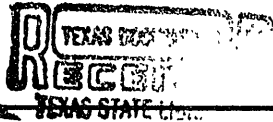


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Texas Register

Volume 17, Number 5, January 17, 1992

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Texas Register

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

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

Governor - Appointments, executive orders, and proclamations

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

Secretary of State - opinions based on the election laws

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

Proposed Sections - sections proposed for adoption

Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date

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

Open Meetings - notices of open meetings

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

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

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

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

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

Texas Administrative Code

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

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

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

Texas Register Art Project

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

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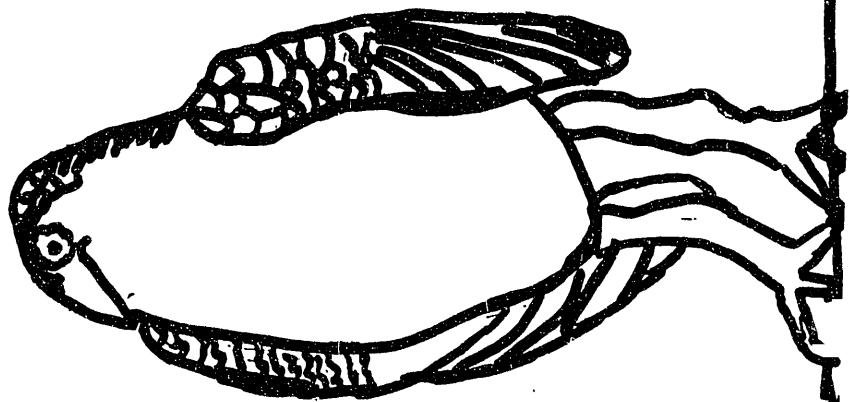
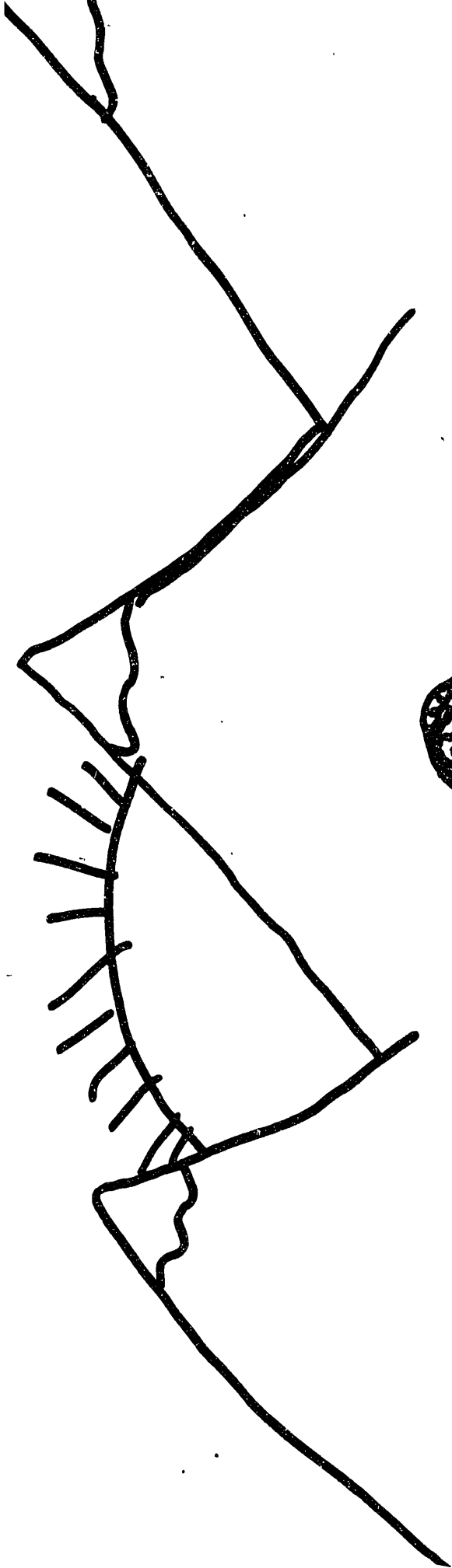
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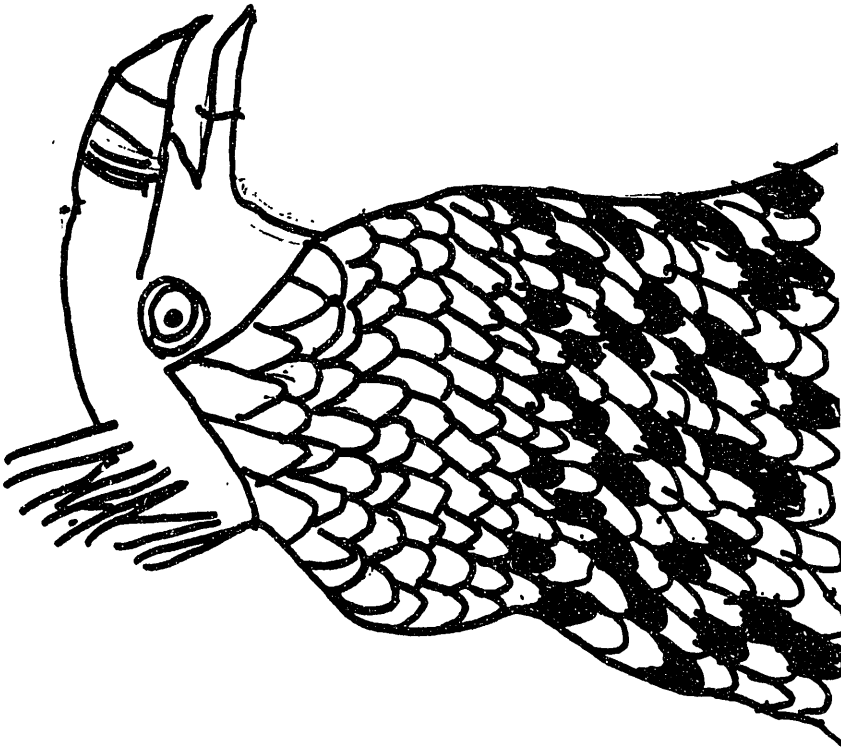
Evette Samarripa

Name: Evette Samarripa

Grade: 4

School: Montgomery Elementary, Carrollton-Farmers Branch ISD

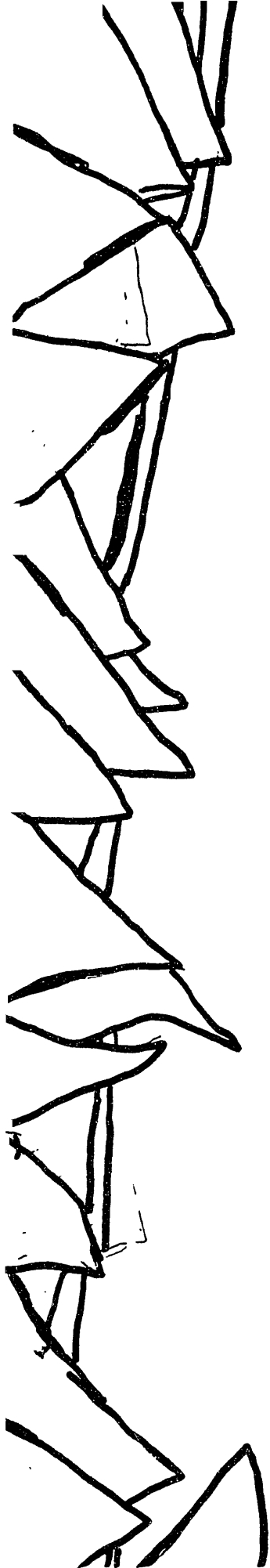
Veronica



Name: Veronica Cagle

Grade: 4

School: Montgomery Elementary, Carrollton-Farmers Branch ISD



Name: Melissa Le Banc

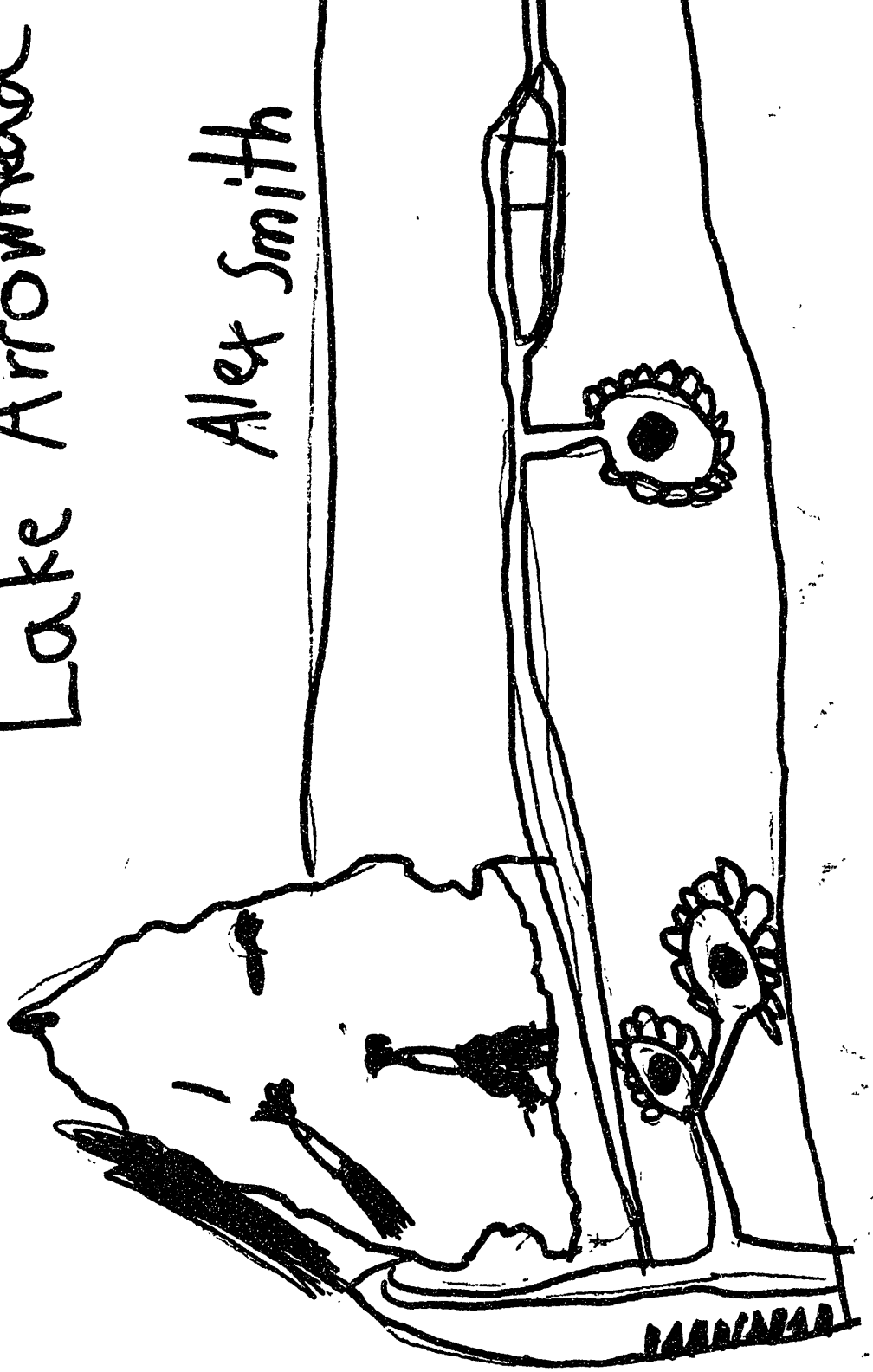
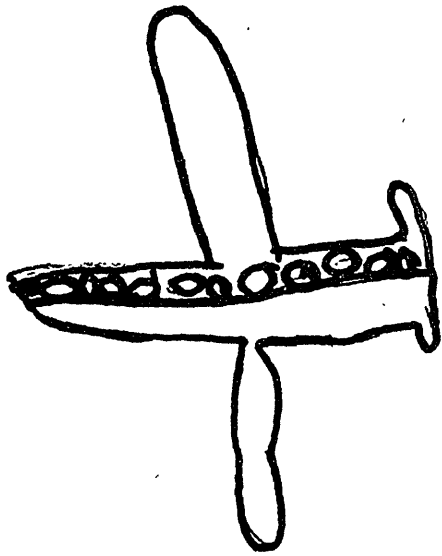
Grade: 4

School: Montgomery Elementary, Carrollton-Farmers Branch ISD

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Lake Arrowhead

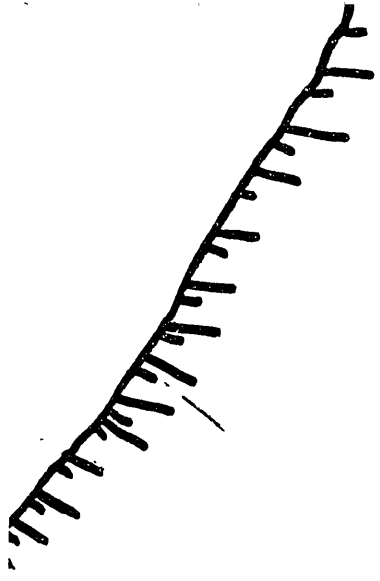
Alex Smith



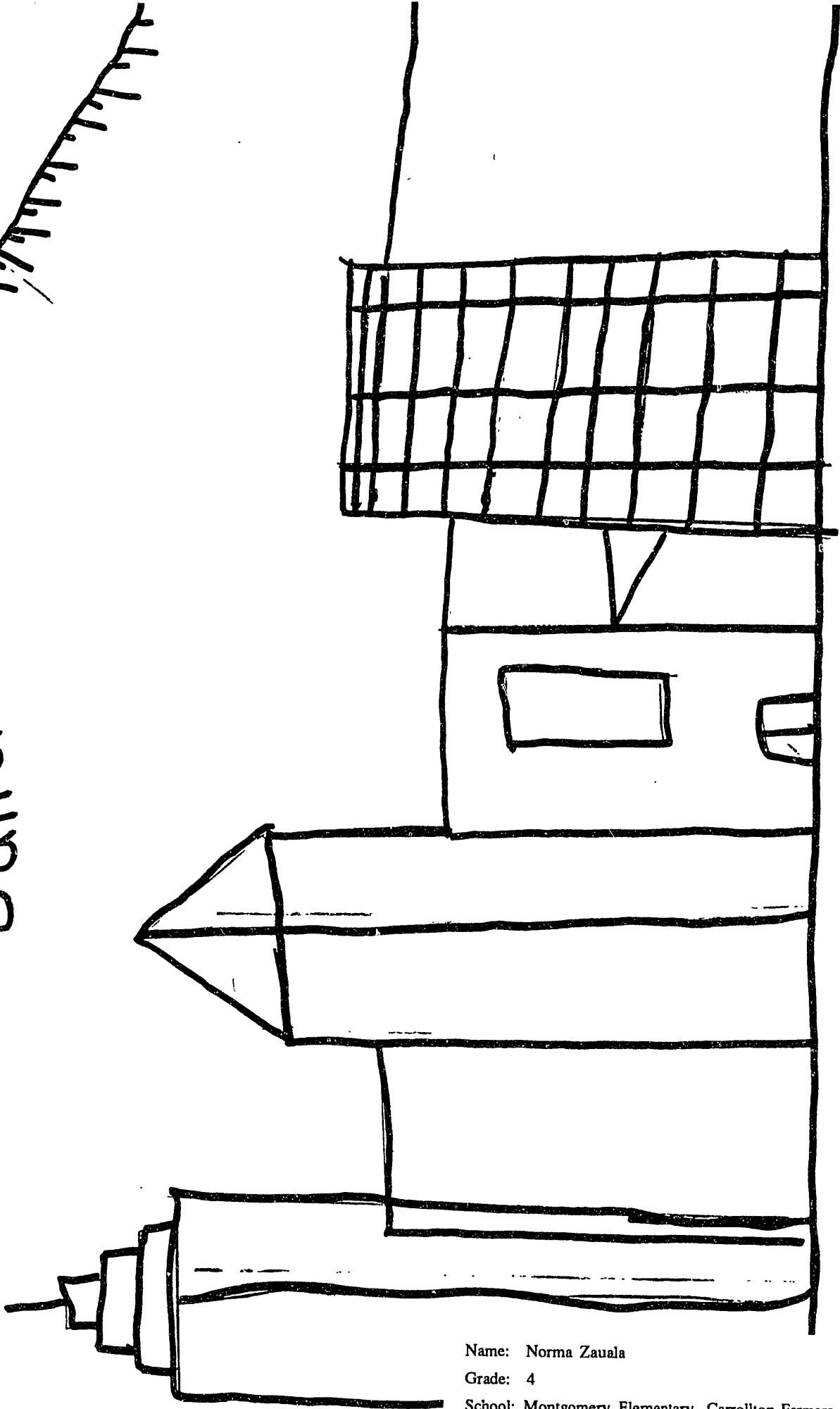
Name: Alex Smith

Grade: 4

School: Montgomery Elementary, Carrollton-Farmers Branch ISD



Dallas

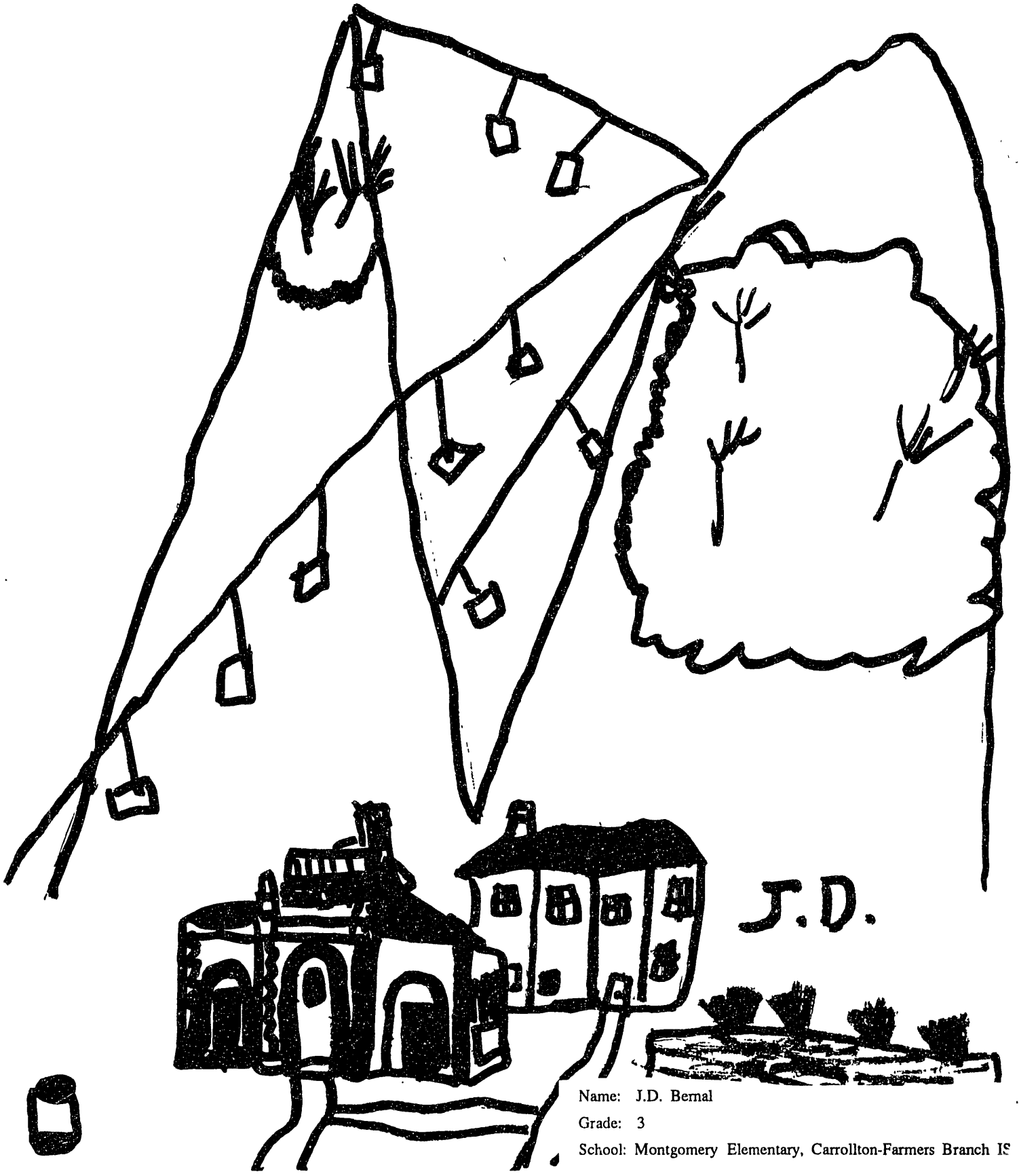


Name: Norma Zauala

Grade: 4

School: Montgomery Elementary, Carrollton-Farmers Branch ISD

a Zauala



J.D.

Name: J.D. Bernal
Grade: 3
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Emergency Sections

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

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

TITLE 1. ADMINISTRATION

Part II. Texas Ethics Commission

Chapter 5. Campaign Financing

Subchapter A. Contribution and Expenditure Reports

Penalty for Late Filing

• 1 TAC §5.1

The Texas Ethics Commission adopts on an emergency basis Chapter 5, Campaign Financing, Subchapter A, Contribution and Expenditure Reports, Penalty for Late Filing, §5.1, which establishes the civil penalty for late filing of a contribution and expenditure report.

The Texas Ethics Commission has determined that the emergency adoption of the new section is necessary and in the public interest in order to comply with the Texas Election Code, Title 15, §254.042(b), as amended by Senate Bill 1 of the 72nd Texas Legislature, effective date January 1, 1992.

The Texas Ethics Commission finds that an emergency exists in that: The Texas Election Code, Title 15, §254.042(b) has been amended effective as of January 1, 1992. The amendment requires the Texas Ethics Commission to set an amount of the civil penalty; Article III §24a of the Texas Constitution creates the Texas Ethics Commission and gives the commission such powers and duties as the legislature may provide. The legislature has enacted Article 6252-9d.1, effective date January 1, 1992, which confers on the commission the power to enforce the Texas Election Code, Title 15, §254.042(b), including the power to adopt rules.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 6252-9d.1 §1.11(b)(9), which empowers the commission to promulgate all rules and regulations necessary in carry out the provisions of Title 15, §254.042(b).

§5.1. Penalty for Late Filing of Contribution and Expenditure Reports. The civil penalty for failure to timely file a contribution and expenditure report is \$100.

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

TRD-9200442

Jim Mathleson
Attorney
Texas Ethics Commission

Effective date: January 13, 1992

Expiration date: May 12, 1992

For further information, please call: (512) 406-0100

Chapter 7. Personal Financial Disclosure

Subchapter A. Disclosure Statements

Penalty for Late Filing

• 1 TAC §7.1

The Texas Ethics Commission adopts on an emergency basis Chapter 7, Personal Financial Disclosure, Subchapter A, Disclosure Statements, Penalty for Late Filing, §7.1, which established the civil penalty for late filing of a personal financial statement.

The Texas Ethics Commission has determined that the emergency adoption of the new section is necessary and in the public interest in order to comply with Article 6252-9b, §12A(b), as amended by Senate Bill 1 of the 72nd Texas Legislature, effective date January 1, 1992.

The Texas Ethics Commission finds that an emergency exists in that: Article 6252-9b, §12A(b) has been amended effective as of January 1, 1992. The amendment requires the Texas Ethics Commission to set an amount of the civil penalty; Article III, §24a of the Texas Constitution creates the Texas Ethics Commission and gives the commission such powers and duties as the legislature may provide. The legislature has enacted Article 6252-9d.1, effective date January 1, 1992, which confers on the commission the power to enforce Article 6252-9b, including the power to adopt rules.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 6252-9d.1 §1.11(b)(9), which empowers the commission to promulgate all rules and regulations necessary in carry out the provisions of Article 6252-9b, §12A(b).

§7.1. Penalty for Late Filing of Contribution and Expenditure Reports. The civil penalty for failure to timely file a personal financial statement is \$100.

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

TRD-9200440

Jim Mathleson
Attorney
Texas Ethics Commission

Effective date: January 13, 1992

Expiration date: May 12, 1992

For further information, please call: (512) 406-0100

Chapter 10. Registration and Regulation of Lobbyists

• 1 TAC §§10.1, 10.3, 10.5, 10.7, 10.9, 10.11, 10.13, 10.15, 10.17, 10.19, 10.21, 10.23, 10.25, 10.27, 10.29, 10.31, 10.33

The Texas Ethics Commission adopts on an emergency basis §§10.1, 10.3, 10.5, 10.7, 10.9, 10.11, 10.13, 10.15, 10.17, 10.19, 10.21, 10.23, 10.25, 10.27, 10.29, 10.31, and 10.33 concerning registration and regulation of lobbyists. The new sections set forth guidelines, requirements, exceptions, penalties, and registration fees concerning lobbyists, and the required disclosures.

The commission has determined that adoption of these sections as soon as possible is in the public interest and is necessary to comply with the Government Code, §305.001 et seq, which governs the registration of lobbyists.

The new sections are adopted on an emergency basis under Senate Bill Number 1, §1.11(a)(9), 72nd Legislative Session (Regular), 1991, effective January 1, 1992, which provides the Texas Ethics Commission with the authority to promulgate all rules and regulations necessary in carrying out the provisions of this Act.

§10.1. Application of the Expenditure Threshold. A person who is not an officer or employee of a political subdivision or of a governmental entity created under the Texas Constitution or laws of this state must register with the commission as a lobbyist if the person makes total expenditures of more than \$200 in a calendar quarter on the activities described by the Government Code, §305.006(b), excluding expenditures on the person's own travel, food, lodging, or membership dues expenses.

§10.3. Application of the Compensation Threshold.

(a) A person who does not make the requisite type and amount of expenditures must nevertheless register as a lobbyist if the person:

(1) is not a member of the state judicial, legislative, or executive branch or an officer or employee of a political subdivision of the state; and

(2) communicates directly with a member of the Texas legislative or executive branch to influence legislation or administrative action and receives compensation or reimbursement of more than \$200 in a calendar quarter, but not including the person's own travel, food, or lodging expenses or the person's own membership dues, to make such direct communication.

(b) To trigger the application of the registration threshold of Government Code, §305.003(a)(2), a person must have communicated directly with a member of the legislative or executive branch to influence legislation or executive action. However, to determine the amount of compensation received for purposes of the Government Code §305.003(a)(2), the amount of compensation received for the direct communication includes additionally any amounts received to prepare for the communication.

(c) For purposes of the Government Code, §305.003(a)(2) and these rules, a person is not required to register if direct communication to influence legislation or administrative action constitutes only an incidental portion of the activities and duties for which the person receives compensation.

(d) Direct communication constitutes an incidental portion of one's activities and duties if no more than 5.0% of one's compensated time during a calendar quarter constitutes time spent in direct communication and in preparing for such communication.

(e) In determining the amount of compensation or reimbursement received for purposes of the registration threshold of the Government Code, §305.003(a)(2) and this section, a person who receives compensation or reimbursement, both for direct communication with a member of the Texas legislature or executive branch to influence and for other activities, may allocate on a reasonable basis his or her compensation and reimbursement to determine the amount subject to Chapter 305.

§10.5. Exclusions From Administrative Action Lobbying.

(a) For purposes of the compensation threshold of the Government Code, §305.003(a)(2), direct communication to influence administrative action does not include testimony or appearance in a public hearing or other communication made by the party, or a party's representative of record, in a proceeding of an adjudicative nature of the type authorized by or subject

to the Administrative Procedure and Texas Register Act (Texas Revised Civil Statutes, Article 6252-13a) (APTRA). Examples of these exclusions include appearances and communications by a representative of record in a contested case where the appearance is documented as part of the public record for that particular contested case, whether or not the proceeding is subject to APTRA.

(b) A person required to register by the Insurance Code, Article 1.06D, must register notwithstanding this section.

(c) For purposes of the Government Code, Chapter 305, "administrative action" does not include actions which only affect the internal operations of the agency itself, such as the purchasing decisions of the state agency.

§10.7. Activities That Do Not Require Registration.

(a) For the purpose of the Government Code, §305.003(a)(2), the following direct communications do not constitute activities to influence legislation or administrative action and are not required to be reported on registration forms or activity reports:

(1) the mere preparation and submission of an application or other written document providing information required by law, including statute, rule, regulation, order, or subpoena;

(2) direct communication solely for the purpose of obtaining information if no attempt is made to influence the action of a member of the legislative or executive branch; examples include an inquiry as to when a particular matter has been set for hearing or the location of the hearing or as to what is an agency's official interpretation of a statutory provision;

(3) providing merely clerical assistance in producing direct communication to influence legislation or administrative action, such as typing or hand-delivering a letter or other document;

(4) appearing, submitting public written comments, or testifying at a hearing before a member of the legislative or executive branch in conjunction with official proceedings or rulemaking procedures if the person does not receive special or extra compensation for the preparation, appearance, submission, or testimony other than actual expenses incurred for the preparation, appearance, submission, or testimony;

(5) direct communication to the legal representative of a state agency whether concerning litigation in which the agency is a party or concerning adjudicative proceedings of the agency;

(6) direct communication to the appointing authority made by a person in his or her capacity as a member of an advisory committee or task force appointed by a member or an entity of the legislative or executive branch;

(7) the activities listed in the Government Code, §305.004 and §305.003(c), whether or not such activities constitute the sole activities of the person to influence legislation or administrative action;

(8) direct communications for the purpose of compliance with existing laws, administrative rules, policies, and procedures, when there is no attempt to change or seek exceptions to such rules, policies, or procedures;

(9) direct communications in connection with an audit, inspection, or government investigation to determine compliance with existing laws, regulations, and policies;

(10) direct communication involving a request to a person who is a member of the executive branch for a written opinion interpreting the law administered by the agency or office of which that person is a member; and

(11) direct communication to provide information in response to a specific request for the information from a member of the legislative or executive branch that are unsolicited or otherwise not a subterfuge from compliance with the requirements of these laws.

(b) A person whose only activities to influence legislation or administrative action is one or more of the activities excepted from the lobbyist registration requirement by the Government Code, §305.004 and §305.003(c), or by rules of this commission is not required to register with the commission as a lobbyist.

§10.9. Persons Who Assist the Registrant.

(a) For purposes of Government Code, §305.005(f)(5), persons employed or retained by the registrant to assist in direct communication with a member of the legislative or executive branch include other registrants and persons who provide administrative or research assistance to the registrant, but not persons whose assistance is clerical in nature.

(b) A person employed by the same employer as the registrant and who assists the registrant in lobby activities at the direction of the registrant is employed or retained by the registrant for purposes of the Government Code, §305.005(f)(5). A client of a business entity is not an employer for the purposes of this subsection.

§10.11. Identifying the Amount of Compensation.

(a) The amount of compensation or reimbursement that must be reported on the registration or registration renewal is the amount received by the registrant for lobby activities during the calendar year for which the registration or registration renewal is effective. If a registrant terminates a registration during the calendar year or allows a registration to expire without filing a registration renewal, the registrant must file a termination notice. The termination notice must report the amount of compensation or reimbursement received by the registrant during the calendar year for which the terminated or expired registration was effective. The term "lobby activities" means direct communication with one or more members of the Texas legislative or executive branch to influence legislation or administrative action and activities in preparing for such direct communication. Examples of such activities include holding strategy sessions, reviewing and analyzing legislative or executive actions, conducting research, and advising the client on these matters.

(b) A registrant who receives compensation or reimbursement from a person for more than the purposes described in subsection (a) of this section may reasonably determine the amount of this compensation attributable to these purposes and report only that amount.

(c) Except as provided in subsection (e), of this section, if the amount of compensation or reimbursement that must be reported on the registration or registration renewal changes, the registrant must file an amended registration schedule to reflect the change, in accordance with the Government Code, §305.005(k), not later than the deadline for filing the next monthly activity report under the Government Code, §305.007.

(d) The members of an organization or association (whether or not it is incorporated) are not clients of the organization or association under the Government Code, §305.005(j). The shareholders of a for-profit corporation are not clients of the corporation under the Government Code, §305.005(j).

(e) The registrant is not required to report changes in the amount of reimbursement received for office expenses and lobby expenditures if those expenditures or reimbursements have been reported on a previous activity report or are reported on the next activity report the registrant is required to file.

§10.13. Disclosing the Lobbyist Employer.

(a) An individual registrant who is reimbursed, retained, or employed by a cor-

poration, association, firm, partnership, committee, club, organization, or group of persons who are voluntarily acting in concert (hereinafter referred to herein as entity) that is itself engaged in the representation of clients for lobby purposes must provide on the registration or registration renewal the full name and complete address and amount of compensation received for lobby activities from that entity; the full name and complete address of each client of the entity for whom the registrant lobbies; and the amount of compensation received by the entity from the entity's clients for the lobby activities of the registrant and of assistants when acting at the registrant's direction. Provided, however, if the entity registers and discloses the information required by this subsection, the individual registrant is excepted from the requirements of this subsection.

(b) In identifying the normal business of the registrant on the prescribed registration form, the registrant must provide the full name and complete address of the entity.

(c) An entity that receives compensation to influence legislation or administrative action on behalf of a client and whose only expenditure to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action is the compensation or reimbursement of one or more individual registrants may register as a lobbyist. Such an entity must disclose on its registration form the full name, complete address, and the amount of compensation received by the entity from each of its clients for lobby activities.

§10.15. Lobby Registration Fee.

(a) The lobby registration fee or renewal fee is \$300 per calendar year, except as provided by subsection (b) of this section.

(b) The lobby registration fee or registration renewal fee for a registrant who is retained, employed, or reimbursed for lobby activities exclusively by one or more organizations exempt from federal income tax under Internal Revenue Code, §501(c)(3) or §501(c)(4), is \$100 per calendar year. A registrant whose clients include a non-exempt entity is subject to the \$300 fee.

(c) A registration or registration renewal submitted without the proper fee will not be accepted. A registration or registration renewal submitted without the proper fee does not constitute a filing of a registration or registration renewal as provided by the Act. The submission of an amended registration does not require a fee.

(d) The fee should be paid by check or money order made payable to the Texas Ethics Commission.

§10.17. Lobby Forms. The Texas Ethics Commission adopts the Lobbyist Registration and Registration Renewal Form prescribed by the commission in January 1992. This form is published by and available from the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070.

§10.19. Identifying Subject Matters.

(a) On the registration form, registration renewal form, and activity report, in identifying the subject matter(s) of the direct communication made by the registrant or a person employed or retained by the registrant, the registrant must also provide the actual bill number, docket number, or other official designation of the matter if the registrant knows that information.

(b) A registrant is not required to file an amended registration form to indicate a change in the subject matter or administrative designation of legislation or administrative action if the registrant reflects that change in relation to the particular clients on the next monthly activity report that is due under Government Code, §305.007.

§10.21. Adding or Deleting Clients. If there is a change in the list of persons for whom the registrant lobbies, the registrant must file an amended registration schedule to reflect this change no later than the date the next monthly activity report is due under the Government Code, §305.007.

§10.23. Identifying Persons Who Make Grants or Contributions. A "political contribution" as defined by the Election Code, §251.001, and reported as required by law is not a grant or contribution under the Government Code, §305.005(h)(4).

§10.25. Detailed Reporting.

(a) In itemizing expenditures of more than \$50 a day for transportation or lodging:

(1) identification of the place of transportation must include the name of the carrier and identification of the departure and arrival city or cities;

(2) identification of the place of lodging must include the name and complete street address of the hotel or other lodging and identification of the city in which such lodging is located;

(3) the date of the transportation or lodging is the date or dates in which the member used such transportation or lodging; and

(4) identification of the purpose of the transportation or lodging must include the name of the conference, seminar, or other events, if applicable.

(b) In itemizing expenditures of more than \$50 a day for food and beverages:

(1) identification of the place of the expenditures must include the name and complete street address of the vendor providing the food and beverages, such as the restaurant or the catering service, and the location where the food and beverages are consumed, if different; and

(2) the date of the expenditure is the date on which the food and beverages are consumed.

(c) In itemizing expenditures of more than \$50 a day for entertainment:

(1) identification of the place of the expenditure must include the name and complete street address of the entertainment hall, arena, or similar location and identification of the city in which such entertainment occurred; and

(2) the date of the expenditure is the date on which the entertainment occurred.

§10.27. Exclusion from the Definition of "Transportation." For purposes of the Government Code, Chapter 305, "transportation" does not include transportation of incidental value, such as a ride of short duration by personal car or taxi-cab.

§10.29. Civil Late Penalty. The civil penalty for failure to file timely a required registration or report is \$100.

§10.31. Legislative Advertising. "Political advertising" as defined by the Election Code, § 251.001(16), does not constitute legislative advertising under the Government Code, §305.027.

§10.33. Conflicts of Interest; Waiver; Withdrawal From Representation. A registrant who resolves a conflict among clients, or withdraws from representation of one or more of the clients whose interests conflict, on the third business day or sooner after the day the registrant became aware of the conflict has not violated the Code of Conduct of the Government Code, §305.0011.

**LOBBYIST REGISTRATION
AND
REGISTRATION RENEWAL**
(Texas Government Code Chapter 305)

Type of Registration [check the appropriate line(s)]:

Initial registration _____ Amended registration _____ Please indicate which part(s) you are amending:

Registration renewal _____

Title Page: _____

Schedule(s): _____

(please specify)

Adding Client(s) _____

Deleting Client(s) _____

The registration fee must accompany an individual's initial registration or registration renewal.¹ There is no fee for an amended registration.

Check if employed exclusively by a federal tax-exempt Sec. 501(c)(3) or (c)(4) organization for lobby purposes:

Modified Reporting Election [optional]: I declare my intent not to exceed \$1,000 in expenditures, not including my own travel, food, or lodging expenses or membership dues, during the calendar year in which this registration or registration renewal is effective. (Section 305.0063) [See footnote 2.]

**DO NOT SIGN UNLESS
CHOOSING THIS OPTION**

Signature of Registrant Electing
Modified Reporting

All registrants must complete the following:

1. Name of Registrant: _____
2. Full Name and Address of
Normal Business Entity*: _____

* Sign the following only if applicable: I certify the above named firm has registered as a lobbyist.

DO NOT SIGN UNLESS APPLICABLE

3. Business Address: _____
4. Business Telephone Number: _____
5. Residence Address: _____

Complete Schedules A, B, and C. If Schedule B or C is not applicable, mark it as such.

Total pages including this title page: _____

If there is a change in the information in this registration, the registrant must file an amended registration not later than the 10th day of the month following the change (which, for registrants not following the modified reporting procedure, will be the date the next activity report is due).

Page 1

I do solemnly swear that this registration is in all things true and correct and fully shows all information required to be reported by me pursuant to Texas Government Code section 305.005.

Signature of Registrant

Sworn to and subscribed before me by _____ this the _____ day
of _____ 19____, to certify which, witness my hand and seal of office.

Signature of officer administering oath³

Print name of officer administering oath

Title of officer administering oath

FOOTNOTES

¹The regular annual registration fee is \$300. For any registrant employed exclusively by organizations exempt from federal income tax under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, the annual registration fee is \$100.

A registration or registration renewal without the required fee will not be accepted.

²**MODIFIED REPORTING:** This election may only be made by a registrant on the initial registration, on a registration renewal, or on an amended registration filed before the registrant's first activity report required by section 305.007 is due. It may not be made on an amended registration filed after the registrant's first activity report required by section 305.007 is due. The election is effective only for the calendar year in which the registration is effective.

This option may be elected only if the registrant does not intend to make expenditures reportable under Section 305.006(b) of more than \$1,000 during the calendar year, not including the registrant's own travel, food, or lodging expenses or the registrant's own membership dues. Section 305.006(b) expenditures include expenditures for transportation and lodging, food and beverages, entertainment, gifts, awards, mementos, and attendance of members of the legislative or executive branch at political fundraising or charity events, but not expenditures for mass media communications.

Upon making this election, the registrant shall file an annual report instead of monthly reports for that calendar year. The report must be filed not later than January 10 and must cover the activities occurring during the previous calendar year.

If the registrant exceeds \$1,000 in expenditures, the registrant shall file the monthly reports required by Section 305.007. The first report filed after exceeding \$1,000 covers the period beginning January 1 through the end of the month in which the \$1,000 ceiling was exceeded and must be filed by the 10th day of the following month.

³Examples of persons who are authorized to administer oaths, affidavits, or affirmations made within this state: notary publics; justices of the peace; judges, clerks, and commissioners of courts of record. Tex. Rev. Civ. Stat. Ann. art. 26.

Page 2

SCHEDULE A
Lobbyist Employer Information

INSTRUCTIONS

Provide the following information for each person who reimburses, retains, or employs the registrant to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action and on whose behalf the registrant has communicated directly with a member of the legislative or executive branch to influence legislation or administrative action:

- a. **Identity:** List the full name and address of the person.
- b. **Subject Matter:** Identify the subject matter and, if known, the bill number, docket number, or other legislative or administrative designation of the legislation or administrative action that is the subject of the registrant's direct communication with a member of the legislative or executive branch on behalf of the person.
- c. **Compensation:** Identify the amount of compensation or reimbursement paid by the person to the registrant during the calendar year for lobby activities, either as an exact amount or as falling within one of the following seven categories:

- less than \$10,000;
- at least \$10,000 but less than \$25,000;
- at least \$25,000 but less than \$50,000;
- at least \$50,000 but less than \$100,000;
- at least \$100,000 but less than \$150,000;
- at least \$150,000 but less than \$200,000; or
- \$200,000 or more.

- d. **Employer Organizational Information:** Provide the following information as applicable:
 - (1) If the person is a group or organization, including a business, trade, professional, or consumer interest association or partnership, but not a corporation, provide:
 - (i) the number of members in the group;
 - (ii) the name of each person in the group or organization who determines the policy of the group or organization relating to influencing legislative or administrative action;
 - (iii) a full description of the methods by which the registrant develops and makes decisions about positions on policy; and
 - (iv) a list of those persons making a contribution or grant to the group or organization, in addition to or instead of dues or fees, that exceeds \$250 per year.
 - (2) If the person is a corporation, the shares of which are not publicly traded, provide:
 - (i) the number of shareholders or members in the corporation;
 - (ii) the name and address of each officer or member of the board of directors; and
 - (iii) the name of each person owning 10 percent or more shares of the corporation.
 - (3) If the person is a business corporation, the shares of which are publicly traded, you are not required to provide organizational information about that person.

- e. **Clients of Lobbyist Employer:** If the person described in (a) is a business entity engaged in the representation of clients for the purpose of influencing legislation or administrative action, also list the full name and address of each such client of the business entity on whose behalf the registrant communicated directly with a member of the legislative or executive branch. If you did not sign the certificate on page 1, also provide the total amount of compensation or reimbursement each such client paid to the business entity for your lobby activities for the calendar year, either as an exact amount or as falling within the categories listed in (c). If there are multiple registrants for the same business entity, the total amount of compensation or reimbursement paid to the individual registrants must equal the total amount of compensation or reimbursement paid to the entity for lobby activities.

Format the required Schedule A information in the following manner:

- a. Employer Identity:
- b. Subject Matter:
- c. Compensation:
- d. Employer Organizational Information (if applicable):
- e. Clients of Lobbyist Employer (if applicable) and compensation employer received from each (if applicable):

EXAMPLES

- | | |
|--|--|
| <p>1. a. Employer Identity: Texans for a Better Texas 5 Form St. Georgetown, TX 78627</p> <p>b. Subject Matter: Insurance H.B. 5, S.B. 26 H.B.6, S.B.42</p> <p>c. Compensation: \$7,000</p> <p>d. Employer Organizational Information:</p> <ul style="list-style-type: none"> (i) 315 members (ii) Bill Smith, Tom Jones, Louis Falstaff, Frank Booth (iii) by vote of the board of directors (iv) Bill Smith, Frank Booth | <p>2. a. Employer Identity: Jane Doe Inc. 1 Capitol Street Austin, TX 78701</p> <p>b. Subject Matter: Road Building</p> <p>c. Compensation: \$25,000 - \$50,000</p> <p>d. Employer Organizational Information:</p> <ul style="list-style-type: none"> (i) 6 shareholders in corporation (ii) Jane Doe: Chair, Board of Directors President & Secretary 10 Valley Road Austin, TX 78751 Tom Doe, Member, Board of Directors Vice President and Treasurer 10 Valley Road Austin, TX 78751 John Johnson, Member Board of Directors. 5 Stock Lane Ft. Worth, TX 76102 (iii) Jane Doe, Tom Doe, John Johnson |
|--|--|

- | | | | | | | | | | |
|---|---|-------------------------|---------------------------------|------------------|-----------------|------------------|----------------------|--------------------|--------------------|
| <p>3.</p> <p>a. Employer Identity: Law Office of Samuel Houston 5 Freedom Ave. Huntsville, TX 77340</p> <p>b. Subject Matter: All Legislative Matters</p> <p>c. Compensation: less than \$10,000</p> | <p>d. Employer Organizational Information:</p> <p>(i) 1</p> <p>(ii) Samuel Houston</p> <p>(iii) not applicable</p> <p>(iv) not applicable</p> <p>e. Clients of Employer:</p> <table border="0"> <tr> <td>Veterans of San Jacinto</td> <td>Early Texas Lawyers Association</td> </tr> <tr> <td>3 Winchester St.</td> <td>10 Freedom Ave.</td> </tr> <tr> <td>Austin, TX 78731</td> <td>Huntsville, TX 77340</td> </tr> <tr> <td>less than \$10,000</td> <td>less than \$10,000</td> </tr> </table> | Veterans of San Jacinto | Early Texas Lawyers Association | 3 Winchester St. | 10 Freedom Ave. | Austin, TX 78731 | Huntsville, TX 77340 | less than \$10,000 | less than \$10,000 |
| Veterans of San Jacinto | Early Texas Lawyers Association | | | | | | | | |
| 3 Winchester St. | 10 Freedom Ave. | | | | | | | | |
| Austin, TX 78731 | Huntsville, TX 77340 | | | | | | | | |
| less than \$10,000 | less than \$10,000 | | | | | | | | |

If any information provided on Schedule A reflects an addition or a change from the information provided by the previously filed registration, registration renewal, or amended registration, please indicate that fact by checking the far left-hand column beside the new or revised entry.

SCHEDULE A

| | | |
|-------------------------------------|----------------------|-------------------------------|
| <p>New or Revised Entry</p> | <p>PAGE <u>5</u></p> | <p>REGISTRANT NAME: _____</p> |
|-------------------------------------|----------------------|-------------------------------|

Attach Additional Sheets as Necessary

**SCHEDULE B
Persons Assisting in Lobby Efforts**

INSTRUCTIONS

For each person employed or retained by the registrant for the purpose of assisting in direct communication with a member of the legislative or executive branch to influence legislation or administrative action, provide:

- a. the full name, business address, occupation, and date of employment or retention of the person by the registrant; and
- b. the subject matter and, if known, the bill number, docket number, or other administrative designation of the legislation or administrative action to which the person's activities reportable under this section were related.

EXAMPLE

- 1.a. Paul Jones
15 Austin Street
Houston, TX 77009

Administrative Assistant
Date of employment: 12/1/83
- b. All insurance matters
H.B. 5, H.B. 6,
S.B. 25, S.B. 42.

SCHEDULE B

PAGE REGISTRANT NAME:
 SCHEDULE C
 Deleting Lobbyist Client(s)

INSTRUCTIONS

If filing an amended registration that deletes one or more clients, provide the name and address of each such person.

EXAMPLE

Sam Austin
10 Fenway Blvd.
Austin, TX 78701

SCHEDULE C

PAGE _____ REGISTRANT NAME: _____

Issued in Austin, Texas on January 8, 1992.
TRD-9200309 Jim Mathieson
 Staff Attorney
 Texas Ethics Commission
Effective date: January 8, 1992

Expiration date: May 7, 1992
For further information, please call: (512)
406-0100

Chapter 15. Legislative Per
Diem

• 1 TAC §15.1

The Texas Ethics Commission adopts on an emergency basis new §15.1 concerning legislative per diem, which establishes the per

diem for members of the legislature and the lieutenant governor.

The Texas Ethics Commission has determined that emergency adoption of the new chapter is in the public interest and is necessary in order to comply with state law, namely: Article III, §24a of the Texas Constitution which provides that the Texas Ethics Commission shall set a per diem for members of the legislature and the lieutenant governor; Article III, §24 of the Texas Constitution which provides that members of the legislature shall receive a per diem for each day of each Regular or Special Session of the Legislature; and Article IV, §17 of the Texas Constitution which provides that the Lieutenant Governor shall receive the same compensation as members of the legislature. The Texas Ethics Commission has further determined that the Third Called Session of the 72nd Legislature convened on January 2, 1992, and remains in session at the time of this emergency adoption of new Chapter 15.

The new section is adopted on an emergency basis by the provisions of Article III, §24a of the Texas Constitution. The Texas Ethics Commission is further authorized by Texas Civil Statutes, Article 6252-9d.1, §1.11(b)(9), to promulgate and adopt rules necessary to carry out the duties of the agency. Texas Civil Statutes, Article 6252-9d.1, took effect on January 1, 1992.

§15.01. Legislative Per Diem. Under Article III, §24a, of the Texas Constitution, the Texas Ethics Commission sets the per diem of members of the legislature and the lieutenant governor under Article III, §24, and Article IV, §17, of the Texas Constitution at the amount allowed as of January 1 of this calendar year for federal income tax purposes as a deduction for living expenses incurred in a legislative day by a state legislator in connection with the legislator's business as a legislator, disregarding any exception in federal law for legislators residing near the Capitol.

Issued in Austin, Texas, on January 8, 1992.

TRD-9200311 Jim Mathleson
Staff Attorney
Texas Ethics Commission

Effective date: January 8, 1992

Expiration date: May 7, 1992

For further information, please call: (512) 406-0100



TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 355. Research and Planning Fund

Subchapter B. Economically Distressed Areas Facility Engineering

• 31 TAC §§355.70-355.73

The Texas Water Development Board (the Board) adopts on an emergency basis amendments to §§355.70-355.73, the repeal of §§355.74-355.77; and new §§355.74-355.76, concerning funding for economically distressed areas facility engineering under the research and planning fund.

The amendment to §355.70, replacing the term "facility engineering" with "facility planning," allows the board to clarify its intent to require a single application for plans and specifications and project construction.

The amendment to §355.71 allows the board to finance up to 100% of the cost of facility planning for water and wastewater facilities to serve economically distressed areas. Sections 355.71-355.73 are amended in order to remain consistent with the amendment to §355.70.

New §355.74 eliminates separate applications for plans and specifications and for project construction. Facility plan tasks and construction plans and specifications will be included in one application.

New §§355.74-355.77 are renumbered sections necessitated by the repeal of §§355.74 and reflect changes due to the amendment made in §355.70.

The board finds that there is a need to adopt the sections on an emergency basis in order to continue the efficient implementation of the Economically Distressed Areas Program, which provides financial assistance to those eligible counties which contain residential areas without any or with seriously inadequate water supply and sewer services, creating serious and unacceptable health hazards and which threaten the public health, safety, and welfare.

The amendments are adopted on an emergency basis under the Texas Water Code, §6.101 and the Texas Water Code, Chapter 15, Subchapter F, §15.403, which requires the board to adopt rules necessary to carry out the powers and duties of the board and of various programs of the research and planning fund.

§355.70. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapter 15 or 17, and not defined here shall

have the meaning provided by the appropriate chapter.

Facility planning [engineering]—The studies and tasks that are performed to determine the engineering feasibility of water or wastewater facilities and to obtain plans and specifications for constructing the water or wastewater facilities for an economically distressed area. **Facility planning** [engineering] consists of a facility plan task and a plans and specifications task.

§355.71. Purpose and Policy.

(a) Availability. The board will make funds available through the research and planning fund or development fund to political subdivisions in affected counties for up to 100 [75]% of the cost of facility **planning** [engineering] for water and wastewater facilities to serve economically distressed areas. [At least 50% of the applicant's minimum required matching share shall be provided in the form of cash.]

(b) [Completion of phases. The board will consider and may provide financing for plans and specifications only after completion of a facility plan or preparation of an equivalent product, and in conjunction with board approval of an application for financial assistance to construct water or wastewater facilities or both.

[(c) Repayment of costs for plans and specifications. Upon closing a transaction that provides financial assistance for facility construction, the applicant may be required to return to the board, from any source available to the applicant including financial assistance from the board, that portion of costs for plans and specifications provided by the board. The board will determine the method and form of security for the funds advanced to the applicant for costs for plans and specifications.]

(d) Engineering. To make the most effective use of the limited amount of funds available, the applicant will confer with the board on all significant decisions related to facility **planning** [engineering].

(c) [(e) Professional engineer. All applicable facility **planning** [engineering] reports and plans shall be signed and sealed by a professional engineer in accordance with the Texas Engineering Practice Act, Texas Civil Statutes, Article 3271a.

§355.72. Criteria for Eligibility. Political subdivisions must meet the appropriate requirements of this section before the board may provide financial assistance for facility **planning** [engineering].

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

(3) A political subdivision applying for facility **planning** [engineering] assistance must have any required certifi-

cate of public convenience and necessity that includes the project area and that is for the same type of service to be addressed in the proposed facility **planning** [engineering] study; or if the project area does not have a holder of a certificate of public convenience and necessity and one is required, the applicant must have applied for the certificate of public convenience and necessity before the applicant applies for facility plan assistance; or the application must be a joint application with the holder of the certificate of public convenience and necessity.

(4) (No change.)

(5) If, after submission of a facility **planning** [engineering] assistance application, the county average per capita income increases or the average unemployment rate decreases so that the county no longer meets the definition of affected county in §355.70 of this title (relating to Definitions), the political subdivision submitting the application will continue to be eligible for financial assistance provided the application is not substantially amended.

(6)-(7) (No change.)

§355.73. *Scope of Facility Plan.*

(a) A facility plan shall incorporate appropriate data from applicable existing planning reports and shall consist of:

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

(6) documentation of the number of dwellings occupied on June 1, 1989, and number of dwellings to be served by the project within the facility **planning** [engineering] area and the economically distressed area;

(7)-(14) (No change.)

(b) The facility plan assistance shall include the items of work described in this subsection if approved or required by the board:

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

(3) the preparation of applications for necessary state and federal wastewater permits. Facility **planning** [engineering] may not include activities associated with administrative or legal proceedings by regulatory agencies; and

(4) (No change.)

Issued in Austin, Texas, on January 9, 1992.

TRD-9200389

Gail Allan
Acting General Counsel
Texas Water Development
Board

Effective date: January 10, 1992

Expiration date: May 9, 1992

For further information, please call: (512) 463-7981

◆ ◆ ◆
• 31 TAC §§355.74-355.77

The repeals are adopted on an emergency basis under the Texas Water Code, §6.101 and the Texas Water Code, Chapter 15, Subchapter F, §15.403, which requires the board to adopt rules necessary to carry out the powers and duties of the board and of various programs of the research and planning fund.

§355.74. *Scope of Plans and Specification Tasks.*

§355.75. *Submission of Applications.*

§355.76. *Contracts.*

§355.77. *Reports and Documents.*

Issued in Austin, Texas, on January 9, 1992.

TRD-9200390

Gail Allan
Acting General Counsel
Texas Water Development
Board

Effective date: January 10, 1992

Expiration date: May 9, 1992

For further information, please call: (512) 463-7981

◆ ◆ ◆
• 31 TAC §§355.74-355.76

The new sections are adopted on an emergency basis under the Texas Water Code, §6.101 and the Texas Water Code, Chapter 15, Subchapter F, §15.403, which requires the board to adopt rules necessary to carry out the powers and duties of the board and of various programs of the research and planning fund.

§355.74. *Submission of Applications.* An application shall be submitted for the facility plan tasks. An application will be in the form and in numbers prescribed by the executive administrator. The executive administrator may request any additional information needed to evaluate the application, and may return any incomplete applications.

§355.75. *Contracts.*

(a) If an application is approved, the board may authorize the executive administrator to enter into a contract with the applicant on behalf of the board. The contract shall include: scope of work; schedule of work; budget; any other terms or conditions required by the executive administrator.

(b) An approved applicant may subcontract any or all of the scope of work. The board will not be party to any subcontract, and the political subdivision will be solely responsible for monitoring, administering, and requiring subcontractor compliance with the terms of the board's contract with the political subdivision.

(c) Applicants, contractors, and subcontractors shall maintain financial accounts, documents, and records that are acceptable to the board. All records shall be made available for examination and audit by the staff of the board and the state. Accounting by applicants contractors, and subcontractors shall be in a manner consistent with generally accepted accounting procedures. All records will be retained for a minimum period of three years, and records shall be retained beyond the three years if litigation, a claim, or an audit is in processor if audit findings are not resolved. The three-year period will begin upon final payment of the funds retained by the board.

(d) Capital equipment shall not be purchased with facility planning assistance.

§355.76. *Reports and Documents.* All reports, planning documents, plans and specifications, and any other work products resulting from facility planning assistance must be provided to the board and will be deemed public information. The applicant and subcontractors shall be available for presentations of results as required by the board.

Issued in Austin, Texas, on January 9, 1992.

TRD-9200391

Gail Allan
Acting General Counsel
Texas Water Development
Board

Effective date: January 10, 1992

Expiration date: May 9, 1992

For further information, please call: (512) 463-7981

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 I. ADMINISTRATION

Part II. Texas Ethics Commission

Chapter 5. Campaign Financing

Subchapter A. Contribution and Expenditure Reports

Penalty for Late Filing

• 1 TAC §5.1

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

The Texas Ethics Commission proposes new §5.1, concerning penalties for late filings of contribution and expenditure reports. This section sets forth the civil penalty for failure to timely file such statement.

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

Mr. Mathieson also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to comply with Title 15, by establishing a civil penalty. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jim Mathieson, 1101 Camino La Costa, Austin, Texas 78752.

The new section is proposed under Texas Civil Statutes, Article 6252-9d.1, which provides the Texas Ethics Commission with the authority to promulgate rules governing penalties for late filings of contribution and expenditure reports.

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 January 10, 1992.

TRD-9200439

Jim Mathieson
Attorney
Texas Ethics Commission

Earliest possible date of adoption: February 17, 1992

For further information, please call: (512) 406-0100

Chapter 7. Personal Financial Disclosure

Subchapter A. Disclosure Statements

Penalty for Late Filing

• 1 TAC §7.1

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

The Texas Ethics Commission proposes new §7.1, concerning penalty for late filing of personal financial statements. This section sets forth the civil penalty for failure to timely file such statements.

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

Mr. Mathieson also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to comply with Texas Civil Statutes, Article 6252-9d.1 by establishing a civil penalty. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jim Mathieson, 1101 Camino La Costa, Austin, Texas 78752.

The new section is proposed under Texas Civil Statutes, Article 6252-9b.1, which provide the Texas Ethics Commission with the authority to promulgate rules governing penalties for late filings of personal financial statements.

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 January 10, 1992.

TRD-9200441

Jim Mathieson
Attorney
Texas Ethics Commission

Earliest possible date of adoption: February 17, 1992

For further information, please call: (512) 406-0100

Chapter 10. Registration and Regulation of Lobbyists

• 1 TAC §§10.1, 10.3, 10.5, 10.7, 10.9, 10.11, 10.13, 10.15, 10.17, 10.19, 10.21, 10.23, 10.25, 10.27, 10.29, 10.31, 10.33

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

The Texas Ethics Commission proposes new §§10.1, 10.3, 10.5, 10.7, 10.9, 10.11, 10.13, 10.15, 10.17, 10.19, 10.21, 10.23, 10.25, 10.27, 10.29, 10.31, and 10.33 concerning registration and regulation of lobbyists. The new sections set forth guidelines, requirements, exceptions, penalties, and registration fees concerning lobbyists, and the required disclosure.

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

Mr. Mathieson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to comply with the Government Code by setting forth the requirements and guidelines to be followed by lobbyists. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

The new sections are proposed under Texas Civil Statutes, Article 6252-9d.1, which provides the Texas Ethics Commission with the authority to establish registration and regulation requirements concerning lobbyists.

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 January 8, 1992.

TRD-9200348

Jim Mathieson
Attorney
Texas Ethics Commission

Earliest possible date of adoption: February 17, 1992

For further information, please call: (512) 406-0100

Chapter 15. Legislative Per Diem

• 1 TAC §15.1

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

The Texas Ethics Commission proposes new §15.1, concerning legislative per diem. The legislative per diem is set by this rule in compliance with Article III, §24a and §24, and Article IV, §17 of the Texas Constitution. It establishes the legislative per diem for members of the legislative and the lieutenant governor for each legislative day in accordance with the constitutional guidelines.

Jim Mathieson, staff attorney, has determined that for the first five-year period the section is in effect there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect will be an estimated reduction in cost of \$295,200 in 1992; \$984,000 in 1993; \$295,200 in 1994; \$984,000 in 1995; and \$295,200 in 1996. There will be no effect on local government for the first five-year period the section is in effect.

Mr. Mathieson also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to comply with the provisions of the Texas Constitution, Article III, §24a and 24, and Article IV, §17, approved by the voters November 5, 1991. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jim Mathieson, 1011 Camino La Costa, Austin, Texas 78752.

The new section is proposed under the Texas Constitution, Article III, which provides the Texas Ethics Commission with the authority to set legislative per diem.

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

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TRD-9200312

Jim Mathieson
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For further information, please call: (512) 406-0100

Part IV. Office of the Secretary of State

Chapter 81. Elections

Campaign Reporting and Disclosure

• 1 TAC §§81.161-81.165

(EDITOR'S NOTE: In 1991, the 72nd Regular Session passed Senate Bill 1 which created the Texas Ethics Commission, therefore the following sections, which were under the Disclosure Filings Section of the Office of the Secretary of State, are being administratively repealed.)

Chapter 89. Lobby Regulation

Registration, Reporting, Termination

• 1 TAC §§89.1-89.6

(EDITOR'S NOTE: In 1991, the 72nd Regular Session passed Senate Bill 1 which created the Texas Ethics Commission, therefore the following sections, which were under the Disclosure Filings Section of the Office of the Secretary of State, are being administratively repealed.)

Chapter 102. Health Spas

Subchapter A. Statute and Definitions

The Office of the Secretary of State proposes the repeal of §§102.1, 102.10, 102.20, 102.30, 102.40, 102.41, 102.70-102.73, 102.80, 102.90 and 102.91, concerning the administration of health spas pursuant to the Health Spa Act, Texas Civil Statutes, Article 5221I (Vernon 1987, Supplement 1991). The sections are proposed for repeal because of the proposal for adoption of new rules to regulate such health spas. The new rules proposed for adoption are being contemporaneously published for comment in this issue of the *Texas Register*.

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

Mr. Joyner also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be to provide individuals and companies with a clarification of the procedure necessary to comply with registration, escrow, and security requirements prescribed by the Health Spa Act. Additionally, the sections prescribe a standard procedure for paying claims to members who have suffered losses as the result of the ces-

sation of operation of a health spa. Such a procedure will provide an efficient means to help ensure members receive funds due them as quickly as possible. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Guy Joyner, Staff Attorney, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887.

• 1 TAC §102.1, §102.10

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

The repeals are proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a (Vernon Supplement 1991) and the Health Spa Act, Texas Civil Statutes, Article 5221I (Vernon 1987, Supplement 1991).

§102.1. Authority.

§102.10. Definitions.

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

Issued in Austin, Texas, on January 8, 1992.

TRD-9200329

Audrey Selden
Assistant Secretary of
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Office of the Secretary of
State

Earliest possible date of adoption: February 17, 1992

For further information, please call: (512) 463-5558

Subchapter B. Procedures for Registration

• 1 TAC §102.20, §102.30

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

The repeals are proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 5221I (Vernon 1987, Supplement 1991).

§102.20. Registration Requirements.

§102.30. Exemptions.

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

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TRD-9200328 Audrey Selden
Assistant Secretary of
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463-5558

Subchapter C. Security

• 1 TAC §102.40, §102.41

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

The repeals are proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a (Vernon Supplement 1991) and the Health Spa Act, Texas Civil Statutes, Article 52211 (Vernon 1987, Supplement 1991).

§102.40. Security Requirements-General.

§102.41. Security Requirements-Claims.

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

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463-5558

Subchapter D. Registrant

• 1 TAC §§102.70-102.73

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

The repeals are proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a (Vernon Supplement 1991) and the Health Spa Act, Texas Civil Statutes, Article 52211 (Vernon 1987, Supplement 1991).

§102.70. Responsibilities of the Registrant-Escrow.

§102.71. Responsibilities of the Registration-Refunds for Cancelled Contracts.

§102.72. Responsibilities of the Registrant-Notice of Assignment.

§102.73. Responsibilities of the Registrant-Disclosures.

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

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Assistant Secretary of
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For further information, please call: (512)
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Subchapter E. Registration Fees

• 1 TAC §102.80

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

The repeal is proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a (Vernon Supplement 1991) and the Health Spa Act, Texas Civil Statutes, Article 52211 (Vernon 1987, Supplement 1991).

§102.80. Fees.

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

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Assistant Secretary of
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463-5558

Subchapter F. Violations

• 1 TAC §102.90, §102.91

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Office of the Secretary of State or in the Texas

Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a (Vernon Supplement 1991) and the Health Spa Act, Texas Civil Statutes, Article 52211 (Vernon 1987, Supplement 1991).

§102.90. Sanctions-General.

§102.91. Sanctions-Administrative.

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

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Assistant Secretary of
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For further information, please call: (512)
463-5558

The Office of the Secretary of State proposes new §§102.1, 102.10, 102.13, 102.15, 102.17, 102.20, 102.30, 102.31, 102.35, 102.45, and 102.50, concerning the administration of health spas pursuant to the Health Spa Act, Texas Civil Statutes, Article 52211 (Vernon 1987, Supplemental 1991). Section 102.1 defines terms not delineated in the Health Spa Act. Section 102.10 clarifies the procedure for filing health spa registration statements with the secretary of state. Section 102.13 sets the fees for registration and renewal statements. Section 102.15 describes those spas that are exempt from registration. Section 102.17 establishes the procedure for the registration of a §7A exercise facility. Section 102.20 delineates the procedure for establishing and releasing escrow accounts. Section 102.30 discusses the requirement for a security deposit and identifies the procedure that a health spa must follow in order to qualify for §102.31(a) treatment. Section 102.31 addresses the procedure to be used in determining the amount of security to be posted by a health spa. Section 102.35 delineates the procedure to be used when the secretary becomes aware a health spa has ceased business and any member has suffered a financial loss within the meaning of the Health Spa Act and these sections. Section 102.40 specifies the procedure to be used by a health spa when filing a letter of credit as the security instrument required by the Health Spa Act, §10. Section 102.45 indicates the procedure to be followed when filing a certificate of deposit under §10. Section 102.50 discusses forms available from the secretary of state for the purpose of complying with the Health Spa Act and these sections.

Guy Joyner, staff attorney, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing the sections.

Mr. Joyner also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to provide individuals and companies with a clarification of the procedure necessary to comply with registration, escrow, and security requirements prescribed by the Health Spa Act. Additionally, the sections prescribe a standard procedure for paying claims to members that have suffered losses as the result of the cessation of operation of a health spa. Such a procedure will provide an efficient means to help ensure members receive funds due them as quickly as possible. There will be no effect on small businesses. There is no anticipated additional economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Guy Joyner, Staff Attorney, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887.

• 1 TAC §102.1

The new sections are proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §4(a) (Vernon 1991) and the Health Spa Act, Texas Civil Statutes, Article 5221L (Vernon 1987, Supplement 1991), which provides the secretary of state with the authority to prescribe and adopt rules.

§102.1. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words and terms defined in the Health Spa Act (Texas Civil Statutes, Article 5221L) shall have the same meaning in this chapter.

Act—The Health Spa Act, Texas Civil Statutes, Article 5221L (Vernon 1987, Supplement 1991).

Closed, closes or closing—A condition where:

(A) the facilities of a health spa are no longer available to its members and equivalent facilities within 10 miles of the closed facilities have not been made available to members of the closed facilities; or

(B) the registrant has sold a registered location and the security required by the Health Spa Act, §10 has either been canceled, withdrawn, or is otherwise unavailable for the use of members; or

(C) the registrant has sold a registered location and the new owner has neither adopted nor honored the contracts of existing members.

Contract—an agreement by which one becomes a member of a health spa.

Fully open or fully open for business—The date on which all services of the health spa that were advertised before the opening or promised to be made available are available for use by its members.

Location—The physical site or place where health spa facilities are located.

Prepayment—A payment for all services or the use of facilities made by members of a health spa before the first day the services or facilities are made available to the members.

Obligor—A person other than a surety who is obligated to perform in the event of a registrant's default.

Registrant—A person who has registered with the secretary and has been issued a health spa operator's certificate of registration.

Secretary—The Texas secretary of state.

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

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TRD-9200334

Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

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For further information, please call: (512) 463-5558

◆ ◆ ◆ Subchapter B. Registration Procedures

• 1 TAC §§102.10, 102.13, 102.15, 102.17

The new sections are proposed under Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §4(a) (Vernon 1991) and the Health Spa Act, Texas Civil Statutes, Article 5221L (Vernon 1987, Supplement 1991), which provides the secretary of state with the authority to prescribe and adopt rules.

§102.10. Procedure for Filing Registration Statement.

(a) Each health spa location shall file a registration statement containing the following information:

(1) the health spa's name and physical location;

(2) the name and address of any person who directly or indirectly owns or controls 10% or more of the issued and outstanding voting shares of a corporation, if the health spa is operated through that corporation;

(3) the name and address of all the partners if the health spa is operated as a general partnership;

(4) the name and address of each general partner if the health spa is operated by a limited partnership;

(5) the name and address of each person deemed to be an owner if the health spa is operated as a sole proprietorship;

(6) the name and address of any person or entity holding any direct or indirect ownership of the health spa, if that person or entity exercises direct control of the health spa;

(7) a detailed disclosure of the proposed facilities and services;

(8) the approximate square footage of the health spa;

(9) a complete disclosure of any litigation, or any complaint filed with a governmental authority relating to the failure to open or the closing of a health spa brought against the owners, officers, or directors of the health spa filing the registration statement that was completed within the past two years or is currently pending; or a notarized statement which states that within the past two years there has been no litigation and no complaint filed with a governmental authority relating to the failure to open or the closing of a health spa brought against the health spa owners, officers, or directors for which the registration statement is being filed; and

(10) the federal tax number of all owners and all operators of the health spa. If a corporation is the owner or the operator, the federal tax number of the corporation shall be provided.

(b) The registrant shall amend the registration statement not later than the 90th day after the day on which a change in the information provided in the statement occurs.

(c) The registration statement must be renewed one year from the original registration date and each year thereafter on the anniversary of the original registration date.

(d) Each registration statement shall be notarized and sworn to by the person submitting it.

§102.13. Fees.

(a) A fee of \$100 will accompany the registration statement.

(b) The fee for filing a renewal statement is \$100.

(c) If an initial or renewal application is not complete before the 31st day after it is received incomplete, the file will be closed and the registration fee forfeited.

§102.15. *Exemptions.* The following are exempt from registration with the secretary:

(1) facilities owned by organizations that are tax exempt under 26 United States Code 501 et seq;

(2) private clubs owned and operated by their members;

(3) entities primarily operated for teaching dance or aerobic exercise,

(4) entities primarily engaged in physical rehabilitation activity related to an individual's injury or disease;

(5) an individual or entity engaged in an activity authorized under a valid license issued by this state;

(6) activities conducted or sanctioned by a school operating under the Education Code.

§102.17. *Procedure for the Registration of Certain Exercise Facilities.*

(a) A registrant claiming the exemption from §10 security requirements of the Health Spa Act (the Act) for facilities described in the Act, §7A must file security with the secretary in the form described by the Act; and

(b) A registrant must execute and file with the secretary a sworn document which states it does not:

(1) require a participant to sign a contract or draw on a financial institution, or pay an initiation fee;

(2) offer memberships, or require prepayment, for a term exceeding 31 days;

(3) average more than 200 participants who are authorized to use its facilities in any one month; and

(4) exceed \$6,000 in monthly revenue from fees paid by participants.

(c) A registrant must submit a registration statement for the facility.

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 January 8, 1992.

TRD-9200333 Audrey Selden
Assistant Secretary of
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Office of the Secretary of
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For further information, please call: (512) 463-5570

Subchapter C. Escrow

• 1 TAC §102.20

The new section is proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §4(a) (Vernon 1991) and the Health Spa Act, Texas Civil Statutes, Article 52211 (Vernon 1987, Supplement 1991), which provides the secretary of state with the authority to prescribe and adopt rules.

§102.20. *Procedure for Establishing and Releasing Escrow Accounts.*

(a) Unless exempted by the Health Spa Act, §9(e), a registrant or its assignee or agent that accepts prepayments for its membership shall deposit all of the funds in an escrow account established with a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, which shall hold the funds as escrow agent for the benefit of the members that prepay.

(b) The registrant shall deposit prepayments received as often as biweekly and shall make the first deposit not later than the 14th day after the day on which the registrant or its agent accepts the first payment.

(c) Not later than the 14th day after the day on which the first prepayment is received, the registrant shall give the secretary a notarized statement that identifies the financial institution in which the prepayments are held in escrow and the name in which the account is held, together with a signed statement on a form approved by the secretary of state which authorizes the secretary of state to make inquires of the financial institution regarding the funds in escrow.

(d) The escrow agreement must contain the following provisions.

(1) Prepayments must be deposited at least biweekly.

(2) The secretary must be named as fiduciary for the prepayment members.

(3) The prepayments shall remain in escrow until the 30th day after the date that the health spa fully opens for business.

(4) If the health spa does not fully open for business before the 181st day after the registrant first sells a membership in the health spa, or if the health spa does not remain open for 30 days, the escrow agreement shall terminate and all prepayment deposits shall be refunded to the members.

(5) Unless another health spa is operated by the same seller and is located

not more than 10 miles from the proposed location of the new health spa and the person purchasing the membership is authorized to use these other facilities, the member of the new spa whose fees are held in escrow is entitled to receive a full refund of the membership fees from the escrow agent if the new health spa does not open before the 361st day after the date on which the new spa first sells a membership or if the new spa does not remain open for 30 days.

(6) The registrant must provide the escrow agent proof that it has filed an affidavit with the secretary of state which certified that all obligations of the registrant for which a lien could be filed under the Property Code, Chapter 53, have been paid and whether any person is eligible to claim a lien under that chapter during the period the registrant or its agent accepts payments.

(e) The escrow agreement shall identify the escrow officer, style of the deposit account, the financial institution, and any other information which will identify the escrow account into which the prepayment have been deposited.

(f) The registrant shall file a copy of the escrow agreement with the secretary.

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

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TRD-9200332 Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

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For further information, please call: (512) 463-5558

Subchapter D. Security

• 1 TAC §§102.30, 102.31, 102.35, 102.40, 102.45

The new sections are proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §4(a) (Vernon 1991) and the Health Spa Act, Texas Civil Statutes, Article 52211 (Vernon 1987, Supplement 1991), which provides the secretary of state with the authority to prescribe and adopt rules.

§102.30. *Procedure for Determining Security Requirements.*

(a) All persons operating a health spa within the meaning of the Health Spa Act (the Act), §6(3) shall file a surety bond or post other security as required by the Act, §10 except that persons who qualify under the Act, §7A shall post the security required by that section.

(b) The secretary may not issue a certificate of registration unless the applicant first files a surety bond or posts other security as required by the Act, either §7A or §10.

(c) The particular security required to be filed under the Act, §10 is dependent upon whether a health spa was in operation prior to September 1, 1989. Health spas which were in operation prior to September 1, 1989 are required to post the security identified in §102.31(a) of this title (relating to Security Requirements-General). Health spas which are new or which were in operation on or after September 1, 1989 are required to post the security identified in §102.31(b).

(d) To qualify for §102.31(a) treatment with respect to the posting of security, the applicant or registrant must demonstrate to the satisfaction of the secretary that:

(1) the health spa for which registration is sought was in operation prior to September 1, 1989;

(2) the legal entity whether it be a sole proprietorship, partnership, or corporation which owned the health spa that was in operation prior to September 1, 1989 is the same legal entity which seeks registration;

(3) when there is a transfer of health spa ownership, save and except for the transfer of all the outstanding stock of a corporation, the successor is subject to the security requirements that are in effect at the time of the transfer.

§102.31. Security Requirements-General.

(a) The following is applicable to the owner of any health spa in operation before September 1, 1989, and any additional locations opened by the owner of that health spa on or after September 1, 1989.

(1) On or before the 30th day after the date a health spa opens its facilities for the use of its members, the health spa shall file with the secretary a surety bond issued by a surety company licensed to do business in this state, or, in lieu of and in equal amount to the bond, a certificate of deposit, letter of credit, or other negotiable instrument issued by a financial institution in this state whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The bond, certificate of deposit, letter of credit, or other instrument shall be payable in favor of the state and shall be held for the benefit of any members of the health spa who suffer financial losses due to the insolvency or cessation of operation of the health spa. "Financial losses" shall mean and be limited to any unused or unearned portion of such member's dues or fees.

Such a member may bring an action based on the bond and recover against the surety regardless of the number of claimants or claims filed against the bond, but the liability of the surety may not exceed the aggregate amount of the bond. If the claims filed against the bond exceed the amount of the bond, the surety shall pay the amount of the bond to the secretary for distribution to the claimants on a pro rata basis. The surety or obligor is relieved of liability on payment of the amount of the bond or other security to the secretary.

(2) The amount of the security required under paragraph (1) of this subsection is 20% of the total value of the prepayments received by the health spa. However the amount of the security may not be less than \$20,000 or more than \$50,000.

(3) The health spa shall maintain the security in the amount provided in paragraph (2) of this subsection in effect for two years after the date the security is filed with the secretary. Thereafter, the health spa shall continuously maintain security in the amount of \$5,000.

(b) The following is applicable to any health spa opened on or after September 1, 1989, other than those hereinafter described in subsection (a) of this section.

(1) On or before the 30th day before the date a health spa opens a location for the use of its members, the health spa shall file with the secretary a surety bond issued by a surety company licensed to do business in this state. In lieu of, and in equal amount to the bond, the spa may submit a certificate of deposit, or a letter of credit, or other negotiable instrument issued by a financial institution in this state whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The bond or other security deposit shall be payable in favor of the state and shall be held for the benefit of any members of the health spa who suffer financial losses due to the insolvency or cessation of operation of the health spa. "Financial losses" shall mean and be limited to any unused or unearned portion of such member's dues or fees. Such a member may bring an action based on the bond and recover against the surety regardless of the number of claimants or claims ruled against the bond, but the liability of the surety may not exceed the aggregate amount of the bond. If the claims filed against the bond exceed the amount of the bond, the surety shall pay the amount of the bond to the secretary of state for distribution to the claimants on a pro rata basis. The surety or obligor is relieved of liability on payment of the amount of the bond or other security to the secretary.

(2) The amount of the security required under paragraph (1) of this subsection

is \$20,000. If a claim is paid from the bond or other security deposit, the health spa must post additional security, not later than the 20th day after the date on which the claim is paid, to restore the amount of the security to \$20,000.

(3) The health spa shall maintain the bond or other security deposit in the amount provided in paragraph (2) of this subsection in effect for two years after the date on which the health spa ceases business or until the secretary of state determines that each claim to which the bond or other security deposit is subject has been satisfied or foreclosed by law.

(c) The following provision shall be applicable to all bonds filed with the secretary regardless of when the owner first opened a health spa.

(1) Regardless of the number of years the bond shall continue in force or the number of premiums payable or paid, the limit of the surety's liability stated in the bond shall not be cumulative from year to year or period to period.

(2) The surety shall not be liable through a bond for punitive damages or for civil or criminal penalties assessed against a health spa, its individual owners, or its employees.

(3) The bond written by a surety hereunder shall be continuous until canceled by the surety or terminated by the health spa only upon giving 90 days' prior notice to the secretary of such cancellation.

(4) A surety hereunder shall not be liable for any claim brought or suit filed against a bond if the claim or filing of a suit occurs more than two years from the last effective date of the bond.

§102.35. Adjudication of Claims.

(a) Within 20 days of receiving notice that a health spa has ceased operations or is insolvent, the secretary shall make a preliminary determination regarding whether any of the spa's members have suffered financial loss within the meaning of the Health Spa Act (the Act) and these rules. If the secretary determines that financial losses have in fact occurred he shall within 20 days of making the determination notify the surety or obligor that:

(1) the health spa has ceased operations or is insolvent;

(2) members of the health spa have suffered financial losses within the meaning of the Act and these rules;

(3) the secretary intends to:

(A) publish a display advertisement in a newspaper of general circulation in the county or nearest county in

which the health spa is located notifying the public of the fact that the health spa is closed and that a health spa member has 90 days from the date of the first notice to perfect a claim under the security posted; or

(B) use any other reasonable method, to include regular mail, deemed by the secretary to provide sufficient notice to members of the health spa of the fact that the health spa is closed and that a member has 90 days from the date of the notice to perfect a claim under the security posted;

(4) the secretary intends to perfect a claim against the bond or other security for the reasonable expenses incurred in providing notice to the members. The maximum amount of such expenses shall not exceed \$3, 000.

(b) Unless the surety or obligor as the case may be, timely contests the preliminary determination of the secretary pursuant to the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a (Vernon Supplement 1991)), the secretary shall proceed to publish the notice.

(c) Within 45 days from the date the secretary first discovers that a health spa has closed, the secretary shall initiate the notice process.

(1) If it is decided to publish in a newspaper, the secretary shall publish a display advertisement in a newspaper of general circulation in the county or nearest county in which the health spa is located notifying the public of the fact that the health spa is closed and the member has 90 days from the date of the first notice to perfect a claim under the security posted pursuant to the Act, §10. The notice shall be published for 2 consecutive Saturdays and Sundays and shall inform those affected of the procedures for perfecting a claim against the security. The secretary shall have a claim against the security for reasonable expenses incurred in publishing the notice which shall not exceed \$3, 000.

(2) Regardless of the method utilized for notice to the members, all claims received by the secretary after 90 days following the date of the last notice are barred and shall not be considered by the secretary. If the total of claims evidencing actual financial loss exceed the amount of the security, the secretary shall adjudicate the claims on a pro rata basis by dividing the amount of the security, after first deducting the actual costs for publication of the notice, by the total amount of the claims in order to ascertain a percentage to be applied to each claim.

(d) In order to perfect a claim, a claimant must submit a copy of the contract that forms a basis of the claim together with

documentation or a sworn affidavit indicating the total of payments made pursuant to the contract. In the event the claimant does not submit adequate documentation, the secretary shall promptly inform the claimant of this fact together with notice that adequate documentation must be received by the bar date in order for the claim to be considered.

(e) The secretary shall timely present claims together with supporting documentation for the approval of payment by the surety or obligor.

(f) Actual financial loss shall mean and be limited to those sums which have been paid under a health spa contract to a registrant or a registrant's assignee and which at the time the health spa is closed are unearned. Actual financial losses shall be calculated by multiplying the gross monthly payment by the total of months or partial months remaining on a contract at the time of closing minus any payments not made. For the purposes of this section the terms used shall mean the following.

(1) Closed--The condition wherein the facilities of a health spa are no longer available to its members and equivalent facilities within 10 miles of the closed facility have not been made available to the members of the closed facilities; or where a registrant has sold a registered location and the security required in section of the Act has not been transferred to the new owner or the new owner has neither adopted nor honored the contracts of existing members.

(2) Gross monthly payment--The gross monthly payment shall be calculated by determining the total of payments, including down payments and initiation fees required by the contract, divided by the total number of months in the term of the contract.

(3) Calculation of dates--The date of closing and the date of the contract expiration shall be rounded to the nearest full month. The total months remaining on the contract shall be calculated by subtracting the date of closing from the expiration date of the contract. The result will be expressed in whole months.

(g) If the members' claims do not exceed the amount of the security, the registrant shall arrange for the direct payment of the claims to the members.

(h) The surety or obligor shall provide the secretary proof of payment of the members' claims.

(i) In the event the total of claims exceed the amount of the security the claims shall be paid on a pro-rata basis by dividing the amount of the security, after first deducting the secretary's cost of publication of the notice, by the total amount of the claims. This percentage shall be applied to each claim.

§102.40. Procedure for Filing Letters of Credit as Security Under the Health Spa Act, §10.

(a) If a registrant posts a letter of credit as the security under the Health Spa Act, §10, the letter of credit must be maintained as a current negotiable instrument issued by a financial institution in this state whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(b) The letter of credit shall be on the financial institution's letterhead and in the format provided by the secretary's sample form.

(c) In the event a health spa ceases operations and the members' claims exceed the amount of the letter of credit, the following procedure shall be followed by the secretary.

(1) The secretary shall within 90 days after discovering the health spa has closed draw upon the letter of credit for the benefit of the members.

(2) The proceeds shall be deposited in the Texas State Treasury until distribution can be made to the members.

§102.45. Procedure For Filing Certificates of Deposit as Security Under the Health Spa Act, §10.

(a) If the registrant provides a certificate of deposit as security under the Health Spa Act, §10, the certificate of deposit must be issued by a financial institution in this state whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(b) The original certificate of deposit must be filed along with an executed assignment form. The assignment form can be obtained from the Statutory Documents Section of the Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711-2887, (512) 463-5559.

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 January 8, 1992.

TRD-9200331

Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption: February 17, 1992

For further information, please call: (512) 463-5558



Subchapter E. General Information

• 1 TAC §102.50

The new section is proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §4(a) (Vernon 1991) and the Health Spa Act, Texas Civil Statutes Article 5221i (Vernon 1987, Supplement 1991), which provides the secretary of state with the authority to prescribe and adopt rules.

§102.50. Forms. Forms shall be provided by the Office of the Secretary of State for the purposes of complying with the Health Spa Act and this chapter. The forms are hereby adopted by reference and may be obtained from the Office of the Secretary of State, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887.

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 January 8, 1992.

TRD-9200330

Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption: February 17, 1992

For further information, please call: (512) 463-5558

Part X. Department of Information Resources

Chapter 201. Planning and Management of Information Resources Technologies

• 1 TAC §201.5

The Department of Information Resources proposes an amendment to §201.5, concerning procedures for state agency planning of information resources technologies. The amendment provides instructions and formats to be used by an agency in the preparation and submission of its initial and final operating plans.

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

Mr. Lehmann also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be more timely preparation and review of agency information resources plans and greater emphasis on the effective use of information resources technologies to support state government activities. 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 as follows: Comments on Rule Changes, P.O. Box 13564, Austin, Texas 78711, Attention: Martin J. Cassano. The outside of the envelope must be clearly marked "Comments on Rule Changes." All comments received after 5 p.m. February 17, 1992, will not be considered and will be returned unopened to the sender. Only comments provided in writing will be considered.

The amendment is proposed under Texas Civil Statutes, Article 4413(32j) §9, which provides the Department of Information Resources with the authority to adopt rules as necessary to carry out its responsibilities under this article.

§201.5. Agency Planning.

(a) (No change.)

(b) Initial operating plans.

(1) (No change.)

(2) Contents. An agency's initial operating plan must contain information in the format specified by the department in the initial operating plan instructions. These instructions are adopted by reference. Copies may be obtained in person or in writing at the Office of the Department of Information Resources, P.O. Box 13564, Austin, Texas 78711. [

[(A) state how the requested appropriations for the management, operation, and procurement of information resources would be spent;

[(B) contain a summary of the agency's needs for information resources technologies and the estimated cost of meeting those needs during the next biennium;

[(C) list the existing and proposed projects for the agency, including the anticipated benefits of those projects; the major resources required to complete the projects; the estimated total cost of each project by legislative program; the cost and implementation schedule for each project; the number, type, approximate cost, and planned method of acquisition for major procurements associated with each project; and the estimated internal development costs for each project;

[(D) provide an estimate of the percentage of existing and proposed information resources technologies that will be required after proposed projects are implemented.]

(3) (No change.)

(c)-(f) (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 January 10, 1992.

TRD-9200435

Debra J. Williams
Policy Analyst
Department of Information
Resources

Earliest possible date of adoption: February 17, 1992

For further information, please call: (512) 475-4744

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

General Rules

• 16 TAC §23.3

The Public Utility Commission of Texas proposes an amendment to §23.3, concerning recreational vehicle parks. The proposed amendment is necessary to recognize changes made by the 72nd Legislature to the definition of public utility in the Public Utility Regulatory Act. In addition, the rule clarifies that the intent of a recreational vehicle park owner to recover shortfalls if future legislative changes allow such will not be considered action that makes the recreational vehicle park owner a utility even though the legislation passed by the 72nd Legislature does not allow a surcharge to recover shortfalls in revenues. However, the recreational vehicle park owner is required to keep a record of shortfalls if he has such intent and otherwise comply with the requirements of Texas Civil Statutes, Article 1446d-2.

Bret J. Slocum, deputy general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Slocum 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 elimination of any inconsistency between the Public Utility Regulatory Act and the commission's rules. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

Comments on the proposal (13 copies) may be submitted to Mary Ross McDonald, Secre-

tary of the Commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 232S, Austin, Texas 78757. Comments should be submitted within 30 days after publication of the proposed section and should refer to Project Number 10803.

The amendment is proposed under the Public Utility Regulatory Act, §16(a), which provides the Public Utility Commission of Texas with the authority to make and enforce the rules reasonably required in the exercise of its powers and jurisdiction.

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

Public utility—The definition of public utility is that definition given in the Public Utility Regulatory Act, Article I, §3(c). A recreational vehicle park owner who intends to recover any shortfall of revenues collected from the recreational vehicle occupants if legislative amendments are made to Texas Civil Statutes, Article 1446-2, that would allow the recovery of such shortfall will still not be considered a public utility if such owner otherwise complies with Article 1446d-2 and keeps a record of such shortfall. [However, the metered sale of electricity shall not be considered the provision of electric shall not be considered the provision of electric service for compensation is each of the following conditions are met: The electricity is consumed in a recreational vehicle, as defined in the Texas Commercial Driver's License Act, Texas Civil Statutes, Article 6687b-2, (Supplement 1991), that is located in a recreational vehicle park; the park owner can show that he does not recover from the recreational vehicle occupants through metered charges more than the utility has charged the park owner including recognition of fuel refunds on an annual basis for the electric service that is being submetered to the recreational vehicle occupants. In order to make such a showing, the park owner must maintain records of the utility bills and the electricity charges collected from the recreational vehicle occupants including consumption records; such electricity is charged by the use of a fixed rate per kwh that is fixed over an annual period and is computed by totaling last year's bill's from the utility and dividing by the total kwh consumed during that last year, rounded to the nearest cent. If the supplying utility has had a rate increase since or during the last annual period, the park owner may recompute last year's bills from the utility using the utility's current tariff. If the supplying utility has had a rate decrease since or during the last annual period, the park owner shall recompute last year's bills from the utility using the utility's current tariff. The fixed rate can only be adjusted once annually; if at the end of a year the park owner determines that he has

collected an amount different than he has been charged by the utility, the park owner must refund any overcollection and may surcharge any undercollection over the next year; no electric utility bills or costs for common areas are included in the costs to be recovered through a metered charge from the recreational vehicle occupants.]

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 January 8, 1992.

TRD-9200920 Mary Ross McDonald
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: February 17, 1992

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

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**TITLE 22. EXAMINING
BOARDS**
**Part XXV. Structural Pest
Control Board**
Chapter 593. Licenses

• **22 TAC §593.21, §593.22**

The Structural Pest Control Board proposes new §593.21 and §593.22, concerning licensing standards and requirements for technicians and technician-apprentices. The new sections create specific testing and training requirements include new fees and a board-approved technician training course.

Benny M. Mathis, Jr. executive director, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections are in effect will be an estimated additional cost of \$50,000 for fiscal year fy 1992 and \$30,000 for fys 1993-1996; and an estimated increase in revenue of \$50,000 for fy 1992 and \$30,000 for fys 1993-1996. There will be no effect on local government.

Mr. Mathis also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased professionalism and proficiency among licensed pest control technicians. The effect on small businesses as compared to the largest businesses affected by the sections based on cost per employee is as follows: technician exam—\$60 per year; technician-apprentice—\$18 per year; training manual—\$7.50 as needed; technician license—\$36 per year.

The anticipated economic cost to persons who are required to comply with the sections as proposed will be technician license—for fys 1992-1996; and technician apprentice—for fys 1992-1996.

Comments on the proposals may be submitted to Roger B. Borgelt, 9101 Burnet Road, Suite 201, Austin, Texas 78758.

The new sections are proposed under Texas Civil Statutes, Article 135b-6, which provide the Structural Pest Control Board with the authority to establish standards for testing, licensing, and regulating persons engaged in the structural pest control business.

§593.21. Technician-apprentice License Standards.

(a) An employee desiring to become a technician-apprentice must file a technician-apprentice application on the initial date of employment. The application must include the following information:

- (1) applicant's full name;
- (2) applicant's home address;
- (3) applicant's date of employment;
- (4) applicant's social security number;
- (5) applicant's driver's license number;
- (6) applicant's birthdate;
- (7) a fee of \$18.

(b) applicants for a technician-apprentice license shall not perform pest control work without the physical presence of a licensed technician or certified applicator.

(c) In order to receive a technician-apprentice license, an applicant must:

- (1) file a technician-apprentice application with the board;
- (2) be at least 16 years of age;
- (3) receive general training of at least 20 hours of verifiable classroom training that shall include at least two hours in each of the following subject areas:

(A) federal and state laws regulating structural pest control and pesticide application;

(B) recognition of pest and pest damage;

(C) pesticide labels and label comprehension;

(D) pesticide safety;

(E) environmental protection;

(F) application equipment and techniques;

(G) pesticide formulator and actions;

(H) emergency procedures and pesticide cleanup;

(I) procedures for the immediate reporting of spills and misapplications;

(J) basic principles of mathematics, chemistry, toxicology, and entomology;

(K) nonchemical pest control techniques, including biological, mechanical, and prevention techniques;

(4) be able to read and write the English language;

(5) receive 60 hours of verifiable on-the-job training and 10 hours of classroom training in each category technician-apprentice. The on-the-job training means work licensed performed that includes education and training in each category for which the technician-apprentice is to become licensed and should include, but not be limited to, the subject areas listed in subsection (c)(3)(A)-(K) of this section.

(d) The business license holder and certified commercial applicator shall certify to the board in writing that the applicant has completed the required training and has demonstrated competency in each category in which he is to provide pest control service. A technician-apprentice license will then be issued.

(e) The business training records for each technician-apprentice in the company files for at least one year after termination of employment. The training records shall be kept on a form prescribed by the board and shall include, but not be limited to, the following: date training is received, number of hours of training, subject of training, name and license number of trainer, designation of on-the-job or classroom training and competency evaluation by the certified commercial applicator.

(f) When a technician-apprentice changes employers the employer who provided the verifiable training shall make the training record available to the technician-apprentice or the new employer upon written request.

(g) It is a violation of this section for a business licensee to allow a technician-apprentice to perform work in a category in which he has not been properly trained. technician-apprentice and technician must have personal contact with the certified commercial applicator of record at least three days per week.

§593.2. Technician License Standards.

(a) technician-apprentice may become a licensed technician by taking the approved technician training courses for the general category and the category of licensure desired and passing the technician examination. The technician examination application must be accompanied by a fee of \$30 per category. technician-apprentice may take the technician examination as many times as necessary but shall maintain a technician-apprentice license for a maximum of six months out of any 12-month period. Technicians who were licensed on or before September 1, 1991 must verify that they have completed the board-approved technician training course before September 1, 1996. Failure of a licensed technician to complete the technician training courses shall be a violation of this section.

(b) The Technician Training Manual for each category may be obtained from the board for a fee of \$7.50 per manual.

(c) An individual must pass the subject area examination for each category of structural pest control in which the individual wishes to become licensed. Reexamination is not necessary if the license is renewed annually by the technician.

(d) Examinations shall be given at dates and at locations to be at the discretion of the board. A fee of \$30 per examination category shall be paid by the applicant.

(e) All other testing procedures shall be governed by §§593.5(c)(3)-(11), and (13), and (14) of this title (relating to Examinations) except that a technician-apprentice may retest at any time.

(f) Persons who make a passing grade and qualify for a technician license must make application to obtain a license within six months of the exam date or be retested.

(g) Each technician-apprentice license application shall be accompanied by a fee of \$18.

(h) Each technician license application shall be accompanied by a fee of \$36.

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 January 10, 1992.

TRD-9200426

Benny M. Mathis, Jr.
Executive Director
Structural Pest Control
Board

Earliest possible date of adoption: February 17, 1992

For further information, please call: (512) 835-4066

TITLE 28. INSURANCE

Part I. Texas Department Of Insurance

Chapter 1. General Administration

Subchapter A. Rules of Practice and Procedure.

Subpoenaing Witnesses and Materials

• 28 TAC §1.36

The State Board of Insurance of the Texas Department of Insurance proposes an amendment to §1.36, concerning subpoenaing witnesses and materials in investigations. House Bill 62, enacted during the Second Called Session of the 72nd Legislature, and effective January 1, 1992, amends Article 1.19-1 to require that the commissioner and a board member sign investigative subpoenas. The amendment to §1.36(b) is necessary to eliminate language in the rule which conflicts with Article 1.19-1 as amended. The amendment also changes references to the State Board of Insurance to reflect the agency's new name, the Texas Department of Insurance.

William P. Harbeson, deputy commissioner for legal services, 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, and there will be no effect on local employment or local economy.

Mr. Harbeson 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 consistency between the language in the rule and the language of the statute. 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 William P. Harbeson, Deputy Commissioner for Legal Services, Mail Code 110-1A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

The amendment is proposed under the Insurance Code, Article 1.04, which authorizes the State Board of Insurance to determine rules and regulations for the conduct and execution of the duties and functions of the Texas Department of Insurance, and under the Insurance Code, Article 1.19-1, which specifies procedures for issuance of investigative subpoenas, as amended by House Bill 62, Second Called Session, 72nd Legislature.

§1.36. Subpoenaing Witnesses and Materials.

(a) (No change)

(b) Investigations. The commissioner and at least one member of the

board must [deputy insurance commissioner for legal and compliance, the director of legal services, the general counsel to the board, and the chief clerk may] sign any [and issue] subpoenas in the course of an investigation. A subpoena includes a subpoena duces tecum.

(1) (No change.)

(2) Service of subpoena. A subpoena shall be addressed to and served by any sheriff, constable, or Texas Department of Insurance [State Board of Insurance] investigator of the State of Texas. For the purposes of this paragraph, a Texas Department of Insurance [State Board of Insurance] investigator includes any insurance specialist or insurance director employed in the legal services or unauthorized insurance divisions of the Texas Department of Insurance [State Board of Insurance].

(3) (No change.)

(4) Receipt of testimony and materials. The testimony of a subpoenaed witness shall be taken in the presence of a certified shorthand reporter having the authority to lawfully administer an oath pursuant to the Government Code, §52.025(b). The shorthand reporter's fee shall be paid by the Texas Department of Insurance [State Board of Insurance]. Any materials received from a witness shall be properly marked and noted by the shorthand reporter. A witness may make originals available for copying instead of relinquishing originals, provided that the originals remain available for comparison.

(5) (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 January 13, 1992.

TRD-9200304 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: February 17, 1992

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

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Chapter 3. Life, Accident, and Health Insurance and Annuities

Subchapter T. Minimum Standards for Medicare Supplement Policies

• 28 TAC §3.3311

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

The State Board of Insurance of The Texas Department of Insurance proposes the repeal of §3.3311, concerning the consumer hotline for medicare supplement insurance information. The repeal of this section will eliminate the redundancy which could result with the amendment of §1.601, notice of policyholder complaint procedure, which is being considered for publication for comment.

Bill Maschal, acting associate commissioner for consumer services, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Maschal also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of duplicate notices concerning medicare supplement insurance information. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Bill Maschal, Acting Associate Commissioner for Consumer Services, Mail Code 111-1A, Texas Department of Insurance, P.O. Box 149091, Austin, Texas 78714-9091.

The repeal is proposed under the Insurance Code, Article 1.04, which provides the Texas Department of Insurance with the authority to determine policy and rules in accordance with the laws of this state; and under the Insurance Code, Article 1.35 and 1.35D which require the board to promulgate the proper wording for a notice of complaint procedure and require the department to maintain a toll-free telephone number to provide information and take complaints.

§3.3311. *Notice of Consumer Hotline.*

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 January 13, 1992.

TRD-9200305 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: February 17, 1992

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

Chapter 5. Property and Casualty Insurance

Subchapter F. Inland Marine Insurance

Definition and Classification of Inland Marine Insurance

• 28 TAC §5.5001

The State Board of Insurance of the Texas Department of Insurance proposes an amendment to §5.5001, concerning the definition and classification of inland marine insurance. The amendment is necessary to delete reference to the regulatory status designated as "fire and e.c." The designation of "fire and e. c." indicates that those classes or subclasses of inland marine insurance for which rules, rates, and forms are not required to be filed and approved by the State Board of Insurance, must be written at rates in excess of the maximum rates promulgated for fire and extended coverage by the State Board of Insurance. The Insurance Code, Article 5.13-2, implements a new file and use rating system for commercial property insurance thereby eliminating the promulgation of maximum fire and extended coverage rates by the State Board of Insurance. In the absence of promulgated maximum fire and extended coverage rates, insurers cannot comply with the Texas definition of inland marine insurance for those classes or subclasses subject to the regulatory status of "fire and e.c." Reference to "fire and e.c." as a regulatory status is eliminated from the classification procedures contained in the Texas definition of inland marine insurance.

Lyndon Anderson, deputy commissioner, property division, 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 and there will be no effect on local employment or local economy.

Mr. Anderson 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 continued ability of insurers to offer inland marine policies for classes or subclasses of inland marine insurance that were previously in conflict with the application of the proper rating method. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Lyndon Anderson, Deputy Commissioner for Property Division, Mail Code 103-A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

The amendment is proposed under the Insurance Code, Article 5.53, which authorizes the State Board of Insurance to adopt a definition and classification of inland marine insurance.

§5.5001. *Purpose and Classification Procedure.*

(a) (No change.)

(b) The regulatory status of each class (or subclass where indicated) is noted by the language "filed," or "non-regulated," [or "fire and e.c."] as specifically applied to each class or subclass and which shall be interpreted as follows.

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

[(3) "Fire and e.c." indicates those classes or subclasses for which rules, rates, and forms are not subject to filing requirements but for which the premium for the inland marine policy must be in excess of the premium which would be otherwise produced by the applications of approved fire and extended coverage rates if the inland marine policy insures against the perils of fire and extended coverage. "Approved rates" as used in this paragraph, are the maximum fire and extended coverage rates published by the State Board of Insurance.]

(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 January 13, 1992.

TRD-9200456

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

Earliest possible date of adoption: February 17, 1992

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

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• 28 TAC §5.5002

The State Board of Insurance of the Texas Department of Insurance proposes an amendment to §5.5002, concerning the definition and classification of inland marine insurance. The amendment is necessary to eliminate reference to the regulatory status of "fire and e.c." from the Texas definition of inland marine insurance for the bailee customers class, cold storage locker plant class, fine arts dealers subclass, installation risks or builders' risk class, stamp and coin commercial risks subclass, and self-service storage customer class. The regulatory status of "fire and e.c." is no longer applicable since the State Board of Insurance will not promulgate maximum fire and extended coverage rates. In the absence of promulgated maximum fire and extended coverage rates, insurers cannot comply with the requirement that the previously mentioned classes or subclasses be subject to a premium charge in excess of State Board of Insurance promulgated fire and extended coverage rates. With the elimination of the regulatory status of "fire and e.c.," a regulatory status of "nonregulated" is assigned to the previously mentioned classes or subclasses of inland marine insurance indicating rules, rates, and forms are not required to be filed for these classes or subclasses, with the exception of self-service storage customer class, which would indicate only rates,

to be "nonregulated" since forms and rules are required to be filed. In addition, amendments are made to the jeweler's block class and musical instrument dealers class to correct printing errors in the previous *Texas Register* publication.

Lyndon Anderson, deputy commissioner, property division, 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 and there will be no effect on local employment or local economy.

Mr. Anderson 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 continued ability of insurers to offer inland marine policies for classes or subclasses of inland marine insurance that were previously in conflict with the application of the proper rating method. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Lyndon Anderson, Deputy Commissioner Property Division, Mail Code 103-A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

The amendment is proposed under the Insurance Code, Article 5.53, which authorizes the State Board of Insurance to adopt a definition and classification of inland marine insurance.

§5.5002. *Texas Definition of Inland Marine Insurance.* Inland marine insurance is defined and classified as follows:

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

(5) Other inland marine risks.

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

(C) Bailee customers policies (**non-regulated**) [(fire and e.c.)]. Covering property in the custody of bleacheries, throwsters, fumigatories, dyers, cleaners, laundries, needle workers, and other bailees for the purpose of storage or performing work thereon. Such policies shall include coverage while in transit but shall not cover bailee's property at his or her premises.

(D) Block policies. Block policies presently approved under this section are:

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

(iv) jeweler's block: [;]

(I) retailers with average inventories of less than \$250,000 (filed); and

(II) all other classes (non-regulated);

(v) musical instrument dealers (filed). [;]

[(I) retailers with average inventories of less than \$250,000 (filed); and

[(II) all other classes (non-regulated).]

(E) Cold storage locker plant policies (**non-regulated**) [(fire and e.c.)]. Covering merchandise of customers such as meats, game, fish, poultry, fruit, vegetables, and property of a similar nature.

(F)-(I) (No change.)

(J) Fine arts policies covering objects of art such as pictures, bronzes, and antiques, rare manuscripts and books, **articles** [Articles] of virtue, etc:

(i) (No change.)

(ii) dealers (**non-regulated**) [fire and e.c.]; and

(iii) (No change.)

(K)-(O) (No change.)

(P) Installation risks or builders' risk (**non-regulated**) [(fire and e.c.)]. Covering loss to owner, seller, or contractor on account of physical damage to machinery, equipment, building materials, or building supplies being used with and during the course of installation, testing, building, renovating, or repairing of dwelling, commercial, or industrial construction. Such policies may cover at points or places where work is being performed, while in transit, and during temporary storage or deposit of property designated for and awaiting specific installation, building renovating, or repairing. In no event shall any policy cover such properties while contained in stock of merchandise held for sale to the public by dealers and such coverage shall be limited to installation risks or builders' risks where perils in addition to fire and extended coverage are to be insured. If written for account of owner, the coverage shall cease upon completion and acceptance thereof or if written for account of a seller or contractor, the coverage shall terminate when the interest of the seller or contractor ceases.

(Q)-(GG) (No change.)

(HH) Stamp and coin floaters:

(i) (No change.)

(ii) commercial risks (non-regulated) [(fire and e.c.)]:

(II) self-service storage customer floater policies (filed for policy forms and endorsements; non-regulated [fire and e.c.] for rates) may be issued to a tenant of a self-storage facility and covering property stored at such facility. Coverage is limited to property in storage for the perils set forth in the policies, which must include coverage for property while in transit. Coverage may not be provided for any motor vehicles subject to motor vehicle registration and inspection. It is not intended that this coverage definition will allow coverage of property stored in any facility where the lessor issues a warehouse receipt, bill of lading, or other document of title relating to the stored property, or in facilities other than storage facilities that have multiple storage units. Accordingly, the terms "self-service storage facility" and "tenant" shall have the meaning prescribed by the Texas Property Code, §59.000, i.e., self-service storage facility means real property that is rented to be used exclusively for storage of property and is cared for and controlled by the tenant. Tenant means a person entitled under a rental agreement to the exclusive use of storage space at a self-service storage facility.

(JJ)-(OO) (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 January 13, 1992.

TRD-9200455 Linda K. von Quintus-Dom
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: February 17, 1992

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

Plan of Operation of the Texas Market Assistance Program (MAP)

• 28 TAC §§5.6601-5.6603, 5.6605-5.6615

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

The State Board of Insurance of the Texas Department of Insurance proposes the repeal of §§5.6601-5.6603, 5.6605-5.6615, concerning the plan of operation of the Texas Market Assistance Program (MAP). The current sections were adopted in 1990. The repeal of

these sections are proposed pursuant to the Texas Insurance Code, Article 5.76-2, which gives the State Board of Insurance authority to establish a voluntary market assistance program to reduce the number of risks insured by the employer's rejected risk fund; and in response to House Bill 62, §18.16, which amends the Texas Insurance Code, Article 5.76-2, to provide that any fees established and collected for market assistance review are dedicated to the Texas Workers' Compensation Insurance Facility (TWCIF). It is anticipated TWCIF will propose an amended plan of operation, through its rulemaking procedures, for the Market Assistance Program to the Texas Department of Insurance. The rules are proposed for repeal pursuant to the transfer of the MAP from the Texas Department of Insurance to TCWIF.

W. R. (Dusty) Rhodes, map coordinator for workers' compensation, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

W. R. (Dusty) Rhodes also determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of the repeals will be compliance with the Texas Insurance Code, Article 5.76-2, §5.01. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to W. R. (Dusty) Rhodes, Workers' Compensation, Mail Code 202-1A, Texas Department of Insurance, P.O. Box 149091, Austin, Texas 78714-9091.

The repeals are proposed under the Texas Insurance Code, Article 5.62, which provides the Texas Department of Insurance with the authority to make such rules and regulations as are necessary to carry out the provisions of

§5.6601. *Definitions.*

§5.6602. *Effective Date.*

§5.6603. *Application Fee.*

§5.6605. *Data Collection Responsibilities of the MAP Coordinator.*

§5.6606. *Additional Responsibilities of the MAP Coordinator.*

§5.6607. *Types of Statistical Information Maintained.*

§5.6608. *Use of Data.*

§5.6609. *Eligibility.*

§5.6610. *Review Process.*

§5.6611. *Participating Insurers.*

§5.6612. *Confidentiality.*

§5.6613. *Policy Forms and Terms.*

§5.6614. *Request for Market Search Forms.*

§5.6615. *Agents.*

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 January 13, 1992.

TRD-9200457 Linda K. von Quintus-Dom
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: February 17, 1992

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

Chapter 7. Corporate and Financial

Subchapter B. Insurance Hold- ing Company System Regu- latory Act

• 28 TAC §§7.201-7.205, 7.209-7.213

The State Board of Insurance of the Texas Department of Insurance proposes amendments to §§7.201-7.205 and 7.209-7.213, concerning administrative regulation under the Insurance Holding Company System Regulatory Act (the Insurance Code, Article 21.49-1). The amendments are necessary to provide editorial changes and clarifications and to reflect statutory amendments to Article 21.49-1 enacted by passage of House Bill 2, 72nd Legislature, 1991. The amendment to §7.201 removes the availability to incorporate by reference on the completely restated registration statement required by §7.203(g) and remove the availability of an extension of time to provide information which is available but impractical to furnish at the time required to be filed. The amendment to §7.202 expands the definition of affiliate, commissioner, control, and insurer and provides a definition for immediate family. The amendment to §7.203 removes the exemption provided in the total reinsurance of a mutual assessment company by a stipulated premium insurance company; provides that a disclaimer may be filed provided the person filing is in compliance with the Act, §5(a)-(c); requires dividends and distributions to shareholders to be noticed, utilizing Form HCDividend as adopted by reference; and, makes dividends to shareholders subject to applicable provisions of the Insurance Code. The amendment to §7.204 broadens the scope for certain transactions requiring notice or approval and provide that

the calculation of extraordinary dividends or distributions shall be based on the declaration date(s) of such dividends or distributions. The amendment to §7.205 provides that a change or substitution of an attorney-in-fact of a Lloyd's or reciprocal or interinsurance exchange is subject to the Act, §5; provides for the docketing of a contested case for the purpose of pre-hearing matters and motions; provides that mergers contemplated by the Insurance Code, Article 21.28-A, §1, are subject to the Act, §5(c); and sets forth additional violations and sanctions. The amendment to §7.209 deletes a previous exemption. The amendment to §7.210 requires disclosure of certain additional transactions and removes a previous exemption. The amendments to §7.211 and §7.212 are editorial changes. The amendment to §7.213 deletes a previous exemption. Copies of Form HCDividend may be obtained from the Holding Company Division, Mail Code 304-2A, Texas Department of Insurance, P.O. Box 149104, 333 Guadalupe, Austin, Texas 78714-9104. Copies are also filed with the secretary of state.

William L. Doolittle, deputy commissioner, holding company division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Doolittle also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more efficient administrative regulation under the Insurance Code, Article 21.49-1. The effect on small businesses will be the same as the anticipated economic cost to persons required to comply with the proposed sections. There is no anticipated difference in cost of compliance between small and large businesses based on cost per hour of labor. There is no anticipated economic cost to persons who are required to comply with the proposed amendments other than for the minimal cost of completing forms reporting on certain occurrences and transactions.

Comments on the proposal may be submitted to William L. Doolittle, Deputy Commissioner, Holding Company Division, Mail Code 304-2A, Texas Department of Insurance, P.O. Box 149104, 333 Guadalupe, Austin, Texas 78714-9104.

The amendments are proposed under the Insurance Code, Article 21.49-1, §11, which authorizes the Texas Department of Insurance to issue such rules, regulations, and orders as shall be consistent with and shall carry out the provisions of the Insurance Holding Company System Regulatory Act and to govern the conduct of its business and proceedings under the Insurance Code, Article 21.49-1.

§7.201. Forms Filings.

(a) General requirements.

(1) The forms that are specified in §§7.209-7.213 of this title (relating to Form A, Form B, Form C, Form D, and Form E) are intended to be guides in the preparation of the statements, notices, and

applications required by the Insurance Code, Article 21.49-1. They are to provide notice of the information required and the location in which it will be expected to be found. In preparing any statement, notice, or application, the text of the form need not be repeated so long as there is clear identity of the matter to which the answer or material applies. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made. The forms specified in §§7.209-7.213 are also referred to in this subchapter as Forms A-E. Form A is also referred to as the acquisition statement, Form B as the registration statement, Form C as a disclaimer, Form D as an extraordinary dividend, and Form E as an exemption statement. For use in accordance with §7.210(e), the Texas Department [State Board] of Insurance adopts by reference the biographical affidavit form published by and available from the Texas Department [State Board] of Insurance. Copies of this form may be obtained from the Holding Company Division, Mail Code 304-2A, Texas Department of Insurance, P.O. Box 149104, 333 Guadalupe [Corporate Activities Division, State Board of Insurance, 1110 San Jacinto Boulevard], Austin, Texas 78714-9104 [78701-1998].

(2) Three complete originally signed copies of each statement, notice, or application, including exhibits and all other papers and documents filed as a part thereof, in connection with any acquisition statement filed under §7.209, and one complete originally signed copy of every other statement, notice, or application, including exhibits and all other papers and documents filed as a part thereof, shall be filed with the commissioner by personal delivery or by mail addressed to: **Holding Company Division, Mail Code 304-2A, Texas Department of Insurance, P.O. Box 149104** [Corporate Activities Division, State Board of Insurance, 1110 San Jacinto Boulevard], Austin, Texas, **78714-9104** [78701-1998]. Each statement, notice, or application shall be subject to the appropriate filing fee provided for in §7.1301 of this title (relating to Regulatory Fees). The appropriate filing fee shall be forwarded to the **Holding Company** [Corporate Activities] Division of the **Texas Department** [State Board] of Insurance under separate cover along with a copy of the letter transmitting the statement, notice, or application.

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

(b) Incorporation by reference, summaries, and omissions.

(1) (No change.)

(2) The right to incorporate by reference does not apply to §7.209 and §7.213, or to a completely restated up-to-

date registration statement filed in accordance with §7.203(g) of this title (relating to Registration of Insurers) and §7.210.

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

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

(e) Information unknown or unavailable [and extension of time to furnish].

[(1)] Information required need be given only insofar as it is known or reasonably available to the person filing the statement. If any required information is unknown and not reasonably available to the person filing, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted, subject to the following conditions.

(1)(A) The person filing shall give such information on the subject as he possesses or can acquire without unreasonable effort or expense, together with the sources thereof.

(2)(B) The person filing shall include a statement either demonstrating that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

[(2) If any required information, document, or report is available but impractical to furnish at the time it is required to be filed, there may be filed with the commissioner as a separate document or as a part of the application an appropriate statement:

[(A) identifying the information, document, or report in question;

[(B) stating why the filing thereof at the time required is impractical; and

[(C) requesting the waiving of the requirement for filing the information, document, or report to a specified date. The application shall be deemed granted unless the commissioner within 30 days after receipt thereof, shall enter an order denying the application or granting an extension for a period other than that requested in the application.]

§7.202. Definitions.

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

(1) Act—(No change.)

(2) Affiliate—An affiliate of, or person affiliated with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. **If such controlling person includes a member of the immediate family of such person, any other person that is an affiliate of such family member shall be deemed to be an affiliate of such controlling person.**

(3) (No change.)

(4) Commissioner—The commissioner of insurance of the State of Texas, **the commissioner's deputies, or the State Board of Insurance, as appropriate.**

(5) Control—The term "control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, **or with members of the person's immediate family, owns, controls, or holds with the power to vote, or if any person other than a corporate officer or director of a person holds [irrevocable] proxies representing 10% or more of the voting securities or authority of any other person, or if any person by contract or agreement is designated as an attorney-in-fact for a Lloyd's plan insurer under the Insurance Code, Article 18.02 or for a reciprocal or interinsurance exchange under the Insurance Code, Articles 19.02 and 19.10.** This presumption may be rebutted by a showing made in the manner provided by the Act, §3(j)(i), that control does not exist in fact **and that the person rebutting the presumption is in compliance with the Act, §5(a)-(c).** The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect, where a person exercises directly or indirectly either alone or pursuant to an agreement with one or more other persons such a controlling influence over the management or policies of an authorized insurer as to make it necessary or appropriate in the public interest or for the protection of the policyholders [or stockholders] of the insurer that the person be deemed to control the insurer.

(6)-(11) (No change.)

(12) **Immediate family—A person's spouse, father, mother, children, brothers, sisters, and grandchildren, the father, mother, brothers, and sisters of the person's spouse, and the spouse of the person's child, brother or sister, mother, father, or grandparent.**

(13)[(12)] Insurance holding company system—Consists of two or more affiliated persons, one or more of which is an insurer.

(14)[(13)] Insurer—Includes all insurance companies organized or chartered under the laws of this state, or licensed to do business in this state, including capital stock companies, mutual companies, **farm mutual insurance companies**, title insurance companies, fraternal benefit societies, local mutual aid associations, local mutual burial associations, statewide mutual assessment companies, county mutual insurance companies, Lloyds' plan companies, reciprocal or interinsurance exchanges, stipulated premium insurance companies and group hospital service companies, and any other entity which is made subject to the Insurance Code, Article 21.49-1, by applicable law, except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(15)[(14)] Person—An individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

(16)[(15)] Security holder—Of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing. The term "debt obligation" shall not include trade, commercial, or open accounts, matured claims, or agents' commissions.

(17)[(16)] Subsidiary—Of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

(18)[(17)] Ultimate controlling person—That person which is not controlled by another person (as defined in this subsection).

(19)[(18)] Voting security—Any security or other instrument giving or granting to the holder the power to vote at a meeting of shareholders of a person for or against the election of directors or any other matter involving the direction of the man-

agement and policies of such person, or any other security or instrument which the **Texas Department [State Board] of Insurance** deems to be of similar nature including, but not limited to, those described in such rules and regulations as the **Texas Department [State Board] of Insurance** may prescribe in the public interest as a voting security.

(b) (No change.)

§7.203. *Registration of Insurers.*

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

(e) Amendments to registration statements. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions (whether single transactions or cumulative in total). Such amendment shall be in accordance with §7.210 of this title (relating to Form B), the registration statement, the cover page requirements of §7.201(d) of this title (relating to Forms Filings), and with a positive statement as to the items of the form not being amended instead of setting out such unamended portions. Such amendment shall be filed within 15 days after the end of the month in which the registered insurer learns of each such change or addition [; provided, however, that subject to the provisions of these sections, relating to notice of declaration of extraordinary dividends and distributions each registered insurer shall so report to the commissioner all dividends and other distributions to shareholders within two business days following the declaration thereof]. **Within 60 days after the effective date of these sections, each insurer shall amend its registration statement to comply with these sections.** [Provided, however, that any] Any transaction that is formally approved by official order of the commissioner under any of the following enumerated provisions shall be deemed to be an amendment to the registration statement without further action or filing:

(1)-(9) (No change.)

(10) [the Insurance Code, Article 22.15;]

[(11)] the Insurance Code, Article 22.19, provided that the reinsurance is a total direct reinsurance; and

(11)[(12)] any other transaction formally approved by official order of the commissioner under authority authorized by any other provisions of the Insurance Code.

(f) Material changes. The following occurrences shall, without limitation on the meaning of the phrase "material changes," be deemed to be material changes for the purposes of filing an amendment to the registration statement:

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

(6) any transaction with an affiliate or affiliates which, when taken together with all other transactions with affiliates (excluding those transactions approved under §7.204(a)(1) of this title (relating to Commissioner's Approval Required) and those transactions for which notification is given under §7.204(a)(2) occurring within 12 months next preceding, in the aggregate or cumulatively involve the lesser of [either] 1/2 of 1.0% or more of an insurer's admitted assets, or 5.0% or more of an insurer's surplus, **calculated** [determined by whichever is the lesser,] as of the 31st day of December next preceding. In such case, §7.210(c) and (f) shall be made current together with a report of all transactions with affiliates regardless of size within 12 months next preceding. After such transactions are reported and the filings pursuant to §7.210(c) and (f) are made current, each subsequent transaction with an affiliate which, when taken together with those transactions which occurred within the 12 months next preceding, were reported pursuant to this subsection and which aggregate or cumulatively involve the lesser of [either] 1/2 of 1.0% or more of an insurer's admitted assets, or 5.0% or more of an insurer's surplus, **calculated** [determined by whichever is the lesser,] as of the 31st day of December next preceding, shall be reported pursuant to §7.203(e) of this title (relating to Registration of Insurers).

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

(k) Exemptions. The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the commissioner or board by rule, regulation, or order shall exempt the same.

(l) Disclaimer. Any person may file with the commissioner a disclaimer of control or affiliation with any insurer, or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall be in accordance with §7.211 of this title (relating to Form C) and shall disclose all material relationships and bases for affiliation between such persons and such insurer as well as the basis for disclaiming such affiliation. A copy of any disclaimer filed with the commissioner, if the affected insurer is not a party thereto, shall also be furnished by the applicant to the insurer at the same time it is filed with the commissioner. The insurer shall, within 15 business days after receipt thereof, unless the time is extended by the commissioner for good cause, respond to the matters raised in the disclaimer [if it does not have a current registration statement on file with the commissioner]. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under subsection (a) of this

section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. A disclaimer filed under this subsection does not relieve a person of the duty to comply with the requirements of the Act, §5(a)-(c). The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance. After a disclaimer of control or affiliation has been filed by any person, any acquisition, in any manner, directly or indirectly, of a voting security of the domestic insurer by such person shall be subject to the Act, §5, in absence of the filing, within five business days, of an amendment which shall make current the disclaimer of control or affiliation previously filed pursuant to this subsection.

(m) (No change.)

(n) Dividends and distributions. Each registered insurer shall, by personal delivery or by mail addressed to: Holding Company Division, Mail Code 304-2A, Texas Department of Insurance, P.O. Box 149104, 333 Guadalupe, Austin, Texas 78714-9104, provide notice to the commissioner of all dividends and other distributions to shareholders within two business days following the declaration thereof in the form prescribed by the commissioner and adopted herein by reference as Form HCDividend and such notice shall be deemed an amendment to the registration statement without further action or filing. See §7.204(d) of this title (relating to Commissioner's Approval Required) for requirements regarding extraordinary dividends and distributions. All dividends and distributions to shareholders are subject to the applicable provisions of the Insurance Code, Articles 3.11, 21.31, 21.32 and 21.32A.

§7.204. *Commissioner's Approval Required.*

(a) Prior approval and notice.

(1) (No change.)

(2) The following transactions between a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into any such transaction at least 30 days prior thereto, or such shorter period as he may permit, and he has not disapproved it within such period:

(A) (No change.)

(B) reinsurance treaties or agreements or modifications to those trea-

ties or agreements, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;

(C) (No change.)

(D) management or service agreements, cost sharing agreements, rental or leasing agreements;

(E) agreements to consolidate federal income tax returns;

(F) transactions with affiliated financial institutions, other than fully insured demand deposits; and

(G)[(D)] any material transactions which the commissioner has determined after notice may adversely affect the interest of the insurer's policyholders [or stockholders] or of the public [including, but not limited to, management or service agreements, cost sharing agreements, rental or leasing agreements, agreements to consolidate federal income tax returns, and transactions with affiliate financial institutions].

(3) A domestic insurer may not enter into transactions that are part of a plan or series of similar transactions with persons within the holding company system to avoid the statutory threshold amount and thus avoid review. If the commissioner determines that the transactions were entered into over any 12-month period for that purpose, the commissioner may consider the series of transactions with regard to their cumulative effect and may apply the applicable statutory thresholds or the commissioner may apply sanctions under the Code.

(4)[(3)] Nothing herein contained shall be deemed to authorize or permit any transactions which, in the case of a noncontrolled insurer, would be otherwise contrary to law.

(5)[(4)] The commissioner, in reviewing transactions hereunder, shall consider whether the transactions comply with the standards set forth in subsection (c) of this section and whether they may adversely affect the interest of policyholders. Any disapproval by the commissioner of any such transactions shall set forth the specific reasons for such disapproval.

(6)[(5)] The approval of any transaction under this subsection shall be deemed an amendment under §7.203(e) of

this title (relating to Registration of Insurers) to an insurer's registration statement without further filing.

(b) Transactions. Requests for approval of transactions pursuant to subsection (a)(1) of this section and notices of proposed transactions pursuant to subsection (a)(2) of this section, shall be accompanied by descriptions of the essential features of such transactions which are reasonably adequate to permit proper evaluation thereof by the commissioner. Such descriptions shall in all cases include at least the following: the nature and purpose of the transaction; the nature and amounts of any payments or transfers of assets between the parties; the identities of all parties to such transactions; whether any officers or directors of a party are pecuniarily interested therein, and copies of any proposed contracts, agreements, or memoranda of understanding between the parties relating to the transaction along with sufficient competent documentation evidencing compliance with the standards specified in the Act, §4(a), and evidencing that the transaction will not adversely affect the interest of policyholders. **An agreement to consolidate federal income taxes shall provide that a domestic insurer will be adequately indemnified in the event the Internal Revenue Service levies upon the insurance company's assets for unpaid taxes in excess of the amount paid under the agreement.** No such request or notice shall be deemed filed with the commissioner until the date all such material has been provided.

(c) (No change.)

(d) **Extraordinary dividends** [Dividends] and other distributions.

(1) (No change.)

(2) For purposes of these sections, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of:

(A) 10% (20% if such insurer is a title insurer) of such insurer's surplus as regards policyholders as of the 31st day of December next preceding; or

(B) the net gain from operations of such insurer, if such insurer is a life or title insurer, or the net investment income, if such insurer is not a life or title insurer, for the 12-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of an insurer's own securities.

(C) **In determining the 12-month cumulative amount for dividends or distributions, the calculation shall be based on the declaration date(s) of such dividends or distributions** [is governed by the Act, §4(c)(2)].

(3) (No change.)

(e) (No change.)

§7.205. Acquisition Statements—Filing Requirements.

(a) Domestic insurer defined. Filing and other regulatory requirements for acquisitions of control and certain other matters as specified in the Act, §5(a), are governed by the Act, §5(a). For purposes of this subsection, a domestic insurer as defined in the Act, §5(a)(2), shall include any person controlling a domestic insurer unless such person is either directly or through its affiliates primarily engaged in business other than the business of insurance. **A change or substitution of an attorney-in-fact of a Lloyd's or reciprocal or interinsurance exchange is subject to the Act, §5.** A failure to file complete and accurate information in all material respects is grounds for a denial by the commissioner under the Act, §5(c).

(b) Form and content of statement. The statement required by subsection (a) of this section (elsewhere referred to as acquisition statement) shall be made in accordance with §7.209 of this title (relating to Form A), the acquisition statement. The acquiring party shall provide additional financial information in the form or substance as required by the commissioner which is material to the finding required by the Act, §5(c)(1)(iii). Any financial information required under the Act, §5(b)(3), may be waived by the commissioner if such information is not deemed material. No statement required by subsection (a) of this section shall be deemed filed with the commissioner until on the date all such material required and sufficient to constitute a full statement has been provided. **At any time after the submission or resubmission to the commissioner of a statement filed under the Act, §5(a), regardless of whether the statement is complete and accurate, the matter may be placed on the commissioner's contested case docket to hear any prehearing matters and motions permitted under the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a).**

(c)-(e) (No change.)

(f) Approval by commissioner; hearings. All mergers, acquisitions of control, and other matters as specified in the Act, §5(a), and mergers contemplated by the Insurance Code, Article 21.28-A, §1, are subject to the Act, §5(c). The acquiring

party shall have the burden of providing sufficient competent evidence for the commissioner to make the determinations required under the Act, §5(c)(1).

(g)-(l) (No change.)

(m) **Additional violations.** Each director or officer of an insurance company subject to these sections, or of an insurance holding company system subject to these sections, who knowingly and willfully violates, participates in, or assents to or who knowingly and willfully permits any of the officers, agents, or employees of the insurer or holding company system to engage in transactions or make investments that have not been properly reported or submitted under these sections or that knowingly and willfully violate these sections, shall pay, in the person's individual capacity, a civil penalty of not more than \$10,000 for each violation, after notice and an opportunity for hearing before the commissioner. In determining the amount of the civil penalty, the commissioner shall consider the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and any other matters that justice requires.

(n) **Additional sanctions.** An entity that holds a certificate of authority granted by the Texas Department of Insurance or the commissioner and that violates the Insurance Code is subject to the sanctions authorized under the Insurance Code, Article 1.10, §7.

§7.209. Form A.

(a) Statement regarding the acquisition of control of a domestic insurer.

_____ name
of _____ domestic insurer by
_____ name of acquiring
person (applicant). Filed with the Texas
Department [State Board] of Insurance,
date: , 19 . Name, title, address, and tele-
phone number of individual to whom no-
tices and correspondence concerning this
statement should be addressed:

(b)-(l) (No change.)

(m) Financial statements and exhibits.

(1) (No change.)

(2) [Subject to §7.201(e) of this title (relating to Forms Filings), the] The

financial statements shall include the annual financial statements of the persons identified in subsection (c)(3) of this section for the preceding three fiscal years (or for such lesser period as such applicant and its affiliates and any predecessors thereof shall have been in existence), and similar unaudited financial information as of a date not earlier than 120 days prior to the filing of the statement, accompanied by affidavit or certification of the chief financial officer of the applicant that such unaudited financial statement is true and correct, as of its date, and that there has been no material change in financial condition, as defined by the Act, §3, from the date of the financial statement to the date of the affidavit or certification. Such statements may be prepared on either an individual basis, or, unless the commissioner otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business. Unless exempted by the commissioner, the annual financial statements of the applicant shall be made in accordance with generally accepted auditing standards and accompanied by the certificate of an independent certified public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If such certificate is not available, then such financial statement shall be sworn to by the applicant as correctly reflecting its financial condition, and in such case, the commissioner of insurance at the commissioner's discretion may require such financial statement to be certified by an independent public accountant. If the applicant is an insurer which is actively engaged in the business of insurance and licensed to do business in this state, it may provide financial statements which conform to the annual statements of the insurer filed with the insurance department of the insurer's domiciliary state and which are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the domiciliary state. If the applicant is an individual person, such person shall provide a reviewed financial statement accompanied by the certificate of an independent public accountant that he is not aware of any material modifications that should be made to the accompanying financial statement in order for it to be in conformity with generally accepted accounting principles and shall provide a balance sheet as of a date not earlier than 120 days prior to the filing of the statement and balance sheets for the second and third fiscal years preceding the filing of the statement accompanied by affidavit or certification that each balance sheet is true and correct as of its date.

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

(n) (No change.)

§7.210. Form B.

(a) Insurance holding company system registration statement. Filed with the Texas Department [State Board] of Insurance by (name of registrant) on behalf of the following insurance companies. Name, address

_____ date: , 19 .
 Name, title, address, and telephone number of individual to whom notices and correspondence concerning this statement should be _____ addressed:

(b) (No change.)

(c) Organizational chart. Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system, including all affiliated persons as defined in §7.202(a)(2) of this title (relating to Definitions). The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile.

(d) (No change.)

(e) Biographical information. Furnish biographical data for the ultimate controlling person(s) if such person is an individual, or for the directors and executive officers of the ultimate controlling person if the ultimate controlling person is not an individual, with such biographical data in the form of the biographical affidavit form adopted by reference under §7.201(a)(1) of this title (relating to Forms Filings). Copies of this form are available from the Holding Company [Corporate Activities] Division, Mail Code 304-2A, Texas Department [State Board] of Insurance, P.O. Box 149104, 333 Guadalupe [1110 San Jacinto Boulevard], Austin, Texas 78714-9104 [78701-1998].

(f) Transactions, relationships, and agreements.

(1) Briefly describe the following agreements in force, relationships sub-

sisting, and transactions currently outstanding between the registrant and its holding company, its subsidiaries, and its affiliates:

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

(F) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company; [and]

(G) all dividends and other distributions to shareholders;

(H) agreements with affiliates to consolidate federal income tax returns;

(I) all transactions with affiliated financial institutions;

(J)[(G)] any affiliated transaction not disclosed previously which is subject to the Act, §4(d); and

(K) any pledge of an insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of its insurance holding company system.

(2) (No change.)

(g) (No change.)

(h) Financial statements and exhibits.

(1) (No change.)

(2) The financial statements shall include the annual financial statements (including profit and loss) of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year and all subsidiaries of the registrant. Such financial statements may be prepared on either an individual basis, or unless the commissioner otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business. [Unless the commissioner otherwise permits pursuant to §7.201(e) of this title (relating to Forms Filings), the] The annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of any ultimate controlling person (other than a natural person) and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial

statements need not be certified, provided they are based on the annual statement of such insurer filed with the insurance department of the insurer's domiciliary state and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of such state. Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by regulation.

(i)-(j) (No change.)

§7.211. Form C.

(a) Disclaimer of control or affiliation filed with the Texas Department [State Board] of Insurance by _____ (name of applicant). Name of company or companies whose relationship is disclaimed:

_____, date: _____, 19___. Name, title, address, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

(b)-(f) (No change.)

§7.212. Form D.

(a) Notice of declaration of extraordinary dividend. Filed with the Texas Department [State Board] of Insurance by _____ (name of insurer), date: _____, 19__. Name, title, address, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed: [.]

(b)-(p) (No change.)

§7.213. Form E.

(a) Statement regarding the exemption from approval of the acquisition of

control of a domestic insurer.[:] Name of domestic insurer: _____ Name of acquiring person (applicant): _____ Filed with the Texas Department [State Board] of Insurance, date: _____, 19__. Name, title, address, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

(b)-(g) (No change.)

(h) Financial statements and exhibits.

(1) (No change.)

(2) [Subject to §7.201(e) of this title (relating to Forms Filings), the] The financial statements shall include the annual financial statements of the persons identified in subsection (c)(1) of this section for the preceding fiscal year, and similar unaudited financial information as of a date not earlier than 120 days prior to the filing of the statement, accompanied by affidavit or certification of the chief financial officer of the applicant that such unaudited financial statement is true and correct, as of its date, and that there has been no material change in financial condition, as defined by Act, §3, from the date of the financial statement to the date of the affidavit or certification. Such statements may be prepared on either an individual basis, or, unless the commissioner otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business. Unless exempted by the commissioner, the annual financial statement of the applicant shall be made in accordance with generally accepted auditing standards and accompanied by the certificate of an independent certified public accountant to the effect that such statement presents fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If such certificate is not available, then such financial statement shall be sworn to by the applicant as correctly reflecting its financial condition, and in such case, the commissioner of insurance at the commissioner's discretion may require such financial statement to be certified by an independent public accountant. If the applicant is an insurer which is actively engaged in the business of insurance and licensed to

do business in this state, it may provide financial statements which conform to the annual statement of the insurer filed with the insurance department of the insurer's domiciliary state and which are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the domiciliary state. If the applicant is an individual person, such person shall provide for the preceding fiscal year a reviewed financial statement accompanied by the certificate of an independent public accountant that he is not aware of any material modifications that should be made to the accompanying financial statement in order for it to be in conformity with generally accepted accounting principles and a balance sheet as of a date not earlier than 120 days prior to the filing of the statement accompanied by affidavit or certification that the balance sheet is true and correct as of its date. Any financial information required by this subsection may be waived by the commissioner if such information is not deemed material.

(3) (No change.)

(i) (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 January 13, 1992.

TRD-9200453 Linda K. von Quintus-Dom
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: February 17, 1992

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

◆ ◆ ◆
Chapter 21. Trade Practices
Subchapter C. Unfair Claims
Settlement Practices

• 28 TAC §§21.202-21.204

The State Board of Insurance of the Texas Department of Insurance proposes amendments to §§21.202-21.204 concerning unfair claims settlement practices. The amendments are necessary to implement Legislative amendments to the Insurance Code, Article 21.21-2. The enactment of the new Insurance Code, Article 21.55, relating to the prompt payment of claims establishes a new standard for claim payments. Failure to meet the standard is being proposed as an additional unfair claims practice. Amendments to the Insurance Code, Article 21.21-2, require deletion of language in §21.202 of this title, limiting the application of the Unfair Claims Settlement Practices law to insurers operating under Subchapter C of Chapter 3 or Subchapter A, B, and C of Chapter 5 of the Insurance Code; repeal of language in §21.203 of this title requiring defined acts to

be committed without cause and with frequency in order for the acts to be considered unfair claims settlement practices.

Bill Maschal, acting associate commissioner for consumer services, Texas Department of Insurance, has determined that, for the first five-year period the proposed amendments will be in effect, there will not be fiscal implications as a result of enforcing or administering the amendments.

Mr. Maschal also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be fair settlement of claims. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Comments on the proposal may be submitted to Bill Maschal, acting associate commissioner for consumer services, Mail Code 111-1A, Texas Department of Insurance, P.O. Box 149091, Austin, Texas 78714-9091.

The amendments are proposed under the Insurance Code, Article 1.04, which provides the Texas Department of Insurance with the authority to determine policy and rules in accordance with the laws of this state; and under the Insurance Code, 21.21-2, which provides the State Board of Insurance with the authority to adopt regulations defining unfair claims settlement practices.

§21.202. Definitions. The following words or phrases, as used in these regulations, shall have the meanings placed opposite them, unless the explicit wording of a regulation shall otherwise direct.

Business day—A day other than a Saturday, Sunday, or holiday recognized by this state.

Claim—A request or demand reduced to writing and filed by a Texas resident with an insurer for payment of funds or the providing of services under the terms of a policy, certificate, or binder of insurance.

Claimant—A person making or having made a claim.

Complaint—Any written communication, not solicited by an insurer, primarily expressing a grievance relating to an unfair claims settlement practice as defined in §21.203 of this title (relating to Unfair Claims Settlement Practices).

First-party coverage—Benefits and other rights provided by an insurance contract to an insured.

Insurer—Any person, or persons acting in concert, doing or licensed to do business in Texas under the Insurance Code or performing any act subject to regulation by the Texas Department of Insurance [Chapter 3, Subchapter G, or the Insurance Code, Chapter 5, Subchapters A, B, or C, as amended], and including (when applicable) proprietorships, partnerships, corporations, and unincorporated associations, and:

(A) a domestic or foreign, stock and mutual, life, health, or accident insurance company;

(B) a domestic or foreign, stock or mutual, fire and casualty insurance company;

(C) a Mexican casualty company;

(D) a domestic or foreign Lloyd's plan insurer;

(E) a domestic or foreign reciprocal or insurance exchange;

(F) a domestic or foreign fraternal benefit society;

(G) a stipulated premium insurance company;

(H) a nonprofit legal service corporation;

(I) a statewide mutual assessment company;

(J) a local mutual aid association;

(K) a local mutual burial association;

(L) an association exempt under Article 14.17 of this code;

(M) a nonprofit hospital, medical, or dental service corporation, including a company subject to Chapter 20 of this code;

(N) a county mutual insurance company;

(O) a farm mutual insurance company;

(P) a risk retention group;

(Q) a purchase group; and

(R) a surplus lines carrier [stock and mutual life, health, accident, fire, casualty, fire and casualty, hail, storm, title, and mortgage guarantee companies; mutual assessment companies; local mutual aid associations; local mutual burial associations; statewide mutual assessment companies;

stipulated premium companies; fraternal benefit societies; group hospital service organizations; county mutual insurance companies; Lloyds; reciprocal or interinsurance exchanges; and farm mutual insurance companies] when transacting such business.

Policyholder—The owner of a policy, certificate, or binder of insurance, and any insured, named insured, or obligee under a bond.

Third-party coverage—Benefits and other rights provided by an insurance contract to any person other than the insured.

§21.203. Unfair Claim Settlement Practices. No insurer shall engage in unfair claim settlement practices. Unfair claim settlement practices means committing or performing [with such frequency as to indicate a general business practice] any of the following:

(1) (No change.)

(2) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies, provided that "pertinent communications" shall exclude written communications that are direct responses to specific inquiries made by the insurer after initial report of a claim. An acknowledgment within 15 business [working] days is presumed to be reasonably prompt.

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

(6) failure of any insurer to maintain a complete record of all complaints which it has received during the preceding three years or since the date of its last examination by the Commissioner of Insurance, whichever time is shorter. This record must [shall] indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. [A record of such complaints maintained in substantially the form as indicated on Exhibit A attached hereto will be presumed to be in compliance with this requirement, but Exhibit A shall not be considered as the exclusive method to record such complaints. Exhibit A is incorporated herein by reference. A copy of Exhibit A may be obtained from the Business Practices and Enforcement Division, State Board of Insurance, 1110 San Jacinto Street, Austin, Texas 78786.]

(7)-(9) (No change.)

(10) Failing to affirm or deny coverage of a claim to a policyholder within a reasonable time after proof of loss statements have been completed. [The taking of a nonwaiver agreement or the submission of a reservation of rights letter by an insurer to the policyholder within a reasonable time is deemed compliance with the provisions of this paragraph.]

(11) (No change.)

(12) Attempting to settle a claim for less than the amount to which a reasonable person would have believed she/he was entitled [by reference to written or printed advertising material accompanying or made part of an application].

(13)-(17) (No change.)

(18) Failing to comply with the requirements of the Insurance Code, Article 21.55.

(19) Requiring a claimant, as a condition of settling a claim, to produce the claimant's federal income tax returns for examination or investigation by the insurer unless the claimant is ordered to produce those tax returns by a court of competent jurisdiction, the claim involves a fire loss, or the claim involves a loss of profits or income.

§21.204. *Special Claim Reports and Statistical Plan.* If it should be found by the Texas Department of Insurance [State Board of Insurance] based on complaint or complaints of unfair claim settlement practices as described in §21.203 of this title (relating to Unfair Claims Settlement Practices), that an insurer [is substantially out of line and] should be subjected to closer supervision with respect to such practices, it may require such insurer to file a report at such periodic intervals as the board deems necessary. [For purposes of this section, the term "substantially out of line" means "a patently disproportionate number of complaints to indicate the existence of a pattern of unfair claim settlement practices as that term is defined in §21.203 of this title (relating to Unfair Claims Settlement Practices").] Such periodical reports shall contain the following information:

(1)-(5) (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 January 13, 1992.

TRD-9200454 Linda von Quintus-Dom
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: February 17, 1992

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

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Chapter 25. Insurance Premium Finance

Subchapter H. Annual Reports, Examinations, and Assessments

• 28 TAC §25.716

The State Board of Insurance of the Texas Department of Insurance proposes new §25.716, concerning the general administrative expense assessment of insurance premium finance companies in fiscal year 1992. This section is proposed to provide a rate of assessment sufficient to meet the expenses of performing the department's statutory responsibilities for examining, investigating, and regulating insurance premium finance companies. Under §25.716, the department levies a rate of assessment to cover fiscal year 1992's general administrative expense and collects from each insurance premium finance company on the basis of a percentage of total loan dollar volume for the 1991 calendar year.

Kenneth J. Ramoin, director of accounting, has determined that for the first five-year period the section is in effect there will be a fiscal impact equivalent on small businesses as on large businesses per \$1.00 of loan volume, or a \$250 minimum payment, for companies required to comply with this section. The fiscal impact on state government will be income estimated at \$153,978 to the department's fund 036. However, there is no fiscal implication for local government as a result of enforcing or administering the proposed new section.

Mr. Ramoin also has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the section will be the facilitation in the collection of an assessment to cover the general administrative expense connected to the regulation of insurance premium finance companies. There is no anticipated economic cost to persons as the assessment is imposed on business entities.

Comments may be submitted to Kenneth J. Ramoin, director of accounting, Mail Code #108-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The new section is proposed under the Texas Insurance Code, Article 24.06(c) and Article 24.09. Article 24.06(c) provides that each insurance premium finance company licensed by the department shall pay an amount assessed by the department to cover the direct and indirect cost of examinations and investigations and a proportionate share of general administrative expense attributable to regulation of insurance premium finance companies. Article 24.09 authorizes the department to adopt and enforce rules necessary to carry out provisions of the Texas Insurance Code concerning the regulation of insurance premium finance companies.

§25.716. *General Administrative Expense Assessment, Fiscal Year 1992.* On or before April 1, 1992, each insurance premium

finance company holding a license issued by the Texas Department of Insurance under the Texas Insurance Code, Chapter 24, shall pay to the department an assessment made by the department to cover the general administrative expenses attributable to the regulation of insurance premium finance companies. Payment shall be made to the Texas Department of Insurance, 333 Guadalupe Street, Mail Code #105-2A, Austin, Texas 78701-3938. The assessment to cover general administrative expenses shall be computed and paid as follows.

(1) The amount of the assessment shall be computed as 0.01012 of 1.0% of the total loan dollar volume of the company for the calendar year 1991.

(2) If the amount of assessment computed under paragraph (1) of this section is less than \$250, a minimum assessment of \$250 shall be levied and collected.

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 January 13, 1992.

TRD-9200303 Linda K. von Quintus-Dom
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: February 17, 1992

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part XVII. Texas State Soil and Water Conservation Board

Chapter 519. Technical Assistance

Subchapter A. Technical Assistance Program

• 31 TAC §519.8

The Texas State Soil and Water Conservation Board proposes an amendment to §519.8, concerning eligible pay rates for soil and water conservation district technicians.

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

Mr. Neiser 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 maintenance of quality technical assistance personnel.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Robert G. Buckley, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503.

The amendment is proposed under Chapter 201.020, Agriculture Code, which provides the Texas State Soil and Water Conservation Board with the authority to adopt rules as necessary for the performance of its functions under the Agriculture Code.

§519.8. Eligible Pay Rates. The state board hereby establishes maximum pay rates of **\$7.50** [\$6.50] per hour or **\$15,580** [\$13,500] per year and maximum hours per week of 40 hours. With the prior approval of the state board a district may exceed the maximum pay rate or maximum hours per week. Expenditures for wages or salaries that are above the maximum pay rate or expenditures for hours over the maximum hours per week will not otherwise be eligible for reimbursement.

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 Temple, Texas, on January 7, 1992.

TRD-9200296

Robert G. Buckley
Executive Director
Texas State Soil and
Water Conservation
Board

Earliest possible date of adoption: February 17, 1992

For further information, please call: (817) 773-2250

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter X. Pari-Mutuel Wagering Racing Revenue

• 34 TAC §3.641

The Comptroller of Public Accounts proposes an amendment to §3.641, concerning pari-mutuel wagering. The purpose of the amendment is to revise and clarify the responsibilities of horse and greyhound racing associations licensed by the Texas Racing Commission with regard to collection, deposit, reporting, and accounting for the state portion of pari-mutuel wagering revenues and related funds; minimum standards for pari-mutuel wagering equipment used to compute the state share of pari-mutuel wagering revenues to reflect amendments to the Texas Racing Act enacted by the 72nd Legislature, 1991.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government as a result of enforcing or administering the section. This section is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses.

Dr. Plaut also has determined that for each year of the first five years the section is in effect there will be no significant public cost or benefit. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Cril Payne, General Counsel, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §4.03, which provides the comptroller with the authority to adopt rules relating to the administration and enforcement of the provisions of the Texas Racing Act.

§3.641. Pari-Mutuel Wagering.

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

(1) Association—A horse or greyhound association licensed by the commission to conduct races with pari-mutuel wagering or the authorized agent of such an association.

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

(D) **Class 4 association—An association licensed by the commission as a Class 4 association for the purpose of conducting horse races with pari-mutuel wagering.**

(E)[(D)] Greyhound association—An association licensed by the commission for the purpose of conducting greyhound races with pari-mutuel wagering.

(F) **Receiving association—A licensed racetrack association in this state that has been allocated live dates simulcasting or a simulcast race meeting, or a facility not located in this state that is authorized to conduct wagering under the law of the jurisdiction in which it is located.**

(G) **Sending association—A licensed association for racing in this state or out-of-state from which a race is transmitted.**

(2) (No change.)

(3) **Common pool—A pool in which the wagers received at a receiving**

location are combined with the wagers received at a sending racetrack.

(4) **Communications facilities—Facilities which include all wire, radio, optical, satellite, or other electromagnetic systems and the modems, phone systems and other equipment used to transmit voice, data, and images.**

(5)[(3)] **Comptroller—The Comptroller of Public Accounts or an authorized agent of the Comptroller of Public Accounts.**

(6) **Live pari-mutuel Pool—The total amount of money wagered by patrons on the result of a particular live race or combination of live races within the enclosure of the racetrack association where the race is being run.**

(7) **Simulcast—The telecast or other transmission of live audio and visual signals of a race, transmitted from a sending track to a receiving location, for the purpose of wagering conducted on the race at the receiving location.**

(8) **Simulcast pari-mutuel pool—The total amount of money wagered by patrons at a licensed racetrack association in Texas on the result of a particular simulcast race or combination of simulcast races.**

(9) **Simulcast race meeting—The dates to conduct simulcast pari-mutuel wagering only, while conducting no live races.**

(10)[(4)] **State approved depository—A bank approved as a depository of state funds by the state depository board.**

(11)[(5)] **Totalisator company—A company selling, leasing, servicing, maintaining, or operating automated electronic computer hardware and software to calculate, record, display, and store pari-mutuel wagering information.**

(b) **Collection/deposit of the state's share from live and simulcasting [state portion of] pari-mutuel wagering revenues; reports to the comptroller.**

(1) **Reporting and payment of the state's share of simulcast pari-mutuel pools shall be in accordance with this subsection.**

(A) **The sending association is responsible for reporting and payment of the state's share from pari-mutuel wagering revenues derived from simulcast intrastate common pools.**

(B) **Each association is responsible for reporting and payment of the state's share from pari-mutuel wagering revenues derived from simulcast intrastate separate pools and simulcast interstate, separate, or common pools.**

(C) The sending track must provide a copy of each simulcasting agreement or amendment(s) to the comptroller within 72 hours after such agreement or amendment(s) is approved by the commission. If interstate simulcasting is involved, the agreement or amendment(s) must be provided by the association located in Texas.

(2)[(1)] In each locality with licensed Class 1, Class 2, or greyhound associations, the State Treasurer has agreed to open an interest-bearing account in a local state-approved depository to be used for deposit of the state share of pari-mutuel wagering proceeds.

(3)[(2)] After each racing day, a representative of a Class 1, Class 2, or greyhound association shall deposit to the state account by 10 a.m. of the next banking day the state's [state] total share from the live and simulcasting [of the] pari-mutuel pools [pool] for all races on which wagers were placed [conducted] since the last deposit.

(4)[(3)] All deposits to the state account must be in cash or by check drawn on an association account in the state-approved depository bank or by telephone transfer from an association account in the state-approved depository bank.

(A) (No change.)

(B) Class 3 and Class 4 associations must transmit a check covering the amount of the state's share to the comptroller by 10 a.m. of the next banking day after the performance by express mail for one day delivery. The check must be attached to the performance pari-mutuel summary report.

(5)[(4)] After each racing performance, information must be reported to the comptroller.

(A) **Live pari-mutuel pools.** At the close of each racing performance, the association shall complete the **Texas Pari-Mutuel Performance Summary Report** [performance pari-mutuel summary report]. This report shall be filed for each racing date authorized by the commission even if no races are held.

(B) **Interstate simulcast pools.** At the close of each racing performance, if the association is receiving the races from an out-of-state destination, the pari-mutuel wagering revenues derived from these races shall be reported on the **Texas Pari-Mutuel Performance Summary Report** and the **Texas Pari-**

Mutuel Performance Supplemental Report. This report shall be filed for each racing day authorized by the commission even if no races are held.

(C) **Intrastate simulcast common pools.** At the close of each racing performance, the sending association shall report the pari-mutuel wagering revenues on the **Texas Pari-Mutuel Performance Summary Report** and the **Texas Pari-Mutuel Supplemental Report.** The receiving association shall also complete the **Texas Pari-Mutuel Performance Supplemental Report.** The pari-mutuel wagering revenues shall be derived from simulcast intrastate combined pari-mutuel pools. These reports shall be filed for each racing day authorized by the commission even if no races are held.

(D) **Intrastate simulcast separate pools.** At the close of each racing performance, the receiving association shall complete the **Texas Pari-Mutuel Performance Summary Report** and the **Texas Pari-Mutuel Performance Supplemental Report.** This report shall be filed for each racing date authorized by the commission even if no races are held.

(E)[(B)] Class 1, Class 2, and greyhound associations shall transmit a copy of the completed reports [performance pari-mutuel summary report] to the comptroller by facsimile equipment no later than 10 a.m. of the next banking day following a performance. Class 3 and Class 4 associations must transmit the [a] completed report(s) [performance pari-mutuel summary report] to the comptroller along with the payment of the state's share by 10 a.m. of the next day by overnight or express mail.

(6)[(5)] If problems exist in telephone transmission or other breakdown in the facsimile equipment and copies of the reports cannot be transmitted by telephone transmission and facsimile equipment because of these problems, then associations shall send such reports to the comptroller by overnight mail or overnight private delivery service.

(7)[(6)] Originals of the reports of which copies have been transmitted to the comptroller by facsimile equipment shall be preserved in chronological order with other association records. Class 3 and Class 4 associations [tracks] shall preserve copies of the reports that have been mailed to the comptroller, in chronological order, at association offices located at the track or at such other location as may be agreed to in writing by the comptroller. These reports shall be available for audit inspection.

[Anytime the information on the reports does not reconcile with the amount deposited, the comptroller will take prompt action to protect the state's interest.]

(c) Associations with pari-mutuel wagering to post bond or other security.

(1) Associations will be responsible for the state's [state] share of the pari-mutuel pool from the time a ticket is sold and the money is collected until the money is deposited to the state account.

(2) All associations shall be bonded or otherwise secured in an amount estimated by the comptroller to be five times the highest daily state's [state] share of the pari-mutuel pool for the period covered by the bond. The bond will cover the state's [state] share of the pari-mutuel pool.

(3) (No change.)

(4) The bond or other security shall be approved by and filed with the comptroller.

(A) The comptroller may require the posting of new or additional bond or security if:

(i) the comptroller determines the amount of bond or other security deposited to be inadequate; or

(ii) the comptroller determines that an association is delinquent in payment of an amount due; or

(iii) [if] a surety gives the comptroller written notice of its intent to withdraw as surety.

(B)-(D) (No change.)

(5)-(7) (No change.)

(d) Equipment required; responsibilities of companies contracting to provide equipment.

(1) Each association licensed for pari-mutuel wagering shall use totalisator company equipment and software that satisfies the record-keeping and reporting requirements of the comptroller. **The association must provide a copy of the totalisator contract or amendment(s) to the comptroller within 72 hours after such contract or amendment(s) is approved by the commission.**

(A) (No change.)

(B) The association must install two separate devices which will cause the tote system to stop betting. The primary device will be installed accessible to association stewards or judges to be used to issue the stop betting command during normal operations. The second device (backup) is

to be installed in the **totalisator room** [pari-mutuel manager's office] and used by the pari-mutuel manager or the **totalisator operator** to issue the stop betting command in cases where hardware malfunction or human error does not cause the tote system to stop betting at the appropriate time.

(C) The totalisator system must have the capability of restricting the [restrict] cancelling of wagers to the last four tickets issued by a machine (to be cancelled by that machine). If the ticket is not in the last four it must be cashed through designated cash/sell terminals only with the appropriate approvals. All manually cashed wagers, cancelled wagers, and refunds issued, must be recorded by the totalisator system for each cash/sell terminal. A detailed printed report of these transactions must be generated upon request of the comptroller, including a summary of each transaction type.

(D)-(G) (No change.)

(H) A waiver may be granted from these requirements for totalisator systems temporarily installed at Class 3 and Class 4 associations [tracks] upon a showing to the comptroller's satisfaction that unnecessary expense would be incurred in complying with the requirements, and that the system can be made to function properly without meeting these requirements.

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

(4) The comptroller may, at any time, inspect or have inspected totalisator company equipment and software which is or which has been on location at a Texas association. The association and the totalisator company shall permit such inspection without prior notice.]

(4)(5) Totalisator equipment and software must be installed on-site and a series of system checkout programs designated by the comptroller must be executed by the totalisator company. At Class 1, Class 2, and greyhound associations [tracks] this shall occur at least 48 hours before the start of each racing meeting. No changes shall be made in the programming after the tests are completed without the permission of the comptroller.

(5) In addition to the information referenced in subsection (d)(4) of this section, the comptroller may at any time, without prior notice, test or have tested the totalisator equipment or software and the communications facilities.

(6) Any malfunction of equipment hardware, [or] software, or communications facilities which results in loss or delay of required report data and any processor down time, regardless of whether it

results in loss or delay of required report data, shall immediately be reported by the association to the comptroller when the performance pari-mutuel summary report form is filed.

(7)-(8) (No change.)

(e) Audit; appeal of audit findings.

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

(3) All computer tapes, computer programs, and books and records used to record, display, calculate, or report the state's share shall be [funds due the state] maintained by the association or the totalisator company and shall be stored in chronological order in a disaster-proof environment to insure the integrity of the data and made available for inspection in a format compatible with the comptroller's equipment at any time without advance notice. Class 1, Class 2, and greyhound associations shall maintain their records at an association office at the track. Class 3 and Class 4 associations [tracks] shall preserve the originals of these records at association offices located at the track or at such other location as may be agreed to in writing by the comptroller.

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

(f) Sanctions.

(1) The comptroller will immediately certify to the commission the violation by the association or its agents of a rule promulgated by the comptroller; the failure or refusal of an association to pay all or any part of funds due the state or to file reports when due; the failure or refusal of an association to allow inspection of reports and [,] records;[, or computer equipment or software; or] the failure or refusal of an association to allow testing of the totalisator equipment or software or the communications facilities; the failure or refusal of an association to post bond in the amount required; or the failure or refusal of an association to keep and retain the records required by the comptroller.

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

(g) Each association shall notify the comptroller in writing of any makeup or replacement race date(s) approved by the commission prior to that date.

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 January 13, 1992.

TRD-9200448

Martin Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Earliest possible date of adoption: February 17, 1992

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

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 85. Admission and Placement

Commitment and Reception

• 37 TAC §85.3, §85.5

The Texas Youth Commission (TYC) proposes amendments to §85.3 concerning admission process; and §85.5 concerning assessment/evaluation. The amendments reflect changes in procedure for making placement assignments of youth committed to the agency. The south region placement function is being discontinued. All youth will be evaluated at the Statewide Reception Center in Brownwood.

John Franks, director of fiscal affairs, 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 section.

Mr. Franks also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more efficient evaluation of each youth's needs and risk. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendments are proposed under the Human Resources Code, §61.071 which provides the Texas Youth Commission with the authority to examine and make a study of each child and to establish rules governing the study.

§85.3. Admission Process.

(a) Policy. Intake activities, including receipt of the youth from the committing county and orienting the youth to new surroundings, are performed by Texas Youth Commission (TYC) [intake programs mobile diagnostic team and the] statewide reception center. [Each newly committed youth is assigned an official TYC registration number by the statewide reception center.]

(b) Rules.

[(1) Admission by the Mobile Diagnostic Team.

[(A) The South Texas mobile diagnostic team serves youth committed by the following counties:

| | | |
|-----------|-----------|---------------|
| [Aransas | Hidalgo | Maverick] |
| [Atascosa | Jim Hogg | Nueces] |
| [Bee | Jim Wells | Refugio] |
| [Brooks | Karnes | San Patricio] |
| [Cameron | Kenedy | Starr] |
| [Dimmit | Kleberg | Webb] |
| [Duval | La Salle | Willacy] |
| [Frio | Live Oak | Zapata] |
| [Goliad | McMullen | Zavala] |

[(B) Committed youth are held by the committing county until the mobile diagnostic team arrives to conduct assessments and take receipt of youth except youth sent directly to the statewide reception center including any youth:

- [(i) sentenced; or
- [(ii) committed or a violent offense; or
- [(iii) committed by a county unable to detain the youth until the mobile diagnostic team can arrive.

[(C) The team conducts initial assessment of the youth in the detention center except for physical examinations.

[(D) Orientation to the admission process and the TYC system is provided and documented as required in GOP.53.03 section §87.55 relating to Youth Orientation.

[(E) The youth is transported to his or her assigned placement by the committing county.

[(F) Mobile diagnostic staff identifies the home parole officer through

the agency assignment system based on zip code area. The staff forwards to the home parole officer, within five working days of admission, the following:

- [(i) copy of the court order;
- [(ii) copy of the Common Application (CCF-002);
- [(iii) county social summary; and
- [(iv) immediate notification when a youth is stating that he or she refuses to live at home when residential placement is complete.

[(G) The placement program completes the following admission activities.

- [(i) Each youth and his possessions are searched.
- [(ii) Youth property is inventoried.
- [(iii) Each youth showers and receives hair care and treatment as needed.
- [(iv) Clothing is inventoried and laundered if necessary. Clothing is issued as necessary in compliance with GOP.55.03 section §87.73 relating to Clothing.

[(v) Personal hygiene articles are made available as needed.

[(H) Immediately following placement, the youth's parents are advised of the placement and are provided information on mail procedures and advised to contact the placement for visiting procedures.

(I) The region notifies the parole officer, judge, prosecuting attorney, chief probation officer, and others as needed of the placement.

[(2) Admission to the Statewide Reception Center.]

(1)[(A)] The statewide reception center in Brownwood, receives youth committed to TYC five days per week, between 8 a.m. and 5 p.m. Youth may be received after 5 p.m. only if prior arrangements are made.

(2)[(B)] Youth are allowed to have a limited number of personal possessions while at the reception center. Personal items beyond basic necessities are inventoried and returned to the county transporter. The transporter is asked to sign a receipt for items returned to his care. Items a youth is allowed to keep are inventoried and a receipt issued to the transporter.

(3)(C) Parents are notified of youth's admission and advised of procedures for mail and visits.

(4) Each youth is assigned an official TYC registration number.

(5)(D) Staff completes personal data and commitment information.

(6)(E) A youth is assigned to a dormitory and caseworker.

(7)(F) Orientation to the admissions process and the TYC system is provided and documented as required in General Operating Policy (GOP) 53.05 §87.55 of this title (relating to Youth Orientation).

(8)(G) Routine admission procedures include but are not limited to the following.

(A)(i) Each youth and his possessions are searched.

(B)(ii) Youth property including clothing is inventoried.

(C)(iii) Each youth showers, is screened for pediculosis, and receives treatment as needed.

(D)(iv) Clothing is laundered if necessary. Clothing is issued as necessary.

(E)(v) Personal hygiene articles are made available as needed.

(F) [(vi)] Initial health screening is performed for each youth.

(9)(H) In addition to assessment and placement activities, the statewide reception center provides a program including recreation, education and counseling.

(10)(I) Reception staff identifies the home parole officer according to the agency assignment system based on zip code area and county. The staff forwards to the home parole officer, within five working days of admission, the following:

(A)(i) copy of the court order;

(B)(ii) copy of the Common Application (CCF-002);

(C)(iii) county social summary; and

(D)(iv) immediate notification when a youth is stating that he or she

refuses to live at home when residential placement is complete.

(11)(J) Reception staff transports youth to their initial placements and not the [youth's] families, the region parole officer, judge, prosecuting attorney, chief probation officer, and others as needed of the placement location.

§85.5. Assessment/Evaluation.

(a) Policy. The Texas Youth Commission (TYC) youth assessment process includes summarizing admission information, conducting diagnostic evaluations, identifying classification and developing an initial placement category recommendation by [either the mobile diagnostic team or] the classification panel at the statewide reception center. The youth assessment process is completed within two weeks of receipt of the youth by TYC.

(b) Rules. [(1) Statewide reception center.] Staff at the statewide reception center conduct the following routine evaluations:

(1)(A) completion of the **Common Application (CCF-002)** [commitment summary];

(2)(B) social summary;

(3)(C) risk/needs assessment;

(4)(D) family involvement assessment;

(5)(E) religious preference assessment;

(6)(F) recreation interest;

(7)(G) psychological evaluation (if one has not been completed within the last year and mental status exam **within six months prior to residential treatment center placement**);

(8)(H) physical and dental examinations (**within six months prior to placement in a halfway house**);

(9)(I) educational assessment;

(10) **substance abuse screening and assessment**;

(11)(J) vocational interests and experience;

(12) [(K)] psychiatric interview of youth sentenced or committed for murder, capital murder, and voluntary manslaughter (Type A violent offenses) and other youth as referred by the professional staff; and

(13)(L) assessment of behavior while at the reception center.

[(2) Mobile diagnostic team. Staff of the mobile diagnostic team conduct directly or provide for immediately following placement in the south region all the

following evaluations. All other assessments are performed at the statewide reception center for youth referred by the mobile diagnostic team. Evaluations include:

[(A) completion of the commitment summary;

[(B) social summary;

[(C) risk/needs assessment;

[(D) family involvement assessment;

[(E) religious preference assessment;

[(F) recreation interest;

[(G) psychological evaluation if one has not been completed within the last year;

[(H) educational assessments; and

[(I) physical and dental examinations (within 30 days of placement).]

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 January 8, 1992.

TRD-9200339

Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: February 17, 1992

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

Chapter 91. Discipline and Control

Disciplinary Practices

• 37 TAC §§91.7, 91.9, 91.11

The Texas Youth Commission (TYC) proposes amendments to §91.7, concerning reclassification consequence, §91.9, concerning parole revocation consequence, §91.11, concerning disciplinary transfers and assigned minimum length of stay consequences, and §91.69, concerning detention. The amendments add one possible exception to the statement that TYC will not hold a revocation hearing on a youth so long as criminal charges are pending. The amendments also reflect changes in procedure for making placement assignments of youth committed to the agency. The south region placement function is being discontinued. All

youth will be evaluated at the Statewide Reception Center in Brownwood.

John Franks, director of fiscal affairs, 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 section.

Mr. Franks also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more consistent, effective evaluation of each youth's needs and risk. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendments are proposed under the Human Resources Code, §61.071, which provides the Texas Youth Commission with the authority to examine and make a study of each child and to establish rules for governing the study.

§91.7. Reclassification Consequence.

(a) (No change.)

(b) Rules.

(1) Restrictions.

(A) With approval of the institutional superintendent or regional director a Level I hearing may be requested.

(B) The primary service worker requesting the hearing may cancel at anytime prior to the beginning of the hearing.

(C) A Level I hearing will not be held if TYC staff receive information that criminal or delinquent proceedings against the youth are planned or anticipated by local authorities. **Exceptions may be made in writing by the deputy executive director or designee when the behavioral incident considered for discipline is clearly separate from the behavioral incident considered by the court, and when justified by the staff requesting the hearing.**

[(D) Specific training school placements are the responsibility of the Statewide Reception Center. Evins Regional Juvenile Center placements are the responsibility of the regional assessment team. All other placements are the responsibility of centralized placement.]

(D)[(E)] High risk offense is any major rule violation which may result

in a classification other than general or violator of CINS probation.

(2) (No change.)

(3) Disposition.

(A) When a youth on parole status is reclassified for a high risk offense, the youth's parole is revoked.

(B) Specific training school placements responsibility of the Statewide Reception Center. All other placements including Evins Regional Juvenile Center are the responsibility of centralized placement.

(C) [(B)] A sentenced offender may be assigned to any appropriate placement, including a maximum restriction facility, following a disciplinary hearing. The appropriate placement is selected according to the totality of the circumstances, including the youth's age, sentencing offense, length of time and progress in TYC custody, and the nature of the misconduct for which the youth is being disciplined. **The Statewide Reception Center** [statewide reception center] superintendent, at his or her discretion, determines whether to return the youth to the reception center for full reassessment and placement or to designate placement directly. If he or she determines that a community placement is most appropriate, placement selection is made by the centralized placement unit.

§91.9. Parole Revocation Consequence.

(a) Policy. Parole may be revoked when a youth's behavior presents an unacceptable risk to the safety of the youth or the community. Parole revocation is considered a major consequence and requires a Level I hearing.

(b) Rules.

(1) Restrictions.

(A) With approval of the regional director, a Level I hearing may be requested.

(B) The primary service worker requesting a hearing may cancel at any time prior to the commencement of the hearing.

(C) A Level I hearing will not be held if TYC staff receive information that criminal or delinquent proceedings against the youth are planned or anticipated by local authorities. **Exceptions may be made in writing by the deputy executive director or designee when the behavioral incident considered for discipline is**

clearly separate from the behavioral incident considered by the court and when justified by the staff requesting the hearing.

[(D) Specific training school placements are the responsibility of the Statewide Reception Center. Evins Regional Juvenile Center placements are the responsibility of the regional assessment team. All other placements are the responsibility of centralized placement.]

(D)[(E)] If a felony offense is found but reclassification to chronic serious offender is not justified, the finding of a felony must be documented in the casework subfile.

(E)[(F)] A high risk offense is any major rule violation which may result in a classification other than general or violator of CINS probation.

(2) (No change.)

(3) Disposition.

(A) Placements are made according to classifications. (See General Operating Policy (GOP) 63.07, §91.7 of this title (relating to Reclassification Consequences)).

(B) If criteria for revocation are not established at a level I hearing, the youth remains on parole status, but lesser disciplinary consequences may be imposed for any rule violations which are proved at the hearing.

(C) Specific training school placements are the responsibility of the Statewide Reception Center. All other placements including Evins Regional Juvenile Center are the responsibility of centralized placement.

(D)[(C)] If a youth is on parole from another state and is being supervised by Texas Youth Commission (TYC) under agreement with the other state, a parole revocation hearing is held by TYC and the youth returned to the sending state, coordinated by the interstate compact administrator and general counsel.

(E)[(D)] If a TYC parolee commits an offense in another state, the return of such youth is coordinated by the interstate compact administrator and the general counsel. A parole revocation hearing is coordinated by and held at the request of the assigned parole officer.

§91.11. *Disciplinary Transfer/Assigned Minimum Length of Stay Consequence.*

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

(1) Restrictions.

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

(C) A Level II hearing will not be held if TYC staff receive information that criminal or delinquent proceedings against the youth are planned or anticipated by local authorities. **Exceptions may be made in writing by the deputy executive director or designee when the behavioral incident considered for discipline is clearly separate from the behavioral incident considered by the court and when justified by the staff requesting the hearing.**

(D) If a felony offense is found at a Level II hearing, it must be documented in the hearing manager's report which is filed in the casework subfile.

(E) A Level II hearing should be held prior to a disciplinary transfer. When good cause compels a prehearing movement of the youth, the hearing shall be held within three consecutive days after the movement.

(F) A high risk offense is any major rule violation which may result in a classification other than general or violator of CINS probation.

(2) Criteria. A youth may be transferred or assigned a minimum length of stay if it is found at a Level II hearing that the youth has committed:

- (A) a high risk offense;
- (B) a felony offense;

(C) any major rule violation and has previously been classified for a high risk offense;

(D)[(C)] any major rule violation causing substantial bodily injury;

(E)[(D)] the sum of two or more major rule violations within 30 days at the most recent permanent placement and any subsequent temporary placement; or

(F)[(E)] the sum of three or more major rule violations at the most recent permanent placement and any subsequent temporary placement.

(3) Disposition.

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

(C) Specific training school placements [assignments] are the responsibility of the Statewide Reception Center. All other placements including **Evins Regional Juvenile Center** [assignments] are the responsibility of centralized placement.

(4) Assigned minimum length of stay.

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

(C) Following a Level II hearing at which a youth is assigned a minimum length of stay, the institutional superintendent or regional director shall request executive director approval for assignment of a minimum stay.

(i) The institutional superintendent or regional director submits the following to the director of institutions or director of community services:

(I) hearing manager's report of a Level II hearing;

(II) cover memo including the administrator's recommended minimum length of stay; and

(III) background information on the youth;

(-a) date of arrival;

(-b) committing offense;

(-c) grounds for the hearing (explain);

(-d) current classification;

(-e) description of precipitating incident;

(-f) youth's adjustment in the program;

(-g) net impact on length of stay if in an institution.

(ii) The director of institutions or director of community services reviews the material, comments, and provides a recommendation and all information to the executive director or designee.

(iii) The executive director or designee reviews the assigned stay and may approve, disapprove, or modify the[,] length of stay. Materials submitted for review are returned to the appropriate cen-

tral office program director to be forwarded to the field along with the decision of the executive director or designee.

(D) (No change.)

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

Issued in Austin, Texas, on January 7, 1992.

TRD-9200337 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: February 7, 1992

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

◆ ◆ ◆
Control

• **37 TAC §91.69**

The amendment is proposed under the Human Resources Code, §61.071, which provides the Texas Youth Commission with the authority to examine and make a study of each child and to establish rules for governing the study.

◆ ◆ ◆
§91.69. Detention.

(a) (No change.)

(b) Rules.

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

(3) Community detention.

(A) TYC provides detention facilities office and home telephone numbers of staff to contact when TYC youth are detained.

(B) Upon notification by detention staff, a TYC staff confirms whether the youth is under TYC authority and notifies the assigned placement facility of the detention, if appropriate, and the regional director of the allegations regarding behavior.

(C) If TYC staff receives information that criminal or delinquent proceedings against the youth are planned, pending, or anticipated by local authorities, TYC shall no longer hold the youth in detention and will cease any plans for a hearing until further notice of deferral to TYC by local authorities. **Exceptions may be made in writing by the deputy executive director or designee when the behavioral incident considered for discipline is clearly separate from the behavioral incident considered by the court and when justified by the staff requesting the hearing.**

(D)-(J) (No change.)

(4) (No change.)

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

Issued in Austin, Texas, on January 7, 1992.

TRD-9200338

Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: February 7, 1992

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

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 15. Division of Transportation Planning

Research and Planning Contracts

• 43 TAC §15.13

The Texas Department of Transportation proposes new §15.13, concerning new product evaluation. The new section provides procedures for the evaluation of new products and processes which may be of benefit to the department. The new section outlines the purpose, application procedures, evaluation procedures, vendor notification, and restrictions.

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

Mr. Luedecke has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the section.

Mr. Luedecke also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more uniform and cost-effective procedure for evaluating new products and processes. There will be no effect on small businesses as a result of enforcing the section. 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 Al Luedecke, Jr., P.E., Division of Transportation Planning, 125 East 11th Street, Austin, Texas 78701-2483.

The new section is proposed under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation.

§15.13. New Product Evaluation.

(a) Purpose. The purpose of this section is to provide for the evaluation of new products and processes which may be of benefit to the Texas Department of Transportation in carrying out its statutorily authorized functions and responsibilities.

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

(1) Department—The Texas Department of Transportation.

(2) New product—A product or process currently available on the market for immediate acquisition, for which the department does not have a current specification or which appears superior to existing products covered by a specification.

(3) Product Evaluation Committee (PEC)—The standing committee of the department responsible for coordinating product evaluation.

(4) Specification—An engineering description of acceptable materials and processes for department activities, adopted by the department's specification committee.

(5) Specification committee—A standing committee of the department appointed by the executive director to approve and adopt specifications for department materials and operations.

(6) Vendor—A person or organization outside the department which submits a product for evaluation.

(c) Application.

(1) To submit a product for evaluation, a vendor shall submit an application in a form prescribed by the department.

(2) The department may request the vendor to submit additional information, such as test reports, engineering reports, or other data citing the economic, environmental, or engineering advantages of the product.

(3) A vendor who submits a patented product shall provide the department with a written certification that the vendor is the holder of the patent, or has market rights to the product under license by the patent holder.

(4) Application forms may be obtained from the Texas Department of

Transportation, Research and Development Section, P.O. Box 5051, Austin, Texas 78763, or from any district office of the department.

(d) Evaluation procedures.

(1) After receipt of the application and any required additional information, the PEC will conduct a preliminary examination of a product to:

(A) determine whether the product is a new product; and

(B) coordinate with appropriate department organizational units to determine if an evaluation of the product is feasible.

(2) If, pursuant to paragraph (1) of this subsection, the PEC determines that the product is a new product that may be useful in the department's operations, and is one which the department may wish to procure, the department may, if determined to be appropriate, test the product under laboratory conditions or trial usage.

(e) Vendor notification. The department will advise the vendor, in writing, of the results of the evaluation.

(f) Restrictions.

(1) Any department determination of product acceptability does not:

(A) obligate the department to procure the product or require any of its contractors to procure the product for use on department projects; or

(B) constitute endorsement or finding of suitability of use other than for the department.

(2) A vendor shall not represent a determination of product acceptability as an endorsement or a finding of suitability.

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

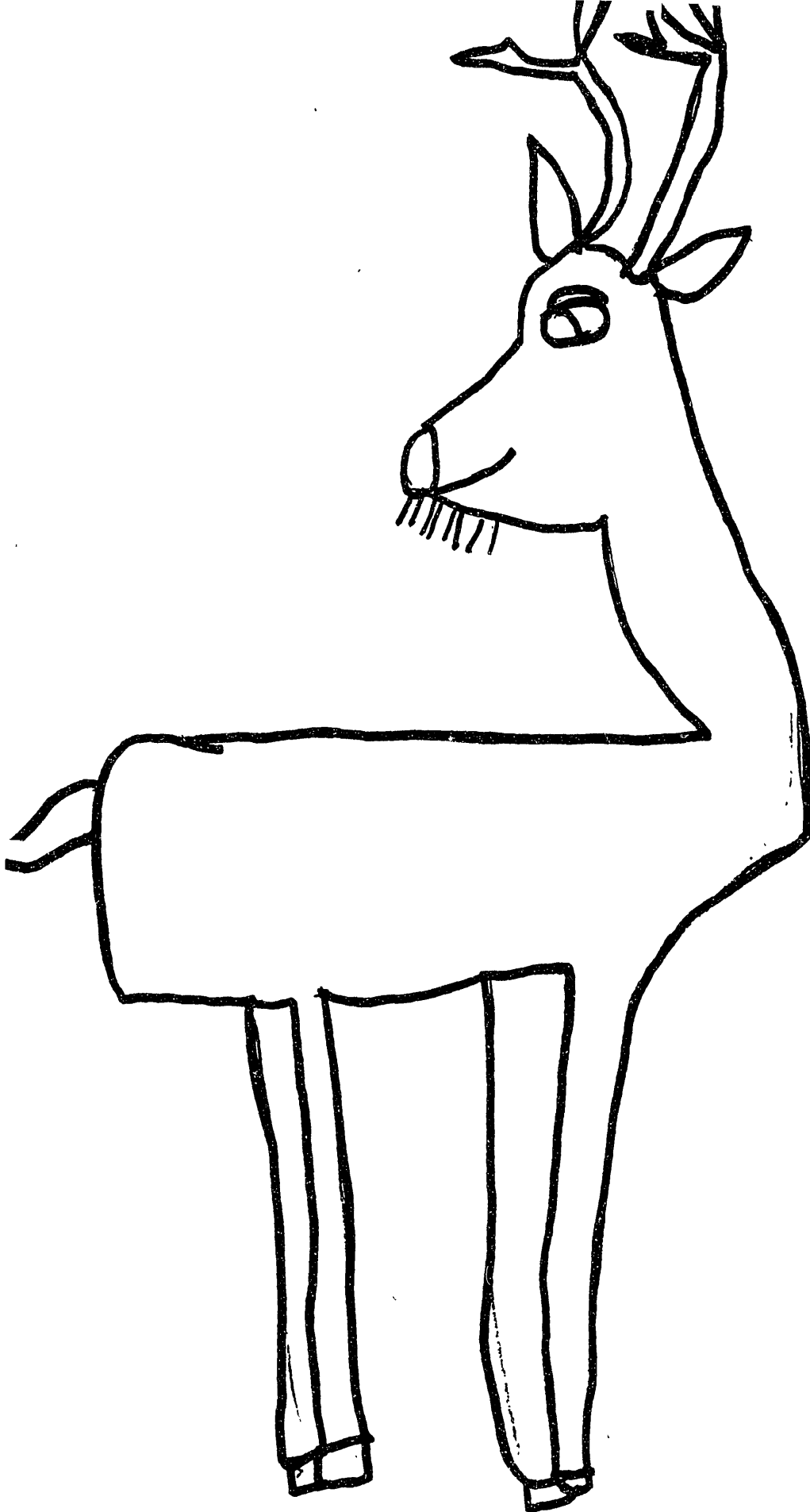
Issued in Austin, Texas, on January 8, 1992.

TRD-9200289

Diane L Northam
Legal Administrative
Assistant
Texas Department of
Transportation

Earliest possible date of adoption: February 17, 1992

For further information, please call: (512) 463-8630



Name: Casey San Miguel

Grade: 4

School: Montgomery Elementary, Carrollton-Farmers Branch ISD

Adopted Sections

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

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

TITLE 22. EXAMINING BOARDS

Part XXI. Texas State Board of Examiners of Psychologists

Chapter 463. Applications

• 22 TAC §463.6

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.6, concerning experience, without changes to the proposed text as published in the November 29, 1991, issue of the *Texas Register* (16 TexReg 6898).

The amendment is adopted to change the effective date to 1995 in order not to penalize those applicants who have already begun their internship programs but will not be eligible to apply for licensure prior to August 31, 1993; and, to clarify how persons employed in public school districts can satisfy the board's experience requirements.

The amendment will clarify the board's requirements for licensure so that potential applicants will place themselves in appropriate work settings to obtain experience that will be acceptable to the board.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512c, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules not inconsistent with the Constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulation of proceedings before it.

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

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

TRD-9200401 Patricia S. Blizzell Tweedy
Executive Director
Texas State Board of
Examiners of
Psychologists

Effective date: January 31, 1992

Proposal publication date: November 29, 1991

For further information, please call: (512) 835-2036



• 22 TAC §463.25

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.25, concerning criteria for oral examiners, without changes to the proposed text as published in the November 29, 1991, issue of the *Texas Register* (16 TexReg 6899).

The amendment is adopted to clarify that in order to qualify as an oral examiner, the psychologist must be currently licensed and actively practicing in his/her area of expertise and training.

The amendment will insure that examiners are experienced and qualified to administer the oral examination.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512c, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules not inconsistent with the Constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulation of proceedings before it.

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

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

TRD-9200405 Patricia S. Blizzell Tweedy
Executive Director
Texas State Board of
Examiners of
Psychologists

Effective date: January 31, 1992

Proposal publication date: November 29, 1991

For further information, please call: (512) 835-2036



Chapter 465. Rules of Practice

• 22 TAC §465.21

The Texas State Board of Examiners of Psychologists adopts an amendment to §465.21, inactive status, without changes to the proposed text as published in the November 29, 1991, issue of the *Texas Register* (16 TexReg 6899).

The amendment addresses the requirements of the board for a certificand and/or licensee who places his/her certificate/license on an inactive status.

The amendment provides an avenue for the board to review the credentials of persons who have not been practicing psychology for at least two years. It will protect the public to insure that services are provided by persons who remain current with professional standards. The rule will be enforced from the date of adoption; it will not effect those persons who have placed their license/certificate on an inactive status.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512c, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules not inconsistent with the Constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulation of proceedings before it.

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

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

TRD-9200404 Patricia S. Blizzell Tweedy
Executive Director
Texas State Board of
Examiners of
Psychologists

Effective date: January 31, 1992

Proposal publication date: November 29, 1991

For further information, please call: (512) 835-2036



• 22 TAC §465.28

The Texas State Board of Examiners of Psychologists adopts new §465.28 concerning career and vocational counseling, without changes to the proposed text as published in the November 29, 1991, issue of the *Texas Register* (16 TexReg 6899).

The new section enables psychologists to receive training in their doctoral programs to do career and vocational counseling.

The new section will put the public on notice that psychologists are trained in career and vocational counseling within their doctoral programs.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psycholo-

gists with the authority to make all rules not inconsistent with the Constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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

TRD-9200406 Patricia S. Blizzell Tweedy
Executive Director
Texas State Board of
Examiners of
Psychologists

Effective date: January 31, 1992

Proposal publication date: November 29, 1991

For further information, please call: (512) 835-2036

Chapter 473. Fees

• 22 TAC §473.1

The Texas State Board of Examiners of Psychologists adopts an amendment to §473.1, concerning fees, without changes to the proposed text as published in the November 29, 1991, issue of the *Texas Register* (16 TexReg 6900).

The amendment will attach a fee to a new requirement of the Psychologists' Certification and Licensing Act passed by the 72nd Legislature.

The amendment will allow psychologists from other states to be considered for licensure by reciprocity.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules not inconsistent with the Constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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

TRD-9200403 Patricia S. Blizzell Tweedy
Executive Director
Texas State Board of
Examiners of
Psychologists

Effective date: January 31, 1992

Proposal publication date: November 29, 1991

For further information, please call: (512) 835-2036

• 22 TAC §473.6

The Texas State Board of Examiners of Psychologists adopts new §473.6, concerning fees, without changes to the proposed text as published in the November 29, 1991, issue of the *Texas Register* (16 TexReg 6900).

The new section will attach a fee to a new requirement of the Psychologists' Certification and Licensing Act passed by the 72nd Legislature.

The new section will allow psychologists from other states to be considered for licensure by reciprocity.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules not inconsistent with the Constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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

TRD-9200402 Patricia S. Blizzell Tweedy
Executive Director
Texas State Board of
Examiners of
Psychologists

Effective date: January 31, 1992

Proposal publication date: November 29, 1991

For further information, please call: (512) 835-2036

TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter G. Workers' Compensation Insurance

Sale of Substitutes to Workers' Compensation Insurance

• 28 TAC §5.6302

The State Board of Insurance of the Texas Department of Insurance adopts new §5.6302, concerning sale of substitutes to workers' compensation insurance, without changes to the proposed text as published in the September 13, 1991, issue of the *Texas Register* (16 TexReg 5054).

The new section is necessary to conform the requirements of the board's rules to legislative enactments concerning workers' compensation insurance. Texas Civil Statutes, Article 8308, allows an employer who is not required to have workers' compensation in-

surance to obtain insurance coverage on employees so long as the insurance is not represented as providing workers' compensation coverage as authorized by workers' compensation statutes.

Section 5.6302 provides that certain policies of insurance must contain language that decreases the possibility that a consumer or policyholder may misunderstand the effect of an insurance policy. The new section provides that no person, agent, or entity may represent any policy of insurance as a substitute for a policy of workers' compensation insurance. It also requires that all policies of insurance which provide benefits to employees shall include on the face page of the policy and on all advertising and marketing materials a notice indicating that the policy is not a policy of workers' compensation insurance and that the employer does not become a subscriber to the system by purchasing the policy. The new section also requires similar language on policies of insurance, including surplus lines policies, which provide employers' liability coverage which indemnify employers for costs of employee sickness or injuries. The new section also requires a similar disclaimer to appear on certificates issued to the policyholder's employees.

One set of comments was received regarding adoption of the section. The Texas Life Insurance Association (TLIA) objected to the section as proposed.

TLIA objected to the rule's application to individual and group health insurance policies because the majority of those policies exclude coverage for on-the-job injuries and as such could not be marketed as a workers' compensation policy. Second, TLIA said the rule should attempt to seek notification of employers and employees who are being encouraged to drop workers' compensation insurance, rather than attempt to do so by the policy language mandated by the rule. Third, TLIA also objected to specifying a certain size type on such policy notification, claiming that it could increase the cost of doing business. Finally, TLIA maintained that the employer, who controls the decision whether to subscribe to the workers' compensation system, should be responsible for communicating the effect of that decision to his workers.

The board disagrees with these comments. The board believes it is necessary to include the notice language on accident and health policies because of the possibility that some employees may be misled into believing that their employer is a workers' compensation subscriber. Despite the fact that the new workers' compensation statute requires an employer to so notify its employees, the board believes the rule provides an additional safeguard. For the same reason, the board feels it is reasonable to require that the notice language be in 10-point bold-face type. The board also believes that the value of such notification outweighs any potential cost to the insurer.

The new section is adopted under the Insurance Code, Article 1.04, which authorizes the State Board of Insurance to determine rules in accordance with the laws of this state and under Texas Civil Statutes, Article 8308 §3.42, which allow an employer to obtain

insurance coverage on employees so long as it is not misrepresented as providing workers' compensation insurance.

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

Issued in Austin, Texas, on January 13, 1992.

TRD-9200458 Linda K. von Quintus-Dom
Chief Clerk
Texas Department of
Insurance

Effective date: February 3, 1992

Proposal publication date: February 13, 1991

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 120. Control of Air Pollution From Hazardous Waste and Solid Waste Management

Subchapter A. Facility Permit Requirements

- 31 TAC §§120.1, 120.3, 120.11, 120.13, 120.15, 120.21

The Texas Air Control Board (TACB) adopts amendments to §§120.1, 120.3, 120.11, 120.13, 120.15, and 120.21, concerning control of air pollution from hazardous waste or solid waste management facilities, without changes to the proposed text as published in the September 24, 1991, issue of the *Texas Register* (16 TexReg 5235). In order to satisfy the requirements of Senate Bill (SB) 1099, passed by the 72nd Texas State Legislature, the regulation was reorganized into two subchapters.

The revised Subchapter A, consists of previously adopted rule language which remains unchanged, except that all references to "chapter" are corrected to read "subchapter."

Public hearings were held in Austin on October 14, 1991, and in Dallas and in Houston on October 16, 1991, to consider the proposed amendments to Regulation X, concerning control of air pollution from hazardous waste or solid waste management facilities. Written comments were accepted through October 25, 1991. Thirteen commenters submitted written testimony. Four individuals presented oral testimony during the three public hearings. Numerous oral comments were received during six public meetings sponsored by the Texas Water Commission (TWC) from October 22 through November 6, 1991. In general, most parties responded favorably to the pollution prevention rules. The majority of testimony was directed at refining the pro-

posed rule language or making the rules more stringent than proposed. The following discussion addresses the comment on the proposed revisions in the following areas:

Concerning 120.3, applicability, Galveston-Houston Association for Smog Prevention (GHASP) and one individual were opposed to the provision which allows for grandfather a facility which was in operation before September 1, 1987, except for facilities which incinerate or burn hazardous or solid waste. Prior to September 1, 1987, TACB could only issue permits to those facilities which incinerate or burn hazardous or solid waste. After September 1, 1987, TWC became the permitting authority for all hazardous waste units other than those facilities which are classified as major sources under the Federal Clean Air Act, C or D for which TACB also issues permits. Since this section reflects the original rule language as adopted in 1988 and is unchanged except for changing "chapter" to "subchapter," no modification is deemed necessary. Any major changes or making the rule language more strict than proposed, are prohibited by Administrative Procedure and Texas Register Act without going through the public hearing process so that the public has an opportunity to comment.

Concerning §120.13, representations in application for permit, GHASP commented that the public should be included in the TWC permitting process. Senate Bill 1099 added §361.0791 to TWC rules which requires a public meeting as part of the local review process of an application for a new hazardous waste management facility.

The amendments are adopted under the Texas Clean Air Act (TCAA), §382.017, Texas Health and Safety Code Annotated (Vernon 1990), which provides TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

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

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

TRD-9200446 Lane Hartsock
Deputy Director
Texas Air Control Board

Effective date: February 3, 1992

Proposal publication date: September 24, 1991

For further information, please call: (512) 908-1451

Subchapter B. Pollution Prevention Requirements: Source Reduction and Waste Minimization

- 31 TAC §§120.101-120.103, 120.105-120.110

The Texas Air Control Board (TACB) adopts new §§120.101-120.103, and 120.105-120.110, concerning control of air pollution from hazardous waste or solid waste

management facilities. Sections 120.101, 120.103, 120.105, 120.106, and 120.109 are adopted with changes to the proposed text as published in the *Texas Register* (16 TexReg 5255). New §§120.102, 120.107, 120.108, and 120.110 are adopted without changes and will not be republished. These sections comprise a new Subchapter B of Chapter 120, concerning pollution prevention: source reduction and waste minimization, developed to satisfy requirements of Senate Bill (SB) 1099, passed by the 72nd Texas State Legislature.

The new Subchapter B, adds several sections to implement the statutory requirements of SB 1099, referred to as the Waste Reduction Policy Act of 1991. The new §120.101, concerning definitions, adds new definitions applicable to source reduction and waste minimization. The new §120.102, concerning pollutants and contaminants, lists the categories of pollutants and contaminants that will be subject to this subchapter. The new §120.103, concerning applicability, defines which facilities will be affected by this subchapter. The new §120.105, concerning source reduction and waste minimization plans, establishes the requirement for a source reduction and waste minimization plan, details components of the plan, and describes the requirements for an executive summary of the plan. The new §120.106, concerning reporting and recordkeeping, outlines the elements required for the annual report. The new §120.107, concerning exemptions, defines which facilities are exempt from the requirements and also establishes the circumstances under which facilities currently covered by this subchapter may apply for an exemption. The new §120.108, concerning enforcement, covers administrative completeness requirements of the plan or annual report and establishes that failure to develop a plan or submit an annual report constitutes a violation of the Waste Reduction Policy Act of 1991. The new §120.109, concerning compliance schedules, develops a prioritized schedule by which affected facilities must have a source reduction and waste minimization plan in place. The new §120.110, concerning confidentiality, establishes that the source reduction and waste minimization plan is not public record; however, both the executive summary and the annual report are public records.

Public hearings were held in Austin on October 14, 1991, and in Dallas and in Houston on October 16, 1991, to consider the proposed amendments to Regulation X. Written comments were accepted through October 25, 1991. Thirteen commenters submitted written testimony. Four individuals presented oral testimony during the three public hearings. Numerous oral comments were received during six public meetings sponsored by the Texas Water Commission (TWC) from October 22 through November 6, 1991. In general, most parties responded favorably to the pollution prevention rules. The majority of testimony was directed at refining the proposed rule language or making the rules more stringent than proposed. The following discussion addresses the comments on the proposed revisions in the following areas:

Concerning §120.101, definition several commenters felt that revisions to the definitions for "release," "small-quantity generator," "toxic release inventory (TRI)," and "waste minimization" should be made, and that additional definitions for terms such as "detoxification" and "neutralization" were needed. Since the definitions used were mandated by SB 1099 and generally conform to those definitions current applied in the field of pollution prevention, no action is deemed necessary at this time.

Concerning §120.102, pollutants and contaminants, Texas Instruments (TI) felt that the definition for pollutant and contaminant was too broad, and the Texas Chemical Council (TCC) and one individual wanted hazardous air pollutants (HAP) as defined in the Federal Clean Air Act included in the definition of pollutant and contaminant. The staff is satisfied with the definition as defined by SB 1099. Changing the definition to include more compounds at this time is not necessary and would require modifications of those source reduction and waste minimization plans already active.

Concerning §120.103, applicability, GHASP was against excluding conditionally exempt small-quantity generators (CESQC) from this program because they felt that any level of hazardous waste needs to be regulated. Senate Bill 1099 specifically exempted CESQC by exclusion in §361.434(2).

Electric Reliability Council of Texas, Inc. (ERCOT) suggested that a facility be subject as a generator of hazardous waste or a TRI reporting, but not both. The staff agrees that a facility becomes subject by exceeding the threshold of either. A modification to §120.103 has been made to clarify this point.

Concerning §120.105, source reduction and waste minimization plans, Star Enterprise (STAR) wanted a single, consolidated, Texas-wide plan for all STAR small service stations and gasoline marketing terminals because of the small amounts and unpredictable and cyclic nature of the wastes generated. Although this approach may be in the company's best interest, every facility must record waste generated on a monthly basis to determine its generator category. The facility must then develop a plan based on its individual, unique requirements. The facility managers must be involved in and manage their own plans in order to successfully accomplish the source reduction and waste minimization goals of SB 1099.

Texas Automobile Dealers Association and STAR felt that the proposed pollution prevention rules were too burdensome and difficult for most automobile dealers and gasoline stations or terminals to comply with. The staff agrees that small businesses may require assistance to accomplish the additional requirements of these new rules. The ultimate goal of pollution prevention is source reduction, and the staffs of both TACB and TWC are in the process of developing programs to assist small businesses in meeting these requirements. Phasing-in of these small quantity generator facilities is among the last covered by the implementation schedule, allowing sufficient time for the affected facilities to obtain assistance and develop ade-

quate programs before the deadline for a plan is due. This phasing-in approach was supported by Tarrant Coalition for Environmental Awareness (TCEA).

The Sierra Club suggested that the agencies periodically revisit the issue of source reduction and waste minimization plan components after the first groups of plans are submitted to determine if any modification in components is necessary. The staff of TACB is committed to the pollution prevention program and will continually review the process for possible improvement.

McGinnis, Lochridge & Kilgore (MLK) suggested that the authority to certify a plan be delegated to any officer of the corporation or any manager of a "large facility." SB 1099, §361.435(a)(8) clearly states that only those persons who have the authority to commit the corporation's resources to implement the plan are able to certify the plan.

MLK pointed out that the term "chemicals" is not defined in the proposed rules or statutory language. Part of the executive summary and the plan must include a prioritized list of chemicals to be reduced. The staff agrees and has changed the rule language to reflect "pollutants and contaminants" which is defined, rather than chemicals which is not.

The staff agrees with the Sierra Club's recommendation that all facilities should be encouraged to share their source reduction and waste minimization plans with the public to the maximum extent possible.

Concerning §120.106, reporting and recordkeeping requirements, in general, industry felt that the February deadline for the annual report was unrealistic. This date allows only one month to compile the data required for submittal. While this seems to be a short deadline, most businesses use computers to compile the required data. Hazardous waste generated must be recorded on a monthly basis to determine the generator's waste category, so a February report should not be unreasonably difficult to produce. Ethyl Corporation pointed out that hazardous waste generated (annual waste summary) for the previous year is due to TWC by January 25, the Superfund Amendments and Reauthorization Act Title III, TRI report is due by July 1; therefore, a September 1 date for the annual report would be more appropriate. TCC also supports a September 1 date. ERCOT felt that March 15 would be appropriate. The staff agreed to delay the report date from February 1 to March 1 to allow owners and operators additional time to prepare the annual report, but any later date would further delay the pollution prevention program. TCC was concerned that its member companies will be required to report data for the entire calendar year of 1993 although their plans are not required to be in place until July 1, 1993. TCC felt that the first report should only cover the period from July 1 through December 31, 1993. The staff strongly disagrees with the TCC position. There is no reason that the facility cannot report for the entire calendar year even if the plan was implemented during that year.

Use of the base year of 1987 was supported by the Sierra Club, but they also expressed

that the use of more current data may be more logical due to at least a five-year lapse between the base year and the first plan submittal. Audubon Council of Texas (ACT), GHASP, TI, and TCEA felt that a more recent base year should be selected. MLK felt that the base year should be flexible, based on the facility and when the facility began their source reduction and waste minimization program. The base year 1987 was selected because it was the first year that both hazardous waste generated and toxic release inventory reporting was required concurrently. At this time, many companies began a source reduction and waste minimization program. These companies which aggressively pursued a source reduction and waste minimization program should not be penalized and be required to reduce on the same schedule as those companies which delayed action.

Concerning §120.107, exemptions, GHASP and an individual were concerned that a facility could obtain an exemption from the source reduction and waste minimization program. SB 1099 required the commission and the board to develop, as an incentive to promote the implementation of source reduction and waste minimization, an opportunity for a facility to be exempted from the requirements of the program provided that they meet appropriate criteria. As proposed, in order for a facility to drop out of the requirements of the source reduction waste minimization program, the facility must demonstrate that it has accomplished at least a 90% reduction, plus obtain approval by the executive directors of both TWC and TACB after a demonstration is made that further reduction is technically and economically not feasible. This demonstration will be a difficult task for most facilities to accomplish and then must be redemonstrated annually thereafter to maintain the exemption.

Two commenters, Sierra Club and TCEA, felt that the board or commission, rather than the executive directors, should grant the exemption from continuing with the plan. Since the executive directors are selected by the board/commission and are delegated with the daily operation of the agencies, the staff feels that the executive director is the proper level for this decision.

The board and commission are informed of all important decisions and have an opportunity to review any exemption granted by the executive directors.

ERCOT felt that the 90% waste reduction demonstration from the base year of 1987 was arbitrary and did not take into account reductions prior to the base year. The base year of 1987 was chosen because it represents the first reporting year in which both hazardous waste generated and TRI reports were required concurrently.

MLK felt that an exemption level should be set at 70% instead of the 90% as proposed because this would maintain consistency with the TWC's goal of reducing generation and disposal of hazardous waste and acutely toxic substances from 1987 levels by the year 2000. The staff believes that a facility must meet a more stringent requirement for an exemption than the average goal required by the TWC initiatives.

Concerning §120.109, compliance schedules, most environmental groups and individuals felt the first plans should be in place by January 1993 rather than the proposed July 1993. They felt that the timetable was too lengthy and should be shortened to between three and five years. The implementation was scheduled to incorporate 99.6% of the top hazardous waste generators and 95.8% of the top TRI covered facilities in the first year. Due to the large number of early facilities to be included in this program, the schedule must be maintained as proposed to provide adequate time to evaluate these facilities' plans and annual reports.

Texas Eastman Company (TEC) suggested that only the dry weight of wastes be used since many are diluted with large quantities of water which then becomes a contaminated waste of significantly larger volume. TCC felt that the program will inappropriately focus on volume reductions rather than on the hazardous constituents. The Resource Conservation and Recovery Act (RCRA) requires the entire volume of hazardous and nonhazardous waste material be reported regardless of the percentages of constituents therein, unless the material is exempted.

TEC suggested that only wastes generated at the point of generation should be counted. Wastes generated as the result of voluntary clean-up, closures, or RCRA correction at land disposal units should be excluded. TWC is developing a reporting method for accounting for one-time generation. The goal is to encourage clean-ups and simplify reporting.

TEC suggested a tiered approach which would consider toxicity rather than volume of hazardous waste generated or TRI released. The staffs did not choose the tiered approach because the current method will cover the largest group of facilities in the shortest time. Facilities will also be able to use existing report data to comply rather than develop additional reporting methods. Facilities are encouraged to consider toxicity when developing individual site reduction goals and plans.

Concerning §120.110, confidentiality, GHASP, TCEA, and two individuals wanted the plans to be made public, while TI felt that any public release of information was too costly for the industries which could be using this additional expense toward waste reduction or minimization. The legislature meant for the plans to be confidential because many of the recommended changes would involve long-term modifications to the facility, process changes, and/or other methods which might involve trade secrets or proprietary process information. It was also believed that a more realistic approach by industry to solving the waste reduction goals would be accomplished by allowing the companies to release only the amounts of reduction, and not what was originally estimated by the plan. The public would have access to the types and amounts of hazardous chemicals on the facility and could see the levels of reduction over successive years.

The staff agrees with the Sierra Club's recommendation that all facilities should be encouraged to share their source reduction and waste minimization plans with the public to the maximum extent possible.

The following are other comments received regarding adoption of the new sections.

One individual raised numerous questions that were not pertinent to the proposed rulemaking. These issues were concerning a specific permit application, siting policies, local land usage determinations, zoning authority, and the possibility of environmental racism. These concerns were addressed in a personal response to the commenter by the TACB general counsel.

A great number of the comments received addressed issues which are beyond the this scope of this rulemaking. In addition to those mentioned previously, a significant number related to making substantive changes which cannot be accomplished during this rulemaking. One commenter pointed out slight textual discrepancies between TACB and TWC rule language. Other issues regarded activities not conducted or regulated by TACB and included waste determinations from an elementary neutralization unit or wastewater treatment facility, developing a suitable standard for assessment of "potential impact on human health and the environment," duplication of reports, emergency response, surface water, ground water and aquifer contamination which were referred to TWC for analysis.

The new sections are adopted under the Texas Clean Air Act (TCAA), §382.017, Texas Health and Safety Code Annotated (VERNON 1990), which provides TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§120.101. Definitions. The words and terms used in this subchapter have the meanings given in the Waste Reduction Policy Act of 1991, Senate Bill 1099, or the regulations promulgated thereunder. Unless specifically defined in the Waste Reduction Policy Act or the regulations promulgated thereunder, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air, water, and solid waste pollution control. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Acute hazardous waste—Hazardous waste listed by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 United States Code, §§6901 et seq), because the waste meets the criteria for listing hazardous waste identified in 40 Code of Federal Regulations, §261.11(a)(2).

Board—The Texas Air Control Board.

Commission—The Texas Water Commission.

Committee—The Waste Reduction Advisory Committee established by the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Annotated

§361.0215.

Conditionally exempt small-quantity generator—A generator that does not accumulate more than 1,000 kilograms of hazardous waste at any one time on the facility and generates less than 100 kilograms of hazardous waste in any given month.

Environment—Water, air, and land and the interrelationship that exists among and between water, air, land, and all living things.

Facility—All buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites that are owned or operated by a person who is subject to this subchapter or by a person who controls, is controlled by, or is under common control with a person subject to this subchapter.

Generator and generator of hazardous waste—Have the meaning assigned by the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated §361.131.

Large-quantity generator—A generator that generates, through ongoing processes and operations at a facility:

(A) more than 1,000 kilograms of hazardous waste in a month or a month; or

(B) more than one kilogram of acute hazardous waste in a month.

Media and medium—Air, water, and land into which waste is emitted, released, discharged, or disposed.

Pollutant or contaminant—Any element, substance, compound, disease-causing agent, or mixture that after release into the environment and on exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations in the organism or its offspring. The term does not include petroleum, crude oil, or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under the environmental response law, §101(14)(A)-(F), nor does it include natural gas, natural gas liquids, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and synthetic gas.

Release—Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but not including:

(A) a release that results in an exposure to a person solely within a

workplace, concerning a claim that the person may assert against the person's employer;

(B) an emission from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) a release of source, by-product, or special nuclear materials from a nuclear incident, as those terms are defined by the Atomic Energy Act of 1954, as amended (42 United States Code, §§2011 et seq), if the release is subject to requirements concerning financial protection established by the Nuclear Regulatory Commission under that Act, §170;

(D) for the purposes of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, §104 (42 United States Code, §§9601 et seq), or other response action, release of source, by-product, or special nuclear material from a processing site designated under the Uranium Mill Tailings Radiation Control Act of 1978, §102(a)(1) or §302(a) (42 United States Code, §7912 and §7942); and

(E) the normal application of fertilizer.

Small-quantity generator—A generator that generates, through ongoing processes and operations at a facility:

(A) equal to or less than 1,000 kilograms, but more than 100 kilograms of hazardous waste in a month; or

(B) equal to or less than one kilogram of acute hazardous waste in a month.

Source reduction—Has the meaning assigned by the federal Pollution Prevention Act of 1990, Public Law 101-508, §6603, 104 Statute 1388.

Ton—2,000 pounds, also referred to as short tons.

Toxic release inventory (TRI)—A program which includes those chemicals on the list in Committee Print Number 99-169 of the United States Senate Committee on Environmental and Public Works, titled "Toxic Chemicals Subject to Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986" (EPCRA, 42 United States Code Annotated, §11023), including any revised version of the list as may be made by the administrator of the United States Environmental Protection Agency.

Waste minimization—A practice that reduces the environmental or health hazards associated with hazardous wastes, pollutants, or contaminants. Examples may in-

clude reuse, recycling, neutralization, and detoxification.

§120.103. *Applicability.* This subchapter applies to facilities which are required to develop a source reduction and waste minimization plan pursuant to the Waste Reduction Policy Act of 1991, Senate Bill 1099, or the regulations promulgated thereunder, including:

(1) all large-quantity generators of hazardous waste as defined in §120.101 of this title (relating to Definitions);

(2) all generators other than large-quantity generators and conditionally exempt small-quantity generators as defined by the Texas Health and Safety Code, §361.431(3);

(3) all facilities subject to the Super-fund Amendments and Reauthorization Act of 1986, §313, Title III, (Emergency Planning and Community Right-to-Know Act (EPCRA), 42 United States Code, §11023). These toxic release inventory (TRI) covered facilities would be required to develop source reduction and waste minimization plans for only the TRI listed chemicals that exceed threshold quantities established under EPCRA.

§120.105. *Source Reduction and Waste Minimization Plan.* All owners or operators of facilities identified under §120.103 of this title (relating to Applicability), shall prepare a five-year (or more) source reduction and waste minimization plan which may be updated annually as appropriate according to the schedule listed in §120.109 of this title (relating to Compliance Schedules). Plans shall be updated as necessary to assure that there never exists a time period for which a plan is not in effect. Prior to completion of the plan and each succeeding plan, a new five-year (or more) plan shall be prepared. Plans required by paragraphs (1), (2), and (3) of this section shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities.

(1) With the exception of small-quantity generators which are subject to paragraph (3) of this section, the plan shall include, at a minimum:

(A) an initial survey that identifies:

(i) for facilities subject to §120.103(1) of this title, activities that generate hazardous waste; and

(ii) for facilities subject to §120.103(3) of this title, activities that result in the release of pollutants or contaminants designated under §120.102 of this title (relating to Pollutants and Contaminants);

(B) based on the initial survey, a prioritized list of economically and technologically feasible source reduction and waste minimization projects;

(C) an explanation of source reduction or waste minimization projects to be undertaken, with a discussion of technical and economic considerations, and environmental and human health risks considered in selecting each project undertaken;

(D) an estimate of the type and amount of reduction anticipated;

(E) a schedule for implementation of each source reduction and waste minimization project;

(F) source reduction and waste minimization goals for the entire facility, including incremental goals to aid in evaluating progress;

(G) an explanation of employee awareness and training programs to aid in accomplishing source reduction and waste minimization goals;

(H) certification by the owner or operator of the facility having the authority to commit the corporation's resources to implement the plan, that the plan is complete and correct;

(I) identification of cases in which the implementation of a source reduction or waste minimization activity designed to reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may shift the release to another medium; and

(J) an executive summary of the plan which shall include, at a minimum:

(i) a description of the facility which shall include: name of the facility; address; contact; general description of the facility; and Texas Air Control Board (TACB) account number, Texas Water Commission (TWC) solid waste notice of registration number, TWC waste water permit number, United States Environmental Protection Agency (EPA) identification number (Resource Conservation and Recovery Act (RCRA) number), national pollutant discharge elimination system (NPDES) permit number, and underground injection well code identification number;

(ii) a list of all hazardous wastes generated and the volumes of each;

(iii) a list of all reportable toxic release inventory (TRI) releases and the volume of each;

(iv) a prioritized list of pollutants and contaminants to be reduced;

(v) a statement of reduction goals;

(vi) an explanation of environmental and human health risks considered in determining reduction goals;

(vii) implementation milestones for individual project development;

(viii) an implementation schedule for future reduction goals; and

(ix) identification and description of cases in which the implementation of a source reduction or waste minimization activity designed to reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may shift the release to another medium. Included in this description shall be a discussion of the change in characteristics of the normal waste stream or release and how it will be managed in the affected medium.

(2) The source reduction and waste minimization plan may also include:

(A) a discussion of the owner's or operator's previous efforts at the facility to reduce risk to human health and the environment or to reduce the generation of hazardous waste or the release of pollutants or contaminants;

(B) a discussion of the effect that changes to environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(C) the effect that events which the owner or operator could not control have had on the achievement of the source reduction and waste minimization goals;

(D) a description of projects that have reduced the generation of hazardous waste or the release of pollutants or contaminants; and

(E) a discussion of the operational decisions made at the facility that have affected the achievement of the source reduction or waste minimization goals or other risk reduction efforts.

(3) The plans of small-quantity generators shall include, at a minimum:

(A) a description of the facility which shall include: name of the facility; address; contact; general description of the facility; and TACB account number, TWC solid waste notice of registration number, TWC waste water permit number, EPA identification number (RCRA number), NPDES permit number, and underground injection well code identification number;

(B) a list of all hazardous wastes generated and the volumes of each;

(C) a list of all reportable TRI releases and the volumes of each;

(D) a prioritized list of pollutants and contaminants to be reduced;

(E) a statement of reduction goals;

(F) information on environmental and human health risks, such as material safety data sheets (MSDS) or other available documentation, considered in determining reduction goals;

(G) implementation milestones for individual project development;

(H) an implementation schedule for future reduction goals; and

(I) identification and description of cases in which the implementation of a source reduction or waste minimization activity designed to reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may shift the release to another medium. Included in this description shall be a discussion of the change in characteristics of the normal waste stream or release and how it will be managed in the affected medium.

§120.106. Reporting and Recordkeeping Requirements. All owners or operators required to develop a source reduction and waste minimization plan for a facility under this subchapter shall submit to the commission and the board, concurrent with implementation of the plan under §120.109 of this title (relating to Compliance Schedules), an initial executive summary of such plan and a copy of the certification of completeness and correctness in §120.105(1) (H) of this title (relating to Source Reduction and Waste Minimization Plans). Within 30 days of any revision of such plan, a revised executive summary shall be submitted. All owners and operators required to develop a plan shall also submit an annual

report according to the schedule outlined in paragraph (4) of this section.

(1) The report shall detail the facility's progress in implementing the source reduction and waste minimization plan and include:

(A) an assessment of the progress toward achievement of the facility source reduction goal and the facility waste minimization goal;

(B) a statement to include, for facilities subject to §120.103(1) of this title (relating to Applicability), the amount of hazardous waste generated and, for facilities subject to §120.103(3) of this title, the amount of the release of reportable pollutants, or contaminants designated under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, §361.433(c) in the year preceding the report, and a comparison of those amounts generated or released using 1987 as a base year; and

(C) any modification to the plan.

(2) The report may include:

(A) a discussion of the owner's or operator's previous effort at the facility to reduce hazardous waste or the release of pollutants or contaminants through source reduction or waste minimization;

(B) a discussion of the effect that changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(C) the effect that events, which the owner or operator could not control, have had on the achievement of the source reduction and waste minimization goals; and

(D) a discussion of the operational decisions the owner or operator has made that affected the achievement of the source reduction and waste minimization goals.

(3) The report shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities.

(4) The report and the executive summary of the plan shall be submitted according to the following schedule and annually thereafter.

(A) For all facilities meeting the specifications of §120.109(1) of this title, the first report will be due on or before March 1, 1994. The report will cover calendar year 1993.

(B) For all facilities meeting the specifications of §120.109(2) of this title, the first report will be due on or before March 1, 1995. The report will cover calendar year 1994.

(C) For all facilities meeting the specifications of §120.109(3) of this title, the first report will be due on or before March 1, 1996. The report will cover calendar year 1995.

(D) For all facilities meeting the specifications of §120.109(4) of this title, the first report will be due on or before March 1, 1997. The report will cover calendar year 1996.

(E) For all facilities meeting the specifications of §120.109(5) of this title, the first report will be due on or before March 1, 1998. The report will cover calendar year 1997.

(5) Base line data from the calendar year 1987 shall be used in developing each of the first reports referred to in paragraph (4) of this section.

(6) The report shall be submitted on forms furnished or approved by the executive directors of the commission and the board and shall contain, at a minimum, the information specified in paragraph (1) of this section. Upon written request by the owner or operator, the executive directors may authorize a modification in the reporting period.

§120.109. Compliance Schedules. All facilities subject to §120.103 of this title (relating to Applicability) and not exempted by §120.107 of this title (relating to Exemptions) shall develop a source reduction and waste minimization plan. The implementation year shall be determined by the prior year's reported volumes of hazardous waste generated and/or total toxic release inventory (TRI) releases. A facility once subject to this subchapter shall remain subject until it no longer meets the requirements of §120.103 of this title or is exempted under §120.107 of this title. Volumes for calculations will be based on total hazardous waste generated and/or total TRI releases. The executive summary shall be submitted to the commission and board on the date the plan is required to be in place. Plan implementation will be according to the following schedule.

(1) The source reduction and waste minimization plan shall be in place, available for review, and be implemented no later than July 1, 1993 for:

(A) hazardous waste generators reporting 5,000 tons or more; or

(B) TRI facilities reporting 100 tons or more.

(2) The source reduction and waste minimization plan shall be in place, available for review, and be implemented no later than January 1, 1994 for:

(A) hazardous waste generators reporting less than 5,000 tons, but more than or equal to 500 tons; or

(B) TRI facilities reporting less than 100 tons, but more than or equal to 10 tons.

(3) The source reduction and waste minimization plan shall be in place, available for review, and be implemented no later than January 1, 1995 for:

(A) hazardous waste generators reporting less than 500 tons, but more than or equal to 15 tons; or

(B) TRI facilities reporting less than 10 tons, but more than or equal to five tons.

(4) The source reduction and waste minimization plan shall be in place, available for review, and be implemented no later than January 1, 1996 for:

(A) hazardous waste generators reporting less than 15 tons, but more than or equal to five tons; or

(B) TRI facilities reporting less than five tons, but more than or equal to one ton.

(5) The source reduction and waste minimization plan shall be in place, available for review, and be implemented no later than January 1, 1997 for:

(A) hazardous waste generators reporting less than five tons, but greater than 1.102 tons (1,000 kilograms); or

(B) TRI facilities reporting less than one ton.

(6) Any facility which becomes subject to the requirement to have a source reduction and waste minimization plan, ei-

ther within 90 days prior to or at any time following the dates referenced in paragraphs (1)-(5) of this section, shall have 90 days to have a plan in place and available for review.

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

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

TRD-9200445 Lane Hartsock
Deputy Director, Air Quality
Planning
Texas Air Control Board

Effective date: February 3, 1992

Proposal publication date: September 24, 1991

For further information, please call: (512) 908-1451

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**Part IX. Texas Water
Commission**
Chapter 293. Water Districts
Conditional Approval
• 31 TAC §293.60

The Texas Water Commission adopts new §293.60, without changes to the proposed text as published in the October 1, 1991, issue of the *Texas Register* (16 TexReg 5391) concerning conditional approval of reimbursements to developers. The new section is proposed in order to inform developers that reimbursement by a district for a developer project may be conditioned on the actions of the developer of related to affiliated entities of the developer in the district applying for approval or in any other district in which the developer or related or affiliated entities of the developer have been involved.

Section 293.60(a) specifies that the commission may condition reimbursement of construction funds to a developer on certain actions of the developer or related or affiliated entities. Section 293.60(a)(1) specifies the issues which the commission may consider in evaluating the performance of the developer and includes the past history of the developer or related affiliated entities with respect to payment of financial obligations to districts, devaluation of property values through claiming special exemptions within districts, compliance with commission rules and orders, and performance under agreements with districts. Section 293.60(a)(2) specifies the conditions on which the commission may condition the approval of reimbursement and includes the payment of financial obligations, the withdrawal of a claim of a special exemption for property valuation, compliance with commission rules and orders, and performance under agreements with districts. Section 293.60(b) provides a definition of "developer" and §293.60(c) provides a definition of "related or affiliated entities." Section 293.60(d) requires a district to submit information regarding the developer or affiliated or related entities upon the request of the executive director.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Water Code, §§5.013, 5.015, and 12.081 which provide the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

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

Issued in Austin, Texas, on January 9, 1992.

TRD-9200364 Claire Arenson
Chief, Hearings Examiner
Texas Water Commission

Effective date: January 30, 1992

Proposal publication date: October 1, 1991

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



Chapter 295. Water Rights, Procedural

Subchapter A. Requirements of Water Use Permit Applica- tion

• 31 TAC §295.72

The Texas Water Commission (TWC) adopts an amendment to §295.72 of its regulations concerning water rights, procedural, without changes to the proposed text as published in the July 26, 1991, issue of the *Texas Register* (16 TexReg 4063).

The amendments to §295.72 clarify the grounds necessary for granting an application to amend a water right to extend the time for commencing or completing construction of the facilities prescribed in the applicant's authorization to use state water. The amended rule also provides that the applicant shall state in his application reasons the commission should consider in determining whether the appropriation should be canceled and forfeited in the event the commission denies the application for an extension of time. The amended rule further provides that, in the event an application for extension is denied, the commission may consider and determine in the same proceeding whether the appropriation shall be forfeited for failure to meet the permit condition requiring timely commencement or completion of construction.

The Texas Water Code, §11.145 (the Code) provides that construction of diversion facilities and/or a storage reservoir must commence within the time fixed by the commission, not to exceed a period of two years from issuance of the appropriation. Upon application by the appropriator, the commission may grant an extension of the time to commence such construction. The appropriator, however, must work "diligently and continuously" towards completion of the project. The Code, §11.146, provides that failure to commence construction within the pre-

scribed time period or failure to work diligently and continuously towards completion of such construction shall subject the appropriation to cancellation and forfeiture after thirty days notice and opportunity for hearing. The amendments to §295.72 provide specific criteria for determining whether to grant an extension of time, including guidance as to what constitutes working "diligently and continuously" towards commencement or completion of construction. The amendments further provide that should the commission deny the application for an extension of time, it may determine in the same hearing whether the appropriation should be canceled and forfeited for failure to commence or complete construction within the prescribed time periods.

The 30-day comment period with respect to these rules expired on August 26, 1991. The commission received only one comment during this period, submitted by the Texas Utilities Electric Company (TU Electric), a private business which provides electric power to much of the central, eastern, and western portions of the state. TU Electric owns a number of dams and reservoirs and purchases water from river authorities, water districts, and cities.

In its comment, TU Electric opposes the amendments, asserting that the commission has no authority to place upon an appropriator the burden of proving why a permit should not be forfeited at the time an application is submitted for an extension of time to commence or complete construction. Rather, TU Electric believes that the commission must initiate a separate proceeding apart from its determination on whether to grant an extension and must carry the burden of proof in such forfeiture proceeding. TU Electric bases its opinion on an interpretation that the forfeiture and cancellation provisions contained in the Code, §11.171 et seq., are applicable to proceedings under the Code, §11.146.

The commission respectfully disagrees with the comments submitted by TU Electric. The provisions of the Code, §11.171 et seq., specifically relate only to the cancellation and forfeiture of an appropriation for failure to beneficially use all or part of the appropriation for a consecutive 10-year period, not for failure to commence or complete construction of facilities within the timeframes provided in permits issued in accordance with the Code, §11.145. Additionally, §11.146(a) specifically provides that forfeiture of an appropriation for failure to commence construction shall be subject to notice and hearing "as prescribed by this section." Therefore, there is no requirement in either the Code, §11.146 or §11.171 et seq. that forfeiture of an appropriation for failure to timely commence construction is to be governed by the Code, §11.171 et seq. Additionally, requiring a separate proceeding for purposes of determining whether to cancel and forfeit an appropriation, separate and apart from the determination upon which the forfeiture must be predicated, is judicially and administratively inefficient. Also, any attempt to relitigate issues previously and finally determined in the prior proceeding would be prohibited by the legal doctrine of collateral estoppel.

Finally, since applicants are the movants in proceedings of this nature (i.e., to amend the time limitations contained in a permit) and have particular knowledge of the facts which must be proven to prevail (i.e., working diligently and continuously towards commencement or completion of construction), the burden of proof legally and properly rests with the applicant, as provided by §263.33 of this title and applicable caselaw.

The amendment is adopted under the Water Code, §§5.103, 5.105, and 5.120, which provide the commission with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

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

Issued in Austin, Texas, on January 9, 1992.

TRD-9200365 Claire Arenson
Chief, Hearings Examiner
Texas Water Commission

Effective date: January 30, 1992

Proposal publication date: July 26, 1991

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



Subchapter C. Notice Require- ments of Water Use Permit Applications

• 31 TAC §295.159

The Texas Water Commission (TWC) adopts amendments to §295.159 of its regulations concerning water rights, procedural, without changes to the proposed text as published in the July 26, 1991, issue of the *Texas Register* (16 TexReg 4063).

The changes to §295.159 add to the notice requirements for applications to extend the time to commence or complete construction of diversion and/or impoundment facilities, to specifically reflect that the commission shall also consider whether the appropriation should be forfeited for failure by the applicant to demonstrate sufficient due diligence and justification for delay.

The Texas Water Code (Code), §11.145, provides that construction of diversion facilities and/or a storage reservoir must commence within the time fixed by the commission, not to exceed a period of two years from issuance of the appropriation. Upon application by the appropriator, the commission may grant an extension of the time to commence such construction. The appropriator, however, must work diligently and continuously towards completion of the project. Section 11.146 of the Code provides that failure to commence construction within the prescribed time period or failure to work diligently and continuously towards completion of such construction shall subject the appropriation to cancellation and forfeiture after 30 days notice and opportunity for hearing. The amendments to §295.72 provide criteria for determining whether to grant an extension of time, including guidance as to what constitutes working diligently and continuously towards commencement or completion of construction. The amendments further

provide that should the commission deny the application for an extension of time, it may determine in the same hearing whether the appropriation should be canceled and forfeited for failure to commence or complete construction within the prescribed time periods.

The 30 day comment period with respect to these rules expired on August 26, 1991. The commission received only one comment during this period, submitted by the Texas Utilities Electric Company (TU Electric), a private business which provides electric power to much of the central, eastern, and western portions of the state. TU Electric owns a number of dams and reservoirs and purchases water from river authorities, water districts, and cities.

In its comment, TU Electric opposes the amendments, asserting that the commission has no authority to place upon an appropriator the burden of proving why a permit should not be forfeited at the time an application is submitted for an extension of time to commence or complete construction. Rather, TU Electric believes that the commission must initiate a separate proceeding apart from its determination on whether to grant an extension and must carry the burden of proof in such forfeiture proceeding. TU Electric bases its opinion on a interpretation that the forfeiture and cancellation provisions contained in the Code, §11.171 et seq, are applicable to proceedings under the Code, §11.146.

The commission respectfully disagrees with the comments submitted by TU Electric. The provisions of §11.171 et seq. of the Code specifically relate only to the cancellation and forfeiture of an appropriation for failure to beneficially use all or part of the appropriation for a consecutive 10-year period, not for failure to commence or complete construction of facilities within the timeframes provided in permits issued in accordance with the Code, §11.145. Additionally, §11.146(a) specifically provides that forfeiture of an appropriation for failure to commence construction shall be subject to notice and hearing "as prescribed by this section." Therefore, there is no requirement in either §11.146 or §11.171 et seq. of the Code that forfeiture of an appropriation for failure to timely commence construction is to be governed by the Code, §11.171 et seq. Additionally, requiring a separate proceeding for purposes of determining whether to cancel and forfeit an appropriation, separate and apart from the determination upon which the forfeiture must be predicated, is judicially and administratively inefficient. Also, any attempt to relitigate issues previously and finally determined in the prior proceeding would be prohibited by the legal doctrine of collateral estoppel.

Finally, since applicants are the movants in proceedings of this nature (i.e., to amend the time limitations contained in a permit) and have particular knowledge of the facts which

must be proven to prevail (i.e., working diligently and continuously towards commencement or completion on construction), the burden of proof legally and properly rests with the applicant, as provided by §263.33 of this title and applicable caselaw.

The amendment is adopted under the Water Code, §§5.103, 5.105, and 5.120, which provide the commission with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

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

Issued in Austin, Texas, on January 9, 1992.

TRD-9200363 Claire Arenson
Chief, Hearings Examiner
Texas Water Commission

Effective date: January 30, 1992

Proposal publication date: July 26, 1992

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

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 9. Property Tax Administration

Subchapter A. Practice and Procedure

• 34 TAC §§9.1-9.6

The Comptroller of Public Accounts adopts new §§9.1-9.6, concerning protests by school districts, county education districts, certain property owners, and appraisal districts of its property value study's preliminary findings, without changes to the proposed text as published in the December 10, 1991, issue of the *Texas Register* (16 TexReg 7083).

The new sections are necessary because new legislation transferred responsibility for conducting the property value study and property value study protests to the comptroller. The new sections clearly describe the agency's protest procedures, including its general rules concerning protests; who may protest; and when a petitioner may file a protest petition.

No comments were received regarding adoption of the new sections.

The new sections are proposed under the Education Code, §11.86(e), which provides the comptroller with the authority to adopt procedural rules governing the conduct of protest hearings.

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

Issued in Austin, Texas, on January 13, 1992.

TRD-9200451 Martin Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Effective date: February 3, 1992

Proposal publication date: December 10, 1991

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

Part XII. State Auditor's Office

Chapter 351. Administration

• 34 TAC §351.1

The State Auditor's Office adopts the repeal of §351.1, without changes to the proposed text as published in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6580).

Senate Bill Number 1004, 72nd Legislature, Regular Session, transferred rulemaking authority relating to the filing of audit reports under the Texas Political Subdivision Employees Uniform Group Benefits Program from the State Auditor's Office to the Department of Insurance. As of the effective date of Senate Bill Number 1004, September 1, 1991, the statutory authority under which the State Auditor's Office originally adopted this rule was rescinded.

Repeal of this section will ensure compliance with any applicable provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Local Government Code, §172.010 as amended, which transfers rulemaking authority to the Department of Insurance.

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

Issued in Austin, Texas, on January 8, 1992.

TRD-9200410 Lawrence F. Alwin
State Auditor

Effective date: January 31, 1992

Proposal publication date: November 12, 1991

For further information, please call: (512) 479-4700

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 4. Medicaid Programs-Children and Pregnant Women

Eligibility Requirements

• 40 TAC §4.1006

The Texas Department of Human Services (DHS) adopts an amendment to §4. 1006, concerning requirements for application for Medicaid, without changes to the proposed text as published in the December 10, 1991, issue of the *Texas Register* (16 TexReg 7084).

The justification for the amendment is to comply with a policy clarification from the Health Care Financing Administration removing the relationship requirement for certain Medicaid-eligible children. As a result, DHS is changing its policy to allow certain children born on or after October 1, 1983, to be eligible for Medicaid irrespective of their relationship to the person(s) with whom they live.

The amendment will function by ensuring that additional needy individuals will receive Medicaid benefits.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on January 9, 1992.

TRD-9200369 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: February 1, 1992

Proposal publication date: December 10, 1991

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

Chapter 5. Medicaid Programs for Aliens

Subchapter B. Medicaid Benefits for Aliens Not Legally Residing in the U.S.

• 40 TAC §5.2004

The Texas Department of Human Services (DHS) adopts an amendment to §5. 2004,

concerning eligibility requirements for Medicaid, without changes to the proposed text as published in the December 10, 1991, issue of the *Texas Register* (16 TexReg 7085).

The justification for the amendment is to comply with a policy clarification from the Health Care Financing Administration removing the relationship requirement for certain Medicaid-eligible children. As a result, DHS is changing its policy to allow certain children born on or after October 1, 1983, to be eligible for Medicaid irrespective of their relationship to the person(s) with whom they live.

The amendment will function by ensuring that additional needy individuals will receive Medicaid benefits.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on January 9, 1992.

TRD-9200370 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: February 1, 1992

Proposal publication date: December 10, 1991

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

Chapter 10. Family Self-support Services

Title IV-A Funded Child Care

The Texas Department of Human Services (DHS) adopts the repeal of §§10. 3325, 10.3340-10.3347, and 10.3501-10.3507, concerning family self-support services, without changes to the proposed text as published in the December 6, 1991, issue of the *Texas Register* (16 TexReg 6996).

Justification of the repeals is to remove obsolete rule material.

The repeals will function by deleting rules that have been replaced by new rules implementing the child care management services (CCMS) system and also deleting rules for the CCMS field test that has been completed.

No comments were received regarding adoption of the repeals.

• 40 TAC §§10.3325, 10.3340-10.3347

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 44, which authorizes the department to administer public assistance and day care programs.

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

Issued in Austin, Texas, on January 9, 1992.

TRD-9200371 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: February 17, 1992

Proposal publication date: December 6, 1991

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

Child Care Management Services Field Test

• 40 TAC §§10.3501-10.3507

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 44, which authorizes the department to administer public assistance and day care programs.

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

Issued in Austin, Texas, on January 9, 1992.

TRD-9200372 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: February 17, 1992

Proposal publication date: December 6, 1991

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

Chapter 79. Legal Services Subchapter R. Release Hearings

• 40 TAC §§79.1701-79.1704, 79.1708, 79.1709

The Texas Department of Human Services (DHS) adopts amendments to §§79. 1701-79.1704, 79.1708, and 79.1709 concerning release hearings, without changes to the proposed text as published in the November 22, 1991, issue of the *Texas Register* (16 TexReg 6743).

The justification for the amendments is to change the rules governing release hearings to allow adult protective services (APS) to notify an employer or other entity of APS findings of abuse, neglect, or exploitation. The amendments are intended also to protect the perpetrator's due process rights. In addition to the amendments concerning release hearings in APS, DHS has rewritten the definition of adverse action in §79.1701 as it pertains to child protective services. This rewrite is intended to clarify the existing definition.

The amendments will function by increasing protection from abuse, neglect, and exploitation of aged or disabled adults and increasing protection of perpetrators' due process rights.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 48, which provides the department with the authority to administer public assistance and adult protective services programs.

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

Issued in Austin, Texas, on January 9, 1992.

TRD-9200373 Nancy Murphy
 Agency liaison, Policy and
 Document Support
 Texas Department of
 Human Services

Effective date: February 15, 1992

Proposal publication date: November 22, 1991

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



Open Meetings

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

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

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

Texas School for the Blind and Visually Impaired

Friday, January 17, 1992, 9 a.m. The Board of Trustees, Finance/Audit Committee of the Texas School for the Blind and Visually Impaired will meet at 1100 West 45th Street, Auditorium Conference Room, Austin. According to the agenda summary, the committee will call the meeting to order; hear a report from the Internal Auditor on possible modification to annual audit plan and management reporting systems; review on how to get the board involved in the budget process; hear legacy update; review of comprehensive annual financial report; discussion of Florida study; and adjourn.

Contact: Jennifer Harris, 1100 West 45th Street, Austin, Texas 78756-3494, (512) 454-8631, ext. 133.

Filed: January 9, 1992, 3:07 p.m.

TRD-9200357

Friday, January 17, 1992, 9 a.m. The Board of Trustees, Curriculum Committee of the Texas School for the Blind and Visually Impaired will meet at 1100 West 45th Street, Room 110, Austin. According to the agenda summary, the committee will call the meeting to order; hear progress report on implementation of independent living curriculum; report on reading curriculum development team, and development of learning media assessment instrument; report on orientation and mobility curriculum development; low vision resource guide; and adjourn.

Contact: Jennifer Harris, 1100 West 45th Street, Austin, Texas 78756-3494, (512) 454-8631, ext. 133.

Filed: January 9, 1992, 3:08 p.m.

TRD-9200358

The Board of Trustees of the Texas School for the Blind and Visually Impaired will meet at 1100 West 45th Street, Room 116, Austin. According to the agenda summary, the board will call

the meeting to order; recognition of TSBVI staff; hear public comments/open forum; reports from board committees: curriculum committee and finance/audit committee; discuss new business including, but not limited to: consultation with school attorney concerning litigation; discussion of superintendent's evaluation; presentation of information regarding organizational structure; approval of minutes of November 22, 1991 meeting; policy changes; consideration of superintendent's residence status; board approval of Texas Education Agency grant proposal; future of accreditation by National Accreditation Council; implementation of Americans with Disabilities Act (ADA); summary of board members' training hours; election of board officers; comments from board members; and adjourn.

Contact: Jennifer Harris, 1100 West 45th Street, Austin, Texas 78756-3494, (512) 454-8631, ext. 133.

Filed: January 9, 1992, 3:08 p.m.

TRD-9200359

Texas Bond Review Board

Tuesday, January 14 1992, 9 a.m. The Texas Bond Review Board met at the Reagan Building, Room 102, Austin. According to the emergency revised agenda summary, the board considered lease-purchase agreement for acquisition of digital telephone switch by Lamar University; and considered issuance of refunding bonds by Texas State University System. The emergency status was necessary to allow timely consideration of additional proposed issues.

Contact: Tom K. Pollard, 506 Sam Houston Building, 201 East 14th Street, Austin, Texas 78701, (512) 463-1741.

Filed: January 10, 1992, 10:41 a.m.

TRD-9200386

Texas Catastrophe Property Insurance Association

Tuesday, January 21, 1992, at 10 a.m. The Board of Directors of the Texas Catastrophe Property Insurance Association will hold a conference call at the TCPIA Offices, 2801 South Interregional, Austin. According to the complete agenda, the board will hold a executive session via conference call only to discuss pending or contemplated litigation: TCPIA versus Morales; SBI rate decision on TCPIA rates; and other litigation.

Contact: Frank R. Rogers, 2801 South Interregional, Austin, Texas 78741, (512) 444-9612.

Filed: January 13, 1992, 11:27 a.m.

TRD-9200475

Texas Board of Chiropractic Examiners

Thursday, January 23, 1992, 10 a.m. The Texas Board of Chiropractic Examiners will meet at the Hyatt Regency DFW, Inside the Airport, DFW Airport. According to the agenda summary, the board will call the meeting to order; elect officers; committee assignments; discuss approval of minutes of the October 26, 1991, board meeting. The following individuals will address the board: Rod Albracht, D.C.-impaired professional program; Othel Pirtle, D.C. - radiologic technical guidelines; federal trade commission concerning a proposed modified order; John Shepherd-reinstatement of his license; Texas Chiropractic Association Executive Committee. In addition, the board will discuss procedures for an individual to reapply for license once the license has been revoked. Committee reports-reciprocity, examination, education, practice, peer review, legislative/budget, enforcement, and rules. The board will discuss withdrawing the previous'y proposed rules and reconsider new proposed rules.

Contact: Jennie Smetana, 8716 Mopac Expressway North, Suite 301, Austin, Texas 78759, (512) 343-1895.

Filed: January 10, 1992, 4:23 p.m.

TRD-9200430

State Cogeneration Council

Friday, February 7, 1992, 10 a.m. The State Cogeneration Council will meet at the Commissioners Hearing Room, Public Utility Commission, 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the council will discuss approval of minutes; hear a status report on current and future state agency projects; discuss possible cogeneration at UT El Paso; hear a report on PUC proceedings pertaining to cogeneration; report on cogeneration using engine driven chillers; discuss and consider for approval cogeneration applications by the University of Texas at San Antonio and the University of Texas Medical Branch at Galveston; hear public comment on the cogeneration applications; take action regarding applications; discuss agenda, time and location of next meeting; adjourn; and take an optional tour of the Austin State Hospital cogeneration facility.

Contact: Carol Stuewe, 636 Sam Houston Building, 201 East 14th Street, Austin, Texas 78701, (512) 463-1891.

Filed: January 13, 1992, 2:26 p.m.

TRD-9200510

Texas Board of Criminal Justice

Wednesday, January 22, 1992, 1:30 p.m. The Subcommittee on Health Care of the Texas Board of Criminal Justice will meet at the University of Houston, College of Pharmacy, 1441 Moursund, Room 112, Houston. According to the agenda summary, the subcommittee will call the meeting to order; give welcoming remarks; discuss approval of minutes; update on tuberculosis and discussion of plan; update on construction projects; Texas Department of Mental Health and Mental Retardation Task Force on Facility review; delivery of health care for substance abuse felony punishment facilities; staffing; and discuss new business.

Contact: Andrea Scott, P.O. Box 99, Huntsville, Texas 77342-0099, (409) 294-2931.

Filed: January 14, 1992, 8:12 a.m.

TRD-9200532

Texas Board of Criminal Justice Board of Pardons and Paroles

Thursday, January 23, 1992, 9:30 a.m. The Board of Pardons and Paroles of the Texas Department of Criminal Justice will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the executive committee will discuss and act on the following items: discuss approval of the minutes; executive committee and its activities; review caseload management; parking locations; transitional case summaries; February board meeting; cases before the executive committee; action of second voter when case is set off; and delegation of authority.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2744.

Filed: January 14, 1992, 8:12 a.m.

TRD-9200531

Texas Employment Commission

Tuesday, January 21, 1992, 8:30 a.m. The Texas Employment Commission will meet at the TEC Building, 101 East 15th Street, Room 644, Austin. According to the agenda summary, the commission will approve prior meeting notes; meet in executive session to discuss Administrastaff, Inc. James Kaster, et al. and transactions necessary for relocation of TEC state office building; actions, if any, resulting from executive session; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 3; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: January 13, 1992, 4:05 p.m.

TRD-9200522

Governor's Office

Thursday-Friday, January 23-24, 1992, 9 a.m. respectively. The Governor's Commission for Women will meet at 401 West 15th Street, 10th Floor, Austin. According to the agenda summary, the commission will hold its quarterly meeting.

Contact: Cynthia W. Galvan, P.O. Box 12428, Austin, Texas 78711, (512) 463-1782.

Filed: January 10, 1992, 2:21 p.m.

TRD-9200413

Texas Department of Health

Wednesday, January 15, 1992, 10:30 a.m. The Advisory Committee on Mental Retardation Facilities of the Texas Department of Health held an emergency meeting at the Texas Department of Health, 1100 West 49th Street, Room T-607, Austin. According to the complete agenda, the committee considered and possibly acted on updates on precertification subcommittee, direct care registry, informed consent, governor's committee on guardianship; and needed changes on licensure of intermediate care/mentally retarded/related condition facilities. The emergency status was necessary due to unforeseeable circumstances.

Contact: Janice Caldwell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-3014.

Filed: January 10, 1992, 8:30 a.m.

TRD-9200376

Texas Higher Education Coordinating Board

Thursday, January 30, 1992, 9:30 a.m. The Universities Committee of the Texas Higher Education Coordinating Board will meet at the Chevy Chase Office Complex, 7700 Chevy Chase Drive, Building One, Room 1.100, Austin. According to the agenda summary, the committee will consider matters relating to universities.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: January 13, 1992, 2:18 p.m.

TRD-9200485

Thursday, January 30, 1992, 10:15 a.m. The Administration and Financial Planning Committee of the Texas Higher Education Coordinating Board will meet at the Chevy Chase Office Complex, 7700 Chevy Chase Drive, Building One, Room 1.100, Austin. According to the agenda summary, the committee will discuss matters relating to administration and financial planning.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: January 13, 1992, 2:18 p.m.

TRD-9200486

Thursday, January 30, 1992, 11 a.m. The Texas Higher Education Coordinating Board will meet at the Chevy Chase Office Complex, 7700 Chevy Chase Drive, Building One, Room 1.100, Austin. According to the complete agenda, the board, acting for itself and on behalf of the Attorney General of the State of Texas will hold a public hearing to discuss a proposal for the issu-

ance of State of Texas College Student Loan Bonds, Series 1992 in the maximum aggregate face amount of \$100,000,000. All interested parties are invited to submit written comments to the board prior to the time set for the public hearing or to attend and express any comments they may have regarding the proposed Series 1992 Bonds. Immediately after the hearing the board will consider approval of the sale of the bonds.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: January 13, 1992, 2:18 p.m.

TRD-9200487

Thursday, January 30, 1992, noon. The Committee of the Whole of the Texas Higher Education Coordinating Board will meet at the Chevy Chase Office Complex, 7700 Chevy Chase Drive, Building One, Room 1.102, Austin. According to the complete agenda, the committee will meet in executive session to hear a report on the status of the South Texas lawsuit.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: January 13, 1992, 2:18 p.m.

TRD-9200488

Thursday, January 30, 1992, 1 p.m. The Health Affairs Committee of the Texas Higher Education Coordinating Board will meet at the Chevy Chase Office Complex, 7700 Chevy Chase Drive, Building One, Room 1.100, Austin. According to the agenda summary, the committee will discuss matters relating to health affairs.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: January 13, 1992, 2:18 p.m.

TRD-9200489

Thursday, January 30, 1992, 1:15 p.m. The Community and Technical Colleges Committee of the Texas Higher Education Coordinating Board will meet at the Chevy Chase Office Complex, 7700 Chevy Chase Drive, Building One, Room 1.100, Austin. According to the agenda summary, the committee will discuss matters relating to community and technical colleges.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: January 13, 1992, 2:19 p.m.

TRD-9200490

Thursday, January 30, 1992, 1:45 p.m. The Joint Liaison Committee of the Texas Higher Education Coordinating Board will meet at the Chevy Chase Office Complex, 7700 Chevy Chase Drive, Building One,

Room 1.100, Austin. According to the complete agenda, the committee will consider a request from the Texas Education Agency for Coordinating Board endorsement of a model college preparatory program for high school students'; and consider endorsement of Tech-Prep associate degree guidelines for public school and community colleges.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: January 13, 1992, 2:19 p.m.

TRD-9200493

Thursday, January 30, 1992, 2 p.m. The Educational Opportunity Committee of the Texas Higher Education Coordinating Board will meet at the Chevy Chase Office Complex, 7700 Chevy Chase Drive, Building One, Room 1.100, Austin. According to the complete agenda, the committee will consider two additional recommendations to institutions for actions in support of the Texas Educational Opportunity Plan; an annual progress report under the Texas Plan to board of regents/trustees/ and job vacancy announcements from public higher education institutions.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: January 13, 1992, 2:19 p.m.

TRD-9200494

Thursday, January 30, 1992, 2:15 p.m. The Campus Planning Committee of the Texas Higher Education Coordinating Board will meet at the Chevy Chase Office Complex, 7700 Chevy Chase Drive, Building One, Room 1.100, Austin. According to the agenda summary, the committee will discuss matters relating to campus planning.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: January 13, 1992, 2:19 p.m.

TRD-9200491

Thursday, January 30, 1992, 3 p.m. The Student Services Committee of the Texas Higher Education Coordinating Board will meet at the Chevy Chase Office Complex, 7700 Chevy Chase Drive, Building One, Room 1.100, Austin. According to the agenda summary, the committee will consider matters relating to student services.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: January 13, 1992, 2:19 p.m.

TRD-9200492

Friday, January 31, 1992, 9 a.m. The Texas Higher Education Coordinating Board will meet at the Chevy Chase Office

Complex, 7700 Chevy Chase Drive, Building One, Room 1.100, Austin. According to the agenda summary, the board will consider matters relating to the Committee on Universities; the Committee on Administration and Financial Planning; the Committee on Health Affairs; the Committee on Community and Technical Colleges; the Joint Liaison Committee; the Committee on Educational Opportunity; the Committee on Campus Planning; the Committee on Student Services; and reports to the board.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: January 13, 1992, 2:20 p.m.

TRD-9200495

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Texas Department of Human Services

Tuesday, January 21, 1992, 1:30 p.m. The Adolescent Pregnancy and Parenthood Advisory Council of the Texas Department of Human Services will meet at the Texas Education Agency, 1701 North Congress Avenue, Conference Room 6-101, Austin. According to the complete agenda, the council will call the meeting to order and make opening remarks; discuss approval of minutes; DHS reorganization of client self-support services; teen parent initiative; House Bill 7 strategic planning; summit on adolescent pregnancy prevention; program updates; wrap-up; and plan next meeting date.

Contact: William Pace, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4146.

Filed: January 9, 1991, 3:18 p.m.

TRD-9200360

Tuesday, January 28, 1992, 9:30 a.m. The Religious Community Advisory Committee of the Texas Department of Human Services will meet at 701 West 51st Street, Fourth Floor, West Tower, Conference Room 4W, Austin. According to the complete agenda, the committee will welcome guests; make introductions; parking reminder; discuss approval of minutes; family planning proposed rules for change in caseworker function; earned income credit refund; concerns of members on focus on roadblocks to client access to services; RCAC proposal for restructuring of Health and Human Services; day care licensing update; office of disabilities update; and adjourn.

Contact: Lucy Todd, P.O. Box 149030, Austin, Texas 78714-9030, (512) 459-3129.

Filed: January 13, 1992, 11:14 a.m.

TRD-9200473
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Texas Incentive and Productivity Commission

Thursday, January 23, 1992, 1:30 p.m. The Texas Incentive and Productivity Commission will meet at the Reagan Building, 15th and Congress Avenue, Room 103, Austin. According to the complete agenda, the commission will call the meeting to order; roll call of members present; discuss approval of minutes of previous meeting; consideration of: employee suggestions for approval; productivity plans for approval; productivity bonus program rules for approval to publish for comment; hear a report on administrative matters; and adjourn.

Contact: Elaine Powell, P.O. Box 12482, Austin, Texas 78711, (512) 475-2393.

Filed: January 10, 1992, 10:35 a.m.

TRD-9200384

Texas Department of Insurance

Thursday, January 9, 1992, 2 p.m. The State Board of Insurance of the Texas Department of Insurance held an emergency meeting at 333 Guadalupe Street, William P. Hobby Building, Room 100, Austin. According to the complete agenda, the board considered a request by State Farm Insurance Company for a determination by the board if certain areas of Texas are catastrophe areas in accordance with Article 21.55, Texas Insurance Code. The emergency status was necessary to protect public welfare and confidence by designating certain areas of Texas as catastrophe due to recent flooding conditions.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: January 9, 1992, 10:06 a.m.

TRD-9200335

Tuesday, January 21, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 12th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of Henry Dale Bonnet of Round Rock, for a Group I, Legal Reserve Life Insurance Agent's license. Docket Number 11371.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: January 13, 1992, 10 a.m.

TRD-9200469

Tuesday, January 21, 1992, 9 a.m. The Commissioner's Hearing Section of the

Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 12th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Walter Knorpp, Jr. who holds a Group I, Legal Reserve Life Insurance Agent's license, a Group II Insurance Agent's license, a Local Recording Agent's license and to consider whether disciplinary action should be taken against the Corporate Local Recording Agency license held by Knorpp Insurance Agency, Inc. and the Corporate Surplus Lines Agent's license held by Knorpp Insurance Agency, Inc. Docket Number 11389.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: January 13, 1992, 10 a.m.

TRD-9200470

Tuesday, January 21, 1992, 2 p.m. The State Board of Insurance of the Texas Department of Insurance will meet at 333 Guadalupe Street, 13th Floor, Board Conference Room, Tower I, Austin. According to the complete agenda, the board will meet with the Attorney General's office representatives to discuss pending and contemplated litigation, and meet in executive session.

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

Filed: January 10, 1992, 1:34 p.m.

TRD-9200400

Friday, January 24, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 12th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Johnny Loyd Standifer, of Austin, who holds a Group I, Legal Reserve Life Insurance Agent's license and a Local Recording Agent's license. Docket Number 11387.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: January 13, 1992, 9:59 a.m.

TRD-9200467

Friday, January 24, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 12th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application for amendments to the Articles of Incorporation of Liberty General Life Insurance Company, Tyler, increase the authorized capital stock. Docket Number 11400.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: January 13, 1992, 9:59 a.m.

TRD-9200468

Friday, February 14, 1992, 8:30 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, 333 Guadalupe Street, Room 100, Austin. According to the complete agenda, the board will hold a public meeting for the consideration of and possible action on amendment of the rules and regulations of the Texas Department of Insurance by adoption of proposed 28 TAC §5.401 entitled "Temporary and Permanent Requirements regarding underwriting treatment of and disclosure to applicants for private passenger automobile liability insurance.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: January 13, 1992, 9:34 a.m.

TRD-9200449

Texas Department of Licensing and Regulation

Thursday, January 23, 1992, 1:30 p.m. The Inspections and Investigations, Tow Trucks of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, 920 Colorado Street, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Donnie Perry for violation of Statutes, Articles 6687-9b and 9100.

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

Filed: January 13, 1992, 4:08 p.m.

TRD-9200524

Thursday, January 30, 1992, 9:30 a.m. The Texas Commission of Licensing and Regulation of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, 920 Colorado Street, Room 1012, Austin. According to the agenda summary, the commission will call the meeting to order; take roll call; discuss approval of minutes; hear contested cases; agreed orders; meet in executive session; advisory committees; discuss proposed amendment to the Texas Air Conditioning and Refrigeration Contractors Licensing law; update on restructuring of the department; approval of the FY 1992 operating budget for the Texas Department of Licens-

ing and Regulation; consider staff proposal to maintain current fees as set in Texas Commission of Licensing and Regulation rules; strategic planning for the department as required by House Bill 2009, 72nd Legislature, Regular Session; discussion of staff support appointment for the Texas Commission of Licensing and Regulation; resolution concerning legislative changes to the Homeowners Recovery Fund; meet in executive session; discuss date, time and location of next commission meeting; and adjourn.

Contact: Larry E. Kosta, 920 Colorado Street, Austin, Texas 78701, (512) 463-3173.

Filed: January 13, 1992, 4:08 p.m.

TRD-9200523

Texas Council on Offenders with Mental Impairments

Friday, January 24, 1992, 9 a.m. The Executive Committee of the Texas Council on Offenders with Mental Impairments will meet at the Texas Juvenile Probation Commission, 2015 South IH 35, Austin. According to the complete agenda, the committee will be called to order, introduce guests, hear public comments, discuss approval of minutes of previous meeting, discuss attendance policy, receive a strategic planning process update; discuss old and new business and adjourn.

Contact: Hamilton, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2720.

Filed: January 10, 1992, 4:01 p.m.

TRD-9200429

Friday, January 24, 1992, 10 a.m.

TRD-9200429

Friday, January 24, 1992, 10 a.m. The Texas Council on Offenders with Mental Impairments will meet at Texas Juvenile Probation Commission, 2015 South IH 35, Austin. According to the complete agenda, the council will hear public comments, discuss approval of minutes of previous meeting, hear executive, program and executive director's reports, nominations/elections of officers, discuss old and new business; and adjourn.

Contact: Pat Hamilton, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2720.

Filed: January 10, 1992, 4:01 p.m.

TRD-9200428

Board of Nurse Examiners

Tuesday-Thursday, January 28-30, 1992, 8 a.m. The Board of Nurse Examiners will meet at the John H. Reagan Building, 15th Street, Room 101, Austin. According to the agenda summary, the board will receive minutes from the November 1991 meeting; consider acceptance of August, September, October and November financial statements; consider possible action on disciplinary matters and other action as recommended by the executive director in relation to hearings; receive a report from the education/examination department regarding annual report summaries, faculty petitions and other school information; consider adoption of previously proposed rules and hold an open forum on Tuesday, January 28, 1992, from 1:30-2 p.m. for interested persons to address the board.

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

Filed: January 10, 1992, 10:43 a.m.

TRD-9200387

Board of Vocational Nurse Examiners

Monday-Tuesday, January 27-28, 1992, 8 a.m. The Board of Vocational Nurse Examiners will meet at the Ramada Inn Airport, Frontier Room, 5600 North IH-35, Austin. According to the agenda summary, on Monday, the board will call the meeting to order; discuss approval of minutes; education report (program matters, program actions, rule revision 233.25; meetings/conferences attended; 1991 NCLEX-PN summary for Texas; recommendations for program approvals for 1991-1992; discuss unfinished business (budget update, NEAC, scope of practice/board policy statements, exempt position report); hear executive director's report; discuss new business (license renewal mock-up, strategic plan, quarterly report on key performance targets; amendment of contested case procedure rules-239.11, 239.15 (new), 239.16 (renumber of 239.15 (old)); and administrative hearings. On Tuesday, the board will continue administrative hearings; agreed orders/voluntary surrenders; and adjourn. The board will be on call to meet in executive session to discuss personnel matters.

Contact: Marjorie A. Bronk, 9101 Burnet Road, #105, Austin, Texas 78758, (512) 834-2071.

Filed: January 9, 1992, 11:14 a.m.

TRD-9200345

State Preservation Board

Wednesday, January 22, 1992, 11 a.m. The Personnel Committee of the State Preservation Board will meet at One Capitol Square, Room 202, Senate Administration Conference Room, Austin. According to the agenda summary, the committee will call the meeting to order; and discuss order of business.

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

Filed: January 9, 1992, 4:59 p.m.

TRD-9200375

Texas State Board of Examiners of Psychologists

Wednesday-Friday, January 22-24, 1992, 8:30 a.m., respectively The Texas State Board of Examiners of Psychologists will meet at 9101 Burnet Road, Suite 212, Austin. According to the complete agenda, the board will meet to consider applications, complaints, proposed rules, budget, legislative matters, minutes, opinion letters, hearings, exam issues, reports, planning issues, exam drafts, and sunset review.

Contact: Patricia S. Tweedy, 9101 Burnet Road, Suite 212, Austin, Texas 78758, (512) 835-2036.

Filed: January 10, 1992, 11:26 a.m.

TRD-9200392

Texas Public Finance Authority

Friday, January 17, 1992, 9 a.m. The Board of the Texas Public Finance Authority will meet at 1711 San Jacinto Street, Room 402, Central Services Building, Austin. According to the agenda summary, the board will call the meeting to order; discuss approval of the minutes; induct new board members; ratify staff personnel actions; introduce new general counsel; consider request for financing from General Services Commission for approximately \$4.1 million in revenue bonds to fund additional finish-out construction in One Capitol Square State Office Building to facilitate move by offices of the Attorney General; consider selection of underwriting firm to implement master equipment finance program; and adjourn.

Contact: Rachel Caron, 1201 Brazos Street, Room 313, Austin, Texas 78701, (512) 463-5544.

Filed: January 9, 1992, 12:35 p.m.

TRD-9200347

Friday, January 17, 1992, 9 a.m. The Board of the Texas Public Finance Authority will hold an emergency meeting at 1711 San Jacinto Street, Room 402, Central Services Building, Austin. According to the emergency revised agenda summary, the board will call the meeting to order; discuss approval of minutes; induction of new board members; ratification of staff personnel actions; introduction of new general counsel; consider request for financing from General Services Commission for approximately \$4.1 million in revenue bonds to fund additional finish-out construction in One Capitol Square State Office Building to facilitate move by Offices of the Attorney General; consider selection of underwriter firm to implement master equipment finance program; consider selection of bond counsel; and adjourn. The emergency status is necessary in order to meet financing schedule.

Contact: Rachael Caron, 1201 Brazos Street, Room 313, Austin, Texas 78701, (512) 463-5544.

Filed: January 14, 1992, 9:34 a.m.

TRD-9200535

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Texas Department of Public Safety

Thursday, January 23, 1992, 11 a.m. The Public Safety Commission of the Texas Department of Public Safety will meet at the DPS Headquarters, Commission Room, 5805 North Lamar Boulevard, Austin. According to the complete agenda, the commission will discuss approval of minutes; budget matters; personnel matters; pending and contemplated litigation; real estate matters; proposed rule changes regarding motor vehicle inspection standards pertaining to glass coating; and discuss miscellaneous and other unfinished business.

Contact: James R. Wilson, 5805 North Lamar Boulevard, Austin, Texas 78752, (512) 465-2000, ext. 3700.

Filed: January 14, 1992, 9:54 a.m.

TRD-9200536

Public Utility Commission of Texas

Thursday, January 23, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10786-application of Brazoria Telephone Company for change in depreciation rates, and request for special amortization of digital switching equipment and operator systems.

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

Filed: January 10, 1992, 3:42 p.m.

TRD-9200423

Tuesday, January 28, 1992, 10 a.m. (rescheduled from Monday, January 6, 1992, at 9 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 10463-application of Southwestern Bell Telephone Company to approve deletion of the carrier common line and interexchange carrier access charge credits.

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

Filed: January 13, 1992, 3:11 p.m.

TRD-9200518

Tuesday, February 18, 1992, 10 a.m. (rescheduled from Monday, January 27, 1992, at 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 10423-petition of Teleprofits of Texas, Inc. for waiver of PUC Substantive Rule 23.54(d)(4) due to technical limitations of equipment.

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

Filed: January 13, 1992, 3:12 p.m.

TRD-9200519

Friday, February 21, 1992, 3 p.m. (rescheduled from January 16, 1992, at 10 a.m.) The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10760-complaint of Laila M. Asmar against Marvin Myers and M. Myers properties.

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

Filed: January 13, 1992, 3:12 p.m.

TRD-9200520

Tuesday, January 28, 1992, 1:30 p.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will hold a prehearing conference in Docket Number 10726-application for sale, transfer, or merger of Cap Rock Electric Cooperative, Inc. and Hunt-Collin Electric Cooperative, Inc.

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

Filed: January 10, 1992, 3:42 p.m.

TRD-9200424

Monday, March 16, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 10787-application of Jasper-Newton Electric Cooperative, Inc. to revise the contract load growth schedule, and request for extension of this service under the title of economic development service for an additional year.

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

Filed: January 9, 1992, 2:40 p.m.

TRD-9200355

Monday, May 4, 1992, 9 a.m. (rescheduled from March 3, 1992, 9 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 10689-application of Southwestern Bell Telephone Company to offer extended metropolitan service to foreign exchange customers.

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

Filed: January 9, 1992, 2:39 p.m.

TRD-9200354

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Texas Racing Commission

Friday, January 17, 1992, 10 a.m. The Texas Racing Commission will meet at the John H. Reagan Building, 105 West 15th Street, Room #101, Austin. According to the complete agenda, the commission will call the meeting to order; take roll call; discuss approval of minutes of December 9, 1991; vote to propose and/or adopt on an emergency basis the following Horse and Greyhound Rules: §319.332, Chapter 321, Subchapter C., §§313.111, 309.194, 313.21, 313.103, 313.303, 313.310, 319.110, 315.2, 309.311; vote to adopt the following section: §313.112; hear reports by the Ad Hoc Committee regarding commission officers and commission action on §303.6 as necessary, Gulf Greyhound Partners, Ltd., and Texas Greyhound Association regarding first amended and restated racetrack management services agreement and commission action as necessary, John T. Williams

regarding kennel crates at Corpus Christi Greyhound Race Track and Valley Greyhound Park; consideration of and votes on the following matters: proposal for decision in Number 91-02-28, in regard to the appeal by D.J. Lang, License Number 10172, from stewards' decision on Race 9 at Trinity Meadows on September 2, 1991; proposal for decision in Number 91-02-29, in regard to the appeal by Larry L. Sherwood, License Number 5943, from stewards' ruling Manor 212; proposal for decision in Number 91-02-32, in regard to the appeal by Gary C. Brown, License Number 2769, from stewards' decision on Race 7 at Manor Downs on September 21, 1991, Number 91-R3-25, request by Manor Downs, Inc., for exemption to §309.102(a), relating to Racetrack Configuration, Number 92-R2-01, application by Trinity Meadows Raceway, Inc., for simulcasting license and approval of simulcasting request, agreement between Trinity Meadows Raceway, Inc., and the Texas Horsemen's Benevolent and Protective Association, Ad Hoc Committee.

Contact: Paula Cochran Carter, P.O. Box 12980, Austin, Texas 78701, (512) 794-8461.

Filed: January 9, 1992, 4:46 p.m.

TRD-9200366

Texas Rehabilitation Commission

Monday, February 3, 1992, 4 p.m. The Texas Rehabilitation Commission will meet at the Metropolitan Multi Service Center, 2475 West Gray Street, Houston. According to the complete agenda, the commission will review and discuss State Plan for Vocational Rehabilitation Services; introduction of guests; statewide assessment of rehabilitation needs; expanding and improving services to individuals with the most severe handicaps; order of selection; transitioning; rehabilitation engineering services; supported employment services; concluding remarks; and programs and services other than vocational rehabilitation.

Contact: Lena Jackson, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4113.

Filed: January 13, 1992, 1:30 p.m.

TRD-9200481

School Land Board

Tuesday, January 21, 1992, 10 a.m. The School Land Board will meet at the General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 831, Austin. According to the agenda summary, the board will discuss approval of previous

board meeting minutes; lease suspension application, Matagorda County; pooling application, Clam Lake Field, Jefferson County; applications to lease highway rights of way for oil and gas, Fayette, Brazos, Gregg, Burlison and Wharton Counties; direct land sale, Terrell County; coastal public lands-easement applications, Colorado River, Matagorda County; Offatts Bayou, Galveston County; Carancahua Bay, Jackson County; Laguna Madre, Cameron County; structure permit requests, Cold Pass, Brazoria County; Espirit Santo, Calhoun County; coastal public lands, request by Tri-Legends Corporation for reduced easement rate, Jarboe Bayou, Clear Lake, Galveston County; meet in executive session-hear a request by Tri-Legends Corporation for reduced easement rate, Jarboe Bayou, Clear Lake, Galveston County; discuss proposed agreement pertaining to DCRC State Trust Property; and to discuss pending and proposed litigation.

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

Filed: January 13, 1992, 2:55 p.m.

TRD-9200513

Tuesday, January 21, 1992, 10 a.m. The School Land Board will meet at the General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 831, Austin. According to the revised agenda summary, the board will discuss approval of the minutes of the previous board meeting; consideration of nominations, terms, conditions and procedures for the April 7, 1992 oil, gas and other minerals lease sale.

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

Filed: January 13, 1992, 4:40 p.m.

TRD-9200530

Secretary of State

Thursday, January 16, 1992, 6 p.m. The Task Force on Economic Transition of the Secretary of State will meet at the Chase Naval Air Station, Beeville. According to the complete agenda, the task force will hold an informal meeting at the Officer's Club Chase Naval Air Station; meet with the Recovery Council, (Chase Reuse Task Force) Officer's Club; presentations by the Governor's Task Force; answer questions; presentation by the Recovery Council; and answer questions.

Contact: Mark Bell, Capitol Building, Room 127, Austin, Texas 78711, (512) 463-5701.

Filed: January 9, 1992, 3:43 p.m.

TRD-9200361

Friday, January 17, 1992, 8 a.m. The Task Force on Economic Transition of the Secretary of State will meet at the First National Bank, Community Center, Beeville. According to the complete agenda, the task force will make recommendations on short term responses to base closure and military industry downsizing will be finalized.

Contact: Mark Bell, Capitol Building, Room 127, Austin, Texas 78711, (512) 463-5701.

Filed: January 9, 1992, 4:52 p.m.

Interagency Council on Sex Offender Treatment

Friday, January 31, 1992, 10:30 a.m. The Board of the Interagency Council on Sex Offender Treatment will meet at 1100 West 49th Street, #M-117, Austin. According to the complete agenda, the board will discuss approval of the minutes of December 13, 1991; report by staff; discussion on hiring an executive director; discussion and approval of: registry training criteria; by-laws; discussion of legislative report preparation; election of officers; and hear public comment.

Contact: D. Michelle Yoscak, 9111 Jollyville Road, #202, Austin, Texas 78759, (512) 343-8520.

Filed: January 13, 1992, 11:25 a.m.

TRD-9200474

Board for Lease of State-owned Lands

Tuesday, January 21, 1992, 2:30 p.m. The Board for Lease of Texas Department of Criminal Justice of the Board for Lease of State-owned Lands will meet at the Stephen F. Austin Building, General Land Office, 1700 North Congress Avenue, Room 833, Austin. According to the agenda summary, the board will discuss approval of the minutes of the previous board meeting; consideration of nominations, terms, conditions and procedures for the April 7, 1992 oil, gas and other minerals lease sale.

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

Filed: January 13, 1992, 2:55 p.m.

TRD-9200512

The Texas A&M University System

Wednesday, January 15, 1992, and on each business day thereafter at 9:30 a.m. respectively, through January 31, 1992. The Board of Regents Pricing Committee of the Texas A&M University System will hold a telephonic meeting at the Board of Regents Meeting Room, College Station. According to the agenda summary, the committee will consider and act upon any lawful subject which come before it, including, among others to consider a "Resolution Authorizing the Issuance, Sale and Delivery of Board of Regents of the Texas A&M University System Permanent University Fund Bonds, Series 1992A and Series 1992E in the maximum aggregate principal amount of \$104,000,000, and approving and authorizing instruments and procedures principal amount of \$104,000,000, and approving and authorizing instruments and procedures relating thereto"; and authorized purchase contracts and other actions necessary in connection with the sale and delivery of the bonds. The meeting or meetings will be held at such time on one or more of such days upon finalization of the terms of sale of one or more series of the bonds by the underwriters. Financial market conditions make it impossible to know the exact date the bonds may be sold on the most advantageous terms to the system.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: January 10, 1992, 10:38 a.m.

TRD-9200385

Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association

Tuesday, January 21, 1992, 9 a.m. The Board of Directors of the Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association will meet at the William P. Hobby Building, Tower I, 333 Guadalupe Street, Austin. According to the agenda summary, the board will consider and possibly approve: the Plan of Operation for the Association; approve the by-laws for the association; bridge agreement for the receiver to provide services to the association; liquidation report to include financial reports and receivership reports; meet in executive session to consider conservator's report, discuss personnel matters and solvency of insurers; and set date for the next meeting.

Contact: Gene Brodhead, 333 Guadalupe Street, Austin, Texas 78701, (512) 322-0223

Filed: January 13, 1992, 11:34 a.m.

TRD-9200477

University Interscholastic League

January 15, 1992, 8 a.m. The State Executive Committee of the University Interscholastic League met at the Hyatt Regency Hotel, Texas 3, 208 Barton Springs Road, Austin. According to the agenda summary, the committee will hear appeals of automatic penalty: Rosebud-Lott, New Braunsfels Canyon, Bremond, Giddings, San Antonio Roosevelt; Agua Dulce High School Player Athletic Code Violation; Coach Jerry Kindred of Academy High School Football Practice Regulations Violation; Coach Ronnie Durham and fans of Oakwood High School Athletic Code Violation; Waxahachie Football Coach and fans Athletic Code Violation; Arlington Houston High School Coach Ken Ozee, Player and Fans Athletic Code Violation; Coach Roy Martinez of Chillicothe High School Athletic Code Violation; and Calallen ISD Coaches Athletic Code Violation.

Contact: B. J. Stamps; 2622 Wichita Street, Austin, Texas 78705, (512) 471-5883.

Filed: January 10, 1992, 2 p.m.

TRD-9200407

Thursday, January 16, 1992, 11 a.m. The Waiver Review Board of the University Interscholastic League met at the Wyndham Southpark Hotel, Ben White at IH-35 South, Austin. According to the agenda summary, the board considered a request for waiver of Sarah Baldwin, Lewisville High School, of the parent residence rule.

Contact: B. J. Stamps, 2622 Wichita Street, Austin, Texas 78705, (512) 471-5883.

Filed: January 10, 1992, 9:15 a.m.

TRD-9200377

Texas Water Commission

Wednesday, January 22, 1992, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, scheduling an item in the entirety or for particular action at a future date or time.

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

Filed: January 9, 1992, 4:48 p.m.

TRD-9200368

Wednesday, January 22, 1992, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission, including specifically the adoption of new or amended agency regulations. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: January 9, 1992, 4:47 p.m.

TRD-9200367

Wednesday, January 22, 1992, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, scheduling an item in the entirety for particular action at a future date or time.

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

Filed: January 13, 1992, 10:01 a.m.

TRD-9200472

Friday, January 24, 1992, 9 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 1149A, Austin. According to the agenda summary, the office will hold a public hearing on a request for reimbursement from the petroleum storage tank remediation fund by Harrisburg Bank.

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

Filed: January 13, 1992, 2:21 p.m.

TRD-9200500

Friday, January 24, 1992, 9 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 1149A, Austin. According to the agenda summary, the office will hold a public hearing on a request for reimbursement from the petroleum storage tank remediation fund by Darby Oil Company.

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

Filed: January 13, 1992, 2:21 p.m.

TRD-9200501

Friday, January 24, 1992, 9 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 1149A, Austin. According to the agenda summary, the office will hold a public hearing on a request for reimbursement from the petroleum storage tank remediation fund by Bandag, Inc.

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

Filed: January 13, 1992, 2:21 p.m.

TRD-9200502

Regional Meetings

Meetings Filed January 9, 1992

The Bastrop Central Appraisal District Board of Directors met at the Bastrop Central Appraisal District, 1200 Cedar Street, Bastrop, January 16, 1992, at 7:30 p.m. Information may be obtained from Dana Ripley, P.O. Box 578, Bastrop, Texas 78602, (512) 321-3925. TRD-9200349.

The Education Service Center Region XI Board of Directors will meet at the Education Service Center Region XI, 3001 North Freeway, Fort Worth, January 21, 1992, at noon. Information may be obtained from R. P. Campbell, Jr., 3001 North Freeway, Fort Worth, Texas 76106, (817) 625-5311. TRD-9200341.

The Edwards County Appraisal District Board of Directors will meet at the New County Annex Building, Rocksprings, January 17, 1992, at 10 a.m. Information may be obtained from Natalie Goggans, P.O. Box 378, Rocksprings, Texas 78880, (512) 683-4189. TRD-9200344.

The Hays County Appraisal District Appraisal Review Board met at 632 A East Hopkins Street, Municipal Building, San Marcos, January 16, 1992, at 9 a.m. Information may be obtained from Lynnell Sedlar, 632 A East Hopkins Street, San Marcos, Texas 78666, (512) 754-7400. TRD-9200342.

The Lamb County Appraisal District Appraisal Review Board will meet at 330 Phelps Avenue, Littlefield, February 4, 1992, at 8 a.m. Information may be ob-

tained from Vaughn E. McKee, RPA, P.O. Box 552, Littlefield, Texas 79339, (806) 385-6474. TRD-9200351.

The Permian Basin Regional Planning Commission General Membership met at the Andrews Country Club, Andrews, January 16, 1992, at 11:30 a.m. Information may be obtained from Terri Moore, P.O. Box 60660, Midland, Texas 79711, (915) 563-1061. TRD-9200350.

The Region One Education Service Center Board of Directors met at 1900 West Schunior, Edinburg, January 13, 1992, at 6 p.m. Information may be obtained from Lauro R. Guerra, 1900 West Schunior, Edinburg, Texas 78539, (512) 383-5611. TRD-9200352.

The Sabine Valley Center Board of Trustees met at the Administration Building, Ben F. Bane Room, 107 Woodbine Place, Bramlette Lane, Longview, January 13, 1992, at 7 p.m. Information may be obtained from Mack O. Blackwell, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9200336.

The San Jacinto River Authority Board of Directors met at the Lake Conroe Office Building Conference Room, Highway 105 West, Conroe, January 15, 1992, at 12:30 p.m. Information may be obtained from James R. Adams, P.O. Box 329, Conroe, Texas 77305, (409) 588-1111. TRD-9200343.

The West Central Texas Council of Governments Criminal Justice Advisory Committee met at 1125 East North 10th Street, Abilene, January 15, 1992, at 10:30 a.m. Information may be obtained from Les Wilkerson, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9200362.

Meetings Filed January 10, 1992

The Bexar Appraisal District Appraisal Review Board will meet at 535 South Main Street, San Antonio, January 17, 1992, at 9 a.m. Information may be obtained from Walter Stoneham, 535 South Main Street, San Antonio, Texas 78204, (512) 224-8511. TRD-9200412.

The Blanco County Appraisal District Board of Directors met at the Blanco County Courthouse Annex, Avenue G and Seventh Street, Johnson City, January 14, 1992, at 6 p.m. Information may be obtained from Hollis Boatright, P. O. Box 338, Johnson City, Texas 78636, (512) 868-4013. TRD-9200417.

The Bosque Central Appraisal District Board of Directors met at the Bosque Central Appraisal District Office, 104 West Morgan Street, Meridian, January 16, 1992, at 10 a.m. Information may be obtained

from Don Whitney, P.O. Box 393, Meridian, Texas 76665-0393, (817) 435-2304. TRD-9200427.

The Burnet County Appraisal District Board of Directors met at 223 South Pierce, Burnet, January 16, 1992, at 6:30 p.m. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291. TRD-9200383.

The Callahan County Appraisal District Board of Directors will meet at the Callahan County Appraisal District Office, 130-A West Fourth Street, Baird, January 20, 1992, at 7 p.m. Information may be obtained from Jane Ringhoffer, P.O. Box 806, Baird, Texas 79504, (915) 854-1165. TRD-9200415.

The Central Texas Council of Governments Central Texas Private Industry Council will meet at 302 East Central, Belton, January 23, 1992, at 9 a. m. Information may be obtained from A. C. Johnson, P.O. Box 729, Belton, Texas 76513, (817) 939-3771. TRD-9200409.

The Dallas Area Rapid Transit Mobility Impaired Committee met at the DART Office, 601 Pacific Avenue, Board Room, Dallas, January 14, 1992, at 11 a.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9200433.

The Dallas Area Rapid Transit Bus, Planning and Development and Operations Committee met at the DART Office, 601 Pacific Avenue, Board Room, Dallas, January 14, 1992, at 1 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9200431.

The Dallas Area Rapid Transit Board of Directors' met at the DART Office, 601 Pacific Avenue, Board Room, Dallas, January 14, 1992, at 3 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9200432.

The Deep East Texas Council of Governments Rural Health Care Task Force met at the Lufkin Civic Center, 601 North Second Street, Lufkin, January 14, 1992, at 2 p.m. Information may be obtained from Katie Bayliss, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9200411.

The Deep East Texas Council of Governments Board of Directors met at the San Augustine Civic and Tourism Center, 611 Columbia Street, San Augustine, January 16, 1992, at 1 p.m. Information may be obtained from Joan Draper, 274 East Lamar, Jasper, Texas 75951, (409) 384-5704. TRD-9200382.

The East Texas Council of Governments Executive Committee met at the Tyler Inn, Tyler, January 16, 1992, at 1:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9200408.

The Ellis County Appraisal District Board of Directors met at 406 Sycamore Street, Waxahachie, January 16, 1992, at 7 p.m. Information may be obtained from R. Richard Rhodes, Jr., P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552. TRD-9200399.

The Golden Crescent Service Delivery Area Private Industry Council, Inc. met at 2401 Houston Highway, Victoria, January 15, 1992, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9200434.

The Hamilton County Appraisal District will meet at the Hamilton County Appraisal District Boardroom, 119 East Henry Street, Hamilton, January 21, 1992, at noon. Information may be obtained from Doyle Roberts, 119 East Henry Street, Hamilton, Texas 76531, (817) 386-8945, FAX (817) 386-8947. TRD-9200380.

The Heart of Texas Council of Governments Private Industry Council met at 300 Franklin Avenue, HOTCOG Board Room, Waco, January 16, 1992, at 5:30 p.m. Information may be obtained from Mary McDow, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822. TRD-9200394.

The Johnson County Rural Water Supply Corporation Board met at the Cleburne Civic Center, 1501 West Henderson, Cleburne, January 15, 1992, at 6 p.m. Information may be obtained from Charlene S. Relle, Highway 171 South, Cleburne, Texas 76033, (817) 645-6646. TRD-9200437.

The Lampasas County Appraisal District Board of Directors met at 109 East Fifth Street, Lampasas, January 16, 1992, at 7 p.m. Information may be obtained from Janice Henry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9200414.

The Liberty County Central Appraisal District Appraisal Review Board met at 315 Main Street, Liberty, January 16, 1992, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722. TRD-9200393.

The Limestone County Appraisal District Board of Directors met at the Limestone County Courthouse, Board Room, Second Floor, Groesbeck, January 15, 1992, at 5:10 p.m. Information may be obtained from Clydene Hyden, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009. TRD-9200381.

The Lower Colorado River Authority Retirement Benefits Committee met at 3700 Lake Austin Boulevard, Austin, January 14-15, 1 p.m. and 8:15 a.m. respectively. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-4043. TRD-9200425.

The Mills County Appraisal District met at the Mills County Courthouse Jury Room, Goldthwaite, January 16, 1992, at 6:30 p.m. Information may be obtained from Cynthia Partin, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD-9200416.

The Red River Boundary Commission met at 3701 Armory Road, at the Texas Army National Guard January 15, 1992, at 3 p.m. and at 4400 Jacksboro Highway, at the Carpenter's Labor Hall, Wichita Falls, at noon. Information may be obtained from Mark Moran, P.O. Box 12068, Austin, Texas 78711, (512) 463-0130. TRD-9200395.

The Scurry County Appraisal District Board of Directors met at the Willow Park Inn Restaurant, Highway 84 and 180, Snyder, January 15, 1992, at 8 a. m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD-9200379.

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Meetings Filed January 13,
1992

The Austin-Travis County Mental Health and Mental Retardation Center Finance and Control Committee met at 1430 Collier Street, Austin, January 15, 1992, at noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9200443.

The Austin-Travis County Mental Health and Mental Retardation Center Operations and Planning Committee will meet at 1430 Collier Street, Austin, January 17, 1992, at 7:30 a.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9200444.

The Barton Springs/Edwards Aquifer Conservation District Board of Directors met at 1124 A Regal Row, Austin, January 16, 1992, at 5:30 p.m. Information may be obtained from Bill E. Couch, 1124 A Regal Row, Austin, Texas 78748, (512) 282-8441. TRD-9200517.

The Brazos Higher Education Authority, Inc. Board of Directors will meet at the Brazos Club of Waco, Bank One Building, Valley Mill and Waco Drive, Waco, January 17, 1992, at 11 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0913. TRD-9200527.

The Brazos Higher Education Service Corporation Board of Directors will meet at the Brazos Club of Waco, Bank One Building, Valley Mill and Waco Drive, Waco, January 17, 1992, at noon. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0913. TRD-9200528.

The Brazos Student Finance Corporation Board of Directors will meet at the Brazos Club of Waco, Bank One Building, Valley Mill and Waco Drive, Waco, January 17, 1992, at 11:30 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0913. TRD-9200526.

The Comal Appraisal District Board of Directors will meet at 430 West Mill Street, New Braunfels, January 20, 1992, at 5:30 p.m. Information may be obtained from Lynn Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222. TRD-9200463.

The Deep East Texas Private Industry Council, Inc. By-Laws Committee will meet at 118 South First Street, Lufkin, January 22, 1992, at 11 a. m. Information may be obtained from Charlene Meadow, 118 South First Street, Lufkin, Texas 75901, (409) 634-4432. TRD-9200507.

The Deep East Texas Private Industry Council, Inc. Worker Adjustment and Educational Advisory Subcommittees will meet at the Lufkin City Hall, Room 102, Lufkin, January 22, 1992, at 1 p.m. Information may be obtained from Charlene Meadows, 118 South First Street, Lufkin, Texas 75901, (409) 634-4432. TRD-9200505.

The Deep East Texas Private Industry Council, Inc. Monitoring Committee will meet at the Lufkin City Hall, Room 102, Lufkin, January 22, 1992, at 1:30 p.m. Information may be obtained from Charlene Meadows, 118 South First Street, Lufkin, Texas 75901, (409) 634-4432. TRD-9200506.

The Deep East Texas Private Industry Council, Inc. will meet at the Lufkin City Hall, Room 102, Lufkin, January 22, 1992, at 2 p.m. Information may be obtained from Charlene Meadows, 118 South First Street, Lufkin, Texas 75901, (409) 634-4432. TRD-9200508.

The Eastland County Appraisal District Board of Directors held an emergency meeting at the Commissioners' Courtroom, Eastland County Courthouse, Main Street, Eastland, January 15, 1992, at 1 p.m. The emergency status was necessary as action on building bids and approval of bids had to be discusses. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 76448, (817) 629-8597. TRD-9200521.

The El Oso Water Supply Corporation Members (Stockholders) will meet at the Karnes City High School Cafeteria, Karnes City, January 18, 1992, at 1:30 p.m. Information may be obtained from Hilmer Wagener, P.O. Box 309, Karnes City, Texas 78118, (512) 780-3539. TRD-9200462.

The Gray County Appraisal District Board of Directors met at 815 North Sumner Street, Pampa, January 16, 1992, at 5 p.m. Information may be obtained from W. Pat Bagley, P.O. Box 836, Pampa, Texas 79066-0836, (806) 665-0791. TRD-9200476.

The Lavaca County Central Appraisal District Appraisal Review Board will meet at the Lavaca County Central Appraisal District, 113 North Main Street, Hallettsville, January 23, 1992, at 9 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9200466.

The Liberty County Central Appraisal District Board of Directors will meet at 315 Main Street, Liberty, January 22, 1992, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722. TRD-9200471.

The Lower Neches Valley Authority Board of Directors will meet at the LNVA Office Building, 7850 Eastex Freeway,

Beaumont, January 21, 1992, at 10:30 a.m. Information may be obtained from A. T. Hebert, Jr., P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011. TRD-9200504.

The North Texas Municipal Water District Board of Directors will meet at the Administrative Offices, 505 East Brown Street, Wylie, January 23, 1992, at 4 p.m. Information may be obtained from Carl W. Riehn, 505 East Brown Street, Wylie, Texas 75098, (214) 442-5405. TRD-9200464.

The TML Group Benefits Risk Pool Board of Trustees, Group Benefits Risk Pool will meet at the San Antonio Marriott Rivercenter, San Antonio, January 17-18, 1992, at 8 a.m. Information may be obtained from Rhonda Ruckel, 211 East Seventh Street, Suite 1100, Austin, Texas 78701, (512) 320-7861. TRD-9200529.

The Upshur County Appraisal District Board of Directors will meet at the Upshur County Appraisal District Office, Warren and Trinity Streets, Gilmer, January 21, 1992, at 1 p.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644, (903) 843-3041. TRD-9200511.

The Wood County Appraisal District Board of Directors met at 217 North Main Street, Conference Room, Wood County Appraisal District, Quitman, January 16, 1992, at 7 p.m. Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box 951, Quitman, Texas 75783-0951, (903) 763-4891. TRD-9200460.

The Wood County Appraisal District Appraisal Review Board will meet at 217 North Main Street, Conference Room, Wood County Appraisal District, Quitman, January 17, 1992, at 9 a.m. Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box 951, Quitman, Texas 75783-0951, (903) 763-4891. TRD-9200461.

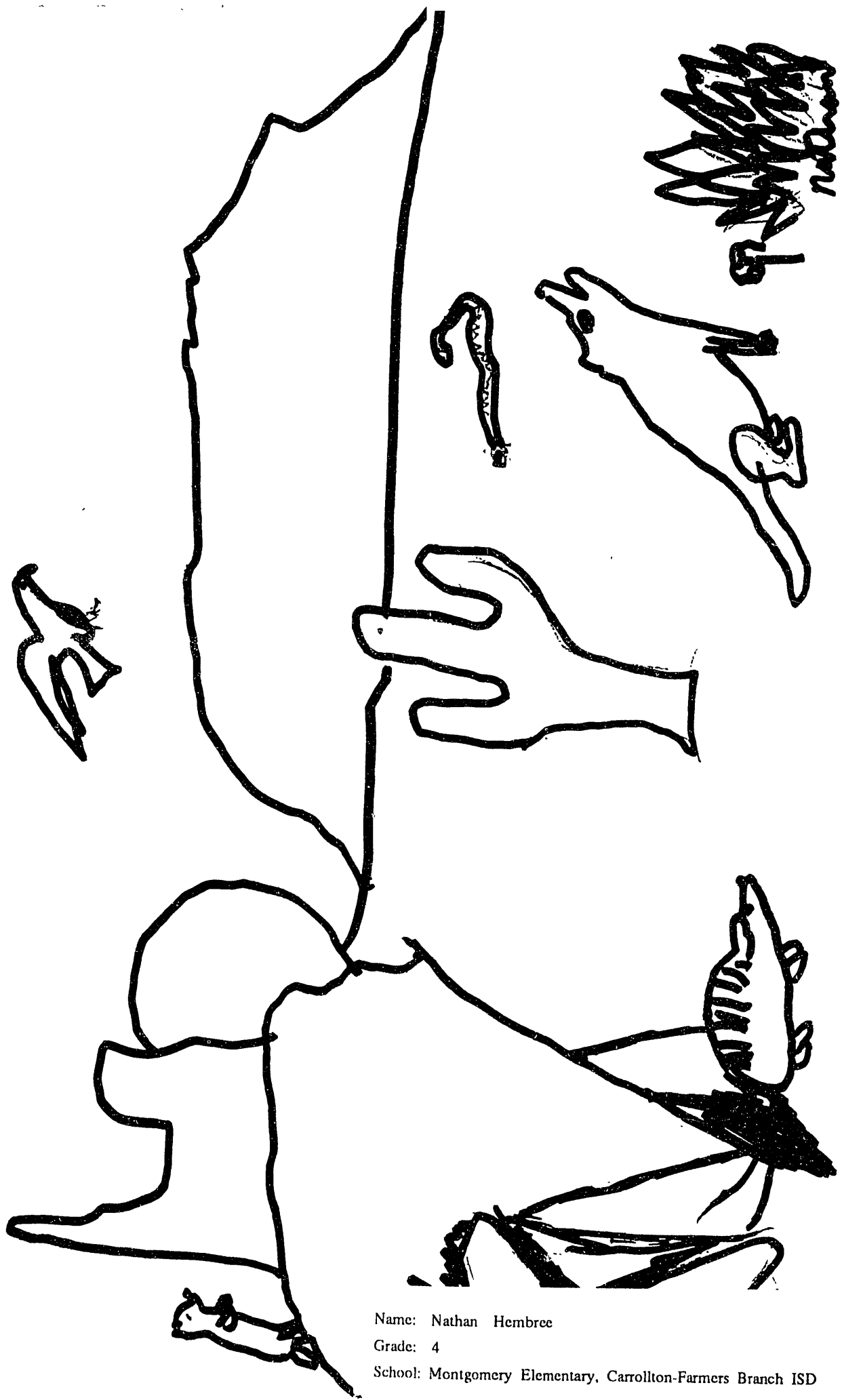
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**Meetings Filed January 14,
1992**

The Central Counties Center for Mental Health and Mental Retardation Services Board of Trustees will meet at 304 South 22nd Street, Temple, January 21, 1992, at 7:45 p.m. Information may be obtained from Robert E. Luckey, Ph.D., 304 South 22nd Street, Temple, Texas 76501, (817) 778-4841. TRD-9200533.

The Houston-Galveston Area Council Natural Resources Advisory Committee met at the Houston Marriott, 2100 Braeswood at Greenbriar, Houston, January 16, 1992, at 3 p.m. Information may be obtained from Ann Weinle, 3555 Timmons, Suite 500, Houston, Texas 77027, (713) 627-3200, ext. 566. TRD-9200537.

The North Texas Municipal Water District Board of Directors will meet at the Westin Galleria Hotel, Dallas, January 24, no meetings, dinner at 7 p.m., 25-26, 1992, at 8:30 a.m. Information may be obtained from Carl W. Riehn, P.O. Box 2408, Wylie, Texas 75098, (214) 442-5405. TRD-9200534.





Name: Nathan Hembree

Grade: 4

School: Montgomery Elementary, Carrollton-Farmers Branch ISD

In Addition

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

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

Texas Air Control Board Notice of Contested Case Hearing Number 292

An examiner for the Texas Air Control Board (TACB) will conduct a contested case hearing on the application for Permit Number C-20345, by which ASARCO Incorporated seeks authorization to construct the ConTop Project at its El Paso, El Paso County, Texas Plant. The Project involves the installation of a new copper processing technology and associated changes at Asarco's El Paso Plant.

Deadline For Requesting To Be a Party. At the hearing, only those persons admitted as parties and their witnesses will be allowed to participate. Presently, the only prospective parties are the applicant and the TACB. Any person who may be affected by emissions from the proposed facility who wants to be made a party must send a specific written request for party status to hearings examiner Cindy Hurd and make sure that this request is actually received at the TACB Central Office, 12124 Park 35 Circle, Austin, Texas 78753 by 5 p.m. on Friday, January 24, 1992. The examiner cannot grant party status after that deadline, unless there is good cause for the request arriving late. Hearing requests, comments, or other correspondence sent to the TACB before publication of this Notice will not be considered as a request for party status. The examiner will decide on party status at the prehearing conference.

Prehearing Conference. The examiner has scheduled a prehearing conference at 1:30 p.m. on Friday, January 31, 1992, at the TACB Central Office, Room 143-E, 12124 Park 35 Circle, Austin, Texas 78753. At this conference, the examiner will consider any motions of the parties, but may grant contested motions for continuance only upon proof of good cause. The examiner will also establish a specific date prior to the hearing on the merits for the exchange of written and documentary evidence.

Time and Place of Hearing. The examiner has set the hearing to begin at 1:30 p.m., on Tuesday, February 18, 1992, at the TACB Central Office, Room 107-W, 12124 Park 35 Circle, Austin, Texas 78753.

What The Applicant Must Prove. This hearing is a contested case hearing under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §13. It is generally conducted like a trial in district court. The applicant must demonstrate, by a preponderance of the evidence, that the proposed facility will meet the requirements of the Texas Clean Air Act, §382.0518, Chapter 382, Texas Health and Safety Code (the Act), and TACB Rule 116.3. These requirements include compliance with all applicable TACB and federal regulations and ambient air quality standards, and application of best available control technology considering the technical practicability and economic reasonableness of reducing or eliminating emissions.

Public Attendance and Testimony. Members of the general public may attend the prehearing conference and the hearing. Those who plan to attend are encouraged to telephone the TACB Central Office in Austin, Texas at (512) 908-1770 a day or two prior to the prehearing conference and the hearing dates in order to confirm the settings, since continuances are sometimes granted. Any person who wants to give testimony at the hearing, but who does not want to be a party, may call the TACB Hearings Section of the Legal Division at (512) 908-1770 to find out the names and addresses of all persons who may be contacted about the possibility of presenting testimony.

Information About The Application and TACB Rules. Information about the application and copies of the TACB's rules and regulations are available at the TACB Regional Office located at 1200 Golden Key Circle, Suite 369, El Paso, Texas 79925, the TACB Central Office located at 12124 Park 35 Circle, Austin, Texas 78753 and the El Paso City-County Health District, 222 South Campbell Street, El Paso, Texas 79901-2897, for your reference.

Legal Authority. This hearing is called and will be conducted under the authority of the Act, §§382.029, 382.0291, 382.030, 382.031, 382.056, and 382.061 and the TACB Procedural Rules 103.11(3), 103.31, and 103.41.

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

TRD-9200255 Steve Spaw, P.E.
Executive Director
Texas Air Control Board

Filed: January 8, 1992

For further information, please call: (512) 908-1451

Notice of Contested Case Hearing Number 293

An examiner for the Texas Air Control Board (TACB) will conduct a contested case hearing to consider whether or not Permit Number C-19679 should be issued to Texas Copper Corporation (the applicant) to construct a copper processing facility to be located east of the intersection of Loop 197 at Highway 146 south of Texas City in Galveston County, Texas 77590.

Deadline For Requesting To Be a Party. At the hearing, only those persons admitted as parties and their witnesses will be allowed to participate. Presently, the only prospective parties are the Applicant and the TACB Staff. Any person who may be affected by emissions from the proposed facility who want to be made a party must send a specific written request for party status to hearings examiner Cindy Hurd and make sure that this request is actually received at the TACB Central Office, 12124 Park 35 Circle, Austin, Texas 78753 by 5 p.m. on Friday, January 24, 1992. The examiner cannot grant party status after that

deadline, unless there is good cause for the request arriving late. Hearing request, comments, or other correspondence sent to the TACB before publication of this notice will not be considered as a request for party status. The examiner will decide on party status at the prehearing conference.

Prehearing Conference. The examiner has scheduled a prehearing conference at 1:30 p.m. on Thursday, February 6, 1992, at the TACB Central Office, Room 143-E, 12124 Park 35 Circle, Austin, Texas 78753. At this conference, the examiner will consider any motions of the parties, but may grant contested motions for continuance only upon proof of good cause. The examiner will also establish a specific date prior to the hearing on the merits for the exchange of written and documentary evidence.

Time and Place of Hearing. The examiner has set the hearing to being at 1:30 p.m. on April 7, 1992, at the TACB Central Office, Room 143-E, 12124 Park 35 Circle, Austin, Texas 78753.

What the Applicant Must Prove. This hearing is a contested case hearing under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §13. It is generally conducted like a trial in district court. The applicant must demonstrate, by a preponderance of the evidence, that the proposed facility will meet the requirements of §382.0158 of the Texas Clean Air Act, Chapter 382, Health and Safety Code, (the Act), and the TACB Rule 116.3. These requirements include compliance with all applicable TACB and federal regulations, including the requirement that the proposed facility will use the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating emissions.

Public Attendance and Testimony. Members of the general public may attend the prehearing conference and the hearing. Those who plan to attend are encourage to telephone the TACB Central Office in Austin, (512) 908-1770 a day or two prior to the prehearing conference and the hearing date in order to confirm the settings, since continuances are sometimes granted. Any person who wants to give testimony at the hearing, but who does not want to be a party, may call the Hearing Section of the TACB Legal Division at (512) 908-1770 to find out the names and addresses of all persons who may be contacted about the possibility of presenting testimony.

Information About the Application and TACB Rules. Information about the application and copies of the TACB's Rules and Regulations are available at the TACB Regional Office located at 5555 West Loop, Suite 300, Bellaire, Texas 77401, the TACB Central Office located at 12124 Park 35 Circle, Austin, Texas 78753, and at the City Hall Office of the City of Texas City located at 1801 9th Avenue North, Texas City, Texas 77590.

Legal Authority. This hearing is called and will be conducted under the authority of the Act, §§382.0291, 382.030, 382.031, 382.0518, and 382.056 and TACB Procedural Rules 103.11(3), 103.31, and 103.41.

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

TRD-9200340 Steve Spaw, P.E.
Executive Director
Texas Air Control Board

Filed: January 9, 1992

For further information, please call: (512) 908-1451

Texas Commission on Alcohol and Drug Abuse

Consultant Contract Award

The following consultant contract award for providing a management and programmatic study is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

The consultant request was published in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6611).

The consultant proposals is for a management and programmatic study of the Institutional Division Chemical Dependency Treatment Program of the Health Services Division of the Texas Department of Criminal Justice.

The consulting firm for this study is: Narcotic and Drug Research, Inc., 11 Beach Street, New York, New York 10013-2490.

The total value of the contract is \$35,000 and the contract period starts January 6, 1992, and ends April 30, 1992.

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

TRD-9200419 Bob Dickson
Executive Director
Texas Commission on Alcohol and Drug Abuse

Filed: January 10, 1992

For further information, please call: (512) 867-8720

Notice of Public Hearings

The Texas Commission on Alcohol and Drug Abuse will hold a public hearing on the proposed emergency revisions to the chemical dependency treatment facility licensure standards.

A public hearing has been scheduled for Thursday January, 29, 1992 at the Texas Commission on Alcohol and Drug Abuse at 720 Brazos, Austin Eight Floor Commissioner's Conference Room.

All written and oral comments will be considered on the proposed revisions to the chemical dependency treatment facility licensure standards by the Texas Commission on Alcohol and Drug Abuse. Proposed rules have been presented to the board of commissioners at the December 17, 1991 meeting with an extended comment period through March 1, 1992. Additional information may be obtained from the Texas Commission on Alcohol and Drug Abuse, Mike Ezzell, Director, Program Compliance Division, 720 Brazos, Suite 403, Austin, Texas 78701, (512) 867-8110; contact person: Emelda Mendoza.

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

TRD-9200418 Bob Dickson
Executive Director
Texas Commission on Alcohol and Drug Abuse

Filed: January 10, 1992

For further information, please call: (512) 867-8720

The Omnibus Reconciliation Act of 1981 (Public Law 97-35, as amended) requires annual public hearings on the intended use of federal funds allocated under the Alcohol, Drug Abuse, Mental Health (ADM) Services Block Grant.

Additionally, the state, through Texas Civil Statutes, Article 6252-13e, mandates that agencies responsible for administering block grant funds must hold public hearings in four locations once every two years as a mechanism for public input on development of the agency's budget request for the next biennium. Consistent with these mandates, the Texas Commission on Alcohol and Drug Abuse (commission) is holding public hearings in February. The purpose of these hearings is to take testimony regarding the commission's intended use of ADM funds for fiscal year 1993 and the commission's legislative appropriations request for the 1994-1995 biennium.

Specific comments will be solicited on the following issues: the intended use of public funds for substance abuse services and services for problem and compulsive gamblers; the magnitude of the substance abuse problem; and, the current availability of and need for substance abuse services.

At these hearings, preliminary reports of the intended use of funds for federal fiscal year 1993 (beginning October 1, 1992) will be provided, along with relevant budget information.

Five public hearings have been scheduled as follows: February 10, 1992, McAllen, 9:30 a.m.-11:30 a.m., Library, Exhibit Room First Floor, 601 North Main; February 11, 1992, Houston, Houston-Galveston Area Council, 4 p.m.-6 p.m., 355 Timmons Lane, Keplinger Building, Suite 500; February 12, 1992, Longview, 4 p.m.-6 p.m., City Council Chambers, 300 West Cotton; February 13, 1992, San Angelo, 2 p.m.-4 p.m., Concho Valley Council of Governments, 5002 Knickerbocker; and February 14, 1992, Waco, 1 p.m.-3 p.m., Heart of Texas Council of Governments, 320 Franklin Avenue.

Representatives from the Texas Commission on Alcohol and Drug Abuse will be present to explain the planning process and consult with and receive comments from interested citizens and affected groups. All written and oral comments will be considered in the preparation of the final plan and budgets.

Preliminary intended use reports can be obtained from all regional councils of governments or by contacting the Texas Commission on Alcohol and Drug Abuse, 720 Brazos, Suite 403, Austin, Texas 78701, (512) 867-8700, contact persons, Rebecca Davis. Written comments will be accepted through February 28, 1992.

Issued in Austin, Texas, on January 9, 1992.

TRD-9200420 Bob Dickson
Executive Director
Texas Commission on Alcohol and Drug Abuse

Filed: January 10, 1992

For further information, please call: (512) 867-8720

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Texas Board of Architectural Examiners

Correction of Error

The Texas Board of Architectural Examiners submitted emergency and new proposed sections, concerning interior designers for publication in the December 20, 1991, *Texas Register* (16 TexReg 7411).

In §5.95(b) the word "without" in the fifth line should read "with".

In §5.131(b) the words (or constructions of the words "interior design") are duplicated.

In §5.155, the word "Addition" should be "Addiction".

In §5.201, the word "the" should be deleted in the twelfth line.

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Office of the Attorney General

Consultant Contract Award

In accordance with Texas Civil Statutes, Article 6252-11c, 6(a), the Office of the Attorney General (OAG) files this report announcing the award of a contract for consultant services to David M. Griffith & Associates, Limited, 8100 Springwood Drive, Suite 200, Irving, Texas 75603. The request for proposal was published in the October 11, 1991, issue of the *Texas Register* (16 TexReg 5796). David M. Griffith & Associates, Limited, is to prepare the Indirect Cost Plan for state fiscal year 1993, review and update the OAG standardized legal billing rate system, and negotiate an agreement with the United States Department of Health and Human Services concerning both of the above mentioned.

The contract is for an amount not to exceed \$50,000. The beginning date of the contract is January 10, 1992, and the ending date is December 31, 1992. Completion date for deliverables include: February 28, 1992, for the Indirect Cost Plan; June 30, 1992, for review and updating the legal billing rate system; and a target date of August 31, 1992, for a negotiated agreement with the United States Department of Health and Human Services.

For further information, please contact Stan Wedel, Acting Deputy Attorney General at (512) 463-2095.

Issued in Austin, Texas, on January 7, 1992.

TRD-9200253 Will Pryor
First Assistant Attorney General
Office of the Attorney General

Filed: January 8, 1992

For further information, please call: (512) 463-2095

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Texas Department of Banking

Notice of Application

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On January 6, 1992, the banking commissioner received an application to acquire control of Community Bank, Rockwall, by Alston R. Colbert, Rockwall, et al.

Additional information may be obtained from: William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1317.

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

TRD-9200260 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: January 8, 1992

For further information, please call: (512) 479-1200

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State Banking Board

Notice of Hearing Cancellations

As no opposition has been noted in the application for the ProBank, N.A., The Woodlands, Texas to convert to a state charter under the name of ProBank, the hearing previously scheduled for Tuesday, January 14, 1992, has been cancelled.

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

TRD-9200259 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: January 8, 1992

For further information, please call: (512) 475-1317

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As no opposition has been noted in the application for domicile change by the Interstate Bank North, Houston, the hearing previously scheduled for Thursday, January 16, 1992, has been cancelled.

Issued in Austin, Texas, on January 6, 1992

TRD-9200258 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: January 8, 1992

For further information, please call: (512) 475-1317

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Texas Cancer Council

Public Review and Comment

The Texas Cancer Council hereby notifies all interested parties that copies of the revised Texas Cancer Plan are available for review and comment. A copy may be obtained by calling or writing: Texas Cancer Council, ATTN: Susan Reid, P. O. Box 12097, Austin, Texas 78711, (512) 463-3190.

This document is a revision of the Texas Cancer Plan, which was originally produced by the Legislative Task Force on Cancer in Texas 1986. The revisions have been made based on recommendations from four workgroups, comprising 30 volunteers from cancer-related fields. This document is the overall guide for controlling and treating cancer in Texas among the public, private, and volunteer sectors.

The deadline for comments to be received in the Texas Cancer Council office is Monday, March 2, 1992.

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

TRD-9200422 Emily F. Untermeyer, M.P.H.
Executive Director
Texas Cancer Council

Filed: January 10, 1992

For further information, please call: (512) 463-3190

Children's Trust Fund of Texas

Correction of Error

Children's Trust Fund of Texas Council submitted an announcement of the availability of funds to establish programs to prevent child abuse and neglect. The notice appeared in the January 3, 1992, *Texas Register* (17 TexReg 65).

Due to a typographical error by the *Texas Register* the telephone number for the Mental Health Association in Austin was incorrect. The correct number is (512) 454-3706.

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Comptroller of Public Accounts

Request for Advertising Services

Notice of Request for Proposals. Pursuant to the State Lottery Act, the Lottery Division of the Comptroller of Public Accounts announces a request for proposals (RFP) to secure proposals to provide advertising services for the Texas Lottery.

Contact Person. Parties interested in making a proposal should contact Charles C. Johnstone, Senior Legal Counsel, Comptroller of Public Accounts, 111 East 17th Street, Room 113, Austin, Texas 78774, (512) 463-4091, for a complete copy of the RFP. The RFP will be available for pickup at the address listed on Friday, January 17, 1992, between 1 p.m. and 5 p.m. (CST), and during normal business hours thereafter.

Closing Date. Proposals must be received by Charles Johnstone no later than 4 p.m. (CST), on February 13, 1992. Proposals received after this date and time will not be considered.

Award Procedure. All proposals will be subject to evaluation by a committee based on evaluation criteria set forth in the RFP. The committee will determine which proposal best meets these criteria and will make a recommendation to the director, who will make the final decision. A proposer may be asked to clarify its proposal, which may include making an oral presentation prior to final selection.

The Lottery Division reserves the right to accept or reject any or all proposals submitted. The Lottery Division is under no legal or other requirements to execute a resulting contract on the basis of this notice or the distribution of the RFP. Neither this notice nor the RFP commit the Lottery Division to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: RFP available-January 17, 1992, after 1 p.m. (CST); letter of intent to bid due-January 28, 1992, by 4 p.m. (CST); mandatory proposer's conference-January 31, 1992, at 10 a.m. (CST); proposals due-February 13, 1992, by 4 p.m. (CST).

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

TRD-9200421 Charles C. Johnstone
Senior Legal Counsel
Comptroller of Public Accounts

Filed: January 10, 1992

For further information, please call: (512) 404-3721

**Office of Consumer Credit
Commissioner**
Notice of Rate Ceilings

las and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formu-

| <u>Types of Rate Ceilings</u> | <u>Effective Period (Dates are Inclusive)</u> | <u>Consumer (1)/Agricultural/ Commercial (2) thru \$250,000</u> | <u>Commercial(2) over \$250,000</u> |
|---|---|---|---|
| Indicated (Weekly) Rate - Art. 1.04(a)(1) | 01/13/92-01/19/92 | 18.00% | 18.00% |
| Retail Credit Card Annual Rate - Art. 1.11(1) | 01/01/92-03/31/92 | 18.00% | N.A. |

(1) Credit for personal, family or household use. (2) Credit for business, commercial, investment or other similar purpose.

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

TRD-9200346 Al Endsley
Consumer Credit Commissioner

Filed: January 9, 1992

For further information, please call: (512) 479-1280

◆ ◆ ◆
Texas Education Agency
Request for Exhibits

The Texas Education Agency (TEA) is requesting exhibits on commercially available materials and services pertaining to dropout prevention and recovery at the Fifth Annual Texas Conference on Students in At-Risk Situations to be held in Austin, at the Doubletree and Red Lion Hotels on April 12-15, 1992. The conference will be attended by approximately 1,500 participants from Texas school districts as well as other educational and governmental entities and Jol Training Partnership Act service delivery areas. Exhibitors will be selected on a first-come basis but will need to demonstrate the relevance of their programs and materials to dropout prevention and recovery. No more than 60 exhibits will be accepted due to space limitations. A flat fee of \$250 will be charged to each exhibitor. The exhibits are scheduled for Sunday, April 12, (3 p.m. until 9 p.m.), Monday, April 13 (7 a.m. until 5 p.m.), and Tuesday, April 14 (11 a.m. until 5:30 p.m.). Minority-owned businesses are encouraged to apply. All inquiries should be made to Sylvia Marquez, Texas Education Agency, Dropout Information Clearinghouse, William B. Travis State Office Building, 1701 North Congress Avenue, Austin, Texas 78701-1494, at (512) 463-9444 or at 1-800-828-7475.

Issued in Austin, Texas, on January 9, 1992.

TRD-9200447 Lionel R. Meno
Commissioner of Education

Filed: January 13, 1992

For further information, please call: (512) 463-9701

◆ ◆ ◆

Office of the Governor
Request for Proposals

This request for engineering services proposals and economics/transportation-planning proposals is filed pursuant to the provisions of Texas Civil Statutes, Article 6252-11c and Article 664-4.

Notice of Invitation. The Governor's Office invites proposals from firms and individuals to conduct transportation planning and engineering feasibility studies for a South Texas transportation corridor. The studies will include a traffic and revenue analysis of possible toll road options.

The studies must be conducted in conformance with Rider 14 of the General Appropriations Act of 1991 (House Bill 1, 72nd Legislature, First Called Session, page I-133), which states, in pertinent part, as follows:

14. INTERNATIONAL TRANSPORTATION CORRIDOR STUDY. The Office of the Governor is hereby appropriated \$250,000 . . . for the contracting of planning and engineering studies regarding an international transportation corridor between Monterrey, Mexico, and Corpus Christi via Laredo. The study shall be conducted in two parts: an analysis of the impacts of a free trade agreement on transportation facilities in Mexico and Texas; and an engineering feasibility study of an international transportation corridor linking Mexico and the Port of Corpus Christi. The study shall include the feasibility of outer loop roadways around Laredo, Alice, and Corpus Christi with a limited access toll road connecting these loops.

In accordance with this legislative mandate, this request for proposals is separated into two sub-parts.

SUB-PART I: Economics/Transportation-Planning Study.

A. Economics/Transportation-Planning Services To Be Performed. Contractors selected will perform the tasks necessary to complete the requisite economics/transportation-planning study in a timely and efficient manner, as detailed in the appropriations rider quoted above. These services include, but are not limited to, the following: assemble data on current transportation facilities in Mexico and Texas with respect to nature and condition, method of funding capital costs and maintenance-operating expenses, network capacity, current and projected network demand, nature of travel served, and an analysis of passenger versus freight movements;

analyze the Free Trade Agreement with respect to transportation system implications; develop alternative operating scenarios; determine transportation system impacts under each scenario; and identify preferred scenarios and recommendations.

B. Selection Criteria For Transportation Planning Study. Contract awards for the economics/transportation-planning study will be based on the following criteria: qualifications, and demonstrated ability to perform all tasks necessary to complete the study in a timely, efficient, and cost-effective manner. Proposals must specifically state the name, location, qualifications, and demonstrated abilities of the person(s) who will be primarily responsible for the work. A proposal must state whether members of the proposed project team have specific experience regarding international or regional transportation planning, or specific experience regarding South Texas transportation issues; if so, this prior experience must be described.

Proposals for the economics/transportation-planning study must include a bid showing the estimated amount that will be charged for conducting the study. This requirement does not apply if the proposer is exempt by law from submitting such bids. The Governor's Office may select a proposal other than the one with the lowest estimate.

SUB-PART II: Engineering Feasibility Study.

A. Engineering Services To Be Performed. Contractors selected for the engineering feasibility study will perform the tasks necessary to complete the requisite engineering feasibility study in a timely and efficient manner, as detailed in the appropriations rider quoted above. These services include, but are not limited to, the following: an analysis of the likely costs of constructing and maintaining the described transportation corridor and its alternatives; an analysis of financing options, specifically including a traffic and revenue study of possible toll road options. It is anticipated that the traffic and revenue study will include at least the following items: identification and analysis of present traffic levels, induced traffic levels, and future traffic potentials; estimates of facility operating and maintenance expenses; estimates of potential toll revenues; and recommendations for appropriate toll collection systems and toll rate schedules.

B. Selection Criteria For Engineering Feasibility Study. The engineering feasibility contract award(s) will be based on the following criteria: qualifications, and demonstrated ability to perform all tasks necessary to complete the engineering feasibility study in a timely and efficient manner. Proposals must specifically state the name, location, qualifications, and demonstrated abilities of the person(s) who will be primarily responsible for the work. A proposal must state whether members of the proposed project team have specific experience regarding South Texas transportation issues; if so, this prior experience must be described.

GENERAL GUIDELINES APPLICABLE TO BOTH SUB-PARTS.

Contact Person. To obtain answers to questions concerning this project, contact David Talbot, General Counsel to the Governor, P.O. Box 12428, Austin, Texas 78711; (512) 463-1788.

Closing Date. Six copies of the sealed proposals should be sent to Anthony Haynes, Director of Administration, Governor's Office, P.O. Box 12428, Austin, Texas 78711; (512) 463-1776. Expensively-prepared proposals are neither required nor requested. The Governor's Office is

located on the Sixth Floor of the Sam Houston State Office Building, 201 East 14th Street, Austin, Texas 78701. Proposals should be sent by certified mail, courier or hand-delivery, and must be received no later than 4 p.m., February 18, 1992. Proposals received after that time and proposals submitted by facsimile will not be considered. The envelope or package containing the proposal should clearly state that it contains a sealed bid, and that it is not to be opened except by authorized Governor's Office employees.

The Governor's Office reserves the right to negotiate both budget and scope of work with the finalists. The Governor's Office reserves the right to select more than one proposal, and to select different proposals for different aspects of the studies. The Governor's Office reserves the right to reject any or all proposals and is under no legal requirement to execute a contract on the basis of this request for proposals.

Selection Procedures. Final selection of contractors will be based on the recommendations of a review committee. If two or more proposals are ranked so closely that a decision cannot be made, the review committee may request finalists to provide additional information and/or to meet with staff in Austin prior to the final selection of the contractors. No respondent will be reimbursed for any cost incurred in the preparation, submission, or clarification of a proposal. Minority, Disadvantaged, and Women's Business Enterprises are encouraged to submit proposals.

Combined Proposals Welcome But Not Required. Applicants may submit a combined proposal for both sub-parts or may submit a proposal for one sub-part alone. The Governor's Office welcomes combined engineering/transportation-planning proposals; however, a combined proposal must be clearly organized so that the qualifications for the engineering study are separately identifiable from the qualifications for the transportation planning study. The Governor's Office reserves the right to select a combined proposal, or separate proposals, or no proposal at all.

Financial Constraints. The Legislature has appropriated a total of \$250,000 to the Governor's Office for the completion of both the engineering and the transportation planning/free trade studies.

Issued in Austin, Texas, on January 8, 1992.

TRD-9200356
Mary Beth Rogers
Chief of Staff
Governor's Office

Filed: January 9, 1992

For further information, please call: (512) 463-1788

◆ ◆ ◆ Texas Department of Health Correction of Error

The Texas Department of Health submitted adopted amendments to 25 TAC §289.116, concerning use of Radiation Machines in the Healing Arts and Veterinary Medicine. The rule appeared in the December 17, 1991, *Texas Register* (16 TexReg 7349).

Due to errors in the agency's submission, the preamble should be corrected as follows.

The last sentence of the first paragraph should read as follows:

"The amendment repeals the existing section on maintenance schedules described in Part 32.30(h). This section is being replaced by new Part 32.20(h) in the Texas Regulations for the Control of Radiation."

The last sentence of the fourth paragraph should read as follows:

"The department's response is that The Medical Physics Practice Act is to be implemented by the department's Professional Licensing and Certification Division and the rules implementing this act have not yet been promulgated. Therefore, the department made no changes to the rule as a result of the comments."

◆ ◆ ◆

Notice of Intent to Revoke a Radioactive Material License

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13 (25 TAC §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against Independent Inspection Corporation, Wichita Falls, L02513.

The department intends to revoke the radioactive material license; order the licensee to cease and desist use of such radioactive materials; order the licensee to divest himself of the radioactive material; and order the licensee to present evidence satisfactory to the bureau that he has complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the items in the complaint are corrected within 30 days of the date of the complaint, the department will not issue an order.

This notice affords the opportunity to the licensee for a hearing to show cause why the radioactive material license should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed, the radioactive material license will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, The Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

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

TRD-9200398 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: January 10, 1992

For further information, please call: (512) 835-7000

◆ ◆ ◆

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13 (25 TAC §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following licensee: Cardinal Surveys Company, Odessa, L03901.

The department intends to revoke the radioactive material license; order the licensee to cease and desist use of radioactive material; order the licensee to divest himself of such radioactive material; and order the licensee to present evidence satisfactory to the bureau that he has complied

with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid and the items in the complaint are corrected within 30 days of the date of the complaint, the department will not issue an order.

This notice affords the opportunity to the licensee for a hearing to show cause why the radioactive material license should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed, or if the fee is not paid or the items in the complaint are not corrected, the radioactive material license will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, The Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

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

TRD-9200397 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: January 10, 1992

For further information, please call: (512) 835-7000

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Permit Application for Municipal Solid Waste Site Notice of Filing

Notice is hereby given that Waste Management of Texas, Inc. presently holds Solid Waste Permit Number 1983 as heretofore issued by the Texas Department of Health for the operation of a Type IV municipal solid waste site located approximately 2.5 miles south of the FM 496 and IH 20 intersection and west of and adjacent to Dick Price Road, southwest of Kennedale, Tarrant County.

Said permit holder has now filed with the Texas Department of Health an application to amend the aforesaid permit to operate an additional 145.123 acres as a Type I municipal solid waste site contiguous to the existing 38.107 acre permitted landfill site.

The site covers approximately 183.23 acres of land, and is to daily receive approximately 1,065 tons of solid waste under the regulatory jurisdiction of the Texas Department of Health for disposal or other processing in accordance with the department's "Municipal Solid Waste Management Regulations." A technical review of the application is being made by the department's Bureau of Solid Waste Management. The application will also be reviewed by various state and local agencies which have a jurisdictional interest.

No public hearing will be held on this application unless a person affected has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, has suffered or will suffer actual injury or economic damage by the granting of the application. If a hearing is requested by a person affected, or if the Bureau of Solid Waste Management determines that a public hearing should be held, notice of such hearing will be published in a newspaper regularly published or circulated in the county in

which the site is located at least 30 days prior to the date of such hearing.

Requests for a public hearing and/or requests for a copy of the application shall be submitted in writing to the Chief, Bureau of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7271.

Issued in Austin, Texas, on January 8, 1992.

TRD-9200280 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: January 8, 1992

For further information, please call: (512) 458-7271

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

**Notice of Public Hearing, Texas
Department of Housing and
Community Affairs Low Income
Housing Tax Credit State Allocation
Plan**

Notice is hereby given of public hearing to be held by the Texas Department of Housing and Community Affairs on Monday, January 27, 1992, at Howard Johnson North 7800 North IH 35, Austin, Travis County, Texas 78753, 1 p.m., with respect to the department's proposed plan for allocation of low-income housing tax credits among projects in Texas as mandated by Congress when it extended the provisions of Section 42 of the Internal Revenue Code of 1986, as amended, concerning low-income housing tax credits. The proposed state allocation plan prepared by the department for discussion at the public hearing designates, among other things, threshold criteria, evaluation factors, selection criteria, final ranking, tax exempt bond financed projects, credit amount and compliance monitoring for projects which request an allocation of low-income housing tax credits in the State of Texas.

All interested persons are invited to attend this public hearing to express their views on the proposed allocation plan to establish selection criteria, priorities and procedures for allocating the housing tax credits, monitoring compliance and to further assist the department in determining the actual housing needs of families of low and moderate income in the State of Texas. Persons who intend to appear at the hearing are encouraged to contact Ninfa Moncada in advance of the hearing.

Questions and requests for a copy of the proposed allocation plan may be directed to: Ninfa Moncada, Interim Director of Housing Development, Robert Johnston, LIHTC Manager, Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Suite 300, Austin, Texas 78704, (512) 474-2974, extension 119 and 112.

All interested persons unable to attend the hearing may submit their views in writing to Nina Moncada before the hearing. All written comments will be available for public inspections.

This published notice and the above-described hearing are held in satisfaction of the requirements of the Internal Revenue Code of 1986, §42(m), as amended.

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

TRD-9200438 Mario Agullar
Attorney
Texas Department of Housing and
Community Affairs

Filed: January 10, 1992

For further information, please call: (512) 474-2974

◆ ◆ ◆
**Texas Department of Human Services
Correction of Error**

The Texas Department of Human Services submitted proposed new 40 TAC §29.1104, regarding Texas Medicaid reimbursement methodology for publication in the December 20, 1991, *Texas Register* (16 TexReg 7463).

On page 16 TexReg 7464, §29.1104(a)(2)(D), second sentence, should read "The initial value of the conversion factor is \$26.873." As published, the dollar figure is erroneously shown as \$26,873 (with a comma instead of a period between the 6 and 8).

On page 16 TexReg 7465, the section number of the repeal should be §29.1104, Reasonable Charges, instead of §29.1004, Reasonable Charges.

◆ ◆ ◆
**Texas Department of Insurance
Company Licensing**

The following applications have been filed with the Texas Department of Insurance and are under consideration.

1. Application for Admission to do business in Texas for American Guardian Life Assurance Company, a foreign life insurance company. The home office is in Baltimore, Maryland.
2. Application for Admission to do business in Texas for Anchor Benefit Consulting, Inc., a foreign third party administrator. The home office is in Reno, Nevada.
3. Application for Admission to do business in Texas for Preferred Administrative Services, Inc., a foreign third party administrator. The home office is in Kansas City, Missouri.
4. Application for name change for Ticor Indemnity Company, a foreign casualty company. The home office is in Atlanta, Georgia. The proposed new name is TIC Indemnity Company.

Issued in Austin, Texas, on January 8, 1992.

TRD-9200459 Linda K. von Quintus-Dom
Chief Clerk
Texas Department of Insurance

Filed: January 13, 1992

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

◆ ◆ ◆
**Public Utility Commission of Texas
Notice of Application To Expand The
San Angelo Base Rate Area**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on Decem-

ber 27, 1992, to expand the San Angelo base rate area pursuant to the Public Utility Regulatory Act, §§16(a), 18(b), 50, 52, and 54. A summary of the application follows.

Docket Title and Number. Application of GTE Southwest, Inc. to expand the San Angelo base rate area to include several areas which have been incorporated into the San Angelo to include several areas which have been incorporated into the San Angelo city limits.

The Application. In Docket Number 10828, GTE Southwest, Inc. seeks approval of its application to expand the San Angelo base rate area to include several areas which have been incorporated into the San Angelo city limits.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Office at (512) 458-0256, or (512) 458-0221 teletypewriter for the deaf on or before February 28, 1992.

Issued in Austin, Texas, on January 8, 1992.

TRD-9200353 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: January 9, 1992

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

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Railroad Commission of Texas LP-Gas Advisory Committee Meeting

The LP-Gas Division of the Railroad Commission of Texas announces a meeting of the LP-Gas Advisory Committee to be held on Tuesday, February 25, 1992, 9 a.m., Room 8-101, William B. Travis Building, 1701 North Congress, Austin.

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

TRD-9200388 Martha V. Swanger
Hearing Examiner, Gas Utilities/LP-Gas
Section, Legal Division
Railroad Commission of Texas

Filed: January 10, 1992

For further information, please call: (512) 463-6949

◆ ◆ ◆

Texas Department of Transportation, Division of Aviation Notice of Contract Award

The following consultant proposal request for providing professional engineering services is filed under the provisions of Texas Civil Statutes, Article 664-4.

The consultants request for professional engineering services was published in the *Texas Register* on September 3, 1991, (16 TexReg 4858).

The consultant proposals will be for professional engineering services for the design and construction administration phases for the following TxDOT Project: 93/03-051 Kate Craddock Field (Burnet City).

The engineering firm for these services is: Thonoff Consulting Engineers, Inc., 1301 Capitol of Texas Highway South, Suite A-304, Austin, Texas 78746.

The total value of the contract is \$40,000 and the contract period starts on January 6, 1992, until the completion of the project.

If there are any questions, please contact Lydia Scarborough, Assistant Division Director, Division of Aviation, Texas Department of Transportation, (512) 476-9262.

Issued in Austin, Texas, on January 7, 1992.

TRD-9200288 Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Filed: January 8, 1992

For further information, please call: (512) 463-8630

◆ ◆ ◆

The following consultant proposal request for providing professional engineering services is filed under the provisions of Texas Civil Statutes, Article 664-4.

The consultants request for professional engineering services was published in the *Texas Register* on May 7, 1991 (16 TexReg 2545).

The consultant proposals will be for professional engineering services for the design and construction administration phases for the following TxDOT Project: Airport Layout Plans for up to 20 general aviation airports.

The engineering firm for these services is: Parkhill, Smith and Cooper, 4010 Avenue R, Lubbock, Texas 79412.

The total value of the contract is \$30,000 and the contract period starts on November 6, 1991, until the completion of the project.

If there are any questions, please contact Lydia Scarborough, Assistant Division Director, Division of Aviation, Texas Department of Transportation, (512) 476-9262.

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

TRD-9200436 Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Filed: January 10, 1992

For further information, please call: (512) 463-8630

◆ ◆ ◆

Texas Water Commission Correction of Error

The Texas Water Commission submitted Emergency adopted 31 TAC §320.21 and §320.22, and Adopted 31 TAC §§320.1-320.9 for publication in the December 13, 1991, *Texas Register* (16 TexReg 7135, 7211).

In the second paragraph, fourth sentence of the preamble "Texas Water Commission Regional Assessments of" should be deleted so the sentence can read: "The new sections are adopted with the intent of developing..."

In the 19th paragraph, second sentence of the preamble the number one should be deleted and "left up to" should be inserted. The sentence would read as follows: "The commission responds that this type of decision will be left up to entities performing the assessments."

In §320.6(b)(13)(B) the language was garbled and should read: "(B) total number of LPSTs in each segment;"

In the second paragraph, first sentence of the emergency sections the sentence should read: "The bill authorizes the commission to recover the reasonable costs of administering the water quality management programs under the Texas Water Code, §26.0135 from all users of water and wastewater permit holders in each watershed generally in proportion to their right to use ..." The underlined words were inadvertently omitted.



Public Hearing Notice

A representative of the Texas Water Commission will conduct a public hearing on: Tuesday, February 18, 1992, 7 p.m., Humanities and Business Building, Room 2. 0106, Campus of the University of Texas at San Antonio, San Antonio.

This hearing is held pursuant to the Water Code, §26.046, to receive evidence from the public on actions the commission should take to protect the Edwards Aquifer from pollution.

Persons who have questions concerning the hearing should contact Kevin McCalla, Senior Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069.

Issued in Austin, Texas, on January 13, 1992.

TRD-9200450 Claire Arenson
 Office of Hearings Examiner
 Texas Water Commission

Filed: January 13, 1992

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



Texas Workers' Compensation Commission

Notice of Public Hearing on Proposed §§130.101-130.110

The Texas Workers' Compensation Commission has scheduled a public hearing to solicit public comment for proposed rules concerning supplemental income benefits on Thursday, January 23rd beginning at 3 p.m. until oral testimony is completed. Depending upon attendance, a time limitation may be imposed and participants may be asked to limit their oral testimony by giving a summary. Written testimony will be accepted and is encouraged. If you have written testimony or handouts, the commission requests that you provide ten copies for commission use. There will not be any visual aid equipment available. Proposed §§130.101-130.110 were published in the November 5, 1991, issue of the *Texas Register* (16 TexReg 6272).

The public hearing will take place in the Tippy Foster Meeting Room 910, in the Southfield Building at 4000 South IH-35, Austin, Texas 78704.

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

TRD-9200396 Ernest Boardman
 Acting General Counsel
 Texas Workers' Compensation Commission

Filed: January 10, 1992

For further information, please call: (512) 440-3972



Using Art to Help Children in Trouble With the Law

By Sunny Nash

This activity--ink drawings of what appear to be monsters--was designed to get the children to render visually how they thought fear would look. Common fears among these children were: being abused by family members, being attacked by other children and non-family adults, being abandoned by parents, being ridiculed and laughed at by school mates, being thought of as dumb or ugly and being friendless and unaccepted.

The tooth-shaped skull with the dagger was done by a 10-year-old, depicting fear of pain. The picture of the

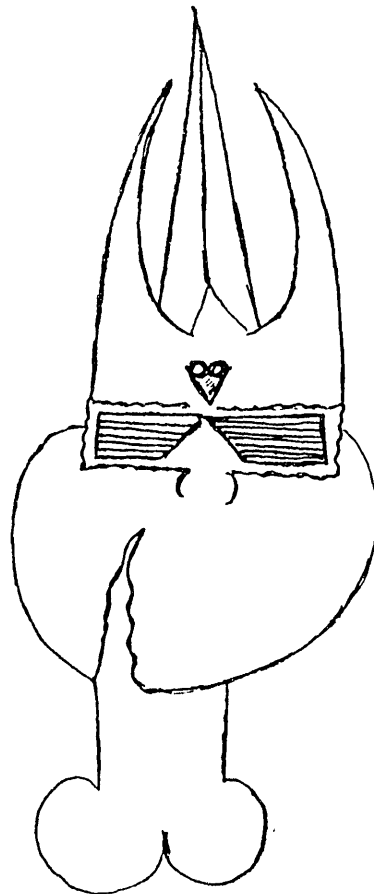
monster was a 13-year-old's rendition of the fear of being put out of his home.

Once rendered on paper, the children dealt verbally with the thing most feared. Children who commit crimes and children who are at risk of becoming involved in criminal activity tend to have a greater number of fears and insecurities than other children. Further, children in trouble with the law generally lack the family support to deal with their fears and other emotions.

Children who commit crimes come from all parts of society--the very poor, the very wealthy and everything in be-

tween. In a like manner, crime crosses age, social, cultural, racial and ethnic lines. Participation in this specialized art project helped children to identify their fears and other emotions and helped them to more effectively control those emotions. After art sessions, professional staff working with the young detainees reported improvements in their dispositions and attitudes toward other people.

Ms. Nash works with juvenile offenders in the Brazos County Juvenile Detention Center, helping them express themselves through art. Her column is a monthly feature of the Texas Register student art project.





1992 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1992 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on February 28, November 6, December 1, and December 29. A bullet beside a publication date indicates that the deadlines have been moved because of state holidays.

| FOR ISSUE PUBLISHED ON | ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M. | ALL NOTICES OF OPEN MEETINGS BY 10 A.M. |
|-------------------------|---|---|
| 1 *Friday, January 3 | Friday, December 27 | Tuesday, December 31 |
| 2 *Tuesday, January 7 | Tuesday, December 31 | Thursday, January 2 |
| 3 Friday, January 10 | Monday, January 6 | Tuesday, January 7 |
| 4 Tuesday, January 14 | Wednesday, January 8 | Thursday, January 9 |
| 5 Friday, January 17 | Monday, January 13 | Tuesday, January 14 |
| 6 Tuesday, January 21 | Wednesday, January 15 | Thursday, January 16 |
| Friday, January 24 | 1991 ANNUAL INDEX | |
| 7 Tuesday, January 28 | Wednesday, January 22 | Thursday, January 23 |
| 8 Friday, January 31 | Monday, January 27 | Tuesday, January 28 |
| 9 Tuesday, February 4 | Wednesday, January 29 | Thursday, January 30 |
| 10 Friday, February 7 | Monday, February 3 | Tuesday, February 4 |
| 11 Tuesday, February 11 | Wednesday, February 5 | Thursday, February 6 |
| 12 Friday, February 14 | Monday, February 10 | Tuesday, February 11 |
| 13 Tuesday, February 18 | Wednesday, February 12 | Thursday, February 13 |
| 14 *Friday, February 21 | Friday, February 14 | Tuesday, February 18 |
| 15 Tuesday, February 25 | Wednesday, February 19 | Thursday, February 20 |
| Friday, February 28 | NO ISSUE PUBLISHED | |
| 16 Tuesday, March 3 | Wednesday, February 26 | Thursday, February 27 |
| 17 Friday, March 6 | Monday, March 2 | Tuesday, March 3 |
| 18 Tuesday, March 10 | Wednesday, March 4 | Thursday, March 5 |
| 19 Friday, March 13 | Monday, March 9 | Tuesday, March 10 |
| 20 Tuesday, March 17 | Wednesday, March 11 | Thursday, March 12 |
| 21 Friday, March 20 | Monday, March 16 | Tuesday, March 17 |
| 22 Tuesday, March 24 | Wednesday, March 18 | Thursday, March 19 |
| 23 Friday, March 27 | Monday, March 23 | Tuesday, March 24 |
| 24 Tuesday, March 31 | Wednesday, March 25 | Thursday, March 26 |
| 25 Friday, April 3 | Monday, March 30 | Tuesday, March 31 |
| 26 Tuesday, April 7 | Wednesday, April 1 | Thursday, April 2 |
| 27 Friday, April 10 | Monday, April 6 | Tuesday, April 7 |
| Tuesday, April 14 | FIRST QUARTERLY INDEX | |
| 28 Friday, April 17 | Monday, April 13 | Tuesday, April 14 |
| 29 Tuesday, April 21 | Wednesday, April 15 | Thursday, April 16 |

| | | |
|--------------------------|------------------------|-----------------------|
| 30 Friday, April 24 | Monday, April 20 | Tuesday, April 21 |
| 31 Tuesday, April 28 | Wednesday, April 22 | Thursday, April 23 |
| 32 Friday, May 1 | Monday, April 27 | Tuesday, April 28 |
| 33 Tuesday, May 5 | Wednesday, April 29 | Thursday, April 30 |
| 34 Friday, May 8 | Monday, May 4 | Tuesday, May 5 |
| 35 Tuesday, May 12 | Wednesday, May 6 | Thursday, May 7 |
| 36 Friday, May 15 | Monday, May 11 | Tuesday, May 12 |
| 37 Tuesday, May 19 | Wednesday, May 13 | Thursday, May 14 |
| 38 Friday, May 22 | Monday, May 18 | Tuesday, May 19 |
| 39 Tuesday, May 26 | Wednesday, May 20 | Thursday, May 21 |
| 40 *Friday, May 29 | Friday, May 22 | Tuesday, May 26 |
| 41 Tuesday, June 2 | Wednesday, May 27 | Thursday, May 28 |
| 42 Friday, June 5 | Monday, June 1 | Tuesday, June 2 |
| 43 Tuesday, June 9 | Wednesday, June 3 | Thursday, June 4 |
| 44 Friday, June 12 | Monday, June 8 | Tuesday, June 9 |
| 45 Tuesday, June 16 | Wednesday, June 10 | Thursday, June 11 |
| 46 Friday, June 19 | Monday, June 15 | Tuesday, June 16 |
| 47 Tuesday, June 23 | Wednesday, June 17 | Thursday, June 18 |
| 48 Friday, June 26 | Monday, June 22 | Tuesday, June 23 |
| 49 Tuesday, June 30 | Wednesday, June 24 | Thursday, June 25 |
| 50 Friday, July 3 | Monday, June 29 | Tuesday, June 30 |
| 51 Tuesday, July 7 | Wednesday, July 1 | Thursday, July 2 |
| 52 Friday, July 10 | Monday, July 6 | Tuesday, July 7 |
| Tuesday, July 14 | SECOND QUARTERLY INDEX | |
| 53 Friday, July 17 | Monday, July 13 | Tuesday, July 14 |
| 54 Tuesday, July 21 | Wednesday, July 15 | Thursday, July 16 |
| 55 Friday, July 24 | Monday, July 20 | Tuesday, July 21 |
| 56 Tuesday, July 28 | Wednesday, July 22 | Thursday, July 23 |
| 57 Friday, July 31 | Monday, July 27 | Tuesday, July 28 |
| 58 Tuesday, August 4 | Wednesday, July 29 | Thursday, July 30 |
| 59 Friday, August 7 | Monday, August 3 | Tuesday, August 4 |
| 60 Tuesday, August 11 | Wednesday, August 5 | Thursday, August 6 |
| 61 Friday, August 14 | Monday, August 10 | Tuesday, August 11 |
| 62 Tuesday, August 18 | Wednesday, August 12 | Thursday, August 13 |
| 63 Friday, August 21 | Monday, August 17 | Tuesday, August 18 |
| 64 Tuesday, August 25 | Wednesday, August 19 | Thursday, August 20 |
| 65 Friday, August 28 | Monday, August 24 | Tuesday, August 25 |
| 66 Tuesday, September 1 | Wednesday, August 26 | Thursday, August 27 |
| 67 Friday, September 4 | Monday, August 31 | Tuesday, September 1 |
| 68 Tuesday, September 8 | Wednesday, September 2 | Thursday, September 3 |
| 69 *Friday, September 11 | Friday, September 4 | Tuesday, September 8 |

| | | |
|----------------------------|-------------------------|------------------------|
| 70 Tuesday, September 15 | Wednesday, September 9 | Thursday, September 10 |
| 71 Friday, September 18 | Monday, September 14 | Tuesday, September 15 |
| 72 Tuesday, September 22 | Wednesday, September 16 | Thursday, September 17 |
| 73 Friday, September 25 | Monday, September 21 | Tuesday, September 22 |
| 74 Tuesday, September 29 | Wednesday, September 23 | Thursday, September 24 |
| 75 Friday, October 2 | Monday, September 28 | Tuesday, September 29 |
| 76 Tuesday, October 6 | Wednesday, September 30 | Thursday, October 1 |
| 77 Friday, October 9 | Monday, October 5 | Tuesday, October 6 |
| Tuesday, October 13 | THIRD QUARTERLY INDEX | |
| 78 Friday, October 16 | Monday, October 12 | Tuesday, October 13 |
| 79 Tuesday, October 20 | Wednesday, October 14 | Thursday, October 15 |
| 80 Friday, October 23 | Monday, October 19 | Tuesday, October 20 |
| 81 Tuesday, October 27 | Wednesday, October 21 | Thursday, October 22 |
| 82 Friday, October 30 | Monday, October 26 | Tuesday, October 27 |
| 83 Tuesday, November 3 | Wednesday, October 28 | Thursday, October 29 |
| Friday, November 6 | NO ISSUE PUBLISHED | |
| 84 Tuesday, November 10 | Wednesday, November 4 | Thursday, November 5 |
| 85 Friday, November 13 | Monday, November 9 | Tuesday, November 10 |
| *86 Tuesday, November 17 | Tuesday, November 10 | Thursday, November 12 |
| 87 Friday, November 20 | Monday, November 16 | Tuesday, November 17 |
| 88 Tuesday, November 24 | Wednesday, November 18 | Thursday, November 19 |
| 89 Friday, November 27 | Monday, November 23 | Tuesday, November 24 |
| Tuesday, December 1 | NO ISSUE PUBLISHED | |
| 90 Friday, December 4 | Monday, November 30 | Tuesday, December 1 |
| 91 Tuesday, December 8 | Wednesday, December 2 | Thursday, December 3 |
| 92 Friday, December 11 | Monday, December 7 | Tuesday, December 8 |
| 93 Tuesday, December 15 | Wednesday, December 9 | Thursday, December 10 |
| 94 Friday, December 18 | Monday, December 14 | Tuesday, December 15 |
| 95 Tuesday, December 22 | Wednesday, December 16 | Thursday, December 17 |
| 96 Friday, December 25 | Monday, December 21 | Tuesday, December 22 |
| Tuesday, December 29 | NO ISSUE PUBLISHED | |
| 1 (1993) Friday, January 1 | Monday, December 28 | Tuesday, December 29 |
| | | |

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