

# Texas Register

Volume 18, Number 60, August 10, 1993

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Due to an error on the part of the Texas Register, TAC Titles Affected was left out of the August 6, 1993 issue.

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## Texas Register



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**Withdrawn Sections** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after the proposal publication date.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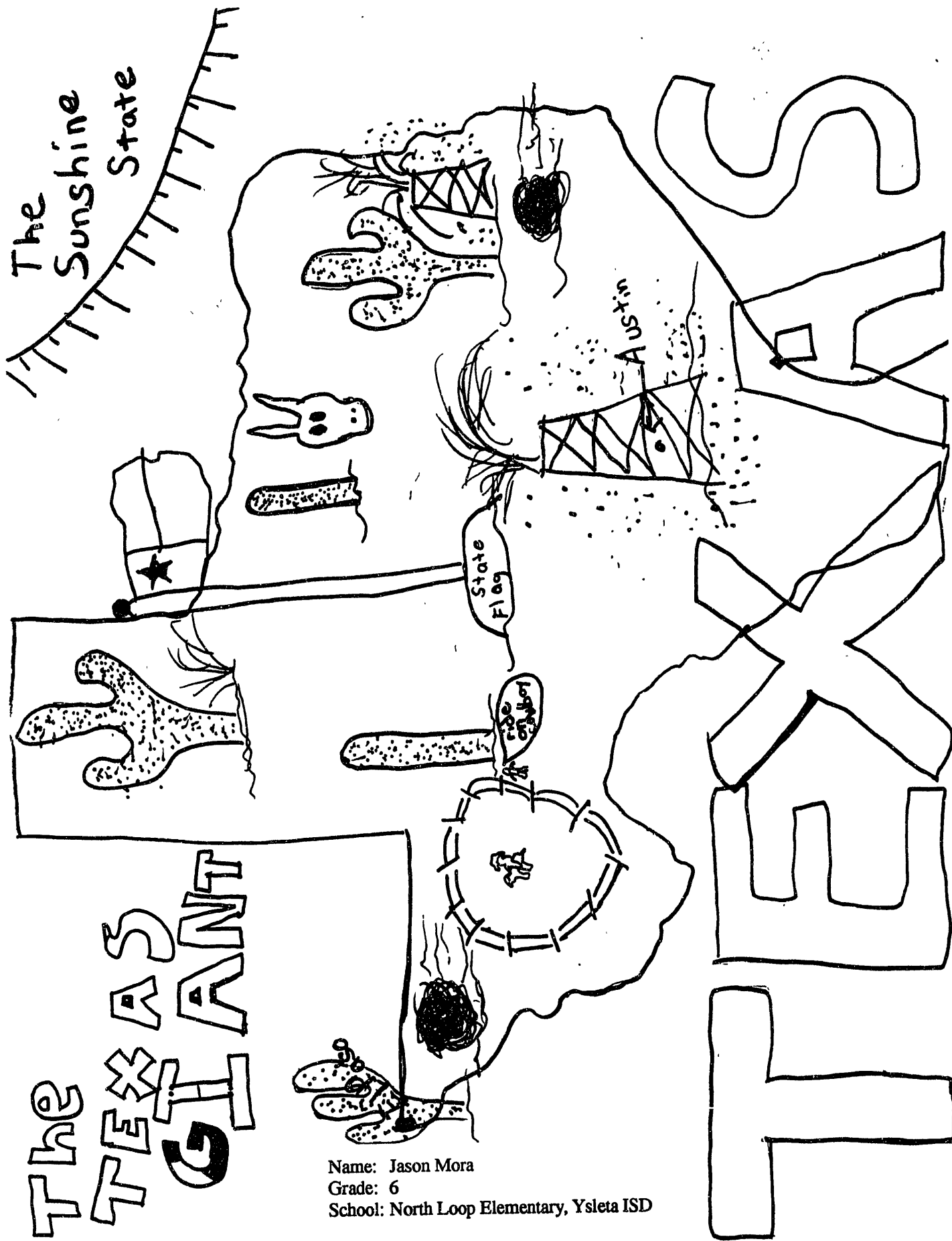
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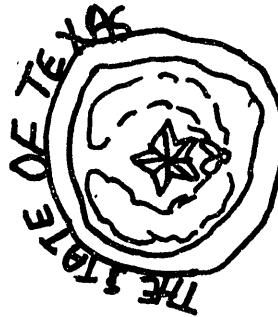
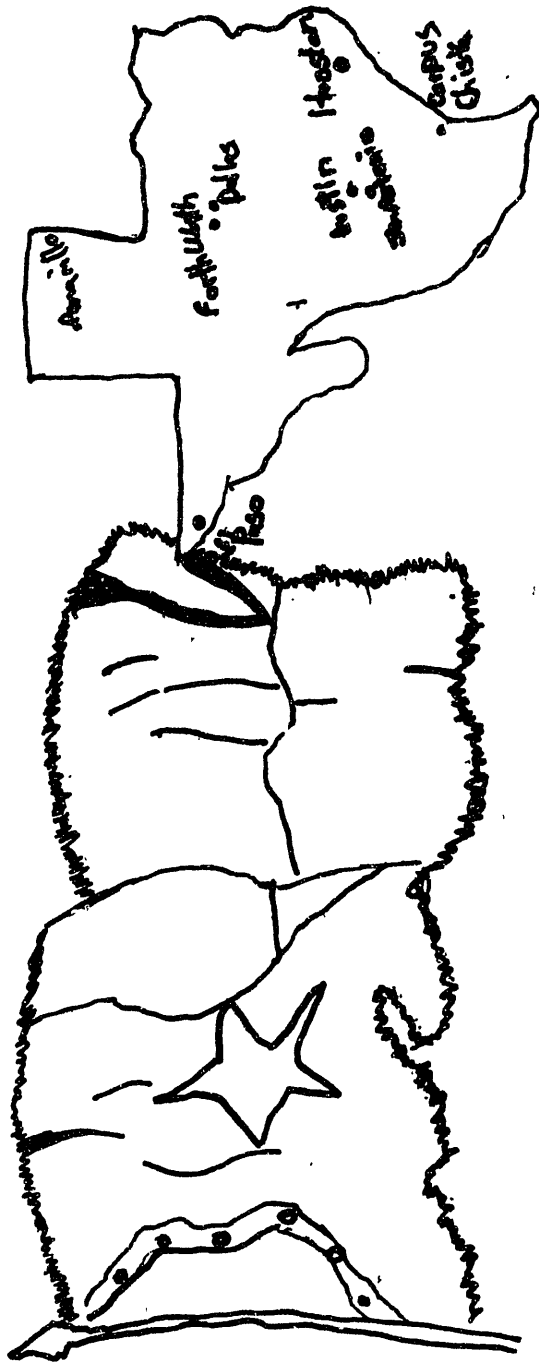
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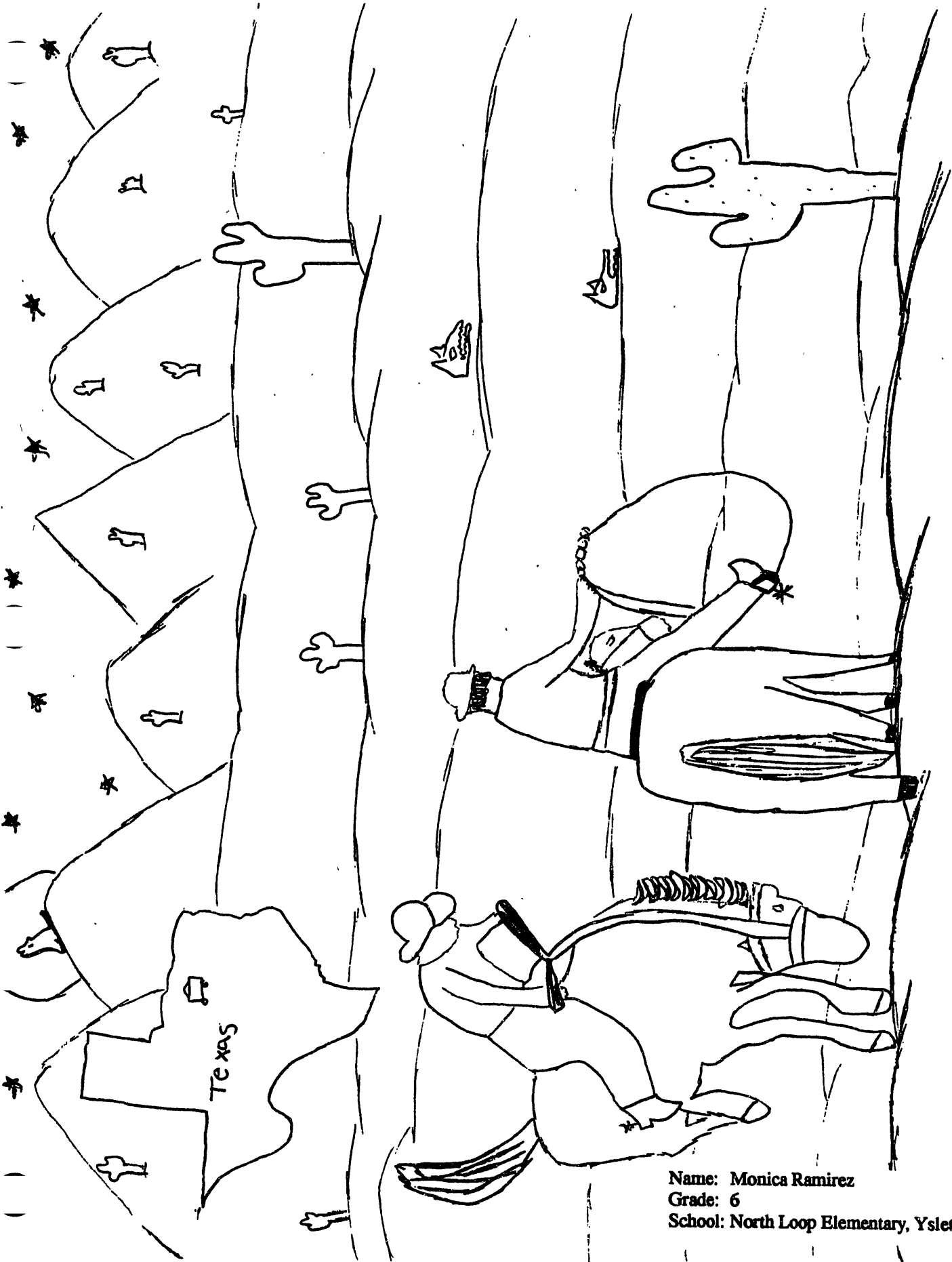


Name: Jason Mora  
Grade: 6  
School: North Loop Elementary, Ysleta ISD

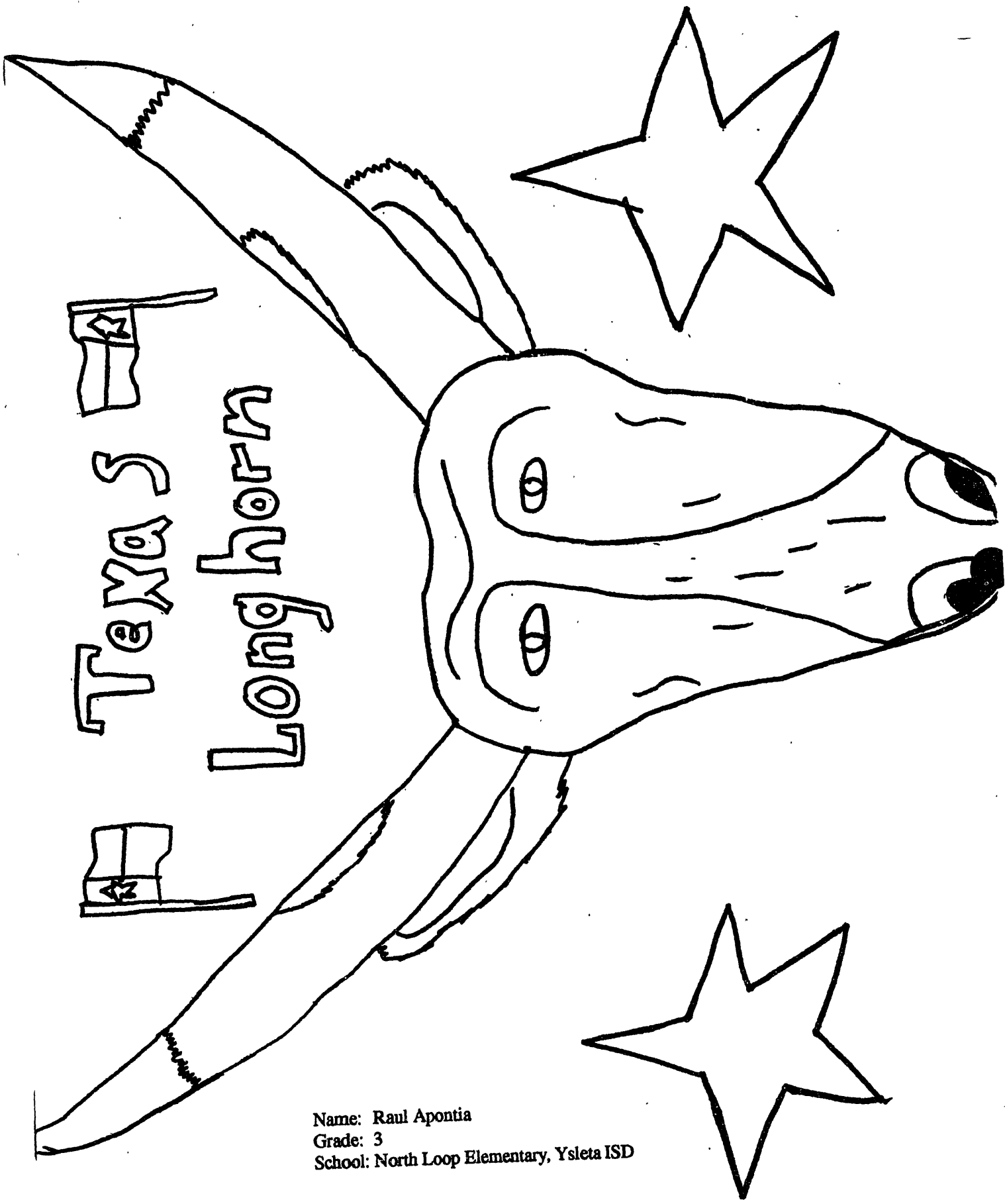


Name: Alex Torres  
Grade: 6  
School: North Loop Elementary, Ysleta ISD





Name: Monica Ramirez  
Grade: 6  
School: North Loop Elementary, Ysleta ISD



Name: Raul Apontia  
Grade: 3  
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 25. HEALTH SERVICES

### Part II. Texas Department of Mental Health and Mental Retardation

#### Chapter 405. Client (Patient) Care

##### Subchapter D. Comprehensive Diagnosis and Evaluation

###### • 25 TAC §§405.81-405.92

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts on an emergency basis the repeal of existing §§405.81-405.92 of Chapter 405, Subchapter D, concerning comprehensive diagnosis and evaluation. The sections are replaced by new §§405.81-405.92 of Chapter 405, Subchapter D, concerning determination of mental retardation and appropriateness for admission to mental retardation services, which are contemporaneously adopted on an emergency basis and proposed for public comment in this issue of *Texas Register*. In addition, the repeal of existing §§405.81-405.92 of Chapter 405, Subchapter D, concerning comprehensive diagnosis and evaluation is simultaneously proposed for public comment in this issue of the *Texas Register*.

The purpose of the repeal is to permit the adoption of new rules which comply with provisions of House Bill 771 of the 73rd Texas Legislature which amends portions of the Texas Health and Safety Code, Title 7, Subtitle D (Persons with Mental Retardation Act).

The repeals are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, §5(d), which provide emergency rulemaking powers, and under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Mental Health and Mental Retardation Board with rulemaking authority.

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§405.82. Application.

§405.83. Definitions.

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§405.86. Certification of Professionally Qualified Members of a Diagnosis and Evaluation Team.

§405.87. Minimum Components of a Comprehensive Diagnosis and Evaluation.

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§405.90. List of Certified Facilities.

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Issued in Austin, Texas, on July 29, 1993.

TRD-9326611

Ann Utley  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Effective date: September 1, 1993

Expiration date: December 31, 1993

For further information, please call: (512) 465-4670

##### Subchapter D. Determination of Mental Retardation and Appropriateness for Admission to Mental Retardation Services

###### • 25 TAC §§405.81-405.92

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts on an emergency basis new §§405.81-405.92 of Chapter 405, Subchapter D, concerning determination of mental retardation and appropriateness for admission to mental retardation services. The emergency rules replace existing §§405.81-405.92 of Chapter 405, Subchapter D, concerning comprehensive diagnosis and evaluation, which are simultaneously repealed on an emergency basis in this issue of *Texas Register*. Also published

simultaneously in this issue of the *Texas Register* is the proposal for public comment of new §§405.81-405.92 of Chapter 405, Subchapter D, concerning determination of mental retardation and appropriateness for admission to mental retardation services, and the proposed repeal of existing §§405.81-405.92 of Chapter 405, Subchapter D, concerning comprehensive diagnosis and evaluation.

The purpose of the emergency adoption is to comply with provisions of House Bill 771 of the 73rd Texas Legislature which amends portions of the Texas Health and Safety Code, Title 7, Subtitle D (Persons with Mental Retardation Act), with an effective date of September 1, 1993. House Bill 771 requires the department to do away with comprehensive diagnosis and evaluations as the basis for admission into mental retardation services provided by community mental health and mental retardation centers and state facilities. Instead, a person seeking services must have a determination of mental retardation which can be performed by a physician or psychologist licensed to practice in Texas or by a psychologist certified by the department.

House Bill 771 also amends the Texas Health and Safety Code to: require that an individual may not be admitted or committed to a residential care facility unless there is a determination of mental retardation and an interdisciplinary team makes a recommendation for the placement; permit an emergency admission to a residential care facility provided that both a determination of mental retardation and an IDT recommendation for the placement are forthcoming no later than 30 days after the admission; permit an individual to receive emergency services provided the services are available, the individual has an urgent need for those services, and a determination of mental retardation is performed within 30 days after the emergency services begin; and permit admission into a residential care facility for respite care without a determination of mental retardation under certain conditions. HB 771 also requires that a person may not be committed to a residential care facility unless the IDT report recommending the placement has been completed during the six months preceding the date of the court hearing.

The new rules outline the procedures for implementing the provisions of HB 771 cited previously and also describe: the criteria for the certification of psychologists by the department; the various assessments that are to be performed based on the type of services requested; and a requirement that a person requesting admission to services receive a determination of appropriateness for mental

retardation services that is in compliance with the TXMHMR Community Standards for Mental Retardation Services.

The rules are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, §5(d), which provide emergency rulemaking powers, and under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Mental Health and Mental Retardation Board with rulemaking authority.

**§405.81. Purpose.** The purpose of this subchapter is to: establish criteria for the certification of psychologists as provide required in the Texas Health and Safety Code, Title 7, §593.005; establish the criteria and format for determinations of mental retardation as required by the Texas Health and Safety Code, Title 7, §593.004; and describe the process for determining the appropriateness of admission of an individual applying for mental retardation services.

**§405.82. Application.** The provisions of this subchapter apply to:

- (1) facilities of the Texas Department of Mental Health and Mental Retardation which provide services to individuals with mental retardation;
- (2) community mental health and mental retardation centers in their role as mental retardation authorities;
- (3) physicians and psychologists licensed by the state who make determinations of mental retardation; and
- (4) psychologists employed by a community center or facility who seek certification by the department.

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

**Adaptive behavior**—The effectiveness with or degree to which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group.

**Admissions team**—A group of professionals as specified by the TXMHMR Community Standards for Mental Retardation Services whose function is to determine the appropriateness of admissions of individuals into mental retardation services.

**Community Center**—A community mental health and mental retardation center established under the Texas Health and Safety Code, Title 7, Chapter 534.

**Department**—The Texas Department of Mental Health and Mental Retardation.

**Deputy commissioner**—The deputy commissioner for Mental Retardation Services.

**Determination of mental retardation**—A determination that an individual

meets the criteria for a diagnosis of mental retardation based on an interview with the individual and a professional assessment that employs diagnostic techniques adapted to that individual's cultural background, language, ethnic origins, and physical or sensory disabilities.

**Diagnostic services**—As specified in 42 Code of Federal Regulations (CFR) 440.130(a), any medical procedures or supplies recommended by physicians or other licensed practitioners of the healing arts, within the scope of their practice under state law, to enable them to identify the existence, nature, or extent of illness, injury, or other health deviation in a recipient.

**Facility**—A state school, state hospital, or state center of the Texas Department of Mental Health and Mental Retardation which provides mental retardation services.

**Interdisciplinary team (IDT)**—A group of mental retardation professionals and paraprofessionals plus the individual with mental retardation and other concerned persons who assess the treatment, training, and habilitation needs of the individual and make recommendations for services.

**Mental retardation**—Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period (birth to 18 years of age.)

**Mental retardation services**—Programs and assistance provided or contracted by a community center or facility for individuals with mental retardation that may include a determination of mental retardation, interdisciplinary team recommendations, education, special training, supervision, care, treatment, rehabilitation, residential care, and counseling, but does not include those services or programs that have been explicitly delegated by law to other state agencies.

**Residential care facility**—A facility for more than 15 individuals with mental retardation which is operated by the department or a community center and provides 24-hour domiciliary services, including services directed toward enhancing the health, welfare, and development of the residents.

**Subaverage general intellectual functioning**—Measured intelligence on standardized general intelligence tests of two or more standard deviations below the age-group mean for the tests used.

**§405.84. Certification of Psychologists by the Department.**

(a) A person seeking certification as a psychologist by the department for the purpose of making determinations of mental retardation must:

- (1) be employed by a community center or facility;
- (2) have a master's degree in

psychology from an accredited university;

(3) produce evidence of graduate course work in individual intellectual assessment;

(4) have supervised experience in adaptive behavior assessment; and

(5) have one year's experience in mental retardation.

(b) Documentation of the credentials described in subsection (a) of this section shall be submitted along with a letter requesting certification to the deputy commissioner at the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668.

**§405.85. Determination of Mental Retardation.**

(a) The first stage in determining an individual's appropriateness for admission to a community center or facility is a determination of mental retardation as described in the Texas Health and Safety Code, Title 7, §593.005. Written application for the determination may be submitted by the individual believed to have mental retardation, the parent of the individual who is a minor, or the guardian of the individual, as appropriate.

(b) A determination may be made by a:

(1) physician or psychologist licensed to practice in Texas; or

(2) psychologist at a community center or facility who is certified by the department as described in §405.84 of this subchapter (relating to Certification of Psychologists by the Department).

(c) The physician or psychologist may use a previous assessment from a school district, public or private agency, or another physician or psychologist if the physician or psychologist making the determination considers the assessment to be valid.

(d) If the individual for whom a determination of mental retardation is being sought is indigent, the assessment shall be performed at the expense of the community center or facility.

(e) A determination of mental retardation must be made using the Determination of Mental Retardation Report (Psychological Assessment) format which is described in §405.90(1) of this subchapter (relating to Report Formats). Each component listed in the format must be addressed.

(f) A written report of the determination of mental retardation shall be sent within 30 calendar days to the person who requested the determination.

(g) When mental retardation ser-

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vices are requested, a psychologist employed at a community center or facility shall:

(1) endorse the determination made by a licensed physician or psychologist; or

(2) conduct the necessary assessments to make a determination of mental retardation. The psychologist may base the determination on assessments performed by a school district, or a public or private agency.

(h) The psychologist employed by the community center or facility shall document that the criteria for a diagnosis of mental retardation has been met as described in the definition of mental retardation in §405.83 of this subchapter (relating to Definitions) and that all the components in the Determination of Mental Retardation Report (Psychological Assessment) format, which is described in §405.90(1) of this subchapter (relating to Report Formats), have been addressed.

(i) If a determination of mental retardation is contested by the community center or facility staff, arrangements shall be made to conduct further assessments as to whether the individual has mental retardation. If the individual is determined not to have mental retardation, access to services may be denied.

(j) An individual seeking services, the parent of an individual who is a minor, or the guardian of an individual, as appropriate, shall be informed of the right to have the determination of mental retardation conducted independently of the community center or facility as described in subsection (b)(1) of this section.

(k) The individual seeking services, the parent of the individual who is a minor, or the guardian of the individual, as appropriate, shall be informed of the right to an administrative hearing to contest a determination of mental retardation.

(1) The community center or facility shall document that the appropriate person or persons were informed of the right to an administrative hearing.

(2) The hearing shall be conducted in accordance with Chapter 403, Subchapter N of this title (relating to Administrative Hearings Arising Under the Persons with Mental Retardation Act). The results of the determination of mental retardation and recommendations shall be presented as evidence.

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**§405.86. Admission to Community-Based Services.**

(a) After a determination of mental retardation has been finalized, the community center's admissions team shall deter-

mine the individual's appropriateness for mental retardation services in compliance with the provisions of the TXMHMR Community Standards for Mental Retardation Services. The admissions team shall:

(1) review the individual's previous diagnostic information;

(2) interview the individual and family members regarding the services being requested and the individual's interests, choices, and goals; and

(3) determine the need for additional assessments.

(b) In conjunction with the individual and family, the team shall:

(1) determine what services are suited to the needs of the individual and consistent with rights guaranteed in the Texas Health and Safety Code, Title 7, Chapter 592 (Rights of Persons with Mental Retardation); and

(2) develop an initial plan for services or make referrals to more appropriate service agencies.

(c) If the individual is considered appropriate for admission to community-based services, the individual shall be enrolled in appropriate services as available.

(d) An individual may receive emergency services without a determination of mental retardation under the provisions of the Texas Health and Safety Code, Title 7 §593.0275. However, a determination of mental retardation must be performed as described in §405.85 of this subchapter (relating to Determination of Mental Retardation) and a determination of appropriateness for admission as described in subsections (a) and (b) of this section within 30 calendar days following the date the services began.

**§405.87. Admission or Commitment to a Residential Care Facility.**

(a) When admission or commitment to a residential care facility is sought, an IDT shall meet to consider the appropriateness of the placement. As required in the Texas Health and Safety Code, Title 7, §593.013, no individual may be admitted or committed to a residential care facility unless an IDT recommends the placement.

(b) The IDT shall:

(1) interview the individual, the parent if the individual is a minor, and the guardian of the individual, if appropriate;

(2) assess or review the person's:

(A) determination of mental retardation;

(B) social and medical history;

(C) medical assessment, which shall include an audiological, neurological, and vision screening;

(D) social assessment; and

(E) determination of adaptive behavior level;

(3) determine the individual's need for additional assessments, including educational and vocational assessments;

(4) obtain any additional assessment(s) necessary to plan services; and

(5) recommend services to address the individual's needs that consider the individual's interests, choices, and goals.

(c) The assessments in subsection (b) of this section should follow the appropriate report formats described in §405.90 of this subchapter (relating to Report Formats).

(d) The IDT shall prepare a written report of its findings and recommendations that is signed by each team member and shall send a copy of the report within 30 calendar days to the individual, the parent of the individual who is a minor, and the individual's guardian, as appropriate.

(e) If the person is being considered for court commitment to a residential care facility, the IDT report must have been completed within the six months prior to the date of the court hearing. An IDT report ordered by a court shall be submitted promptly to the court, the individual or the individual's legal representative, the parent of the individual who is a minor, and the guardian of the individual, if appropriate.

(f) An individual may be admitted to a residential care facility on an emergency basis without a determination of mental retardation and an IDT recommendation under the provisions of the Texas Health and Safety Code, Title 7, §593.027(c). However, within 30 days of an admission for emergency services:

(1) a determination of mental retardation must be performed as described in §405.85 of this subchapter (relating to Determination of Mental Retardation); and

(2) an IDT must meet and make a recommendation as described in subsections (a)-(d) of this section.

(g) An individual may be admitted to a residential care facility for respite services without a determination of mental retardation and an IDT recommendation under the provisions of the Texas Health and

Safety Code, Title 7, §593.028.

§405.88. *General Provisions.*

(a) Each community center and facility shall make necessary provisions to assess non-English speaking individuals and individuals who have other communication deficits.

(b) All assessments shall be confidential, as required in:

(1) the Texas Health and Safety Code, Title 7, Subtitle D, (Persons with Mental Retardation Act); and

(2) Chapter 403, Subchapter K of this title (relating to Client-identifying Information).

(c) The determination of mental retardation and appropriateness for admission is to be distinguished from subsequent assessments completed in conjunction with annual habilitation planning meetings. The former is performed to determine if an individual is eligible for mental retardation services, to complete a diagnostic classification, and to develop an initial plan for services.

§405.89. *Charges for Determination of Mental Retardation and Admissions Eligibility.*

(a) Charges for a determination of mental retardation and related diagnostic services will be made in accordance with the following:

(1) relevant provisions of the Texas Health and Safety Code, Title 7, Subtitle D (Persons with Mental Retardation Act); and

(2) Chapter 403, Subchapter C of this title (relating to Determination of Rates for Support, Maintenance, and Treatment).

(b) For purposes of obtaining Medicaid reimbursement for diagnostic services, the services must be determined by a physician (M.D. or D.O.) to be reasonable and medically necessary in determining the existence, nature, or extent of illness, injury, or other health deviation in a recipient. This should be documented using the Medicaid Reimbursement Format which is described in §405.90(5) of this subchapter (relating to Report Formats). Required assessments include those described in §405.90(1)-(4) of this subchapter (relating to Report Formats.)

§405.90. *Report Formats.* The following report formats are referenced in this subchapter. Copies can be obtained by contacting the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

(1) Determination of Mental Retardation Report (Psychological Assessment) format;

(2) Medical Evaluation Report format;

(3) Social Information Report format;

(4) Developmental Assessment Report format; and

(5) Medicaid Reimbursement form.

§405.91. *Distribution.*

(a) this subchapter shall be distributed to:

(1) members, Texas Mental Health and Mental Retardation Board;

(2) the medical director and deputy commissioners;

(3) associate and assistant deputy commissioners;

(4) management and program staff in Central Office;

(5) superintendents/directors of all department facilities;

(6) board of trustees chairpersons, community centers; and

(7) executive directors, community centers.

(b) Copies of this subchapter shall be distributed to:

(1) all county and juvenile court judges; and

(2) commissioners of the following state agencies:

(A) Health and Human Services Commission;

(B) Texas Department of Health;

(C) Texas Department of Human Resources;

(D) Texas Youth Council;

(E) Texas Rehabilitation Commission; and

(F) Texas Education Agency.

(c) A copy of this subchapter may be provided upon request to any individual seeking mental retardation services, the parent of an individual who is a minor, the guardian of an individual, or to the attorney

of record of such persons.

(d) A copy of this subchapter shall be provided to other public or private agencies or associations, including private providers, upon request.

§405.92. *References.* Reference is made to the following statutes, federal regulations, and rules:

(1) The Texas Health and Safety Code, Title 7, Subtitle D (Persons with Mental Retardation Act);

(2) 42 Code of Federal Regulations (CFR), §440.130(a);

(3) Chapter 403, Subchapter N of this title, (relating to Administrative Hearings Arising Under the Persons with Mental Retardation Act);

(4) Chapter 403, Subchapter C of this title, (relating to Determination of Rates for Support, Maintenance, and Treatment);

(5) Chapter 403, Subchapter K of this title (relating to Client-Identifying Information); and

(6) TXMHMR Community Standards for Mental Retardation Services.

Issued in Austin, Texas, on July 29, 1993.

TRD-9326612

Ann Utley  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Effective date: September 1, 1993

Expiration date: December 31, 1993

For further information, please call: (512) 465-4670

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Subchapter AA. Practice and Procedure with Respect to Administrative Hearing of the Department Arising Under the Mentally Retarded Persons Act of 1977

• 25 TAC §§405.661-405.678

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts on an emergency basis the repeal of §§405.661-405.678 of Chapter 405, Subchapter AA, concerning practice and procedure with respect to administrative hearings of the department arising under the Mentally Retarded Persons Act of 1977. The sections would be replaced by new §§403.401-403.419 of Chapter 403, Subchapter N, concerning administrative hearings arising under the Persons with Mental Retardation Act, which are contemporaneously adopted on an emergency basis and proposed for public comment in this issue of the *Texas Register*. In addition, the repeal of

§§405.661-405.678 is proposed for public comment contemporaneously in this issue of the *Texas Register*.

The purpose of the repeal is to permit the adoption of new sections which comply with provisions of House Bill 771 of the 73rd Texas Legislature which amends portions of the Texas Health and Safety Code, Title 7, Subtitle D (Persons with Mental Retardation Act).

The repeals are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, §5(d), which provide emergency rulemaking powers, and under Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Department of Mental Health and Mental Retardation with rulemaking powers.

§405.661. *Purpose.*

§405.662. *Definitions.*

§405.663. *Applicability and Scope of this Subchapter.*

§405.664. *Request for an Administrative Hearing.*

§405.665. *Who May Request an Administrative Hearing.*

§405.666. *Appointment of a Hearing Officer.*

§405.667. *Setting a Time and Place for the Administrative Hearing.*

§405.668. *Notice of a Hearing.*

§405.669. *Representation of Parties.*

§405.670. *Access to Records.*

§405.671. *Prehearing Conference.*

§405.672. *Notice of Filing; Service of Notice; Certificate of Service.*

§405.673. *Rules of Evidence; Official Notice; Witnesses; Transcription.*

§405.674. *Applicable Rules of the Department; General Administrative Procedures.*

§405.675. *Final Decisions and Orders.*

§405.676. *Appeal to County Court.*

§405.677. *References.*

§405.678. *Distribution.*

Issued in Austin, Texas, on July 29, 1993.

TRD-9326615

Ann K. Utley  
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Effective date: September 1, 1993

Expiration date: December 31, 1993

For further information, please call: (512) 465-4670

◆ ◆ ◆  
**Subchapter FF. Consent to Treatment with Psychoactive Medication**

• 25 TAC §§405.801-405.810

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts on an emergency basis the repeal of §§405.801-405.812, concerning consent to treatment with psychoactive medication.

The purpose of the emergency adoption is to comply with the Texas Health and Safety Code, §§576.103-576.106, 576.024-576.025, with an effective date of September 1, 1993. The emergency adoption of the subchapter which will replace it, also known as Chapter 405, Subchapter FF, is also adopted on an emergency basis in this issue of the *Texas Register*. The new subchapter includes provisions for petitioning for a court-order to administer medication to an involuntarily committed patient who refuses medication. The new subchapter prohibits administration of medication to an involuntarily committed patient who refuses without such a court-order.

The repeal of these sections is adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, §5(d), which provide emergency rulemaking powers; and under the Texas Health and Safety Code, §532.015 (Texas Civil Statutes, Article 5547-202, §2.11), which provides the Texas Department of Mental Health and Mental Retardation with broad rulemaking powers.

§405.801. *Purpose.*

§405.802. *Application.*

§405.803. *Definitions.*

§405.804. *Information Required to be Given.*

§405.805. *Who May Give Informed Consent.*

§405.806. *Documentation of Informed Consent.*

§405.807. *Clients Admitted Under Texas Statutes.*

§405.808. *Clients Committed Under Texas Statutes.*

§405.809. *Documentation.*

§405.810. *Emergencies.*

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

TRD-9326662

Anne K. Utley  
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Effective date: September 1, 1993

Expiration date: December 31, 1993

For further information, please call: (512) 465-4670

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• 25 TAC §§405.801-405.812

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts on an emergency basis new §§405.801-405.812 of Chapter 405, Subchapter FF, concerning consent to treatment with psychoactive medication. The rules adopted on an emergency basis are simultaneously proposed for public comment in this issue of the *Texas Register*.

The purpose of the emergency adoption is to comply with the Texas Health and Safety Code, §§576.103-576.106, and 576.024-576.025, with an effective date of September 1, 1993. Section 405.802 extends the provisions of the subchapter to apply to those persons receiving inpatient services in mental health facilities when the services are operated by the department or funded through a contract between the facility and the department or a community mental health and mental retardation center (CMHMRC). Section 405.803 includes new definitions for "capacity," "emergency situation," "medication class," "psychoactive medication," and "refusal to consent to treatment with psychoactive medication."

Section 405.808 establishes a prohibition on administration of psychoactive medication to a patient receiving court-ordered mental health services if the patient refuses to take the medication voluntarily unless a court-order allowing administration of the medication has been obtained. Section 405.809 addresses the process for obtaining such a court-order. Section 405.810 outlines the rights of persons for whom a petition to obtain an order to authorize administration of psychoactive medication has been filed.

The rule is adopted on an emergency basis simultaneously with its proposal in this issue of the *Texas Register* and with the emergency and proposed repeal of the rule it would replace, which is also known as Chapter 405, Subchapter FF.

These sections are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, §5(d), which provide emergency rulemaking powers, and under the Texas Health and Safety Code, Title 7,

§532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§405.801. *Purpose.* The purpose of these rules is to prescribe procedures to be followed in administering psychoactive medications to certain patients served by the department and to assist in establishing therapeutic alliances between the patients and their treating physician.

§405.802. *Application.* These rules apply to all state hospitals, state centers, and other mental health facilities operated by the Texas Department of Mental Health and Mental Retardation. The provisions of this subchapter also apply to persons receiving inpatient services in other mental health facilities when the services are funded through a contract between the facility and the department or a community mental health and mental retardation center (CMHMRC).

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

Capacity—A patient's ability to:

(1) understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and

(2) make a decision whether to undergo the proposed treatment.

Emergency situation—A situation in which it is immediately necessary to administer medication to a patient to prevent:

(1) imminent probable death or substantial bodily harm to the patient because the patient:

(A) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(B) is behaving in a manner that indicates that the patient is unable to satisfy the patient's need for nourishment, essential medical care, or self-protection; or

(2) imminent physical or emotional harm to others because of threats, attempts, or other acts the patient overtly or continually makes or commits.

Informed consent—Consent given by a person admitted to a mental health facility or the person's legally authorized representative when each of the following conditions have been met:

(1) Legal capacity. The person giving the consent is not a minor and has not been adjudicated incompetent to manage his/her personal affairs by an appropriate court of law;

(2) Comprehension of information. The person giving the consent has been provided and understands the information outlined in §405.804 of this title (relating to Information to Be Given); and

(3) Voluntariness. The consent has been given voluntarily.

Legally authorized representative—The parent, managing conservator, or guardian of a minor; or the guardian of the person of an adult.

Medically appropriate treatment—Treatment with psychoactive medication based on a physician's judgment that such medication is clinically indicated and that the medication's potential benefits outweigh its potential risks.

Medication class—A group of medications with similar actions and indications for use, as outlined in "Classes of Medications Requiring Consent to Treatment with Psychoactive Medication," copies of which are available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668.

Mental health facility—All state hospitals, state centers, and other facilities which provide inpatient mental health services.

Minor—A person under 18 years of age who is not and has not been married or who has not had his/her disabilities of minority removed for general purposes. A person 16 or 17 years of age who has voluntarily admitted himself/herself to a mental health facility is not considered to be a minor.

Psychoactive medication—A medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. "Psychoactive medication" includes the following categories when used as described in this subchapter:

(1) antipsychotics or neuroleptics;

(2) antidepressants;

(3) agents for control of mania or depression;

(4) antianxiety agents;

(5) sedatives, hypnotics, or other sleep-promoting drugs; and

(6) psychomotor stimulants.

Refusal to consent to administration of psychoactive medication (refusal)—Actions which include the following behaviors:

(1) The individual or legally authorized representative communicates orally, through sign language, or in writing that he/she refuses psychoactive medication.

(2) The patient communicates through behavior that he/she refuses psychoactive medication, e.g., refusing to swallow oral medication, refusing to submit to hypodermic injection of psychoactive medication.

(3) The individual pretends to swallow oral psychoactive medications, and the attending physician determines that the pretending behavior is due to an unwillingness to take the medication.

(4) The individual gives an unacceptable response, which is a lack of response, no response, or an inadequate or a noncommittal response from the individual after he/she has received the standard risk/benefit explanation. A response is considered unacceptable if it does not meet the criteria for informed consent.

§405.804. *Information Required to be Given.*

(a) Before administering psychoactive medication to any patient in a mental health facility, the treating physician shall explain to the patient and/or to the patient's legally authorized representative, if the representative is available, the following in simple, nontechnical language (this explanation may be given by the registered nurse (RN) licensed vocational nurse (LVN) or physician's assistant (PA) if the treating physician cannot be present, but the treating physician must confirm the explanation with the patient and/or the patient's legally authorized representative, if the representative is available, within two working days, not including weekends or legal holidays):

(1) the nature of the patient's mental illness and condition;

(2) the beneficial effects on the patient's mental illness and/or condition expected as a result of treatment with the medication;

(3) the probable health and mental health consequences to the patient of not taking the medication, including, as appropriate:

(A) unnecessarily prolonged hospital stays;

(B) repeated hospital admission;

(C) deterioration in the patient's family, social, or work adjustment; and

(D) the occurrence, increase, or reoccurrence of symptoms of mental illness.



(4) the existence of generally accepted alternative forms of treatment, if any, that could reasonably be expected to achieve the same benefits as the medication;

(5) a description of the proposed course of treatment with medication;

(6) the fact that side effects of varying degrees of severity are a risk of all medication;

(7) the side effects of the medication, including:

(A) any side effects which are known to frequently occur in most persons;

(B) any side effects to which the particular patient may be predisposed; and

(C) the nature and possible occurrence of the potentially irreversible symptoms of tardive dyskinesia;

(8) the need to advise mental health facility staff immediately if any of these side effects occur;

(9) an instruction that the patient may withdraw consent at any time without negative actions on the part of staff; and

(10) the patient's rights under this rule (as outlined in the MHRS 9-7.1 form, copies of which are available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711).

(b) The patient and his/her legal representative must also receive this information in writing, along with an offer to answer any questions concerning the treatment.

**§405.805. Who May Give Informed Consent.** Informed consent to administer psychoactive medications may be given by the legally authorized representative of a patient, or by the patient if he/she meets the criteria for informed consent described in §405.803 of this title (relating to Definitions). Persons who have admitted themselves under the voluntary provisions of Texas statutes are presumed to have the legal capacity to consent.

**§405.806. Documentation of Informed Consent.**

(a) Informed consent for the administration of psychoactive medication will be evidenced by a completed copy of the department's form for consent to treatment with psychoactive medication (MHRS 9-7 form, copies of which are available

from the Texas Department of Mental Health and Mental Retardation, P. O. Box 12668, Austin, Texas 78711) executed by the patient or his/her legally authorized representative. The executed form will establish a rebuttable presumption of valid consent and will be retained in the patient's record.

(1) Any time the medication regimen is altered in a way which would result in a significant change in the risks or benefits for the patient, an explanation of the change will be provided to the patient and/or the patient's legally authorized representative. The explanation will include notification of the right to withdraw consent at any time.

(2) A new consent shall be obtained if a change in medication class is proposed.

(3) If psychoactive medication is administered PRN on a recurrent basis (more than 3 times in a seven day period) for the same or similar behaviors, situations, or conditions, use of the medication must be included as part of the ongoing plan of treatment, and consent must be obtained for its ongoing use.

(b) If the patient or his/her legally authorized representative consents to the administration of psychoactive medication but refuses or is unable to execute the form, the treating physician will document the consent in the patient's record and on the MHRS 9-7 form.

(c) The treating physician and/or RN/LVN/PA will discuss the administration of psychoactive medication with all patients for whom such medication has been prescribed, and will provide to them the explanation described in §405.804 of this title (relating to Information Required to be Given). This requirement shall include patients for whom an order to authorize the administration of psychoactive medications is filed. If the RN/LVN/PA gives the initial explanation for the consent information to the patient, then the treating physician must confirm the explanation and sign the MHRS 9-7 form within 2 working days, not including weekends or legal holidays.

(d) A patient's refusal or attempt to refuse to receive psychoactive medication, whether given verbally or by other indications or means, shall be documented in the patient's clinical record, in the progress notes, and on the consent form (MHRS 9-7 form).

(e) All consents will be reviewed with the patient or his/her legally authorized representative at least every 90 days. The review will include a discussion of the information outlined in §405.804 of this title (relating to Information to Be Given) as well as a discussion of the patient's or

his/her legally authorized representative's wishes regarding continuation of the medication.

**§405.807. Patients Admitted Under Texas Statutes.** Psychoactive medications will not be administered to patients admitted to a mental health facility under the voluntary, emergency, or OPC provisions of Texas statutes without informed consent, except as provided in §405.812 of this title (relating to Emergencies).

**§405.808. Patients Committed Under Texas Statutes.** Psychoactive medications will not be administered to patients committed to a mental health facility under a temporary or extended order for mental health services without the informed consent of the patient except:

(1) as provided in §405.812 of this title (relating to Emergencies);

(2) when the patient is a minor or does not have the capacity to consent and the patient's legally authorized representative has consented to the administration; or

(3) when the administration of the medication regardless of the patient's refusal is authorized by an order as outlined in §405.809 of this title (relating to Order Authorizing Administration of Psychoactive Medication).

**§405.809. Order Authorizing Administration of Psychoactive Medication.**

(a) Filing of Petition. A physician who is treating a patient may petition a probate court or a court with probate jurisdiction for an order to authorize the administration of a class or classes of psychoactive medication regardless of the patient's refusal if:

(1) the physician believes that the patient lacks the capacity to make a decision regarding the administration of the psychoactive medication;

(2) the physician determines that the medication is the proper course of treatment for the patient; and

(3) the patient is under an order for temporary or extended mental health services under the Texas Health and Safety Code, §574.034 or §574.035 and the patient, verbally or by other indication, refuses to take the medication voluntarily.

(b) Hearing on petition. A hearing on a petition for an order to authorize the administration of psychoactive medication regardless of the patient's refusal will be held in accordance with provisions outlined in the Texas Health and Safety Code, §§576.104-§576.106 of.

(c) Issuance of order.

(1) The court may issue an order authorizing the administration of one or more classes of psychoactive medication only if the court finds by clear and convincing evidence after the hearing that:

(A) the patient lacks the capacity to make a decision regarding the administration of the proposed medication; and

(B) treatment with the proposed medication is in the best interest of the patient.

(2) In making its finding, the court shall consider:

(A) the patient's expressed preferences regarding treatment with psychoactive medication;

(B) the patient's religious beliefs;

(C) the risks and benefits, from the perspective of the patient, of taking psychoactive medication;

(D) the consequences to the patient if the psychoactive medication is not administered;

(E) the prognosis for the patient if the patient is treated with psychoactive medication; and

(F) alternatives to treatment with psychoactive medication.

(3) An order entered under this section shall authorize the administration to a patient, regardless of the patient's refusal, of one or more classes of psychoactive medications specified in the petition and consistent with the patient's diagnosis. The order shall permit:

(A) an increase or decrease in a medication's dosage;

(B) reinstatement of medication authorized but discontinued during the period the order is valid; or

(C) the substitution of a medication within the same medication class.

(4) The issuance of an order authorizing administration of medication is not a determination or adjudication of mental incompetency and does not limit in any other respect the patient's rights as a citizen or the patient's property rights or legal capacity.

(d) Appeal of order. A patient may appeal an order under this subchapter in the manner provided by the Texas Health and Safety Code, §574.070 for appeal of an order requiring court-ordered mental health services. The order authorizing the administration of medication remains effective, pending the appeal.

(e) Review and expiration of order.

(1) An order authorizing the administration of medication expires on the expiration or termination date of the order for temporary or extended mental health services in effect when the order for psychoactive medication is issued.

(2) An order authorizing the administration of medication shall be reviewed by the court on an annual basis.

*§405.810. Rights of Patients for Whom an Order to Authorize the Administration of Psychoactive Medication is Filed.* A patient for whom a petition for an order to authorize the administration of a psychoactive medication is filed is entitled to:

(1) a hearing on the petition within seven days after the date the petition to authorize the administration of a psychoactive medication is filed;

(2) have the hearing scheduled for a different date than the date of a hearing on an application for temporary court-ordered mental health services unless the patient and the patient's attorney agree in writing to have the hearings on the same date;

(3) representation by a court-appointed attorney who is knowledgeable about issues to be adjudicated at the hearing;

(4) meet with that attorney as soon as is practicable to prepare for the hearing and to discuss any of the patient's questions or concerns;

(5) receive, immediately after the time of the hearing is set, a copy of the petition and written notice of the time, place, and date of the hearing;

(6) be told, at the time personal notice of the hearing is given, of the patient's right to a hearing and right to the assistance of an attorney to prepare for the hearing and to answer any questions or concerns;

(7) be present at the hearing, unless the patient's attorney waives the right and the court is satisfied by a clear showing that the patient's attendance would subject him/her to substantial risk of serious physical or emotional harm;

(8) request from the court an independent expert; and

(9) oral notification, at the conclusion of the hearing, of the court's determinations of the patient's capacity and best interests.

*§405.811. Documentation.* Each step of the procedure described in this rule will be clearly documented in the patient's record.

*§405.812. Emergencies.*

(a) Nothing herein is intended to preclude the administration of psychoactive medication to any patient in an emergency as defined herein.

(b) If a physician issues an order to administer psychoactive medication to a patient without the patient's consent because of an emergency situation:

(1) the physician shall document in the patient's clinical record in specific medical or behavioral terms the necessity of the order and that the physician has evaluated but rejected other generally accepted, less intrusive forms of treatment, if any; and

(2) treatment of the patient with the psychoactive medication shall be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the patient's personal liberty.

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

TRD-9326661

Ann K. Utley  
Chairman  
Texas Department of  
Mental Health and  
Mental Retardation

Effective date: September 1, 1993

Expiration date: December 31, 1993

For further information, please call: (512) 465-4670



# 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 7. BANKING AND SECURITIES

### Part VII. State Securities Board

#### Chapter 101. General Administration

##### • 7 TAC §101.5

The State Securities Board proposes an amendment to §101.5, concerning an increase in the cost of copies of public records made available pursuant to the provisions of the Texas Open Records Act. The 15% increase in costs was mandated by House Bill 1009, 73rd Legislature, 1993.

Tom Spradlin, director of information resources and planning, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Spradlin also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that persons requesting copies of Board records will be on notice of the costs associated with obtaining such copies. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1, which provide the Board with the authority to adopt rules and regulations governing registration statements and applications; to classify securities, persons, and matters within its jurisdiction; and to prescribe different requirements for different classes.

*§101.5. Cost of Copies of Public Records.* The cost to any person requesting photocopied reproductions of any readily available records of the State Securities Board, comprised of pages up to legal size, which are subject to public examination pursuant to the provisions of the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, shall be as follows:

(1) For noncertified copies:

(A) \$.12 [\$.10] per page for requests totaling 50 pages or less;

(B) \$.98 [\$.85] for the first page and \$.17 [\$.15] for each additional page for requests totaling 51 pages or more.

(2) For certified copies the charge shall be \$1.15 [\$1.00] per page plus a \$5.00 certification fee.

(3) (No change.)

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

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

TRD-9326723

Richard D. Latham  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: September 10, 1993

For further information, please call: (512) 474-2233

#### Chapter 109. Transactions Exempt From Registration

##### • 7 TAC §109.17

The State Securities Board proposes an amendment to §109.17, concerning Texas chartered savings banks to the list of financial institutions recognized in the Securities Act, §5.L., which is appropriate in view of the enactment of the new Texas Savings Bank Act, as set forth in Senate Bill 396, 73rd Legislature, 1993.

Michael Northcutt, director, securities registration division, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be parity of treatment between state chartered savings banks and state chartered savings and loan associations for purposes of the Securities Act, §5.L. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1, which pro-

vide the Board with the authority to adopt rules and regulations governing registration statements and applications; to classify securities, persons, and matters within its jurisdiction; and to prescribe different requirements for different classes.

*§109.17. [Federal] Savings Banks Under the Securities Act, §5.L.*

(a) The phrase "any savings and loan association organized and subject to regulation under the laws of this State" shall include any Texas state chartered savings bank.

(b) The phrase "any federal savings and loan association" shall include any federally chartered savings bank.

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 August 2, 1993.

TRD-9326724

Richard D. Latham  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: September 10, 1993

For further information, please call: (512) 474-2233

#### Chapter 123. Open-End Investment Companies

##### • 7 TAC §123.3

The State Securities Board proposes an amendment to §123.3, concerning a conditional exemption for money market funds to take into account current rules of the Securities and Exchange Commission (SEC) and the National Association of Securities Dealers (NASD) as they relate to the Securities Commissioner's designation of open-end investment companies as "money market funds" for purposes of reduced registration fees.

Michael Northcutt, director, securities registration division, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be a money market fund designation approach that takes into ac-

count current SEC and NASD rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1, which provide the Board with the authority to adopt rules and regulations governing registration statements and applications; to classify securities, persons, and matters within its jurisdiction; and to prescribe different requirements for different classes.

*§123.3. Conditional Exemption for Money Market Funds.*

(a) (No change.)

(b) Definition. In this section [Rule], a "money market fund" or "fund" is an open-end investment company which must meet all of the following conditions.

(1) The fund must engage [engages] in a continuous offering of its securities.[, which]

(2) The fund must hold itself out to be a money market fund or equivalent to a money market fund and must be in compliance with the Investment Company Act of 1940, Rule 2a-7, as made effective in Securities and Exchange Commission Release Number IC-13380 and as amended in Release Numbers IC-14606, IC-14983, IC-18005, and IC-18177.

(3) The fund must not pay or charge [charges no] sales commissions or redemption fees except for a nominal exchange fee which may not be used for sales expenses or in lieu of an initial sales charge or redemption fee.

(4) The fund's total charges against net assets for sales distribution activities and/or the servicing of shareholder accounts must not be in excess of .25% of average net assets per annum. [and whose only objectives are preservation of capital, liquidity, and generation of current income derived from a portfolio consisting exclusively of evidences of indebtedness that generally may be described as money market investments such as certificates of deposit, United States government securities, commercial paper or similar obligations, 80% of whose principal amount must mature (may be redeemed or paid on demand) within one year from the date of issuance or settlement whichever is later; all of whose principal amount must mature (may be redeemed or paid on demand) within three years from the date of settlement. For these purposes, an indebtedness is deemed to "mature" on the date noted on the face of the instrument as the

date on which the principal amount must be paid, or in the case of variable or floating rate instruments with longer stated dates for principal payments, such instruments are deemed to "mature" on the next stated interest rate adjustment date.]

(5) Except for mergers, consolidations, or acquisitions of assets, or as noted in paragraph (6) of this subsection, the fund's investments in other investment companies must be limited to:

(A) 10% of the fund's total assets;

(B) other investment companies with substantially similar investment objectives; and

(C) other investment companies with charges and fees substantially similar to those set forth in paragraphs (3) and (4) of this subsection.

(6) In the case of a master/feeder fund structure:

(A) feeder fund(s) must meet paragraph (1)-(4) of this subsection;

(B) when viewed together, the master/feeder fund(s) must meet paragraphs (3) and (4) of this subsection; and

(C) all feeder funds must have substantially similar investment objectives as that of the master fund.

(7) A currently registered fund which has been granted money market status in not required to comply with this subsection until the fund files its Year End Report of Sales by a Money Market Fund on Form 133.27, but it is required to maintain compliance with the subsection as it was in effect at the time that the fund was designated a money market fund for purposes of this section.

(c) Request for Determination.

(1) At the time an applicant applies for registration of securities issued by an open-end investment company under the Act, §7, or at any time thereafter [when such a registration application is pending or registration is effective], the applicant may request that the Commissioner determine the issuer to be a money market fund as defined in this rule. The request shall be made in writing on Form 133.26 of this title (relating to Request for Determination as a Money Market Fund) [in such form and content as prescribed by the Commissioner]. The Commissioner shall review such [a] request and any other information deemed relevant by the Commissioner

[him] and shall determine whether or not the issuer is a money market fund for purposes of this section.

(2) If the request is made subsequent to the issuance of the fund's original permit, an amendment fee of \$10 will be required. Also, additional sales information will be required since only the securities registered and sold after the date the Commissioner determines that the issuer is a money market fund will be subject to the reduced registration fees under subsection (d) of this section.

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

(g) Year End Reports. All funds must file a Year End Report of Sales on Form 133.27 of this title (relating to Year End Report of Sales by Money Market Fund) in January of each year which reflects the amount of securities sold in the previous year, the balance of fees paid for registration of any unsold balance in the previous year and the recalculated balance of authorized securities at the beginning of the current year. In calculating fees applied to sales during the previous year, fees are first applied at the higher rates in the subsection (d)(5) of this section scale, and then at more reduced rates as sales volume increases, and not vice versa. Funds should consult the examples contained in the form for Year End Report of Sales in determining how to compute fees.

(h)-(j) (No change.)

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

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

TRD-9326725

Richard D. Latham  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: September 10, 1993

For further information, please call: (512) 474-2233

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**TITLE 25. HEALTH SERVICES**

**Part II. Texas Department of Mental Health and Mental Retardation**

**Chapter 405. Client (Patient) Care**

**Subchapter D. Comprehensive Diagnosis and Evaluation**

**• 25 TAC §§405.81-405.92**

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

Texas Department of Mental Health and Mental Retardation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes the repeal of §§405.81-405.92 of Chapter 405, Subchapter D, concerning comprehensive diagnosis and evaluation. The sections would be replaced by new §§405.81-405.92, concerning determination of mental retardation and appropriateness for admission to mental retardation services, which are adopted on an emergency basis and simultaneously proposed for public comment in this issue of the Texas Register. In addition, the repeal on an emergency basis of existing §§405.81-405.92 of Chapter 405, Subchapter D, concerning comprehensive diagnosis and evaluation also is published simultaneously in this issue of the Texas Register.

The purpose of the repeals is to permit the adoption of new rules which comply with provisions of House Bill 771 of the 73rd Texas Legislature which amends portions of the Texas Health and Safety Code, Title 7, Subtitle D (Persons with Mental Retardation Act).

Leilani Rose, director, financial services department, has determined that for the first five-year period that the repeals are in effect there will be cost savings to accrue to the department, but likely not in terms of cash savings to the department. The repeals will permit the department to perform determinations in a more timely fashion with savings accruing in terms of accuracy and less strain on the individual being assessed and on facility and community center staff as a result of enforcing or administering the new rules as proposed. There is no significant local economic impact anticipated.

Jaylon Fincannon, deputy commissioner, Mental Retardation Services, has determined that for each year of the first five years that the repeals are in effect the public benefit anticipated will be the more timely access to services of individuals with mental retardation under the provisions of the new repeals. 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.

These sections are proposed under Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation Board with rulemaking authority.

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 August 4, 1993.

TRD-9326771

Ann K. Utley  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Earliest possible date of adoption: September 6, 1993

For further information, please call: (512) 465-4670

## Subchapter D. Determination of Mental Retardation and Appropriateness for Admission to Mental Retardation Services

### • 25 TAC §§405.81-405.92

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

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes new §§405.81-405.92 of Chapter 405, Subchapter D, concerning determination of mental retardation and appropriateness for admission to mental retardation services. The new rules replace existing §§405.81-405.92 of Chapter 405, Subchapter D, concerning comprehensive diagnosis and evaluation, which are simultaneously proposed for repeal in this issue of Texas Register. Also published simultaneously in this issue of the Texas Register is the emergency adoption of new §§405.81-405.92, concerning determination of mental retardation and appropriateness for admission to mental retardation services, and the emergency repeal of §§405.81-405.92, concerning comprehensive diagnosis and evaluation.

The purpose of the new rules is to comply with provisions of House Bill 771 of the 73rd Texas Legislature, which amends portions of the Texas Health and Safety Code, Title 7, Subtitle D (Persons with Mental Retardation Act). House Bill 771 requires the department to do away with comprehensive diagnosis and evaluations as the basis for admission into mental retardation services provided by community mental health and mental retardation centers and state facilities. Instead, a person seeking services must have a determination of mental retardation which can be performed by a physician or psychologist licensed to practice in Texas or by a psychologist certified by the department.

House Bill 771 also amends the Texas Health and Safety Code to require that an individual may not be admitted or committed to a residential care facility unless there is a determination of mental retardation and an interdisciplinary team makes a recommendation for the placement; permit an emergency admission to a residential care facility provided that both a determination of mental retardation and an IDT recommendation for the placement are forthcoming no later than 30 days after the admission; permit an individual to receive emergency services provided the services are available, the individual has an urgent need for those services, and a determination of mental retardation is performed within 30 days after the emergency services begin; and permit admission into a residential care facility for respite care without a determination of mental retardation under certain conditions. House Bill 771 also requires that a person may not be committed to a residential care facility unless the IDT report recommending the placement

has been completed during the six months preceding the date of the court hearing.

The proposed rules outline the procedures for implementing the provisions of HB 771 cited previously and also describe: the criteria for the certification of psychologists by the department; the various assessments that are to be performed based on the type of services requested; and a requirement that a person requesting admission to services receive a determination of appropriateness for mental retardation services that is in compliance with the TXMHMR Community Standards for Mental Retardation Services.

Leilani Rose, director, financial services department, has determined that for the first five-year period the rules are in effect there will be cost savings to accrue to the department, but likely not in terms of cash savings to the department. The department will be able to perform determinations in a more timely fashion with savings accruing in terms of accuracy and less strain on the individual being assessed and on facility and community center staff as a result of enforcing or administering the rules. There is no significant local economic impact anticipated.

Jaylon Fincannon, deputy commissioner, Mental Retardation Services, has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be more timely access to services of individuals with mental retardation. 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.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

A public hearing will be held to accept testimony on the sections as proposed, as well as on proposed new Chapter 403, Subchapter N concerning practice and procedure with respect to administrative hearings of the department arising under the Persons with Mental Retardation Act (PMRA). The hearing will be Monday, August 23, 1993, from 1:00-3:00 p.m., in the TXMHMR Central Office Auditorium at 909 West 45th Street, Austin, Texas 78756. If interpreters for the hearing impaired are required, please notify Ms. Logan 72 hours prior to the hearing by calling (512) 465-4670.

These sections are proposed under Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation Board with rulemaking authority.

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 July 29, 1993.

TRD-9326613

Ann Utley  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Earliest possible date of adoption: September 6, 1993

For further information, please call: (512) 465-4670

◆ ◆ ◆  
**Subchapter AA. Practice and Procedure with Respect to Administrative Hearings of the Department Arising under the Mentally Retarded Persons Act of 1977**

• 25 TAC §§405.661-405.678

*(Editor's Note: The Texas Department of Mental Health and Mental Retardation proposes for permanent adoption the repealed sections it adopts on an emergency basis in this issue. The text of the repealed sections is in the Emergency Rules section of this issue.)*

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes the repeal of §§405.661-405.678 of Chapter 405, Subchapter AA, concerning Practice and Procedure with Respect to Administrative Hearings of the Department Arising under the Mentally Retarded Persons Act of 1977. The sections would be replaced by new §§403.401-403.419 of Chapter 403, Subchapter N, concerning Practice and Procedure with Respect to Administrative Hearings of the Department Arising under the Persons with Mental Retardation Act which are simultaneously adopted on an emergency basis and proposed for public comment in this issue of the *Texas Register*. In addition, the repeal of §§405.661-405.678 is simultaneously adopted on an emergency basis and proposed for public comment in this issue of the *Texas Register*.

The purpose of the repeal is to permit the adoption of new rules which comply with provisions of House Bill 771 of the 73rd Texas Legislature, which amends portions of the Texas Health and Safety Code, Title 7, Subtitle D (Persons with Mental Retardation Act).

Leilani Rose, director, Financial Services Department, has determined that for the first five-year period that the repeals are in effect there will be cost savings to accrue to the department, but likely not in terms of cash savings to the department. The new sections will permit the department to perform determinations in a more timely fashion with savings accruing in terms of accuracy and less strain on the individual being assessed and on facility and community center staff as a result of enforcing or administering the repeals. There is no significant local economic impact anticipated.

Jaylon Fincannon, deputy commissioner, Mental Retardation Services, has determined that for each year of the first five years that the repeals are in effect the public benefit anticipated will be the more timely access to services of individuals with mental retardation under the provisions of the new rules. 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.

These sections are proposed under Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation Board with rulemaking authority.

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 July 29, 1993.

TRD-9326616

Ann Utley  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

◆ ◆ ◆  
Earliest possible date of adoption: September 6, 1993

For further information, please call: (512) 465-4670

◆ ◆ ◆  
**Subchapter FF. Consent to Treatment with Psychoactive Medication**

• 25 TAC §§405.801-405.812

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

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes new §§405.801-405.812, concerning consent to treatment with psychoactive medication. The new rule is proposed simultaneously with its emergency adoption in this issue of the *Texas Register* and with the emergency and proposed repeal of the rule it would replace, which is also known as Chapter 405, Subchapter FF.

The proposed new subchapter implements provisions required by the Texas Health and Safety Code, §§574.103-574.106 and 576.024-576.025, which become effective September 1, 1993. Section 405.802 extends the provisions of the subchapter to apply to those persons receiving inpatient services in mental health facilities when the services are operated by the department or funded through a contract between the facility and the department or a community mental health and mental retardation center (CMHMRC). Section 405.803 includes new definitions for "capacity," "emergency situation," "medication class," "psychoactive medication," and "refusal to consent to treatment with psychoactive medication."

Section 405.808 establishes a prohibition on administration of psychoactive medication to a patient receiving court-ordered mental health services if the patient refuses to take the medication voluntarily unless a court-order allowing administration of the medication has been obtained. Section 405.809 addresses the process for obtaining such a court-order. Section 405.810 outlines the rights of persons for whom a petition to obtain an order to authorize administration of psychoactive medication has been filed.

Leilani Rose, director, Office of Financial Services, has determined that for the first five-year period the rules are in effect there will be no significant fiscal implications for state or local government as a result of administering the rules. Local economic impact is anticipated to be insignificant.

Dr. Steven Shon, deputy commissioner, Mental Health Services, has determined that the public benefit is the adoption of rules providing for the implementation of legislative requirements. 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 Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

A public hearing will be held to accept testimony on the sections as proposed on Tuesday, August 17, 1993, from 1:00-3:00 p.m., in the TXMHMR Central Office Auditorium at 909 West 45th Street, Austin, Texas 78756. If interpreters for the hearing are required, please notify Ms. Logan at (512) 465-4516 at least 72 hours prior to the hearing.

These sections are proposed under Texas Health and Safety Code, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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 August 2, 1993.

TRD-9326663

Anne K. Utley  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

◆ ◆ ◆  
Earliest possible date of adoption: September 6, 1993

For further information, please call: (512) 465-4670

◆ ◆ ◆  
**• 25 TAC §§405.801-405.810**

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

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes the repeal of §§405.801-405.810, concerning consent to treatment with psychoactive medication. The subchapter is also repealed on an emergency basis in this *Texas Register*.

The purpose of the repeal is to comply with the Texas Health and Safety Code, §§576.103-576.106 and 576.024-576.025, with an effective date of September 1, 1993. The subchapter would be replaced with new sections, which are also known as Chapter 405, Subchapter FF, concerning consent to

treatment with psychoactive medication, which are also adopted on an emergency basis and proposed in this issue of the *Texas Register*. The new sections include provisions for petitioning for a court-order to administer psychoactive medications to an involuntarily committed patient who refuses to take the medication voluntarily. The subchapter includes a prohibition on administration of medication to a committed patient who refuses unless such a court-order is obtained.

Leilani Rose, director, Office of Financial Services, has determined that for the first five-year period the repeals are in effect there will be no significant fiscal implications for state or local government as a result of administering the repeals as proposed. Local economic impact is anticipated to be insignificant.

Dr. Steven Shon, deputy commissioner, Mental Health Services, has determined that the public benefit is the repeal of outdated rules to enable the adoption of rules that meet legislative requirements. 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 Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The repeals are proposed under the Texas Health and Safety Code, §532.015 (Texas Civil Statutes, Article 5547-202, §2.11), which provides the Texas Department of Mental Health and Mental Retardation with broad rulemaking powers.

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 August 2, 1993.

TRD-9328864

Anne K. Uteley  
Chairman  
Texas Department of  
Mental Health and  
Mental Retardation

Earliest possible date of adoption: September 6, 1993

For further information, please call: (512) 465-4670

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part IX. Texas Water Commission

#### Chapter 305. Consolidated Permits

##### Subchapter A. General Provisions

The Texas Water Commission (TWC) proposes amendments to §§305.2, 305.50, 305.69, and 305.122, concerning consoli-

dated permits. The purpose of the amendments is to adopt certain federal regulations as adopted by the *Federal Register* and to clarify certain state rules.

Section 305.2 is amended by adding the definition of "component," "facility mailing list," and "functionally equivalent component."

Two changes are made in §305.50 to reflect the concurrent adoption of 40 Code of Federal Regulations (CFR), Part 264, Subparts AA, BB, and W in Chapter 335. Those subparts address, respectively, regulation of air emission standards for process vents, air emission standards for equipment leaks, and design, operating, and closure requirements of drip pads. Section 305.50(4)(A) is amended to provide that an application for a permit to store, process, or dispose of hazardous waste, or an amendment or modification thereto, is also subject to the information requirements of 40 CFR, §§270.24-270.26. Section 305.50(4)(E) is amended to provide that the executive director may require the owner or operator of an existing hazardous waste management facility to submit the information specified in 40 CFR, §§270.24-270.26. 40 CFR, §270.24 specifies Part B information requirements for process vents; 40 CFR, §270.25 specifies Part B information requirements for equipment, and 40 CFR, §270.26 specifies the Part B information requirements for drip pads. The changes to §§305.50(4)(A) and (E) are made to comport with 56 FedReg 19290 as published on April 26, 1991, and with 57 FedReg 61492 as published on December 24, 1992.

In addition, §305.50(14) is amended to provide that the executive director may require a permittee or an applicant to submit information in order to establish permit conditions under §305.127(4)(A) and §305.127(1)(B)(iii). This change is made to comport with 54 FedReg 45799 as published on December 1, 1987.

Appendix I of §305.69(i)(B).1.b. is amended to provide that permit modification made to incorporate changes associated with F039 (multi-source leachate) sampling or analysis methods is a Class 1 change that requires prior approval. The former §305.69(i)(B).1.b. is renumbered as §305.69(i)(B).1.c. to comport with 56 FedReg 3928 as published on January 31, 1991.

Section 305.122 is amended to provide that compliance with a hazardous waste permit during its term constitutes compliance, for purpose of enforcement, with Subtitle C of the Resource Conservation and Recovery Act (RCRA), except for those requirements not included in the permit which become effective by statute, which are promulgated under the land ban provisions of Chapter 335, Subchapter O, or which are promulgated under Chapter 335, Subchapter F, regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units. This change is made to comport with 57 FedReg 3495 as published on January 29, 1992.

Stephen Minick, division of budget and planning, has determined that for the first five years the rules are in effect there will be no significant fiscal implications as a result of

enforcement or administration of the rules. There are no significant implications for either state or local governments. The effect of these rules will be to incorporate into state regulations provisions of existing federal regulations. It is not anticipated that enforcement of these same rules by the state will have significantly different fiscal implications for affected entities than would enforcement of the equivalent federal rules.

Mr. Minick also has determined that for the first five years the rules are in effect the public benefit anticipated as a result of enforcement of and compliance with the rules will be improvements in the consistency of federal and state regulation of hazardous waste treatment, storage, and disposal facilities and in the information required to be submitted in support of permit applications. There will be no effect on small businesses. There are no known costs to persons required to comply with the rules as proposed.

Comments on the proposals may be submitted to Brenda Clayton, Staff Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted until 5:00 p.m. for a period of 30 days following the date of this publication.

#### • 31 TAC §305.2

The amendment is proposed pursuant to the Texas Water Code, §5.103 and §5.105, which authorizes the Texas Water Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to the Texas Health and Safety Code, §361.017 and §361.024, which further authorizes the Texas Water Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

**§305.2. Definitions.** The definitions contained in the Texas Water Code, §§26.001, 27.002, and 28.001, and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §2, shall apply to this chapter. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

**Component**—Any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (e.g. a pump seal, pump, kiln liner, kiln thermocouple).

**Facility mailing list**—The mailing list for a facility seeking a Class I injection well UIC permit. The facility mailing list, which is described in 40 CFR, §120.10(c)(viii), is maintained by the Texas Water Commission in accordance with §305.103(b).

**Functionally equivalent component**—A component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

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 August 2, 1993.

TRD-9326689 Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: September 6, 1993

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

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Subchapter C. Application for Permit

• 31 TAC §305.50

The amendment is proposed pursuant to the Texas Water Code §5.103 and §5.105, which authorizes the Texas Water Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to the Texas Health and Safety Code, §361.017 and §361.024, which further authorizes the Texas Water Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

§305.50. *Additional Requirements for an Application for a Solid Waste Permit.* Unless otherwise stated, an application for a permit to store, process, or dispose of solid waste shall meet the following requirements:

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

(4) An application for a permit, permit amendment, or permit modification to store, process or dispose of hazardous waste shall be subject to the following requirements, as applicable:

Modifications

(A) General Permit Provisions

1. Administrative and informational changes. ....1

(2) Correction of typographical errors.....1

(A) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain any additional information required by 40 Code of Federal Regulations, §§270.13-270. 26 [270.23], except that closure cost estimates shall be prepared in accordance with 40 Code of Federal Regulations §264.142(a)(1), (3), (4), (b), and (c) and §335.178 of this title (relating to Cost Estimate for Closure).

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

(E) At any time after the effective date of the requirements contained in Chapter 335, Subchapter F, of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), the executive director may require the owner or operator of an existing hazardous waste management facility to submit that portion of his application containing the information specified in 40 Code of Federal Regulations §§270.14-270.26 [270.23]. Any owner or operator shall be allowed a reasonable period of time from the date of the request to submit the information. An application for a new hazardous waste management facility must be submitted at least 180 days before physical construction of the facility is expected to commence.

(5)-(13) (No change.)

(14) The executive director may require a permittee or an applicant to submit information in order to establish permit conditions under §305.127(4)(A) of this title (relating to Conditions to be Determined for Individual Permits) and §305.127(1)(B)(iii) of

this title (relating to Conditions to be Determined for Individual Permits).

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 August 2, 1993.

TRD-9326690 Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: September 6, 1993

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

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Subchapter D. Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits

• 31 TAC §305.69

The amendment is proposed pursuant to the Texas Water Code §5.103 and §5.105, which authorizes the Texas Water Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to the Texas Health and Safety Code §361.017 and §361.024, which further authorizes the Texas Water Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

§305.69. *Solid Waste Permit Modification at the Request of the Permittee.*

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

(i) Appendix I. The following appendix will be used for the purposes of Subchapter D which relate to solid waste permit modification at the request of the permittee.

Class

(a) To provide for more frequent monitoring, reporting, sampling, or maintenance..... 1

(b) Other changes..... 2

(5) Schedule of compliance

(a) Changes in interim compliance dates, with prior approval of the executive



director.....1<sup>1</sup>

(b) Extension of final compliance date..... 3

(6) Changes in expiration date or permit to allow earlier permit expiration, with prior approval of the executive director.....1<sup>1</sup>

(7) Changes in ownership or operational control of a facility, provided the procedures of §305.65(g) are followed..... 1<sup>1</sup>

(B) General Standards

(1) Changes to waste sampling or analysis methods:

(a) To conform with agency guidance or regulations..... 1

(b) To incorporate changes associated with FO39 (multi-source leachate) sampling or analysis methods..... 1<sup>1</sup>

(c)[(b)] Other changes.....2

(2) Changes to analytical quality assurance/control plan:

(a) To conform with agency guidance or regulations..... 1

(b) Other changes..... 2

(3) Changes in procedures for maintaining the operating record..... 1

(4) Changes in frequency or content of inspection schedules..... 2

(5) Changes in the training plan:

(a) That affect the type or decrease the amount of training given to employees..... 2

(b) Other changes..... 1

(6) Contingency plan:

(a) Changes in emergency procedures (i.e., spill or release response procedures)..... 2

(b) Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment list-ed..... 1

(c) Removal of equipment from emergency equipment list..... 2

(d) Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan..... 1

Note: When a permit modification (such as introduction of a new unit) requires a

change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification. (No change)

(C) Ground-water Protection

(1) Changes to wells:

(a) Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted groundwater monitoring system..... 2

(b) Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well..... 1

(2) Changes in groundwater sampling or analysis procedures or monitoring schedule, with prior approval of the executive director..... 1<sup>1</sup>

(3) Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred, with prior approval of the executive director. .... 1<sup>1</sup>

(4) Changes in point of compliance..... 2

(5) Changes in indicator parameters, hazardous constituents, or concentration limits (including ACLs):

(a) As specified in the groundwater protection standard..... 3

(b) As specified in the detection monitoring program..... 2

(6) Changes to a detection monitoring program as required by §335.164(10) of this title (relating to Detection Monitoring Program), unless otherwise specified in this appendix..... 2

(7) Compliance monitoring program:

(a) Addition of compliance monitoring program pursuant to §335.164(7) (D) of this title (relating to Detection Monitoring Program), and §335.165 of this title (relating to Compliance Monitoring Program)..... 3

(b) Changes to a compliance monitoring program as required by §335.165(11) of this title (relating to Compliance Monitoring Program), unless otherwise specified in this appendix.... 2

(8) Corrective action program:

(a) Addition of a corrective action program pursuant to §335.165(9)(B) of this title (relating to Compliance Monitoring Program) and §335.166 of this title (relating to Corrective Action Program)..... 3

(b) Changes to a corrective action program as required by §335.166(8), unless otherwise specified in this appendix..... 2

(D) Closure

(1) Changes to the closure plan:

(a) Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the executive director..... 1<sup>1</sup>

(b) Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the executive director..... 1<sup>1</sup>

(c) Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the executive director..... 1<sup>1</sup>

(d) Changes in procedures for decontamination of facility equipment or structures, with prior approval of the executive director..... 1<sup>1</sup>

(e) Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix..... 2

(f) Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive non-hazardous wastes after final receipt of hazardous wastes under 40 CFR, §264.113(d) and (e)..... 2

(2) Creation of a new landfill unit as part of closure..... 3

(3) Addition of the following new units to be used temporarily for closure activities:

(a) Surface impoundments..... 3

(b) Incinerators..... 3

(c) Waste piles that do not comply with 40 CFR, §264.250(c)..... 3

(d) Waste piles that comply with 40 CFR, §264.250(c)..... 2

(e) Tanks or containers (other than specified below)..... 2

(f) Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the executive director.....1<sup>1</sup>

(E) Post-Closure

(1) Changes in name, address, or phone number of contact in post-closure plan..... 1

(2) Extension of post-closure care period..... 2

(3) Reduction in the post-closure care period..... 3

(4) Changes to the expected year of final closure, where other permit conditions are not changed..... 1

(5) Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure.... 2

(F) Containers

(1) Modification or addition of container units:

(a) Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below..... 3

(b) Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below..... 2

(c) Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR, §268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) ..... 1<sup>1</sup>

(2) (a) Modification of a container unit without increasing the capacity of the unit..... 2

(b) Addition of a roof to a container unit without alteration of the containment system..... 1

(3) Storage of different wastes in containers, except as provided in F(4) below:

(a) That require additional or different management practices from those authorized in the permit..... 3

(b) That do not require additional or different management practices from those authorized in the permit..... 2

Note: See §305.69(g) of this title (relating

to Newly Listed Solid Waste Permit Modification at the Request of the Permittee or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

(4) Storage or treatment of different wastes in containers:

(a) That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR, §268.8(a)(2)(ii), with prior approval of the executive director. This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1<sup>1</sup>

(b) That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

(5) Other changes in container management practices (e.g., aisle space, types of containers, segregation)..... 2

G Tanks

(1) (a) Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1) (c), G(1)(d), and G(1)(e) below of this appendix..... 3

(b) Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) below of this appendix..... 2

(c) Addition of a new tank (no capacity limitation) that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation..... 2

(d) After prior approval of the executive director, addition of a new tank (no capacity limitation) that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation..... 1<sup>1</sup>

(e) Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to

satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR, §268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1<sup>1</sup>

(2) Modification of a tank unit or secondary containment system without increasing the capacity of the unit..... 2

(3) Replacement of a tank with a tank that meets the same design standards and has a capacity within +/-10% of the replaced tank provided:..... 1

(a) The capacity difference is no more than 1,500 gallons;

(b) The facility's permitted tank capacity is not increased; and

(c) The replacement tank meets the same conditions in the permit.

(4) Modification of a tank management practice..... 2

(5) Management of different wastes in tanks:

(a) That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(c) below..... 3

(b) That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(d) below..... 2

(c) That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR, §268.8(a)(1)(ii), with prior approval of the executive director. The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1<sup>1</sup>

(d) That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable

to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1  
 Note: See §305.69(g) of this title (relating to Newly Listed Solid Waste Permit Modification at the Request of the Permittee or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

**H Surface Impoundments**

(1) Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity. ... 3

(2) Replacement of a surface impoundment unit..... 3

(3) Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system..... 2

(4) Modification of a surface impoundment management practice..... 2

(5) Treatment, storage, or disposal of different wastes in surface impoundments:

(a) That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit..... 3

(b) That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit..... 2

(c) That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR, §268.8(a)(2)(ii), and provided that the unit meets the minimum technological requirements stated in 40 CFR, §268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

(d) That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in 40 CFR, §268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the

management of newly listed or identified wastes.

**I. Enclosed Waste Piles.** For all waste piles except those complying with 40 CFR, §264.250(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with 40 CFR, §264.250(c).

(1) Modification or addition of waste pile units:

(a) Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity..... 3

(b) Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity..... 2

(2) Modification of waste pile unit without increasing the capacity of the unit..... 2

(3) Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit..... 1

(4) Modification of a waste pile management practice... 2

(5) Storage or treatment of different wastes in waste piles:

(a) That require additional or different management practices or different design of the unit..... 3

(b) That do not require additional or different management practices or different design of the unit..... 2

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

**J) Landfills and Unenclosed Waste Piles**

(1) Modification or addition of landfill units that result in increasing the facility's disposal capacity..... 3

(2) Replacement of a landfill..... 3

(3) Addition or modification of a liner, leachate collection system, leachate detection system, run-off control, or final cover system..... 3

(4) Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system..... 2

(5) Modification of a landfill management practice..... 2

**(6) Landfill different wastes:**

(a) That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system..... 3

(b) That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system..... 2

(c) That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR, §268.8(a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in 40 CFR, §268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

(d) That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in 40 CFR, §268.5(h)(2), and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

**(K) Land Treatment**

(1) Lateral expansion of or other modification of a land treatment unit to increase areal extent..... 3

(2) Modification of run-on control system..... 2

(3) Modify run-off control system..... 3

(4) Other modifications of land treatment unit component specifications or standards required in the permit..... 2

(5) Management of different wastes in land treatment units:

(a) That require a change in permit operating conditions or unit design specifications..... 3

(b) That do not require a change in permit operating conditions or unit design specifications..... 2

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for

modification procedures to be used for the management of newly listed or identified wastes.

(6) Modification of a land treatment management practice to:

(a) Increase rate or change method of waste application..... 3

(b) Decrease rate of waste application..... 1

(7) Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions..... 2

(8) Modification of a land treatment unit management practice to grow food chain crops, or add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops..... 3

(9) Modification of operating practice due to detection of releases from the land treatment unit pursuant to 40 CFR, §264.278(g)(2)..... 3

(10) Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components that have specifications different from permit requirements..... 3

(11) Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components having specifications not different from permit requirements..... 2

(12) Changes in background values for hazardous constituents in soil and soil-pore liquid..... 2

(13) Changes in sampling, analysis, or statistical procedure..... 2

(14) Changes in land treatment demonstration program prior to or during the demonstration..... 2

(15) Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the executive director's prior approval has been received..... 1

(16) Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the

same as the conditions for the first demonstration and have received the prior approval of the executive director..... 1

(17) Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the waste can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration..... 3

(18) Changes in vegetative cover requirements for closure..... 2

(L) Incinerators, Boilers, and Industrial Furnaces

(1) Changes to increase by more than 25% any of the following limits authorized in the permit: a thermal feed rate limit; a feedstream feed rate limit; a chlorine feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3

(2) Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream feedrate limit; chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 2

(3) Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size of geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl/Cl<sub>2</sub>, metals or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3

(4) Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The executive director may require a new

trial burn to demonstrate compliance with the regulatory performance standards..... 2

(5) Operating requirements:

(a) Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3

(b) Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls..... 3

(c) Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit..... 2

(6) Burning different wastes:

(a) If the waste contains a POHC that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3

(b) If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit..... 2

Note: See §305.69(g) of this title (relating to Newly Regulated Wastes and Units) for modification procedures to be used for the management of newly regulated wastes and units.

(7) Shakedown and trial burn:

(a) Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn..... 2

(b) Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction,

with the prior approval of the executive director .....<sup>1</sup>

(c) Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the executive director... <sup>1</sup>

(d) Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the executive director..... <sup>1</sup>

(8) Substitution of an alternate type of nonhazardous waste fuel that is not specified in the permit..... 1

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 August 2, 1993.

TRD-9326691 Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: September 6, 1993

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



### Subchapter F. Permit Characteristics and Conditions

#### • 31 TAC §305.122

The amendment is proposed under the Texas Water Code, §5.103 and §5. 105, which provides the Texas Water Commission the authority to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and under the Texas Health and Safety Code, §361.017 and §361.024, which further provides the Texas Water Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

#### §305.122. Characteristics of Permits.

(a) Compliance with a Resource Conservation and Recovery Act (RCRA) permit during its term constitutes compliance, for purposes of enforcement, with Subtitle C of RCRA except for those requirements not included in the permit which:

- (1) become effective by statute;
- (2) are promulgated under Part 268 of this chapter restricting the placement of hazardous wastes in or on the land; or
- (3) are promulgated under Chapter 335, Subchapter F, regarding leak detection systems for new and re-

placement surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response through the Class 1 permit modifications procedures of §305.69 of this title (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocations, and Suspensions of Permits).

(b)[(a)] A permit issued within the scope of this subchapter does not convey any property rights of any sort, nor any exclusive privilege, and does not become a vested right in the permittee.

(c)[(b)] The issuance of a permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulations.

(d)[(c)] Except for any toxic effluent standards and prohibitions imposed under the Clean Water Act (CWA), §307, and standards for sewage sludge use or disposal under CWA, §405(d), compliance with a Texas pollutant discharge elimination system (TPDES) permit during its term constitutes compliance, for purposes of enforcement, with the CWA, §§301, 302, 306, 307, 318, 403, and 405; however, a TPDES permit may be amended or revoked during its term for cause as set forth in §305.62 and §305.66 of this title (relating to Permit Denial, Revocation and Suspension.)

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

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

TRD-9326692 Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: September 6, 1993

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



### Chapter 330. Municipal Solid Waste

#### Subchapter Q. Memorandum of Understanding and Joint Rules With Other Agencies

#### • 31 TAC §330.732

The Texas Water Commission (TWC) proposes new §330.732, concerning the adoption of a memorandum of understanding by reference. The memorandum proposed for adoption by reference complies with the Environmental Protection Agency's (EPA) requirements as delineated in §239.9 of the State/Tribal Implementation Regulations (STIR). STIR provides states with requirements which must be met in order to demon-

strate that they have incorporated the recent federal amendments to Subtitle D of the Resource Conservation Recovery Act of 1976, as amended (42 United States Code, §6901 et seq).

By publication in the June 18, 1993, *Texas Register* (18 TexReg 4023), the TWC adopted new Chapter 330, Subchapters A-L in order to incorporate the new federal requirements which were adopted by the EPA on October 9, 1991 (Vol. 56, No. 198 FedReg). These new federal requirements set forth revised minimum federal criteria for municipal solid waste landfills. Both the federal rules and the TWC's newly adopted rules are effective on October 9, 1993, excluding a delayed implementation date for financial assurance requirements in Subchapter K.

STIR, §239.9, requires those states intending to administer the federal Subtitle D program to provide for intervention in the state civil enforcement process. The memorandum of understanding, which is proposed to be adopted by reference contains the TWC's and Office of the Attorney General's policies in regard to intervention in the civil enforcement process.

Proposed §330.273 adopts the memorandum of understanding by reference and provides the public with information on how to obtain a copy of this document. The effect date of this rule is proposed to be October 9, 1993, in order to coincide with the effective date of the new federal and state municipal solid waste regulations.

Stephen Minick, division of budget and planning, has determined that for the first five-year period this rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Minick also has determined that the public benefit anticipated as a result of enforcement of or compliance with the rule as proposed will be improvements in public awareness and involvement in proceedings related to enforcement of environmental protection requirements for municipal solid waste facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Steven Shepherd, Staff Attorney, Legal Services Division, P.O. Box 13087, Austin, Texas 78711-3087. The deadline for submitting written comments is at 5:00 p.m., 30 days following the date of this publication. To facilitate public comment on the proposed new rule, a public hearing has been scheduled for Thursday, September 9, 1993 at 9:00 a.m., in Room 1149A, 1700 North Congress Avenue, Stephen F. Austin State Office Building, Austin, Texas 78711.

The new section is proposed under the Texas Water Code (Vernon 1988), §5. 103, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state. Additionally, this section is adopted pursuant to the Texas Solid

Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (Vernon 1992), which provides the Texas Water Commission with the authority to regulate municipal solid waste and adopt rules and necessary to regulate the operation, management, and control of solid waste under its jurisdiction.

§330.732. *Adoption by Reference.*

(a) The Texas Water Commission adopts by reference a memorandum of understanding among the Texas Water Commission and the Attorney General of Texas. The memorandum contains the Water Commission's and the Attorney General's interpretation concerning intervention in the civil enforcement process under the Texas Solid Waste Disposal Act.

(b) Copies of the memorandum of understanding are available upon request from the Waste Management Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-6087.

(c) The effective date of the memorandum of understanding is October 9, 1993.

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

Issued in Austin, Texas, on August 3, 1993.

TRD-9326773

Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: September 10, 1993

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

◆ ◆ ◆  
Chapter 331. Underground  
Injection Control

Subchapter G. Consideration  
Prior to Permit Issuance

• 31 TAC §331.121

The Texas Water Commission (TWC) proposes an amendment to §331.121, concerning underground injection control. The purpose of the amendments is to adopt federal regulations as published and adopted in 52 FedReg 45797 as promulgated on December 1, 1987.

Section 331.121(e) is added to require additional information for Class I hazardous waste injection well permits. Section 331.121(e) reflects the requirements of 40 Code of Federal Regulations (CFR) §144.31(g)(1)-(3).

Section 331.121(f) is added to clarify the interim status under the Resource Conservation and Recovery Act (RCRA) for Class I hazardous waste injection wells. The section provides that the issuance of an underground injection well permit does not automatically terminate RCRA interim status. However, a

class I well's interim status does automatically terminate upon issuance to that well of a RCRA permit, or upon the well's receiving a RCRA permit-by-rule under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste). Section 331.121(f) reflects the provisions of 40 CFR §144.1(h).

Stephen Minick, division of budget and planning, has determined that for the first five years the rule is in effect there will be no significant fiscal implications as a result of enforcement or administration of the rule. There are no significant implications for either state or local governments. The effect of the rule will be to incorporate into state regulations provisions of existing federal regulations. While application of the rule to a specific facility may have fiscal implications, it is not anticipated that enforcement of the rule by the state will have significantly different fiscal implications for affected entities than would enforcement of the equivalent federal rules.

Mr. Minick has also determined that for the first five years the rule will be in effect the public benefit anticipated as a result of enforcement of and compliance with the rule will be improvements in the consistency of federal and state regulation of hazardous waste disposal facilities and in the information required to be submitted in support of permit applications. There are no anticipated effects on small businesses. There are no known economic costs to persons required to comply with the rule as proposed.

Comments on the proposals may be submitted to Brenda Clayton, Staff Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted until 5:00 p.m. for a period of 30 days following the date of this publication.

The amendment is proposed pursuant to the Texas Water Code, §5.103 and §5.105, which authorizes the Texas Water Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to the Texas Health and Safety Code, §361.017 and §361.024, which further authorizes the Texas Water Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

§331.121. *Class I Wells.*

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

(e) Information requirements for Class I hazardous waste injection well permits.

(1) The following information is required for each active Class I hazardous waste injection well at a facility seeking a underground injection control permit:

(A) dates well was operated; and

(B) specification of all wastes that have been injected in the well, if available.

(2) The owner or operator of any facility containing one or more active hazardous waste injection wells must submit all available information pertaining to any release of hazardous waste or constituents from any active hazardous waste injection well at the facility.

(3) The owner or operator of any facility containing one or more active Class I hazardous waste injection wells must conduct such preliminary site investigations as are necessary to determine whether a release is occurring, has occurred, or is likely to have occurred.

(f) Interim status under the Resource Conservation and Recovery Act (RCRA) for Class I hazardous waste injection wells. The minimum state standards which define acceptable injection of hazardous waste during the period of interim status are set out in §331.9 of this title (relating to Injection Authorized by Rule) and §331.44 of this title (relating to Corrective Action Standards). The issuance of an underground injection well permit does not automatically terminate RCRA interim status. A Class I well's interim status does, however, automatically terminate upon issuance to that well of a RCRA permit, or upon the well's receiving a RCRA permit-by-rule under §335.47 of this title (relating to Special Requirements for Persons Eligible for a Federal Permit by Rule).

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 August 2, 1993.

TRD-9326688

Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: September 6, 1993

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

◆ ◆ ◆  
Chapter 335. Industrial Solid  
Waste and Municipal  
Hazardous Waste

Subchapter A. Industrial Solid  
Waste and Municipal Hazardous  
Waste Management  
in General

The Texas Water Commission (TWC) proposes amendments to §§335.1, 335.2, 335.10, 335.13, 335.29, 335.41, 335.47, 335.61, 335.69, 335.74, 335.111, 335.112,

335.115, 335.152, 335.155, 335.166, 335.167, 335.168, 335.173, 335.211, 335.224, and 335.504 and the repeal of §335.431 and new §335.431, concerning industrial solid waste and municipal hazardous waste. The purpose of the amendments is to adopt certain federal hazardous waste regulations and to clarify existing state regulations.

Section 335.1 is amended to supplement the definition of "designated facility." The additional language will provide that when a waste is destined for a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste.

Section 335.1 is also amended to add the definition of a "drip pad" and to add the words "tank system" to the definitions of "elementary neutralization unit" and "wastewater treatment unit."

Section 335.2(c) is amended to provide that generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who process, store, or dispose of these wastes on-site, a Part A permit application shall be submitted to the U.S. EPA by March 24, 1987, as required by 40 Code of Federal Regulations, §270.10(e)(1)(i-ii).

Section 335.2(i) is amended to provide that owners and operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure after January 26, 1983, must have a post-closure permit. If a post-closure permit is required, the permit must address applicable provisions of 40 Code of Federal Regulations (CFR), 264, and of Subchapter F of 31 TAC Chapter 335. Also, §335.2(k) is added to adopt by reference the references listed in 40 CFR, §260.11.

Section 335.10 is amended to provide that the generator who ships hazardous waste to a designated facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

Section 335.13(a) is amended to provide that the generator or primary exporter that receives a signed copy of the manifest from the designated facility that received its waste must keep the signed copy for at least three years from the date the waste was accepted by the initial transporter.

Section 335.13(c) and (d) are amended to clarify that those subsections apply only to generators of greater than 1,000 kilograms of hazardous waste in a calendar month or to a generator of Class I waste. Simultaneously, §335.13(g) is added to require generators of greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month to report to the executive director if he does not receive a copy of the

manifest with the signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter.

Section 335.29 is amended to change the effective date of the adoption of Appendix III of 40 CFR, Part 261, from April 1, 1987 to March 9, 1990.

Section 335.41(c) is amended to eliminate the exemption from Subchapters E and F for persons disposing of hazardous waste by means of underground injection. After the rule change is promulgated, persons disposing of hazardous waste by means of underground injection will be subject to the interim status standards for owners and operators of hazardous waste storage, processing, or disposal facilities and to the special requirements for persons eligible for a federal permit by rule under §335.47.

Section 335.41(d) is amended to provide that a farmer who disposes of waste pesticides from his own use in compliance with §335.77 is exempt from Subchapters E and F of Chapter 335.

Section 335.41(i) is added to provide that the permitting standards of Subchapter F do not apply to persons disposing of hazardous waste by means of underground injection, except as provided under §335.47 (which relates to special requirements for persons eligible for a federal permit by rule).

Section 335.47(c)(3) is amended to provide that where an underground injection well is the only unit at a facility which requires a permit, the owner and operator of an injection well used to dispose of hazardous waste must comply with the information requirements of 40 CFR, §270.14(d).

Section 335.61 is amended to provide that generators who store, process, or dispose of hazardous waste must also comply with §335.73 (which relates to additional reporting), §335.73 (which relates to additional reporting), and, if applicable, §335.77 (which relates to farmers) and §335.69 (which relates to accumulation time). In addition, §335.61(f) is added to provide that a generator who treats, stores, or disposes of hazardous waste on-site must comply with the permitting and standard requirement for storage, treatment, and disposal facilities.

Section 335.69(a) is amended to provide that the generator that accumulates hazardous waste on-site without a permit and that places the hazardous waste on drip-pads must comply with 31 TAC §335.112(a)(18) (which relates to drip pads) and must maintain certain documentation.

Section 335.69(a)(4) is amended to provide that the generator who accumulates hazardous waste on-site without a permit or interim status must also comply with the land disposal restrictions of 40 CFR, §268.7(a)(4).

Section 335.69(f)(4) is amended to provide that the generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without interim status if he also complies with

the land ban provisions of 40 CFR, §268.7(a)(4).

Section 335.74 is amended to provide that the generator of between 100 and 1,000 kilograms per month of hazardous waste is also subject to the recordkeeping and reporting provisions of §335.13(a) and (g).

Section 335.111(c) is added to provide that the land disposal restrictions of 40 CFR, Part 268, are material conditions or requirements of interim status standards.

Sections 335.112(a)(17), (18), (19), and (20) are added to adopt by reference 40 CFR, Part 265, Subparts R, W, AA, and BB, respectively. Subpart R provides that the owner or operator of a facility which disposes of hazardous waste by underground injection is excluded from the requirements of Subparts G and H, which relate to closure and post-closure plans and to financial requirements. Subpart W regulates the use of drip pads to convey treated wood drippage, precipitation, and/or surface water run-on to an associated collection system. Texas will regulate drip pads for the first time with the adoption of Subpart W. Texas is required, to retain authorization, to adopt the drip-pad rules promulgated through July 1, 1991. However, we consider it appropriate to incorporate the more recent amendments adopted by the EPA in 57 FedReg 61492 on December 24, 1992. Subpart AA sets air emission standards for certain process vents associated with distillation, fractionalization, thin-film evaporation, solvent extraction, or air or stream stripping operations that manage hazardous wastes with organic concentrations of at least 10 ppmw. Subpart BB sets air emission standards for certain equipment leaks if that equipment contains or contacts hazardous wastes with organic concentrations of at least 10% by weight.

The TWC also proposes to move amendment dates subsequent to June 1, 1990, from the preamble of §335.112(a) to the individual paragraphs.

The effective date of §335.112(a)(1), which adopts by reference 40 CFR, Part 265, Subpart A, is amended from June 1, 1990, to April 26, 1991. In doing so, amendments made in 55 FedReg 25506 on June 21, 1990, and in 56 FedReg 19290 on April 26, 1991, are incorporated.

The effective date of §335.112(a)(4), which adopts by reference 40 CFR, Part 265, Subpart E, is changed from June 1, 1990, to April 26, 1991. In doing so, amendments made in 55 FedReg 25507 on June 21, 1990, and in 56 FedReg 19290 on April 26, 1991, are incorporated.

The effective date of §335.112(a)(7), which adopts by reference 40 CFR, Part 265, Subpart H, is changed from June 1, 1990, to July 1, 1991. In doing so, amendments made in 56 FedReg 30200 on July 1, 1991, are incorporated.

The effective date of §335.112(a)(9), which adopts by reference 40 Code of Federal Regulations, Subpart J, is changed from June 1, 1990, to December 6, 1990. In doing so, amendments made in 56 FedReg 50486 on December 6, 1990, are incorporated.

Section 335.115(a)(4) is added to require the owner and operator of storage, processing, or disposal facilities to submit any reports required by 40 CFR, Part 265, Subparts AA and BB.

The TWC is proposing to renumber old §335.152(a)(14) as new §335.152(a) (15).

Sections 335.152(14), (16), and (17) are added to adopt by reference 40 CFR, Part 264, Subparts W, AA, and BB, respectively. Subpart W regulates the use of drip pads to convey treated wood drippage, precipitation, and/or surface water run-on to an associated collection system. Texas will regulate drip pads for the first time with the adoption of Subpart WW. Texas is required, to retain authorization, to adopt the drip-pad rules promulgated through July 1, 1991. However, we consider it appropriate to incorporate the more recent amendments adopted by the EPA in 57 FedReg 61492 on December 24, 1992. Subpart AA sets air emission standards for process vents associated with distillation, fractionalization, thin-film evaporation, solvent extraction, or air or stream stripping operations that manage hazardous wastes with organic concentrations of at least 10 ppmw. Subpart BB sets air emission standards for equipment leaks if that equipment contains or contacts hazardous wastes with organic concentrations of at least 10% by weight.

Section 335.152 is also amended to move the amendment dates subsequent to June 1, 1990 from the preamble of §335.152(a) to the individual paragraphs.

The effective date of §335.152(a)(1), which adopts by reference 40 CFR, Part 264, Subparts B and E, is changed from June 1, 1990, to June 21, 1990. Amendments made in 55 FedReg 25494 on June 21, 1990, are thereby incorporated.

The effective date of §335.152(a)(4), which adopts by reference 40 CFR, Part 264, Subpart E, is changed from June 1, 1990, to June 21, 1990. Amendments made in 55 FedReg 25494 on June 21, 1990, are thereby incorporated.

The effective date of §335.152(a)(8), which adopts by reference 40 CFR, Part 264, Subpart J, is changed from June 1, 1990, to December 6, 1990. Amendments made in 55 FedReg 50484 on December 6, 1990, are thereby incorporated.

Section 335.155 is amended to require the owner and operator of storage, processing, or disposal facilities to submit any reports required by 40 CFR, Part 264, Subparts AA and BB.

Section 335.166(5) is amended to provide that the owner or operator who is required to implement a corrective action program must conduct that program beyond the facility boundary, if possible.

Section 335.167(c) is added to require the owner or operator of solid waste management units to implement corrective actions beyond the facility boundary, if possible.

Section 335.168(c) is amended to clarify that the requirements of the subsection apply with respect to all waste received after the issuance of the permit for units where Part B of

the permit application is received by the executive director after November 8, 1984.

Section 335.173(c) is amended to clarify that the requirements of that subsection apply with respect to all waste received after the issuance of the permit for units where Part B of the permit application is received by the executive director after November 8, 1984.

Section 335.211(b) is amended in three respects. First, it is amended to provide that the exemption for products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials must meet the applicable treatment standards in 40 CFR, Part 268, Subpart D. Second, the exemption for commercial fertilizers that contain recyclable materials is conditioned on meeting those same treatment standards or prohibition levels for each recyclable material that the fertilizers contain. Third, the section is amended to provide the zinc-containing fertilizers using hazardous waste K061 that are produced for the general public's use are not subject to regulation.

Section 335.224(7) is amended to allow the owner and operator of a boiler and industrial furnace that burns hazardous waste to use compliance test data from one unit in lieu of testing a similar on-site unit.

Section 335.431 is repealed due to the extensive changes need to clarify the subchapter.

New §335.431 will incorporate later amendments to the land ban provisions of 40 CFR, Part 268, and will clarify the language of the Texas regulation.

Except as provided in §335.431(c)(2), and subject to the changes in §335.431(d), the regulations contained in 40 CFR, Part 268, as amended through June 26, 1992, in 57 FedReg 29632, are adopted by reference in §335.431(c)(1).

Section 335.431(c)(2) excludes from adoption 40 CFR, §§268.5, 268.6, 268.7(a)(10), 268.10-268.13, 268.42(b), and 268.44. Sections 268.5, 268.6, 268.42(b), and 268.44 are excluded because those provisions are not delegable to the states. Section 268.7(a)(10) is excluded because Texas did not adopt the tolling provision of 40 CFR, §262.20(e), that is referred to in that section. Since Texas does not recognize the tolling agreement manifest exception allowed by 40 CFR, §262.20(e), Texas will require LDR certifications with each shipment. Sections 268.10-268.13 are excluded because those sections are merely deadlines set for EPA by Congress.

Section 335.431(d) changes portions of 40 CFR, Part 268, that are adopted by reference. The changes are necessary to integrate the federal regulations into the state regulatory scheme.

Section 335.504 is amended to provide that a person who generates hazardous waste must test that waste to comply with the land disposal restrictions.

Stephen Minick, division of budget and planning, has determined that for the first five years the rules are in effect there will be fiscal implications as a result of enforcement or

administration of the rules. There are no significant implications for either state or local governments. The effect of these rules will be to incorporate into state regulations provisions of existing federal regulations. It is not anticipated that enforcement of these same rules by the state will have significantly different fiscal implications for affected entities than would enforcement of the equivalent federal rules. The Environmental Protection Agency (EPA) has determined that none of the rules proposed to be incorporated constitute a "major rule" with significant national impact (greater than \$100 million).

EPA has estimated the industry-wide annualized costs of compliance with organic air emission standards for process vents and equipment leaks for hazardous waste management units at \$48 million (see 55 FedReg 25492, June 21, 1990). It is not known what part of the national total is represented by treatment storage or disposal facilities in Texas, however, approximately 10% of the total of potentially affected permitted hazardous waste facilities are in Texas. EPA has also determined that the regulations relating to drip pads, while not a major rule, could have potential significant impacts on the wood preserving industry. The total national annualized cost to wood preserving facilities of the proposed drip pad rules (see 55 FedReg 50471, December 12, 1990) was estimated to be between \$11 million and \$14 million. The state rules as proposed, however, incorporate changes adopted in the final federal rule (57 Federal Register 61501, December 24, 1992) which will reduce the anticipated costs of these rules. These changes relate to exemptions from listing of certain hazardous wastes, construction standards for drip pads and management requirements for wastes from drip pads. Of the approximately 440 wood preserving facilities anticipated to be affected by the rule nationally, no more than 10 (2.3%) are located in Texas. Other provisions of these proposed rules will have fiscal implications which have not been specifically identified at the state level, but which should not be different from the equivalent federal regulation.

Mr. Minick also has determined that for the first five years the rules will be in effect the public benefit anticipated as a result of enforcement of and compliance with the rules will be improvements in the consistency of federal and state regulation of hazardous waste treatment, storage, and disposal facilities, reductions in potential releases of hazardous constituents to the environment and improved protection of human health and safety. No significant impacts to small businesses are anticipated. There are no known costs to persons required to comply with the rules as proposed.

Comments on the proposals may be submitted to Brenda Clayton, Staff Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted until 5:00 p.m. for a period of 30 days following the date of this publication.

• 31 TAC §§335.1, 335.2, 335.10, 335.13, 335.29



The amendments are proposed pursuant to the Texas Water Code, §5.103 and §5.105 (Vernon 1988), which authorizes the Texas Water Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to the Texas Health and Safety Code, §361.017 and §361.024 (Vernon 1992), which further authorizes the Texas Water Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

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

**Designated facility**—A Class I or hazardous waste storage, processing, or disposal facility which has received an Environmental Protection Agency (EPA) permit (or a facility with interim status) in accordance with the requirements of 40 Code of Federal Regulations, Parts 270 and 124; a permit from a state authorized in accordance with 40 Code of Federal Regulations, Part 271 (in the case of hazardous waste); a permit issued pursuant to §335.2 of this title (relating to Permit Required) (in the case of non-hazardous waste); or that is regulated under §335.24(f), (g), or (h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) or §335.241 of this title (relating to Applicability and Requirements) and that has been designated on the manifest by the generator pursuant to §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste). If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving State to accept such waste.

**Drip Pad**—An engineered structure consisting of a curbed, free-draining base, constructed of a non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

**Elementary neutralization unit**—A device which:

(A) (No change.)

(B) meets the definition of tank, tank system, container, transport vehicle, or vessel as defined in this section.

**Landfill**—A disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an injection well, a salt dome

formation, a saltbed formation, an underground mine or a cave.

**Wastewater treatment unit**—A device which:

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

(C) meets the definition of tank or tank system as defined in this section.

**§335.2. Permit Required.**

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

(c) Any owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application with the commission in accordance with the rules and regulations of the commission, may continue the storage, processing, or disposal of hazardous waste until such time as the Texas Water Commission approves or denies the application, or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by the United States Environmental Protection Agency or commission rules relative to termination of interim status. If a solid waste facility which has become a commercial hazardous waste management facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. Owners or operators of municipal hazardous waste facilities which satisfied this requirement by filing an application on or before November 19, 1980, with the United States Environmental Protection Agency are not required to submit a separate application with the Texas Department of Health. Applications filed under this section shall meet the requirements of §335.44 of this title (relating to Application for Existing On-Site Facilities). Owners and operators of solid waste management facilities that are in existence on the effective date of statutory or regulatory amendments under the Solid Waste Disposal Act, Chapter 361, Texas Health and Safety Code (Vernon's Supplement 1991), Texas Civil Statutes, Article 4477-7, or the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code, §§6901 et seq, that render the facility subject to the requirement to obtain a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no later than six months after the date of publication of regu-

lations by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, which first require them to comply with the standards set forth in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); or 30 days after the date they first become subject to the standards set forth in these subchapters, whichever first occur; or for generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who process, store, or dispose of these wastes on-site, a Part A permit application shall be submitted to the United States Environmental Protection Agency by March 24, 1987, as required by 40 Code of Federal Regulations, §270.10(e)(1)(iii). This subsection shall not apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated. Applications filed under this section shall meet the requirements of §335.44 of this title (relating to Application for Existing On-Site Facilities). For purposes of this subsection, a solid waste management facility is in existence if the owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits, as required by applicable federal, state, and local hazardous waste control statutes, regulations, or ordinances; and either:

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

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

(i) Owners or operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to 40 Code of Federal Regulations, §265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal as provided under 40 Code of Federal Regulations, §270.1(c)(5) and (6). If a post-closure permit is required, the permit must address applicable provisions of 40 Code of Federal Regulations, Part 264, and Subchapter F of this Chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) provisions relating to Groundwater Monitoring, Unsaturated Zone Monitoring, Corrective Action, and Post-closure Care Requirements. The denial of a permit for the active life of a hazardous waste man-

agement facility or unit does not affect the requirement to obtain a post-closure permit under this section. [and, for any unit that receives hazardous waste after July 26, 1982, during any post-closure care period required under 40 Code of Federal Regulations, §264.117, and during any compliance period specified under §335.162 of this title (relating to Compliance Period) including any extension of that period.]

(j) (No change.)

(k) When used in this Chapter, (relating to Industrial Solid Waste and Municipal Hazardous Waste) the references contained in 40 Code of Federal Regulations, §260.11 are incorporated by reference.

*§335.10. Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste.*

(a) Except as provided in subsection (g) of this section, no generator of hazardous or Class I waste consigned to an off-site solid waste storage facility within the United States or primary exporters of hazardous waste consigned to a foreign country shall cause, suffer, allow, or permit the shipment of hazardous waste or Class I waste unless:

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

(6) For shipments of hazardous waste to a designated facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

(b)-(h) (No change.)

*§335.13. Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste.*

(a) The generator or primary exporter shall retain a copy of each manifest required by §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste) for a minimum of three years from the date of shipment by the generator or primary exporter or until the generator or primary exporter receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

(b) (No change.)

(c) A generator of greater than 1,000 kilograms of hazardous waste in a calendar month or a generator of Class I waste who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste or Class I waste.

(d) A generator of greater than 1,000 kilograms of hazardous waste in a calendar month or a generator of Class I waste must submit an exception report to the commission if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date that the waste was accepted by the initial transporter. Primary exporters of hazardous waste must submit an exception report to the executive director as set forth in §335.76(c) of this title (relating to Additional Requirements Applicable to International Shipments). The exception report must be retained by the generator or primary exporter for at least three years from the date the waste was accepted by the initial transporter and must include:

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

(e)-(f) (No change.)

(g) A generator of greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the executive director.

*§335.29. Adoption of Appendices by Reference.* The following appendices contained in 40 Code of Federal Regulations, Part 261 [which are in effect as of April 1, 1987, except Appendix II which is in effect as of September 25, 1990], are adopted by reference[:] as amended and adopted through April 1, 1987 and as further amended as indicated in each paragraph:

(1) Appendix I-Representative Sampling Methods;

(2) Appendix II-Method 1311 Toxicity Characteristic Leaching Procedure (TCLP) (as amended through September 25, 1990);

(3) Appendix III-Chemical Analysis Test Methods (as amended through March 9, 1990 at 55 FedReg 8948);

(4) Appendix VII-Basis for Listing Hazardous Waste;

(5) Appendix VIII-Hazardous Constituents;

(6) Appendix IX-Wastes Excluded Under §260.20 and §260.22; and

(7) Appendix X-Method of Analysis for Chlorinated Dibenzo-p-dioxins and Dibenzofurans.

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

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◆ ◆ ◆  
Subchapter B. Hazardous  
Waste Management General  
Provisions

• 31 TAC §335.41, §335.47

The amendments are proposed pursuant to the Texas Water Code, §5.103, and §5.105 (Vernon 1988), which authorizes the Texas Water Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to Texas Health and Safety Code, §361.017 and §361.024 (Vernon 1992), which further authorizes the Texas Water Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

*§335.41. Purpose, Scope, and Applicability.*

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

(c) Except as provided in §335.47 of this title (relating to Special Requirements for Persons Eligible for a Federal Permit by Rule), Subchapter B of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste, Storage, Processing, or Disposal Facilities) do not apply to the owner or operator of a publicly-owned treatment works (POTW) which processes, stores, or disposes of hazardous waste.[:]

[(1) The owner or operator of a publicly-owned treatment works (POTW) which processes, stores, or disposes of hazardous waste; and

(2) Persons disposing of hazardous waste by means of underground injection. However, Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) do apply to the above ground storage or processing of hazardous waste before it is injected underground.]

(d) Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste, Storage, Processing, or Disposal Facilities) do not apply to:

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

(4) a farmer disposing of waste pesticides from his own use in compliance with §335.77 (relating to Farmers) of this title.

(e)-(h) (No change.)

(i) Except as provided in §335.47 of this title (relating to Special Requirements for Persons Eligible for a Federal Permit by Rule), Subchapter F of this Chapter (relating to Permitting Standards for Owners and Operators of Hazardous waste Storage, Processing, or Disposal Facilities) does not apply to persons disposing of hazardous waste by means of underground injection. However, Subchapter F does apply to the aboveground storage or processing of hazardous waste before it is injected underground.

*§335.47. Special Requirements for Persons Eligible for a Federal Permit by Rule.*

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

(c) In addition to the requirements stated in subsection (b) of this section, the owner or operator of an injection well used to dispose of hazardous waste shall:

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

(3) for underground injection control permits issued after November 8, 1984, comply with §335.167 of this title (relating to Corrective Action for Solid Waste Management Units). Where the underground injection well is the only unit at a facility which requires a permit, comply with 40 Code of Federal Regulations §270.14(d) (relating to information requirements for solid waste management units). Persons who dispose of hazardous waste by means of underground injection must obtain a permit under the Texas Water Code, Chapter 27.

(d) (No change.)

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

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◆ ◆ ◆  
**Subchapter C. Standards Applicable to Generators of Hazardous Waste**

• 31 TAC §§335.61, 335.69, 335.74

The amendments are proposed pursuant to the Texas Water Code, §5.103 and §5.105 (Vernon 1988), which authorizes the Texas Water Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to Texas Health and Safety Code, §361.017 and §361.024 (Vernon 1992), which further authorizes the Texas Water Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

*§335.61. Purpose, Scope, and Applicability.*

(a) (No change.)

(b) The provisions of this subchapter with which a generator who stores, processes or disposes of hazardous waste on-site must comply are §335.62 of this title (relating to Hazardous Waste Determination), §335.63 of this title (relating to EPA Identification Numbers), [and] §335.70 of this title (relating to Recordkeeping), §335.73 of this title (relating to Additional Reporting), and, if applicable, §335.77 of this title (relating to Farmers), and §335.69 of this title (relating to Accumulation Time).

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

(f) A generator who treats, stores, or disposes of hazardous waste on-site must comply with the applicable standards and permit requirements set forth in Subchapters E, F, H, and O of 31 TAC Chapter 335 and with 31 TAC Chapter 305.

*§335.69. Accumulation Time.*

(a) Except as provided in subsections (f)-(h) of this section, a generator may accumulate hazardous waste on-site without a permit or interim status for 90 days or less if the generator complies with para-

graphs (1) -(4) of this subsection. In addition, such a generator is exempt from all requirements adopted by reference in §335.112(a)(6) and (7) of this title (relating to Standards), except 40 Code Of Federal Regulations, §265.111 and §265.114. The exemptions apply if: [provided that:]

(1) the waste is placed:

(A) in containers and the generator complies with the provisions adopted by reference in §335.112(a)(8) of this title (relating to Standards); or

(B) in tanks and the generator complies with the requirements adopted by reference in §335.112(a)(9) of this title (relating to Standards), except 40 Code of Federal Regulations, §265.197(c) and §265.200; or

(C) on drip pads and the generator complies with §335.112(a)(18) (relating to drip pads) and maintains the following records at the facility;

(i) a description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(ii) documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

[(1) the waste is placed in containers and the generator complies with the provisions adopted by reference in §335.112(a)(8) of this title (relating to Standards) or the waste is placed in tanks, and the generator complies with the requirements adopted by reference in §335.112(a)(9) of this title (relating to Standards), except 40 Code of Federal Regulations, §265.197(c) and §265.200. In addition, such a generator is exempt from all requirements adopted by reference in §335.112(1)(6) and (7) of this title (relating to Standards), except 40 Code of Federal Regulations, §265.111 and §265.114;]

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

(4) the generator complies with the requirements for owners or operators contained in 40 Code of Federal Regulations, Part 265, Subparts C and D, as incorporated by reference in §335.112 of this title (relating to Standards), with 40 Code of Federal Regulations, §265.16, with 40 Code of Federal Regulations, §268.7(a)(4), and §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

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

(f) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

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

(4) the generator complies with the requirements of subsections (a)(2) and (3) of this section and the requirements of 40 Code of Federal Regulations, Part 265, Subpart C, the requirements of 40 Code of Federal Regulations, §268.7(a)(4); and

(5) (No change.)

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

**§335.74. Special Requirements for Generators of Between 100 and 1,000 Kilograms Per Month.** A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month is exempt from the recordkeeping and reporting requirements of this subchapter, except for [the recordkeeping requirements in] §335.70(a) and (c) (relating to Recordkeeping); and §335.73 of this title (relating to [Recordkeeping; and] Additional Reporting); [.] and §335.13(a) and (g) (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste and Primary Exporters of Hazardous Waste. Such generators are subject to the requirements of §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators).

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

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**Subchapter E. Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities**

• 31 TAC §§335.111, 335.112, 335.115

The amendments are proposed pursuant to the Texas Water Code, §5.103 and §5.105 (Vernon 1988), which authorizes the Texas Water Commission to promulgate rules nec-

essary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to Texas Health and Safety Code, §361.017 and §361.024 (Vernon 1992), which further authorizes the Texas Water Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

**§335.111. Purpose, Scope, and Applicability.**

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

(c) The requirements of this section apply to owners or operators of all facilities which process, store or dispose of hazardous waste referred to in 40 Code of Federal Regulations, Part 268, and the 40 Code of Federal Regulations, Part 268 standards are considered material conditions or requirements of the Part 265 interim status standards incorporated by reference in §335.112 of this title (relating to Standards).

**§335.112. Standards.**

(a) The following regulations contained in 40 Code of Federal Regulations, Part 265 (including all appendices to Part 265) (except as otherwise specified herein), are adopted by reference as amended and adopted in the Code of Federal Regulations through June 1, 1990 (see 55 FedReg 22685) and as further amended as indicated in each paragraph of this section: [published and adopted in the February 21, 1992, July 17, 1991, August 27, 1991, and September 5, 1991 issues of the *Federal Register* (see 56 FedReg 7239, and 56 FedReg 32688, 56 FedReg 42504, and 56 FedReg 43874.)]

(1) Subpart B-General Facility Standards (as amended through April 26, 1991 in (56 FedReg 19290);

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

(4) Subpart E-Manifest System, Recordkeeping and Reporting[.] (as amended through April 26, 1991 in 56 FedReg 19290), except 40 Code of Federal Regulations, §§265.71, 265.72, and 265.75-265.77;

(5) (No change.)

(6) Subpart G-Closure and Post-Closure (as amended through February 21, 1991 in 56 FedReg 7207); except 40 Code of Federal Regulations, §265.112 (d)(3) and (4) and §265.118(e) and (f);

(7) Subpart H-Financial Requirements (as amended through July 1, 1991 in 56 FedReg 30200); except 40 Code of Federal Regulations, §265.142(a)(2); and facilities qualifying for a corporate guarantee for liability are subject to §265.147(g)(2);

(8) (No change.)

(9) Subpart J-Tank Systems (as amended through December 6, 1990 at 55 FedReg 50486);

(10)-(13) (No change.)

(14) Subpart O-Incinerators (as amended through February 21, 1991 at 56 FedReg 7208);

(15) Subpart P-Thermal Treatment (as amended through July 17, 1991 at 56 FedReg 32692; and

(16) Subpart Q-Chemical, Physical, and Biological Treatment; [.]

(17) Subpart R-Underground Injection;

(18) Subpart W-Drip Pads (as amended through December 24, 1992 at 57 FedReg 61492);

(19) Subpart AA-Air Emission Standards for Process Vents (as amended through through April 26, 1991 at 56 FedReg 19290); and

(20) Subpart BB-Air Emission Standards for Equipment Leaks (as amended through April 26, 1991 at 56 FedReg 19290).

(b) (No change.)

**§335.115. Additional Reports.** In addition to submitting the annual report and waste reports described in §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners and Operators of Storage, Processing, or Disposal Facilities) and §335.114 of this title (relating to Reporting Requirements), the owner or operator must also report to the executive director:

(1) (No change.)

(2) groundwater contamination and monitoring data as specified in 40 Code of Federal Regulations, §265.93 and §335.117 of this title (relating to Recordkeeping and Reporting); [and]

(3) facility closure as specified in 40 Code of Federal Regulations, §265.115; and [.]

(4) as otherwise required by §335.112(a)(2) of this title (relating to Standards), which incorporates the requirements of 40 Code of Federal Regulations, Part 265, Subparts AA and BB.

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

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Subchapter F. Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities

- 31 TAC §§335.152, 335.155, 335.166-335.168, 335.173

The amendments are proposed pursuant to the Texas Water Code, §5.103 and §5.105 (Vernon 1988), which authorizes the Texas Water Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to Texas Health and Safety Code, §361.017 and §361.024 (Vernon 1992), which further authorizes the Texas Water Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

§335.152. *Standards.*

(a) The following regulations contained in 40 Code of Federal Regulations, Part 264 (including all appendices to Part 264), are adopted by reference as amended and adopted in the Code of Federal Regulations through June 1, 1990 (see 55 FedReg 22685) and as further amended and adopted as indicated in each paragraph of this section: [published and adopted in the February 21, 1991, July 17, 1991, August 27, 1991, and September 5, 1991, issues of the *Federal Register* (see 56 FedReg 7239, and 56 FedReg 19290, 56 FedReg 30196, 56 FedReg 32688, 56 FedReg 42504, and 56 FedReg 43874).]

(1) Subpart B-General Facility Standards (as amended through June 21, 1990, at 55 FedReg 25494); in addition, the facilities which are subject to 40 Code of Federal Regulations, Part 264, Subpart X, are subject to regulation under 40 Code of Federal Regulations, §264.15(b)(4) and §264.18(b)(1)(ii);

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

(4) Subpart E-Manifest System, Recordkeeping, and Reporting (as amended through June 21, 1990, at 55 FedReg 25494), except 40 Code of Federal Regulations, §§264.71, 264.72, and 264.75-264.77; facilities which are subject to 40 Code of Federal Regulations, Part 264, Subpart X, are subject to 40 Code of Federal Regulations, §264.73(b)(6);

(5) Subpart G-Closure and Post-Closure (as amended through February

21, 1991, at 56 FedReg 7207); facilities which are subject to 40 Code of Federal Regulations, Part 264, Subpart X, are subject to 40 Code of Federal Regulations, §§264.90(d), 264.111(c), 264.112(a)(2), 264.114, 264.117(a)(1)(i) and (ii), and §264.118(b)(1) and (2)(i) and (ii);

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

(8) Subpart J-Tank Systems (as amended through December 6, 1990, at 55 FedReg 50484);

(9)-(12) (No change.)

(13) Subpart O-Incinerators (as amended through February 21, 1991, at 54 FedReg 7207); and

(14) Subpart W-Drip Pads (as amended through December 24, 1992, at 57 FedReg 61492);

(15)[(14)] Subpart X-Miscellaneous Units; [.]

(16) Subpart AA-Air Emission Standards for Process Vents (as amended through April 26, 1991, at 56 FedReg 19290);

(17) Subpart BB-Air Emission Standards for Equipment Leaks (as amended through April 26, 1991, at 56 FedReg 19290).

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

§335.155. *Additional Reports.* In addition to submitting the annual report and waste reports described in §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners and Operators of Storage, Processing, or Disposal Facilities) and §335.154 of this title (relating to Reporting Requirements for Owners and Operators), the owner or operator must also report to the executive director:

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

(3) as otherwise required by 40 Code of Federal Regulations, Part 264, Subparts F, K-N, [and] X, [.] AA and BB.

§335.166. *Corrective Action Program.* An owner or operator required to establish a corrective action program must, at a minimum, discharge the following responsibilities:

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

(5) In addition to the other requirements of this section, the owner or operator must conduct a corrective action program to remove or treat in place any hazardous constituents under §335.159 of this title (relating to Hazardous Constituents) that exceed concentration limits under §335.160 of this title (relating to Concentration Limits) in groundwater between the

compliance point under §335.161 of this title (relating to Point of Compliance) and the downgradient facility property boundary and beyond the facility boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the executive director that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. The owner/operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. The plan will specify the measures to be taken.

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

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

§335.167. *Corrective Action for Solid Waste Management Units.*

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

(c) The owner or operator must implement corrective actions beyond the facility boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the executive director that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. The owner/operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. Assurances of financial responsibility for such corrective action must be provided to the executive director.

§335.168. *Design and Operating Requirements (Surface Impoundments).*

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

(c) The owner or operator of each new surface impoundment, each new surface impoundment unit at an existing facility, each replacement of an existing surface impoundment unit, and each lateral expansion of an existing surface impoundment unit, must install two or more liners and a leachate collection system between such liners. The liners and leachate collection system must protect human health and the environment. The requirements of this subsection shall apply with respect to all waste received after the issuance of the permit [.] for units where Part B of the permit application is received by the executive director after November 8, 1984. The re-

quirement for the installation of two or more liners in this subsection may be satisfied by the installation of a top liner designed, operated, and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any post-closure monitoring period), and a lower liner designed, operated, and constructed to prevent the migration of any constituent through such liner during such period. A lower liner shall be deemed to satisfy this requirement if it is constructed of at least a three-foot thick layer of recompacted clay or other natural material with a permeability of no more than  $1 \times 10^{-7}$  centimeter per second.

(d)-(i) (No change.)

*§335.173. Design and Operating Requirements (Landfills).*

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

(c) The owner or operator of each new landfill, each new landfill unit at an existing facility, each replacement of an existing landfill unit, and each lateral expansion of an existing landfill unit, must install two or more liners and a leachate collection system above and between the liners. The liners and leachate collection systems must protect human health and the environment. The requirements of this subsection shall apply with respect to all waste received after the issuance of the permit for units where the Part B of the permit application is received by the executive director after November 8, 1984. The requirement for the installation of two or more liners in this subsection may be satisfied by the installation of a top liner designed, operated, and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any post-closure monitoring period), and a lower liner designed, operated, and constructed to prevent the migration of any constituent through such liner during such period. A lower liner shall be deemed to satisfy this requirement if it is constructed of at least a three-foot thick layer of recompacted clay or other natural material with a permeability of no more than  $1 \times 10^{-7}$  centimeter per second.

(d)-(j) (No change.)

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◆ ◆ ◆  
Subchapter H. Recyclable Materials Used in a Manner Constituting Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities

• 31 TAC §335.211

The amendment is proposed pursuant to the Texas Water Code, §5.103 and §5.105 (Vernon 1988), which authorizes the Texas Water Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to Texas Health and Safety Code, §361.017 and §361.024 (Vernon 1992), which further authorizes the Texas Water Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

*§335.211. Applicability.*

(a) (No change.)

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the product so as to become inseparable by physical means and if such products meet the applicable treatment standards in 40 Code of Federal Regulations, Subpart D of Part 268 (or applicable prohibition levels in §268.32 or RCRA, §3004(d), where no treatment standards have been established) for each recyclable material (i.e. hazardous waste) that they contain. Commercial fertilizers that are produced for the general public's use that contain recyclable materials also are not presently subject to regulation provided they meet these same treatment standards or prohibition levels for each recyclable material that they contain. However, zinc-containing fertilizers using hazardous waste K061 that are produced for the general public's use are not presently subject to regulation.

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 August 2, 1993.

TRD-9326698 Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: September 6, 1993

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

Subchapter H. Hazardous Waste Burned for Energy Recovery; Standards for the Management of Specific Wastes and Specific Types of Facilities

• 31 TAC §335.224

The amendment is proposed pursuant to the Texas Water Code, §5.103 and §5.105 (Vernon 1988), which authorizes the Texas Water Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to Texas Health and Safety Code, §361.017 and §361.024 (Vernon 1992), which further authorizes the Texas Water Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

*§335.224. Additional Interim Status Standards for Burners.* In addition to the interim status standards for burners under §335.221(a)(7)-(14) of this title (relating to Applicability and Standards), owners and operators of "existing" boilers and industrial furnaces that burn hazardous waste are subject to the following provisions, including the applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General) and Subchapter E of this Chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), as follows.

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

(7) Compliance testing must be conducted under conditions for which the owner or operator has submitted a certification of precompliance under 40 Code of Federal Regulations (CFR) §266.103(b) and paragraphs (4)-(5) of this section, and under conditions established in the notification of compliance testing required by 40 CFR, §266.103(c)(2). The owner and operator may seek approval on a case-by-case basis to use compliance test data from one unit in lieu of testing a similar on-site unit. To support the request, the owner or operator must provide a comparison of the hazardous waste burned and other feedstreams, and the design, operation, and maintenance of both the tested unit and the similar unit. The director shall provide a written approval to use compliance test data in lieu of testing a similar unit if he finds that the hazardous wastes, the devices, and the operating conditions are sufficiently similar, and the data from the other compliance test is adequate to meet the requirements of §266.103(c).

(8)-(15) (No change.)

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

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

TRD-9326699

Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: September 6, 1993

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

## Subchapter O. Land Disposal Restrictions

### • 31 TAC §335.431

*(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 repeal is proposed under the Texas Water Code, §5.103 and §5.105 (Vernon 1988), which provides the Texas Water Commission the authority to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to Texas Health and Safety Code, §361.017 and §361.024 (Vernon 1992), which further provides the Texas Water Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

### §335.431. Purpose, Scope, and Applicability.

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 August 2, 1993.

TRD-9326700

Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: September 6, 1993

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

The new section is proposed pursuant to the Texas Water Code, §5.103 and §5.105 (Vernon 1988), which authorizes the Texas Water Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to Texas Health and Safety Code, §361.017 and §361.024 (Vernon 1992), which further authorizes the Texas Water Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

### §335.431. Purpose, Scope, and Applicability.

(a) Purpose. The purpose of this subchapter is to identify hazardous wastes that are restricted from land disposal and define those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.

#### (b) Scope and Applicability.

(1) Except as provided in paragraph (2) of this subsection, the requirements of this subchapter apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste processing, storage, and disposal facilities.

(2) The requirements of this subchapter do not apply to any entity that is either specifically excluded from coverage by this subchapter or would be excluded from the coverage of 40 Code of Federal Regulations (CFR), Part 268 by 40 CFR, Part 261, if those parts applied.

#### (c) Adoption by Reference.

(1) Except as provided in paragraph (2) of this subsection, and subject to the changes indicated in subsection (d) of this section, the regulations contained in 40 CFR, Part 268, as amended through June 26, 1992, in 57 FedReg 29632, are adopted by reference.

(2) The following sections of 40 CFR, Part 268 are excluded from the sections adopted in paragraph (1) of this subsection: §§268.5, 268.6, 268.7(a)(10), 268.10-268.13, 268.42(b), and 268.44.

(3) Appendices I-IX of 40 CFR, Part 268 are adopted by reference as amended through June 26, 1992, in 57 FedReg 29632.

(d) Changes to Adopted Parts. The parts of the CFR that are adopted by reference in subsection (c) of this section are changed as follows:

(1) the words "Administrator" or "Regional Administrator" are changed to "Executive Director;"

(2) the word "treatment" is changed to "processing;"

(3) the words "Federal Register," when they appear in the text of the regulation, are changed to "Texas Register;"

(4) in §§268.7(a)(6) and (7), the applicable definition of hazardous waste and solid waste is the one that is set out in 31 TAC Chapter 335 rather than the definition of hazardous waste and solid waste that is set out in 40 CFR, Part 261.

(5) in §268.501(a)(1), the citation to "§262.34" is changed to "§335.69."

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 August 2, 1993.

TRD-9326701

Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: September 6, 1993

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

## Subchapter R. Waste Classification

### • 31 TAC §335.504

The amendment is proposed pursuant to the Texas Water Code, §5.103 and §5.105 (Vernon 1988), which authorizes the Texas Water Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to Texas Health and Safety Code, §361.017 and §361.024 (Vernon 1992), which further authorizes the Texas Water Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

§335.504. Hazardous Waste Determination. A person who generates a solid waste must determine if that waste is hazardous waste using the following method:

(1) (No change.)

(2) for purposes of complying with 40 Code of Federal Regulations Part 268 or if [I]f the waste is not listed as a hazardous waste in 40 Code of Federal Regulations Part 261, Subpart D, he or she must then determine whether the waste is identified in 40 Code of Federal Regulations Part 261, Subpart C, by either:

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

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

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

TRD-9326702

Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: September 6, 1993

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

**TITLE 34. Public Finance**  
**Part I. Comptroller of**  
**Public Accounts**

**Chapter 3. Tax Administration**  
**Subchapter BB. Battery Sales**  
**Fee**

• **34 TAC §3.711**

The Comptroller of Public Accounts proposes an amendment to §3.711, concerning the batteries that are subject to the battery sales fee. The 73rd Legislature, 1993, amended the Health and Safety Code, §361, effective August 30, 1993, to exempt certain batteries from the fee and to impose the fee on some batteries that were previously exempted.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Charles C. Johnstone, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

*§3.711. Collection and Reporting Requirements.*

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

(1) Dealer—A wholesaler, retailer, or any other person who sells or offers to sell lead-acid batteries.

(2) Lead-acid battery—Any battery, new or used, which contains lead and sulfuric acid, in liquid or gel form.

(3) Sale for resale—A sale of a lead-acid battery to a purchaser for the purpose of reselling the battery in the normal course of business in the form or condition in which it is acquired (i.e., as a separate item). A sale of a battery that is attached to or becomes an integral part of a vehicle, boat, or other equipment that is being sold, rented, or leased is not a sale for resale. The battery sales fee is due on the sale prior to

the battery becoming a part of this equipment.

(b) Collection and remittance of the fee.

(1) Except as provided in subsection (g) of this section, every [Every] dealer must collect the fee on each sale of a lead-acid battery [of six volts or more, except a sale for resale or a sale for disposal or reclamation]. A fee shall not be charged, collected, or allowed as an offset on a battery taken as a trade-in.

(2) The fee is not due on the sale of a vehicle, boat, or other equipment that has a battery as an integral part of it.

(3) The amount of the fee due must be separately stated on the invoice, bill, or contract to the customer and shall be identified as the Texas battery sales fee.

(4) A dealer may not advertise, make public, indicate, or imply that the dealer will absorb, assume, or refund any portion of the fee.

(c) Report forms. The battery sales fee is to be reported on the Texas battery sales fee/waste tire recycling fee report form as prescribed by the comptroller. The fact that the dealer does not receive the form or does not receive the correct form from the comptroller for the filing of the return does not relieve the dealer of the responsibility of filing a return and paying the required fee.

(d) Reporting period.

(1) Monthly filing. The battery sales fee is due and payable on or before the 20th day of the month following the end of each calendar month. Every dealer also required to report the waste tire recycling fee must file at the same time the battery sales fee is filed. Returns must be filed on a monthly basis unless a dealer qualifies as a quarterly filer under paragraph (2) of this subsection.

(2) Quarterly filing. A dealer who owes an average, as computed for the year, of less than \$50 for a calendar month or less than \$150 for a calendar quarter is required to file a return and pay the fee on or before the 20th day of the month following the end of the calendar quarter. The waste tire recycling fee liability is not included in determining the requirement for quarterly filing; however, a dealer required to file the waste tire recycling fee return on a monthly basis must file the battery fee return at the same time. The comptroller will notify a dealer when the report and payment may be submitted quarterly.

(e) Payment of the fee.

(1) On or before the 20th day of the month following each reporting period, every person subject to the fee shall file a

consolidated return for all businesses operating under the same fee payer number and remit the total fee due.

(2) Every dealer may retain .025 for each fee (i.e., battery) reported and paid on his return.

(3) The returns must be signed by the person required to file the return or by the person's duly authorized agent, but need not be verified by oath.

(f) Records required.

(1) Invoices or other records must be kept for at least four years after the date on which the invoices or records are prepared.

(2) The comptroller or an authorized representative has the right to examine any records or equipment of any person liable for the fee in order to verify the accuracy of any return made or to determine the fee liability in the event no return is filed.

(g) Exemptions.

(1) Sales for resale are not subject to the fee.

(2) The sale of a battery that under the sales contract is shipped to a point outside Texas is not subject to the fee imposed by this rule if the shipment is made by the seller by means of:

(A) the facilities of the seller;

(B) delivery by the seller to a carrier for shipment to a consignee at a point outside this state; or

(C) delivery by the seller to a forwarding agent for shipment to a location in another state of the United States or its territories or possessions.

(3) Exports beyond the territorial limits of the United States are not subject to the fee. Proof of export may be shown only by:

(A) a copy of a bill of lading issued by a licensed and certificated carrier showing the seller as consignor, the buyer or purchaser as consignee, and a delivery point outside the territorial limits of the United States;

(B) documentation provided by a licensed United States customs broker certifying that delivery was made to a point outside the territorial limits of the United States;



(C) formal entry documents from the country of destination showing that the battery was imported into a country other than the United States. For the country of Mexico, the formal entry document would be the pedimento de importaciones document with a computerized, certified number issued by Mexican customs officials; or

(D) a copy of the original airway, ocean, or railroad bill of lading issued by a licensed and certificated carrier which describes the items being exported and a copy of the freight forwarder's receipt if the freight forwarder takes possession of the property in Texas.

(4) There is no exemption provided for any organization or governmental agency, except as provided in paragraph (5) of this subsection.

(5) The United States, its instrumentalities and agencies are exempted from the battery sales fee.

(6) Sales for disposal or reclamation are not subject to the fee.

(7) A battery is exempt from this fee if it meets all of the following criteria:

(A) the ampere-hour rating of the battery is less than 10 ampere-hours;

(B) the sum of the dimensions of the battery (height, width, and length) is less than 15 inches; and

(C) the battery is sealed so that no access to the interior of the battery is possible without destroying the battery.

(h) Replacements covered by a warranty or service contract.

(1) The replacement of a battery under a manufacturer's warranty, without an additional charge to the purchaser, is not the sale of a battery to the purchaser. This replacement, therefore, is not subject to the fee. If there is a charge to the customer for the replacement (such as a pro rata warranty adjustment), then the customer must pay the battery sales fee.

(2) The replacement of a battery under an extended warranty or a service contract, for which the customer pays an extra charge, depends on the terms of the contract.

(A) If the replacement is free of charge to the customer, the dealer is responsible for paying the fee.

(B) If there is a charge to the customer for the replacement, the customer must pay the fee.

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 August 2, 1993.

TRD-9326708

Martin E. Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Earliest possible date of adoption: September 10, 1993

For further information, please call: (512) 463-4852

## TITLE 40. Social Services and Assistance

### Part I. Texas Department of Human Services

#### Chapter 29. Purchased Health Services

##### Subchapter L. General Admin- istration

###### • 40 TAC §§29.1104, 29.1126, 29.1127

The Texas Department of Human Services (DHS) proposes amendments to §29.1104 concerning the Texas Medicaid Reimbursement Methodology, §29.1126 concerning reimbursement for in-home total parenteral hyperalimentation services and §29.1127 concerning reimbursement for in-home respiratory therapy services for ventilator-dependent persons

These rule amendments are required to eliminate any cost-of-living adjustment for these services for the 1994-1995 biennium as mandated in the appropriations act effective September 1, 1993. In addition, the rules are being revised to state that future cost-of-living adjustments are dependent on available funding.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed amendments will be in effect there will be fiscal implications as a result of enforcing or administering the amendments. The effect on state government for the first five year period the amendments will be in effect is an estimated reduction in cost of \$18,733,629, for fiscal year 1994, and \$45,123,388, for fiscal year 1995. For fiscal years 1996, 1997, and 1998, DHS cannot determine at this time if funding will be available to allow a cost-of-living adjustment since such an adjustment is dependent on the appropriations bill passed by the Texas Legislature. There will be no fiscal implications for local government.

Mr. Raiford also has determined that for each year of the first five years the amendments

are in effect the public benefit anticipated as a result of enforcing the amendments will be the continuation of Medicaid services at the current level. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Questions about the content of the proposal may be directed to Genie DeKneef at (512) 338-6509 in DHS's Purchased Health Services. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-193, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DHS will hold a public hearing on the proposal at 1:00 p.m. Wednesday, August 25, 1993, in the public hearing room of the John H. Winters Building, first floor, east tower, 701 W. 51st Street, Austin. A copy of the proposal will be available for review in DHS local offices.

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

§29.1104. *Texas Medicaid Reimbursement Methodology (TMRM)*.

(a) Reimbursement for physicians and certain other practitioners.

(1) (No change.)

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

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

(D) Conversion Factor—The dollar amount by which the sum of the three cost component RVUs is multiplied in order to obtain a reimbursement fee for each individual service. The initial value of the conversion factor is \$26.873 for fiscal year 1992 and 1993. If funding is available, the conversion factor will be updated based on the adjustments described in subparagraph (E) of this paragraph at the beginning of each state fiscal year biennium. Unless the cost savings specified in the Appropriations Act for the 1994-1995 biennium are realized, there will be no adjustment of the conversion factor for the 1994-1995 biennium. DHS may, at its discretion, develop and apply multiple conversion factors for various classes of service such as obstetrics, pediatrics, general surgeries, and/or primary care services.

(E) (No change.)

(3) (No change.)

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

**§29.1126. In-Home Total Parenteral Hyperalimentation Services.**

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

(e) The Texas Department of Human Services (DHS) or its designee reimburses each provider on a monthly basis. Reimbursement is based on one-twelfth of the maximum yearly fee established by DHS. If funding is available, DHS will adjust the allowable fees or rates each state fiscal year by applying the projected rate of change of the implicit price deflator for personal consumption expenditures (IPD-PCE). DHS uses the lowest feasible IPD-PCE forecast consistent with the forecasts of nationally-recognized sources available to DHS at the time rates are prepared. The first adjustment will be effective January 1, 1993. Unless the cost savings specified in the Appropriations Act for the 1994-1995 biennium are realized, there will be no adjustment for the 1994 and 1995 fiscal years. [Subsequent adjustments will occur at the beginning of each state fiscal year.] DHS or its designee does not reimburse more than a one-week supply of solutions

and additives if the solutions and additives are shipped and not used because of the recipient's loss of eligibility, change in treatment, or inpatient hospitalization. The provider must exclude from its monthly billing any days that the recipient is an inpatient in a hospital or other medical facility or institution. Payment for partial months will be prorated based upon actual days of administration. Hospital outpatient departments furnishing in-home total parenteral nutrition must be separately enrolled as a provider meeting all requirements stipulated in subsection (d) of this section. Reimbursement to hospital outpatient departments furnishing in-home total parenteral nutrition may not exceed the maximum yearly fee established by DHS.

**§29.1127. In-Home Respiratory Therapy Services for Ventilator-Dependent Persons**

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

(f) The department or its designee reimburses each respiratory therapy provider on a per-visit basis. Reimbursement for the visit is based on the lesser of the provider's customary charge or the maximum allowable fee or rate established by

the department or its designee. Reimbursement for supplies furnished by the respiratory care practitioner is the lesser of the provider's customary charges or the maximum allowable fees or rates established by the department or its designee. If funding is available, the department updates its allowable fees or rates each state fiscal year by applying the implicit price deflator for personal consumption expenditures. Unless the cost savings specified in the Appropriations Act for the 1994-1995 biennium are realized, there will be no adjustment for the 1994 and 1995 state fiscal years.

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 August 4, 1993.

TRD-9326797

Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Human Services

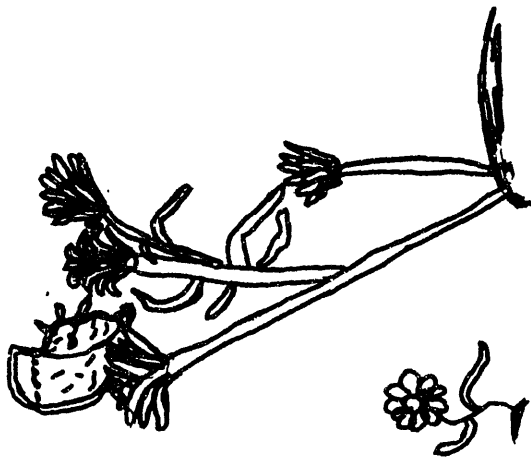
Earliest possible date of adoption: October 15, 1993

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





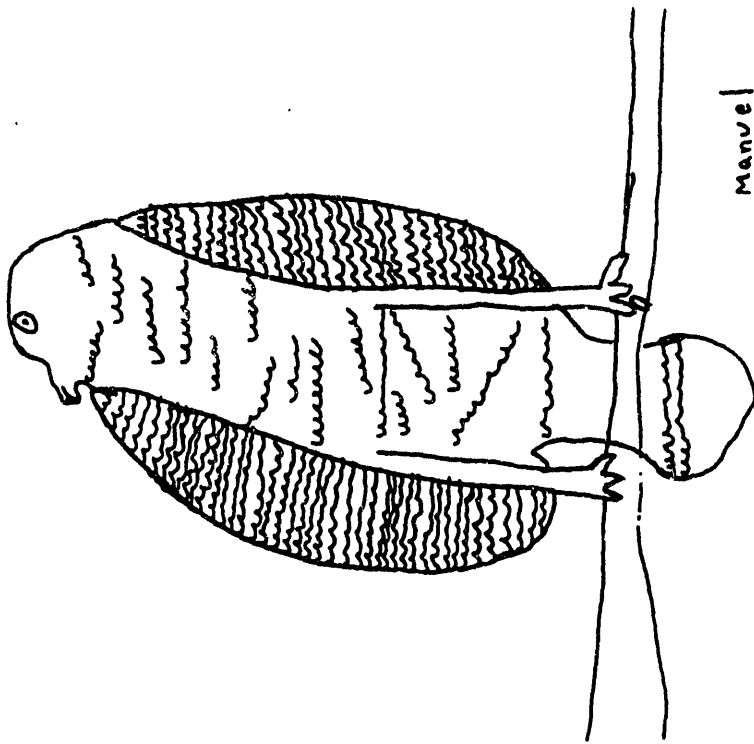
Stephanie woolf.



Name: Stephanie Woolf

Grade: 2

School: Montgomery Elementary, Carrollton-Farmers Branch ISD



Name: Manuel Marquez

Grade: 2

School: Montgomery Elementary, Carrollton-Farmers Branch ISD



Name: Jim Buchanan  
Grade: 11  
School: Plano East Senior High, Plano ISD



Name: Steve Bishop  
Grade: 12  
School: Plano East Senior High, Plano 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 7. BANKING AND SECURITIES

### Part VII. State Securities Board

#### Chapter 123. Open-End Investment Companies

##### • 7 TAC §123.3

The State Securities Board has withdrawn from consideration for permanent adoption a proposed amendment to §123.3 which appeared in the February 9, 1993, issue of the *Texas Register* (18 TexReg 793). The effective date of this withdrawal is August 2, 1993.

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

TRD-9326719 Richard D. Latham  
Securities Commissioner  
State Securities Board

Effective date: August 2, 1993

For further information, please call: (512) 474-2233

◆ ◆ ◆

#### Chapter 133. Forms

##### • 7 TAC §133.26

The State Securities Board has withdrawn from consideration for permanent adoption a proposed new §133.26 which appeared in the February 9, 1993, issue of the *Texas Register* (18 TexReg 798). The effective date of this withdrawal is August 2, 1993.

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

TRD-9326720 Richard D. Latham  
Securities Commissioner  
State Securities Board

Effective date: August 2, 1993

For further information, please call: (512) 474-2233

◆ ◆ ◆

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

### Chapter 38. Chronically Ill and Disabled Children's Services Program

##### • 25 TAC §38.11

The Texas Department of Health (department) is withdrawing the proposed amendment to §38.11, which was published in the March 5, 1993, issue of the *Texas Register* (18 TexReg 1393). Due to the large number of comments received on the proposal and due to the reorganization of the department's Bureau of Chronically Ill and Disabled Children's Services, the department has decided to repropose changes to the rules at a later date.

For further information, please contact John E. Evans, Chief, Bureau of Chronically Ill and Disabled Children's Services, Texas Department of Health, 1100 W. 49th Street, Austin, Texas 78756. (Telephone (512) 458-7355).

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

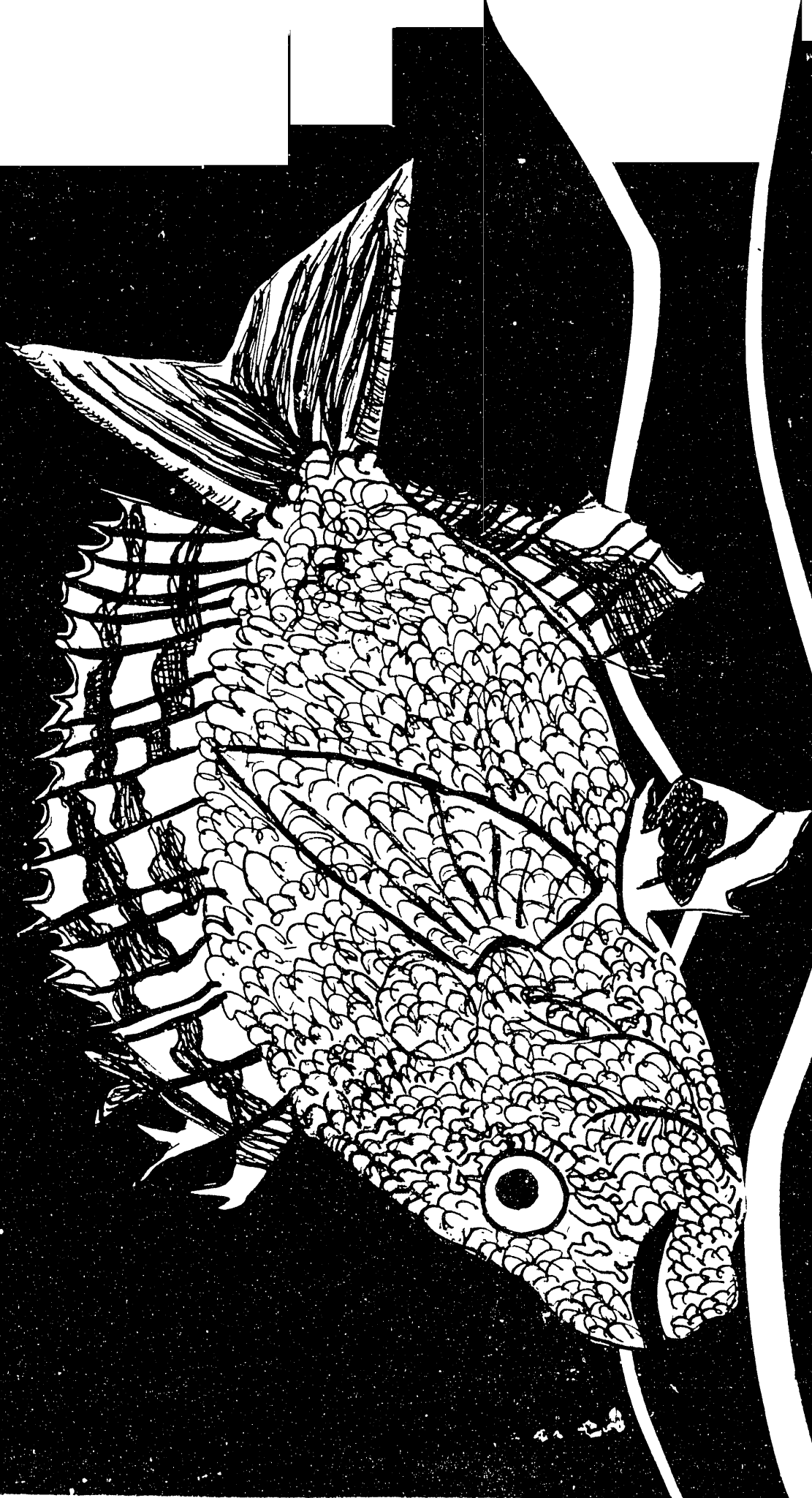
Issued in Austin, Texas, on August 3, 1993.

-TRD9326743 Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health.

Filed: August 3, 1993

◆ ◆ ◆

Name: Lilly Torres  
Grade 6  
School Cuellar Middle School, Westlaco 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 III. Office of the Attorney General

#### Chapter 51. State Employees-Workers' Compensation

##### Definition of Terms

###### • 1 TAC §51.1

The Workers' Compensation Division of the Office of the Attorney General adopts amendments to §51.1 concerning definitions, with changes to the proposed text as published in the May 14, 1993, issue of the *Texas Register* (18 TexReg 3085).

The Workers' Compensation Division of the Office of the Attorney General believes that, because of changes brought about by the enactment of the Texas Workers' Compensation Act in 1989, codified as Texas Civil Statutes, Article 8308-1.01, et seq, by recent amendments to Texas Civil Statutes, Article 8309g, which governs workers' compensation for state employees, and by the enactment of the Texas Code of Criminal Procedure, Article 42.131, the amendments to this rule are necessary to ensure accuracy, clarity, and simplicity in providing state employees with the benefits to which they may become entitled because of an injury sustained in the course and scope of their employment.

The changes in the proposed text of the rule were also made to ensure accuracy, clarity, and simplicity, and were necessitated by the enactment after submission of the proposed text for publication, of the Texas Labor Code. That Code, effective September 1, 1993, re-arranges, reformats, and renumbers certain statutes, including Article 8308-1.01, et seq, and Article 8309g, as well as restating the law in modern American English, all without substantive change.

The changes made to the proposed text of the rule are as follows: in definition of "employee", the reference to Article 8309g was changed to the new Chapter and Section designations in the Texas Labor Code, and the definitions of "director," "division," and "insurer" were changed to reflect the Texas Labor Code's new name for this Division.

This rule defines terms used in rules regulating an employee's right to receive worker's compensation benefits based upon an injury occurring in the course and scope of state employment, and in certain rules for the prevention of accidents and injuries.

There were no public comments against the adoption of the rules.

The following comments in favor of the adoption of the rule were received: do not appear to be any significant difficulties; finds them acceptable; approves of the changes and has no problem with them; agrees with the changes made; believes the proposed rule changes will facilitate the administration of workers' compensation activities, and anticipates no problems; and the proposed rule changes are beneficial and this entity supports them.

Commenting in favor of the amendment were the following: San Antonio State School, University of North Texas, Texas General Land Office, Texas Education Agency, Texas Employment Agency, and Texas Rehabilitation Commission.

The Workers' Compensation Division of the Office of the Attorney General agrees with the comments.

The amendment is adopted under Texas Civil Statutes, Article 8309g, §5, which authorize the making of such procedural rules as are necessary to the effective administration of that article.

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

**Commission**—The Texas Workers' Compensation Commission.

**Director**—The director of the Workers' Compensation Division of the Office of the Attorney General.

**Division**—The Workers' Compensation Division of the Office of the Attorney General.

**Employee**—Any person who is an "employee" as defined by Chapter 501 of the Texas Labor Code, §501.001(5) and §501.024, or is otherwise considered under Texas law to be a state employee for purposes of that Chapter.

**Employing Agency**—The agency, department, office, board, commission, body, or entity of the state by which the injured person is employed.

**Insured**—The State of Texas.

**Insurer**—The director, Workers' Compensation Division of the Office of the Attorney General.

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 August 4, 1993.

TRD-9326782

Jerry Benedict  
Administrative Counsel  
Office of the Attorney  
General

Effective date: September 1, 1993

Proposal publication date: May 7, 1993

For further information, please call: (512) 475-4290

## Procedures

### • 1 TAC §§51.12-51.25, 51.29, 51.30, 51.34-51.37

The Workers Compensation Division of the Office of the Attorney General adopts amendments to §§51.12, 51.14, 51.16, and 51.29 with changes to the proposed text as published in the May 14, 1993, issue of the *Texas Register* (18 TexReg 3085). Sections 51.13, 51.15, 51.17-51.25, 51.29, 51.30, and 51.34-51.37 are adopted without changes and will not be republished.

The Workers Compensation Division of the Office of the Attorney General believes that, because of changes brought about by the enactment of the Texas Workers' Compensation Act in 1989, codified as Texas Civil Statutes, Article 8308-1.01, et seq; by recent amendments to Texas Civil Statutes Article 8309g, which governs workers compensation for state employees; by the repeal of Articles 601 and 601a; the enactment of Texas Civil Statutes, Article 601b; by the recent adoption of various rules by the Texas Workers' Compensation Commission; and because of certain grammatical errors in the existing rules, the amendments to these rules are necessary to ensure accuracy, clarity, and simplicity in providing state employees with the benefits to which they may become entitled because of an injury sustained in the course and scope of their employment.

The changes to the proposed text of the rules were also made to ensure accuracy, clarity, and simplicity, and were necessitated by the enactment, after submission of the proposed text for publication, of the Texas Labor Code. That Code, effective September 1, 1993, re-arranges, reformats, and renumbers certain statutes, including Article 8308-1.01, et seq, and Article 8309g, as well as restating the law in modern American English, all without substantive change. The changes to the proposed text of the rules are as follows: §51.12 was changed to reflect the new statutory designation under the Texas Labor Code; §51.14 and §51.16 were changed to delete statutory

designations that are no longer correct; §51.14 was changed to reflect the complete, correct title of Form TWCC-IS; and §51.29 was changed to reflect the Division's new name under the Texas Labor Code.

These rules relate to the procedure regulating an employees' right to receive workers compensation benefits based upon an injury occurring in the course and scope of state employments. They set out required forms, reports, notices, and other responsibilities of agencies, injured employees, injured employees representatives, and health care providers.

The following public comments against the proposed amendments to these rules were received.

One commenter stated that because of varying shift lengths, the phrase "one day's lost time" should be changed to "eight consecutive hours lost time," in §51.18; and that there is a conflict between §51.20, on the one hand, relating to when an employing agency must file a first report of injury, and the Texas Workers' Compensation Act and TWCC Rules, on the other hand, that may lead in some instances to unnecessary paperwork.

The following public comments in favor of the proposed amendments to these rules were received.

One commenter stated that there do not appear to be any significant difficulties; one commenter found the rules acceptable; one commenter approved of the changes and has no problem with them; one commenter agreed with the changes made; one commenter believed the proposed rule changes would facilitate the administration of workers' compensation activities, and anticipated no problems; and one commenter stated that the proposed rule changes are beneficial and this entity supports them.

The following groups and associations made comments in favor of adoption of the rules: San Antonio State School; University of North Texas; Texas General Land Office; Texas Education Agency; Texas Employment Commission; and Texas Rehabilitation Commission.

The following groups and associations commented against the adoption of the rules: San Antonio State School; University of North Texas; and Texas Department of Mental Health and Mental Retardation.

The Workers' Compensation Division of the Office of the Attorney General agrees with all of the comments except: The Division disagrees with the comments relating to §51.18, and believes that the existing language should be used because it is the language used in the Texas Workers' Compensation Act; and the Division disagrees with the comments relating to §51.20, because the Workers' Compensation Act's requirement that the first report of injury be filed with the Commission within eight days applies to the Division and not to the employing agency, and therefore, in order for the Division to fulfill its obligation, the employing agency must submit the report to the Division by the next working day after the injury.

The rules are adopted under Texas Civil Statutes, Article 8309g, §5, which authorize the making of such procedural rules as are necessary to the effective administration of that article.

**§51.12. Employing Agency's Cooperation.** All employing agencies shall cooperate with the division in all actions required for the proper administration of Chapter 501 of the Texas Labor Code, and any amendments thereto.

**§51.14. Filing of Instruments.** Any reference in this Chapter to a specific form to be used for giving notices, making reports, or otherwise transmitting information to the Commission is meant to include the form or forms prescribed for that particular purpose by the Commission's executive director, pursuant to the Texas Workers' Compensation Act, as of the time that the notice, report, or transmittal is required to be made.

*The following shall be filed with the division office in Austin:*

- (1) Employers First Report of Injury or Illness (Form TWCC-IS).
- (2) Any supplemental report of injury by the employing agency (Form TWCC-6).
- (3) Any special reports required by the director.
- (4) Any other forms prescribed or required from the employing agency by the Commission will be submitted to the director who will be responsible for filing with the Commission.

**§51.16. Medical Reports.** Any health care provider, as defined in the Texas Workers Compensation Act, §1.03, rendering care to an injured employee must render reports to the director in keeping with that Act and Commission rules.

**§51.29. Agency Policies Regarding Workers' Compensation.** In formulating agency personnel policies, no agency should disseminate any guidelines or instructions at variance with the Texas workers' compensation statutes or Workers Compensation Division rules.

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 August 4, 1993.

TRD-9328783  
Jerry Benedict  
Administrative Counsel  
Office of the Attorney  
General

Effective date: September 1, 1993

Proposal publication date: May 7, 1993

For further information, please call: (512) 475-4290

◆ ◆ ◆  
• 1 TAC §§51.27, 51.28, 51.31

The Workers' Compensation Division of the Office of the Attorney General adopts the repeal of §§51.27, 51.28, and 51.31 concerning procedures, without changes to the proposed text as published in the May 14, 1993, issue of the *Texas Register* (18 TexReg 3085).

The Workers' Compensation Division of the Office of the Attorney General believes that these sections duplicate other provisions of Texas substantive and procedural law, and are therefore not necessary.

The rules defined certain legal and ethical responsibilities of attorney's physicians, and other persons, and set out part of the procedures for filing suits concerning workers' compensation for state employees.

There were no public comments against the proposed repeal of these rules.

The following public comments in favor of the proposed repeal of these rules were received: do not appear to be any significant difficulties; finds them acceptable; approves of the changes and has no problem with them; agrees with the changes made; believes the proposed rule changes will facilitate the administration of workers' compensation activities, and anticipates no problems; and the proposed rule changes are beneficial and this entity supports them.

Commenting in favor of the repeals were the following: San Antonio State School, University of North Texas, Texas General Land Office, Texas Education Agency, Texas Employment Commission, and Texas Rehabilitation Commission.

The Workers' Compensation Division of the Office of the Attorney General agrees with the comments.

The repeals are adopted pursuant to Texas Civil Statutes, Article 8309g, §5, which authorize the making of such procedural rules as are necessary to the effective administration of that article.

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 August 4, 1993.

TRD-9328784  
Jerry Benedict  
Administrative Counsel  
Office of the Attorney  
General

Effective date: September 1, 1993

Proposal publication date: May 7, 1993

For further information, please call: (512) 475-4290

◆ ◆ ◆  
• 1 TAC §51.27

The Workers' Compensation Division of the Office of the Attorney General adopts §51.27



concerning legal responsibilities of injured employee, without changes to the proposed text as published in the May 14, 1993, issue of the *Texas Register* (18 TexReg 3085).

The Workers' Compensation Division of the Office of the Attorney General believes that this rule will make it clear that nothing contained in any of the rules of the Division is intended to change any of the legal requirements or responsibilities, relating to giving notice of injury or filing a claim for compensation, placed upon injured state employees by the workers' compensation statutes of the State of Texas.

The new rule relates to the procedure regulating an employee's right to receive workers' compensation benefits based upon an injury occurring in the course and scope of state employment.

There were no public comments against the proposed rule.

The following public comments in favor of the proposed rule were received: do not appear to be any significant difficulties; finds them acceptable; approves of the changes and has no problem with them; agrees with the changes made; believes the proposed rule changes will facilitate the administration of workers' compensation activities, and anticipates no problem; and the proposed rule changes are beneficial and this entity supports them.

Commenting in favor of the amendments were as follows: San Antonio State School, University of North Texas, Texas General Land Office, Texas Education Agency, Texas Employment Commission, and Texas Rehabilitation Commission.

The Workers' Compensation Division of the Office of the Attorney General agrees with all of the comments.

The new section indicated is adopted under Texas Civil Statutes, Article 8309g, §5, which authorize the making of such procedural rules as are necessary to the effective administration of that article.

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 August 4, 1993.

TRD-9326785 Jerry Benedict  
Administrative Counsel  
Office of the Attorney  
General

Effective date: September 1, 1993

Proposal publication date: May 7, 1993

For further information, please call: (512) 475-4290

## Employee Entitlement to Compensation

- 1 TAC §§51.53, 51.55, 51.56, 51.58, 51.59, 51.61

The Workers' Compensation Division of the Office of the Attorney General adopts amend-

ments to §§51.53, 51.55, 51.56, 51.58, 51.59, and 51.61 concerning employee entitlement to compensation, without changes to the proposed text as published in the May 14, 1993, issue of the *Texas Register* (18 TexReg 3085).

The Workers' Compensation Division of the Office of the Attorney General believes that, because of changes brought about by the enactment of the Texas Workers' Compensation Act in 1989, codified as Texas Civil Statutes, Article 8308-1.01, et seq, by recent amendments to Texas Civil Statutes, Article 8309g, which governs workers' compensation for state employees, and by changes in the General Appropriations Act, accuracy, clarity, and simplicity in providing state employees with the benefits to which they may become entitled because of an injury sustained in the course and scope of their employment.

The rules relate to the procedure regulating an employees' right to receive workers' compensation benefits based upon an injury occurring in the course and scope of state employment. The rules specifically set out the procedure for the utilization of sick and emergency leave.

There were no public comments against the proposed amendment.

The following public comments in favor of the proposed amendments to these rules were received: specifically agrees with the changes made; sees no difficulty with the changes but asks for clarification on whether or not the changed definition of sick leave includes over-time and vacation; seeking clarification of their policy of not granting pooled sick leave for use during the waiting period, the utilization of leave should be mandatory; clarify the rule concerning additional sick leave that accrues while the employee is utilizing sick leave, by adding language that specifies that such sick leave will not be credited to the employee until after he or she returns to work; will be able to provide timely notice of the granting or utilization of leave; do not appear to be any significant difficulties; finds them acceptable; approves of the changes and has no problem with them; agrees with the changes made; believes the proposed rule changes will facilitate the administration of workers' compensation activities, and anticipates no problems; and the proposed rule changes are beneficial and this entity supports them.

Commenting in favor of the amendments were: San Antonio State School, University of North Texas, Texas General Land Office, Texas Education Agency, Texas Employment Commission, Texas Rehabilitation Commission, Texas College of Osteopathic Medicine, Denton State School, and Texas Employment Commission.

The Workers' Compensation Division of the Office of the Attorney General agrees with all of the comments, and offers the following clarification and response.

The new definition of sick leave does not include overtime and vacation, and an agency's policy concerning the granting of pooled sick leave is solely within its discretion.

The law would prohibit the Division from making the utilization of sick leave mandatory; Texas Civil Statutes, Article 8309g, §12(a), specifically gives an employee the option.

Clarification of the rule concerning additional sick leave that accrues while the employee is utilizing sick leave may occur at a later date.

The amendments are adopted under Texas Civil Statutes, Article 8309g, §5, which authorize the making of such procedural rules as are necessary to the effective administration of that article.

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 August 4, 1993.

TRD-9326786 Jerry Benedict  
Administrative Counsel  
Office of the Attorney  
General

Effective date: September 1, 1993

Proposal publication date: May 7, 1993

For further information, please call: (512) 475-4290

## Accident Prevention

- 1 TAC §51.71, §51.72

The Workers' Compensation Commission Division of the Office of the Attorney General adopts amendments to §51.71 and §51.72, with changes to the proposed text as published in the May 14, 1993, issue of the *Texas Register* (18 TexReg 3085).

The Workers' Compensation Division of the Office of the Attorney General believes that, because of changes brought about by recent amendments to Texas Civil Statutes, Article 8309g, which governs workers' compensation for state employees, and because of certain grammatical errors in the existing rule, the amendments to these rules are necessary to ensure accuracy, clarity, and simplicity in providing state employees with the benefits to which they may become entitled because of an injury sustained in the course and scope of their employment.

The changes to the proposed text of the rules were also made to ensure accuracy, clarity, and simplicity, and were necessitated by the enactment, after submission of the proposed text for publication, of the Texas Labor Code. That Code, effective September 1, 1993, re-arranges, reformats, and rennumbers certain statutes, includes Article 8308-1.01, et seq, and Article 8309g, as well as restating the law in modern America English, all without substantive change. The changes to the proposed text are as follows: §in §51.71, the reference to Article 8309g were changed to reflect the new chapter and section designations of the Texas Labor Code; and §51.72 was changed to reflect the Texas Labor Code's new name for the Division.

The rules apply to state agencies and relate to the prevention of accidents and injuries. They specifically adopt certain OSHA standards as accident prevention rules.

There were no public comments against the adoption of the rules.

The following comments in favor of the adoption of the rules were received: There did not appear to be any significant difficulties. One commenter found the rules acceptable; approved of the changes and had no problem with them; agreed with the changes made; believes the proposed rule changes would facilitate the administration of workers' compensation activities, and anticipates no problems; and one commenter said the proposed rule changes are beneficial and the entity supports them.

Commenting in favor of these amendments were the following: San Antonio State School, University of North Texas, Texas General Land Office, Texas Education Agency, Texas Employment Commission, and Texas Rehabilitation Commission.

The Workers' Compensation Division of the Office of the Attorney General agrees with all of the comments.

The rules are adopted under Texas Civil Statutes, Article 8309g, §6, which authorize the making of reasonable rules for the prevention of accidents and injuries.

#### §51.71. Authority for Accident Prevention Rules.

(a) Compliance with these rules is mandated by the Texas Labor Code, §501.043.

(b) The director's responsibility is mandated by the Texas Labor Code, §501.043.

(c) Each agency under the Texas Labor Code, §501.043, has the general duty to furnish each of its employees' places of employment free from recognized hazards likely to cause physical harm.

(d) Each employing agency will designate one or as many accident prevention coordinators as may be required, who will be responsible for the implementation within that department of the safety rules promulgated by the director.

(1) The employing agency will report to the director any changes in personnel designated as an accident prevention coordinator.

(2) Within 60 day after an inspection report has been received by an agency-if it contains recommendations requiring corrective action-a reply will be made delineating items on which action has been taken, or is to be taken. Where action cannot be taken, it should be so stated and reasons listed.

§51.72. Accident Prevention Rules. The following is adopted by reference as accident prevention rules of the director, Workers' Compensation Division of the Office of the Attorney General. Copies of the Occu-

pational Safety and Health Standards may be obtained by writing superintendent of documents, United States Government Printing Office, Washington, D.C., 20402. The Occupational Safety and Health Standards, Department of Labor, Occupational Safety and Health Administration being.

(1) 29 Code of Federal Regulations, Part 1910, republished in its entirety as of November 7, 1978 (commonly known as OSHA); and

(2) 29 Code of Federal Regulations, Part 1926, Occupational Safety and Health Regulations for Contractors, republished in its entirety February 9, 1979, and amendments thereto.

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 August 4, 1993.

TRD-9326790 Jerry Benedict  
Administrative Counsel  
Office of the Attorney  
General

Effective date: September 1, 1993

Proposal publication date: May 7, 1993

For further information, please call: (512) 475-4290

## TITLE 7. BANKING AND SECURITIES

### Part VII. State Securities Board

#### Chapter 113. Registration of Securities

##### • 7 TAC §113.12

The State Securities Board adopts an amendment to §113.12, concerning applicability of guidelines to add Chapter 124 of this title (relating to Administrative Guidelines for Registration of Periodic Payment Plans) to the list of guidelines set forth in the rule. The rule is adopted without changes to the proposed text as published in the May 11, 1993, issue of the *Texas Register* (18 TexReg 3013).

The rule provides guidance to persons who are unsure whether particular guidelines apply to securities offerings which are exempt from registration.

The rule clarifies that compliance with the listed guidelines is required only when the securities offering in question is being registered.

No comments were received regarding adoption of the new rule.

The amendment is adopted under Texas Civil Statutes, Article 581, §28-1, which provide the Board with the authority to make or adopt rules or regulations governing registration statements, applications, notices, and reports, and in the adoption of rules and regula-

tions; to classify securities, persons, and matters within its jurisdiction, and to prescribe different requirements for different classes.

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 August 2, 1993.

TRD-9326718 Richard D. Latham  
Securities Commissioner  
State Securities Board

Effective date: August 23, 1993

Proposal publication date: May 11, 1993

For further information, please call: (512) 474-2233

#### Chapter 133. Forms

##### • 7 TAC §133.27

The State Securities Board adopts new §133.27, concerning the year-end report of sales by a money market fund. Simultaneously, the Board is adopting the repeal of §133.28. The overall effect of the new rule and the repeal is to provide a form that is easier to complete and will lessen the likelihood of reporting errors. The rule is adopted without changes to the proposed text as published in the February 9, 1993, issue of the *Texas Register* (18 TexReg 798).

The rule provides a simplified reporting form for money market funds.

The rule sets forth the information required from money market funds to be disclosed in their year-end report of sales.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Article 581, §28-1, which provide the Board with the authority to make or adopt rules or regulations governing registration statements, applications, notices, and reports, and in the adoption of rules and regulations, to classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

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 August 2, 1993.

TRD-8326721 Richard D. Latham  
Securities Commissioner  
State Securities Board

Effective date: August 23, 1993

Proposal publication date: February 9, 1993

For further information, please call: (512) 474-2233

##### • 7 TAC §133.28

The State Securities Board adopts the repeal of §133.28, concerning the year-end report of sales of money market funds. Simulta-

neously, the Board is adopting a new rule, §133.27. The overall effect of the repeal and the new rule is to provide a form that is easier to complete and will lessen the likelihood of reporting errors. The repeal is adopted without changes to the proposed text as published in the February 9, 1993, issue of the *Texas Register* (18 TexReg 799).

The rule is no longer needed.

An unnecessary rule will be eliminated.

No comments were received regarding adoption of the new section.

The repeal is adopted under Texas Civil Statutes, Article 581, §28-1, which provide the Board with the authority to make or adopt rules or regulations governing registration statements, applications, notices, and reports, and in the adoption of rules and regulations, to classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

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 August 2, 1993.

TRD-9326722

Richard D. Latham  
Securities Commissioner  
State Securities Board

Effective date: August 23, 1993

Proposal publication date: February 9, 1993

For further information, please call: (512) 474-2233



**TITLE 16. ECONOMIC  
REGULATION**  
**Part I. Railroad  
Commission of Texas**  
**Chapter 5. Transportation  
Division**

*(EDITOR'S NOTE: In the July 23, 1993 issue of the Texas Register an administrative transfer was published transferring the regulation and operation of tow trucks and storage facilities from the Texas Department of Licensing and Regulation to the Railroad Commission of Texas (Texas Civil Statutes, Article 6687-9b), effective September 1, 1993.*

In the table published, the transfer of rules in Chapter 79, Part IV. Texas Department of Licensing and Regulation to Subchapter DD, Part I. Railroad Commission of Texas, §79.83 was inadvertently omitted. Below is a corrected table in its entirety.)



**Chapter 5. Transportation Division**

**Subchapter CC. Tow Trucks**  
*Previously Chapter 80. Tow Trucks*

<b>Old Number</b>	<b>New Number</b>
§80.1	§5.801
§80.10	§5.802
§80.20	§5.803
§80.30	§5.804
§80.40	§5.805
§80.60	§5.806
§80.70	§5.807
§80.80	§5.808
§80.81	§5.809
§80.82	§5.810
§80.90	§5.811
§80.91	§5.812
§80.92	§5.813
§80.93	§5.814
§80.94	§5.815
§80.100	§5.816
§80.101	§5.817
§80.102	§5.818
§80.103	§5.819

**Subchapter DD. Vehicle Storage Facilities**  
*Previously Chapter 79. Vehicle Storage Facilities*

<b>Old Number</b>	<b>New Number</b>
§79.1	§5.901
§79.10	§5.902
§79.20	§5.903
§79.30	§5.904
§79.40	§5.905
§79.70	§5.906
§79.71	§5.907
§79.72	§5.908
§79.73	§5.909
§79.80	§5.910
§79.81	§5.911
§79.83	§5.912
§79.90	§5.913
§79.91	§5.914
§79.92	§5.915
§79.93	§5.916
§79.94	§5.917
§79.100	§5.918
§79.101	§5.919
§79.102	§5.920

# Part IV. Texas Department of Licensing and Regulation

*(EDITOR'S NOTE: In the July 23, 1993 issue of the Texas Register an administrative transfer was published transferring the regulation and opera-*

*tion of tow trucks and storage facilities from the Texas Department of Licensing and Regulation to the Railroad Commission of Texas (Texas Civil Statutes, Article 6687-9b), effective September 1, 1993.*

*In the table published, the transfer of rules in Chapter 79 to Subchapter DD a rule was inadvertently omitted. Below is a corrected table.)*



## Chapter 5. Transportation Division

### Subchapter CC. Tow Trucks *Previously Chapter 80. Tow Trucks*

Old Number	New Number
§80.1	§5.801
§80.10	§5.802
§80.20	§5.803
§80.30	§5.804
§80.40	§5.805
§80.60	§5.806
§80.70	§5.807
§80.80	§5.808
§80.81	§5.809
§80.82	§5.810
§80.90	§5.811
§80.91	§5.812
§80.92	§5.813
§80.93	§5.814
§80.94	§5.815
§80.100	§5.816
§80.101	§5.817
§80.102	§5.818
§80.103	§5.819

**Subchapter DD. Vehicle Storage Facilities**  
*Previously Chapter 79. Vehicle Storage Facilities*

<b>Old Number</b>	<b>New Number</b>
§79.1	§5.901
§79.10	§5.902
§79.20	§5.903
§79.30	§5.904
§79.40	§5.905
§79.70	§5.906
§79.71	§5.907
§79.72	§5.908
§79.73	§5.909
§79.80	§5.910
§79.81	§5.911
§79.83	§5.912
§79.90	§5.913
§79.91	§5.914
§79.92	§5.915
§79.93	§5.916
§79.94	§5.917
§79.100	§5.918
§79.101	§5.919
§79.102	§5.920

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 38. Chronically Ill and Disabled Children's Services Program

##### • 25 TAC §38.11

The Texas Department of Health (department) is withdrawing the proposed amendment to §38.11, which was published in the March 5, 1993, issue of the *Texas Register* (18 TexReg 1393). Due to the large number of comments received on the proposal and due to the reorganization of the department's Bureau of Chronically Ill and Disabled Children's Services, the department has decided to repropose changes to the rules at a later date.

For further information, please contact John E. Evans, Chief, Bureau of Chronically Ill and Disabled Children's Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; (512) 458-7355.

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

Issued in Austin, Texas, on August 3, 1993.

-TRD-9326743

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

Filed: August 3, 1993

#### Chapter 145. Long Term Care

##### Subchapter E. Procedures on Long-Term Care Facilities

The Texas Department of Health (department) adopts new §145.235, concerning administrative penalties, with changes to the proposed text as published in the April 13, 1993, issue of the *Texas Register* (18 TexReg 2547). The repeal of §145.91 is adopted without changes to the proposed text and will not be republished.

The adopted section concerns administrative penalty requirements for nursing facilities and facilities serving persons with mental retardation and related conditions (ICF-MR).

The enforcement provisions have been strengthened in order to provide for better care of residents and the rule more closely tracks the statutory mandate in the Health and Safety Code, Chapter 242.

The department received numerous comments from groups, individuals, and associations concerning the proposed new rule. A summary of the comments received and the department's response are as follows.

Comment: Concerning the cost note to nursing facilities in the proposed preamble and

the deletion of existing provisions in the current administrative penalty rules, a commenter expressed a specific concern. The commenter's concerns are with regard to: the cost note which states that "Nursing facilities participating in the Texas Department of Human Services (TDHS) Medicaid program will probably not experience increased cost due to the proposed administrative penalties because other sanctions are available under the TDHS Medicaid certification rules for non-compliant facilities," and to language in current administrative penalty rules which specifically provide waiver of administrative penalties if penalties under certification are applied. The commenter stated that the rules should be changed to state that facilities will not be subject to double jeopardy by applying penalties from two separate penalties systems. The commenter felt that this addition would be consistent with the department's expressed intent to have a more uniform penalty system and be consistent with the intent expressed in the preamble.

Response: The department believes that for facilities participating in the Medicare and/or Medicaid program, the federal and state sanctions/remedies options will be applied to most non-compliance findings of significance. However, the Licensing Act authorizes the department to assess administrative penalties when appropriate and staff will be trained to utilize the sanctions and administrative penalties judiciously as needed to bring facilities into compliance. The department made no change to the rule.

Comment: A commenter stated that the licensure rules should be amended to provide for a clearer coordination of the penalties available to the department under licensure and certification.

Response: The department's position is addressed in the previous comment. The department made no change to the section.

Comment: A commenter stated that there is no clearly developed coordination of the use of administrative penalties and possible referral to the Attorney General's Office for possible injunction and/or assessment of civil monetary penalties. Criteria should be developed to determine when a case may be referred to the Attorney General in lieu of monetary penalties and it should be clearly stated that both administrative penalties and civil monetary penalties will not be applied simultaneously.

Response: The department believes that the Licensing Act gives it the authority to use both options of assessing administrative penalties and referral to the Attorney General for civil penalty consideration. Through training and evaluation of the findings in each situation, the appropriate penalty recommendation or combination of recommendations will be made. The department made no change to the section.

Comment: A commenter stated that the rules should require the department to immediately notify the facility if it has decided to pursue either administrative penalties or to refer the alleged violation to the Attorney General.

Response: The department does not concur with the comment. In subsections (g) and (h), the rules address the notification process to inform facilities of the assessment of administrative penalties. The department believes that these rules allow the facility proper notice and an opportunity to respond or appeal the assessment. Procedures for the referral of cases to the Attorney General for consideration of civil penalties are a separate issue and are covered in other licensing rules. The department made no change to the section.

Comment: Concerning nonperformance of physicians or outside consultants and violations beyond the facility's control, a commenter recommended the following wording changes: subsection (d) to read "No facility shall be penalized because of a physician's or consultant's nonperformance beyond the facility's control"; then, create a new subsection (e) that reads "No facility shall be penalized if the violation is beyond the facility's control if the situation is clearly documented;" and next, reorder all of the remaining items.

Response: The department believes that both thoughts are clearly covered in the proposed wording in subsection (d) and no change is necessary.

Comment: Concerning subsection (e), a commenter questioned does the first sentence in this item mean that any offense from the second survey will automatically be in the second offense column? What if the facility had offenses with different deficiencies? Is the progression of fines tied to the same offense? The same deficiencies?

Response: The department's response is that no change to the rules is needed, but offers the following clarifications. To clarify subsection (e), the first sentence means that if the offense from the second survey is the same penalty element as the first survey's offense was, then the assessment will be in the Second Offense column (unless two years have elapsed from the first survey to the second survey). If during the second survey a facility has offenses with different deficiencies but the deficiencies pertain to the same penalty element, then the penalty assessment will be in the Second Offense column. If during the second survey, the deficiencies are the same as the first survey, then a penalty assessment could be cited to the same element in the Second Offense column. However, if over two years have elapsed between the first and second survey, then the penalty assessment at the second survey would be in the First Offense column.

Comment: Concerning subsection (i), a commenter requests that current language that ties penalties in the schedule to references to the applicable standard should be retained. The current proposal deletes these references.

Response: Based on the surveyor's/investigator's training and professional judgment, the penalty elements are specifically written to cover the areas of resident rights, health, welfare, and safety, lending themselves to consistent application without specific reference to licensing standards. The department feels that no change is necessary.

Comment: Concerning Schedule A, A(1-2), this item does not seem to be consistent with the spirit of these proposed rules. It only refers to paper compliance and not to the care of the patient, which is outside the scope of the defined intent. The commenter recommended that Schedule A, A (1-2) be deleted.

Response: State law requires licensed facilities to report a change of administrator to the licensing agency. The department believes that 30 days is adequate time to hire an administrator to fill the key position. The department, therefore, made no changes.

Comment: Concerning Schedule A, E-1, a commenter recommended the following wording change for clarification: "Medications are administered by a person who is not a physician..."

Response: The department concurs with the comment and has changed the wording.

Comment: Concerning Schedule A, G-1, a commenter recommended that this element be clarified by changing it to: "Catheter is inserted without a physician's order."

Response: The department feels that no change is necessary. Proposed wording is appropriate to cover situations where there is no physician's order and where the catheter is inserted improperly, etc. Both situations can be detrimental to the resident's health.

Comment: Concerning Schedule A, K-4, a commenter stated that this element does not track the licensing standards. The standard addresses when the medication should be ordered. It does not address availability prior to administering the last dose. Also, this element is covered sufficiently in E-4. The commenter recommended deleting Condition K, Element 4.

Response: The element coincides with §19.1308(c) as adopted by reference by the department in 25 TAC §145.41(l)(1), relating to Pharmacy Services of the licensing standards, which will be effective August 31, 1993. This element does not cover the same topic as E-4. The department made no change to Schedule A, K-4.

Comment: Concerning Schedule A, K-5, a commenter suggested that this wording does not track the standards. The commenter recommended the following change to this element: "Drug administration errors or adverse drug reactions are not reported in a timely manner to the resident's physician."

Response: The department concurs with the comment and changed the wording.

Comment: Concerning Schedule A, L-3, a commenter suggested that in order to follow the licensing regulations closer, the element should be changed to: "The facility fails to prevent food-borne illness through the practice of storage, preparation, or distribution of foods."

Response: The proposed wording follows acceptable food storage and sanitation regulations and practices which assure protection to the residents. Therefore, the department made no changes.

Comment: Concerning Schedule A, M, one commenter questioned whether this condition

be tied only to "identified" psychosocial needs. The commenter recommended adding the word "identified" before "psychosocial."

Response: The department believes that the proposed wording more effectively describes the rights of residents to have their psychosocial needs met and made no changes.

Comment: Concerning Schedule A, N-2, which specifically addresses gas driers, a commenter recommended adding "gas" before "clothes driers."

Response: The department believes that the reference to clothes driers is correct since lint buildup can cause fires in gas and electric clothes driers. Protection of the residents is the goal. No changes were made to the section.

Comment: Concerning Schedule A, O-2, a commenter recommended changing this element to "required fire alarm system is not functioning in a majority of zones", because there could be a small item not functioning and not jeopardizing the resident's health.

Response: The department feels that no changes are necessary since the proposed wording covers fire alarm systems in both large and small facilities and fully protects all residents.

Comment: Concerning Schedule A, P, one commenter recommended that this should address "safe temperature" instead of "safe condition."

Response: The department concurs with the comment and changed the wording accordingly.

Comment: Concerning Schedule A, P-1, a commenter stated that a maximum temperature should be specific and not a range, and that a resident should not be put in water that is 149 degrees Fahrenheit. The commenter recommended deleting "to 149 degrees Fahrenheit."

Response: The department concurs with the comment and the wording was changed to reflect that for water temperatures exceeding 125 degrees Fahrenheit a penalty will be assessed.

Comment: Concerning Schedule A, Q-1, a commenter stated that this element is not consistent with the law since there are many crimes not included in the criminal history law. The condition is better written and adequately covers the intent. The commenter recommended deleting Q1.

Response: The department concurs with the comment and wording will be clarified to delete the subpart wording and retaining the condition paragraph.

Comment: A commenter stated that, as a part of our contracting requirements with the Texas Department of Human Services, ICF-MR facilities have been subject to various sanction provisions to include vendor hold on state Medicaid payments; decertification; revocable facility license; contract cancellation; and before long, a disbarment option as well. If this is not sufficient, the department has an enforcement problem, not a regulation problem and the addition of administrative penalties will simply compound the problem. Thus,

administrative penalties are already in place and easily enforceable to insure compliance with Title XIX ICF-MR contractual agreements and standards.

The Association for Retarded Citizens (ARC)/Texas favors development of a strong ICF-MR sanctions policy and recommends that a formal workgroup be established to develop a plan and proposed policy applicable to all ICF-MR providers. ARC/Texas would be pleased to participate in this workgroup.

Response: State law authorizes the licensing agency to develop and implement administrative penalties in addition to the Medicaid program sanctions options. The department made no changes as a result of the comment.

Comment: One commenter suggested that this rule, as written, will not be applied equally to all agencies providing residential services. The penalties would apply only to private providers, which is discriminatory. Since it has been placed under the code related to licensure, no state or county operated facilities have the threat of penalty for non-compliance with the standards. This places consumers of these programs at a disadvantage as they will not receive the same protection from harm as the proposed section intends to provide. Although it is hoped that these types of programs would receive monitoring from their agency, there is no guarantee that compliance will be enforced when the external penalties are less severe than for licensed facilities. Mandating this penalty on licensed facilities only raises a stigma of improper services which public agencies avoid as it will be said that they have never paid fines for non-compliance with the standards. Please consider the possibility of placing an administrative penalty component under the current Sanctions rules which would apply to all agencies providing this kind of service. If state schools are exempted (based on the technicality that they don't have a license because Department of Health attorneys have interpreted the State Constitution to say that one state agency cannot license another), then all ICF-MR providers should be exempted from ICF-MR administrative penalties. Five comments were received on this issue.

Response: The department realizes that the administrative penalties apply only to licensed intermediate care facilities serving persons with mental retardation or related conditions (ICF-MR/RC) facilities. The department also believes that a similar penalties system should apply to all ICF-MR/RC facilities whether operated by the public or private sector. However, current state law exempts state-operated facilities from compliance with the department's licensure law.

Comment: A commenter suggested that another obvious disparity of the rule is the significant burden placed on smaller facilities when the penalty amount is a set figure rather than one based on bed capacity. The publication of the rule points this out quite clearly with the smallest facilities (6 bed) paying \$167 per bed while the largest pay a mere \$1.67 per bed, a 10,000% difference for the same first offense! The vast majority (492 out of 572) of facilities subject to the proposed



rule are composed of six beds or less. To help put this in perspective, the \$500 amount proposed for the first offense is the entire monthly food budget for a six-bed home while a large facility would spend that amount on soft drinks and snack foods! Please consider establishing the penalty on a sliding scale based on bed size or a set amount which is multiplied by bed-size as this would ensure the same threat of punitive action regardless of size.

**Response:** While ICF-MR/RC facilities are of different bed size, the daily Medicaid reimbursement rate is from approximately \$80 to \$130 per day per resident. The cost of a \$500 administrative penalty would probably not cause serious economic consequences in and of itself. The penalties are designed to be assessed if a pattern/trend or serious danger to resident health or safety is based on the finding of the visit. The elements are based on the licensing standards which are minimum requirements. The department made no changes as a result of the comment.

**Comment:** In order to validly exercise rule-making authority related to ICF-MR programs, the agency must first satisfy the legislative mandate of Senate Bill 1426, 71st Legislature, which requires interagency dialogue as a prerequisite to rule-making which affects ICF-MR programs. Dialogue is defined in Webster's Dictionary as "a conversation between two or more persons; an exchange of ideas and opinions." Such a dialogue did not take place with regard to the proposed rule making at issue. The concept of "exchange" between the department and other affected agencies and providers was not realized. The agency has been advised of this on more than one occasion. The rule is therefore issued in violation of Texas Civil Statutes, Article 6252-13a, §5(c-1)(3).

**Response:** Senate Bill 1426, 71st Legislature, requires a dialogue between agencies and such a dialogue has occurred via the Advisory Committee for Mental Retardation Facilities involvement in the development and comments on the proposed and re-proposed administrative penalty rules. The department, based on the licensing act and the Texas Administrative Procedures Act has the authority to publish proposed rules for every duty imposed by law. The proposed administrative penalties rules were published twice in accordance with the state law and rules and public and advisory committee comments were received and considered by the Board of Health. The department feels that no change to the rules is necessary as a result of the comment.

**Comment:** One commenter suggested that by mixing nursing home with ICF-MR facilities, the proposed administrative penalties now mix the proverbial "apples and oranges" theme. Nursing homes and ICF-MR facilities have different missions; populations with different needs and goals; and different staffing and programming patterns for compliance with Federal and State standards. The systems are completely different. It is illogical that such be done to the ICF-MR program. Three comments were received on this issue.

**Response:** The department's response is that while the administrative procedural portion of

the proposed rules is the same for both nursing facilities and ICF-MR/RC facilities, the elements are separated and specifically apply to each type of facility based on the pertinent standards and services offered to the residents. The proposed rules recognize that ICF-MR/RC facilities serve a different clientele than nursing facilities. Residents in an ICF-MR/RC facilities have the right to a safe and healthy environment and quality active treatment services and the proposed administrative penalty elements take those areas into consideration. It is not illogical to apply the administrative penalty system to ICF-MR/RCs. No changes were made as a result of the comment.

**Comment:** In revising this rule, one commenter suggested that the agency has already exempted maternity homes from the proposed rule. The agency has supported this exemption by a mis-focused analysis on the distinctions within "long-term care." Instead of focusing their inquiry on the meaning of "care", the agency's focus ended with an analysis of "long-term." A focus on the meaning of "care" would reveal that the services of the majority of ICF-MR facilities more closely pattern the home-like atmosphere created by the exempted maternity homes. Thus there is no reasoned justification for including ICF-MR facilities with nursing facilities when services more closely match providers exempted from the penalty.

**Response:** While some of the services offered in an ICF-MR/RC may be similar to those offered by a licensed maternity home, we do not believe that the same level of active treatment services is generally needed by maternity home residents. Regardless of this, the licensing law specifically exempts maternity homes from the administrative penalty system. Furthermore the 73rd Legislature passed a bill which transfers the regulation of maternity homes from the department to the Department of Protective and Regulatory Services. The department made no change as a result of the comment.

**Comment:** The remainder of the Association's comments relate to the absence of a reasoned justification for the rule as required by Texas Civil Statutes, Article 6252-13a, §(c)(1) (1). As related earlier, one assumption of the Board of Health in approving this rule was "the general consensus is that the facilities are expected to and usually will provide safe and adequate care, and in so doing will not face penalties. It is only the exceptional circumstances, where a pattern of problems occur, that penalties will be invoked." A review of the Texas Department of Health's records for deficiencies cited in 1992, Tag Numbers W159, W164, W186, W189, and W195, alone reveals that 407 facilities were cited for a deficiency which would carry a \$500 or greater fine under the proposed rule. With only 572 privately owned facilities in Texas, the clear majority of providers would be fined under the proposed rule. The rule therefore does not involve "exceptional circumstances". The penalties incurred for a first offense of only a small portion of the regulations now proposed to be subject to penalties total \$340,000. It is clear from the gross disparity between the factual basis reported in the *Texas Register* to support the proposed rule and the actual

numbers maintained by the department that the impact of this rule on the private provider industry is not supported by an accurate much less reasoned justification.

**Response:** The department believes that if facilities comply with the minimum standards in providing quality services then no administrative penalties will be assessed. No changes were made.

**Comment:** One commenter noted that the majority of penalties relate to deficiencies in "active treatment." The area of mental health and mental retardation is not conducive to standardization in this area. Unlike a geriatric or convalescent situation, the needs of ICF-MR residents are individual and not easily quantified much less subjected to a \$500 penalty. Reasoned justification does not exist for a rule which imposes penalties on active treatment decisions within ICF-MR facilities.

**Response:** The department disagrees with the commenter that ICF-MR/RC residents needs are more individualistic and less easily quantified than nursing facility residents. State and federal requirements for both types of facilities mandate that the residents be assessed and treated on an individualistic basis. Because the developmental and habilitation needs of ICF-MR/RC residents are called "active treatment", the penalty elements were designed to coincide with those areas of service. No changes were made as a result of the comment.

**Comment:** One commenter suggested that the stated purpose for administrative penalties for ICF-MR facilities on page 2458 of the April 13, 1993 *Texas Register* is "to provide for better care of residents." How would the assessment of fines help the ICF-MR facility increase services, if necessary, "to provide better care of residents"? The assessment of fines will likely have the opposite effect and simply limit an ICF-MR facilities' ability to improve services. Sanction provisions for ICFs-MR have been in place for many years. Adding administrative penalties to these sanctions make an enforceable, workable system burdensome and punitive. A longitudinal study by the department to assess how administrative penalties added to existing sanctions would "provide better care of residents" is essential before any additional regulations are contemplated.

**Response:** The administrative penalty system is an option allowed by the licensing law to be a disincentive to facilities, who are not meeting the minimum standards, to continue that action. The department will gather information about the assessment of penalties and their relationship to decreased punitive actions. The department made no changes to the section.

**Comment:** A commenter stated that although the proposed rules listed fewer conditions for which a provider could be assessed a penalty, the proposed rule maintained a condition which addresses the service concept called "active treatment". Active treatment is integral to the ICF-MR program. The term encompasses many activities and numerous judgements by ICF-MR facility staff about when and how to assist an ICF-MR recipient develop age appropriate competence in bal-

ance with the limitations of the person's disability(ies) While some measures of active treatment can be readily recognized, others cannot. This one condition has the potential to create a classic "bureaucratic nightmare" and incur considerable illwill from many ICF-MR providers. The condition reads, as follows: "Failure to ensure or provide continuous, consistent, and aggressive program of training, treatment, and activities which are directed towards acquisition of behaviors and/or the prevention or deceleration of regression or loss of optimal functional status." This condition is not stated in measurable or observable terms. Determining compliance during a survey requires staff well-trained in ICF-MR survey technique and highly knowledgeable about the intent and implementation of ICF-MR standards. Under the best of conditions the department will likely find itself challenged to identify when and where an administrative penalty should be assessed and will face numerous provider appeals of fine assessments.

Response: The wording of Schedule B, Element C is taken from state licensing and federal Medicaid requirements relating to active treatment for residents. The department is committed to employing qualified surveyors/investigators and providing them with the orientation and training needed to evaluate facilities' compliance with the pertinent state and federal laws and rules. If a facility believes that a penalty assessment is not warranted, they have an appeal mechanism available under these rules. No changes were made as a result of the comment.

Comment: One person commented that a well-trained, professional survey staff is essential to promote credibility in the ICF-MR survey process. The large number of newly recruited surveyors and the difficulty in filling vacancies on the survey staff may compromise consistent interpretation of the "active treatment" condition.

Response: The department believes that it hires qualified staff and that they are oriented and trained adequately. The department is committed to continued training of the staff. No changes were made as a result of the comment.

Comment: One commenter stated that ICF-MR facilities are subject to more than 525 different standards with no less than five probes per standard in the interpretive guidelines. Added to this is the inconsistent interpretation by surveyors in the various regions. To complicate this burdensome system with additional administrative penalties seems harsh and unreasonable for the surveyor and facility—and ultimately the resident! Legal and administrative challenges to such administrative penalties are a given and will complicate the process even further.

Response: As stated previously, the department continues to provide training for all surveyors/investigators on the application of all regulatory law and rules. In addition, training will be given to the providers on the implementation of the administrative penalty rules. The administrative penalty rules include provisions for the appeal of penalty assessments which the department believes facilities will use as they believe appropriate. The refer-

ence to other legal actions is not new to the department and any provider has access to due process based on democratic laws of our country. No changes were made.

Comment: One commenter suggested that the "Description of Conditions and Elements of Conditions" in the April 13, 1993, *Texas Register*, (18 TexReg 2465), are highly subjective. The department's surveyors already have enough difficulty applying their interpretation to the standards consistently from region to region. As it is now, words such as "continuous," "aggressive," "adequate" and "sufficient" are simply not measurable by the provider or the surveyor in or out of a court of law.

Response: The terms referenced as being "subjective" are terms currently used in the licensing and federal Medicaid rules adopted by reference in §145.42(c) of the new licensing standards, effective August 31, 1993. The department believes that the trained surveyor/investigative staff can make sound professional judgments in the application of the administrative penalty rules. No changes were made as a result of the comment.

Comment: One commenter pointed out that the proposed Administrative Penalties, Schedule B-Penalties for Facilities Serving Persons with Mental Retardation and/or Related Conditions, paragraph (A) under Description of Conditions and Elements of Conditions, exempts facilities less than 15 beds. All "small" facilities do not have all items listed, i.e., items 3, 4, and 5; however, they do have items 1, 2, and 6, and therefore should not be exempt from these rules. It is recommended the following be deleted from paragraph (A). Also, there are some 15-bed ICF-MR facilities that were approved when the program first began.

Response: The department concurs with the comment and the rewording of the element will cover application to all sizes of facilities. Rewording should be, "A. Failure to maintain requirements in accordance with the appropriate Life Safety Code Standards."

Comment: One commenter stated that the proposed rule purports to apply the Life Safety Code requirements to facilities of 15 beds or more. It is the Association's understanding that a 15-bed facility would not be subject to the Life Safety Code and that these requirements would apply to facilities with more than 15 beds. This is consistent with the present standards which exempt a 15-bed facility from compliance standards imposed upon larger facilities.

Response: The department does not concur with the comment as 15-bed or less facilities do have to comply with some of the sub-elements under paragraph (A). Rewording for clarification was done based on the previous comment.

Comment: Concerning Schedule B, A-2, a commenter suggested there could be a small item not functioning and not jeopardizing the resident's health. The commenter recommended changing this element to "required fire alarm system is not functioning in a majority of zones."

Response: The department believes that the wording is appropriate and provides protec-

tion to residents in all size facilities and made no changes to the section.

Comment: The department's Mental Retardation Facilities Advisory Committee, established to provide advice and expertise on applicable department public policy directives, has expressed significant reservations regarding the proposed rules. ARC/Texas has been an active partner in the Advisory Committee's deliberations. The commenter shares the concerns expressed by the Committee in their most recent meeting on this topic. They also believe it is ill-advised for the department to promulgate rules which directly contradict its own Advisory Committee's recommendations.

Response: The input and comments of the Advisory Committee were considered by the Long Term Care Committee and the Board of Health, however, the department made no changes to the section.

The following submitted comments and were in favor of the proposed amendments: Texas Healthcare Association and Roy Cronwelge, Bureau of Long Term Care, Texas Department of Health. The following were against penalties for ICF-MR/RC facilities: the Texas Council of Community Mental Health and Mental Retardation Centers, Inc.; Advo Care, Inc.; Mission Road Development Center; Association for Retarded Citizens/Texas, and Private Provider Association of Texas. The Texas Association of Homes for the Aging was generally for penalties for nursing facilities and against penalties for ICF-MR/RC facilities.

#### • 25 TAC §145.91

The repeal is being adopted under the Health and Safety Code, §242.066 which provides the department with the authority to assess administrative penalties; §12.001 with provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department and the Commissioner of Health; and Texas Civil Statutes, Articles 6252- 13a, which establishes the procedure for a state agency to adopt a rule.

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 August 4, 1993.

TRD-9326795 Susan K. Steeg  
General Counsel, Office of  
General Counsel  
Texas Department of  
Health

Effective date: August 31, 1993

Proposal publication date: April 13, 1993

For further information, please call: (512) 834-6770

#### ◆ ◆ ◆ Subchapter H. Enforcement

#### • 25 TAC §145.235

The amendment is adopted under the Health and Safety Code, Chapter 242. 066, which provides the department with the authority to

assess administrative penalties; §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the Commissioner of Health; and Texas Civil Statutes, Article 6252-13a, which establish the procedure for a state agency to adopt a rule.

*§145.235. Administrative Penalties.*

(a) The department may recommend assessment of administrative penalties against a person who violates the Health and Safety Code, Chapter 242, as provided in this section.

(b) When a violation cited by the department is determined to be within the scope and description of the penalty schedules as stated in subsection (i) of this section, known as Schedule A and Schedule B, the violation is cause for assessment of a penalty as described in this section and as listed in the schedules. In determining whether a violation limits the facility's ability to comply with the law, a violation must be:

(1) of a number of existing simultaneous occurrences such that a pattern or trend is established;

(2) recurrent in nature and type;

(3) of a type presenting danger to the health and safety of at least one resident;

(4) of a magnitude or nature that constitutes a health and safety hazard having a direct or imminent adverse effect on resident health, safety, or security, or which presents even more serious danger or harm.

(c) The criteria for penalty assessment as described in subsection (b) of this section applies to nursing facilities and facilities serving persons with mental retardation or related conditions.

(d) No facility shall be penalized because of a physician's or consultant's nonperformance beyond the facility's control or if the violation is beyond the facility's control if the situation is clearly documented.

(e) An offense is defined as all deficiencies cited during a particular survey. The first offense carries the penalty shown in the "first offense" column on the schedule. The second offense carries the penalty shown in the "second offense" column on the schedule. The third offense carries the penalty shown in the "third offense" column of the schedule.

(f) The progression of offenses described in subsection (e) of this section

applies to facilities regardless of license renewals, however, when a facility has not had an offense for a period of two years, the facility's next offense will be in the "first offense" column of the schedule. A suspension of a license and subsequent reinstatement does not interrupt the progression.

(g) Within 20 days after the date on which written notice of recommended assessment of a penalty is sent to a facility, the facility must give the department written consent to the penalty or make a written request for a hearing. If the facility does not make a response within the 20-day period, the department will request that the penalty be assessed.

(h) The procedures for notification of recommended assessment, opportunity for hearing, actual assessment, payment of penalty, judicial review, and remittance will be in accordance with §145.238 of this title (relating to Administrative Hearings) and the formal hearing procedures of the department under Chapter 1 of this title (relating to Board of Health).

(i) Conditions and assessments for violations warranting administrative penalties for licensed facilities are described in Schedule A and Schedule B which are as follows.

## SCHEDULE A: PENALTIES FOR NURSING FACILITIES

DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	FIRST OFFENSE (1)	SECOND OFFENSE (2)	THIRD OR SUBSEQUENT OFFENSE (3)
<b>A. Failure to employ administrative personnel and give notice to licensing agency.</b>			
1. The licensed nursing home administrator or executive director is not hired within 30 days of vacancy occurrence.	500	1,000	1,500
2. The facility fails to file notification of a change in the nursing home administrator, the medical director, the director of nurses, or the executive director within 30 days of hire.	500	1,000	2,000
<b>B. Failure of direct care personnel to meet the needs of the residents.</b>			
1. The facility does not meet licensed staffing ratio.	500	1,000	1,500
2. The facility does not provide licensed charge nurse coverage for required shifts.	500	1,000	1,500
3. Residents are not being kept comfortable, clean or well-groomed.	500	1,000	1,500
<b>C. Failure to observe, recognize, record or report to the physician sudden and/or severe changes in resident clinical signs or symptoms and/or conditions.</b>	500	1,000	1,500
<b>D. Failure to obtain emergency medical care when required.</b>	500	2,000	3,000
<b>E. Failure to administer drugs or biologicals in accordance with the physician's orders and/or established drug administration procedures.</b>			
1. Medications are administered by a person who is not a physician; or physician extender; or personnel licensed to administer medications according to the individual's licensing practice act; or medication aides; or student nurses, student medication aides, or graduate nurses who are directly supervised by a licensed nurse, as appropriate and required by Texas Department of Health (TDH) and the nursing licensur. board.	500	1,000	1,500
2. Medications are administered without physician's order.	500	2,000	3,000

# SCHEDULE A: PENALTIES FOR NURSING FACILITIES

DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	FIRST OFFENSE (1)	SECOND OFFENSE (2)	THIRD OR SUBSEQUENT OFFENSE (3)
3. Medications are administered in the wrong strength, or by the wrong route of administration.	500	1,000	1,500
4. Medications are ordered by physician, but not administered.	500	1,000	1,500
<b>F. Failure to provide tube feeding/syringe feedings in accordance with physician's orders and/or established feeding administration procedures.</b>			
1. Tube feeding is not administered by licensed personnel.	500	1,000	1,500
2. The quality and/or quantity of the formula administered is not as ordered by the physician.	500	1,000	1,500
3. Improper technique is used in feeding.	500	500	750
<b>G. Failure to provide proper catheter care.</b>			
1. Catheter is not inserted according to the physician's order.	500	1,000	1,500
2. There is improper technique or cross contamination in routine catheter care.	500	1,000	1,500
<b>H. Failure to give proper skin care.</b>			
1. The staff fails to follow physician's orders for skin care.	500	1,000	1,500
2. Tears, wounds, ulcers, or rashes are not reported to the attending physician or are not documented in clinical records.	500	1,000	1,500
3. The staff fails to clean a resident after each incontinent episode.	500	1,000	1,500
4. The staff fails to position residents, including but not limited to, turning and/or repositioning, in order to help prevent skin deterioration.	500	1,000	1,500
<b>I. Failure to use restraints properly.</b>			
1. Physician's orders are not followed in the use of restraints, and/or except in emergency, physical restraints are applied without physician's orders.	500	1,000	1,500
2. Physical restraints are incorrectly applied and/or released.	500	1,000	1,500
<b>J. Failure to utilize infection control; including, but not limited to, universal precautions in the care of all residents.</b>	500	1,000	1,500

## SCHEDULE A: PENALTIES FOR NURSING FACILITIES

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DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	FIRST OFFENSE (1)	SECOND OFFENSE (2)	THIRD OR SUBSEQUENT OFFENSE (3)
<b>K. Failure to organize and execute pharmacy services in accordance with standards or established pharmacy practices.</b>			
1. The nursing facility does not retain a pharmacist who serves as a consultant to the facility.	500	1,000	1,500
2. The licensed consultant pharmacist does not review the drug regimen of each resident at least monthly and/or report any irregularities to the attending physician and the director of nursing.	500	1,000	1,500
3. Medications are not maintained at all times in properly labeled containers and/or stored in locked medication room, cabinet, cart, or secured refrigerator area.	500	1,000	1,500
4. Resident's replacement (reordered) medications are not available in the facility prior to administering the last dose from the previous container.	500	1,000	1,500
5. Drug administration errors or adverse drug reactions are not reported in a timely manner to the resident's physician.	500	1,000	1,500
<b>L. Failure to provide dietary services in accordance with standards or established dietary practices.</b>			
1. The nursing facility does not retain a qualified dietitian or receive regularly scheduled consultation from a professional dietitian.	500	1,000	1,500
2. The facility fails to provide therapeutic diets, mechanically altered diets, or special meals in accordance with physician's orders.	500	1,000	1,500
3. The facility fails to provide a safe and/or sanitary environment through the practice of storage, preparation, or distribution of foods.	500	1,000	1,500

## SCHEDULE A: PENALTIES FOR NURSING FACILITIES

DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	FIRST OFFENSE (1)	SECOND OFFENSE (2)	THIRD OR SUBSEQUENT OFFENSE (3)
M. Failure to provide services to meet the psychosocial or activity needs of the residents.	500	1,000	1,500
N. Failure to maintain the physical plant in accordance with standards.			
1. The facility interior or exterior is not maintained in a safe, clean, or orderly manner, or is not free of lingering offensive odors. This includes, but is not limited to, repairs and/or maintenance.	500	1,000	1,500
2. The facility fails to prevent lint build-up and fire hazard in clothes driers.	500	1,500	2,000
3. The facility fails to maintain an on-going safe or effective pest control program.	500	500	750
O. Failure to maintain Life Safety Code requirements in accordance with the Standards.			
1. Required sprinkler system is not functioning, or system water supply is turned off or, has inadequate pressure or is restricted.	500	1,500	2,000
2. Required fire alarm system is not functioning in total or in the majority of zones.	500	1,500	2,000
3. The installed generator will not start automatically within the required time period or will not transfer and carry load.	500	1,500	2,000
4. The installed battery emergency system does not illuminate or maintain required illumination for the required time.	500	1,500	2,000
5. A required exit door does not allow immediate egress.	500	1,000	1,500
6. The corridor means of egress are not kept clear of obstructions.	500	1,000	1,500
7. Required smoke or fire doors are tied, blocked, or wedged open.	500	1,000	1,500
8. Portable fire extinguishers are not available at required locations.	500	1,000	1,500
9. Fire drills are not conducted or documented at least one per shift per quarter.	500	1,000	1,500

## SCHEDULE A: PENALTIES FOR NURSING FACILITIES

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DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	FIRST OFFENSE (1)	SECOND OFFENSE (2)	THIRD OR SUBSEQUENT OFFENSE (3)
10. Smoking is allowed in unauthorized or unsupervised areas.	500	1,000	1,500
P. Failure to provide resident-use hot water supply in a safe temperature.			
1. Hot water temperature exceeds 125°F.	500	1,000	1,500
Q. Failure to verify the criminal conviction record of an employee/applicant as required by Human Resources Code, Chapter 106, and/or failure to deny or terminate the permanent employment of a person identified in the criminal conviction report as unemployable or otherwise known by management to be unemployable.	500	1,000	1,500



**SCHEDULE B: PENALTIES FOR FACILITIES SERVING PERSONS  
WITH MENTAL RETARDATION AND/OR RELATED CONDITIONS**

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DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	FIRST OFFENSE (1)	SECOND OFFENSE (2)	THIRD OR SUBSEQUENT OFFENSE (3)
<b>A. Failure to maintain requirements in accordance with the appropriate Life Safety Code Standards.</b>			
1. Required sprinkler system is not functioning, or system water supply is turned off, or has inadequate pressure or is restricted.	500	1,000	1,500
2. Required fire alarm system is not functioning in total or in the majority of zones.	500	1,000	1,500
3. The generator will not start automatically within the required time period or will not transfer and carry load.	500	1,000	1,500
4. Battery emergency system does not illuminate or maintain required illumination for the required time.	500	1,000	1,500
5. Smoke or fire doors are tied, blocked, or wedged open.	500	1,000	1,500
6. Portable fire extinguishers are not available at required locations.	500	1,000	1,500
<b>B. Failure to provide tube feeding/syringe feedings in accordance with physician's orders and/or established feeding administration procedures.</b>			
1. Tube feeding is not administered by licensed personnel.	500	1,000	1,500
2. The quality and/or quantity of the formula administered is not as ordered by the physician.	500	1,000	1,500
3. Improper technique is used in feeding.	500	1,000	1,500
<b>C. Failure to ensure or provide a continuous, consistent, and aggressive program of training, treatment, and activities which are directed towards acquisition of behaviors and/or the prevention or deceleration of regression or loss of optical functional status.</b>	500	1,500	2,000

## SCHEDULE B: PENALTIES FOR FACILITIES SERVING PERSONS WITH MENTAL RETARDATION AND/OR RELATED CONDITIONS

DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	FIRST OFFENSE (1)	SECOND OFFENSE (2)	THIRD OR SUBSEQUENT OFFENSE (3)
D. Failure of the Qualified Mental Retardation Professional to provide on-going coordination and integration, and continuous monitoring of an individual's active treatment program to ensure adequate delivery of services.	500	1,000	1,500
E. Failure to provide needed professional program service delivery as indicated by client needs and/or recommended by the Interdisciplinary Team.	500	1,000	1,500
F. Failure to provide sufficient direct care staff to manage and supervise clients in accordance with their individual plans of care.	500	1,000	1,500
G. Failure of the facility to assure staff is trained to implement client programs.	500	1,000	1,500

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 August 4, 1993.

TRD-9326793

Susan K. Steeg  
General Counsel, Office of  
General Counsel  
Texas Department of  
Health

Effective date: August 31, 1993

Proposal publication date: April 13, 1993

For further information, please call: (512) 834-6770



### Part VIII. Interagency Council on Early Childhood Intervention.

#### Chapter 621. Early Childhood Intervention Program

#### Early Childhood Intervention Service Delivery

The Interagency Council on Early Childhood Intervention (council) adopts amendments to §§621.22, 621.23, 621.41-44, 621.46, and 621.64 concerning the early childhood intervention program, without changes to the proposed text as published in the May 25, 1993, issue of the *Texas Register* (18 TexReg 3345). The sections cover the program's service delivery, administrative hearings concerning individual child rights, and the advisory committee. The amendments will

clarify service delivery requirements and definitions in order to comply with federal regulations, Part 303, which implement Public Law 102-119, Individuals with Disabilities Education Act Amendments of 1991.

No comments were received regarding adoption of the amendments.

• 25 TAC §621.22, §621.23

The amendments are adopted under the Human Resource Code, §73.003, which provides the Interagency Council on Early Childhood Intervention with the authority to establish rules regarding services provided for children with developmental delays.

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 August 3, 1993.

TRD-9326746

Tammy Tiner, Ph.D.  
Chairperson  
Interagency Council on  
Early Childhood  
Intervention

Effective date: August 24, 1993

Proposal publication date: May 25, 1993

For further information, please call: (512)  
458-7236

◆ ◆ ◆  
• 25 TAC §621.25

The Interagency Council on Early Childhood Intervention (council) adopts an amendment to §621.25, concerning the early childhood intervention (ECI) program, without change to the text as published in the June 8, 1993, issue of the *Texas Register* (18 TexReg 3614). The rule covers service delivery requirements; specifically, application requirements. The amendment updates and clarifies the section in compliance with the Individuals with Disabilities Education Act Amendments of 1991, Public Law 102-119, Part 303.

The amendment corrects citations, clarifies language, improves consistency, and recent changes in the federal regulations under the Individuals with Disabilities Education Act, (IDEA) Part H.

No public comments were received concerning the adoption of the rule..

The amendment is adopted under the Human Resource Code, §73.003, which provides the Interagency Council on Early Childhood Intervention with the authority to establish rules regarding services provided for children with developmental delays.

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 August 3, 1993.

TRD-9326747

Tammy Tiner, Ph.D.  
Chairperson  
Interagency Council on  
Early Childhood  
Intervention

Effective date: August 24, 1993

Proposal publication date: June 6, 1993

For further information, please call: (512)  
458-7673

◆ ◆ ◆  
Procedural Safeguards and Due  
Process Procedures

• 25 TAC §§621.41-621.44, 621.46

The amendments are adopted under the Human Resource Code, §73.003, which provides the Interagency Council on Early Childhood Intervention with the authority to establish rules regarding services provided for children with developmental delays.

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 August 3, 1993.

TRD-9326745

Tammy Tiner, Ph.D.  
Chairperson  
Interagency Council on  
Early Childhood  
Intervention

Effective date: August 24, 1993

Proposal publication date: May 25, 1993

For further information, please call: (512)  
458-7673

◆ ◆ ◆  
Early Childhood Intervention  
Advisory Committee

• 25 TAC §621.64

The amendment is adopted under the Human Resource Code, §73.003, which provides the Interagency Council on Early Childhood Intervention with the authority to establish rules regarding services provided for children with developmental delays.

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 August 3, 1993.

TRD-9326744

Tammy Tiner, Ph.D.  
Chairperson  
Interagency Council on  
Early Childhood  
Intervention

Effective date: August 24, 1993

Proposal publication date: May 25, 1993

For further information, please call: (512)  
458-7673

◆ ◆ ◆  
TITLE 37. PUBLIC  
SAFETY AND CORREC-  
TIONS

Part III. Texas Youth  
Commission

Chapter 91. Discipline and  
Control

Control

• 37 TAC §91.65

The Texas Youth Commission (TYC) adopts an amendment to §91.65, concerning procedures in the security units in TYC institutional facilities, with changes to the proposed text as published in the July 2, 1993, issue of the *Texas Register* (18 TexReg 4290). Text has been rearranged with no change in content.

The justification for amending the section is to prevent injury to staff and youth in the security unit.

Youths are placed in individual rooms in the security units when immediate behavior meets specific criteria, including engaging in serious physical harm to him/herself or others. The amendment allowing locked doors on individual rooms in the security unit will

prevent continuing injuries to staff working in TYC's institutional security units, and to delinquent youth confined to those units, by restricting violent behavior.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to determine appropriate treatment, including confinement.

§91.65. Security Unit.

(a) Policy. The Texas Youth Commission (TYC) refers to security as the institutional unit or building, which is designed and operated for the segregation of youth from the general population and which is controlled exclusively by staff. Placement in security is a serious and extreme measure which may be imposed only in specific situations. Security shall not be used for retribution at any time. Also see General Operating Procedure 67.19, §91.69 of this title (relating to Detention).

(b) Rules.

(1) Admission to Security.

(A) A youth may be confined in security:

(i) when there are reasonable grounds to believe, based upon overt acts, that the youth is a serious and continuing escape risk; or

(ii) when the youth is a serious and immediate physical danger to himself or herself or others and staff cannot protect the youth or others except by referring the youth to security; or

(iii) when the confinement is necessary to prevent imminent and substantial destruction of property; or

(iv) to restrain behavior that creates substantial disruption of the routine of the facility; or

(v) upon the youth's own request.

(B) A youth may be admitted to security only with the approval of the superintendent, acting superintendent, the youth's caseworker, his substitute, or a child care professional designated by the superintendent.

(C) Within 50 minutes of the referral the responsible staff shall determine whether the youth meets admission criteria and whether to admit the youth to the security unit. The superintendent or his substitute may extend the 50-minute time limit up to one additional hour if requested and necessary.

(2) Release.

(A) A youth shall not remain in security more than 24 hours solely on the basis of the behavior for which he was admitted to security.

(B) No minimum length of time in security is imposed.

(3) Locked doors in security unit rooms.

(A) Doors of individual security rooms may be locked during the referral process prior to admission with the following restrictions:

(i) A youth may be placed in an individual room and the door locked when the youth is out of control and is a serious and immediate physical danger to himself or herself or others, and only after less restrictive methods of restraint have failed.

(ii) As soon as a youth is sufficiently under control so to no longer pose a serious and immediate danger to himself or others, he is released from the locked door.

(iii) Use of locked doors for this purpose shall be fully documented.

(B) Doors of individual security rooms are locked following a youth's admission to the security unit and placement in an individual room.

(4) Extended stay.

(A) A youth's stay in security may be extended beyond the 24 hours if there are reasonable grounds to believe that one of the admission criteria is occurring or will occur if the youth is released.

(B) Extended security confinement due process protections are provided to youth who remain in security longer than 24 hours.

(i) A hearing is afforded the youth before security confinement is extended past 24 hours.

(ii) The youth is informed of the reasons for the continued confinement.

(iii) A hearing administrator is appointed by the superintendent to review the reasons for the confinement and make a decision on the facts presented.

(iv) The youth is present and participates in the review and has an opportunity to make his own statement.

(v) The youth is given assistance in presenting his position if the youth requests such assistance.

(vi) The administrator's decision is based solely on the evidence presented.

(vii) A written statement of the decision setting forth the reasons for the decision and the appeal procedure is provided to the youth.

(viii) The superintendent will decide the appeal outcome and the youth is notified of the outcome of the appeal.

(C) Following the extended stay hearing, the superintendent may approve an additional 24-hour extension, every 24 hours thereafter, until the end of the fifth day or 120 hours.

(D) Following 120 hours of extended security placement, the director of institutions may approve an additional 24-hour extension, every 24 hours thereafter, until the end of the seventh day or 168 hours.

(E) Following 168 hours of extended stay security placement, the deputy executive director may approve an additional 24-hour extension every 24 hours thereafter until the youth is released.

(5) Security requirements.

(A) Youth placed in security who are on suicide alert are visually checked by staff no less frequently than every ten minutes. All other youth in security are visually checked by staff at least every 15 minutes.

(B) Youth in security are visited at least once each day by the superintendent or acting superintendent and by personnel from the psychology and medical departments.

(C) During normal sleeping hours a supervisor visits the security area at least once each hour (unless exceptional and unusual duties prohibit such visits) and shall make an entry into the log recording each such visit.

(D) Youth in security receive appropriate psychological and medical services.

(E) Youth in security receive the same food including snacks prepared in the same manner as for other youth except

as special diets may be prescribed on an individual basis by medical personnel.

(F) Youth in security receive educational services. Academic assignments are expected to be completed on all school days by youth enrolled in academic classes; any youth not enrolled in an educational program or only involved in vocational shop activities may be given leisure reading or letter writing assignments in lieu of completing academic class assignments.

(G) Youth in security receive two periods of supervised large muscle activity daily.

(6) Documentation. Permanent log(s) are maintained stating the name of the person who authorized confinement or security, the superintendent or acting superintendent's daily approval of the placement, the names and times of the persons who visited the youth while so confined, and the date and time of the youth's placement into security or isolation and release.

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 August 2, 1993.

TRD-9328738

Ron Jackson  
Executive Director  
Texas Youth Commission

Effective date: August 24, 1993

Proposal publication date: July 2, 1993

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

◆ ◆ ◆  
**TITLE 40, Social Services  
& Assistance,  
Part I, Texas Dept. of  
Human Services**

**Chapter 29, Purchased Health  
Services**

**Subchapter BB, Coordinated  
Care**

**• 40 TAC §29.2701**

The Texas Department of Human Services (DHS) adopts new §29.2701 concerning DHS's Coordinated Care Pilot Project, in its Purchased Health Services rule chapter. The section is adopted without changes to the proposed text published in the June 29, 1993, issue of the *Texas Register* (18 TexReg 4233).

The justification for the rule is to comply with §32.041 of the Human Resources Code which was adopted by the 72nd Texas Legislature in 1991. This legislation mandates that DHS develop an innovative and cost effective approach for delivery of health care services

to Medicaid clients. In response to the adoption of §32.041, DHS developed the LoneSTAR (State of Texas Access Reform) Health Initiative. New §29.2701 states the objectives of this initiative, which will be tested in a pilot project in Travis county beginning August 1, 1993, and in Chambers, Jefferson, and Galveston counties beginning December 1, 1993. The pilot test will conclude in 1995.

The new rule will function by improving quality of health care coverage to eligible individuals without increasing overall health-care expenditures in the Texas Medicaid Program.

No comments were received regarding the adoption of the proposal.

The new section is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs, and Chapter 32.041, which provides the department with the authority to conduct a Medicaid Managed Care Demonstration Project, 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.

**§29.2701. Coordinated Care Pilot Project.**

(a) The Texas Department of Human Services is conducting a Coordinated Care Pilot Project in response to §32.041 of the Human Resources Code, which was enacted by the Texas Legislature in 1991. The objectives of the project are to ensure adequate access to primary health care, prevent unnecessary utilization of health care resources, reduce inappropriate utilization of health care resources, and enhance the cost effectiveness of the Medicaid program for Aid to Families with Dependent Children (AFDC) and AFDC-related clients.

(b) All eligible AFDC and AFDC-related Medicaid clients in the counties specified in subsection (c) of this section must participate in the project. These clients:

(1) will receive the current services available under the Texas Medicaid program, except that the existing three-prescription drug limit for clients over the age of 21 is removed; and

(2) must select an individual Primary Care Provider (PCP) who will manage their medical care.

(c) Clients in Travis County begin participation in the project August 1, 1993, and clients in the tri-county area of Chambers, Jefferson, and Galveston begin participation December 1, 1993. Clients in these counties will continue to participate in the project for a period of two years.

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 August 4, 1993.

TRD-9328814

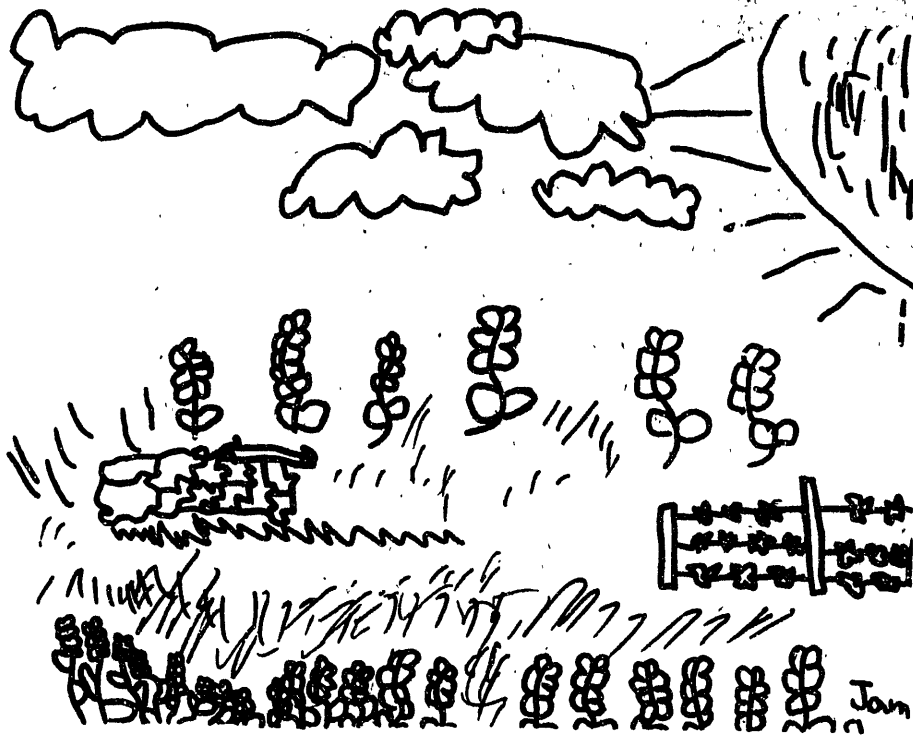
Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Human Services

Effective date: August 31, 1993

Proposal publication date: June 29, 1993

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

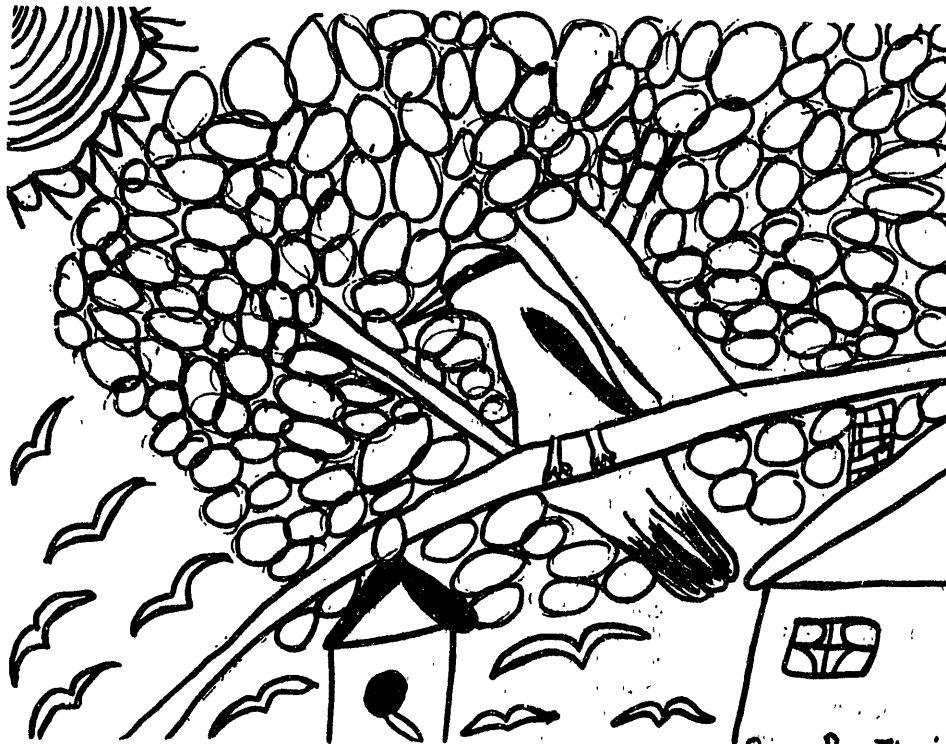




Name: James Stephens

Grade: 2

School: Montgomery Elementary, Carrollton-Farmers Branch ISD.



Name: Cassandra Harris

Grade: 2

School: Montgomery Elementary, Carrollton-Farmers Branch ISD

# Open Meetings

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

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

**Posting of open meeting notices.** All notices are posted on the bulletin board at the Office of the Secretary of State in lobby of 221 East 11th Street, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

## Texas Department on Aging

Wednesday, August 11, 1993, 9:00 a.m. The Texas Board on Aging of the Texas Department on Aging will meet at the Sheraton Tyler Hotel, Constellation Ballroom, 5701 South Broadway Street, Tyler. According to the agenda summary, the board will consider and possibly act on: calling the meeting to order; discuss approval of the minutes of July 8, 1993 meeting; hear public testimony; executive director's report; Citizens Advisory Council (CAC) Chair's report; letter of support for Options for Independent Living program; amendments to Fiscal Year 1994 state plan; use of 1994 census projections to develop funding formula allocation to distribute funds to Area Agencies on Aging (AAAs) for Fiscal Year 1994; allocation of Fiscal Year 1994 Ombudsman Activity funds to AAAs; operating budget amendment; Fiscal Year 1994 operating budget; proposed board travel policy/procedures; addition of TDoA staff persons to list of individuals authorized to sign vouchers; general announcements; and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: August 3, 1993, 3:35 p.m.

TRD-9326764

## Texas Department of Agriculture

Thursday, August 12, 1993, 8:00 a.m. The Schleicher County Cotton Producers Board of the Texas Department of Agriculture will meet at the County Agent's Office, Schleicher County Courthouse Annex, Eldorado. According to the complete

agenda, the board will discuss approval of the minutes of previous meeting; hear report from committee to obtain an attorney for Tri-State case; decide on collection procedure and spray program; hear report on election process; discuss other business and comments; and adjourn.

Contact: Steve Williams, Route 1, Eldorado, Texas 76936, (915) 853-2460.

Filed: August 4, 1993, 1:58 p.m.

TRD-9326803

## The State Bar of Texas

Thursday-Friday, August 12-13, 1993, 10:00 a.m. and 8:30 a.m. respectively. The Commission for Lawyer Discipline of the State Bar of Texas will meet at the Texas Law Center, 1414 Colorado Street, Room 206, Austin. According to the agenda summary, the commission will call the meeting to order; make introductions; review minutes; discuss statistical reports; commission's compliance with State Bar Act, Texas Rules of Disciplinary Procedure and order of the Supreme Court; operations of General Counsel's office; grievance committees; special counsel program; operations of commission; collection of attorney's fees; meet in closed executive session, pursuant to Texas Civil Statutes, Article 6252-17(2)(e) and (g) to discuss pending litigation; pending evidentiary cases; special counsel assignments; and personnel matters; reconvene in open meeting to discuss pending litigation; evidentiary cases; special counsel assignments; future meetings; and other matters as appropriate; receive public comment; and adjourn.

Contact: Anne Dorris, 400 West 15th Street, Suite 1500, Austin, Texas 78701, (512) 463-1463.

Filed: August 4, 1993, 3:34 p.m.

TRD-9326819

## Texas Commission for the Blind

Friday, August 13, 1993, 8:30 a.m. The Board Audit Committee of the Texas Commission for the Blind will meet at the Hyatt Regency Houston, 1200 Louisiana Street, Houston. According to the complete agenda, the committee will hold a work session; and review audit department's charter.

Contact: Jean Wakefield, P.O. Box 12866, Austin, Texas 78711, (512) 459-2600.

Filed: August 3, 1993, 4:50 p.m.

TRD-9326768

Friday, August 13, 1993, 10:00 a.m. The Board of the Texas Commission for the Blind will meet at the Hyatt Regency Houston, 1200 Louisiana Street, Houston. According to the agenda summary, the board will discuss approval of the minutes from May 14, 1993; meet in executive session pursuant to Article 6252-17, §2(g) to discuss personnel, and §2(e) to discuss pending legal matters with attorney; have discussion about and approval of executive director's report on agency activities; hear board committee reports; adoption of policy on approving agency vouchers; have discussion about and approval of establishment grants contingent on year-end funding; agency's federal strategic plan for fiscal year 1994; interim vocational rehabilitation state plan; and hear public comments.

Contact: Jean Wakefield, P.O. Box 12866, Austin, Texas 78711, (512) 459-2600.

Filed: August 3, 1993, 4:50 p.m.

TRD-9326769

## Court Reporters Certification Board

Saturday, August 14, 1993, 9:00 a.m. The Court Reporters Certification Board will meet at the Texas Law Center, 1414 Colorado Street, Suite 206, Austin. According to the complete agenda, the board will call the meeting to order; take attendance; conduct formal hearings in Cause Numbers 93089606 and 93298607; consider and possibly recommend Code of Professional Conduct; consider legislation affecting agency; request of Applicant Number 6089; discuss approval of minutes from April 3, 1993 meeting; conduct preliminary reviews in Cause Numbers 93232308, 93107009 and 93054210; discuss potential conflict of interest of fellow board member; review results of pilot program; consider applicants convicted of a criminal offense; proposed Fiscal Year 1994 budget; review Fiscal Year 1993 expenditures; consider authorization for signature cards; confirm biennial operating plan; consider 1994 exam and meeting dates; and set the next meeting date.

Contact: Peg Liedtke, 205 West 14th Street, Suite 101, Austin, Texas 78701, (512) 463-1624.

Filed: August 3, 1993, 2:01 p.m.

TRD-9326758

## Credit Union Department

Thursday, August 12, 1993, 10:00 a.m. The Credit Union Commission, Commissioner Search Committee of the Credit Union Department will meet at the Credit Union Department Building, 914 East Anderson Lane, Austin. According to the complete agenda, the committee will interview candidates for the Credit Union Commissioner position and to determine the applicants for final commission selection.

Contact: Harry L. Elliott, 914 East Anderson Lane, Austin, Texas 78752-1699, (512) 837-9236.

Filed: August 2, 1993, 2:38 p.m.

TRD-9326763

Friday, August 13, 1993, 9:00 a.m. The Credit Union Commission, Commissioner Search Committee of the Credit Union Department will meet at the Credit Union Department Building, 914 East Anderson Lane, Austin. According to the complete agenda, the committee will interview candidates for the Credit Union Commissioner position and to determine the applicants for final commission selection.

Contact: Harry L. Elliott, 914 East Anderson Lane, Austin, Texas 78752-1699, (512) 837-9236.

Filed: August 3, 1993, 2:38 p.m.

TRD-9326762

## Texas Planning Council for Developmental Disabilities

Thursday, August 12, 1993, 8:30 a.m. The Committee of the Whole of the Texas Planning Council for Developmental Disabilities will meet at the Austin North Hilton and Towers, Hill Country B Room, 6000 Middle Fiskville Road, Austin. According to the complete agenda, the committee will call the meeting to order; introduce council members, staff, and guests; continue development of council strategic plan; and adjourn. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Denese Holman at (512) 483-4087.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4080.

Filed: August 4, 1993, 9:23 a.m.

TRD-9326779

Thursday, August 12, 1993, 6:00 p.m. The Executive Committee of the Texas Planning Council for Developmental Disabilities will meet at the Austin North Hilton and Towers, Magnolia Room, 6000 Middle Fiskville Road, Austin. According to the complete agenda, the committee will call the meeting to order; make introductions; discuss approval of the minutes of May 6, 1993; consider Fiscal Year 1994 budget; stipends grant applications; revisions to stipends request for proposal (RFP); update on redesignation of TPCDD; and adjourn. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Denese Holman at (512) 483-4087.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4080.

Filed: August 4, 1993, 9:23 a.m.

TRD-9326777

Friday, August 13, 1993, 8:30 a.m. The Quarterly Council of the Texas Planning Council for Developmental Disabilities will meet at the Texas Rehabilitation Commission, Public Hearing Room, 4900 North Lamar Boulevard, Austin. According to the agenda summary, the council will call the

meeting to order; introduce council members, staff, and visitors; discuss approval of the minutes of May 6-7, 1993; hear chairman's report; executive committee report; planning and evaluation committee report; advocacy and public information committee report; grants monitoring committee report; executive director's report; and adjourn. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Denese Holman at (512) 483-4087.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4080.

Filed: August 4, 1993, 9:23 a.m.

TRD-9326778

## State Board of Registration for Professional Engineers

Friday, August 13, 1993, 4:00 p.m. The Ad Hoc Committee on Faculty Registration of the State Board of Registration for Professional Engineers will meet at the Opryland Hotel, 2800 Opryland Drive, Nashville, Tennessee. According to the complete agenda, the committee will call the meeting to order, convened by Chairman Johnson; take roll call; recognize and welcome visitors; discuss compliance with the Texas Engineering Practice Act; and adjourn.

Contact: Charles E. Nemir, P.E., 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723.

Filed: August 4, 1993, 2:00 p.m.

TRD-9326810

## Office of the Governor-Criminal Justice Division

Thursday-Friday, August 12-13, 1993, 9:00 a.m. The Juvenile Justice and Delinquency Prevention Advisory Board of the Criminal Justice Division of the Office of the Governor will meet at the Texas Law Center, 1414 Colorado Street, Austin. According to the complete agenda, the board will call the meeting to order; discuss purpose of meeting; overview of current status of JJD Act appropriation; explanation of compliance monitoring requirements; development of compliance monitoring plan; three-year plan for Fiscal Year 1994-1996 adoption of priority problem statements; three-year plan for Fiscal Year 1994-1996 adoption of eligible types of programs; explanation of federal budget requirements; approval of budget; and adjourn.



Contact: Jim Kester, P.O. Box 12428, Austin, Texas 78701, (512) 463-1919.

Filed: August 4, 1993, 2:32 p.m.

TRD-9326813

Friday, August 13, 1993, 6:00 p.m. The Juvenile Justice and Delinquency Prevention Advisory Board, Executive Committee of the Criminal Justice Division of the Office of the Governor will meet at the Insurance Annex Building, 221 East 11th Street, Austin. According to the complete agenda, the committee will call the meeting to order; discuss eligible programs under the 1994-1996 plan for Juvenile Justice and Delinquency Prevention Act funds; plan for compliance with the mandates of the JJDP Act; board's legislative efforts during the first session of the 74th Texas Legislature; status of JJDP Act appropriation; and adjourn.

Contact: Jim Kester, P.O. Box 12428, Austin, Texas 78701, (512) 463-1919.

Filed: August 4, 1993, 2:01 p.m.

TRD-9326799

## Texas Department of Licensing and Regulation

Tuesday, August 31, 1993, 9:00 a.m. The Inspections and Investigations: Air Conditioning of the Texas Department of Licensing and Regulation will meet at 920 Colorado, E.O. Thompson Building, Tenth Floor, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension, or revocation of the license for Leonard Lanier doing business as Lanier Refrigeration Service for violation of Texas Civil Statutes, Article 8861, 16 TAC §75.90(a), Article 6252-13a, and Article 9100.

Contact: Paula Harnje, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: August 3, 1993, 4:15 p.m.

TRD-9326767

## Texas Optometry Board

Thursday-Friday, August 12-13, 1993, 9:00 a.m. and 8:00 a.m. respectively. The Texas Optometry Board will meet at the Sheraton Austin Hotel, 500 North IH-35, Austin. According to the agenda summary, the Investigation-Enforcement Committee will meet, followed by the Continuing Education Committee, Rules Committee and then all committees. The board will consider reports of secretary-treasurer, execu-

tive director, legal counsel, and committee chair's; consider adoption of rules as published in the *Texas Register*; consider adoption of proposed rules for publication in order to implement House Bill 1479 (Sunset legislation); discuss therapeutic advisory council; policy for use of board stationery; general mailing; Health Professions Council; health insurance for members; hear reports on IAB meeting in June, and Governor's Conference in July; health care reform conference; public comment at 9:30 a.m. (time certain); meet in executive session in accordance with Texas Civil Statutes, Article 6252-17, §2(e); discuss with attorney litigation between Texas Optometry Board and Lens Express; and orientation with member.

Contact: Lois Ewald, 9101 Burnet Road, Suite 214, Austin, Texas 78758, (512) 835-1938.

Filed: August 4, 1993, 4:06 p.m.

TRD-9326841

## Public Utility Commission of Texas

Friday, August 13, 1993, 9:00 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11972-petition of Texas Utilities Electric Company to show commercial operation date for Comanche Peak Steam Electric Station Unit Two.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 3, 1993, 3:43 p.m.

TRD-9326766

Monday, August 16, 1993, 9:00 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 12188-complaint of Frederick L. Kay against Southwestern Bell Telephone Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 4, 1993, 3:13 p.m.

TRD-9326817

Monday, August 16, 1993, 10:00 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket

Number 12174-Application of Southwestern Bell Telephone Company for temporary provision of service for the 1994 World Cup Dallas event being held from June 17-July 17, 1994, in Dallas.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 4, 1993, 3:12 p.m.

TRD-9326815

Monday, August 16, 1993, 10:00 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 12057-Application of Southwestern Bell Telephone Company to revise wide area telecommunications service tariff under Substantive Rule 23.26.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 4, 1993, 3:12 p.m.

TRD-9326816

Wednesday, August 25, 1993, 10:00 a.m. (Rescheduled from Tuesday, August 10, 1993, at 10:00 a.m.). The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the commission will hold a prehearing conference in Docket Number 12159-petition of General Counsel into the reasonableness of the rates and practices of Denton County Electric Cooperative.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 3, 1993, 3:42 p.m.

TRD-9326765

## Texas Rehabilitation Commission

Friday, August 13, 1993, 9:30 a.m. The Board of the Texas Rehabilitation Commission will meet at the Brown-Heatly Building, 4900 North Lamar Boulevard, Public Hearing Room, First Floor, Austin. According to the complete agenda, the board will take roll call; introduce guests; give invocation; discuss approval of minutes of board meeting of May 28, 1993; hear commissioner's comments; update on management audit issues; work force statistical analysis report; meet in executive session; discuss approval to apply Article V, Section 1, Subsection 17 of Senate Bill 5, 73rd Legislature, compensation procedures to the position of Commissioner; and adjourn.

Contact: Charles Schiesser, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4051 or T.D.D. (512) 483-4045. For ADA assistance, call Sarah Hallum, (512) 483-4004.

Filed: August 3, 1993, 1:59 p.m.

TRD-9326757

## Structural Pest Control Board

Tuesday, August 24, 1993, 9:00 a.m. The Continuing Education Committee of the Structural Pest Control Board will meet at the Joe C. Thompson Conference Center, 2405 East Campus Drive, Room 2.110, Austin. According to the complete agenda, the committee will consider continuing education programs submitted for approval; review of current course submittal and evaluation process; and review and development of course evaluation forms.

Contact: Benny M. Mathis, Jr., 9101 Burnet Road, Suite 201, Austin, Texas 78758, (512) 835-4066.

Filed: August 5, 1993, 8:46 a.m.

TRD-9326846

## The Texas A&M University System

Friday, August 27, 1993, 10:00 a.m. The Board of Regents of the Texas A&M University System will meet at 200 Seawolf Parkway, Classroom Lab Building, Building #3007, Room 216, Texas A&M-Galveston Campus, Galveston. According to the complete agenda, the board will review and adopt the budgets for the Texas A&M University System for Fiscal Year 1993-1994; consider and possibly act on regarding the change of names for Laredo State University, Corpus Christi State University, and Texas A&I University; consider acceptance of the tendered resignation of Chancellor H. H. Richardson and approval of his requested appointment to a distinguished tenured professor position at Texas A&M University effective September 1, 1993; consider the appointment of William H. Mobley, current President of Texas A&M University, to the position of Chancellor of the Texas A&M University System, effective September 1, 1993; consider the appointment of E. Dean Gage, current Senior Vice President and Provost of Texas A&M University, to the position of Interim President of Texas A&M University, effective September 1, 1993; consider the appointment of a person to serve as Interim Vice President and Provost for Texas A&M University, in the event such position becomes vacant, effective September 1, 1993;

and discuss matters involving personnel and pending or threatened litigation.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: August 4, 1993, 1:08 p.m.

TRD-9326801

## University of Texas Health Science Center at San Antonio

Wednesday, August 18, 1993, 3:00 p.m. The Institutional Animal Care and Use Committee of the University of Texas Health Science Center at San Antonio will meet in Room 422A, Medical School Building, 7703 Floyd Curl Drive, San Antonio. According to the agenda summary, the committee will discuss approval of the minutes; protocols for review; hear subcommittee reports; and discuss other business.

Contact: Molly Greene, 7703 Floyd Curl Drive, San Antonio, Texas 78284, (512) 567-3717.

Filed: August 4, 1993, 4:01 p.m.

TRD-9326839

## Texas Water Commission

Wednesday, August 25, 1993, 9:00 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 Arlington Sports Facilities Development Authority, Inc.'s Application Number TA-7101 for a permit to divert and use 75 acre-feet of water for a three-year period from Johnson Creek, tributary of the West Fork Trinity River, tributary of the Trinity River, Trinity River Basin, for irrigation purposes in Tarrant County.

Contact: Arlette Capehart, P.O. Box 13087, Austin, Texas 78711, (512) 475-2347.

Filed: August 4, 1993, 1:59 p.m.

TRD-9326805

Wednesday, August 25, 1993, 9:00 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 Hays County's Application Number TA-7109 for a permit to divert and use nine acre-feet of water for a three-year period from five diversion points on the Blanco River, tributary of the San Marcos River, tributary of the Guadalupe River, Guadalupe River Ba-

sin, for industrial purposes (repair and maintenance of various county roads) in Hays County.

Contact: Arlette Capehart, P.O. Box 13087, Austin, Texas 78711, (512) 475-2347.

Filed: August 4, 1993, 1:59 p.m.

TRD-9326806

Wednesday, August 25, 1993, 6:00 p.m. The Texas Water Commission will meet at the City Public Works Building, City Council Meeting Room, 900 Irvine Street, Yoakum. According to the agenda summary, the commission will hold a public meeting on an application for a municipal solid waste transfer station registration by the City of Yoakum, Proposed Registration Number MSW-40017. The facility will be located at 1501 Dunn Street in Yoakum, Yoakum County.

Contact: Charles Stavley, P.O. Box 13087, Austin, Texas 78711, (512) 908-6688.

Filed: August 5, 1993, 9:28 a.m.

TRD-9326859

Thursday, August 26, 1993, 4:00 p.m. The Texas Water Commission will meet at the Falfurrias City Hall, Conference Room, 205 East Allen Street, Falfurrias. According to the agenda summary, the commission will hold a public meeting on an application for a municipal solid waste transfer station registration by the City of Falfurrias, Proposed Registration Number MSW-40016. The facility will be located at 300 East Travis Street in Falfurrias, Brooks County.

Contact: Charles Stavley, P.O. Box 13087, Austin, Texas 78711, (512) 908-6688.

Filed: August 5, 1993, 9:28 a.m.

TRD-9326860

## Regional Meetings

### Meetings Filed August 3, 1993

The Central Plains Center for Mental Health Mental Retardation and Substance Abuse Board of Trustees will meet at 2700 Yonkers, Plainview, August 11, 1993, at 9:00 a.m. Information may be obtained from Seth Halbert, 2700 Yonkers, Plainview, Texas 79072, (806) 293-2636. TRD-9326755.

The Central Economic Development District Executive Committee will meet at Nick's Restaurant, 4508 West Waco Drive, Waco, August 12, 1993, at 11:00 a.m. Information may be obtained from Bruce Gaines, P.O. Box 154118, Waco, Texas 76715, (817) 799-0258. TRD-9326761.

The Coastal Bend Quality Workforce Planning Association Association will

meet at the Education Service Center, 209 North Water Street, Corpus Christi, August 19, 1993, at 11:00 a.m. Information may be obtained from Baldomero Garcia, 5110 Wilkinson Drive, Corpus Christi, Texas 78415, (512) 853-4111. TRD-9326760.

The Colorado County CAD Board of Directors will meet at the Colorado County Courthouse (County Courtroom), 400 Spring, Columbus, August 10, 1993, at 1:30 p.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, (409) 732-8222. TRD-9326759.

The High Plains Underground Water Conservation District Number One Board of Directors will meet at 2930 Avenue Q, Conference Room, Lubbock, August 10, 1993, at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9326770.

The Hunt County Appraisal District Board of Directors will meet in the Hunt County Appraisal District Board Room, 4801 King, Greenville, August 10, 1993, at 11:00 a.m. Information may be obtained from Shirley Smith, 4801 King, Greenville, Texas 75401, (903) 454-3510. TRD-9326756.

### Meetings Filed August 4, 1993

The Bandera County Appraisal District Board of Directors will meet in the Bandera Bank Community Room on Cypress behind Bandera Bank, Bandera, August 12, 1993, at 7:00 p.m. Information may be obtained from P. H. Coates, IV, P.O. Box 1119, Bandera, Texas 78003, (210) 796-3039. TRD-9326842.

The Canyon Regional Water Authority Board met at the Guadalupe Fire Training Facility, Route 2, Lakeside Pass Drive, New Braunfels, August 9, 1993, at 7:00 p.m. Information may be obtained from David Davenport, Route 2, Box 654W, New Braunfels, Texas 78130-9579, (210) 608-0543. TRD-9326840.

The Central Counties Center for Mental Health and Mental Retardation Services Board of Trustees will meet at the Milam County Annex, 206 South Central Street, Cameron, August 10, 1993, at 7:45 p.m. Information may be obtained from Eldon Tietje, 304 South 22nd Street, Temple, Texas 76501, (817) 778-4841, Ext. 301. TRD-9326781.

The Central Counties Center for Mental Health and Mental Retardation Services Board of Trustees will meet at the Milam County Annex, 206 South Central Street, Cameron, August 10, 1993, at 7:45 p.m. (Revised agenda). Information may be ob-

tained from Eldon Tietje, 304 South 22nd Street, Temple, Texas 76501, (817) 778-4841, Ext. 301. TRD-9326798

The Education Service Center, Region 20 Board of Directors will meet at 1314 Hines Avenue, San Antonio, August 18, 1993, at 2:00 p.m. Information may be obtained from Dr. Judy M. Castleberry, 1314 Hines Avenue, San Antonio, Texas 78208-1899, (210) 299-2471. TRD-9326804.

The Elm Creek WSC Board met at Willow Grove Road, Moody, August 9, 1993, at 7:00 p.m. Information may be obtained from Paulette Richardson, Route 1, Box 538, Moody, Texas 76557, (817) 853-2339. TRD-9326820.

The Fort Bend Education District Board of Trustees met in the Lamar CISD Administration Building Board Room, 3911 Avenue I, Rosenberg, August 9, 1993, at 6:00 p.m. Information may be obtained from Jerome D. Bourgeois, 2706 St. Andrews Place, League City, Texas 77573, (713) 334-5639. TRD-9326838.

The Grand Parkway Association will meet at 5757 Woodway, Suite 140 East Wing, Houston, August 11, 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-9326809.

The Hansford Appraisal District Board will meet at 709 West Seventh Street, Spearman, August 11, 1993, at 9:00 a.m. Information may be obtained from Alice Peddy, P.O. Box 519, Spearman, Texas 79081-0519, (806) 659-5575. TRD-9326807.

The Hansford Appraisal District Board will meet at 709 West Seventh Street, Spearman, August 11, 1993, at 9:00 a.m. (Revised agenda). Information may be obtained from Alice Peddy, P.O. Box 519, Spearman, Texas 79081-0519, (806) 659-5575. TRD-9326791.

The Hays County Appraisal District Appraisal Review Board will meet at 632 A East Hopkins, Municipal Building, San Marcos, August 10, 1993, at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 632 A East Hopkins, San Marcos, Texas 78666, (512) 754-7400. TRD-9326866.

The Hays County Appraisal District Appraisal Review Board will meet at 632 A East Hopkins, Municipal Building, San Marcos, August 11, 1993, at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 632 A East Hopkins, San Marcos, Texas 78666, (512) 754-7400. TRD-9326844.

The Kendall County Appraisal District Board of Directors will meet at 121 South Main Street, Conference Room, Boerne,

August 11, 1993, at 5:00 p.m. Information may be obtained from Joe P. Davis, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012. TRD-9326780.

The Lavaca County Central Appraisal District Board of Directors will meet at 113 North Main Street, Hallettsville, August 16, 1993, at 4:00 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9326845.

The Lavaca County Central Appraisal District Appraisal Review Board will meet at 113 North Main Street, Hallettsville, August 23, 1993, at 9:00 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9326867.

The Liberty County Central Appraisal District Board of Directors will meet at 315 Main Street, Liberty, August 11, 1993, at 9:30 a.m. Information may be obtained from Sherry Greak, 315 Main Street, Liberty, Texas 77575, (409) 336-5722. TRD-9326802.

The Lower Rio Grande Valley Tech Prep Consortium (also known as Tech Prep of the Rio Grande Valley, Inc.) Board of Directors will meet in the Board Room, Short Course Center, Texas State Technical College, 2424 Boxwood, Harlingen, August 11, 1993, at 3:00 p.m. Information may be obtained from Pat Bubb, Tech Prep, TSTC Short Course Center, Harlingen, Texas 78550-3697, (210) 425-0729. TRD-9326774.

The Permian Basin Regional Planning Commission Board of Directors will meet at the PBRPC Offices, 2910 La Force, Midland International Airport, Midland, August 11, 1993, at 1:30 p.m. Information may be obtained from Terri Moore, P.O. Box 60660, Midland, Texas 79711, (915) 563-1061. TRD-9326808.

The Red River Boundary Commission will meet at the Cotton Electric Cooperative, Civic Room, 226 North Broadway Street, Walters, Oklahoma, August 20, 1993, at 11:00 a.m. Information may be obtained from M'Lou Bell, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-5007. TRD-9326837.

The South Franklin Water Supply Corporation Board of Directors will meet at the South Franklin Water Supply Corporation Office, Mt. Vernon, August 10, 1993, at 7:00 p.m. Information may be obtained from Richard Zachary, P.O. Box 591, Mt. Vernon, Texas 75457, (903) 860-3400. TRD-9326843.

## Meetings Filed August 5, 1993

The Bi-County WSC will meet at the Bi-County WSC Office, FM Road 2254, Pittsburg, August 10, 1993, at 7:00 p.m. Information may be obtained from Freeman Phillips, P.O. Box 848, Pittsburg, Texas 75686, (903) 856-5840. TRD-9326864.

The Brazos Valley Development Council Executive Committee will meet in Room 102, Brazos Center, 3232 Briarcrest, Bryan, August 11, 1993, at 1:30 p.m. Information may be obtained from Tom Wilkinson, Jr., P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9326852.

The Brazos Valley Development Council Brazos Valley Regional Review Committee will meet in Room 106, Brazos Center, 3232 Briarcrest, Bryan, August 27, 1993, at 10:00 a.m. Information may be obtained from Jill Hyde, P. O. Drawer 4128, Bryan, Texas 77805, (409) 776-2277. TRD-9326851.

The Education Service Center, Region VI ESC Board of Directors will meet at the Education Service Center, Region VI Board Room, 1301 Sam Houston Avenue, Huntsville, August 12, 1993, at 5:00 p.m. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161. TRD-9326855.

The El Oso Water Supply Corporation Board of Directors will meet at their Office on FM 99, Karnes City, August 10, 1993, at 8:00 p.m. Information may be obtained

from Judith Zimmermann, P.O. Box 309, Karnes City, Texas 78118, (210) 780-3539. TRD-9326850.

The Gregg County Appraisal District Board of Directors will meet at 2010 Gilmer Road, Longview, August 13, 1993, at 1:30 p.m. Information may be obtained from Bill Carroll, 2010 Gilmer Road, Longview, Texas 75604, (903) 759-0015. TRD-9326857.

The Liberty County Central Appraisal District Board of Directors will meet at 315 Main Street, Liberty, August 11, 1993, at 9:30 a.m. (Revised agenda). Information may be obtained from Sherry Greak, 315 Main Street, Liberty, Texas 77575, (409) 336-5722. TRD-9326863.

The Panhandle Ground Water Conservation District Number Three Board of Directors will meet at the Water District Office, 300 South Omohundro, White Deer, August 11, 1993, at 8:00 p.m. (Public hearing). Information may be obtained from C. E. Williams, P.O. Box 637, White Deer, Texas 79097, (806) 883-2501. TRD-9326862.

The Panhandle Ground Water Conservation District Number Three Board of Directors will meet at the Water District Office, 300 South Omohundro, White Deer, August 11, 1993, at 8:30 p.m. (Public hearing). Information may be obtained from C. E. Williams, P.O. Box 637, White Deer, Texas 79097, (806) 883-2501. TRD-9326861.

The Region V Education Service Center Board of Directors will meet in the ESC

Boardroom, Delaware Street, Beaumont, August 11, 1993, at 1:15 p.m. Information may be obtained from Robert E. Nicks, 2295 Delaware Street, Beaumont, Texas 77703, (409) 835-5212. TRD-9326853.

The Rusk County Appraisal District Board of Directors will meet at the Administrative Office, 107 North Van Buren, Henderson, August 19, 1993, at 1:30 p.m. Information may be obtained from Melvin R. Cooper, P.O. Box 7, Henderson, Texas 75653-0007, (903) 657-3578. TRD-9326854.

The San Patricio County Appraisal District Board of Directors will meet at 1146 East Market, Sinton, August 12, 1993, at 10:00 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402. TRD-9326856.

The Swisher Appraisal District Board of Directors will meet at the Conestoga Restaurant, North Highway 87, Tulia, August 12, 1993, at 7:30 a.m. Information may be obtained from R. L. Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118. TRD-9326858.

The Upshur County Appraisal District Appraisal Review Board will meet at the Upshur County Appraisal District Office, Warren and Trinity Streets, Gilmer, August 17, 1993, at 8:45 a.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644-0280, (903) 843-3041. TRD-9326847.

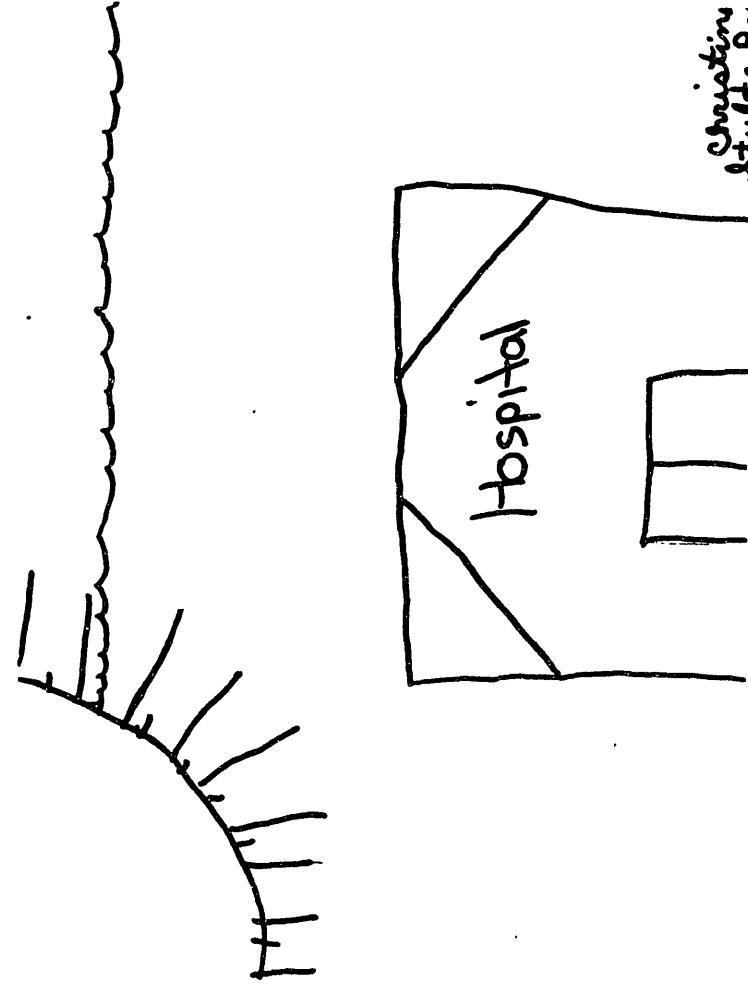




SCOTT HIGGINBOTHAM  
GRADE 6 WOODCARVING  
RICHARDSON HEIGHTS ELEM.  
RICHARDSON, TEXAS

ERICA JOHNSON  
GRADE 6 WOODCARVING  
RICHARDSON HEIGHTS ELEM.  
RICHARDSON, TEXAS

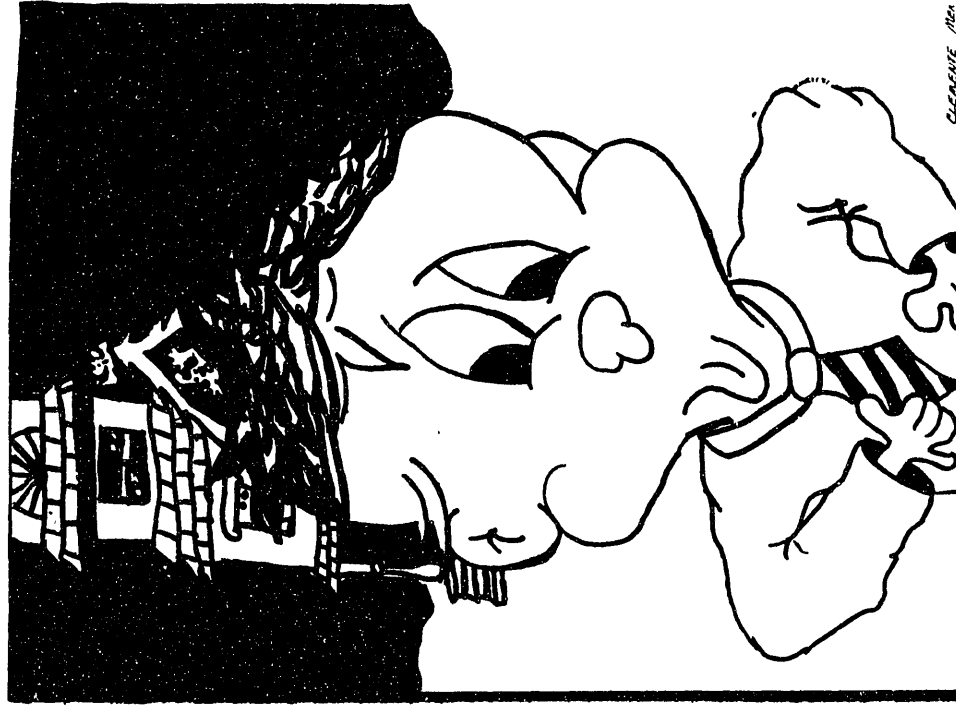




Name: Christina Kemp

Grade: 4

School: Sults Road Elementary, Richardson ISD



Name: Clemente Mena

Grade: 6

School: Cuellar Middle School, Westlaco 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.

## State Banking Board Notice of Hearing

The Hearing Office of the State Banking Board will conduct a hearing on September 13, 1993, at 9:00 p.m., 2601 North Lamar Boulevard, Austin, on the change of domicile application for Security State Bank, Abilene.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1317.

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

TRD-9326775 William F. Aldridge  
Director of Corporate Activities  
Texas Department of Banking

Filed: August 4, 1993

## Texas Bond Review Board Bi-Weekly Report on the 1993 Allocation of the State Ceiling on Certain Private Activity Bonds

The information that follows is a report of the allocation activity for the period of July 17, 1993-July 30, 1993. Since Congress did not act by March 1, 1993 to extend the provisions of the tax code which allow Mortgage Bonds and Small Issue Bonds to qualify for tax-exempt financing, the amount of state ceiling remaining for those purposes has been proportionately redistributed to the other categories, pursuant to Texas Civil Statutes, Article 5190(9a), §2(e). Currently, there are three categories within the allocation program.

Total amount of state ceiling remaining unreserved for the \$239,513,792 subceiling for state-voted issues under the Act as of July 30, 1993: \$129,513,792; total amount of state ceiling remaining unreserved for the \$68,428,035 subceiling for residential rental project issues under the Act as of July 30, 1993: \$48,743,035; total amount of state ceiling remaining unreserved for the \$574,858,173 subceiling for all other bonds requiring an allocation under the Act as of July 30, 1993: \$3,173; and total amount of the \$882,800,000 state ceiling remaining unreserved as of July 30, 1993: \$178,260,000.

Following is a comprehensive listing of applications which have received a reservation date pursuant to the Act from July 17, 1993-July 30, 1993: None.

Following is a comprehensive listing of applications which have issued and delivered the bonds and received a Certificate of Allocation pursuant to the Act from July 17, 1993-July 30, 1993: ISSUER: Abilene HEA; USER: Eligible Borrowers; DESCRIPTION: student loans; AMOUNT: \$19,975,000.

Following is a comprehensive listing of applications which were either withdrawn or canceled pursuant to the Act from July 17, 1993-July 30, 1993: None.

Following is a comprehensive listing of applications which released a portion of their reservation pursuant to the Act from July 17, 1993-July 30, 1993: None.

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

TRD-9326736 Jim Thomassen  
Executive Director  
Texas Bond Review Board

Filed: August 2, 1993

## Comptroller of Public Accounts Texas Lottery Game Procedures Instant Game Number 17

1.0. Name and Style of Game. The name of Instant Game Number 17 is "JOKER'S WILD." The play style of the game is "match three symbols."

1.1. Price of Instant Ticket. Tickets for Instant Game Number 17 shall be \$1.00 per ticket.

1.2. Definitions in Instant Game Number 17.

A. Bar Code-The unique bar-coded representation of the game Pack-Ticket Number and the Validation Number.

B. Display Printing-That area of the instant game ticket outside of the area where the Play Symbols appear.

C. Low-Tier Prize-A prize of \$1, \$2, \$3, \$5, \$10, or \$15.

D. Mid-Tier Prize-A prize of \$20, \$30, \$50, \$100, \$150, \$200, \$300, or \$500.

E. Non-Winning Ticket-A ticket which is not intended to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, Texas Civil Statutes, Article 179g (the Lottery Act), and applicable rules adopted by the Lottery pursuant to the Lottery Act and published in 34 TAC, Chapter 7.

F. Pack-A pack of fanfolded "JOKER'S WILD" Instant Game tickets which are attached to each other by perforations the retailer tears when the retailer sells a ticket. Each pack contains 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five. Tickets 000 to 004 are on the top page; tickets 005 to 009 are on the next page, etc.; and tickets 245 to 249 are on the last page. Tickets 000 and 249 are folded down to expose the pack-ticket number through the shrink-wrap.

G. Pack-Ticket Number-The 11-digit code printed on the back of each ticket located above the Bar Code which is printed vertically down the side of the back of the ticket in the form 00-000000-000. The first two digits are the game identification number followed by a six-digit pack

number followed by a three-digit ticket number. Numbering begins with 17-000001-000 for this game.

H. **Play Symbol**—The play area will consist of six Play Symbols and one Prize Symbol. Each Play Symbol is printed in Archer font in black ink in positive. The possible Play Symbols are: A, K, Q, J, 10, 9, 8, 7, and (JOKER).

PLAY SYMBOL	CAPTION
A	ACE
K	KING
Q	QUEN
J	JACK
10	TEN
9	NINE
8	EGHT
7	SVEN
(JOKER)	JOKER

J. **Prize Symbol**—Each Prize Symbol is printed in Archer font in black ink in positive. The possible Prize Symbols are: \$1.00, \$2.00, \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$50.00, \$100, \$150, \$200, \$300, and \$500.

K. **Prize Symbol Caption**—The small printed material appearing below each Prize Symbol which explains the Prize Symbol. One and only one of these Prize Symbol Captions appears under each Prize Symbol, and each is printed in Caption font in black ink in positive. The Prize Symbol Caption which corresponds with and verifies each Prize Symbol is as follows:

\$1.00	ONES	\$30.00	THIRTY
\$2.00	TWO\$	\$50.00	FIFTY
\$3.00	THREE\$	\$100	ONE HUND
\$5.00	FIVE\$	\$150	1 HUND 50
\$10.00	TEN\$	\$200	TWO HUND
\$15.00	FIFTN	\$300	THR HUND
\$20.00	TWENTY	\$500	FIV HUND

L. **Retailer Validation Code**—Three small letters found under the removable rub-off covering over the Play Symbols on the front of the ticket, which the retailer uses to verify and validate instant winners.

M. **Ticket or Instant Game Ticket, or Instant Ticket**—A Texas Lottery "JOKER'S WILD" Instant Game Number 17 ticket.

N. **Validation Number**—A unique 12-digit number applied to the front of each ticket.

2.0. **Determination of Prize Winners.** The determination of prize winners is subject to the general ticket

I. **Play Symbol Caption**—The small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in Caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

validation requirements set forth in Section 2.1 of rules adopted by the Lottery for this purpose, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "JOKER'S WILD" Instant Game is determined when the latex material on the front of the ticket is rubbed off to expose six Play Symbols and one Prize Symbol. The holder of a ticket wins the prize amount indicated by the Prize Symbol if the same Play Symbol appears in three separate play spots on that ticket, or if the same Play Symbol appears in two separate play spots and the Joker Play Symbol also appears in one play spot on that ticket. No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the Instant Game. The Prize Symbol amounts have the following instant values:



\$1  
\$2, or  
\$3, or  
\$5, or  
\$10, or  
\$15, or  
\$20, or  
\$30, or  
\$50, or  
\$100, or  
\$150, or  
\$200, or  
\$300, or  
\$500.

**2.1. Instant Ticket Validation Requirements.**

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly six Play Symbols and one Prize Symbol must appear in the play area of each ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Prize Symbols must have a Prize Symbol Caption underneath, and each Prize Symbol must agree with its Prize Symbol Caption;
4. Each of the Play Symbols and Prize Symbols must be present in its entirety and be fully legible;
5. Each Play Symbol Caption and Prize Symbol Caption must be present in its entirety and be fully legible;
6. Each of the Play Symbols, Prize Symbols, Prize Symbol Captions, and the Play Symbol Captions must be printed in black ink;
7. The ticket shall be intact;
8. The Validation Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
9. The Validation Number must correspond, using the Lottery's codes, to the Play Symbols on the ticket;
10. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
11. The ticket must not be counterfeit in whole or in part;
12. The ticket must have been issued by the Lottery in an authorized manner;
13. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Lottery;
14. The Play Symbols, Play Symbol Captions, Prize Symbols, Prize Symbol Captions, Validation Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
15. The ticket must be complete and not miscut, and have exactly six Play Symbols and exactly six Play Symbol Captions and exactly one Prize Symbol and exactly

one Prize Symbol Caption under the latex material on the front of the ticket, exactly one Validation Number, exactly one Retailer Validation Code and exactly one Pack-Ticket Number on the ticket;

16. The Validation Number of an apparent winning ticket shall appear on the Lottery's Official List of Validation Numbers of winning tickets, and a ticket with that Validation Number shall not have been paid previously;

17. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

18. Each of the six Play Symbols must be exactly one of those described in Section 1.2.H, and each of the Play Symbol Captions to those Play Symbols must be exactly one of those described in Section 1.2.I;

19. The Prize Symbol must be exactly one of those described in Section 1.2.J and the Prize Symbol Caption to the Prize Symbol must be exactly one of those described in Section 1.2.K;

20. Each of the four Play Symbols and two Prize Symbols on the ticket must be printed in the Archer Font and must correspond precisely to the artwork on file at the Lottery; the ticket Validation Numbers must be printed in the Validation Font and must correspond precisely to the artwork on file at the Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number Font and must correspond precisely to the artwork on file at the Lottery;

21. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Lottery; and

22. The ticket must have been received or recorded by the Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these game procedures, the Lottery's Rules governing the award of prizes of the size to be validated, and any confidential validation and security tests of the Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Director may, solely at the Director's option, replace an invalid ticket with an unplayed ticket in that Instant Game (or ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant

Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket.

## 2.2. Procedure for Claiming Prizes.

A. To claim a "JOKER'S WILD" Instant Game prize of \$1.00, \$2.00, \$3.00, \$5.00, \$10, \$15, \$20, \$30, \$50, \$100, \$150, \$200, \$300, or \$500, a player shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Lottery Retailer. The Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the player and physically void the ticket; provided that the Lottery Retailer may, but is not in some cases required to, pay a \$30, \$50, \$100, \$150, \$200, \$300, or \$500 ticket. In the event the Lottery Retailer cannot verify the claim, the Lottery Retailer shall provide the player with a claim form and instruct the player on how to file a claim with the Lottery. If the claim is validated by the Lottery, a check shall be forwarded to the player in the amount due. In the event the claim is not validated, the claim shall be denied and the player shall be notified promptly. A player may also claim any of the above prizes under the procedure described in Section 2.2.B.

B. As an alternative method of claiming a "JOKER'S WILD" Instant Game prize, the player must sign the winning ticket, thoroughly complete a claim form, and present both at any Lottery claim center. If the claim is validated by the Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. A player may also claim a prize by signing the winning ticket, thoroughly completing a claim form, and mailing both to: Texas Lottery, Comptroller of Public Accounts, P.O. 16600, Austin, Texas 78752-6600. In the event that the claim is not validated by the Lottery, the claim shall be denied and the player shall be notified promptly.

C. Prior to payment by the Lottery of any prize, the Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, State Treasurer, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. in default on a loan guaranteed under Texas Civil Statutes, Chapter 57, the Education Code. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.3. Allowance for Delay of Payment. The Lottery may delay payment of the prize pending a final determination by the director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.2.C. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.4. Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a prize from the "JOKER'S WILD" instant game, the Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.5. Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these game procedures and on the back of each ticket, shall be forfeited.

## 3. 0. Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Director will require that one of those players whose name appears thereon be designated to receive payment.

B. The Lottery shall not be responsible for lost or stolen Instant Game tickets.

4.0. Number and Value of Instant Prizes. There will be approximately 70,000,000 tickets in the Instant Game Number 17. The expected number and value of prizes in the game are as follows:

PRIZE	APPROXIMATE NUMBER OF WINNERS IN THE GAME	CHANCES OF WINNING
\$1	7,288,320	1:9.62
\$2	3,924,480	1:17.86
\$3	2,242,560	1:31.25
\$5	840,960	1:83.33
\$10	280,320	1:250.00
\$15	280,320	1:250.00
\$20	140,160	1:500.00
\$30	70,080	1:1,000.00
\$50	4,088	1:17,142.86
\$100	2,336	1:30,000.00
\$150	2,044	1:34,286.00
\$200	1,752	1:40,000.00
\$300	1,460	1:48,000.00
\$500	292	1:240,000.00

The actual number of tickets in the game may be increased or decreased at the sole discretion of the Lottery.

5.0. Termination of the Instant Game. The Director may, at any time, announce a termination date for the Instant Game Number 17 without advance notice, at which point no further tickets in that game may be sold.

6.0. Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these game procedures for Instant Game Number 17, the Lottery Act (Article 179g, Texas Civil Statutes), applicable Rules adopted by the Lottery pursuant to the Lottery Act and published in 34 TAC, Chapter 7, and all final decisions of the Director.

Issued in Austin, Texas, on August 4, 1993.

TRD-9326792

Arthur F. Lorton  
Senior Legal Counsel  
Comptroller of Public Accounts

Filed: August 4, 1993

### Texas Lottery Game Procedures Instant Game Number 18

1.0 Name and Style of Game. The name of Instant Game Number 18 is "CASH CELEBRATION." The play style of the game is "match three."

1.1 Price of Instant Ticket. Tickets for Instant Game Number 18 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game Number 18.

A. Bar Code-The unique bar-coded representation of the game Pack-Ticket Number and the Validation Number.

B. Display Printing-That area of the instant game ticket

outside of the area where the Play Symbols appear.

C. High-Tier Prize-A prize of \$4,000.

D. Low-Tier Prize-A prize of \$1.00, \$2.00, \$4.00, \$8, \$10, or \$20.

E. Mid-Tier Prize-A prize of \$40 or \$400.

F. Non-Winning Ticket-A ticket which is not intended to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, Texas Civil Statutes, Article 179g (the Lottery Act), and applicable rules adopted by the Lottery pursuant to the Lottery Act and published in 34 TAC, Chapter 7.

G. Pack-A pack of fanfolded "CASH CELEBRATION" Instant Game tickets which are attached to each other by perforations the retailer tears when the retailer sells a ticket. Each pack contains 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five. Tickets 000 to 004 are on the top page; tickets 005 to 009 are on the next page, etc.; and tickets 245 to 249 are on the last page. Tickets 000 and 249 are folded down to expose the pack-ticket number through the shrink-wrap.

H. Pack-Ticket Number-The 11-digit code printed on the back of each ticket located above the Bar Code which is printed vertically down the side of the back of the ticket in the form 00-000000-000. The first two digits are the game identification number followed by a six-digit pack number followed by a three-digit ticket number. Numbering begins with 18-000001-000 for this game.

I. Play Symbol-One of the symbols which appears under the six rub-off spots on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible Play Symbols are: \$1.00, \$2.00, \$4.00, \$8.00, \$10.00, \$20.00, \$40.00, \$400, and \$4,000.

J. Play Symbol Caption-The small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions

appears under each Play Symbol and each is printed in Caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

PLAY SYMBOL	CAPTION
\$1.00	ONES
\$2.00	TWO\$
\$4.00	FOUR\$
\$8.00	EIGHT\$
\$10.00	TENS
\$20.00	TWENTY
\$40.00	FORTY
\$400	FOR HUND
\$4,000	FOR THOU

**K. Retailer Validation Code**—Three small letters found under the removable rub-off covering over the Play Symbols on the front of the ticket, which the retailer uses to verify and validate instant winners.

**L. Ticket or Instant Game Ticket, or Instant Ticket—A Texas Lottery "CASH CELEBRATION" Instant Game Number 18 ticket.**

**M. Validation Number**—A unique 12-digit number applied to the front of each ticket.

**2.0 Determination of Prize Winners.** The determination of prize winners is subject to the general ticket

validation requirements set forth in Section 2.1 of rules adopted by the Lottery for this purpose, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CASH CELEBRATION" Instant Game is determined when the latex on the ticket is rubbed off to expose the six Play Symbols on the front of the ticket. The holder of a ticket wins that like Play Symbol prize amount, if the same Play Symbol prize amount appears in three separate play spots on that ticket. No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the Instant Game. The Play Symbol amounts have the following instant values:

- \$1.00
- \$2.00, or
- \$4.00, or
- \$8.00, or
- \$10.00, or
- \$20.00, or
- \$40.00, or
- \$400, or
- \$4,000.

**2.1 Instant Ticket Validation Requirements.**

**A. To be a valid Instant Game ticket, all of the following requirements must be met:**

1. Exactly one Play Symbol must appear under each of the six rub-off spots on the right front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each Play Symbol Caption must be present in its entirety and be fully legible;
5. Each of the Play Symbols and the Play Symbol Captions must be printed in black ink;

6. The ticket shall be intact;
7. The Validation Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
8. The Validation Number must correspond, using the Lottery's codes, to the Play Symbols on the ticket;
9. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
10. The ticket must not be counterfeit in whole or in part;
11. The ticket must have been issued by the Lottery in an authorized manner;
12. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Lottery;

13. The Play Symbols, Play Symbol Captions, Validation Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

14. The ticket must be complete and not miscut, and have exactly one Play Symbol and exactly one Play Symbol Caption under each of the six rub-off spots on the front of the ticket, exactly one Validation Number, exactly one Retailer Validation Code and exactly one Pack-Ticket Number on the ticket;

15. The Validation Number of an apparent winning ticket shall appear on the Lottery's Official List of Validation Numbers of winning tickets, and a ticket with that Validation Number shall not have been paid previously;

16. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

17. Each of the six Play Symbols must be exactly one of those described in Section 1.2.I, and each of the Play Symbol Captions to those Play Symbols must be exactly one of those described in Section 1.2.J;

18. Each of the six Play Symbols on the ticket must be printed in the Symbol Font and must correspond precisely to the artwork on file at the Lottery; the ticket Validation Numbers must be printed in the Validation Font and must correspond precisely to the artwork on file at the Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number Font and must correspond precisely to the artwork on file at the Lottery;

19. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Lottery; and

20. The ticket must have been received or recorded by the Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these game procedures, the Lottery's Rules governing the award of prizes of the size to be validated, and any confidential validation and security tests of the Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Director may, solely at the Director's option, replace an invalid ticket with an unplayed ticket in that Instant Game (or ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket.

## 2.2 Procedure for Claiming Prizes.

A. To claim a "CASH CELEBRATION" Instant Game prize of \$1.00, \$2.00, \$4.00, \$8, \$10, \$20, \$40, or \$400, a player shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Lottery Retailer. The Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the player and physically void the ticket; provided that the Lottery Retailer may, but is not, in some cases, required to pay a \$40 or \$400 ticket. In the event the Lottery Retailer cannot verify the claim, the Lottery Retailer shall provide the

player with a claim form and instruct the player on how to file a claim with the Lottery. If the claim is validated by the Lottery, a check shall be forwarded to the player in the amount due. In the event the claim is not validated, the claim shall be denied and the player shall be notified promptly. A player may also claim any of the above prizes under the procedure described in Section 2.2.B.

B. To claim a "CASH CELEBRATION" Instant Game prize of \$4,000, the player must sign the winning ticket, thoroughly complete a claim form, and present both at any Lottery claim center. If the claim is validated by the Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. A player may also claim a prize by signing the winning ticket, thoroughly completing a claim form, and mailing both to: Texas Lottery, Comptroller of Public Accounts, P.O. 16600, Austin, Texas 78752-6600. When paying a prize of \$600 or more, the Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Lottery, the claim shall be denied and the player shall be notified promptly.

C. Prior to payment by the Lottery of any prize, the Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, State Treasurer, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. in default on a loan guaranteed under Texas Civil Statutes, Chapter 57, the Education Code. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.3 Allowance for Delay of Payment. The Lottery may delay payment of the prize pending a final determination by the director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

- B. if there is any question regarding the identity of the claimant;

- C. if there is any question regarding the validity of the ticket presented for payment; or

- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.2.D. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.4 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a prize from the "CASH CELEBRATION" instant game, the Lottery shall:

1. if the prize is less than \$600, deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor;

2. if the prize is more than \$600, deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

**2.5 Instant Ticket Claim Period.** All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these game procedures and on the back of each ticket, shall be forfeited.

**3.0 Instant Ticket Ownership.**

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable

thereto. Notwithstanding any name or names submitted on a claim form, the director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Director will require that one of those players whose name appears thereon be designated to receive payment.

B. The Lottery shall not be responsible for lost or stolen Instant Game tickets.

**4.0 Number and Value of Instant Prizes.** There will be approximately 70,000,000 tickets in the Instant Game Number 18. The expected number and value of prizes in the game are as follows:

PRIZE	APPROXIMATE NUMBER OF WINNERS IN THE GAME	CHANCES OF WINNING
\$1	7,148,160	1:9.80
\$2	3,854,400	1:18.18
\$4	1,962,240	1:35.71
\$8	840,960	1:83.33
\$10	280,320	1:250.00
\$20	280,320	1:250.00
\$40	70,080	1:1,000.00
\$400	2,920	1:24,000.00
\$4,000	292	1:240,000.00

TRD-9326796 Arthur F. Lortons  
Senior Legal Counsel  
Comptroller of Public Accounts

The actual number of tickets in the game may be increased or decreased at the sole discretion of the Lottery.

**5.0 Termination of the Instant Game.** The Director may, at any time, announce a termination date for the Instant Game Number 18 without advance notice, at which point no further tickets in that game may be sold.

**6.0 Governing Law.** In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these game procedures for Instant Game Number 18, the Lottery Act (Article 179g, Texas Civil Statutes), applicable Rules adopted by the Lottery pursuant to the Lottery Act and published in 34 TAC, Chapter 7, and all final decisions of the Director.

Issued in Austin, Texas, on August 4, 1993.

Filed: August 4, 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 <sup>(1)</sup>/Agricultural/ Commercial <sup>(2)</sup> thru \$250,000</u>	<u>Commercial<sup>(2)</sup> over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	08/09/93-08/15/93	18.00%	18.00%

<sup>(1)</sup>Credit for personal, family or household use. <sup>(2)</sup>Credit for business, commercial, investment or other similar purpose.

Filed: August 4, 1993

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

TRD-9326776 Al Endsley  
Consumer Credit Commissioner

## Texas Employment Commission Public Announcement

The Texas Employment Commission (TEC) announces its intent to issue a Request for Proposal (RFP) to provide services for clients enrolled in the Job Opportunities and Basic Skills (JOBS) program. RFP respondents must be prepared to offer services in Brazoria, Fort Bend, Galveston, Liberty, Matagorda, Montgomery, Waller, and Wharton counties. Interested parties should contact the TEC at the following address: Texas Employment Commission, TEC Building, 1117 Trinity Street, JSO Department, Room 404T, Austin, Texas 78778.

Telephone inquiries may be made to Don Snow at (512) 463-2898 or Johnie McHugh at (512) 463-2678. There will be a bidder's conference for interested parties on August 11, 1993 at 1:00 p.m. in Room 304T of the TEC Building located at 1117 Trinity Street, Austin. Copies of the RFP will be available at this conference.

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

TRD-9326732      C. Ed Davis  
Deputy Administrator for Legal Affairs  
Texas Employment Commission

Filed: August 2, 1993

## Texas Department of Health Notice of Revocation of Certificates of Registration

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (§289.112), has revoked the following certificates of registration: METROTEK, Dallas, R16275, July 23, 1993; Dorothy A. Villarral, D.V.M., Fort Worth, R17346, July 23, 1993; Glenn Robinson, D.C., Balch Springs, R18463, July 23, 1993.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on August 3, 1993.

TRD-9326749      Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: August 3, 1993

## Notice of Revocation of Radioactive Material Licenses

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (§289.112), has revoked the following radioactive material licenses: B. W. Henderson, Nacogdoches, L03519, July 23, 1993; On-Line Testing, Arlington, L04109, July 23, 1993; Energy Wireline Surveys, Odessa, L04130, July 23, 1993; Exwell Logging & Perforating, Inc., Alice, L04447, July 23, 1993; GEO-TAG, Midland, L04018, July 23, 1993; I.T. Corporation, Knoxville, Tennessee, L03837, July 23, 1993.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on August 3, 1993.

TRD-9326748      Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: August 3, 1993

## Texas Department of Housing and Community Affairs Announcements of Contract Awards

The Texas Department of Housing and Community Affairs announces that the unit of general local government listed below has been selected as a contract recipient for Colonia Funds under the Texas Community Development Program established pursuant to Texas Civil Statutes, Article 4413(501), §2.07.

Grantee: Tom Green County; Funded Amount: \$425,881.

A contract is not effective until executed by the unit of general local government and the Executive Director of the Texas Department of Housing and Community Affairs.

Issued in Austin, Texas, on August 3, 1993.

TRD-9326788      Henry Flores  
Executive Director  
Texas Department of Housing and  
Community Affairs

Filed: August 4, 1993

The Texas Department of Housing and Community Affairs announces that the unit of general local government listed below has been selected as a contract recipient for Planning/Capacity Building Funds under the Texas Community Development Program established pursuant to Texas Civil Statutes, Article 4413(501), §2.07.

Grantee: Anson; Funded Amount: \$25,454.

A contract is not effective until executed by the unit of general local government and the Executive Director of the Texas Department of Housing and Community Affairs.

Issued in Austin, Texas, on August 3, 1993.

TRD-9326789      Henry Flores  
Executive Director  
Texas Department of Housing and  
Community Affairs

Filed: August 4, 1993

The Texas Department of Housing and Community Affairs announces that the units of general local government listed below have been selected as contract recipients for Community Development Funds under the Texas Community Development Program established pursuant to Texas Civil Statutes, Article 4413(501), §2.07.

A contract is not effective until executed by the unit of general local government and the Executive Director of the Texas Department of Housing and Community Affairs.

GRANTEES FUNDED UNDER THE 1992 COMMUNITY DEVELOPMENT FUND

GRANTEE	FUNDED AMOUNT
ALICE	\$215,341
BLUE RIDGE	\$250,000
CALDWELL COUNTY	\$169,020
CHICO	\$250,000
COMMERCE	\$250,000
CRANDALL	\$250,000
GANADO	\$163,617
GOODLOW	\$229,660
JOSEPHINE	\$250,000
KAUFMAN	\$250,000
KOSSE	\$99,210
MANVEL	\$183,383
MAYPEARL	\$250,000
MILFORD	\$250,000
MULLIN	\$204,810
NEWTON COUNTY	\$161,310
PELICAN BAY	\$250,000
PITTSBURG	\$58,739
RED OAK	\$250,000
SOUR LAKE	\$221,353
SPRINGTOWN	\$145,000
WAXAHACHIE	\$250,000
WEST TAWAKONI	\$250,000
=====	=====
Total:	\$4,851,443



Issued in Austin, Texas, on August 3, 1993.

TRD-9326787

Henry Flores  
Executive Director  
Texas Department of Housing and  
Community Affairs

Filed: August 4, 1993

◆ ◆ ◆  
**Texas Department of Insurance**  
**Notice of Hearing**

The State Board of Insurance, of the Texas Department of Insurance under Docket Number 2050, at a public hearing scheduled for 9:00 a.m., August 25, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider the adoption of amendments to the Texas General Basis Schedules and the Texas Personal Lines Manual. These amendments are made necessary because of the withdrawal of the Texas Fire Record System as an acceptable and recognized rating system for applying debits and credits to the fire premiums charged for risks located within cities and towns in Texas. The amendments consist of the elimination of rules governing the method of determining a fire record for individual cities and towns in Texas, contained in the Texas General Basis Schedules and the elimination of rules governing the application of a fire record to risks insured under a residential policy, as outlined in the Personal Lines Manual. Revised provisions contained in House Bill 2, enacted by the 72nd Legislature, make the application of a fire record system inappropriate and will produce excessive or inadequate premiums for homeowners insurance. In addition, the determination of fire records under the fire record system is not actuarially based and is no longer reflective of the fire protection afforded a city or town.

Copies of the full text of the amendments are available for review in the office of the Chief Clerk of the State Board of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the text, please contact Angie Arizpe at (512) 322-4147, (refer to Reference Number P-0693-14-I)

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

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

Issued in Austin, Texas, on August 4, 1993.

TRD-9326794

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

Filed: August 4, 1993

◆ ◆ ◆  
**North Central Texas Council of  
Governments**

**Request for Qualifications**

**Consultant Qualifications Request.** This request by the North Central Texas Council of Governments (NCTCOG) for consultant qualifications is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

NCTCOG intends to retain the services of consultants to implement designated projects and task assignments in the 1992-1993 and 1993-1994 Unified Planning Work Programs. Consultants will be enlisted on a retainer basis with NCTCOG for approximately 13 months to conduct tasks in four areas of service: Transportation Planning, Traffic Engineering, Data Collection, and Air Quality. More than one consultant may be chosen in each category. All work will be assigned on a work order basis, and costs will be negotiated with each consultant prior to the notice to proceed.

**Contract Award Procedures.** A Project Review Committee will select consultants for these projects using evaluation criteria and methodology consistent with the scope of services contained in the Request for Qualifications. The NCTCOG Executive Board will review the PRC's recommendation and, if found acceptable, will issue an award of contract.

**Regulations.** NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit qualifications in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

**Due Date.** Qualifications must be submitted no later than noon, August 16, 1993, to Michael Morris, Director of Transportation, North Central Texas Council of Governments, 616 Six Flags Drive, Second Floor, or P.O. Box 5888, Arlington, Texas 76005-5888. For more information and copies of the Request for Qualifications, contact Shirley Henry (817) 640-3300.

Issued in Arlington, Texas, on July 30, 1993.

TRD-9326710

Mike Eastland  
Executive Director  
North Central Texas Council of  
Governments

Filed: August 2, 1993

◆ ◆ ◆  
**Public Utility Commission of Texas**  
**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 P.U.C. Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Liberty National Bank, Austin.

**Docket Title and Number.** Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Liberty National Bank pursuant to P.U.C. Substantive Rule 23.27(k). Docket Number 12189.

**The Application.** Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Lib-

erty National Bank. 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 August 2, 1993.

TRD-9326728      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: August 2, 1993

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for the Methodist Hospital, Houston.

**Docket Title and Number.** Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for the Methodist Hospital pursuant to P.U.C. Substantive Rule 23.27(k). Docket Number 12184.

**The Application.** Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for the Methodist Hospital. The geographic service market for this specific service is the Houston 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 August 2, 1993.

TRD-9326729      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: August 2, 1993

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for St. Luke's Lutheran Hospital, San Antonio.

**Docket Title and Number.** Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for St. Luke's Lutheran Hospital pursuant to P.U.C. Substantive Rule 23.27(k). Docket Number 12183.

**The Application.** Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for St. Luke's Lutheran Hospital. The geographic service market for this specific service is the San Antonio area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

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

TRD-9326730      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: August 2, 1993

## Texas Water Commission Notice of Application For Waste Disposal Permit

Attached are Notices of Applications for waste disposal permits issued during the period of July 26-30, 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.

City of Cotulla; the wastewater treatment facilities; are approximately 1.1 miles south of the intersection of State Highway 97 and State Highway 624 and 1.1 miles southeast of the intersection of U.S. Highway-Business 81 and State Highway 97 in La Salle County; amendment; 10153.01.

Hampshire Chemical Corporation; a facility which manufactures glycine, chelates, and sulfonated naphthalene polymer; the plant site is on the west side of Texas State Highway 134 (Battleground Road), approximately one mile north of the intersection of Texas State Highway 134 and Texas State Highway 225 (Pasadena Highway) in the City of Deer Park, Harris County; renewal; 02558.

Harris County Municipal Utility District Number 104; the Pinewalk Addition Wastewater Treatment Plant; the plant site is approximately 5,500 feet west of Interstate highway 45 and 2.1 miles northwest of the intersection of FM Road 1960 and Interstate Highway 45, on the east bank of Seals Gully, a Harris County Flood Control ditch, in Harris County; renewal; 11925-01.

City of Pittsburg; the Sparks Branch Wastewater Treatment Facilities; the plant site is on Sparks Branch between FM Road 557 and State Highway 11, approximately one and one-quarter miles northeast of the intersection of State Highway Loop 271 and FM Road 557 in Camp County; renewal; 10250-01.

Quail Pipe Corporation; a polyethylene pipe manufacturing facility; the plant site is on the west side of State Highway 70 in the City of Roaring Springs, Motley County; renewal; 02971.

San Jacinto River Authority; the wastewater treatment facilities; are approximately 3.5 miles south of the intersection of FM Road 1488 and Interstate Highway 45, and approximately 2,000 feet northwest of the confluence of Bear Branch with Panther Branch in Montgomery County; renewal; 12597-01.

Schuller International, Inc.; a plant manufacturing fiberglass insulation by recycling; the plant site is on the west side of State Highway 174, just north of the City of Cleburne, Johnson County; renewal; 02266.

City of Timpson; the Timpson Wastewater Treatment Facilities; the plant site is approximately 0.5 of a mile northeast from State Highway 87, and 0.8 of a mile east/southeast of the intersection of State Highway 87 and U.S. Highway 59 in Shelby County; new; 10614-02.

Sterling Chemicals, Inc.; a Class I Underground Injection Control Permit; subsurface disposal of industrial hazardous wastewaters generated on-site at its Texas City Plant; the

waste disposal well WDW-314 is located at latitude 29 degrees, 22 feet, 32 inches north and longitude 94 degrees, 53 feet, 33 inches west, 220 feet from the west line and 130 feet from the south line of a 3.3175 acre tract of land adjoining the south line of Sterling Chemical property, within the John Grant Survey, Abstract 72 in Galveston County; new; WDW314.

Union Carbide Chemicals and Plastics Company, Inc.; a compliance plan at its Texas City Plant; a groundwater corrective action program and a groundwater monitoring program for the remediation of releases occurring from the closed hazardous waste surface impoundments. RCRA Facility Investigations (RFI) are specified for eleven solid waste management units and/or areas. The Facility Investigations will be used to determine if hazardous constituents have been released from the solid waste managements units into the surrounding environment. The permit will act as the vehicle for implementing the RFI for this facility. The hazardous waste management facility is on a 435.29-acre tract of land on the east side of Loop 197 at the Texas City Ship Channel, within the City of Texas City, Galveston County; new; HW50264.

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

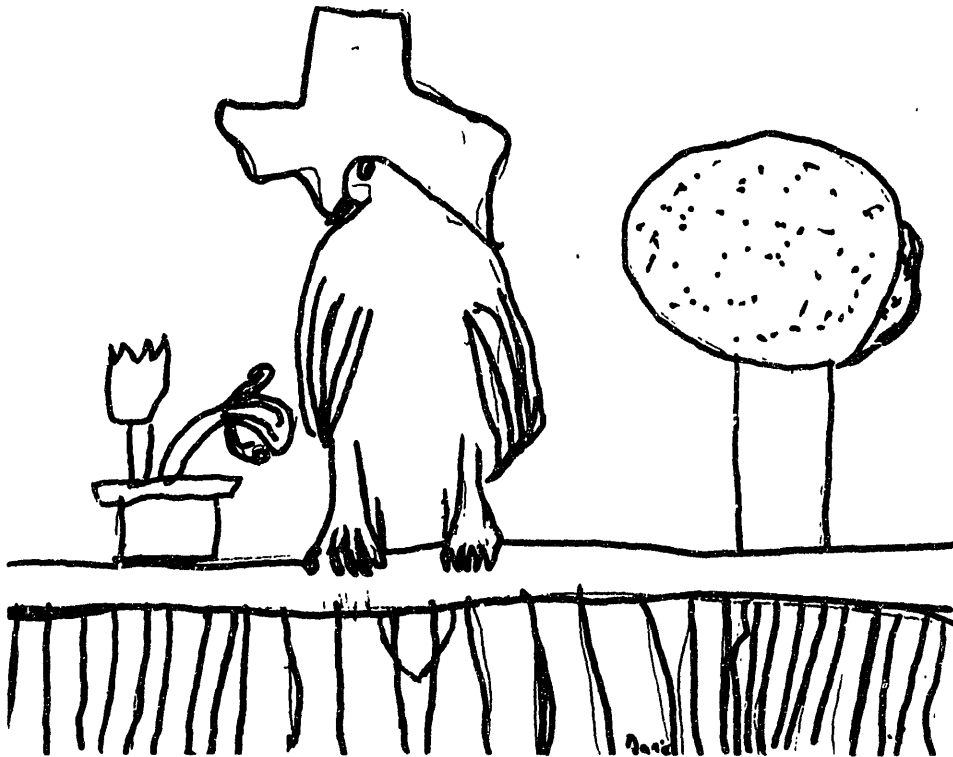
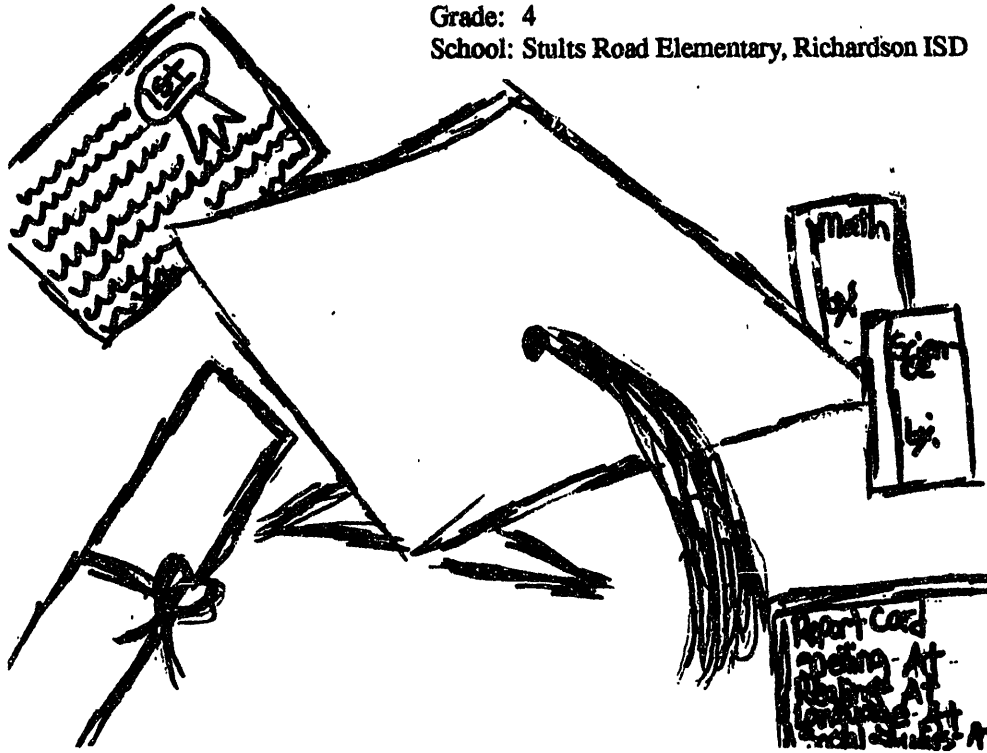
TRD-9326713

Gloria A. Vaequez  
Chief Clerk  
Texas Water Commission

Filed: August 2, 1993



Name: Keiko Hattori  
Grade: 4  
School: Stults Road Elementary, Richardson ISD



Name: Daniel Valdez  
Grade: 2  
School: Montgomery Elementary, Carrollton-Farmers Branch ISD

## TAC Titles Affected

The following is a list of the administrative rules that were published in the July 1993 issues.

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## 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 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 preceding 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.

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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
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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
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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
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53 Friday, July 9	Monday, July 5	Tuesday, July 6
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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
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82 Friday, October 29	Monday, October 25	Tuesday, October 26
83 Tuesday, November 2	Wednesday, October 27	Thursday, October 28
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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
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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
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