

# Texas Register

Volume 18, Number 28, April 9, 1993

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a section of the  
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*Texas Register*, ISSN 0362-4781, is published semi-weekly 100 times a year except July 30, November 30, December 28, 1993. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: one year - printed, \$95 and electronic, \$90; six-month printed, \$75 and electronic, \$70. Single copies of most issues are available at \$5 per copy.

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

## How to Use the Texas Register

**Information Available:** The 10 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

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

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

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

**Proposed Sections** - sections proposed for adoption.

**Withdrawn Sections** - sections withdrawn by state agencies under consideration for adoption, or automatically withdrawn by the *Texas Register* six months after the proposal publication date.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 cumulative 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 the 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 18 (1993) is cited as follows: 18 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 "18 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 18 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, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the official compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*. West Publishing Company, the official publisher of the *TAC*, releases cumulative supplements to each printed volume of the *TAC* twice each year.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals).

The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The *Official TAC* also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the *TAC* or to inquire about WESTLAW access to the *TAC* call West: **1-800-328-9352**.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each 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 the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 22, April 16, July 13, and October 12, 1993). In its second issue each month the *Texas Register* contains a cumulative *Table of TAC Titles Affected* for the preceding month. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE  
*Part I. Texas Department of Human Services*  
40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

**Update by FAX:** An up-to-date *Table of TAC Titles Affected* is available by FAX upon request. Please specify the state agency and the *TAC* number(s) you wish to update. This service is free to *Texas Register* subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of \$2.00 per page (VISA, MasterCard). (512) 463-5561.

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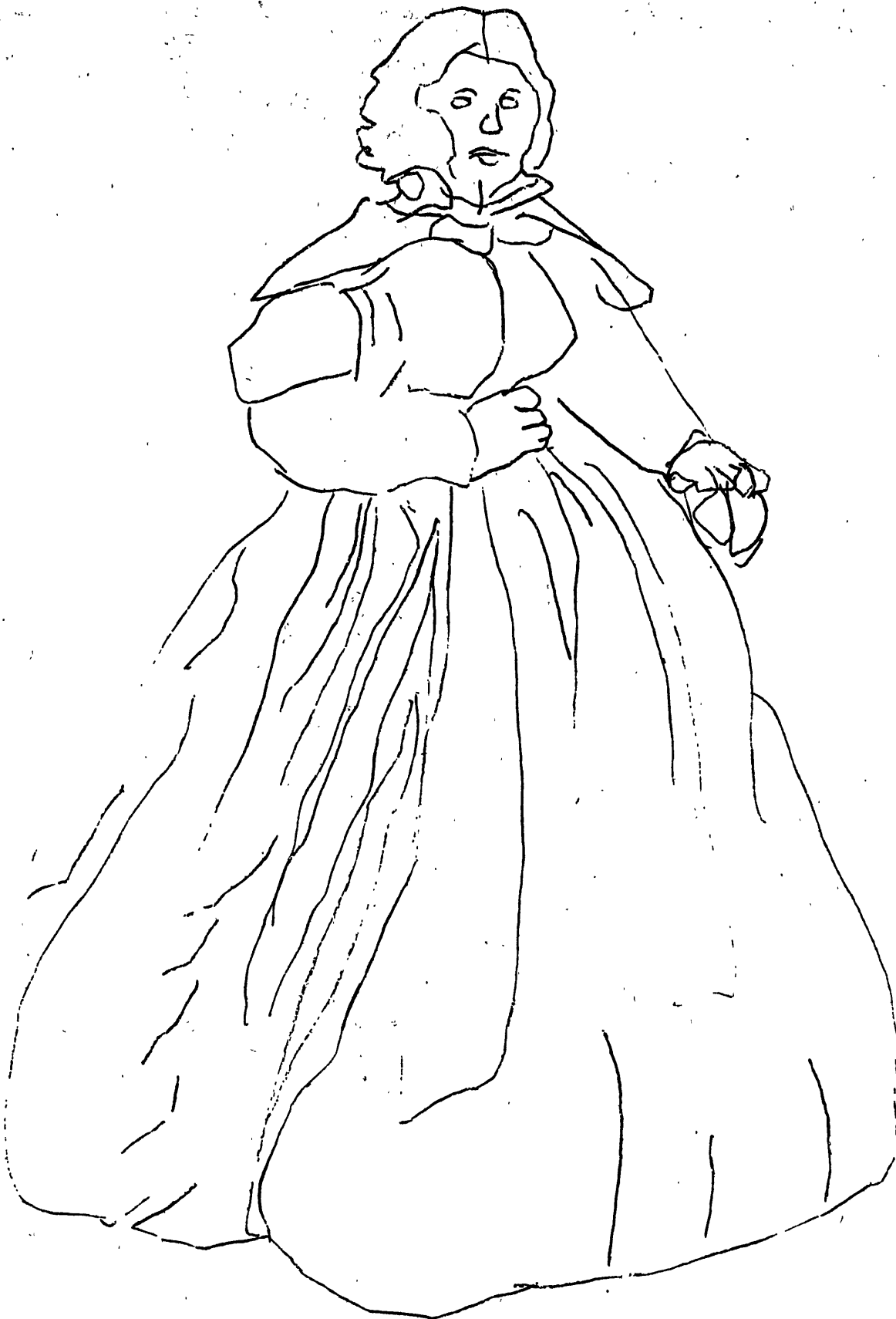
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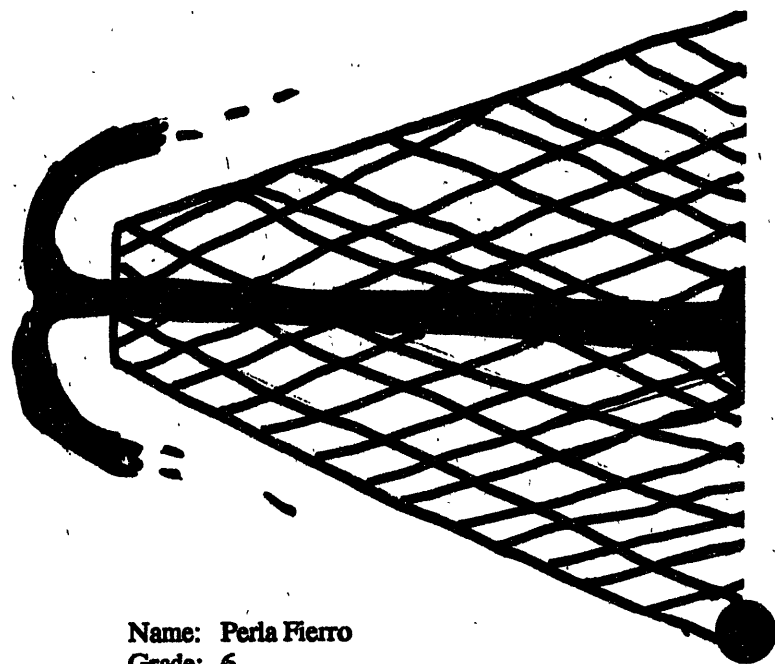
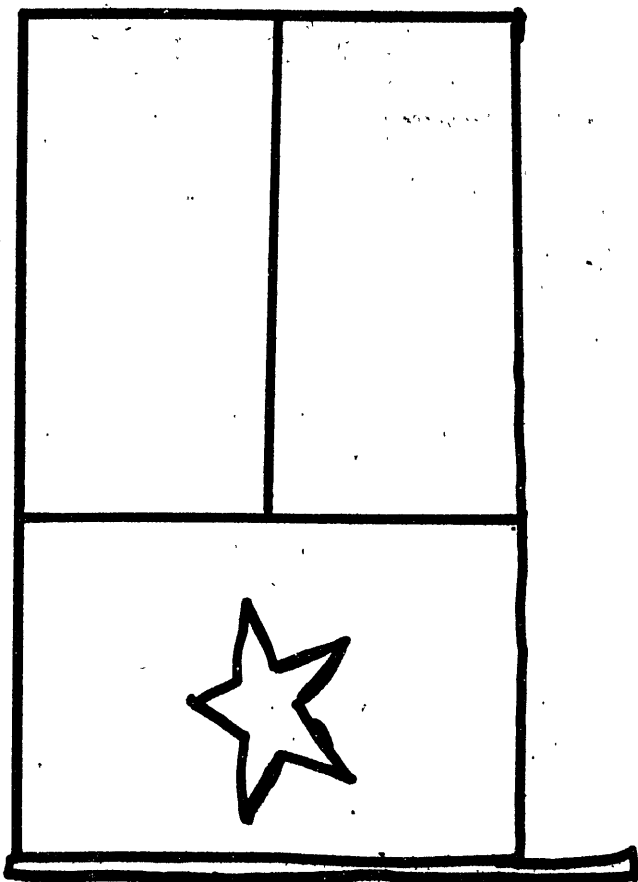
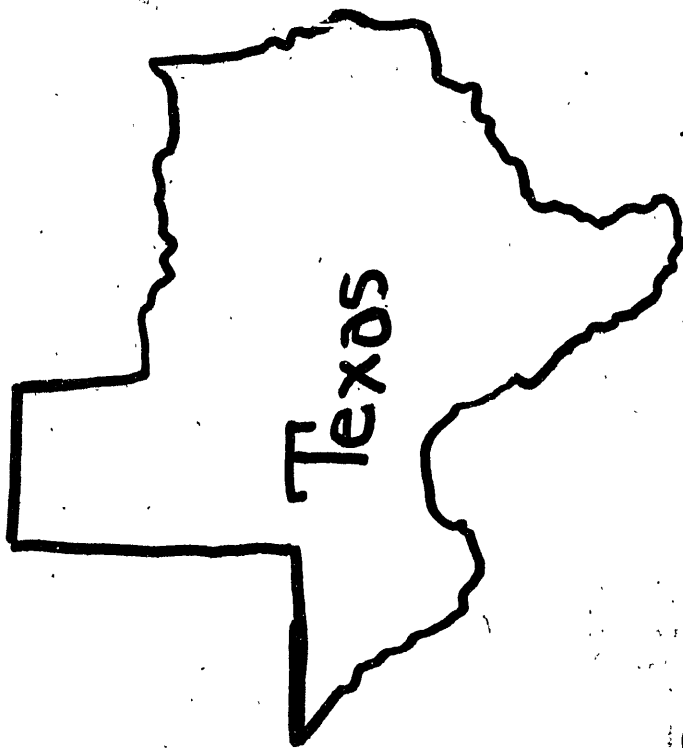
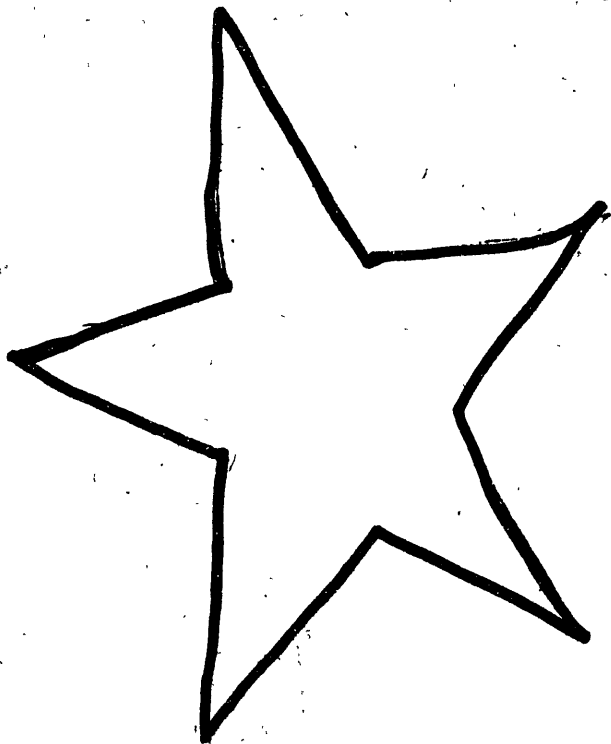
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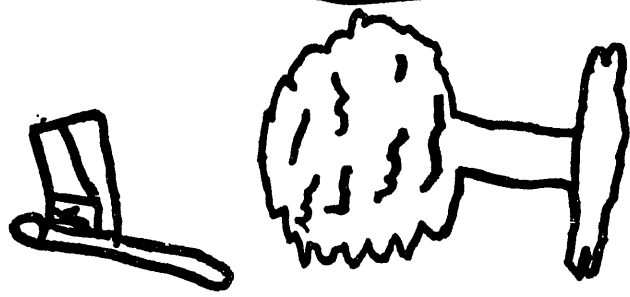
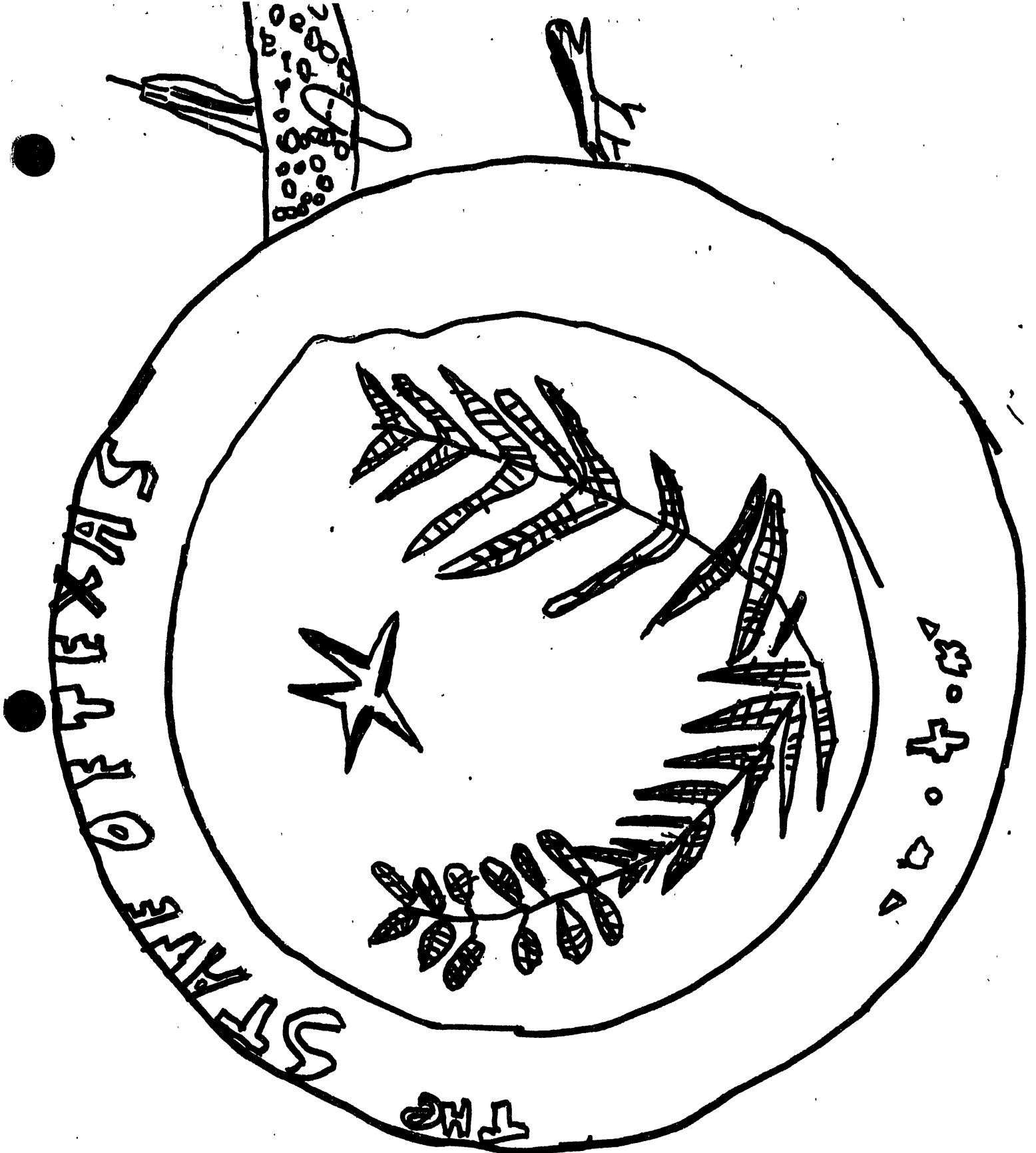


Name: Ana Moncada

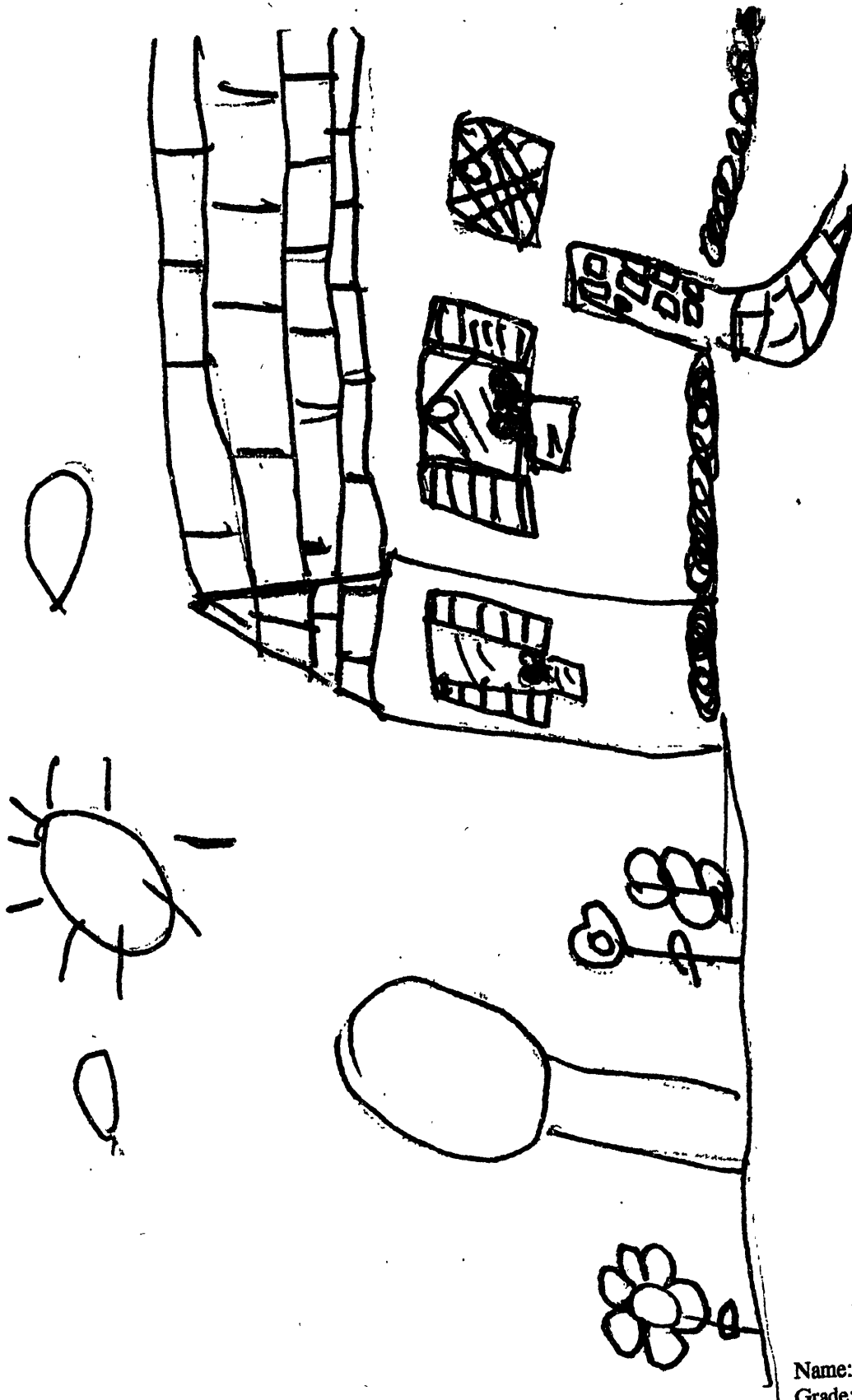
Grade: 1

School: North Loop Elementary, Ysleta ISD





Name: Rudy Amaya  
Grade: 3  
School: North Loop Elementary, Ysleta ISD

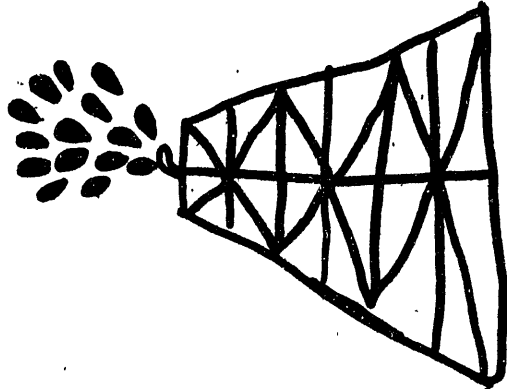
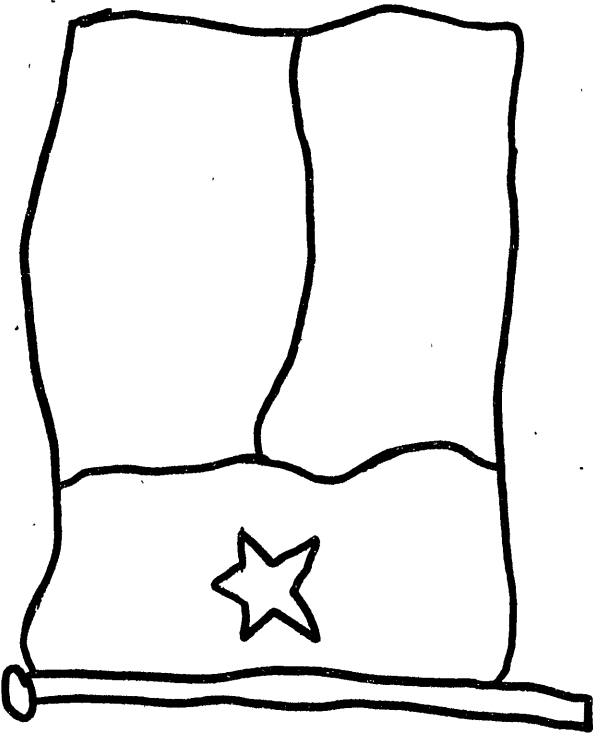


Name: Daniela Castellanos  
Grade: 1  
School: North Loop Elementary, Ysleta ISD

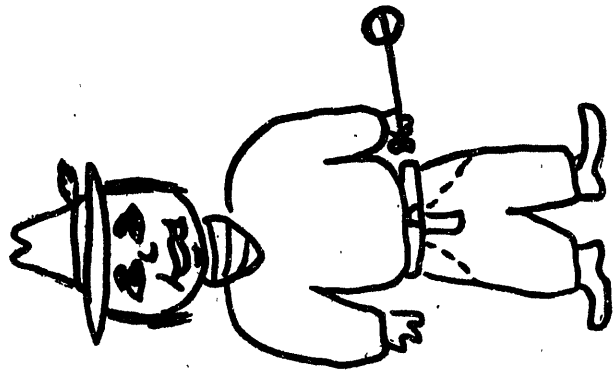


HOME OF THE BRAVE!!

ANSWER



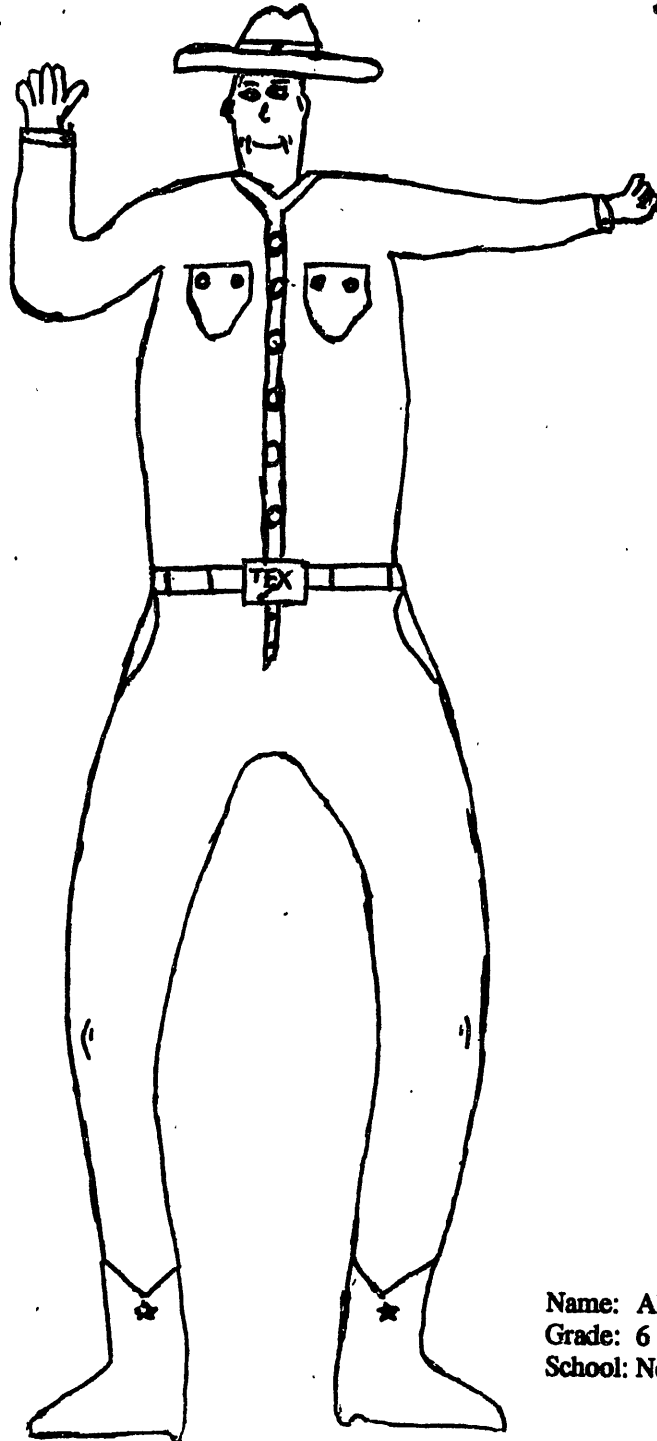
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TRASH  
LASH  
STASH  
STASH...

Name: Gaby Sanchez  
Grade: 6  
School: North Loop Elementary, Ysleta ISD

# BIG TEX



Name: Albert Sandoval  
Grade: 6  
School: North Loop Elementary, Ysleta ISD

# Emergency Sections

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

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

## TITLE 1. ADMINISTRATION

### Part V. General Services Commission

#### Chapter 115. Facilities Construction and Space Management Division

##### • 1 TAC §115.32

The General Services Commission adopts on an emergency basis amendment to §115.32, concerning emergency leases. The amendment increases the maximum term of emergency leases from 12 months to 24 months and deletes the requirement that the purpose of emergency leases be to provide time for acquiring space in accordance with Texas Civil Statutes, Article 6. The amendment is adopted on an emergency basis for immediate application for the following reasons. All Health and Human Services agencies will be subject to a moratorium on acquisition of lease space beginning on or about January 15, 1993, and continuing for 90 days, for the purpose of coordinating long-term acquisition of space for Health and Human Services agencies. Within such time, there will be a need for emergency leases. The longer term for such emergency leases will increase flexibility in scheduling commencement dates of bid leases, minimize the cost of emergency leases, and avoid the risk of unnecessary relocation of offices, with the resultant expense and disruption of client services.

The amendment is adopted on an emergency basis adopted under Texas Civil Statutes, Article 601b, §6.12, which provide the General Services Commission with the authority to promulgate rules necessary to administer its functions under Texas Civil Statutes, Article 601b, Article 6.

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

**Emergency Lease**—A lease negotiated with a private source for a term not to exceed 24 months, as determined by the Commission.

Issued in Austin, Texas, on March 30, 1993.

TRD-9321064  
Judith M. Porras  
Director of Legal  
Information and Human  
Resources  
General Services  
Commission

Effective date: March 31, 1993

Expiration date: July 29, 1993

For further information, please call: (512) 463-3583

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part VI. Texas Department of Criminal Justice

#### Chapter 163. Community Justice Standards

##### Subchapter C. Programs and Services

##### • 37 TAC §163.55

The Texas Department of Criminal Justice is renewing the effectiveness of the emergency adoption of the repeal §163.55, for a 60-day period effective April 12, 1993. The text of repeal §163.55 was originally published in the January 29, 1993, issue of the *Texas Register* (18 TexReg 521).

Issued in Austin, Texas, on March 31, 1993.

TRD-9321061  
Jackee Cox  
General Counsel  
Texas Department of  
Criminal Justice

Effective date: April 12, 1993

Expiration date: June 11, 1993

For further information, please call: (512) 463-9988

## TITLE 43. TRANSPORTATION

### Part I. Texas Department of Transportation

#### Chapter 1. Administration

##### Conditional Grant Program

##### • 43 TAC §1.403

The Texas Department of Transportation adopts on an emergency basis an amendment to §1.403, concerning eligibility in the department's conditional grant program.

Senate Bill 352, 72nd Legislature, Regular Session, 1991, required the department to establish and administer a conditional grant

program to provide financial assistance to minority students who exhibited in the student's secondary school performance an aptitude for engineering, who intend to become civil engineers, and who will work for the department for two years following graduation.

Section 1.403 provides that for a student to continue to be eligible to receive conditional grant funds, he or she must maintain an overall grade point average of 2.50 and receive credit for not fewer than 12 hours each semester toward the student's degree program. The amendment adds another provision to subsection (b) by providing that if, during not more than one semester, a student fails to meet the grade point or credit hour requirements of the section, he or she will continue to maintain eligibility on condition that the student must receive credit for not fewer than 12 hours each semester and attain a semester grade point average of 2.5 during all semesters thereafter until the student graduates.

The department recognizes that due to temporary or short term individual circumstances a student may not be able to maintain uninterrupted eligibility. Adoption on an emergency basis is necessary in order to avoid the imposition of severe economic hardship on grant recipients and their families and to preserve the integrity of the conditional grant program.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and Chapter 56, Subchapter H of the Education Code which requires the department to adopt rules implementing a conditional grant program.

##### §1.403. Eligibility.

###### (a) Initial eligibility.

(1) To be initially eligible for a conditional grant, a student must:

(A) be a Texas resident;

(B) be a minority;

(C) be ranked by the committee among the top number of applicants commensurate with the number of available grants, pursuant to §1.404 of this title (relating to Application); and

(D) except as provided in paragraph (2) of this subsection, exhibit in secondary school performance an aptitude for engineering by receiving:

(i) an overall grade point average of at least 3.00 on a 4-point scale or a minimum score of 850 on the SAT or 21 on the ACT; and

(ii) a grade of at least "B" in no fewer than three laboratory science or higher mathematics courses.

(2) A student, who by reason of course unavailability cannot satisfy the requirements under paragraph (1)(D)(ii) of this subsection, may substitute the following:

(A) a grade of at least "B" in no fewer than two mechanical or engineering drawing or related vocational educational courses; and

(B) letters of recommendation from two knowledgeable secondary school teachers or from one professional engineer indicating that the student has an aptitude for engineering.

(b) Continued eligibility.

(1) In order to maintain eligibility, a student must [(1)] be enrolled each semester in an institution in a course of instruction leading toward a degree in civil engineering and, except as provided in paragraph (2) of this subsection, must:

(A)[(2)] maintain an overall institutional grade point average of at least 2.50 on a 4-point scale; and

(B)[(3)] receive credit for not fewer than 12 hours each semester toward the student's degree program.

(2) If, during not more than one semester, a student fails to meet the grade point or credit hour requirements of this subsection, he or she will continue

to maintain eligibility. Students who fail to meet the grade point requirement, must receive credit for not fewer than 12 hours each semester and attain a semester grade point average of 2.5 during all semesters thereafter until the student graduates.

(c) Waiver. The department may waive, upon approval of the executive director, the requirement that a student receive credit for not fewer than 12 hours each semester if a student demonstrates hardship. Hardship may involve serious illness, family emergency, or other extraordinary circumstances beyond the control of the student.

Issued in Austin, Texas, on April 2, 1993.

TRD-9321143

Diane L. Northam  
Legal Administrative  
Assistant  
Texas Department of  
Transportation

Effective date: April 2, 1993

Expiration date: July 31, 1993

For further information, please call: (512) 463-8630



# Proposed Sections

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

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

## TITLE 1. ADMINISTRATION

### Part II. Texas Ethics Commission

#### Chapter 40. Registration and Regulation of Lobbyists

##### • 1 TAC §40.5

The Texas Ethics Commission proposes an amendment to §40.5, concerning exclusions from administrative action lobbying.

Jim Mathieson, Assistant General Counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the 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 more clearly define those actions that are not included within the definition "administrative lobbying." 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, P.O. Box 12070, Austin, Texas 78711-2070. Only written comments will be received. Anyone desiring to comment otherwise may do so at the next regularly scheduled commission meeting on May 13, 1993.

The new section is proposed under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning those provisions of the law administered by the commission.

##### §40.5. Exclusions from Administrative Action Lobbying.

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

(c) For purposes of the compensation threshold of the Government Code, §305.003(a)(2), [Chapter 305] "administrative action" does not include [an action which affects only the internal operations of the agency, such as] the purchasing decisions of a [the] state agency or[; and] the negotiations regarding those decisions [over the terms of a contract to provide those services, including, but not limited to, negotiations over payment, delivery and

performance of services, compliance with contract terms, and amendments]. This exception, however, does not affect registration requirements under the expenditure threshold.

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

Issued in Austin, Texas, on April 1, 1993.

TRD-9321158

Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Earliest possible date of adoption: May 10, 1993

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

## Part IV. Office of the Secretary of State

### Chapter 87. Notary Public

#### Subpoenas

##### • 1 TAC §§87.50, 87.52, 87.54

The Office of the Secretary of State proposes new §§87.50, 87.52, and 87.54, concerning the issuance of subpoenas by notaries public. The new rules are proposed for the purpose of clarifying minimum procedures that a notary must follow in issuing a subpoena.

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 or administering 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 notaries public with a clarification of the procedure for issuing subpoenas. 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 Guy Joyner, Staff Attorney, Statutory Documents Sections, P.O. Box 12887, Austin, Texas 78711-2887.

The new sections are proposed under the Texas Government Code, §406.023(a), which provides the Secretary of State with the authority to prescribe and adopt rules necessary for the administration and enforcement

of the Notary Public Act, Texas Government Code, §§406.001-406.024 (Vernon 1990).

§87.50. *Authority.* A notary public is authorized to issue a subpoena or subpoena duces tecum for written depositions. This is a powerful authorization and should be exercised cautiously.

§87.52. *Issuing.* Prior to issuing a subpoena, the notary shall:

(1) require proof of service of notice to take a deposition from the requesting party or attorney; or

(2) personally execute service of the notice to take a deposition. Additionally, the notary shall confirm that there is no court or administrative order or procedure that precludes the issuance of the subpoena. The notary shall obtain an affidavit from the requesting party or attorney stating whether the party or attorney is aware of any such procedure or order.

§87.54. *Governed by Other Law.* These rules do not independently authorize a notary public to issue a subpoena. The issuance of a subpoena by a notary public must be authorized by other law, rule, or procedure and in conformity with such law, rule, or procedure. Failure of a notary public to conform to these administrative rules does not affect the validity of a subpoena but may subject the notary public to disciplinary proceedings by the Office of the 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.

Issued in Austin, Texas, on April 5, 1993.

TRD-9321194

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

Earliest possible date of adoption: May 10, 1993

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

# TITLE 16. ECONOMIC REGULATION

## Part III. Texas Alcoholic Beverage Commission

### Chapter 51. Limousine Service Beverage Permit

#### • 16 TAC §§51.1-51.28

The Texas Alcoholic Beverage Commission proposes new §§51.1-51.28 concerning the sale of alcoholic beverages by limousine services. The new sections implement Texas Alcoholic Beverage Code, Chapter 50, which has created a limousine service beverage permit.

Randy Yarbrough, assistant administrator, has determined that the new sections will have no fiscal implications for state or local government. Taxes, fees, and penalties which are mentioned in the new sections are imposed by statute, not the new sections.

Gayle Gordon, general counsel, 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 effective interdiction of illicit sales of alcoholic beverages by unscrupulous companies and enhanced protection of the public health and safety by providing appropriate regulatory controls for the legal sale of alcoholic beverages by legitimate limousine service businesses. No individuals are required to obtain a limousine service beverage permit, but those who do must comply with the proposed sections. Mr. Yarbrough has further determined that there are no fiscal implications for small businesses because no business is required to obtain a limousine service beverage permit. No economic cost is anticipated for those who choose to obtain a permit and comply with the new sections because the permit and the enabling new sections would allow the permit holder to engage in a profitable legal enterprise which does not presently exist.

Comments on the proposal may be submitted to Gayle Gordon, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The new sections are expressly mandated by the Texas Alcoholic Beverage Code, Chapter 50, which creates the limousine service beverage permit and requires the commission to pass rules implementing the chapter. In addition, the Texas Alcoholic Beverage Code, §5.31, authorizes the commission to prescribe rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code.

#### §51.1. Definitions and Construction.

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

(1) Code—The Texas Alcoholic Beverage Code.

(2) Guest—A bona fide passenger in a licensed limousine who was invited by the person or persons who rented the limousine.

(3) Individual serving—A quantity of alcoholic beverage according to the following criteria:

(A) not more than one fluid ounce of distilled spirits;

(B) not more than 12 fluid ounces of beer;

(C) not more than six fluid ounces of wine.

(4) Licensed limousine—A limousine covered by a limousine service beverage permit.

(5) Licensed premises—Premises covered by a limousine service beverage permit.

(6) Limousine—A luxury stretch sedan motor vehicle with a manufacturer's rated passenger capacity of not more than nine persons including the driver and having a permanently installed beverage service bar.

(7) Limousine service—The business of renting by prearrangement of at least one hour a limousine and driver for the use of not more than eight passengers.

(8) Permit—A limousine service beverage permit, unless another type of permit is clearly indicated in the context.

(9) Permittee—The holder of a limousine service beverage permit or his agent, servant or employee, unless another type of permittee is clearly indicated in the context.

(10) Purchase invoice—An instrument issued by the seller of alcoholic beverages to a limousine service beverage permittee.

(11) Sales invoice—An instrument issued by a limousine service beverage permittee to a customer of the limousine service.

(12) Seller—A person who sells an alcoholic beverage to a limousine service beverage permittee.

(13) State—The State of Texas.

(b) Each word and term used in this chapter shall have the meaning given to it by:

(1) a definition in this chapter; or

(2) a definition in the Texas Alcoholic Beverage Code; or

(3) the commonly accepted meaning if it were used in the Texas Alco-

holic Beverage Code. In the event of conflict, the lower numbered provision in this paragraph shall control.

(c) In addition to administrative and civil sanctions, any violation of this chapter constitutes a criminal violation under the code and rules of the commission and is subject to the general penalty provided in the Code, §1.05.

#### §51.2. Authorized Container Sizes.

(a) Distilled spirits may be dispensed only in or from sealed containers containing not less than six fluid ounces.

(b) Beer may be dispensed only in or from sealed containers containing not less than seven fluid ounces nor more than twelve fluid ounces.

(c) Wine may be dispensed in or from sealed containers of any legal size.

§51.3. Dispensing Systems. Distilled spirits and wine may be dispensed by means of a sealed dispensing system connected to the original containers if the system has been approved in writing in advance by the administrator. Factors to be considered in determining approval shall include, but not be limited to: health and sanitation in the design and maintenance of the system; protection of state revenue and the prevention of access to liquor by unauthorized persons.

§51.4. Permittee To Retain Records. A limousine service beverage permittee shall keep any record or report required by this rule or by the code in the permittee's files for a period of four years and shall make any such record or report available to a representative of the commission upon request.

§51.5. Failure To Make Proper Records. No person may fail or refuse to make any record or report required by this chapter. No person may make or cause to be made any false or incorrect entry on any record or report required by this chapter. No person may fail or refuse to make any entry on any record or report required by this chapter at the time or in the place or in the manner required by this chapter.

§51.6. Sales Restricted. A limousine service beverage permittee may not sell or serve any alcoholic beverage to any person except for consumption by a person and his guests in a licensed limousine then hired from that permittee by that person.

#### §51.7. Removal of Beverages Prohibited.

(a) A limousine service beverage permittee or his bona fide agents and em-

employees may, in the normal course of business, remove alcoholic beverages from his licensed limousines but only in the manner provided by this paragraph. Sealed containers may be returned to storage at the licensed premises business address. All contents of unsealed containers shall be destroyed at the licensed premises business address promptly after arrival.

(b) No other person may remove any alcoholic beverage from a licensed limousine.

(c) A limousine service beverage permittee may not permit any other person to remove any alcoholic beverage from a licensed limousine.

#### §51.8. Purchase Invoice Required.

(a) A person who sells alcoholic beverages to a limousine service beverage permittee shall issue an invoice, which shall be the purchaser's purchase invoice, in an original and one copy. Such invoices shall be consecutively numbered and shall show the date of the sale or distribution, the name of the purchaser, the address of the purchaser, the quantity, brand and class of the alcoholic beverages sold and the total price of each brand and class shown. The invoice or a copy thereof shall be delivered to the limousine service beverage permittee and a copy of such invoice shall be kept by the seller.

(b) A limousine service beverage permittee may not possess or permit to be possessed in the permittee's licensed limousine or on the permittees licensed business address premises any alcoholic beverage which is not covered by an invoice from the supplier from whom the alcoholic beverage was purchased by the limousine service permittee.

#### §51.9. Purchase of Alcoholic Beverages.

(a) A limousine service beverage permittee may purchase distilled spirits from only the holder of a local distributor's permit.

(b) A limousine service beverage permittee may purchase wine, beer, and ale from only:

(1) a local distributor's permittee; or

(2) a wholesaler holding a license or permit to sell the kind of alcoholic beverage being purchased.

§51.10. *Container Identification Stamps.* No local distributor's permittee may knowingly sell, ship or deliver to any limousine service beverage permittee any distilled spirits in any container not bearing a serially numbered identification stamp issued by the commission.

§51.11. *Monthly Report and Payment.* Each holder of a limousine service beverage permit shall make a monthly report to the commission on forms provided by the commission which shall include any information requested by the commission or administrator. Such report shall be filed by the permittee at the state headquarters offices of the commission at Austin, on or before the fifteenth day of the month following the calendar month for which the report is made. The total payment due for the subject month shall accompany the report.

#### §51.12. Sales Invoice Requirements.

(a) Each limousine service beverage permittee shall record on a sales invoice the following information in a manner which makes such information clearly evident, or by a system of symbols if such symbols and their meanings are printed on the sales invoice or maintained in the permittee's files:

(1) the total number of individual servings of liquor sold or served;

(2) the total number of individual servings of beer sold or served;

(3) the total number of individual servings of wine sold or served;

(4) the date of the transaction.

(b) Sales invoices shall be maintained in sequence by date.

(c) The limousine service beverage fee levied in Chapter 50 of the code accrues on the entire number of servings in the sealed original container of alcoholic beverages at the time such container is delivered to a passenger. Delivery occurs at the time the seal of the container is broken.

§51.13. *Daily Summary.* Each limousine service beverage permittee shall prepare a daily summary of all information required to be recorded on sales invoices, including the sale or service of alcoholic beverages. Identifiable symbols may be used.

#### §51.14. Audit Computation Basis.

(a) In examining the tax and service fee accounts of any limousine service beverage permittee, the commission staff may compute and determine the amount of tax and service fee liabilities upon the basis of reports filed with the commission by the permittee, but if such reports are found to be unsatisfactory the computation of the tax and service fee liabilities may be based upon any records or information obtained from the permittee or any seller who furnished alcoholic beverages to the permittee.

(b) In examining the tax and service fee accounts of any limousine service beverage permittee, if the commission staff finds that the permittee has failed to maintain or make available the records required by this chapter or the code, the commission staff may compute and determine the amounts of the tax and service fee liabilities from any available source or records, and estimates of the tax and service fee liabilities may be made by use of any available records for any period for which the permittee has failed to maintain records or file a report with the commission.

(c) In examining the tax and service fee records of any limousine service beverage permittee to establish the permittee's tax and service fee liabilities, the commission presumes that the disposition of all alcoholic beverages purchased by the permittee is taxable and the service fee is due until the contrary is established. The burden of proving the contrary is upon the permittee and may only be established through authentic records.

(d) In examining the tax, service fee, and permit fee accounts of a limousine service beverage permittee the commission staff may examine all books, papers, records, documents, supplies and equipment of the permittee. The commission staff may also investigate and take into account the character and operation of the permittee's business.

#### §51.15. Theft or Disaster Loss.

(a) Concerning alcoholic beverages which are lost through theft or disaster, the limousine service beverage permittee shall prepare a written report showing the number of containers lost by size, brand, and class of beverage.

(b) A theft of alcoholic beverages shall be reported within 10 days to the proper police or sheriff's department and to the commission and must be substantiated by the official report of such police or sheriff's department.

(c) A disaster causing a loss of alcoholic beverages shall be reported within ten days to the commission by the permittee and must be substantiated by an affidavit of the investigating representative of the commission.

§51.16. *Limousine Vehicle Record.* Each limousine service beverage permittee shall keep a permanent record in which is shown the following about each licensed limousine owned, leased, or operated by the limousine service: the vehicle year; the vehicle make; the vehicle identification number; the vehicle license number; the date the vehicle was placed in service and the date such vehicle was removed from service.

**§51.17. Seller To Retain Records.** The seller of any alcoholic beverage to a limousine service beverage permittee shall maintain a record of such sale for a period of four years and shall make any such record available to a representative of the commission upon request.

**§51.18. Permit Fee.** The limousine service beverage permit fee shall be based upon each qualified limousine owned, leased or operated by the limousine service, whether or not beverage service is offered in connection with the operation of any given limousine. The fee paid for each limousine is non-refundable and cannot be transferred to another limousine. A limousine added to the fleet of the limousine service during the permit year will incur the full yearly fee for that fraction of a year without proration. Any addition to the fleet shall be reported to the commission within ten days in writing on a form prescribed by the administrator.

**§51.19. Permit Bond.** No permit may be issued to any person until a bond is filed with the commission on approved forms in the amount of one thousand dollars for the security of any taxes or fees which may become due.

**§51.20. Location of Business.** A limousine service beverage permit shall be issued to a business address where persons may telephone, write or go in person to make advance arrangements for service, where the licensed limousines are dispatched and where the records and reports required by this rule and the code are kept. The location must be wet for the sale of mixed beverages.

**§51.21. Alcoholic Beverage Storage.** All alcoholic beverages held under authority of a limousine service beverage permit shall be stored at the business address covered by the permit except the beverages which are in licensed limousines in the due course of business.

**§51.22. Service or Consumption at Business Address.** No person may sell, serve, deliver, or consume any alcoholic beverage or permit any person to consume any alcoholic beverage at the business address covered by a limousine service beverage permit. However, legal suppliers may deliver alcoholic beverages to the permittee and the permittee may otherwise acquire alcoholic beverages in his storage inventory by any procedure authorized by Texas law.

**§51.23. Open Container at Business Address.**

(a) The permittee and his employees may possess on the licensed premises open containers of alcoholic beverages which have been abandoned by, or not delivered to, customers of the permittee, but only for the purpose of returning the open containers to the licensed business address for destruction of the remaining contents.

(b) No other person may possess or be permitted by the permittee to possess an open container of alcoholic beverage at the business address covered by a limousine service beverage permit.

**§51.24. Limousines are Licensed Premises.**

(a) All limousines covered by a limousine service beverage permit are, at all times and for all purposes contemplated by the code, licensed premises covered by the permit and are subject to all provisions of the code, including consent to inspection.

(b) Any authorized representative of the commission or any peace officer may stop a licensed limousine at any time to conduct an investigation or inspect the limousine for the purpose of performing any duty imposed by the code.

**§51.25. Identification Cards.** The commission shall issue an identification card for each individual licensed limousine in such form and containing such information as may from time to time be prescribed by the administrator. This card shall be kept at all times in the glove compartment of the licensed limousine for which it was issued. No privilege of a limousine service beverage permit may be exercised in a limousine in which there is no valid and current identification card in the glove compartment as required by this section.

**§51.26. Application For a Permit.**

(a) In addition to the information required under the code, an applicant for a limousine service beverage permit shall file as a part of his original or renewal application the following information under oath in a form prescribed by the administrator:

(1) the name and residential address of the lessor of each licensed limousine;

(2) the amount of monthly rental or lease for each licensed limousine and the terms of each rental or lease;

(3) a statement as to whether the business is to be operated under a franchise and, if so, the name and address of the franchiser;

(4) a list of all bank accounts, including account numbers, used in connection with the business;

(5) a statement disclosing all persons having any direct or indirect finan-

cial interest of any kind in the business, the proposed business or in the granting of the permit;

(6) any further information required from time to time by the administrator.

(b) The application shall be accompanied by remittance of the permit fee in the form of a cashier's check, certified check, or United States postal money order.

**§51.27. Permit To Be Displayed.** Each permittee shall at all times prominently display the permit at the licensed premises business address.

**§51.28. Grounds For Suspension or Cancellation.**

(a) The administrator may, after notice and hearing, suspend for a period of not more than 60 days, or cancel, a limousine service beverage permit upon finding that:

(1) the permittee has failed to comply with any provision of the code or rules of the commission or any state or federal law applicable to the operation of a limousine service or the sale or service of alcoholic beverages;

(2) the permittee has failed to comply with any rule of the Texas Railroad Commission or any other agency of the State of Texas applicable to the operation of a limousine service or the sale or service of alcoholic beverages;

(3) the permittee has failed to comply with any ordinance, rule or regulation of a city or county in which the permittee is located applicable to the operation of the business covered by the permit.

(b) All provisions of the code pertaining to administrative hearings shall apply to hearings under this section.

(c) All provisions of the code pertaining to civil penalties shall apply to sanctions under this section.

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

Issued in Austin, Texas, on April 1, 1993.

TRD-9321159

Gayle Gordon  
General Counsel  
Texas Department of  
Criminal Justice

Earliest possible date of adoption: May 10, 1993

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



## TITLE 22. EXAMINING BOARDS

### Part XXI. Texas State Board of Examiners of Psychologists

#### Chapter 463. Applications

##### • 22 TAC §463.5

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.5, concerning Application File Requirements. The Board is amending its policy to allow applicants who have a complaint filed against them to sit for the required examinations, but to hold their certification in abeyance until the complaint can be resolved.

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

Ms. Forkner 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 by holding certification in abeyance until a complaint is resolved, the Board is helping to assure that the consuming public receive psychological services from qualified and ethical persons. 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 Brian L. Creath, 9101 Burnet Road, Suite 212, Austin, Texas 78758.

The amendment is proposed 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 reasonable necessary for the proper performance of its duties and regulations of proceedings before it.

**§463.5. Application File Requirements.** An application file must be complete and contain whatever information or examination results the Board requires. An incomplete application remains in the active file for 90 days, at the end of which time, if still incomplete, it is void. If certification or licensure is sought again, a new application and filing fee must be submitted. An applicant cannot have two types of applications for certification or licensure pending before the Board.

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

(5) For an applicant who is practicing psychology in Texas under a temporary permit, a supervision contract [affidavit], or employment in a statutorily exempt agency and a complaint is filed against the applicant, any final decision on the application will be held in abeyance

until the Board has made a final determination on the complaint filed. The applicant will be permitted to take all required exams as scheduled but will not be certified until approved by the Board [the application process will be held in abeyance until the Board has made a final determination on the complaint filed].

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

Issued in Austin, Texas, on March 30, 1993.

TRD-9321118

Rebecca E. Forkner  
Acting Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Earliest possible date of adoption: May 10, 1993

For further information, please call: (512) 835-2036

#### Chapter 465. Rules of Practice

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

The Texas State Board of Examiners of Psychologists proposes the repeal of §§465.6-465.8, concerning Employment by Psychologists. The Board is repealing this rule in that the Board's requirements for employment by psychologists, status of psychological associates, and financial considerations for the supervision of psychological associates will be found in new Board Rule 485.18.

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

Ms. Forkner 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 by deleting this rule and including the information in §465.18, the general public, as well as licenses/certificands of the Board, will be able to find the requirements for most aspects of supervision/employment by psychologists in one place. 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 Brian L. Creath, 9101 Burnet Road, Suite 212, Austin, Texas 78758.

##### • 22 TAC §465.6

The repeal is proposed 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 reasonable necessary for the proper performance of its duties and regulations of proceedings before it.

##### §465.6. Employment by Psychologists.

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

Issued in Austin, Texas, on March 30, 1993.

TRD-9321117

Rebecca E. Forkner  
Acting Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Earliest possible date of adoption: May 10, 1993

For further information, please call: (512) 835-2036

##### • 22 TAC §465.7

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

The repeal is proposed 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 reasonable necessary for the proper performance of its duties and regulations of proceedings before it.

##### §465.7. Status of Psychological Associates.

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

Issued in Austin, Texas, on March 30, 1993.

TRD-9321118

Rebecca E. Forkner  
Acting Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Earliest possible date of adoption: May 10, 1993

For further information, please call: (512) 835-2036

##### • 22 TAC §465.8

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

The repeal is proposed 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 reasonable necessary for the proper performance of its duties and regulations of proceedings before it.

• §465.8. *Wages of Psychological Associates.*

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

Issued in Austin, Texas, on March 30, 1993.

TRD-9321119

Rebecca E. Forkner  
Acting Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Earliest possible date of adoption: May 10, 1993

For further information, please call: (512) 835-2036

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**Chapter 471. Renewals**

• 22 TAC §471.1

The Texas State Board of Examiners of Psychologists proposes an amendment to §471.1, concerning Notification of Renewal. The Board is instituting a policy to standardize the time period between a person receiving his/her license/certificate and that person's first renewal.

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

Ms. Forkner 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 by standardizing the time period between a person being licensed/certified and his/her first renewal, the licensee/certificand will be able to provide proof of his/her credentials to the consuming public of Texas in a more timely manner. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be first year renewal fees will be prorated based on the following fee schedule: Licensed Psychologist/HSP—\$180, Licensed Psychologist—\$160, and Certified Psychologist—\$65.

Comments on the proposal may be submitted to Brian L. Creath, 9101 Burnet Road, Suite 212, Austin, Texas 78758.

The amendment is proposed 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 reasonable necessary for the proper performance of its duties and regulations of proceedings before it.

§471.1. *Notification of Renewal.* All certificates and licenses issued by the Board

shall be subject to annual renewal. Newly certified/licensed persons will be sent a renewal notice payable within 90 calendar days of the issuance of their certificate or license. This renewal will be prorated through the person's birth month. Thereafter, annual [Annual] renewals will be [are] due on the last day of each person's birth month. Persons whose psychologists' certification, licensure, specialty certification, or psychological associates certification is about to expire shall be notified once by regular mail at least 30 days before the last day their birth month each year and shall be notified by registered mail if they fail to renew by the last day of their birth month. The second notice will not be mailed prior to the last day of their birth month.

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

Issued in Austin, Texas, on March 30, 1993.

TRD-9321120

Rebecca E. Forkner  
Acting Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Earliest possible date of adoption: May 10, 1993

For further information, please call: (512) 835-2036

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• 22 TAC §471.7

The Texas State Board of Examiners of Psychologists proposes new §471.7, concerning Supervision of Other Extenders. The Board is setting a renewal fee for supervision of other extenders as defined in §465.18(c)(2)(F).

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

Ms. Forkner 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 Board will be able to monitor the supervisees of licensed psychologists. The agency will be able to respond to public inquiry about these supervisees. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be \$200 per year per supervisee for those psychologists who supervise persons who supervise persons as defined in §465.18(c)(2)(F).

Comments on the proposal may be submitted to Brian L. Creath, 9101 Burnet Road, Suite 212, Austin, Texas 78758.

The amendment is proposed 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 reasonable necessary for the proper performance of its duties and regulations of proceedings before it.

§471.7. *Supervision of Other Extenders.*

Licenses are required to annually renew their supervision contracts with other extenders as defined in §465.18(c)(2)(f) of this title (relating to Supervision Guidelines) no later than the anniversary date on their contract of supervision with the other extenders. Renewal of supervision contracts received by the anniversary date require payment of a renewal fee as defined in §473.5 of this title (relating to Miscellaneous Fees (Not Refundable)). Renewals for supervision contracts received after the anniversary date require payment of the renewal fee plus a late fee as defined in §473.4 of this title (relating Late Fees for All Renewals (Not Refundable)).

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

Issued in Austin, Texas, on March 30, 1993.

TRD-9321121

Rebecca E. Forkner  
Acting Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Earliest possible date of adoption: May 10, 1993

For further information, please call: (512) 835-2036

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**Chapter 473. Fees**

• 22 TAC §473.3

The Texas State Board of Examiners of Psychologists proposes an amendment to §473.3, concerning Annual Renewal Fees. The Board determined there was a need to codify in Board Rules, its policy allowing certificands/licenseses over the age of 70 to renew their certificates/licenses at a reduced rate.

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

Ms. Forkner 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 ensure that the Board has an adequate cash balance to carry out the mandates of the Psychologists' Certification and Licensing Act. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be \$10 per year for those licensee/certificands over the age of 70.

Comments on the proposal may be submitted to Brian L. Creath, 9101 Burnet Road, Suite 212, Austin, Texas 78758.

The amendment is proposed 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 reasonable necessary for the proper performance of its duties and regulations of proceedings before it.

*§473.3. Annual Renewal Fees (Not Refundable).*

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

(e) Certificants/Licensees over the age of 70—\$10.

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

Issued in Austin, Texas, on March 30, 1993.

TRD-9321122

Rebecca E. Forkner  
Acting Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Earliest possible date of adoption: May 10, 1993

For further information, please call: (512) 835-2036

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• 22 TAC §473.4

The Texas State Board of Examiners of Psychologists proposes an amendment to §473.4, concerning Late Fees for All Renewals. The Board determined that §473.4 needed to be amended in order to correspond to the requirements of the Psychologists' Certification and Licensing Act, §17(c).

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

Ms. Forkner 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 ensure that the Board has an adequate cash balance to carry out the mandates of the Psychologists' Certification and Licensing Act. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be none, as the late fees are already set by statute.

Comments on the proposal may be submitted to Brian L. Creath, 9101 Burnet Road, Suite 212, Austin, Texas 78758.

The amendment is proposed 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 reasonable necessary for the proper performance of its duties and regulations of proceedings before it.

Comments on the proposal may be submitted to Brian L. Creath, 9101 Burnet Road, Suite 212, Austin, Texas 78758.

*§473.4. Late Renewal Fees for Certificates, Licenses, and Supervision Contracts [Late Fees for All Renewals] (Not Refundable).*

(a) One day to 90 days—\$68 [\$45].

(b) Ninety-one days to less than two years—\$135 [\$90].

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

Issued in Austin, Texas, on March 30, 1993.

TRD-9321123

Rebecca E. Forkner  
Acting Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Earliest possible date of adoption: May 10, 1993

For further information, please call: (512) 835-2036

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• 22 TAC §473.5

The Texas State Board of Examiners of Psychologists proposes an amendment to §473.5, concerning Miscellaneous Fees. The Board is setting a fee for the supervision of other extenders as defined in §465.18(c)(2)(F).

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

Ms. Forkner also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the Board will be able to monitor the supervisees of licensed psychologists. The agency will be able to respond to public inquiry about these supervisees. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be \$200 per supervisee as defined in §465(c)(2)(F) paid by psychologist supervisor.

Comments on the proposal may be submitted to Brian L. Creath, 9101 Burnet Road, Suite 212, Austin, Texas 78758.

The amendment is proposed 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 reasonable necessary for the proper performance of its duties and regulations of proceedings before it.

*§473.5. Miscellaneous Fees (Not Refundable).*

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

(f) Fee for supervision of Other Extenders (as defined in §465.18(c)(2)(F) of this title (relating to Rules of Practice)—\$200.

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

Issued in Austin, Texas, on March 30, 1993.

TRD-9321124

Rebecca E. Forkner  
Acting Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Earliest possible date of adoption: May 10, 1993

For further information, please call: (512) 835-2036

◆ ◆ ◆  
**TITLE 28. INSURANCE**  
**Part I. Texas Department**  
**of Insurance**

**Chapter 1. General**  
**Administration**

**Subchapter C. Maintenance**  
**Taxes**

• 28 TAC §1.413

The State Board of Insurance of the Texas Department of Insurance proposes new 28 TAC §1.413, concerning assessment of maintenance taxes for the Texas Workers' Compensation Commission and the Texas Workers' Compensation Research Center as set by the Texas Workers' Compensation Commission, assessment of a maintenance tax surcharge which will be used to service the bond debt for the Texas Workers' Compensation Insurance Fund, and a tax form with instructions for filing and paying the taxes. This section is being submitted for re-publication in order to set new collection rates and to set new collection dates. New collection rates are necessary due to a decline in workers' compensation gross insurance premiums from approximately \$4.2 billion in 1991 to approximately \$2.8 billion in 1992. The section was originally published in the December 25, 1992, issue of the *Texas Register* (17 TexReg 9085) and republished under in the February 5, 1993, issue of the *Texas Register* (18 TexReg 734). The section is proposed to provide a method of assessment and record the rates of assessment for taxes due in 1993 on the basis of gross premium receipts for calendar year 1992 and to provide insurers with a form and instructions for filing and paying the taxes. The Texas Workers' Compensation Commission annually establishes and certifies to the State Board of Insurance the rates of assessment for the maintenance taxes which are authorized to pay the cost of administering the Texas Workers' Compensation Act. Section 1.413 sets rates of assessment which apply to workers' compensation in-

insurance companies. Timely and accurate payment of maintenance taxes is necessary for support of regulatory functions. The new section adopts a form and instructions which facilitate compliance with statutory requirements for reporting and payment of maintenance taxes to the department for the Texas Workers' Compensation Commission and the Texas Workers' Compensation Research Center.

Michael Davis, the director of accounting, has determined that for the first five-year period the proposed section is in effect, there will be no fiscal implications for local government as a result of enforcing or administering the section, and there will be no effect on local employment or the local economy. The anticipated fiscal impact on state government will be an estimated income of \$36,009,130 which is generated from the Texas Workers' Compensation Commission maintenance tax, an estimated income of \$574,430 of maintenance tax collected on behalf of the Texas Workers' Compensation Research Center, and an estimated income of \$38,000,223 generated from the maintenance tax surcharge which will be used to pay bond debt service for \$300 million in bonds issued by the Texas Public Finance Authority on behalf of the Texas Workers' Compensation Insurance Fund.

Mr. Davis also has determined that for each year of the first five-years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be the facilitation in the collection of a maintenance tax assessment for the Texas Workers' Compensation Commission and the Texas Workers' Compensation Research Center and a maintenance tax surcharge assessment for the Texas Workers' Compensation Insurance Fund. The anticipated cost to small businesses required to comply with this section is the amount each business will pay based on the rates provided in the section and the administrative cost of completing the forms and following the instructions. There is no difference in the rates of assessment between large and small businesses. There is no anticipated economic cost to persons as the assessment is imposed on business entities.

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

The new section is proposed under the Insurance Code, Articles 5.76-5, 5.76-3, 5.68, and 1.04(b), and Texas Civil Statutes, Articles 8308-2.22, 8308-2.23, 8308-11.09, and 6252-13a, §4 and §5. The Insurance

Code, Article 5.76-5, establishes the maintenance tax surcharge. Article 5.76-3 establishes the Texas Workers' Compensation Insurance Fund. Article 5.68 establishes the maintenance tax based on premiums for workers' compensation coverage. Article 1.04(b) authorizes the State Board of Insurance to determine rules and regulations in accordance with the laws of this state for uniform application. Texas Civil Statutes, Articles 8308-2.22, 8308-2.23, and 8308-11.09, establish the maintenance tax for workers' compensation insurance companies. Article 6252-13a, §4 and §5, authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures, and prescribe the procedures for adoption of rules by a state administrative agency. The proposed new section affects regulation relating to workers' compensation insurance maintenance taxes and the maintenance tax surcharge for 1993, under the Insurance Code, Article 5.76-5, and under the Texas Civil Statutes, Articles 8308-2.22, 8308-2.23, and 8308-11.09.

*§1413. Maintenance Tax Assessment for the Texas Workers' Compensation Commission and for the Texas Workers' Compensation Research Center; Maintenance Tax Surcharge for the Texas Workers' Compensation Insurance Fund, 1993.*

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

(1) the maintenance tax as set by the Texas Workers' Compensation Commission at the rate of 1.260% of the correctly reported gross workers' compensation insurance premiums for the calendar year 1992;

(2) the maintenance tax as set by the Texas Workers' Compensation Commission on behalf of the Texas Workers' Compensation Research Center at the rate of .020% of the correctly reported gross workers' compensation insurance premiums for the calendar year 1992;

(3) the maintenance tax surcharge at the rate of 1.440% of the correctly reported gross workers' compensation insurance premiums for the calendar year 1992 to cover debt service for bonds issued on behalf of the Texas Workers' Compensation Insurance Fund.

(b) The maintenance taxes assessed under subsections (a)(1) and (2) of this section shall be due and payable to the Texas Department of Insurance on June 1, 1993.

(c) Except as specifically otherwise provided in this subsection, the maintenance tax surcharge assessed under subsection (a)(3) of this section shall be due and payable to the Texas Department of Insurance

50% on June 1, 1993, and 50% on October 15, 1993, provided that any insurance company may pay, at its option, the entire amount assessed on June 1, 1993. The maintenance taxes and surcharge assessed for those insurers whose maintenance tax liability under the Insurance Code, Article 5.68, for the previous tax year was less than \$2,000 are due and payable on June 1, 1993, and these insurers shall remit 100% of such taxes on June 1, 1993.

(d) A separate tax form with instructions for the filing and payment of maintenance taxes to the Texas Department of Insurance for the 1992 calendar year are adopted by reference. This form and instructions are published by the Texas Department of Insurance and may be obtained from Tax Administration Division of the Texas Department of Insurance, Tower I, Room 860, 333 Guadalupe Street, Austin, Texas 78701-3938. Each insurer shall follow such instructions and use and report on such form as appropriate to its operation. This tax form with instructions is more particularly identified as the 1992 Maintenance Taxes for the Workers' Compensation Commission and the Workers' Compensation Research Center.

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

Issued in Austin, Texas, on April 2, 1993.

TRD-9321183

Linda von Quintus-Dorn  
Chief Clerk  
Texas Department of  
Insurance

Earliest possible date of adoption: May 10, 1993

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

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

#### Subchapter FF. Credit Life and Accident and Health Insurance

##### • 28 TAC §3.5702

The State Board of Insurance of the Texas Department of Insurance proposes an amendment to §3.5702 concerning instructions for preparing forms. The amendments are necessary to include new requirements for the reporting of data for the experience calls. Four new forms have been added. New form CI-ACT-CERT will be used to provide the actuarial reserve certification, new form CI-VAL-AFF will be used to submit an affidavit of validity of experience data, new form CI-EXP-L will be used to provide a reporting form for the carriers' credit life general expenses and new form CI-EXP-DIS will be

used to provide a reporting form for the carriers' credit disability expenses. Seven other forms have been revised. The revised forms are: CI-EX-L (Rev. 1992), CI-EX-DIS (Rev. 1992), CI-EP-L (Rev. 1992), CI-EP-DIS-1/60 (Rev. 1992), CI-EP-DIS-61/120 (Rev. 1992), CI-R-L (Rev. 1992), and CI-R-DIS (Rev. 1992). New subsection (f) contains instructions for completing the actuarial certification and new subsection (g) contains instructions for completing the affidavit of validity form. The amendment to subsection (h)(1)(C), formerly subsection (f)(1)(C), refers to the revised forms and changes the reporting period to the reporting year in order to make the instructions clearer. The amendment to subsection (h)(2)(B), which was formerly (f)(2)(B), changes the reporting of the mean insurance in force for joint coverage. New subsection (h) (3) describes the reporting of commissions. New subsection (i) describes the instructions for reporting general expense. The amendment contained in new subsection (j)(1), formerly (g)(1), contains instructions for the use of the presumptive rate in effect at the end of the reporting year when converting actual earned premiums. The amendment to (j)(2)(A)(iv) refers to the revised forms and provides that the actual earned premium included in those forms is at the presumptive rate at the end of the reporting year, and similarly references the end of the reporting year in explaining that additional forms may not need to be completed. The amendments to (j)(2)(B)(ii) and (j)(2)(C)(iv) add references to (j)(2)(A)(iv). New subsection (l) describes the requirement for diskette filing and the procedure for obtaining an alternative method of filing. New subsection (m) describes the manner in which entities will be advised of the dates for transmission of credit experience annual call documents. Throughout the section, changes are made to show a reference to the revised form designations. Changes have also been made to reflect the use of title designations rather than page numbers of National Association of Insurance

Commissioners (NAIC) forms, throughout the section. These changes were made because the NAIC may change the locations of these pages in the future. The forms are filed with the Office of the Secretary of State, Texas Register Section, and incorporated by reference. They can be obtained from the Texas Department of Insurance, Publications Department, MC 108-5A, P. O. Box 149104, Austin, Texas 78714-9104.

Max Ryan, director, credit insurance, has determined that for the first five-year period the proposed section will be in effect, there will be no fiscal implications for local government as a result of enforcing or administering the section, and there will be no effect on local employment or the local economy. Based on a cost per hour of labor, the cost of compliance for large and small business will be the same. There will be a one time cost to state government of \$4,068 for reformatting and expanding the system to capture the additional information; and \$16,800 for the design and development of the diskette filing system. However, the costs will be fully offset by the elimination of costs associated with data entry and the reduction of time spent in editing the accuracy of the experience reports.

Max Ryan, 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 this section is the ability to obtain more accurate experience information to conduct a rate hearing in the credit insurance area. Mr. Ryan has determined that for the first year of the first five years this section is in effect, the anticipated economic cost to entities who are required to comply with the proposed amendments to the section is a one-time cost of between \$100-\$1,000 dependent upon the amount of time necessary to reprogram their data systems to provide the additionally requested data and expense information. These costs will be partly or completely offset by the savings the entities will have due to the filing of experience data

by diskette. There will be no additional cost in the remaining four years of the first five years the proposed amendments to the section are in effect.

Comments on the proposal, to be considered by the State Board of Insurance, must be submitted in writing within 30 days after publication of the proposed section in the Texas Register, to Linda K. von Quintus-Dorn, Chief Clerk, P.O. Box 149104, Mail Code 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Max Ryan, Director, Credit Insurance, Mail Code 108-1C, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing should be submitted separately to the Chief Clerk's office.

The amendments are proposed under the Insurance Code, Articles 3.53 and 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 3.53 authorizes the board to issue such rules and regulations as it deems appropriate for the regulation of credit life insurance and credit accident and health insurance. Article 1.04(b) provides the board with authority to determine rules in accordance with the laws of this state. Texas Civil Statutes, Article 6252-13a, §4 and §5 authorize and require each state agency to adopt rules of practice setting forth the nature and requirements of available procedures, and prescribe the procedures for adoption of rules by a state administrative agency.

### §3.5702. Instructions for Preparing Forms.

(a) Identification of Forms. These forms are filed with the Office of the Secretary of State, Texas Register Section, and incorporated by reference. They can be obtained from the Texas Department of Insurance, Publications Department, MC 108-5A, P.O. Box 149104, Austin, Texas 78714-9104.

<u>FORM</u>	<u>DESCRIPTION</u>
CI-I-PR	Inventory Information Form Presumptive Rates
CI-I-DR	Inventory Information Form Deviated Rates
<u>CI-ACT-CERT</u>	<u>Actuarial Reserve Certification Form</u>
<u>CI-VAL-AFF</u>	<u>Affidavit of Validity of Experience Data Form</u>
CI-EX-L (Rev. 1992)	Credit Life Insurance Experience Report Form
CI-EX-DIS (Rev. 1992)	Credit Disability Insurance Experience Report Form
<u>CI-EXP-L</u>	<u>Credit Life General Expense Report Form</u>
<u>CI-EXP-DIS</u>	<u>Credit Disability General Expense Report Form</u>
CI-EP-L (Rev. 1992)	Earned Premiums Credit Life Insurance
CI-EP-DIS-1/60 (Rev. 1992)	Earned Premiums Credit Disability Insurance - Loan Durations 1 to 60
CI-EP-DIS-61/120 (Rev. 1992)	Earned Premiums Credit Disability Insurance - Loan Durations 61 to 120
CI-R-L (Rev. 1992)	Reconciliation to State Page Credit Life
CI-R-DIS (Rev. 1992)	Reconciliation to State Page Credit Disability

(b)-(e) (No change.)

(f) Actuarial certification form (CI-ACT-CERT). The purpose of this form is to provide verification as to the method used to compute the unearned premium reserves for single premium credit insurance. The form is to be signed by a qualified actuary. A qualified actuary is a member of the American Academy of Actuaries.

(g) Affidavit of validity form (CI-VAL-AFF). The purpose of form CI-VAL-AFF is to provide an affidavit as to the completeness and validity of the credit insurance experience data submitted. The affidavit requires a notarized signature of an officer of the company and certifies that the information submitted for the insurer is a full and true

statement of the credit experience for the reporting year(s) requested, according to the best information, knowledge and belief of the affiant.

(h) [(f)] Experience forms (CI-EX-L (Rev. 1992) and CI-EX-DIS (Rev. 1992)). The purpose of these forms is to provide statewide experience data in order to determine if the benefits provided under contracts of credit insurance are reasonable in relation to premiums charged in order that the board may discharge its statutory obligations for the supervision of credit insurance operations under the Insurance Code, Article 3. 53. A separate form CI-EX-L (Rev. 1992) or CI-EX-DIS (Rev. 1992) must be filed for each class of business, loan duration, and plan of benefits.

(1) Earned premiums.

(A) Line 1a Net written premiums. Net premiums to be shown on line 1a are to be determined as follows: Gross premium written (before deductions for dividends and experience rating credits) less refunds on terminations.

(B) Line 1d Actual earned premiums. The total of all premiums earned at the premium rates actually charged and in force during the experience period.

(C) Line 1e Earned premiums at presumptive rate. Actual earned premiums adjusted (on form CI-EP-L (Rev. 1992), CI-EP-DIS-1/60 (Rev. 1992), or CI-EP-DIS-61/120 (Rev. 1992) to the amount which would have been earned had the premium rate during the experience period been equal to the presumptive rate in effect

at the end of the reporting year [period]. Note that if premiums in force differ from the presumptive rate in effect at the end of the reporting year [period], line 1d will not equal line 1e.

(2) Mean Insurance in force, line 4 Form CI-EX-L (Rev. 1992).

(A) Particular care should be exercised to assure sufficiently accurate results in determining the amounts of "mean insurance in force."

(B) The average of the monthly amounts should be calculated and entered as the mean insurance in force on line 4. Exclude reinsurance assumed and do not deduct any ceded. For joint coverage, the amount of insurance in force shall equal the death benefit payable under the contract and shall not be reported as twice the death benefit.

(3) Commissions, line 6a of Form CI-EX-L (Rev. 1992) or line 4a of Form CI-EX-DIS (Rev. 1992). The amount to be reported on this line shall be the total amount of commissions incurred in the state of Texas (direct business only). The commissions shall be inclusive of commissions for agents or general agents and shall be reflected separately for each class of business, loan duration, and plan of benefits, as indicated at the top of either Form CI-EX-L (Rev. 1992) or CI-EX-DIS (Rev. 1992).

(i) General expense forms ( CI-EXP-L and CI-EXP-DIS). The purpose of these forms is to provide general expense and allocation information to assist the board in promulgating presumptive premium rates for this state. For credit life coverage, the data should be the total of all classes of business, durations of loan and plans of life benefits. The credit life data will be reported on form (CI-EXP-L). For credit disability coverage, the data should be the total of all classes of business, durations of loan and plans of disability benefits. The credit disability data will be reported on form (CI-EXP-DIS). The reported nationwide general expenses are to be limited to those items listed on pages 2, 3 and 4 of forms CI-EXP-L and CI-EXP-DIS. Commissions are to be reflected solely on forms CI-EX-L (Rev. 1992) and CI-EX-DIS (Rev. 1992). The expenses shall be limited to the credit insurance general expenses for loan durations not exceeding 120 months.

(1) Number of policies and certificates of insurance for Texas experience.

(A) Line 1a Incepting in the reporting year. The total number of policies and certificates of insurance

which took effect (incepted) in the reporting year shall be shown on line 1a of CI-EXP-L or CI-EXP-DIS, as appropriate. If coverage for both life and disability are written on the same policy or certificate of insurance, report the coverages as if each coverage had been written separately.

(B) Line 1b In-force from previous years and continuing in-force after the reporting year. The total number of policies and certificates of insurance which took effect before the reporting year and are still in-force at the end of the reporting year shall be reported on line 1b. If coverage for both life and disability are written on the same policy or certificate of insurance, report the coverages as if each coverage had been written separately.

(C) Line 1c In-force from previous years and going out of force during the reporting year, for any reason. The total number of policies and certificates of insurance which took effect before the reporting year and terminated during the reporting year shall be reported on line 1c. If coverage for both life and disability are written on the same policy or certificate of insurance, report the coverages as if each coverage had been written separately.

(D) Line 1d Total number of policies and certificates of insurance in force at the start of the reporting year. The sum total of policies and certificates of insurance which are in force at the beginning of the reporting year are to be reflected on line 1d. If coverage for both life and disability are written on the same policy or certificate of insurance, report the coverages as if each coverage had been written separately. Line 1d equals Line 1b plus Line 1c.

(E) Line 1e Total number of policies and certificates of insurance in force at the end of the reporting year. The sum total of policies and certificates of insurance which were in force at the beginning of the reporting year plus those that took effect during the reporting year and are still in-force are to be reflected on line 1e. If coverage for both life and disability are written on the same policy or certificate of insurance, report the coverages as if each coverage had been written separately. Line 1e equals line 1a plus Line 1b minus Line 1c.

(2) Number of policies and certificates of insurance for nationwide experience. The instructions are the same as those listed for lines 1a-1e, described in subparagraphs A-E of this subsection,

except that the data is to reflect the nationwide experience rather than being limited to the Texas experience.

(3) Average original term of policies and certificates of insurance, in months, for single premium business only.

(A) Line 3a Incepting in the reporting year in Texas. The average original term of all single premium policies and certificates of insurance which took effect in Texas ONLY during the reporting year shall be reflected on line 3a. For coverage with odd days, round the term to the nearest whole month.

(B) Line 3b In-force from previous years in Texas. The average original term of all single premium policies and certificates of insurance which were in-force from previous years for Texas business ONLY shall be reflected on line 3b. For coverage with odd days, round the term to the nearest whole month.

(C) Line 3c Incepting in the reporting year nationwide. The average original term of all single premium policies and certificates of insurance which took effect during the reporting year, for the carriers' nationwide business, shall be reflected on line 3c. For coverage with odd days, round the term to the nearest whole month.

(D) Line 3d In-force from previous years nationwide. The average original term of all single premium policies and certificates of insurance which were in-force from previous years for nationwide business shall be reflected on line 3d. For coverage with odd days, round the term to the nearest whole month.

(4) Expense and allocation table. The expense line items, shown to the left of column 1, track exactly to those in Exhibit 5 of the NAIC Life Annual Statement for life and accident and health carriers. Casualty carriers should contact the Credit Life and Credit Accident and Health Section of the Texas Department of Insurance for more detailed instructions.

(A) Column 2. Enter the amount for each expense line item in column 2. The total of column 2 should reconcile to the amount shown on the page entitled "Analysis of Operations by Lines of Business" of the NAIC Life Annual Statement for the reporting year. For life and accident and health companies, refer to line 22, column 6, for credit

life coverages or line 22, column 10, for credit accident and health coverages. Casualty carriers should contact the Credit Life and Credit Accident and Health Section of the Texas Department of Insurance for more detailed instructions.

(B) Column 3. Percentage allocated. The call differentiates general expenses into two categories -- directly incurred versus allocated. Expenses directly incurred are those specifically and uniquely attributable to credit life or credit accident and health insurance. Directly incurred expenses would include salaries, professional fees, marketing expenses, etc. whose expenditure is solely a function of the credit life or credit accident and health insurance transaction. Allocated expenses would include corporate overhead or other expenses shared with lines of insurance other than credit life or credit accident and health. For example, if the insurer sells several lines of insurance in addition to credit life and credit accident and health, the share of corporate management salaries assigned to credit life or credit accident and health would be the result of an allocation.

(C) Column 4 Basis for allocation. If Column 3 contains a percentage greater than 0%, explain the basis of allocation; such as: square feet of office space, number of employees, premium volume, number of claims, policies or certificates of insurance in-force, policies or certificates of insurance issued or any other basis employed.

(D) Examples. Enter the percentage of the general expense line item resulting from an allocation, as opposed to directly incurred expenses, in column 3. Examples include:

(i) If the entire form 1, line 22 amount is an allocation of corporate general expenses, enter that dollar amount in Column 2, line 10 -- Total and enter 100% in Column 3, line 10. Explain the basis for allocation in Column 4, line 10.

(ii) If legal fees are incurred only in conjunction with credit life claims or other credit life activities, enter 0% in Column 3, line 4.1.

(iii) If traveling expenses are incurred jointly (and only) for the benefit of credit life and credit accident and health and if the total amount is allocated to each line, enter 100% in Column 3, line 5.1, and explain the basis for allocation in Column 4, line 5.1.

(iv) If the cost of claim investigation and settlement consists partly of contract investigators incurred solely on behalf of credit life claims (\$30,000) and

partly as a result of a corporate allocation of claims investigation (\$30,000), enter \$60,000 in Column 2, line 4.5 and enter 50% in Column 3, line 4.5. Explain the basis for the corporate allocation of claims investigation in Column 4, line 4.5.

(5) Additional miscellaneous information.

(A) Line 5a Sundry general expenses. Please list the major components of the expense items referred to as "Sundry General Expenses."

(B) Line 5b Aggregate write-ins. Please list the major components of the expense items referred to as "Aggregate Write-Ins."

(j) [(g)] Earned premium forms (CI-EP-L (Rev. 1992), CI-EP-DIS-1/60 (Rev. 1992), and CI-EP-DIS-61/120 (Rev. 1992).

(1) The purpose of these forms is to convert actual earned premiums to the amount of premiums which would have been earned had all business been written at the [current] presumptive rate in effect at the end of the reporting year. If more than one year's data is requested, each year's data shall use the presumptive rate that was in effect at the end of each reporting year.

(2) Form CI-EP-L (Rev. 1992) is applicable to credit life insurance, Form CI-EP-DIS-1/60 (Rev. 1992) is applicable to credit disability insurance written in connection with loan durations of one to 60 months, and Form CI-EP-DIS-61/120 (Rev. 1992) is applicable to credit disability insurance written in connection with loan durations of 61 to 120 months. Note that forms CI-EP-L (Rev. 1992), CI-EP-DIS-1/60 (Rev. 1992) and CI-EP-DIS-61/120 (Rev. 1992) should be reproduced as needed to correspond to the class of business, loan duration and plan of benefits, as shown on the corresponding Form CI-EX-L (Rev. 1992) or CI-EX-DIS (Rev. 1992).

(A) General.

(i) A form CI-EP-L (Rev. 1992) or either CI-EP-DIS-1/60 (Rev. 1992) or CI-EP-DIS-61/120 (Rev. 1992), as applicable, must be completed for each Form CI-EX-L (Rev. 1992) or CI-EX-DIS (Rev. 1992) where the presumptive earned premium differs from the actual earned premium. More than one form may be required when more than one year's data is presented, due to changes in the presumptive rates or other factors.

(ii) (No change.)

(iii) The overall totals presented on Form CI-EP-L (Rev. 1992),

CI-EP-DIS-1/60 (Rev. 1992) or CI-EP-DIS-61/120 (Rev. 1992) must agree to the appropriate lines on the Form CI-EX-L (Rev. 1992) or CI-EX-DIS (Rev. 1992) to which they are attached.

(iv) Note that Form CI-EP-L (Rev. 1992), Form CI-EP-DIS-1/60 (Rev. 1992), and Form CI-EP-DIS-61/120 (Rev. 1992), include actual earned premium at the presumptive rate, in effect at the end of the reporting year, on line A. This data is for balancing purposes only, and in no way indicates that Form CI-EP-L (Rev. 1992), CI-EP-DIS-1/60 (Rev. 1992), or CI-EP-DIS-61/120 (Rev. 1992) must be completed if actual earned premium is equal to presumptive earned premium, in effect at the end of the reporting year.

(B) Form CI-EP-L (Rev. 1992)-credit life insurance.

(i) Presumptive earned premium (Column 4) is the product of actual earned premium (Column 1) times the conversion factor (Column 2/ Column 3).

(ii) See also subparagraphs (A)(iii) and (A)(iv) of this paragraph.

(C) Form CI-EP-DIS-1/60 (Rev. 1992), and Form CI-EP-DIS-61/120 (Rev. 1992)-credit disability insurance.

(i) Since deviated rates generally can be expressed as a percentage of the presumptive rates, the conversion factor will tend to be constant for all periods. When using Form CI-EP-DIS-1/60 (Rev. 1992), the conversion factor to be utilized is the average of three ratios taken between presumptive and actual rates for 12-, 24-, and 36-month terms. When using Form CI-EP-DIS-61/120 (Rev. 1992), the conversion factor to be utilized is the average of three ratios taken between presumptive and actual rates for 72-, 84-, 96-month terms. The sum of these ratios, divided by three, becomes the conversion factor.

(ii) Presumptive premium rates are to be presented on Line A, Columns 2-4 of Form CI-EP-DIS-1/60 (Rev. 1992) or CI-EP-DIS-61/120 (Rev. 1992), as applicable. All ratios (Line b) are to be calculated by dividing Line A by Line a.

(iii) These forms should be reproduced as necessary to present the required conversion for all premium rates in force during the experience period.

(iv) See subparagraphs (A)(iii) and (A)(iv) of this paragraph.

(k) [(h)] Reconciliation forms (CI-R-L (Rev. 1992) and CI-R-DIS (Rev. 1992)).

(1) The purpose of this form is to present a reconciliation between current



year data presented on the various forms, CI-EX-L (Rev. 1992) and CI-EX-DIS (Rev. 1992) and the total presented on the page entitled "DIRECT BUSINESS IN THE STATE OF TEXAS DURING THE YEAR" (commonly known as the "state page") [46] of the annual statement.

(2) Form CI-R-L (Rev. 1992) is applicable to credit life insurance and Form CI-R-DIS (Rev. 1992) is applicable to credit disability insurance.

(A) Due to the volume of forms CI-EX-L (Rev. 1992) and CI-EX-DIS (Rev. 1992) which may be filed, each such form will be listed by page number only on the appropriate form, CI-R-L (Rev. 1992) or CI-R-DIS (Rev. 1992). Each form, CI-EX-L (Rev. 1992) or CI-EX-DIS (Rev. 1992), must contain a page number to identify it on forms, CI-R-L (Rev. 1992) and CI-R-DIS (Rev. 1992).

(B) Line references included in column headings refer to the appropriate form CI-EX-L (Rev. 1992) or CI-EX-DIS (Rev. 1992).

(C) This form should be reproduced as necessary to include all forms CI-EX-L (Rev. 1992) or CI-EX-DIS (Rev. 1992).

(l) Experience data submissions on diskette. The experience data of each carrier must be submitted on diskette. The diskette will be furnished by the Texas Department of Insurance. The experience data shall be entered onto the diskette and returned along with a hard copy of the information. Any carrier who cannot comply with the filing of their credit experience data on diskette shall contact the Credit Life and Accident and Health Section of the Texas Department of Insurance immediately, after receiving the credit experience data call packet, to request an alternative method for filing of their experience data. The request for using an alternative method for the submission of experience data shall be forwarded to the Texas Insurance Department, Credit Life and Credit Accident and Health Section, MC 106-1C, P.O. Box 149104, Austin, Texas 78714-9104.

(m) Notice of dates for submission of credit experience annual call documents. The dates for submission of credit insurance annual experience call documents will be listed in a letter written under Insurance Code, Article 1.24. The letter will list dates for submission that will allow a reasonable period of time for insurers to comply with the request for the documents.

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

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

Issued in Austin, Texas, on April 2, 1993.

TRD-9321182

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

Earliest possible date of adoption: May 10, 1993

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

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part IX. Texas Water Commission

#### Chapter 312. Sewage Sludge Use and Disposal

##### Subchapter A. General Provisions

The Texas Water Commission (TWC) proposes new §§312.1-312.21, 312.41-312.49, 312.61-312.68, 312.81-312.83, 312.101, and 312.121, concerning sewage sludge use and disposal.

Senate Bill 2, First Called Session, 72nd Legislature, transferred all the powers, duties, rights, and obligations of the Texas Department of Health (TDH) pertaining to the treatment, handling, storage, and disposal of solid waste to the TWC effective March 1, 1992. All rules pertaining to municipal solid waste, except procedural rules, were administratively transferred from Title 25, Part 1, Texas Department of Health, to Title 31, Part IX, Texas Water Commission, in the March 3, 1992, issue of the *Texas Register* (17 TexReg 1649). Rules relating to the management of sludges and similar wastes, formerly codified as 25 TAC §§325.411-325.534, were included in the administrative transfer of rules to the TWC through recodification as 31 TAC §§330.411-330.534.

The new sections concerning sewage sludge use and disposal are proposed by TWC in order to establish standards for the final use or disposal of sewage sludge, water treatment sludge, and domestic septage sludge applied to land or placed on a surface disposal site, and to establish standards for sewage sludge fired in a sewage sludge incinerator. These standards include general requirements, pollutant limits, management practices, and operational standards. The new sections also establish the basis for requiring either a permit or a registration for the final use or disposal of sewage sludge.

The TWC has assessed the rules adopted by the TDH concerning management of sludges and similar wastes which were administratively transferred to the TWC, and has determined that revisions of these rules are necessary in order to effectively administer, manage, and implement the program regulating the final use and disposal of sewage sludge in the State of Texas.

New §312.1 states the purpose of this chapter which is to establish standards for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works, water treatment sludge generated during the treatment of domestic drinking water, and domestic septage. Standards are also included in this chapter for sewage sludge fired in a sewage sludge incinerator, pathogen and alternative vector attraction reduction requirements, and monitoring and recordkeeping requirements when sewage sludge, water treatment sludge, and domestic septage is applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator.

New §312.2 specifies the applicability of this chapter.

New §312.3 specifies the activities that are excluded from regulation under this chapter.

New §312.4 establishes the basis for requiring either a permit or a registration for the final use or disposal of sewage sludge. New §312.4(a) provides that except as described in §312.4(b), a permit is required for the use or disposal of sewage sludge or water treatment sludge. New §312.4(b)(1) concerns registration of land application for beneficial use sites. A site which qualifies for an exemption from a permit and for which a permit has not been issued shall register such site with the commission in accordance with the requirements of §312.12 and §312.13. New §312.4(b)(2) states that an exemption from a permit may be allowed by the executive director if all of the following conditions are met: the registration of land for beneficial use of sewage sludge or water treatment sludge shall meet the requirements in §§312.41-312.49 (Land Application for Beneficial Use); the pH of the soil at the beneficial use site shall be greater than 5.5 standard units; the beneficial use site shall not be greater than 1,500 acres in surface area; the travel time from the sludge source to the beneficial site shall not be greater than six hours; and the beneficial site shall receive at least 14 inches of rainfall annually. New §312.4(b)(3) states that the effective date of a registration of a site at which sewage sludge or water treatment sludge is applied to the land for beneficial use is the date the executive director approves the application by letter. New §312.4(b)(3) also establishes requirements for confirming or updating site registration information on file with the commission. New §312.4(b)(4) describes procedures for appealing the decision of the executive director concerning an application for a beneficial use site registration. New §312.4(c) establishes term limits for registrations or permits issued under this chapter, and gives the time frame for renewal of those registrations or permits issued prior to the effective date of this chapter. New §312.4(d) provides for exclusions to the registration requirements of this section.

New §312.5 describes the relationship of this chapter to relevant sections of the Code of Federal Regulations and the federal Clean Water Act.

New §312.6(a) states that the commission or executive director may impose additional or more stringent requirements than are set out in this chapter when necessary to protect public health and the environment from any

adverse effect of a pollutant in sewage sludge. New §312.6(b) states that political subdivisions of the state may impose more stringent requirements for the use or disposal of sewage sludge, water treatment sludge or domestic septage than those set out in this chapter.

New §312.7 establishes standards and acceptable methods for sampling and analyzing sewage sludge, water treatment sludge or domestic septage that is applied to the land or placed on a surface disposal site, and sewage sludge fired in a sewage sludge incinerator.

New §312.8 sets out general definitions for words and terms frequently used in this chapter.

New §312.9 concerns the sludge fee program. New §312.9(a) lists special definitions for words and terms used in that section and relating to the sludge fee program. New §312.9(b) establishes an annual fee for each person holding a registration or permit issued under this chapter to treat, process or dispose of sewage sludge or water treatment sludge, including all persons holding a commission permit issued pursuant to the Texas Water Code, Chapter 26 allowing treatment, discharge, or disposal of sewage sludge or water treatment sludge. The amount of the fee is determined by weight of dry solids disposed of and reported to the commission as of September 1 of each year. The fee assessed for the fiscal year ending August 31, 1993, will be based on only the last two quarters of that fiscal year; March 1, 1993, to August 31, 1993. Failure to report the disposal of sewage sludge does not exempt a registrant or permittee from this fee. New §312.9(b)(1)-(5) indicates the fee amount assessed for each activity for which a fee is required. New §312.9(c) assesses an annual transporter fee against each person or entity holding a registration to transport sewage sludge, water treatment sludge or septage (including transporters of grit (mud) trap and grease trap waste) issued in accordance with §312.15 of this title (related to Transporter Registration). The amount of the annual fee shall be based upon the total annual volume of waste transported by the transporter under each registration and reported to the commission as of September 1 of each year. Failure to report the transportation of sewage sludge does not exempt a registrant from this fee. New §312.9(c) also establishes the various fee amounts assessed based on the total annual volume of waste transported. New §312.9(d) provides that fees assessed in subsections (b) and (c) of §312.9 shall be paid by the registrant or permittee prior to October 1 of each year. Fees shall be paid by check, certified check or money order payable to the Texas Water Commission. Fees not paid by October 1 shall be assessed a 10% late charge. New §312.9(e) states that failure of the registrant or permittee to submit the required fee payment by October 1 shall be sufficient cause for the commission to revoke the registration or permit and authorization to process or dispose of waste. Any entity to whom a registration or permit is transferred shall be liable for payment of the annual fee on the same basis as the transferor.

New §312.10 establishes requirements and procedures for permit and registration processing. New §312.10(a) states that applications for permits, registrations, or other types of approvals required by this chapter shall be reviewed for administrative completeness within 10 working days of receipt of the application by the executive director. New §312.10(b) sets out general information required to be included in applications for permits and registrations issued under this chapter. New §312.10(c) further requires applications for permits issued under this chapter to include a list of adjacent and potentially affected landowners, residents, and businesses and their addresses along with a map locating the property owned by these persons. New §312.10(d)-(g) establish procedures for preparation and publication of the Notice of Receipt of Application and Declaration of Administrative Completeness by the executive director, including the information to be contained in the notice, and indicates existing commission rules which are also applicable to applications for permits and registrations under this chapter.

New §312.11 establishes standards and requirements for permit applications to land apply, dispose of, or incinerate sewage sludge or water treatment sludge. New §312.11(b) states that the executive director may designate any person subject to the standards for sewage sludge use and disposal as a "treatment works treating domestic sewage" and require a permit to be obtained where the executive director finds that a permit is necessary to protect public health and the environment from the adverse effects of sewage sludge or to ensure compliance with the technical standards for sludge use and disposal developed under the federal Clean Water Act, §405(d). New §312.11(c) indicates existing commission rules relating to permit applications processing which are also applicable to permits issued under this chapter. New §312.11(d)(1) and (2) sets out the information required to be included in an application for permit under this chapter, and specifically requires the application to show the ownership of all land adjacent to, or within one-half mile of the perimeter of any portion or tract of land where the land application, incineration, or disposal facility is to be located. The application shall also show each residential or business address and occupant of all such tracts of land, and shall provide a map indicating the names and addresses of the owners, residents, and businesses of such tracts as can be determined from the county tax rolls and other reliable sources. New §312.11(d)(3) states that the applicant shall submit any other information reasonably required by the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and federal statutes. New §312.11(e) indicates other commission rules relating to standards and requirements for applications and actions concerning amendments, modifications, renewals, transfers, corrections, revocations, and suspensions of permits which are also applicable to permits issued under this chapter. New §312.11(f) indicates existing commission rules relating to permit characteristics and standards which are also applicable to permits issued under this chapter.

New §312.12 concerns requirements for registration of land application activities. New §312.12(a) sets out the requirements for persons who land apply sewage sludge or water treatment sludge for beneficial use through a registration approved by the executive director rather than by permit. Such requirements include notifying the executive director in writing of the planned land application for beneficial use activity, along with details relating to that activity; providing the executive director with notice of any changes or additional information regarding waste composition, waste management methods, and information regarding soils and subsurface conditions where the operation is to be located, and submitting information requested by the executive director which is necessary to determine whether the land application for beneficial use activity is compliant with the terms of this chapter. Such information shall include, but is not limited to, those items listed in new §312.12(a)(3). New §312.12(b) states that no person may cause, suffer, allow or permit any activity of land application for beneficial use without a permit unless that person has received prior written authorization from the executive director. New §312.12(c) provides that the executive director, after reviewing an application for registration under this chapter, shall determine whether to approve or deny an application in whole or in part, suspend the authority to conduct an activity for a specified period of time, amend, or modify the proposed activity requested by the applicant. New §312.12(d) provides for parties who have expressed interest in an application to be notified of the executive director's decision on a registration application.

New §312.13 concerns actions, notice and public meeting and hearing requirements for applications for a permit to land apply, dispose of, or incinerate sewage sludge, water treatment plant sludge, or septage, and applications for a registration to land apply sewage sludge, water treatment plant sludge, or septage. New §312.13(b) indicates existing commission rules relating to actions on amendments, modifications, transfers, and renewals of permits which are also applicable to applications for a permit to land apply, dispose of, or incinerate sewage sludge, water treatment plant sludge, or septage. New §312.13(c) concerns opportunity for public meeting. The requirements under this subsection apply to new applications for a permit, or to applications for renewal and major amendment of a permit, for land application, disposal, or incineration of sewage sludge or water treatment sludge. The public notice requirements of this subsection also apply to new applications for registration, or for applications for renewal and amendment of a registration, for land application of sewage sludge or water treatment sludge. New §312.13(c)(1) requires that Notice Of Receipt of Application and Declaration of Administrative Completeness be mailed by the chief clerk to all county judges, the county commissioner's court, and underground water districts in the county where the proposed site is located, in addition to those persons entitled to notice under §312.10(d). New §312.13(c)(2) and (3) describe requirements for placement of the application for permit or registration at the county courthouse in the county where the site is proposed to be lo-

cated or at a public library in the area of the proposed site, and describes procedures for requesting a public meeting. New §312.13(d) concerns requirements for posting of signs at the proposed site of land application, disposal, or incineration of sewage sludge or water treatment sludge and applies to both applications for a permit and applications for a registration.

New §312.13(e) provides that the executive director of the TWC has discretion to determine whether a public meeting, if one is requested pursuant to §312.13(c)(2) and (3), should be held. New §312.13(e)(1) describes the purpose of the public meeting as being to facilitate constructive communication between applicants and members of the public and to allow citizens to provide the commission with additional information regarding the proposed activity. Public meetings are not contested case hearings under the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a).

New §§312.14-312.21 establish requirements for persons collecting and/or transporting sewage sludge, water treatment sludge, grit trap waste, or grease trap waste. New §312.14(b) states that transporters regulated by this chapter shall not collect or transport hazardous waste except as provided in §§330.271-330.382 of this title (relating to Hazardous Household Waste).

New §312.15 establishes requirements for transporter registration. Transporters described in new §312.15(a) shall register with the commission prior to commencing operations. New §312.15(b)-(e) contain requirements for registered transporters, such as: maintaining a copy of the registration form at their designated place of business and in each vehicle operated under that registration; annual renewal of registration; submission of a new registration application when ownership of the operating entity is changed or operations or management methods are no longer adequately described by the application, and notification to the executive director of certain changes to the registration. New §312.15(f) provides that the executive director may revoke or void a registration for cause, and describes procedures for notice to the registrant of such revocation and opportunity for the registrant to request a hearing on the revocation.

New §312.16 concerns delivery requirements for transporters.

New §312.17 relates to transporter vehicles and equipment. New §312.17(a) requires vehicles used to transport waste regulated under this subchapter to mark such vehicles or containers to show the company name and the commission assigned registration number. New §312.17(b) requires all vehicles and equipment used to transport waste to be maintained in a sanitary condition. New §312.17(c) prohibits mixing of incompatible waste within the same container; however, mixing of waste with different characteristics is permitted if the facility to which the waste is being transported is authorized to store, process, or dispose of such mixed wastes.

New §312.18 relates to record keeping requirements for transporters of wastes regulated by this chapter. Such requirements

include recording each individual collection and deposit of waste in the form of a manifest or similar documentation approved by the executive director, retaining a copy of all manifests for a period of five years for inspection by the executive director, and submission of an annual summary to the executive director of describing collection and transport activities up to September 1 of each year. New §312.18(c) states that local ordinances which are equivalent to or more stringent than the requirements of this section relating to transporters may be used to satisfy the commission's requirements under this section.

New §312.19 sets out procedures to be followed by transporters or collectors of wastes regulated by this chapter in the event of a discharge or spill of waste.

New §312.20 requires persons who engage in the transportation of wastes subject to regulation under this subchapter from Texas to other states or from other states to Texas, or persons who collect or transport such waste in Texas but have their place of business in another state, shall comply with all the requirements for transporters contained in §§312.14-312.19. Such persons are also obligated to meet the applicable requirements of this chapter if they also engage in the management of such wastes by storage, processing, or disposal.

New §312.21 lists the conditions which constitute sufficient cause for the commission to void a transporter's registration and authorization to transport wastes. This section also provides that the commission may take any action necessary to secure compliance, including the assessment of administrative penalties or seeking of civil penalties as prescribed by law.

The TWC proposes new §§312.41-312.49, relating to land application and beneficial use, for sewage sludge, domestic septage, and water treatment sludge. These sections are grouped into Subchapter B of Chapter 312 and together constitute the basic regulations for beneficial use of sewage sludge, domestic septage, and water treatment sludge.

Though not adopted by reference these new sections will essentially adopt the new requirements set forth in 40 Code of Federal Regulations Part 503, Subpart B, with appropriate modifications for beneficial use operations in the State of Texas. Additionally, the proposed new sections will provide state requirements to regulate the disposal of sewage sludge, domestic septage, and water treatment sludge on a land application and beneficial use site.

New §312.41 specifies the applicability of this subchapter. This subchapter applies to any person who prepares sewage sludge that is applied to the land, to any person who applies sewage sludge to the land, to sewage sludge applied to the land, and to the land on which sewage sludge is applied and specifies the activities that are excluded from this regulation.

New §312.42 provides the general requirements that sets up restriction on sewage sludges, water treatment plant sludges, and domestic septic applied at land application sites.

New §312.43 contains four tables showing the maximum pollution concentration allowed for Arsenic, Cadmium, Chromium, Copper, Lead, Mercury, Molybdenum, Nickel, Selenium, and Zinc. Table 1 contains the maximum pollutant concentration for the sludge that can be used at a land application site. Table 2 contains the maximum cumulative pollutant loading rate at the land application site. Table 3 contains the maximum pollutant concentration for the sludge that is sold or given away. Table 4 contains the maximum annual pollutant loading rates at the land application site.

New §312.44 specifies the management practices that must be followed when sludge is applied at a land application site. The practice will not allow sludge to adversely affect a threaten or endangered species or contaminate an aquifer. Minimum buffer zones distances are set from where sludge can be applied to water of the state; to private and public water supply well; to conduits to groundwater; to occupied residence; to existing schools, institutions, or residential or business development property lines; to property boundary or public right-of-way; and to irrigation conveyance ditches. Sludge applied on land within a designated 100-year floodplain must be incorporated into the soil within 24 hours. Sludge shall not be applied on land within a designated 25-year floodplain.

New §312.45 provides the operational standards with respect to pathogen and vector attraction reduction. This section requires sludge applied to land application site to be classified as Class A or Class B.

New §312.46 describes the monitoring requirements for a land application site. Table 5 lists the minimum monitoring frequencies that range from monthly to annually depending on the amount of sludge applied to a site or the size of the wastewater treatment plant that generates the sludge. This section also provides the commission with the authority to increase the monitoring frequency if necessary.

New §312.47 requires certain records to be kept by the person who prepares sludge and the owner or operator of a land application site.

New §312.48 requires land application sites and wastewater treatment plants to submit the records required by §312.47 annually to the commission.

New §312.49 is procedure to determine the annual whole sludge application rate as require in Table 4 of §312.43.

The TWC proposes new §§312.61-312.68, relating to surface disposal of sewage sludge and water treatment sludge. These sections are grouped into Subchapter C of Chapter 312 and together constitute the basic regulations for surface disposal of sewage sludge and water treatment sludge.

Though not adopted by reference these new sections will essentially adopt the new requirements set forth in 40 Code of Federal Regulations Part 503, with appropriate modifications for surface disposal operations in the State of Texas. Additionally, the proposed new sections will provide state requirements

to regulate the disposal of sewage sludge and water treatment sludge on a surface disposal site, also known as dedicated land disposal site or monofill.

New §312.61 defines the applicability of the subchapter and provides limitations for what will be considered storage of sludge versus final disposal on a dedicated site. This subchapter applies to any person who prepares sludge that is placed on a surface disposal site, to an owner or operator of a surface disposal site, to sludge placed on a surface disposal site, and to a surface disposal site. The limitation for sludge storage is two years and may be extended up to five years provided the person who prepares the sludge demonstrates that the land on which the sludge is stored is not an active sludge unit or surface disposal site.

New §312.62 provides the general requirements that restrict the mixture of sewage sludge and water treatment sludge in a single sludge unit, restrict the location of sludge units in wetlands or near certain faults, require the owner or operator to submit a closure and post closure plan, and require notification of disposal activities to subsequent land owners.

New §312.63 contains the maximum pollutant concentrations allowed for arsenic, chromium, and nickel for sludge placed on a sludge unit.

New §312.64 specifies management practices that must be followed when sludge is placed on a sludge unit. These practices will not allow sludge to adversely affect a threatened or endangered species or contaminate an aquifer, will not allow sludge units to be located in the 100 year floodplain, a wetland, or in an unstable area. They also require runoff and leachate to be collected and treated in accordance with any applicable requirements and also require the collection of methane gas from the site when concentrations exceed certain values. Management practices must also restrict agricultural uses of the site and public access to the site.

New §312.65 provides the operational standards with respect to pathogen and vector attraction reduction. This section requires sludge placed on a sludge unit to be classified as Class A or Class B.

New §312.66 describes the monitoring requirements for surface disposal activity. Table 8 lists the minimum monitoring frequencies that range from monthly to yearly depending on the amount of sludge applied to a site. This section also provides the commission with the authority to increase the monitoring frequency if necessary and requires monitoring of each container of domestic septage and air in onsite structures for methane gas.

New §312.67 requires certain records to be kept by the person who prepares sludge and the owner or operator of a surface disposal site.

New §312.68 requires certain facilities, based on size, to submit the records required by §312.67 annually.

The TWC proposes new §§312.81-312.83, relating to pathogen and vector attraction re-

duction, for sewage sludge and water treatment sludge. These sections are grouped into Subchapter D of Chapter 312 and together constitute the requirements for sewage sludge and water treatment sludge to be classified Class A or Class B with respect to pathogens, the requirements for vector attraction reduction, and certain site restrictions.

Though not adopted by reference these new sections will essentially adopt the new requirements set forth in 40 Code of Federal Regulations Part 503, §§503.30-503.33, with appropriate modifications for operations in the State of Texas. Additionally, the proposed new sections will provide state requirements to regulate the disposal of sewage sludge and water treatment sludge.

New §312.81 defines the scope of the subchapter and explains the intention of the content of the subchapter. This subchapter contains the requirements for classification of sludge with respect to pathogens, site restrictions for land on which Class B sludge is applied, and vector attraction reduction requirements.

New §312.82 sets forth the requirements for pathogen reduction. The general requirements for Class A sludge are a fecal coliform density less than 1,000 Most Probable Number per gram of total solids and one of several other performance alternatives. The previous alternatives referred to as "Process to Further Reduce Pathogens" which are similar to a Class A sludge treatment process will be phased out by December 1, 1993. The general requirements for Class B sludge is a fecal coliform density less than 2,000,000 Most Probable Number per gram of total solids and certain site restrictions for Class B sludge that is applied to the land in a beneficial use. Again, the previous alternatives referred to as "Process to Significantly Reduce Pathogens" which are similar to Class B sludge will be phased out by December 1, 1993. Also included are site restrictions and a treatment performance standard for domestic septage applied to the land in a beneficial use.

New §312.83 contains the compliance requirements and alternatives for vector attraction reduction. The section contains two subsections. The first subsection provides a slightly altered list of the alternatives listed in the second subsection for each type of sludge application.

The TWC proposes new §312.101, relating to incineration guidelines and standards for Texas wastewater treatment plant sludge permits. This section is Subchapter E of Chapter 312 and constitute the basic regulations for incineration of sewage sludge.

This new section will adopt by reference the new requirements set forth in 40 Code of Federal Regulations Part 503, Subpart E. This section will be in effect beginning September 1, 1993.

The TWC proposes new §312.121, relating to General permitting guidelines and standards for Texas wastewater treatment plant sludge permits. This section is Subchapter F of Chapter 312 and constitute the basic regulations for general permitting for beneficial use of sludge.

This new section will adopt by reference the requirements set forth in 40 Code of Federal Regulations, §122.28. This section will be in effect beginning upon the date of TPDES sludge program authorization.

Stephen Minick, Division of Budget and Planning, has determined that for the first five years these sections are in effect there will be fiscal implications as a result of administration and enforcement of the sections. With few exceptions, these sections will incorporate into state regulations those federal rules published February 19, 1993, relating to standards for the use and disposal of sewage sludge. For the most part, the impacts of these regulations are indistinguishable from those of the federal rules on affected entities. The impacts are described here to acknowledge the implications of this proposal and to characterize the effects on entities in Texas of both the federal rules and proposed state rules.

The effects on state government will be a increase in cost of approximately \$340,000. These costs are anticipated to be offset by increases in revenue of essentially the same amount. Revenues from permit applications and sludge disposal activities cannot be estimated with precision at this time but are not anticipated to exceed any costs incurred. These sections will have effects on local governments. The objective of these rules is to control the quality of sewage sludge and the potential effects of contaminants in sludge. This quality control is related to the control of the quality of influent wastewater to treatment facilities, control of treatment processes, and definition of appropriate sludge disposal methods. These proposed regulations will establish requirements for the final use and disposal of sewage sludge when it is applied to the land for a beneficial purpose, placed in or on a surface disposal site, or incinerated. These rules do not establish standards for sludge disposed with municipal solid waste in landfills or incinerated with a predominant municipal solid waste stream, nor do they apply to sludges generated from treatment of domestic wastewaters mixed with industrial wastewaters by privately-owned treatment facilities. The majority of costs to be incurred will be realized by domestic and municipal wastewater treatment facilities, many of which are publically-owned treatment works (POTW's), and related public and private operations. These fiscal implications will relate to increased costs of sludge monitoring, reporting, permit application processes, changes in required management practices and potentially changes in method of waste disposition for sludges which fail proposed numerical standards for specific disposal methods.

Generally, the total effects of these regulations on POTW's are anticipated to increase annual costs to wastewater service providers by less than \$1.00 per household serviced. These costs will vary considerably depending on the size of the facility, the population served, the nature of current sludge management practices and the extent of changes in operation required. The most significant increases in cost will be for the relatively few facilities that are anticipated to fail numerical sludge standards for the methods of disposi-

tion currently utilized by the facility. On a national scale, EPA has estimated that just over 2.0% of all POTW's produce sludge which will fail the proposed numerical standards. EPA has also estimated that nationally the approximate annual cost implications of these rules for facilities disposing of sludge by land application will vary from a low of \$426, for facilities producing less than one million gallons per day (MGD) of effluent, to a high of \$43,507 for those producing in excess of 100 MGD. Costs to facilities utilizing surface disposal facilities are generally greater, between \$3,925 and \$96,922 annually, for the same range of facility effluent discharge. Annual costs associated with incineration of sludge are estimated to be higher, ranging from \$37,000 to \$315,000 per facility. It should be noted that currently no facilities in Texas are incinerating sewage sludge.

These proposed rules will affect small businesses, including small, privately-owned treatment facilities and transporter of sewage sludge. The number of treatment facilities that would qualify as small businesses is not known. It is estimated, however, that the lower limits of the anticipated ranges in cost, above, are characteristic of the impacts on these facilities. These impacts are assumed to be proportional to the amounts of sludge produced annually at these facilities. The other category of small business affected is the transporters or haulers of sludge, almost all of which are small businesses. These firms will realize a greater burden under these rules as a function of total revenues than will most other affected entities. Total costs to sludge haulers is anticipated to average approximately 1.0% of total revenues annually. The maximum impact however, for the smallest operators, is anticipated to approach 14% of revenues. Actual annual costs for small firms is estimated to be between \$48 and \$1,600.

Mr. Minick also has determined that for the first five years these sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections are: diversion of potential pollutants from wastewaters and improved quality of wastewater effluents from treatment facilities, improved surface water quality, reduced emissions to soil, air and groundwater of pollutants in sewage sludge, reductions in adverse health effects from contaminants potentially contained in sewage sludge, improved productivity of soil, and reduced dependence on chemical fertilizers and associated savings in raw materials and energy resources.

Except as described above, these proposed rules are not anticipated to affect any individual required to comply with these sections. Individuals will be indirectly affected, however. Any service recipient of a POTW or private wastewater utility may expect to realize increased costs of service to recover the fiscal effects of these rules on the service provider. Again, for POTW's, this cost is estimated at less than \$1 per year per household. Owners of septic tanks will be affected by increased costs for authorized haulers. The projected fiscal implications for haulers described above, if passed through directly, are anticipated to increase costs of septic tank service by approximately 2.0% annually

or up to \$1.30 for each household operating a septic tank.

Comments on the proposal may be submitted to Permitting Section, Watershed Management Division, P.O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted until 5 p.m. for a period of 30 days following the date of this publication. Public meetings to receive public comment on these proposals will be held in the Dallas, Houston, Austin, and Midland/Odessa areas dates, times, and places will be published in a later issue of the *Texas Register*.

#### • 31 TAC §§312.1-312.21

The new sections are proposed under the Texas Water Code (Vernon 1992), §5.103, which provides the TWC with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state. Additionally, the sections are proposed pursuant to the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361 (Vernon 1992), §361.011 and §361.024, which provides the TWC with the authority to regulate municipal solid waste and adopt rules consistent with the general intent and purposes of the Act.

**§312.1. Purpose.** This chapter establishes standards, which consist of general requirements, pollutant limits, management practices, and operational standards, for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works, water treatment sludge generated during the treatment of domestic drinking water, and domestic septage. Standards are included in this chapter for sewage sludge, water treatment sludge and domestic septage applied to the land, or placed on a surface disposal site. Standards are also included in this chapter for sewage sludge fired in a sewage sludge incinerator. Also included in this chapter are pathogen and vector attraction reduction requirements for sewage sludge, water treatment sludge and domestic septage applied to the land or placed on a surface disposal site. In addition, the standards in this chapter include the frequency of monitoring and record keeping requirements when sewage sludge, water treatment sludge, and domestic septage is applied to the land or placed on a surface disposal site. Also included are the frequency of monitoring and record keeping requirements when sewage sludge is fired in a sewage sludge incinerator.

#### §312.2. Applicability.

(a) This chapter applies to any person who prepares sewage sludge, water treatment sludge, or domestic septage.

(b) This chapter applies to any person who fires sewage sludge in a sewage sludge incinerator.

(c) This chapter applies to any person who applies sewage sludge, water treat-

ment sludge, or domestic septage to the land and to the owner/operator of a surface disposal site.

(d) This chapter applies to sewage sludge, water treatment sludge, or domestic septage applied to the land, or placed on a surface disposal site.

(e) This chapter applies to sewage sludge fired in a sewage sludge incinerator.

(f) This chapter applies to land where sewage sludge, water treatment sludge, or domestic septage is applied, to a surface disposal site, and to a sewage sludge incinerator.

(g) This chapter applies to any person who transports sewage sludge, water treatment sludge, domestic septage, grit or screening waste, or grease trap waste.

(h) This chapter applies to the exit gas from a sewage sludge incinerator stack.

#### §312.3. Exclusions.

(a) This chapter does not establish requirements for processes used to treat domestic sewage or for processes used to treat sewage sludge prior to final use or disposal, except as provided in §312.82 and §312.83 of this title (relating to Pathogen Reduction and Vector Attraction Reduction).

(b) This chapter does not require the selection of a method of use or disposal for sewage sludge or water treatment sludge. The determination of the manner in which sewage sludge or water treatment sludge is used or disposed is a local determination.

(c) This chapter does not establish requirements for sewage sludge co-fired in an incinerator with other wastes or for the incinerator in which sewage sludge and other wastes are co-fired. Other wastes do not include auxiliary fuel, as defined in 40 Code of Federal Regulations (CFR), §503.41(b), fired in a sewage sludge incinerator.

(d) This chapter does not establish requirements for the use and disposal of industrial sewage sludge generated at an industrial facility or from an industrial process, including industrial sewage sludge generated during the treatment of industrial wastewater even when combined with domestic sewage sludge. Such sludge, process wastes, wastewater, and sewage sludge are all considered to be industrial solid waste and subject to all applicable requirements of Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(e) This chapter does not establish requirements for the use or disposal of sewage sludge, water treatment sludge, or other wastes determined to be a hazardous waste, as defined in §335.1 of this title (relating to

Definitions) , or as determined in accordance with 40 CFR Part 261.

(f) This chapter does not establish requirements for the use or disposal of sewage sludge with a concentration of polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry weight basis).

(g) This chapter does not establish requirements for the use or disposal of ash generated during the firing of sewage sludge in a sewage sludge incinerator.

(h) This chapter does not establish requirements for the use or disposal of grease trap waste, grit (e.g., sand, gravel, cinders, or other materials with a high specific gravity), screenings (e.g., relatively large materials such as rags) or other wastes generated during preliminary treatment of domestic sewage in a treatment works.

(i) This chapter does not establish requirements for the use or disposal of industrial septage or a mixture of domestic septage and industrial septage.

(j) This chapter does not apply to sewage sludge, septage, or any wastes resulting from activities associated with the exploration, development, and production of oil or gas or geothermal resources, as defined in §335.1 of this title (relating to Definitions), except for domestic septage which is collected from portable toilets at facilities where such activities occur that is not mixed in any manner with other oil, gas, or geothermal wastes.

#### §312.4. Permit or Registration Required.

(a) Except as described in subsections (b) and (c) of this section, a permit is required for the beneficial use or disposal of sewage sludge or water treatment sludge, in accordance with the requirements of §§312.10, 312.12, and 312.13 of this title (relating to Permit and Registration Applications Processing, Registration of Land Application Activities, and Actions, Notice, Public Meetings, and Hearing).

(b) Registration of land application for beneficial use sites.

(1) A site which qualifies for exemption from the permit requirement as set forth in this section and for which a permit has not been issued shall be registered with the commission, in accordance with the requirements of §312.12 of this title (relating to Registration of Land Application Activities) and the requirements of §312.13 of this title (relating to Actions, Notice, Public Meeting, and Hearing).

(2) An exemption from a permit, as described in paragraph (1) of this subsection may be allowed by the executive director after the effective date of these regulations and prior to the date of Texas

pollutant discharge elimination system (TPDES) authorization, so long as all of the following conditions are met.

(A) The registration of land for beneficial use of sewage sludges or water treatment sludge shall meet the requirements in Subchapter B, §§312.41-312.49 of this title (relating to Land Application for Beneficial Use).

(B) The pH of the soil at the beneficial use site shall be greater than 5.5 standard units.

(C) The beneficial use site shall not be greater than 1,500 acres in surface area.

(D) The travel time from the sludge source to the beneficial site shall not be greater than six hours.

(E) The beneficial site shall receive at least 14 inches of rainfall annually.

(3) The effective date for the registration of a site at which sewage sludge or water treatment sludge is applied to the land for beneficial use is the date that the executive director by letter, approves the application, in accordance with §312.12(c) of this title (relating to Registration of Land Application Activities). Site registration information on file with the commission shall be confirmed or updated, in writing, whenever:

(A) the mailing address and/or telephone number of the owner or operator is changed;

(B) requested by the commission or executive director; or

(C) the source of the waste is modified.

(4) A person who wishes to appeal the executive director's decision required in §312.12(c) of this title (relating to Registration of Land Application Activities) shall file a letter with the chief clerk of the commission within 30 days of the date of the director's letter, requesting a re-evaluation of the application.

(c) Term limits for registration or permits shall not exceed five years. Effective December 1, 1993, all existing registrations, not to include transportation registrations, and permits approved before the effective date of these rules shall be due for renewal five years from the date of the registration or permit approval. Registrations or permits which had been approved

for greater than a five year period, prior to effective date of these rules, shall submit an application for registration or permit renewal by October 1, 1993.

(d) The permit and registration requirements of this section do not apply to any person who receives sewage sludge, or a material which is derived from the sewage sludge, which is sold or given away to them in a bag or similar enclosure for application to the land and if such materials meet the pollutant concentration limits in Table 3, §312.43(b)(3) of this title (relating to Pollutant Limits), the requirements in §312.83(a) of this title (relating to Vector Attraction Reduction), and one of the requirements in §312.83(b)(1)-(8) of this title (relating to Vector Attraction Reduction).

(e) Upon the date of TPDES program authorization, the commission will no longer consider registration applications for the beneficial use of sewage sludge or water treatment sludge, as described in §§312.10, 312.12, and 312.13 of this title (relating to Permits and Registration Applications Processing, Registration of Land Application Activities, and Actions, Notice, Public Meetings, and Hearing). On or after this date, if a person meets the exemptions of subsection (b) of this section, the executive director may allow authorization by general permit, as described in §312.121 of this title (relating to General Permitting for Beneficial Use of Sludge) for activities of sewage sludge or water treatment sludge land application for beneficial use.

§312.5. Relationship to Other Requirements. Disposal of sewage sludge in a municipal solid waste landfill unit, as defined in 40 Code of Federal Regulations (CFR), §258.2, that complies with the requirements in 40 CFR, §257 and §258 constitutes compliance with the Clean Water Act (CWA) , §405(d). Any person who prepares sewage sludge or water treatment sludge that is disposed of in a municipal solid waste landfill unit shall ensure that the sewage sludge or water treatment sludge meets the requirements in 40 CFR, §258, concerning the quality of materials disposed of in a municipal solid waste landfill unit.

#### §312.6. Additional or More Stringent Requirements.

(a) On a case-by-case basis, the commission or executive director may impose requirements for the use or disposal of sewage sludge or water treatment sludge in addition to or more stringent than the requirements in this chapter when necessary to protect public health and the environment from any adverse effect of a pollutant in the sewage sludge.

(b) Nothing in this chapter precludes a political subdivision of the State

from imposing requirements for the use or disposal of sewage sludge or water treatment sludge more stringent than the requirements in this chapter.

### §312.7. Sampling and Analysis.

(a) Representative samples of sewage sludge, water treatment sludge, or domestic septage that is applied to the land, or placed on a surface disposal site shall be collected and analyzed.

(b) Representative samples of sewage sludge fired in a sewage sludge incinerator shall be collected and analyzed.

(c) The following methods shall be used to analyze samples of sewage sludge.

(1) Enteric viruses—ASTM Method D 4994-89, "Standard Practice for Recovery of Viruses From Wastewater Sludge," Annual Book of ASTM Standards: Section 11, Water and Environmental Technology, 1992.

(2) Fecal coliform—Part 9221 E or Part 9222 D, "Standard Methods for the Examination of Water and Wastewater," 18th edition, American Public Health Association, Washington, D.C., 1992.

(3) Helminth ova—Yanko, W.A., "Occurrence of Pathogens in Distribution and Marketing Municipal Sludges," EPA 600/1-87-014, 1987. NTIS PB 88-154273/AS, National Technical Information Service, Springfield, Virginia.

(4) Inorganic pollutants—Method SW-846 in "Test Methods for Evaluating Solid Waste," United States Environmental Protection Agency, November 1986.

(5) Salmonella sp. bacteria—Part 9260 D.1, "Standard Methods for the Examination of Water and Wastewater," 18th edition, American Public Health Association, Washington, D.C., 1992.

(6) Specific oxygen uptake rate—Part 2710 B, "Standard Methods for the Examination of Water and Wastewater," 18th edition, American Public Health Association, Washington, D.C., 1992.

(7) Total solids, fixed solids, and volatile solids—Part 2540 G, "Standard Methods for the Examination of Water and Wastewater," 18th edition, American Public Health Association, Washington, D.C. 1992.

(8) Percent volatile solids reduction—Percent volatile solids reduction shall be calculated using a procedure in "Environmental Regulations and Technology—Control of Pathogens and Vectors in Sewage Sludge," EPA-625/R-92/013, United States Environmental Protection Agency, Cincinnati, Ohio, 1992.

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

Active sludge unit—A sludge unit that has not closed and/or is still receiving sewage sludge or water treatment sludge.

Aerobic digestion—The biochemical decomposition of organic matter in sewage sludge into carbon dioxide, water, and other by-products by microorganisms in the presence of free oxygen.

Agricultural land—Land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

Agronomic rate—The whole sludge application rate (dry weight basis) designed:

(A) to provide the amount of nitrogen needed by the crop or vegetation grown on the land; and

(B) to minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

Anaerobic digestion—The biochemical decomposition of organic matter in sewage sludge into methane gas, carbon dioxide, and other by-products by microorganisms in the absence of free oxygen.

Annual pollutant loading rate—The maximum amount of a pollutant (dry weight basis) that can be applied to a unit area of land during a 365 day period.

Annual whole sludge application rate—The maximum amount of sewage sludge that can be applied to a unit area of land during a 365 day period.

Apply sewage sludge or sewage sludge applied to the land—Land application or the spraying/spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil.

Aquifer—A geologic formation, group of geologic formations, or a portion of a geologic formation capable of yielding groundwater to wells or springs.

Arid land—Land having insufficient precipitation to support a cover crop and where precipitation is the only means of watering.

Base flood—A flood that has a one percent chance of occurring in any given year.

Beneficial Use—Use determined both on the basis of agronomic need or rate for a cover crop and on the basis of any metal or toxic constituent limitations which the cover crop has.

Bulk sewage sludge—Sewage sludge that is not sold or given away in a bag or similar enclosure for application to the land.

CFR—Code of Federal Regulations.

CWA—The Clean Water Act (formerly referred to as either the Federal Wa-

ter Pollution Act or the Federal Water Pollution Control Act Amendments of 1972), Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, Public Law 97-117, and Public Law 100.4.

Commission—The Texas Water Commission.

Contaminate an aquifer—To introduce a substance that causes the maximum contaminant level for nitrate in 40 CFR, §141.11, to be exceeded in ground water or that causes the existing concentration of nitrate in ground water to increase when the existing concentration of nitrate in the ground water already exceeds the maximum contaminate level for nitrate in 40 CFR, §141.11.

Cover—Soil or other material used to cover sewage sludge or water treatment sludge placed on an active sludge unit.

Cover crop—Grasses or small grain crop, such as oats, wheat, or barley, not grown for harvest.

Cumulative pollutant loading rate—The maximum amount of an inorganic pollutant (dry weight basis) that may be applied to a unit area of land.

Density of micro-organisms—The number of micro-organisms per unit mass of total solids (dry weight basis) in the sewage sludge.

Displacement—The relative movement of any two sides of a fault measured in any direction.

Domestic septage—Either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap.

Domestic sewage—Waste and wastewater from humans or household operations that is discharged to a wastewater collection system or otherwise enters a treatment works.

Dry weight basis—Calculated on the basis of having been dried at 105 degrees Celsius until reaching a constant mass (i.e., essentially 100% solids content).

EPA—The United States Environmental Protection Agency.

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

Facility—Includes all contiguous land, and structures, other appurtenances, and improvements on the land used for the surface disposal, land application for beneficial use, or incineration of sewage sludge or water treatment plant sludge.

Fault—A fracture or zone of fractures in any materials along which strata on one side are displaced with respect to strata on the other side.

**Feed crops**—Crops produced primarily for consumption by animals.

**Fiber crops**—Crops such as flax and cotton.

**Final cover**—The last layer of soil or other material placed on a sludge unit at closure.

**Food crops**—Crops consumed by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

**Forest**—Land densely vegetated with trees and/or underbrush.

**Ground water**—Water below the land surface in the saturated zone.

**Holocene time**—The most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present. Holocene time began approximately 10,000 years ago.

**Industrial wastewater**—Wastewater generated in a commercial or industrial process.

**Land application**—The spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

**Land with a high potential for public exposure**—Land that the public uses frequently and/or is not provided with a means of restricting public access.

**Land with a low potential for public exposure**—Land that the public uses infrequently and/or is provided with a means of restricting public access.

**Leachate collection system**—A system or device installed immediately above a liner that is designed, constructed, maintained, and operated to collect and remove leachate from a sludge unit.

**Liner**—Soil or synthetic material that has a hydraulic conductivity of 1 by 10<sup>-7</sup>, centimeters per second or less. Soil liners shall be clay with more than 30% passing a number 200 sieve, have a liquid limit greater than 30% and a plasticity index greater than 15 and will be at least two feet thick placed in six inch lifts. Synthetic liners shall be a membrane with a minimum thickness of 20 mils and include an underdrain leak detection system.

**Lower explosive limit for methane gas**—The lowest percentage of methane in air, by volume, that propagates a flame at 25 degrees Celsius and atmospheric pressure.

**Municipality**—A city, town, county, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or under State law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge management; or a designated and approved management Agency under the Clean Water Act (CWA), §208, as amended. The definition includes a special district created under

State law, such as a water district, sewer district, sanitary district, or an integrated waste management facility as defined in CWA, §201(e), as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge.

**Off-site**—Property which cannot be characterized as "on-site."

**On-site**—The same or contiguous property owned, controlled, or supervised by the same person. If the property is divided by public or private rights-of-way, the access shall be by crossing the right-of-way or the right-of-way shall be under the control of the person.

**Operator**—The person responsible for the overall operation of a facility.

**Owner**—The person who owns a facility or part of a facility.

**POTW**—(publicly-owned treatment works), or any device or system used in the treatment (including recycling and reclamation) of municipal sewage of a liquid nature which is owned by a state or municipality (as defined by the Clean Water Act, §502(4)). The definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

**Pasture**—Land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, forbs, or stover.

**Pathogenic organisms**—Disease causing organisms including, but not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

**Person**—An individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

**Person who prepares sewage sludge**—Either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

**Place sewage sludge or sewage sludge placed**—Disposal of sewage sludge on a surface disposal site.

**Pollutant**—An organic or inorganic substance, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the executive director, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

**Pollutant limit**—A numerical value that describes the amount of a pollutant allowed per unit amount of sewage sludge (e.g., milligrams per kilogram of total solids); the amount of a pollutant that can be applied to a unit area of land (e.g. kilo-

grams per hectare); or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

**Public contact site**—Land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, plant nurseries, turf farms, and golf courses.

**Qualified groundwater scientist**—An individual with a baccalaureate or post graduate degree in the natural sciences or engineering who has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by State registration, professional certification, or completion of accredited university programs that enable the individual to make sound professional judgments regarding groundwater monitoring, pollutant fate and transport, and corrective action.

**Range land**—Open land with indigenous vegetation.

**Reclamation site**—Drastically disturbed land that is reclaimed using sewage sludge. This includes, but is not limited to, strip mines and construction sites.

**Runoff**—Rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface.

**Seismic impact zone**—An area that has a 10 percent or greater probability that the horizontal ground level acceleration of the rock in the area exceeds 0.10 gravity once in 250 years.

**Sewage sludge**—Solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

**Similar enclosure**—Either an open or closed container. This includes, but is not limited to, a bucket, a box, and a vehicle or trailer with a load capacity of one metric ton (2,200 pounds) or less.

**Sludge unit**—Land on which only sewage sludge or water treatment sludge is placed for disposal. A sludge unit shall be used only for sewage sludge or water treatment sludge and will not contain a mixture of sludges. This does not include land on which sewage sludge or water treatment sludge is either stored or treated.

**Sludge unit boundary**—The outermost perimeter of a surface disposal site.

**Specific oxygen uptake rate (SOUR)**—The mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the sewage sludge.

**Store or storage**—The placement of sewage sludge or water treatment sludge on



land on which the sewage sludge remains for two years or less. This does not include the placement of sewage sludge on land for treatment.

**Surface disposal site**—An area of land that contains one or more sludge units.

**Total solids**—The materials in sewage sludge that remain as residue if the sewage sludge is dried at 103 degrees Celsius to 105 degrees Celsius.

**Transporter**—Any person who collects, conveys, or transports sewage sludge, water treatment plant sludges, grit trap waste, grease trap waste, and septage by truck, ship, pipeline, or other means.

**Treat or treatment of sewage sludge**—The preparation of sewage sludge for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

**Treatment works**—Either a Federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

**Unstabilized solids**—Organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

**Unstable area**—Land subject to natural or human induced forces that may damage the structural components of an active sewage sludge unit. This includes, but is not limited to, land on which the soils are subject to mass movement.

**Vector attraction**—The characteristic of sewage sludge that attracts rodents, flies, mosquitos, or other organisms capable of transporting infectious agents.

**Volatile solids**—The amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550 degrees Celsius in the presence of excess oxygen.

**Water Treatment Sludge**—Sludge generated during the treatment of either surface water or ground water for potable use.

**Wetlands**—Those areas that are inundated or saturated by surface water or ground water at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

#### §312.9. Sludge Fee Program.

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

(1) **Annual fee**—A fee charged to each person holding a registration or permit pursuant to the commission's authority in the Texas Health and Safety Code, Chapter 361.

(2) **Reported-Information** compiled and submitted to the commission that tracks the amount of waste being stored, treated, processed, transported or disposed of in the state, tracks the amount of processing, transporting, and disposal capacity and reserve capacity, and enables equitable assessment and collection of fees.

(3) **Payment-Receipt** by the commission of the full amount of the annual fee(s) due.

(b) An annual fee is assessed to each person holding a registration or permit to treat, process, or dispose of sewage sludge or water treatment sludge issued under this chapter, including all persons holding a commission permit allowing the treatment, discharge, or disposal of sewage sludge or water treatment sludge, issued pursuant to the Texas Water Code, Chapter 26. The amount of the fee is determined by weight of dry solids disposed of and reported to the commission as of September 1, each year. The fee assessed for the fiscal year ending August 31, 1993, will be based on only the last two quarters of that fiscal year, March 1, 1993, to August 31, 1993. Failure to report the disposal of sewage sludge does not exempt a registrant or permittee from this fee. The fees shall be as follows.

(1) The minimum fee assessed against each registration or permit is \$100, regardless of whether the site is active or inactive.

(2) When sewage sludge or water treatment plant sludge that is classified as Class A is applied to the land in a beneficial use as described in subchapter B of this title (relating to Land Application) the fee shall be \$0.50 per dry ton.

(3) When sewage sludge or water treatment plant sludge that is classified as Class B is applied to the land in a beneficial use as described in Subchapter B of this title (relating to Land Application for Beneficial Use) the fee shall be \$0.75 per dry ton.

(4) When sewage sludge or water treatment plant sludge is applied to a surface disposal site as described in Subchapter C of this title (relating to Surface Disposal) the fee shall be \$1.25 per dry ton.

(5) When sewage sludge is fired in a sewage sludge incinerator as described in Subchapter E of this title (relating to Guidelines and Standards for Sludge Incineration) the fee shall be \$1.25 per dry ton.

(c) An annual transporter fee is assessed against each person or entity holding a registration to transport sewage sludge, water treatment sludge, or septage (including transporters of grit (mud) trap and

grease trap waste) issued in accordance with §312.15 of this title (relating to Transporter Registration). The amount of the annual fee shall be based upon the total annual volume of waste transported by the transporter under each registration and reported to the commission as of July 15, each year. Failure to report the transportation of sewage sludge does not exempt a registrant from this fee. The fees shall be as follows:

(1) for a total annual volume transported of 10,000 gallons or less the fee is \$100;

(2) for a total annual volume transported greater than 10,000 gallons but equal to or less than 50,000, the fee is \$250;

(3) for a total annual volume transported greater than 50,000 gallons but equal to or less than 200,000 gallons, the fee is \$400;

(4) for a total annual volume transported of greater than 200,000 gallons the fee is \$500.

(d) Fees assessed in subsections (b) and (c) of this section shall be paid, by the registrant or permittee, prior to October 1, each year. Fees shall be paid by check, certified check, or money order payable to the Texas Water Commission. Fees not paid by October 1, shall be assessed a 10% late charge.

(e) Failure of the registrant or permittee to submit the required fee payment by October 1, shall be sufficient cause for the commission to revoke the registration or permit and authorization to process or dispose of waste. Any entity to whom a registration or permit is transferred shall be liable for payment of the annual fee on the same basis as the transferor.

#### §312.10. Permit and Registration Applications Processing.

(a) Applications for permits, registrations, or other types of approvals, required by this subchapter shall be reviewed by the staff for administrative completeness within 10 working days of receipt of the application by the executive director.

(b) Applications for sewage sludge or water treatment sludge land application, disposal, incineration, or transportation permits and registrations must include:

(1) complete application form(s), signed and notarized, and appropriate copies provided;

(2) the verified legal status of the applicants, including both operator and landowner;

(3) the signature of the applicants, checked against agency requirements, in accordance with §305.44 of this title (relating to Signatories to Applications);

(4) a notarized affidavit from the applicants verifying land ownership and landowner agreement to the proposed activity;

(5) the attachment of technical reports and supporting data required by the application; and

(6) any other information as the executive director or the commission may reasonably require.

(c) Applications for sewage sludge or water treatment sludge land application, disposal, or incineration permits must additionally include a list of adjacent and potentially affected landowners, residents, and businesses and their addresses along with an appropriately scaled map locating the property owned by these persons.

(d) Upon receipt of an application for a permit or registration, not to include transportation registrations, described in subsections (b) and (c) of this section which contains the information required, the executive director or his designee shall assign the application a number for identification purposes, and prepare a statement of the receipt of the application and declaration of administrative completeness which is suitable for publishing or mailing and shall forward that statement to the chief clerk. The chief clerk shall notify every person entitled to notification of a particular application under the rules of the commission, and as described in §312.13 of this title (relating to Actions, Notice, Public Meetings, and Hearing).

(e) The notice of receipt of an application for permit or registration and declaration of administrative completeness shall contain the following information:

(1) the identifying number given the application by the commission;

(2) the type of permit or registration sought under the application;

(3) the name and address of the applicants;

(4) the date on which the application was submitted; and

(5) a brief summary of the information included in the application.

(f) Nothing in this section shall be construed so as to waive the requirement of notice of the application and draft permit in accordance with Chapter 305, Subchapter B, of this title (relating to Actions, Notice, and Hearing) for applications for sewage sludge or water treatment sludge land application, disposal, or incineration permits.

(g) The applications processing procedures and requirements found in §281.18 of this title (relating to Applications Returned), §281.19 of this title (relating to Technical Review), §281.20 of this

title (relating to Extension), §281.21 of this title (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary), §281.22 of this title (relating to Referral to Commission), §281.23 of this title (relating to Application Amendment), and §281.24 of this title (relating to Effect of Rules) apply to any person who is required to obtain a permit, or who requests an amendment, modification or renewal of a permit to land apply, dispose of, or incinerate sewage sludge or water treatment sludge. The applications processing procedures and requirements found in §281.18 of this title (relating to Applications Returned), §281.19 of this title (relating to Technical Review), and §281.20 of this title (relating to Extensions) apply to any person who is required to obtain approval of a registration, or who requests an amendment, modification or renewal of a registration to land apply sewage sludge or water treatment sludge.

(h) Where the landowner is not the operator of a site proposed to be utilized for land application of sewage sludge or water treatment sludge, both landowner and operator shall be applicants, unless operator can show a substantial interest in the land, such as an option or earnest money contract; or, the landowner signs an affidavit acknowledging responsibility and the registration clearly states that the landowner is jointly responsible.

(i) The registration or permit shall be cancelled upon receipt of a written request for cancellation from either applicant. The TWC will provide notice to the other applicant that cancellation has been requested and that cancellation will occur ten days from the issuance of notice. This notice is provided merely as a courtesy by the TWC.

(j) In order to transfer a registration held by joint applicants both applicants must sign the transfer application. An application for transfer that is signed by only one applicant will be considered a request for cancellation.

(k) If a registration for a site is canceled, a complete application for registration must be submitted in order to re-register the site. If the application is approved, the site will be re-registered under the same site registration number.

#### §312.11. Permits.

(a) The provisions of this section set the standards and requirements for permit applications to land apply, dispose of, or incinerate sewage sludge or water treatment sludge.

(b) The national pollutant discharge elimination system (NPDES) program, upon delegation to the State of Texas, requires permits for the discharge of pollutants from

any point source to waters in the state. Such permits are designated as Texas pollutant discharge elimination system. The terms "NPDES," "pollutant," "point source," and "waters in the state" are defined in the Texas Water Code, §26.001. The executive director may designate any person subject to the standards for sewage sludge use and disposal as a "treatment works treating domestic sewage" as defined in §305.2 of this title (relating to Definitions), where the executive director finds that a permit is necessary to protect public health and the environment from the adverse effects of sewage sludge or to ensure compliance with the technical standards for sludge use and disposal developed under Clean Water Act (CWA), §405(d). Any person designated as a treatment works treating domestic sewage shall submit an application for a permit within 120 days of being notified by the executive director that a permit is required. The executive director's decision to designate a person as a treatment works treating domestic sewage shall be stated in the fact sheet or statement of basis for the permit.

(c) The permit application procedures of §305.42(a) of this title (relating to Application Required), §305.43 of this title (relating to Who Applies), §305.44 of this title (relating to Signatories to Applications), §305.45 of this title (relating to Contents of Application for Permit), §305.46 of this title (relating to Designation of Material as Confidential), and §305.47 of this title (relating to Retention of Application Data) apply to any person who is required to obtain a permit, or who requests an amendment, modification or renewal of a permit to land apply, dispose of, or incinerate sewage sludge or water treatment sludge.

(d) The following shall be included in an application for permit to land apply, dispose of, or incinerate sewage sludge or water treatment sludge.

(1) The original and one copy of the permit application shall be submitted on forms provided by or approved by the executive director and shall be accompanied by a like number of copies of all technical supplements and attachments.

(2) The application shall show the ownership of all the tracts of land adjacent to, or within one-half mile of the perimeter of any portion or tract of land where the land application, incineration, or disposal facility is to be located. The application shall show each residential or business address and occupant of all the tracts of land adjacent to, or within 1/2-mile of the perimeter of any portion or tract of land where the land application, incineration, or disposal facility is to be located. The applicant shall list on a map, or in a separate sheet attached to a map, the names and addresses of the owners, residents, and businesses of such tracts of land as can be

determined from the current county tax rolls and other reliable sources. The application shall state the source of the information.

(3) The applicant shall submit any other information reasonably required by the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and federal statutes, including but not limited to the following:

(A) the operator's name, address, and telephone number;

(B) whether the facility is located on Indian lands; and

(C) the legal owners of all tracts of land on which the proposed activity will occur.

(e) The standards and requirements for applications and actions concerning amendments, modifications, renewals, transfers, corrections, revocations, and suspensions of permits, as set forth in §305.62 of this title (relating to Amendment), §305.63 of this title (relating to Renewal), §305.64 of this title (relating to Transfer of Permits), §305.65 of this title (relating to Corrections of Permits), §305.66 of this title (relating to Permit Denial, Suspension, and Revocation), §305.67 of this title (relating to Revocation and Suspension upon Request or Consent), and §305.68 of this title (relating to Action and Notice on Petition for Revocation or Suspension) apply to any person who is required to obtain a permit, or who requests an amendment, modification or renewal of a permit to land apply, dispose of, or incinerate sewage sludge or water treatment sludge.

(f) The permit characteristics and standards set forth in §305.122 of this title (relating to Characteristics of Permits), §305.123 of this title (relating to Reservation in Granting Permit), §305.124 of this title (relating to Acceptance of Permit, Effect), §305.125 of this title (relating to Standard Permit Conditions), §305.126(d) of this title (relating to Additional Standard Permit Conditions for Waste Discharge Permits), §305.127 of this title (relating to Conditions to be Determined for Individual Permits), §305.128 of this title (relating to Signatories to Reports), and §305.129 of this title (relating to Variance Procedures) apply to any person who is issued a permit to land apply, dispose of, or incinerate sewage sludge or water treatment sludge.

#### *§312.12. Registration of Land Application Activities.*

(a) Any person who intends to conduct an activity of land application for beneficial use of sewage sludge or water treatment sludge without a permit, as al-

lowed by §312.4 of this title (relating to Permit or Registration Required) shall:

(1) notify the executive director in writing that such land application for beneficial use activities are planned. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such land application for beneficial use activities are compliant with the terms of this chapter. Such information may include, but is not limited to, information concerning waste composition, waste management methods, and information regarding soils and subsurface condition where the operation is to be located. Any information provided under this subsection shall be submitted to the executive director in duplicate form;

(2) have the continuing obligation to immediately provide written notice to the executive director of any changes, requests for an amendment, modification, or renewal of a registration, or any additional information concerning waste composition, change in the source of sewage sludge, waste management methods, and information regarding soils and subsurface conditions where the operation is to be located, to that reported in paragraph (1) of this subsection, authorized in any permit, or stated in any application filed with the commission. Any information provided under this subsection shall be submitted to the executive director in duplicate form;

(3) submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether the land application for beneficial use activity is compliant with the terms of this chapter. The information submitted pursuant to the notification shall include, but is not limited to:

(A) a description and composition of the sewage sludge or water treatment sludge;

(B) a description of all processes generating the sewage sludge or water treatment sludge;

(C) the disposition of the sewage sludge or water treatment sludge, including the name, address, and telephone number of any landowner or operator at the site, if subject to the registration requirements of this section, including the following information:

(i) whether such material is managed on-site and/or off-site from its point of generation;

(ii) a description of each on-site land application beneficial use unit

or tract, including the name, address, and telephone number of all landowners;

(iii) a listing of the types of sewage sludge or water treatment sludge managed in each unit or tract;

(iv) a justification describing why each unit or tract qualifies for an exclusion from permitting as described under §312.4 of this title (relating to Permit or Registration Required); and

(v) a detailed description of the beneficial use occurring at each unit or tract of land where application of sewage sludge or water treatment sludge is proposed.

(b) No person may cause, suffer, allow, or permit any activity of land application for beneficial use of sewage sludge or water treatment sludge without a permit, as allowed by §312.4 of this title (relating to Permit or Registration Required), unless such activity has received the prior written authorization of the executive director, except as provided by subsection (d) of this section.

(c) The executive director or his designee shall, after review of any application for registration of a activity to land apply for beneficial use sewage sludge or water treatment sludge without a permit, as allowed by §312.4 of this title (relating to Permit or Registration Required) determine if he will approve or deny an application in whole or in part, suspend the authority to conduct an activity for a specified period of time, or amend or modify the proposed activity requested by the applicant. The determination of the executive director shall include review and action on any new applications or changes, renewals, and requests for major amendment of any existing application. In consideration of such an application, the executive director will consider all relevant requirements of this chapter and consider all information received by the executive director regarding the application. The written determination on any application, including any authorization granted, shall be mailed to the applicant upon the decision of the executive director.

(d) At the same time that the executive director's decision is mailed to the applicant, a copy or copies of this decision shall also be mailed to all parties who submitted written requests for a public meeting on the application, as described in §312.13(c)(2) of this title (relating to Actions, Notice, Public Meeting, and Hearings).

#### *§312.13. Actions, Notice, Public Meetings, and Hearing.*

(a) Applicability. This section sets forth the manner in which action will be taken on applications for a permit to land apply, dispose of, or incinerate sewage

sludge or water treatment sludge, filed with the commission. This section also sets forth the manner in which action will be taken on applications for a registration to land apply sewage sludge or water treatment sludge, filed with the commission.

(b) Actions. The standards and requirements for actions concerning amendments, modifications, transfers, and renewals of permits, as set forth in §305.92 of this title (relating to Action on Applications), §305.93(a) of this title (relating to Action on Applications for Permit), §305.95 of this title (relating to Action on Applications for Renewal), §305.96 of this title (relating to Action on Applications for Amendment or Modification), §305.97 of this title (relating to Action on Application for Transfer), §305.98 of this title (relating to Scope of Proceedings), §305.99 of this title (relating to Commission Action), §305.100 of this title (relating to Notice of Application), §305.101 of this title (relating to Notice of Hearing), §305.102 of this title (relating to Notice by Publication), §305.103 of this title (relating to Notice by Mail), §305.105 of this title (relating to Request for Public Hearing), and §305.106 of this title (relating to Response to Comments) apply to any application for a permit to land apply, dispose of, or incinerate sewage sludge, water treatment plant sludge, or septage.

(c) Opportunity for public meeting. The public notice requirements of this subsection apply to new applications for a permit, or to applications for renewal and major amendment of permits, of sites for land application, disposal, or incineration of sewage sludge or water treatment sludge. The public notice requirements of this subsection apply to new applications for registration, or for applications for renewal and amendment of a registration, for land application of sewage sludge or water treatment sludge. These public notice requirements include the following.

(1) In addition to persons entitled to notice under §312.10(d) of this title (relating to Permit and Registration Applications Processing) the chief clerk of the commission shall also mail Notice of Receipt of Application and Declaration of Administrative Completeness to all county judges, county commissioner's court, and underground water districts in the county where the proposed site for land application, disposal, or incineration of sewage sludge or water treatment sludge is to be located.

(2) Upon the chief clerk's mailing of the Notice of Receipt of Application and Declaration of Administrative Completeness in accordance with paragraph (1) of this subsection and §312.10(d) of this title (relating to Permit and Registration Applications Processing) the applicant shall

immediately make available for public review a complete copy of the application at either the county courthouse in the county where the site is proposed to be located or at a public library in the area of the proposed site. The application shall have attached to its cover a statement prepared by the commission and provided to the applicant indicating an address and telephone number for the applicant and for the commission's Austin office where more information regarding the application and proposed activity may be obtained. The statement shall also indicate that any person desiring a public meeting as described in subsection (e) of this section shall submit a written request to the office of the chief clerk of the commission by the deadline date indicated in the notice. The deadline date shall be 30 days from the date the application was made available for public review in the county courthouse or public library. The statement shall also provide that any person requesting a public meeting must state in the request the reason a public meeting is desired. The application shall remain at the county courthouse or local library for review for at least 30 days.

(3) At the close of the 30-day period, the applicant shall submit an affidavit to the chief clerk of the commission certifying that the requirements of this section were complied with. If a public meeting is requested, the office of the chief clerk shall immediately forward such request(s) and all reasons for the meeting being desired to the appropriate staff of the executive director. The executive director shall then comply with the notice and public meeting requirements set out in subsection (e) of this section.

(d) Posting of Notice at the Proposed Site. Concurrently with the 30-day period for public review of the application, required of permit and registration applications as described in subsection (c) of this section, the applicant shall comply with the following posting requirements.

(1) At the applicant's expense, a sign or signs shall be placed and maintained at the site of the proposed land application, disposal, or incineration of sewage sludge or water treatment sludge, declaring the filing of an application for a permit or registration and stating the manner in which the commission may be contacted for further information. Such signs shall be provided by the applicant and shall meet the following requirements.

(A) Signs shall consist of dark lettering on a white background and shall be no smaller than 18 inches by 28 inches.

(B) Signs shall be headed by the words "proposed (biosolids, sludge, or

septage) (application, disposal, or incineration) site" in no less than two inch boldface block printed capital lettering.

(C) Signs shall include the words "application No. \_\_\_\_\_" and the number of the permit or registration application in no less than one inch boldface block printed capital lettering.

(D) Signs shall include the words "for further information contact" in no less than 1/2 inch lettering.

(E) Signs shall include the words "Texas Water Commission," in no less than one inch boldface capital lettering and 3/4 inch boldface lower case lettering.

(F) Signs shall include the phone number of the Austin office of the Texas Water Commission where more information may be obtained regarding the application, in no less than two inch boldface numbers.

(2) The sign or signs must be in place by the date of placement of the application in the county courthouse or public library as required by subsection (c)(2) of this section and must remain in place and legible throughout the same 30-day period in which the application is available for public review.

(3) Each sign placed at the site must be located within 10 feet of each property line paralleling a street or other public thoroughfare. Signs must be completely visible from the street and spaced at not more than 1,500 foot intervals. A minimum of one sign, but no more than three signs shall be required along any property line paralleling a public thoroughfare.

(4) These sign requirements do not apply to properties under the same ownership which are noncontiguous and/or separated by intervening public thoroughfares.

(e) Public meeting and notice requirements. In accordance with subsection (c)(2) and (3) of this section a public meeting may be requested on any new, major amendment, or renewal application to register or permit a site for land application, disposal, or incineration of sewage sludge or water treatment sludge. The executive director shall, upon receipt of a request for a public meeting from the office of the chief clerk, determine whether a public meeting should be held. It is solely within the discretion of the executive director to make this determination. If it is determined that a public meeting will not be held, the executive director shall mail notice of the decision to all individuals who had requested the public meeting during the public comment period. If it is determined that a public

meeting will be held, the following requirements apply.

(1) The purpose of the public meeting is to facilitate constructive communication between applicants and members of the public and to allow citizens to provide the commission with additional information regarding the proposed land application for beneficial use, disposal of, or incineration of sewage sludge or water treatment sludge. A public meeting under this section is not a contested case hearing under the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a).

(2) The public meeting shall be held as soon as is practicable after it is requested. At least 15 days prior to the public meeting, the applicant shall cause notice of the meeting approved by the executive director to be published in a newspaper of the largest general circulation that is published in the county where the site is proposed to be located, or, if no newspaper is published in the county, in a newspaper of general circulation in the county.

(3) The applicant is responsible for all costs associated with the publication of notice. The applicant shall coordinate the date and time of a the public meeting with commission staff reviewing the application and the chief clerk of the commission prior to publication of notice.

(4) The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches and shall contain, at a minimum, the following information:

(A) the registration or permit application number;

(B) the applicant's name;

(C) the proposed location of the facility;

(D) the location and availability of copies of the registration or permit application. The applicant shall retain copies of the application at the county courthouse or local library for public review; and

(E) the date, time, and location of the public meeting to be held regarding the application.

(f) Major amendment. For purposes of this chapter, a major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit or a substantive change in the information provided in an application for registration, regarding sewage sludge or water treatment sludge management.

Changes which are not considered major include typographical errors, changes which result in more stringent monitoring requirements, changes in site ownership, changes in site operator, or similar administrative information.

#### *§312.14. Transporters-Applicability and Responsibility.*

(a) Applicability. Rules contained in §§312.14-312.21 of this title (relating to Transporters-Applicability and Responsibility, Transporter Registration, Transporters-Delivery Requirement, Transporters-Vehicle and Equipment, Transporters-Record Keeping, Transporters-Discharge or Spills, Interstate Transportation, and Penalties) establish standards applicable to persons collecting and/or transporting sewage sludge, water treatment sludge, grit trap waste, or grease trap waste. Methods of transportation shall include measures utilizing roadway, rail, water, and pipeline facilities.

(b) Responsibility. Transporters of waste subject to control under this subchapter shall not collect or transport industrial waste or hazardous waste except as provided in Chapter 330, Subchapter L, §§330.271-330.382 of this title (relating to Hazardous Household Waste). Each transporter shall take reasonable precautions to ensure that waste handled in accordance with rules contained in this subchapter is not hazardous waste.

#### *§312.15. Transporter Registration.*

(a) Persons who plan to transport sewage sludge, water treatment sludge, grit trap waste, or grease trap waste regulated under this chapter shall register with the commission on forms furnished by the executive director prior to commencing operations.

(b) Persons who apply to the commission for registration and receive said registration shall maintain a copy of the registration form, as annotated by the executive director with an assigned registration number, at their designated place of business and in each vehicle operated under that registration.

(c) Registrations shall expire August 31, of each year. Registrations are required to be renewed annually prior to the expiration date. Application for renewal shall be submitted at least 60 days prior to the expiration date.

(d) A new registration application is required to be submitted within 15 days of the following, whereupon the old registration number will be voided and the old registration canceled:

(1) when ownership of the operating entity is changed; or

(2) the executive director determines that operations or management methods are no longer adequately described by the existing registration.

(e) Transporters shall notify the executive director, by letter, within 15 days of any changes to their registration whenever:

(1) the office or place of business is moved;

(2) the name of the operating entity is changed; or

(3) a transporter handles or plans to handle a waste not included in the existing registration.

(f) The commission may revoke or void a registration for cause as provided in §312.21 of this title (relating to Penalties). An opportunity for a formal hearing on the revocation may be requested by the registrant within 20 days after a Notice of Revocation has been sent from the executive director to the last known address of the registrant. If the registration is revoked or voided, a transporter shall not continue to transport the wastes regulated under this chapter.

*§312.16. Transporters-Delivery Requirement.* Transporters shall deposit wastes at a facility designated by or acceptable to the generator where the operator of the facility agrees to receive the wastes and the (Texas) facility has written authorization by permit or registration issued by the executive director to receive the wastes. In this regard, "authorization by the executive director" means the executive director or commission has given its approval by rule, permit, letter, or other document that identifies the individual facility or class of facilities to receive that specific waste or class of waste.

#### *§312.17. Transporters-Vehicle and Equipment.*

(a) Marking and identification. Owners or operators of specially equipped vacuum pump trucks, tanks, or containers used for the collection and/or over the road transportation of wastes regulated under this subchapter shall prominently mark such trucks, tanks, or containers to show the company name and the commission assigned registration number. The registration number shall be a minimum of three inch, permanently affixed, block numbers. The identification will be removed when it is no longer authorized by the commission or leaves the control of the person(s) holding the registration. Municipalities and state and federal agencies providing transportation of their sludges and similar wastes using vehicles/tanks may do so provided the vehicles/tanks used for transporting sludges and similar wastes will be identified by suitable means showing the entity which owns the

vehicles/tanks and the commission assigned registration number.

(b) Sanitation standards. All vehicles and equipment used for the collection and transportation of the wastes regulated under this chapter shall be constructed, operated, and maintained to prevent loss of liquid or solid waste materials and to prevent health nuisance and safety hazards to operating personnel and the public. Collection vehicles and equipment shall be maintained in a sanitary condition to preclude odors and insect breeding.

(c) Mixing of incompatible wastes. Mixing of incompatible wastes within the same container is prohibited. Transporters shall not use the same container or pumping equipment to collect or transport incompatible waste without first emptying and cleaning the container and equipment of all previously handled wastes. For purposes of this subsection, incompatible waste means wastes which have different processing, storage, or disposal requirements. However, transporters may mix wastes with different characteristics provided the facility to which the waste is being transported is authorized to store, process, or dispose of such mixed wastes.

#### §312.18. Transporters-Record Keeping.

(a) Manifests. Persons who collect and transport waste subject to control under this subchapter shall initiate and maintain a record of each individual collection and deposit. Such records shall be in the form of a manifest or similar documentation approved by the executive director. The manifest shall include:

- (1) name and commission registration number of transporter;
- (2) name, address, and phone number of the person who generated the waste and the date collected;
- (3) type and amount of waste collected or transported;
- (4) name of responsible person(s) collecting, transporting, and depositing the waste;
- (5) date and place where the waste was deposited;
- (6) identification (permit application or site registration number, location, and operator) of the facility where the waste was deposited; and
- (7) name and signature of facility representative acknowledging receipt of the waste and the amount of waste received.

(b) Maintenance of records and reporting. Within 15 days, the transporter shall return to the person who generated the waste a copy of the manifest showing receipt of waste and shall provide the facility

operator a copy of all manifests of wastes deposited. The transporter shall retain a copy of all manifests showing the collection and disposition of waste. Such copies shall be retained for five years and made available to the executive director upon request. Persons who transport waste via pipeline, rail, or barge may use an alternate record keeping system if approved by the executive director. Transporters shall submit to the executive director an annual summary of their activities for the period June 1-May 31, of each year showing amounts and types of waste collected, all disposition of such wastes, and amounts and types of waste delivered to each facility. The annual report shall also include a statement of the total capacity of all waste transport vehicles utilized by the transporter during the reporting year and as applicable to the operation for which he is required to register. Related to the calculation of vehicle capacity, a transport vehicle shall include, but is not limited to, trucks, portable tanks, trailers, barges, or similar transport vehicles, but shall not include pipelines. The report shall be submitted to the executive director no later than June 15 of the year following the end of the report period.

(c) Local ordinances. Where local ordinances require controls and records substantially equivalent to or more stringent than the requirements of subsection (a) of this section, transporters may use such controls and records to satisfy the commission's requirement under this section.

§312.19. Transporters-Discharge or Spills. In the event of a discharge or spill of waste during collection or transportation, the collector or transporter must take appropriate action to protect human health and the environment, e.g., notify local law enforcement and health authorities; dike the discharge area; clean up any waste discharge that occurs during transportation; or take such action as may be required or approved by federal, state, or local officials having jurisdiction so that the waste discharge no longer presents a public health or environmental problem. Transporters are responsible for reporting certain spills to the executive director in accordance with requirements of the State of Texas Oil and Hazardous Substance Spill Contingency Plan and the Texas Water Code, Chapter 26.039.

§312.20. Interstate Transportation. Persons who engage in the transportation of wastes (subject to regulation under this subchapter) from Texas to other states or from other states to Texas, or persons who collect or transport such waste in Texas but have their place of business in another state, shall comply with all the requirements for transporters contained in §§312.14-312.19 of this title (relating to Transporters-Applicability and Responsibility, Transporter Registration, Transporters-Delivery Requirement, Transporters-Vehicle and Equipment, Transporters-Record Keeping, Transporters-Discharge or Spills). If such persons also engage in any activity of managing such wastes in Texas by storage, processing, or disposal, they shall follow the applicable requirements of this chapter of such activities.

ability and Responsibility, Transporter Registration, Transporters-Delivery Requirement, Transporters-Vehicle and Equipment, Transporters-Record Keeping, Transporters-Discharge or Spills). If such persons also engage in any activity of managing such wastes in Texas by storage, processing, or disposal, they shall follow the applicable requirements of this chapter of such activities.

§312.21. Penalties. Failure of a transporter to properly and correctly maintain records, manifests, or other documents; or failure of a transporter to submit to the executive director correct information on the annual summary report or on an application for registration by the required due date; or unauthorized discharges of sewage sludge or water treatment sludge shall be sufficient cause for the commission to void the transporter's registration and authorization to transport such wastes. The commission may also take any other action authorized by law to secure compliance, including the assessment of administrative penalties or seeking of civil penalties as prescribed by law.

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

Issued in Austin, Texas, on April 2, 1993.

TRD-9321108

Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: May 10, 1993

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

## Subchapter B. Land Application for Beneficial Use

### • 31 TAC §§312.41-312.49

The new sections are proposed under the Texas Water Code (Vernon 1992), §5.103, which provides the TWC with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state. Additionally, the sections are proposed pursuant to the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361 (Vernon 1992), §361.011 and §361.024, which provides the TWC with the authority to regulate municipal solid waste and adopt rules consistent with the general intent and purposes of the Act.

#### §312.41. Applicability.

(a) Applications. This subchapter applies to any person who prepares sewage sludge that is applied to the land, to any person who applies sewage sludge to the land, to sewage sludge applied to the land,

and to the land on which sewage sludge is applied.

(b) Bulk sewage sludge.

(1) Section 312.42 of this title (relating to General Requirements) and §312.44 of this title (relating to Management Practices) do not apply when bulk sewage sludge is applied to the land if the bulk sewage sludge meets the pollutant concentrations in §312.43(b)(3) of this title (relating to Pollutant Limits), the Class A pathogen requirements in §312.82(a) of this title (relating to Pathogen Reduction), and one of the vector attraction reduction requirements in §312.83(b)(1)-(8) of this title (relating to Vector Attraction Reduction).

(2) The executive director may apply any or all of §312.42 of this title (relating to General Requirements) and §312.44 of this title (relating to Management Practices) to the bulk sewage sludge in paragraph (1) of this subsection on a case-by-case basis after determining that the general requirements or management practices are needed to protect public health and the environment from any reasonably anticipated adverse effect that may occur from any pollutant in the bulk sewage sludge.

(c) General requirement.

(1) Section 312.42 of this title (relating to General Requirements) and the management practices in §312.44 of this title (relating to Management Practices) do not apply when a bulk material derived from sewage sludge is applied to the land if the derived bulk material meets the pollutant concentrations in §312.43(b)(3) of this title (relating to Pollutant Limits), the Class A pathogen requirements in §312.83(a) of this title (relating to Pathogen Reduction), and one of the vector attraction reduction requirements in §312.83(b)(1)-(8) of this title (relating to Vector Attraction Reduction).

(2) The executive director may apply any or all of §312.42 of this title (relating to General Requirements) or in §312.44 of this title (relating to Management Practices) to the bulk material in subsection (c) of this section on a case-by-case basis after determining that the general requirements or management practices are needed to protect public health and the environment from any reasonably anticipated adverse effect that may occur from any pollutant in the bulk sewage sludge.

(d) Bulk derived materials. The requirements in this subchapter do not apply when a bulk material derived from sewage sludge is applied to the land if the sewage sludge from which the bulk material is derived meets the pollutant concentrations in §312.43(b)(3) of this title (relating to Pollutant Limits), the Class A pathogen requirements in §312.82(a) of this title (relating to Pathogen Reduction), and one

of the vector attraction reduction requirements in §312.83(b)(1)-(8) of this title (relating to Vector Attraction Reduction).

(e) Bagged sludge. Sewage sludge sold or given away in a bag or other container for application to the land. Section 312.42 of this title (relating to General Requirements) and in §312.44 of this title (relating to Management Practices) do not apply when sewage sludge is sold or given away in a bag or other container for application to the land if the sewage sludge sold or given away in a bag or other container for application to the land meets the pollutant concentrations in §312.43(b) of this title (relating to Pollutant Limits), the Class A pathogen requirements in §312.82(a) of this title (relating to Pathogen Reduction), and one of the vector attraction reduction requirements in §312.83(b)(1)-(8) of this title (relating to Vector Attraction Reduction).

(f) Bagged derived materials. Section 312.42 of this title (relating to General Requirements) and §312.44 of this title (relating to Management Practices) do not apply when a material derived from sewage sludge is sold or given away in a bag or other container for application to the land if the derived material meets the pollutant concentrations in §312.43(b) of this title (relating to Pollutant Limits), the Class A pathogen requirements in §312.82(a) of this title (relating to Pathogen Reduction), and one of the vector attraction reduction requirements in §312.83(b)(1)-(8) of this title (relating to Vector Attraction Reduction).

(g) Bagged materials. The requirements in this subchapter do not apply when a material derived from sewage sludge is sold or given away in a bag or other container for application to the land if the sewage sludge from which the material is derived meets the pollutant concentrations in §312.43(b)(3) of this title (relating to Pollutant Limits), the Class A pathogen requirements in §312.83(a) of this title (relating to Vector Attraction Reduction), and one of the vector attraction reduction requirements in §312.83(b)(1)-(8) of this title (relating to Vector Attraction Reduction).

(h) Water treatment sludge. Water treatment sludge is also regulated in this subchapter, but all standards, frequency of monitoring requirements, record keeping requirements, and reporting requirements in this subchapter do not apply if the water treatment sludge meets the pollutant concentrations in Table 3, §312.43(b)(3) of this title (relating to Pollutant Limits). Land application of water treatment sludge not meeting this criteria will be reviewed by the executive director.

*§312.42. General requirements.*

(a) No person shall apply sewage sludge, including domestic septage, to the

land except in accordance with the requirements in this subchapter.

(b) No person shall apply sewage sludge that does not meet the pollutant concentrations in §312.43(b)(3) of this title (relating to Pollutant Limits) to land where any of the cumulative pollutant loading rates in §312.43(b)(2) of this title (relating to Pollutant Limits) have been reached.

(c) No person shall apply domestic septage to agricultural land, forest, or a reclamation site during a 365 day period where the annual application rate in §312.43(c) of this title (relating to Pollutant Limits) has been reached.

(d) The person who applies sewage sludge, including domestic septage, to the land shall obtain information needed to comply with the requirements in this subchapter.

(e) If a treatment works provides bulk sewage sludge to a person who applies the bulk sewage sludge to the land, the treatment works shall provide the person who applies the bulk sewage sludge to the land notice and necessary information to comply with the requirements in this subchapter.

(f) If a treatment works provides bulk sewage sludge to a person who prepares the bulk sewage sludge for application to the land, the treatment works shall provide the person who prepares the bulk sewage sludge for application to the land notice and necessary information to comply with the requirements in this subchapter.

(g) The person who applies bulk sewage sludge to the land shall provide the owner or lease-holder of the land on which the bulk sewage sludge is applied notice and necessary information to comply with the requirements in this subchapter.

(h) If a treatment works provides sewage sludge to a person who prepares the sewage sludge for sale or give away in a bag or similar enclosure for application to the land, the treatment works shall provide the person who prepares the sewage sludge for sale or give away in a bag or similar enclosure for application to the land notice and information to comply with the requirements in this subchapter.

(i) The applicant shall determine the background levels of regulated pollutants in the top six inches of the soil and demonstrate to the satisfaction of the commission that the proposed cumulative pollutant loading will result in a non-toxic condition or reduce the toxicity of the existing soil.

*§312.43. Pollutant Limits.*

(a) Sewage sludge and water treatment sludge.

(1) Bulk sewage sludge or sewage sludge sold or given away in a bag or other container shall not be applied to the land if the concentration of any pollutant in the sewage sludge exceeds the ceiling concentration for the pollutant in Table 1 of subsection (b) of this section.

(2) If the bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site, either:

(A) the cumulative loading rate for each pollutant shall not exceed the cumulative pollutant loading rate for the pollutant in Table 2 of subsection (b) of this section; or

(B) the concentration of each pollutant in the sewage sludge shall not exceed the concentration for the pollutant in Table 3 of subsection (b) of this section.

(3) If bulk sewage sludge is applied to a lawn or a home garden, the concentration of each pollutant in the sewage sludge shall not exceed the concentration for the pollutant in Table 3 of subsection (b) of this section.

(4) If sewage sludge is sold or given away in a bag or other container for application to the land, either:

(A) the concentration of each pollutant in the sewage sludge shall not exceed the concentration for the pollutant in Table 3 in subsection (b) of this section; or

(B) the product of the concentration of the each pollution in the sewage sludge and the annual sludge application rate for the sewage sludge shall not cause the annual pollutant loading rate for the pollutant in Table 4 of subsection (b) of this section to be exceeded. The procedure used to determine the annual whole sludge application rate is presented in §312.49 of this title (relating to Appendix A-Procedure to Determine the Annual Whole Sludge Application Rate for a Sewage Sludge).

(b) Pollutant concentrations and loading rates—sewage sludge.

(1) Ceiling concentrations.

TABLE 1 - POLLUTANT CEILING CONCENTRATIONS

Pollutant	Concentration (Milligrams per kilogram)*
Arsenic	75
Cadmium	85
Chromium	3000
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
Selenium	100
Zinc	7500

\* Dry weight basis



rates.  
(2) Cumulative pollutant loading

TABLE 2 - CUMULATIVE POLLUTANT LOADING Rate

Pollutant	Cumulative Pollutant Loading	
	(kilograms per hectare)*	(pounds per acre)*
Arsenic	41	36
Cadmium	39	35
Chromium	3000	2677
Copper	1500	1339
Lead	300	268
Mercury	17	15
Molybdenum	18	16
Nickel	420	375
Selenium	100	89
Zinc	2800	2500

\* Dry weight basis

(3) Pollutant concentrations.

TABLE 3 - POLLUTANT CONCENTRATIONS

Pollutant	Concentration (Milligrams per kilogram)*
Arsenic	41
Cadmium	39
Chromium	1200
Copper	1500
Lead	300
Mercury	17
Molybdenum	18
Nickel	420
Selenium	36
Zinc	2800

\* Dry weight basis

(4) Annual Pollution loading  
rates.

TABLE 4 - ANNUAL POLLUTANT LOADING RATES

Pollutant	Annual Pollutant Loading Rate**	
	(kilograms per hectare)*	(pounds per acre)*
Arsenic	2.0	1.8
Cadmium	1.9	1.7
Chromium	150.0	134.0
Copper	75.0	67.0
Lead	15.0	13.0
Mercury	0.85	0.76
Molybdenum	0.9	0.8
Nickel	21.0	18.7
Selenium	5.0	4.5
Zinc	140.0	125.0

\* Dry weight basis

\*\* Per 365 day period

(c) Domestic Septage. The annual application rate for domestic septage applied to agricultural land, forest, or a reclamation site shall be equal to or less than the annual application rate calculated using equation 1.

$$\text{AAR} = \frac{N}{0.0026} \quad (1)$$

Where:

AAR = Annual application rate in gallons per acre per 365 day period.

N = Amount of nitrogen in pounds per acre per 365 day period for the crop of vegetation grown on the land.

**§312.44. Management Practices.**

(a) Bulk sewage sludge shall not cause or contribute to the harm of a threatened or endangered species of plant, fish, or wildlife or result in the destruction or adverse modification of the critical habitat of a threatened or endangered species after application to agricultural land, forest, a public contact site, or a reclamation site.

(b) Bulk sewage sludge shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded.

(c) Bulk sewage sludge shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is frozen or snow-covered.

(d) Bulk sewage sludge shall not be applied to agricultural land, forest, or a reclamation site that is 200 feet or less from waters of the state, unless otherwise specified by the commission. Other buffer zone distances are as follows:

- (1) private water supply well-200 feet;
- (2) public water supply well or intake-500 feet;
- (3) solution channels, sinkholes, or other conduits to groundwater-200 feet;
- (4) occupied residence or public right of way-300 feet;
- (5) existing schools, institutions, or residential or business development property lines-1,000 feet;

- (6) property boundary-50 feet;
- (7) irrigation conveyance canals-10 feet.

(e) Bulk sewage sludge shall be applied to agricultural land, forest, or a public contact site at a whole sludge application rate that is equal to or less than the agronomic rate for the agricultural land, forest, or public contact site on which the bulk sewage sludge is applied.

(f) Bulk sewage sludge shall be applied to a reclamation site at a whole application rate that is equal to or less than the agronomic rate for the reclamation site on which the bulk sewage sludge is applied, unless otherwise specified by the commission.

(g) Seasonal high water table, groundwater table, or depth to water-saturated soils shall be not less than three feet below the treatment zone for soils with moderate to slow permeability (less than two inches per hour) or four feet below the treatment zone for soils with rapid to moderately rapid permeability (between six and two inches per hour). Application of sludge to land having soils with greater permeability and with higher water tables will be considered on a case-by-case basis.

(h) Sludge shall be applied by a method and under conditions that prevent runoff beyond the active application area and protects the quality of the surface water and the soils in the unsaturated zone.

(i) Sludge shall be applied uniformly over the surface of the land.

(2) When applied to unvegetated soils, sludges shall be incorporated into the soils within 48 hours of application.

(3) Sludge shall not be applied to areas where permeable surface soils are less than two feet thick.

(4) Sludge shall not be applied during rainstorms or during periods in which surface soils are water-saturated.

(5) Sludge shall not be applied to areas having topographical slopes in excess of 8.0%.

(6) Where the sludge is not incorporated within 48 hours of application, stormwater runoff generated by storms of up to a 10-year, one-hour event shall be prevented from leaving the application area. Berms shall be installed for this purpose if necessary.

(7) Where runoff from the active application area is evident, the operator shall cease further sludge application until the condition is corrected.

(8) Sludge applied under provisions of this section on land within a designated 100-year floodplain must be incorporated into the soil within 24 hours. Sludge shall not be applied under provisions of this section on land within a designated 25-year floodplain.

(9) If a floodplain is not designated, the applicant shall demonstrate to the satisfaction of the executive director that site inundation will be prevented or that the land application site is not subject to flooding.

(i) A land application site location shall be selected and the site operated in a manner to prevent public health nuisances. Where nuisance conditions exist, the operator shall take necessary action to abate such nuisances. The tracking of mud or soils from the application area or access roads onto public roadways shall be controlled to any applicable conform to state and local requirements. Dust from site and access roadways shall be prevented from becoming a nuisance to surrounding areas.

(j) Either a label shall be affixed to the bag or similar enclosure in which sewage sludge is sold or given away for application to the land or an information sheet shall be provided to the person who receives sewage sludge sold or given away in a similar enclosure for application to the land. The label or information sheet shall contain the following information:

(1) the name and address of the person who prepared the sewage sludge for sale or give away in a bag or similar enclosure for application to the land;

(2) a statement that prohibits the application of the sewage sludge to the land except in accordance with the instructions on the label or information sheet;

(3) the annual whole sludge application rate for the sewage sludge that does not cause the annual pollutant loading rates in Table 4 to be exceeded.

#### *§312.45. Operational Standards-Pathogens and Vector Attraction.*

##### (a) Pathogens.

(1) The Class A pathogen requirements in §312.82(a) of this title (relating to Pathogen Reduction) or Class B pathogen requirements §312.82(b) of this title (relating to Vector Attraction Reduction) shall be met if bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.

(2) The Class A pathogen requirements in §312.82(a) of this title (relating to Pathogen Reduction) shall be met if bulk sewage sludge is applied to a lawn or a home garden.

(3) The Class A pathogen requirements in §312.82(a) of this title (relating to Pathogen Reduction) shall be met if sewage sludge is sold or given away in a bag or similar enclosure for application to the land.

(4) The requirements in §312.82(c) of this title (relating to Pathogen Reduction) shall be met if domestic septage is applied to agricultural land, forest, or a reclamation site.

##### (b) Vector attraction reduction.

(1) One of the vector attraction reduction requirements in §312.83(b)(1)-(10) of this title (relating to Vector Attraction Reduction) shall be met if bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.

(2) One of the vector attraction reduction requirements in §312.83(b)(1)-(8) of this title (relating to Vector Attraction Reduction) shall be met if bulk sewage sludge is applied to a lawn or a home garden.

(3) One of the vector attraction reduction requirements in §312.83(b)(1)-(8) of this title (relating to Vector Attraction Reduction) shall be met if sewage sludge is sold or given away in a bag or similar enclosure for application to the land.

(4) The vector attraction reduction requirements in §312.83(b)(12) of this title (relating to Vector Attraction Reduction) shall be met if domestic septage is applied to agricultural land, forest, or a public contact site.

#### *§312.46. Frequency of Monitoring.*

(a) Sewage sludge (other than domestic septage).

(1) The frequency of monitoring for the pollutants listed in Table 1, Table 2, Table 3, and Table 4 of §312.45(b) of this title (relating to Pollutant Limits; the pathogen density requirements in either §312.82(a) or §312.82(b)(2) of this title (relating to Pathogen Reduction); and vector attraction reduction requirements in §312.83(b)(1)-(8) of this title (relating to Vector Attraction Reduction).

TABLE 5 - FREQUENCY OF MONITORING - LAND APPLICATION

Amounts of sewage sludge* (metric tons per 365 day period)	Plant Design Flow (million gallons per day)	Frequency
0 to less than 290	0 to less than 1.0	once per year
290 to less less than 1,500	1.0 to less than 5.0	once per quarter
1,500 to less than 15,000	5.0 to less than 15.0	once per 60 days
15,000 or greater	15.0 or greater	once per month

\* Either the amount of bulk sewage sludge applied to the land or the amount of sewage sludge received by a person who prepares the sewage sludge for sale or give away in a bag or similar enclosure for application to the land - dry weight basis.

(2) The commission may increase the frequency of monitoring required in paragraph 1 of this subsection after the sewage sludge is monitored for two years at the frequency in Table 5. The increase in frequency of monitoring should only increase to the next highest frequency for each two year period and then may be lowered in the same manner. In no case shall the frequency of monitoring be less than the frequency required in Table 5 if sewage sludge is placed on a beneficial use site.

(b) Domestic septage applied to agricultural land, forest, or a reclamation site shall be monitored for the pathogen requirements in §312.82(c) of this title (relating to Pathogen Reduction) and the vector attraction reduction requirements in

§312.83(b)(12) of this title (relating to Vector Attraction Reduction).

§312.47. Recordkeeping.

(a) Sewage sludge.

(1) The person who prepares the sewage sludge in §312.41(b)(1) or (e) of this title (relating to Applicability) shall develop the following information and shall retain the information for five years:

(A) the concentration of each pollutant listed in Table 3 of §312.43(b)(3) of this title (relating to Pollutant Limits) in the sewage sludge;

(B) the following certification statement: "I certify, under penalty of

law, that the Class A pathogen requirements in 31 TAC §312.82(a) and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 31 TAC §312.83(b)(1)-(8)) have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen requirements and vector attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

(C) a description of how the Class A pathogen requirements in §312.82(a) of this title (relating to Pathogen Reduction) are met;

(D) a description of how one of the vector attraction reduction requirements in §312.83(b)(1)-(8) of this title (relating to Vector Attraction Reduction) is met.

(2) The person who derives the material in §312.41(c)(1) or (f) of this title (relating to Applicability) shall develop the following information and shall retain the information for five years:

(A) the concentration of each pollutant listed in Table 3 of §312.43(b)(3) of this title (relating to Pollutant Limits) in the material;

(B) the following certification statement: "I certify, under penalty of law, that the Class A pathogen requirements in 31 TAC §312.82(a) and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in §312.83(b)(1)-(8)) have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen requirements and the vector attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

(C) a description of how the Class A pathogen requirements in §312.82(a) of this title (relating to Pathogen Reduction) are met.

(D) a description of how one of the vector attraction reduction requirements in §312.83(b)(1)-(8) of this title (relating to Vector Attraction Reduction) is met.

(3) If the pollutant concentrations in §312.43(b)(3) of this title (relating to Pollutant Limits), the Class A pathogen requirements in §312.82(a) of this title (relating to Pathogen Reduction), and the vector attraction reduction requirements in either §312.83(b)(9) or (10) of this title (relating to Vector Attraction Reduction) are met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site:

(A) The person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(i) the concentration of each pollutant listed in Table 3 of

§312.43(b)(3) of this title (relating to Pollutant Limits) in the bulk sewage sludge;

(ii) the following certification statement: "I certify, under penalty of law, that the pathogen requirements in 31 TAC §312.82(a) have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

(iii) A description of how the pathogen requirements in §312.82(a) of this title (relating to Pathogen Reduction) are met.

(B) The person who applies the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(i) the following certification statement: "I certify, under penalty of law, that the management practices in 31 TAC §312.44 and the vector attraction reduction requirement in (insert either 31 TAC §312.83(b)(9) or 31 TAC §312.83(b)(10)) have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the management practices and vector attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including fine and imprisonment."

(ii) a description of how §312.44 of this title (relating to Management Practices) are met for each site on which bulk sewage sludge is applied;

(iii) a description of how the vector attraction reduction requirements in either §312.83(b)(9) or (10) of this title (relating to Vector Attraction Reduction) are met for each site on which bulk sewage sludge is applied.

(4) If the pollutant concentrations in §312.43(b)(3) of this title (relating to Pollutant Limits) and the Class B pathogen requirements in §312.82(b) of this title (relating to Pathogen Reduction) are met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site:

(A) The person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(i) the concentration of each pollutant listed in Table 3 of §312.43(b)(3) of this title (relating to Pollutant Limits) in the bulk sewage sludge;

(ii) the following certification statement: "I certify under, penalty of law, that the Class B pathogen requirements in 31 TAC §312.82(b) of this title (relating to Pathogen Reduction) and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 31 TAC §312.83(b)(1)-(8) if one of those requirements is met) have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen requirements (and vector attraction reduction requirements if applicable) have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

(iii) a description of how the Class B pathogen requirements in §312.82(b) of this title (relating to Pathogen Reduction) are met;

(iv) when one of the vector attraction reduction requirements in §312.83(b)(1)-(8) of this title (relating to Vector Attraction Reduction) is met, a description of how the vector attraction reduction requirement is met.

(B) The person who applies the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(i) the following certification statement: "I certify, under penalty of law, that the management practices in 31 TAC §312.44, the site restrictions in 31 TAC §312.82(b)(5), and the vector attraction reduction requirements in (insert either 31 TAC §312.83(b)(9) or (10), if one of those requirements is met) have been met for each site on which bulk sewage sludge is applied. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the management practices and site restrictions (and the vector attraction reduction requirements if applicable) have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

(ii) a description of how §312.44 of this title (relating to Management Practices) are met for each site on which bulk sewage sludge is applied;

(iii) a description of how the site restrictions in §312.82(b)(5) of this

title (relating to Pathogen Reduction) are met for each site on which bulk sewage sludge is applied;

(iv) when the vector attraction reduction requirement in either §312.83(b)(9) or (10) of this title (relating to Vector Attraction Reduction) is met, a description of how the vector attraction reduction requirement is met.

(5) If the requirements in §312.43(a)(2)(A) of this title (relating to Pollutant Limits) are met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site the following shall apply.

(A) The person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(i) the concentration of each pollutant listed in Table 1 of §312.43(b)(1) of this title (relating to Pollutant Limits) in the bulk sewage sludge;

(ii) the following certification statement: "I certify, under penalty of law, that the pathogen requirements in (insert either 31 TAC §312.82(a) or 31 TAC §312.82(b)) and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 31 TAC §312.83(b)(1)-(8) if one of those requirements is met) have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen requirements (and vector attraction reduction requirements) have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

(iii) a description of how the pathogen requirements in either 31 TAC §312.82(a) or (b) of this title (relating to Pathogen Reduction) are met;

(iv) when one of the vector attraction requirements in §312.83(b)(1)-(8) of this title (relating to Vector Attraction Reduction) is met, a description of how the vector attraction requirement is met.

(B) The person who applies the bulk sewage sludge shall develop the following information, retain the information in §312.47(a)(5)(B)(i)-(vii) indefinitely, and retain the information in §312.47(a)(5)(B)(viii)-(xiii) of this title (relating to Record Keeping) for five years:

(i) the location, by either street address or latitude and longitude, of each site on which bulk sewage sludge is applied;

(ii) The number of hectares in each site on which bulk sewage sludge is applied;

(iii) the date and time bulk sewage sludge is applied to each site;

(iv) the cumulative amount of each pollutant (i.e., kilograms) listed in Table 2 of §312.43(b)(2) of this title (relating to Pollutant Limits) in the bulk sewage sludge applied to each site, including the amount in §312.42(e)(2)(C) of this title (relating to General Requirement);

(v) the amount of sewage sludge (i.e., metric tons) applied to each site;

(vi) the following certification statement: "I certify, under penalty of law, that the requirements to obtain information in §312.42(e)(2) have been met for each site on which bulk sewage sludge is applied. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the requirements to obtain information have been met. I am aware that there are significant penalties for false certification including fine and imprisonment. "

(vii) a description of how the requirements to obtain information in §312.12(e)(2) of this title (relating to General Requirements) are met;

(viii) the following certification statement: "I certify, under penalty of law, that the management practices in 31 TAC §312.44 have been met for each site on which bulk sewage sludge is applied. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the management practices have been met. I am aware that there are significant penalties for false certification including fine and imprisonment."

(ix) a description of how §312.44 of this title (relating to Management Practices) are met for each site on which bulk sewage sludge is applied;

(x) the following certification statement when the bulk sewage sludge meets the Class B pathogen requirements in §312.82(b) of this title (relating to Pathogen Reduction): "I certify, under penalty of law, that the site restrictions in 31 TAC §312.82(b)(5) have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the site restrictions have been met. I am aware that

there are significant penalties for false certification including fine and imprisonment."

(xi) a description of how the site restrictions in 31 TAC §312.82(b)(5) of this title (relating to Pathogen Reduction) are met for each site on which Class B bulk sewage sludge is applied;

(xii) the following certification statement when the vector attraction reduction requirement in either 31 TAC §312.83(b)(9) or (10) of this title (relating to Vector Attraction Reduction) is met: "I certify, under penalty of law, that the vector attraction reduction requirement in (insert either 31 TAC §312.83(b)(9) or (10)) has been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the vector attraction reduction requirement has been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

(xiii) if the vector attraction reduction requirements in either §312.83(b)(9) or (10) of this title (relating to Vector Attraction Reduction) are met, a description of how the requirements are met.

(6) If the requirements in §312.43(a)(4)(B) of this title (relating to Pollutant Limits) are met when sewage sludge is sold or given away in a bag or other container for application to the land, the person who prepares the sewage sludge that is sold or given away in a bag or other container shall develop the following information and shall retain the information for five years:

(A) the annual whole sludge application rate for the sewage sludge that does not cause the annual pollutant loading rates in Table 4 of §312.43(b)(4) of this title (relating to Pollutant Limits) to be exceeded;

(B) the concentration of each pollutant listed in Table 4 of §312.43(b)(4) of this title (relating to Pollutant Limits) in the sewage sludge;

(C) the following certification statement: "I certify, under penalty of law, that the management practice in 31 TAC §312.44(e), the Class A pathogen requirement in 31 TAC §312.82(a), and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 31 TAC §312.83(b)(1)-(8)) have been met. This determination has been made under my direction and supervision in accordance with the system designed to en-



sure that qualified personnel properly gather and evaluate the information used to determine that the management practice, pathogen requirements, and vector attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

(D) a description of how the Class A pathogen requirements in §312.82(a) of this title (relating to Pathogen Reduction) are met;

(E) a description of how one of the vector attraction requirements in §312.83(b)(1)-(8) of this title (relating to Vector Attraction Reduction) is met.

(b) Domestic septage. When domestic septage is applied to agricultural land, forest, or a reclamation site, the person who applies the domestic septage shall develop the following information and shall retain the information for five years:

(1) the location, by either street address or latitude and longitude, of each site on which domestic septage is applied;

(2) the number of acres in each site on which domestic septage is applied;

(3) the date and time domestic septage is applied to each site;

(4) the nitrogen requirement for the crop or vegetation grown on each site during a 365 day period;

(5) the rate, in gallons per acre per 365 day period, at which domestic septage is applied to each site;

(6) the following certification statement: "I certify, under penalty of law, that the pathogen requirements in (insert either 31 TAC §312.82(c)(1) or 31 TAC §312.82(c)(2) ) and the vector attraction reduction requirements in [insert 31 TAC §312.83(b)(9), (10), or (12)] have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen requirements and vector attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

(7) a description of how the pathogen requirements in either §312.83(c)(1) or (2) of this title (relating to Vector Attraction Reduction) are met;

(8) a description of how the vector attraction reduction requirements in §312.83(b)(9),(10), or (12) of this title (relating to Vector Attraction Reduction) are met.

*§312.48. Reporting.* Unless otherwise specified by the commission sludge management facilities and POTWs shall submit the following information to the Enforcement Section, Watershed Management Division, and District Office:

(1) the information in §312.47 of this title, except the information in §312.47(a)(3)(i)(A)-(E) and (4)(i) of this title (relating to Record Keeping) for the appropriate requirements by September 1 of each year;

(2) the information in §312.47(a)(5)(A)(i)-(v) of this title (relating to Record Keeping) by September 1 of each year if:

(A) the sewage sludge does not meet the pollutant concentrations in §312.43(b)(3) of this title (relating to Pollutant Limits);

(B) 90% or more of any of the cumulative pollutant loading rates in Table 2 of §312.43(b)(2) of this title (relating to Pollutant Limits) is reached at a site;

(C) sewage sludge is applied to a site after 90% of any of the cumulative pollutant loading rates is reached at the site.

*§312.49. Appendix A—Procedure to Determine the Annual Whole Sludge Application Rate for a Sewage Sludge.* Section 312.43(a)(4)(B) of this title (relating to Pollutant Limits) requires that the product of the concentration for each pollutant listed in Table 4 of §312.43(b)(4) of this title (relating to Pollutant Limits) in sewage sludge sold or given away in a bag or other container for application to the land and the annual whole sludge application rate (AWSAR) for the sewage sludge not cause the annual pollutant loading rate for the pollutant in Table 4 of §312.43(b)(4) of this title (relating to Pollutant Limits) to be exceeded. This appendix contains the procedure used to determine the AWSAR for a sewage sludge that does not cause the annual pollutant loading rates in Table 4 of §312.43(b)(4) of this title (relating to Pollutant Limits) to be exceeded.

(1) The relationship between the annual pollutant loading rate (APLR) for a pollutant and the annual whole sludge application rate (AWSAR) for a sewage sludge is shown in equation (1).

$$\text{APLR} = \text{C} \times \text{AWSAR} \times 0.001 \quad (1)$$

Where:

APLR = Annual pollutant loading rate in kilograms per hectare per 365 day period.

C = Pollutant concentration in milligrams per kilogram of total solids (dry weight basis).

AWSAR = Annual whole sludge application rate in metric tons per hectare per 365 day period (dry weight basis).

0.001 = A conversion factor.

(2) To determine the AWSAR, equation (1) is rearranged into equation (2):

$$\text{AWSAR} = \frac{\text{APLR}}{\text{C} \times 0.001} \quad (2)$$

(3) The procedure used to determine the AWSAR for a sewage sludge is presented in Appendix-A.

## Appendix A

### PROCEDURE:

1. Analyze a sample of the sewage sludge to determine the concentration for each of the pollutants listed in Table 4 of §312.43 of this title (relating to Pollutant Limits) in the sewage sludge.
2. Using the pollutant concentrations from Step 1 and the APLRs from Table 4 of §312.43(b)(4) of this title (relating to Pollutant Limits), calculate an AWSAR for each pollutant using equation (2) above.
3. The AWSAR for the sewage sludge is the lowest AWSAR calculated in Step 2.

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

Issued in Austin, Texas, on April 2, 1993.

TRD-9321109

Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: May 10, 1993

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

### Subchapter C. Surface Disposal

#### • 31 TAC §§312.61-312.68

The new sections are proposed under the Texas Water Code (Vernon 1992), §5.103, which provides the TWC with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state. Additionally, the sections are proposed pursuant to the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361 (Vernon 1992), §361.011 and §361.024, which provides the TWC with the authority to regulate municipal solid waste and adopt rules consistent with the general intent and purposes of the Act.

#### §312.61. Applicability.

(a) This subchapter applies to any person who prepares sewage sludge or water treatment sludge that is placed on a surface disposal site, to the owner/operator

of a surface disposal site, to sewage sludge and water treatment sludge placed on a surface disposal site, and to a surface disposal site.

(b) This subchapter does not apply to sewage sludge or water treatment sludge stored on the land or to the land on which sewage sludge or water treatment sludge is stored when the storage period is two years or less.

(c) This subchapter does not apply to sewage sludge or water treatment sludge that remains on the land for longer than two years but less than five years when the person who prepares the sewage sludge or water treatment sludge demonstrates that the land on which the sewage sludge or water treatment sludge remains is not an active sludge unit or surface disposal site. The demonstration shall include the following information, which shall be reviewed and approved by the executive director and retained by the person who prepares the sewage sludge or water treatment sludge for the period that the sewage sludge or water treatment sludge remains on the land:

(1) the name and address of the person who prepared the sewage sludge or water treatment sludge;

(2) the name and address of the person who either owns the land or leases the land;

(3) the location of the land, by latitude and longitude, street address if available, and boundary shown on a 7 1/2 minute quadrangle United States Geological Survey map;

(4) an explanation of why sewage sludge needs to remain on the land for longer than two years prior to final use or disposal;

(5) the date by which the sewage sludge will be used or disposed of. This date must clearly maintain a storage period less than five years;

(d) This subchapter does not apply to sewage sludge or water treatment sludge that is treated on the land or the land on which sewage sludge or water treatment sludge is treated. However, in no case shall the sewage sludge or water treatment sludge remain on the land longer than two years without meeting the requirements in subsection (c) of this section.

#### §312.62. General Requirements.

(a) No person shall place sewage sludge or water treatment sludge on an active sludge unit unless the requirements in this subchapter are met.

(b) Sewage sludge and water treatment sludge shall not be mixed in a single sludge unit.

(c) An active sludge unit located within 60 meters of a fault that has displacement in Holocene time, located in an unstable area, or located in a wetland, shall close prior to December 1, 1993.

(d) The owner/operator of an active sludge unit shall submit a written "closure and post closure plan" to the executive director 180 days prior to the date that the

active sludge unit closes. The plan shall describe how the sludge unit will be closed and, at a minimum, shall include:

(1) a discussion of how the leachate collection system will be operated and maintained for three years after the sludge unit closes if the sludge unit has a liner and leachate collection system;

(2) a description of the system used to monitor for methane gas in the air in any structures within the surface disposal site and in the air at the property line of the surface disposal site, as required in §312.64(j) of this title (relating to Management Practices);

(3) a discussion of how public access to the surface disposal site will be restricted for three years after the last sludge unit in the surface disposal site closes.

(e) Deed Recordation Notification.

(1) No person shall place sewage sludge or water treatment sludge on an active sludge unit prior to recording, in the deed records of the county or counties in which the disposal takes place, the following information:

(A) a metes and bounds description of the portion(s) of the tract of land on which disposal of sewage sludge or water treatment sludge will take place;

(B) a detailed description of the sewage sludge or water treatment sludge which is to be disposed of;

(C) all pertinent information related to the permit to dispose of sewage

sludge or water treatment sludge, including at least the permit number and issuing agency; and

(D) the name and permanent address of the person or persons operating the facility where more specific information on the waste can be secured.

(2) Proof of recordation shall be provided to the executive director before the commission issues a permit.

§312.63. Pollutant Limits (other than domestic septage).

(a) Except as provided in subsection (b) of this section, the concentration for each pollutant listed in Table 6 in sewage sludge or water treatment sludge placed on an active sludge unit that does not have a liner and leachate collection system shall be equal to or less than concentration for the pollutant in Table 6.

TABLE 7 - POLLUTANT CONCENTRATIONS

Unit boundary to property line distance (meters)	Pollutant concentration*		
	Arsenic (mg/kg)	Chromium (mg/kg)	Nickel (mg/kg)
0 to less than 25	30	200	210
25 to less than 50	34	220	240
50 to less than 75	39	260	270
75 to less than 100	46	300	320
100 to less than 125	53	360	390
125 to less than 150	62	450	420

\* (Dry weight basis)

(b) The concentration of each pollutant listed in Table 6 of subsection (a) of this section (relating to Pollutant Limits) in sewage sludge or water treatment sludge placed on an active sludge unit whose boundary is less than 150 meters from the

property line of the surface disposal site shall not exceed the concentration determined using the following procedure.

(1) The shortest actual distance from the active sludge unit boundary to the property line of the surface disposal site shall be determined.

(2) The concentration of each pollutant listed in Table 7 of this subsection in the sewage sludge or water treatment sludge shall not exceed the concentration in Table 7 that corresponds to the actual distance as described in paragraph (1) of this subsection.

TABLE 6 - POLLUTANT CONCENTRATIONS

<u>Pollutant</u>	<u>Concentration</u> <u>(milligrams per kilogram*)</u>
Arsenic	73
Chromium	600
Nickel	420

\* (Dry weight basis)

*§312.64. Management Practices.*

(a) Sewage sludge or water treatment sludge shall not be placed on an active sludge unit if it is likely to adversely affect a threatened or endangered species listed under the Endangered Species Act, §4, or its designated critical habitat.

(b) An active sludge unit shall not restrict the flow of the 100 year flood nor be located within the 100 year floodplain.

(c) When a surface disposal site is located in a seismic impact zone, each sludge unit in that site shall be designed to withstand the maximum recorded horizontal ground level acceleration.

(d) An active sludge unit shall be located 60 meters or more from a fault that has displacement in Holocene time, unless otherwise approved by the commission.

(e) An active sludge unit shall not be located in an unstable area.

(f) An active sludge unit shall not be located in a wetland.

(g) Runoff from an active sludge unit shall be collected and disposed in accordance with discharge permit requirements and any other applicable requirements. The runoff collection system

for an active sludge unit shall have the capacity to handle runoff from the 25 year storm.

(h) The leachate collection system for an active sludge unit that has a liner and leachate collection system shall be operated and maintained during the period the sludge unit is active and for three years after the sludge unit closes.

(i) Leachate from an active sludge unit that has a liner and leachate collection system shall be collected and disposed in accordance with the applicable requirements during the period the sludge unit is active and for three years after the sludge unit closes.

(j) When a cover is placed on an active sewage sludge unit, the concentration of methane gas in air in any structure within the surface disposal site shall not exceed 25% of the lower explosive limit for methane gas during the period that the sewage sludge unit is active and the concentration of methane gas in air at the property line of the surface disposal site shall not exceed the lower explosive limit for methane gas during the period that the sludge unit is active. When a final cover is placed on a sludge unit at closure, the concentration of methane gas in air in any structure within the surface disposal site shall not exceed 25% of the lower explosive limit for methane gas

for three years after the sludge unit closes and the concentration of methane gas in air at the property line of the surface disposal site shall not exceed the lower explosive limit for methane gas for three years after the sludge unit closes.

(k) A food crop, a feed crop, or a fiber crop shall not be grown on an active sludge unit, unless the owner/operator of the surface disposal site demonstrates to the commission that through additional management practices, public health and the environment are protected from any reasonably anticipated adverse effects of pollutants in sewage sludge or water treatment sludge when crops are grown.

(l) Animals shall not be grazed on an active sludge unit, unless the owner/operator of the surface disposal site demonstrates to the commission that through additional management practices, public health and the environment are protected from any reasonably anticipated adverse effects of pollutants in sewage sludge or water treatment sludge when animals are grazed.

(m) Public access to a surface disposal site shall be restricted during the period that the surface disposal site contains an active sludge unit and for a period of three years after the last active sludge unit in the surface disposal site closes. The

means of restricting access to a surface disposal site shall be effective with consideration of the location of the site and adjacent land use(s).

(1) The permit application shall include an explanation of the means for restricting access to a surface disposal site.

(2) The executive director shall include, as a condition of the proposed permit, specific requirements for the means of restricting access to a surface disposal site.

(n) Sewage sludge or water treatment sludge placed on an active sludge unit shall not contaminate an aquifer. Results of a groundwater monitoring program developed by a qualified groundwater scientist or a certification by a qualified groundwater scientist shall be used to demonstrate that sewage sludge or water treatment sludge placed on an active sludge unit does not contaminate an aquifer.

**§312.65. Operational Standards-Pathogen and Vector Attraction.**

(a) Pathogen reduction-Sewage sludge (other than domestic septage). The Class A pathogen reduction requirements in §312.82(a) of this title (relating to Pathogen Reduction) or the Class B pathogen reduction requirements in §312.82(b)(1)(A) and (B) of this title (relating to Vector Attraction Reduction) shall be met when sewage sludge is placed on an active sludge unit.

(b) Pathogen reduction-Domestic septage. The pathogen reduction requirement in §312.82(c)(2) of this title (relating to Domestic septage) shall be met when domestic septage is placed on an active sludge unit.

(c) Vector attraction reduction-Sewage sludge (other than domestic septage). One of the alternatives for vector attraction reduction in §312.83(b)(1)-(11) of this title (relating to Vector Attraction Reduction) shall be met when sewage sludge is placed on an active sludge unit.

(d) Vector attraction reduction-Domestic septage. The vector attraction reduction requirement in §312.83(b)(12) of this title (relating to Vector Attraction Reduction) shall be met when domestic septage is placed on an active sludge unit.

**§312.66. Frequency of Monitoring.**

(a) Sewage sludge (other than domestic septage) and water treatment sludge.

(1) When required by this subchapter, the frequency of monitoring for the pollutants in Table 6 and Table 7 of §312.63(a) and (b) of this title (relating to Pollutant Limits), the pathogen density requirements in §312.82(a) of this title (relating to Pathogen Reduction) and in §312.82(b) of this title (relating to Vector Attraction Reduction), and the vector attraction reduction requirements in §312.83(b)(1)-(8) of this title (relating to Vector Attraction Reduction), for sewage sludge and water treatment sludge placed on an active sludge unit shall be the frequency in Table 8.

TABLE 8 - FREQUENCY OF MONITORING

<u>Amount of sewage sludge*</u> <u>(metric tons per 365 day period)</u>	<u>Frequency</u>
Greater than zero but less than 290	once per year
Equal to or greater than 290 but less than 1,500	once per quarter (four times per year)
Equal to or greater than 1,500 but less than 15,000	once per 60 days (six times per year)
Equal to or greater than 15,000	once per month (12 times per year)

\* Amount of sewage sludge placed on an active sewage sludge unit (dry weight basis).

(2) The commission may increase the frequency of monitoring required in paragraph (1) of this subsection after the sewage sludge or water treatment sludge is monitored for two years at the frequency in

Table 8. The increase in frequency of monitoring should only increase to the next highest frequency for each two year period and then may be lowered in the same manner. In no case shall the frequency of monitoring be less than the frequency required in

Table 8 if sewage sludge or water treatment sludge is placed on an active sludge unit.

(b) If the vector attraction reduction requirements in §312.83(b)(12) of this title (relating to Vector Reduction Requirements) are met when domestic septage is

placed on an active sewage sludge unit, each individual container of domestic septage shall be monitored for compliance with those requirements.

(c) Air in structures within a surface disposal site and at the property line of the surface disposal site shall be monitored continuously for methane gas during the period the surface disposal site contains an active sludge unit on which the sewage sludge or water treatment sludge is covered and for three years after a sludge unit closes if a final cover is placed on the sewage sludge.

#### §312.67. Record Keeping.

(a) When sewage sludge (other than domestic septage) is placed on an active sludge unit.

(1) The person who prepares the sewage sludge shall develop the following information and shall retain the information for five years.

(A) The concentration of each pollutant listed in Table 6 of §312.63(a) of this title (relating to Pollutant Limits) in the sewage sludge when the pollutant concentrations in Table 6 are met.

(B) The following certification statement: "I certify, under penalty of law, that the management practices in 31 Texas Administrative Code §312.64; the pathogen requirements in (insert the citation to the specific pathogen reduction requirements that are met from §312.82(a) of this title (relating to Pathogen Reduction)) and the vector attraction reduction requirements in (insert the citation to the specific vector attraction reduction requirements that are met from §312.83(b) of this title (relating to Vector Attraction Reduction) when one of those requirements is met) have been met. This determination has been made under my direction and supervision in accordance with the system designed to assure that qualified personnel properly gather and evaluate the information used to determine that the (specific requirements for pathogen and vector attraction reduction (when appropriate)) have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

(C) A description of how the pathogen reduction requirements in §312.82(a) of this title (relating to Pathogen Reduction) are met when any of those requirements are met.

(D) A description of how one of the vector attraction reduction requirements in §312.83(b) of this title (relat-

ing to Vector Attraction Reduction) are met when required.

(2) The owner/operator of the surface disposal site shall develop the following information and shall retain that information for five years.

(A) The concentration of each pollutant listed in Table 7 of §312.63(b) of this title (relating to Pollutant Limits) in the sewage sludge when the pollutant concentrations in Table 7 are met.

(B) The following certification statement: "I certify, under penalty of law, that the management practices in 31 Texas Administrative Code §312.64 and the vector attraction reduction requirements in (insert the citation to the specific requirements that are met from §312.83(b) of this title (relating to Vector Attraction Reduction)) have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the management practices (and specific requirements for vector attraction reduction (when appropriate)) have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

(C) A description of how the management practices in §312.64 of this title (relating to Management Practices) are met.

(D) A description of how one of the vector attraction reduction requirements in §312.83 of this title (relating to Vector Attraction Reduction) are met when required.

(b) When domestic septage is placed on an active sludge unit.

(1) When the vector attraction reduction requirements in §312.83(b)(12) of this title (relating to Vector Attraction Reduction) are met, the person who places the domestic septage on the surface disposal site shall develop the following information and shall retain the information for five years:

(A) The following certification statement: "I certify, under penalty of law, that the vector attraction reduction requirements in 31 Texas Administrative Code §312.83(b)(12) have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the vec-

tor attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

(B) A description of how the vector attraction reduction requirements in §312.83(b)(12) of this title (relating to Vector Attraction Reduction) are met.

(2) The owner/operator of the surface disposal site shall develop the following information and shall retain that information for five years:

(A) the following certification statement: "I certify, under penalty of law, that the management practices in 31 Texas Administrative Code §312.64 and the vector attraction reduction requirements in (insert the citation to the specific vector attraction reduction requirements that are met from §312.83 of this title (relating to Vector Attraction Reduction)) have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the management practices (and vector attraction reduction requirements (when appropriate)) have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment;"

(B) a description of how the management practices in §312.64 of this title (relating to Management Practices) are met;

(C) a description of how one of the vector attraction reduction requirements in §312.83 of this title (relating to Vector Attraction Reduction) are met when required.

§312.68. Reporting. Class I sludge management facilities, POTWs with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more shall submit the information required in §312.67(a) of this title (relating to Record Keeping) to the commission by September 1 each year.

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

Issued in Austin, Texas, on April 2, 1993.

TRD-9321110

Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Proposed date of adoption: May 10, 1993

◆ ◆ ◆  
**Subchapter D. Pathogen and Vector Attraction Reduction**

• 31 TAC §§312.81-312.83

The new sections are proposed under the Texas Water Code (Vernon 1992), §5.103, which provides the TWC with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state. Additionally, the sections are proposed pursuant to the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361 (Vernon 1992), §361.011 and §361.024, which provides the TWC with the authority to regulate municipal solid waste and adopt rules consistent with the general intent and purposes of the Act.

§312.81. Scope.

(a) This subchapter contains the requirements that must be met for a sewage sludge to be classified either Class A or Class B with respect to pathogen reduction.

(b) This subchapter contains the site restrictions for the land on which a sewage sludge that is Class B with respect to pathogens is either land applied for beneficial use or placed on an active sludge unit.

(c) This subchapter contains the pathogen reduction requirements for domestic septage applied to agricultural land, forest, or a reclamation site for beneficial use

and the pathogen reduction requirements for domestic septage placed on an active sludge unit.

(d) This subchapter contains the site restrictions for the land on which domestic septage is applied for beneficial use or placed on an active sludge unit.

(e) This subchapter contains the vector attraction reduction requirements for domestic septage land applied for beneficial use or placed on an active sludge unit.

§312.82. Pathogen Reduction.

(a) Sewage sludge-Class A.

(1) Compliance requirements-Class A.

(A) For a sewage sludge to be classified as Class A with respect to pathogens, the requirements in subparagraphs (C) and (D) of this paragraph and the requirements of one of the alternatives listed in paragraph (2) of this subsection shall be met.

(B) Prior to December 1, 1993, one of the alternatives listed in paragraph (3) of this subsection may be used in lieu of the alternatives listed in paragraph (2) of this subsection.

(C) The requirements of the chosen alternative for pathogen reduction from paragraph (2) or (3) of this subsection shall be met prior to or at the same time as

the vector attraction reduction requirements, except the requirements in paragraphs §312.83(b)(6)-(8) of this title (relating to Vector Attraction Reduction).

(D) Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis) or the density of Salmonella sp. bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed of, at the time the sewage sludge is prepared for sale or give away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in §312.41(b), (c), (e), or (f) of this title (relating to Applicability).

(2) Compliance alternatives-Class A.

(A) Alternative 1-The temperature of the sewage sludge shall be maintained at a specified value for a period of time.

(i) When the percent solids of the sewage sludge is 7.0% or higher, the temperature of the sewage sludge shall be 50 degrees Celsius or higher; the time period shall be 20 minutes or longer; and the temperature and time period shall satisfy equation (2) except when small particles of sewage sludge are heated by either warmed gases or an immiscible liquid.

$$D > \frac{131,700,000}{10^{0.1400t}} \quad (2)$$

D = time in days.

t = temperature in degrees Celsius.

or higher, the time period shall be 15 seconds or longer, and the temperature and time period shall satisfy equation (2).

(iii) When the percent solids of the sewage sludge is less than 7.0% and the time period is less than 30 minutes, the time period shall be at least 15 seconds and the temperature and time period shall satisfy equation (2).

(iv) When the percent solids of the sewage sludge is less than 7.0% and the time period is 30 minutes or longer, the temperature of the sewage sludge shall be 50 degrees Celsius or higher and the temperature and time period shall satisfy equation (3).

(ii) When the percent solids of the sewage sludge is seven percent or higher and small particles of sewage sludge are heated by either warmed gases or an immiscible liquid, the temperature of the sewage sludge shall be 50 degrees Celsius



$$10^{0.1400t}$$

D = time in days.

t = temperature in degrees Celsius.

(B) Alternative 2—The temperature and pH of the sewage sludge that is used or disposed of shall be maintained at specific values for periods of time.

(i) The pH of the sewage sludge shall be raised to above 12 and shall remain above 12 for 72 hours.

(ii) The temperature of the sewage sludge shall be above 52 degrees Celsius for 12 hours or longer during the period that the pH of the sewage sludge is above 12.

(iii) At the end of the 72 hour period during which the pH of the sewage sludge is greater than 12, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50%.

(C) Alternative 3—The sewage sludge that is used or disposed of shall be analyzed prior to pathogen reduction to determine whether the sewage sludge contains enteric viruses and viable helminth ova.

(i) When the density of enteric viruses in the sewage sludge prior to pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to enteric viruses until the next monitoring episode for the sewage sludge.

(ii) When the density of enteric viruses in the sewage sludge prior to pathogen treatment is equal to or greater than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to enteric viruses when the density of enteric viruses in the sewage sludge after pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the enteric virus density requirement are documented.

(iii) After the enteric virus reduction in clause (ii) of this

subparagraph is demonstrated for the pathogen treatment process, the sewage sludge continues to be Class A with respect to enteric viruses when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in clause (ii) of this subparagraph.

(iv) When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is less than one per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to viable helminth ova until the next monitoring episode for the sewage sludge.

(v) When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is equal to or greater than one per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to viable helminth ova when the density of viable helminth ova in the sewage sludge after pathogen treatment is less than one per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the viable helminth ova density requirement are documented.

(vi) After the viable helminth ova reduction in clause (v) of this subparagraph is demonstrated for the pathogen treatment process, the sewage sludge continues to be Class A with respect to viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in clause (v) of this subparagraph.

(D) Alternative 4—The sewage sludge that is used or disposed of shall be analyzed prior to pathogen reduction to determine whether the sewage sludge contains enteric viruses and viable helminth ova.

(i) The density of enteric viruses in the sewage sludge shall be less than one Plaque-forming Unit per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed of, at the time the sewage sludge is prepared for sale or give away in a bag or

other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in §312.41(b), (c), (e), or (f) of this title (relating to Applicability).

(ii) The density of viable helminth ova in the sewage sludge shall be less than one per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed of, at the time the sewage sludge is prepared for sale or give away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in §312.41(b), (c), (e), or (f) of this title (relating to Applicability).

(3) Interim compliance alternatives—Class A.

(A) Alternative 5—Sewage sludge that is used or disposed of shall be treated in one of the Processes to Further Reduce Pathogens described in 40 Code of Federal Regulations Part 503, Appendix B.

(B) Alternative 6—Sewage sludge that is used or disposed of shall be treated in a process that has been approved by the executive director as being equivalent to those in subparagraph (A) of this paragraph.

(b) Sewage sludge—Class B.

(1) Compliance requirements—Class B.

(A) For a sewage sludge to be classified as Class B with respect to pathogens, the requirements in subparagraphs (C) and (D) of this paragraph shall be met.

(B) Prior to December 1, 1993, one of the alternatives listed in paragraph (2) of this subsection may be used in lieu of the requirements in subparagraph (D) of this paragraph.

(C) The site restrictions in paragraph (3) of this subsection shall be met when sewage sludge that is classified as

Class B with respect to pathogens is applied to the land for beneficial use.

(D) A minimum of seven samples of the sewage sludge shall be collected at the time the sewage sludge is used or disposed of during each monitoring episode for the sewage sludge. The geometric mean of the density of fecal coliform for the samples collected shall be less than either 2,000,000 Most Probable Number per gram of total solids (dry weight basis) or 2,000,000 Colony forming Units per gram of total solids (dry weight basis).

(2) Interim compliance alternatives—Class B.

(A) Alternative 1—Sewage sludge that is used or disposed of shall be treated in one of the Processes to Significantly Reduce Pathogens described in 40 Code of Federal Regulations Part 503, Appendix B.

(B) Alternative 2—Sewage sludge that is used or disposed of shall be treated in a process that has been approved by the executive director as equivalent to those in subparagraph (A) of this paragraph.

(3) Site restrictions.

(A) Food crops with harvested parts totally above the land surface that touch the sewage sludge/soil mixture shall not be harvested from the land for at least 14 months after the application of sewage sludge.

(B) Food crops with harvested parts below the surface of the land shall not be harvested from the land for at least 20 months after application of sewage sludge when the sewage sludge remains on the land surface for four months or longer prior to incorporation into the soil.

(C) Food crops with harvested parts below the surface of the land shall not be harvested for at least 38 months after application of sewage sludge when the sewage sludge remains on the land surface for less than four months prior to the incorporation into the soil.

(D) Feed crops and fiber crops shall not be harvested for at least 30 days after application of sewage sludge.

(E) Animals shall not be allowed to graze on the land for at least 30 days after application of sewage sludge.

(F) Turf grown on land where sewage sludge is applied shall not be

harvested for at least one year after application of sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn.

(G) Public access to land with a high potential for public exposure shall be restricted for at least one year after application of sewage sludge.

(H) Public access to land with a low potential for public exposure shall be restricted for at least 30 days after application of the sewage sludge.

(c) Domestic septage.

(1) The site restrictions in subsection (b)(3) of this section shall be met if domestic septage is applied to the land.

(2) The pH of domestic septage applied to land shall be raised to 12 or higher by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for a period of 30 minutes.

#### §312.83. Vector Attraction Reduction.

(a) Compliance requirements.

(1) One of the vector attraction reduction requirements in subsection (b)(1)-(10) of this section shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.

(2) One of the vector attraction reduction requirements in subsection (b)(1)-(8) of this section shall be met when bulk sewage sludge is applied to a lawn, home garden, or is sold or given away in a bag or other container.

(3) One of the vector attraction reduction requirements in subsection (b)(1)-(11) of this section shall be met when sewage sludge (other than domestic septage) is placed on an active sewage sludge unit.

(4) One of the vector attraction reduction requirements in subsection (b)(9), (10), or (12) of this section shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

(5) One of the vector attraction reduction requirements in subsection (b)(9)-(12) of this section shall be met when domestic septage is placed on an active sewage sludge unit.

(b) Compliance alternatives.

(1) The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38%.

(2) If an anaerobically digested sewage sludge can not meet the 38% volatile solids reduction requirement in paragraph (1) of this subsection, vector

attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge anaerobically in a laboratory in a bench-scale unit for 40 additional days at 30 degrees Celsius or higher. If at the end of the 40 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 17%, vector attraction reduction is achieved.

(3) If an aerobically digested sewage sludge can not meet the 38% volatile solids reduction requirement in paragraph (1) of this subsection, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge that has a percent solids of two percent or less aerobically in a laboratory in a bench-scale unit for 30 additional days at a temperature between 20 degrees and 22 degrees Celsius. If at the end of the 30 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 15%, vector attraction reduction is achieved.

(4) The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20 degrees Celsius.

(5) Sewage sludge shall be treated in an aerobic process for 14 days or longer during which time the temperature of the sewage sludge shall be greater than 40 degrees Celsius. The average temperature of sewage sludge during the 14 day or longer period shall be greater than 45 degrees Celsius, but less than 60 degrees Celsius.

(6) The pH of sewage sludge shall be raised to 12, at a minimum, by alkali addition. Without the addition of more alkali, the pH of the sewage sludge shall remain at 12, at a minimum, for two hours and then remain at 11.5 at a minimum, for an additional 22 hours.

(7) The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75% based on the moisture content and total solids prior to mixing with other materials.

(8) The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90% based on the moisture content and total solids prior to mixing with other materials.

(9) Sewage sludge shall be injected below the surface of the land. No significant amount of the sewage sludge shall be present on the land surface within one hour after the sewage sludge is injected. If the sewage sludge that is injected below the surface of the land is Class A with

respect to pathogens, as described in §312.82 of this title (relating to Pathogen Reduction), the sewage sludge shall be injected below the land surface within eight hours after the sewage sludge is discharged from the pathogen reduction process.

(10) Sewage sludge applied to the land surface shall be incorporated into the soil within six hours after application to the land.

(11) Sewage sludge placed on an active sewage sludge unit shall be covered with soil or other material at the end of each operating day.

(12) The pH of domestic septage shall be raised to 12, at a minimum, by alkali addition and, without the addition of more alkali, shall remain at 12, at a minimum for a period of 30 minutes.

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

Issued in Austin, Texas, on April 2, 1993.

TRD-9321111 Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: May 10, 1993

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

### Subchapter E. Guidelines and Standards for Sludge Incineration

#### • 31 TAC §312.101

The new section is proposed under the Texas Water Code (Vernon 1992), §5.103, which provides the TWC with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state. Additionally, the sections are proposed pursuant to the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361 (Vernon 1992), §361.011 and §361.024, which provides the TWC with the authority to regulate municipal solid waste and adopt rules consistent with the general intent and purposes of the Act.

*§312.101. Incineration.* Except to the extent that they are less stringent than the Texas Water Code or the rules of the commission, 40 Code of Federal Regulations Subpart E, Part 503, which are in effect as of September 1, 1993, as amended, are adopted by reference.

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

Issued in Austin, Texas, on April 1, 1993.

TRD-9321112 Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: May 10, 1993

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

### Subchapter F. General Permitting for Beneficial Use Sites

#### • 31 TAC §312.121

The new section is proposed under the Texas Water Code (Vernon 1992), §5.103, which provides the TWC with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state. Additionally, the sections are proposed pursuant to the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361 (Vernon 1992), §361.011 and §361.024, which provides the TWC with the authority to regulate municipal solid waste and adopt rules consistent with the general intent and purposes of the Act.

*§312.121. General Permits.* Except to the extent that they are less stringent than the Texas Water Code or the rules of the commission, 40 Code of Federal Regulations, §122.28 (relating to General permits), which are in effect upon the date of authorization of TPDES, as amended, are adopted by reference.

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

Issued in Austin, Texas, on April 2, 1993.

TRD-9321113 Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: May 10, 1993

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

### Chapter 317. Design Criteria for Sewerage Systems

#### • 31 TAC §317.14

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

The Texas Water Commission (TWC) proposes the repeal of §317.14 concerning the disposal of sludges at the plant site.

Senate Bill 2, First Called Session, 72nd Legislature, transferred all the powers, duties,

rights, and obligations of the Texas Department of Health (TDH) pertaining to the treatment, handling, storage, and disposal of solid waste to the TWC effective March 1, 1992. All rules pertaining to municipal solid waste, except procedural rules, were administratively transferred from Title 25, Part 1, Texas Department of Health, to Title 31, Part IX, Texas Water Commission, in the March 3, 1992, issue of the *Texas Register* (17 TexReg 1649). Rules relating to the management of sludges and similar wastes, formerly codified as 25 TAC §§325.411-325.534, were included in the administrative transfer of rules to the TWC through recodification as 31 TAC §§330.411-330.534.

The new sections concerning sewage sludge use and disposal are proposed by TWC in order to establish standards for the final use or disposal of sewage sludge, water treatment sludge, and domestic septage sludge applied to land or placed on a surface disposal site, and to establish standards for sewage sludge fired in a sewage sludge incinerator. These standards include general requirements, pollutant limits, management practices and operational standards. The new sections also establish the basis for requiring either a permit or a registration for the final use or disposal of sewage sludge.

The TWC has assessed the rules adopted by the TDH concerning management of sludges and similar wastes which were administratively transferred to the TWC, and has determined that revisions of these rules are necessary in order to effectively administer, manage, and implement the program regulating the final use and disposal of sewage sludge in the State of Texas.

Stephen Minick, Division of Budget and Planning, has determined that for the first five years the repeal is in effect there will be fiscal implications as a result of administration and enforcement of the repeal. With few exceptions, the repeal will incorporate into state regulations those federal rules published February 19, 1993, relating to standards for the use and disposal of sewage sludge. For the most part, the impacts of the repeal are indistinguishable from those of the federal rules on affected entities. The impacts are described here to acknowledge the implications of this proposal and to characterize the effects on entities in Texas of both the federal rules and the repeal.

The effects on state government will be a increase in cost of approximately \$340,000. These costs are anticipated to be offset by increases in revenue of essentially the same amount. Revenues from permit applications and sludge disposal activities cannot be estimated with precision at this time but are not anticipated to exceed any costs incurred. The repeal will have effects on local governments. The objective of the repeal is to control the quality of sewage sludge and the potential effects of contaminants in sludge. This quality control is related to the control of the quality of influent wastewater to treatment facilities, control of treatment processes, and definition of appropriate sludge disposal methods. The repeal will establish requirements for the final use and disposal of sewage sludge when it is applied to the land for a beneficial purpose,

placed in or on a surface disposal site, or incinerated. The repeal does not establish standards for sludge disposed with municipal solid waste in landfills or incinerated with a predominant municipal solid waste stream, nor does it apply to sludges generated from treatment of domestic wastewaters mixed with industrial wastewaters by privately-owned treatment facilities. The majority of costs to be incurred will be realized by domestic and municipal wastewater treatment facilities, many of which are publicly-owned treatment works (POTW's), and related public and private operations. These fiscal implications will relate to increased costs of sludge monitoring, reporting, permit application processes, changes in required management practices, and potentially changes in method of waste disposition for sludges which fail proposed numerical standards for specific disposal methods.

Generally, the total effects of this repeal on POTW's are anticipated to increase annual costs to wastewater service providers by less than \$1.00 per household serviced. These costs will vary considerably depending on the size of the facility, the population served, the nature of current sludge management practices and the extent of changes in operation required. The most significant increases in cost will be for the relatively few facilities that are anticipated to fail numerical sludge standards for the methods of disposition currently utilized by the facility. On a national scale, EPA has estimated that just over 2.0% of all POTW's produce sludge which will fail the proposed numerical standards. EPA has also estimated that nationally the approximate annual cost implications of this repeal for facilities disposing of sludge by land application will vary from a low of \$426, for facilities producing less than one million gallons per day (MGD) of effluent, to a high of \$43,507 for those producing in excess of 100 MGD. Costs to facilities utilizing surface disposal facilities are generally greater, between \$3,925 and \$96,922 annually, for the same range of facility effluent discharge. Annual costs associated with incineration of sludge are estimated to be higher, ranging from \$37,000 to \$315,000 per facility. It should be noted that currently no facilities in Texas are incinerating sewage sludge.

This repeal will affect small businesses, including small, privately-owned treatment facilities and transporter of sewage sludge. The number of treatment facilities that would qualify as small businesses is not known. It is estimated, however, that the lower limits of the anticipated ranges in cost, above, are characteristic of the impacts on these facilities. These impacts are assumed to be proportional to the amounts of sludge produced annually at these facilities. The other category of small business affected is the transporters or haulers of sludge, almost all of which are small businesses. These firms will realize a greater burden under these rules as a function of total revenues than will most other affected entities. Total costs to sludge haulers is anticipated to average approximately 1.0% of total revenues annually. The maximum impact however, for the smallest operators, is anticipated to approach 14% of

revenues. Actual annual costs for small firms is estimated to be between \$48 and \$1,600.

Mr. Minick also has determined that for the first five years this repeal is in effect the public benefits anticipated as a result of enforcement of and compliance with the repeal are: diversion of potential pollutants from wastewaters and improved quality of wastewater effluents from treatment facilities, improved surface water quality, reduced emissions to soil, air and groundwater of pollutants in sewage sludge, reductions in adverse health effects from contaminants potentially contained in sewage sludge, improved productivity of soil, and reduced dependence on chemical fertilizers and associated savings in raw materials and energy resources.

Except as described above, the repeal is not anticipated to affect any individual required to comply with these sections. Individuals will be indirectly affected, however. Any service recipient of a POTW or private wastewater utility may expect to realize increased costs of service to recover the fiscal effects of this repeal on the service provider. Again, for POTW's, this cost is estimated at less than \$1.00 per year per household. Owners of septic tanks will be affected by increased costs for authorized haulers. The projected fiscal implications for haulers described above, if passed through directly, are anticipated to increase costs of septic tank service by approximately 2.0% annually or up to \$1.30 for each household operating a septic tank.

Comments on the proposal may be submitted to Louis Herrin, Permitting Section, Watershed Management Division, P.O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted until 5 p.m. for a period of 30 days following the date of this publication. Public meetings to receive public comment on this proposal will be held in the Dallas, Houston, San Antonio, and Midland/Odessa areas. Dates, times, and places will be published in a later issue of the *Texas Register*.

The repealed section is proposed under the Texas Water Code, §5.103, which provides the TWC with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state. Additionally, the sections are proposed pursuant to the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361, §361.011 and §361.024, which provides the TWC with the authority to regulate municipal solid waste and adopt rules consistent with the general intent and purposes of the Act.

#### §317.14. Appendix F—Sludge Disposal.

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

Issued in Austin, Texas, on April 2, 1993.

TRD-9321114

Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Proposed date of adoption: May 10, 1993

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

## Chapter 330. Municipal Solid Waste

### Subchapter N. Management of Sludges and Similar Wastes

- 31 TAC §§330.411-330.415, 330.431-330.432, 330.441-330.449, 330.461-330.465, 330.481-330.484, 330.501-330.504, 330.511-330.514, 330.531-330.534

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

The Texas Water Commission (TWC) proposes the repeal of §§330.411-330.415, 330.431-330.432, 330.441-330.449, 330.461-330.465, 330.481-330.484, 330.501-330.504, 330.511-330.514, and 330.531-330.534 concerning management of sludges and similar wastes and new §§312.1-312.21, 312.41-312.50, 312.61-312.69, 312.81-312.84 and §312.101 concerning sewage sludge use and disposal to replace the repealed sections.

Senate Bill 2, First Called Session, 72nd Legislature, transferred all the powers, duties, rights and obligations of the Texas Department of Health (TDH) pertaining to the treatment, handling, storage, and disposal of solid waste to the TWC effective March 1, 1992. All rules pertaining to municipal solid waste, except procedural rules, were administratively transferred from Title 25, Part 1, Texas Department of Health, to Title 31, Part IX, Texas Water Commission, in the March 3, 1992, issue of the *Texas Register* (17 TexReg 1649). Rules relating to the management of sludges and similar wastes, formerly codified as 25 TAC §§325.411-325.534, were included in the administrative transfer of rules to the TWC through recodification as 31 TAC §§330.411-330.534.

The new sections concerning sewage sludge use and disposal are proposed by TWC in order to establish standards for the final use or disposal of sewage sludge, water treatment sludge, and domestic septage sludge applied to land or placed on a surface disposal site, and to establish standards for sewage sludge fired in a sewage sludge incinerator. These standards include general requirements, pollutant limits, management practices and operational standards. The new sections also establish the basis for requiring either a permit or a registration for the final use or disposal of sewage sludge.

The TWC has assessed the rules adopted by the TDH concerning management of sludges and similar wastes which were administratively transferred to the TWC, and has determined that revisions of these rules are necessary in order to effectively administer, manage, and implement the program regulat-

ing the final use and disposal of sewage sludge in the State of Texas.

Stephen Minick, Division of Budget and Planning, has determined that for the first five years the repeal is in effect there will be fiscal implications as a result of administration and enforcement of the repeal. With few exceptions, the repeal will incorporate into state regulations those federal rules published February 19, 1993, relating to standards for the use and disposal of sewage sludge. For the most part, the impacts of the repeal are indistinguishable from those of the federal rules on affected entities. The impacts are described here to acknowledge the implications of this proposal and to characterize the effects on entities in Texas of both the federal rules and the repeal.

The effects on state government will be an increase in cost of approximately \$340,000. These costs are anticipated to be offset by increases in revenue of essentially the same amount. Revenues from permit applications and sludge disposal activities cannot be estimated with precision at this time but are not anticipated to exceed any costs incurred. The repeal will have effects on local governments. The objective of the repeal is to control the quality of sewage sludge and the potential effects of contaminants in sludge. This quality control is related to the control of the quality of influent wastewater to treatment facilities, control of treatment processes, and definition of appropriate sludge disposal methods. The repeal will establish requirements for the final use and disposal of sewage sludge when it is applied to the land for a beneficial purpose, placed in or on a surface disposal site, or incinerated. The repeal does not establish standards for sludge disposed with municipal solid waste in landfills or incinerated with a predominant municipal solid waste stream, nor does it apply to sludges generated from treatment of domestic wastewaters mixed with industrial wastewaters by privately-owned treatment facilities. The majority of costs to be incurred will be realized by domestic and municipal wastewater treatment facilities, many of which are publicly-owned treatment works (POTW's), and related public and private operations. These fiscal implications will relate to increased costs of sludge monitoring, reporting, permit application processes, changes in required management practices and potentially changes in method of waste disposition for sludges which fail proposed numerical standards for specific disposal methods.

Generally, the total effects of this repeal on POTW's are anticipated to increase annual costs to wastewater service providers by less than \$1.00 per household serviced. These costs will vary considerably depending on the size of the facility, the population served, the nature of current sludge management practices and the extent of changes in operation required. The most significant increases in cost will be for the relatively few facilities that are anticipated to fail numerical sludge standards for the methods of disposition currently utilized by the facility. On a national scale, EPA has estimated that just over 2.0% of all POTW's produce sludge which will fail the proposed numerical standards. EPA has also estimated that nationally the approximate an-

nual cost implications of this repeal for facilities disposing of sludge by land application will vary from a low of \$426, for facilities producing less than one million gallons per day (MGD) of effluent, to a high of \$43,507 for those producing in excess of 100 MGD. Costs to facilities utilizing surface disposal facilities are generally greater, between \$3,925 and \$96,922 annually, for the same range of facility effluent discharge. Annual costs associated with incineration of sludge are estimated to be higher, ranging from \$37,000 to \$315,000 per facility. It should be noted that currently no facilities in Texas are incinerating sewage sludge.

This repeal will affect small businesses, including small, privately-owned treatment facilities and transporter of sewage sludge. The number of treatment facilities that would qualify as small businesses is not known. It is estimated, however, that the lower limits of the anticipated ranges in cost, above, are characteristic of the impacts on these facilities. These impacts are assumed to be proportional to the amounts of sludge produced annually at these facilities. The other category of small business affected is the transporters or haulers of sludge, almost all of which are small businesses. These firms will realize a greater burden under these rules as a function of total revenues than will most other affected entities. Total costs to sludge haulers is anticipated to average approximately 1.0% of total revenues annually. The maximum impact however, for the smallest operators, is anticipated to approach 14% of revenues. Actual annual costs for small firms is estimated to be between \$48 and \$1,600.

Mr. Minick also has determined that for the first five years this repeal is in effect the public benefits anticipated as a result of enforcement of and compliance with the repeal are: diversion of potential pollutants from wastewaters and improved quality of wastewater effluents from treatment facilities, improved surface water quality, reduced emissions to soil, air and groundwater of pollutants in sewage sludge, reductions in adverse health effects from contaminants potentially contained in sewage sludge, improved productivity of soil, and reduced dependence on chemical fertilizers and associated savings in raw materials and energy resources.

Except as described above, the repeal is not anticipated to affect any individual required to comply with these sections. Individuals will be indirectly affected, however. Any service recipient of a POTW or private wastewater utility may expect to realize increased costs of service to recover the fiscal effects of this repeal on the service provider. Again, for POTW's, this cost is estimated at less than \$1.00 per year per household. Owners of septic tanks will be affected by increased costs for authorized haulers. The projected fiscal implications for haulers described above, if passed through directly, are anticipated to increase costs of septic tank service by approximately 2.0% annually or up to \$1.30 for each household operating a septic tank.

Comments on the proposal may be submitted to Louis Herrin, Permitting Section, Water-

shed Management Division, P.O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted until 5 p.m. for a period of 30 days following the date of this publication. Public meetings to receive public comment on this proposal will be held in the Dallas, Houston, San Antonio, and Midland/Odessa areas. Dates, times, and places will be published in a later issue of the *Texas Register*.

The repeals are proposed under the Texas Water Code, §5.103, which provides the TWC with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state. Additionally, the sections are proposed pursuant to the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361, §361.011 and §361.024, which provides the TWC with the authority to regulate municipal solid waste and adopt rules consistent with the general intent and purposes of the Act.

§330.411. *Purpose.*

§330.412. *Applicability.*

§330.413. *Effective Date.*

§330.414. *Nonhazardous Class I Industrial Waste and Small Quantities of Hazardous Waste.*

§330.415. *Agency Jurisdiction.*

§330.431. *General Requirements for Generators.*

§330.432. *Notification by Municipal Wastewater Treatment Plant Operators.*

§330.441. *Applicability and Responsibility.*

§330.442. *Registration.*

§330.443. *Delivery Requirements.*

§330.444. *Vehicles and Equipment.*

§330.445. *Record Keeping.*

§330.446. *Discharge or Spills.*

§330.447. *Interstate Transportation.*

§330.448. *Transporter Fees.*

§330.449. *Penalties.*

§330.461. *Applicability and Responsibility.*

§330.462. *Basic Requirements for Land Application.*

§330.463. *General Land Application Authorization.*

§330.464. *Sampling, Analysis, and Records.*

§330.465. *Storage of Sludge at Land Application Sites.*

§330.481. *General.*

§330.482. *Permit Requirements.*

§330.483. *Special Considerations.*

§330.484. *Operational Requirements.*

§330.501. *General and Applicability.*

§330.502. *Sludge for Controlled Use.*

§330.503. *Sludge for Uncontrolled Use.*

§330.504. *Records and Reports.*

§330.511. *General.*

§330.512. *Permit Requirements.*

§330.513. *Additional Permit Requirements.*

§330.514. *Operational Requirements.*

§330.531. *Grease Trap Wastes.*

§330.532. *Grit Trap Wastes.*

§330.533. *Septage.*

§330.534. *Water Supply Treatment Plant Sludge.*

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

Issued in Austin, Texas, on April 2, 1993.

TRD-9321115

Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Proposed date of adoption: May 10, 1993

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

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 12. Special Nutrition Programs

##### Summer Food Service Program

###### • 40 TAC §12.116

The Texas Department of Human Services (DHS) proposes an amendment to §12.116, concerning advance payments. The purpose of this amendment is to allow DHS to increase advance payments to eligible sponsors.

Burton F. Ralford, commissioner, 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 Ralford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that sponsors serving a large number of sites will be able to manage their programs more effectively and serve additional children. 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.

Questions about the content of the proposal may be directed to Norma Robinson at (512) 467-5821 in DHS's Summer Food Service Program. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-074, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

###### §12.116. *Advance Payments.*

(a) Sponsors may receive advance payments from the Texas Department of Human Services (DHS) to assist in meeting operating costs and administrative expenses. DHS makes advance payments according to 7 Code of Federal Regulations (CFR), §§225. 5, 225.6, and 225.9.

(b) DHS elects to exercise the option provided in 7 CFR, §§225.5, 225.6, and 225.9 to allow sponsors to receive advances in excess of \$40,000.

(c)[(b)] Sponsors who are institutions of higher education, hospitals, and/or other nonprofit organizations and receive advances of federal funds must maintain the funds in interest-bearing accounts. The

sponsors must return quarterly to DHS interest in excess of \$100 per year earned on advance funds, beginning with the quarter in which the interest first exceeds \$100. The sponsors may retain interest amounts up to \$100 per year for administrative expenses.

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

Issued in Austin, Texas, on April 5, 1993.

TRD-9321189

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

Proposed date of adoption: June 1, 1993

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

## Part IX. Texas Department on Aging

### Chapter 255. Support Documents

#### • 40 TAC §255.12.

The Texas Department on Aging proposes an amendment to §255.12, concerning State procedures to designate planning and service areas. It incorporates into the Texas Administrative Code important aspects of the changes made to the Older Americans Act of 1965 as amended by the 1992 amendments.

Ann Ammons, director of field operations, Texas Department on Aging, has determined that for the first five-year period the section is in effect there will be no fiscal implications as a result of enforcing or administering the section.

Ms. Ammons also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be greater understanding of the roles and missions of area agencies on aging as a result of incorporating new language and simplifying previous language in the rule. 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.

Request for public comment on the proposal may be submitted to Ann Ammons, Director of Field Operations, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The amendment is proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

###### §255.12. *Designation of Planning and Service Area (PSA).*

(a) A proposed PSA shall be coterminous with, a combination of, or a [either be contiguous with or a] subdivision of

State planning regions as delineated by the governor and authorized by the Local Government Code 391 [Texas Civil Statutes, Article 1011m]. A proposed PSA should not split an existing PSA.

(b) Existing PSAs shall continue to be designated unless [there is:

[(1) demonstrated evidence that designation of an existing PSA is manifestly consistent with the purpose of the rules and regulations issued pursuant to the Act; or

[(2) the designation of another PSA is necessary for the assurance of the efficient and effective administration of the programs authorized by Title III of the Act and operating in the state.] the designation of another PSA is necessary for the assurance of the efficient and effective administration of the programs authorized by the Older Americans Act.

(c) The Texas Department on Aging (State Agency) [Committee will] will document the basis for its designation of each PSA.

(d) State procedures to provide due process to affected parties, if the State agency initiates an action or proceedings to revoke designation, designate additional planning and service areas, divide the State into different planning and service areas (PSA), or other action otherwise affecting the boundaries of the PSA in the State will be as follows: [Department will designate PSAs no later than December 1 of the year preceding the development of the two-year state plan.]

(1) The State agency will provide notice of an action or proceedings to

the affected area agencies on aging, grantee organizations, and citizens advisory councils by certified mail.

(2) The State agency will provide in the notice the documentation for the need of the action or proceedings. The documentation will include:

(A) statutory authority for the action; and

(B) summary of projected impact of action on clients within service areas affected, and the anticipated improvements in service that will result from said action.

(3) The State agency will conduct a public hearing for the action or proceedings. The State agency will:

(A) register participants at the hearing and tape record oral testimony presented; and

(B) receive a report consisting of a summary of all oral testimony received at the hearings, copies of all written testimony, and a list of names of all persons attending. The report on the hearings will be presented in a public meeting of the Board within 30 days of the completion of the hearing.

(4) The State agency will request written comment from area agencies on aging, service providers, and older individuals on the action or proceedings.

(5) The State agency will allow an appeal to the Commissioner of the

Administration on Aging of the decision of the State agency on the action or proceedings.

(6) The State agency will provide a plan for an orderly transition to ensure continuity in the provision of services to older persons in the PSA.

(e) An adversely affected party involved in an action or proceeding described in subsection (d) of this section, relating to due process, may bring an appeal as provided in subsection (d)(5) of this section, relating to appeals to the Commissioner on Aging, on the basis of the following:

(1) the facts and merits of the matter that is the subject of the action or proceeding; or

(2) procedural grounds.

(f) The Administration on Aging Commissioner's decision on the appeal described in subsection (d)(5) of this section, relating to submission of appeals to the Administration on Aging, may affirm or set aside the decision of the State agency. If the Administration on Aging Commissioner sets aside the decision, the State agency shall nullify its action.

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

Issued in Austin, Texas, on March 31, 1993.

TRD-9321057

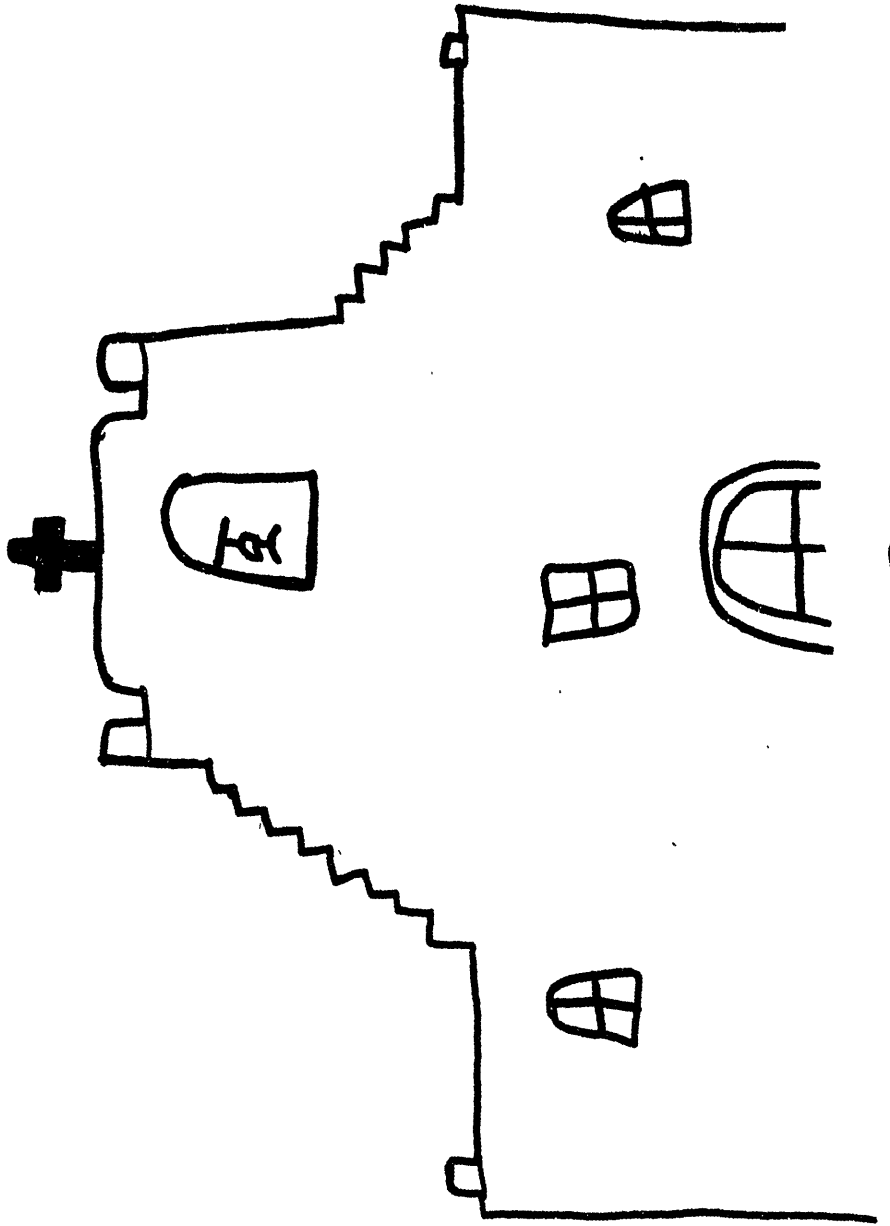
Mary Sapp  
Executive Director  
Texas Department on  
Aging

Earliest possible date of adoption: May 10, 1993

For further information, please call: (512) 444-2727

◆ ◆ ◆

# TEXAS



Name: Alfredo Moreno  
Grade: 2  
School: North Loop Elementary, Ysleta ISD



# Withdrawn Sections

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

## TITLE 28. INSURANCE Part I. Texas Department of Insurance

### Chapter 1. General Administration

#### Subchapter C. Maintenance Taxes

##### • 28 TAC §1.413

The Texas Department of Insurance has withdrawn from consideration for permanent adoption a proposed new to §1.413 which appeared in the February 5, 1993, issue of the *Texas Register* (18 TexReg 734). The effective date of this withdrawal is April 2, 1993.

Issued in Austin, Texas, on April 2, 1993.

TRD-9321181      Angella H. Johnson  
Deputy Chief Clerk  
Texas Department of  
Insurance

Effective date: April 2, 1993

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



## TITLE 40. SOCIAL SER- VICES AND ASSIS- TANCE

### Part IX. Texas Department of Aging

#### Chapter 255. State Delivery Systems

#### Planning and Service Area Designation

##### • 40 TAC §255.12

The Texas Department on Aging has withdrawn from consideration for permanent adoption a proposed amendment to §255.12 which appeared in the February 2, 1993, issue of the *Texas Register* (18 TexReg 635). The effective date of this withdrawal is April 20, 1993.

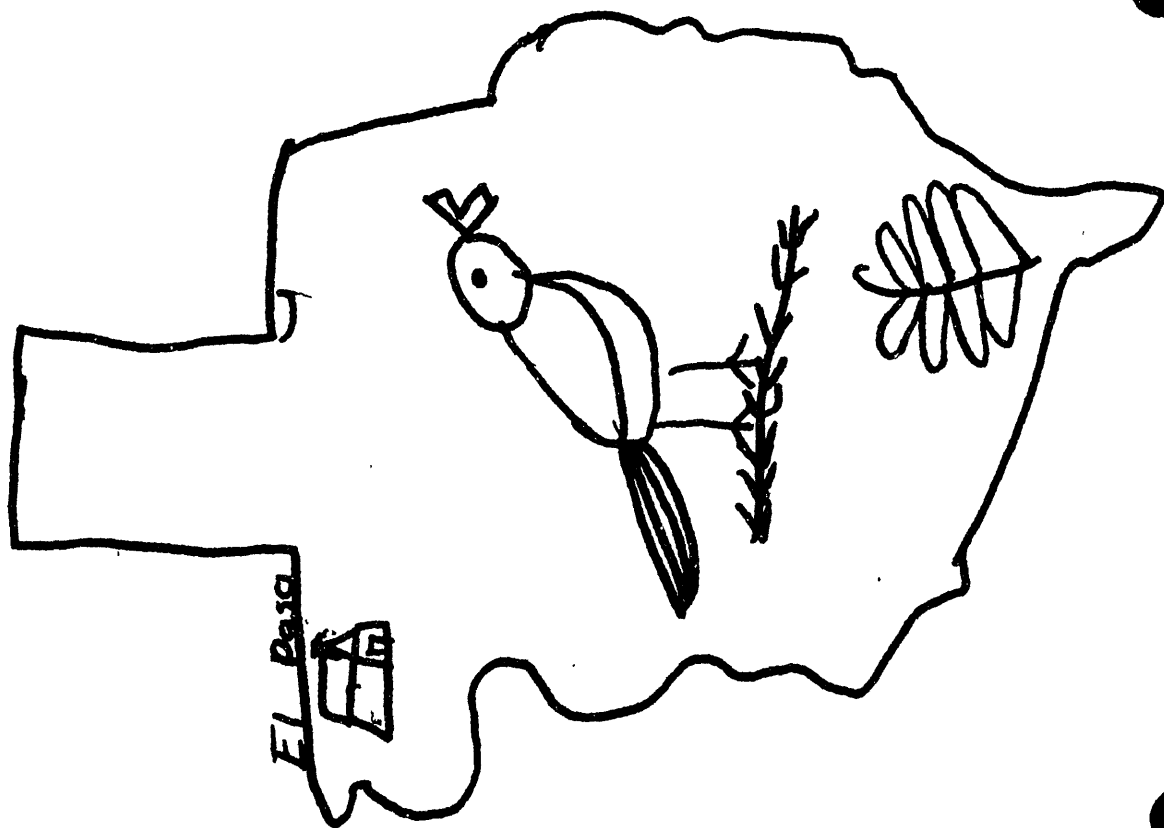
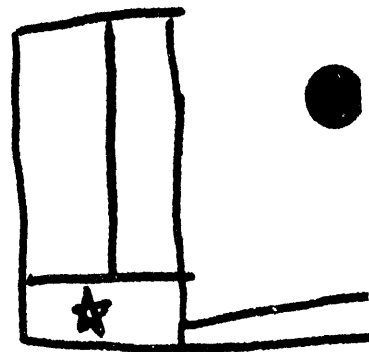
Issued in Austin, Texas, on March 31, 1993.

TRD-9321058      Mary Sapp  
Executive Director  
Texas Department on  
Aging

Effective date: April 20, 1993

For further information, please call: (512)  
444-2727





1.1.13

Name: Lancelena Salas  
Grade: 2  
School: North Loop Elementary, Ysleta ISD

# Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

## TITLE 1. ADMINISTRATION

### Part II. Texas Ethics Commission

#### Chapter 8. Legislative Per Diem

##### • 1 TAC §8.1

The Texas Ethics Commission adopts the repeal of §8.1, concerning legislative per diem, as published in the June 19, 1992, issue of the *Texas Register* (17 TexReg 4443).

This section is being replaced with new §8.1 which will also set forth the legislative per diem for members of the legislature and the lieutenant governor for each legislative day.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the authority of Article III, §24 and §24a, and Article IV, §17, of the Texas Constitution, which provides the Texas Ethics Commission with the authority to set the per diem for members of the legislature and the lieutenant governor.

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

Issued in Austin, Texas, on April 1, 1993.

TRD-9321137 Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Effective date: April 22, 1993

Proposal publication date: February 26, 1993

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

The Texas Ethics Commission adopts new §8.1 concerning legislative per diem, without changes to the proposed text as published in the February 26, 1993, issue of the *Texas Register* (17 TexReg 1221).

The new section sets forth the legislative per diem for members of the legislature and the lieutenant governor for each legislative day.

The new section provides the rate of per diem receivable by legislators and the lieutenant governor.

No public comments were received regarding adoption of the new section.

The new section is adopted in compliance with Article III, §24 and §24a, and Article IV, §17, of the Texas Constitution, which provides the Texas Ethics Commission with the authority to set the per diem for members of the legislature and the lieutenant governor.

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

Issued in Austin, Texas, on April 1, 1993.

TRD-9321136 Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Effective date: April 22, 1993

Proposal publication date: February 26, 1993

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

## TITLE 10. COMMUNITY DEVELOPMENT

### Part IV. Texas Department of Housing and Community Affairs

#### Chapter 53. HOME Investment Partnership Program Rules

##### • 10 TAC §§53.1-53.18

The Texas Department of Housing and Community Affairs (the Department) adopts new §§53.1-53.18, concerning the Home Investment Partnership Program Rules, without changes to the proposed text as published in the January 8, 1993, issue of the *Texas Register* (18 TexReg 147).

The new rules are adopted to establish procedures for the allocation of HOME investment partnership funds within the State of Texas to enhance the State's ability to provide affordable housing.

The new sections provide procedures for the allocation by the Department of certain funds available under federal and state laws and regulations to, among others, qualified public entities, for profit and non-profit organizations and low- and very low income families.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 4413(501), §3.02(2), which provide the Department with the authority to adopt rules governing the administration of the Department and its programs.

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

Issued in Austin, Texas, on April 1, 1993.

TRD-9321198 Henry Flores  
Executive Director  
Texas Department of  
Housing and  
Community Affairs

Effective date: April 26, 1993

Proposal publication date: January 8, 1993

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

## TITLE 16. ECONOMIC REGULATION

### Part II. Public Utility Commission of Texas

#### Chapter 23. Substantive Rules Rates

##### • 16 TAC §23.21

The Public Utility Commission of Texas adopts an amendment to §23.21, concerning Cost of Service, with changes to the proposed text as published in the December 25, 1992, issue of the *Texas Register* (17 TexReg 9073). The amendment adds provisions governing the ratemaking treatment for post-retirement benefits other than pensions (OPEBs or FASB 106 Expense).

Eighteen interested persons commented on the proposed rule. No person expressly supported the rule exactly as written. Texas Industrial Energy Consumers (TIEC) stated that the proposed rule fairly balances the interests of ratepayers and utilities, and recommended some changes to the proposed text to provide additional protections for ratepayers. Specifically, TIEC stated that the rule should specify that the conversion to the accrual method should occur only in a full rate case, that only reasonable OPEB costs should be included in rates, and that if amounts placed in an external trust are not used to pay OPEB expenses, the funds should be returned to ratepayers. The Commission agrees that the rule should clearly state that rate recognition of OPEB expense on an accrual basis should only occur in a full rate case, and clarifying language has been added to the rule. The Public Utility Regulatory Act (PURA) requires that only reasonable and necessary expenses may be included in rates, so it is unnecessary for the rule to so state. Requiring return of trust

funds to ratepayers may restrict the ability of future commissions to order appropriate disposition of the funds, so the Commission declines to address the eventual disposition of unused funds in this rule.

The Office of Public Utility Counsel (OPC) supports an approach that would allow utilities recovery of OPEB expense based on amounts actually expended. The Commission rejects the pay as you go approach because it does not reflect the current cost of providing OPEB benefits to current employees and does not attempt to match the expense with the corresponding generation of ratepayers. OPC also expressed concern about accurately estimating the amount of OPEB expense to be recovered through rates. The Commission shares OPC's concern, and believes that the requirement to place all FASB 106 related revenues in an external trust largely alleviates that concern. The Commission agrees with OPC that adoption of a rule will not end the debate about the appropriate level of expense to include in rates, but accepts that it is a problem inherent in the ratemaking process.

MCI Telecommunications Corporation noted that utilities' cash outlays are not changed by FASB 106 accounting procedures. MCI supported the proposed rule's treatment of the transition obligation on the basis that it is reasonable and emulates competitive markets. MCI contended that recovery of the transition obligation is tantamount to lowering the cost of capital for regulated companies, and would further result in intergenerational inequity.

The following persons stated that the proposed rule should not be adopted because it is unnecessary: Central Telephone Company of Texas, Lufkin-Conroe Telephone Exchange, Inc., Sugar Land Telephone Company, GTE Southwest Incorporated and Contel of Texas, Inc., and Texas Telephone Association. The Commission recognizes that ratemaking treatment of FASB 106 costs can be addressed on a case by case basis, but believes that the benefits of promoting consistency of treatment and decreasing litigation support adoption of a rule.

Most of the comments submitted focused on the proposal not to allow recovery of the transition obligation as part of OPEB expense, and on the proposal to require external funding of all amounts relating to OPEB expense recovered through rates. The following persons stated that the rule should allow recovery of OPEB costs to the full extent SFAS 106 requires them to be recognized for financial reporting purposes, including the transition obligation: Central Power and Light Company, West Texas Utilities, Southwestern Electric Power Company, Central Telephone Company of Texas, Lufkin-Conroe Telephone Exchange, Inc., Sugar Land Telephone Company, El Paso Electric Company, GTE Southwest and Contel of Texas, Inc., Gulf States Utilities, Houston Lighting & Power Company, Lower Colorado River Authority, Southwestern Bell Telephone Company, Southwestern Public Service Company, Texas Electric Cooperatives, Texas-New Mexico Power Company, Texas Telephone Association, Texas Utilities Electric Company, United Telephone Company. A number

of commenters stated that not allowing recovery of the transition obligation would be inconsistent with allowing utilities to recover on a "pay as you go" basis, which would be allowed under the proposed rule.

It appears that the commenters misunderstood the Commission's intent in proposing a rule that would allow a utility to recover OPEB expenses on a "pay as you go" basis. The Commission's intent was to accommodate utilities with small numbers of employees which may choose not to adopt SFAS 106 for ratemaking purposes. The Commission recognizes that "pay as you go" does not achieve matching goals, but determined that it would be in the public interest to recognize the diverse regulatory needs of utilities in the state.

The primary reasons advanced for why it would be improper to deny recovery of the transition obligation were that the transition obligation is a reasonable and necessary expense that utilities must be allowed an opportunity to recover under the Public Utility Regulatory Act, §39; that the matching principle cannot justify a total denial of any opportunity for recovery; that denial of an opportunity to recover the transition obligation will result in increased capital costs and increased total revenue requirements; that not allowing recovery of the transition obligation assumes that the expense should have been recovered in prior years; that the proposed treatment is inconsistent with treatment afforded pension expense; and, that the proposed rule is contrary to the regulatory approach of the Federal Energy Regulatory Commission and a number of states.

The Commission agrees that PURA is reasonably interpreted as requiring utilities to be allowed an opportunity to recover the transition obligation to the extent it is found to be reasonable and necessary. The Commission has determined that it is appropriate to amortize the transition obligation over 20 years.

The following commenters support the provision of the proposed rule which would require placing all revenues associated with OPEB expense in an external trust: MCI Telecommunications Corporation; Office of Public Utility Counsel; Texas Industrial Energy Consumers. The following commenters oppose the funding requirement: Central Telephone Company of Texas; Lufkin-Conroe Telephone Exchange, Inc.; Sugar Land Telephone Company; Texas Telephone Association; and United Telephone Company. GTE Southwest Incorporated and Contel of Texas, Inc. do not oppose the funding concept, but oppose mandatory funding. The following commenters do not favor the funding requirement, but do not oppose it if the Commission deems it necessary as a condition of allowing recovery of OPEB expenses on an accrual basis: Houston Lighting & Power Company; Southwestern Public Service Company; Texas-New Mexico Power Company, and Texas Utilities Electric Company. Gulf States Utilities does not oppose the funding requirement, but stated that funding should only be required to the extent it can be accomplished on a tax advantaged basis. Texas Electric Cooperatives stated that the funding requirement should be addressed on a case by case basis, and expressed concern that many co-

operatives would not have the cash to establish a trust until rate recognition is given.

The Commission believes that the funding requirements of the proposed rule are necessary to protect ratepayers. The funding requirement reduces incentive to overstate the expenses, alleviates some concerns over the difficulty of accurately estimating the OPEB expenses, and ensures that the funds will be available to provide benefits to future retirees. The Commission's concern in this regard is not to protect the interests of the retirees, but rather to address the interests of the ratepayers inherent in paying rates that include costs intended to maintain quality of service. The Commission believes that the benefit of having all amounts recovered placed in an external trust fund outweighs the anticipated costs of non-tax advantaged funding. The Commission clarifies that the funding requirement does not become effective as to any utility until OPEB expenses are recognized in rates on an accrual basis in accordance with the new rule.

Some commenters suggested that the rule should address the tax treatment to be used if not all of the funding can be accomplished on a tax advantaged basis. The Commission has determined that the tax issues are more appropriately addressed in the context of a general rate case and does not adopt any changes to the proposed text in that regard.

Texas Utilities Electric Company suggested that utilities should be given six months from the date of an order requiring funding before funding must actually be accomplished. The Commission agrees that it is appropriate to allow utilities a reasonable time to establish trust vehicles, and has modified the rule accordingly.

The following commenters stated that the Commission should allow creation of a regulatory asset and deferral of FASB 106 amounts accrued before rate recognition of the new level of expense: Central Power & Light Company; West Texas Utilities; Southwestern Electric Power Company; Gulf States Utilities Company; Southwestern Public Service Company. The Commission determined that deviation from the usual ratemaking treatment of expenses subject to regulatory lag is not justified in this situation.

The amendment is adopted under Texas Civil Statutes, Article 1446c, §16(a), which provide 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.

### §23.21. Cost of Service.

(a) (No change.)

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

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

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

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

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

(ii) A utility may request a one time conversion to inclusion of current OPEB expense in cost of service for ratemaking purposes on an accrual basis in accordance with generally accepted accounting principles (GAAP). Rate recognition of OPEB expense on an accrual basis shall be made only in the context of a full rate case.

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

(iv) For ratemaking purposes, the transition obligation shall be amortized for 20 years.

(v) OPEB amounts included in rates shall be placed in an irrevocable external trust fund dedicated to the payment of OPEB expenses. The trust shall be established no later than six months after the order establishing the OPEB expense amount included in rates. The utility shall make deposits to the fund no less frequently than annually. Deposits on the fund shall include, in addition to the amount included in rates, an amount equal to fund earnings that would have accrued if deposits had been made monthly. The funding requirement can be met with deposits made in advance of the recognition of the expense for ratemaking purposes. The utility shall, to the extent permitted by the Internal Revenue Code, establish a post-retirement benefit plan that allows for current federal income tax deductions for contributions and allows earnings on the trust funds to accumulate tax free.

(2) (No change.)

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

This agency hereby certifies that the 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 March 31, 1993.

TRD-9321076

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

Effective date: April 21, 1993

Proposal publication date: December 25, 1992

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

◆ ◆ ◆  
**TITLE 19. EDUCATION**  
**Part II. Texas Education Agency**

**Chapter 141. Teacher Certification**

**Subchapter U. Alternative Teacher Certification**

• 19 TAC §141.481, §141.482

The Texas Education Agency (TEA) adopts the repeal of §141.481 and §141.482, concerning alternative teacher certification, without changes to the proposed text as published in the February 26, 1993, issue of the *Texas Register* (18 TexReg 1225).

The sections are being repealed in accordance with the sunset review process mandated by Senate Bill 1, 71st Legislature. After review, the substance of these sections is being relocated to Chapter 137. The review process will result in a clearer, more concise statement of the rules relating to teacher certification.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the State Board of Education to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

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

Issued in Austin, Texas, on April 5, 1993.

TRD-9321191

Crisie Cloudt  
Director of Policy Planning  
and Evaluation  
Texas Education Agency

Effective date: April 26, 1993

Proposal publication date: February 26, 1993

For further information, please call: (512) 463-9701

**Chapter 153. Professional Practices**

• 19 TAC §153.1

The Texas Education Agency (TEA) adopts the repeal of §153.1, concerning the Professional Practices Commission, without changes to the proposed text as published in the February 26, 1993, issue of the *Texas Register* (18 TexReg 1241).

The section is being repealed in accordance with the sunset review process mandated by Senate Bill 1, 71st Legislature. After review, the substance of this section is being relocated to Chapter 137. The review process will result in a clearer, more concise statement of the rules relating to teacher certification.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the State Board of Education to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

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

Issued in Austin, Texas, on April 5, 1993.

TRD-9321192

Crisie Cloudt  
Director of Policy Planning  
and Evaluation  
Texas Education Agency

Effective date: April 26, 1993

Proposal publication date: February 26, 1993

For further information, please call: (512) 463-9701

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**TITLE 22. EXAMINING BOARDS**

**Part XXI. Texas State Board of Examiners of Psychologists**

**Chapter 465. Rules of Practice**

• 22 TAC §465.36

The Texas State Board of Examiners of Psychologists adopts new §465.36, concerning ethics code, with changes to the proposed text as published in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8379). Subsections (a), (c)(6)(f)(i) and (ii) and (1) and (d) are being changed.

The section is necessary to codify the Ethics Code into a Board Rule so that persons bound by the rules and regulations of the Board as well as the general public will be able to refer to a specific Board Rule concerning the ethical practice of psychology. This ethics code provides a common set of values, standards, and behavior upon which psychologists build their professional and scientific work.

The section will inform licensees/certificands of the Board of the requirements for the ethical practice of psychology in the State of Texas. The section will also help to inform persons seeking mental health services from a licensee/certificand of the Board of the ethical standards of the profession. Violations of this section constitute unprofessional conduct and accordingly, violations of this rule may result in Board action.

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.

#### §465.36. Ethics Code.

(a) Preamble. Psychologists work to develop a valid and reliable body of scientific knowledge based on research. They may apply that knowledge to human behavior in a variety of contexts. In doing so, they perform many roles, such as researcher, educator, diagnostician, therapist, supervisor, consultant, administrator, social interventionist, and expert witness. Their goal is to broaden knowledge of behavior and, where appropriate, to apply it pragmatically to improve the condition of both the individual and society. Psychologists respect the central importance of freedom of inquiry and expression in research, teaching, and publication. They also strive to help the public in developing informed judgments and choices concerning human behavior. This Ethics Code provides a common set of values upon which psychologists build their professional and scientific work. Violations of this section constitute unprofessional conduct.

(1) This Code is intended to provide both the general principles and the decision rules to cover most situations encountered by psychologists. It has as its primary goal the welfare and protection of the individuals and groups with whom psychologists work. It is the individual responsibility of each psychologist to aspire to the highest possible standards of conduct. Psychologists respect and protect human and civil rights, and do not knowingly participate in or condone unfair discriminatory practices.

(2) The development of a dynamic set of ethical standards for a psychologist's work-related conduct requires a personal commitment to a lifelong effort to act ethically; to encourage ethical behavior by students, supervisees, employees, and colleagues, as appropriate; and to consult with others, as needed, concerning ethical problems. Each psychologist supplements, but does not violate, the Ethics Code's val-

ues and rules on the basis of guidance drawn from personal values, culture, and experience.

#### (b) General Principles.

(1) Competence. Psychologists strive to maintain high standards of competence in their work. They recognize the boundaries of their particular competencies and the limitations of their expertise. They provide only those services and use only those techniques for which they are qualified by education, training, or experience. Psychologists are cognizant of the fact that the competencies required in serving, teaching, and/or studying groups of people vary with the distinctive characteristics of those groups. In those areas in which recognized professional standards do not yet exist, psychologists exercise careful judgment and take appropriate precautions to protect the welfare of those with whom they work. They maintain knowledge of relevant scientific and professional information related to the services they render, and they recognize the need for ongoing education. Psychologists make appropriate use of scientific, professional, technical, and administrative resources.

(2) Integrity. Psychologists seek to promote integrity in the science, teaching, and practice of psychology. In these activities psychologists are honest, fair, and respectful of others. In describing or reporting their qualifications, services, products, fees, research, or teaching, they do not make statements that are false, misleading, or deceptive. Psychologists strive to be aware of their own belief systems, values, needs, and limitations and the effect of these on their work. To the extent feasible, they attempt to clarify for relevant parties the roles they are performing and to function appropriately in accordance with those roles. Psychologists avoid improper and potentially harmful dual relationships.

(3) Professional and Scientific Responsibility. Psychologists uphold professional standards of conduct, clarify their professional roles and obligations, accept appropriate responsibility for their behavior, and adapt their methods to the needs of different populations. Psychologists consult with, refer to, or cooperate with other professionals and institutions to the extent needed to serve the best interests of their patients, clients, or other recipients of their services. Psychologists' moral standards and conduct are personal matters to the same degree as is true for any other person, except as psychologists' conduct may compromise their professional responsibilities or reduce the public's trust in psychology and psychologists. Psychologists are concerned about the ethical compliance of their colleagues' scientific and professional conduct. When appropriate, they consult with colleagues in order to prevent or avoid unethical conduct.

(4) Respect for People's Rights and Dignity. Psychologists accord appropriate respect to the fundamental rights, dignity, and worth of all people. They respect the rights of individuals to privacy, confidentiality, self-determination, and autonomy, mindful that legal and other obligations may lead to inconsistency and conflict with the exercise of these rights. Psychologists are aware of cultural, individual, and role differences, including those due to age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, and socioeconomic status. Psychologists try to eliminate the effect on their work of biases based on those factors, and they do not knowingly participate in or condone unfair discriminatory practice.

(5) Concern for Others' Welfare. Psychologists seek to contribute to the welfare of those with whom they interact professionally. In their professional actions, psychologists weigh the welfare and rights of their patients or clients, students, supervisees, human research participants, and other affected persons, and the welfare of animal subjects of research. When conflicts occur among psychologists' obligations or concerns, they attempt to resolve these conflicts and to perform their roles in a responsible fashion that avoids or minimizes harm. Psychologists are sensitive to real and ascribed differences in power between themselves and others, and they do not exploit or mislead other people during or after professional relationships.

(6) Social Responsibility. Psychologists are aware of their professional and scientific responsibilities to the community and the society in which they work and live. They apply and make public their knowledge of psychology in order to contribute to human welfare. Psychologists are concerned about and work to mitigate the causes of human suffering. When undertaking research, they strive to advance human welfare and the science of psychology. Psychologists try to avoid misuse of their work. Psychologists comply with the law and encourage the development of law and social policy that serve the interests of their patients and clients and the public. They are encouraged to contribute a portion of their professional time for little or no personal advantage.

#### (c) Ethical Standards.

(1) General Standards. These General Standards are potentially applicable to the professional and scientific activities of all psychologists. "Psychologists" include licensed psychologists, certified psychologists, certified psychological associates and applicants to the Board.

(A) Applicability of the Ethics Code. The activity of a psychologist

subject to the Ethics Code may be reviewed under these Ethical Standards only if the activity is part of his or her work-related functions or the activity is psychological in nature. Personal activities having no connection to or effect on psychological roles are not subject to the Ethics Code.

(B) **Relationship of Ethics and Law.** If psychologists' ethical responsibilities conflict with law, psychologists make known their commitment to the Ethics Code and take steps to resolve the conflict in a responsible manner.

(C) **Professional and Scientific Relationship.** Psychologists provide diagnostic, therapeutic, teaching, research, supervisory, consultative, or other psychological services only in the context of a defined professional or scientific relationship or role (see also paragraph (2)(A) of this subsection, Evaluation, Diagnosis, and Interventions in Professional Context, and paragraph (7)(B) of this subsection, Forensic Assessments).

(D) **Boundaries of Competence.**

(i) Psychologists provide services, teach, and conduct research only within the boundaries of their competence, based on their education, training, supervised experience, or appropriate professional experience.

(ii) Psychologists provide services, teach, or conduct research in new areas or involving new techniques only after first undertaking appropriate study, training, supervision, and/or consultation from persons who are competent in those areas or techniques.

(iii) In those emerging areas in which generally recognized standards for preparatory training do not yet exist, psychologists nevertheless take reasonable steps to ensure the competence of their work and to protect patients, clients, students, research participants, and others from harm.

(E) **Maintaining Expertise.** Psychologists who engage in assessment, therapy, teaching, research, organizational consulting, or other professional activities maintain a reasonable level of awareness of current scientific and professional information in their fields of activity, and undertake ongoing efforts to maintain competence in the skills they use.

(F) **Basis for Scientific and Professional Judgments.** Psychologists rely on scientifically and professionally derived knowledge when making scientific or pro-

fessional judgments or when engaging in scholarly or professional endeavors.

(G) **Describing the Nature and Results of Psychological Services.**

(i) When psychologists provide assessment, evaluation, treatment, counseling, supervision, teaching, consultation, research, or other psychological services to an individual, a group, or an organization, they provide, using language that is reasonably understandable to the recipient of those services, appropriate information beforehand about the nature of such services and appropriate information later about results and conclusions (see also paragraph (2)(I) of this subsection, Explaining Assessment Results).

(ii) If psychologists will be precluded by law or by organizational roles from providing such information to particular individuals or groups, they so inform those individuals or groups at the outset of the service.

(H) **Human Differences.** Where differences of age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, or socioeconomic status significantly affect psychologists' work concerning particular individuals or groups, psychologists obtain the training, experience, consultation, or supervision necessary to ensure the competence of their services, or they make appropriate referrals.

(I) **Respecting Others.** In their work-related activities, psychologists respect the rights of others to hold values, attitudes, and opinions that differ from their own.

(J) **Nondiscrimination.** In their work-related activities, psychologists do not engage in unfair discrimination based on age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, socioeconomic status, or any basis proscribed by law.

(K) **Sexual Harassment.**

(i) Psychologists do not engage in sexual harassment. Sexual harassment is sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature, that occurs in connection with the psychologists' activities or roles as a psychologist, and that either:

(II) is unwelcome, is offensive, or creates a hostile workplace environment, and the psychologist knows or is told this; or

(II) is sufficiently severe or intense to be abusive to a reasonable person in the context. Sexual harassment can consist of a single intense or severe act or of multiple persistent or pervasive acts.

(ii) Psychologists accord sexual harassment complainants and respondents dignity and respect. Psychologists do not participate in denying a person academic admittance or advancement, employment, tenure, or promotion, based solely upon their having made, or their being the subject of, sexual harassment charges. This does not preclude taking action based upon the outcome of such proceedings or consideration of other appropriate information.

(L) **Other Harassment.** Psychologists do not knowingly engage in behavior that is harassing or demeaning to persons with whom they interact in their work based on factors such as those person's age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, or socioeconomic status.

(M) **Personal Problems and Conflicts.**

(i) Psychologists recognize that their personal problems and conflicts may interfere with their effectiveness. Accordingly, they refrain from undertaking an activity when they know or should know that their personal problems are likely to lead to harm to a patient, client, colleague, student, research participant, or other person to whom they may owe a professional or scientific obligation.

(ii) In addition, psychologists have an obligation to be alert to signs of, and to obtain assistance for, their personal problems at an early stage, in order to prevent significantly impaired performance.

(iii) When psychologists become aware of personal problems that may interfere with their performing work-related duties adequately, they take appropriate measures, such as obtaining professional consultation or assistance, and determine whether they should limit, suspend, or terminate their work-related duties.

(N) **Avoiding Harm.** Psychologists take reasonable steps to avoid harming their patients or clients, research participants, students, and others with whom they work, and to minimize harm where it is foreseeable and unavoidable.

(O) **Misuse of Psychologists' Influence.** Because psychologists' scientific and professional judgments and actions may affect the lives of others, they are alert to

and guard against personal, financial, social, organizational, or political factors that might lead to misuse of their influence.

**(P) Misuse of Psychologists' Work.**

(i) Psychologists do not participate in activities in which it appears likely that their skills or data will be misused by others, unless corrective mechanisms are available (see also paragraph (7)(D) of this subsection, Truthfulness and Candor).

(ii) If psychologists learn of misuse or misrepresentation of their work, they take reasonable steps to correct or minimize the misuse or misrepresentation.

**(Q) Multiple Relationships.**

(i) In many communities and situations, it may not be feasible or reasonable for psychologists to avoid social or other nonprofessional contacts with persons such as patients, clients, students, supervisees, or research participants. Psychologists must always be sensitive to the potential harmful effects of other contacts on their work and on those persons with whom they deal. A psychologist refrains from entering into or promising another personal, scientific, professional, financial, or other relationship with such persons if it appears likely that such a relationship reasonably might impair the psychologist's objectivity or otherwise interfere with the psychologist effectively performing his or her functions as a psychologist, or might harm or exploit the other party.

(ii) Likewise, whenever feasible, a psychologist refrains from taking on professional or scientific obligations when preexisting relationships would create a risk of such harm.

(iii) If a psychologist finds that, due to unforeseen factors, a potentially harmful multiple relationship has arisen, the psychologist attempts to resolve it with due regard for the best interests of the affected person and maximal compliance with the Ethics Code.

**(R) Barter (With Patients or Clients)** . Psychologists ordinarily refrain from accepting goods, services, or other nonmonetary remuneration from patients or clients in return for psychological services because such arrangements create inherent potential for conflicts, exploitation, and distortion of the professional relationship. A psychologist may participate in bartering only if:

(i) it is not clinically contraindicated; and

(ii) the relationship is not exploitative (see also paragraph (1)(Q) of this subsection, Multiple Relationships, and paragraph (1)(Y) of this subsection, Fees and Financial Arrangements).

**(S) Exploitative Relationships.**

(i) Psychologists do not exploit persons over whom they have supervisory, evaluative, or other authority such as students, supervisees, employees, research participants, and clients or patients (see also paragraphs (4)(E)-(G) of this subsection regarding sexual involvement with clients or patients).

(ii) Psychologists do not engage in sexual relationships with students or supervisees in training over whom the psychologist has or may have evaluative or direct authority, because such relationships are so likely to impair judgment or be exploitative.

**(T) Consultations and Referrals.**

(i) Psychologists arrange for appropriate consultations and referrals based principally on the best interests of their patients or clients, with appropriate consent, and subject to other relevant considerations, including applicable law and contractual obligations (see also paragraph (5)(A) of this subsection, Discussing the Limits of Confidentiality, and paragraph (5)(F) of this subsection, Consultations).

(ii) When indicated and professionally appropriate, psychologists cooperate with other professionals in order to serve their patients or clients effectively and appropriately.

(iii) Psychologists' referral practices are consistent with law.

**(U) Third-Party Requests for Services.**

(i) When a psychologist agrees to provide services to a person or entity at the request of a third party, the psychologist clarifies to the extent feasible, at the outset of the service, the nature of the relationship with each party. This clarification includes the role of the psychologist (such as therapist, organizational consultant, diagnostician, or expert witness), the probable uses of the services provided or the information obtained, and the fact that there may be limits to confidentiality.

(ii) If there is a foreseeable risk of the psychologist being called upon to perform conflicting roles because of the involvement of a third party, the psychologist clarifies the nature and direction of his or her responsibilities, keeps all

parties appropriately informed as matters develop, and resolves the situation in accordance with this Ethics Code.

**(V) Delegation to and Supervision of Subordinates.**

(i) Psychologists delegate to their employees, supervisees, and research assistants only those responsibilities that such persons can reasonably be expected to perform competently, on the basis of their education, training, or experience, either independently or with the level of supervision being provided.

(ii) Psychologists provide proper training and supervision to their employees or supervisees and take reasonable steps to see that such persons perform services responsibly, competently, and ethically.

(iii) If institutional policies, procedures, or practices prevent fulfillment of this obligation, psychologists attempt to modify their role or to correct the situation to the extent feasible.

**(W) Documentation of Professional and Scientific Work.**

(i) Psychologists appropriately document their professional and scientific work in order to facilitate provision of services later by them or by other professionals, to ensure accountability, and to meet other requirements of institutions or the law.

(ii) When psychologists have reason to believe that records of their professional services will be used in legal proceedings involving recipients of or participants in their work, they have a responsibility to create and maintain documentation in the kind of detail and quality that would be consistent with reasonable scrutiny in an adjudicative forum (see also paragraph (7)(A) of this subsection, Professionalism, under Forensic Activities).

**(X) Records and Data.** Psychologists create, maintain, disseminate, store, retain, and dispose of records and data relating to their research, practice, and other work in accordance with law and in a manner that permits compliance with the requirements of this Ethics Code (see also paragraph (5)(D) of this subsection, Maintenance of Records).

**(Y) Fees and Financial Arrangements.**

(i) As early as is feasible in a professional or scientific relationship, the psychologist and the patient, client, or other appropriate recipient of psychological



services reach an agreement specifying the compensation and the billing arrangements.

(ii) Psychologists do not exploit recipients of services or payors with respect to fees.

(iii) Psychologists' fee practices are consistent with law.

(iv) Psychologists do not misrepresent their fees.

(v) If limitations to services can be anticipated because of limitations in financing, this is discussed with the patient, client, or other appropriate recipient of services as early as is feasible (see also paragraph (4)(H) of this subsection, Interruption of Services).

(vi) If the patient, client, or other recipient of services does not pay for services as agreed, and if the psychologist wishes to use collection agencies or legal measures to collect the fees, the psychologist first informs the person that such measures will be taken and provides that person an opportunity to make prompt payment (see also paragraph (5)(K) of this subsection, Withholding Records for Nonpayment).

(Z) Accuracy in Reports to Payors and Funding Sources. In their reports to payors for services or sources of research funding, psychologists accurately state the nature of the research or service provided, the fees or charges, and where applicable, the identity of the provider, the findings, and the diagnosis (see also paragraph (5)(E) of this subsection, Disclosures).

(AA) Referrals and Fees. When a psychologist pays, receives payment from, or divides fees with another professional other than in an employer-employee relationship, the payment to each is based on the services (clinical, consultative, administrative, or other) provided and is not based on the referral itself.

(2) Evaluation, Assessment, or Intervention.

(A) Evaluation, Diagnosis, and Interventions in Professional Context.

(i) Psychologists perform evaluations, diagnostic services, or interventions only within the context of a defined professional relationship (see also paragraph (1)(C) of this subsection, Professional and Scientific Relationship).

(ii) Psychologists' assessments, recommendations, reports, and psychological diagnostic or evaluative statements are based on information and techniques (including personal interviews of

the individual when appropriate) sufficient to provide appropriate substantiation for their findings (see also paragraph (7)(B) of this subsection, Forensic Assessments).

(B) Competence and Appropriate Use of Assessments and Interventions.

(i) Psychologists who develop, administer, score, interpret, or use psychological assessment techniques, interviews, tests, or instruments do so in a manner and for purposes that are appropriate in light of the research on or evidence of the usefulness and proper application of the techniques.

(ii) Psychologists refrain from misuse of assessment techniques, interventions, results, and interpretations and take reasonable steps to prevent others from misusing the information these techniques provide. This includes refraining from releasing raw test results or raw data to persons, other than to patients or clients as appropriate, who are not qualified to use such information (see also paragraph (1)(B) of this subsection, Relationship of Ethics and Law, and paragraph (1)(D) of this subsection, Boundaries of Competence).

(C) Test Construction. Psychologists who develop and conduct research with tests and other assessment techniques use scientific procedures and current professional knowledge for test design, standardization, validation, reduction or elimination of bias, and recommendations for use.

(D) Use of Assessment in General and With Special Populations.

(i) Psychologists who perform interventions or administer, score, interpret, or use assessment techniques are familiar with the reliability, validation, and related standardization or outcome studies of, and proper applications and uses of, the techniques they use.

(ii) Psychologists recognize limits to the certainty with which diagnoses, judgments, or predictions can be made about individuals.

(iii) Psychologists attempt to identify situations in which particular interventions or assessment techniques or norms may not be applicable or may require adjustment in administration or interpretation because of factors such as individuals' gender, age, race, ethnicity, national origin, religion, sexual orientation, disability, language, or socioeconomic status.

(E) Interpreting Assessment

Results. When interpreting assessment results, including automated interpretations, psychologists take into account the various test factors and characteristics of the person being assessed that might affect psychologists' judgments or reduce the accuracy of their interpretations. They indicate any significant reservations they have about the accuracy or limitations of their interpretations.

(F) Unqualified Persons. Psychologists do not promote the use of psychological assessment techniques by unqualified persons (see also paragraph (1)(V) of this subsection, Delegation to and Supervision of Subordinates).

(G) Obsolete Tests and Outdated Test Results.

(i) Psychologists do not base their assessment or intervention decisions or recommendations on data or test results that are outdated for the current purpose.

(ii) Similarly, psychologists do not base such decisions or recommendations on tests and measures that are obsolete and not useful for the current purpose.

(H) Test Scoring and Interpretation Services.

(i) Psychologists who offer assessment or scoring procedures to other professionals accurately describe the purpose, norms, validity, reliability, and applications of the procedures and any special qualifications applicable to their use.

(ii) Psychologists select scoring and interpretation services (including automated services) on the basis of evidence of the validity of the program and procedures as well as on other appropriate considerations.

(iii) Psychologists retain appropriate responsibility for the appropriate application, interpretation, and use of assessment instruments, whether they score and interpret such tests themselves or use automated or other services.

(I) Explaining Assessment Results. Unless the nature of the relationship is clearly explained to the person being assessed in advance and precludes provision of an explanation of results (such as in some organizational consulting, preemployment or security screenings, and forensic evaluations), psychologists ensure that an explanation of the results is provided using language that is reasonably understandable to the person assessed or to another legally authorized person on behalf of the client.

Regardless of whether the scoring and interpretation are done by the psychologist, by assistants, or by automated or other outside services, psychologists take reasonable steps to ensure that appropriate explanations of results are given.

(J) **Maintaining Test Security.** Psychologists make reasonable efforts to maintain the integrity and security of tests and other assessment techniques consistent with law, contractual obligations, and in a manner that permits compliance with the requirements of this Ethics Code (see also paragraph (1)(B) of this subsection, Relationship of Ethics and Law).

(3) **Advertising and Other Public Statements.**

(A) **Definition of Public Statements.** Psychologists comply with this Ethics Code in public statements relating to their professional services, products, or publications or to the field of psychology. Public statements include, but are not limited to, paid or unpaid advertising, brochures, printed matter, directory listings, personal resumes or curricula vitae, interviews or comments for use in media, statements in legal proceedings, lectures and public oral presentations, and published materials.

(B) **Statements by Others.**

(i) Psychologists who engage others to create or place public statements that promote their professional practice, products, or activities retain professional responsibility for such statements.

(ii) In addition, psychologists make reasonable efforts to prevent others whom they do not control (such as employers, publishers, sponsors, organizational clients, and representatives of the print or broadcast media) from making deceptive statements concerning psychologists' practice or professional or scientific activities.

(iii) If psychologists learn of deceptive statements about their work made by others, psychologists make reasonable efforts to correct such statements.

(iv) Psychologists do not compensate employees of press, radio, television, or other communication media in return for publicity in a news item.

(v) A paid advertisement relating to the psychologists' activities must be identified as such, unless it is already apparent from the context.

(C) **Avoidance of False or Deceptive Statements.**

(i) Psychologists do not make public statements that are false, deceptive, misleading, or fraudulent, either because of what they state, convey, or suggest or because of what they omit, concerning their research, practice, or other work activities or those of persons or organizations with which they are affiliated. As examples (and not in limitation) of this standard, psychologists do not make false or deceptive statements concerning:

(I) their training, experience, or competence;

(II) their academic degrees;

(III) their credentials;

(IV) their institutional or association affiliations;

(V) their services;

(VI) the scientific or clinical basis for, or results or degree of success of, their services;

(VII) their fees; or

(VIII) their publications or research findings (see also paragraph (6) (O) of this subsection, Deception in Research, and paragraph (6)(R) of this subsection, Providing Participants With Information About the Study).

(ii) Psychologists claim as credentials for their psychological work, only degrees that:

(I) were earned from a regionally accredited educational institution; or

(II) were the basis for psychology licensure by the state in which they practice.

(D) **Media Presentations.** When psychologists provide advice or comment by means of public lectures, demonstrations, radio or television programs, prerecorded tapes, printed articles, mailed material, or other media, they take reasonable precautions to ensure that:

(i) the statements are based on appropriate psychological literature and practice;

(ii) the statements are otherwise consistent with this Ethics Code; and

(iii) the recipients of the information are not encouraged to infer that a relationship has been established with them personally.

(E) **Testimonials.** Psychologists do not solicit testimonials from current psychotherapy clients or patients or other persons who because of their particular circumstances are vulnerable to undue influence.

(F) **In-Person Solicitation.** Psychologists do not engage, directly or through agents, in uninvited in-person solicitation of business from actual or potential psychotherapy patients or clients or other persons who because of their particular circumstances are vulnerable to undue influence. However, this does not preclude attempting to implement appropriate collateral contacts with significant others for the purpose of benefiting an already engaged therapy patient.

(4) **Therapy.**

(A) **Structuring the Relationship.**

(i) Psychologists discuss with clients or patients as early as is feasible in the therapeutic relationship appropriate issues, such as the nature and anticipated course of therapy, fees, and confidentiality (see also paragraph (1)(Y) of this subsection, Fees and Financial Arrangements, and paragraph (5)(A) of this subsection, Discussing the Limits of Confidentiality).

(ii) When the psychologist's work with clients or patients will be supervised, the discussion includes that fact, and the name of the supervisor, when the supervisor has legal responsibility for the case.

(iii) When the therapist is a student intern, the client or patient is informed of that fact.

(iv) Psychologists make reasonable efforts to answer patient's questions and to avoid apparent misunderstandings about therapy. Whenever possible, psychologists provide oral and/or written information, using language that is reasonably understandable to the patient or client.

(B) **Informed Consent to Therapy.**

(i) Psychologists obtain appropriate informed consent to therapy or related procedures, using language that is reasonably understandable to participants. The content of informed consent will vary depending on many circumstances; however, informed consent generally implies that the person:

(I) has the capacity to consent;

(II) has been informed of significant information concerning the procedure;

(III) has freely and without undue influence expressed consent; and

(IV) consent has been appropriately documented.

(ii) When persons are legally incapable of giving informed consent, psychologists obtain informed permission from a legally authorized person, if such substitute consent is permitted by law.

(iii) In addition, psychologists:

(I) inform those persons who are legally incapable of giving informed consent about the proposed interventions in a manner commensurate with the persons' psychological capacities;

(II) seek their assent to those interventions; and

(III) consider such persons' preferences and best interests.

(C) Couple and Family Relationships.

(i) When a psychologist agrees to provide services to several persons who have a relationship (such as husband and wife or parents and children), the psychologist attempts to clarify at the outset:

(I) which of the individuals are patients or clients; and

(II) the relationship the psychologist will have with each person. This clarification includes the role of the psychologist and the probable uses of the services provided or the information obtained (see also paragraph (5)(A) of this subsection, *Discussing the Limits of Confidentiality*).

(ii) As soon as it becomes apparent that the psychologist may be called on to perform potentially conflicting roles (such as marital counselor to husband and wife, and then witness for one party in a divorce proceeding), the psychologist attempts to clarify and adjust, or withdraw from, roles appropriately (see also paragraph (7)(C) of this subsection, *Clarification of Role, under Forensic Activities*).

(D) Providing Mental Health Services to Those Served by Others. In deciding whether to offer or provide services to those already receiving mental health services elsewhere, psychologists carefully consider the treatment issues and the potential patient's or client's welfare. The psychologist discusses these issues with the patient or client, or another legally authorized person on behalf of the client, in order to minimize the risk of confusion and conflict, consults with the other service providers when appropriate, and proceeds with caution and sensitivity to the therapeutic issues.

(E) Sexual Intimacies With Current Patients or Clients. Psychologists do not engage in sexual intimacies with current patients or clients.

(F) Therapy With Former Sexual Partners. Psychologists do not accept as therapy patients or clients persons with whom they have engaged in sexual intimacies.

(G) Sexual Intimacies With Former Therapy Patients.

(i) Psychologists do not engage in sexual intimacies with a former therapy patient or client for at least five years after cessation or termination of professional services.

(ii) Because sexual intimacies with a former therapy patient or client are so frequently harmful to the patient or client, and because such intimacies undermine public confidence in the psychology profession and thereby deter the public's use of needed services, psychologists do not engage in sexual intimacies with former therapy patients and clients even after a five-year interval except in the most unusual circumstances. The psychologist who engages in such activity after the five years following cessation or termination of treatment bears the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including:

(I) the amount of time that has passed since therapy terminated;

(II) the nature and duration of the therapy;

(III) the circumstances of termination;

(IV) the patient's or client's personal history;

(V) the patient's or client's current mental status;

(VI) the likelihood of adverse impact on the patient or client and others; and

(VII) any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the patient or client (see also paragraph (1)(Q) of this subsection, *Multiple Relationships*).

(H) Interruption of Services.

(i) Psychologists make reasonable efforts to plan for facilitating care in the event that psychological services are interrupted by factors such as the psychologist's illness, death, unavailability, or relocation or by the client's relocation or financial limitations (see also paragraph (5)(I) of this subsection, *Preserving Records and Data*).

(ii) When entering into employment or contractual relationships, psychologists provide for orderly and appropriate resolution of responsibility for patient or client care in the event that the employment or contractual relationship ends, with paramount consideration given to the welfare of the patient or client.

(I) Terminating the Professional Relationship.

(i) Psychologists do not abandon patients or clients (see also paragraph (1)(Y)(v) of this subsection, under *Fees and Financial Arrangements*).

(ii) Psychologists terminate a professional relationship when it becomes reasonably clear that the patient or client no longer needs the service, is not benefiting, or is being harmed by continued service.

(iii) Prior to termination for whatever reason, except where precluded by the patient's or client's conduct, the psychologist discusses the patient's or client's views and needs, provides appropriate pre-termination counseling, suggests alternative service providers as appropriate, and takes other reasonable steps to facilitate transfer of responsibility to another provider if the patient or client needs one immediately.

(5) Privacy and Confidentiality. These standards are potentially applicable to the professional and scientific activities of all psychologists.

(A) **Discussing the Limits of Confidentiality.**

(i) Psychologists discuss with persons and organizations with whom they establish a scientific or professional relationship (including, to the extent feasible, minors and their legal representatives):

(I) the relevant limitations on confidentiality, including limitations where applicable in group, marital, and family therapy or in organizational consulting; and

(II) the foreseeable uses of the information generated through their services.

(ii) Unless it is not feasible or is contraindicated, the discussion of confidentiality occurs at the outset of the relationship and thereafter as new circumstances may warrant.

(iii) Permission for electronic recording of interviews is secured from clients and patients.

(B) **Maintaining Confidentiality.** Psychologists have a primary obligation and take reasonable precautions to respect the confidentiality rights of those with whom they work or consult, recognizing that confidentiality may be established by law, institutional rules, or professional or scientific relationships (see also paragraph (6)(Z) of this subsection, Professional Reviewers).

(C) **Minimizing Intrusions on Privacy.**

(i) In order to minimize intrusions on privacy, psychologists include in written and oral reports, consultations, and the like, only information germane to the purpose for which the communication is made.

(ii) Psychologists discuss confidential information obtained in clinical or consulting relationships, or evaluative data concerning patients, individual or organizational clients, students, research participants, supervisees, and employees, only for appropriate scientific or professional purposes and only with persons clearly concerned with such matters.

(D) **Maintenance of Records.** Psychologists maintain appropriate confidentiality in creating, storing, accessing, transferring, and disposing of records under their control, whether these are written, automated, or in any other medium. Psychologists maintain and dispose of records in accordance with law and in a manner that permits compliance with the requirements of this Ethics Code.

(E) **Disclosures.**

(i) Psychologists disclose confidential information without the consent of the individual only as mandated by law, or where permitted by law for a valid purpose, such as:

(I) to provide needed professional services to the patient or the individual or organizational client;

(II) to obtain appropriate professional consultations;

(III) to protect the patient or client or others from harm; or

(IV) to obtain payment for services, in which instance disclosure is limited to the minimum that is necessary to achieve the purpose.

(ii) Psychologists also may disclose confidential information with the appropriate consent of the patient or the individual or organizational client (or of another legally authorized person on behalf of the patient or client), unless prohibited by law.

(F) **Consultations.** When consulting with colleagues:

(i) psychologists do not share confidential information that reasonably could lead to the identification of a patient, client, research participant, or other person or organization with whom they have a confidential relationship unless they have obtained the prior consent of the person or organization or the disclosure cannot be avoided; and

(ii) they share information only to the extent necessary to achieve the purposes of the consultation (see also paragraph (5)(B) of this subsection, Maintaining Confidentiality).

(G) **Confidential Information in Databases.**

(i) If confidential information concerning recipients of psychological services is to be entered into databases or systems of records available to persons whose access has not been consented to by the recipient, then psychologists use coding or other techniques to avoid the inclusion of personal identifiers.

(ii) If a research protocol approved by an institutional review board or similar body requires the inclusion of personal identifiers, such identifiers are deleted before the information is made accessible to

persons other than those of whom the subject was advised.

(iii) If such deletion is not feasible, then before psychologists transfer such data to others or review such data collected by others, they take reasonable steps to determine that appropriate consent of personally identifiable individuals has been obtained.

(H) **Use of Confidential Information for Didactic or Other Purposes.**

(i) Psychologists do not disclose in their writings, lectures, or other public media, confidential, personally identifiable information concerning their patients, individual or organizational clients, students, research participants, or other recipients of their services that they obtained during the course of their work, unless the person or organization has consented in writing or unless there is other ethical or legal authorization for doing so.

(ii) Ordinarily, in such scientific and professional presentations, psychologists disguise confidential information concerning such persons or organizations so that they are not individually identifiable to others and so that discussions do not cause harm to subjects who might identify themselves.

(I) **Preserving Records and Data.** A psychologist makes plans in advance so that confidentiality of records and data is protected in the event of the psychologist's death, incapacity, or withdrawal from the position or practice.

(J) **Ownership of Records and Data.** Recognizing that ownership of records and data is governed by legal principles, psychologists take reasonable and lawful steps so that records and data remain available to the extent needed to serve the best interests of patients, individual or organizational clients, research participants, or appropriate others.

(K) **Withholding Records for Nonpayment.** Psychologists may not withhold records under their control that are requested and imminently needed for a patient's or client's treatment solely because payment has not been received, except as otherwise provided by law.

(6) **Teaching, Training Supervision, Research, and Publishing.**

(A) **Design of Education and Training Programs.** Psychologists who are responsible for education and training programs seek to ensure that the programs are competently designed, provide the

proper experiences, and meet the requirements for licensure, certification, or other goals for which claims are made by the program.

**(B) Descriptions of Education and Training Programs.**

(i) Psychologists responsible for education and training programs seek to ensure that there is a current and accurate description of the program content, training goals and objectives, and requirements that must be met for satisfactory completion of the program. This information must be made readily available to all interested parties.

(ii) Psychologists seek to ensure that statements concerning their course outlines are accurate and not misleading, particularly regarding the subject matter to be covered, bases for evaluating progress, and the nature of course experiences (see also paragraph (3)(C) of this subsection, Avoidance of False or Deceptive Statements).

(iii) To the degree to which they exercise control, psychologists responsible for announcements, catalogs, brochures, or advertisements describing workshops, seminars, or other non-degree-granting educational programs ensure that they accurately describe the audience for which the program is intended, the educational objectives, the presenters, and the fees involved.

**(C) Accuracy and Objectivity in Teaching.**

(i) When engaged in teaching or training, psychologists present psychological information accurately and with a reasonable degree of objectivity.

(ii) When engaged in teaching or training, psychologists recognize the power they hold over students or supervisees and therefore make reasonable efforts to avoid engaging in conduct that is personally demeaning to students or supervisees (see also paragraph (1)(I) of this subsection, Respecting Others, and paragraph (1)(L) of this subsection, Other Harassment).

**(D) Limitation on Teaching.** Psychologists do not teach the use of techniques or procedures that require specialized training, licensure, or expertise, including, but not limited to, hypnosis, biofeedback, and projective techniques, to individuals who lack the prerequisite training, legal scope of practice, or expertise.

**(E) Assessing Student and Supervisee Performance.**

(i) In academic and supervisory relationships, psychologists establish an appropriate process for providing feedback to students and supervisees.

(ii) Psychologists evaluate students and supervisees on the basis of their actual performance on relevant and established program requirements.

**(F) Planning Research.**

(i) Psychologists design, conduct, and report research in accordance with recognized standards of scientific competence and ethical research.

(ii) Psychologists plan their research so as to minimize the possibility that results will be misleading.

(iii) In planning research, psychologists consider its ethical acceptability under the Ethics Code. If an ethical issue is unclear, psychologists seek to resolve the issue through consultation with institutional review boards, animal care and use committees, peer consultations, or other proper mechanisms.

(iv) Psychologists take reasonable steps to implement appropriate protections for the rights and welfare of human participants, other persons affected by the research, and the welfare of animal subjects.

**(G) Responsibility.**

(i) Psychologists conduct research competently and with due concern for the dignity and welfare of the participants.

(ii) Psychologists are responsible for the ethical conduct of research conducted by them or by others under their supervision or control.

(iii) Researchers and assistants are permitted to perform only those tasks for which they are appropriately trained and prepared.

(iv) As part of the process of development and implementation of research projects, psychologists consult those with expertise concerning any special population under investigation or most likely to be affected.

**(H) Compliance With Law and Standards.** Psychologists plan and conduct research in a manner consistent with federal and state law and regulations, as well as professional standards governing the conduct of research, and particularly those standards governing research with human participants and animal subjects.

**(I) Institutional Approval.**

Psychologists obtain from host institutions or organizations appropriate approval prior to conducting research, and they provide accurate information about their research proposals. They conduct the research in accordance with the approved research protocol.

**(J) Research Responsibilities.** Prior to conducting research (except research involving only anonymous surveys, naturalistic observations, or similar research), psychologists enter into an agreement with participants that clarifies the nature of the research and the responsibilities of each party.

**(K) Informed Consent to Research.**

(i) Psychologists use language that is reasonably understandable to research participants in obtaining their appropriate informed consent (except as provided in subparagraph (L) of this paragraph, Dispensing With Informed Consent). Such informed consent is appropriately documented.

(ii) Using language that is reasonably understandable to participants, psychologists inform participants of the nature of the research; they inform participants that they are free to participate or to decline to participate or to withdraw from the research; they explain the foreseeable consequences of declining or withdrawing; they inform participants of significant factors that may be expected to influence their willingness to participate (such as risks, discomfort, adverse effects, or limitations on confidentiality, except as provided in subparagraph (O) of this paragraph, Deception in Research); and they explain other aspects about which the prospective participants inquire.

(iii) When psychologists conduct research with individuals such as students or subordinates, psychologists take special care to protect the prospective participants from adverse consequences of declining or withdrawing from participation.

(iv) When research participation is a course requirement or opportunity for extra credit, the prospective participant is given the choice of equitable alternative activities.

(v) For persons who are legally incapable of giving informed consent, psychologists nevertheless:

(I) provide an appropriate explanation;

(II) obtain the participant's assent; and

(III) obtain appropriate permission from a legally authorized person, if such substitute consent is permitted by law.

(L) **Dispensing With Informed Consent.** Before determining that planned research (such as research involving only anonymous questionnaires, naturalistic observations, or certain kinds of archival research) does not require the informed consent of research participants, psychologists consider applicable regulations and institutional review board requirements, and they consult with colleagues as appropriate.

(M) **Informed Consent in Research Filming or Recording.** Psychologists obtain informed consent from research participants prior to filming or recording them in any form, unless the research involves simply naturalistic observations in public places and it is not anticipated that the recording will be used in a manner that could cause personal identification or harm.

(N) **Offering Inducements for Research Participants.**

(i) In offering professional services as an inducement to obtain research participants, psychologists make clear the nature of the services, as well as the risks, obligations, and limitations (see also paragraph (1)(R) of this subsection, *Barter (With Patients or Clients)*).

(ii) Psychologists do not offer excessive or inappropriate financial or other inducements to obtain research participants, particularly when it might tend to coerce participation.

(O) **Deception in Research.**

(i) Psychologists do not conduct a study involving deception unless they have determined that the use of deceptive techniques is justified by the study's prospective scientific, educational, or applied value and that equally effective alternative procedures that do not use deception are not feasible.

(ii) Psychologists never deceive research participants about significant aspects that would affect their willingness to participate, such as physical risks, discomfort, or unpleasant emotional experiences.

(iii) Any other deception that is an integral feature of the design and conduct of an experiment must be explained to participants as early as is feasible, preferably at the conclusion of their participation, but no later than at the conclusion of the

research (see also subparagraph (R) of this paragraph, *Providing Participants With Information About the Study*).

(P) **Sharing and Utilizing Data.** Psychologists inform research participants of their anticipated sharing or further use of personally identifiable research data and of the possibility of unanticipated future uses.

(Q) **Minimizing Invasiveness.** In conducting research, psychologists interfere with the participants or milieu from which data are collected only in a manner that is warranted by an appropriate research design and that is consistent with psychologists' roles as scientific investigators.

(R) **Providing Participants With Information About the Study.**

(i) Psychologists provide a prompt opportunity for participants to obtain appropriate information about the nature, results, and conclusions of the research, and psychologists attempt to correct any misconceptions that participants may have.

(ii) If scientific or humane values justify delaying or withholding this information, psychologists take reasonable measures to reduce the risk of harm.

(S) **Honoring Commitments.** Psychologists take reasonable measures to honor all commitments they have made to research participants.

(T) **Care and Use of Animals in Research.**

(i) Psychologists who conduct research involving animals treat them humanely.

(ii) Psychologists acquire, care for, use, and dispose of animals in compliance with current federal, state, and local laws and regulations, and with professional standards.

(iii) Psychologists trained in research methods and experienced in the care of laboratory animals supervise all procedures involving animals and are responsible for ensuring appropriate consideration of their comfort, health, and humane treatment.

(iv) Psychologists ensure that all individuals using animals under their supervision have received instruction in research methods and in the care, maintenance, and handling of the species being used, to the extent appropriate to their role.

(v) Responsibilities and activities of individuals assisting in a re-

search project are consistent with their respective competencies.

(vi) Psychologists make reasonable efforts to minimize the discomfort, infection, illness, and pain of animal subjects.

(vii) A procedure subjecting animals to pain, stress, or privation is used only when an alternative procedure is unavailable and the goal is justified by its prospective scientific, educational, or applied value.

(viii) Surgical procedures are performed under appropriate anesthesia; techniques to avoid infection and minimize pain are followed during and after surgery.

(ix) When it is appropriate that the animal's life be terminated, it is done rapidly, with an effort to minimize pain, and in accordance with accepted procedures.

(U) **Reporting of Results.**

(i) Psychologists do not fabricate data or falsify results in their publications.

(ii) If psychologists discover significant errors in their published data, they take reasonable steps to correct such errors in a correction, retraction, erratum, or other appropriate publication means.

(V) **Plagiarism.** Psychologists do not present substantial portions or elements of another's work or data as their own, even if the other work or data source is cited occasionally.

(W) **Publication Credit.**

(i) Psychologists take responsibility and credit, including authorship credit, only for work they have actually performed or to which they have contributed.

(ii) Principal authorship and other publication credits accurately reflect the relative scientific or professional contributions of the individuals involved, regardless of their relative status. Mere possession of an institutional position, such as Department Chair, does not justify authorship credit. Minor contributions to the research or to the writing for publications are appropriately acknowledged, such as in footnotes or in an introductory statement.

(iii) A student is usually listed as principal author on any multiple-authored article that is substantially based on the student's dissertation or thesis.

(X) **Duplicate Publication of**

Data. Psychologists do not publish, as original data, data that have been previously published. This does not preclude republishing data when they are accompanied by proper acknowledgement.

(Y) **Sharing Data.** After research results are published, psychologists do not withhold the data on which their conclusions are based from other competent professionals who seek to verify the substantive claims through reanalysis and who intend to use such data only for that purpose, provided that the confidentiality of the participants can be protected and unless legal rights concerning proprietary data preclude their release.

(Z) **Professional Reviewers.** Psychologists who review material submitted for publication, grant, or other research proposal review respect the confidentiality of and the proprietary rights in such information of those who submitted it.

#### (7) Forensic Activities

(A) **Professionalism.** Psychologists who perform forensic functions, such as assessments, interviews, consultations, reports, or expert testimony, must comply with all other provisions of this Ethics Code to the extent that they apply to such activities. In addition, psychologists base their forensic work on appropriate knowledge of and competence in the areas underlying such work, including specialized knowledge concerning special populations (see also paragraphs (1)(F), Basis for Scientific and Professional Judgments; (1)(H), Human Differences; (1)(O), Misuse of Psychologists' Influence; and (1)(W) of this subsection, Documentation of Professional and Scientific Work).

#### (B) Forensic Assessments.

(i) Psychologists' forensic assessments, recommendations, and reports are based on information and techniques (including personal interviews of the individual, when appropriate) sufficient to provide appropriate substantiation for their findings (see also paragraphs (1)(C), Professional and Scientific Relationships; (1)(W), Documentation of Professional and Scientific Work; (2)(A), Evaluation, Diagnosis, and Interventions in Professional Context; and (2)(E) of this subsection, Interpreting Assessment Results).

(ii) Except as noted in clause (iii) of this subparagraph, psychologists provide written or oral forensic reports or testimony of the psychological characteristics of an individual only after they have conducted an examination of the individual adequate to support their statements or conclusions.

(iii) When, despite reasonable efforts, such an examination is not feasible, psychologists clarify the impact of their limited information on the reliability and validity of their reports and testimony, and they appropriately limit the nature and extent of their conclusions or recommendations.

(C) **Clarification of Role.** In most circumstances, psychologists avoid performing multiple and potentially conflicting roles in forensic matters. When psychologists may be called on to serve in more than one role in a legal proceeding—for example, as consultant or expert for one party or for the court and as a fact witness—they clarify role expectations and the extent of confidentiality in advance to the extent feasible, and thereafter as changes occur, in order to avoid compromising their professional judgment and objectivity and in order to avoid misleading others regarding their role.

(D) **Truthfulness and Candor.**

(i) In forensic testimony and reports, psychologists testify truthfully, honestly, and candidly and, consistent with applicable legal procedures, describe fairly the bases for their testimony and conclusions.

(ii) Whenever necessary to avoid misleading, psychologists acknowledge the limits of their data or conclusions.

(E) **Prior Relationships.** A prior relationship with a party does not preclude psychologists from testifying as fact witnesses or from testifying to their services to the extent permitted by applicable law. Psychologists appropriately take into account ways in which the prior relationship might affect their professional objectivity or opinions and disclose the potential conflict to the relevant parties.

(F) **Compliance with Law and Rules.** In performing forensic roles, psychologists are reasonably familiar with the rules governing their roles. Psychologists are aware of the occasionally competing demands placed upon them by these principles and the requirements of the court system, and attempt to resolve these conflicts by making known their commitment to this Ethics Code and taking steps to resolve the conflict in a responsible manner (see also paragraph (1)(B) of this subsection, Relationship of Ethics and Law).

#### (8) Resolving Ethical Issues.

(A) **Familiarity With Ethics Code.** Psychologists have an obligation to

be familiar with this Ethics Code, other applicable ethics codes, and their application to psychologists' work. Lack of awareness or misunderstanding of an ethical standard is not itself a defense to a charge of unethical conduct.

(B) **Confronting Ethical Issues.** When a psychologist is uncertain whether a particular situation or course of action would violate this Ethics Code, the psychologist ordinarily consults with other psychologists knowledgeable about ethical issues, with state or national psychology ethics committees, or with other appropriate authorities in order to choose a proper response.

(C) **Conflicts Between Ethics and Organizational Demands.** If the demands of an organization with which psychologists are affiliated conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and to the extent feasible, seek to resolve the conflict in a way that permits the fullest adherence to the Ethics Code.

(D) **Informal Resolution of Ethical Violations.** When psychologists believe that there may have been an ethical violation by another psychologist, they attempt to resolve the issue by bringing it to the attention of that individual if an informal resolution appears appropriate and the intervention does not violate any confidentiality rights that may be involved.

(E) **Reporting Ethical Violations.** If an apparent ethical violation is not appropriate for informal resolution under subparagraph (D) of this paragraph or is not resolved properly in that fashion, psychologists take further action appropriate to the situation, unless such action conflicts with confidentiality rights in ways that cannot be resolved. Such action might include referral to state or national committees on professional ethics or to state licensing boards.

(F) **Cooperating With Ethics Committees.** Psychologists cooperate in ethics investigations, proceedings, and resulting requirements of the APA or any affiliated state psychological association to which they belong. In doing so, they make reasonable efforts to resolve any issues as to confidentiality. Failure to cooperate is itself an ethics violation.

(G) **Improper Complaints.** Psychologists do not file or encourage the filing of ethics complaints that are frivolous and are intended to harm the respondent rather than to protect the public.

(d) This rule sets ethical standards on or after May 1, 1993. The ethical standards as established previously by the Board control prior to May 1, 1993.

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

Issued in Austin, Texas, on March 31, 1993.

TRD-9321125

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Acting Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Effective date: May 1, 1993

Proposal publication date: December 4, 1992

For further information, please call: (512) 835-2036

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part III. Texas Air Control Board

#### Chapter 103. Procedural Rules

##### Initiation of Other Than Rulemaking Hearings

The Texas Air Control Board (TACB) adopts amendments to §§103.33, 103.42, and 103.46 and new §§103.91-103.94, concerning Alternative Dispute Resolution (ADR) Procedures. Sections 103.33, 103.42, 103.46, and 103.93 are adopted with changes to the proposed text as published in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7852). The changes are in response to an initiative by the Hearings Oversight Committee to improve the hearings process and include input from the Chairman of TACB, the general public, and the TACB staff. Sections 103.91, 103.92, and 103.94 are adopted without changes and will not be republished.

The changes to §103.33, concerning Action on Request for a Hearing, outline the information a requestor will be required to provide after a request for a hearing has been received by the Executive Director and specify the procedure for appealing the Executive Director's decision to grant a hearing. The changes to §103.42, concerning Hearing Examiner, establish the order for presenting evidence and specify that the consequence for withdrawing a permit application solely for the purpose of obtaining a continuance is a requirement to wait at least 90 days before being allowed to refile a new application. The changes to §103.46, concerning Prehearing Conference, require an initial prehearing conference, set the conditions for a second prehearing conference, specify what the applicant is required to make available to named parties or their counsel, and state that each party bears the responsibility for its own document copying costs.

The new §103.91, concerning Scope and Policy, outlines the TACB's policy for the use of ADR Procedures. The new §103.92, concerning Referral of Contested Licensing Application for Alternative Dispute Resolution Procedures, specifies the procedure for referring a contested licensing application, the process for appointing a mediator, the requirements for use of an outside mediator, and the qualifications for those selected to the mediator pool. The new §103.93, concerning Time Periods, specifies the time constraints of the ADR procedures. The new §103.94, concerning Confidentiality of Communications in Alternative Dispute Resolution Procedures, describes the confidentiality of written and oral communications in regard to the ADR proceedings and the restrictions placed upon participants of the procedures.

A public hearing was held in Austin on December 2, 1992. Testimony was received from three commenters during the comment period which ended December 18, 1992. The following discussion initially addresses the more general comments and then addresses the comments which deal with specific provisions of the regulation.

Brown McCarroll and Oaks Hartline (BMOH) supported the proposal, an individual opposed the proposal, and Phillips Petroleum Company (Phillips) supported the proposal with additional suggestions.

An individual raised an objection regarding the need for the proposed rules expressing the opinion that the real purpose of the rules was to reduce public input.

Nothing in the rules is intended to reduce public input. To the contrary, the rules encourage public input by requiring disclosure to the public a copy of the application as well as supporting information including studies and other material upon which the applicant will rely (§103.46). Furthermore, the proposed rules would require the TACB staff to state its position on the application at the commencement of the hearing to inform the public.

An individual and Phillips addressed the provision in proposed §103.33(b) that the statement of interest required to be submitted by those requesting a hearing would not be the basis for denial of party status. The individual believed that it would form the basis for denial particularly because of the proposed requirement to describe the requestor's location relative to the proposed facility. Phillips urged that it should be used for denial and should be required to contain allegations of facts to be used to determine if there is reason to deny the permit. Phillips also urged that the burden of proof be switched to the protestants if the basis for the request is not sufficient per se for permit denial and the application is administratively complete. Additionally, Phillips urged that protestants should have to disclose any other pending legal actions or disputes between themselves and the applicants.

The "statement of interest" requirement is intended solely to provide additional information regarding a request for hearing. If it is determined after review of the facts to call a hearing, it would then be clear that the Executive Director had determined that sufficient

cause existed to use the hearing process to review the application. One aspect of the hearing process is to determine party status and that decision should continue to be made based upon the information developed at the prehearing conference. The location of a requestor is but one of many factors that go into the determination of whether a person has "standing" to participate as a party. The required disclosure of other pending legal disputes is appropriate and language has been added to §103.33(b) to accomplish that goal. The Texas Clean Air Act puts the burden upon the applicant to submit sufficient information to determine whether the application warrants the issuance of a permit (Health and Safety Code, §382.0515). The use of the hearing process to make that determination does not provide justification for changing that burden.

BMOH, representing the Texas Chamber of Commerce; the Texas Chemical Council; the Texas Mid-Continent Oil & Gas Association; ASARCO, Incorporated; Austin White Lime Company; BoxCrow Chemical Resources, Inc.; the Dow Chemical Company; Exxon Chemical Americas; Gibraltar Chemical Resources, Inc.; Hoechst Celanese Corporation; Mobil Oil Corporation; Shell Oil Company; and Valero Energy Corporation, suggested that proposed §103.33(b) be amended to require the statement of interest at the time of the hearing request and that it be clarified to apply only to hearing requests for permit applications. Comments were also made that the criteria for the decision of whether to call a contested case hearing following receipt of a request should be clarified.

It is appropriate to insure that the statement of interest required under proposed §103.33(b) not result in a lengthening of the review process. Accordingly, changes have been made to §103.33(b) to provide an expeditious procedure for obtaining the statement of interest. The comment suggesting that the proposed §103.33(b) be clarified to apply only to hearing requests on permit applications is appropriate, and the change has been made.

The issue of establishing criteria for the decision whether to call a contested case hearing was considered by the Hearings Oversight Committee and the Board which adopted guidance to the Executive Director regarding the issue. The staff does not believe that the guidance requires rulemaking procedures and, consequently, no rules were proposed.

BMOH suggested that the proposed §103.42(a)(5) be clarified to provide references to emergency orders throughout the text, where appropriate. An individual criticized the same proposal claiming it unfairly hinders the public by allowing the staff to address the hearings examiner twice while allowing the applicant the last rebuttal, and that it pits the staff with the applicant against the protestants.

Minor changes have been made to §103.42(a)(5) to clarify which portions of the section are applicable to both permit and emergency order applications. No other changes are recommended. The proposal that the staff open with a simple statement of its position and a draft permit is in response to suggestions from both applicants and the



general public that the staff position be identified early in the process. This opening statement does not align the staff with the applicant; the staff remains an independent party. The provision that the applicant be entitled to the last rebuttal testimony is consistent with normal judicial procedures which give the moving party (in this case, the person seeking a permit) the right to open and close the presentation of evidence.

Phillips and BMOH expressed concern over the concept of two prehearing conferences embodied in the proposed rule which could result in additional expense and delay. BMOH requested that the TACB clarify that the second prehearing conference is discretionary. BMOH also suggested that party status be denied to those persons who do not attend the prehearing conference.

BMOH and an individual addressed the requirements regarding the exchange of information provisions in proposed §103.46(b)(2). BMOH stated that protestants should also be required to exchange information or, in the alternative, the entire provision should be deleted as unnecessary in view of available discovery procedures. BMOH also suggested that the proposed rule be clarified to require copies to be sent only to the representatives of the aligned parties to avoid excessive costs. The individual recommended that all parties receive, free of charge, all information outlined in the proposed rule as well as information in the possession of the Hearing Examiner and the staff.

The wording in §103.46(a) is sufficient to establish that the first prehearing conference is required and the second is at the discretion of the Hearing Examiner, since it states the second conference "may be scheduled." The decision as to whether a second prehearing conference is necessary will be determined by the Examiner. Current agency practice has allowed for more than one prehearing conference, if necessary. Persons who fail to appear at the prehearing conferences are currently denied party status, if they do not submit advance notice that they will be unavailable for good cause. Consequently, no changes are needed on this topic.

Only one clarifying change is made to the proposed rule regarding exchange of information. The rule simply requires that the basic information the applicant intends to rely upon be disclosed. Since the applicant is the entity seeking to disturb the status quo by seeking the permit, it is appropriate that it bear the greater burden of required disclosures. All other parties will still have to supply the information currently described in the existing §103.46(c) which includes witness lists, disputed issues for consideration at the hearing, and any written statements or documentary evidence. The clarifying change, to §103.46(d), is to provide that the information to be exchanged in the existing §103.46(b) will be provided at the expense of each party, consistent with present procedure. Thus, the applicant will not be the only party required to disclose information. Regarding the comment that all parties should additionally receive information in the possession of the Hearings Examiner and staff, all materials in the possession of the Hearings Examiner must be

available to all parties, except information covered by privilege or confidentiality. The word "counsel" in §103.46(b) is changed to "representative" to be consistent with the existing §103.46(b) and to clarify that the existing practice of serving documents only upon the representative(s) of aligned parties will be maintained.

No change is being made regarding the issue of copy costs. The current practice of exchanging copies of items specified in §103.46(b), described previously, occurs without charge to the parties. Any intervenor parties have chosen to enter the hearing forum due to concern or interest, and thus it is not unreasonable to expect them to bear their fair share of copying costs. As a practical matter, the agency has always been aware of this cost burden and the staff has, in appropriate circumstances, provided copies free of charge; the Hearings Examiners likewise provide free copies if they are not voluminous. Further, the applicant is called upon to provide free copies of the application, normally an extensive document. Accordingly, the proposed allocation of copy costs appears appropriate.

Two general comments were made regarding the proposed ADR. Phillips stated that it was unclear who could call for ADR, what the procedure would be, and whether it would be binding upon the parties. BMOH suggested that the initiation of ADR should stay all activity in the contested case hearing including discovery.

The individual suggested that the terms "fullest extent possible" and "reasonable opportunity" as used in proposed §103.91 should be defined. The individual opposed the proposed §103.92(a), which establishes when ADR can be ordered, unless unanimous consent of the parties is first obtained. The individual also objected to the requirement in proposed §103.93(b)(3)(A) that absent agreement, the costs of an outside mediator should be borne by the nongovernmental parties to the hearing. Finally, the same commenter objected to the confidentiality of ADR communications provision of proposed §103.94.

The staff believes the ADR rules are clear regarding procedures involved in the ADR process. Section 103.91 and §103.92 provide that either the Executive Director, the Hearings Examiner, or the Board can direct the use of ADR and specify when each of those persons may exercise that authority. Section 103.91 specifies that appropriate ADR procedures include those used currently in the courts of this state. ADR is a well-established concept which has been used in the judicial system via mini-trials, mediation, and other techniques. ADR is an attempt to resolve a dispute by agreement; accordingly, it is up to the parties, by agreement, to determine the extent to which they intend to bind themselves.

The suggestion that proceedings in a hearing be stayed during ADR has merit and language is being added to §103.93(b) to implement that concept.

Given the context of §103.91, the terms "fullest extent possible" and "reasonable op-

portunity" are sufficiently detailed. The determination of whether to direct the use of ADR is one which is highly dependent upon the facts of each case and is not reasonably susceptible to an objective criteria based system. It is sufficient to direct the use of ADR when it appears that there is a "reasonable opportunity" to settle the dispute.

The decision to direct the use of ADR should not be left to the parties to a hearing. However, it is unlikely that ADR would be ordered if one or more parties registered strong objections, since the probability of success would be low. The staff does not believe that unanimous consent of the parties should be required before ADR can be employed.

The rules already serve to protect the interests of a party that does not wish to pay for an outside mediator. Section 103.92(b)(2) provides that before an outside mediator may be used, the parties must unanimously agree to both the use and actual selection of an outside mediator. A party that cannot reach agreement regarding the allocation of costs may simply refuse to agree to the use of an outside mediator and will then incur no obligation for payment.

It is unclear whether the commenter's concerns over the confidentiality of communications goes simply to the confidentiality of any agreement reached through ADR or includes concern over the confidentiality of statements and information made during ADR. The rules would not provide for the confidentiality of ADR agreements. Such agreements would ordinarily form a proposed basis for decision by the Executive Director or the Board and, as such, would be public information. It is, however, intended that communications made during the ADR process would be confidential. This is similar to the existing rules of evidence which protect from disclosure statements made in settlement negotiations. The reason for confidentiality protection is to encourage the parties to speak frankly and openly in the efforts to settle the matter. Parties are naturally worried that offers they might make in the spirit of compromise might become requirements upon them even though there was no compromise. Without confidentiality provisions, ADR would have little chance for success.

An individual suggested that a fundamental problem with public participation in permit proceedings is that there exists a "rigged process" and stated that public notice on permit applications should occur when all required information is submitted, not when the application is deemed approvable.

The suggestion of the individual is essentially the process currently used. The staff has always attempted to provide public notification as soon as the application reflects all required information to enable the public to know early in the process that an application is pending. In the case of applications which must be reviewed under the Prevention of Significant Deterioration requirements, notice is delayed because the federal mandate is that a draft permit must be prepared prior to the notice and comment period.

In compliance with the Americans With Disabilities Act, this document may be re-

requested in alternate formats by contacting Air Quality Planning Program staff at (512) 908-1457, (512) 908-1500 FAX or 1-800-RELAY-TX (TDD), or by writing or visiting at 12124 Park 35 Circle, Austin, Texas 78753.

• 31 TAC §103.33

The amendment is adopted under the Texas Clean Air Act (TCAA), §382.017, Texas Health and Safety Code (Vernon 1990), which provides TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§103.33. Action on Request for a Hearing.

(a) (No change.)

(b) After receipt of a request for a hearing on a permit application pursuant to the Health and Safety Code, §382.056, the Executive Director or his designate shall promptly require the requestor to provide in writing a brief, but specific, statement of interest and basis for challenging the application. Such statement should convey in plain language the requestor's location relative to the proposed facility, why the requestor believes he or she will be affected by emissions from the proposed facility, what the requestor's concerns are about the emissions from the proposed facility, how the requestor believes emissions from the facility will affect him or her if permitted, and any pending legal disputes between the requestor and the applicant including any pending judicial or administrative proceedings. The executive director or his designate shall provide a form to the requestor which may be used to supply the information required by this rule. The requestor shall supply the information within 14 days of the receipt of the letter and form from the executive director, unless extended for good cause shown. This statement shall not be used as the basis for denial of party status in any contested case hearing; party status determinations will be made based on information developed at the initial prehearing conference.

(c) A decision by the Executive Director to grant a hearing request pursuant to subsection (a)(1) or (2) of this section shall be noticed to the applicant and may be appealed by the applicant to the Board within 30 days after notification of the decision. Such appeal is to be taken by written notification to the Executive Director. If a contested case hearing has already been called, the submission of an appeal by the applicant pursuant to this section stays all further actions in the hearing, until the appeal has been the subject of final action by the Board. Such appeal shall be placed on the agenda of the next regularly scheduled Board meeting subject to posting requirements. The appeal is not subject to contested case hearing requirements.

(d) The decision of the Executive Director to deny a request for hearing is appealable to the Board within 30 days after

notification of the decision. Such appeal is to be taken by written notification to the Executive Director. Section 103.71 of this title (relating to Request for Action by the Board) should be consulted for the method of requesting Board action on the appeal.

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

Issued in Austin, Texas, on April 2, 1993.

TRD-9321186 Lane Hartssock  
Deputy Director, Air Quality  
Planning  
Texas Air Control Board

Effective date: April 26, 1993

Proposal publication date: November 10, 1992

For further information, please call: (512) 908-1451

◆ ◆ ◆  
Adjudicative Hearings

• 31 TAC §103.42, §103.46

The amendments are adopted under the Texas Clean Air Act (TCAA), §382.017, Texas Health and Safety Code (Vernon 1990), which provides TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§103.42. Hearing Examiner.

(a) Examiners shall be designated to preside at hearings and to report to the Board on such hearings in the manner provided by law. In any adjudicative hearing, the examiner shall have no other duties concerning the hearing and shall be considered to be assisting the Board in its decision-making function. The examiners shall have no prosecuting duties with the agency and shall act independently of the staff in an impartial manner. A hearing examiner assigned to a particular proceeding or case shall have the authority to:

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

(5) designate and align parties and establish the following order for presentation of evidence in hearings on applications for permits or emergency orders: the Texas Air Control Board Staff (Staff) will open with a simple statement of its current position on the application and, in a permit hearing, will present the Staff's draft permit including any proposed special provisions. The applicant presents evidence to meet its burden of proof on the application, any opponents present evidence, and the Staff presents its evidence. Each party is given the opportunity for rebuttal, with the applicant's rebuttal being last in order of presentation. Nothing herein should be construed to change the burden of proof being upon the applicant;

(6)-(15) (No change.)

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

(d) In the case where an applicant withdraws a permit application solely for the basis of obtaining a continuance, the application shall be withdrawn with prejudice to refiling for 90 days.

(e) If a hearing examiner fails to complete an assigned case before a final order is rendered, the Director of Hearings may appoint another examiner on the hearings staff to complete the assigned case without the necessity of duplicating any duty or function performed by the previous examiner.

§103.46. Prehearing Conference.

(a) The hearing examiner shall hold an initial prehearing conference at which party status is determined and a discovery schedule is set. Reasonable notice of the time and location of the conference shall be provided to all parties. A second prehearing conference may be scheduled at which time the examiner will determine the contested case issues and accept any stipulations as to such contested issues.

(b) To facilitate transfer of basic information and preparation of the parties for the hearing and without precluding further discovery by any of the parties, in all contested cases the applicant shall make available to named parties or their representative at a time and place to be determined by the hearing examiner:

(1) copies of the permit application; and

(2) any information which the applicant will rely upon in the hearing, such as facts or data upon which an expert bases an opinion or inference, including, but not limited to, the following:

(A) any engineering or technical studies performed in support of the application;

(B) any emissions modeling report or computer runs of air emission models for the proposed facility;

(C) any health effects assessment conducted by or for the applicant for the proposed facility; and

(D) resumes and reports of any experts who will testify for the applicant in the hearing.

(e) The hearing examiner may direct that one or more of the following be transmitted by each party to all other parties or their representatives and to the hearing

examiner by a date established by the hearing examiner:

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

(d) Except for the copy of the application which the applicant shall provide to all parties, and the material identified in subsection (c) of this section, which is to be provided by each party submitting material, each party bears responsibility for its own document copying costs.

(e) Witnesses and proposed written evidence may be added and narrative summaries of expected testimony amended at the hearing only upon a finding of the hearing examiner that good cause existed for failure to exchange the additional or amended material by the established date.

(f) At any prehearing conference or in the prehearing conference summary, the hearing examiner:

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

(g) The results of any prehearing conference shall be summarized in writing by the hearing examiner and made part of the record.

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

Issued in Austin, Texas, on April 2, 1993.

TRD-9321187 Lane Hartscock  
Deputy Director, Air Quality  
Planning  
Texas Air Control Board

Effective date: April 26, 1993

Proposal publication date: November 10, 1992

For further information, please call: (512) 908-1451

### Alternative Dispute Resolution Procedures

#### • 31 TAC §§103.91-103.94

The new sections are adopted under the Texas Clean Air Act (TCAA), §382.017, Texas Health and Safety Code (Vernon 1990), which provides TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

#### §103.93. Time Periods.

(a) The mediator in a contested matter for which notice of contested case hearing has not been issued shall determine a reasonable time period (generally no more than 30 days) during which alternative dispute resolution procedures shall be conducted.

(b) The mediator in a contested matter for which notice of contested case hearing has been issued shall conduct alter-

native dispute resolution procedures pursuant to a schedule established by the Board or hearing examiner which shall not exceed 14 days in length. The hearing examiner may, with the consent of all parties to the hearing and the mediator, extend the alternative dispute resolution procedures for a period not to exceed an additional 14 days. The use of alternative dispute resolution procedures in a contested case hearing shall act as a stay of all further actions in the hearing until the conclusion of the alternative dispute resolution procedures.

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

Issued in Austin, Texas, on April 2, 1993.

TRD-9321188 Lane Hartscock  
Deputy Director, Air Quality  
Planning  
Texas Air Control Board

Effective date: April 26, 1993

Proposal publication date: November 10, 1992

For further information, please call: (512) 908-1451

## TITLE 34. PUBLIC FINANCE

### Part V. Texas County and District Retirement System

#### Chapter 101. Practice and Procedure Regarding Claims

##### • 34 TAC §101.1, §101.6

The Texas County and District Retirement System adopts amendments to §101.1 and §101.6 concerning practice and procedure regarding claims, without changes to the proposed text as published in the February 26, 1993, issue of the *Texas Register* (18 TexReg 1246).

The amendments are adopted to correct the name of the system, amend the reference to its governing statute to reflect that it now is part of the Government Code, and to reflect that the time for filing retirement applications may not precede the termination of a member's employment with the participating subdivision.

The correct name of the system is the Texas County and District Retirement System; its governing law is the Texas Government Code, Title 8, Subtitle F, as amended. Applications for retirement under that statute must be filed not less than 30 nor more than 90 days prior to the date specified as the effective date of retirement, which date must be the last day of membership, and may not precede termination of the member's employment with the participating subdivision.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for effective administration of the system.

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 March 31, 1993.

TRD-9321045 Terry Horton  
Director  
Texas County and District  
Retirement System

Effective date: May 1, 1993

Proposal publication date: February 26, 1993

For further information, please call: (512) 476-6651

### Chapter 103. Calculation or Types of Benefits

#### • 34 TAC §103.2

The Texas County And District Retirement System adopts an amendment to §103.2, concerning additional optional benefits, without changes to the proposed text as published in the February 26, 1993, issue of the *Texas Register* (18 TexReg 1247).

The amendment is adopted to set forth the seven optional benefits which a member may elect in lieu of the standard benefit, without the necessity of referring to any other source or document.

The amendment sets forth the seven optional service and disability retirement benefits, each of which is a reduced monthly allowance that is the actuarial equivalent of the standard benefit, and each of which is separately numbered.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for effective administration of the system.

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 March 31, 1993.

TRD-9321046 Terry Horton  
Director  
Texas County and District  
Retirement System

Effective date: May 1, 1993

Proposal publication date: February 26, 1993

For further information, please call: (512) 476-6651

## Chapter 105. Creditable Service

### • 34 TAC §105.1, §105.2

The Texas County and District Retirement System adopts amendments to §105.1 and §105.2 concerning creditable services, without changes to the proposed text as published in the February 26, 1993, issue of the *Texas Register* (18 TexReg 1247).

The amendment to §105.1 is adopted to correctly designate the Act governing the System and to use gender-neutral language. The amendment to §105.2 deletes the authority for hospitals to provide for periods of probationary employment, unless otherwise authorized by the Act governing the System, and provide that no person can be required to serve a probationary period after having become a member of the System.

The System's governing law is the Texas Government Code, Title 8, Subtitle F, as amended. No person may be required to serve a probationary period, during which that person would not be a member of the System, unless such probationary period is expressly authorized by the Act governing the System, nor may any person who has become a member of the System and has not terminated membership be required to serve a probationary period.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for effective administration of the system.

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 March 31, 1993.

TRD-9321047 Terry Horton  
Director  
Texas County and District  
Retirement System

Effective date: May 1, 1993

Proposal publication date: February 26, 1993

For further information, please call: (512) 476-6651

## Chapter 107. Miscellaneous Rules

### • 34 TAC §107.1, §107.3

The Texas County And District Retirement System adopts an amendment to §107.1 and new §107.3, concerning miscellaneous rules, without changes to the proposed text as published in the February 26, 1993, issue of the *Texas Register* (18 TexReg 1248).

The amendment is adopted to conform §107.1, to the provisions of the Government

Code, §845.115, and to limit the number of checks written in connection with trustee-to-trustee transfers.

The confidentiality of information about members, retirees, annuitants, or beneficiaries of the System is governed by the Texas Government Code, §845.115. Payment of a withdrawal of contributions under the Government Code, §845.108, will not be made to more than one trustee of an eligible retirement plan upon the withdrawal of contributions by any one member or any one spouse or any one alternate payee in addition to any payment directly to the member, spouse, or alternate payee.

No comments were received regarding adoption of the amendment and new section.

The amendment and new section are adopted under the Texas Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for effective administration of the system.

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 March 31, 1993.

TRD-9321048 Terry Horton  
Director  
Texas County and District  
Retirement System

Effective date: May 1, 1993

Proposal publication date: February 26, 1993

For further information, please call: (512) 476-6651

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part VI. Texas Department of Criminal Justice

#### Chapter 325. Agency Procedures

##### • 37 TAC §§325.1-325.5, 325.7-325.11

The Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) adopts the repeal of §§325.1-325.5 and §§325.7-325.11, concerning the agency procedures of the Texas Adult Probation Commission, without changes to the proposed text as published in the January 29, 1993, issue of the *Texas Register* (18 TexReg 575).

These sections are being repealed as a part of the TDCJ-CJAD rule recodification process and, without the adoption of these repeals, duplication of rules will occur.

The sections are prior rules of the Texas Adult Probation Commission (TAPC) and are being repealed as part of the recodification process required by the reorganization of the

Texas Department of Criminal Justice under which the TAPC became the TDCJ-CJAD.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Code of Criminal Procedures, Article 42.13, §2(a) and §3(a), which provides the TDCJ-CJAD with the authority to establish minimum standards for programs, facilities, equipment, and other aspects of the operation of departments; establish an application process and procedures for funding community corrections facilities; establish a format for community justice plans; and to require community supervision and corrections departments to keep financial and statistical records; submit a community justice plan; and submit periodic financial audits and statistical reports to TDCJ-CJAD.

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 March 29, 1993.

TRD-9321062 Jackie Cox  
General Counsel  
Texas Department of  
Criminal Justice

Effective date: April 21, 1993

Proposal publication date: January 29, 1993

For further information, please call: (512) 463-9988

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

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

##### Subchapter S. Reimbursement Methodology for Nursing Facilities

##### • 40 TAC §19.1807

The Texas Department of Human Services (DHS) adopts an amendment to §19.1807, concerning rate setting methodology, without changes to the proposed text as published in the December 15, 1993, issue of the *Texas Register* (17 TexReg 8805).

The justification for the amendment is to add supplemental reimbursement for ventilator-dependent residents as an allowed cost of care for qualified nursing facility residents.

The section will function by making nursing facility care more accessible to ventilator-dependent individuals.

During the public comment period, DHS received comments from the Texas Health

Care Association and Beverly Enterprises. A summary of the comments and DHS's responses follows:

**COMMENT:** One commenter stated that the calculation of time difference between ventilator-dependent residents and other heavy care residents might not be a reasonable assessment or incentive for facilities to admit ventilator-dependent residents.

**RESPONSE:** The proposed methodology for calculation of the ventilator-dependent supplement is based upon case mix research analogous to that used in designing the current Texas Index for Level of Effort (TILE) case mix classification system. The data base used in this most recent research was specifically designed to collect information regarding the costs of caring for special resident populations, including ventilator-dependent residents.

**COMMENT:** One commenter stated that the proposed methodology would not account for increased liability factors involved in caring for ventilator-dependent residents.

**RESPONSE:** DHS collects and retains cost information about professional and facility malpractice insurance from the Medicaid cost reports.

**COMMENT:** One commenter stated that because of the need for better-trained, higher-qualified personnel, such as registered nurses (RNs), higher salaries should be included in the rate determination.

**RESPONSE:** The case mix differential used to calculate the ventilator supplement accounts for the higher wages of professional staff such as RNs. The staff times incorporated into this differential are weighted by the average wage for each type of staff providing services.

**COMMENT:** One commenter stated that in some cases, ventilator-dependent residents might not be able to have a roommate, which would result in higher costs to the provider.

**RESPONSE:** Ventilator equipment can be accommodated by the space allocated to an individual resident residing in a semi-private room.

**COMMENT:** One commenter stated that the equipment and supplies required to care for ventilator-dependent residents are extremely expensive and that these costs needed to be captured in the reimbursement methodology.

**RESPONSE:** The case mix differential used to calculate the ventilator supplement is applied to the Resident Care Cost Center which encompasses both direct care staff costs and miscellaneous costs, including medical supplies, durable medical equipment, laundry, and housekeeping. DHS has determined that the increase in miscellaneous cost reimbursement due to the application of the differential is sufficient to cover the costs of required equipment and supplies.

**COMMENT:** One commenter stated that the costs of donated equipment should be calculated in the rate so the true costs are captured and supplementation is not encouraged.

**RESPONSE:** DHS's determination of the adequacy of the miscellaneous portion of the ventilator supplement is independent of whether the supplies are donated.

**COMMENT:** One commenter stated that services to ventilator residents vary greatly and that it will be difficult for facilities to accept a ventilator-dependent resident for anything other than a resident-specific rate.

**RESPONSE:** Eligibility criteria in the proposed rules for the reimbursement supplement ensure that qualifying residents form a

homogenous group. These criteria require that the resident receive continuous ventilation and be classified as heavy care.

**COMMENT:** One commenter stated that DHS should implement a pilot program in several nursing facilities in order to examine the costs of caring for ventilator-dependent residents.

**RESPONSE:** The proposed methodology for calculation of the ventilator-dependent supplement is based upon the most current research data available. The data base used in this research was specifically designed to collect and retain information regarding the needs of special resident populations, including ventilator-dependent residents.

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 and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

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 March 31, 1993.

TRD-9321082

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

Effective date: May 15, 1993

Proposal publication date: December 15, 1992

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

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# TEXAS OUR TEXAS

Texas our Texas! All hail  
the mighty State! Texas our  
Texas! So wonderful so great!  
Boldest and grandest withstanding  
every test of Empire wide and  
glorious, you stand supremely  
blest. God bless you Texas  
and keep you brave and strong  
That you may grow in power  
and worth throughout the ages  
long.

Name: Hector Noriega

Grade: 3

School: North Loop Elementary, Ysleta ISD

# Open Meetings

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

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

**Posting of open meeting notices.** All notices are posted on the bulletin board at the Office of the Secretary of State in lobby of 221 East 11th Street, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

## Texas Air Control Board

Friday, April 16, 1993, 9 a.m. The Permits Oversight and Hearings Oversight Committees of the Texas Air Control Board will meet at Park 35 Technology Center, 12118 North IH-35, Room 201S, Austin. According to the agenda summary, the committees will consider and possibly act on workshop on modeling and effects evaluation guidelines for permit review; workshop on the processing and disposition of requests for contested case hearing including procedures and criteria for the executive director's decision whether to grant hearing requests.

Contact: Lane Hartsock, 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1451.

Filed: April 6, 1993, 9:34 a.m.

TRD-9321254

## Texas Bond Review Board

Tuesday, April 13, 1993, 10 a.m. The Staff of the Texas Bond Review Board will meet in the Reagan Building, Room 101, 105 West 15th Street, Austin. According to the agenda summary, the staff will call the meeting to order; discuss approval of minutes; discuss proposed issues; other business; and adjourn.

Contact: Jim Thomassen, 300 West 15th Street, Clements Building, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: April 5, 1993, 3:15 p.m.

TRD-9321229

## Texas Office for Prevention of Developmental Disabilities

Monday, May 10, 1993, 8:30 a.m. The Advisory Committee of the Texas Office for Prevention of Developmental Disabilities will meet at the Brown-Heatly Building, 4900 North Lamar Boulevard, Public Hearing Room, Austin. According to the complete agenda, the committee will call the meeting to order; welcome guests; make introductions and TOP background; discussion/workshops regarding long range state plan; take lunch break; reconvene workshops; wrap-up; and adjourn.

Contact: Jerry Ann Robinson, 4900 North Lamar Boulevard, Austin, Texas 78756, (512) 483-5042.

Filed: April 1, 1993, 2:20 p.m.

TRD-9321127

Tuesday, May 11, 1993, 2 p.m. The Executive Committee of the Texas Office for Prevention of Developmental Disabilities will meet at the Texas Medical Association Building, 401 West 15th Street, 10th Floor, Austin. According to the complete agenda, the committee will call the meeting to order; make opening remarks; take roll call; introduce guests; call for changes or corrections to February 9, 1993, minutes; hear task force reports; discuss bicycle helmet legislation status; legislative proposals for 73rd Legislature; advisory committee meeting status; set schedule for next meeting; and discuss other business.

Contact: Jerry Ann Robinson, 4900 North Lamar Boulevard, Austin, Texas 78756, (512) 483-5042.

Filed: April 1, 1993, 2:20 p.m.

TRD-9321126

## Interagency Council on Early Childhood Intervention

Wednesday, April 14, 1993, 9 a.m. The Interagency Council on Early Childhood Intervention will meet at the Texas Department of Health, Room T-607, 1100 West 49th Street, Austin. According to the complete agenda, the council will receive public comments; discuss approval of the minutes of March 7, 1993 meeting; discuss and possibly act on: reports of the advisory committee and director's forum; interagency coordination and liaison assignments; continuation issues for fiscal year 1994; staff recommendation on revising Early Childhood Intervention policy related to allowing building use and depreciation; request from Tri-County Mental Health and Mental Retardation to reduce their maintenance of effort support; high priority infant transitional services project in San Antonio; interim report on program income/funding methodology study; and statute revisions.

Contact: Mary Elder, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7673. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: April 2, 1993, 3:42 p.m.

TRD-9321170

## Texas Education Agency

Monday-Tuesday, April 19-20, 1993, 10 a.m. and 8:30 a.m. respectively. The Soft-

ware Advisory Committee of the Texas Education Agency will meet at the Texas Education Agency, William B. Travis Building, Room 1-109, 1701 North Congress Avenue, Austin. According to the complete agenda, the committee will give an update on the software selection tools for Texas Schools (TESS and The Latest and Best of TESS); discuss our role in the States' Consortium for improving software selection; continuation of development of recommendations/guidelines for software designers and publishers (third mandate); and discuss the committee's meeting with the Software Publishers Association in June and other short- and long-term plans.

Contact: Karen Kahan, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9064.

Filed: April 5, 1993, 3:57 p.m.

TRD-9321236

Monday-Tuesday, April 19-20, 1993, 1 p.m. and 8:30 a.m. respectively. The English Supplementary Reading Committee of the Texas Education Agency will meet at 1701 North Congress Avenue, William B. Travis Building, Rooms 1-104 and 1-111 (respectively), Austin. According to the complete agenda, the Texas Education Agency staff will make presentations to committee members; and State Textbook Committee members remain under no-contact rules until the close of the discussion and balloting meeting in August 1993.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: April 1, 1993, 11:30 a.m.

TRD-9321099

Monday-Tuesday, April 19-20, 1993, 1 p.m. and 8:30 a.m. respectively. The Industrial Technology Education Committee of the Texas Education Agency will meet at 1701 North Congress Avenue, William B. Travis Building, Rooms 1-104 and 1-100 (respectively), Austin. According to the complete agenda, the Texas Education Agency staff will make presentations to committee members; and State Textbook Committee members remain under no-contact rules until the close of the discussion and balloting meeting in August 1993.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: April 1, 1993, 11:31 a.m.

TRD-9321100

Tuesday-Wednesday, April 20-21, 1993, 1 p.m. and 8:30 a.m. respectively. The Spanish Supplementary Reading Committee of the Texas Education Agency will meet at 1701 North Congress Avenue, William B. Travis Building, Rooms 1-104 and 1-111

(respectively), Austin. According to the complete agenda, the Texas Education Agency staff will make presentations to committee members; and State Textbook Committee members remain under no-contact rules until the close of the discussion and balloting meeting in August 1993.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: April 1, 1993, 11:31 a.m.

TRD-9321101

Tuesday-Wednesday, April 20-21, 1993, 1 p.m. and 8:30 a.m. respectively. The Health Education Committee of the Texas Education Agency will meet at 1701 North Congress Avenue, William B. Travis Building, Rooms 1-104 and 1-110 (respectively), Austin. According to the complete agenda, the Texas Education Agency staff will make presentations to committee members; and State Textbook Committee members remain under no-contact rules until the close of the discussion and balloting meeting in August 1993.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: April 1, 1993, 11:31 a.m.

TRD-9321102

Tuesday-Wednesday, April 20-21, 1993, 1 p.m. and 8:30 a.m. respectively. The Trade and Industrial Education Committee of the Texas Education Agency will meet at 1701 North Congress Avenue, William B. Travis Building, Rooms 1-104 and 1-100 (respectively), Austin. According to the complete agenda, the Texas Education Agency staff will make presentations to committee members; and State Textbook Committee members remain under no-contact rules until the close of the discussion and balloting meeting in August 1993.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: April 1, 1993, 11:31 a.m.

TRD-9321103

Wednesday-Thursday, April 21-22, 1993, 1 p.m. and 8:30 a.m. respectively. The Science Education Committee of the Texas Education Agency will meet at 1701 North Congress Avenue, William B. Travis Building, Rooms 1-104 and 1-111 (respectively), Austin. According to the complete agenda, the Texas Education Agency staff will make presentations to committee members; and State Textbook Committee members remain under no-contact rules until the close of the discussion and balloting meeting in August 1993.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: April 1, 1993, 11:31 a.m.

TRD-9321104

Wednesday-Thursday, April 21-22, 1993, 1 p.m. and 8:30 a.m. respectively. The Business Education Committee of the Texas Education Agency will meet at 1701 North Congress Avenue, William B. Travis Building, Rooms 1-104 and 1-110 (respectively), Austin. According to the complete agenda, the Texas Education Agency staff will make presentations to committee members; and State Textbook Committee members remain under no-contact rules until the close of the discussion and balloting meeting in August 1993.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: April 1, 1993, 11:32 a.m.

TRD-9321105

Thursday-Friday, April 22-23, 1993, 1 p.m. and 8:30 a.m. respectively. The Mathematics Committee of the Texas Education Agency will meet at 1701 North Congress Avenue, William B. Travis Building, Rooms 1-100 and 1-111 (respectively), Austin. According to the complete agenda, the Texas Education Agency staff will make presentations to committee members; and State Textbook Committee members remain under no-contact rules until the close of the discussion and balloting meeting in August 1993.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: April 1, 1993, 11:32 a.m.

TRD-9321106

Thursday-Friday, April 22-23, 1993, 1 p.m. and 8:30 a.m. respectively. The Language Arts Committee of the Texas Education Agency will meet at 1701 North Congress Avenue, William B. Travis Building, Room 1-100, Austin. According to the complete agenda, the Texas Education Agency staff will make presentations to committee members; and State Textbook Committee members remain under no-contact rules until the close of the discussion and balloting meeting in August 1993.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: April 1, 1993, 11:32 a.m.

TRD-9321107



## Texas Department of Health

**Tuesday, April 13, 1993, 8:30 a.m.** The Home Health Services Advisory Council of the Texas Department of Health will meet at the Exchange Building, Room S-402, 8407 Wall Street, Austin. According to the complete agenda, the council will discuss approval of the minutes of previous meeting; discuss and possibly act on public comments received relating to the proposed changes to the Home Health Care Agency's rules and regulations; legislative update; and hear announcements and comments not requiring council action.

**Contact:** Becky Beechinor, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6647. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

**Filed:** April 5, 1993, 4:05 p.m.

TRD-9321237

**Friday, April 23, 1993, 10 a.m.** The Trauma Technical Advisory Committee of the Texas Department of Health will meet at the Sheraton Austin Hotel, Colorado Room, 500 North IH-35, Austin. According to the complete agenda, the committee will discuss approval of the minutes of previous meeting; discuss and possibly act on trauma system development update; regional advisory council reports; basic trauma facility designation process; basic trauma facility designation criteria; committee recommendations; and schedule of future meetings.

**Contact:** Kathy Perkins, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6700. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

**Filed:** April 2, 1993, 3:43 p.m.

TRD-9321173

**Thursday, April 29, 1993, 10 a.m.** The Texas Emergency Medical Services Advisory Council of the Texas Department of Health will meet at the Howard Johnson Hotel, Pedernales Room, 7800 North IH-35, Austin. According to the complete agenda, the council (TEMSAC) will hear opening remarks; discuss approval of the minutes of previous meeting; discuss and possibly act on: report and legislative update of Chief of Bureau of Emergency Management; committee reports on providers, education, public information and education, medical directors, and bylaws; and skills examination status report.

**Contact:** Harold Broadbent, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6700. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

**Filed:** April 2, 1993, 3:43 p.m.

TRD-9321172

## Texas Historical Commission

**Thursday, April 15, 1993, 10 a.m.** The State Interagency Task Force-Los Caminos del Rio Heritage Project of the Texas Historical Commission will meet at the DeWitt C. Greer Building, 125 East 11th Street, Red Room, First Floor, Austin. According to the complete agenda, the task force will review accomplishments during 1992; and give an overview of upcoming projects.

**Contact:** Mario Sanchez, P.O. Box 12276, Austin, Texas 78711, (512) 463-5754.

**Filed:** April 5, 1993, 2:14 p.m.

TRD-9321222

## Texas Department of Insurance

**Tuesday, April 13, 1993, 1:30 p.m.** The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 100, 333 Guadalupe Street, Austin. According to the complete agenda, the board will hold a public hearing under Docket Number 1989 to consider the appeal from ruling in Commissioner's Docket Number 11630 regarding public access to underwriting guidelines filed by the Consumers Union and Office of Public Insurance Counsel.

**Contact:** Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

**Filed:** April 5, 1993, 1:20 p.m.

TRD-9321219

**Tuesday, April 13, 1993, 1:30 p.m.** The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 100, 333 Guadalupe Street, Austin. According to the complete agenda, the board will hold a public hearing under Docket Number 1990 to consider the appeal from ruling in Commissioner's Docket Numbers 11578 and 11629 regarding the matter of the public hearing to consider whether the private passenger auto and homeowner's premium-by-territory data submitted by State Farm Insurance Company is a trade secret and whether such data is confidential filed by the Office of Public Insurance Counsel and the Consumers Union.

**Contact:** Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

**Filed:** April 5, 1993, 1:19 p.m.

TRD-9321218

**Wednesday, April 14, 1993, 10 a.m.** The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 100, 333 Guadalupe Street, Austin. According to the complete agenda, the board will hold a public hearing under Docket Number 1988 to consider a rate filing outside statutory limitation filed by National General Insurance Company pursuant to Article 5.101, §3(f), which requests a rate of 100% above the benchmark rate for comprehensive coverage for classification 9437 (motor homes).

**Contact:** Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

**Filed:** April 5, 1993, 1:20 p.m.

TRD-9321220

**Thursday, April 15, 1993, 9 a.m.** The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 100, 333 Guadalupe Street, Austin. According to the agenda summary, the board will discuss personnel; litigation; commissioner's orders; solvency; budget; hear staff reports; legislative update; consider adoption of amendments to Texas Workers' Compensation Statistical Plan; consider approval of proposed rule on procedures for redistribution of assessments on carriers in liquidation; consider petition filed by OPIC et al, proposing to amend 28 TAC by adding new chapter for mortgage guaranty insurance; consider adoption of new 28 TAC §§1.82-1.86 concerning forms and scope of discovery in contested cases; re-consider proposed new 28 TAC §§7.1801-7.1808 concerning withdrawal plan requirements and procedures; consider petition proposing to amend 28 TAC §5.4001 concerning plan of operation of TCPIA relating to member participation; consider filings by the Home Insurance Company et al, Mortgage Guaranty Insurance Corporation, General Electric Mortgage Insurance Corporation, and Amerisure Insurance Company, et al.

**Contact:** Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

**Filed:** April 1, 1993, 3:01 p.m.

TRD-9321131

**Thursday, April 15, 1993, 9 a.m.** The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 100, 333 Guadalupe Street, Austin. According to the complete revised agenda, the board will consider whether a meeting or hearing will be granted regarding a petition filed by the Texas Department of Insurance requesting approval of a proposed revision to the Texas Experience Rating Plan Manual. (Article 5.60, 5.96).

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: April 2, 1993, 11:29 a.m.

TRD-9321155

## Lamar University, Board of Regents

Thursday, April 8, 1993, 9 a.m. The Committees of the Board of Regents of Lamar University met at the John Gray Institute, Map Room, 855 Florida Street, Beaumont. According to the agenda summary, the following committees met: Building and Grounds; Academic Affairs; Finance and Audit; Personnel; met in executive session; and Committee of the Whole.

Contact: Dr. James A. Norton, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: April 2, 1993, 9:11 a.m.

TRD-9321138

Thursday, April 8, 1993, 1 p.m. The Board of Regents of Lamar University System met at the John Gray Institute, Map Room, 855 Florida, Beaumont. According to the agenda summary, the board called the meeting to order; gave invocation; heard chairman's comments; chancellor's comments; considered recommendations of: building and grounds committee; academic affairs committee; finance and audit committee; personnel committee; committee of the whole; and heard regents comments and suggestions.

Contact: Dr. James A. Norton, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: April 5, 1993, 11:21 a.m.

TRD-9321215

## Texas Board of Pardons and Paroles

Monday-Tuesday, April 12-13, 1993, 9 a.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 2821 Guadalupe Street, Suite 106, San Antonio. According to the agenda summary, a panel(s) (composed of three board member(s)) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: April 2, 1993, 10:59 a.m.

TRD-9321151

Monday-Friday, April 12-16, 1993, 1:30 p.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 2503 Lake Road, Suite 2, Huntsville. According to the agenda summary, a panel(s) (composed of three board member(s)) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: April 2, 1993, 10:59 a.m.

TRD-9321146

Tuesday-Wednesday, April 13-14, 1993, 1:30 p.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1550 East Palestine, Suite 100, Palestine. According to the agenda summary, a panel(s) (composed of three board member(s)) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: April 2, 1993, 10:59 a.m.

TRD-9321150

Wednesday-Friday, April 14-16, 1993, 9 a.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1212 North Velasco, Suite 201, Angleton. According to the agenda summary, a panel(s) (composed of three board member(s)) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: April 2, 1993, 10:59 a.m.

TRD-9321147

Thursday-Friday, April 15-16, 1993, 9 a.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1550 East Palestine, Suite 100, Palestine. According to the agenda summary, a panel(s) (composed of three board member(s)) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: April 2, 1993, 10:59 a.m.

TRD-9321149

Thursday-Friday, April 15-16, 1993, 12:30 p.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at Route 5, Box 258-A, Gatesville. According to the agenda summary, a panel(s) (composed of three board member(s)) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: April 2, 1993, 10:59 a.m.

TRD-9321148

## Texas Department of Public Safety

Tuesday, April 13, 1993, 1:30 p.m. The Public Safety Commission of the Texas Department of Public Safety will meet at DPS Headquarters, Commission Room, 5805 North Lamar Boulevard, Austin. According to the complete agenda, the commission will discuss approval of minutes; budget matters; internal audit report; presentation by Johnny Rutherford referring professional driving; discuss personnel matters; pending and contemplated litigation; real estate matters; miscellaneous and other unfinished business.

Contact: James R. Wilson, 5805 North Lamar Boulevard, Austin, Texas 78752, (512) 465-2000, extension 3700.

Filed: April 1, 1993, 11:16 a.m.

TRD-9321098

## Public Utility Commission of Texas

Friday, April 16, 1993, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11771-application of Southwestern Bell Telephone Company for approval of a customer-specific contract for billing and collection services for Teleamarica.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 5, 1993, 3:42 p.m.

TRD-9321233

Friday, April 16, 1993, 1 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11773-application of Southwestern Bell Telephone Company for approval of a customer-specific contract for billing and collection service with OAN Services, Inc.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 5, 1993, 3:43 p.m.

TRD-9321234

Monday, April 19, 1993, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will conduct a prehearing conference in Docket Number 11888-petition of Leaco Rural Telephone Cooperative for waiver of the requirements of Public Utility Commission Substantive Rule 23.12(b)(2)(A)(ii).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 1, 1993, 3:18 p.m.

TRD-9321132

Monday, August 23, 1993, 9 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a hearing on the merits in Docket Number 11503-application of Lower Colorado River Authority to amend certificate of convenience and necessity for a 138KV transmission line and substation within Kerr County.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 5, 1993, 3:43 p.m.

TRD-9321235

## Railroad Commission of Texas

Monday, April 5, 1993, 9:30 a.m. The Railroad Commission of Texas met in the First Floor Conference Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the complete emergency revised agenda, the commission reviewed and discussed oil and gas Docket Number 7B-96, 296; enforcement action for alleged violations committed by Raymond C. Larose doing business as Larose Petroleum Company as to the W. B. Bradley (13336) Lease, Well Numbers 1, 4, 5, 8-10, 11W, 13, 14, 16W, 20, 22-25, 28-46, 48-51, and 57, Throckmorton County Regular Field, Throckmorton County, motion for rehearing. The emergency status was necessary as the time for ruling expired before the next regularly scheduled meeting date.

Contact: Meredith Kawaguchi, P.O. Box 12967, Austin, Texas 78711, (512) 463-6924.

Filed: April 2, 1993, 9:28 a.m.

TRD-9321139

## Texas Real Estate Commission

Monday-Tuesday, April 12-13, 1993, 9:30 a.m. The Texas Real Estate Commission will meet in Conference Room 235, Second Floor, TREC Headquarters Office, 1101 Camino La Costa, Austin. According to the agenda summary, on Monday, the commission will discuss and possibly act on proposed amendment to 22 TAC §535.164 and repeal of §535.165; education providers and courses; meet in executive session to discuss pending litigation; discuss payments from recovery funds; motions for rehearing; entry of orders; rehearing in Hearing Number 92-75-911114 in the matter of Benny Eugene Caballero; and on Tuesday, the commission will continue rehearing in Hearing Number 92-75-911114. For ADA assistance, call Nancy Guevremont (512) 465-3923 at least two days prior to meeting.

Contact: Camilla Shannon, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: April 1, 1993, 10:52 a.m.

TRD-9321097

## Texas Savings and Loan Department

Monday, April 12, 1993, 10 a.m. The Texas Savings and Loan Department will meet at 300 West 15th Street, Room 408, Austin. According to the agenda summary, the department will hold this meeting (hearing) to accumulate a record of evidence in regard to the application of Horizon Savings Association, Austin, Travis County, to relocate the home office from 8627 North Mopac to 5767 North Mopac, Austin, Travis County, from which record the Commissioner will determine whether to grant or deny the application.

Contact: Shirley T. Burton, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1350.

Filed: April 2, 1993, 4:22 p.m.

TRD-9321178

## Interagency Council on Sex Offender Treatment

Wednesday, April 14, 1993, 8:30 a.m. The Board Subcommittee: Policies and Procedures of the Interagency Council on Sex Offender Treatment will meet at 701 West 51st Street, Fourth Floor, Room 450, Austin. According to the complete agenda, the subcommittee will convene Pam Rodgers, chair; subcommittee will review agency by-laws; hear public comment; and adjourn.

Contact: Eliza May, 1106 Clayton Lane, #205E, Austin, Texas 78723, (512) 454-1314.

Filed: April 5, 1993, 1:23 p.m.

TRD-9321221

## State Committee of Examiners for Speech-Language Pathology and Audiology

Saturday, April 17, 1993, 4 p.m. The State Committee of Examiners for Speech-Language Pathology and Audiology will meet in Room 227, Bayfront Plaza Convention Center, 1901 North Shoreline Boulevard, Corpus Christi. According to the complete agenda summary, the committee will conduct a question and answer session concerning licensing and regulations of Speech-Language Pathologists and Audiologists.

Contact: Dorothy Cawthon, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6627. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: April 2, 1993, 3:43 p.m.

TRD-9321174

### Texas Title Insurance Guaranty Association

Tuesday, April 13, 1993, 10 a.m. The Board of Directors of the Texas Title Insurance Guaranty Association will meet at the Texas Department of Insurance, 333 Guadalupe Street, Tower One, 12th Floor, Austin. According to the complete agenda, the board will discuss approval of the minutes of January 27, 1993 meeting; discuss and possibly act on legislative proposals; hear liquidation report; title manager's report; conservator's report; discuss and possibly act on amendment of agreement for services; release of recoupments and guaranty fees; and set date and time for next meeting.

Contact: Burnie Burner, 100 Congress Avenue, #1600, Austin, Texas 78701, (512) 474-1587.

Filed: April 2, 1993, 3:12 p.m.

TRD-9321169

### Texas Department of Transportation

Tuesday, April 20, 1993, 9 a.m. The Environmental Advisory Committee of the Texas Department of Transportation will meet at 200 East Riverside Drive, Building 200, Room 101, Austin. According to the agenda summary, the committee will discuss approval of minutes; final review of proposed rulemaking concerning a memorandum of understanding with the Texas Air Control Board and the transportation enhancement program; briefing on current status of rules previously reviewed by committee; presentations on the environmental and public involvement process; and the public perspective of the department's environmental and public involvement process.

Contact: Roland Gamble, 125 East 11th Street, Austin, Texas 78701, (512) 475-0701.

Filed: April 5, 1992, 3:29 p.m.

TRD-9321232

Wednesday, April 21, 1993, 3:30 p.m. The Aviation Advisory Committee of the Texas Department of Transportation will meet at the Anson Jones Building, Room 107, 410 East Fifth Street, Austin. According to the agenda summary, the committee will discuss approval of minutes; final review of proposed rulemaking concerning transportation enhancement program; discuss legislation pending in this session concerning the Division of Aviation and the FAA state block grant program; hear directors report;

and introduce Deputy Director of Division of Aviation.

Contact: Suetta Murray, 410 East Fifth Street, Austin, Texas 78711, (512) 476-9262.

Filed: April 5, 1993, 3:28 p.m.

TRD-9321231

### Texas Turnpike Authority

Wednesday, April 14, 1993, 1:30 p.m. The Contract Awards Committee of the Texas Turnpike Authority will meet at the Texas Turnpike Authority Administration Building, 3015 Raleigh Street, Dallas. According to the complete agenda, the committee will take roll call of directors; briefing of board on TTA contract acquisition procedures; TTA minority participation of contracts and purchases; and adjourn.

Contact: Harry Kabler, P.O. Box 190369, Dallas, Texas 75219, (214) 522-6200.

Filed: April 5, 1993, 4:30 p.m.

TRD-9321241

### Texas Water Commission

Wednesday, April 14, 1993, 9 a.m. The Waste Reduction Advisory Committee of the Texas Water Commission will meet at the Stouffer Hotel of Austin, 9721 Aboretum Boulevard, Frio Room, Austin. According to the complete agenda, the committee will discuss the toxic release inventory survey-preliminary results; annual reporting requirements required by Senate Bill 1099; and federal funding sources for pollution prevention.

Contact: Ken Zarker, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-7869.

Filed: April 5, 1993, 10:01 a.m.

TRD-9321211

Wednesday, April 14, 1993, 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 approving the following matters: hazardous waste permit; water quality permits; amendments to water quality; minor amendments to water quality; permit renewals; water rights; bond issues; rate matters; examiner memorandums and orders; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: April 5, 1993, 4:22 p.m.

TRD-9321239

Wednesday, April 14, 1993, 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 approving the following matters: hazardous waste enforcement orders; rules; examiner's proposal for decision; meet in executive session; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: April 5, 1993, 4:22 p.m.

TRD-9321240

Friday, April 23, 1993, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1028-A, Austin. According to the complete agenda, the commission will hold a public hearing on Texas Utilities Mining Company, Application Number TA-6978.

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

Filed: April 5, 1993, 4:21 p.m.

TRD-9321238

Wednesday, May 5, 1993, 1:30 p.m. (Rescheduled from April 23, 1993). The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1028-A, Austin. According to the agenda summary, the commission will hold a hearing on College Mound Water Supply Corporation's water rate increase effective October 10, 1992. Docket Number 9920-W.

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

Filed: April 5, 1993, 9:37 a.m.

TRD-9321203

Wednesday, May 12, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on Aransas County Municipal Utility District Number One's application requesting an extension of time on the standby fees imposed on

undeveloped property in the district. The amount of the standby fee requested is: \$156 per lot per year for single family residential lots, according to the plat of Goose Island Lake Estates; \$156 per year for each seventy front feet of acreage tracts that are restricted for residential uses; and \$156 per year for each proposed townhouse unit.

Contact: Gloria A. Vasquez, P.O. Box 13087, Austin, Texas 78711, (512) 371-6219.

Filed: April 5, 1993, 9:38 a.m.

TRD-9321205

Thursday, May 20, 1993, 11 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Weatherford Community Center, 701 Narrow Street, Weatherford. According to the agenda summary, the commission will hold a public hearing to consider an application to renew Permit Number 13438-01/Aledo Independent School District for authority to discharge treated domestic wastewater effluent.

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

Filed: April 5, 1993, 2:26 p.m.

TRD-9321227

Wednesday, June 30, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on Floyd B. Neuman's Application Number 4041-A to amend water use Permit Number 3747. Applicant is requesting to increase his annual diversion from 25 acre-feet to 45 acre-feet. Permit Number 3747 authorizes the diversion and use of not to exceed 25 acre-feet of water per annum from San Miguel Creek, tributary of the Frio River, tributary of the Nueces River, Nueces River Basin. Water is used to irrigate 70 acres of land approximately 15 1/2 miles northeast of Pearsall in Frio County.

Contact: Mark Evans, P.O. Box 13087, Austin, Texas 78711, (512) 475-4584.

Filed: April 5, 1993, 9:38 a.m.

TRD-9321204

### Texas Workers' Compensation Commission

Thursday, April 8, 1993, 9 a.m. The Texas Workers' Compensation Commission met at the Southfield Building, Rooms 910-911, 4000 South IH-35, Austin. According to the agenda summary, the commission called the meeting to order; discussed approval of minutes; rules for amendment: Chapter 164,

Chapter 128, Chapter 140; rules for proposal: Chapter 145; acted on members to serve on the Texas Certified Self-Insurer Guaranty Association; acted on members to serve on the Medical Advisory Committee; acted on alternate members to serve on the Medical Advisory Committee; acted on Volume IV on Risk Management, Liability Exposures; acted on rule-making petition; discussion on staff direction on any issues regarding policy or rules; met in executive session; acted on matters considered in executive session; general reports and action; planned future public meetings; and adjourned.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-3973.

Filed: April 2, 1993, 4:28 p.m.

TRD-9321180

### Texas Workers' Compensation Insurance Facility

Monday, April 12, 1993, 8:30 a.m. The Governing Committee of the Texas Workers' Compensation Insurance Facility will meet at the Guest Quarters Hotel, 303 West 15th Street, Austin. According to the agenda summary, the committee will discuss approval of March 15, 1993 minutes; consider and possibly act on: report from Independent Actuarial Services, Inc., pending legislation and on legislative issues, engagement of consultants to advise and assist in transition process between the facility and Texas Workers' Compensation Insurance Fund; recommendations from the Appeals Committee, and date and agenda for annual meeting of member companies; hear executive director's report; and meet in executive session(s) regarding personnel matters and pending legal matters.

Contact: Russell R. Oliver, 8303 MoPac Expressway North, Suite 310, Austin, Texas 78759-8396.

Filed: April 2, 1993, 12:55 p.m.

TRD-9321158

### Regional Meetings

#### Meetings Filed April 1, 1993

The Aqua Water Supply Corporation met at 305 Eskew (Aqua Office), Bastrop, April 5, 1993, at 7:30 p.m. Information may be obtained from Adlinie Rathman, P.O. Box P, Bastrop, Texas 78602, (512) 321-3943. TRD-9321130.

The Education Service Center, Region VI Executive Committee met at 1301 Sam Houston Avenue, Huntsville, April 7, 1993, at noon. Information may be obtained from Bobby Roberts, 3332 Montgomery Road,

Huntsville, Texas 77340, (409) 293-3724. TRD-9321128.

The Wood County Appraisal District Board of Directors met at 217 North Main, Conference Room, Wood County Appraisal District, Quitman, April 8, 1993, 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-9321129.

### Meetings Filed April 2, 1993

The Austin-Travis County Mental Health and Mental Retardation Center Public Relations Committee met at 1430 Collier Street, Board Room, Austin, April 6, 1993, at 12:30 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9321179.

The Barton Springs/Edwards Aquifer Conservation District Board of Directors met at 1124A Regal Row, Austin, April 8, 1993, at 5:30 p.m. Information may be obtained from William Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441. TRD-9321168.

The Bastrop Central Appraisal District Appraisal Review Board met at the Bastrop Central Appraisal District, 1200 Cedar Street, Bastrop, April 8, 1993, at 8:30 a.m. Information may be obtained from Dana Ripley, P.O. Drawer 578, Bastrop, Texas 78602, (512) 321-3925. TRD-9321184.

The Creedmoor MAHA Water Corporation Board of Directors met at 1699 Laws Road, Mustang Ridge, April 7, 1993, at 7 p.m. Information may be obtained from Charles P. Laws, 1699 Laws Road, Buda, Texas 78610, (512) 243-1991 or 243-2113. TRD-9321142.

The Dallas Area Rapid Transit (DART) Public Affairs Committee met at 1401 Pacific Avenue, DART Headquarters, Dallas, April 6, 1993, at 1 p.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9321153.

The Dallas Area Rapid Transit (DART) Rail Committee met at 1401 Pacific Avenue, DART Headquarters, Dallas, April 6, 1993, at 3 p.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9321152.

The Dallas Area Rapid Transit (DART) Officers' and Chairs' will meet at 1401 Pacific Avenue, DART Headquarters, Dallas, April 9, 1993, at noon. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9321154.

The East Texas Council of Governments Executive Committee met at the ETCOG Offices, Kilgore, April 8, 1993, at 2 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9321176.

The Eastland County Appraisal District Board of Directors will meet in the Commissioners' Courtroom, Eastland County Courthouse, Eastland, April 14, 1993, at 1 p.m. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 76448, (817) 629-8597. TRD-9321141.

The Education Service Center, Region XIII Board of Directors will meet at the ESC, Region XIII, ESC Conference Rooms 202-203, 5701 Springdale Road, Austin, April 12, 1993, at 12:45 p.m. Information may be obtained from Dr. Roy C. Benavides, 5701 Springdale Road, Austin, Texas 78723, (512) 929-1300. TRD-9321166.

The Gonzales County Appraisal District Board of Directors met at 928 St. Paul Street, Gonzales, April 8, 1993, at 6 p.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879. TRD-9321157.

The Grand Parkway Association will meet at 5757 Woodway, Suite 140 East Wing, Houston, April 14, 1993, at 8:15 a.m. Information may be obtained from Jerry L. Coffman, 5757 Woodway, 140 East Wing, Houston, Texas 77057, (713) 782-9330. TRD-9321161.

The Hockley County Appraisal District Appraisal Review Board met at 1103-C Houston Street, Levelland, April 6, 1993, at 7 a.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9321175.

The Hunt County Appraisal District Board of Directors met in the Hunt County Appraisal District Boardroom, 4801 King Street, Greenville, April 8, 1993, at 7 p.m. Information may be obtained from Shirley Smith, 4801 King Street, Greenville, Texas 75401, (903) 454-3510. TRD-9321167.

The Liberty County Central Appraisal District Appraisal Review Board met at 315 Main Street, Liberty, April 8, 1993, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722. TRD-9321171.

The Shackelford Water Supply Corporation Board of Directors met at the Fort Griffin Restaurant, Albany, April 7, 1993, at noon. Information may be obtained from E. D. Fincher, P.O. Box 1295, Albany, Texas 76430, (915) 762-2519. TRD-9321145.

The Sulphur-Cypress Soil and Water Conservation District Number 419 met at 1809 West Ferguson, Suite B, Mt. Pleasant, April 8, 1993, at 8:30 a.m. Information may be obtained from Beverly Amerson, 1809 West Ferguson, Suite B, Mt. Pleasant, Texas 75455-2921, (903) 572-5411. TRD-9321164.

The Tarrant Appraisal District Tarrant Appraisal Review Board will meet at 2329 Gravel Road, Fort Worth, April 13, 1993, at 8 a.m. Information may be obtained from Suzanne Williams, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884. TRD-9321162.

The Tarrant Appraisal District Tarrant Appraisal Review Board will meet at 2329 Gravel Road, Fort Worth, April 15, 1993, at 8:15 a.m. Information may be obtained from Suzanne Williams, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884. TRD-9321163.

### Meetings Filed April 5, 1993

The Appraisal District of Jones County Board of Directors will meet at the District's Office, 1137 East Court Plaza, Anson, April 15, 1993, at 8:30 a.m. Information may be obtained from Susan Holloway, 1137 East Court Plaza, Anson, Texas 79501, (915) 823-2422. TRD-9321209.

The Bell-Milam-Falls Water Supply Corporation Board of Directors met at the WSC Office, West FM 485, Cameron, April 8, 1993, at 8:30 a.m. Information may be obtained from Dwayne Jekel, P.O. Drawer 150, Cameron, Texas 76520, (817) 697-4016. TRD-9321185.

The Bexar-Medina-Atascosa Counties Water Control and Improvement District Number One Board of Directors will meet at 226 Highway 132, Natalia, April 12, 1993, at 8 a.m. Information may be obtained from John W. Ward III, P.O. Box 170, Natalia, Texas 78059, (210) 663-2132. TRD-9321208.

The Canadian River Municipal Water Authority Board of Directors will meet at the Bridal House, 212 West Ninth Street, Plainview, April 14, 1993, at 10:30 a.m. Information may be obtained from John C. Williams, P.O. Box 99, Stanford, Texas 79078, (806) 865-3325. TRD-9321224.

The Cash Water Supply Corporation will meet at the Administration Office, FM 1564 East, Greenville, April 13, 1993, at 7 p.m. Information may be obtained from Donna Mohon, P.O. Box 8129, Greenville, Texas 75404, (903) 883-2695. TRD-9321223.

The Deep East Texas Private Industry Council, Inc. Planning and Worker Adjustment Committees will meet at City Hall,

Room 102, Lufkin, April 13, 1993, at 1 p.m. Information may be obtained from Charlene Meadows, P.O. Box 1523, Lufkin, Texas 75901, (409) 634-4432. TRD-9321226.

The Deep East Texas Private Industry Council, Inc. will meet at City Hall, Room 102, Lufkin, April 13, 1993, at 2:30 p.m. Information may be obtained from Charlene Meadows, P.O. Box 1523, Lufkin, Texas 75901, (409) 634-4432. TRD-9321225.

The East Texas Council of Governments (Revised Agenda). Executive Committee met at the ETCOG Offices, Kilgore, April 8, 1993, at 2 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9321217.

The Gregg County Appraisal District Board of Directors will meet at 2010 Gilmer Road, Longview, April 12, 1993, at 9 a.m. Information may be obtained from Bill Carroll, 2010 Gilmer Road, Longview, Texas 75604, (903) 759-0015. TRD-9321210.

The Johnson County Rural Water Supply Corporation met at the JCRWSC Office, Highway 171 South, Cleburne, April 8, 1993, at 1 p.m. Information may be obtained from Charlene SoRelle, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6846. TRD-9321216.

The Manville Water Supply Corporation Board of Directors met at the Manville Office, Spur 277, Coupland, April 8, 1993, at 7 p.m. Information may be obtained from LaVerne Rohlack, P.O. Box 248, Coupland, Texas 78615, (512) 272-4044. TRD-9321214.

The Region 14 Education Service Center Board of Directors will meet at the Region 14 Education Service Center, 1850 Highway 351, Abilene, April 15, 1993, at 5:30 p.m. Information may be obtained from Taressa Huey, 1850 Highway 351, Abilene, Texas 79601, (915) 675-8600.

The San Antonio River Authority Employees Retirement Trust, Board of Trustees will meet at the SARA General Office, Board Room, 100 East Guenther Street, San Antonio, April 14, 1993, at 1:30 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (210) 227-1373. TRD-9321201.

The San Antonio River Authority Board of Directors will meet at the SARA General Office, Board Room, 100 East Guenther Street, San Antonio, April 14, 1993, at 2 p.m. Information may be obtained from Fred N. Pfeiffer, P. O. Box 830027, San Antonio, Texas 78283-0027, (210) 227-1373. TRD-9321200.

**The San Antonio River Authority Salary Review and Personnel Committee will meet at the SARA General Office, Board Room, 100 East Guenther Street, San Antonio, April 14, 1993, at 3:30 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (210) 227-1373. TRD-9321202.**

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**Meetings Filed April 6, 1993**

**The Callahan County Appraisal District Board of Directors will meet at the Appraisal District Offices, 130-A West Fourth Street, Baird, April 12, 1993, at 8 p.m. Information may be obtained from Jane Ringhoffer, P.O. Box 806, Baird, Texas 79504, (915) 854-1165. TRD-9321252.**

**The Capital Area Planning Council General Assembly will meet at the Wyndham Southpark Hotel, IH-35 South at Ben White Boulevard, Austin, April 14, 1993, at 11:45 a.m. Information may be obtained from Richard G. Bean, 2520 IH-35 South, Suite 100, Austin, Texas 78704, (512) 443-7653. TRD-9321247.**

**The Capital Area Planning Council Executive Committee will meet at 2520 IH-35 South at Ben White Boulevard, Suite 100, Austin, April 14, 1993, at 1:30 p.m. Information may be obtained from Richard G. Bean, 2520 IH-35 South, Suite 100, Austin, Texas 78704, (512) 443-7653. TRD-9321248.**

**The Education Service Center, Region VI Board of Directors and Executive Committee will meet at 1301 Sam Houston Avenue, Huntsville, April 15, 1993, at 5 p.m. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 293-3724. TRD-9321253.**

**The Kendall County Appraisal District Appraisal Review Board will meet at 121 South Main Street, Conference Room, Boerne, April 26, 1993, at 9 a.m. Information may be obtained from J. P. Davis, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012. TRD-9321251.**

**The Sabine Valley Center Finance Committee will meet at the Administration Building, Bramlette Lane, 107 Woodbine, Longview, April 12, 1993, at 6 p.m. Information may be obtained from Mack**

**Blackwell, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9321243.**

**The Sabine Valley Center Care and Treatment Committee will meet at the Administration Building, Bramlette Lane, 107 Woodbine, Longview, April 12, 1993, at 6 p.m. Information may be obtained from Mack Blackwell, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9321245.**

**The Sabine Valley Center Personnel Committee will meet at the Administration Building, Bramlette Lane, 107 Woodbine, Longview, April 12, 1993, at 6:30 p.m. Information may be obtained from Mack Blackwell, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9321244.**

**The Sabine Valley Center Board of Trustees will meet at the Administration Building, Bramlette Lane, 107 Woodbine, Longview, April 12, 1993, at 7 p.m. Information may be obtained from Mack Blackwell, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9321246.**

◆ ◆ ◆



Name: Bernie Ullva  
Grade: 6  
School: North Loop Elementary, Ysleta 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 Department of Agriculture Correction of Error

The Texas Department of Agriculture proposed new 4 TAC §5.51, concerning Pine Shoot Beetle Quarantine. The rule was scheduled to appear in the March 26, 1993, *Texas Register* (18 TexReg 1895).

Due to an error by the *Texas Register* the preamble to the rule was printed, but the text of the rule was omitted. The proposed text should read as follows.

§5.51. *Adoption of Federal Quarantine.* The Texas Department of Agriculture (the department) hereby adopts by reference the Federal Pine Shoot Beetle Quarantine as adopted by the United States Department of Agriculture, 7 *Code of Federal Regulations*, Part 301.50-1 through 301.50-10, effective November 13, 1992.

## Texas Air Control Board Notice of Opportunity to Comment on Administrative Actions

Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions.

The Texas Air Control Board (TACB) Staff is providing an opportunity for written public comment on the listed Agreed Board Orders (ABO's) pursuant to §382.096 of the Texas Clean Air Act, Health and Safety Code, Chapter 382. The Act, §382.096, requires that the TACB may not approve these ABO's unless the public has been provided an opportunity to submit written comments. Section 382.096 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is May 9, 1993. Section 382.096 also requires that the TACB promptly consider any written comments received and that the TACB may withhold approval of an ABO if a comment indicates the proposed ABO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Clean Air Act. Additional notice is not required if changes to an ABO are made in response to written comments.

A copy of each of the proposed ABO's is available for public inspection at both the TACB's Central Office, located at 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1000 and at the applicable Regional Office listed below. Written comments about these ABO's should be sent to the Staff Attorney designated for each ABO at the TACB's Central Office in Austin, and must be received by 5 p.m. on May 9, 1993. Written comments may also be sent by facsimile machine to the Staff Attorney at (512) 908-1850. The TACB Staff Attorneys are available to discuss the ABO's and/or the comment procedure at the

listed phone numbers; however, §382.096 provides that comments on the ABO's should be submitted to the TACB in writing.

Company: Am-Ag Incorporated, Location: Edinburg, Hidalgo County, Type of Facility: fertilizer plant, Rule Violated: TACB Rule 116.1, unauthorized construction and operation of a fertilizer plant, Penalty: \$0.00 (Small Business Minor Source policy), Staff Attorney: David Todd, (512) 908-1851, Regional Office: 513 East Jackson, Harlingen, Texas 78550, (210) 425-6010.

Company: Anderson Laboratories, Inc., Location: Fort Worth, Tarrant County, Type of Facility: standardized solution manufacturing laboratory, Rule Violated: TACB Rule 116.1, unauthorized construction and operation of an underground formaldehyde tank, Penalty: \$0.00, Staff Attorney: David Todd, (512) 908-1851, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531, (817) 732-5532.

Company: Ark Wrecking, Location: Houston, Harris County, Type of Facility: demolition project, Rule Violated: TACB Rule 101.20(2), failure to comply with notification requirements of Federal National Emissions Standards for Hazardous Air Pollutants (asbestos), Penalty: \$0.00 (Small Business Minor Source policy), Staff Attorney: Walter Ehresman, (512) 908-1843, Regional Office: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

Company: Benchmark Development, Location: Austin, Travis County, Type of Facility: clearing operations at two residential development sites, Rule Violated: TACB Rule 111.101, unauthorized outdoor burning, Penalty: \$3,000, Staff Attorney: Walter Ehresman, (512) 908-1843, Regional Office: 500 Lake Air Drive, Suite 1, Waco, Texas 76710, (817) 772-9240, (817) 772-9241.

Company: Betty Marines Auto Sales, Location: Houston, Harris County, Type of Facility: used car dealership, Rule Violated: TACB Rule 114.1(c), offered for sale in the State of Texas a motor vehicle which was not equipped with the emission control systems or devices with which the motor vehicle was originally equipped, Penalty: \$0.00 (Small Business Minor Source policy), Staff Attorney: Walter Ehresman, (512) 908-1843, Regional Office: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

Company: Bob Meals Company, Incorporated, Location: Seagoville, Dallas County, Type of Facility: pit-run sand mine, Rule Violated: TACB Rule 116.4 by violating the conditions in TACB Standard Exemption Number 91, creating a condition which also violated Board Rule 101.4, as to nuisance level dust emissions, Penalty: \$4,000, Staff Attorney: Walter Ehresman, (512) 908-1843, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531, (817) 732-5532.

Company: Cabinet Specialists, Location: Waxahachie, Ellis County, Type of Facility: woodworking plant, Rule Violated: TACB Rule 116.1, unauthorized construction and operation of two sanders and other woodworking equipment, Penalty: \$0.00 (Small Business Minor Source policy), Staff Attorney: Walter Ehresman, (512) 908-1843, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531, (817) 732-5532.

Company: Can-Too Auto Sales Number 2, Location: Houston, Harris County, Type of Facility: motor vehicle sales operation, Rule Violated: TACB Rule 114.1(c), offering for sale a motor vehicle which was not equipped with the emission control systems or devices with which the motor vehicle was originally equipped, Penalty: \$0.00 (Small Business Minor Source policy), Staff Attorney: Walter Ehresman, (512) 908-1843, Regional Office: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

Company: Capitol Aggregates, Location: Round Rock, Travis County, Type of Facility: concrete batch plant, Rule Violated: TACB Rule 101.4, nuisance level dust emissions, Penalty: \$6,000, Staff Attorney: David Todd, (512) 908-1851, Regional Office: 500 Lake Air Drive, Suite 1, Waco, Texas 76710, (817) 772-9240, (817) 772-9241.

Company: Chevron USA Incorporated, Location: Port Arthur, Jefferson County, Type of Facility: petroleum refinery, Rule Violated: TACB Rule 101.4, Agreed Board Order Numbers 88-01(e) and 89-08(a), nuisance level emissions of smoke and odors; TACB Rule 101.6(a), failing to promptly report an upset condition; TACB Rule 111.111(a)(2)(A), allowing visible emissions from a gas flare for more than five minutes in a consecutive two hour period, Penalty: \$13,000, Staff Attorney: Walter Ehresman, (512) 908-1843, Regional Office: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703, (409) 898-3838, (409) 898-3790.

Company: City of Calvert, Location: Calvert, Robertson County, Type of Facility: dump site, Rule Violated: TACB Rule 111.101, unauthorized outdoor burning, Penalty: \$1,000, Staff Attorney: Walter Ehresman, (512) 908-1843, Regional Office: 500 Lake Air Drive, Suite 1, Waco, Texas 76710, (817) 772-9240, (817) 772-9241.

Company: Dean Jones Contractor, Incorporated, (published in the June 23, 1992, issue of the *Texas Register*, republishing due to change of payment schedule in order), Location: Cedar Park, Williamson County, Type of Facility: water tower sandblasting project, Rule Violated: TACB Rule 101.4 and Agreed Board Order Number 92-07(ee), discharging one or more air contaminants or combinations thereof in such concentration and of such duration as to constitute a nuisance condition, Penalty: Originally \$10,500; New schedule covers remainder of \$7,350, Staff Attorney: Walter Ehresman, (512) 908-1843, Regional Office: 500 Lake Air Drive, Suite 1, Waco, Texas 76710, (817) 772-9240, (817) 772-9241.

Company: DWW Abatement, Incorporated, Location: Richardson, Dallas County, Type of Facility: asbestos abatement project, Rule Violated: TACB Rule 101.20(2), failure to comply with notification requirements of the Federal National Emission Standards for Hazardous Air Pollutants (asbestos), Penalty: \$0.00 (Small Business Minor Source policy), Staff Attorney: Walter Ehresman, (512) 908-1843, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531, (817) 732-5532.

Company: Fina Oil and Chemical Company, Location: Port Arthur, Jefferson County, Type of Facility: petroleum refinery, Rule Violated: TACB Rule 101.20(2), which requires compliance with Federal National Emissions Standards for Hazardous Air Pollutants, (NESHAPS); TACB Rule 101.20(1), which requires compliance with Federal New Source Performance Standards, (NSPS) for equipment leaks; TACB Rule 115.112(a)(2)(E), storing a volatile organic compound, (VOC) in a storage tank with a damaged seal; TACB Rule 115.322(2), failing to promptly attempt repairs on leaking components in VOC service; TACB Rule 115.322(4), failing to equip 2 valves with the required second valve, blind flange plug or cap; TACB Rule 115.324(6), failing to remonitor five leaking components immediately following repair; TACB Rule 116.4, failing to comply with permit conditions regarding leak repair in TACB permits for the Truck Terminal, Saturated Liquids Unit and Amine Unit ATU-14 and requiring monthly fugitive monitoring of Distillate Hydrotreater Unit Number 805, Penalty: \$96,500, Staff Attorney: Bill Zeis, (512) 908-1844, Regional Office: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703, (409) 898-3838, (409) 898-3790.

Company: Fraco Services, Location: Holliday, Wichita County, Type of Facility: oilfield cementing and acidizing plant, Rule Violated: TACB Rule 116.1, unauthorized construction and operation of an oilfield cementing and acidizing plant, Penalty: \$0.00 (Small Business Minor Source policy), Staff Attorney: Walter Ehresman, (512) 908-1843, Regional Office: 1290 South Willis, Suite 205, Abilene, Texas 79605, (915) 698-9674.

Company: General Magnaplate Texas, Inc., Location: Arlington, Tarrant County, Type of Facility: plasma spray plant, Rule Violated: TACB Rule 116.1, unauthorized construction and operation of two plasma spray booths, Penalty: \$0.00 (Small Business Minor Source policy), Staff Attorney: David Todd, (512) 908-1851, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531, (817) 732-5532.

Company: Georgia Gulf Corporation, Location: Pasadena, Harris County, Type of Facility: organic chemicals manufacturing plant, Rule Violated: TACB Rule 101.20(2), which requires compliance with Federal National Emissions Standards for Hazardous Air Pollutants, (NESHAPS), (fugitive emission sources); TACB Rule 115.335(1), failure to comply with fugitive monitoring requirements; and TACB Rule 116.4, failure to comply with fugitive monitoring requirements of the permit, Penalty: \$6,000, Staff Attorney: Terri Phelps, (512) 908-1846, Regional Office: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

Company: Hoechst Celanese Corporation and Fina Oil and Chemical Company, Location: Bayport, Harris County, Type of Facility: polyethylene manufacturing plant, Rule Violated: TACB Rule 115.332(2) and Agreed Board Order Numbers 90-07(g) and 89-04(j), by failing to promptly repair leaking valves; and TACB Rule 115.336(2)(D), by failing to record the dates on which leaking valves were discovered; TACB Rule 101.20(1), by violating Federal New Source Performance Standards for polymer manufacturing; TACB Rule 116.5, by failing to comply with the represented removal efficiency for the carbon adsorption device for the GUR unit; TACB Rule 115.116, by failing to maintain the temperature recorder for the hexane tank chiller; and TACB Rule 115.332(4) by failing to cap pipeline valves, Penalty: \$114,450, Staff Attorney: Bill

Zeis, (512) 908-1844, Regional Office: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4064.

Company: Jack Lane Used Cars, Location: Baytown, Harris County, Type of Facility: motor vehicle sales operation, Rule Violated: TACB Rule 114.1(c), offering for sale in the State of Texas motor vehicles which were not equipped with the emission control systems or devices with which the motor vehicles were originally equipped, Penalty: \$1,000, Staff Attorney: Walter Ehresman, (512) 908-1843, Regional Office: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4064.

Company: Koch Materials, Location: Pleasanton, Atascosa County, Type of Facility: emulsified asphalt plant, Rule Violated: TACB Rule 116.1, unauthorized modification of an emulsified asphalt plant, Penalty: \$1,000, Staff Attorney: David Todd, (512) 908-1851, Regional Office: 4335 Piedras West, Suite 101, San Antonio, Texas 78228, (210) 734-7981, (210) 734-7982.

Company: Pace Cleaners, Location: Carrollton, Dallas County, Type of Facility: dry cleaning facility, Rule Violated: TACB Rule 115.521, failing to vent the dryer exhaust to a properly functioning control device, Penalty: \$500, Staff Attorney: Walter Ehresman, (512) 908-1843, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531, (817) 732-5532.

Company: Pamarco, Incorporated, Location: Dallas, Dallas County, Type of Facility: printing press roller refurbishing plant, Rule Violated: TACB Rule 116.4 and Agreed Board Order Number 88-01(s), exceeding the maximum allowable daily usage rates for the metal spray operation for monel, stainless steel, and plasma powder, mandated in Special Provision Number 1 of TACB Permit Number S-18291, Penalty: \$10,500, Staff Attorney: Walter Ehresman, (512) 908-1843, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531, (817) 732-5532.

Company: Chris Pappas, Greg Pappas, Harris Pappas, and Pete H. Pappas, Location: Houston, Harris County, Type of Facility: a building, Rule Violated: TACB Rule 101.20(2), which requires compliance with Federal National Emissions Standards for Hazardous Air Pollutants (asbestos), Penalty: \$1,000, Staff Attorney: David Todd, (512) 908-1851, Regional Office: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4064.

Company: Phillips Petroleum Company, Location: Pasadena, Harris County, Type of Facility: petrochemical complex, Rule Violated: TACB Rule 101.20(1), which requires compliance with Federal New Source Performance Standards, (NSPS) regarding timely repair of leaking valves in gas/vapor and in light liquid service, Penalty: \$5,000, Staff Attorney: David Todd, (512) 908-1851, Regional Office: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4064.

Company: Richardson Independent School District, Location: Richardson, Dallas County, Type of Facility: asbestos abatement project, Rule Violated: TACB Rule 101.20(2), which requires compliance with the notification requirements of the Federal National Emissions Standards for Hazardous Air Pollutants (asbestos), Penalty: \$0.00, Staff Attorney: Walter Ehresman, (512) 908-1843, Regional Office: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531, (817) 732-5532.

Company: Shell Oil Company, Location: Deer Park, Harris County, Type of Facility: refinery/chemical plant, Rule

Violated: TACB Rule 101.20(1) and Agreed Board Order Number 91-04(z), failing to conduct performance tests on flares as required by applicable New Source Performance Standards, (NSPS) for equipment leaks; TACB Rule 101.20(2), which requires compliance with Federal National Emissions Standards for Hazardous Air Pollutants, (NESHAPS); TACB Rule 115.322(2), failing to promptly repair leaking valves; TACB Rule 120.11, which requires testing the waste feed to the hazardous waste incinerator for fluorine compounds, bromine compounds, or organic hazardous constituents, as required by Texas Water Commission, (TWC) Permit Number HW-50099-0011, paragraphs X.D.2 and X.D.3, Penalty: \$33,500, Staff Attorney: Bill Zeis, (512) 908-1844, Regional Office: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

Company: Texas Department of Transportation, Location: Houston, Harris County, Type of Facility: service station, Rule Violated: TACB Rule 101.20(2), which requires compliance with Federal National Emissions Standards for Hazardous Air Pollutants concerning notification of the demolition of buildings which may contain asbestos, Penalty: \$0.00, Staff Attorney: David Todd, (512) 908-1851, Regional Office: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4064.

Company: Touch Of Class Car Salon, Location: Houston, Harris County, Type of Facility: motor vehicle sales, Rule Violated: TACB Rule 114.1(c), offering for sale in the State of Texas motor vehicles which were not equipped with the emission control systems or devices with which the motor vehicles were originally equipped, Penalty: \$0.00 (Small Business Minor Source policy), Staff Attorney: Walt Ehresman, (512) 908-1843, Regional Office: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4064.

Company: United Collision Experts, Location: Austin, Travis County, Type of Facility: spray painting body shop, Rule Violated: TACB Rule 101.4, nuisance level odor emissions, Penalty: \$0.00, Staff Attorney: Scott Humphrey, (512) 908-1847, Regional Office: 500 Lake Air Drive, Suite 1, Waco, Texas 76710, (817) 772-9240, (817) 772-9241.

Company: Western Iron Works, Inc., Location: San Angelo, Tom Green County, Type of Facility: machine shop and foundry, Rule Violated: TACB Rule 101.4, nuisance level emissions, Penalty: \$21,000, Staff Attorney: Bill Zeis, (512) 908-1844, Regional Office: 1901 East 37th Street, Suite 101, Odessa, Texas 79762, (915) 367-3871, (915) 367-3872.

Issued in Austin, Texas, on April 5, 1993.

TRD-9321207

Lane Hartssock  
Deputy Director, Air Quality Planning  
Texas Air Control Board

Filed: April 5, 1993

## Texas Department of Banking Notice of Application

Texas Civil Statutes, Article 342-041a, requires any person who intends to buy control of a trust company to file an application with the Banking Commissioner for the Commissioner's approval to purchase control of a particular trust company. A hearing may be held if the application is denied by the Commissioner.

On March 30, 1993, the Banking Commissioner received an application to acquire control of Dawson Bancshares, Inc., Dawson, thereby acquiring control of First Bank and Trust Company, Dawson, by Charles F. Irvine, Corsicana.

Additional information may be obtained from: William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1317.

Issued in Austin, Texas, on March 30, 1993.

TRD-9321069 William F. Aldridge  
Director of Corporate Activities  
Texas Department of Banking

Filed: March 31, 1993

◆ ◆ ◆  
**Notice of Hearing**

The Hearing Officer of the Texas Department of Banking will conduct a hearing on April 20, 1993, 9:30 a.m. at 2601 North Lamar Boulevard, Austin on the denied application for a prepaid funeral sales permit for Sterling Funeral Directors, Inc., 302 North Ross, Tyler, Texas 75712.

Additional information may be obtained from D'Ann Johnson, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1302.

Issued in Austin, Texas, on March 31, 1993.

TRD-9321140 William F. Aldridge  
Director of Corporate Activities  
Texas Department of Banking

Filed: April 2, 1993

◆ ◆ ◆  
**Office of Consumer Credit  
Commissioner  
Notice of Rate Ceilings**

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Article 1.04, as amended (Texas Civil Statutes, Article 5069-1.04)

<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)	04/05/93-04/11/93	18.00%	18.00%
Monthly Rate - Art. 1.04 (c)(3)	04/01/93-04/30/93	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose. (3)For variable rate commercial transactions only.

Issued in Austin, Texas, on March 29, 1993.

TRD-9321094 Al Endsley  
Consumer Credit Commissioner

Filed: April 1, 1993

◆ ◆ ◆  
**Texas Education Agency  
Notice of Consultant Contract Award**

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Education Agency publishes this notice of consultant contract award. The consultant contract was granted an emergency waiver by the Governor of the 30-day RFP publication requirement of Article 6252-11c, §5, on February 19, 1993. The consultant is to conduct a study of the educational impact of the North American Free Trade Agreement (NAFTA) on the Texas border region.

The consultant selected to perform this study is the Intercultural Development Research Association (IDRA), 5835 Callaghan Road, Suite 350, San Antonio, Texas 78228. The maximum amount of this contract is \$19,290. The contract will begin on March 2, 1993, and will terminate on May 30, 1993.

At the conclusion of this project, the consultant will prepare a final report and submit same to the Texas Education Agency no later than May 30, 1993. The documentation of this report will include, but is not limited to

findings, conclusions, and recommendations reflective of the purpose of the study.

Issued in Austin, Texas, on April 1, 1993.

TRD-9321193 Lionel R. Meno  
Commissioner of Education  
Texas Education Agency (226)

Filed: April 5, 1993

◆ ◆ ◆  
**Texas Employment Commission  
Amendment to Request for Proposals**

The Texas Employment Commission posted a Request for Proposals for Dependent Care Development Grant Program funds which appeared in the March 26, 1993, issue of the *Texas Register* (18 TexReg 1966). An omission occurred in the paragraph headed Eligible Applicants. That paragraph should read as follows:

Eligible applicant organizations for these funds include local governments; regional councils; public or nonprofit private education institutions; and private nonprofit or private for-profit organizations. Applications from minority individuals and women are encouraged.

Also, the paragraph previous to that should have noted that one address given is for mailing purposes and one for delivery (street address) purposes. The applicable sentence should read as follows:

Applications may be mailed or delivered in person or by special delivery to one of the following addresses: mail to

Texas Employment Commission, Public/Private Sector Initiatives, 101 East 15th Street, Travis Building #209, Austin, Texas 78778; Deliver to Texas Employment Commission, Public/Private Sector Initiatives, 3520 Executive Center Drive, Suite 209, Austin, Texas 78731.

The anticipated length of the contract is from May 1, 1993 to September 30, 1993. In view of the above changes, the date for receipt of proposals is now extended to April 23, 1993. The anticipated date for completion of the selection process is April 30, 1993.

Issued in Austin, Texas, on April 5, 1993.

TRD-9321196

C. Ed Davis  
Deputy Administrator for Legal Affairs  
Texas Employment Commission

Filed: April 5, 1993

The Texas Employment Commission posted a Request for Proposals for Texas Work and Family funds which appeared in the March 26, 1993, issue of the *Texas Register* (18 TexReg 1968). An omission occurred in the paragraph headed Eligible Applicants. That paragraph should read as follows:

Eligible applicant organizations for these funds include local governments; regional councils; public or nonprofit education institutions; and private nonprofit or private for-profit organizations. Applications from minority individuals and women are encouraged.

Also, the paragraph previous to that should have noted that one address given is for mailing purposes and one for delivery (street address) purposes. The applicable sentence should read as follows:

Applications may be mailed or delivered in person or by special delivery to one of the following addresses: Mail to Texas Employment Commission, Public/Private Sector Initiatives, 101 East 15th Street, Travis Building #209, Austin, Texas 78778; Deliver to Texas Employment Commission, Public/Private Sector Initiatives, 3520 Executive Center Drive, Suite 209, Austin, Texas 78731.

The anticipated length of the contract is from May 1, 1993 to August 31, 1993. In view of the above changes, the date for receipt of proposals is now extended to April 23, 1993. The anticipated date for completion of the selection process is April 30, 1993.

Issued in Austin, Texas, on April 5, 1993.

TRD-9321195

C. Ed Davis  
Deputy Administrator for Legal Affairs  
Texas Employment Commission

Filed: April 5, 1993

## Texas Department of Health Correction of Error

The Texas Department of Health adopted on an emergency basis amendments to 25 TAC §98.104 and §98.105, concerning the Texas HIV Medication Program. The rules appeared in the March 30, 1993, *Texas Register* (18 TexReg 1983).

Due to a proofreading error by the *Texas Register* the Chapter heading incorrectly read "Subchapter 98." It

should read "Chapter 98." The rule was reprinted in the April 2, 1993, *Texas Register* (18 TexReg 2181).

## Women, Infants & Children (WIC) Marketing Study Request for Proposals

The consultant services described in this notice are necessary to the efficient functioning of the Texas WIC program and will be administered under the requirements of Texas Civil Statutes, Article 6252-11c. Payment for these services will be made from funds received from the federal government pursuant to a State of Texas request for such funds through a grant program

**Description:** The Texas Department of Health (TDH), Bureau of WIC Nutrition invites proposals from private consulting agencies to design and conduct a statewide marketing study of the Texas WIC program. Also, the proposal will specifically address utilization and non-utilization of WIC services by pregnant women on Medicaid and develop a strategy to increase participation in this group. The research, funded by the United States Department of Agriculture, will include: a review of recent literature, technical reports and national model programs; design of a research plan utilizing existing data, in-depth interviews, focus groups, questionnaires and surveys with WIC participants, staff, health providers, and other program partners; design and preparation of protocol for information collection; development of quantitative data collection instrument; and data analysis; production of a research summary and; a strategy formation session with WIC staff. The research and subsequent plan must support the WIC program in increasing the percentage of eligible families that enroll in the WIC program; enhance the ability of the WIC program to meet nutritional and educational needs of our program participants; improve program participants; satisfaction with the program and enhance job satisfaction among WIC's professional, clerical and administrative staff, and help to develop a permanent data collection system that will allow administrative staff to monitor client and staff needs.

**Selection procedure.** Interested contractors can obtain proposal submission instructions from TDH (see the following). Proposal evaluation criteria will include: experience in social marketing, experience in research, data collection and analysis, effectiveness and outcomes of past marketing studies; experience with state agency staff; knowledge of and experience with the WIC program; knowledge of and experience with a variety of ethnic groups, women, children in a public health setting; fiscal management and budget allocations. Proposals will be scored by TDH. Presentations will not be included in the selection process unless deemed necessary to break a tie.

**Dates and amount of contract.** The contract period will begin May 15, 1993, and will end September 30, 1993. The total amount of this contract will not exceed \$261,331.

**Contract and deadlines.** A request for proposal packet with proposal submission instructions, may be obtained by contacting: Marsha Walker, Texas Department of Health, Bureau of WIC Nutrition, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7444. Proposals must be received by TDH, Bureau of WIC Nutrition, no later than 5:30 p.m., Friday, April 23, 1993. For further information, please call (512) 458-7444, extension 3443.

Issued in Austin, Texas, on April 5, 1993.

TRD-8321212

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

Filed: April 5, 1993

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**Texas Department of Human Services  
Public Notice Open Solicitation**

Pursuant to Title 2, Chapters 22 and 32 of the Human Resources Code and 40 TAC §19.2004, in the September 11, 1990, issue of the *Texas Register* (15 TexReg 5315), the Texas Department of Human Services (TDHS) is announcing the reopening of the open solicitation period for Zapata County, County Number 253, identified in the December 18, 1992, issue of the *Texas Register* (17 TexReg 8977). Potential contractors desiring to construct a 90-bed nursing facility in the previously referenced areas must submit a written reply (as described in 40 TAC §19.2004) to TDHS, Gary L. Allen, Institutional Programs Section, Long-Term Care Department, Mail Code W-519, P.O. Box 149030, Austin, Texas 78714-9030. Upon receipt of a reply from a potential contractor, TDHS will place a notice in the *Texas Register* to announce the closing date of the reopened solicitation period.

Issued in Austin, Texas, on April 5, 1993.

TRD-8321180

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

Filed: April 5, 1993

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**Texas Public Finance Authority  
Correction of Error**

The Texas Public Finance Authority adopted new 34 TAC §§225.1, 225.3, 225.5, and 225.7, concerning the Master Lease Purchase Program. The rules appeared in the March 30, 1993, *Texas Register* (18 TexReg 2143).

Due to a typographical error by the *Texas Register* the reference in the heading and in the first paragraph incorrectly reads "255.7". The correct section number is "225.7".

◆ ◆ ◆  
**Public Utility Commission of Texas  
Notice of Application to Amend  
Certificate of Convenience and  
Necessity**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 22, 1993, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

**Docket Title and Number.** 11874-Application of Gulf States Utilities Company and Houston Lighting and Power Company to Amend Certificated Service Area Boundaries Within Harris County before the Public Utility Commission of Texas.

**The Application.** In Docket Number 11874, Gulf States Utilities Company and Houston Lighting and Power Company request approval of a joint application to amend certificated service area boundaries within Harris County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on April 1, 1993.

TRD-8321135

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

Filed: April 1, 1993

◆ ◆ ◆  
**Notices of Intent to File Pursuant to  
Public Utility Commission Substantive  
Rule 23.27**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for the Texas Department of Public Safety, Austin.

**Docket Title and Number.** Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for the Texas Department of Public Safety pursuant to Public Utility Commission Substantive Rule 23.27(k). Docket Number 11886.

**The Application.** Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for the Texas Department of Public Safety. The geographic service market for this specific service is the Austin area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on April 1, 1993.

TRD-8321133

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

Filed: April 1, 1993

◆ ◆ ◆  
Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for the Texas Rehabilitation Commission, Austin.

**Docket Title and Number.** Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for the Texas Rehabilitation Commission pursuant to Public Utility Commission Substantive Rule 23.27(k). Docket Number 11887.

**The Application.** Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for the Texas Rehabilitation Commission. The geographic service market for this specific service is the Austin area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on April 1, 1993.

TRD-9321134      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: April 1, 1993

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## Texas Racing Commission

### Correction of Errors

The Texas Racing Commission proposed an amendment to 16 TAC §301.1, concerning definitions, new §305.301, concerning interim license to conduct race meetings, and an amendment to §309.52, concerning change of ownership, board of directors, or management committee. The rules appeared in the March 30, 1993, *Texas Register* (18 TexReg 1987).

Due to errors by the agency and by the *Texas Register* corrections should be made as follows.

In §301.1(A), the reference to "1993" should read "1933". In §301.1(B) the reference to "Act, of 1940" should read "Act of 1940", and the second reference to "Act of 1940" in the fifth line should be deleted. In §301.1(J) the phrase "such as NASDAO" should read "(such as NASDAQ)".

In §305.301(c) "of" should be deleted in the third sentence. "The investigation fee is the amount needed by the commission to the costs incurred by...."

In §305.301(c)(3) the reference to "\$5,000" should read "500,000".

In §305.301(d) the word "holds" should read carries. "An interim license issue under this section carries all the privileges...."

In §309.52(d)(1)(B) the word "provides" should be in lower case type.

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## Railroad Commission of Texas

### Invitation for Bids

The Railroad Commission of Texas, Surface Mining and Reclamation Division (hereinafter referred to as the commission), is soliciting bids for regrading (Phase I) of approximately 100 acres at the Smith Abandoned Mine Land (AML) site. The site is located in Live Oak County, three miles east of Ray Point, off FM 1358.

The Smith AML Regrade Project, Phase I will regrade and recontour spoil piles and partially regrade the highwall at the Smith Abandoned Uranium Mine. The remaining highwall grading will be bid at a later date as part of the Smith AML Regrade Project, Phase II.

As the designated state agency for implementation of the "Surface Mining Control and Reclamation Act of 1977" (30 United States Code, §1201 et seq), the commission will award a unit price contract to the lowest and best bidder for completion of this work. Sealed bids will be

received until 2 p.m., May 18, 1993, at which time the bids will be publicly opened and read at the address given below. A mandatory pre-bid conference will be held at the site at 10 a.m., April 20, 1993. Construction work items will include: mobilization; clearing and grubbing; topsoil handling; earthwork; water control structures; erosion repair; special handling of unsuitable spoil materials.

Copies of the specifications, drawings, and other contract documents are on file in Austin at the address shown below. The complete bid package may be obtained for \$15 from the following mailing address: Smith AML Regrade Project, Phase I; Surface Mining and Reclamation Division; Railroad Commission of Texas; P.O. Box 12967; Austin, Texas 78711-2967; Attention: Melvin B. Hodgkiss, P.E., Director. All questions concerning the work or bid document must be received by 5 p.m., April 30, 1993.

Issued in Austin, Texas, on April 2, 1993.

TRD-9321160      Mary Ross McDonald  
Assistant Director, Legal Division-Gas  
Utilities/LP Gas  
Railroad Commission of Texas

Filed: April 2, 1993

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## South Plains Association of Governments

### Consultant Proposal Request

The South Plains Association of Governments (SPAG) announces its Consultant Proposal Request pursuant to Texas Civil Statutes, Article 6252-11c, under the negotiation method to perform auditing. SPAG is soliciting proposals to perform services which will include five annual audits in accordance with the provisions of the Single Audit Act.

Detailed information regarding the project is set forth in the Request for Proposal Instructions which will be available on or after April 5, 1993, and may be obtained by contacting Debra Crowder, CPA, Director of Finance, South Plains Association of Governments, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452-3730.

The deadline for submission of proposals in response to this request will be 5 p.m., on Friday, May 14, 1993.

SPAG reserves the right to accept or reject any or all proposals submitted. SPAG is under no legal requirement to execute a resulting contract on the basis of this advertisement and intends the materials provided only as a means of identifying the various contractual alternatives. SPAG will base its choice on demonstrated competence, qualifications, and evidence of superior conformance with criteria.

This RFP does not commit SPAG to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates SPAG to award a contract or pay any costs incurred in the preparation of a response. SPAG specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where SPAG feels it to be its own best interest.

Issued in Austin, Texas, on April 2, 1993.

TRD-9321197      Jerry D. Casstevens  
Executive Director  
South Plains Association of Governments

Filed: April 5, 1993

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**Texas Department of Transportation,  
Division of Aviation**

**Notice of Contract Award**

Under the provisions of the Texas Civil Statutes, Article 664-4, the Texas Department of Transportation publishes this notice of a consultant contract award for providing professional engineering services.

The request for qualifications for professional engineering services was published in the September 4, 1992, issue of the *Texas Register* (17 TexReg 6118).

The consultant will provide professional engineering services for the design and construction administration phases for the following TxDOT Project: #94-16-061, Monahans-Roy Hurd Memorial Airpark.

The engineering firm for these services is: Freese and Nichols, Inc., 4055 International Plaza, Suite 200, Fort Worth, Texas 76109-4895.

The total value of the contract is \$42,378 and the contract period starts on March 31, 1993, until the completion of the project.

Issued in Austin, Texas, on April 1, 1993.

TRD-9321177

Diane L. Northam  
Legal Administrative Assistant  
Texas Department of Transportation,  
Division of Aviation

Filed: April 2, 1993

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**Texas Water Commission**  
**Notice of Application For Waste  
Disposal Permit**

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of March 29th-April 2, 1993.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7906.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the

facility, permit number, and type of application—new permit, amendment, or renewal.

AMOCO Chemical Company; a polypropylene plant; the plant site is on the north side of Interstate 10, approximately one-half mile west of Cedar Bayou, north of the City of Baytown in Harris County; renewal; 02766.

BICC Cables Incorporation; an aluminum wire drawing and insulating plant; the plant site is at the intersection of U.S. Highway 80 and FM 2199, approximately eight miles east of the City of Marshall, Harrison County; renewal; 01270.

Booker Custom Packing Company, Inc.; a slaughter house/meat packing plant; the plant site is at 910 East Industrial, adjacent to the south side of State Highway 15 and approximately 0.3 mile east of the intersection of State Highway 15 and FM Road 1265 in the City of Booker, Lipscomb County; renewal; 02757.

City of Breckenridge; the Breckenridge Wastewater Treatment Plant; is approximately 6,000 feet north-northeast of the intersection of U.S. Highways 180 and 183, at a point approximately 1,000 feet east of U.S. Highway 183 in Stephens County; amendment; 10040-01.

Dumas Cattle Feeders, Inc.; the feedlot; The feedlot is on the west side of U.S. Highway 287, at the intersection of U.S. Highway 287 and FM Road 119 in Moore County; amendment; 01532.

Four-K Houston Property Company, Brookshire Plant; its formulation plant for solvents, photoprocessing and water treatment chemicals, and other chemical products; the plant site is at 3001 Katy-Brookshire Road, about four miles west of Katy, 1/4 mile south of intersection of U.S. Highway 90 and FM 2855 in Waller County; renewal; 02416.

Hung's Shrimp Farm, Inc.; a mariculture facility to rear shrimp for human consumption; The plant site is at the southeast corner of the intersection of FM 2925 and FM 1847, near the City of Arroyo City, Cameron County; new; 03457.

Hafliger Dairy; a dairy; the dairy is on the west side of FM Road 1057, approximately three miles north of the intersection of FM Road 1057 and FM Road 1058 in Deaf Smith County; new; 03586.

Koswood, Inc., doing business as Harborlight Campground; the wastewater treatment facilities; the plant site is on the east side of FM Road 3121 at a point approximately 2.5 miles north of the intersection of FM Roads 3121 and 83 in Sabine County; renewal; 11432-01.

Lake Travis Independent School District; the wastewater treatment facility and subsurface disposal site; are west of Ranch Road 620, approximately two miles north-northwest of the intersection of Ranch Road 620 and State Highway 71 in Travis County; renewal; 12920-01.

City of Palestine; the Town Creek Wastewater Treatment Facilities; the plant site is approximately four miles southwest of the intersection of State Highway 256 and U.S. Highway 84-79 at the confluence of Basset Creek and Town Creek southwest of the City of Palestine in Anderson County; renewal; 10244-01.

Ridge Harbor Utility Company; the Ridge Harbor Subdivision wastewater treatment facility and subsurface irrigation site; are approximately two and 3/4 miles northeast of the intersection of State Highway 71 and State Highway Loop 191 in Burnet County; new; 13631-01.



Rollins Environmental Services (Tx), Inc.; an industrial and hazardous waste disposal facility; the plant site is at 2027 Battleground Road, south of Tidal Road, west of State Highway 134 and east of and adjacent to Tucker Bayou in the City of Deer Park in Harris County; amendment; 01429.

John Roof; a dairy; the dairy is on the west side of County Road 1226, approximately four miles north of the intersection of County Road 1226 and State Highway 67 in Johnson County; minor amendment; 03277.

Schlumberger Technology Corporation; the Sandy Point Wastewater Treatment Plant; the plant site is approximately 13.2 miles west-southwest of the City of Alvin, approximately 1.3 miles north of FM Road 1462 and 1.6 miles northeast of the intersection of FM Road 1462 and FM Road 521, near the intersection of Brazoria County Roads Number 48 and 52, in Brazoria County; renewal; 12062-01.

City of Sulphur Springs; the wastewater treatment facility; are south of the St. Louis Southwestern Railroad approximately 7,000 feet northeast of the intersection of Interstate Highway 30 and FM Road 1870 in Hopkins County; renewal; 10372-01.

Star Dairies, Inc.; the dairy; is on the south side of FM Road 3426 approximately one mile east of the intersection of FM Road 1497 and FM Road 3426 in Lamar County; amendment; 03346.

Texas A&M University, Physical Plant Department; the West Campus Utilities Plant Number Two which produces 4,000 tons of chilled water used for air conditioning; the plant site is within the West Campus area west of Wellborn Road and north of Highway 60, just north of the Veterinary Medicine Complex in the City of College Station, Brazos County; renewal; 02969.

City of Wellman; the wastewater treatment facility will serve the City of Wellman; the wastewater treatment facility and irrigation site are located approximately 0.25 mile north and 1.2 miles east of the City of Wellman in Terry County; new; 13642-01.

Windermere Utility Company, Inc.; the Windermere Wastewater Treatment Facilities; are approximately 5,800 feet northwest of the intersection of Pflugerville Loop and FM Road 1825 and on the east bank of Gilleland Creek in Travis County; renewal; 11931-01.

Issued in Austin, Texas, on April 2, 1993.

TRD-9321206

Gloria A. Vasquez  
Chief Clerk  
Texas Water Commission

Filed: April 5, 1993

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**Texas Youth Commission**  
**Inpatient Psychiatric Hospital Treatment**

The Texas Youth Commission (TYC) is requesting written proposals for inpatient psychiatric services to serve youth of the Texas Youth Commission in a psychiatric hospital setting.

**Description.** The Inpatient Psychiatric Hospital Treatment will provide services for both male and female youth with psychiatric hospitals for the evaluation/assessment of youth, the stabilization of emotionally disturbed youth, and for youth who have threatened and/or attempted suicide.

Eligible applicants include corporations, private non-profit agencies, private for profit agencies or individuals. The Texas Youth Commission encourages historically under-utilized businesses as defined in Article V, §106 of the current Appropriations Act (Acts 1992, 72nd Legislature, First Called Session, Chapter 19, page 1242) to respond to this request for proposal. Multiple contracts may be awarded. Bids must be received no later than 5 p.m. on April 30, 1993.

**Evaluation and Selection.** Proposals will be evaluated and selections based on the program description of services, applicant's qualifications and past experience, reasonableness and competitiveness of cost and resources demonstrating ability of applicant to commence immediate services.

**Contact Person.** Bid packets and information may be obtained from Paula Morelock, Chief of Community Placement, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, (512) 483-5093.

**Closing Date.** The closing date for receipt of proposals is April 30, 1993, at 5 p.m.

Issued in Austin, Texas, on March 29, 1993.

TRD-9321060

Ron Jackson  
Executive Director  
Texas Youth Commission

Filed: March 31, 1993

# 1993 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1993 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on July 30, November 5, November 30, and December 28. A asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 Friday, January 1	Monday, December 28	Tuesday, December 29
2 Tuesday, January 5	Wednesday, December 30	Thursday, December 31
3 Friday, January 8	Monday, January 4	Tuesday, January 5
4 Tuesday, January 12	Wednesday, January 6	Thursday, January 7
5 Friday, January 15	Monday, January 11	Tuesday, January 12
6 Tuesday, January 19	Wednesday, January 13	Thursday, January 14
Friday, January 22	1992 ANNUAL INDEX	
7 Tuesday, January 26	Wednesday, January 20	Thursday, January 21
8 Friday, January 29	Monday, January 25	Tuesday, January 26
9 Tuesday, February 2	Wednesday, January 27	Thursday, January 28
10 Friday, February 5	Monday, February 1	Tuesday, February 2
11 Tuesday, February 9	Wednesday, February 3	Thursday, February 4
12 Friday, February 12	Monday, February 8	Tuesday, February 9
13 Tuesday, February 16	Wednesday, February 10	Thursday, February 11
14 *Friday, February 19	Friday, February 12	Tuesday, February 16
15 Tuesday, February 23	Wednesday, February 17	Thursday, February 18
16 Friday, February 26	Monday, February 22	Tuesday, February 23
17 Tuesday, March 2	Wednesday, February 24	Thursday, February 25
18 Friday, March 5	Monday, March 1	Tuesday, March 2
19 Tuesday, March 9	Wednesday, March 3	Thursday, March 4
20 Friday, March 12	Monday, March 8	Tuesday, March 9
21 Tuesday, March 16	Wednesday, March 10	Thursday, March 11
22 Friday, March 19	Monday, March 15	Tuesday, March 16
23 Tuesday, March 23	Wednesday, March 17	Thursday, March 18
24 Friday, March 26	Monday, March 22	Tuesday, March 23
25 Tuesday, March 30	Wednesday, March 24	Thursday, March 25
26 Friday, April 2	Monday, March 29	Tuesday, March 30
27 Tuesday, April 6	Wednesday, March 31	Thursday, April 1
28 Friday, April 9	Monday, April 5	Tuesday, April 6
29 Tuesday, April 13	Wednesday, April 7	Thursday, April 8
Friday, April 16	FIRST QUARTERLY INDEX	
30 Tuesday, April 20	Wednesday, April 14	Thursday, April 15

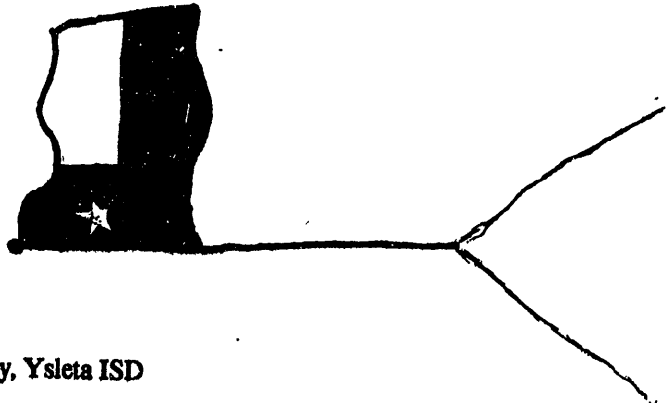
31 Friday, April 23	Monday, April 19	Tuesday, April 20
32 Tuesday, April 27	Wednesday, April 21	Thursday, April 22
33 Friday, April 30	Monday, April 26	Tuesday, April 27
34 Tuesday, May 4	Wednesday, April 28	Thursday, April 29
35 Friday, May 7	Monday, May 3	Tuesday, May 4
36 Tuesday, May 11	Wednesday, May 5	Thursday, May 6
37 Friday, May 14	Monday, May 10	Tuesday, May 11
38 Tuesday, May 18	Wednesday, May 12	Thursday, May 13
39 Friday, May 21	Monday, May 17	Tuesday, May 18
40 Tuesday, May 25	Wednesday, May 19	Thursday, May 20
41 Friday, May 28	Monday, May 24	Tuesday, May 25
42 Tuesday, June 1	Wednesday, May 26	Thursday, May 27
43 *Friday, June 4	Friday, May 28	Tuesday, June 1
44 Tuesday, June 8	Wednesday, June 2	Thursday, June 3
45 Friday, June 11	Monday, June 7	Tuesday, June 8
46 Tuesday, June 15	Wednesday, June 9	Thursday, June 10
47 Friday, June 18	Monday, June 14	Tuesday, June 15
48 Tuesday, June 22	Wednesday, June 16	Thursday, June 17
49 Friday, June 25	Monday, June 21	Tuesday, June 22
50 Tuesday, June 29	Wednesday, June 23	Thursday, June 24
51 Friday, July 2	Monday, June 28	Tuesday, June 29
52 Tuesday, July 6	Wednesday, June 30	Thursday, July 1
53 Friday, July 9	Monday, July 5	Tuesday, July 6
Tuesday, July 13	SECOND QUARTERLY INIDEX	
54 Friday, July 16	Monday, July 12	Tuesday, July 13
55 Tuesday, July 20	Wednesday, July 14	Thursday, July 15
56 Friday, July 23	Monday, July 19	Tuesday, July 20
57 Tuesday, July 27	Wednesday, July 21	Thursday, July 22
Friday, July 30	NO ISSUE PUBLISHED	
58 Tuesday, August 3	Wednesday, July 28	Thursday, July 29
59 Friday, August 6	Monday, August 2	Tuesday, August 3
60 Tuesday, August 10	Wednesday, August 4	Thursday, August 5
61 Friday, August 13	Monday, August 9	Tuesday, August 10
62 Tuesday, August 17	Wednesday, August 11	Thursday, August 12
63 Friday, August 20	Monday, August 16	Tuesday, August 17
64 Tuesday, August 24	Wednesday, August 18	Thursday, August 19
65 Friday, August 27	Monday, August 23	Tuesday, August 24
66 Tuesday, August 31	Wednesday, August 25	Thursday, August 26
67 Friday, September 3	Monday, August 30	Tuesday, August 31
68 Tuesday, September 7	Wednesday, September 1	Thursday, September 2
69 *Friday, September 10	Friday, September 3	Tuesday, September 7

70 Tuesday, September 14	Wednesday, September 8	Thursday, September 9
71 Friday, September 17	Monday, September 13	Tuesday, September 14
72 Tuesday, September 21	Wednesday, September 15	Thursday, September 16
73 Friday, September 24	Monday, September 20	Tuesday, September 21
74 Tuesday, September 28	Wednesday, September 22	Thursday, September 23
75 Friday, October 1	Monday, September 27	Tuesday, September 28
76 Tuesday, October 5	Wednesday, September 29	Thursday, September 30
77 Friday, October 8	Monday, October 4	Tuesday, October 5
Tuesday, October 12	THIRD QUARTERLY INDEX	
78 Friday, October 15	Monday, October 11	Tuesday, October 12
79 Tuesday, October 19	Wednesday, October 13	Thursday, October 14
80 Friday, October 22	Monday, October 18	Tuesday, October 19
81 Tuesday, October 26	Wednesday, October 20	Thursday, October 21
82 Friday, October 29	Monday, October 25	Tuesday, October 26
83 Tuesday, November 2	Wednesday, October 27	Thursday, October 28
Friday, November 5	NO ISSUE PUBLISHED	
84 Tuesday, November 9	Wednesday, November 3	Thursday, November 4
85 Friday, November 12	Monday, November 8	Tuesday, November 9
86 Tuesday, November 16	Wednesday, November 10	Thursday, November 11
87 Friday, November 19	Monday, November 15	Tuesday, November 16
88 Tuesday, November 23	Wednesday, November 17	Thursday, November 18
89 Friday, November 26	Monday, November 22	Tuesday, November 23
Tuesday, November 30	NO ISSUE PUBLISHED	
90 Friday, December 3	Monday, November 29	Tuesday, November 30
91 Tuesday, December 7	Wednesday, December 1	Thursday, December 2
92 Friday, December 10	Monday, December 6	Tuesday, December 7
93 Tuesday, December 14	Wednesday, December 8	Thursday, December 9
94 Friday, December 17	Monday, December 13	Tuesday, December 14
95 Tuesday, December 21	Wednesday, December 15	Thursday, December 16
96 Friday, December 24	Monday, December 20	Tuesday, December 21
Tuesday, December 28	NO ISSUE PUBLISHED	

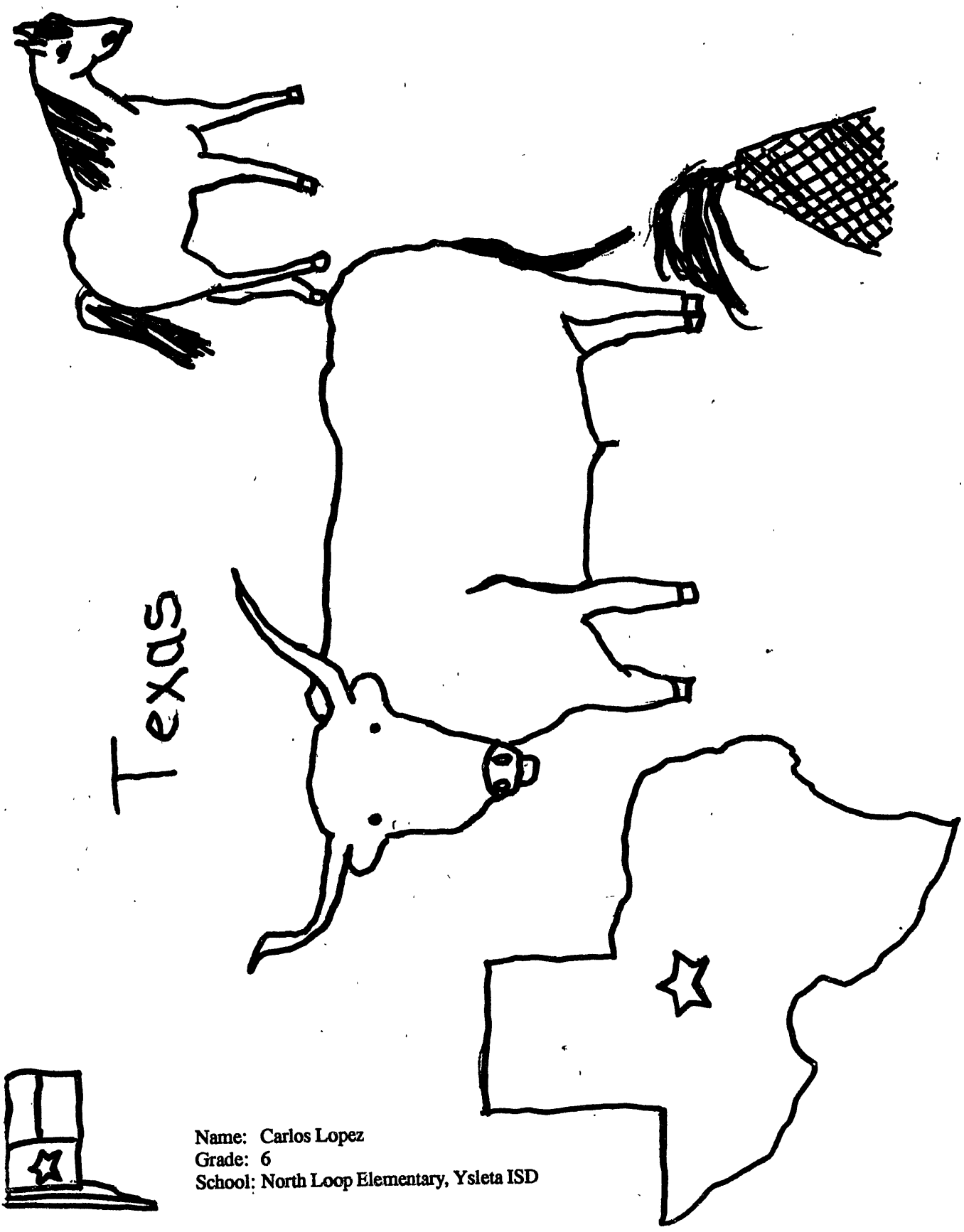
THE LONE STAR



STATE



Name: Albert Sandoval  
Grade: 6  
School: North Loop Elementary, Ysleta ISD



Name: Carlos Lopez  
Grade: 6  
School: North Loop Elementary, Ysleta ISD

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