

Texas Register

Volume 15, Number 87, November 20, 1990

Pages 6631-6695

In This Issue...

Emergency Sections

Texas Youth Commission

6645-Administrative Provisions

Proposed Sections

Texas Department of Agriculture

6647-Quarantines

Texas Historical Commission

6647-State Architectural Programs

Texas Department of Licensing and
Regulation

6649-Air Conditioning and Refrigeration Contractor Li-
cense Law

Texas State Board of Examiners of
Dietitians

6650-Dietitians

Texas Workers' Compensation
Commission

6660-Benefits--Impairment and Supplemental Income
Benefits

6662-Representation of Parties Before the Agency-
Qualifications for Representatives

6662-Representation of Parties Before the Agency-
Attorney's Fees

Texas Department of Human Services

6668-Intermediate Care Facilities for Mentally Retarded

Withdrawn Sections

Texas Department of Health

6671-Special Care Facilities

Open Meetings

6673-Texas Deptment of Agriculture

6673-Texas Alcoholic Beverage Commission

6674-Texas Department of Commerce

6674-Office of the Governor, Criminal Justice Division

6674-Texas Department of Health

6674-Texas Hospital Equipment Financing Council

6675-State Board of Insurance

6675-Texas Department of Mental Health and Mental
Retardation

6675-Board of Nurse Examiners

6675-Public Utility Commission of Texas

6676-Texas State Board of Public Accountancy

6676-Railroad Commission of Texas

6676-Board of Lease of State-owned Lands

6676-The Texas A&M University System

6676-Texas Water Commission

6677-Texas Water Development Board

6677-Texas Workers' Compensation Commission

6677-Regional Meetings

In Addition

Texas Department of Agriculture

6679-Administrative Penalty Schedule for Pesticide and
Herbicide Law Violations

CONTENTS CONTINUED INSIDE

Texas Register

The *Texas Register* (ISSN0362-4781) is published semi-weekly 100 times a year except June 1, 1990, November 9 and 27, 1990, and December 28, 1990. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78711.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person for any purpose whatsoever without permission of the *Texas Register* director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director. The *Texas Register* is published under Texas Civil Statutes, Article 6252-13a. Second class postage is paid at Austin, Texas.

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

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

Governor-Appointments, executive orders, and proclamations

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

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

Proposed Sections-sections proposed for adoption

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

Adopted Sections-sections adopted following a 30-day public comment period

Open Meetings-notices of open meetings

In Addition-miscellaneous information required to be published by statute or provided as a public service

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes accumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg," and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 6 (1981) is cited as follows: 6 TexReg 2402.

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

How to Research: The public is invited to research rules and information; of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, Austin. Material can be found using Texas Register indexes, the *Texas Administrative Code*, sections number, or TRD number.

Texas Administrative Code

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

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

1 indicates the title under which the agency appears in the *Texas Administrative Code*;

TAC stands for the *Texas Administrative Code*;

§27.15 is the section number of rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).



Texas Register Publications

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, Texas 78711-3824

Secretary of State
George S. Bayoud, Jr.

Director
Dan Procter

Assistant Director
Dee Wright

Documents Section Supervisor
Patty Parris

Documents Editors
Lisa Brull
Janiene Hagel

Open Meetings Clerk
Jill Dahmert

Production Section Supervisor
Ann Franklin

Production Editor

Tyographers
Sherry Rester
Janice Rhea
Carla Carter

Circulation/Marketing
Cheryl Converse
Roberta Knight

TAC Editor
Dana Bianton

TAC Typographer
Madeline Chrisner

Subscriptions-one year (96 regular issues), \$90; six months (48 regular issues and two index issues), \$70. Single copies of most issues are available at \$4 per copy.

State Banking Board

6689–Notice of Hearing Cancellation

Credit Union Department

6689–Notice of Hearing

Texas Commission for the Deaf

6690–Request for Proposal

Texas Department of Health

6691–Correction of Error

State Department of Highways and
Public Transportation

6691–Public Hearing Notice

Legislative Budget Board

6692–Budget Execution Proposal

Texas State Board of Examiners and
Psychologists

6692–Correction of Error

Public Utility Commission of Texas

6692–Notice of Application to Amend Certificate of Con-
venience and Necessity

Texas Racing Commission

6692–Notice of Public Hearing

Texas Youth Commission

6693–Consultant Proposal Request

Texas Register

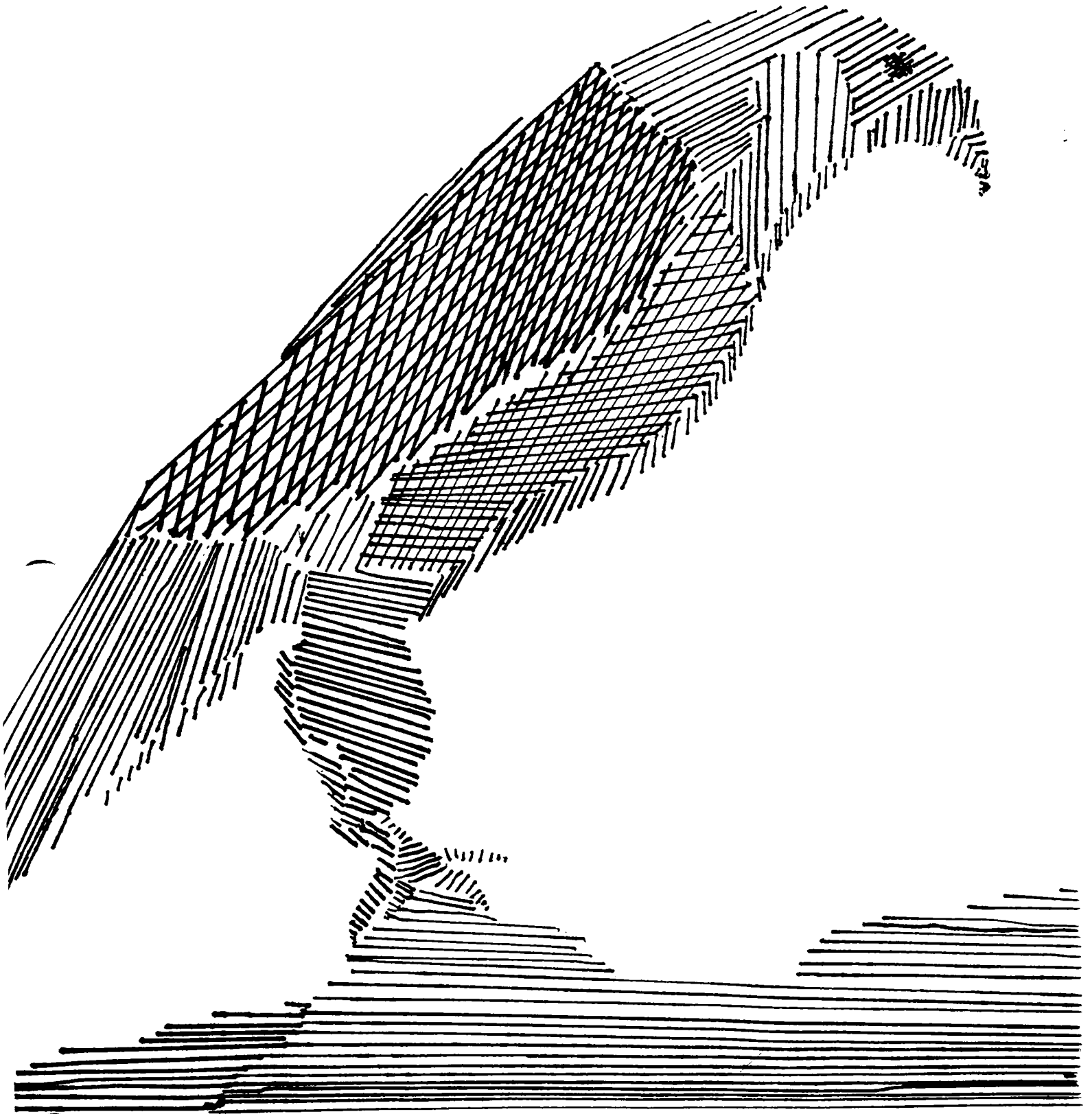
6695–Publication Schedule



Name: David Bovey

Grade: 11

School: Plano East Senior High, Plano ISD



Name: Casey Weidner

Grade: 6

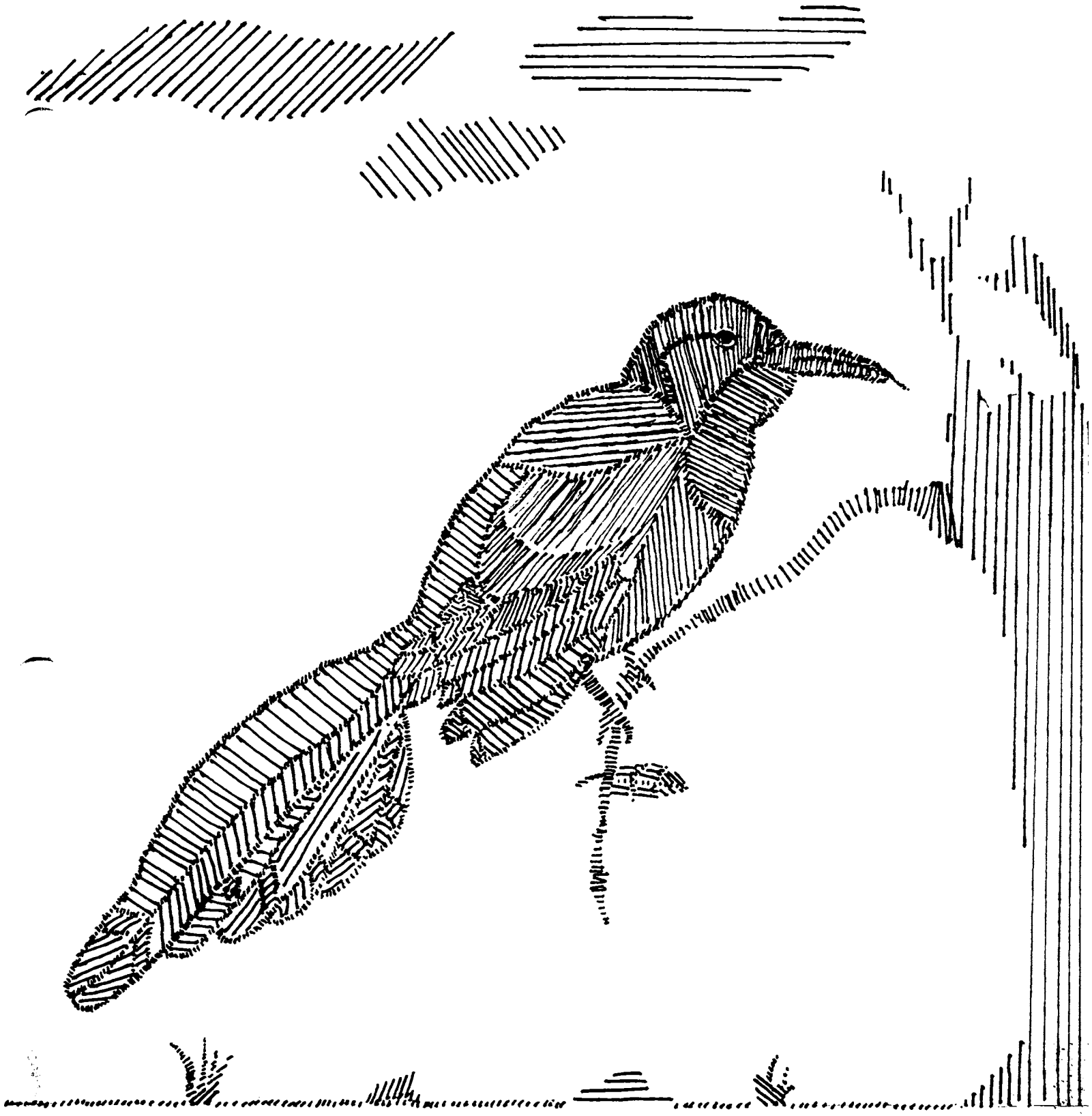
School: Spring Garden Elementary, Hurst-Euless-Bedford ISD



Name: Nancy Yu

Grade: 6

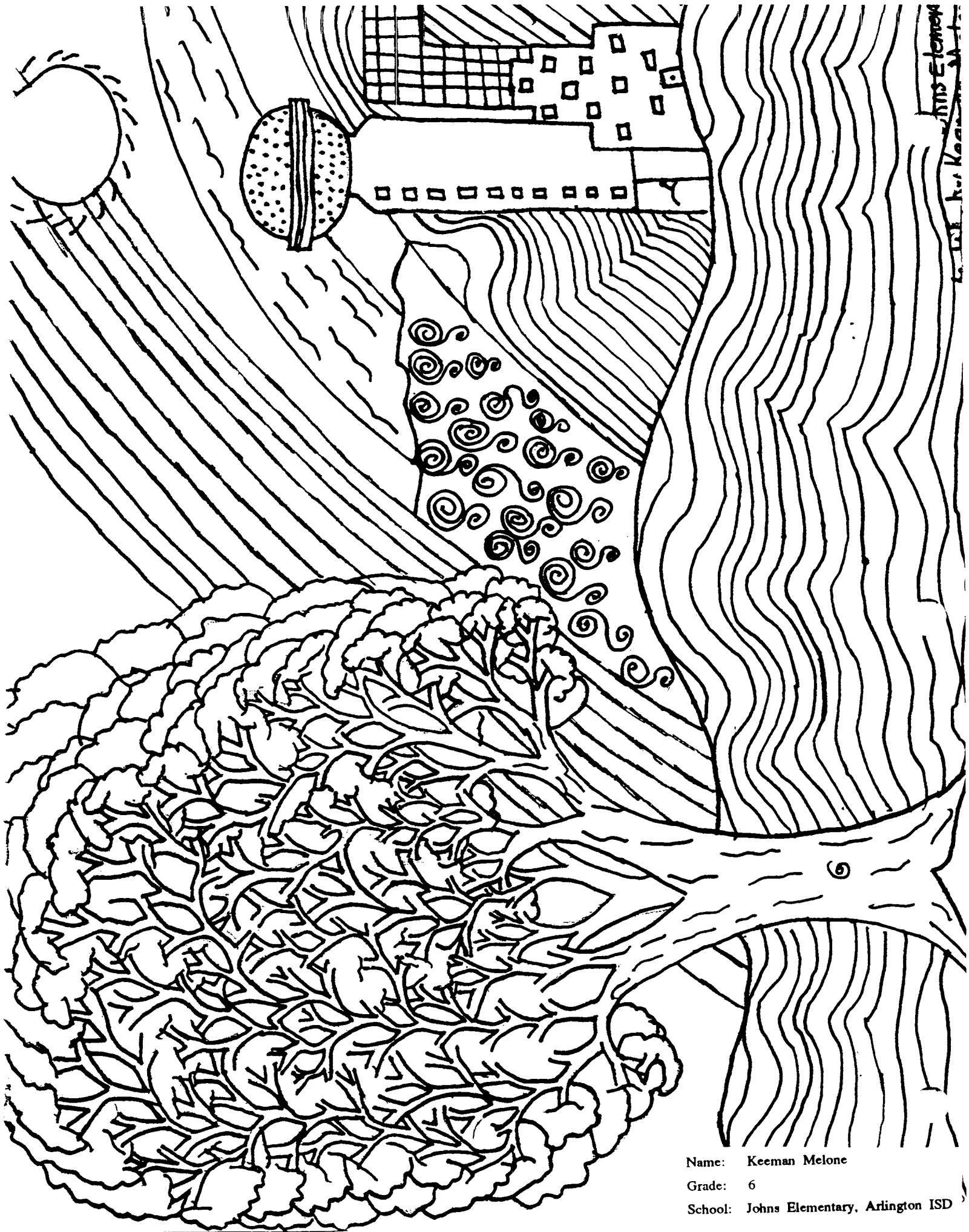
School: Spring Garden Elementary, Hurst-Euless-Bedford ISD



Name: Domingo Ocampo

Grade: 6

School: Spring Garden Elementary, Hurst-Euless-Bedford ISD



Johns Elementary
Arlington, Texas

Name: Keeman Melone
Grade: 6
School: Johns Elementary, Arlington ISD

TAC Titles Affected

TAC Titles Affected—November

The following is a list of the administrative rules that have been published this month.

TITLE 1. ADMINISTRATION

Part I. Office of the Governor

1 TAC §5.401—6289

Part III. Office of the Attorney General

1 TAC §§53.181-53.184—6289

1 TAC §§53.193-53.200—6289

1 TAC §§53.211-53.217—6289

1 TAC §§53.227-53.233—6289

1 TAC §§53.244-53.250—6290

Part V. State Purchasing and General Services Commission

1 TAC §113.1—6290

1 TAC §115.35—6273, 6275

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

4 TAC §5.1—6647

4 TAC §§5.70-5.74—6273

Part III. Texas Feed & Fertilizer Control Service

4 TAC §61.1—6443

4 TAC §61.22—6443

TITLE 7. BANKING AND SECURITIES

Part I. State Finance Commission

7 TAC §3.33—6275

Part II. Banking Department of Texas

7 TAC §11.64—6585, 6587

7 TAC §11.65—6585, 6587

Part VII. State Securities Board

7 TAC §§105.9—6290

7 TAC §109.3—6276

7 TAC §109.13—6290

7 TAC §113.4—6290

7 TAC §113.12—6291

7 TAC §113.13—6276

7 TAC §115.2—6277

7 TAC §115.3—6277

7 TAC §123.1, §123.2—6277

7 TAC §135.3—6278

7 TAC §139.4—6279

TITLE 10. COMMUNITY DEVELOPMENT

Part IV. Texas Housing Agency

10 TAC §§149.1-149.12—6557

10 TAC §§149.1-149.13—6557

Part V. Texas Department of Commerce

10 TAC §178.10—6444—6564

TITLE 13. CULTURAL RESOURCES

Part II. Texas Historical Commission

13 TAC §17.4—6647

Part VIII. State Preservation Board

13 TAC §111.19—6565

13 TAC §111.23—6565

13 TAC §111.24—6566

13 TAC §111.25—6567

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

16 TAC §§1.1-1.7—6359

16 TAC §§1.1-1.9—6359

16 TAC §§1.21-1.25—6361

16 TAC §§1.21-1.29—6361

16 TAC §§1.31-1.39—6362

16 TAC §§1.41-1.48—6362

16 TAC §§1.51-1.54—6363

16 TAC §§1.61-1.64—6364

16 TAC §§1.61-1.65—6364

16 TAC §§1.71-1.79—6364
16 TAC §§1.81-1.85—6365
16 TAC §§1.91-1.98—6365
16 TAC §§1.101-1.108—6366
16 TAC §§1.111-1.114—6367
16 TAC §§1.121-1.123—6367
16 TAC §§1.121-1.129—6367
16 TAC §§1.131-1.136—6368
16 TAC §§1.141-1.152—6369

Part II. Public Utility Commission of Texas

16 TAC §21.24—6444
16 TAC §23.31—6445
16 TAC §23.61—6445

Part IV. Texas Department of Licensing and Regulation

16 TAC §§75.10, 75.30, 75.70, 75.100—6649
16 TAC §79.40—6291
16 TAC §79.101—6279
16 TAC §80.40—6291

Part VI. Texas Motor Vehicle Commission

16 TAC §101.13—6370
16 TAC §103.5—6371
16 TAC §§107.2, 107.8—6446
16 TAC §107.8—6395

Part VIII. Texas Racing Commission

16 TAC §301.1—6587
16 TAC §303.41—6587
16 TAC §305.68—6555, 6568
16 TAC §307.201—6587
16 TAC §309.35—6588
16 TAC §309.56—6555, 6568,
16 TAC §309.68—6588
16 TAC §309.70—6588
16 TAC §309.71—6588
16 TAC §309.72—6588
16 TAC §309.112—6589

16 TAC §309.302—6585
16 TAC §309.360—6589
16 TAC §311.15—6555, 6568,
16 TAC §311.107—6589
16 TAC §315.101—6556, 6569
16 TAC §315.102—6556, 315.102
16 TAC §319.2—6589
16 TAC §319.3—6589
16 TAC §319.4—6590
16 TAC §319.8—6590

16 TAC §319.10—6590
16 TAC §319.13—6590
16 TAC §319.306—6590
16 TAC §319.331—6591
16 TAC §321.112—6591
16 TAC §321.113—6591
16 TAC §321.115—6591
16 TAC §321.116—6591
16 TAC §321.117—6592

TITLE 19. EDUCATION

Part II. Texas Education Agency

19 TAC §61.21—6569
19 TAC §§61.30-61.31—6570
19 TAC §69.3—6397
19 TAC §69.128—6571
19 TAC §75.64—6292
19 TAC §75.141, §75.142—6292
19 TAC §§75.166, 75.168, 75.169, 75.173—6293
19 TAC §89.120—6293
19 TAC §89.131—6293
19 TAC §97.5—6294
19 TAC §121.31—6294
19 TAC §129.61—6397
19 TAC §141.443—6572
19 TAC §143.11—6397
19 TAC §149.25—6572

19 TAC §§149.41, 149.45, 149.46—6397

19 TAC §149.43—6295

Part VI. Foundation School Fund Budget Committee

19 TAC §§201.1, 201.5, 201.9, 201.13, 201.17, 201.21, 201.25, 201.29—6441, 6447

19 TAC §§203.1, 203.5, 203.10, 203.15, 203.20, 203.25, 203.30—6447

TITLE 22. EXAMINING BOARDS

Part I. Texas Board of Architectural Examiners

22 TAC §§1.161-1.177—6592

22 TAC §§1.161-1.179—6592

Part VI. Texas State Board of Professional Engineers

22 TAC §131.92—6449

22 TAC §131.133—6450

22 TAC §131.134—6399

22 TAC §131.155—6400

Part XXI. State Board of Examiners of Psychologists

22 TAC §471.4—6295

22 TAC §473.3—6295

Part XXIII. Texas Real Estate Commission

22 TAC §§535.71-535.72—6573

22 TAC §539.51—6593

Part XXIX. Texas Board of Professional Land Surveying

22 TAC §§661.1-661.11—6450

22 TAC §§661.21-661.24—6451

22 TAC §§661.23, 661.24—6452

22 TAC §661.31—6452

22 TAC §§661.41-661.47—6452

22 TAC §§661.61-661.94—6454

22 TAC §§661.62-661.65, 661.67-661.70, 661.72-661.75, 661.77-661.80, 661.82-661.88, 661.91, 661.93—6454

22 TAC §661.101—6456

22 TAC §661.111—6456

22 TAC §661.120—6457

22 TAC §661.121—6457

22 TAC §§661.131-661.133—6457

22 TAC §§663.1-663.11—6457

22 TAC §§663.1-663.12—6458

22 TAC §§664.1-664.11—6460

Part XXXI. Texas State Board of Examiners of Dieticians

22 TAC §§711.1-711.15—6650

Part XXXII. State Committee of Examiners for Speech-Language Pathology and Audiology

22 TAC §741.163—6371

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

25 TAC §§13.31-13.34—6296

25 TAC §§37.47, 37.48—6400

25 TAC §37.281—6372

25 TAC §97.21—6401

25 TAC §98.9—6373

25 TAC §98.69—6374

25 TAC §125.1, §125.6—6671

25 TAC §133.21—6402

25 TAC §§145.211, 145.212, 145.214, 145.217—6376

25 TAC §§145.231-145.244—6386

25 TAC §§145.251-145.256, 145.258, 145.261, 145.263-145.265—6387

25 TAC §181.12—6390

25 TAC §181.22—6390

25 TAC §§289.111, §289.121—6296

25 TAC §§337.3, 337.19-337.21—6297

TITLE 28. INSURANCE

Part I. State Board of Insurance

28 TAC §1.100—6462

28 TAC §§3.3306-3.3309, 3.3317, 3.3319-3.3321—6594

28 TAC §5.4101—6279

28 TAC §5.4602, §5.4603—6299

28 TAC §7.23—6300

28 TAC §7.58—6442

28 TAC §7.1414—6300

28 TAC §27.16—6442

28 TAC §27.215—6442

28 TAC §110.5, §110.106—6280

Part II. Texas Workers' Compensation Commission

28 TAC §102.4—6391, 6463

28 TAC §104.1—6391, 6463

28 TAC §§130.1, 130.2, 130.3, 130.5, 130.6, 130.7—6464

28 TAC §§130.1-130.3, 130.5-130.7—6391

28 TAC §130.4—6660

28 TAC §§134.100, 134.101—6466

28 TAC §§142.1-142.18—6391, 6467

28 TAC §§143.1-143.5—6473

28 TAC §150.1—6662

28 TAC §§152.1-152.5—6662

28 TAC §166.2—6284

28 TAC §166.111—6284

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

31 TAC §101.1—6300

31 TAC §§101.6, 101.7—6475

31 TAC §111.111—6302

31 TAC §§111.121, 111.123, 111.1215, 111.127, 111.129—6303

31 TAC §111.129—6317

Part IX. Texas Water Commission

31 TAC §335.29—6476

31 TAC §335.112—6477

31 TAC §§335.160, 335.168, 335.173—6477

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

34 TAC §3.21—6499

34 TAC §3.300—6600

34 TAC §3.310—6602

34 TAC §3.317—6576

Part II. Texas State Treasury Department

34 TAC §§11.2-11.37—6274

Part IV. Employees Retirement System of Texas

34 TAC §§63.3, 63.4—6499

34 TAC §63.7—6480

34 TAC §§73.11, 73.21—6480

34 TAC §77.11—6481

34 TAC §81.7—6500

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

37 TAC §3.4—6317

37 TAC §§15.1, 15.5, 15.7—6501

37 TAC §§15.2-15.4—6501

37 TAC §15.59—6501

37 TAC §§15.91-15.93—6502

37 TAC §§19.1-19.7—6602

Part III. Texas Youth Commission

37 TAC §81.112—6645

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.902—6285

40 TAC §§4.1004, 4.1006—6391

40 TAC §8.2—6577

40 TAC §§15.442, 15.443—6317

40 TAC §27.203—6502

40 TAC §27.9801—6668

40 TAC §§33.501-33.508—6578

40 TAC §§33.601-33.606—6579

40 TAC §48.2703—6481

40 TAC §48.3905—6318

40 TAC §49.511—6318

40 TAC §50.901—6482

40 TAC §85.2026—6318

Part III. Texas Commission on Alcohol and Drug Abuse

40 TAC §141.71—6319

Part IV. Texas Commission for the Blind

40 TAC §159.22—6583

Part IX. Texas Department on Aging

40 TAC §251.11—6286

40 TAC §251.12—6483

40 TAC §§268.3, 268.6, 268.7, 268.13—6486

40 TAC §§285.2, 285.3—6486

40 TAC §294.1—6488

TITLE 43. TRANSPORTATION

Part I. State Department of Highways and Public Transportation

43 TAC §1.101-1.103, 1.105-1.107—6489

43 TAC §§1.300-1.305—6503

43 TAC §17.51—6357, 6392

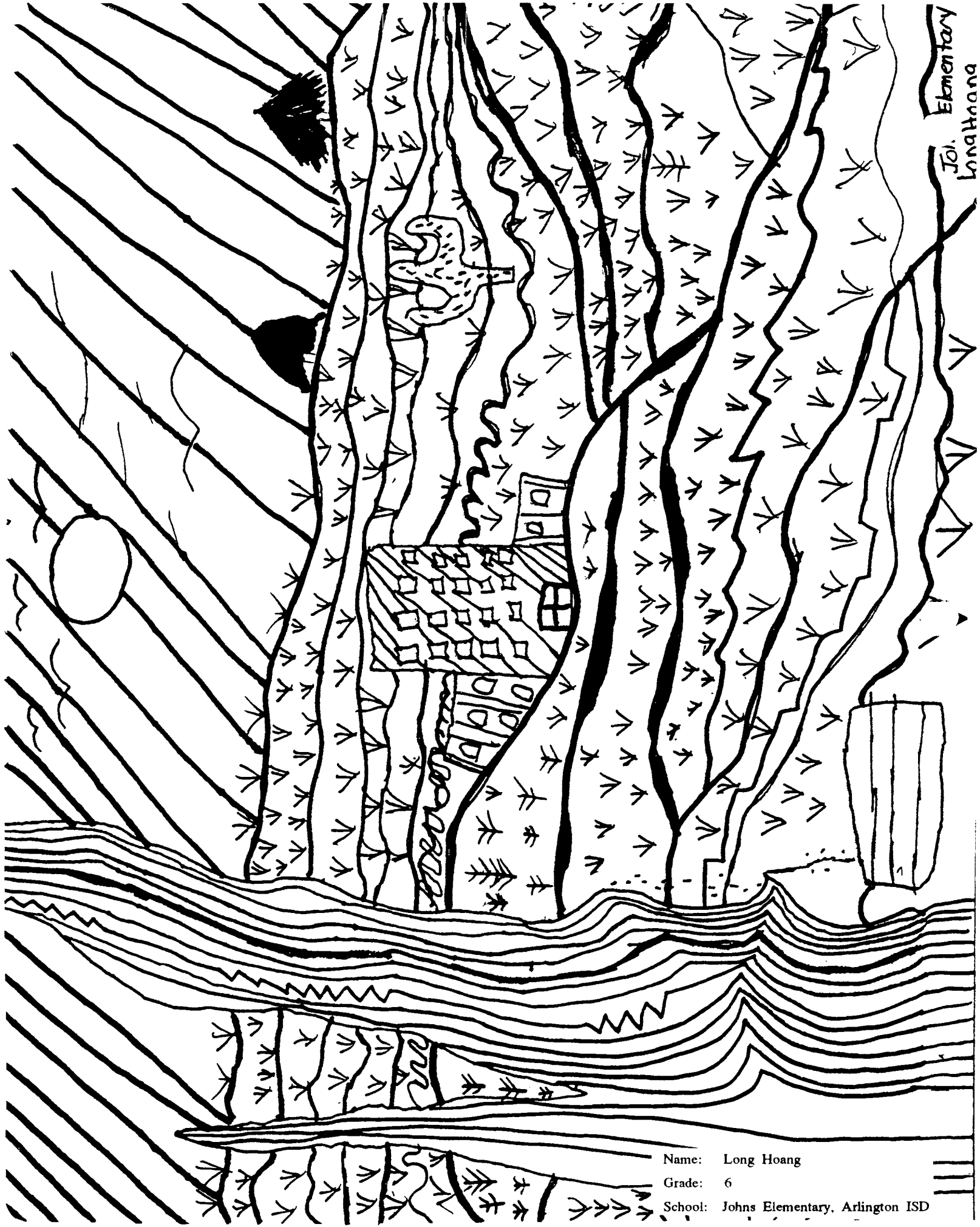
43 TAC §21.150—6494

43 TAC §21.601—6319

Part IV. Texas High-Speed Rail Authority

43 TAC §§83.101, 83.102—6403

◆ ◆ ◆



Name: Long Hoang

Grade: 6

School: Johns Elementary, Arlington 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 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 81. Administrative Provisions

Case Management System for Delinquent Youth

• 37 TAC §81.112

The Texas Youth commission adopts on an emergency basis an amendment to §81.112, concerning the commission's classification. Controlled substances dealer is being added as a classification. The emergency amendment will allow the commission to classify appropriate youth as controlled substances dealer and assign a minimum length of stay of six months. The emergency adoption is necessary in order for the commission to retain youth as necessary for longer periods of time.

The amendment is adopted on an emergency basis under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules, appropriate to proper accomplishment of its functions.

§81.112. Classification.

(a) (No change.)

(b) Rules.

(1) Classifications.

(A)-(F) (No change.)

(G) **Controlled substances dealer. Any youth found to have engaged in a felony-level manufacture or sale of offense under the Texas Controlled Substances Act will be classified as a controlled substances dealer (CSD). CSD youth are assigned to a facility of higher restriction for a minimum stay of six months unless other circumstances war-**

rant a classification with longer minimum length of stay prevails. Commission of a CSD offense may be found by a court or during a Level I hearing. Parole will be revoked if a youth on parole is reclassified to CSD. If there are extenuating circumstances incident to an offense which would otherwise result in CSD classification, the youth will be classified as a non-violent offender with no minimum length of stay.

(2) (No change.)

Issued in Austin, Texas, on November 13, 1990.

TRD-9012145

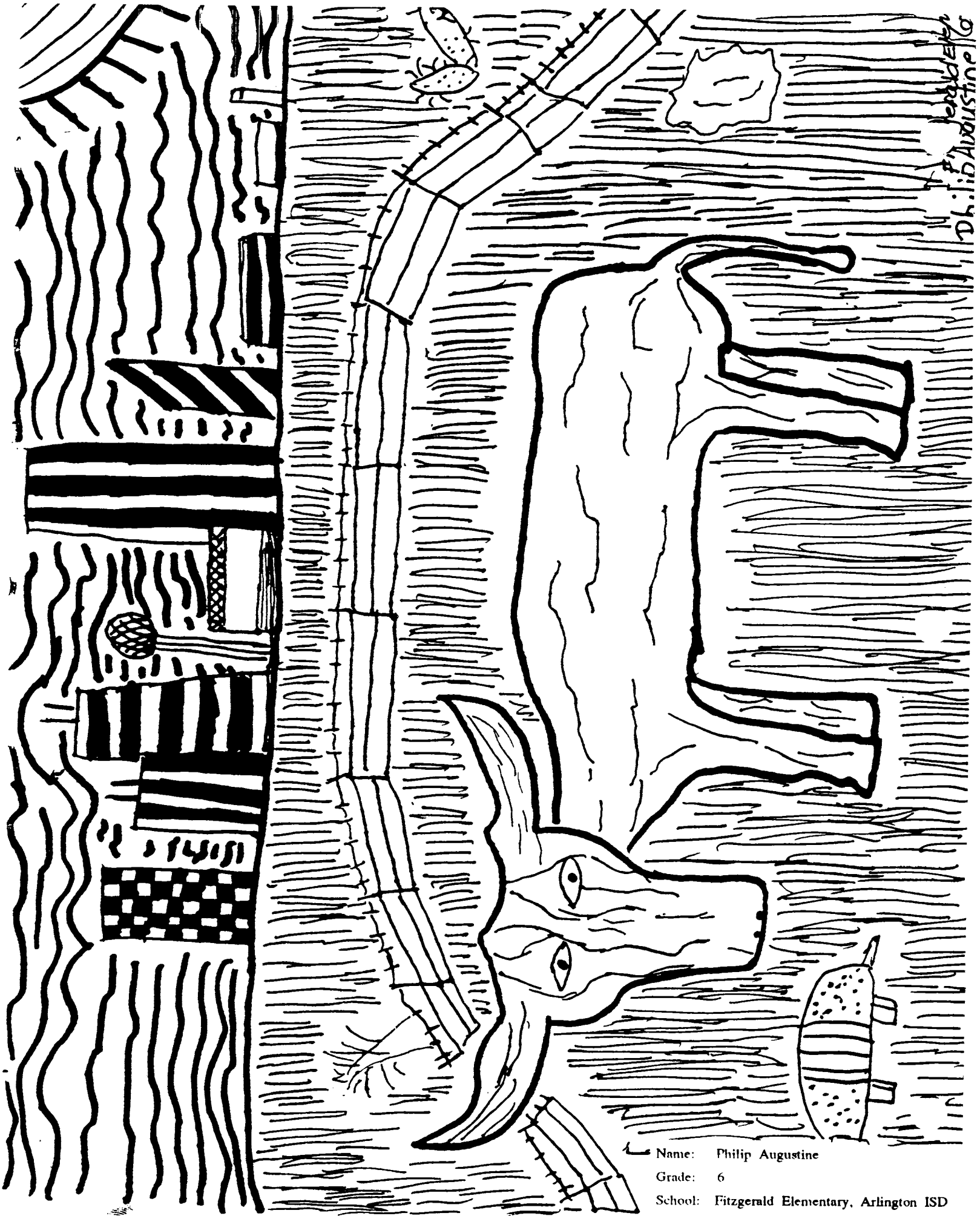
Ron Jackson
Executive Director
Texas Youth Commission

Effective date: November 28, 1990

Expiration date: March 28, 1991

For further information, please call: (512) 483-5244

◆ ◆ ◆



Philip Augustine
Dh. J. D. Augustine

Name: Philip Augustine

Grade: 6

School: Fitzgerald Elementary, Arlington ISD

Proposed Sections

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

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

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 5. Quarantines

Imported Fire Ant Quarantine

• 4 TAC §5.1

(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 Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (TDA) proposes the repeal of §5.1, concerning quarantined areas under the imported fire ant quarantine. The section lists the counties and portions thereof which are designated as quarantined. The section is being repealed so that TDA may adopt by reference the Texas counties or portions thereof listed as regulated under the federal imported fire ant quarantine. The adoption by reference of Texas counties listed as regulated in the federal imported fire ant quarantine will allow for inclusion of more Texas counties in the quarantined area and for more uniform enforcement.

Danny Johnson, quarantine specialist, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government.

There will be no effect on local employment.

Mr. Johnson, 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 addition of more Texas counties to the imported fire ant quarantine, resulting in more regulation to prevent the spread of the fire ant to noninfested areas, and more uniform enforcement of the quarantine. There will be no effect on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposed may be submitted to Dolores Alvarado Hibbs, Director of Hearings, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

The repeal is proposed under the Texas Agriculture Code, §71.002, which provides TDA with the authority to quarantine an infested area when TDA determines that a dangerous pest not widely distributed in the state exists within an area of the state.

§5.1. Quarantined Areas

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

Issued in Austin, Texas, on November 13, 1990.

TRD-9012176

Dolores Alvarado Hibbs
Director of Hearings
Texas Department of
Hearings

Earliest proposed date of adoption: December 21, 1990

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

◆ ◆ ◆
The Texas Department of Agriculture (TDA) proposes new §5.1, concerning quarantined areas under the imported fire ant quarantine. The new section, as proposed, adopts by reference as quarantined areas all Texas counties, or portions thereof, listed as regulated areas in the most current federal imported fire ant quarantine found at 7 Code of Federal Regulations, §301.81-2a. The new section will make the Texas imported fire ant quarantine consistent with the federal quarantine and will result in more uniform enforcement.

Danny Johnson, quarantine specialist, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government. There will be no effect on local employment.

Mr. Johnson, 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 addition of more Texas counties to the imported fire ant quarantine, resulting in more regulation to prevent the spread of the fire ant to noninfested areas, and more uniform enforcement of the quarantine. There will be no effect on small or large 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 Dolores Alvarado Hibbs, Director of Hearings, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

The new section is proposed under Texas Agriculture Code, §71.002, which provides TDA with the authority to quarantine and infested area when TDA determines that a dangerous pest not widely distributed in the state exists within an area of the state.

§5.1. Quarantined Areas. The Texas Department of Agriculture hereby adopts by reference as quarantined areas those counties in Texas, or portions thereof, listed as regulated areas in the most current federal imported fire ant quarantine as adopted by the United States Department of Agriculture, and found at 7 Code of Federal Regulations, §301.81-29a.

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

Issued in Austin, Texas, on November 13, 1990.

TRD-9012175

Dolores Alvarado Hibbs
Director of Hearings
Texas Department of
Agriculture

Earliest proposed date of adoption: December 21, 1990

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

◆ ◆ ◆ Title 13. CULTURAL RE-SOURCES

Part II. Texas Historical Commission

Chapter 17. State Architectural Programs

◆ ◆ ◆ • 13 TAC §17.4

The Texas Historical Commission proposes new §17.4, concerning state architectural programs, Texas preservation trust fund. The preservation trust fund was the enactment of Senate Bill 294 by the 71st Legislature (1989), which amended the Texas Government Code, Chapter 442, by adding §442.0071.

George Ramirez, fiscal officer, 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.

Curtis Tunnell, executive director, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the section will inform the public of a new vehicle which may give the agency the opportunity to receive as well as grant and loan monies to applicants for the acquisition, restoration, and preservation of historic prop-

erties in the State of Texas. There will be no effect on small businesses. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Cindy Laguna Dally, Texas Historical Commission, P.O. Box 12276; Austin, Texas 78711, (512) 463-6100.

The new section is proposed under the Texas Government Code, Chapter 442, which provide the Texas Historical Commission with the authority to adopt rules as it considers proper for the effective administration of this chapter (§442.005(q)).

§174. Texas Preservation Trust Fund.

(a) Definition. The Texas preservation trust fund (hereinafter referred to as trust fund or fund) is a fund in the state treasury, created by enactment of Senate Bill 294 by the 71st Texas Legislature (1989), which amended the Texas Government Code, Chapter 442, by adding §442.0071. The trust fund shall consist of transfers made to the fund, including state and federal legislative appropriations, grants, donations, proceeds of sales, loan repayments, interest income earned by the fund, and any other monies received. Funds may be received from federal, state, or local government sources, organizations, charitable trusts and foundations, private individuals, business or corporate entities, estates, or any other source.

(b) Purpose. The purpose of the Texas preservation trust fund is to serve as a source of funding for the Texas Historical Commission (THC) to provide financial assistance to qualified applicants for the acquisition, restoration, and preservation of historic properties in the State of Texas.

(c) Property eligibility. Historic properties must either be listed on the *National Register of Historic Places*, designated as recorded Texas historic landmarks, or determined eligible for such designation(s) by THC staff at the time of application for fund assistance. Priority shall be given to those properties determined by THC to be endangered by impending demolition, neglect, underuse, or other threat.

(d) Fund recipient eligibility. Any public or private entity, including those whose purposes include historic preservation, and that is either the owner, manager, lessee, maintainer, or potential purchaser of an eligible historic property is eligible for fund assistance.

(e) Types of assistance. The THC shall provide financial assistance in the form of grants or loans. Grant recipients shall be required to follow the terms and conditions of the Texas Historic Preservation Grant Program or other terms and conditions imposed by THC at the time of the grant award. Loans shall have a term not to exceed five years at an interest rate at or below the prime interest rate at the time the loan is made.

(f) Preservation easements and covenant. The owner of record (and the mortgagee, if applicable) of any property benefiting from fund assistance shall encumber the title of the property with a preservation easement and covenant in a form prescribed by THC prior to disbursement of any fund monies.

(g) Allowable use of trust fund monies. If no specification is made, 90% of the money deposited to the fund shall be used for historic architectural projects and 10% shall be used for prehistoric and historic archeological projects. Money deposited to the fund specifically for architectural projects or archeological projects must be in the amount of \$100 or more and shall only be used for the type of projects specified. Money may be deposited to the fund in the amount of \$100 or more for a specific architectural or archeological project provided that the project specified has received prior approval of THC and that all other requirements herein are met. In all cases, the proceeds or interest on such monies shall be unencumbered and shall accrue to the benefit of the entire fund.

(h) Organization. The Texas preservation trust fund shall be administered by THC through its trust fund committee. The trust fund advisory board, trust fund guardians, and THC staff shall provide support and input as needed.

(i) Texas Historical Commission Preservation Trust Fund Committee (hereinafter referred to as trust fund committee). The trust fund committee shall be appointed by the chairman of the Texas Historical Commission. All actions of the Texas trust fund committee are subject to ratification by the full Texas Historical Commission. Duties of the Trust Fund Committee are:

(1) to appoint the advisory board after considering the recommendations of the Texas governor, lieutenant governor, and the speaker of the house, and to make reappointments to the advisory board, as needed;

(2) to appoint the guardians and to make reappointments to the guardians, as needed;

(3) to approve all rules, regulations, policies, and guidelines for the administration of the fund or any of its associated boards and committees;

(4) to approve the acceptance of grants or other donations of money, property, and/or services from any source. Money received shall be deposited to the credit of the Texas preservation trust fund;

(5) to provide final approval of all trust fund allocations based on advisory board and THC staff recommendations; and

(6) to establish, organize, and direct the efforts of a broad-based, statewide membership organization to support the trust fund.

(j) Texas Preservation Trust Fund Advisory Board (hereinafter referred to as Advisory Board):

(1) In accordance with Senate Bill 294, which created the Texas preservation trust fund, the advisory board shall consist of:

(A) One representative of a bank or savings and loan association;

(B) One attorney with a recognized background in historic preservation;

(C) Two architects with substantial experience in historic preservation;

(D) One archeologist with substantial experience in Texas archeology;

(E) One real estate professional with experience in historic preservation;

(F) Two Persons with a demonstrated commitment to historic preservation; and

(G) One director of a non-profit historic preservation organization.

(2) Members of the advisory board shall serve a two-year term expiring on February 1 of each odd numbered year. Initial appointments shall be made for staggered terms of one year for four members and two years for five members. Advisory Board members may be reappointed. A member of the advisory board is not entitled to compensation for his service, but is entitled to reimbursement for reasonable expenses incurred while attending advisory board meetings. The advisory board shall elect a chairman for a two-year term from among its membership at its first regularly scheduled meeting. Subsequent elections for chairman shall be held at the end of the existing chairman's term. The chairman shall not serve in that capacity for more than two consecutive two-year terms. The advisory board shall meet annually in conjunction with the THC quarterly meeting in the fall of each year and at other times as determined by their chairman. Duties of the advisory board are:

(A) to develop rules for the assessment of projects;

(B) to make recommendations to THC through the Trust Fund Committee on all trust fund project allocations of \$20,000 or more, as per the trust fund statute;

(C) to consult with and advise the THC trust fund committee and THC staff on matters relating to more efficient utilization or enhancement of the trust

fund in order to further the cause of historic preservation throughout Texas; and

(D) to provide advice and guidance in their respective area of expertise.

(k) Texas preservation trust fund guardians (hereinafter referred to as guardians). The guardians shall consist of up to 25 persons appointed for two-year terms by the Texas Historical Commission. The Texas Historical Commission shall appoint guardian members based on their demonstrated commitment to historic preservation. The guardians shall elect a chairman for a two-year term from among its membership at its first regularly scheduled meeting. Subsequent elections for chairman shall take place at the end of the existing chairman's term. The chairman shall not serve in that capacity for more than two two-year terms. The guardians may elect additional officers or establish committees, as needed. The guardians shall meet annually in conjunction with the THC quarterly meeting and annual historic preservation conference held in the spring of each year and at other times as determined by their chairman. Duties of the guardians are:

(1) to assist THC in achieving the goal of preserving historic architectural and prehistoric and historic archeological properties of the state for the benefit of future generations;

(2) to serve as an organized network of persons familiar with preservation problems and potential in their respective geographical region of the state to utilize their interest, leadership, and resources to further the objectives of the trust fund;

(3) to cultivate and develop known or potential sources of direct support, both financial and otherwise, and to inform THC of individuals or organizations that are seeking assistance for preservation projects or considering the disposition of historically significant properties or potential donors of property or other assets to the trust fund; and

(4) to serve as spokesman and ambassadors of the trust fund to local organizations, political subdivisions of the state, and the general public.

(1) Texas preservation trust fund membership organization (hereinafter referred to as membership organization). The membership organization shall consist of individuals and organizations from across the state and beyond that demonstrate support of the goals and purposes of the Texas preservation trust fund through the payment of annual membership dues. Privileges and benefits shall be established by the THC for each level of membership.

(m) Texas preservation trust fund staff. The executive director of THC shall organize and administer the staff for the Texas preservation trust fund.

(n) General provisions.

(1) Code of conduct—the THC code of conduct shall apply to members of the advisory board and guardians.

(2) Gender—As used herein, the masculine pronoun shall include the feminine.

(3) Vacancies—Any vacancy on a trust fund committee or board may be filled at any time in the same manner as the incumbent member was elected or appointed.

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 October 26, 1990.

TRD-9012105

Curtis Tunnell
Executive Director
Texas Historical
Commission

Earliest possible date of adoption: December 21, 1990

For further information, please call: (512) 463-6100

◆ ◆ ◆
**TITLE 16. ECONOMIC
REGULATION**
**Part IV. Texas Department
of Licensing and
Regulation**
**Chapter 75. Air Conditioning
and Refrigeration Contractor
License Law**

• **16 TAC §§75.10, 75.30, 75.70,
75.100**

The Texas Department of Licensing and Regulation proposes amendments to §§75.10, 75.30, 75.70, and 75.100, concerning definitions, exemptions, responsibilities of the licensee, and technical requirements. In §75.10 three definitions have been revised for clarity and one new definition is added to specify equipment mentioned in the rules. A sentence addressing direct personal supervision is removed from §75.30, revised for clarity, and added to a more appropriate place in §75.70. In §75.100 the permitted area of placement for a disconnect is expanded.

Meryl Vaughan, administrative assistant, boiler section, has determined that for the first five-year period the sections are in effect there will not be fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Vaughan, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the section as proposed will be a better informed public as to who is responsible for the work for which they have contracted. There will be no effect on small businesses. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Elvis Schulze, General Counsel, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711.

The amendments are proposed under Texas Civil Statutes, Article 8861, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Act.

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

Air conditioning and refrigeration subcontractor—A person contracting [contracted by a Texas air conditioning contractor license (TACL) licensed contractor] to perform a portion of a contract for the design, installation, construction, alteration, or modification of a product or of equipment in environmental air conditioning, commercial refrigeration, or process cooling or heating systems, wherein [certain task.] the TACL licensed contractor is responsible for the completed, end, or finished product of the work performed by the subcontractor.

Air conditioning or heating unit—A stand-alone system with its own controls which cools a specific space and which does not require connection to other equipment in order to function.

Direct personal supervision—Directing and verifying the design, installation, construction, maintenance, service, repair, alteration, or modification of a product or of equipment, for compliance with mechanical integrity. [Will be satisfied if the entity employed a full time licensee in a responsible position. Each air conditioning and refrigeration contractor licensed under the Act shall have a full time licensee in direct supervision of the work in each of his permanent offices.]

Permanent office—Any office, branch office, or location which has the ability to enter into contractual obligations to perform air conditioning and/or refrigeration contracting work and/or have control or [and] supervisory responsibility over these contracts.

§75.30. Exemptions.

(a) The Air Conditioning and Refrigeration Contractor License Law (the Act) and its rules and regulations do not apply to a person who:

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

(8) assists in the performance of air conditioning and refrigeration contracting work under the direct personal supervision of a license holder. A person who assists in the performance of air conditioning and refrigeration work may not engage in the practice of air conditioning and refrigeration work for the general public without being under direct personal supervision

by a duly licensed air conditioning and refrigeration contractor. To directly supervise air conditioning and refrigeration work, a license holder must accept responsibility for work done by those persons assisting the license holder in meeting the standards for air conditioning and refrigeration work established by the commissioner under the Act];

(9)-(11) (No change.)

(b)-(d) (No change.)

§75.70. Responsibilities of the Licensee.

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

(f) Each air conditioning and refrigeration contractor licensed under the Act shall [will] have a licensee employed full time in [direct supervision of the work in] each of the [his] permanent offices. All work performed shall be under the direct personal supervision of the licensed individual(s) whose valid license number shall appear in all proposals and invoices prepared by the contractor.

(g) A licensee must register all [assumed] names under which he operates, [whether registered with the secretary of state, a county clerk, or elsewhere] and these assumed names shall be listed with his license. All assumed names used and registered must be accompanied by a certificate of insurance which indicates the primary company name and the assumed names being covered. Failure to keep the registration current will result in suspension of the license. All notification will be in writing and submitted within 30 days of any change. Only legally registered assumed names will be accepted.

(h)-(i) (No change.)

§75.100. Technical Requirements.

(a) (No change.)

(b) Electrical connections.

(1) (No change.)

(2) Air conditioning and refrigeration contractors licensed under this law may replace and reconnect environmental air conditioning, commercial refrigeration, process cooling or heating systems, or component parts of the same or lesser amperage. On replacement environmental air conditioning, commercial refrigeration, process cooling, or heating systems where the electrical disconnect has not been installed and is required by the National Electrical Code, the air conditioning and refrigeration contractor may install a disconnect directly adjacent to or on the replacement system and reconnect the system.

(3)-(6) (No change.)

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and

found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 12, 1990.

TRD-9012144

Larry E. Kosta
Executive Director
Texas Department of
Licensing and
Regulation

Earliest proposed date of adoption: December 21, 1990

For further information, please call: (512) 463-3127

TITLE 22. Examining Boards Part XXXI. Texas State Board of Examiners of Dietitians

Chapter 711. Dietitians

Licensure

• 22 TAC §§711.1-711.15

The Texas State Board of Examiners of Dietitians, with the approval of the Texas Board of Health, proposes amendments to §§711.1-711.15, concerning dietitians. The sections cover definitions; the board's operation; the profession of dietetics; academic requirements for licensure; experience requirements for examination; examinations for dietitian licensure; application procedures; determination of eligibility; provisional licensed dietitians; licensing; changes of name and address; license renewal; licensing of persons with criminal backgrounds; violation, complaints, and subsequent board actions; and formal hearings.

The amendments include combining the application and initial license fee to expedite processing applications and issuing initial licenses to eligible applicants; increasing the supervision requirements for provisional licensed dietitians; expanding the code of ethics; changing the organization of the rules to assist licensees in understanding and following the rules and regulations; and changing the procedures to process complaints.

Stephen Seale, Chief Accountant III, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections as proposed.

Mr. Seale also has determined that for each year of the first five years the sections are in effect the public benefit will be to assure that the licensing and regulation of dietitians continues to identify competent practitioners. There will be no cost to small or large businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There will be no impact on local employment.

Comments on the proposal may be submitted to Becky Berryhill, Executive Secretary, Texas State Board of Examiners of Dietitians, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 459-2945. Comments will be accepted 30 days following publication of the proposed sections in the *Texas Register*.

The board will conduct a public hearing beginning at 9 a.m., December 12, 1990, at the Texas Department of Health, 1100 West 49th Street, Austin. The purpose of the hearing is to receive testimony regarding the proposed amendments.

The amendments are proposed under Texas Civil Statutes, Article 4512h, §6, which provide the Texas State Board of Examiners of Dietitians with the authority to adopt rules consistent with the Licensed Dietitian Act.

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

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

Contested case—A proceeding in accordance with APTRA and this chapter, including, but not restricted to, rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.

Formal hearing—A formal hearing or proceeding in accordance with this chapter and includes a contested case.

Hearing examiner—A person duly designated and appointed by the chairman of the board who conducts formal hearings under this chapter on behalf of the board.

Pleading—Any written allegation filed by a party concerning its claim or position.

§711.2. The Board's Operation.

(a)-(i) (No change.)

(j) Rules of order. The latest edition of Roberts Rules of Order [Revised] shall be the basis of parliamentary decisions except where otherwise provided by these board rules.

(k)-(n) (No change.)

(o) Committees.

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

(7) The following standing committees shall be appointed by the newly elected chairman each odd-numbered year to serve a term of two years.

(A) (No change.)

[(B) The Complaint Committee shall be composed of two board members who are licensed dietitians and one public member of the board. The committee shall process all complaints received by the board and shall recommend to the board action to be taken on complaints in accordance with §711.14 of this title (relating to Violations, Complaints, and Subsequent Board Actions) and review the applications that the executive secretary determines should not be approved.]

(B)[(C)] The Program Approval Committee shall be composed of three board members who are licensed dietitians. The committee shall review all applications for internship and preplanned professional experience programs received by the board and shall either approve or deny the applications. Determinations made by the committee are subject to ratification at the next regular meeting of the board.

(C)[(D)] The Consumer Information Committee shall be composed of two board members who are licensed dietitians and one public member of the board. The committee shall recommend to the executive secretary the publication of consumer information related to the board and shall guide the preparation of all consumer information related publications. The committee shall recommend to the board action to be taken regarding proposed publications.

(8) **The Complaint Committee shall be composed of a persons appointed by the chairman. The committee may review complaints received by the board and shall recommend action to be taken on complaints in accordance with §711.14 of this title (relating to Violations, Complaints, and Subsequent Board Actions).**

(p)-(q) (No change)

(r) License certificates.

[(1) The board shall prepare and provide to each licensee a license certificate and license identification card which contain the licensee's name, license number, and date of licensure.

[(2) Official license certificate shall be signed by the chairman and vice-chairman and be affixed with the seal of the board. Official license identification cards shall bear the signatures of the chairman and the executive secretary.

[(3) Any license certificate and license identification card issued by the board remain the property of the board and must be surrendered to the board on demand.

[(4) The license certificate must be displayed in an appropriate and public manner as follows:

[(A) the license certificate shall be displayed in the primary office or place of employment of the licensee; or

[(B) in the absence of a primary office or place of employment, or when the licensee is employed at multiple locations, the licensee shall carry a current board issued license identification card.

[(5) Neither the licensee nor anyone else shall display a photocopy of a license certificate or carry a photocopy of a license identification card in lieu of the

original license certificate or license identification card.

[(6) Neither the licensee nor anyone else shall make any alteration on a license certificate or license identification card issued by the board.]

(r) [(s)] Registry.

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

(s)[(t)] Consumer information. The executive secretary, on behalf of the board of health, and with the approval of the board, shall publish information of consumer interest which describes the regulatory functions of the board, board procedures to handle and resolve consumer complaints, and the profession of dietetics. Distribution of consumer information shall follow the department's guidelines for distribution of literature and forms.

(t) [(u)] Fees.

(1) (No change.)

(2) Schedule of fees for licensure as a dietitian and a provisional licensed dietitian:

(A) application (includes initial license) [processing] fee-~~\$54~~[\$30];

(B) license fee for upgrade of provisional licensed dietitian -- ~~\$20~~[\$24 (prorated at \$2.00 per month);

(C)-(E) (No change.)

(F) license certificate and identification card replacement fee ~~-\$20~~[\$10];

[(G) license identification card replacement fee-~~\$10~~;]

(G) [(H)] examination fee - the fee designated by the commission at the time of the examination or reexamination; and

(H)[(I)] application processing fee for preplanned professional experience approval-~~\$350~~.[:]

[(J) fees for upgrading PLD-\$10.]

(3)-(8)(No change.)

(u) [(v)] Petition for adoption of a rule.

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

§711.3. *The Profession of Dietetics.*

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

(d) Code of ethics. These rules shall constitute a code of ethics as autho-

rized by the Licensed Dietitian Act (the Act), §6(b)(1).

(1) Professional representation and responsibilities.

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

(E) A licensee shall not use his or her professional relationship with a client, a person supervised by the licensee, or an associate to promote for personal gain or profit any item, procedure, or service unless the licensee has disclosed to the client, a person supervised by the licensee, or an associate the nature of the licensee's personal gain or profit.

(F)[(E)] A licensee shall maintain knowledge and skills required for professional competence.

(G) [(F)] A licensee shall not abuse alcohol or drugs in any manner which detrimentally affects the provision of dietetic services.

(H)[(G)] A licensee shall comply with the provisions of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481 and Chapter 483 relating to dangerous drugs; [Texas Civil Statutes, Article 4476-15, and the Texas Dangerous Drug Act, Texas Civil Statutes, Article 4476-14,] and any rules of the board of health or the Texas State Board of Pharmacy implementing those chapters [statutes].

(I)[(H)] A licensee shall have the responsibility of reporting alleged misrepresentations or violations of board rules to the board's executive secretary.

(J) A licensee shall comply with any order relating to the licensee which is issued by the board.

(K) A licensee shall not aid or abet the practice or misrepresentation of an unlicensed person when that person is required to have a license under the Act.

(L) A licensed dietitian shall supervise a provisional licensed dietitian in accordance with §711.9 of this title (relating to Provisional Licensed Dietitians.)

(M)[(I)] A licensee shall not make any false, misleading, or deceptive claims in any advertisement, announcement, or presentation relating to the services of the licensee or any person supervised by the licensee [in competitive bidding].

(N)(J) A licensee shall conform to generally accepted principles and standards of dietetic practice which are those generally recognized by the profession as appropriate for the situation presented, including those promulgated or interpreted by or under the association or commission, and other professional or governmental bodies.

(O) A licensee shall not interfere with an investigation or disciplinary proceeding by willful misrepresentation of facts to the board or its authorized representative or by the use of threats or harassment against any person.

(2) Professional relationships [with clients].

(A) A licensee shall make known to a prospective client the important aspects of the professional relationship including fees and arrangements for payment which might affect the client's decision to enter into the relationship. A licensee shall bill a client or a third party in the manner agreed to by the licensee and in accordance with state and federal law.

(B)-(F) (No change.)

(G) A licensee shall not engage in sexual contact with a client. "The term sexual contact" means any type of sexual behavior described in the Texas Penal Code, Chapters 21, 22, or 43 and includes sexual intercourse.

(H) A licensee shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from the services provided.

(I) A licensee shall not provide services to a client or the public if by reason of any mental or physical condition of the licensee, the services cannot be provided with reasonable skill or safety to the client or the public.

(J) A licensee shall not provide any services which result in mental or physical injury to a client or which create an unreasonable risk that the client may be mentally or physically harmed.

(3) Supervision of provisional licensed dietitian. A licensed dietitian shall adequately supervise a provisional licensed dietitian for whom the licensee has assumed supervisory responsibility.

§711.4. Academic Requirements for Licensure.

(a) (No change.)

(b) General.

(1) The board shall accept as meeting licensure requirements baccalaureate and post-baccalaureate degrees and course work received from American colleges or universities which held accreditation, at the time the degree was conferred or the course work was taken from accepted regional educational accrediting associations as reported by the American Association of Collegiate Registrars and Admissions Officers.

(2)-(5) (No change.)

(6) In the event that an academic deficiency is present, an applicant may have one year in which to complete the additional course work acceptable to the board before the application will be voided and the applicant will be required to reapply and to pay additional application fees.

(7) Persons applying for licensure must possess a baccalaureate or post-baccalaureate degree and [including] a minimum of 24 semester hours from the fields of human nutrition, food and nutrition, dietetics, or food systems management [, or an equivalent major course of study as may be approved by the board]. Of these 24 semester hours, at least three semester hours must be from each of the following course areas:

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

(8) In place of the requirements in paragraph (7) of this subsection, a person may have an [An] equivalent major course of study [shall be] defined as either:

(A) a baccalaureate or post-baccalaureate degree or course work including a minimum of 30 semester hours specifically designed to train a person to apply and integrate scientific principles of human nutrition under different health, social, cultural, physical, psychological, and economic conditions to the proper nourishment, care, and education of individuals or groups throughout the life cycle. Of these 30 semester hours, a minimum of 18 semester hours must be from human nutrition, food and nutrition, dietetics, or food systems management. Of these 18 semester hours, at least three semester hours must be from each of the course areas specified in paragraph (7)(A)-(D) of this subsection; or

(B) (No change.)

(9) The semester hours may be part of a degree plan or in addition to a degree.

(c) Registered dietitians. Applicants who are registered in active status by the commission at the time of making application to the board are deemed to meet the

academic requirements.

§711.5. Experience Requirements for Examination.

(a) (No change.)

(b) General. Applicants for examination must have satisfactorily completed a preplanned professional program experience or internship in the profession of dietetics approved by the board or the association.

(1) An internship shall:

(A) be either a dietetic internship approved by the board or the association, [or] a coordinated undergraduate program in dietetics approved by the association, or a preprofessional practice program approved by the association; and

(B) (No change.)

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

(4) Applicants who are registered in active status by the commission at the time of making application are deemed to meet the experience requirements.

(5) (No change.)

(c) Application and approval or disapproval procedures.

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

(3) Sponsor(s) or applicant(s) desiring approval of a program, or reapproval of program plans when applicable, shall submit to the executive secretary properly completed application forms provided by the board [, which shall include program plans in triplicate, along with a nonrefundable application processing fee].

(A) The applicant or sponsor shall submit the application processing fee with the application.

(B) An original and four copies of the entire application must be submitted in binders with all pages clearly legible and numbered. All signatures on the required forms in the original application must be originals, not photocopies.

(C) If the application is revised or supplemented during the review process, the applicant must submit an original and four copies of a transmittal letter plus an original and four copies of the revision or supplement specified.

(D) If a page is to be revised, the complete new page must be submitted with the changed item or information clearly marked on the four copies, but not on the original page.

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

(d) Guidelines specific to preplanned professional experience programs beyond the undergraduate level.

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

(4) The curriculum guidelines are as follows.

(A)-(E) (No change.)

(F) The program shall, following completion of the learning and work experiences, include rotation relief for three weeks. Rotation relief shall provide an opportunity for the trainee to demonstrate professional proficiency in the area of specialization. The sponsor, supervising licensed dietitian, or another licensed dietitian shall be available at reasonable times. The trainee shall perform at the level of a licensed dietitian based on the area of specialization.

(i) The rotation must be conducted between the hours of 6 am and 8 pm, Monday through Sunday with a minimum of 20 clock hours per week.

(ii) The rotation must include one weekend day.

(5) The records guidelines are as follows.

(A) (No change.)

(B) A written report of the trainee's activities shall be sent to the board by the trainee at six month intervals commencing with the approval of the program.

(C)[(B)] The sponsor(s) shall issue to each student, upon successful completion of the program, a written statement and/or certificate of accomplishment, and shall notify the executive secretary in writing of the name(s) of the student(s) who have completed the program and of the date the program was completed.

(e) Guidelines specific to individualized planned work training programs following a postgraduate degree.

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

(4) The curriculum guidelines are as follows.

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

(D) The program shall, following completion of the learning and work experience, include rotation relief for three weeks. Rotation relief shall provide an opportunity for the trainee to demonstrate professional proficiency in the area of specialization. The sponsor, the supervising licensed dietitian, or another licensed dietitian shall be available

at reasonable times. The trainee shall perform at the level of a licensed dietitian based on the area of specialization.

(i) The rotation must be conducted between the hours of 6 am and 8 pm, Monday through Sunday with a minimum of 20 clock hours per week.

(ii) The rotation must include one weekend day.

(5) The records guidelines are as follows.

(A) (No change.)

(B) A written report of the trainee's activities shall be sent to the board by the trainee at six month intervals commencing with the approval of the program.

(C)[(B)] The sponsor(s) shall issue to each student, upon successful completion of the program, a written statement and/or certificate of accomplishment, and shall notify the executive secretary in writing of the name(s) of the student(s) who have completed the program and of the date the program was completed.

(f) Guidelines specific to graduate assistantship in the field of dietetics.

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

(5) The records guidelines are as follows.

(A) (No change.)

(B) A written report of the student's activities shall be sent to the board by the student at six month intervals commencing with the approval of the program.

(C)[(B)] The sponsor(s) shall issue to each student, upon successful completion of the program, a written statement and/or certificate of accomplishment, and shall notify the executive secretary in writing of the name(s) of the student(s) who have completed the program and of the date the program was completed.

(g) (No change.)

§711.6. Examinations for Dietitian Licensure.

(a)-(g) (No change.)

(h) Failures.

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

(3) An applicant who fails the examination three times shall have his application denied unless the applicant furnished [must furnish] the board an official transcript from an accredited college or university indicating completed course work

taken for credit with a passing grade in the area(s) of weakness determined by analysis of the previous examination(s) [before the applicant may again apply for examination]. The applicant must submit an official transcript within six months of the date of the notice from the board which specifies the course work to be completed.

(4) An applicant who completes course work as described in paragraph (3) of this section must file an updated application for examination with the application fee.

§711.7. Application Procedures.

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

(d) Required application materials.

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

(5) Applicants must submit a full-face photo, a minimum in size of 1 1/2 inches by 1 1/2 inches, signed on the reverse side with the applicant's signature as it appears on the application. The photograph must have been taken within the two-year period prior to application.

(6) If an applicant is or has been licensed, certified, or registered in another state, territory, or jurisdiction, the applicant must submit information required by the board concerning that license, certificate, or registration on official board forms.

(7)[(5)] Vitae, resumes, and other documentation of the applicant's credentials may be submitted.

(8) An applicant applying for licensing by reciprocity shall submit a copy of the license or certificate by which the reciprocal license is requested and the name and address of the licensing or certifying agency.

(9) A provisional licensed dietitian applicant must submit a completed supervision contract.

§711.8. Determination of Eligibility.

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

(e) The board may [shall] disapprove the application if the person has:

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

(6) been in violation of the Licensed Dietitian Act (the Act), the Code of Ethics, [§711.3(d)(1)(A)-(G) and (I)-(J) of this title (relating to Profession of Dietetics),] or any other [applicable] provision of this title; [or]

(7) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee as set out in §711.14 of this title (relating to Licensing of Persons with Criminal Backgrounds to be Dietitians and Provisional Licensed Dietitians); or[.]

(8) had a license, registration, or certificate to practice dietetics in another state or jurisdiction which has been suspended, revoked, or otherwise restricted by the licensing entity or commission.

(f) If after review the executive secretary determines that the application should not be approved, the executive secretary shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing. The notice and hearing shall be in accordance with §711.14 of this title (relating to Violations, Complaints, and Subsequent Board Actions) [ask the Complaint Committee to review the application. The Complaint Committee shall take either one of the following actions].

{(1) If the Complaint Committee concurs that the application should not be approved, the Complaint Committee shall instruct the executive secretary to give the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing. The formal hearing shall be conducted according to the formal hearing procedures in §711.15 of this title (relating to Formal Hearings). Within 10 days after receipt of the written notice, the applicant shall give written notice to the executive secretary that either waives the hearing, or wants the hearing. If the applicant fails to respond within 10 days after receipt of the notice of opportunity, or if the applicant notifies the executive secretary that the hearing be waived, the applicant is deemed to have waived the hearing. If the hearing has been waived, the board may disapprove the application.

{(2) If the Complaint Committee determines that the application should be approved, the board may approve the application.]

(g) An applicant whose application has been disapproved under subsection (e) (5), 6, [and] (7), or (8) of this section shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit with the reapplication, proof satisfactory to the board, of compliance with all rules of the board and the provisions of the Act in effect at the time of reapplication.

(h) Processing procedures are as follows.

(1) Time periods. The board shall comply with the following procedures in processing applications for licensure and renewal.

(A) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient

and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(i) letter of acceptance of application for licensure-14 working days;

(ii) letter of application deficiency-14 working days; and

(iii) issuance of license renewal after receipt of documentation of all renewal requirements-20 working days.

(B) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. For the purpose of this section an application is not considered complete until any required examination has been successfully completed by the applicant. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with law and of the opportunity for a formal hearing. The time periods are as follows:

(i) letter of approval for examination-20 working days;

(ii) initial letter of approval for licensure (exam waived)-20 working days;

(iii) letter of denial of licensure-20 working days;

(iv) issuance of license renewal after receipt of documentation of all renewal requirements-20 working days.

(2) Reimbursement of fees.

(A) In the event an application is not processed in the time periods stated in paragraph (1) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the executive secretary. If the executive secretary does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(B) Good cause for exceeding the time period is considered to exist if the number of applications for licensure and license renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the board in the application process caused the delay;

or any other condition exists giving the board good cause for exceeding the time period.

(3) Appeal. If a request for reimbursement under paragraph (2) of this subsection is denied by the executive secretary, the applicant may appeal to the chairman of the board for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the chairman at the address of the board that the applicant requests full reimbursement of all fees paid in that particular application process because the application was not processed within the applicable time period. The executive secretary shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period to the chairman of the board. The chairman shall provide written notice of the chairman's decision to the applicant and the executive secretary. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(4) Contested cases. The time periods for contested cases related to the denial of licensure or license renewals are not included within the time periods stated in paragraph (1) of this subsection. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the board is final and appealable. A hearing may be completed within one to four months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

§711.9. Provisional Licensed Dietitians.

(a) Supervision. The purpose of this section is to set out the nature and the scope of the supervision provided for provisional licensed dietitians.

(1) Supervision contract.

(A) Initiation. The applicant or provisional licensed dietitian must submit a contract on board forms to the board prior to the date that supervision is to begin. The contract shall include:

(i) the name and signature of supervisor and the name and signature of supervisee;

(ii) the license number of supervisor and license number of supervisee if applicable;

(iii) the primary location and address where dietetic services are to be rendered;

(iv) a description of dietetic services to be rendered by the supervisee;

(v) a statement that the supervisor and the supervisee have read and agree to adhere to the requirements of this chapter; and

(vi) the date that the supervisor and the supervisee signed the board supervision contract.

(2) Termination. The supervising licensed dietitian must submit a written notification of termination of supervision to the board and the supervisee within 14 days of when supervision has ceased. The board notification of termination of supervision shall include:

(A) the name, license number, and signature of the supervisor and the name and license number of the supervisee;

(B) a statement that supervision has terminated;

(C) the reason for termination;

(D) the date of termination of supervision; and

(E) a statement indicating whether the supervisor and the supervisee have complied with the requirements of this chapter.

(3) Changes. Any change in the board supervision contract shall require submission of a new supervision contract.

(4) Requirements of supervision.

(A) The supervisor must have adequate training, knowledge, and skill to render competently any dietetic services which the supervisee undertakes. The supervisor shall have discretion to refer the supervisee for specific supervision from another licensed dietitian.

(B) The supervisor is responsible for determining the adequacy of the supervisee's ability to perform the dietetic tasks.

(C) The supervisor may not supervise more than three supervisees unless board approval is provided in advance.

(D) The supervisee must clearly state the supervised status to patients, clients, and other interested

parties and must provide the name, address, and telephone number of the supervisor.

(E) The supervisor may not be employed by the supervisee, may not lease or rent space from the supervisee, and must avoid any dual relationship with the supervisee which could impair the supervisor's professional judgment.

(F) The supervisor must provide each supervisee with no less than one hour of regularly scheduled face-to-face supervision weekly, regardless of the number of hours employed per week. Group supervision may be used as an adjunct to the face-to-face supervision but not as a substitute. A written record of the scheduled meetings must be maintained by the supervisor and include a summary of the supervisee's work activities. The record shall be provided to the board at its request.

(G) The supervisor must be available for discussion of any problems encountered by the supervisee at reasonable times in addition to the scheduled supervisory sessions.

(H) The supervisor will provide an alternate licensed dietitian to provide supervision for the supervisee in circumstances when the supervisor is not available for more than four continuous weeks.

(5) Payment. A supervisee may not pay for supervision.

[(1) To meet licensure and license renewal requirements, a provisional licensed dietitian shall be under the supervision and direction of a licensed dietitian.

[(2) "Supervision and direction" shall be defined as the authoritative procedural guidance provided by a licensed dietitian and need not be routinely on site. Written reports of the provisional licensed dietitian's activities shall be provided to the supervising licensed dietitian at least quarterly, and to the board with the annual renewal questionnaire.

[(3) The supervising licensed dietitian must sign the application for a provisional license and the application for renewal of the provisional license.]

(b) Required supervisor. A provisional licensed dietitian must have a supervising licensed dietitian at all times whether or not the provisional licensed dietitian is actively employed.

(c) [(b)] Upgrading a provisional license. The purpose of this subsection [section] is to set out the procedure to upgrade from provisional licensed dietitian to licensed dietitian.

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

(3) The provisional licensed dietitian who successfully completes the licensing examination shall surrender to the board the license certificate and license identification [I.D.] card, and submit the license fee for upgrade of provisional licensed dietitian to licensed dietitian [an amount equal to the license certificate replacement fee].

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

(d) Existing supervisory relationships. A person who is a provisional licensed dietitian at the time of adoption of this subsection shall file a supervision contract in accordance with subsection (a)(1) of this section with the board within 60 days of the effective date of this subsection.

§711.10. Licensing.

(a) (No change.)

(b) Issuance of licenses.

(1) The board, [executive secretary] will send each applicant whose application has been approved and who has passed the examination (if applicable) a license certificate and license identification card containing a license number [licensure form to complete and return with the prorated licensee fee in the form of a personal or certified check or money order].

[(2) Upon receiving an applicant's licensure form and fee, the board shall issue the person a license certificate and license identification card containing a license number.]

(2)[(3)] The board shall replace a lost, damaged, or destroyed license certificate or [license] identification card upon a written request from the licensee and payment of the license replacement fee. Requests shall include a statement detailing the loss or destruction of the licensee's original license or [license] identification card [,] or be accompanied by the damaged certificate or card.

(c) License certificates.

(1) The board shall prepare and provide to each licensee a license certificate and identification card which contain the licensee's name, license number, and expiration date.

(2) Official license certificates shall be signed by the chairman and vice-chairman. Official identification cards shall bear the signatures of the chairman and the licensee.

(3) Any certificate or identification card issued by the board remain the property of the board and must be surrendered to the board on demand.

(4) The license certificate must be displayed in an appropriate and public manner as follows.

(A) The license certificate shall be displayed in the primary office or place of employment of the licensee.

(B) In the absence of a primary office or place of employment, or when the licensee is employed at multiple locations, the licensee shall carry a current identification card.

(5) Neither the licensee nor anyone else shall display a photocopy of a license certificate or carry a photocopy of a identification card in lieu of the original document. A photocopy shall be clearly marked as a copy across the face of the document.

(6) Neither the licensee nor anyone else shall make any alteration on a license certificate or identification card.

[(c) Reciprocity.

[(1) The board shall waive the examination requirement for an applicant who:

[(A) holds at the time of application a valid license or certificate as a dietitian issued by another state whose minimum requirements for licensure are equivalent to or exceed the licensing requirements of the board which are in effect at the time of application and with whom the board has entered into a reciprocity agreement; or

[(B) is registered at the time of application by the commission as a registered dietitian.

[(2) Reciprocity agreements with licensing bodies of other states shall include a written agreement to provide this board with the following:

[(A) information regarding all disciplinary actions relating to each applicant;

[(B) a current copy of the body's proposed (if any) and adopted rules governing its operations and application and licensing procedures;

[(C) a copy of the legal authority (law, act, code, section, or otherwise) for the licensing program including any proposed and final amendments;

[(D) the names, addresses, and phone numbers of the licensing body's chairman and executive administrator; and

[(E) any other information deemed necessary by the board, or its legal counsel.

[(3) All application materials shall be completed and application and license fees shall be paid by the applicant.

[(4) An applicant applying for licensing by reciprocity shall submit a copy of the license or certificate by which the reciprocal licensure is requested and the name and address of the licensing or certifying agency.

[(5) The board may contact the issuing agency to verify the applicant's status with that agency at the time of application.

[(6) The board may propose to deny approval of an application from an applicant who is either licensed by another state with which this board has a reciprocity agreement, or a registered dietitian, if the executive secretary has determined that the applicant may be:

[(A) in violation of that state's act or rules of the licensing body, if applicable;

[(B) in violation of the Code of Ethics adopted by the commission or the association, if applicable;

[(C) engaged in, or has previously engaged in, conduct which constitutes a violation of the Act, the Code of Ethics, §711.3(d)(1)(A)-(G) and (I)-(J) of this title (relating to the Profession of Dietetics), or any other applicable provision of this title; or

[(D) convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibility of a licensee as set out in §711.13 of this title (relating to Licensing of Persons with Criminal Backgrounds to be Dietitians and Provisional Dietitians).

[(7) If after review the executive secretary determines that the application should not be approved, the executive secretary will ask the Complaint Committee to review the application in accordance with §711.8 of this title (relating to Determination of Eligibility).]

§711.11. Changes of Name and Address.

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

(d) Before another license certificate and [or] identification card [cards] will be issued by the board, notification of name changes must be mailed to the executive secretary and shall include a notarized copy of a marriage certificate, court decree evidencing such change, or a Social Security card reflecting the new name. The licensee shall return any previously issued license certificate and [or] identification card [cards] and remit the appropriate replacement fee as set out in §711.2(t)

[§711.2(u)] of this title (relating to Fees).

§711.12. License Renewal.

(a) (No change.)

(b) General.

(1) When issued, a license is valid until the licensee's next birth month [except as provided by subsection (c)(2) of this section].

(2)-(5) (No change.)

(6) The board shall deny renewal of the license of a licensee if renewal is prohibited by the Education Code, §57.491.

(7) The board shall deny renewal of the license of a licensee for whom a contested case is pending until resolution of the case.

[(c) Staggered renewals. The board shall use a staggered system for license renewals.

[(1) License fees will be prorated when the licensee's initial renewal date occurs less than 12 months after the original date of licensure.

[(2) Licenses issued within three months of a licensee's birth month shall be issued for that period of time plus the next full year.]

(c) [(d) License renewal requirements.

(1) (No change.)

(2) The license renewal form for all licensees shall require the provision of the preferred mailing address, primary employment address and telephone number, [and category of employment,] and misdemeanor and felony convictions. The license renewal form for the provisional licensed dietitian shall [include a] be signed [statement] by the supervising licensed dietitian and indicate whether the supervisor and supervisee have complied with this chapter [indicating receipt of the report forms as required in §711.9(a) of this title (relating to Provisional Licensed Dietitians)].

(3) (No change.)

(4) The board shall issue to a licensee who has met all requirements for renewal a license certificate and identification card [renewal license identification card and may issue a renewal validation sticker or renewal card to be affixed to, or displayed with the original certificate].

[(5) The board shall delay license renewal of a licensee named in formal complaint procedures until resolution of the proceedings.]

(d) [(e) Late renewal requirements.

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

(e) [(f) Expiration of license.

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

§711.13. Licensing of Persons with Criminal Backgrounds to be Dietitians and Provisional Dietitians.

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

(c) Procedures for revoking, suspending, or denying a license to persons with criminal backgrounds.

(1) The board's executive secretary will give written notice to the person that the board intends to deny, suspend, or revoke the license [after a hearing] in accordance with the provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the board's formal hearing procedures, §711.15 of this title (relating to Formal Hearings).

(2) If the board denies, suspends, or revokes an application or a license under this section [these rules after hearing], the executive secretary will give the person written notice:

(A) (No change.)

(B) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, for review of the evidence presented to the board and its decision; [and]

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

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

§711.14. Violations, Complaints, and Subsequent Board Actions.

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

(c) Filing of complaints.

(1) (No change.)

(2) A person wishing to complain about a prohibited act or alleged violation against a licensee or other person shall notify the executive secretary. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the executive secretary's office. The mailing address is Texas State Board of Examiners of Dietitians, 1100 West 49th Street, Austin, Texas 78756-3183 (512) 459-2945 [458- 111].

(3) Upon receipt of a complaint, the executive secretary shall send to the complainant an acknowledgment letter and the board's complaint form, herein adopted by reference, which the complainant must complete and return to the executive secretary before further action can be taken. If the complaint is made by a visit to

the executive secretary's office, the form may be given to the complainant at that time; however, it must be completed and returned to the executive secretary before further action can be taken. Copies of the complaint form may be obtained from the Texas State Board of Examiners of Dietitians [Texas Department of Health], 1100 West 49th Street, Austin, Texas 78756-3183.

(4) (No change.)

(d) Investigation of complaints.

(1) The executive secretary on behalf of the board is [and the Complaint Committee of the board are] responsible for handling complaints.

[(2) The executive secretary shall make the initial investigation and report the findings to the Complaint Committee.]

(2)[(3)] If the executive secretary determines that the complaint does not come within the board's jurisdiction, the executive secretary shall advise the complainant and, if possible, refer the complainant to the appropriate governmental agency for handling such complaints.

(3) [(4)] The executive secretary, on behalf of the board, shall, at least as frequently as quarterly, notify the parties to the complaint of the status of the complaint until its final disposition.

(e) Actions by executive secretary [Complaint Committee actions].

(1) The executive secretary alone or with the concurrence of the Complaint Committee may [shall] take one or more of the following actions [described in this subsection]:

(A) [The committee may] determine that an allegation is groundless and dismiss the complaint; [.]

(B) [The committee may] determine that a nonlicensed person has committed a prohibited action under subsection (b) of this section. The executive secretary [committee] shall consider the seriousness and the effects of the violation and shall initiate any one of the following actions:[.]

(i) [The committee may] attempt to resolve the complaint by requesting the violator to stop the action immediately. If the violator complies, the executive secretary [committee] may close the complaint file; or[.]

(ii) [The committee] with the concurrence of the board chairman, [may] ask the attorney general, district attorney, or county attorney to take appropriate legal action against the violator;[. The Act, §15(c), make it a criminal offense of a Class B misdemeanor if a person knowingly or intentionally commits a prohibited action described in subsection (b)(1)-(2) of this section.]

(C) [The committee may] determine that a licensee has violated the Act or a board rule and propose denial of renewal, revocation, or suspension of the license, reprimand, or probation of the license suspension. [If this is the licensee's first violation during the annual licensing period and it represents no immediate threat to the health and safety of an individual or the general public and it does not involve misrepresentation of title, the committee shall attempt to resolve the complaint by requesting the violator to stop the action immediately. If the licensee complies, the committee shall close the complaint file. If the licensee refuses to comply, or the violation represents an immediate threat to the health and safety of an individual or the general public, or if the violation involves misrepresentation of title, or if the violation is a second, subsequent, or repeat violation during the annual licensing period, the committee may:

[(i) request, with the concurrence of the board chairman, the attorney general, or district or county attorney to institute a suit to take appropriate legal action; and/or

[(ii) institute disciplinary action in accordance with subsection (f) of this section.

[(D) At any time during the investigation of a complaint and prior to any court or disciplinary action against a licensee or other person, the committee may hold an informal conference on its own motion or at the request of the complainant or accused person to discuss the investigation and any proposed court of disciplinary action.]

(2) Whenever the executive secretary [committee] dismisses a complaint or closes a complaint file, the executive secretary [committee] will give a summary report of the final action to the board, the complainant, and the accused party.

(f) Disciplinary actions by the board [Complaint Committee]. The executive secretary may issue written reprimands of violations, but may only initiate or propose action to suspend or revoke a license, deny renewal of a license, or probate the suspension of a license. Final action to suspend or revoke a license, deny renewal of a license, or probate the suspension of a license may be taken by the board only after the licensee has had an opportunity for a formal hearing.

[(1) If the committee is unable to resolve a complaint against a licensee who has violated the Act or a board rule under subsection (e) of this section, the committee shall reprimand the licensee or initiate action to suspend or revoke the license.

[(2) The committee also may initiate action to suspend or revoke a li-

cense if the licensee has been convicted of a misdemeanor or felony offense under §711.13 of this title (relating to The Licensing of Persons with Criminal Backgrounds to be Dietitians and Provisional Dietitians).

[(3) A reprimand is a written notice from the committee to the licensee that the licensee has violated the Act or a board rule. The committee shall issue a reprimand when the licensee refuses a committee request to stop committing a first violation, during the annual licensing period, which represents no immediate threat to the health and safety of an individual or the general public and which does not involve misrepresentation of title. The reprimand shall include a second request from the committee to the licensee that the violator stop the action immediately.

[(4) The committee initiates license suspension for a definite time period when the licensee refuses to comply with a reprimand request to stop the violation or when there is a second, subsequent, or repeat violation, during the annual licensing period, which does not immediately threaten the health or safety of an individual or the general public.

[(5) The committee initiates a license revocation when there are three or more violations (which may include repeat or different violations) during the annual licensing period, or when any one violation represents an immediate threat to the health or safety of an individual or the general public.

[(6) When any one violation involves misrepresentation of title, the committee shall consider the seriousness and effects of the violation and shall initiate either license suspension or revocation.

[(7) The Complaint Committee may issue reprimands, but may only initiate or propose action to suspend or revoke a license. Final action to suspend or revoke a license can be taken by the board only after the licensee has had an opportunity for a formal hearing to contest the proposed committee actions.]

(g) Formal hearings.

(1) (No change.)

(2) At any time prior to initiating formal hearing procedures, the executive secretary or the Complaint Committee, on its own motion or the motion of the licensee, may request an informal conference with the licensee to discuss the proposed action.

(3) To initiate formal hearing procedures, the executive secretary shall give the applicant or licensee written notice of the opportunity for hearing. The notice shall state the basis for the proposed action. Within 10 days after receipt of the notice, the applicant or licensee shall give written notice to the executive secretary that the applicant or licensee either waives the hearing or wants the hearing.

(A) If the person [licensee] fails to respond within 10 days after receipt of the notice of opportunity, or if the person [licensee] notifies the executive secretary that the hearing be waived, the person [licensee] is deemed to have waived the hearing. If the hearing has been waived, the executive secretary [Complaint Committee] may recommend to the board that the license be suspended or revoked, the license suspension be probated, the licensee renewal be denied, or the application be denied. The board may take the final action which the board deems appropriate.

(B) If the person [licensee] requests a hearing within 10 days after receiving the notice of opportunity for hearing, the executive secretary shall request the department's office of general counsel to initiate formal hearing procedures.

(4) (No change.)

(h) Final action by the board.

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

(5) If the board revokes the license, the former license holder must reapply in order to obtain a new license. The board will not issue a new license until the board determines that the reasons for revocation have been removed. The board may require an investigation [by the executive secretary] and a recommendation from the executive secretary [Complaint Committee] to assist the board in making its decision.

(6) (No change.)

(I) Surrender of license.

(1) A licensee may offer his license for surrender to the board office. The executive secretary will notify the licensee that the license has been received.

(2) The board shall consider accepting the voluntary surrender of the license at its next regularly scheduled meeting which is at least 18 days after the offer of surrender.

(3) When a licensee has offered the surrender of his license after a complaint has been filed alleging violations of the Act or this chapter, and the board has accepted such a surrender, that surrender is deemed to be the result of a formal disciplinary action.

(4) A license which has been surrendered and accepted may not be reinstated; however, that person may apply for a new license in accordance with the Act and this chapter.

§711.15. Formal Hearings.

(a) Purpose. This section covers the formal hearing procedures and practices

that will be used by the board in handling suspensions, [and] revocations of licenses, denial of licenses, probating a license suspension, and reprimanding a licensee. The intended effect of these procedures is to implement the contested case provisions of the Administrative Procedure and Texas Register Act[, Texas Civil Statutes, Article 6252-13a,] and the relevant sections of the Licensed Dietitian Act[, Texas Civil Statutes, Article 4512h,] and to make the public aware of the procedures and practices.

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

[(1) Act-The Licensed Dietitian Act, Texas Civil Statutes, Article 4512h.

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

[(3) Board-The Texas State Board of Examiners of Dietitians.

[(4) Contested case-A proceeding in accordance with APTRA and these rules, including, but not restricted to, rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an adjunctive hearing.

[(5) Formal hearing-A formal hearing in accordance with these rules and includes a contested case as defined in these rules and other required formal hearings.

[(6) Hearing examiner-An attorney duly designated and appointed by the Texas commission of health as requested and approved by the board who conducts formal hearing under these rules on behalf of the board.

[(7) Licensee-Any person licensed by the board.

[(8) Party-Any person or governmental agency, or any subdivision thereof, or officer or employee of a governmental agency named by the hearing examiner as having a justiciable interest in the matter being considered, or any person or governmental agency, or any subdivision thereof, or officer or employee of a governmental agency meeting the requirements of a party as prescribed by applicable law.

[(9) Person-Any natural person, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

[(10) Pleading-Any written allegation filed by a party concerning its claim or position.]

(b)[(c)] General provisions.

(1) Initiating a formal hearing. The board on its own motion or the executive secretary on petition or application

from a person or party may initiate a formal hearing. The hearing [and] shall be conducted [conduct it] in accordance with the provisions in this section. In the event of conflict between APTRA[,] or other state statutes [,and agency rules,] and these sections, APTRA[,] or other state statutes [, and agency rules] will prevail over these sections [rules].

(2) (No change.)

(3) If a hearing examiner is not utilized by the board, the board shall conduct the formal hearing and contested case proceedings, and all references in this chapter to the hearing examiner shall be references to the board.

(c)[(d)] Notice requirements.

(1) General. The hearing examiner shall give notice of the hearing according to the notice requirements of the applicable law or board rules authorizing the hearing. [If no such requirements exist, the hearing examiner shall give notice to the parties by personal service or by certified mail return receipt requested.] All notices under this subsection must be given not less than 10 days prior to the hearing.

(2)-(4) (No change.)

(d) [(e)]> Parties to the hearing.

(1) (No change.)

(2) Duties and privileges of a party. A party has the privilege to participate fully in any prehearing and hearing, to appeal as provided by law, and to perform any and all duties and privileges provided by [the] APTRA and other applicable laws.

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

(e)[(f)] Subpoena requirements.

(1) Issuance of subpoena. On the hearing examiner's own motion or on the written request of any party to the hearing, the hearing examiner shall issue a subpoena addressed to the appropriate sheriff or constable to require the attendance of witnesses or the production of documents at the hearing.

(2) (No change.)

(3) Quashing of subpoena. A party or witness may seek to quash the subpoena or move for a protective order as provided in Texas Rules of Civil Procedures, Rule 166b [186b].

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

(6) Witness reimbursement. Witnesses subpoenaed will be paid per diem and mileage in accordance with those amounts paid to state employees as set out in the current State General Appropriations Bill. The same amounts will be paid by the party at whose request the witness appears. The payment of subpoena costs or fees and the failure to comply with a subpoena shall be governed by [§14 of the] APTRA, §14.

(f)[(g)] Depositions. The taking and

use of depositions in any contested case proceeding shall be governed by [the] APTRA, §14.

(g) [(h)] Prehearing conference.

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

(h)[(i)] The hearing procedures.

(1) The hearing examiner's duties. The hearing examiner shall preside over and conduct the hearing. On the day and time designated for the hearing, the hearing examiner shall:

(A)-(E) (No change.)

(2) Order of presentation.

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

(C) In the request for relief or action of any kind, the party seeking such relief or action has the burden of proving entitlement to the same; provided, however, that the order of proceeding may be altered or modified by the hearing examiner either upon agreement of the parties or upon the hearing examiner's [his] own order when such action will expedite the hearing without prejudice to any party.

(D) When the party first proceeding finishes the [his] case, the remaining party or parties will be allowed to present evidence and testimony in the same manner. Each witness is subject to cross-examination and clarifying questions by other participants to the proceedings.

(E) (No change.)

(F) When the parties have concluded their testimony and evidence, the hearing examiner will ask the audience if any interested person desires to make a statement. If so, the interested person will be allowed to make a [his] statement subject to cross-examination and clarifying questions by any party.

(G) After interested persons make statements or if there are no such statements, the hearing examiner, at the hearing examiner's [his] discretion, may allow final arguments or take the case under advisement, note the time, and close the hearing. For sufficient cause, the hearing examiner may hold the record open for a stated number of days for the purpose of receiving additional evidence into the record.

(3) Consolidation. The hearing examiner, upon the hearing examiner's [his] own motion or upon motion by any party, may consolidate for hearing two or more proceedings which involve substantially the same parties or issues. Proceedings before the board shall not be

consolidated without consent of all parties to such proceedings, unless the hearing examiner finds that such consolidation will be conducive to a fair, just, and proper hearing and will not result in unwarranted expense or undue delay.

(4) (No change.)

(5) Conduct and decorum during the hearing. Every party, witness, attorney, representative, or other person shall exhibit in all hearings proper dignity, courtesy, and respect for the hearing examiner and all other persons participating in or observing the hearing. The hearing examiner is authorized to take what ever action the hearing examiner [he] deems necessary and appropriate to maintain the proper level of decorum and conduct, including, but not limited to, recessing the hearing to be reconvened at another time or place or excluding from the hearing any party, witness, attorney, representative, or other person for such period and upon such conditions as the hearing examiner deems fair and just.

(6)-(8) (No change.)

(9) Rules of evidence. The hearing examiner, at a hearing, a reopened hearing, or a rehearing will apply the rules of evidence under APTRA, §14(a), and also the following rules.

(A) (No change.)

(B) Documentary evidence should be presented in its original form but if the original is not readily available, documentary evidence may be received in the form of copies or excerpts. On request, parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the hearing examiner may limit those admitted to a number which are typical and representative, and may, at the hearing examiner's [his] discretion, require the abstracting of the relevant data from the documents and presentation of the abstracts in the form of exhibits; provided, however, that before making such requirement, the hearing examiner shall require that all parties of record or their representatives be given the right to examine the documents from which such abstracts were made. Any party may make an offer of proof of the documents which are excluded by a hearing examiner's decision to remove only typical or representative documents.

(C) Exhibits shall be as follows.

(i)-(iii) (No change.)

(iv) Unless specifically directed by the hearing examiner, no exhibit will be permitted to be filed in any proceeding after the conclusion [conclusions] of the hearing except in a reopened hearing or a rehearing.

(D) When a proceeding will be expedited and the interests of the parties will not be prejudiced substantially, evidence may be received in written form. The prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness being sworn and identifying the same as a true and accurate record of what the [his] testimony would be if the witness [he] were to testify orally. The witness shall be subject to clarifying questions and to cross-examination and the [his] prepared testimony shall be subject to a motion to strike either in whole or in part.

(E) When testimony is excluded by the hearing examiner, the party offering such evidence shall be permitted to make an offer of proof by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review. The hearing examiner may ask such questions of the witness as the hearing examiner [he] deems necessary to satisfy the hearing examiner [himself] that the witness would testify as represented in the offer of proof. An alleged error in sustaining any objections to questions asked on cross-examination may be preserved without making an offer of proof.

(F) Official notice by the hearing examiner or the board shall be governed by APTRA, §14(q). Further, official notice may be taken of any statute, ordinance, or duly promulgated and adopted rules or regulations of any governmental agency. The hearing examiner shall indicate during the course of a hearing that information of which the hearing examiner [he] will take official notice. When a hearing examiner's findings are based upon official notice as a material fact not appearing in the evidence of record, the hearing examiner shall set forth in the [his] proposal for decision those items with sufficient particularity so as to advise the parties of the matters which have been officially noticed. The parties shall have the opportunity to show to the contrary through the filing of exceptions to the hearing examiner's proposal for decision.

(10) (No change.)

(11) Agreements in writing. No stipulation or agreement between the parties, their attorneys, or representations, with regard to any matter involved in any proceeding shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, dictated into the record during the course of a hearing, or incorporated in an order bearing their written approval. This rule does not limit a party's ability to

waive, modify, or stipulate away any right or privilege afforded by these sections [rules].

(1) [(j)] Action after the hearing.

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

(4) Final orders or decisions.

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

(C) Unless otherwise permitted by statute or by these sections, all final orders shall be signed by the executive secretary and the chairman of the board; however, interim orders may be issued by the hearing examiner in accordance with the [his] order of appointment.

(D) (No change.)

(5) Motion for rehearing. A motion for rehearing shall be governed by APTRA, §16[;] or other pertinent statute and shall be addressed to the executive secretary [of the board] and filed with the hearing examiner.

(6) Appeals. All appeals from final board orders or decisions shall be governed by APTRA, §19 and §20, or other pertinent statute and communications regarding any appeal shall be to the executive secretary [of the board].

(j) [(k)] Ex parte consultations. All matters regarding ex parte consultations shall be governed by the provisions of APTRA, §17.

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 October 31, 1990.

TRD-9012185

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

Earliest proposed date of adoption: February 3, 1991

For further information, please call: (512) 459-2955

◆ ◆ ◆
TITLE 28. INSURANCE
Part II. Texas Workers'
Compensation
Commission

Chapter 130. Benefits-
Impairment and
Supplemental Income
Benefits

Subchapter A. Impairment In-
come Benefits

• **28 TAC §130.4**

The Texas Workers' Compensation Commission proposes new §130.4, concerning the

establishment of a presumption that maximum medical improvement (MMI) has, by definition, been reached if 104 weeks have passed since the date that temporary income benefits have been reached and the establishment of the procedures to be followed by an insurance carrier to resolve whether an employee has reached MMI if there has been no certification from a doctor that an injured employee has reached MMI. The section sets out the presumptions concerning MMI that will allow the carrier to invoke these procedures. The section prohibits the carrier from suspending temporary income benefits unless a benefit review officer issues an interlocutory order granting suspension of benefits. The section allows the carrier to request that the commission send a medical status request letter to the treating doctor under certain specified conditions. The section requires the commission to provide a medical evaluation form along with the medical status request letter and specifies when this must be done and the information to be requested from the treating doctor concerning MMI. The section specifies when the treating doctor must file the report and allows the carrier to request a benefit review conference if the treating doctor fails to respond as required. The section also sets out the information that must be included in the request for a benefit review conference. The section requires any agreement concerning a designated doctor to resolve a dispute over MMI to include an agreement from the same doctor concerning assigning an impairment rating, if any. The section provides for the commission to order a medical examination, or direct an examination by a designated doctor at the same time as an expedited benefit review conference. The section sets out the grounds upon which a benefit review conference may be cancelled. The section also provides for the benefit review officer to presume that the finding of the designated doctor is correct unless rebutted and requires the benefit review officer to direct an examination by the designated doctor in the event MMI is found to have been reached by a doctor under the Act, §4.16. The section also sets out when the benefit review officer is to enter an interlocutory order directing suspension of temporary income benefits and commence payment of any impairment income benefits.

R. Glenn Looney, manager of planning and analysis, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There is no anticipated impact on employment, locally or statewide, as a result of implementing the section.

Mr. Looney also has determined that for each year of the first five years the section is in effect the public benefit anticipated is the implementation of the Workers' Compensation Act adopted by recent legislation. 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 Susan M. Kelley, General Counsel, Texas Workers' Compensation Commission, 200 East Riverside Drive, Austin, Texas 78704-1287. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register*.

The new sections are proposed under Texas Civil Statutes, Article 8308, §2.09(a), which authorize the commission to adopt rules necessary to administer the Texas Workers' Compensation Act, and the Act, §4.23(g), which authorizes the commission to establish rules establishing a presumption that maximum medical improvement has been reached based on a lack of medical improvement in the employee's condition.

§130.4. Presumption That Maximum Medical Improvement Has Been Reached and Resolution When MMI Has Not Been Certified.

(a) If 104 weeks have passed since the date that temporary income benefits began to accrue, maximum medical improvement has, by definition, been reached and this section does not apply.

(b) If there has not been a certification from a doctor that an injured employee has reached maximum medical improvement (MMI), an insurance carrier may follow the procedure outlined in this section to resolve whether an employee has reached MMI. The carrier shall presume, only to invoke this procedure, that an employee has reached MMI, if:

(1) the compensable injury is not an occupational disease other than a repetitive trauma injury;

(2) the treating doctor has examined the employee at least twice for the same compensable injury;

(3) the number of days between the two of the examinations is greater than 60 except for laminectomy, spinal fusion, and discectomy for which the number of days between two of the exams is greater than 90;

(4) the two examinations referenced in subsection (b) of this section were held after the date on which temporary income benefits began to accrue; and

(5) the treating doctor's medical reports, as filed with the insurance carrier, for all examinations and reports conducted after the first of the two examinations indicate a lack of medical improvement in the employee's condition from the first of the two examinations.

(c) The insurance carrier may also follow the procedure outlined in this section if it appears that the employee has failed to attend two or more consecutively scheduled health care appointments.

(d) The insurance carrier shall not suspend temporary income benefits based on the rule, unless a benefit review officer issues an interlocutory order granting suspension of benefits.

(e) An insurance carrier that identifies an apparent lack of medical improvement, as set forth in subsection (b) of this section, or an apparent failure to attend health care appointments by an employee

may notify the commission in writing, and request that a medical status request letter be sent by the commission to the treating doctor.

(f) A medical evaluation report form, described under §130.1 of this title (relating to Reports of Medical Evaluation: Maximum Medical Improvement and Permanent Impairment), shall be provided by the commission, no later than five days from the insurance carrier's request, along with the medical status request letter. The letter shall notify the doctor of the requirements of the Texas Workers' Compensation Act (the Act), §1.03(32). In addition, the letter shall request the treating doctor to answer the following questions:

(1) whether the employee has reached maximum medical improvement; and

(2) whether the employee has failed to attend two or more consecutively scheduled health care appointments, and the dates of the missed appointments.

(g) The treating doctor shall complete and file the Medical Evaluation Report as required by §130.1 of this title (relating to Reports of Medical Evaluation: Maximum Medical Improvement and Permanent Impairment), no later than seven days after receiving the request from the commission.

(h) If the treating doctor fails to respond as required by this section, or if the treating doctor certifies that the employee has not reached MMI, the carrier may request a benefit review conference, on the ground of the apparent lack of improvement in medical condition or failure to attend health care appointments.

(i) The insurance carrier shall include with its request for a benefit review conference the following:

(1) a request for a required medical examination as provided under the Act, §4.16. Section 126.5 of this title (relating to Procedure for Requesting Required Medical Examinations) and 126.6 of this title (relating to Order for Required Medical Examinations) apply, except that the employee may not reschedule the examination except for an exceptional circumstance. The rescheduled appointment shall be within 72 hours of the originally scheduled appointment; or

(2) a request for a designated doctor to be appointed by the commission if an agreement with the employee is not reached. The request shall indicate whether or not an agreement has been reached with the employee for selection of the designated doctor. Section 130.6 of this title (relating to Designated Doctor: General Provisions) shall apply, except that the examination by the designated doctor shall be held no later than 14 days after the doctor is agreed to by the parties or appointed by the commission, whichever is earlier. The employee may not

reschedule the examination, except for an exceptional circumstance. The rescheduled appointment shall be within 72 hours of the originally scheduled appointment.

(3) For purposes of rescheduling an appointment, an "exceptional circumstance" includes, but is not limited to, a death in the employee's immediate family.

(j) An agreement on a designated doctor to resolve a dispute over MMI under this section shall also include an agreement on the same doctor for assigning an impairment rating, if any.

(k) The commission shall order the requested required medical examination under the Act, §4.16, or direct an examination by a designated doctor, concurrent with the scheduling of an expedited benefit review conference, if appropriate, as provided by §141.4 of this title (relating to Requesting and Setting a Benefit Review Conference).

(l) The benefit review conference may be cancelled by the commission, without prejudice, if:

(1) the examining doctor ordered under subsection (i) of this section certifies that the employee has not reached MMI; or

(2) by agreement of the parties, when a designated doctor certifies that an employee has reached MMI, in which case the designated doctor shall assign an impairment rating, if any, and complete the medical evaluation report pursuant to §130.1 of this title (relating to Reports of Medical Evaluation: Maximum Medical Improvement and Permanent Impairment). The carrier shall pay benefits based on the report of the designated doctor.

(m) If a benefit review conference is held, and there is no signed settlement or agreement on the dispute on MMI, the benefit review officer shall presume that the finding of a designated doctor is correct, unless there is information, statements, or medical reports that clearly and convincingly rebut a determination of MMI. If a doctor ordered pursuant to §4.16 finds that MMI has been reached, and this finding is disputed, the benefit review officer shall direct an examination by a designated doctor.

(n) The benefit review officer shall enter an interlocutory order directing the insurance carrier to suspend temporary income benefits, and begin payment of impairment income benefits, if any, if the benefit review officer's recommendations state that:

(1) the determination of the designated doctor has not been clearly and convincingly rebutted by information, statements, or medical reports;

(2) there has been a lack of improvement in the employee's medical condition, the certification of MMI by the doctor requested under §4.16 is disputed,

and a designated doctor is directed to resolve the dispute; or

(3) the employee has missed two or more consecutively scheduled health care appointments or has otherwise abandoned treatment without good cause.

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

Issued in Austin, Texas, on November 14, 1990.

TRD-9012182 Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Earliest possible date of adoption: December 21, 1990

For further information, please call: (512) 440-3973

Chapter 150. Representation of Parties Before the Agency- Qualifications for Representative

• 28 TAC §150.1

The Texas Workers' Compensation Commission proposes new §150.1, concerning the setting out of the minimum standards of practice for an attorney before the commission and the requirement of attorneys practicing before the commission to observe the commission rules, the Texas disciplinary rules of professional conduct, and the Texas Trial Lawyers' Creed promulgated by the Texas Supreme Court. The new section prohibits an attorney representing a claimant on a valid compensation claim and a third party liability action from abandoning the compensation claim for the purpose of avoiding the maximum attorney fee established under the Act, §4.09. The new section also provides for an administrative penalty against an attorney who fails to comply with the section.

R. Glenn Looney, manager of planning and analysis, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There is no anticipated impact on employment, locally or statewide, as a result of implementing the section.

Mr. Looney also has determined that for each year of the first five years the section is in effect the public benefit anticipated is the implementation of the Workers' Compensation Act adopted by recent legislation. 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 Susan M. Kelley, General Counsel, Texas Workers' Compensation Commission, 200 East Riverside Drive, Austin, Texas 78704-1287. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register*.

The new sections are proposed under Texas Civil Statutes, Article 8308, §2.09(a), which authorize the Commission to adopt rules necessary to administer the Texas Workers' Compensation Act.

§150.1. Minimum Standards of Practice for an Attorney.

(a) An attorney, in practice before the commission, shall observe:

- (1) these rules;
- (2) the Texas Disciplinary Rules of Professional Conduct; and

(3) the Texas Lawyer's Creed, promulgated by the Supreme Court of Texas on November 7, 1989.

(b) An Attorney who undertakes representation of a claimant on a valid compensation claim and a third party liability action shall not abandon the compensation claim for the purpose of avoiding the maximum attorney fee established under the Texas Workers' Compensation Act (the Act), §4.09.

(c) An attorney who fails to comply with this section may be assessed an administrative penalty under the Act, §10.07(a)(11).

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

Issued in Austin, Texas, on November 14, 1990.

TRD-9012183 Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Earliest proposed date of adoption: December 21, 1990

For further information, please call: (512) 440-3973

Chapter 152. Representation of Parties Before the Agency- Attorney's Fee

• 28 TAC §§152.1-152.5

The Texas Workers' Compensation Commission proposes new §§152.1-152.5, concerning representation of parties before the agency-attorney's fees.

New §152.1 sets out general provisions relating to attorney fees. The section provides that, in order to earn a fee, an attorney representing any party must hold a valid, active Texas license and not be under suspension for any reason. The section provides that the commission must approve the amount of the fee and prohibits an attorney from receiving an amount greater than the fee approved by the commission. The section requires that the fee be fixed and approved by the commission based on the attorney's time and expenses, and allows for the fee to be made in a lump sum payment upon a request by the attorney

or the carrier to be approved by the commission, to be discounted for present payment. The commuted fee is to be recouped by the carrier out of the future income benefits paid to the represented claimant. A fee for representing a claimant for death benefits cannot be commuted where the only dispute involves identification of the proper beneficiaries. The section makes clear that an attorney's right to a fee is not defeated by a client's discharging the attorney. The section also provides that an attorney who successfully prosecutes a disputed claim for supplemental income benefits shall be eligible to receive attorney's fees from an insurance carrier under certain conditions.

New §152.2 requires an attorney who represents a client to notify the commission and sets out, for purposes of computing the maximum amount of a fee that may be approved, the benefits that may not be included as part of the claimant's recovery. The section prohibits representation of multiple legal beneficiaries in a death benefit claim in certain specified cases. The section also makes clear that the total amount that may be approved shall not exceed 25% except in certain cases provided for by the Act of §152.1(f).

New §152.3 relates to the approval of an attorney's fee by the commission, and sets out the procedure for claiming the fee, specifies that the attorney must submit written evidence of time and expenses, and sets out the information to be included in the attorney's affidavit that is required to be submitted to the commission. The section requires the commission to review each request for attorney's fees and to fix and approve a fee based on the evidence submitted, and sets out the factors to be considered in setting the fee. The section also requires the commission to apportion the fee among attorneys if more than one represents a client, and prohibits the aggregate fee from exceeding 25% of the claimant's recovery. The section requires the carrier to pay the attorney's fee no later than 14 days after approval by the commission, and sets out the procedure for contesting the fee fixed and approved by the commission.

New §152.4 sets out the guidelines for maximum hours for specific services to be considered by the commission along with other factors for setting the attorney's fees.

New §152.5 details the allowable expenses an attorney may claim as part of an attorney's fee. The section requires an attorney to submit an itemized list of expenses to the commission. The section also sets out examples of the kinds of expenses that are not allowed as part of the attorney's fees.

R. Glenn Looney, manager of planning and analysis, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There is no anticipated impact on employment, locally or statewide, as a result of implementing the section.

Mr. Looney also has determined that for each year of the first five years the section is in effect the public benefit anticipated is the implementation of the Workers' Compensation Act adopted by recent legislation. There will be no effect on small businesses. The only anticipated additional economic cost to

persons who are required to comply with the section as proposed may be certified mail costs for those contesting a fee, who must request a contested case hearing or review by certified mail under §152.3.

Comments on the proposal may be submitted to Susan M. Kelley, General Counsel, Texas Workers' Compensation Commission, 200 East Riverside Drive, Austin, Texas 78704-1287. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register*.

The new sections are proposed under Texas Civil Statutes, Article 8308, §2.09(a), which authorize the commission to adopt rules necessary to administer the Texas Workers' Compensation Act. New §152.4 is also proposed under Texas Civil Statutes, Article 8308, §4.09(e), which authorize the commission to provide, by rule, guidelines for maximum attorney's fees for specific services, based on criteria set forth in that statute.

§152.1. Attorney Fees: General Provisions.

(a) To be eligible to earn a fee, an attorney representing any party shall hold an active license to practice law in Texas and not be currently under suspension for any reason.

(b) An attorney shall receive a fee for representation of any party before the commission only after the commission approves the amount of the fee. An attorney shall not receive an amount greater than the fee approved by the commission, notwithstanding any agreements between the parties, including retainer fee agreements.

(c) The fee fixed and approved by the commission shall be based on the attorney's time and expenses, subject to the guidelines and standards set forth in the Texas Workers' Compensation Act (the Act) and established in this chapter of the rules.

(d) An attorney's fee for representing a claimant may be commuted to a lump sum upon request by the attorney or the carrier, and may be approved by the commission. The lump sum payment shall be discounted for present payment at the rate provided under the Act §1.04. A commuted fee shall be recouped by the carrier out of the future income benefits paid to the represented claimant. The fee for representing a claimant for death benefits cannot be commuted where the only dispute involves identification of the proper beneficiaries.

(e) A client who discharges an attorney does not, by this action, defeat the attorney's right to claim a fee.

(f) An attorney for an employee who successfully prosecutes a disputed claim for supplemental income benefits shall be eligible to receive a reasonable and necessary attorney's fee, including expenses, from the insurance carrier, in accordance with the Act, §4.28(1)(2). All provisions of this chapter, except §152.4 of this title (relating to Guidelines for Maxi-

imum Hours for Specific Services Performed by a Claimant's Attorney), apply, except that such fee shall not be limited to a maximum of 25% of the employee's recovery.

§152.2. Attorney Fees: Representation of Claimants.

(a) An attorney who represents a claimant shall notify the commission in writing within 10 days of undertaking representation, and shall provide a copy of the contract of employment if requested by the commission.

(b) For purposes of computing the maximum amount of a fee that may be fixed and approved for a claimant's attorney, claimant's recovery shall not include:

(1) the amount of benefits paid to the claimant prior to hiring the attorney;

(2) benefits initiated or offered by an insurance carrier when the initiation or offer is based upon documentation in a claimant's file, and has not been the subject of a dispute with the carrier;

(3) any undisputed portion of impairment benefits paid or offered to the claimant based upon an impairment rating that is assessed by the carrier, under the Texas Workers' Compensation Act (the Act), §4.26(f).

(4) the value of medical and hospital benefits provided to the claimant; or

(5) lifetime income or death benefits when the carrier admits liability on all issues involved, and when the maximum benefit is tendered in writing by a carrier, no later than the date on which the carrier is required to contest the claim.

(c) An attorney shall not represent multiple legal beneficiaries on a claim for death benefits if it is reasonably foreseeable that a judgment favorable to one legal beneficiary would impact unfavorably on another legal beneficiary.

(d) The total amount that the commission approves for the attorney's time and expenses constitute the fee, and shall not exceed 25% of the claimant's recovery, except as provided in §4.28(1)(2) and §152.1(f) of this title (relating to Attorneys' Fees: General Provisions).

§152.3. Approval of Fee by the Commission.

(a) To claim a fee, an attorney representing any party shall submit written evidence of the attorney's time and expenses. The written evidence shall be in the form of an affidavit that contains evidence of an hourly rate for attorneys, paralegals, and law clerks; time expended by attorneys, paralegals, and law clerks, an itemized list of allowable expenses, and the attorney's date of licensure, experience, and special

qualifications or training. The affidavit shall be on a form, approved by the commission, that contains the following additional identifying information:

(1) the claimant's name, address, and social security number;

(2) the date of injury;

(3) the employer's name and address;

(4) the carrier's name and commission assigned identification number;

(5) the attorney's name, address, telephone number, and state bar identification number; and

(6) a statement indicating whether the attorney represents a claimant or carrier.

(b) The commission shall review each request for an attorney fee and fix and approve a fee based on the evidence submitted, but may ask for additional documentary evidence to fairly evaluate the fee claim. The commission shall consider the guidelines for maximum charges for services (provided in §152.4 of this title (relating to Guidelines for Maximum Hours for Specific Services Performed by a Claimant's Attorney)), the factors set forth in the Texas Workers' Compensation Act (the Act), §4.09(c) for claimant's attorneys, and, for a defense attorney representing a carrier, analogous factors as well as the nature and length of the professional relationship to the client. In considering whether a defense counsel's fee is reasonable and necessary, the commission shall also consider the guidelines set out in §152.4 of this title (relating to Guidelines for Maximum Hours for Specific Services Performed by a Claimant's Attorney). The commission shall further consider whether the attorney has raised all issues timely and efficiently, given the facts known to the attorney, in order to avoid multiple proceedings on the same claim.

(c) An order of the commission that fixes and approves a fee of a claimant's attorney that is the maximum fee allowed under the Act, §4.09, shall state this fact.

(d) The commission shall apportion the fee between attorneys when more than one attorney claims a fee for representing the same party. The commission shall consider each claim based upon the factors and guidelines outlined in the Act and these rules. The aggregate fee for attorneys representing a claimant shall not exceed 25% of the claimant's recovery.

(e) The carrier shall pay, pursuant to the order of the commission, an attorney's fee no later than 14 days after approval by the commission. For purposes of this section, the date of payment is the date that the initial check for the attorney's fee is mailed, unless the order is contested by any party.

(f) An attorney, claimant, or carrier who contests the fee fixed and approved by the commission shall request a contested case hearing (or, if the order was made by a hearings officer, review by the appeals panel) by certified mail, return receipt requested, no later than seven days after the date of the commission's order. The contesting party shall send a copy of the request, by certified mail, return receipt requested, to the carrier and, by regular mail to the other parties, including the claimant. Notice of a contest shall relieve the carrier of the obligation to pay, according to the commission's order, until such time that the commission enters a subsequent order.

§152.4. Guidelines for Maximum Hours for Specific Services Performed by a Claimant's Attorney.

(a) The guidelines outlined in this section shall be considered by the commission along with the factors, and maximum fee limitations, set forth in the Texas Workers' Compensation Act, §4.09, and the commission rules applicable to claimant's attorney's fees.

(b) As part of the application for attorney fees, a claimant's attorney shall submit a statement of hours expended on the case by attorneys, paralegals, and law clerks.

(c) An attorney may request approval for a number of hours greater than those allowed by these guidelines but must demonstrate to the satisfaction of the commission that the higher fee was justified by the effort necessary to preserve the client's interest, or the complexity of the legal and factual issues involved.

(d) Except when approved by the commission under subsection (c) of this section, an attorney's claim for a service shall not exceed the time limits contained in the following table.

Research in Compensation Issues, Filing

Initial Documents with Commission	1.0	
	TOTAL	1.0

Client Conferences (per month)	2.0	
	TOTAL	2.0

Resolving Disputes of Compensability or
Amount of Payment

(includes research and preparation time),
either:

1. Informal Resolution of all issues without Commission intervention; or	6.0	
	TOTAL	6.0

2. Benefit Review Conference, and	2.5	
Contested Case Hearing (if necessary), and	1.5	
Appeal Panel Review (if necessary)	1.0	
	TOTAL	5.0

Resolving Disputes About Proper Beneficiary
in Death Benefits Cases (includes research
and preparation time), either:

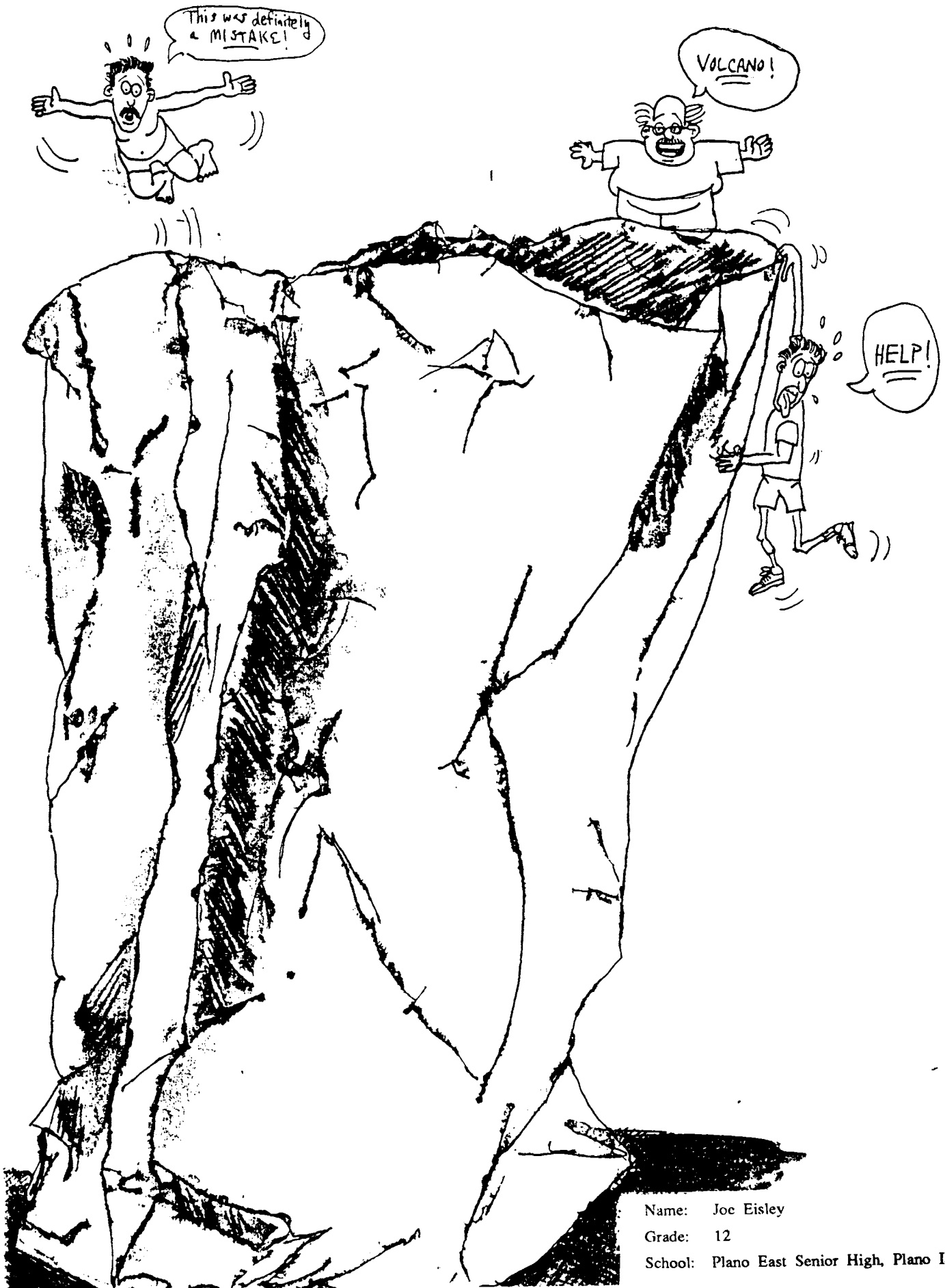
1.	Informal Resolution of all issues without Commission intervention; or	7.0	
		TOTAL	7.0

2.	Benefit Review Conference, and	3.0	
	Contested Case Hearing (if necessary), and	2.0	
	Appeal Panel Review (if necessary).	1.0	
		TOTAL	6.0

Contest of Impairment Rating, Maximum Medical Improvement, Ability to Return to Work, Entitlement to Lifetime Benefits, and all other Medical Issues relating to income benefits (includes review of medical records, research, and preparation time), either:

1.	Informal Resolution of all issues without Commission intervention; or	6.0	
		TOTAL	6.0

2.	Benefit Review Conference, and	5.5	
	Contested Case Hearing (if necessary), and	2.5	
	Appeal Panel Review (if necessary).	1.0	
		TOTAL	9.0



This was definitely
a MISTAKE!

VOLCANO!

HELP!

Name: Joe Eisley
Grade: 12
School: Plano East Senior High, Plano ISD

(e) When an attorney's only service has been to assist a claimant with completing and filing claim forms and other documents, and the claim is not disputed, the range of hours allowed shall be in the range of one to three hours, depending upon the extent of services rendered.

§152.5. Allowable Expenses.

(a) As part of the application for attorney fees, an attorney shall submit an itemized list of expenses incurred for the preparation and presentation of the client's case. The date, nature, and amount of the expense shall be clearly identified.

(b) The commission shall allow those expenses necessary for the preparation and presentation of a person's claim or a carrier's defense before the commission, including:

(1) travel expenses, at the rate set for state employees by the legislature for state employees in the General Appropriation Act, if the attorney is required to attend a benefit review conference or hearing more than 25 miles from the attorney's office nearest to the location of the conference or hearing;

(2) expenses necessary to present a case at a hearing including subpoena costs, court reporter's fee, per diem witness fees incurred, and translator's fee;

(3) the costs of records necessary to prepare or present a claim or defense including copies of commission files, a record check performed by the commission, medical reports (except medical reports required to be provided by commission rule), and copies of certificates, licenses, and decrees necessary for perfecting a claim for death benefits;

(4) costs of long distance telephone calls to: the client, an attorney or other representative of the other party, health care providers, or others necessary to prepare the claim or defense;

(5) costs of collect long distance telephone calls from the client; and

(6) investigative services necessary to establish or dispute a claim.

(c) The commission shall not allow as attorney expenses those expenses that are not necessary for the preparation and presentation of a party's individual claim or defense before the commission, including:

(1) attorney travel, except as permitted in subsection (c)(1) of this section;

(2) overhead costs of operating a law office including: rent, utilities, copies, fax, telecopier, postage, shipping, local telephone calls, long distance calls to the commission, and salaries for general office staff; and

(3) medical reports and hospital records that commission rules require to be sent to the claimant and carrier.

(d) An attorney's payment of out-of-pocket expenses for items listed in subsection (b) of this section does not constitute a loan to the client as prohibited by the Texas Workers' Compensation Act, §10.03.

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

Issued in Austin, Texas on November 14, 1990.

TRD-9012184

Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Earliest possible date of adoption: December 21, 1990

For further information, please call: (512) 440-3973

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 27. Intermediate Care Facilities for Mentally Retarded

Subchapter UUUU. Support Documents

• 40 TAC §27.9801

The Texas Department of Human Services (DHS) proposes an amendment to §27.9801, concerning reimbursement methodology for intermediate care facilities for the mentally retarded. The purpose for the amendment is to include Level I facilities in the small provider class and change the cost areas for Level I to labor and all other cost areas.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed 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. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be simpler and more accurate cost reporting for Level I. 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.

Questions about the content of this proposal may be directed to Glenn Hart at (512) 450-4049 in DHS's Provider Reimbursement Section. Comments on the proposal may be submitted to Cathy Rossberg, Agency Liaison, Policy and Document Support Department-540, Texas Department of Hu-

man Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

§27.9801. Reimbursement Methodology for Intermediate Care Facilities for the Mentally Retarded.

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

(f) Cost finding methodology.

(1) (No change.)

(2) Cost determination by class of provider. "Class of provider" incorporates references to large and small facilities: large facilities are those with more than six Medicaid-contracted beds; small facilities are those with six or fewer Medicaid-contracted beds. For rate determination purposes, TDHS establishes three classes of ICF-MR providers:

(A) [ICF-MR I,] large ICF-MR V[,] and large ICF-MR VI community-based providers;

(B) ICF-MR I, small ICF-MR V, and small ICF-MR VI community-based providers; and

(C) (No change.)

(3) Cost determination by cost centers for [ICF-MR I,] large ICF-MR V[,] and large ICF-MR VI community-based providers. TDHS combines adjusted expenses from the rate base into the following cost centers for [ICF-MR I,] large ICF-MR V[,] and large ICF-MR VI community-based providers:

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

(4) Cost determination by cost centers for ICF-MR I, small ICF-MR V, and small ICF-MR VI community-based providers. TDHS combines adjusted expenses from the rate base into the following cost centers for ICF-MR I, small ICF-MR V, and small ICF-MR VI community-based providers.

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

(5) (No change.)

(g) Rate setting methodology.

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

(3) Rate determination. The Texas Board of Human Services determines general reimbursement rates for medical assistance programs for Medicaid recipients under the provisions of Chapter 24 of this title (relating to Reimbursement Methodolo-

gy). The Texas Board of Human Services determines particular reimbursement rates for each class of ICF-MR provider by class of service based on consideration of DHS staff recommendations. To develop a separate set of reimbursement rate recommendations for each class of service within each provider class, DHS staff apply the following procedures.

(A) A cost component for each cost center for each class of service is calculated at the adjusted per diem expense corresponding to the provider delivering the median day of service. (In calculating the median day of service, days of service de-

livered by each provider included in the rate base are summed cumulatively in the order which corresponds to the array of adjusted per diem costs, from lowest to highest.)

(B) The cost component for each cost center is multiplied by an incentive factor, and the resulting rate components are summed by class of service [level of care] to calculate the recommended total reimbursement rates. The Texas Board of Human Services determines the incentive factor based on consideration of staff recommendations and input from interested parties. The incentive factor must not exceed 1.07.

(4)-(6) (No change.)

(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 November 14, 1990.

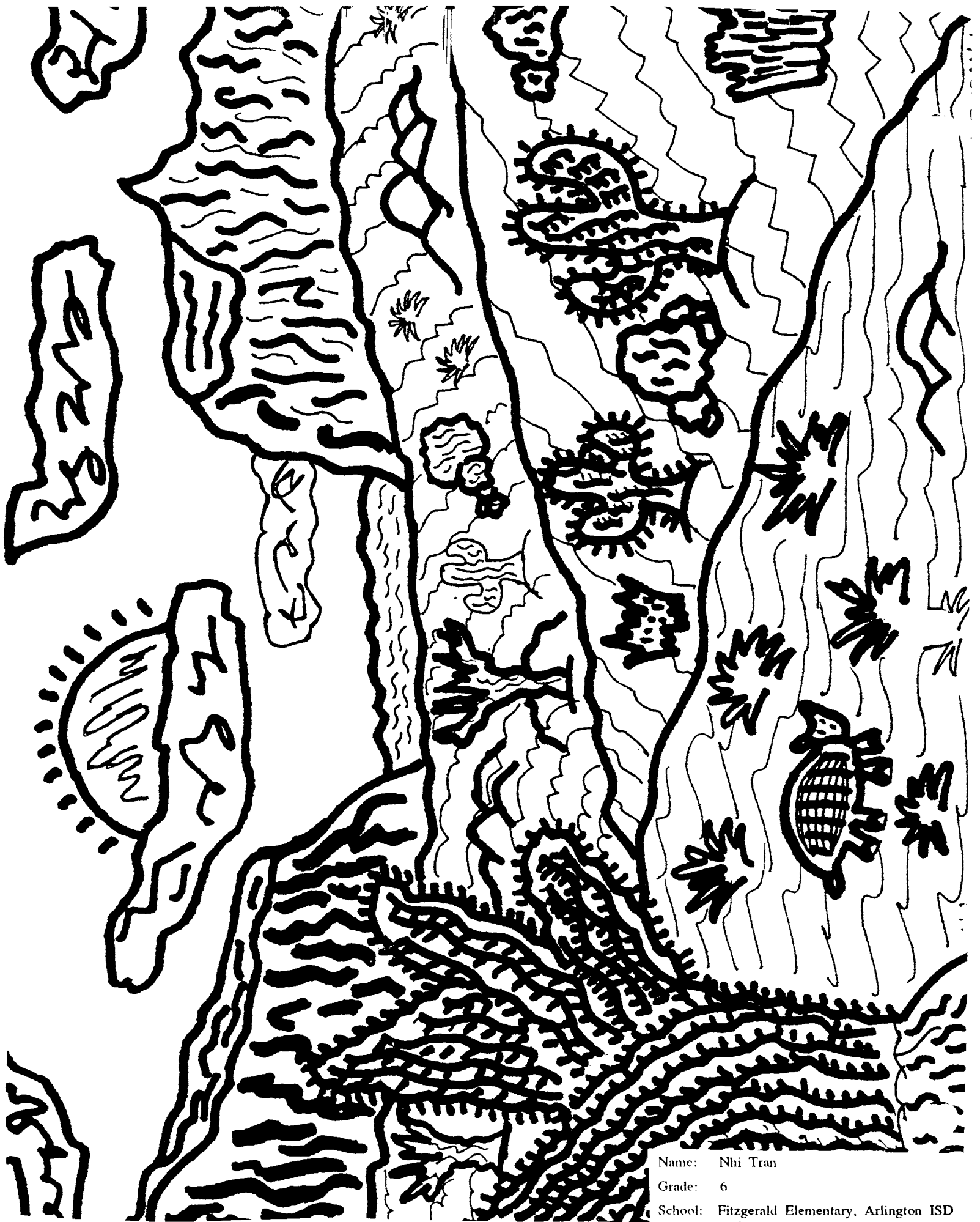
TRD-9012181

Cathy Rossberg
Agency Liaison
Texas Department of
Human Services

Proposed date of adoption: February 1, 1991

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

◆ ◆ ◆



Name: Nhi Tran

Grade: 6

School: Fitzgerald Elementary, Arlington ISD

Withdrawn Sections

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

TITLE 25. Health Services Part I. Texas Department of Health

Chapter 125. Special Care Facilities

• 25 TAC §125.1, §125.6

The Texas Department of Health is withdrawing the proposed amendments to §125.1 and §125.6, concerning special care facilities. The text of the amendments appeared in the July 13, 1990, issue of the *Texas Register* (15 TexReg 3965). The effective date of this withdrawal is November 13, 1990.

The department withdraws the proposal because it has identified additional areas in the rules that need significant changes. These amendments along with the additional changes will be reproposeed at a later date.

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

Issued in Austin, Texas on November 13, 1990.

TRD-9012180

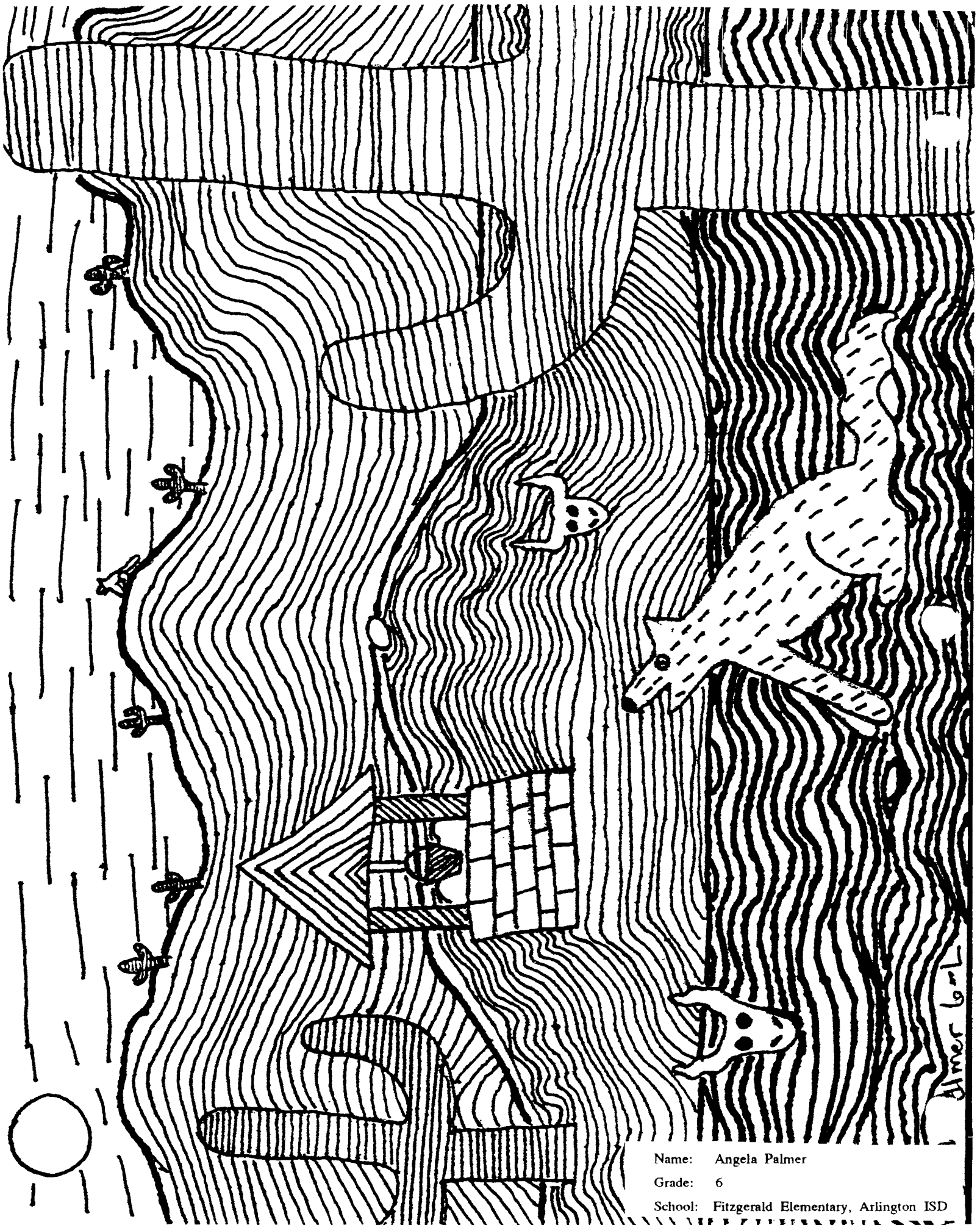
Robert A. MacLean M.D.
Deputy Commissioner for
Professional Services
Texas Department of
Human Services

Effective date: November 13, 1990

Proposal publication date: July 13, 1990

For further information, please call: (512)
458-7245





Name: Angela Palmer

Grade: 6

School: Fitzgerald Elementary, Arlington ISD

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Texas Department of Agriculture

Friday, November 16, 1990, 9 a.m. The Texas Corn Producers Board of the Texas Department of Agriculture met at the Kingston Hotel, 1-40 East and Lakeside, Amarillo. According to the emergency revised agenda summary, the board will add to the agenda two research projects: Texas Agricultural Extension Service "Mycotoxins in the Feed and Food Corn Industry", \$19,463, Dr. Stephen Livingston, TAEX, Corpus Christi; and Texas Agriculture Extension Service "Aflatoxin", project amount to be proposed at meeting, Dr. Wendell Horne, TAEX, College Station. The emergency status was necessary as these items were inadvertently omitted from the original posting and needed to be reviewed as projects, and if approved, scheduled to begin prior to the board's next regular meeting.

Contact: Carl King, 218 East Bedford, Dimmitt, Texas 79027, (806) 647-4224.

TRD-9012171

Monday-Tuesday, November 26-27, 1990, 9:30 a.m. The Texas Agricultural Diversification Program Board of the Texas Department of Agriculture will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Ninth Floor Conference Room, Austin. According to the complete agenda, the board will discuss and act on acceptance of summary proposals for full development for diversification grants for 1991; disposition of previously awarded grants; microenterprise loan program rules, timetable, and financing; discussion on review process of 1991 grant awards; and discuss other administrative matters.

Contact: Brian Muller, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 14, 1990, 2:28 p.m.

TRD-9012209

Thursday, November 29, 1990, 10 a.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture District Office, Expressway 83, Two Blocks West of Morningside Road, San

Juan. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code Annotated §103.001 et. seq. by Mexican Blue Eyes, Inc. as petitioned by A & R Farms.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 14, 1990, 10:43 a.m.

TRD-9012194

Thursday, November 29, 1990, 11 a.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture District Office, Expressway 83, Two Blocks West of Morningside Road, San Juan. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code Annotated §103.001 et. seq. by Mexican Blue Eyes, Inc. as petitioned by Farmers' Marketing Service.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 14, 1990, 10:43 a.m.

TRD-9012193

Tuesday, December 4, 1990, 1 p.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture District Office, 122 Heiman Street, First Floor, San Antonio. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code Annotated §103.001 et. seq. by Farmers Produce as petitioned by Progresso Produce Company.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 14, 1990, 10:38 a.m.

TRD-9012189

Thursday, December 6, 1990, 10 a.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture District Office, 2626 South Loop West, Suite 130, Houston. According to the complete agenda, the department will hold an admin-

istrative hearing to review alleged violation of Texas Agriculture Code Annotated §103.001 et. seq. by C. H. Robinson Company as petitioned by Amerifresh.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 14, 1990, 10:39 a.m.

TRD-9012191

Thursday, December 6, 1990, 1 p.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture District Office, 2626 South Loop West, Suite 130, Houston. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code Annotated §103.001 et. seq. by J.R.F. Enterprises doing business as Houston First Choice as petitioned by Houston Calco, Inc.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 14, 1990, 10:38 a.m.

TRD-9012190

Thursday, December 6, 1990, 3 p.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture District Office, 2626 South Loop West, Suite 130, Houston. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code Annotated §103.001 et. seq. by J.R.F. Enterprises doing business as Houston First Choice as petitioned by G & D Vegetable Company.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 14, 1990, 10:39 a.m.

TRD-9012192

Texas Alcoholic Beverage Commission

Monday, November 26, 1990, 2 p.m. The Texas Alcoholic Beverage Commission will

meet at 5806 Mesa, Room 180, Austin. According to the complete agenda, the commission will approve the minutes of October 22, 1990 meeting; hear administrator's and staffs' report of agency activity; and approve affidavit of destruction of tested alcoholic beverages.

Contact: W. S. McBeath, P.O. Box 13127, Austin, Texas 78711, (512) 458-2500.

Filed: November 13, 1990, 1:58 p.m.

TRD-9012163

◆ ◆ ◆
Texas Department of Commerce

Monday, November 19, 1990, 9 a.m. The Product Development Advisory Board of the Texas Department of Commerce met at the Texas Department of Commerce, 816 Congress Avenue, Austin. According to the complete agenda, the board discussed product development fund rules; break at 10:30 a.m. and reconvened at 10:40 for discussion.

Contact: Mike Klonsinski, 816 Congress Avenue, Austin, Texas 78701, (512) 320-9678.

Filed: November 13, 1990, 12:04 p.m.

TRD-9012160

Tuesday, November 27, 1990, 9 a.m. The Rural Economic Development Commission will meet at the Lieutenant Governor's Committee Room, Capitol Building, Austin. According to the complete agenda, the commission will discuss recommended legislation and resolutions developed by the staff; adoption of legislation and resolutions; discussion of other legislation and resolutions; discussion and adoption of a process to approve and publish the final report of the commission; and discuss other business.

Contact: David Ellis, Special Services Building, Texas A&M University, College Station, Texas 77843, (409) 845-5332.

Filed: November 13, 1990, 12:04 p.m.

TRD-9012159

◆ ◆ ◆
**Office of the Governor,
Criminal Justice Division**

Tuesday, November 27, 1990, 9 a.m. The Governor's Task Force on Drug Abuse, Drug Policy Subcommittee of the Office of the Governor, Criminal Justice Division will meet at the Westin Paso Del Norte Hotel, 101 South El Paso Street, El Paso. According to the agenda summary, the subcommittee will solicit testimony from law enforcement officials and other interested persons regarding the illegal drug and violent crime problem in Texas for development of the 1991 statewide drug strategy as required by the drug control and system improvement grant program (Anti-Drug Act

of 1988).

Contact: Georgia Whitehead, Office of the Governor, Criminal Justice Division, 201 East 14th Street, Austin, Texas 78701, (512) 463-1919.

Filed: November 13, 1990, 10:14 a.m.

TRD-9012152.

Wednesday, November 28, 1990, 9 a.m. The Governor's Task Force on Drug Abuse, Drug Policy Subcommittee of the Office of the Governor, Criminal Justice Division will meet at the Barcelona Court Hotel, 5215 South Loop 289, Lubbock. According to the agenda summary, the subcommittee will solicit testimony from law enforcement officials and other interested persons regarding the illegal drug and violent crime problem in Texas for development of the 1991 statewide drug strategy as required by the drug control and system improvement grant program (Anti-Drug Act of 1988).

Contact: Georgia Whitehead, Office of the Governor, Criminal Justice Division, 201 East 14th Street, Austin, Texas 78701, (512) 463-1919.

Filed: November 13, 1990, 10:14 a.m.

TRD-9012153

Thursday, November 29, 1990, 9 a.m. The Governor's Task Force on Drug Abuse, Drug Policy Subcommittee of the Office of the Governor, Criminal Justice Division will meet at the Hyatt Regency Fort Worth, 815 Main Street, Fort Worth. According to the agenda summary, the subcommittee will solicit testimony from law enforcement officials and other interested persons regarding the illegal drug and violent crime problem in Texas for development of the 1991 statewide drug strategy as required by the drug control and system improvement grant program (Anti-Drug Act of 1988).

Contact: Georgia Whitehead, Office of the Governor, Criminal Justice Division, 201 East 14th Street, Austin, Texas 78701, (512) 463-1919.

Filed: November 13, 1990, 10:13 a.m.

TRD-9012151

Friday, November 30, 1990, 9 a.m. The Governor's Task Force on Drug Abuse, Drug Policy Subcommittee of the Office of the Governor, Criminal Justice Division will meet at the Holiday Inn Crowne Plaza, 2222 West Loop South, Houston. According to the agenda summary, the subcommittee will solicit testimony from law enforcement officials and other interested persons regarding the illegal drug and violent crime problem in Texas for development of the 1991 statewide drug strategy as required by the drug control and system improvement grant program (Anti-Drug Act of 1988).

Contact: Georgia Whitehead, Office of the Governor, Criminal Justice Division, 201 East 14th Street, Austin, Texas 78701, (512) 463-1919.

Filed: November 13, 1990, 10:10 a.m.

TRD-90121150

Monday, December 3, 1990, 9 a.m. The Governor's Task Force on Drug Abuse, Drug Policy Subcommittee of the Office of the Governor, Criminal Justice Division will meet at the Holiday Inn Civic Center, 200 West Expressway 83, McAllen. According to the agenda summary, the subcommittee will solicit testimony from law enforcement officials and other interested persons regarding the illegal drug and violent crime problem in Texas for development of the 1991 statewide drug strategy as required by the drug control and system improvement grant program (Anti-Drug Act of 1988).

Contact: Georgia Whitehead, Office of the Governor, Criminal Justice Division, 201 East 14th Street, Austin, Texas 78701, (512) 463-1919.

Filed: November 13, 1990, 10:09 a.m.

TRD-9012149

◆ ◆ ◆
Texas Department of Health

Friday, November 30, 1990, 10 a.m. The Hospital Licensing Advisory Council of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room T-604, Austin. According to the agenda summary, the council will introduce new council members; elect chair and vice-chair; hear hospital licensing director's report; consider rules concerning hospital licensing standards and hospital licensing fees; rehabilitation hospitals; and subjects for next meeting.

Contact: Maurice Shaw, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7538.

Filed: November 14, 1990, 2:05 p.m.

TRD-9012203

◆ ◆ ◆
**Texas Hospital Equipment
Financing Council**

Friday, November 16, 1990, 10:30 a.m. The Board of Trustees of the Texas Hospital Equipment Financing Council met at the Texas State Treasury Department, 111 East 17th Street, LBJ State Office Building, Austin. According to the emergency revised agenda summary, the board discussed the state auditor's engagement letter for upcoming audit. The emergency status was necessary since the engagement letter was received after filing notice of open meeting on November 8, 1990.

Contact: Rose-Michel Mungia, 111 East 17th Street, Austin, Texas 78711, (512) 463-5971.

Filed: November 13, 1990, 2:47 p.m.

TRD-9012166

◆ ◆ ◆
State Board of Insurance

Tuesday, November 20, 1990, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 342, Austin. According to the complete emergency revised agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Patrick Michael Doud, Round Rock, who holds a Group I, Legal Reserve Life Insurance Agent's license, a Group II Insurance Agent's license, and a Local Recording Agent's license. The emergency status was necessary because on original submission, the last name of Doud should have been Doud.

Contact: Wendy L. Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: November 14, 1990, 3:06 p.m.

TRD-9012216

◆ ◆ ◆
Texas Department of Mental Health and Mental Retardation

Wednesday, November 28, 1990, 4:30 p.m. The Board Business and Asset Management Committee of the Texas Department of Mental Health and Mental Retardation will meet at the TDMHMR Central Office, 909 West 45th Street, Auditorium, Austin. According to the complete agenda, the committee will consider approval of a lease for the West 38th Street planned unit development. If deaf interpreters required, notify TDMHMR (512) 465-4585, Ernest Fuentes, 72 hours prior to the meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78756, (512) 454-3761.

Filed: November 14, 1990, 2:35 p.m.

TRD-9012210

Thursday, November 29, 1990, 8 a.m. The Board Human Resources Committee of the Texas Department of Mental Health and Mental Retardation will meet at the TDMHMR Central Office, 909 West 45th Street, Auditorium, Austin. According to the complete agenda, the committee will consider appointments to the Medical Advisory Committee. If deaf interpreters required, notify TDMHMR (512) 465-4585, Ernest Fuentes, 72 hours prior to the meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78756, (512) 454-3761.

Filed: November 14, 1990, 2:39 p.m.

TRD-9012214

Thursday, November 29, 1990, 8:15 a.m. The Board Planning and Policy Development Committee of the Texas Department of Mental Health and Mental Retardation will meet at the TDMHMR Central Office, 909 West 45th Street, Auditorium, Austin. According to the complete agenda, the committee will give an update on legislative initiatives; status of the CPAC Subcommittee reports; single portal concept; adoption of new subchapter governing standards of the Texas Department of Mental Health and Mental Retardation; and discussion on accountability and relationship of community mental health and mental retardation centers to TDMHMR. If deaf interpreters required, notify TDMHMR (512) 465-4585, Ernest Fuentes, 72 hours prior to the meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78756, (512) 454-3761.

Filed: November 14, 1990, 2:37 p.m.

TRD-9012213

Thursday, November 29, 1990, 10 a.m. The Board Audit Committee of the Texas Department of Mental Health and Mental Retardation will meet at the TDMHMR Central Office, 909 West 45th Street, Auditorium, Austin. According to the complete agenda, the committee will consider the internal audit position. If deaf interpreters required, notify TDMHMR (512) 465-4585, Ernest Fuentes, 72 hours prior to the meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78756, (512) 454-3761.

Filed: November 14, 1990, 2:36 p.m.

TRD-9012212

Thursday, November 29, 1990, 10:30 a.m. The Board Business and Asset Management Committee of the Texas Department of Mental Health and Mental Retardation will meet at the TDMHMR Central Office, 909 West 45th Street, Auditorium, Austin. According to the complete agenda, the committee will consider approval of construction of a chapel on the campus of the Waco Center for Youth; hear FY 1990 budget report; FY 1991 operating budget adjustments; FY 1992-1993 legislative appropriations request-second submittal; approval of construction projects for submission to the Texas Public Finance Authority; approval of construction project funded from emergency repairs and maintenance funds; consideration of delegation of authority to the commissioner or his designee to close on real properties for community based facilities; and consideration of a lease for the West 38th Street planned unit development. If deaf interpreters required, notify TDMHMR (512) 465-4585, Ernest Fuentes, 72 hours prior to the meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78756, (512) 454-3761.

Filed: November 14, 1990, 2:42 p.m.

TRD-9012215

Thursday, November 29, 1990, 2:30 p.m. The Board of MHMR of the Texas Department of Mental Health and Mental Retardation will meet at the TDMHMR Central Office, 909 West 45th Street, Auditorium, Austin. According to the agenda summary, the board will hear citizens' comments (limited to three minutes); and issues to be considered. If deaf interpreters required, notify TDMHMR (512) 465-4585, Ernest Fuentes, 72 hours prior to the meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78756, (512) 454-3761.

Filed: November 14, 1990, 2:36 p.m.

TRD-9012211

◆ ◆ ◆
Board of Nurse Examiners

Thursday, November 15, 1990, 8 a.m. The Board of Nurse Examiners met at the Radisson Plaza Hotel, 700 San Jacinto Street, Austin. According to the complete emergency revised agenda, the board also considered under reinstatement hearings on November 15, 1990 as: 3.3.10, Maria J. B. Cruz Valadez, TX #505624. The emergency status was necessary since Maria's name was inadvertently omitted from the original filing.

Contact: Louise Waddill, P.O. Box 140466, Austin, Texas 78714, (512) 835-8650.

Filed: November 14, 1990, 10:16 a.m.

TRD-9012188

◆ ◆ ◆
Public Utility Commission of Texas

Monday, November 26, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 9850-application of Houston Lighting and Power Company for authority to change rates.

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

Filed: November 13, 1990, 3:08 p.m.

TRD-9012167

Thursday, November 29, 1990, 1 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin.

According to the complete agenda, the division will hold a prehearing conference in Docket Number 9782-application of Southwestern Bell Telephone Company for approval of experimental tariff call forwarding-busy line and call forwarding-don't answer (CFBLDA).

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

Filed: November 14, 1990, 3:41 p.m.

TRD-9012234

Friday, November 30, 1990, 1 p.m. The Relay Service Advisory Committee of the Public Utility Commission of Texas will meet at Sprint Services, Conference Room, 1321 Rutherford Lane, Suite 100, (512) 458-0155 or (512) 458-0105 TDD, Austin. According to the complete agenda, the committee will consider issues concerning the status of relay service on these items: interstate/international calls; confidentiality issue; relay agent protocol; and other related issues. The Advisory Committee was appointed by the PUC pursuant to House Bill 174, passed by the 71st Legislature. Relay Texas Service began on September 1, 1990.

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

Filed: November 14, 1990, 3:39 p.m.

TRD-9012231

Monday, March 18, 1991, 10 a.m. The Hearings Division of the Texas Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a hearing on the merits in Consolidated Docket Numbers 9713-application of GTE Southwest, Inc. to revise tariff to establish "Enhanced Services" network offerings; and 9714-application of GTE Southwest, Inc. to revise tariff to provide "Enhanced Services" at Dallas-Fort Worth Airport.

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

Filed: November 14, 1990, 3:47 p.m.

TRD-9012235

Monday, March 18, 1991, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 8018-inquiry into the rate case expenses of El Paso Electric Company and the city of El Paso in Docket Numbers 7460 and 7172.

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

Filed: November 13, 1990, 3:09 p.m.

TRD-9012168

Texas State Board of Public Accountancy

Friday-Saturday, November 16-17, 1990, 11 a.m. and 10 a.m. respectively. The Texas State Board of Public Accountancy held an emergency meeting at 1033 La Posada, Suite 340, Austin. According to the agenda summary, the board will review on Friday the minutes of the October 8-9, 1990, board meeting; hear report of the executive committee; report of the Technical Standards Review Committee; report of the Behavioral Enforcement Committee; report of the November 1990, examination, report of the Quality Review Committee; report of the Licensee Education Committee; report of the Long-Range Planning Committee; report of the Sponsor Compliance Committee; action on substantive rules; ratification of board orders, consent orders and proposals for decision; and review of certain board communication review of future meeting/hearing schedules. On Saturday, the board will conduct swearing-in ceremony at 10 a.m. at the Erwin Special Events Center. The emergency status was necessary in order to carry out essential board business.

Contact: William Treacy, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: November 13, 1990, 1:43 p.m.

TRD-9012162

Railroad Commission of Texas

Monday, November 19, 1990, 9 a.m. (rescheduled from November 20, 1990). The Railroad Commission of Texas held an emergency meeting at the William B. Travis Building, 1701 North Congress Avenue, 12th Floor Conference Room, Austin. According to the complete agenda, the commission held its statewide hearing on oil and gas. The emergency status was necessary due to the lack of a quorum at the regularly scheduled oil and gas hearing creating a reasonably unforeseeable situation requiring immediate action by the commission before November 20, 1990, pursuant to state law.

Contact: Paula Middleton, P.O. Box 12967, Austin, Texas 78711, (512) 463-6729.

Filed: November 14, 1990, 1:31 p.m.

TRD-9012198

Board for Lease of State-owned Lands

Tuesday, November 27, 1990, 9:30 a.m. The Board for Lease of Texas Parks and Wildlife Lands of the Board for Lease of State-owned Lands will meet at the General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 833, Austin. According to the agenda summary, the board will approve the minutes of the previous board meeting; consider easement applications for drill sites and roads, Zapata and Starr Counties.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: November 14, 1990, 4:10 p.m.

TRD-9012236

The Texas A&M University System

Sunday, November 18, 1990, 10:30 a.m. The Committee to Search for the Chancellor of the Board of Regents of the Texas A&M University System met at the Embassy Suites Hotel, 10110 U.S. Highway 281, San Antonio. According to the complete agenda, the committee will consider any and all things leading to the selection of a new chancellor.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9603.

Filed: November 13, 1990, 8:40 a.m.

TRD-9012156

Monday, November 19, 1990, 9:30 a.m. The Board of Regents of the Texas A&M University System met at the Board of Regents Meeting Room, College Station. According to the complete agenda, the board implemented the system-wide revenue financing program by adopting the master resolution and the first, second and third supplements to the master resolution; established a pricing committee; and authorized the refunding of outstanding bonds of the system. This special meeting took place telephonically.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9603.

Filed: November 14, 1990, 10:08 a.m.

TRD-9012186

Texas Water Commission

Wednesday, November 28, 1990, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider various matters within

the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to scheduling an item in the entirety or for particular action at a future date or time.

Contact: Gloria Barrera, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: November 14, 1990, 3:35 p.m.

TRD-9012224

Wednesday, November 28, 1990, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to scheduling an item in the entirety or for particular action at a future date or time.

Contact: Gloria Barrera, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: November 14, 1990, 3:35 p.m.

TRD-9012223

Wednesday, December 12, 1990, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider an application by Braes Utility District of Harris County for adoption of standby fees.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: November 14, 1990, 3:37 p.m.

TRD-9012226

Wednesday, December 12, 1990, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider an application by Mills Road Municipal Utility District of Harris County, for adoption of standby fees.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: November 14, 1990, 3:37 p.m.

TRD-9012227

Wednesday, December 12, 1990, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider an application by

Sportsman's World Municipal Utility District for adoption of standby fees.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: November 14, 1990, 3:37 p.m.

TRD-9012228

Wednesday, December 12, 1990, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider an application by Cypress Hill Municipal Utility District Number One for adoption of standby fees.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: November 14, 1990, 3:38 p.m.

TRD-9012229

Monday, January 7, 1991, 10 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 512, Austin. According to the agenda summary, the examiner will consider an application by Rosehill Ranchettes Water System for rate increase, Docket Number 8597-G.

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: November 14, 1990, 3:36 p.m.

TRD-9012225

Wednesday, January 9, 1991, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider Rusk State Hospital seeking an extension of time to commence and complete modifications authorized under Permit Number 4292(A-4609). The permit authorizes the permittee to maintain an existing dam and 265 foot acre-foot capacity reservoir on On-Eye Creek, tributary of Box Creek, tributary of the Neches River, Neches River Basin, approximately one mile north of Rusk, Cherokee County.

Contact: Mark Evans, P.O. Box 13087, Austin, Texas 78711, (512) 371-6389.

Filed: November 14, 1990, 3:33 p.m.

TRD-9012221

Wednesday, January 9, 1991, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider Water Works Board of Trustees of San Antonio seeking an extension of time to commence and complete construction of the Applewhite Reservoir Project authorized by Water Use Permit Number 3914 (A-4128). The permit authorizes construction and maintenance of Leon

Creek Diversion Dam and 544 acre-foot reservoir on Leon Creek, tributary of the San Antonio River and a dam and 45,528 acre-foot reservoir (Applewhite Reservoir) on the Medina River, San Antonio River Basin. The dams and reservoirs are to be located approximately 11 miles south of San Antonio, Bexar County.

Contact: Terry Slade, P.O. Box 13087, Austin, Texas 78711, (512) 371-6386.

Filed: November 14, 1990, 3:34 p.m.

TRD-9012222

Texas Water Development Board

Thursday, November 15, 1990, 9 a.m. The Texas Water Development Board met at 1700 North Congress Avenue, Stephen F. Austin Building, Room 118, Austin. According to the emergency revised agenda summary, the board will consider extension of the following loan commitment: State Revolving Fund Project, Greater Texoma Utility Authority (Gunter), \$995,000, from November 16, 1990 until February 22, 1991. The emergency status was necessary as closing a loan to Greater Texoma Utility Authority had been unexpectedly delayed, and without extension, the board loan commitment would expire.

Contact: G. E. Kretschmar, P.O. Box 13231, Austin, Texas 78701, (512) 463-7847.

Filed: November 14, 1990, 1:31 p.m.

TRD-9012197

Texas Workers' Compensation Commission

Thursday-Friday, November 15-16, 1990, 9 a.m. The Texas Workers' Compensation Commission met at 200 East Riverside Drive, Room 255, Austin. According to the revised agenda summary, the commission will add to Friday agenda at 11:30 a.m.: met in executive session for staff briefing and consultation with attorney to discuss legal aspects of competitive bidding relating to central office building lease.

Contact: George E. Chapman, 200 East Riverside Drive, Austin, Texas 78704, (512) 448-7962.

Filed: November 13, 1990, 10:41 a.m.

TRD-9012157

Regional Meetings

Meetings Filed November 13, 1990

The Concho Valley Council of Governments Executive Committee will meet at

the Concho Valley Regional Conference and Training Center, 5014 Knickerbocker Road, San Angelo, November 21, 1990, at 7 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 76906, (915) 944-9666. TRD-9012177.

The Dallas Area Rapid Transit Board of Directors' met at 601 Pacific Avenue, Board Room, Dallas, November 13, 1990, at 6:30 p.m. (emergency revised agenda). Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9012172.

The Hood County Appraisal District Board of Directors will meet at 1902 West Pearl Street, Granbury, November 20, 1990, at 7:30 p.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471. TRD-9012164.

The Jack County Appraisal District Agricultural Advisory Board met at the Los Creek Office Building, 216-D South Main Street, Jacksboro, November 19, 1990, at 7 p.m. Information may be obtained from J. D. Garcia, 216-D South Main Street, Jacksboro, Texas 76056, (817) 567-6301. TRD-9012154.

The Jack County Appraisal District Board of Directors will meet at the Los Creek Office Building, 216-D South Main Street, Jacksboro, November 20, 1990, at 7 p.m. Information may be obtained from J. D. Garcia, 216-D South Main Street, Jacksboro, Texas 76056, (817) 567-6301. TRD-9012155.

The Toledo Bend Project Joint Operation Operating Board met at the Toledo Bend Dam Site Office (Texas), Burkeville, November 19, 1990, at 10 a.m. Information may be obtained from Sam F. Collins, P.O. Box 579, Orange, Texas 77630, (409) 746-2192. TRD-9012173.



Meetings Filed November 14, 1990

The Central Counties Center for Mental Health and Mental Retardation Services Board of Directors will meet at 304 South 22nd Street, Temple, November 20, 1990, at 7:45 p.m. Information may be obtained from Michael K. Muegge, 304 South 22nd Street, Temple, Texas 76501, (817) 778-4841. TRD-9012205.

The Henderson County Appraisal District Board of Directors met at 1751 Enterprise, Athens, November 19, 1990, at 7:30 p.m. Information may be obtained from Helen Marchbanks, 1751 Enterprise, Athens, Texas 75751, (903) 675-9296. TRD-9012179.

The Lamar County Appraisal District Board will meet at the Lamar County Appraisal District Office, 521 Bonham Street, Paris, November 20, 1990, at 5 p.m. Information may be obtained from Joe Welch, 521 Bonham Street, Paris, Texas 75460, (214) 785-7822. TRD-9012219.

The Lampasas County Appraisal District Board of Directors met at 109 East Fifth Street, Lampasas, November 19, 1990, at 9 a.m. Information may be obtained from Henry B. Stoneham, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9012206.

The Region VIII Education Service Center Board of Directors will meet at the Days Inn Restaurant, Mt. Pleasant, November 29, 1990, at 6:30 p.m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Mt. Pleasant, Texas 75455, (903) 572-8551. TRD-9012199.



Meetings Filed November 15, 1990

The Alamo Area Council of Governments Community Affairs Committee will

meet at 118 Broadway Street, Suite 400, San Antonio, November 20, 1990, at 9 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway Street, Suite 400, San Antonio, Texas 78205, (512) 225-5201. TRD-9012237.

The Alamo Area Council of Governments Planning and Program Development Committee will meet at 118 Broadway Street, Suite 400, San Antonio, November 20, 1990, at 10:30 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway Street, Suite 400, San Antonio, Texas 78205, (512) 225-5201. TRD-9012239.

The Alamo Area Council of Governments Management Committee will meet at 118 Broadway Street, Suite 400, San Antonio, November 21, 1990, at noon. Information may be obtained from Al J. Notzon III, 118 Broadway Street, Suite 400, San Antonio, Texas 78205, (512) 225-5201. TRD-9012238.

The Bexar Appraisal District Board of Directors met at 535 South Main Street, San Antonio, November 19, 1990, at 5 p.m. Information may be obtained from Walter Stoneham, 535 South Main Street, San Antonio, Texas 78204, (512) 224-8511. TRD-9012240.

The Dewitt County Appraisal District Board of Directors will meet at the Dewitt County Appraisal Office, 103 Bailey Street, Cuero, November 20, 1990, at 7:30 p.m. Information may be obtained from John Haliburton, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9012241.

The Texas Panhandle Mental Health Authority Board of Trustees will meet Room 420, World Trade Center, at 7120 I-40 West, Suite 150, Conference Room, Amarillo, November 20, 1990, at 10:30 a.m. Information may be obtained from Claire Rigler, P.O. Box 3250, Amarillo, Texas 79106, (806) 353-7235. TRD-9012242.



In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture Administrative Penalty Schedule

I. Background

Texas Agriculture Code, §76.1555 conferred administrative penalty authority on the Department. Section 76.1555, subsection (b) requires the department to "establish a schedule stating the types of violations under Chapter 75 and 76 of this code and the maximum fine applicable to each type of violation." The legislature mandated that this schedule be published in the *Texas Register* before implementing the schedule or assessing penalties for violations that occurred after September 1, 1989. This document represents the department's initial schedule.

This legislation also required that six factors be considered in determining the appropriate penalty in a particular case, i.e., the seriousness of the violation, economic damage to property or the environment, the violator's history of previous violations, the deterrent effect, efforts of the violator to correct the violation, as well as other matters that justice may require.

Pursuant to the provisions of Texas Agricultural Code, Chapter 76 (Vernon 1982), the Texas Department of Agriculture ("TDA" or the "department"), has primary responsibility and authority for regulating pesticides in the State of Texas. In keeping with the department's regulatory authority under Chapters 75 and 76 and pursuant to the powers and duties conferred on it by law as an administrative agency of the State of Texas, including those powers and duties set forth in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a (Vernon Supplement 1989), the Department may initiate various enforcement actions in response to a violation of Chapters 75 and 76 and the regulations promulgated thereunder. For example, the department may initiate a civil suit for penalties, injunctive relief or both by referring the case to the Attorney General, it may refer the matter to an appropriate prosecuting attorney for criminal penalties, or it may take administrative enforcement action. Administrative enforcement actions include license suspension, modification, or revocation, probated suspension, reprimand or assessment of an administrative penalty. The department may assess an administrative penalty not to exceed \$2,000 for each violation provided that the penalty not exceed \$4,000 for all violations related to a single incident. Section 76.1555 of the Code requires the department to establish and publish a schedule of administrative penalty maximums. These guidelines are intended to fulfill the §76.1555 requirements and to insure that the department's administrative enforcement actions are fair, uniform, consistent, and appropriate to the nature and gravity of the violation.

II. Applicability

These guidelines apply to monetary administrative penalties under Chapters 75 and 76 for failure to comply with applicable statutory and regulatory requirements; they do not apply to enforcement actions taken by the department

for violations of Chapter 125 of the Agriculture Code. Further, these guidelines do not apply to emergency orders or other enforcement remedies requiring timely action, such as 10-day suspensions under §76.116 or stop sale orders under §76.153.

III. Determining the Appropriate Penalty.

Texas Agriculture Code §76.1555(c)(1-6) requires the Department to consider, in addition to the penalty schedule, the following six factors: the seriousness of the violation, economic damage to property or the environment, the violator's history of previous violations, the deterrent effect of the penalty, the violator's efforts to correct the violation, and other matters that justice may require.

Upon a determination that a violation has occurred, the department will employ the following analysis to calculate the appropriate penalty. A base penalty corresponding to the seriousness of the violation will be established. The seriousness of the violation includes but is not limited to the nature, circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created either to the health or safety of the public or the environment or of economic damage to property. These are the factors set forth in Texas Pesticide Law, §76.1555(c)(1), and (2). The base penalty is determined using the penalty tables at the end of this document. In the listing of violations below, violations are categorized under subject headings. Next to each subject heading appears in parentheses a statement of the base penalty tables to be used for first and subsequent violations in that category. The penalty may then be adjusted in accordance with the factors specified in §76.1555(c)(3-6).

A. Base Penalty

1. Nature, Circumstances, Extent and Gravity of the Prohibited Acts (horizontal or "NCEG" axis). Each violation is assigned a NCEG value. The NCEG value may be classified as either major, moderate, or minor. Major NCEG values refer to those violations involving little or no observance of or compliance with a clear statutory or regulatory requirement. Moderate NCEG values involve only partial observance of or compliance with a statutory or regulatory requirement. Minor NCEG values reflect substantial observance of or compliance with a statutory or regulatory requirement.

2. Hazard or Potential Hazard to Human Health, the Public, the Environment, or of Economic Damage to Property (vertical or "HPH" axis). The magnitude of the hazard or potential hazard posed to human health, property, or the environment must be evaluated to determine the appropriate penalty. Hazard or potential hazard of harm associated with the violation, not the extent of harm actually resulting, is the key factor in making this determination. Actual harm may be considered, but only as an indication of the hazard posed by the violation.

As with the NCEG value, the hazard or potential hazard value may be classified as either major, moderate, or minor. It shall be analyzed as a function of two factors, specifically (1) the hazard or potential hazard associated

with the violative conduct, and (2) the hazard or potential hazard associated with the pesticide involved.

a. Hazard or potential hazard associated with the violative conduct. The hazard or potential hazard associated with the violative conduct is determined by examining whether the conduct increases the likelihood or extent of improper exposure or injury to humans, property, or the environment. The hazard or potential hazard embodied in any act will depend upon the circumstances of each case and will be based upon factors such as, but not limited to, the following: (1) the distance between the treated site and sites, persons and/or animals inappropriately exposed, or likely to be inappropriately exposed, (2) the use of methods tending to increase or decrease the likelihood of improper exposure, damage, or contamination, (3) topographic features of the area tending to increase or decrease the likelihood of improper exposure, damage or contamination, (4) the use of or failure to use buffer zones, drift control agents where appropriate, or any other measures to prevent the violation, (5) presence or proximity of species susceptible to the chemical used, etc.

Although evidence of actual harm may be considered in assessing an HPH value, it will not be the deciding factor. Major hazard may be evidenced by major economic damage, but high risk conduct will not be evaluated as less hazardous simply because the violator was fortunate enough to avoid causing extensive damage. The risk of harm and potential for such risk, in view of the circumstances existing at the time of the application, is the relevant inquiry.

b. Hazard or potential hazard associated with the pesticide. In evaluating the HPH associated with a particular pesticide, the following factors may be considered in appropriate cases: (1) the relative toxicity of the pesticide, as indicated by the human health hazard "signal word" on the pesticide's label, (2) chronic effects associated with the pesticide, (3) the pesticide's persistence in the environment and its residual properties, (4) the tolerance levels established for the pesticide, (5) the pesticide's effect on vegetation, livestock, fish, wildlife, or other natural resources, and (6) any other data found on the label or otherwise reasonably available to the respondent, concerning potential effects on human health, property, or the environment from the pesticide.

c. Interrelation of the two factors in determining magnitude of hazard or potential hazard. Combined, the two hazard or potential hazard factors represent the total HPH of the violation. Although combining the factors to determine a total value is somewhat more complicated when their associated risks are of different magnitudes, careful analysis of how the two factors interrelate should yield an accurate determination of HPH value. For example, if the conduct poses only a moderate hazard of human exposure, but the pesticide is identified as acutely toxic (thus posing a major health hazard to humans) the hazard or potential hazard value of the violation may properly be considered major. Similarly, if the conduct involves a major hazard of non-target crop exposure, but the hazard associated with the effect of the pesticide on that crop is minor, the total hazard or potential hazard value of the violation may properly be considered moderate.

d. Violations not requiring hazard or potential hazard evaluation. Some violations will require evaluation of the extent of non-compliance but not the magnitude of hazard or potential hazard. The hazard or potential hazard value associated with that type of violation has been predetermined and factored into the base penalty. For example, only the degree of non-compliance need be evaluated in determining the penalty component for records violations.

B. Penalty Adjustment Factors.

The base penalty having been established with regard to the factors specified in §76.1555(c)(1) and (2), adjustments to the base penalty will be considered in accordance with factors specified in §76.1555(c)(3-6).

Once a base penalty has been determined, the penalty is subject to upward adjustment based upon the violator's history of previous violations, the amount necessary to deter future violations in light of the economic benefit derived as a result of the violation. The penalty is subject to downward adjustment based upon a consideration of the measures taken by respondent to correct the violation. Finally, in extraordinary cases penalties may be adjusted in response to other factors that justice may require.

1. Previous violations. Previous violations are those for which action has been completed and a penalty, be it monetary or otherwise, has been assessed or agreed upon prior to the date action is taken in response to a subsequent violation. A second or subsequent violation of the same type will often result in upward adjustment of the base penalty. Previous violations of a different type may result in base penalty adjustment for the violation under consideration upward by the difference between the base penalty for the previous violation and the next highest penalty on the matrix associated with that previous violation. Thus, if the current violation involves a human exposure-related use restriction (Type A) that would draw a base penalty of \$750 (on Table I), and the respondent previously was assessed a penalty of \$105 for a Type B records violation on Table VII (7 items x \$15 = \$105), with the next highest penalty for that particular records violation being \$175 on Table VIII (7 items x \$25 = \$175), the base penalty for the current violation would be \$750, plus \$60 (\$175 minus \$105), or \$810. Such an adjustment will be made for each and every previous violation.

Any penalty previously assessed by the department or agreed to by a respondent will be accepted as a proof of the previous violation for the purpose of adjusting base penalties in any subsequent enforcement action.

2. The amount necessary to deter future violations. The base penalty may be adjusted upward if circumstances indicate that failure to comply with a statutory or regulatory requirement resulted in some significant savings or extraordinary economic benefit to the violator. The base penalty-or adjusted base penalty if a repeat violator-can be increased up to twice the penalty within the statutory limits in keeping with the savings. For example, if pesticide drums are discarded illegally, the cost of proper disposal of the drums may be added to the penalty, up to a ceiling of twice the base or adjusted base penalty not to exceed the statutory maximum penalty.

3. Respondent's efforts to correct the violations. To encourage proper action on the part of respondents, the base penalty (or adjusted base penalty) may be reduced depending upon any extraordinary measures taken by a respondent to cooperate with the Department, such as self-reporting the violation or to remedy any effects resulting from the violative conduct. While efforts to remedy the impact of a violation, such as payment for crop damage, may result in a reduction of the base penalty or adjusted base penalty, this reduction will not exceed 15% nor will such efforts be accepted in lieu of a penalty.

C. Multiple Violations.

In any case involving several different violations, the adjusted penalty for each violation will be determined without regard to the other violations being considered in that case. The total penalty will equal the sum of all the adjusted penalties.

IV. Penalties.

A. A person who commits any of the following actions in such a manner as to cause human exposure, cause a risk of human exposure or contravene any requirement which is or appears to be intended to reduce the risk of human exposure may be assessed for that violation an administrative penalty not to exceed \$2,000 and/or a license or certificate suspension not to exceed 80 days.

A second or subsequent violation of this type by a person may result in an administrative penalty not to exceed \$2,000, and/or license revocation, suspension or modification.

Use Restrictions-General (Table I)

Use of pesticides in a manner inconsistent with its label or labeling. Texas Pesticide Law §76.116(a)(1); 4 TAC §7.22

Individual using or causing a pesticide to be used under conditions not specified on the label directions. Texas Pesticide Law, §76.116(1); 4 TAC §7.22(1)

Individual using or causing a pesticide to be used on a crop, animal or site not specified on the label. Texas Pesticide Law, §76.116(1); 4 TAC §7.22(1)

Individual using or causing a pesticide to be used in violation of label requirements related to concentrations, intervals, prohibited methods. Texas Pesticide Law, §76.116(a)(1); 4 TAC §7.22(1)

Individual using or causing a pesticide to be used in violation of label requirements related to tank mixing, application techniques or equipment prohibited by the label. Texas Pesticide Law, §76.116(a)(1); 4 TAC §7.22(2)

Application made in a faulty, careless or negligent manner causing human exposure. Texas Pesticide Law, §76.116(a)(2)

Worker and Resident Protection Requirements (Table I)

Violation of label requirements related to reentry intervals, preharvest intervals, or worker protection requirements, e.g., failure of person in control of site or commodity to comply; or commercial applicator failure to notify farmer of these requirements. 4 TAC §7.22(3)

Application of a pesticide during a time that persons not involved with the application were lawfully present in the field. 4 TAC §7.29(1)

Failure to stop an application when a person not wearing protective clothing lawfully entered the field. 4 TAC §7.29(2)

Farm operator failing to direct workers not to enter a field until expiration of the reentry interval (where reentry interval is seven days or less) and to make reasonable efforts to obtain compliance therewith. 4 TAC §7.27(b)(1)

Farm operator permitting entry into a treated field by workers not wearing appropriate protective clothing prior to the expiration of the reentry interval (where reentry interval is seven days or less). 4 TAC §7.27(b)(2)

Failure to properly post a treated field for the entire reentry interval (where interval exceeds seven days) and to direct workers not to enter a field until the expiration of the reentry interval and to make reasonable efforts to obtain compliance therewith. 4 TAC §7.27(c)(1) and (2)

Failure to properly post a treated field for the entire reentry interval (where reentry interval is seven days or less) and/or failure to permit workers not wearing appropriate clothing to enter a field and/or failure to provide

workers with appropriate instructions as required under §7.28. 4 TAC §7.27(c) (1) and (3)

Ordering workers not wearing appropriate protective clothing to engage in an activity that involves substantial contact with sources of pesticide residues prior to the expiration of the reentry interval. 4 TAC §7.27(f)

Failure of farm operator to furnish upon request the trade and common chemical name of the pesticide and the pesticide's label and other safety requirements to workers, persons alleging pesticide exposure or to treating medical personnel. 4 TAC §7.28(e)

Storage and Disposal Restrictions (Table I)

Disposal of, discarding, or storing a pesticide or pesticide container in a manner that may cause or result in pollution or injury to humans, vegetation, crops livestock, wildlife, pollinating insects, or pollution of any water supply or waterway. Texas Pesticide Law, §76.004(2); 4 TAC §7.21(a)

Disposal of pesticide containers, concentrates, spray mixes, container rinsates and/or spray system rinsates not in accordance with the provisions of the Texas Solid Waste Disposal Act. 4 TAC §7.21(d)

Individual using or causing a pesticide to be used in violation of label requirements related to improper storage or disposal of the pesticide or its container. Texas Pesticide Law, §76.116(a)(1); 4 TAC §7.22(4)

Storage or disposal constituting operation in a faulty, careless or negligent manner. Texas Pesticide Law §76.116(a)(2)

Registrant or agent disposing of LPC contrary to label directions. 4 TAC §7.32(c)(6)

Improper disposal of Compound 1080 wastes. 4 TAC §7.32(f)

Distribution Requirements-General (Table I)

Distribution of a misbranded pesticide: false or misleading label. Texas Pesticide Law §76.023(a)(1); Texas Pesticide Law, §76.021(a)

Distribution of a misbranded pesticide: no label. Texas Pesticide Law, §76.023(b)(2); Texas Pesticide Law, §76.021(a); 4 TAC §7.3(a)

Distribution of a misbranded pesticide: information missing from label. Texas Pesticide Law, §76.023(b)(3); Texas Pesticide Law, §76.021(a); 4 TAC §7.3

Dealer selling or transferring M-44 sodium cyanide without providing a complete label for the product. 4 TAC §7.33(c)(6)

Use Restrictions-LPC and M-44 (Table I)

Use of an LPC in a manner inconsistent with its label:

Failing to post a bilingual warning sign, or failing to ensure legible warning sign is posted about the use of LPC displayed at a point of access to a particular location. 4 TAC §7.32(f)

Failing to keep LPCs under lock and key in a dry place away from food, feed, domestic animals or corrosive chemicals and in outbuildings or in storage areas which may be attached to, but separate from human living quarters. 4 TAC §7.32(f)

Use of LPCs in a site prohibited by the label, i.e., National or State parks, etc. 4 TAC §7.32(f)

Individual other than registrant or collar manufacturer filling collars with compound 1080 solution. 4 TAC §7.32(h)

Use of M-44 sodium cyanide in a manner inconsistent with its label:

M-44 device placed less than 50 feet from any public road or pathway. 4 TAC §7.33(d)(2)

Failure to keep M-44 devices under lock and key. 4 TAC §7.33(d)(2)

B. A person who commits any of the following actions in a manner not involving human exposure, or the risk of human exposure or contravenes any requirement other than one intended to reduce the risk of human exposure may be assessed for that violation an administrative penalty not to exceed \$1,500 and/or a license or certificate suspension not to exceed 60 days.

A second violation of this type by a person may result in the assessment of an administrative penalty not to exceed \$2,000 and/or a license or certificate suspension not to exceed 80 days.

A third violation of this type and each subsequent violation may result in an administrative penalty not to exceed \$2,000 and/or license or certificate revocation, modification or suspension.

Use Restrictions-General (First violation: Table II; subsequent violation: Table I)

Individual using or causing a pesticide to be used in a manner inconsistent with its label or labeling. Texas Pesticide Law, §76.116(1); 4 TAC §7.22

Individual using or causing a pesticide to be used under conditions not specified on the label directions. Texas Pesticide Law, §76.116(1); 4 TAC §7.22(1)

Individual using or causing a pesticide to be used in a crop, animal or site not specified on the label. Texas Pesticide Law, §76.116(1); 4 TAC §7.22(1)

Individual using or causing a pesticide to be used in violation of label requirements related to concentrations, intervals, prohibited methods. Texas Pesticide Law, §76.116(a)(1); 4 TAC §7.22(1)

Individual using or causing a pesticide to be used in violation of label requirements related to tank mixing, application techniques or equipment prohibited by the label. Texas Pesticide Law, §76.116(a)(1); 4 TAC §7.22(2)

Application made in a faulty, careless or negligent manner. Texas Pesticide Law, §76.116(a)(2)

License and Permit Requirements (First violation: Table III; subsequent violation: Table IV)

Individual using or supervising the use of a SLU or RU pesticide without either being appropriately licensed or certified as a commercial, non-commercial, private, or certified private applicator as required by law; or performing services in a category for which he/she is not licensed. Texas Pesticide Law, §76.105(a)(1 and 2); Texas Pesticide Law, §76.108(a); 4 TAC §7.17(a); Texas Pesticide Law, §76.109 or Texas Pesticide Law, §76.112(h).

Failure of a licensed business, commercial applicator or entity to employ a certified applicator. Texas Pesticide Law, §76.108(f)

Fraud or misrepresentation in applying for an applicator's license. Texas Pesticide Law, §76.116(a)(7)

Financial Responsibility Requirements (First violation: Table III; subsequent violation: Table IV)

Commercial applicator applying a chemical excluded from coverage on his/her insurance policy. 4 TAC §7.14(a)(3).

Individual acting as a commercial applicator without having obtained insurance or during an uninsured period. Texas Pesticide Law, §76.116(a)(5); Texas Pesticide Law, §76.111(j); 4 TAC §7.14(a)

Failure to maintain a liability insurance policy or bond protecting persons who might suffer damages as a result of the applicator's operations and applications. Texas Pesticide Law, §76.116(a)(5)

Supervision Requirements (First Violation: Table III; subsequent violation: Table IV)

Failure of a commercial applicator to be continuously physically present on the site where a restricted or state limited use pesticide is being applied by a person working under his/her supervision. 4 TAC §7.34(b)

Failure of licensed applicator to assure that any person working under his/her direct supervision is knowledgeable of the label requirements and rules and regulations governing the use of the particular pesticide being used by the individual. 4 TAC §7.34(d)

Private applicator supervising the use of restricted or state limited use pesticides by an unlicensed or noncertified applicator without obtaining a private applicator's license. 4 TAC §7.34(e)

M-44 Dealer failing to be or failing to employ a person certified under 4 TAC §7.33. 4 TAC §7.33(c)(4)

Records and Report Requirements-General (Base penalty = \$1,500)

Applicator keeping false or fraudulent records. Texas Pesticide Law, §76.116(a)

Failure to submit application records or reports upon request. Texas Pesticide Law, §76.075(b); 4 TAC §7.18(b)

Use Restriction-Herbicides (First violation: Table II; subsequent violation: Table I)

Application of a regulated herbicide during a time period prohibited by County Special Provisions regulations. Texas Herbicide Law, §75.012(a); 4 TAC §11.2

Application of low/non-volatile herbicide in violation of wind speed and distance requirements. Texas Herbicide Law, §75.012(a); 4 TAC §11.6(e)(5)

Application of a high volatile herbicide in violation of four mile radius requirement from susceptible crops. Texas Herbicide Law, §75.012(a); 4 TAC §11.6(e)(6)

Application of a regulated herbicide in a regulated county when the wind velocity exceeded 10 miles per hour. Texas Herbicide Law, §75.012(a); 4 TAC §11.6(e)(2)

Application of a hormone-type herbicide at a rate in excess of the maximum pressure for aircraft equipment. Texas Herbicide Law, §75.012(a); 4 TAC §11.6(e)(3)

Application of a hormone-type herbicide at a rate in excess of the maximum pressure for ground equipment. Texas Herbicide Law, §75.012(a); 4 TAC §11.6(e)(4)

Storage and Disposal Restrictions (First violation: Table II; subsequent violation: Table I)

Disposal of, discarding, or storing a pesticide or pesticide container in a manner that may cause or result in pollution or injury to vegetation, crops, livestock, wildlife, pollinating insects, or pollution of any water supply or waterway. Texas Pesticide Law, §76.004(2); 4 TAC §7.21(a)

Displaying or offering for sale pesticides in leaking, broken, corroded, or otherwise unsafe containers, or with illegible labels. 4 TAC §7.21(c)

Disposal of pesticide containers, concentrates, spray

mixes, container rinsates and/or spray system rinsates not in accordance with the provisions of the Texas Solid Waste Disposal Act. 4 TAC §7.21(d)

Storage or disposal constituting operation in a faulty, careless or negligent manner. Texas Pesticide Law, §76.116(a)(2)

Individual using or causing a pesticide to be used in violation of label requirements related to improper storage or disposal of the pesticide or its container. Texas Pesticide Law, §76.116(a)(1); 4 TAC §7.22(4)

Application made in a faulty, careless or negligent manner. Texas Pesticide Law, §76.116(a)(2)

Distribution Requirements-General (First violation: Table II; subsequent violations: Table I)

Distribution of a misbranded pesticide: false or misleading label. Texas Pesticide Law, §76.023(a)(1); Texas Pesticide Law, §76.021(a)

Distribution of restricted use or state limited use products to persons other than licensed and certified applicators, persons acting under the direct supervision of a licensed applicator, or a licensed dealer. Texas Pesticide Law, §76.076(a); 4 TAC §7.8(b)(5)

Dealer selling SLU or RU pesticides to a licensed applicator or certified private applicator without verifying the purchaser holds an unexpired license. 4 TAC §7.8(b)(5)

Authorized dealer selling or transferring M-44 sodium cyanide to unauthorized individuals. 4 TAC §7.33(c)(2)

Dealer selling or transferring M-44 sodium cyanide without providing a complete label for the product. 4 TAC §7.33(c)(6)

Dealer's failure to have a list of poison control centers. 4 TAC §7.21(f)

Registrant or agent who sells or transfers LPCs operating without a commercial or non-commercial license and/or without a pesticide dealer license. 4 TAC §7.32(c)(2)

Registrant or agent selling or transferring LPCs to persons other than registrant or agents for the purpose of resale or transfer. 4 TAC §7.32(c)(3)

Registrant or agent disposing of LPC contrary to label directions. 4 TAC §7.32(c)(6)

Use Restrictions-LPC and M-44 (First violation: Table II; subsequent violation: Table I)

Use of an LPC in a manner inconsistent with its label:

Use of LPCs on unfenced, open range areas. 4 TAC §7.32(f)

Use of LPCs in a area larger than the one allowed on the label or using LPC in an amount exceeding the one recommended on the label. 4 TAC §7.32(f)

Failing to check all collared livestock at least once every seven days. 4 TAC §7.32(f)

Failing to keep LPCs under lock and key in a dry place away from food, feed, domestic animals or corrosive chemicals and in outbuildings or in storage areas which may be attached to, but separate from human living quarters. 4 TAC §7.32(f)

Improper disposal of Compound 1080 wastes. 4 TAC §7.32(f)

Use of LPCs in a site prohibited by the label, i.e., National or State parks, etc. 4 TAC §7.32(f)

LPC applicator failing to instruct noncertified applicator on the use of LPCs. 4 TAC §7.32(i)

LPC applicator failing to keep copy of LPC label signed and dated by applicator and noncertified person. 4 TAC §7.32(i)

Use of M-44 sodium cyanide in a manner inconsistent with its label:

Use of M-44 device to take animals for the value of their fur. 4 TAC §7.33(d)(2)

Use of M-44 device in a site prohibited by the label, i.e., National or State parks, etc. 4 TAC §7.33(d)(2)

Use of M-44 device in an area where threatened or endangered animal species might be adversely affected. 4 TAC §7.33(d)(2)

Individual applicator failing to inform other person of the exact location of all M-44 devices in a field. 4 TAC §7.33(d)(2)

M-44 device placed within two hundred feet of lake, stream, or other body of water. 4 TAC §7.33(d)(2)

M-44 device placed in areas where food crops are planted. 4 TAC §7.33(d)(2)

M-44 device density exceeding the one recommended on the label. 4 TAC §7.33(d)(2)

Amount of M-44 devices placed in a single draw station exceeding the amount allowed by the label. 4 TAC §7.33(d)(2)

Failure to remove from field a damaged or nonfunctional M-44 device. 4 TAC §7.33(d)(2)

Failure to keep M-44 devices under lock and key. 4 TAC §7.33(d)(2)

Failure to post a bilingual sign in areas containing M-44 devices. 4 TAC §7.33(d)(2)

Failure to post a sign within 6 feet of the M-44 device. 4 TAC §7.33(d)(2)

Licensed applicator failing to carry an antidote on his person when placing and/or inspecting M-44 devices. 4 TAC §7.33(d)(2)

C. A person who commits any of the following violations may be assessed an administrative penalty **not to exceed \$1,000 and/or a license or certificate suspension not to exceed 40 days.**

A second violation of this type by a person may result in the assessment of an administrative penalty not to exceed \$1,250 and/or a license suspension not to exceed 60 days.

A third violation of this type and each subsequent violation may result in the assessment of an administrative penalty not to exceed \$1,500 and/or license or certificate revocation, suspension, or modification.

Distribution Requirements-General (First violation: Table VI; second violation: Table V; subsequent violation: Table II)

Distribution of an unregistered product within the State of Texas. Texas Pesticide Law, §76.041(a)

Failure to include information in the application for registration of a product. Texas Pesticide Law, §76.042(a); 4 TAC §7.4(a)

Distribution of restricted use or state limited use products without a valid dealer's license. Texas Pesticide Law, §76.071(a) and 4 TAC §7.8(a)

Distribution of a regulated herbicide without a valid dealer's license. Texas Herbicide Law, §75.004(a); 4 TAC §11.7(a) and (b)

Distribution of a misbranded pesticide: false or misleading; did not meet guaranteed analysis. 4 TAC §7.3(5)

Distributing a pesticide under more than one brand name or formulation without registering each product separately. Texas Pesticide Law, §76.041(a); 4 TAC §7.4(b)

Continuing to distribute a product in the state without renewing the product registration by December 31. Texas Pesticide Law, §76.041(a); 4 TAC §7.4(c)

Distribution Requirements-LPC (First violation: Table VI; second violation: Table V; subsequent violation: Table II)

LPC registrant failing to file with the department the name, home address, address of distribution site, and telephone number of each agent and/or failure to notify the Department of any change in this information within 10 days. 4 TAC §7.32(c)(4)

LPC registrant or agent selling or transferring an LPC with no serial number. 4 TAC §7.32(c)(5)

Failure of registrant or agent to distribute the forms prescribed by the department for use of LPC applicators with each sale or transfer of LPCs. 4 TAC §7.32(c)(7)

Registrant or agent selling or transferring LPCs to LPC applicators for whom a site review and sales data report has not been executed. 4 TAC §7.32(c)(8)

Failure of registrant or agent to report to the department any incident or complaints of misuse involving LPCs. 4 TAC §7.32(c)(9)

Record and Report Requirements-LPC (First violation: Table VII; second violation: Table VIII; subsequent violation: Table IX)

Registrant failing to keep an inventory of Compound 1080 and an inventory of LPCs. 4 TAC §7.32(g)(1)(A)

Registrant failing to submit an annual production report to the department by January 31 for the previous calendar year reporting on the number and type of LPCs produced and distributed and on the quantity of Compound 1080 purchased and used. 4 TAC §7.32(g)(1)(A)

Registrant failing to keep all the information required on the department's site review and sales data report. 4 TAC §7.32(g)(1)(B)

Registrant failing to submit to the department on a monthly basis a site review and sales data report. 4 TAC §7.32(g)(1)(C)

LPC applicator failing to submit to the Department quarterly records on the use of the collar by the 10th day of January, April, July and October for each quarter when the collars have been used. 4 TAC §7.32(g)(2)

LPC applicator failing to keep copy of the reports that are required to be submitted to the department for at least two years. 4 TAC §7.32(g)(3)

LPC applicator failing to report to the department accidents involving any suspected or actual poisoning of threatened or endangered species, humans, domestic animals or non-target animals. 4 TAC §7.32(g)(4)

Distribution Requirements-M-44 (First violation: Table VI; second violation: Table V; subsequent violation: Table II)

Dealer failing to keep for a period of two years complete records of all transactions involving M-44 sodium cyanide. 4 TAC §7.33(c)(5)

Dealer failing to provide to M-44 applicators the recordkeeping forms prescribed by the Department. 4 TAC §7.33(c)(6)

Dealer failing to obtain the Department's approval prior to purchasing any M-44 sodium cyanide. 4 TAC §7.33(c)(7)

Dealer failing to report to the Department any incident or complaint of misuse involving M-44 sodium cyanide. 4 TAC §7.33(c)(8)

Use Restrictions-M-44

Use of M-44 sodium cyanide in a manner inconsistent with its label: (First violation: Table VI; second violation: Table V; subsequent violation: Table II)

Failure to notify local medical personnel that M-44 devices are going to be used in the area. 4 TAC §7.33(d)(2)

Applicator failing to keep all the information required dealing with the placement of M-44s and the results of each placement. 4 TAC §7.33(e)

License and Permit Requirements (First violation: Table X; second violation: Table XI; subsequent violation: Table III)

Failure of a commercial applicator, business, or entity to notify the Department of a change in address, status, or employment of any certified applicator, employee, owner or associate. 4 TAC §7.13(c)

Out-of-state licensee failing to appoint a resident agent for service of process. Texas Pesticide Law, §76.108(g)

Failure to obtain a spray permit. Texas Herbicide Law, §75.006(a); 4 TAC §11.8(b)(2)

Failure to give to the department a notice of intent to spray a herbicide in a regulated county. Texas Herbicide Law, §75.012(c)(1); 4 TAC §11.8(c)(1)(B)

Record and Report Requirements-General (First violation: Table VII; second violation: Table VIII; subsequent violation: Table IX)

Applicator failing to maintain all the information required on his/her records of pesticide use. Texas Pesticide Law, §76.114(a); 4 TAC §7.18

Applicator failing to maintain all the information required on his/her records of herbicide use. Texas Herbicide Law, §75.013(a); 4 TAC §11.8(4)

Failure of a licensed applicator, business or entity to submit supplemental reports as required by the law and regulations. Texas Pesticide Law, §76.006(b); Texas Pesticide Law, §76.012(c); Texas Herbicide Law, §75.024(a)(1); 4 TAC §11.1, 11.2(d); 4 TAC §11.3(b)(2)

Record and Report Requirements-Distributor (First violation: Table VII; second violation: Table VIII; subsequent violation: Table IX)

Dealer failing to maintain all the information required for sales of herbicides and/or restricted use or state limited use pesticides. Texas Pesticide Law, §76.075(a); 4 TAC §7.8(e)

Dealer failing to maintain all the information required for sales of regulated herbicides. Texas Herbicide Law, §75.005(a); 4 TAC §11.7(d)

Dealer not reporting all sales of herbicides for which monthly sales reports are required to be submitted. Texas Herbicide Law, §75.005(a); 4 TAC §11.7(b) and (d)

Prior Notification Requirements (First violation: Table VI; second violation: Table V; subsequent violation: Table II)

Failure to give proper or timely notice as required by the Pesticide Regulations to adjoining owners. 4 TAC §7.26(a) and (h)(1)

Failure to give proper or timely notice as required by the Pesticide Regulations to persons with chemical hypersensitivities, allergies, or other medical conditions which may be aggravated by pesticide exposure. 4 TAC §7.26(a) and (h)(2)

Failure to give proper or timely notice as required by the Pesticide Regulations to persons in charge of day-care centers, primary and secondary schools, hospitals, in-patient clinics, or nursing homes. 4 TAC §7.26(a) and (h)(3)

Storage and Disposal Requirements (First violation: Table VI; second violation: Table V; subsequent violation: Table II)

Storing or displaying pesticides intended for distribution or sale in open areas without surveillance. 4 TAC §7.21(b)

D. A person who commits any of the following actions may be assessed an administrative penalty not to exceed \$500 and/or a license or certificate suspension not to exceed 20 days. (Base Penalty = \$500)

A second violation of this type by a person may result in the assessment of an administrative penalty not to exceed \$750 and/or a license suspension not to exceed 30 days. (Base Penalty = \$750)

A third violation of this type and each subsequent violation may result in the assessment of an administrative penalty not to exceed \$750 and/or license or certificate revocation, suspension or modification. (Base Penalty = \$750)

Worker and Resident Protection Requirements

Person employed by a farm operator knowingly entered a field to which pesticides have been applied and the reentry

interval has not expired or to which pesticides are being applied without the authorization of the farm operator. 4 TAC §7.29(3)

Failure to remove reentry signs from field for more than 48 hours after the expiration of the reentry period. 4 TAC §7.27(d)(2)

Failure to remove flags from field after more than 48 hours from the time of application. 4 TAC §7.26(1)

Record and Report Requirements

Dealer failing to submit hormone herbicide sales report by the 10th of each month of all sales of hormone herbicides sold during the prior month. Texas Herbicide Law, §75.005(c); 4 TAC § 11.7(e)

License and Permit Requirements

Failure of a pesticide dealer to display license. Texas Pesticide Law, §76.074(a)

Equipment Requirements

Failure to have an accurate wind gauge at the place of spraying. 4 TAC §11.6(e)(1)

Financial Responsibility Requirements

Failure of a commercial applicator to notify the Department of reduction in, or cancellation of insurance. Texas Pesticide Law, §76.111(e); 4 TAC §7.14(a) (4), (b) and (g)

V. Other Penalties

In appropriate cases, the department will continue to refer a matter for local prosecution or civil action. For example, the department may refer for civil action incidents where the administrative penalties available for the violation do not reflect the egregiousness or number of violations, or the Department may refer for local prosecution.

Table I

Hazard or Potential Hazard	Nature, Circumstances, Extent, and Gravity		
	Minor	Moderate	Major
Minor	\$500	\$750	\$1000
Moderate	\$1000	\$1250	\$1500
Major	\$1500	\$1750	\$2000

Table II

Hazard or Potential Hazard **Nature, Circumstances, Extent, and Gravity**

	Minor	Moderate	Major
Minor	\$200	\$400	\$600
Moderate	\$600	\$800	\$1000
Major	\$1000	\$1200	\$1500

Table III

Hazard or Potential Hazard

Minor	\$375
Moderate	\$750
Major	\$1500

Table IV

Hazard or Potential Hazard

Minor	\$500
Moderate	\$1000
Major	\$2000

Table V

Hazard or Potential Hazard **Nature, Circumstances, Extent, and Gravity**

	Minor	Moderate	Major
Minor	\$250	\$500	\$750
Moderate	\$500	\$750	\$1000
Major	\$750	\$1000	\$1250

Table VI

Hazard or Potential Hazard	Nature, Circumstances, Extent, and Gravity		
	Minor	Moderate	Major
Minor	\$200	\$400	\$600
Moderate	\$400	\$600	\$800
Major	\$600	\$800	\$1000

Table VII

	Nature, Circumstances, Extent, and Gravity		
	Minor	Moderate	Major
\$15/item required to be recorded or reported that is not accurately recorded or reported	\$15-345	\$360-705	\$720-1000

Table VIII

	Nature, Circumstances, Extent, and Gravity		
	Minor	Moderate	Major
\$25/item required to be recorded or reported that is not accurately recorded or reported	\$25-425	\$450-900	\$925-1250

Table IX

Nature, Circumstances, Extent, and Gravity

\$50/item required to be recorded or reported that is not accurately recorded or reported

Minor	Moderate	Major
\$50-500	\$550-1000	\$1050-1500

Table X

Hazard or Potential Hazard

Minor	\$300
Moderate	\$600
Major	\$1000

Table XI

Hazard or Potential Hazard

Minor	\$400
Moderate	\$800
Major	\$1250

Issued in Austin, Texas, on November 13, 1990.

TRD-9012174 Dolores Alvarado Hibbs
Director of Hearings
Texas Department of Agriculture

Filed: November 13, 1990

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



State Banking Board

Notice of Hearing Cancellation COD-Prim

As no opposition has been noted in the application for domicile change by the Prime Guaranty Trust Company, Dallas, the hearing previously scheduled for Tuesday, November 20, 1990, has been cancelled.

Issued in Austin, Texas, on November 12, 1990.

TRD-9012139 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: November 13, 1990

For further information, please call: (512)479-1200



Credit Union Department

Notice of Hearing

The Credit Union Department will conduct a hearing on the appeal by the Board of Directors of Houston Postal Credit Union of the Order of Conservation issued October

16, 1990, and to consider a plan to resume operations under the control of the board of directors.

Time and Place of Hearing. The hearing will be held on Monday, November 26, 1990, at 9 a.m. in the conference room of the Credit Union Department building, 914 East Anderson Lane, Austin.

Authority. Texas Revised Civil Statutes Articles 6252-13(a), 2461-10.01(c), and 2461-12.01 (Vernon Supplement 1989); 7 Texas Administration Code, §93.221.

Name and Address of Parties. Board of Directors, Houston Postal Credit Union P.O. Box 222, Houston, Texas 77001-0222; Attorney-Winstead, McGuire, Sechrest & Minick, 1700 MBank Building, Houston, Texas 77002-5895.

Nature of Hearing. This hearing is contested case under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a. The board of directors must present to the commissioner a plan to continue operations under the control of the board of directors setting out proposed corrective actions. The commissioner shall consider the board of directors' plan, the findings leading to the Order of Conservatorship and any other information necessary to comply with the provisions of Texas Civil Statutes, Article 2461-10.01.

Hearing Officer. Nancy Ricketts (2003 Cypress Point East, Austin, Texas 78746) has been appointed to serve as hearing officer.

Public Attendance and Testimony. Members of the general public may attend the hearing. Those who plan to attend are encouraged to telephone the Credit Union Department at (512) 837-9236, a day or two prior to the hearing date in order to confirm the setting, 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 Credit Union Department at (512) 837-9236, to find out the names and addresses of all admitted parties who may be contacted about the possibility of presenting testimony.

Issued in Austin, Texas, on November 13, 1990.

TRD-9012158 Nancy Ricketts
Hearing Officer
Credit Union Department

Filed: November 13, 1990

For further information, please call: (512) 837-9236

◆ ◆ ◆
Texas Commission for the Deaf
Request for Proposal

Pursuant to the authority provided in the Human Resources Code, §81.013, the Texas Commission for the Deaf will implement an outdoor training program for students who are deaf and hearing impaired during the summer of fiscal year 1991. In compliance with Texas Civil Statutes, Article 6252-11c, the commission is requesting proposals for the operation of a summer camp program for school age children who are deaf and hearing impaired.

The commission is seeking a camp program designed to provide a broad range of recreational and educational camping experiences for campers who are deaf and hearing impaired eight to 15 years old. In conjunction the commission desires to include a counselor-in-training (CIT) program focused on the development and preparation of future camp counselors. Such counselors-in-training will be 16 and 17 years old and deaf or hearing impaired.

Description of Recommended Services. Respondents should be licensed by the Texas Department of Health; provide three meals daily and one snack (such as fresh fruits and frozen ices) every afternoon; and make available safe, comfortable, and well-maintained facilities, and have comprehensive campsite insurance. Programs should be planned and provided for deaf and hearing impaired campers eight to 15 years old and CITs 16 and 17 years old. An orientation program should be conducted on the camp site for counselors and CITs.

Respondents should provide a broad spectrum of camping activities including, but not limited to water sports, i.e., swimming, fishing, canoeing, etc., in a natural water setting; horseback riding, with a minimum of 65 horses; riflery on a National Riflery Association or equivalent affiliated rifle range; arts and crafts; nature trail hikes; evening programs, i.e., skits, movies, campfire stories, etc.; life-long sports, i.e., golf, tennis, soccer; and other related camping experiences. Activities should also include some types of leadership training experiences.

The respondents must coordinate with a camp director who has experience as a director in camping for and working in other related fields with children who are deaf and hearing impaired appointed by the commission. Also, camp counselors must be employed who have a working knowledge of sign language and experience working with children who are deaf and hearing impaired. The desired ratio of staff to children is one to four. A suggested salary schedule for the staff follows this request as furnished in an application package provided by the commission. All staff as described above will be recommended by the commission.

The respondents must also employ two full-time nurses who are skilled in the use and understanding of sign language. These individuals will be recommended by the commission. A camp physician should be available 24 hours a day, subject to call night or day.

The commission will consider proposals for a one-week camping session. Proposals must accommodate a camp population of at least 120.

Funding. Respondents should provide a complete estimated budget of expenditures. The cost shall not exceed \$400 per camper; however, a contractor will be allowed to collect the fees from campers whose parents' income is in excess of a scale determined by the commission. These collected fees will be supplemented to the contractor's fund. (Previous collections range from \$8,000 to \$12,000.) The minimum budget should specify expected costs, minimum and maximum number of campers and shall not exceed a cumulative of \$35,000 (state appropriation) per year of the summer. A contract award will be good for a period from January 1, 1991-August 31, 1991. The respondents should show their own payment schedule for completion of required task. A contractor will be paid 1/3 of the allocation upon completion of each of three segments of the program enumerated and described in an awarded contract. In no event will the final payment be made until the program is completed. No advance payments will be made under contract mechanism.

Deadline for Proposals. Proposals must be postmarked no later than 5 p.m. on Monday, December 10, 1990. Proposals postmarked after this established deadline cannot be considered for selection. Proposals are to be addressed to: Texas Commission for the Deaf, Attention: Billy Collins, Jr., P.O. Box 12904, Austin, Texas 78711.

Proposal Evaluation Criteria and Selection. Proposals will be evaluated by a screening committee on submission of proposal on or before the established deadline; operation of the program within the monetary limits established, including the salary schedule for the staff; submission of proposal utilizing provided format; minimum and maximum number of campers allowed within specified budgets; respondents' program; respondents' ability to provide a sound, high quality recreational and educational program specifically directed to, and suited for youngsters who are deaf and hearing impaired; willingness of respondent to employ staff with knowledge of and experience in working with the deaf as recommended by the commission. Final selection with the commission approval will be based on the results of the screening committee's evaluation of the listed criteria. However, contract award will not necessarily be made to the respondent offering the lowest cost, but to the best respondent, considering results of the evaluation criteria and cost allocated within the commission's specified budget.

Intent to Award to Prior Consultant. The commission intends to award a contract for outdoor training program to the consultant that previously performed the program unless a better proposal is submitted as determined by the criteria stated in evaluation and selection.

Contact Person. Further information, format guidelines for submitting proposals and a copy of the suggested salary schedule for the camp staff may be obtained by contacting Billy Collins, Jr., Direct Services Manager, Texas Commission for the Deaf, P.O. Box 12904, 1801 South I-35, Suite 200, Austin, Texas 78711, (512) 444-DEAF (3323).

Issued in Austin, Texas, on November 8, 1990.

Filed: November 12, 1990

For further information, please call: (512) 444-3323

◆ ◆ ◆

Texas Department of Health

Correction Of Error

The Texas Department of Health submitted an adopted section which contained an error as submitted by the department for publication in the department for publication in the September 25, 1990, issue of the *Texas Register* (15 TexReg 5578).

In the preamble on page 15 TexReg 5578, third column, lines 2-4 and line 6, the wording contradicts the department's response to the previous comment. The phrase should read "...the same requirement as in §19.503; has added a definition of social worker; and has made changes relating to the requirements of a social worker, thereby more closely following the current ICF/SNF requirements as well as the intent of the federal requirements."

◆ ◆ ◆

The Texas Department of Health submitted adopted sections which contained errors as submitted by the department in the August 21, 1990, issue of the *Texas Register* (15 TexReg 4819).

In §96.16, the subsections following subsection (h) were not sequentially alphabetized. Subsection (j) should be (i), and subsection (k) should be (j).

◆ ◆ ◆

The Texas Department of Health submitted a notice of Intent to Revoke a Certificate of Registration by the Bureau of Radiation Control. The document was published with a wrong zip code due to publication error in the November 2, 1990, *Texas Register* (15 TexReg 6388).

The first paragraph should read as follows. "The Bureau of Radiation Control, Texas Department of Health, is seeking the revocation of Certificate of Registration Number R17348, issued to Advanced Radiology Services, Inc., because the Agency determined that the registrant is no longer located at 10203 Market Street, Suite J, Houston, Texas 77029. The registrant has not notified the Agency of a change of address and no forwarding address is available."

◆ ◆ ◆

State Department of Highways and Public Transportation

Public Hearing Notice

Pursuant to the Texas Coastal Waterway Act of 1975, Texas Civil Statutes Article 5415e-2, §6(g), the State Highway and Public Transportation Commission will conduct a public hearing to receive data, evidence, comments, views, and/or testimony concerning the acquisition of land or interest therein by donation, lease, purchase or condemnation which is environmentally suitable for use as disposal sites for materials dredged from the main channel of the Gulf Intracoastal Waterway. The location of the individual proposed sites to be considered by the commission are near Baffin Bay in the vicinity of Point of Rocks in

Kleberg County, and adjacent to Point Penascal in Kenedy County and are more specifically described in each county as follows.

Kleberg County, concerning three sites north of Baffin Bay in the vicinity of Point of Rocks. Point of Rocks "A" being approximately 140 upland acres located along the western edge of the Laguna Madre at the intersection of the Laguna and Baffin Bay in the immediate vicinity of the Point of Rocks. More specifically identified by the United States Army Corps of Engineers as between their station numbers 151+000 and 154+500; and Point of Rocks "B" being approximately 160 upland acres located along the western edge of the Laguna Madre approximately 7,000 feet north of Point of Rocks "A". More specifically identified by the United States Army Corps of Engineers as between their station numbers 141+000 and 144+000; and Point of Rocks "C" being approximately 200 upland acres located along the western edge of the Laguna Madre approximately 13, 000 feet north of Point of Rocks "B". More specifically identified by the United States Army Corps of Engineers as between their station numbers 123+000 and 128+000.

Kenedy County, concerning one site being approximately 250 upland acres located along the western edge of the Laguna Madre on the southern side of Baffin Bay adjacent to Point Penascal. More specifically identified by the United States Army Corps of Engineers as between their station numbers 175+000 and 185+000.

The public hearing will be held at 10:30 a.m., Thursday, November 29, 1990, in the first floor meeting room, Dewitt C. Greer State Highway Building, 11th and Brazos Streets, Austin.

Any interested person may appear and offer either oral or written testimony or evidence; however, questioning will be reserved exclusively to the commission as may be necessary to ensure a complete record. While any person with pertinent evidence or testimony will be granted an opportunity to present it during the course of the hearing, the commission reserves the right to restrict testimony in terms of time or repetitive content.

Maps, environmental impact statements and other displays concerning the proposed sites will be exhibited at the public hearing. Prior to the public hearing, information about the proposed sites will be on file and available for inspection at the State Department of Highways and Public Transportation, Building #1, 40th and Jackson Streets, Austin with B. C. Gersch, P.E., (512) 467-3832.

The State's Relocation Assistance Program concerning the benefits and services for displacees, and information about the site acquisition process are available at the above noted office.

For further information, please contact Alvin R. Luedecke, Jr., P.E., State Transportation Planning Engineer, P.O. Box 5051, Austin, Texas 78763-5051, (512) 465-7346; or Marcus L. Yancey, Jr., P.E., Deputy Director, Planning and Policy, (512) 463-8627.

Issued in Austin, Texas, on November 13, 1990.

TRD-9012178

Diane L. Northam
Legal Administrative Assistant
State Department of Highways and Public
Transportation

Filed: November 14, 1990

For further information, please call: (512) 463-8630

Legislative Budget Board Budget Execution Proposal

Pursuant to Texas Government Code, §317.002(b)(2), relating to budget execution authority, I make the following budget execution proposal.

The National Research Laboratory Commission requests authority to transfer funds freed up by bond proceeds to fund resources needed to fulfill its expanded obligations in regard to minority affairs and public information. I propose to authorize the National Research Laboratory Commission to transfer \$114,111 from item 2. Site Development and \$220,062 from item 3. Research and Development to item 1. Administration, appropriated for the fiscal year ending August 31, 1991, Article III, page III-53, Senate Bill 222, 71st Legislature, 1989, Regular Session, and hereby declare an emergency.

I hereby certify that this proposal has been reviewed by legal counsel and found to be within my authority.

Issued in Austin, Texas, on October 22, 1990.

TRD-9012111 William P. Clements, Jr.
Governor

Filed: November 12, 1990

For further information, please call: (512) 463-1778

Texas State Board of Examiners of Psychologists Correction Of Error

The Texas State Board of Examiners of Psychologists submitted an adopted section which contained an error as submitted by the board for publication in the November 2, 1990, issue of the *Texas Register* (15 TexReg 6295).

In §473.3, the annual renewal fee for psychological associate certification should be \$65, instead of \$50. Subsection (a) should read as follows: "(a) Psychological associate certification \$65."

Public Utility Commission of Texas Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 2, 1990, to amend a Certificated 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 Texas Utilities Electric Company for a Certificate of Convenience and Necessity for a proposed transmission line within Dallas County, Docket Number 9838 before the Public Utility Commission of Texas.

The application: In Docket Number 9838, Texas Utilities Electric Company requests approval of its application to construct approximately 0.13 miles of 138kv transmission line in Dallas County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard,

Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on November 9, 1990.

TRD-9012170 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 13, 1990

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

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 31, 1990, to amend a Certificated of Convenience pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52 and 54. A summary of the application follows.

Docket Title and Number: Application of Southwestern Bell Telephone Company to amend the boundary between Southwestern Bell's Midland and Terminal Exchanges, Docket Number 9837 before the Public Utility Commission of Texas.

The Application: In Docket Number 9837, Southwestern Bell Telephone Company requests approval of its application to amend exchange area boundaries to serve a customer in Midland County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas on November 9, 1990.

TRD-9012169 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 13, 1990

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

Texas Racing Commission Notice of Public Hearing

Pursuant to Texas Civil Statutes, Article 179e, §18.02, a hearings examiner for the Texas Racing Commission, Horse Racing Section, will conduct an administrative hearing on the application for a Class 2 pari-mutuel horse racetrack license for the Bryan-College Station area. The hearing will be held at 9 a.m. on Wednesday, December 12, 1990, and Thursday, December 13, 1990. The hearing will be held at the John H. Reagan Building, Room 101, 1500 North Congress Avenue, Austin, Texas 78701. All interested persons are welcome to attend.

The applicant, Bluebonnet Turf Club, asserts that they are qualified to received the Class 2 pari-mutuel racetrack license under Texas Civil Statutes, Article 179e, §6.04 and 16 Texas Administrative Code, §305.62.

The hearing will be conducted in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and Chapter 307 of the Texas Racing Commission Rules, 16 Texas Administrative Code, §307.1 et seq.

Questions regarding this matter should be directed to Lisa Gonzales, Hearings Coordinator, Texas Racing Commission, Post Office Box 12080, Austin, Texas 78711, (512) 794-8461.

Issued in Austin, Texas, on November 12, 1990.

TRD-9012161 Paula Cochran Carter
General Counsel
Texas Racing Commission

Filed: November 13, 1990

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

◆ ◆ ◆
Texas Youth Commission
Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11C, the Texas Youth Commission (TYC) is soliciting proposals for consultant services.

Description of Services. This is a request for proposals to prepare a written document which recommends a methodology by which TYC can develop an integrated and standardized planning and service delivery system; identify key aspects of the system to be developed that are critical to success of planning and service delivery and which will require special attention; and monitor the development of the planning and service delivery system on an as needed basis.

The planning and service delivery system will require integration of such elements as the agency's mission, philosophy, vision, long-range goals and objectives, coor-

dated and standardized policies and procedures, program performance standards, and personnel evaluation.

Contact Person. To obtain a complete copy of the request for proposal, please contact Dr. Charles Jeffords, Director of Research and Planning, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas, 78765, (512) 483-5251.

Consultant Selection. Evaluation of proposals will be based on quality of the proposal; demonstrated experience an ability of personnel to be assigned to this project; reasonableness of proposed fee for the services; and location of consultant. Finalists may be asked to make a presentation of their proposal to a selection committee at the Central Office in Austin.

Closing Date. Proposals are due at TYC Central Office, 4900 North Lamar Boulevard, Austin, Texas by 5 p.m. on December 14, 1990.

Issued in Austin, Texas, on November 9, 1990.

TRD-9012165 Charles Jeffords, Ph.D.
Director of Research and Planning
Texas Youth Commission

Filed: November 13, 1990

For further information, please call: (512) 483-5244

◆ ◆ ◆

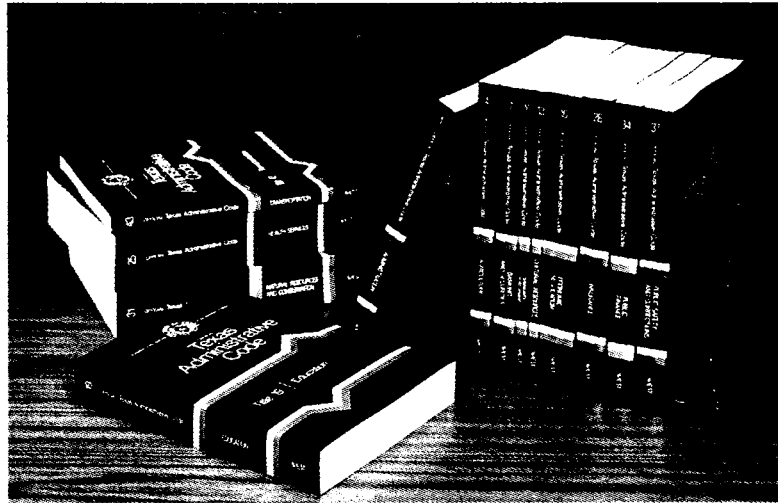
1990 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-March 1991 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. 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.
*Tuesday, January 1	Friday, December 21	Thursday, December 27
Friday, January 4	NO ISSUE PUBLISHED	
Tuesday, January 8	Wednesday, January 2	Thursday, January 3
Friday, January 11	Monday, January 7	Tuesday, January
Tuesday, January 15	Wednesday, January 9	Thursday, January 10
Friday, January 18	Monday, January 14	Tuesday, January 15
Tuesday, January 22	Wednesday, January 16	Thursday, January 17
Friday, January 25	1990 ANNUAL INDEX	
Tuesday, January 29	Wednesday, January 23	Thursday, January 24
Friday, February 1	Monday, January 28	Tuesday, January 29
*Tuesday, February 5	Wednesday, January 30	Thursday, January 31
Friday, February 8	Monday, February 4	Tuesday, February 5
Tuesday, February 12	Wednesday, February 6	Thursday, February 7
Friday, February 15	Monday, February 11	Tuesday, February 12
Tuesday, February 19	Wednesday, February 13	Thursday, February 14
*Friday, February 22	Friday, February 15	Tuesday, February 19
Tuesday, February 26	Wednesday, February 20	Thursday, February 21
Friday, March 1	Monday, February 25	Tuesday, February 26
Tuesday, March 5	Wednesday, February 27	Thursday, February 28
Friday, March 8	Monday, March 4	Tuesday, March 5
Tuesday, March 12	Wednesday, March 6	Thursday, March 7
Friday, March 15	Monday, March 11	Tuesday, March 12
Tuesday, March 19	Wednesday, March 13	Thursday, March 14
Friday, March 22	Monday, March 18	Tuesday, March 19
Tuesday, March 26	Wednesday, March 20	Thursday, March 21
Friday, March 29	Monday, March 25	Tuesday, March 26

♦

The only COMPLETE, OFFICIAL and UP-TO-DATE
source of administrative rules for Texas!



SAVE 40% ON WEST'S® TEXAS ADMINISTRATIVE CODE

West Publishing Company, official publisher of the *Texas Administrative Code* for 1990, is proud to announce that the complete TAC is now ready—and is being offered to you right now at a full set savings of 40%! Or, choose only those volumes essential to your daily practice.

COMPLETE, FOR RESEARCH CONVENIENCE!

The TAC is your convenient access to the rules and regulations of Texas state agencies. Each title is divided into parts, and each part corresponds to a state agency. The chapters and sections within each part thus contain all permanent rules and regulations for that particular agency in one convenient publication.

DEPENDABLE SUPPLEMENTATION TO KEEP YOU UP-TO-DATE!

West's TAC includes rules and regulations soon after their adoption into Texas law.

You'll find the exact currency dates of the provisions contained within the preface of each volume.

Timely Supplementation! Semi-annual supplements bring subscribers up-to-date with the adoption of new rules and changes in existing rules. The supplementation consists of softbound, cumulative, companion volumes to the 16-volume TAC set. This eliminates the time-consuming need for complicated collation and substitution of pages that was required by the looseleaf format of the previous publisher.

OFFICIAL, FOR YOUR ASSURANCE OF CONFIDENCE!

Only with West's *Texas Administrative Code* do you get absolute assurance that all code provisions appear as finally reviewed and corrected by the Secretary of State's Office.

TITLES INCLUDED IN THIS COMPLETE AND OFFICIAL SET:

1. Administration
 4. Agriculture
 7. Banking and Securities
 10. Community Development
 13. Cultural Resources
 16. Economic Regulation
 19. Education
 22. Examining Boards
 25. Health Services
 28. Insurance
 31. Natural Resources and Conservation
 34. Public Finance
 37. Public Safety and Corrections
 40. Social Services and Assistance
 43. Transportation
- All New General Index



WEST PUBLISHING CO.

50 W. Kellogg Blvd. • P.O. Box 64526 • St. Paul, MN 55164-0526

SAVE 40% ON YOUR FULL SET PURCHASE! Get complete details from your West representative, or call toll free **1-800-328-9352**. (In MN call collect 0-612-688-3600.)

To order a new subscription, or to indicate a change of address, please use this form. When notifying us of an address change, please attach the mailing label from the back of a current issue. Questions concerning existing subscriptions should also include the subscription number from the mailing label.

For information concerning the Texas Register, please call (512) 463-5561, or write to P.O. Box 13824, Austin, Texas 78711-3824.

You may also use this form to request back issues of the Texas Register. Please specify the exact dates and quantities of the issues requested. Each copy of a back issue is \$4.

<input type="checkbox"/>	Change of Address (Please attach mailing label)	<input type="checkbox"/>	Back Issues Requested (Please specify dates)
		<hr/>	

Please enter my subscription to the Texas Register as indicated below. (I will look for my first issue in about two weeks.)

<input type="checkbox"/>	1 year (100 issues) \$90	<input type="checkbox"/>	Payment enclosed
<input type="checkbox"/>	6 months (50 issues) \$70	<input type="checkbox"/>	Bill me

Name

Organization

Occupation

Address

City State Zip Code

Please make checks payable to the Secretary of State. Subscription fees are not refundable.

For office use only

Second Class Postage
PAID
Austin, Texas
and additional entry offices
