicable law. The ALJ makes the decision to sustain or reverse the action taken by DHS or when probation is appropriate develops the terms of the probation as an alternative to revocation or suspension.

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 17, 1992.

TRD-9216721

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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Chapter 85. General Licensing Procedures

Subchapter III. Social Work Certification

- 40 TAC §§85.6001, 85.6003-85.6016, 85.6018-85.6029

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

The Texas Department of Human Services (DHS) proposes the repeal of §§85.6001, 85.6003-85.6016, and 85.6018-85.6029, concerning social work certification, in its General Licensing Procedures chapter. The purpose of the repeals, which constitute all of the remaining sections in Chapter 85, is to enable DHS to propose new sections to make DHS's social work certification program rules clearer and more concise, particularly the requirements for recognition as a clinical social worker and private practice practitioner. Supervision and qualifying education requirements are more specific. DHS is proposing the new sections in new Chapter 67, in this issue of the *Texas Register*.

Burton F. Raiford, commissioner, has determined that for the first five years 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. Raiford also has determined that for each year of the first five years the repeals will be in effect the public benefit anticipated as a result of enforcing the repeals will be the adoption of Chapter 67 which will provide consumers and practitioners a clearer, more concise statement of social work certification requirements. There will be no effect on small businesses. There is no anticipated economic cost to individuals who are required to comply with the proposed repeals.

Questions about the content of this proposal may be directed to Michael Doughty at (512) 450-3248 or 1-800-232-3162 in DHS's Licensing Department. Comments on the proposal may be submitted to Nancy Murphy, Policy and Document Support-230, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The repeals are proposed under the Human Resources Code, Title 2, Chapter 50, which authorizes the department to establish rules for social work certification.

§85.6001. *General Rule.*

§85.6003. *Recognition.*

§85.6004. *Fees.*

§85.6005. *Eligibility for Certification.*

§85.6006. *Application.*

§85.6007. *Examination Requirement.*

§85.6008. *Reciprocity.*

§85.6009. *Expiration and Renewal.*

§85.6010. *Denial Notification.*

§85.6011. *Request for Reconsideration.*

§85.6012. *Variations.*

§85.6013. *Violations.*

§85.6014. *Probation.*

§85.6015. *Procedures for Establishing Proof of Rehabilitation.*

§85.6016. *Appeals.*

§85.6018. *Code of Ethics.*

§85.6019. *Certified Social Worker.*

§85.6020. *Social Worker.*

§85.6021. *Social Work Associate.*

§85.6022. *Social Work Experience.*

§85.6023. *Emeritus Certification.*

§85.6024. *Public Notice.*

§85.6025. *Continuing Education Requirements.*

§85.6026. *Revocation and Suspension.*

§85.6027. *Exemption from Examination.*

§85.6028. *Letters of Reprimand.*

§85.6029. *Definitions.*

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 17, 1992.

TRD-9216722

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

TITLE 43. TRANSPORTATION

Part IV. Texas High-Speed Rail Authority

Chapter 81. Administrative Procedures

Subchapter B. Texas High-Speed Rail Authority Practices

- 43 TAC §81.170

The Texas High-Speed Rail Authority (authority) proposes new §81.170 concerning the acceptance of private donations. Texas Civil Statutes, Article 6252-11f, requires state agencies that have statutory authority to accept money from private donors to adopt rules governing the relationship between the donors and the agency and its employees. The Texas High-Speed Rail Authority has the authority to accept private donations pursuant to Texas Civil Statutes, Article 6674v.2, §6(b)(1).

Steven Polunsky, director of research and planning for the authority, has also 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. Polunsky 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 certainty that private funds received by the authority outside of the Legislative appropriations process will be properly and ethically handled and accounted for. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Steven Polunsky, Director of Research and Planning, Texas High-Speed Rail Authority, 823 Congress Avenue, Suite 1502, Austin, Texas 78701-2457, (512) 478-5484.

The new section is proposed under Texas Civil Statutes, Article 6674v.2, §17(a)(2), which provides the Texas High-Speed Rail Authority with the authority to adopt rules to govern the operation of the authority.

§81.170. *Private Donations.* The purpose of this section is to establish procedures for the acceptance of private donations made to the authority and to create standards of conduct to govern the relationship between the agency and the donors.

(1) General Provisions.

(A) Introduction. The Texas High-Speed Rail Authority is statutorily authorized to accept donations pursuant to Texas Civil Statutes, Article 6674v. 2, §6(b)(1). It shall be the policy of the authority to accept only those donations that advance the mission of the agency.

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

(i) Corporation—Texas TGV Corporation, its successors or assigns.

(ii) Donation—The conveyance of cash contributions, grants, or gifts, excluding franchise fees paid to the authority under terms of a franchise agreement.

(iii) Donation agreement—The donative instrument executed by the authority and the donor which identifies the donation and outlines any special conditions of the donation.

(iv) Donor—One or more individuals or organizations that offer to give or give a donation to the authority.

(v) Employee—An individual employed by the authority in a full or part-time capacity or a volunteer of the authority.

(vi) Executive Director—The executive director of the authority or his or her designee.

(vii) Officer—The executive director of the authority or board members.

(C) Written communication with the authority. Communications to the authority regarding donations should be addressed to the Executive Director, Texas High-Speed Rail Authority, 823 Congress Avenue, Suite 1502, Austin, Texas 78701-2457.

(2) Procedure for acceptance of donations.

(A) Statutory authority. All donations shall be accepted under the authority granted in Texas Civil Statutes, Article 6674v.2, §6(b)(1).

(B) Donation agreement. The donor and the authority shall execute a donation agreement which includes the following information:

(i) a description of the donation, including a statement of the value;

(ii) a statement by the donor attesting to its ownership rights in the donation;

(iii) the signature of the donor if the donor is an individual or its official representative if the donor is a business organization;

(iv) the signature of the Executive Director or his or her designee;

(v) any conditions restricting the use of the donation if the donor imposes restrictions agreed to by the authority;

(vi) the mailing address of the donor and principal place of business if the donor is a business entity;

(vii) a statement identifying any official relationship between the donor and the authority;

(viii) a statement advising the donor to seek legal and/or tax advice from its own legal counsel.

(C) Deposited funds. The authority shall deposit monetary contributions from private sources in the State Treasury. The money contributed shall be used to carry out the purposes of the authority and, to the extent possible, the purposes specified by the donors.

(3) Donations from individuals appearing before the authority. The authority will adhere to all policies relating to the acceptance of gifts from persons appearing before state agencies adopted by the Texas Ethics Commission.

(4) Acceptance of donations.

(A) All donations made to the authority shall be accepted in writing by the Executive Director or his or her designee.

(B) All donations will be accepted on behalf of the authority. No officer

or employee of the authority can accept donations in their individual capacity.

(5) Standard of conduct between the authority and private donors. Any person or entity seeking to contract with the authority on a competitive bid basis or otherwise shall disclose all previous donations occurring within the preceding two years to the authority or any other state agency. The disclosure shall include the following information:

(A) the nature and value of the donation; and

(B) the date the donation was made and the recipient. If the donation is ongoing the last date that the donation was available to the agency shall be used to determine the date of the donation.

(6) Standard of conduct between authority officers and employees and private donors.

(A) An officer or employee shall not accept or solicit any gift, favor, or service from a private donor that might reasonably tend to influence his official conduct or that the officer or employee knows is being offered with the intent to influence official conduct.

(B) An officer or employee shall not accept employment or engage in any business or professional activity with a private donor which the officer or employee might reasonably expect would require or induce him to disclose confidential information acquired by reason of his official position.

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 18, 1992.

TRD-9216764

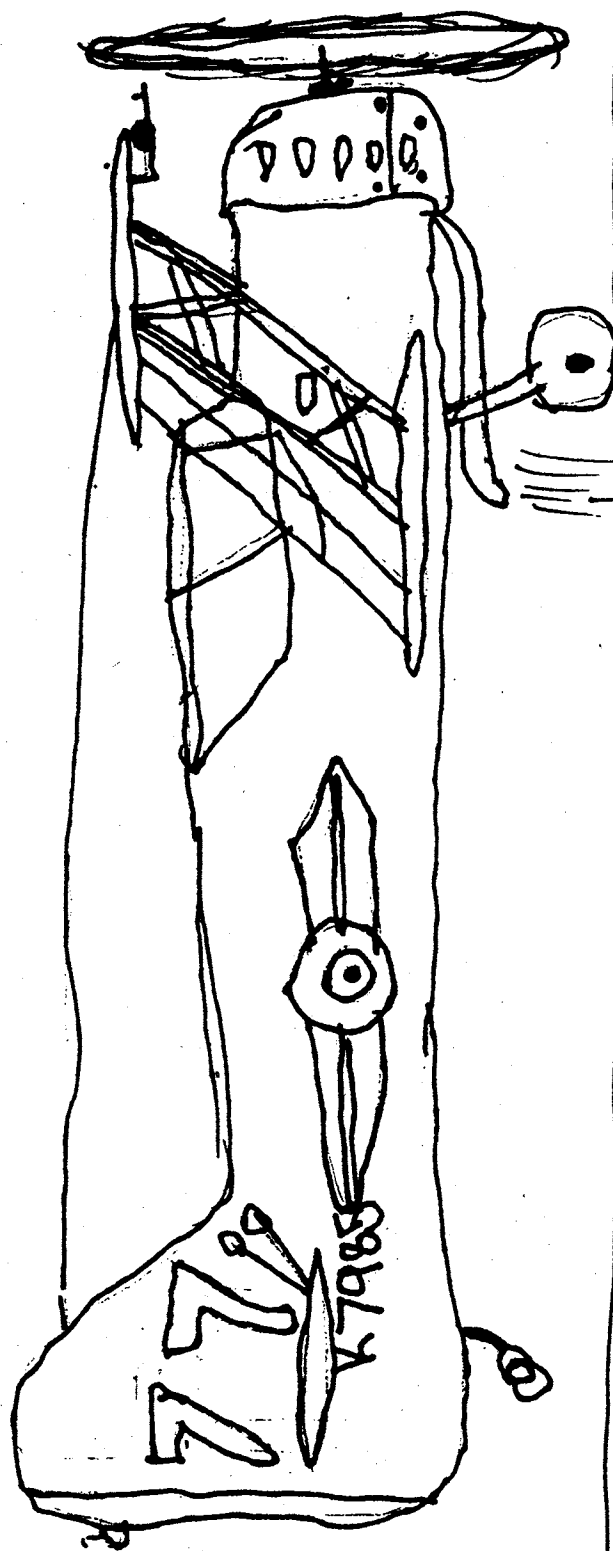
Allan Rutter
Deputy Executive Director
Texas High-Speed Rail
Authority

Earliest possible date of adoption: January 25, 1993

For further information, please call: (512) 478-5484

◆ ◆ ◆

Gloucester Gladiators



Name: Robert Abrams
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 13. CULTURAL RESOURCES

Part II. Texas Historical Commission

Chapter 15. Administration of Federal Programs

- 13 TAC §15.7

The Texas Historical Commission adopts new §15.7, concerning Memoranda of Understanding, with changes to the proposed text as published in the September 9, 1992, issue of the *Texas Register* (17 TexReg 6174).

The new section allows for the appropriate placement of Memoranda of Understanding in agency rules concerning the administration of federal programs. The new section is also required by the provisions of Texas Civil Statutes, Article 6673g enacted by Senate Bill 352, 72nd Legislature, 1991. Article 6673g directs the Texas Department of Transportation to adopt a Memorandum of Understanding (MOU) with applicable environmental resources agencies, including the commission. Article 6673g further directs each of the environmental agencies to adopt the MOU and all revisions to the memorandum.

The MOU provides for the review of TxDOT projects which have the potential to affect historic properties and cultural resources within the jurisdiction of the commission. The intent of the MOU is for the commission to assist TxDOT in making environmentally sound decisions and to develop an information system regarding cultural resources. Increased coordination ensures that historic properties and archeological sites are given full consideration in a uniform and timely manner.

A joint public hearing was held by TxDOT and the Commission September 14, 1992. A Representative of the Lone Star Chapter of the Sierra Club attended the hearing, presented oral testimony concerning the MOU, and submitted written comments following the public hearing. No other comments were received. The organization supports the improved communication between the agencies and believes that the MOU is an improvement, in that respect. However, the group expressed concerns for enforcement of the agreement and the need to ensure that it is properly implemented. Three specific recommendations made by the Sierra Club and the Commission's responses follow.

First, the Sierra Club requests modifications to the definition of the term "Project development". The requested modifications expand the definition to include all project studies

prior to right-of-way designation or acquisition. The TxDOT and The Commission disagree. It is the intention of TxDOT to complete all studies and surveys necessary to properly evaluate the impact of a project on natural and cultural resources early in the planning process. TxDOT and the Commission, however, believe that the definition of the term "project development" included in the MOU is appropriate since under certain circumstances studies cannot be completed or performed prior to acquisition of right-of-way as authorized by federal law and denial of access by property owner. When a property owner denies access to his or her property, TxDOT's ability to perform early studies can be significantly hampered.

Second, the group recommends changes to subclause §15.7(D)(V) of this title, relating to Archeological Sites Found After Award of Contract. This recommendation requires TxDOT and the review agency to prepare a plan of action for reroute alternatives and terminated projects. The Commission and TxDOT disagree with their comment. Should an archeological site be found during the course of construction, all feasible measures to minimize harm will be considered. However, once construction has commenced, the feasibility of selecting an alternative route or canceling the project is greatly reduced.

Third, the Sierra Club further suggests the addition of a new subclause to be named "Failure to report." Paraphrased, the suggested subclause states that if review agency determines that any TxDOT "... archeological investigations are inadequate, the reviewing agency shall give notice to TxDOT and the highway project shall cease until inadequacies are corrected." In the organization's opinion, the addition clarifies the Commission's authority to require timely and adequate testing and reporting data from TxDOT.

To address these concerns, a new clause is included in the MOU. The final adoption, therefore, is made with changes in the form of a new clause §15.7(b)(1)(d)(iv) of this title, relating to Resolution of Objections. The clause provides for the reviewing agency to timely object to plans submitted for review, or proposed actions, and for TxDOT and the reviewing agency to enter in consultation to resolve the objection. If the objection cannot be resolved, the reviewing agency may terminate consultation and invoke Dispute Resolution proceedings.

The new section is proposed under the Texas Government Code, Chapter 442, §442.005(q), which provides the Texas Historical Commission with the authority to promulgate rules and regulations as it shall deem proper for effective administration.

§15.7. Memoranda of Understanding.

(a) Introduction. It is in public policy and in the public interest to locate, protect, and preserve archeological sites and historic properties. Furthermore, it is in the best interest of the public to enter into agreements to provide for timely and efficient construction of transportation facilities, reservoirs, public buildings, and infrastructure. Memoranda of understanding are formal agreements which provide for the preservation of the environment; wise, productive use of cultural and natural resources; good stewardship of historic landmarks; and protection of public and private investment in historic properties.

(b) Memoranda of understanding. Memoranda of understanding are mutual agreements entered into in order to better implement programs and policies for the preservation of historic and archeological resources. A memorandum of understanding (MOU) is a formal mechanism which fosters the joint review of the impact of federal projects on cultural resources. Increased coordination and communication between agencies ensures that historical properties and archeological sites are given full consideration in a uniform and timely manner.

(1) Texas Department of Transportation (TxDOT).

(A) Need for agreement.

(i) It is the practice of

TxDOT to:

(I) investigate fully the environmental impacts of TxDOT transportation projects, coordinate these projects with applicable state and federal agencies, and reflect these investigations and coordinations in the environmental documentation for each project;

(II) base project decisions on a balanced consideration of the need for a safe, efficient, economical, and environmentally sound transportation system;

(III) complete public involvement and a systematic interdisciplinary approach as essential parts of the devel-

opment process for transportation projects; and

(IV) mitigate project impacts to provide environmentally sound roadway projects where such mitigation is feasible and prudent and where such mitigation is agreed upon by appropriate agencies.

(ii) In order to pursue this policy, TXDOT, the Texas Historical Commission (THC), and the Texas Antiquities Committee (Committee) have agreed to develop the MOU, which will supersede TXDOT's MOU with the Committee which became effective on January 5, 1972.

(iii) Senate Bill 352, enacted by the 72nd Legislature, directs TXDOT to adopt a memorandum of understanding with applicable environmental resources agencies.

(iv) The rules for coordination of state-assisted transportation projects developed by TXDOT and published in the June 11, 1991, issue of the *Texas Register* (16 TexReg 3197) underline the need for and importance of comprehensive environmental coordination for all transportation projects.

(v) It is the intent of this MOU to provide a formal mechanism by which THC and the Committee may review TXDOT projects which have the potential to affect historic properties (cultural resources) within the jurisdiction of THC and the Committee, and to develop a system by which information held by TXDOT, THC, and the Committee may be exchanged to their mutual benefit.

(vi) This memorandum supersedes that memorandum of understanding executed by TXDOT, THC, and the Committee on January 31, 1992, and that memorandum of understanding is of no further force of effect.

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

(i) Antiquities Code of Texas (ACT)—Designates the Committee as the legal custodian of all cultural resources, historic and prehistoric, within the public domain of the State of Texas, and the body which issues antiquities permits, in accordance with Chapter 41 of this title (relating to Practice and Procedure) and as provided in ACT §§191.054 and 191.091-191.089.

(ii) Antiquities permit—A permit issued by the Committee in order to regulate site destruction, archeological testing, and archeological excavation.

(iii) Archeological excavation (data recovery)—Use of field tech-

niques, including those of archeological testing, but with the goal of addressing specific research issues identified with the site's historic context. Excavation (data recovery) is conducted under an approved data recovery plan developed in consultation with the state historic preservation officer and the Advisory Council on Historic Preservation, following the procedure set forth under 36 Code of Federal Regulations 800, for federal undertakings; or in consultation with the Committee for non-federal undertakings, in accordance with Chapter 41 of this title.

(iv) Archeological monitoring—Use of a professional archeologist present on-project when clearing and grubbing or other construction activities are being conducted. Should evidence of archeological remains be encountered, TXDOT will ensure that clearing and grubbing or other construction activities shall cease in the area of the archeological remains until these remains can be assessed and evaluated in accordance with appropriate state and federal laws and regulations.

(v) Archeological resource/site—Locations where prehistoric or historic remains are found in a primary deposit, excluding extant standing structures dating from the historic time period. Note that archeological sites can be associated with a historic structure and historic structural ruins can be designated as archeological sites (§41.5 of this title (relating to Definitions)). However, an extant standing structure itself (as contrasted to a historic structural ruin) does not constitute an archeological site in the absence or other associated remains. Prehistoric ruins are considered to be archeological sites.

(vi) Archeological survey—Archeological field methods used to locate archeological remains, including on-foot examination of the surface, shovel testing, and subsurface trenching by mechanical means where appropriate.

(vii) Archeological testing—Use of field techniques including excavation of holes larger or deeper than those of a shovel test, and including mechanical trenching and removal of artifacts. Archeological field research limited to determination of eligibility for the National Register of Historic Places (NRHP) for federal undertakings, as defined in 36 Code of Federal Regulations 800, or determination of significance for non-federal undertakings, as defined in Chapters 41, 43, and 45 of this title (relating to Practice and Procedure; Procedure; State Archeological Landmarks). The review agency will determine what level of testing is appropriate under the MOU. The Committee will determine when test phase investigations warrant an antiquities permit.

(viii) Committee—The Texas Antiquities Committee.

(ix) Cultural resources—A general term synonymous with "historic properties."

(x) Eligibility—A site's eligibility for the NRHP as set forth in 36 Code of Federal Regulations 800.

(xi) Environmental documents—Decision-making documents which incorporate the results of environmental studies, coordination and consultation efforts, and engineering elements. Types of documents include categorical exclusion assessments, environmental assessments, and environmental impact statements.

(xii) Historic property—Any prehistoric or historic district, site building, structure, or object included in, or eligible for inclusion in the NRHP, as defined in 36 Code of Federal Regulations 800.2.

(xiii) Historic resource—A feature of the built environment which is potentially eligible for listing in the NRHP as defined in 36 Code of Federal Regulations 60.

(xiv) Historic resource survey—Examination of the project for the presence of historic resources.

(xv) Mechanical testing—Excavation with backhoe, Gradall, or other heavy equipment in order to locate archeological remains.

(xvi) Project development—The planning process of a highway project, which includes engineering design as well as environmental studies and public involvement procedures. Project development generally includes all studies of a project prior to actual construction.

(xvii) Review agency—The appropriate review agency for each particular circumstance. THC has jurisdiction over federal undertakings, as defined in 36 Code of Federal Regulations 800, and the Committee has jurisdiction over non-federal undertakings and the issuing of antiquities permits, as provided in ACT §191.054 and §191.098.

(xviii) Right-of-way—The land provided for a highway, usually including the roadway itself, shoulders, and areas between the roadway and adjacent properties.

(xix) Shovel testing—Excavation of test holes which shall measure at least 35 centimeter in diameter and shall be excavated to a basal horizon or bedrock, or to a depth of at least 1 millimeter if a basal horizon or bedrock is not reached. This technique is used both in areas where surface visibility is low and in areas where

the potential for archeological remains is high. Shovel testing is also used when surface indications of archeological remains are encountered in order to provide a preliminary determination of the depth of the cultural deposits.

(xx) State archeological landmark—Archeological and historic properties as defined in the Antiquities Code of Texas ACT, Subchapter D and identified in accordance with Chapters 41 and 45 of this title.

(xxi) Subsurface survey—Mechanical or hand-dug probing of a site or project area during the survey phase to record or examine subsurface deposits, for the collection of archeological or geomorphic data.

(C) Responsibilities.

(i) TxDOT.

(I) The responsibilities of TXDOT pertain to its functions as a transportation agency, and include the following:

(-a-) planning and designing safe, efficient, cost-effective, and environmentally sound transportation facilities, and avoiding, minimizing, or compensating for environmental impacts as far as practicable when they are anticipated to occur;

(-b-) the timely and efficient construction of transportation facilities, executed in a manner consistent with approved plans or agreements which have been entered into by the department for the protection of the natural environment and cultural sites; and

(-c-) the ongoing maintenance of these facilities to provide safe, efficient, and environmentally sound transportation facilities for the traveling public, and dedication to the protection of natural and cultural resources within the jurisdiction of TxDOT.

(-d-) a commitment to the preservation and enhancement of the human environment.

(II) Senate Bill 352, which became effective on September 1, 1991, directs TXDOT to adopt an MOU with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historic and archeological resources.

(ii) THC. THC, through the Office of the State Historic Preservation Officer (SHPO), regulates the disposition and management of historic properties which are affected by federal undertakings, as described in the National Historic Preser-

vation Act, §106, and in 36 Code of Federal Regulations 800.

(iii) The Committee.

(-a-) The Committee regulates the disposition and management of archeological landmarks which are affected by non-federal undertakings, as described in the ACT and Chapter 41 of this title.

(-b-) The Committee issues permits for the taking, excavation, restoration, or study of state archeological landmarks as provided in the ACT, §§191.054 and 191.091-191.098.

(D) Provisions.

(i) Procedures for coordination regarding archeological resources.

(I) Initial coordination phase.

(-a-) TxDOT may combine the initial coordination phase with the archeological survey phase in order to expedite project coordination. In these cases, the review agency will be afforded an opportunity to comment on both the survey methodology and survey results.

(-b-) TxDOT will identify projects requiring coordination for archeological resources, as indicated by the level of project documentation. Such projects include:

(-1-) any project which, although classified as a categorical exclusion (CE), is judged to have the potential to affect archeological resources;

(-2-) all projects requiring issuance of a finding of no significant impact (FONSI), when such a project is judged to have the potential to affect archeological resources; and

(-3-) all projects requiring an environmental impact statement (EIS).

(-c-) TXDOT will identify projects which are not believed to require individual coordination for archeological sites and will provide THC and the Committee with a list of such projects on a monthly basis.

(-d-) TxDOT will begin coordination by conducting a search of the site files at the Texas Archeological Laboratory (TARL) as well as site files and survey records held at THC and the Committee. THC and the Committee will render TxDOT all reasonable assistance in the search.

(-e-) TxDOT will request a review of the project by the review agency. TxDOT will submit for review:

(-1-) plans, project descriptions, and other documentation required by the review agency for review;

(-2-) a statement detailing the result of the site files search, including information on any sites listed in the site files and occurring on or near the project, including a list of properties on or near the project which are listed in the NRHP, or are designated as state archeological landmarks (SALs); and

(-3-) a statement recommending which portions of the project are to be surveyed, the techniques to be used on each part of the project, and identifying the portions of the project which have high likelihood of yielding archeological remains.

(-f-) The review agency will respond within 30 days of receipt of the TxDOT request for review of the project. The response will include:

(-1-) a statement of concurrence or nonconcurrence with the results of the site fields check and the survey recommendations contained in the TxDOT request for review; and

(-2-) any other comments relevant to the archeological resources which could be affected by the project.

(-g-) TxDOT will include the results of the site files search, survey recommendations, and comments from the review agency in any environmental assessment or draft EIS written as part of the project, and will present findings at the public hearing, if such hearing is held.

(II) Archeological survey phase.

(-a-) All projects, and portions of projects, recommended for survey by TxDOT and for which concurrence has been obtained from the review agency during the initial phase of coordination will be the subjects of archeological survey using the methods agreed upon between TxDOT and the review agency.

(-b-) An archeological survey will be conducted by a member of the TxDOT professional archeological staff or other archeologist approved by the review agency.

(-c-) When the archeological survey has been completed, TxDOT will request a review of the results of the survey. With its request for review, TxDOT will include:

(-1-) a letter report or form detailing the results of the survey, including a discussion of any deviations from the methods agreed upon during the initial phase of coordination;

(-2-) the project location plotted on 7.5' Series USGS quadrangle maps;

(-3-) copies of archeological site survey forms for any new archeological sites discovered during survey;

(-4-) copies of archeological sites survey forms for any previously recorded archeological sites; and

(-5-) recommendations regarding archeological testing or archeological monitoring.

(-6-) if deemed necessary, the review agency may request TxDOT to produce a formal report of findings made as a result of a survey phase investigation.

(-d-) The review agency will respond within 30 days of receipt of the TxDOT request for review of the survey results and recommendations. The response will include:

(-1-) a statement of concurrence or nonconcurrence with the results of the site files check and the survey results contained in the TxDOT request for review; and

(-2-) any other comments relevant to the archeological resources which could be affected by the project.

(-e-) TxDOT will include the results of the archeological survey and recommendations in the environmental assessment or final EIS, if one is prepared.

(III) Archeological testing phase.

(-a-) All sites and portions of sites recommended for testing by TxDOT, THC, or the Committee will be subjects of archeological testing, using

methods agreed upon by TxDOT and the review agency.

(-b-) The review agency may send a representative to observe any or all of the testing procedures.

(-c-) At the completion of testing, TxDOT will prepare a formal report of the results of testing.

(-1-) For sites affected by federal undertakings, the report will include recommendations regarding eligibility for the NRHP, as described in 36 Code of Federal Regulations 800.

(-2-) For sites affected by non-federal undertakings, the report will include recommendations regarding the significance of the site and whether designation as an SAL is warranted, in accordance with the ACT, §191.091 and §191.092, and Chapters 41, 43, and 45 of this title.

(-d-) TxDOT will send the testing report to the review agency with a request for review.

(-e-) THC, in accordance with 36 Code of Federal Regulations 800, will respond to the report within 30 days of receipt of the TxDOT request for review. The response will include:

(-1-) a statement of concurrence or nonconcurrence with the results of the archeological testing and recommendations contained in the TxDOT request for review;

(-2-) a determination of the site's eligibility for listing in the NRHP; and

(-3-) any other comments relevant to the archeological site which has undergone archeological testing.

(-f-) The Committee, in accordance with Chapter 41 of this title and the ACT, Chapter 191, will respond to the report within 60 days of receipt of the TxDOT request for review. The response will include:

(-1-) a statement of concurrence or nonconcurrence with the results of the archeological testing and recommendations contained in the TxDOT request for review;

(-2-) a determination of whether the site warrants designation as an SAL; and

(-3-) any other comments relevant to the archeological site which has undergone archeological testing.

(-g-) TxDOT will include the results of the archeological survey and recommendations in the environmental assessment or final EIS, if one is prepared.

(-h-) The Committee may require an antiquities permit be issued for some test phase investigations if the scope of the investigations warrants it. All testing performed by non-TxDOT staff archeologists must be performed under an antiquities permit.

(IV) Archeological excavation/data recovery.

(-a-) All sites and portions of sites determined to be eligible for the NRHP (for federal undertakings) or significant (for non-federal undertakings) based on consultation with the review agency during the survey phase or testing phase will be the subjects of data recovery.

(-b-) TxDOT (or their contracted agency), in consultation with the review agency, will develop a suitable data recovery plan for each eligible or significant archeological site on a case-by-case basis, in accordance with 36 Code of Federal Regulations 800 for federal undertakings and the ACT, Chapter 191 for non-federal undertakings. Final data recovery plans must be approved by the review agency prior to their implementation.

(-c-) Results of data recovery will be published as required by 36 Code of Federal Regulations 800 and/or the ACT, Chapter 191.

(V) Archeological sites found after award of contract.

(-a-) When previously unknown archeological remains are encountered after award of contract, TxDOT will immediately suspend construction that would affect the site.

(-b-) A TxDOT archeologist will examine the remains and report the findings to the appropriate review agency. The Federal Highway Administration (FHWA) will enter consultations regarding the disposition of the site or sites for federal undertakings, as required by 36 Code of Federal Regulations 800.

(-c-) TxDOT and the review agency will prepare a plan of action to determine eligibility or significance, and/or mitigate the effects on the site.

(-d-) TxDOT may continue construction in the affected area

upon approval of the review agency.

(ii) Procedures for coordination regarding historic resources.

(I) TxDOT will identify projects requiring coordination with the review agency for historic resources. Coordination will be required for:

(-a-) any project which, although classified as a CE, is judged to have the potential to affect historical resources;

(-b-) any project requiring the issuance of an FONSI, when such project is judged to have the potential to affect historic resources;

(-c-) all projects requiring an EIS.

(II) TxDOT will identify which projects require individual coordination for historic resources. The TxDOT will provide a list of those projects which do not require individual coordination to the THC and Committee on a monthly basis.

(III) For projects requiring individual coordination, TxDOT will conduct a search of available records, references, and resources, including listings of Registered Texas Historic Landmarks (RTHLs), SALs, and properties listed in the NRHP, as well as local historic property survey files on record at THC. THC and Committee will render all reasonable assistance to the TxDOT in the search.

(IV) TxDOT will conduct historic resources surveys to locate historic resources which are potentially eligible for inclusion in the NRHP.

(V) For each project requiring individual historic resources coordination with the review agency, TxDOT will provide the following:

(-a-) plans, project descriptions, and other documentation as needed;

(-b-) a statement detailing the results of the records search;

(-c-) a summary of the results of the historic resources survey, describing all resources:

(-1-) listed in or potentially eligible for listing in the NRHP for federal undertakings; or

(-2-) which possess historical interest as defined by the

ACT, §191. 092 for non-federal undertakings.

(VI) The review agency will respond within 30 days of receipt of the TxDOT request for review of the project. The response will be in accordance with 36 Code of Federal Regulations 800, the ACT, Chapter 191, and Chapter 41 of this title.

(VII) TxDOT will include information on historic resources in the environmental assessment or final EIS, if one is prepared.

(VIII) TxDOT will include information on historic resources in the environmental assessment or final EIS, if one is prepared.

(IX) All historic resources either listed in or determined eligible for listing in the NRHP (for federal undertakings) or designated SALs (for non-federal undertakings) which are affected by projects will be subject to mitigation of these effects.

(X) TxDOT, in consultation with the review agency, will develop a suitable mitigation plan:

(-a-) in accordance with 36 Code of Federal Regulations 800 for historic resources listed in or determined eligible for listing in the NRHP for federal undertakings; or

(-b-) in accordance with the ACT, Chapter 191, for historic resources designated as SALs for non-federal undertakings. Final mitigation plans must be approved by the review agency prior to implementation of mitigation efforts.

(iii) Artifact recovery and curation.

(I) Artifact recovery.

(-a-) All artifacts or analysis samples (such as soil samples) that are recovered from survey, testing, or data recovery investigations by TxDOT or their contracted agents must be cleaned, labeled, and processed in preparation for long-term curation.

(-b-) Recovery methods must conform to 36 Code of Federal Regulations 800, Committee rules, and/or Council of Texas Archeologists (CTA) guidelines to ensure proper care and curation.

(II) Artifact curation.

(-a-) TxDOT may temporarily house artifacts and samples during their laboratory analysis research, but all artifacts must be transferred to a permanent curatorial facility within a reasonable time period, to be decided by the review agency.

(-b-) All artifacts and samples must be placed at the Texas Archeological Research Laboratory or some regional artifact curatorial repository which fulfills 36 Code of Federal Regulations 800, Committee rules, or CTA curation standards, as approved by the review agency.

(-c-) TxDOT is responsible for the curatorial preparation of all artifacts so that they are acceptable to the receiving curatorial repository and fulfill 36 Code of Federal Regulations 79, Committee rules, or CTA curation standards, as approved by the review agency.

(iv) Resolution of objections.

(I) Should the reviewing agency timely object (within stipulated review period) to any plans provided for review or any actions proposed by TxDOT regarding:

(-a-) any phase of coordination for archeological resources including initial coordination, survey, testing, excavation/data recovery, and reporting;

(-b-) any phase of coordination for historic resources including initial coordination, historic resources survey, and mitigation; or

(-c-) curation of site materials, documentation and samples, TxDOT and reviewing agency shall enter into consultation to resolve the objection.

(II) If the objection cannot be resolved through the consultation process, either TxDOT or the reviewing agency, at any time, may terminate consultation and invoke the provisions of subparagraph (E) of this paragraph.

(E) Dispute Resolution.

(i) In such instances when TxDOT and the review agency are unable to reach a mutually agreeable plan of action regarding survey, testing, determination of eligibility or significance, or mitigation, a good-faith effort will be made to develop a compromise plan.

(ii) If TxDOT and the review agency cannot arrive at a compromise plan, the dispute will be resolved in accordance with procedures established under state and federal rules.

(I) Federal undertakings will follow the procedures provided in 36 Code of Federal Regulations 800, including consultation with the Advisory Council on Historic Preservation, if necessary.

(II) Non-federal undertakings will follow the procedures provided in Chapters 41, 43, and 45 of this title.

(F) Review of MOU. This memorandum shall be reviewed and updated no later than January 1, 1997, and every fifth year after that date, as provided for in Senate Bill 352 and Texas Civil Statutes, Article 6673g, §3(d).

(2) Future adoption of memoranda of understanding. The commission may, at a later date, adopt by rule memoranda of understanding with additional state and/or federal agencies to better implement programs and policies for the preservation of historic properties and archeological resources.

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-9216694

Curtis Tunnell
Executive Director
Texas Historical
Commission

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For further information, please call: (512) 463-6100

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TITLE 19. Education
Part II. Texas Education
Agency

Chapter 75. Curriculum

Subchapter D. Essential
Elements-Grades 9-12

• **19 TAC §§75.62, 75.63, 75.66**

(Editor's note: Due to an agency error in the July 24, 1992, issue of the Texas Register (17 TexReg 5197), the following sections were adopted without changes when in fact changes were made to the sections as proposed. The sections are now being published. The effective date remains August 6, 1992.

The Texas Education Agency (TEA) adopts amendments to §§75.62, 75.63, and 75.66, concerning essential elements - Grades 9-12, with changes to the proposed text as published in the May 19, 1992, issue of the *Texas Register* (17 TexReg 3687).

Identical amendments were adopted in the July 24, 1992, issue of the *Texas Register* (17 TexReg 5197). At that time, the TEA filed the adopted rule text for public inspection with changes to the proposed text; however, due to a proofreading error, the preamble stated that the amendments were adopted without changes. Consequently, the *Texas Register* did not publish the text of the sections. The effective date remains August 6, 1992.

The amendments are necessary to refine curriculum essential elements. The changes to §75.62 adjust the proficiency levels of language skill requirements. They also incorporate new areas of emphasis in the field of writing to parallel first language instruction. The changes to §75.63 correct the spelling of the word "COBOL" and add "C" to the list of programming languages for which the student must be able to identify appropriate uses. The changes to §75.66 remove the limitations on aerobic exercise by replacing the phrase "aerobic dance" with "aerobic activities."

No comments were received regarding adoption of the amendments.

Based on a five-year review, the amendments revise essential elements in the state curriculum related to subjects and courses that will be included in the 1993 textbook proclamation.

The amendments are adopted under the Texas Education Code, §21.101(c), which authorizes the State Board of Education to promulgate rules designating the essential elements of each subject and course in the state curriculum.

§75.62. Other Languages.

(a) Other languages, Level I (one unit). Essential elements described in this subsection for other languages, Level I, shall be superseded by the essential elements described in subsection (j) of this section effective September 1996. Other languages, Level I, shall include in a sequential program the following essential elements.

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

(b) Other languages, Level II (one unit). Essential elements described in this subsection for other languages, Level II, shall be superseded by the essential elements described in subsection (k) of this section effective September 1996. Other languages, Level II, shall include in a sequential program the following essential elements.

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

(c) Other languages, Level III (one unit). Essential elements described in this subsection for other languages, Level III, shall be superseded by the essential elements described in subsection (l) of this section effective September 1996. Other languages, Level III, shall include in a sequential program the following essential elements.

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

(d) Advanced languages I, II, III, IV (one-half to one unit). Essential elements described in this subsection for advanced languages I, II, III, IV shall be superseded by the essential elements described in subsections (m) and (n) of this section effective September 1996. Advanced languages I, II, III, IV shall include in a sequential program one or more of the following essential elements.

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

(e)-(i) (No change.)

(j) Languages, Level I (one unit). Essential elements for languages, Level I, as described in this subsection shall be effective September 1996. Languages, Level I, shall include the following essential elements in a sequential program for modern and classical languages. The sequence provides for an integration of skills and a spiraling of content throughout the learning process.

(1) Oral communication: listening and speaking.

(A) Skills and concepts that result in the understanding of sentence-length utterances, including recombinations of learned material on a variety of topics. The student shall be provided opportunities to:

(i) discriminate sounds in meaningful contexts;

(ii) distinguish variations in sounds and intonation patterns;

(iii) comprehend basic structures, expressions, and common vocabulary; and

(iv) comprehend short familiar utterances.

(B) Skills and concepts that result in the handling of a limited number of spoken communicative tasks and situations. The student shall be provided opportunities to:

(i) reproduce sounds and intonation patterns in meaningful contexts;

(ii) use words, phrases, and sentences as appropriate;

(iii) use expressions needed for classroom and/or daily life situations; and

(iv) restate familiar material.

(2) Written communication: reading and writing.

(A) Skills and concepts that result in the comprehension of main ideas and/or some facts from simple connected

texts. The student shall be provided opportunities to:

(i) read familiar material orally, approximating correct pronunciation and intonation;

(ii) read familiar material with comprehension; and

(iii) use word recognition skills.

(B) Skills and concepts that result in meeting limited practical writing needs. The student shall be provided opportunities to:

(i) write familiar material using spelling, capitalization, and punctuation conventions; and

(ii) write from dictation.

(3) Culture and language.

(A) Concepts that result in knowledge and awareness of the culture of another people within a range of situations. The student shall be provided opportunities to:

(i) experience various aspects of another culture such as contemporary life, the arts, geography, history, and literature; and

(ii) understand that behavior is conditioned by culture.

(B) Concepts that result in generalizations about how a language operates and skills that result in the application of the language learning process to the study of other languages. The student shall be provided opportunities to:

(i) recognize the interrelationship of languages;

(ii) recognize the role of nonlinguistic elements in communication;

(iii) recognize the role of errors and the process of self-correction in learning a language; and

(iv) develop language learning techniques.

(k) Languages, Level II (one unit). Essential elements for languages, Level II, as described in this subsection shall be effective September 1996. Languages, Level II, shall include the following essential elements in a sequential program for modern and classical languages. The sequence provides for an integration of skills and a spiraling of content throughout the learning process.

(1) Oral communication: listening and speaking.

(A) Skills and concepts that result in the understanding of sentence-length utterances, including recombinations of learned material on a variety of topics. The student shall be provided opportunities to:

(i) distinguish variations in sounds and intonation patterns;

(ii) comprehend basic structures, expressions, and common vocabulary;

(iii) comprehend short familiar utterances; and

(iv) recognize familiar material in unfamiliar context.

(B) Skills and concepts that result in the handling of a limited number of spoken communicative tasks and situations. The student shall be provided opportunities to:

(i) reproduce sounds and intonation patterns in meaningful contexts;

(ii) use words, phrases, and sentences as appropriate;

(iii) use expressions needed for classroom and/or daily life situations;

(iv) restate familiar material; and

(v) use alternate means of communicating an idea.

(2) Written communication: reading and writing.

(A) Skills and concepts that result in the comprehension of main ideas and/or some facts from simple connected texts. The student shall be provided opportunities to:

(i) read familiar material orally, approximating correct pronunciation and intonation;

(ii) read familiar material with comprehension;

(iii) use word recognition skills; and

(iv) understand unfamiliar material in context.

(B) Skills and concepts that result in meeting limited practical writing needs. The student shall be provided opportunities to:

(i) write familiar material using spelling, capitalization, and punctuation conventions;

(ii) write from dictation; and

(iii) write familiar memorized material with some recombinations.

(3) Culture and language.

(A) Concepts that result in knowledge and awareness of the culture of another people within a range of situations. The student shall be provided opportunities to:

(i) experience various aspects of another culture such as contemporary life, the arts, geography, history, and literature;

(ii) understand that behavior is conditioned by culture;

(iii) become aware of the cultural connotations of common words and phrases; and

(iv) locate and organize cultural information.

(B) Concepts that result in generalizations about how a language operates and skills that result in the application of the language learning process to the study of other languages. The student shall be provided opportunities to:

(i) recognize the interrelationship of languages;

(ii) recognize that some language features are unique;

(iii) recognize the role of errors and the process of self-correction in learning a language; and

(iv) develop language learning techniques.

(l) Languages, Level III (one unit). Essential elements for languages, Level III, as described in this subsection shall be effective September 1996. Languages, Level III, shall include the following essential elements in a sequential program for modern and classical languages. (The essential elements for listening, speaking, and writing will not be as fully developed in classical languages as in modern languages.) The sequence provides for an integration of skills and a spiraling of content throughout the learning process.

(1) Oral communication: listening and speaking.

(A) Skills and concepts that result in the understanding of sentence-length utterances, including recombinations of learned material on a variety of topics. (For classical languages, clauses (iv)-(vii) of this subparagraph may be inappropriate.) The student shall be provided opportunities to:

(i) comprehend basic structures, expressions, and common vocabulary;

(ii) comprehend short familiar utterances;

(iii) recognize familiar material in unfamiliar context;

(iv) comprehend native speakers in controlled situations;

(v) understand face-to-face speech in a standard dialect on everyday topics;

(vi) comprehend simple telephone messages and uncomplicated announcements and reports over the media; and

(vii) interpret body language and context to aid comprehension.

(B) Skills and concepts that result in the handling of a limited number of spoken communicative tasks and situations. (For classical languages, clauses (v), (vii), (viii) of this subparagraph may be inappropriate.) The student shall be provided opportunities to:

(i) reproduce the sounds and intonation patterns in meaningful contexts;

(ii) use expressions needed for classroom and/or daily life situations;

(iii) retell familiar material;

(iv) use alternate means of communicating an idea;

(v) initiate and respond to simple statements;

(vi) ask and answer questions;

(vii) sustain face-to-face conversations on familiar subjects; and

(viii) describe particular interests.

(2) Written communication: reading and writing.

(A) Skills and concepts that result in the comprehension of main ideas and/or some facts from simple connected texts. The student shall be provided opportunities to:

(i) use word recognition skills;

(ii) understand unfamiliar material in context;

(iii) identify main idea and supporting details; and

(iv) read selections of simple prose and/or poetry.

(B) Skills and concepts that result in meeting limited practical writing needs. (For classical languages, clauses (ii)-(v) of this subparagraph may be inappropriate.) The student shall be provided opportunities to:

(i) write familiar or memorized material with some recombinations;

(ii) supply information on simple forms and documents;

(iii) create statements and questions relating to familiar topics;

(iv) write short messages; and

(v) apply the writing process to plan and generate writing for a variety of purposes in a variety of formats.

(3) Culture and language.

(A) Concepts that result in knowledge and awareness of the culture of another people within a range of situations. The student shall be provided opportunities to:

(i) experience various aspects of another culture such as contemporary life, the arts, geography, history, and literature;

(ii) understand that behavior is conditioned by culture;

(iii) become aware of the cultural connotations of common words and phrases; and

(iv) study cultural generalizations.

(B) Concepts that result in generalizations about how a language operates and skills that result in the application of the language learning process to the study of other languages. The student shall be provided opportunities to:

(i) recognize appropriate language for different social situations;

(ii) recognize language as a structured and evolving system of communication;

(iii) recognize the role of errors and the process of self-correction in learning a language; and

(iv) develop language learning techniques.

(m) Modern Languages, Levels IV, V, VI, VII (one unit). Essential elements for modern languages, Levels IV, V, VI, VII, as described in this subsection shall be effective September 1996. Modern languages,

Levels IV, V, VI, VII, shall include the following essential elements in a sequential program. The sequence provides for an integration of skills and a spiraling of content throughout the learning process. Culture is taught as an integral part of oral and written communication skills.

(1) Oral communication: listening and speaking.

(A) Skills and concepts that result in the understanding of main ideas and most details of stretches of connected speech of a native speaker on a number of topics beyond the immediacy of the situation. The student shall be provided opportunities to:

(i) understand face-to-face speech in a standard dialect on everyday topics;

(ii) follow the essential points of a discussion, speech, and/or explanation on social and work-related topics;

(iii) understand some main ideas and supporting detail; and

(iv) comprehend telephone conversations, announcements and reports over the media, and/or short interviews.

(B) Skills and concepts that result in handling most uncomplicated spoken communicative tasks and social situations when interacting with a native speaker. The student shall be provided opportunities to:

(i) ask and answer questions;

(ii) participate in casual conversations about current events, school, work, family, and/or autobiographical information;

(iii) initiate, sustain, and close a conversation;

(iv) narrate and describe topics of current public and/or personal interests in connected discourse;

(v) express opinions; and

(vi) expand the use of fundamental grammatical constructions.

(2) Written communication: reading and writing.

(A) Skills and concepts that result in being able to read and comprehend connected, authentic texts dealing with a variety of basic personal and social needs and interests. The student shall be provided opportunities to:

(i) understand social notes and personal and business letters;

(ii) read news items describing current events;

(iii) do intensive and extensive reading, including simple fiction and/or nonfiction;

(iv) read selections of prose and/or poetry of moderate difficulty with attention given to style;

(v) identify main idea and supporting details; and/or

(vi) use reference works such as dictionaries, encyclopedias, and atlases.

(B) Skills and concepts that result in being able to meet most practical writing needs. The student shall be provided opportunities to:

(i) take notes on familiar topics;

(ii) do simple original composition, including social notes and personal letters;

(iii) express personal preferences and observations in some detail;

(iv) describe and narrate in paragraphs;

(v) write simple summaries, brief synopses, and paraphrases relating to personal experiences;

(vi) apply the writing process to plan and generate writing for a variety of purposes in a variety of formats;

(vii) understand and use the forms and conventions of written language appropriately;

(viii) use reference works such as dictionaries, encyclopedias, and atlases; and/or

(ix) expand the use of fundamental grammatical constructions.

(n) Classical languages, Levels IV, V, VI, VII (one unit). Essential elements for classical languages, Levels IV, V, VI, VII, as described in this subsection shall be effective September 1996. Classical languages, Levels IV, V, VI, VII, shall include the following essential elements in a sequential program. The sequence provides for an integration of skills and a spiraling of content throughout the learning process.

(1) Reading.

(A) Skills and concepts that result in the ability to read and comprehend connected, authentic texts of prose and poetry. The student shall be provided opportunities to:

(i) do intensive and extensive reading;

(ii) understand ordinary prose which may include such items as personal letters and inscriptions; and/or

(iii) read selections of prose and/or poetry of moderate difficulty with attention given to style.

(B) Listening, speaking, and writing. The student shall be provided opportunities to use the skills of listening, speaking, and writing to reinforce the continuing development of the skill of reading.

(2) Culture. Culture is taught as an integral part of the skill of reading.

§75.63. Mathematics.

(a)-(1) (No change.)

(m) Computer Mathematics I (one-half to one unit). Essential elements described in this subsection for Computer Mathematics I shall be superseded by the essential elements described in subsection (dd) of this section effective September 1996. (The Computer Mathematics course will replace the Computer Mathematics I and Computer Mathematics II courses.) Computer Mathematics I shall include the following essential elements.

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

(n) Computer Mathematics II (one-half to one unit). Essential elements described in this subsection for Computer Mathematics II shall be superseded by the essential elements described in subsection (dd) of this section effective September 1996. (The Computer Mathematics course will replace the Computer Mathematics I and Computer Mathematics II courses.) Computer Mathematics II shall include the following essential elements.

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

(o)-(cc) (No change.)

(dd) Computer Mathematics (one-half to one unit). Essential elements for Computer Mathematics as described in this subsection shall be effective September 1996. (The Computer Mathematics course will replace the Computer Mathematics I and Computer Mathematics II courses.) Computer Mathematics shall include the following essential elements.

(1) Fundamentals of computer systems. The student shall be provided opportunities to:

(A) investigate major hardware components including storage, processing, and input/output devices;

(B) investigate past and future computer technology and related applications;

(C) use a computer system with attached peripherals;

(D) investigate the way characters are stored in the computer memory, including the binary number system and bit and byte terminology;

(E) use major types of applications software such as word processing, spreadsheets, database packages, and shells; and

(F) explore telecommunications including data communication networks.

(2) Programming languages and procedures. The student shall be provided opportunities to:

(A) use hierarchy charts such as flowcharts, pseudocodes, and top-down design;

(B) identify appropriate uses for languages such as BASIC, COBOL, FORTRAN, Pascal, C, and LISP;

(C) use debugging techniques such as interpreting error messages and tracing transfer of control;

(D) write structured programs using recursive techniques, arrays, functions, subroutines, and string manipulations;

(E) use format techniques to design input and output; and

(F) use a programming language in problem-solving situations.

(3) Using the computer for topics in mathematics. The student shall be provided opportunities to:

(A) explore topics related to consumer mathematics, including payroll, banking, budgets, investments, taxes, and loans and credit systems;

(B) explore topics related to algebra, including evaluating expressions, the graphing of functions, relations and inequalities, the solving of equations and systems, sequences, series, and matrices;

(C) explore topics related to geometry, including perimeters, areas, volumes, transformational and coordinate ge-

ometries, right triangles, properties of triangles and other polygons, and approximation of pi;

(D) explore topics related to trigonometry, including trigonometric relationships, polar coordinates, parametric equations, and circular functions;

(E) explore topics related to precalculus, including vectors, approximation of areas under a curve, length of arcs, and slopes/derivatives;

(F) explore topics related to number theory, including prime numbers; greatest common divisor; least common multiple; divisibility; integral factorization; perfect, abundant, and deficient numbers; and modular arithmetic; and

(G) explore topics related to probability and statistics, including permutations, combinations, random numbers, measures of central tendencies, graphing data, standard deviation, variance, simulations, and data analysis.

(4) Using computer features and programs. The student shall be provided opportunities to:

(A) create computer-generated graphics relating the computer commands to geometric principals, using animation which incorporates the use of functions, and fractals;

(B) use a file structure (either a user-created sequential file or a commercial database);

(C) use sort and search routines/features; and

(D) use a random number generator.

§75.66. Physical Education.

(a) Physical Education I and II (one-half to one unit). Essential elements described in this subsection for Physical Education I and II shall be superseded by the essential elements described in subsections (d)-(f) of this section effective September 1996. Physical Education I and II shall include the following essential elements.

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

(b) (No change.)

(c) Dance I, II, III, IV (one-half to one unit). Dance I-IV shall include the essential elements listed in §75.67(s)-(v) of

this title (relating to Fine Arts). Essential elements described in §75.67(s)-(v) shall be superseded by the essential elements described in §75.67(cc)-(ff) effective September 1993.

(d) Physical Education IA, Foundations of Personal Fitness (1/2 unit). Essential elements for Physical Education IA, Foundations of Personal Fitness, as described in this subsection shall be effective September 1996. Physical Education IA, Foundations of Personal Fitness, shall include the following essential elements.

(1) Analysis of the components of physical fitness. The student shall be provided opportunities to:

(A) define physical fitness;

(B) identify, describe, and demonstrate each of the health-related components of physical fitness;

(C) identify, describe, and demonstrate each of the skill-related components of physical fitness;

(D) compare and differentiate between health-related fitness and skill-related fitness; and

(E) evaluate physical activities in terms of their specific contributions to health-related versus skill-related fitness.

(2) Understanding of the relationship between physical fitness activities and stress. The student shall be provided opportunities to:

(A) define stress;

(B) identify the different types of stress and their relationship to specific health problems;

(C) identify physical fitness activities that are positive coping strategies; and

(D) identify, describe, and demonstrate how some types of physical activities and/or overtraining in a physical activity may induce negative coping strategies.

(3) Understanding of sound nutritional practices related to physical fitness. The student shall be provided opportunities to:

(A) describe and explain the relationship between caloric intake and ca-

loric expenditure in relationship to physical activity;

(B) describe and explain sound nutritional practices related to physical activity and proper dietary balance of carbohydrates, fats, protein, vitamins, and minerals;

(C) describe and explain the importance of adequate fluid balance in relationship to physical activity;

(D) describe and explain myths associated with nutritional practices related to physical activity;

(E) describe and explain the methods of weight control; and

(F) describe and explain the combined use of exercise and diet as a method of weight control.

(4) Understanding of health problems associated with inadequate fitness levels. The student shall be provided opportunities to:

(A) identify health-related problems associated with inadequate range of motion and poor flexibility;

(B) identify health-related problems associated with inadequate cardiovascular fitness;

(C) identify health-related problems associated with inadequate muscular strength and muscular endurance; and

(D) identify health-related problems associated with an abnormal percentage of body fat.

(5) Understanding of consumer issues related to physical fitness. The student shall be provided opportunities to:

(A) differentiate between fact and myths as related to physical activity;

(B) determine the validity of marketing claims promoting fitness products and services;

(C) identify consumer issues related to selection, purchase, care, and maintenance of personal fitness equipment; and

(D) describe and explain the consumer issues related to obtaining membership to a reputable health-fitness facility.

(6) Selection of a variety of dynamic activities that will help students improve or maintain their physical fitness levels. The student shall be provided opportunities to:

(A) identify and demonstrate a variety of static and dynamic stretching exercises which promote range of motion and flexibility;

(B) identify and demonstrate a variety of aerobic activities that promote cardiovascular fitness; and

(C) identify and demonstrate a variety of activities that promote muscular strength and muscular endurance.

(7) Understanding and application of correct biomechanical and physiological principles related to exercise and training. The student shall be provided opportunities to:

(A) identify and explain factors one should consider before engaging in a physical fitness program;

(B) identify and explain the importance of a warm-up/cool-down period when participating in physical activity;

(C) describe and explain the training principles of overload, progression, and specificity (frequency, intensity, duration);

(D) describe and explain how range of motion and flexibility are improved through application of training principles;

(E) describe and explain how cardiovascular fitness is improved through application of the training principles;

(F) identify and explain the biomechanical principles related to cardiovascular activities;

(G) describe and explain how muscular strength and muscular endurance are improved through application of the training principles; and

(H) identify and explain the biomechanical principles related to muscular strength and endurance activities.

(8) Understanding and application of safety practices associated with physical fitness. The student shall be provided opportunities to:

(A) describe and explain safety procedures which should be followed when engaging in flexibility, cardiovascular and muscular strength, and muscular endurance activities;

(B) describe and explain safety precautions which should be followed when engaging in physical activities regarding clothing, footwear, facilities, and environment;

(C) identify and explain signs of heat illnesses caused by fluid loss; and

(D) identify precautions to be taken when performing physical activities in extreme weather and/or environmental conditions.

(9) Development and/or maintenance of an acceptable health-related level of physical fitness. The student shall be provided opportunities to demonstrate the attainment of the health-related components of physical fitness, measured by a valid and reliable criterion-referenced health-related physical fitness test, as part of their comprehensive physical fitness program.

(10) Assessment of individual lifestyles in relationship to regular physical activity and one's quality of living. The student shall be provided opportunities to:

(A) identify and describe how regular physical activity influences primary risk factors associated with disease, disability, and premature death;

(B) differentiate between changeable and non-changeable risk factors in relation to regular physical activity;

(C) identify personal health risk factors that can be changed and/or modified through regular physical activity and that will result in the pursuance of a healthy lifestyle; and

(D) describe and explain the relationship between one's health and physical fitness and one's lifestyle.

(11) Identification and modeling of characteristics of a positive attitude towards regular physical activity. The student shall be provided opportunities to:

(A) identify positive and negative attitudes that people have toward exercise and physical activities;

(B) identify why youth and adolescent health-fitness issues are related to national health concerns; and

(C) describe the health-fitness benefits of achieving acceptable adult fitness levels.

(12) Assessment of individual fitness levels. The student shall be provided opportunities to:

(A) identify, describe, and demonstrate methods of evaluating flexibility;

(B) identify, describe, and demonstrate methods of evaluating various cardiovascular fitness levels;

(C) identify, describe, and demonstrate methods of evaluating muscular strength and muscular endurance levels; and

(D) identify, describe, and explain a method of assessing body fat levels that would be consistent with good health.

(13) Designing of a fitness program that meets individual student needs and interests. The student shall be provided opportunities to:

(A) design a personal fitness program that will lead to or maintain an acceptable level of health-related fitness (generally based on criterion references from the physical fitness program selected by the teacher) based upon an understanding of training principles, individual skill levels, and availability of resources; and

(B) determine appropriate individual requirements for physical activity prescription concerning the mode, intensity, duration, frequency, and progression.

(e) Physical Education IB, Lifetime Activities (1/2 unit). Essential elements for Physical Education IB, Lifetime Activities, as described in this subsection shall be effective September 1996. Physical Education IB, Lifetime Activities, shall include the following essential elements.

(1) Knowledge and motor skills basic to efficient movement. The student shall be provided opportunities to:

(A) analyze, review, and improve movement skills basic to the activity being taught;

(B) practice efficient movement; and

(C) improve skills necessary for successful participation in physical activities.

(2) Knowledge, skills, and rules basic to proficient participation in physical recreation activities and individual, dual, or team sports. The student shall be provided opportunities to:

(A) learn skills, rules, strategies, officiating techniques, protocol, and safety practices appropriate to individual, dual, and team sports;

(B) continue development and practice of behavior reflective of good sportsmanship; and

(C) participate in lifetime activities that may include the following: aerobics, archery, badminton, basketball, bowling, dance, golf, horseshoes, outdoor recreational activities, shuffleboard, softball, swimming, table tennis, tennis, volleyball, and weight training.

(f) Physical Education II, Intramurals/Fitness for Life (one-half to one unit). Essential elements for Physical Education II, Intramurals/Fitness for Life, as described in this subsection shall be effective September 1996. Physical Education II, Intramurals/Fitness for Life, shall include the following essential elements.

(1) Demonstration and participation in lifetime activities within an intramural class format. The student shall be provided the opportunities to:

(A) experience game-like conditions through intramural activities;

(B) participate in voluntary intramural activities;

(C) learn skills, rules, strategies, officiating techniques, protocol, and safety practices appropriate to individual, dual, and team sports;

(D) continue development and practice of behavior reflective of good sportsmanship;

(E) participate in lifetime activities that may include the following: aer-

obics, archery, badminton, basketball, bowling, dance, golf, horseshoes, outdoor recreational activities, shuffleboard, softball, swimming, table tennis, volleyball, and weight training;

(F) experience and demonstrate skills and knowledge of fitness equipment for leisure and lifetime activities; and

(G) learn physical, recreational, and leisure time use of resources available in the community.

(2) Demonstration and participation in lifetime activities within a fitness class format. The student shall be provided the opportunities to:

(A) participate in varied physical activities that could be continued throughout life;

(B) participate in activities related to muscular strength and endurance, flexibility, cardiorespiratory endurance (sustained at the recommended duration of 20 minutes of activity in the personal target heart rate zone), body composition, nutrition, health-related fitness concepts and behaviors, and lifestyle problem-solving skills;

(C) participate in sustained and continuous activities that address the three components of fitness training (frequency, intensity, and duration) required to develop and maintain desired levels of fitness;

(D) develop and exhibit positive safety practices (warm-up and cool-down);

(E) participate in flexibility and stretching exercises;

(F) demonstrate cognitive understanding of the benefits of the components of health-related fitness;

(G) develop and maintain an acceptable health-related level of physical fitness;

(H) demonstrate the attainment of the health-related components of physical fitness as measured by a fitness assessment;

(I) participate in weight training by:

(i) utilizing fitness equipment similar to equipment used at health clubs;

(ii) applying training principles from the foundations course; and

(iii) applying safety practices (warm-up and cool-down, correct spotting techniques);

(J) participate in aerobic activities by:

(i) applying safety practices related to aerobic activities (correct shoes, low versus high impact); and

(ii) analyzing, reviewing, and developing skills for safe and successful participation in aerobic activities.

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 18, 1992.

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TITLE 22. EXAMINING BOARDS

Part XV. Texas State Board of Pharmacy

Chapter 291. Pharmacies

Community Pharmacy (Class A)

• 22 TAC §§291.31-291.36

Due to errors in the December 8, 1992, issue of the Texas Register (17 TexReg 8522), §§291.31-291.36 are being republished for clarification. The effective date of January 1, 1993 will remain the same.

The Texas State Board of Pharmacy adopts amendments to Sections 291.31-291.36. Sections 291.31-291.34 and 291.36, concerning definitions, personnel, operational standards, records, and Class A pharmacies compounding sterile pharmaceuticals are adopted with changes to the proposed text as published in the August 25, 1992, issue of the *Texas Register* (17 TexReg 5782). Section 291.35, concerning triplicate prescription requirements, is adopted without changes and will not be republished.

The Federal Omnibus Budget Reconciliation Act of 1990 (OBRA '90) was signed into law on November 5, 1990. This Act amended the 1965 Medicaid law to condition Federal Med-

icaid payments for outpatient drugs on the participation of drug manufacturers in state rebate programs, the development of drug use review programs, and implementation of patient counseling requirements by the states. These adopted amendments will implement the prospective drug review provisions of the OBRA '90 and set standards for patient counseling and prospective drug review for all patients by pharmacists in Class A Pharmacies in Texas. In addition, the adopted rules correct non-substantive inconsistencies in the rules.

A public hearing on the proposed rules was held on September 15, 1992, with eight persons giving oral testimony. In addition, the agency has received 17 letters of comment from 16 individuals for a total of 25 comments. The comments are summarized as follows.

(1) Regarding Section 291.31 (Definitions), commentors suggested that:

(a) the definition of "Confidential health information" be amended by deleting the word "which" and replace the "and" between subparagraph (B) and (C) with "or"; and

(b) a definition for "new prescription" be added.

The Agency agrees with these suggestions and has amended the definition of "confidential health information" as requested and added a definition for "new prescription."

(2) Regarding §291.32 (Personnel), commentors suggested that:

(a) the language in proposed §291.32(a)(2)(C) be modified to read the same as that in §291.33(c)(1)(B)(i);

(b) pharmacists be allowed to delegate affixing the label to supportive personnel;

(c) the phrase "in the pharmacist's professional judgement" be added to paragraph (2)(H); and

(d) (2)(J) paragraph be amended as to read: "assuring that a reasonable effort is made to obtain, record, and maintain patient medication records at the individual pharmacy."

The Agency agrees with the suggestions made in (a), (c), and (d) and has amended the proposed language as suggested. The agency disagrees with the suggestion in (b) and believes that at the present time a pharmacist should be required to affix the label to the prescription container.

(3) Regarding §291.33 (Operational Standards), commentors suggested that:

(a) all pharmacies should not be required to have an area suitable for confidential patient counseling;

(b) subsection (c)(1) should be modified to allow the pharmacist to use his or her professional judgement to determine the content of counseling and delete the reference to minimum;

(c) "techniques for self-monitoring of drug therapy" as specified in the OBRA '90 language should be added to the list in subsection (c)(1)(B);

(d) subsection (c)(1)(B) should be modified to insert the words "to the patient" between "dispensed" and "by the pharmacy";

(e) subsection (c)(1)(B) be modified to not require that written information be provided;

(f) subsection (c)(1)(B) be modified to not require written information but allow use of written information, "when deemed appropriate by the pharmacist"; and

(g) subsection (c)(1)(B) be modified to delay requiring written information until January 1, 1994.

The Agency agrees with the suggestions made in (b), (c), and (d) and partially agrees with the suggestions made in (f) and (g). The proposed language has been amended to reflect this agreement.

The Agency disagrees with the suggestions in (a) and (e). The Agency believes that an area suitable for confidential patient counseling is necessary for pharmacists to effectively counsel their patients. The Agency also believes that the most effective method of presenting information to the patient is to orally tell the patient about the drug or device and to reinforce this oral counseling with written information. However, the proposed rules have been amended to allow pharmacies nine months to implement the provision to provide written information for patients who come into the pharmacy. Written information will be immediately required to be included with prescriptions that are delivered to the patient's residence.

(4) Regarding §291.34 (Records), commentors suggested that:

(a) subsection 291.34(c) exceeds the federal mandate and implementation should be delayed until 1994;

(b) subsection 291.34(c)(1) should be modified to delete the words "all pharmacies" and replace with "the individual pharmacy";

(c) the word "year" in §291.34(c)(2) and (4) should be clarified by replacing with "12-month period";

(d) review of patient history should be required for 180 days only, not one year;

(e) a phase-in period for §291.34(c)(3)(E) and (F) should be allowed;

(f) §291.34(c)(3)(G) should be deleted "since this is not mandated under OBRA and appears to be simply an unnecessary addition of details regarding specifics for a particular type of record system";

(g) implementation of §291.34(c)(4) should be delayed until January 1, 1994; and

(h) a new §291.34(c)(5) should be added as follows: "Nothing in this subparagraph shall be construed as requiring a pharmacist to obtain, record, and maintain patient medication records when a patient or patient's agent refuses to provide the necessary information for such patient medication records."

The Agency agrees or partially agrees with the suggestions made in (b), (c), and (h) and the proposed language has been amended to reflect this agreement.

The Agency disagrees with the suggestions in (a), (e), (f), and (g). Each of these comments either suggest a delay in implementation of these proposed sections or suggest that the proposed sections exceed the requirements of the Federal requirements of OBRA. The Agency believes that these sections are mandated in the OBRA legislation and thus, does not believe that a delay in implementation is possible.

The Agency also disagrees with the suggestion in (d) to require review of medication records for 180 days rather than one year. The agency believes that the one-year requirement will result in a better review of records for possible drug-drug interactions. However, the agency will continue to monitor this requirement and if this appears to be overburdensome will consider modification of this portion of the rules in the future.

Comments were received from the following groups: Texas Federation of Drug Stores; Texas Pharmaceutical Association; and Texas Society of Hospital Pharmacists.

Each of these groups generally supported the intent and concepts of pharmacist/patient counseling and drug regimen review as proposed. However, each of the groups had specific comments about certain sections of the rules and made recommendations for changes in these sections.

The amendments are adopted under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1), §17, which gives the Board the authority to specify minimum standards for drug storage, maintenance of prescription drug records, and procedures for the delivery, dispensing in a suitable container appropriately labeled, or providing of prescription drugs or devices within the practice of pharmacy.

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

Confidential health information—Any health related information maintained by the pharmacy in the patient's records, is privileged and may be released only to:

(A) the patient, or as the patient directs;

(B) those health care professionals where, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well being; or

(C) other such persons or governmental agencies authorized by law to receive such confidential information.

New prescription drug order—A prescription drug order for a drug not previously taken by the patient.

Patient counseling—Communication by the pharmacist of information to the patient or patient's agent, in order to im-

prove therapy by ensuring proper use of drugs and devices.

Prospective drug review—A review of the patient's medication record and prescription drug order prior to dispensing.

§291.32. *Personnel.*

(a) Pharmacist-in-charge.

(1) (No change.)

(2) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

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

(C) assuring that a pharmacist communicates to the patient or the patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgement, the pharmacist deems significant as specified in §291.33(c) of this title (relating to Operational Standards);

(D) assuring that a pharmacist communicates to the patient or the patient's agent on their request, information concerning any prescription drugs dispensed to the patient by the pharmacy;

(E) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records;

(F) education and training of pharmacy supportive personnel;

(G) establishment of policies for procurement of prescription drugs and devices and other products dispensed from the Class A pharmacy;

(H) disposal and distribution of drugs from the Class A pharmacy;

(I) bulk compounding of drugs;

(J) storage of all materials, including drugs, chemicals, and biologicals;

(K) maintaining records of all transactions of the Class A pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials required by applicable state and federal laws and sections;

(L) establishment and maintenance of effective controls against the

theft or diversion of prescription drugs, and records for such drugs;

(M) maintenance of records in a data processing system such that the data processing system is in compliance with Class A (Community) Pharmacy requirements; and

(N) legal operation of the pharmacy, including meeting all inspection and other requirements of all state and federal laws or sections governing the practice of pharmacy.

(b) Pharmacists.

(1) (No change.)

(2) Duties. Duties which may only be performed by a pharmacist are as follows:

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

(D) interpreting patient medication records;

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

(G) affixing the label to the prescription container and performing the final check of the dispensed prescription before delivery to the patient;

(H) communicating to the patient or patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgement, the pharmacist deems significant, as specified in §291.33(c) of this title;

(I) communicating to the patient or the patient's agent on his or her request, information concerning any prescription drugs dispensed to the patient by the pharmacy; and

(J) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records.

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

§291.33. *Operational Standards.*

(a) (No change.)

(b) Environment.

(1) General requirements.

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

(D) A Class A pharmacy initially licensed after June 1, 1989, shall con-

tain an area which is suitable for confidential patient counseling and beginning January 1, 1995, all Class A pharmacies shall contain an area which is suitable for confidential patient counseling;

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

(2) (No change.)

(c) Prescription dispensing and delivery.

(1) Patient counseling and provision of drug information.

(A) To optimize drug therapy, a pharmacist shall communicate to the patient or the patient's agent, information about the prescription drug or device which in the exercise of the pharmacist's professional judgement the pharmacist deems significant, such as the following:

(i) the name and description of the drug or device;

(ii) dosage form, dosage, route of administration, and duration of drug therapy;

(iii) special directions and precautions for preparation, administration, and use by the patient;

(iv) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(v) techniques for self monitoring of drug therapy;

(vi) proper storage;

(vii) refill information; and

(viii) action to be taken in the event of a missed dose.

(B) Such communication:

(i) shall be provided with each new prescription drug order, and if the pharmacist deems appropriate, with prescription drug order refills;

(ii) shall be provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent;

(iii) shall be communicated orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits such oral communication; and

(iv) may be reinforced with written information when deemed appropriate by the pharmacist. Beginning September 1, 1993, the communication shall be reinforced with written information.

(C) Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(D) In addition to the requirements of subparagraphs (A)-(C) of this paragraph, if a prescription drug order is delivered to the patient at the pharmacy the following is applicable.

(i) So that a patient will have access to information concerning his or her prescription, a prescription may not be delivered to a patient unless a pharmacist is in the pharmacy, except as provided in clause (ii) of this subparagraph.

(ii) An agent of the pharmacist may deliver a prescription drug order to the patient or his or her agent during short periods of time when a pharmacist is absent from the pharmacy, provided the short periods of time do not exceed two hours, and provided a record of the delivery is maintained containing the following information:

(I)-(V) (No change.)

(iii) Any prescription delivered to a patient when a pharmacist is not in the pharmacy must meet the requirements described in subparagraph (E) of this paragraph.

(iv) A Class A pharmacy shall make available for use by the public, a current or updated edition of the United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient), or, another source of such information, such as patient information leaflets.

(E) In addition to the requirements of subparagraphs (A)-(C) of this paragraph, if a prescription drug order is delivered to the patient or his or her agent at the patient's or other designated location, the following is applicable.

(i) The information specified in subparagraph (A) of this paragraph shall be delivered with the dispensed prescription in writing.

(ii) If prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacy shall provide a toll-free telephone line which is answered during normal business hours to enable communication between the patient and a pharmacist.

(iii) The pharmacist shall place on the prescription container or on a separate sheet delivered with the prescrip-

tion container in both English and Spanish the local and if applicable, toll-free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions."

(F) The provisions of this paragraph do not apply to patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(2) Prospective drug review.

(A) For the purpose of promoting therapeutic appropriateness, a pharmacist shall, at the time of dispensing a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant:

- (i) inappropriate drug utilization;
- (ii) therapeutic duplication;
- (iii) drug-disease contraindications;
- (iv) drug-drug interactions;
- (v) incorrect drug dosage or duration of drug treatment;
- (vi) drug-allergy interactions; and
- (vii) clinical abuse/misuse.

(B) Upon identifying any clinically significant conditions, situations, or items listed in subparagraph (A) of this paragraph, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner.

(3) Prescription containers.

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

(4) Labeling. At the time of delivery of the drug, the dispensing container shall bear a label with at least the following information:

(A)-(M) (No change.)

(d)-(h) (No change.)

§291.34. Records.

(a) (No change.)

(b) Prescriptions.

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

(3) Verbal prescription drug orders.

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

(C) If a prescription drug order is transmitted to a pharmacist verbally, the pharmacist shall note any substitution instructions by the practitioner or practitioner's agent on the file copy of the prescription drug order. Such file copy may follow the two-line format indicated in paragraph (2)(B) of this subsection, or any other format that clearly indicates the substitution instructions.

(D)-(E) (No change.)

(4) (No change.)

(5) Authorization for substitution.

(A)-(D) (No change.)

(6)-(8) (No change.)

(c) Patient medication records.

(1) A patient medication record system shall be maintained by the pharmacy for patients to whom prescription drug orders are dispensed.

(2) The patient medication record system shall provide for the immediate retrieval of information for the previous 12 months which is necessary for the dispensing pharmacist to conduct a prospective drug review at the time a prescription drug order is presented for dispensing.

(3) The pharmacist-in-charge shall assure that a reasonable effort is made to obtain and record in the patient medication record at least the following information:

(A) full name of the patient for whom the drug is prescribed;

(B) address and telephone number of the patient;

(C) patient's age or date of birth;

(D) patient's gender;

(E) any known allergies, drug reactions, idiosyncrasies, and chronic conditions or disease states of the patient and the identity of any other drugs currently being used by the patient which may relate to prospective drug review;

(F) pharmacist's comments relevant to the individual's drug therapy, including any other information unique to the specific patient or drug; and

(G) a list of all prescription drug orders dispensed (new and refill) to the patient by the pharmacy during the last two years. Such list shall contain the following information:

- (i) date dispensed;
- (ii) name, strength, and quantity of the drug dispensed;
- (iii) prescribing practitioner's name;
- (iv) unique identification number of the prescription; and
- (v) name or initials of the dispensing pharmacists.

(4) A patient medication record shall be maintained in the pharmacy for two years. If patient medication records are maintained in a data processing system, all of the information specified in this subsection shall be maintained in a retrievable form for two years and information for the previous 12 months shall be maintained online.

(5) Nothing in this paragraph shall be construed as requiring a pharmacist to obtain, record, and maintain patient information other than prescription drug order information when a patient or patient's agent refuses to provide the necessary information for such patient medication records.

(d) Prescription drug order records maintained in a manual system.

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

(e) Prescription drug order records maintained in a data processing system.

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

(f) Limitation to one type of record keeping system. When filing prescription drug order information a pharmacy may use only one of the two systems described in subsection (d) or (e) of this section.

(g) Distribution of controlled substances to another registrant. A pharmacy, may distribute controlled substances to a practitioner, another pharmacy or other registrant, without being registered to distribute, under the following conditions:

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

(h) Other records. Other records to be maintained by a pharmacy:

(1)-(10) (No change.)

(i) Permission to maintain central records. Any pharmacy that uses a central-

ized recordkeeping system for invoices and financial data shall comply with the following procedures.

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

(j) Ownership of pharmacy records. For the purposes of these sections, a pharmacy licensed under the Act is the only entity which may legally own and maintain prescription drug records.

(k) Confidentiality. A pharmacist shall provide adequate security of prescription drug order and patient medication records to prevent indiscriminate or unauthorized access to confidential health information.

§291.36. Class A Pharmacies Compounding Sterile Pharmaceuticals.

(a) (No change.)

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

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

(9) Confidential health information—Any health related information maintained by the pharmacy in the patient's records, is privileged and may be released only to:

(A) the patient, or as the patient directs;

(B) those health care professionals where, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well being; or

(C) other such persons or governmental agencies authorized by law to receive such confidential information.

(10) Controlled substance—A drug, immediate precursor, or other substance listed in Schedules I-V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedule I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(11) Cytotoxic—A pharmaceutical that has the capability of killing living cells.

(12) Dangerous drug—Any drug or device that is not included in Penalty Groups 1-4 of the Controlled Substances Act and that is unsafe for self-medication or any drug or device that bears or is required to bear the legend:

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

(13) Deliver or delivery—The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(14) Designated agent—An individual under the supervision of a practitioner, designated by the practitioner, and for whom the practitioner assumes legal responsibility, who communicates the practitioner's instructions to the pharmacist.

(15) Device—An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(16) Dispense—Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(17) Distribute—The delivery of a prescription drug or device other than by administering or dispensing.

(18) Downtime—Period of time during which a data processing system is not operable.

(19) Enteral—Within or by the way of the intestine.

(20) Facsimile (FAX) prescription drug order—A prescription drug order which is transmitted by an electronic device which sends an exact image to the receiver (pharmacy) over telephone lines.

(21) Full-time pharmacist—A pharmacist who works in a pharmacy from 30 to 40 hours per week or if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(22) Hard-copy—A physical document that is readable without the use of a special device (i.e., cathode ray tube (CRT), microfiche reader, etc).

(23) Medical Practice Act—The Texas Medical Practice Act, Texas Civil Statutes, Article 4495b, as amended.

(24) New prescription drug order—A prescription drug order for a drug not previously taken by the patient.

(25) Original prescription—The:

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

(26) Parenteral—Sterile preparations of drugs for injection through one or more layers of the skin.

(27) Part-time pharmacist—A pharmacist who works less than full-time.

(28) Patient counseling—Communication by the pharmacist of information to the patient or patient's agent, in order to improve therapy by ensuring proper use of drugs and devices.

(29) Pharmacist-in-charge—The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(30) Physician assistant—A physician assistant recognized by the Texas State Board of Medical Examiners as having the specialized education and training required under the Medical Practice Act, §3.06(d), and issued an identification number by the Texas State Board of Medical Examiners.

(31) Practitioner—

(A)-(D) (No change.)

(32) Repackaging—The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container into a prescription container for dispensing by a pharmacist to the ultimate consumer.

(33) Prescription drug—

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

(34) Prescription drug order—

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

(35) Registered nurse—A registered nurse recognized by the Texas State Board of Nurse Examiners as having the specialized education and training necessary to carry out a prescription drug order and issued an identification number by the Texas State Board of Nurse Examiners.

(36) Sterile pharmaceutical—A dosage form free from living microorganisms.

(37) Supportive personnel—Those individuals utilized in pharmacies whose responsibility it shall be to provide nonjudgmental technical services concerned with the preparation and distribution of drugs under the direct supervision of and responsible to a pharmacist.

(38) Texas Controlled Substances Act—The Texas Controlled Substances Act, Health and Safety Code, Chapter 481, as amended.

(c) Personnel.

(1) Pharmacist-in-charge.

(A) (No change.)

(B) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(i)-(ii) (No change.)

(iii) assuring that a pharmacist communicates to the patient or the patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgement, the pharmacist deems significant as specified in subsection (c)(3) of this section;

(iv) assuring that a pharmacist communicates to the patient or the patient's agent on his or her request, information concerning any prescription drugs dispensed to the patient by the pharmacy;

(v) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records;

(vi) education and training of pharmacy supportive personnel;

(vii) establishment of policies for procurement of prescription drugs and devices and other products dispensed from the Class A pharmacy;

(viii) disposal and distribution of drugs from the Class A pharmacy;

(ix) bulk compounding of drugs;

(x) preparation and sterilization of sterile pharmaceuticals compounded within the pharmacy;

(xi) admixture of sterile pharmaceuticals, including education and training of personnel concerning incompatibility;

(xii) participation in those aspects of the patient care evaluation program relating to pharmaceutical material utilization and effectiveness;

(xiii) implementation of the policies and decisions relating to pharmaceutical services;

(xiv) storage of all materials, including drugs, chemicals, and biologicals;

(xv) maintaining records of all transactions of the Class A pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials required by applicable state and federal laws and rules;

(xvi) establishment and maintenance of effective controls against the theft or diversion of prescription drugs, and records for such drugs;

(xvii) maintenance of records in a data processing system such that the data processing system is in compliance with this section;

(xviii) assuring that the pharmacy has a system to dispose of cytotoxic/biohazardous waste in a manner so as not to endanger the public health; and

(xix) legal operation of the pharmacy, including meeting all inspection and other requirements of all state and federal laws or rules governing the practice of pharmacy.

(2) Pharmacists.

(A) (No change.)

(B) Duties. Duties which may only be performed by a pharmacist are as follows:

(i)-(iii) (No change.)

(iv) interpreting patient medication records;

(v) affixing the label to the prescription container and performing the final check of the dispensed prescription before delivery to the patient;

(vi) communicating to the patient or patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgement, the pharmacist deems significant as specified in subsection (c)(3) of this section;

(vii) communicating to the patient or the patient's agent on his or her request, information concerning any prescription drugs dispensed to the patient by the pharmacy; and

(viii) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records.

(C) (No change.)

(3) -(4) (No change.)

(d) Operational standards.

(1) (No change.)

(2) Environment.

(A) General requirements.

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

(vii) If prescription drug orders are delivered to the patient at the pharmacy, beginning January 1, 1995, the pharmacy shall contain an area which is suitable for confidential patient counseling,

(B)-(C) (No change.)

(3) Prescription dispensing and delivery.

(A) Patient counseling and provision of drug information.

(i) To optimize drug therapy, a pharmacist shall communicate to the patient or the patient's agent, information about the prescription drug or device which in the exercise of the pharmacist's professional judgement the pharmacist deems significant, such as the following:

(I) the name and description of the drug or device;

(II) dosage form, dosage, route of administration, and duration of drug therapy;

(III) special directions and precautions for preparation, administration, and use by the patient;

(IV) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(V) techniques for self monitoring of drug therapy;

(VI) proper storage;

(VII) refill information; and

(VIII) action to be taken in the event of a missed dose.

(ii) Such communication:

(I) shall be provided with each new prescription drug order, and if the pharmacist deems appropriate, with prescription drug order refills;

(II) shall be provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent;

(III) shall be communicated orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits such oral communication; and

(IV) may be reinforced with written information when deemed appropriate by the pharmacist. Beginning September 1, 1993, the communication shall be reinforced with written information.

(iii) Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(iv) In addition to the requirements of clauses (i)-(iii) of this subparagraph, if a prescription drug order is delivered to the patient at the pharmacy, the following is applicable.

(I) So, that a patient will have access to information concerning his or her prescription, a prescription may not be delivered to a patient unless a pharmacist is in the pharmacy, except as provided in subclause (II) of this clause.

(II) An agent of the pharmacist may deliver a prescription drug order to the patient or his or her agent during short periods of time when a pharmacist is absent from the pharmacy, provided the short periods of time do not exceed two hours, and provided a record of the delivery is maintained containing the following information:

(-a)-(-e-) (No change.)

(III) Any prescription delivered to a patient when a pharmacist is not in the pharmacy must meet the requirements described in clause (v) of this subparagraph.

(IV) A Class A pharmacy compounding sterile pharmaceuticals that delivers prescriptions to patients or their agents on-site shall make available for use by the public, a current or updated edition of the United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient), or, another source of such information, such as patient information leaflets.

(v) In addition to the requirements of clauses (i)-(iii) of this subparagraph, if a prescription drug order is delivered to the patient or his or her agent at the patient's residence or other designated location, the following is applicable:

(I) the information specified in clause (i) of this subparagraph shall be delivered with the dispensed prescription in writing;

(II) if prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacy shall provide a toll-free telephone line which is answered during normal

business hours to enable communication between the patient and a pharmacist;

(III) the pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container in both English and Spanish the local and if applicable, toll-free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions;"

(IV) the pharmacist-in-charge shall assure that:

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

(vi) This provisions of this subparagraph do not apply to patients in facilities where drugs are administered to patients by a person authorized to do so by the laws of the state (i.e., nursing homes).

(B)-(C) (No change.)

(4)-(6) (No change.)

(7) Patient medication records. A patient medication record shall be maintained for each patient of the pharmacy. The PMR shall contain at a minimum the following:

(A) patient information:

(i) patient's full name, gender, and date of birth;

(ii)-(iv) (No change.)

(v) other drugs the patient is receiving;

(vi) (No change.)

(vii) pharmacist's comments relevant to the individual's drug therapy, including any other information unique to the specific patient or drug; and

(viii) a list of all prescription drug orders dispensed (new and refill) to the patient by the pharmacy during the last two years. Such list shall contain the following information:

(I) date dispensed;

(II) name, strength, and quantity of the drug dispensed;

(III) prescribing practitioner's name;

(IV) unique identification number of the prescription; and

(V) name or initials of the dispensing pharmacist.

(B) (No change.)

(C) Nothing in this paragraph shall be construed as requiring a pharmacist to obtain, record, and maintain patient information other than prescription drug order information when a patient or patient's agent refuses to provide the necessary information for such patient medication records.

(8)-(10) (No change.)

(e) Records.

(1)-(10) (No change.)

(11) Confidentiality. A pharmacist shall provide adequate security of prescription drug order and patient medication records to prevent indiscriminate or unauthorized access to confidential health information.

(f) (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 1, 1992.

TRD-9216014

Fred S. Brinkley, Jr.,
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Executive
Director/Secretary
Texas State Board of
Pharmacy

Effective date: January 1, 1993

Proposal publication date: August 25, 1992

For further information, please call: (512) 832-0661

Part XVIII. Texas State Board of Podiatry Examiners

Chapter 371. Examinations

• 22 TAC §§371.3, 371.6, 371.9, 371.14

The Texas State Board of Podiatry Examiners adopts amendments to §§371.3, 371.6, 371.9, and 371.14, concerning examinations, without changes to the proposed text as published in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7837).

The justification for the adoption of the amendments is to better clarify the requirements for taking the examination.

The sections will function by instructing the applicants as to what requirements he/she must meet in order to take the examination.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the State Board of Podiatry Examiners with the authority to adopt all reasonable and necessary rules, regulations, and by-laws not consistent with the law regulating the practice of podiatry, the laws of this state, or of the United States, to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

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-9216782

Janie Alonzo
Certifying Official, Staff
Services Officer I
Texas State Board of
Podiatry Examiners

Effective date: January 11, 1993

Proposal publication date: November 10, 1992

For further information, please call: (512) 794-0145

Chapter 373. Identification of Practice

• 22 TAC §373.2

The Texas State Board of Podiatry Examiners adopts an amendment to §373.2, concerning practitioner identification, without changes to the proposed text as published in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7838).

The justification for the adoption of the amendment to this section is to make professional appellations consistent with the statute.

The section will function by instructing the podiatrists what professional designations he may use in his advertisements.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the State Board of Podiatry Examiners with the authority to adopt all reasonable and necessary rules, regulations, and by-laws not consistent with the law regulating the practice of podiatry, the laws of this state, or of the United States, to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

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-9216783

Janie Alonzo
Certifying Official, Staff
Services Officer I
Texas State Board of
Podiatry Examiners

Effective date: January 11, 1993

Proposal publication date: November 10, 1992

For further information, please call: (512) 794-0145

Chapter 377. Procedures Governing Grievances, Hearings, and Appeals

• 22 TAC §377.1, §377.43

The Texas State Board of Podiatry Examiners adopts amendments to §377.1 and §377.43, concerning procedures governing grievances, hearings, and appeals, without changes to the proposed text as published in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7839).

The justification for the adoption of the amendments is to provide better clarification of the rules.

The sections will function by advising the podiatrist of the procedures that take place regarding grievances, hearings, and appeals.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the State Board of Podiatry Examiners with the authority to adopt all reasonable and necessary rules, regulations, and by-laws not consistent with the law regulating the practice of podiatry, the laws of this state, or of the United States, to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

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-9216784

Janie Alonzo
Certifying Official, Staff
Services Officer I
Texas State Board of
Podiatry Examiners

Effective date: January 11, 1993

Proposal publication date: November 10, 1992

For further information, please call: (512) 794-0145

• 22 TAC §382.1

The Texas State Board of Podiatry Examiners adopts an amendment to §382.1 concerning registration of podiatry radiologic technologists, without changes to the pro-

posed text as published in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7839).

The justification for the adoption of the amendment is to recover all the agency's expenses for registering the applicants.

The section will function by allowing the agency to recover costs of registering radiologic technologists.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the State Board of Podiatry Examiners with the authority to adopt all reasonable and necessary rules, regulations, and by-laws not consistent with the law regulating the practice of podiatry, the laws of this state, or of the United States, to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

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-9216785 Janie Alonzo
Certifying Official, Staff
Services Officer I
Texas State Board of
Podiatry Examiners

Effective date: January 11, 1993

Proposal publication date: November 10, 1992

For further information, please call: (512) 794-0145

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 281. Applications Processing

- 31 TAC §§281.2, 281.3, 281.5, 281.17, 281.18, 281.21

The Texas Water Commission (TWC) adopts amendments to §§281.2, 281.3, 281.5, 281.17, 281.18, and 281.21, concerning the processing of applications for new, amended or renewed municipal solid waste permits, without changes to the proposed text as published in the October 30, 1992, issue of the *Texas Register* (17 TexReg 7646).

The replacement of these sections is a result of Senate Bill 2, First Called Session, 72nd Legislature, which transferred the jurisdiction over municipal solid waste management from the Texas Department of Health (TDH) to the TWC effective March 1, 1992. The TWC proposes to add these amendments to the existing Chapter 281 to allow the orderly

processing of applications for new, amended or renewed municipal solid waste permits.

No comments were received regarding adoption of the amendments.

The amended sections are adopted under the Texas Water Code §5.103 and §26.011, which gives the Texas Water Commission the authority to adopt any rules necessary to carry out its powers, duties and policies and to protect water quality in the state. These sections are also adopted under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 (Vernon) which gives the Texas Water Commission the authority to regulate industrial, hazardous and municipal solid wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

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

Issued in Austin, Texas, on December 17, 1992.

TRD-9216742 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Effective date: January 7, 1993

Proposal publication date: October 30, 1992

For further information, please call: (512) 908-2059

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VII. Texas Commission on Law Enforcement Officer Standards and Education

Chapter 211. Administration Division

Substantive Rules

- 37 TAC §211.85

The Texas Commission on Law Enforcement Officer Standards and Education adopts an amendment to §211.85, concerning proficiency certificates for jailers, with changes to the proposed text as published in the July 21, 1992, issue of the *Texas Register* (17 TexReg 5076).

The amendment to this Section was adopted at the December 9, 1992, meeting of the Commission, as Final Order 92-5.

The amendment to §211.85 as adopted adds the provision that the jailer must attend training related to the management and operation of a correctional facility (including county jails) and related courses as determined by the commission. The Section as adopted also provides that the courses for the certificate will include crime scene search and investigation in jail setting; inmate rights and privi-

leges; interpersonal communications, in addition to other courses. The subsections were relettered in order to conform with the format.

In addition to the comments received at the Commission meeting, which were extensive and of record, regarding the proposed amendments to §211.85, the Commission provides the following responses to the written comments and a summary of the verbal. The Commission was requested by an individual representing the Houston Police Department Training Academy, who spoke, on behalf of the committee appointed by Sheriff Joe King, October 1990, and provided the Commissioners with a draft of the modifications to amendment setting out the proposed changes of the Committee. The Commission provides the following response. For now the Commission believes that not changing the training points as contained in the proposed amendment adopted by the Commissioners, will reduce the confusion caused by trying to maintain two different point systems. In addition, maintaining the same point system is more effective and efficient to administer. The Commission finds that a standardized point system is fair, since many of the licensees are both jailers and peace officers. The Commission anticipates that this program will increase the availability of correctional facility management and operational courses and related courses. The Commission incorporated the additional comments regarding course content. A written comment was received regarding the Commission's use of the terms "jailer" or "county jailer," as opposed to "correctional officer" or "detention officer." The term "jailer" is a defined term in the Government Code, §415.001, and pertains to only county jailers appointed by the sheriff pursuant to the Local Government Code, §85.005. The definition of "jailer" in the Commission's rules do reference the term "county correctional officer." It should also be noted that the Commission does not have jurisdiction over either the city, state, or federal correctional personnel, so the designation of county jailer also reduces public's confusion in this matter.

The amendment is proposed under the Texas Government Code, Chapter 415, §§415.010(1), 415.32, and 415.062, which provides the Texas Commission on Law Enforcement Officer Standards and Education with the authority to pass rules for the administration of Chapter 415, and Texas Civil Statutes, Article 6252-13a, which taken together establish the procedures for the rulemaking requirements for the Commission.

§211.85. Proficiency Certificates.

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

(d) A permanent jailer license holder who is reported to the commission as currently appointed as a jailer may, if qualified, be issued one of the following proficiency certificates:

- (1) basic jailer;
- (2) intermediate jailer; or
- (3) advanced jailer.

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

(k) To qualify for an intermediate jailer certificate, the applicant:

(1) must attend training related to the management and operation of a correctional facility (including county jails) and related courses as determined by the commission;

(2) must have one of the following combinations of points and jailer experience:

(A) 20 points and six years' experience;

(B) 40 points and four years' experience;

(C) 60 points or an associate's degree and two years' experience; or

(D) 120 points or a bachelor's degree and one year experience; and

(3) if the basic jailer was issued or qualified for on or after March 1, 1993, must also complete an intermediate proficiency course which must:

(A) be approved by the commission;

(B) be taught in conformity with the instructor guides provided by the commission;

(C) require passing a final examination; and

(D) consist of the following subjects, each credited with three points upon successful completion: suicide detection and prevention; use of force in jail setting; crime scene search and investigation in jail setting; inmate rights and privileges; interpersonal communications; or as otherwise required by the commission.

(l) To qualify for an advanced jailer certificate, the applicant must have already qualified for an intermediate jailer certificate and have either:

(1) 40 points and eight years' experience;

(2) 60 points or an associate's degree and six years' experience;

(3) 120 points or a bachelor's degree and four years' experience; or

(4) a post-graduate degree and two years' experience.

(m) To qualify for a crime prevention inspector or a homeowners insurance

inspector certificate, the applicant must meet the requirements found in §211.106 of this title (relating to Crime Prevention and Homeowners Insurance Inspector Certificates and Inspection Standards).

(n) To qualify for an investigative hypnotist certificate, the applicant must meet the requirements found in §211.103 of this title (relating to Investigative Hypnosis by a Peace Officer).

(o) To qualify for a drug recognition expert (DRE) certificate or standardized field sobriety testing (SFST) certificate, the applicant must meet any training, testing, certification, recertification, or other standards that may be required by the commission in the discretion of the executive director.

(p) Any person, if qualified, may be issued an emergency telecommunications operator's certificate or emergency telecommunications technician certificate. The applicant must meet any training, testing, certification, recertification, or other standards that may be required by the commission in the discretion of the executive director.

(q) To qualify for the issuance of a certificate, the commission may require submission of an application by an individual or agency on a completed commission form, including any documentation requested.

(r) A license holder must return any cancelled certificate to the commission. The commission may cancel any certificate if the recipient was not qualified for its issue and it was issued:

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

(s) In this section, the term "experience" means the actual number of months served in the appropriate capacity in law enforcement, the term "points" means training or education points, and the term "post-graduate degree" means either a master's degree, a doctoral degree, or other similar degree above the level of a bachelor's degree.

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

(t) The effective date of this section is February 1, 1989; the effective date of subsections (a)(6) and (o) is February 1, 1990; the effective date of subsections (a) and (o) of this section as amended, is February 1, 1991; the effective date of subsection (p) of this section as amended is September 1, 1991; the effective date of subsection (d) of this section as amended is March 1, 1993; the effective date of subsections (k) and (l) is March 1, 1993.

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 10, 1992.

TRD-9216736

Johanna McCully-Bonner
General Counsel
Texas Commission on Law
Enforcement Officer
Standards and
Education

Effective date: January 7, 1993

Proposal publication date: July 21, 1992

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

◆ ◆ ◆
• 37 TAC §211.100

The Texas Commission on Law Enforcement Officer Standards and Education adopts an amendment to §211.100, concerning the requirements of continuing education for constables and their deputies, without changes to the proposed text as published in the September 22, 1992, issue of the *Texas Register* (17 TexReg 6543).

The amendment to this Section was adopted at the December 9, 1992, meeting of the Commission. Section 211.100 was adopted as Final Order 92-7.

The amendment is adopted under the Texas Government Code, Chapter 415, §§415.010(1), 415.32, 415.034, 415.0345, which provides the Texas Commission on Law Enforcement Officer Standards and Education with the authority to pass rules for the administration of Chapter 415, and Texas Civil Statutes, Article 6252-13a, which taken together establish the procedures for the rule making requirements for the Commission.

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

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

TRD-9216735

Johanna McCully-Bonner
General Counsel
Texas Commission on Law
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Standards and
Education

Effective date: January 7, 1993

Proposal publication date: September 22, 1992

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

TITLE 40. Social Services and Assistance

Part I. Texas Department of Human Services

Chapter 29. Purchased Health Services

Subchapter C. Rehabilitative Services for Persons with Mental Illness

• 40 TAC §29.206

The Texas Department of Human Services (DHS) adopts amendments to §29.206 and §29.2306, without changes to the proposed text as published in the November 13, 1992, issue of the *Texas Register* (17 TexReg 7996).

The justification for the amendments is to formalize and clarify current reimbursement practices.

The amendments will function by providing a more accurate reflection of the way reimbursement rates are determined.

No comments were received regarding adoption of the amendments.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

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 17, 1992.

TRD-9216723

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

Effective date: January 15, 1993

Proposal publication date: November 13, 1992

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

Subchapter X. Diagnostic Services for Persons with Potential of Mental Retardation

• 40 TAC §29.2306

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

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 17, 1992.

TRD-9216724

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

Effective date: January 15, 1993

Proposal publication date: November 13, 1992

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

Chapter 31. Case Management Services

Subchapter A. Program Requirements

The Texas Department of Human Services (DHS) adopts amendments to §31.11 and §31.205, without changes to the proposed text as published in the November 13, 1992, issue of the *Texas Register* (17 TexReg 7999).

The justification for the amendments is to formalize and clarify current reimbursement practices.

The amendments will function by providing a more accurate reflection of the way reimbursement rates are determined.

No comments were received regarding adoption of the amendments.

• 40 TAC 31.11

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

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 17, 1992.

TRD-9216725

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

Effective date: January 15, 1993

Proposal publication date: November 13, 1992

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

Subchapter C. Case Management for Persons with Chronic Mental Illness

• 40 TAC §31.205

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and

32, which provides the department with the authority to administer public and medical assistance programs.

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 17, 1992.

TRD-9216726

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

Effective date: January 15, 1993

Proposal publication date: November 13, 1992

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

Chapter 48. Community Care for Aged and Disabled

Client-managed Attendant Services

• 40 TAC §48.2613

The Texas Department of Human Services (DHS) adopts new §48.2613, with changes to the proposed text as published in the November 13, 1992, issue of the *Texas Register* (17 TexReg 8001).

The justification for the new section is to add contracted provider requirements for the submission of annual cost reports, guidelines for allowable and unallowable costs, and provisions for audit desk reviews and onsite audits of cost reports.

The new section will function by providing a more accurate reflection of the costs to deliver these contracted services.

No comments were received regarding adoption of the section. DHS, however, has initiated a minor editorial change to §48.2613(b)(19)(EE).

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§48.2613. Cost Reporting Guidelines for Client-managed Attendant Services.

(a) The term contracted provider, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise. An agency that has contracted with the Texas Department of Human Services (DHS) to provide the Community Care for Aged and Disabled (CCAD) Services that DHS has authorized for eligible clients.

(b) Contracted providers must submit financial and statistical information at least annually on cost report forms provided

by DHS or on facsimiles preapproved by DHS and formatted according to DHS specifications. Contract-specific reimbursement rates are determined through either the procurement or rate negotiation process with DHS staff and the contracted provider. The reimbursement rate is per hour of service.

(1) Cost report due date. Contracted providers must submit cost reports to DHS by the due date stated in the cost report transmittal letter, which is usually 90 days following the receipt of the cost report forms.

(2) Extension of due date. DHS may grant extensions of due dates for good cause. Good cause is defined as a situation that the provider could not reasonably be expected to control. Contracted providers must submit requests for extensions to DHS in writing before the cost report due date. Provider Reimbursement Department staff respond to requests within 10 workdays of receipt.

(3) Reporting period. The contracted provider must prepare the cost report to reflect the activities of the contracted provider during its previous fiscal year. Cost reports may be required for other periods at the discretion of DHS.

(4) Failure to file an acceptable cost report. If a contracted provider fails to file a cost report according to all applicable rules and instructions, DHS may withhold all provider payments until the contracted provider submits an acceptable cost report.

(5) Accounting requirements. The contracted provider must ensure that financial and statistical information submitted in cost reports is based upon the accrual method of accounting, except for governmental institutions operated on the cash or modified accrual method of accounting. The contracted provider's treatment of any financial or statistical item must reflect the application of the generally accepted accounting principles (GAAP) approved by the American Institute of Certified Public Accountants (AICPA).

(6) Allocation methods. If allocation of costs is necessary, contracted providers must use reasonable methods of allocation. DHS adjusts allocated costs if it considers the allocation method is unreasonable. The contracted provider must retain workpapers supporting allocations.

(7) Cost report certification. Contracted providers must certify the accuracy of cost reports submitted to DHS in the format specified by DHS. Contracted providers may be liable for civil and/or criminal penalties in the case of misrepresented or falsified information.

(8) Cost report supplements. DHS may require additional financial and

statistical information other than the information contained in the cost report.

(9) Review of cost reports. DHS staff review each cost report to ensure that all financial and statistical information submitted conforms to all applicable rules and instructions. The review of the cost report includes a desk audit. If a contracted provider fails to complete a cost report according to instructions or rules, DHS returns the cost report to the contracted provider for proper completion. DHS may require information other than that contained in the cost report to substantiate reported information.

(10) Onsite audits. DHS may perform onsite audits on all contracted providers that participate in the program. DHS determines the frequency and nature of audits, but ensures that they are not less than that required by regulations relating to the administration of the program. Failure to allow DHS to perform an audit in sufficient detail to verify reported information may result in the withholding of provider payments.

(11) Cost of out-of-state audits. When possible, the records necessary to verify information submitted to DHS on cost reports, including related-party transactions and other business activities engaged in by the provider, must be accessible to DHS audit staff in Texas. When records are not available to DHS audit staff within the state, the contracted provider must pay the costs for DHS staff to travel and review the records out-of-state. If a provider fails to reimburse DHS for these costs within 30 days of the request for payment, DHS may place a hold on the provider's vendor payments until the costs are paid in full.

(12) Notification by regular mail. DHS notifies providers by regular mail of exclusions and adjustments to reported expenses made during desk reviews and onsite audits of cost reports.

(A) DHS mails notices of desk-review exclusions and adjustments within 10 workdays after entering them in the cost-report data base. The notice consists of a one-page desk-review audit adjustment sheet that specifies the line-items on the cost report that have been adjusted or excluded, the amount of each adjustment or exclusion, and the principal reason for each adjustment or exclusion.

(B) DHS mails each onsite audit report within 30 days after the final exit interview with the contracted provider. An exit interview is final when DHS audit staff have received, reviewed, and analyzed all documentation from the contracted provider pertinent to the scope of the audit. The onsite audit report consists of a multiple-page professional report prepared

by DHS audit staff to enumerate the results of the onsite audit. Each onsite audit report includes a specification of cost-report line-items that have been adjusted or excluded, the amount of each adjustment or exclusion, and the principal reason for each adjustment or exclusion.

(C) DHS mails onsite audit reports and notices of desk-review exclusions and adjustments to the addresses that providers have given to DHS as their standard mailing addresses. However, if a provider submits a written request for DHS to send an onsite audit report or a notice of desk-review exclusions and adjustments to another address, DHS must do so.

(D) A provider may also submit a written request for DHS to provide additional information about exceptions and adjustments to the provider's cost reports, including citations of the laws or regulations that constitute the grounds for the exceptions and adjustments. DHS must provide the additional information in writing within 30 calendar days.

(13) Access to records. Each contracted provider or its designated agent(s) must allow access to any and all records necessary to verify information submitted to DHS on cost reports. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the contracted provider. If a contracted provider does not allow inspection of pertinent records within 30 days following written notice from DHS, a hold is placed on vendor payments until access to the records is allowed. If the provider continues to deny access to records, DHS may cancel the provider's contract.

(14) Recordkeeping requirements. Contracted providers must maintain records according to the requirements stated in §69.202 of this title (relating to Contractors' Records). Contracted providers must ensure that records are accurate and sufficiently detailed to support the financial and statistical information contained in cost reports. If a provider fails to maintain adequate records to support the financial and statistical information reported in cost reports, DHS allows 90 days for the contracted provider to bring recordkeeping into compliance. If a provider fails to correct deficiencies within 90 days from the date of notification of the deficiency, DHS may cancel the provider's contract for services.

(15) Amended cost report due dates. Contracted providers must submit cost reports to DHS in a manner prescribed by DHS. DHS accepts amended cost reports submitted on the request of the provider until 180 days after the due date of the cost report.

(16) Exclusion of certain reported expenses. Contracted providers must ensure that all unallowable costs are eliminated from the cost report. DHS excludes any unallowable costs that are included in the cost report.

(17) Projected costs. DHS projects allowable expenses per hour of service from each contracted provider's reporting period to the next rate period. DHS determines reasonable and appropriate economic adjusters to calculate the projected expenses. DHS also adjusts rates if new legislation, regulations, or economic factors affect costs.

(18) Allowable costs. To be allowable under client-managed attendant services, costs must be:

(A) necessary and reasonable for the proper and efficient administration of the program to deliver services for which DHS has contracted;

(B) authorized or not prohibited under state or local laws or regulations;

(C) consistent with any limitations or exclusions described in this section, federal or state laws, or other governing limitations as to types or amounts of cost items;

(D) consistent with policies, regulations, and procedures that apply uniformly to both the Client-Managed Attendant Services Program and other activities of the organization of which the contracted provider is a part;

(E) treated consistently using generally accepted accounting principles appropriate to the circumstances;

(F) not allocable to or included as a cost of any other program in either the current or a prior period; and

(G) the net of all applicable credits.

(19) Definition of reasonableness. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, DHS considers the following:

(A) whether the cost is a type generally recognized as ordinary and necessary for the operation of the business or the performance under the contract;

(B) the restraints or requirements imposed by generally accepted sound business practices, arm's length bargaining, federal and state laws and regulations, and contract terms and specifications; and

(C) the action that a prudent person would take in the circumstances, considering his responsibilities to the public, the government, his employees, clients, shareholders, or members, and the fulfillment of the purpose for which the business was organized.

(20) Unallowable costs. Unallowable costs are expenses incurred by a contracted provider which are not directly or indirectly related to the provision of contracted services according to applicable laws, rules, and standards. A contracted provider may expend funds on unallowable cost items, but those costs must not be included in the cost report and are not used in arriving at a contract-specific rate. The information contained in subparagraphs (A) through (JJ) of this paragraph is a general guide to the various unallowable costs frequently encountered in cost reports submitted by contracted providers and is not intended to be inclusive of all possible unallowable costs:

(A) advertising expenses other than those for employee recruitment, yellow page listings no larger than one column width and one inch length, and advertising to meet statutory or regulatory requirements;

(B) allowances for bad debts, other allowances, returns, refunds, or other similar accounts;

(C) business, personal, or other expenses not related to the provision of services for which DHS has contracted;

(D) contributions to political activities or contributions to charity;

(E) corporate headquarters or central office expenses that are not directly involved in providing services or supplies used by the contracted provider's staff in normal operations relating to client-managed attendant services;

(F) depreciation expenses other than those based on straight-line depreciation; building depreciation expenses based on less than a 30-year life; depreciation and amortization of unallowable costs, including amounts in excess of those resulting from the straight-line method, capitalized lease expenses in excess of actual lease payments, and goodwill or any excess

above the actual value of physical assets at the time of purchase;

(G) discounts for administrative reasons; courtesy, cash, trade, and quantity discounts; rebates; or other discounts granted;

(H) dues and membership fees to organizations whose primary emphasis is not related to the services for which DHS has contracted;

(I) dues to all types of political and social organizations, and to professional associations not directly and primarily concerned with the provision of services for which DHS has contracted;

(J) entertainment expenses, except for entertainment which is reported as an employee benefit;

(K) expenses for purchases of goods and services from revenues received from restricted or unrestricted gifts, donations, endowments, and trusts;

(L) expenses which are not the legal obligation of the contracted provider or are not clearly enumerated as to dollar amount;

(M) expenses of donated items (facilities, materials, supplies, services, etc.), including depreciation and amortization of the value of the donations, and values assigned to the services of unpaid workers or volunteers;

(N) fees and travel expenses for corporation or association board of directors, and partnership or corporation filing fees;

(O) fines and other penalties for violation of statutes or ordinances; penalties for late payment of taxes, utilities, mortgages, loans; insufficient fund bank charges; and other similar penalties;

(P) franchise fees;

(Q) fundraising, promotion, and public relations expenses;

(R) expenses for life insurance premiums where the beneficiary is the provider organization, unless life insurance is a requirement of a loan agreement and the loan is related to client care;

(S) interest expense on loans for assets not related to the delivery of services for which DHS has contracted; interest expense on loans pertaining to unallowable items; and interest expenses on that portion of interest paid which is reduced or offset by interest income (interest expenses must be reduced or offset by interest income except interest income from funded depreciation accounts or qualified pension funds);

(T) medical equipment and supplies (except those required by the Occupational Safety and Health Administration, those used for universal health and safety precautions, and those otherwise needed to meet program requirements);

(U) personal compensation not related to the delivery of services for which DHS has contracted;

(V) physicians' fees for completion of physician orders;

(W) expenses for the purchase of services, facilities, or supplies from related organizations or parties if the expenses exceed the lower of the cost to the related party or organization or the price of comparable services, facilities, or supplies purchased in an arm's length transaction;

(X) rental or lease expense on any item not related to the delivery of services for which DHS has contracted;

(Y) tax expense for federal, state, or local income tax, and any tax levied on assets not related to the delivery of services for which DHS has contracted;

(Z) any expense, and corresponding revenues, that are reimbursed directly through voucher payment systems which are outside of the per-hour rate payment system;

(AA) expenses which cannot be adequately documented;

(BB) motor vehicles that are not generally suited or are not commonly used to transport clients or contracted provider supplies. This includes motor homes and recreational vehicles; sports and luxury automobiles; motorcycles; heavy trucks, tractors and equipment used in farming, ranching, and construction; and other activities unrelated to the provision of client-managed attendant services;

(CC) transportation expenses for vehicles which are not generally suited

to functions related to the provision of services for which DHS has contracted. Mileage expense may be included at a cost per mile not to exceed the current reimbursement rate set by the legislature for state employee travel. Mileage is allowable if there is adequate documentation of the mileage and if the expense was related to delivery of services for which DHS has contracted;

(DD) any expense incurred because of imprudent business practices;

(EE) out-of-state travel expenses, except for the provision of client-care-related services to contracted provider personnel, which include training and quality assurance functions;

(FF) forms of compensation that are not clearly enumerated as to dollar amount or which represent profit distributions;

(GG) management fees paid to a related organization that are not clearly derived from the actual cost of materials, supplies, or services provided directly to the contracted provider;

(HH) insurance premiums pertaining to items of unallowable cost;

(II) contributions to self-insurance funds which do not represent payments based on current liabilities; and

(JJ) any expense not allowable under other pertinent federal, state, or local laws and regulations.

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-9216727 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Effective date: January 15, 1993

Proposal publication date: November 13, 1992

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

Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 150. Licensure of Chemical Dependency Counselors

Counselor Licensure Rules

• 40 TAC §150.1, §150.13

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §150.1 and §150.13, concerning licensure of chemical dependency counselors, without changes to the proposed text as published in the August 7, 1992, issue of the *Texas Register* (17 TexReg 5518).

The sections will clarify the requirements of licensure of chemical dependency counselors by more specifically defining supervision of counselor interns and renewal requirements.

The amendments further define requirements for counselor interns and clarify requirements in continuing education for license renewal.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 4512c, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to establish procedures which the commission is to license chemical dependency counselors.

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 18, 1992.

TRD-9216801 Bob Dickson
Executive Director
Texas Commission on Alcohol and Drug Abuse

Effective date: January 11, 1993

Proposal publication date: August 7, 1992

For further information, please call: (512) 867-8720

Part IX. Texas Department on Aging

Chapter 255. Designation of Area Agencies on Aging

• 40 TAC §255.36

The Texas Department on Aging adopts an amendment to §255.36, concerning operating an area agency on aging, without changes to the proposed text as published in the September 14, 1992, issue of the *Texas Register* (17 TexReg 70).

This section concerns the operation an area agency on aging by establishing rules for uniform logo, telephone listings, and listing

the Department as the primary funding source for area agencies on aging for all public information purposes.

Each area agency will use the uniform logo designed by the Department to assure a uniform, statewide symbol for area agencies on aging designation for public information purposes. The telephone number of each area agency on aging, the area agency on aging's information and assistance toll-free or collect number, and the area agency on aging's nursing home ombudsman toll-free or collect number will appear in each telephone directory that is published by the provider of local telephone service, for residents in any geographical area that lies in whole or in part in the planning and service area served by the area agency on aging. Listing of the Texas Department on Aging as primary funding source by area agencies on aging. All area agencies on aging designated under Title III of the Older Americans Act, as amended, will cite the Texas Department on Aging as the primary funding source.

Comments on the uniform logo included concerns for the cost for signs, stationery, and business cards; support for the concept of a uniform logo to increase the visibility of the area agencies on aging; and concern over the readability by older people with one suggestion that the logo be redesigned by a commercial or advertising artist. Comments on the uniform telephone listing included concerns over the cost of telephone listings in several directories, when compared to the with the results; the increased costs would result in reduced services; and one commenter suggested that the listing should be in the government section of the telephone directories under aging. Comments on the listing of the Texas Department on Aging as the funding source included prediction of difficulties when the Department does not serve as the primary funding source; and that some well established grantee/contract agencies may object to this requirement. General comments in favor of the new rules were very supportive of the Texas Board on Aging's goal to improve the visibility of the area agencies on aging and thereby improve access to services.

Names of groups and associations making comments against the new rules were received from the Texas Association of Regional Councils, Rio Grande Area Agency on Aging, Middle Rio Grande Area Agency on Aging, Harris County Area Agency on Aging, Brazos Valley Development Council, and South Plains Association of Governments.

The Department disagrees with the comments on the uniform logo because such a logo will help give a statewide, recognizable identity to area agencies on aging. The logo to be used was developed by the National Association of Area Agencies on Aging and is being used by several area agencies on aging already. The Department disagrees with the comments on the uniform telephone listings because the language used in the rule follows the new language in the reauthorization of the Older Americans Act concerning area agencies on aging. The portions dealing with Information and Assistance and the nursing home Ombudsman are established or will be established in service standards. Listings in the telephone directories of the service area are a necessary cost

to area agencies on aging to ensure that they are accessible and that they serve as a visible advocate to the elderly in that area, and if future public awareness efforts are to fully succeed. The Department disagrees with the comments on listing the Department as a funding source because this rule is to assure that the public served by area agencies on aging are aware of the state program that provides funding for Older Americans Act programs in their area. There was no requirement that other organizations that also fund area agencies could not be cited and therefore no foreseen conflict exists at the local level.

The amendment is proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operations of this department.

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 18, 1992.

TRD-9216748

Mary Sapp
Executive Director
Texas Department on
Aging

Effective date: January 8, 1993

Proposal publication date: September 14, 1992

For further information, please call: (512) 444-2727

Chapter 299. Ombudsman Service Standards

• 40 TAC §§299.1, 299.3, 299.5, 299.7, 299.9, 299.11, 299.13.

The Texas Department on Aging adopts the repeal of §§299.1, 299.3, 299.5, 299.7, 299.9, 299.11, and 299.13, concerning Ombudsman Service Standards, without changes to the proposed text as published in the September 1, 1992, issue of the *Texas Register* (17 TexReg 66).

These sections no longer reflect the intent of the Older Americans Act, as amended, for the implementation and operation of a statewide Office of State Long Term Care Ombudsman.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operations of this department.

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 18, 1992.

TRD-9216749

Mary Sapp
Executive Director
Texas Department on
Aging

Effective date: January 8, 1993

Proposal publication date: September 1, 1992

For further information, please call: (512) 444-2727

• 40 TAC §§299.1, 299.3, 299.5, 299.7, 299.9, 299.11

The Texas Department on Aging adopts new §§299.1, 299.3, 299.5, 299.7, 299.9, and 299.11 concerning Ombudsman Service Standards. Sections 299.5, 299.7, 299.9, and 299.11 are adopted with changes to the proposed text published in the September 1, 1992 issue of the *Texas Register* (17 TexReg 66). Section 299.1 and §299.3 are adopted without changes and will not be republished.

The new sections reflect the intent of the Older Americans Act, as amended, for the implementation and operation of a statewide Office of State Long Term Care Ombudsman.

The new sections will function as a delineation of responsibilities for the Texas Department on Aging, the Office of the State Long Term Care Ombudsman, and the regional ombudsman programs in the provision of ombudsman services to residents of long term care facilities and their families. This new rule replace the Ombudsman Service Standards published as 40 TAC Chapter 299.

One commenter presented commendations on the proposed standards. One commenter suggested that the Texas Department of Protective and Regulatory Services be listed to reflect the new Health and Human Services Commission organization where appropriate. Three commenters expressed comments on the program relationship between the state and regional offices and requested clarification. Program relationships are outlined in the Older Americans Act and the standards are not addressing the management structure at the regional level. Two commenters wrote on the issue of coverage of facilities not regularly served by certified volunteer ombudsmen and the costs associated with this coverage. Regional programs are responsible for monitoring care in facilities in their regions. Frequency of monitoring should be based on the needs of the facility and not based on a set schedule. Funding for all aspects of the regional program should be included in the Area Plan budget.

The following group/association made comments in favor of the proposed rule: Senior Citizens of Greater Dallas. The following groups/associations made comments not in favor of the proposed rule: Ark-Tex Council of Governments, South Plains Association of Governments, and North Central Texas Council of Governments.

The Department disagreed with those comments which did not reflect the federal mandate of the Older Americans Act and the state enabling legislation; therefore, no changes were made to accommodate those comments.

The new sections are adopted under the authority of Chapter 101, Human Resources Code, which provides the Texas Department on Aging with the authority to promulgate rules governing the operations of this department.

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

Advocacy—Defending, upholding, or assuring the provision of individual rights of residents of long term care facilities. Advocacy efforts may include, but are not limited to, providing information, negotiation, mediation, confrontation, involvement of other organizations or legal procedures.

Certified volunteer—An individual who has been selected by a regional program to serve as an advocate for long term care facility residents and participate in the ombudsman program. Certified volunteers shall successfully complete an internship, or equivalent experience, as determined by the office, and complete required training prior to being certified and prior to engaging in independent complaint resolution. A certified volunteer shall be a representative of the office.

Clients or recipients of services—Persons who reside in settings described in §299.3(b) of this title (relating to Philosophy and Mission Statement), and their families.

Conflict of interest—A representative of the office, paid or volunteer, or an immediate member of his/her family, who has one or more of the following:

- (A) direct involvement in the licensing or certification of a long term care facility or of a provider of a long term care service;
- (B) ownership or investment interest in a long term care service;
- (C) employed by or participates in the management of a long term care facility;
- (D) receives or has the right to receive, directly or indirectly, remuneration under a compensation arrangement with an owner or operator of a long term care facility; and;
- (E) has a family member residing in a long term care facility in which the representative is assigned or provides advocacy.

Department—The Texas Department on Aging, the single state agency for Older Americans Act programs.

Friendly visitor—A volunteer who

does not participate in complaint resolution. Friendly visitors receive orientation and may receive local training but do not receive certification.

Grantee—The entity at the regional level that is contractually responsible for the ombudsman program.

In-service—A planned educational effort conducted or coordinated by professional staff or certified volunteers.

Long term care facility—A facility that is licensed or regulated or that is required to be licensed or regulated by the Texas Department of Health.

Office—The Office of the State Long Term Care Ombudsman, a division of the Texas Department on Aging.

Ombudsman intern—A volunteer who has been admitted to the regional training program as a potential certified volunteer ombudsman.

Professional staff—An individual at the regional or state level who has responsibility directing, implementing or supervising ombudsman program operations. A professional generally refers to an individual who has obtained a four-year bachelors degree in aging related areas or human services, but may include an individual who does not have a four year degree, but who has qualifying experience as a substitute for a degree. Such substitution shall be consistent with the employing entity's personnel policies.

Regional program—A provider and its implementation of these standards on a sub-state level. Regional programs are Area Agencies on Aging, or other entities, as defined by the Board on Aging, Texas Department on Aging.

Staff ombudsman—The professional staff person at the regional level who directs ombudsman program activities. The staff ombudsman shall be appointed by the regional program and so designated by the Executive Director, Texas Department on Aging, and under state law shall be granted access to long term care facility resident records. The staff ombudsman shall be a representative of the office.

State ombudsman—The person designated by the Executive Director, Texas Department on Aging, as Chief Administrator of the Office of the State Long Term Care Ombudsman. The state ombudsman is accountable to the Executive Director, Texas Department on Aging, for program and personnel matters.

Texas Department of Health—The state agency responsible under state law for the regulation of long term care facilities in Texas.

§299.7. Responsibilities of the Department on Aging.

(a) The department shall establish and operate the office.

(b) The department may operate the office directly or by contract or memorandum of agreement with a public agency or other appropriate private nonprofit organization. The department may not contract with an agency or organization that is:

(1) responsible for licensing or certifying long term care services; or

(2) an association of long term care facilities or an affiliate of such an association.

(c) The department shall consider the views of elderly persons, provider organizations, advocacy groups, and area agencies on aging in planning and operating the office.

(d) The department shall assure that a person involved in designating the state ombudsman or in designating an employee or representative of the office does not have a conflict of interest.

(e) The department shall designate a state ombudsman, who on a full time basis will direct the activities of the office.

(f) The department shall assure that representatives of the office receive adequate legal advice and representation.

(g) The department shall operate the ombudsman program in cooperation with state and federal regulatory agencies and shall enter into a cooperative agreement with the Texas Department of Health to define areas of responsibilities, roles, and expectations.

(h) The department shall assure that appropriate funding and resources are made available to the office to protect the office's ability to thoroughly investigate and resolve complaints and support a statewide advocacy effort.

§299.9. Responsibilities of the Office of the State Long Term Care Ombudsman.

(a) General responsibilities of the office. The office shall be an aggressive advocate for the development of an effective and progressive system of quality long term care; and of rules, policy, procedures, resource development, and legislation on the state and national level for quality long term care services. It shall assure that residents and family members have regular and timely access to services provided through the office and that they receive timely responses from representatives of the office to complaints and requests for information and assistance.

(b) Specific responsibilities of the office;

(1) provide policies, procedures, and technical assistance for regional programs to assure consistent investigation and resolution of complaints made by or on

behalf of residents of long term care facilities relating to action, inaction, or decisions of providers, or their representatives, of long term care services, of public agencies, or of social service agencies, which may adversely affect the health, safety, welfare, or rights of such residents;

(2) establish procedures for appropriate access by the ombudsman to long term care facilities and patients' records, including procedures to protect the confidentiality of such records and assure that the identity of any complainant or resident shall not be disclosed without the consent of such complainant or resident, or upon court order;

(3) establish procedures to assure that any files maintained by a representative of the office shall be disclosed only at the discretion of the ombudsman having authority over the disposition of such files or upon consent of the complainant, or resident, or the resident's legal representative, or as required by court order;

(4) establish written procedures to train staff and volunteers and assure that all representatives of the office are qualified to investigate and resolve complaints;

(5) assure that no representative of the office shall be liable under State law for the good faith performance of official duties;

(6) assure that willful interference with representatives of the office in the performance of their official duties shall be unlawful in accordance with State enabling legislation;

(7) prohibit retaliation and reprisals by a long term care facility or other entity with respect to any resident or employee for having filed a complaint with, or providing information to, the office and assuring that existing sanctions with respect to such interference, retaliation, and reprisals are applied;

(8) establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long term care facilities for the purpose of identifying and resolving significant problems and making recommendations regarding policy, regulatory and legislative issues affecting quality of care. Such data shall be submitted on an annual basis, to the Texas Department of Health, the Texas Department of Human Services, the Texas Department of Protective and Regulatory Services, Office of the Governor, advocacy and membership organizations interested in long term care and elder rights issues, area agencies on aging, and the Administration on Aging;

(9) ensure that mechanisms are in place to identify and resolve conflicts of interest.

(10) coordinate ombudsman activities with Advocacy, Incorporated, the protection and advocacy system, that exists for persons with developmental disabilities or mental illness;

(11) form an advisory committee representing consumers, advocates, providers, and regulators to meet at least two times per year, to obtain advice on matters of priorities of service, standards, policies and procedures and identify advocacy strategies for the statewide program. Membership of the committee shall be approved by the Board on Aging, Texas Department on Aging;

(12) demonstrate the coordination with citizen and advocacy organizations to support quality of care and increase community involvement with and awareness of long term care services;

(13) develop procedures to evaluate the effectiveness of the statewide ombudsman program. The office shall conduct on-site evaluations of regional programs at least biennially;

(14) assure the functioning of an effective training program and promotional program to promote the acceptance and operation of the ombudsman program.

§299.11. Responsibilities of Regional Programs.

(a) General responsibilities of the program. The regional program shall be an organization with a responsive, visible presence in its region. It shall be coordinated with state, regional and local agencies and be recognized as an active member in the continuum of care in the communities it serves. It shall have a mutually positive referral relationship with the Texas Department of Health, the Texas Department of Human Services and the Texas Department of Protective and Regulatory Services. It shall be an expert and reliable source of information for families seeking information on long term care placement or general requests for assistance. It shall be a catalyst for community involvement in long term care facilities and be viewed as a credible source of information for the community, the regulatory system, and the nursing home industry. It shall maintain an active and visible advocacy effort to assure quality of care and quality of life in every facility in the region.

(b) Specific responsibilities of regional programs:

(1) shall have adequate staff to manage all aspects of the program and shall designate a professional staff person as the regional ombudsman. The regional ombudsman program shall be a subdivision of the office. The regional ombudsman under fe-

deral authority shall be a representative of the office;

(2) recruit, select, and provide regional certification training and supervision for volunteer ombudsmen to serve all licensed nursing facilities in the region with the goal of at least one ombudsman per nursing facility. Selection, training, acceptance, and placement of volunteers shall be in accordance with procedures established by the office;

(3) provide active supervision and monitoring of certified volunteers and regional staff participating in the program, ensuring that each certified volunteer contributes at least two hours per week, on the average, to the program. Staff ombudsman shall visit each nursing facility in the region at least once per year. Assure that facilities not regularly served by volunteers are monitored by regional staff;

(4) provide a minimum of 12 hours of in-service training for certified volunteers per year. Content and process will be in accordance with procedures developed by the office;

(5) provide recertification of existing certified volunteers on a biennial basis, as directed by the office;

(6) assure that residents, families, and complainants have regular, timely, and no-cost access to the program and that timely responses are given to complainants and requesters of the service. The ombudsman telephone number shall be listed under the area agency on aging listing in accordance with current TDoA policy;

(7) support the formation of family and resident councils in each facility of the region, in an effort to provide advocacy resources to promote quality of care;

(8) ensure availability of materials, resources and in-services relating to quality of care to residents, family, and staff of each nursing facility in the region with the goal of providing at least one in-service per facility per year, conducted by certified volunteers or staff ombudsmen. Regional programs shall demonstrate coordination with regional offices of the Texas Department of Health in conducting an educational session in conjunction with the open hearing for each nursing facility in the region per year;

(9) coordinate with regional administrators or their designees of the Texas Department of Health, the Texas Department of Human Services, and the Texas Department of Protective and Regulatory Services serving the region at least quarterly to develop efficient referral, communication, and problem-solving procedures;

(10) participate in inspection and survey activities with the Texas Depart-

ment of Health in accordance with the cooperative agreement between the department and the Texas Department of Health;

(11) submit program performance and other reports in accordance with requirements established by the office, to include an analysis of complaints, a facility by facility synopsis of advocacy activities and recommendation for policy-regulatory changes;

(12) assure local awareness of the ombudsman program through the frequent use of local and regional resources, including the media, in order to assure access to the program;

(13) demonstrate the coordination with citizen, membership and advocacy organizations to support quality of care and increase community involvement with and awareness of long term care services.

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

Issued in Austin, Texas, on December 18, 1992.

TRD-9216750

Mary Sapp
Executive Director
Texas Department on
Aging

Effective date: January 8, 1993

Proposal publication date: September 1, 1992

For further information, please call: (512) 444-2727



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 Article 5.97, the Texas Register publishes notices of actions taken by the State Board of Insurance pursuant to the Code, Chapter 5, Subchapter L. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the Offices of the Texas Department of Insurance, 1110 San Jacinto Street, Austin.)

The State Board of Insurance of the Texas Department of Insurance, at a public hearing held at 9 a.m. on November 20, 1992, under Docket Number 1934, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, adopted amendments as proposed by Staff in a petition filed in the Chief Clerk's Office on August 19, 1992. The petition recommended, in part, revising Rule 74 of the Texas Automobile Rules and Rating Manual (the Manual) to allow insurers to establish discounts of the following categories: Good Student Discount, Student Away at School Discount, Anti-Lock Brake Discount, and Renewal Discount. Based on these amendments, an insurer would file its election to give a discount prior to the effective date. Staff's petition (Reference Number A-0892-54-I), was published in the September 22, 1992, issue of the *Texas Register* (17 TexReg 6544).

The State Board of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.06 and 5.96.

The amendments as adopted by the State Board of Insurance, adding a new section H to the Manual's Rule 74, are as follows: H. Student Away from Home, Anti-Lock Brake and Renewal Discounts. 1. This rule is not applicable to risks: a. written in the Texas Automobile Insurance Plan; b. subject to experience rating, loss rating, composite rating, or retrospective rating; or c. rated in accordance with the miscellaneous type vehicles

rule. 2. Policies that provide private passenger automobile coverages may afford any or all of the discounts described in paragraphs 3.a., b., and c., of this rule. Discounts and the amount of discounts applied are optional for each company but any discounts elected must be applied uniformly to applicable classes and coverages. No sub-classification is permissible. Discounts may be applied to bodily injury/property damage liability, personal injury protection/medical payments, collision, other than collision, and specified causes of loss coverages. The election to give discounts must be filed with the Department prior to the effective date of such discounts. A company may file its intent to give discounts on its own form. If a company chooses to withdraw any discounts, written notification must be given to the Department prior to such withdrawal. A company may establish its own criteria for giving the discounts subject to applicable provisions of paragraphs 3.a., b., and c. of this rule. The criteria to be used by each company must be filed with the Department prior to the effective date of the discounts. The effect of a discount under this rule shall be in addition to the effect of any other discount applicable under this Manual or under any other rating manual approved by the Board. "Discount" means a percentage credit applicable to the company's filed rate within the flexibility band or approved rate outside the flexibility band. 3. Discount. Categories a. Student Away at School Discount A discount may be given for a household member who: (1) is classified as a youthful operator; (2) is a student living away from home to attend school; and (3) does not own an auto or have an auto furnished for his or her regular use at school. Any such discount must be applicable to the full term of the policy and may not be withdrawn when the student returns to his or her domicile on a temporary basis, such as holidays and summer break. However, the discount shall be withdrawn once the student has completed his or her schooling or does not intend to return to the school. b. Anti-Lock Brake Discount A discount may be given for an anti-lock brake system which has the ability to lessen the likelihood of an automobile accident. c. Renewal Discount A renewal discount may be given after a policy has been in force for no less than six months, based upon

the driving experience of the members of a household to which the policy applies. The standards for a renewal discount may be established by each company.

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

Consistent with the Texas Insurance Code, Article 5.96(h), prior to the effective date of this action, the Board will notify all insurers writing automobile insurance.

IT IS THEREFORE THE ORDER of the State Board of Insurance that the amendments of the Manual's Rule 74, to allow insurers to establish discounts designated as Student Away at School Discount, Anti-Lock Brake Discount, and Renewal Discount, be adopted and become effective on and after 15 days after publication of this notice in the *Texas Register*.

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 21, 1992.

TRD-9216781

Linda K. von Quintus-Dom
Chief Clerk
Texas Department of
Insurance

Effective date: January 9, 1993

Proposal publication date: September 22, 1992

For further information, please call: (512) 463-6327



The State Board of Insurance of the Texas Department of Insurance, at a public hearing held at 9 a.m. on December 11, 1992, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, adopted amendments proposed by Staff. The amendments to the endorsements in the Texas Automobile Rules and Rating Manual (the Manual) bring the endorsements into

compliance with the Insurance Code by meeting the plain language requirements of Article 5.06(7), and Commissioner's Order Number 92-0573, issued June 15, 1992. The numbers of the existing endorsements are 501, 503, 510, 511, 512, 529A, 552A, 561C, and 573. Those numbers are changed to 501A, 503A, 510A, 511A, 512A, 529B, 552B, 561D, 573A. Staff's petition (Reference Number A-0792-45-1), was published in the July 24, 1992 issue of the *Texas Register* (17 TexReg 5191).

The State Board of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.06 and 5.96.

The amendments as adopted by the State Board of Insurance are shown in exhibits 1-11, which were filed with the Chief Clerk under Reference Number A-0792-45-1, and are incorporated by reference herein.

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

Consistent with the Texas Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Board's action.

IT IS THEREFORE THE ORDER of the State Board of Insurance that endorsements 501, 503, 510, 511, 512, 529A, 552A, 561C, and 573 are hereby changed to 501A, 503A, 510A, 511A, 512A, 529B, 552B, 561D, 573A, and the amendments of the Manual's endorsements named herein are adopted to become effective on and after 12:01 a.m., February 1, 1993.

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 21, 1992.

TRD-9216779

Linda K. von Quintus-Dom
Chief Clerk
Texas Department of
Insurance

Effective date: February 1, 1993

Proposal publication date: July 24, 1992

For further information, please call: (512) 463-6327

◆ ◆ ◆
The Texas Department of Insurance, at a public hearing held at 9 a.m. on November 12, 1992, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, adopted amendments as proposed by Staff to the Symbol and Identification Section of the Texas Automobile Rules and Rating Manual (the Manual). The amendments adopt certain new and/or adjusted 1991 and 1992 Model Private Passenger Automobile Physical Damage Rating Symbols. The symbols are for various models of the following makes: Isuzu, Oldsmobile, Acura, Alfa Romeo, Audi, Avanti, BMW, Buick, Chevrolet, Chrysler, Daihatsu, Dodge, Eagle, Ford, Honda, Hyundai, Infiniti, Jaguar, Lexus, Lincoln, Mazda, Mercury, Mercedes Benz, Mitsubishi, Nissan, Plymouth, Pontiac, Saab, Subaru, Suzuki, Toyota, Volkswagen, and Volvo. The symbols adopted were developed from Manufacturer List Price Data and adjusted in accordance with the prescribed Vehicle Series Rating Rule contained in the Symbol and Identification Section of the Manual, for 1990 and subsequent models. Staff's petition (Reference Number A-0992-61-1), was published in the October 9, 1992, issue of the *Texas Register* (17 TexReg 7058).

The State Board of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.101 and 5.96.

The amendments as adopted by the State Board of Insurance are shown in the exhibits which were filed with the Chief Clerk under Reference Number A-0992-61-1, and are incorporated by reference herein.

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

Consistent with the Texas Insurance Code, Article 5.96(h), prior to the effective date of this action, the Board will notify all insurers writing automobile insurance.

IT IS THEREFORE THE ORDER of the State Board of Insurance that the Manual's Symbol and Identification Section is amended to include the new and/or adjusted 1991 and 1992 model private passenger automobile physical damage rating symbols, and these symbols are hereby adopted to become effective on and after 60 days after publication of this notice in the *Texas Register*.

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 21, 1992.

TRD-9216780

Linda K. von Quintus-Dom
Chief Clerk
Texas Department of
Insurance

Effective date: February 23, 1993

Proposal publication date: October 9, 1992

For further information, please call: (512) 463-6327

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 Bond Review Board

Monday, January 4, 1993, 2 p.m. The Texas Bond Review Board will meet at the Sam Houston Building, Room 710, 201 East 14th Street, Austin. According to the complete agenda, the board will call the meeting to order; meet in executive session to consider applicants for executive director position; consider and possibly vote on selection of executive director, Texas Bond Review Board; and adjourn.

Contact: Beverly Bunch, 300 West 15th Street, Clements Building, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: December 22, 1992, 9:19 a.m.

TRD-9216837

Texas Cancer Council

Monday, January 11, 1993, 5 p.m. The Breast and Cervical Cancer Strategic Planning Steering Committee Public Hearing of the Texas Cancer Council will meet at the Centro de Artes, Market Square, San Antonio. According to the complete agenda, the committee will hear opening remarks; introduce members; hear testimony; discussion; and adjourn. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Gale Morrow at (512) 463-3190 or Anna Caballero, (210) 614-4211 five working days prior to the meeting so that appropriate arrangements can be made.

Contact: Emily F. Untermeyer, P.O. Box 12097, Austin, Texas 78701, (512) 463-3190.

Filed: December 17, 1992, 10:22 a.m.

TRD-9216712

Tuesday, January 26, 1993, 5 p.m. The Breast and Cervical Cancer Strategic Planning Steering Committee Public Hearing of the Texas Cancer Council will meet at the Fair Park Garden Center, Dallas. According to the complete agenda, the committee will hear opening remarks; testimony; discussion; and adjourn. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Gale Morrow at (512) 463-3190 or Susan Ostergren, (214) 631-3850 five working days prior to the meeting so that appropriate arrangements can be made.

Contact: Emily F. Untermeyer, P.O. Box 12097, Austin, Texas 78701, (512) 463-3190.

Filed: December 17, 1992, 10:21 a.m.

TRD-9216709

Thursday, January 28, 1993, 6 p.m. The Breast and Cervical Cancer Strategic Planning Steering Committee Public Hearing of the Texas Cancer Council will meet at the Porter High School Auditorium, 3500 International Boulevard, Brownsville. According to the complete agenda, the committee will hear opening remarks; testimony; discussion; and adjourn. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Gale Morrow at (512) 463-3190 or Dominic Lopez (210) 682-8320 five working days prior to the meeting so that appropriate arrangements can be made.

Contact: Emily F. Untermeyer, P.O. Box 12097, Austin, Texas 78701, (512) 463-3190.

Filed: December 17, 1992, 10:21 a.m.

TRD-9216710

Tuesday, February 9, 1993, 5 p.m. The Breast and Cervical Cancer Strategic Planning Steering Committee Public Hearing of the Texas Cancer Council will meet at the Ysleta High School Auditorium, 8600 Alameda, El Paso. According to the complete agenda, the committee will hear opening remarks; testimony; discussion; and adjourn. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Gale Morrow at (512) 463-3190 or Ann Marie Oria (915) 544-4425 five working days prior to the meeting so that appropriate arrangements can be made.

Contact: Emily F. Untermeyer, P.O. Box 12097, Austin, Texas 78701, (512) 463-3190.

Filed: December 17, 1992, 10:22 a.m.

TRD-9216711

Texas Education Agency

Thursday, January 7, 1993, 8 a.m. The Ad Hoc Committee on Textbooks of the State Board of Education of the Texas Education Agency will meet at the William B. Travis Building, Room 1-100, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will discuss proposed amendment to 19 TAC Chapter 67, Subchapter A, State Textbook Pro-

gram; report and recommendations regarding adoption of United States Government Textbooks and Theater Arts Teacher's resource books; and presentation on electronic instructional media systems.

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

Filed: December 21, 1992, 10:05 a.m.

TRD-9216805

Thursday, January 7, 1993, 9 a.m. The Committee of the Whole of the State Board of Education (SBOE) of the Texas Education Agency will meet at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin. According to the complete agenda, the committee will give commissioner's overview of the January 1993 SBOE meeting.

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

Filed: December 21, 1992, 10:05 a.m.

TRD-9216804

Thursday, January 7, 1993, 9:15 a.m. The Committee on Personnel of the State Board of Education (SBOE) of the Texas Education Agency (TEA) will meet at the William B. Travis Building, Room 1-111, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will hear public testimony; discuss repeal/re-adoption of 19 TAC Chapter 137, Teacher Education, and related professional education rules; discuss alternative certification programs for Region XI Education Service Center; discuss rules for sunset review: 19 TAC Chapter 145, Professional Environment and 19 TAC Chapter 149, Education Personnel Development; discuss supplemental legislative recommendations; status report on the accreditation of school districts; report on the recommendation to govern the practice of speech therapists holding TEA bachelor level certificates.

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

Filed: December 21, 1992, 10:06 a.m.

TRD-9216807

Thursday, January 7, 1993, 9:15 a.m. The Committee on Students of the State Board of Education (SBOE) of the Texas Education Agency will meet at the William B. Travis Building, Room 1-100, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will hear public testimony; discuss 19 TAC Chapter 157, Hearings and Appeals; 19 TAC Chapter 75, Curriculum, Subchapter D, to phase-out awarding of state graduation credit for business mathematics course; discuss a leadership initiative for improving special

education services in Texas; discuss the Texas Master Plan for Career and Technical Education; discuss proposed list of priority occupations; supplemental legislative recommendations; discuss SBOE rules pertaining to state graduation credit options for high school students; discuss 19 TAC §75. 144, Student Absences for Extracurricular or other activities; discuss 19 TAC Chapter 169, Relationship with the University Interscholastic League (UIL); proposed amendments to the UIL 1992-93 constitution and contest rules; discuss proposed amendments to the UIL 1993-94 constitution and contest rules.

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

Filed: December 21, 1992, 10:06 a.m.

TRD-9216808

Thursday, January 7, 1993, 9:15 a.m. The Committee on School Finance of the State Board of Education (SBOE) of the Texas Education Agency will meet at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will hear public testimony; update school finance; discuss: 19 TAC Chapter 175, Proprietary Schools and Veterans Education; proposed list of priority occupations; request for approval to receive grants from: Centers for Disease Control, and United States Department of Education for improvement and reform of schools and teaching; request for approval to accept program budget funds from Texas Middle School Association for 1992-93; discuss supplemental legislative recommendations; discuss 19 TAC Chapter 157, Hearings and Appeals; status report on proprietary schools; discuss Texas Master Plan for Career and Technical Education; annual report of the School Audits Division; and administrative cost reports.

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

Filed: December 21, 1992, 10:39 a.m.

TRD-9216809

Thursday, January 7, 1993, 1 p.m. The Committee of the Whole of the State Board of Education of the Texas Education Agency will meet at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will hear public testimony; discuss legislative recommendations; performance report for the Academic Excellence Indicator System; sunset review of rules regarding: advisory groups; rules and the rulemaking process; and relationships with the United States Government; and discuss pending litigation. The discussion of pending litigation will be held

in Room 1-103 in executive session in accordance with Vernon's Texas Civil Statutes, Article 6252-17, §2(e).

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

Filed: December 21, 1992, 10:06 a.m.

TRD-9216806

Friday, January 8, 1993, 8:30 a.m. The Committee on Long-Range Planning of the State Board of Education of the Texas Education Agency will meet at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will hear public testimony; presentation on "The School Development Program"; public education waivers to improve student achievement; discuss supplemental legislative recommendations; discuss federal government relations activities; annual report of Texas Center for Educational Technology; and give update on high school policy statement.

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

Filed: December 21, 1992, 10:40 a.m.

TRD-9216810

Friday, January 8, 1993, 8:30 a.m. The Committee on the Permanent School Fund (PSF) of the State Board of Education of the Texas Education Agency will meet at the William B. Travis Building, Room 1-109, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will hear public testimony; discuss recommended PSF investment program for January and funds available for the program; discuss supplemental legislative recommendations; discuss request for proposal for master trust custodian; review of PSF securities transactions and the investment portfolio; and report of the PSF manager.

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

Filed: December 21, 1992, 10:41 a.m.

TRD-9216811

Friday, January 8, 1993, 1 p.m. The State Board of Education (SBOE) of the Texas Education Agency will meet at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin. According to the agenda summary, the board will hear public testimony; discuss approval of minutes; discuss SBOE resolutions; approval of consent agenda; drawing for terms of office; election of SBOE officers; SBOE operating rules; state textbook program; report/recommendations regarding adoption of United States Government textbooks/theater arts

teacher's resource books; supplemental legislative recommendations; performance report for 1993 academic excellence indicator system; teacher education/related professional education rules; alternative certification programs; hearings/appeals; discuss curriculum; A leadership initiative for improving special education services in Texas; relationship with the University Interscholastic League (UIL); amendments to the UIL 1992-93 constitution/contest rules; discuss proprietary schools and veterans education; proposed list of priority occupations; approval to receive grant from Centers for Disease Control; grant from U.S. Department of Education for improvement/reform of schools and teaching; review Permanent School Fund investment program for January and funds available for the program; SBOE meeting dates for 1993; and information concerning agency administration.

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

Filed: December 21, 1992, 10:42 a.m.

TRD-9216812

Tuesday, January 12, 1993, 10 a.m. The Proprietary School Advisory Commission of the Texas Education Agency will meet at 1701 North Congress Avenue, William B. Travis Building, Room 1-104, Austin. According to the complete agenda, the commission will act on: continuation of membership of Rosie Bonilla and Gene Oliveres; recommendation to adopt or amend the proposed rules concerning the chairperson and reappointment of PSAC members; recommendation to refer to the State Board of Education an amendment to the legislative package to adopt a renewal fee schedule with a minimum fee of \$500 and establish a maximum fee; discuss approval of the report from the Tuition Protection Fund subcommittee which includes specific details for an alternative method to fund the tuition protection fund; administer the fund; increase the size of the fund; discuss director's reports: State Board of Education action at January meeting; tuition protection fund rates for 1993; and financial stability requirements for nationally recognized accrediting agencies.

Contact: Dee Bednar, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-3454.

Filed: December 21, 1992, 4:38 p.m.

TRD-9216834

Texas General Land Office

Wednesday, January 6, 1993, 2 p.m. The Oil Spill Division (Texas Oil Spill Commission) of the Texas General Land Office will meet at the port of Houston Authority, 111

East Loop North, Houston. According to the complete agenda, the commission will discuss approval of minutes from December 11, 1992 meeting; discuss Washington and Florida natural resources damage assessment; discuss Dr. Robilliard's Natural resources damage assessment presentation; and natural resources damage assessment resolution.

Contact: Karen Pratt, 1700 North Congress Avenue, Room 740, Austin, Texas 78701, (512) 463-6556.

Filed: December 21, 1992, 11:35 a.m.

TRD-9216818

Texas Department of Housing and Community Affairs

Tuesday, December 22, 1992, 2 p.m. The Board of Directors of the Texas Department of Housing and Community Affairs held an emergency meeting at 811 Barton Springs Road, Suite 300, Austin. According to the complete agenda, the board called the meeting to order; took roll call; considered and/or acted on the following item: resolution authorizing the filing of an application for reservation with the Texas Bond Review Board with respect to qualified mortgage bonds; and containing other provisions relating to the subject; and adjourn. Individuals who required auxiliary aids or services for this meeting should have contact Aurora Carajal, ADA Responsible Employee, at (512) 475-3822 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements could be made. The emergency status was necessary to ensure participation by TDHCA in the allocation of the state ceiling of private activity bonds in accordance with federal and state deadlines, thereby increasing the supply of decent, safe, and sanitary single family housing.

Contact: Susan J. Leigh, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3937.

Filed: December 18, 1992, 1:33 p.m.

TRD-9216752

Thursday, January 7, 1993, 11 a.m. The Program Committee of the Board of Directors of the Texas Department of Housing and Community Affairs will meet at 811 Barton Springs Road, Suite 300, Austin. According to the agenda summary, the committee will consider and/or propose recommendations for the full board's consideration of the following items: allocation of funds under the Housing Trust Fund and HOME programs to qualified applicants, and the Texas Housing Finance Corporation relationship with this department.

Contact: Susan J. Leigh, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3937.

Filed: December 21, 1992, 2:47 p.m.

TRD-9216827

Texas Department of Insurance

Wednesday, January 6, 1993, 9 a.m. The State Board of Insurance of the Texas Department of Insurance will meet in Room 100, William P. Hobby Building, 333 Guadalupe Street, Austin. According to the agenda summary, the board will discuss personnel; litigation; commissioner's orders; solvency; budget; staff reports; consider filings by St. Paul Insurance Company, St. Paul Fire and Marine Insurance Company, Employers Insurance of Wausau, Employers Mutual Casualty Company and Emcasco Insurance Company, and All America Insurance Company, Central Mutual Insurance Company, and CMI Lloyds Insurance Company; consider petition filed by Texas Workers Compensation Insurance Facility proposing rules on procedures for hearing appeals; consider petition to amend policy forms and endorsements and manual rules for Texas Homeowners, Texas Dwelling, Texas Farm and Ranch and Texas Farm and Ranch Owners Policies; reconsider filing by the Medical Protective Company; consider whether a meeting or hearing will be granted form filing by Texas Department of Public Safety and regarding form filing by Texas Department of Insurance.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: December 18, 1992, 3:14 p.m.

TRD-9216765

Thursday, January 7, 1993, 9 a.m. The State Board of Insurance of the Texas Department of Insurance will meet in Room 100, William P. Hobby Building, 333 Guadalupe Street, Austin. According to the agenda summary, the board will discuss personnel; litigation; commissioner's orders; solvency; budget; staff reports; Docket 1961 concerning manual rules and endorsements governing large deductibles for residential property will be withdrawn by staff and not considered by the board; consider filings by Royal Insurance Company of America, MIC Property and Casualty Insurance Company, Zurich Insurance Company, Foremost County Mutual Insurance Company, and National American Insurance Company; consider excess of loss policies; consider whether a meeting or hearing will be granted regarding a petition to amend Rule 17 and Rule 2 of the Texas Automobile Liability Experience Rating Plan.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: December 18, 1992, 3:14 p.m.

TRD-9216766

Wednesday, January 13, 1993, 9 a.m. The State Board of Insurance of the Texas Department of Insurance will meet in Room 100, William P. Hobby Building, 333 Guadalupe Street, Austin. According to the agenda summary, the board will hold a public hearing under Docket Number R-1966 to consider possible adoption of proposed amendments to 28 TAC §5.401, which provides protection to applicants for private passenger insurance who have not had such insurance prior to application. The proposed amendments were published in the October 23, 1992, issue of the *Texas Register* (17 TexReg 7514). The comment period expired on November 23, 1992.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: December 18, 1992, 4:11 p.m.

TRD-9216768

Public Utility Commission of Texas

Tuesday, December 29, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11660-application of Houston County Electric Cooperative, Inc. for authority to implement a new high load factor rate.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 18, 1992, 2:55 p.m.

TRD-9216829

Tuesday, March 9, 1993, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11253-complaint of the Sunmeadow Community Improvement Association of Friendswood, against Southwestern Bell Telephone Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 18, 1992, 2:55 p.m.

TRD-9216760

Thursday, January 7, 1993, 10 a.m. The Hearings Division of the Public Utility

Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11664-application of Gate City Electric Cooperative, Inc. for authority to change rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 18, 1992, 2:55 p.m.

TRD-9216758

Texas Racing Commission

Monday, December 28, 1992, 1 p.m. The Texas Racing Commission will meet at the Texas Rehabilitation Commission, Brown-Healy Building, 4900 North Lamar Boulevard, Austin. According to the complete agenda, the commission will call the meeting to order; take roll call; discuss and act on plans by Trinity Meadows to repair, reconstruct, and/or renovate its racing surface; consider and act on request for additional simulcasting at Trinity Meadows during the Spring 1993; discuss issues relating to regulation of training facilities and facilities for obtaining official workouts; old business; new business; and adjourn.

Contact: Paula Cochran Carter, P.O. Box 12080, Austin, Texas 78711, (512) 794-8461.

Filed: December 18, 1992, 4:23 p.m.

TRD-9216772

Sam Houston State University

Thursday, January 14, 1993, 11:30 a.m. The Sam Houston Bicentennial Celebration Commission of the Sam Houston State University will meet at the Sam Houston State University, Austin Hall, Huntsville. According to the agenda summary, the commission will call the meeting to order; discuss approval of the minutes from the last meeting, December 9, 1992; and hear report from chairman.

Contact: Twila Kirkpatrick, P.O. Box 2419, Huntsville, Texas 77341, (409) 294-3625.

Filed: December 18, 1992, 9:19 a.m.

TRD-9216745

Structural Pest Control Board

Tuesday, January 5, 1993, 9 a.m. The Structural Pest Control Board will meet at the Thompson Conference Center, Room

3.122, 2405 East Campus Drive, Austin. According to the agenda summary, the board will discuss approval of the minutes of October 12, and November 12, 1992; hold a public comment period; consider proposed Regulation 593.14, Rural Outdoor Applications; discussion regarding certified applicators who have not completed their continuing education requirements; hear committee reports-Legislative, IPM and Continuing Education; consider proposed administrative penalties and consent agreements-Hearing Number 93-1, Scott Hickey; Hearing Number 93-2, Gene Cherry; Hearing Number 93-5, Kent Corley; Hearing Number 93-6, Harry Lee; and Hearing Number 93-7, Russell Gant.

Contact: Benny M. Mathis, Jr., 9101 Burnet Road, Suite 201, Austin, Texas 78758, (512) 835-4066.

Filed: December 18, 1992, 1:16 p.m.

TRD-9216751

The Texas A&M University System, Board of Regents

Monday, January 4-8, 11-15, 18-22, 25-29, 1992, 8:30 a.m. The Pricing Committee of the Board of Regents of the Texas A&M University System will hold telephone meetings at the Board of Regents Meeting Room, College Station. According to the agenda summary, the committee will consider and act upon any lawful subject which may come before it, including, among others, to consider a "Resolution Authorizing the Issuance, Sale and Delivery of Board of Regents of The Texas A&M University System Revenue System Refunding Bonds, Series 1993, in the Maximum Aggregate Principal Amount of \$48,000,000, and Approving and Authorizing Instruments and Procedures Relating Thereto"; and authorizing purchase contracts and other actions necessary in connection with the sale and delivery of the bonds. The meeting or meetings will be held at such time on one or more of such days upon finalization of the terms of sale of the bonds by the underwriters. Financial market conditions make it impossible to know the exact date the board may be sold on the most advantageous terms to the system.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: December 18, 1992, 2:24 p.m.

TRD-9216756

Texas Southern University

Tuesday, January 12, 1993, 4 p.m. The Finance Committee of the Board of Regents

of Texas Southern University will meet at 3100 Cleburne Avenue, Hannah Hall, Room 117, Texas Southern University, Houston. According to the complete agenda, the committee will consider budgetary matters in Auxiliary Enterprise.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: December 21, 1992, 1:55 p.m.

TRD-9216822

Tuesday, January 12, 1993, 5 p.m. The Personnel and Academic Affairs Committee of the Board of Regents of Texas Southern University will meet at Board of Regents of Texas Southern University will meet at 3100 Cleburne Avenue, Hannah Hall, Room 117, Texas Southern University, Houston. According to the complete agenda, the committee will consider reports on progress of academic activities and programs; and personnel actions.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: December 21, 1992, 1:55 p.m.

TRD-9216820

Thursday, January 28, 1993, 4 p.m. The Finance Committee of the Board of Regents of Texas Southern University will meet at Board of Regents of Texas Southern University will meet at 3100 Cleburne Avenue, Hannah Hall, Room 117, Texas Southern University, Houston. According to the complete agenda, the committee will consider matters relating to financial reporting systems, and budgets; fiscal reports from the administration; investments; and informational items.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: December 21, 1992, 1:55 p.m.

TRD-9216821

Texas Water Commission

Wednesday, January 6, 1993, 9 a.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 118, Austin. According to the agenda summary, the commission will consider approving the following matters on the uncontested agenda: class 2 modifications; new water quality permits; amendments; renewals; District matters; rate matters; water right permits; contracts; final decision on emergency order; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the com-

mission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: December 18, 1992, 4:25 p.m.

TRD-9216774

Wednesday, January 6, 1993, 9 a.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 118, Austin. According to the agenda summary, the commission will consider approving the following matters on the uncontested agenda: Enforcement Actions; Examiner's Proposal for Decisions; Executive Session; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: December 18, 1992, 4:37 p.m.

TRD-9216775

Wednesday, January 6, 1993, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the William B. Travis Building, Room 6-100, 1701 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing to consider Harris County Municipal Utility District Number 175's application for standby fees.

Contact: Elizabeth Bourbon, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: December 21, 1992, 9:17 a.m.

TRD-9216796

Wednesday, January 13, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider approving the following matters: new water quality permits; amendments; renewals; district matters; rate matters; water right permits; contracts; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: December 21, 1992, 4:26 p.m.

TRD-9216833

Wednesday, January 13, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider approving the following matters: enforcement actions; examiner's proposal for decision; rules; meet in executive session; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: December 21, 1992, 4:26 p.m.

TRD-9216832

Thursday, January 14, 1993, 1:30 p.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will allow David Hancock, the Executive Director of the Texas Water Commission and the Public Interest Counsel to present evidence on whether a violation has occurred on three separate allegations.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: December 22, 1992, 9:25 a.m.

TRD-9216843

Thursday, January 14, 1993, 1:30 p.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will allow Dale Faught, Jr., the executive director of the Texas Water Commission and the Public Interest Counsel to present evidence on whether a violation has occurred.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: December 22, 1992, 9:25 a.m.

TRD-9216844

Thursday, January 14, 1993, 1:30 p.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will allow Herbert Walker, the executive director of the Texas Water Commission and the Public Interest Counsel

to present evidence on whether a violation has occurred.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: December 22, 1992, 9:25 a.m.

TRD-9216845

Thursday, January 14, 1993, 1:30 p.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will allow James Fleck, the executive director of the Texas Water Commission and the Public Interest Counsel to present evidence on whether a violation has occurred.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: December 22, 1992, 9:25 a.m.

TRD-9216846

Thursday, January 14, 1993, 1:30 p.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will allow Jerry Jasek, the executive director of the Texas Water Commission and the Public Interest Counsel to present evidence on whether a violation has occurred.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: December 22, 1992, 9:26 a.m.

TRD-9216847

Thursday, January 14, 1993, 1:30 p.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will allow Gerald Rankin, the executive director of the Texas Water Commission and the Public Interest Counsel to present evidence on whether a violation has occurred.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: December 22, 1992, 9:27 a.m.

TRD-9216848

Thursday, January 14, 1993, 1:30 p.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will allow Jack Burns, the executive director of the Texas Water Commission and the Public Interest Counsel to present evidence on whether a violation has occurred.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: December 22, 1992, 9:27 a.m.

TRD-9216849

Thursday, January 14, 1993, 1:30 p.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will allow Johnny Folmar, the executive director of the Texas Water Commission and the Public Interest Counsel to present evidence on whether a violation has occurred.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: December 22, 1992, 9:27 a.m.

TRD-9216850

Thursday, January 14, 1993, 1:30 p.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will allow Dwight Northcutt, the executive director of the Texas Water Commission and the Public Interest Counsel to present evidence on whether a violation has occurred.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: December 22, 1992, 9:27 a.m.

TRD-9216851

Thursday, January 14, 1993, 1:30 p.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will allow Earl Haberman, Jr., the executive director of the Texas Water Commission and the Public Interest Counsel to present evidence on whether a violation has occurred.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: December 22, 1992, 9:28 a.m.

TRD-9216852

Tuesday, January 26, 1993, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 119, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing to consider Rankin Road West Utility District's application for standby fees.

Contact: Elizabeth Bourbon, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: December 21, 1992, 9:17 a.m.

TRD-9216795

Wednesday, January 27, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on Windswept Utility District of Walker County's application for dissolution of the Utility District. Any District's assets shall escheat to the State of Texas and shall be administered by the State Treasurer and disposed of in the manner provided by Texas Civil Statutes, Article 3270a, 1925, as amended.

Contact: Randy Nelson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: December 21, 1992, 9:17 a.m.

TRD-9216797

Monday, February 8, 1993, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 1149B, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing to consider Albury Manor Utility Company, Inc.'s water rate increase effective August 1, 1992 for its service area located in Harris County. Docket Number 9618-G.

Contact: Elizabeth Bourbon, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: December 21, 1992, 9:16 a.m.

TRD-9216792

Tuesday, February 16, 1993, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the William B. Travis Building, Room 1-100, 1701 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing to consider Lake Navigation Company, Inc.'s water rate increase effective October 1, 1992 for its service area located in Travis County. Docket Number 9772-G.

Contact: Linda Sorrels, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: December 21, 1992, 9:17 a.m.

TRD-9216793

Wednesday, February 17, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on Matagorda County Drainage District Number 1's Application Number 5438 for a water use permit to transfer 260 acre-feet of high-level flood water per annum from Cottonwood Creek, tributary of Peyton Creek, tributary of Live Oak Bayou, tributary of Matagorda Bay, Brazos-Colorado Coastal Basin to the

Colorado River, Colorado River Basin. Only high-level flood waters will be diverted for high-level flood protection purposes in the City of Bay City, Matagorda County. Normal, low-level flows, and initial storm flows will continue to be carried by Cottonwood Creek to Matagorda Bay.

Contact: Arlette Capehart, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: December 21, 1992, 9:17 a.m.

TRD-9216794

Friday, February 19, 1993, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 1149B, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing to consider Lakefalls Estates Water System water rate increase effective October 30, 1992 for its service area located in Walker County. Docket Number 9796-G.

Contact: Carol Wood, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: December 21, 1992, 9:16 a.m.

TRD-9216791

Regional Meetings

Meetings Filed December 17, 1992

The Deep East Texas Council of Governments Regional Review Committee Scoring Meeting will meet at the Lufkin City Hall, 300 East Shepherd, Lufkin, Angelina County, January 7, 1993, at 8 a.m. Information may be obtained from Rusty Phillips, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9216730.

The Galveston County Education District Board of Trustee met at the Education Center, Board Room of Clear Creek ISD, 2425 East Main Street, League City, December 22, 1992, at 7 p.m. Information may be

obtained from Ted L. Thomas, P.O. Box 321, Friendswood, Texas 77546, (713) 482-2205. TRD-9216737.

The Hockley County Appraisal District Appraisal Review Board met at 1103-C Houston Street, Levelland, December 21, 1992, at 7 a.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9216731.

Meetings Filed December 18, 1992

The Brazos Valley Development Council Solid Waste Plan will hold a public hearing at the Brazos Center, 3232 Briarcrest Drive, Bryan, January 13, 1993, at 1 p.m. Information may be obtained from Jill Hyde, P.O. Drawer 4128, Bryan, Texas 77805, (409) 776-2277. TRD-9216754.

The Brazos Valley Development Council Regional Review Committee will meet at the Brazos Valley Development Council Conference Room, 3006 East 29th Street, Bryan, January 28, 1993, at 9 a.m. Information may be obtained from Jill Hyde, P.O. Drawer 4128, Bryan, Texas 77805, (409) 776-2277. TRD-9216744.

The East Texas Council of Governments Executive Committee met at the ETCOG Office, Kilgore, December 22, 1992, at 2 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9216769.

The Fort Bend County Education District Board of Trustees will meet at the Lamar CISD Administration Building Board Room, 3911 Avenue I, Rosenberg, January 4, 1993, at 6 p.m. Information may be obtained from Jerome D. Bourgeois, 2706 St. Andrews Place, League City, Texas 77573, (713) 334-5639. TRD-9216747.

The Jasper County Appraisal District Appraisal Review Board will meet at the

Jasper County Appraisal District, 137 North Main Street, Jasper, December 29, 1992, at 9 a.m. Information may be obtained from David W. Luther, 137 North Main Street, Jasper, Texas 75951, (409) 384-2544. TRD-9216753.

The Lubbock Regional Mental Health and Mental Retardation Center Board of Trustees held an emergency meeting at 3801 Avenue J, Board Room, Lubbock, December 21, 1992, at noon. The emergency status was necessary to bid on property. Information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79401, (806) 766-0202. TRD-9216767.

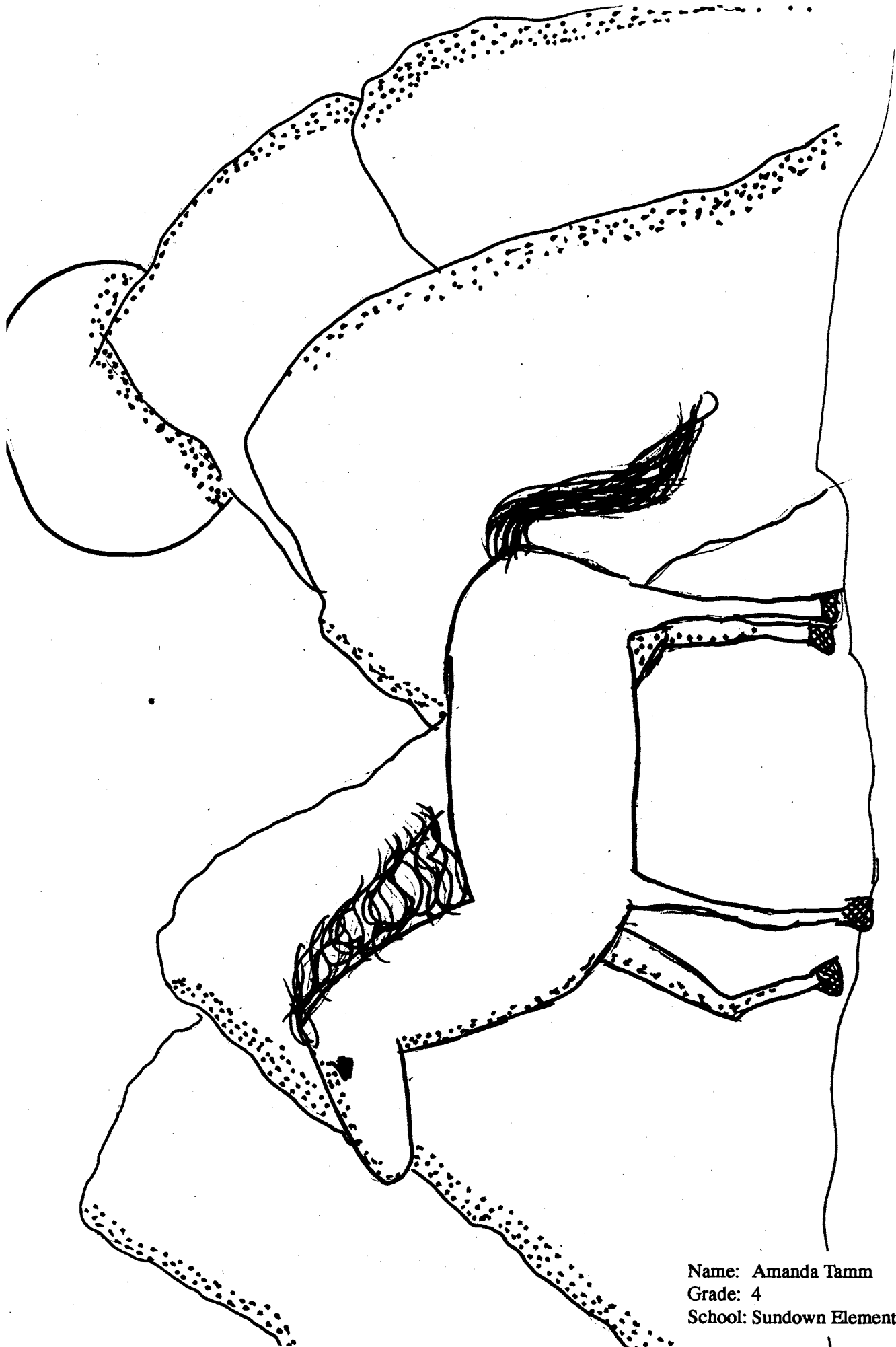
Meetings Filed December 21, 1992

The West Central Texas Council of Governments Ombudsman Task Force will meet at The WCTCOG Large Conference Room, 1025 East North 10th Street, Abilene, January 8, 1993, at 10 a.m. Information may be obtained from Brad Helbert, 1025 East North 10th Street, Abilene, Texas 79601, (915) 672-8544. TRD-9216831.

Meetings Filed December 22, 1992

The Burnet County Appraisal District Appraisal Review Board will meet at 223 South Pierce, Burnet, January 7, 1993, at 8:30 a.m. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291. TRD-9216836.

The Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, January 7, 1993, at 4 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9216838.



Name: Amanda Tamm
Grade: 4
School: Sundown Elementary, Katy ISD

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Air Control Board Notice of Contested Case Hearing Number 305

An Examiner for the Texas Air Control Board (TACB) will conduct a contested case hearing for the general purpose of determining whether proposed emissions into the air from a facility operated by Vulcan Materials Company (Applicant) will comply with all rules and regulations of the TACB and with the intent of the Texas Clean Air Act (the Act), including protection of the health and physical property of the people. This hearing will consider an application to amend TACB Permit Number R9562. Specifically, the Examiner will consider whether or not Applicant's permit to operate a drum mix asphalt plant should be modified for the use of recycled asphalt products, liquid anti-strip agents, latex and recycled crumb rubber as additives. The facility is located at 12301 West Freeway I-30, Aledo, Tarrant County, Texas 76008.

Deadline For Requesting To Be a Party. At the hearing, only those persons admitted as parties and their witnesses will be allowed to participate. Presently, the only prospective parties are the Applicant and the TACB Staff. Any person who may be affected by emissions from the proposed facility who wants to be made a party must send a specific written request for party status to Hearings Examiner Janis Boyd Hudson and make sure that this request is actually received at the TACB Central Office, 12124 Park 35 Circle, Austin, Texas 78753, Fax (512) 908-1212, by 5 p.m. on Friday, January 8, 1993. The Examiner cannot grant party status after that deadline, unless there is good cause for the request arriving late. Hearing requests, comments, or other correspondence sent to the TACB before publication of this notice will not be considered as a request for party status. No correspondence should be sent to any member of the Texas Air Control Board at any time regarding this hearing. The Examiner will decide on final party status at the prehearing conference.

Prehearing Conferences. The Examiner has scheduled a prehearing conference at 1:30 p.m. on Thursday, January 21, 1993, at the TACB Central Office, Room 143-E, 12124 Park 35 Circle, Austin, Texas 78753. At this conference, party status will be determined and a schedule will be set for the exchange of: written and documentary evidence, and a list of prospective witnesses and a short narrative summary of their prospective testimony. In addition, the parties may propose contested case issues and stipulations on those issues. A date for the second prehearing conference will also be decided, if necessary. At the second prehearing conference the Examiner will accept any stipulations as to contested issues and will determine the contested case issues. The Examiner will consider any motions of the parties, but may grant contested motions for continuance only upon proof of good cause.

Time and Place of Hearing. The Examiner has set the hearing to begin at 9:30 a.m. on Tuesday, February 16, 1993, at the TACB Central Office, Room 143-E, 12124 Park 35 Circle, Austin, Texas 78753.

What the Applicant Must Prove. This hearing is a contested case hearing under §13 of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a. It is generally conducted like a trial in district court. The Applicant must demonstrate, by a preponderance of the evidence, that the proposed facility will meet the requirements of §382.0518 of the Act, Chapter 382, Texas Health and Safety Code, and TACB Rule 116.3. These requirements include compliance with all applicable TACB and federal regulations, including the requirement that the proposed facility will use the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating emissions. The TACB has no legal jurisdiction over vehicular traffic per se or noise which may result from a facility's operation.

Public Attendance and Testimony. Members of the general public may attend the prehearing conference and the hearing. Those who plan to attend are encouraged to telephone the Texas Air Control Board Central Office in Austin, at (512) 908-1770 a day or two prior to the prehearing conference and the hearing date in order to confirm the settings, since continuances are sometimes granted. Any person who wants to give testimony at the hearing, but who does not want to be a party, may call the Hearings Section of the TACB Legal Division at (512) 908-1770 to find out the names and addresses of all persons who may be contacted about the possibility of presenting testimony. Persons with disabilities who have special communication or other accommodation needs who are planning to attend this meeting should contact the agency at (512) 908-1815. (Requests should be made as far in advance as possible.)

Information About the Application and TACB Rules. Information about the application and copies of the TACB's Rules and Regulations are available at the TACB Regional Office located at 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, the TACB Central Office located at 12124 Park 35 Circle, Austin, Texas 78753, and at the Aledo City Hall Office located at 200 Old Annetta Road, Aledo, Texas 76008.

Legal Authority. This hearing is called and will be conducted under the authority of §§382.029, 382.0291, 382.030, 382.031, 382.0518, and 382.056 of the Act and TACB Procedural Rules 103.11(3), 103.31, and 103.41-103.66.

Issued in Austin, Texas, on December 17, 1992.

TRD-9216798 William R. Campbell
Executive Director
Texas Air Control Board

Filed: December 21, 1992

Ark-Tex Council of Governments Request for Proposal for Provision of a Regional Law Enforcement Training Program

The Ark-Tex Council of Governments (ATCOG) is soliciting proposals for the provision of regional law enforcement training through a grant provided by the Texas Governor's Office, Criminal Justice Division.

The types of training to be provided include: Basic Law Enforcement Officer, Basic Jailer Certification, Basic Tele-Communicators, Reserve Officer, and Advanced Law Enforcement training. The period of performance is May 1, 1993-April 30, 1994.

The service delivery area includes the following counties in Texas: Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, Titus.

In order to ensure that all respondents are provided sufficient assistance in completing proposals, a respondent's conference will be held at the Ark-Tex Council of Governments Conference Room, Building A, Centre West, 911 North Bishop Road, Texarkana, Texas, January 8, 1993, 11 a.m.

Potential respondents may obtain a copy of the request for proposals, scoring guidelines, and project scoring criteria by contacting Janell Browning, Program Manager, Human Services, Ark-Tex Council of Governments, P.O. Box 5307, Texarkana, Texas 75505, or call (903) 832-8636. The deadline for proposal submission is January 29, 1993, at 5 p.m. The Ark-Tex Council of Governments Regional Criminal Justice Advisory Committee will score the proposals. Respondents will be notified in writing of the date, time, and place of the meeting at which the proposals will be scored.

Issued in Austin, Texas, on December 17, 1992.

TRD-9216799 James C. Fisher, Jr.
Executive Director
Ark-Tex Council of Governments

Filed: December 21, 1992

Advisory Commission on State Emergency Communications Invitation to Bid for Market Analysis of 9-1-1 Awareness and Usage

Sealed bids for the services for a statewide market analysis of 9-1-1 emergency communications awareness and usage will be accepted by the Advisory Commission on State Emergency Communications, 1101 Capital of Texas Highway, South, Suite B-100, Austin, Texas 78746. Contact Carey Spence at (512) 327-1911 for information or a copy of the bid specification.

Issued in Austin, Texas, on December 17, 1992.

TRD-9216728 Mary A. Boyd
Executive Director
Advisory Commission on State Emergency
Communications

Filed: December 17, 1992

Invitation to Bid for Public Education Materials

Sealed bids for the production and delivery of informational materials (telephone stickers), to be used for public education for 9-1-1 emergency telephone communications, will be accepted by the Advisory Commission on State Emergency Communications, 1101 Capital of Texas Highway, South, Suite B-100, Austin, Texas 78746. Contact Carey Spence at (512) 327-1911 for information or a copy of the bid specification.

Issued in Austin, Texas, on December 17, 1992.

TRD-9216729 Mary A. Boyd
Executive Director
Advisory Commission on State Emergency
Communications

Filed: December 17, 1992

Governor's Energy Office Consultant Proposal Request

This request for consulting services is filed pursuant to the provisions of Texas Civil Statutes, Article 6252-11c.

Notice of Invitation. The Governor's Energy Office (GEO) invites proposals from qualified firms, institutions of higher education, or individuals to collect and analyze data to measure energy savings that derive from programs implemented under the State Energy Conservation Program (SECP). Minority and women-owned businesses are encouraged to respond to this request. The Governor's Energy Office anticipates awarding this contract to one firm.

Background. In order to comply with the Energy Policy and Conservation Act and SECP regulations for states receiving financial assistance, a calculation of energy savings resulting from SECP programs is conducted annually. The estimated energy savings are reported to the United States Department of Energy (DOE) on DOE-prescribed CE-462 forms, with a separate report summarizing the findings and documenting the calculations.

Program activities of the SECP to be evaluated include seminars/workshops, technical assistance, information dissemination, and a statewide retrofit demonstration and revolving loan program.

The selected contractor will be funded on a cost reimbursement basis. All expenses must be properly documented and permissible under the contract and under federal guidelines, and all are subject to approval by the Governor's Energy Office. No advance payments are allowable.

Scope of Work. The successful proposer will be expected to perform, at a minimum, the following services.

Data Collection: identify data needs through discussions with GEO staff; contact program contractors to update projected energy savings based on actual data, as appropriate, and to obtain additional information; develop questionnaire on pertinent data necessary for evaluation of programs.

Data Analysis (standard methodology per SECP plan, Volume III): measure accumulated energy savings derived from the SECP programs by applying prescribed methodologies; for projects initiated in 1992, assess the applica-

bility of the prescribed energy savings methodologies and develop alternative methodologies as required; calculate energy savings by project, program, target audience, and SECP aggregate; calculate accumulated energy savings since 1978 by project, program, target audience, and SECP aggregate.

Reporting. Two reports are required: energy savings summary report—prepare estimates of energy savings in order for GEO to report to the U.S. Department of Energy (DOE) on DOE-prescribed CE-462 forms, to be furnished by GEO; executive summary report—prepare and submit a separate report documenting the methodology and calculations, and describing the findings. The report should cover, at a minimum, the following topics: executive summary introduction; discussion of methodology; data collection: data elements, data sources, and assumptions; formulas and methodologies used to determine savings for each program; findings—summary tables and discussion of energy savings by project, program, target audience, and SECP aggregate, expressed in British Thermal Units (BTUs). Separate tables should demonstrate BTUs saved in 1992 and accumulated savings since 1978; recommendations—provide suggestions for alternative data collection methods in an effort to meet the state's energy goals; conclusions; appendices—detailed calculations of energy savings for each program; examples of any survey instruments used; list of contacts used to prepare this report. List should be formatted to include SECP Program, GEO's Program Coordinator's name and contractor's name, address, and phone number.

Proposal Format. Interested parties should submit proposals with the following information: description of services to be performed; qualifications and experience of Project Team members; knowledge of energy savings methodologies and techniques; experience in designing and evaluating energy conservation programs; technical writing sample; work schedule with milestones; budget (show hourly rates): by category (Personnel, Travel, Supplies, etc.); by task (Data collection, Data analysis, Reporting, etc.).

Contact Person. To obtain more information concerning this project, contact Theresa Sifuentes, Governor's Energy Office, P.O. Box 12428, Austin, Texas 78711; telephone (512) 463-1931.

Closing Date. Seven copies of the sealed proposals should be sent to: Booker White, Governor's Energy Office, P.O. Box 12428, Austin, Texas 78711. The Governor's Energy Office is located in Room 620 of the Sam Houston State Office Building, 201 East 14th Street, Austin, Texas 78701. Proposals should be sent by certified mail or by courier and must be postmarked or received no later than 4 p.m. January 19, 1993. Proposals received after that time, and proposals submitted by facsimile will not be considered. Proposals should be short, concise, clearly written, and conform to the instructions in the proposal package. All potential proposers are encouraged to attend a pre-proposal conference to be held on the Second Floor of the Insurance Annex building, 221 East 11th, Austin, Texas on January 12, 1993, from 9:30 a.m. to 11:30 a.m. Contracts for this program are anticipated to run from February 1, 1993 through June 30, 1993.

Selection Criteria. A staff review committee will evaluate proposals and select one for funding based on the following criteria: proposer's knowledge of energy savings methodologies and techniques (30%); proposer's demonstrated experience in energy conservation program design and

evaluation (30%); proposer's ability to effectively prepare a report of the findings and methodology as demonstrated by submitting a writing sample prepared by the staff assigned to this project (20%); the reasonableness of the proposed budget in relation to services provided (20%).

Award will not necessarily be made to the bidder offering the lowest price; selection will be based on the proposer's ability to satisfy the preceding criteria. The Governor's Energy Office reserves the right to negotiate both budget and scope of work with the finalist. The Governor's Energy Office reserves the right to reject any or all proposals and is under no legal requirement to execute a contract on the basis of this request for proposals. Selection of the contractor will be based on the recommendations of a review panel.

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

TRD-9216693

Harris E. Worcester
Director
Governor's Energy Office

Filed: December 16, 1992

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Texas Department of Housing and Community Affairs

Consultant Proposal Request

Pursuant to Texas Civil Statutes, Article 6252-11c, the Texas Department of Housing and Community Affairs (TDHCA) is inviting proposals for consultant services.

Description of Services. TDHCA has recently launched an ambitious program to define and develop the Department's information systems. Four distinct analysis and development phases have been identified which have been tentatively scheduled for completion by June 1994. Under this RFP, the Department plans to use competitive bidding to procure the services of an external consultant to act as Project Liaison (PL) for Phases 2, 3, and 4 of the project. The PL will serve as liaison between TDHCA and the Texas Department of Information Resources (DIR), advising TDHCA management and representing TDHCA's best interests in the ongoing information systems analysis and development project. The consultant selected to be Project Liaison will have significant knowledge and experience using STRADIS, AD/Method or similar software/methodologies, cost estimation, project management, and CASE software. The PL must have knowledge and experience in full cycle information systems engineering, information systems design, and database design and development. In addition, the PL should demonstrate considerable experience in project management of large complex financial systems. The PL will have comprehensive knowledge of mortgage loan servicing, bond debt programs, cash management, debt management, and accounting systems in a state government environment.

While it is anticipated that the consultant (or consultant team) will not be required on a full-time basis, the Department expects the PL to observe and monitor the analysis and attend meetings as scheduled by TDHCA and DIR such that the PL will have an in-depth understanding of the project goals, maintain real-time knowledge of project progress, problems, and decision alternatives. The PL will be required to provide timely oral and written recommendations to TDHCA management concerning the analysis process, system design, and development, and other factors bearing on the decision making process. We anticipate

that written reports and recommendations will be required at critical decision points at the end of each phase.

Terms of Contract. It is anticipated the contract period will be from approximately February 20, 1993 to May 31, 1994.

Contact Person. Proposal Information Packets will be available after December 28, 1992. Automatic release of this document to the agency maintained vendor list will NOT occur. To request a proposal packet, contact Donna Schielack, Purchasing Section, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941; or by phone at (512) 475-3988.

Questions. Offerors must submit all questions, if any, concerning the RFP in writing to Bob Orozco, Quality Control Director, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941. All written inquiries must be received by 2 p.m. CST, January 15, 1993. Except for the written inquiries to Mr. Orozco, communications about the RFP to any TDHCA personnel before the proposal due date will be grounds for disqualification of the offeror.

Closing Date. Proposals must be received by 4 p.m. CST, January 20, 1993.

Evaluation and Selection. Selection of the contractor will be based on: demonstrated competence, knowledge, and qualifications of the offeror and key personnel; the proposed approach; a demonstrated background and understanding of the project needs and agency current environment; and on the reasonableness of the proposed fee(s) for services. In addition, when other considerations are equal, TDHCA is required to give a preference to a private consultant whose principal place of business is within the State of Texas or who will manage the consulting engagement wholly from one of its offices within the State of Texas. All responsive proposals will be subject to evaluation by a review committee of qualified TDHCA personnel. This committee will recommend a single proposal which most clearly meets the identified requirements. Final decision will be that of Department management based on this recommendation and their separate review of evaluation scores and bidder performance summaries.

Issued in Austin, Texas, on December 17, 1992.

TRD-9216734 Susan J. Leigh
Executive Director
Texas Department of Housing and
Community Affairs

Filed: December 17, 1992

Texas Department of Insurance Correction of Error

The Texas Department of Insurance submitted a notice pursuant to the Insurance Code, Subchapter L, concerning adoption of certain amendments to the Texas Automobile Rules and Rating Manual. Due to an error by the agency, the notification contained an error under TRD-9215015 in the November 13, 1992, *Texas Register* (17 TexReg 8047).

Endorsement 503 was not adopted by the Board, therefore, it should not appear in the published notice. A correction to the fourth paragraph, omitting the reference to 503 and 503A, should read as follows.

"The Board's action...; amends Endorsement 502 (to become 502A); and amends Rule 45..."

Notice of Public Hearing

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, 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.

Issued in Austin, Texas, on December 17, 1992.

TRD-9216738 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed: December 17, 1992

Public Utility Commission of Texas Notices of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 3, 1992, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number. Application of Wood County Electric Cooperative, Inc. to amend certification of convenience and necessity for proposed transmission line within Wood and Smith Counties, Docket Number 11643 before the Public Utility Commission of Texas.

The Application. In Docket Number 11643, Wood County Electric Cooperative, Inc. requests approval of its

application to construct approximately 8.8 miles of 138-kV transmission line within Wood and Smith Counties.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Office at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

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

TRD-9216733 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 17, 1992

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Notice is given to the public of the filing with the Public Utility Commission of Texas an application on December 8, 1992, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 50, 52, and 54. A summary of the application follows.

Docket Title and Number. Application of Taylor Telephone Cooperative, Inc. to amend certification of convenience and necessity within Runnels County, Docket Number 11655, before the Public Utility Commission of Texas.

The Application. In Docket Number 11655, Taylor Telephone Cooperative, Inc. seeks approval of its application to amend the exchange area boundary between its Norton exchange and GTE Southwest, Inc.'s Miles exchange in order to provide a residential customer with North exchange service, at his request.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Office at (512) 458-0256, or (512) 458-0221 teletypewriter for the deaf on or before February 11, 1993.

Issued in Austin, Texas, on December 18, 1992.

TRD-9216757 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 18, 1992

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Notice is given to the public of the filing with the Public Utility Commission of Texas an application on December 11, 1992, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 50, 52, and 54. A summary of the application follows.

Docket Title and Number. Application of Lufkin-Conroe Telephone Exchange, Inc. to amend certification of convenience and necessity within Angelina County, Docket Number 11662, before the Public Utility Commission of Texas.

The Application. In Docket Number 11662, Lufkin-Conroe Telephone Exchange, Inc. seeks approval of its application to amend the exchange area boundary between its Diboll and Fuller Springs exchanges in order to reflect the manner in which telephone service is presently being administered. Specifically, three subscribers currently re-

siding with the Fuller Springs exchange but receiving Diboll exchange service, will be transferred to the Diboll exchange.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Office at (512) 458-0256, or (512) 458-0221 teletypewriter for the deaf on or before February 4, 1993.

Issued in Austin, Texas, on December 17, 1992.

TRD-9216761 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 18, 1992

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Notices of Proceeding for Approval of
Plexar Customer Service Pursuant to
PUC Substantive Rule 23.27

Notice is given to the public of the filing of an application on December 11, 1992, with the Public Utility Commission of Texas, seeking approval of customer-specific PLEXAR-Custom Service pursuant to PUC Substantive Rule 23.27 for Incarnate Word College, San Antonio.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Incarnate Word College pursuant to PUC Substantive Rule 23.27(k). Docket Number 11663.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Incarnate Word College. The geographic service market for this specific service is the San Antonio area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on December 17, 1992.

TRD-9216763 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 18, 1992

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Notice is given to the public of the filing of an application on December 11, 1992, with the Public Utility Commission of Texas, seeking approval of customer-specific PLEXAR-Custom Service pursuant to PUC Substantive Rule 23.27 for Dallas, ISD, Dallas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for ISD pursuant to PUC Substantive Rule 23.27(k). Docket Number 11661.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Dallas ISD. The geographic service market for this specific service is the Dallas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on December 17, 1992.

TRD-9216762 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 18, 1992

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Texas Water Commission

Notice of Application For Waste Disposal Permit

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of December 18, 1992.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application—new permit, amendment, or renewal.

Anderson Industries, Inc.; the wastewater treatment facilities; are in the northwest corner of the intersection of State Highway 114 and North Kimball Drive in Southlake in Tarrant County; renewal; 11487-01.

ARCO Pipe Line Company; the Texas City Tank Farm and the connected Marine Terminal Facility; are on the northeast side of Highway 146 between Galveston County Seawall and Loop 197 (Tank Farm), and at 900 South Bay Street (Terminal) in the City of Texas City in Galveston County; renewal; 02111.

City of Arcola; the wastewater treatment facilities; are approximately 1,000 feet east of FM Road 521 and 3,200 feet south of the intersection of FM Road 521 and Texas Highway 6 in Fort Bend County; amendment; 13367-01.

Ascension Resorts, Limited; the Holly Lake Ranch Wastewater Treatment Facilities; the plant site is approximately 7,600 feet south and 2,400 feet east of the intersection of FM Road 49 and FM Road 2869 and 9.0 miles north of

the Town of Hawkins in Wood County; renewal; 12482-01.

Keith Brown; a dairy; the dairy is on the north side of FM Road 8, approximately seven miles west of the intersection of FM Road 8 and FM Road 219 in Erath County; new; 03497.

Browning-Ferris Industries, Inc.; a Class II/III solid waste disposal facility; the plant site is on West Port Arthur Road at the intersection of Beauxart Garden Road, between Live Oak Cemetery and Rhodair Gully in the extra-territorial jurisdiction of Port Arthur, Jefferson County; 02517.

Cedar Point Utility Management Company, Inc.; the Cedar Point Subdivision Wastewater Treatment Facilities; the plant site is on the east side of the Kickapoo Creek Arm of Lake Livingston approximately 2,000 feet south of U.S. Highway 190 within the Cedar Point Subdivision in Polk County; renewal; 12454-01.

City of Columbus; the wastewater treatment facilities; are approximately 0.2 of a mile north of Interstate Highway 10, on the west bank of the Colorado River near the easterly end of McCormick Street, in the southeast corner of the City of Columbus in Colorado County; renewal; 10025-01.

Roy H. Cullen; the Pearland Tract Wastewater Treatment Plant; the plant site is to be 0.3 of a mile northeast of the intersection of FM Road 518 and FM Road 865, approximately 2.5 miles east of State Highway 288 and 3.6 miles west of the City of Pearland in Brazoria County; renewal; 12424-01.

Daytop Village, Inc.; the Pine Mountain Wastewater Treatment Facilities; the plant site is approximately 2.5 miles east-southeast of the community of Bois D'Arc, approximately 14 miles north of the City of Palestine in Anderson County; new; 13645-01.

Diamond Shamrock Refining and Marketing Company; a petroleum products storage and distribution terminal; the plant site is on IH-35 at the Uniroyal Interchange approximately 13 miles north of the City of Laredo in Webb County; new; 03531.

El Paso County Water Control and Improvement District Number 4; the wastewater treatment facilities; are approximately 8,000 feet east of the intersection of U.S. Highway 80 and State Highway 76 and approximately 2,000 feet south of U.S. Highway 80 in El Paso County; renewal; 10166-01.

General American Transportation Corporation; a railroad tank car maintenance and repair facility; the plant site is on the eastern side of U.S. Highway 79, approximately 1.25 miles southwest of the intersection of U.S. Highway 79 and 190 in the City of Hearne, Robertson County; new; 03494.

Guadalupe-Blanco River Authority; the Guadalupe-Blanco River Authority Loop 175 Wastewater Treatment Plant; the plant site is on the east bank of the Guadalupe River, immediately north of U.S. Highway 175 in Victoria County; renewal; 11078-01.

Harris County Municipal Utility District Number 109; the Atascocita Central Wastewater Treatment Facilities; the plant site is on Atascocita Road, approximately 0.6 mile south of FM Road 1960 and approximately 2.1 miles west of the intersection of Atascocita Road and FM Road 1960 in Harris County; renewal; 11533-01.

Harris-Fort Bend Counties Mud Number 1; the wastewater treatment facilities; are on the north side of Rosner Road; approximately 3,000 feet northeast of the intersection of Green-Busch Road and Rosner Road; approximately 2.5 miles southeast of the intersection of Interstate Highway 10 and FM Road 1463 in Fort Bend County; renewal; 12805-01.

High Meadows Company; the wastewater treatment facilities; are approximately 100 feet south of Aldine Mail Road between John F. Kennedy Boulevard and Gloger Road in Harris County; renewal; 10812-01.

City of Huntsville; the Parker Branch Wastewater Treatment Facilities; the plant site is approximately 3.5 miles northeast of the intersection of U.S. Highways 30 and 190, 0.8 miles north of the intersection of State Highway 19 and Ellisor Road, at the north end of Ellisor Road near the City of Huntsville in Walker County; renewal; 10781-03.

City of Jewett; the Lower Keechi Creek Wastewater Treatment Facilities; the plant site is approximately 500 feet southeast of Sugar Street, approximately 4,000 feet east of State Highway 79, on the east side of the City of Jewett in Leon County; renewal; 11392-01.

City of Junction; the wastewater treatment facilities; are north of and adjacent to FM Road 2169; approximately 0.4 mile northeast of the intersection of FM Road 2169 and Interstate Highway 10 in Kimble County; renewal; 10199-01.

KMCO, Inc.; an industrial organic chemical manufacturing facility; the plant site is at 2425 South Gulfway Drive, approximately five miles southwest of the Port Arthur City Hall in Jefferson County; new; 03544.

Lamar Water Supply Corporation; the Sea Gun Inn Wastewater Treatment Facilities; the plant site is approximately five miles north of the City of Fulton near the north end of the Lyndon Baines Johnson Causeway over Copano Bay (State Highway 35) in Aransas County; renewal; 10669-01.

M and M Dairy; a dairy operation; the dairy operation is on the south side of FM Road 852 approximately five miles west of the City of Winnsboro in Wood County; new; 03502.

Morton International, Incorporated; the company produces industrial, agricultural and consumer salt products and upgrades potassium chloride. Production is from an underground mine and a brine evaporation process; the plant site is on State Highway 110 approximately one mile south of the town of Grand Saline in Van Zandt County; new; 03510.

City of Orange Grove; the wastewater treatment facilities; are on the east side of County Road 351, approximately 0.5 miles south of the City of Orange Grove in Jim Wells County; renewal; 10592-01.

City of Palmer; the wastewater treatment facilities; the plant site is approximately 0.40 miles south and 0.10 miles west of the intersection of FM Road 813 and Interstate Highway 45 in the City of Palmer in Ellis County; new; 13620-01.

City of Pasadena; the Deepwater Wastewater Treatment Facilities; the plant site is north of the 3,600 block of Darling Avenue; approximately 4,000 feet east-southeast of the intersection of South Avenue and State Highway 225 in Harris County; renewal; 10053-02.

City of Navasota; the wastewater treatment facilities; are on the southern bank of Cedar Creek one block north of State Highway 105 at the intersection of Chase Street and Peoples Street in the City of Navasota in Grimes County; renewal; 10231-01.

Steve Neusse and Michael Hammond; the Whiskey Flats Mobile Home Park Wastewater Treatment Plant; the plant site is approximately 16 miles southwest of the City of Fort Worth central business district and 0.5 of a mile south of the intersection of U.S. Highway 377 and FM Road 1187 in Tarrant County; renewal; 12723-01.

City of Palestine; the Wells Creek Wastewater Treatment Facilities; the plant site is on the east side of Palestine north of the Missouri Pacific Railroad Track, approximately 1,000 feet east of the intersection of the railroad and State Highway Loop 256 in Anderson County; renewal; 10244-02.

San Antonio Water System; the Leon Creek Wastewater Treatment Facilities; are approximately one mile west of the intersection of Mauermann Road and Pleasanton Road in Bexar County; amendment; 10137-03.

City of Sanger; the wastewater treatment facilities; are approximately 1,000 feet south of Jones Street, approximately 1,500 feet east of the Atchison, Topeka, and Santa Fe Railroad and southeast of the City of Sanger in Denton County; renewal; 10271-01.

"778" Limited; the wastewater treatment facility and irrigation sites; are approximately 4.6 miles northwest of the intersection of Interstate Highway 35 and FM Road 2338 and northwest of the City of Georgetown in Williamson County; renewal; 13329-01.

Texas Department of Transportation; the Sinton Maintenance Yard Wastewater Treatment Facilities; the plant site is 3,000 feet northwest of the intersection of United States Highway 181 and FM Road 1074 and approximately 1.5 miles southeast of the intersection of United States Highway 181 and FM Road 881 at the Texas Department of Transportation Area Engineering and Maintenance Office Site in San Patricio County; renewal; 13412-02.

Texas Utilities Electric Company, Parkdale Steam Electric Station; the plant site is at 5770 Parkdale Drive, on the East side of White Rock Creek at the confluence of Forney Branch with White Rock Creek in the City of Dallas, Dallas County; renewal; 01251.

Transfield Corporation; the wastewater treatment facilities; are near the intersection of Chippewa Boulevard and North Houston-Rosslyn Road and one mile south of State Highway 149 in Harris County; renewal; 11797-01.

West Harris County Municipal Utility District Number 6; the wastewater treatment; facilities are approximately 2,000 feet west of Synott Road and 4,500 feet south of Westheimer Road in Harris County; renewal; 12499-01.

Ben Wheeler Water Supply Corporation; Plant Number 2 well water treatment plant; the plant site is approximately 3.7 miles east-northeast of Ben Wheeler and 0.6 miles north of FM Road 858 in Van Zandt County; amendment; 02044.

Ben Wheeler Water Supply Corporation; a water treatment plant; the plant site is approximately 100 feet south of FM Road 279 (behind the First State Bank Building) which is adjacent to and on the south side of FM 279 in the Community of Ben Wheeler in Van Zandt County; amendment; 03044.

Woodland Oaks Company; the wastewater treatment facilities; are approximately 4,000 feet east of the Fairbanks North Houston Road bridge over Whiteoak Bayou in Harris County; renewal; 11670-01.

Zapata County; the wastewater treatment facilities; are approximately 1/2 mile east of U.S. Highway 83 on Third Avenue in the City of Zapata County; renewal; 10462-01.

Issued in Austin, Texas, on December 18, 1992.

TRD-9216790 Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: December 21, 1992

◆ ◆ ◆
Texas Water Development Board
Request for Proposals for Regional
Water Supply and Wastewater
Planning

The Texas Water Development Board (board) requests, pursuant to 31 Texas Administrative Code (TAC) §355.3, the submission of regional planning proposals leading to the possible award of contracts to evaluate and determine the most feasible alternatives to meet water supply and wastewater facility needs, estimate the costs associated with implementing feasible water supply and wastewater facility alternatives, and identify institutional arrangements to provide regional water supply and wastewater services for areas in Texas. In order to receive a grant, the applicant must have the authority to plan, implement, and operate water supply and wastewater facilities.

Regional planning applications may be submitted by eligible political subdivisions from any area of the State and will be considered and evaluated. In addition, applicants must supply a map of the geographical planning area to be studied.

Description of Planning Purpose and Objectives. The purpose of this program is for the State to assist local governments to prepare regional-level plans that document water supply and wastewater service needs, identify feasible regional alternatives to meet water supply and wastewater needs, and present estimates of costs associated with providing regional water supply plants and distribution lines and regional wastewater treatment plants and collection systems. A water conservation plan and a drought management plan will be developed to ensure that existing and future sources are used efficiently and as a basis for confirming demand projections of future need.

Discrete phases to implement regional water supply and wastewater facilities to meet projected needs will be identified. Cost estimates shall be made for each respective implementation phase to determine the capital, operation, and maintenance requirements for a 30-year planning period. Separate cost estimates shall be made for each regional water supply and wastewater system component, including the water conservation program.

Description of Funding Consideration. Up to \$300,000 has been initially authorized for Fiscal Year 1993 assistance for regional water supply and wastewater planning from the board's research and planning fund. Up to 50% funding may be provided to individual applicants, with up to 75% funding available to areas identified in 31 TAC §355.10(a) as economically disadvantaged. In the event

that acceptable proposals are not submitted, the board retains the right to not award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information. Ten double-sided copies of a complete regional planning grant application including the required attachments must be filed with the Board prior to 5 p.m., February 25, 1993. Proposals can be directed either in person to April Lander, Room 452A, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, or by mail to April Lander, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

Applications will be evaluated according to 31 TAC §355.5 and the evaluation criteria included in the Texas Water Development Board's Guidelines for Regional Water Supply and Wastewater Planning Grants. All potential applicants must contact the board to obtain these guidelines. Requests for information, the board's rules and guidelines covering the research and planning fund and detailed evaluation criteria may be directed to April Lander at the preceding address or by calling (512) 475-3003.

Issued in Austin, Texas, on December 18, 1992.

TRD-9216802 Suzanne Schwartz
General Counsel
Texas Water Development Board

Filed: December 21, 1992

◆ ◆ ◆
Request for Proposals for Water
Research

The Texas Water Development Board (board) requests, pursuant to 31 Texas Administrative Code (TAC) §355.3, the submission of water research proposals leading to the possible award of contracts to conduct water research.

Description of Research Purpose and Objectives. All water research applications must address a portion of the water research topic priority list developed at the November, 1991, water research workshop sponsored by the board and the Texas Water Resources Institute titled "Water for Texas—Setting the Research Agenda". Therefore, proposals are requested for research in the following topic areas: water quality—develop and perform procedures to evaluate the actual effectiveness of best management practices (bmps) for nonpoint source pollution including structural and nonstructural controls; water quality—remote sensing of water quality and associated GIS (geographic information system) mapping including locations of contamination sources; water quality—oil wells and their impact on water quality; water quality—nonpoint sources of pollution including types and quantities, controlling factors, and water quality impacts; aquatic ecosystems—quantify effects of point and nonpoint discharges on water quality, aquatic productivity, diversity, and ambient toxicity; water use efficiency—evaluate water conservation programs and integrate findings into long-term systems planning including municipal, commercial, industrial, and agricultural conservation programs; water use efficiency—aquifer management including data collection and interpretation, natural and artificial recharge, etc.; water use efficiency—production agriculture: conversion of irrigation systems, optimum cropping systems, specific crops for specific areas, etc.; law, institutions, and policy—economic, institutional, and legal aspects of innovative water allocation mechanisms

including transfers and market-based pricing; hydrology and climatology—recharge to aquifers involving amounts and techniques.

Description of Funding Consideration. Up to \$300,000 has been initially authorized for water research assistance from the board's research and planning fund for use in fiscal year 1993. Up to 100% funding may be provided to individual applicants, however applicants are encouraged to contribute matching funds or services. An applicant may submit more than one proposal, however only one proposal per applicant is eligible to receive a contract award. In the event that acceptable proposals are not submitted, the Board retains the right to not award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information. Ten double-sided copies of a complete water research grant application including the required attachments must be filed with the Board prior to 5 p.m., February 25, 1993. Proposals can be directed either in

person to April Lander, Room 452A, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, or by mail to April Lander, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

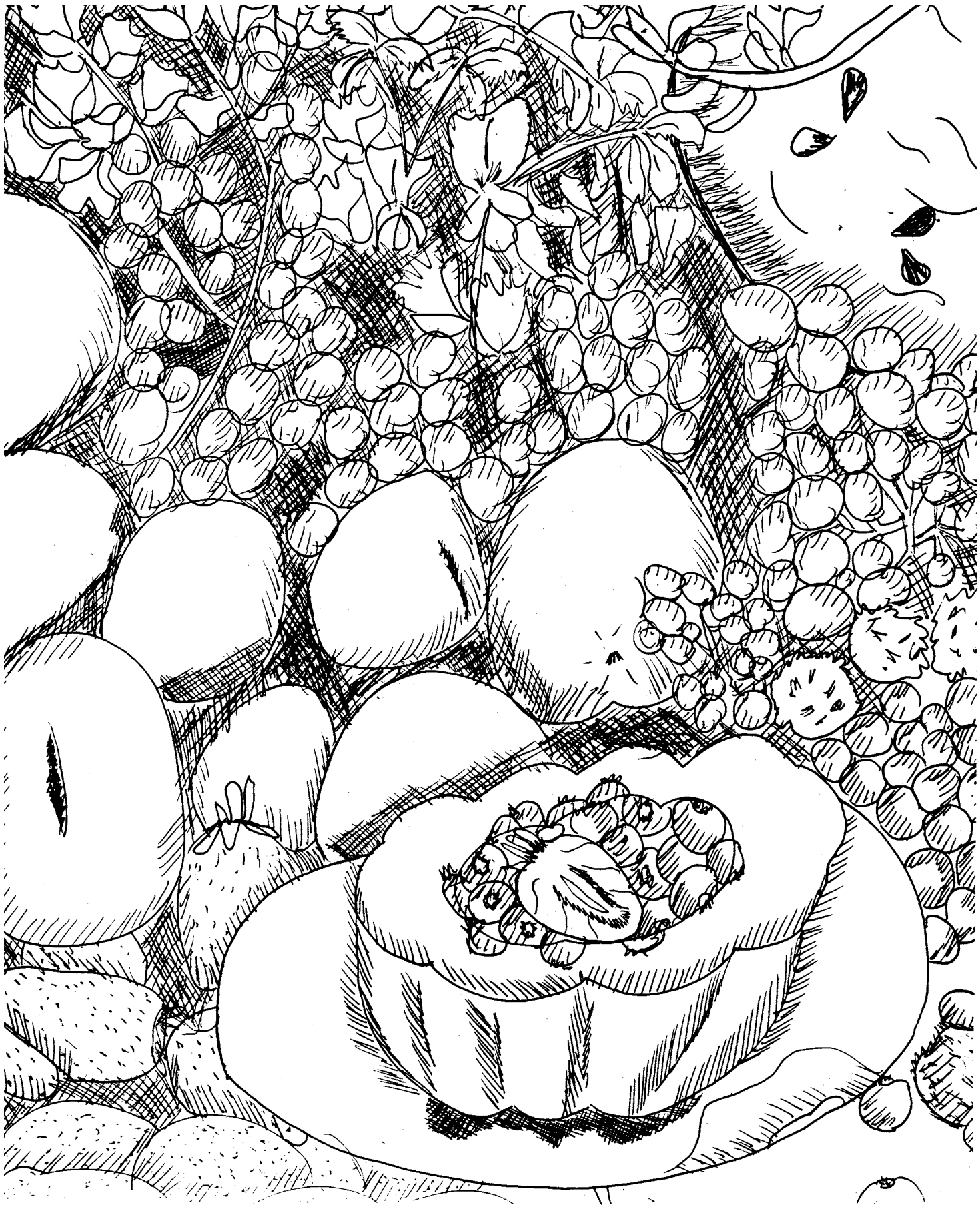
Applications will be evaluated according to 31 TAC §355.5 and the evaluation criteria included in the Texas Water Development Board's Guidelines for Water Research Grants. All potential applicants must contact the board to obtain these guidelines. Research shall not duplicate work planned or underway by state agencies. Requests for information, the board's rules and guidelines covering the research and planning fund and detailed evaluation criteria may be directed to April Lander at the preceding address or by calling (512) 475-3003.

Issued in Austin, Texas, on December 18, 1992.

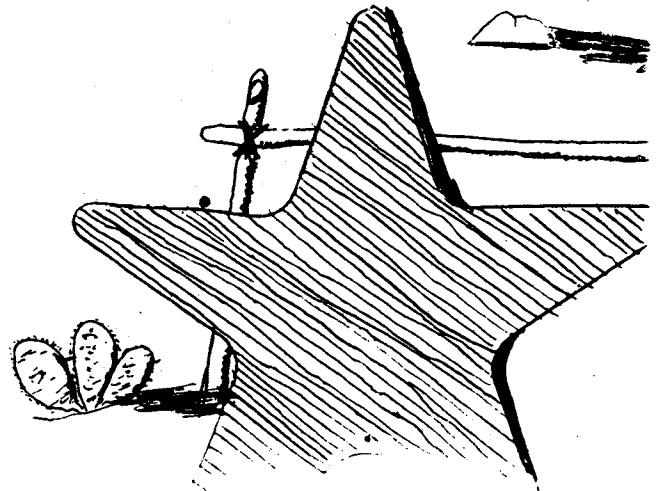
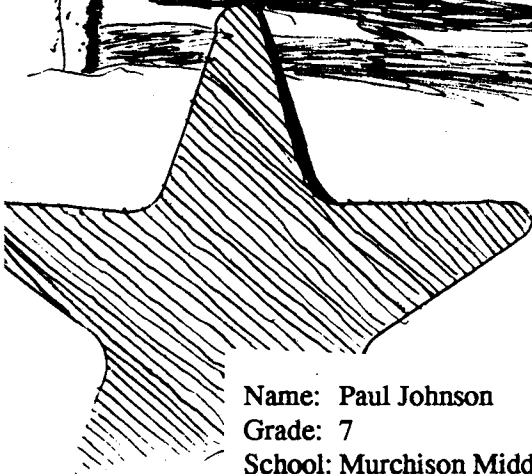
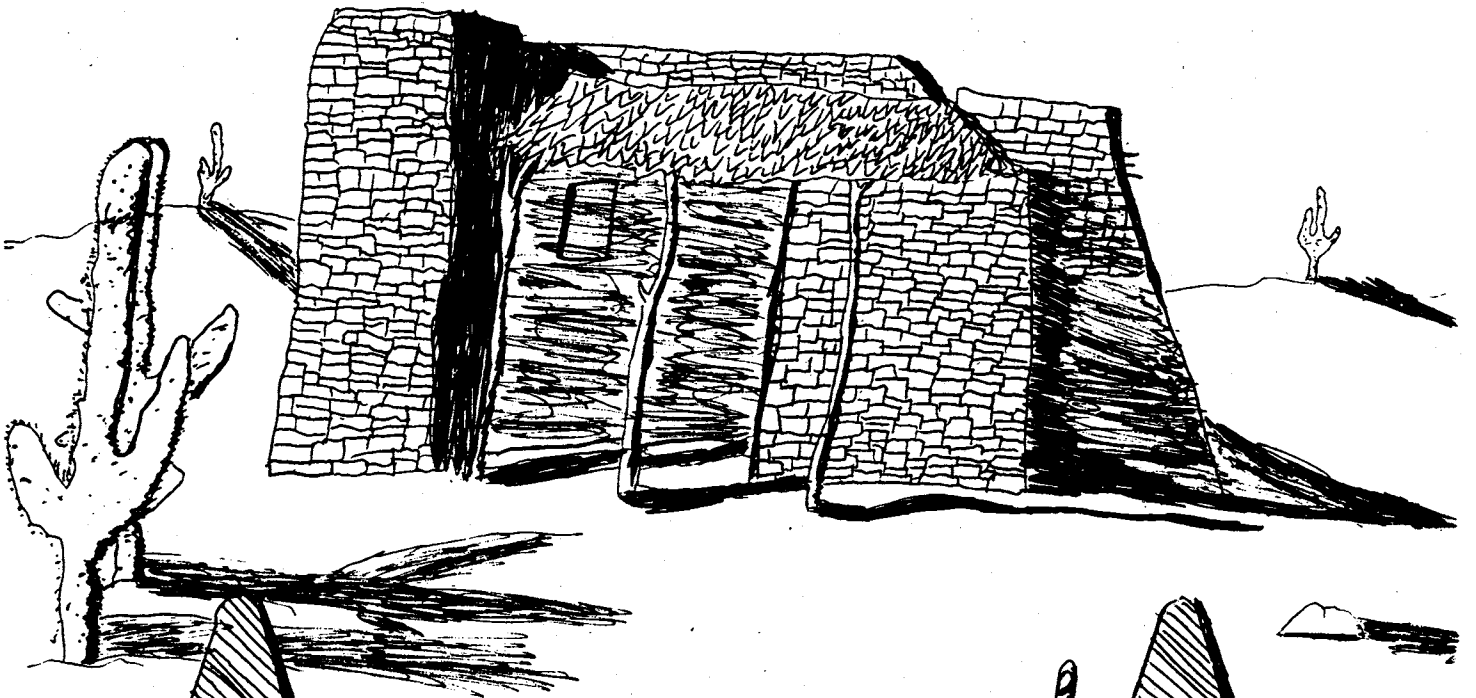
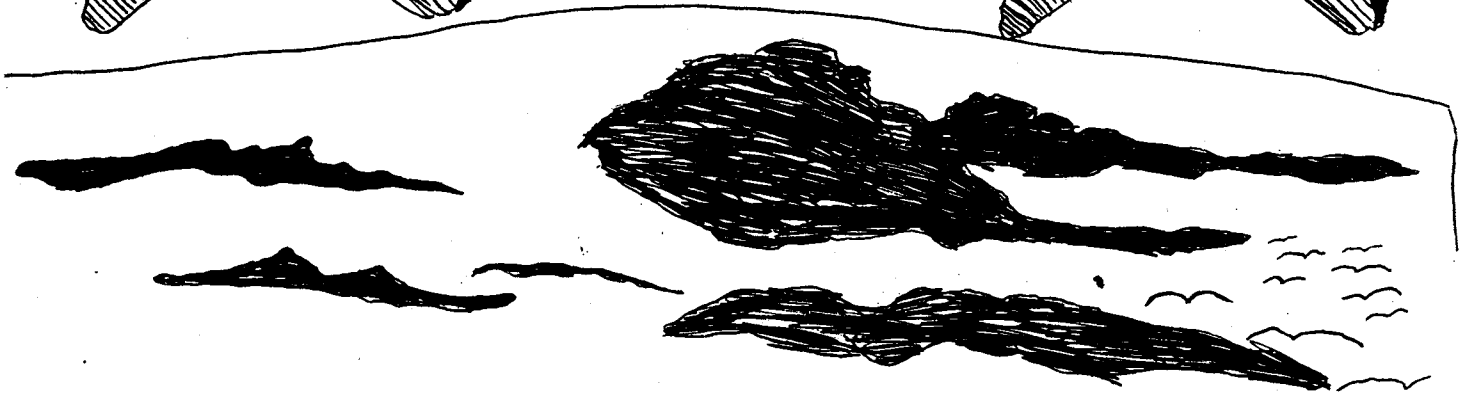
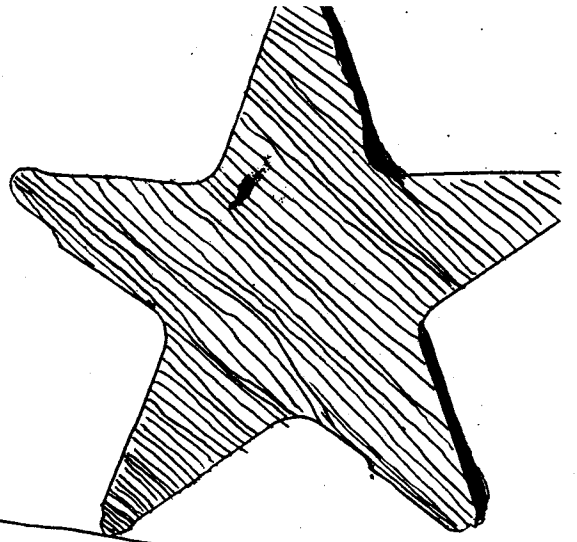
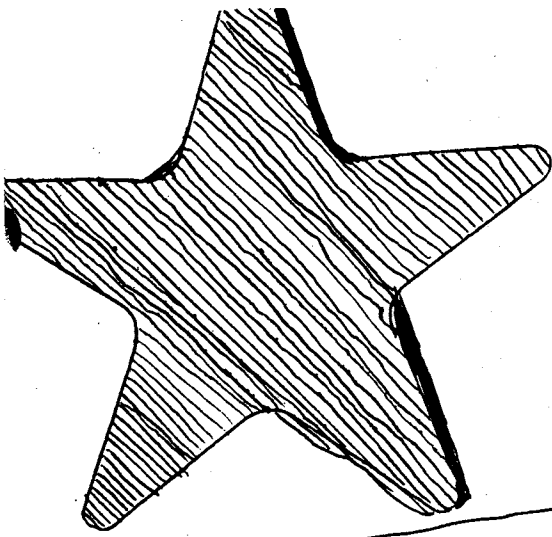
TRD-9216803 Suzanne Schwartz
 General Counsel
 Texas Water Development Board

Filed: December 21, 1992





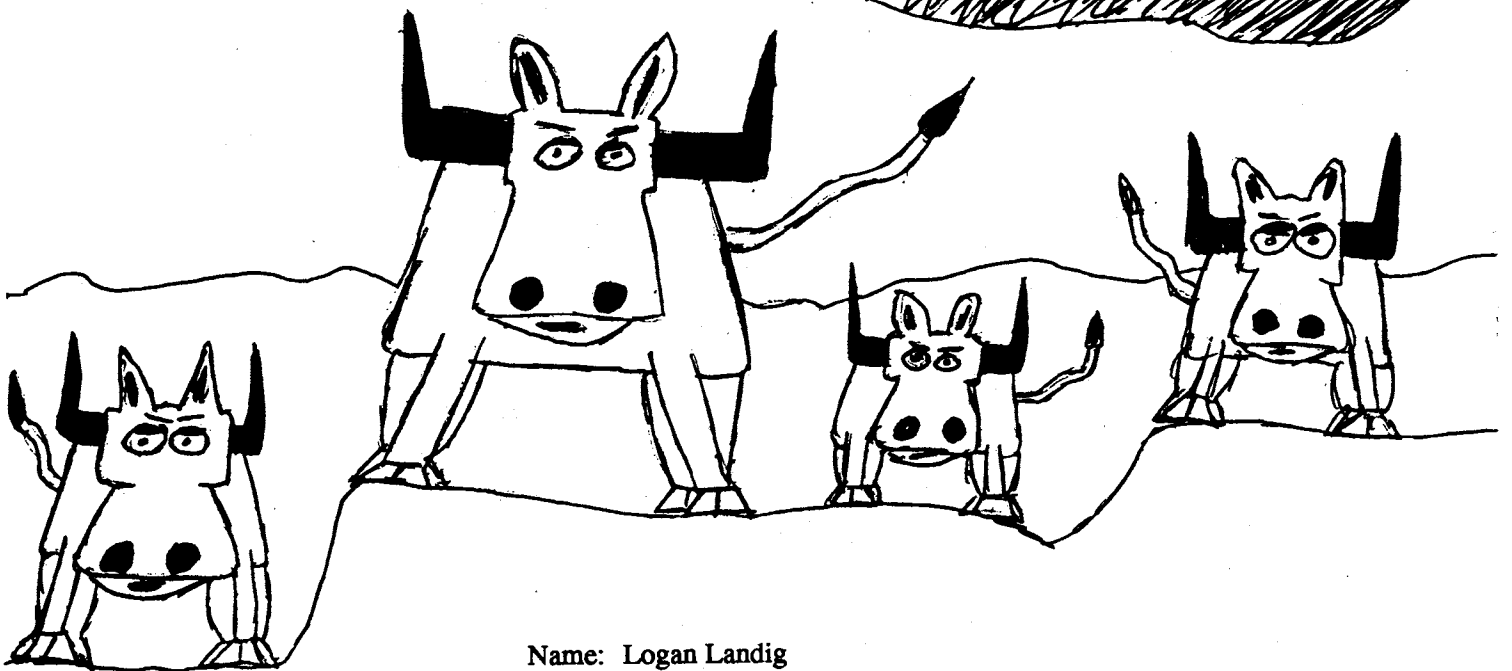
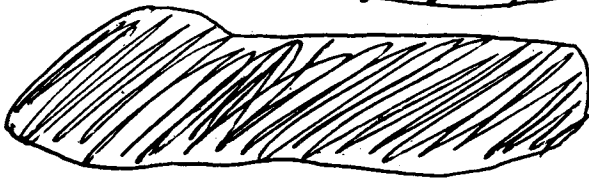
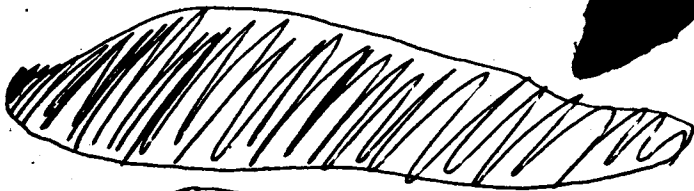
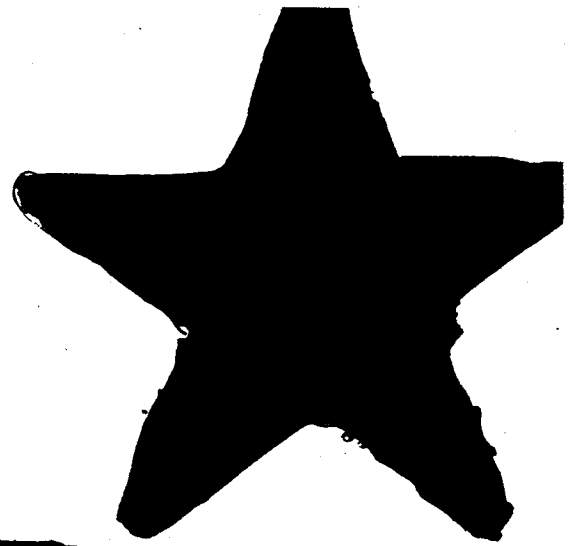
Name: Ruth Everett
Grade: 4
School: Murchison Middle School, Austin ISD



Name: Paul Johnson
Grade: 7
School: Murchison Middle School, Austin, ISD



Name: Christine Gardner
Grade: 8
School: Murchison Middle School, Austin ISD



Name: Logan Landig
Grade: 7
School: Murchison Middle School, Austin ISD

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	Wednesday, April 28	Thursday, April 29
35 Friday, May 7	Monday, May 3	Tuesday, May 4
36 Tuesday, May 11	Wednesday, May 5	Thursday, May 6
37 Friday, May 14	Monday, May 10	Tuesday, May 11
38 Tuesday, May 18	Wednesday, May 12	Thursday, May 13
39 Friday, May 21	Monday, May 17	Tuesday, May 18
40 Tuesday, May 25	Wednesday, May 19	Thursday, May 20
41 Friday, May 28	Monday, May 24	Tuesday, May 25
42 Tuesday, June 1	Wednesday, May 26	Thursday, May 27
43 *Friday, June 4	Friday, May 28	Tuesday, June 1
44 Tuesday, June 8	Wednesday, June 2	Thursday, June 3
45 Friday, June 11	Monday, June 7	Tuesday, June 8
46 Tuesday, June 15	Wednesday, June 9	Thursday, June 10
47 Friday, June 18	Monday, June 14	Tuesday, June 15
48 Tuesday, June 22	Wednesday, June 16	Thursday, June 17
49 Friday, June 25	Monday, June 21	Tuesday, June 22
50 Tuesday, June 29	Wednesday, June 23	Thursday, June 24
51 Friday, July 2	Monday, June 28	Tuesday, June 29
52 Tuesday, July 6	Wednesday, June 30	Thursday, July 1
53 Friday, July 9	Monday, July 5	Tuesday, July 6
Tuesday, July 13	SECOND QUARTERLY INDEX	
54 Friday, July 16	Monday, July 12	Tuesday, July 13
55 Tuesday, July 20	Wednesday, July 14	Thursday, July 15
56 Friday, July 23	Monday, July 19	Tuesday, July 20
57 Tuesday, July 27	Wednesday, July 21	Thursday, July 22
Friday, July 30	NO ISSUE PUBLISHED	
58 Tuesday, August 3	Wednesday, July 28	Thursday, July 29
59 Friday, August 6	Monday, August 2	Tuesday, August 3
60 Tuesday, August 10	Wednesday, August 4	Thursday, August 5
61 Friday, August 13	Monday, August 9	Tuesday, August 10
62 Tuesday, August 17	Wednesday, August 11	Thursday, August 12
63 Friday, August 20	Monday, August 16	Tuesday, August 17
64 Tuesday, August 24	Wednesday, August 18	Thursday, August 19
65 Friday, August 27	Monday, August 23	Tuesday, August 24
66 Tuesday, August 31	Wednesday, August 25	Thursday, August 26
67 Friday, September 3	Monday, August 30	Tuesday, August 31
68 Tuesday, September 7	Wednesday, September 1	Thursday, September 2
69 *Friday, September 10	Friday, September 3	Tuesday, September 7

70 Tuesday, September 14	Wednesday, September 8	Thursday, September 9
71 Friday, September 17	Monday, September 13	Tuesday, September 14
72 Tuesday, September 21	Wednesday, September 15	Thursday, September 16
73 Friday, September 24	Monday, September 20	Tuesday, September 21
74 Tuesday, September 28	Wednesday, September 22	Thursday, September 23
75 Friday, October 1	Monday, September 27	Tuesday, September 28
76 Tuesday, October 5	Wednesday, September 29	Thursday, September 30
77 Friday, October 8	Monday, October 4	Tuesday, October 5
Tuesday, October 12	THIRD QUARTERLY INDEX	
78 Friday, October 15	Monday, October 11	Tuesday, October 12
79 Tuesday, October 19	Wednesday, October 13	Thursday, October 14
80 Friday, October 22	Monday, October 18	Tuesday, October 19
81 Tuesday, October 26	Wednesday, October 20	Thursday, October 21
82 Friday, October 29	Monday, October 25	Tuesday, October 26
83 Tuesday, November 2	Wednesday, October 27	Thursday, October 28
Friday, November 5	NO ISSUE PUBLISHED	
84 Tuesday, November 9	Wednesday, November 3	Thursday, November 4
85 Friday, November 12	Monday, November 8	Tuesday, November 9
86 Tuesday, November 16	Wednesday, November 10	Thursday, November 11
87 Friday, November 19	Monday, November 15	Tuesday, November 16
88 Tuesday, November 23	Wednesday, November 17	Thursday, November 18
89 Friday, November 26	Monday, November 22	Tuesday, November 23
Tuesday, November 30	NO ISSUE PUBLISHED	
90 Friday, December 3	Monday, November 29	Tuesday, November 30
91 Tuesday, December 7	Wednesday, December 1	Thursday, December 2
92 Friday, December 10	Monday, December 6	Tuesday, December 7
93 Tuesday, December 14	Wednesday, December 8	Thursday, December 9
94 Friday, December 17	Monday, December 13	Tuesday, December 14
95 Tuesday, December 21	Wednesday, December 15	Thursday, December 16
96 Friday, December 24	Monday, December 20	Tuesday, December 21
Tuesday, December 28	NO ISSUE PUBLISHED	

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