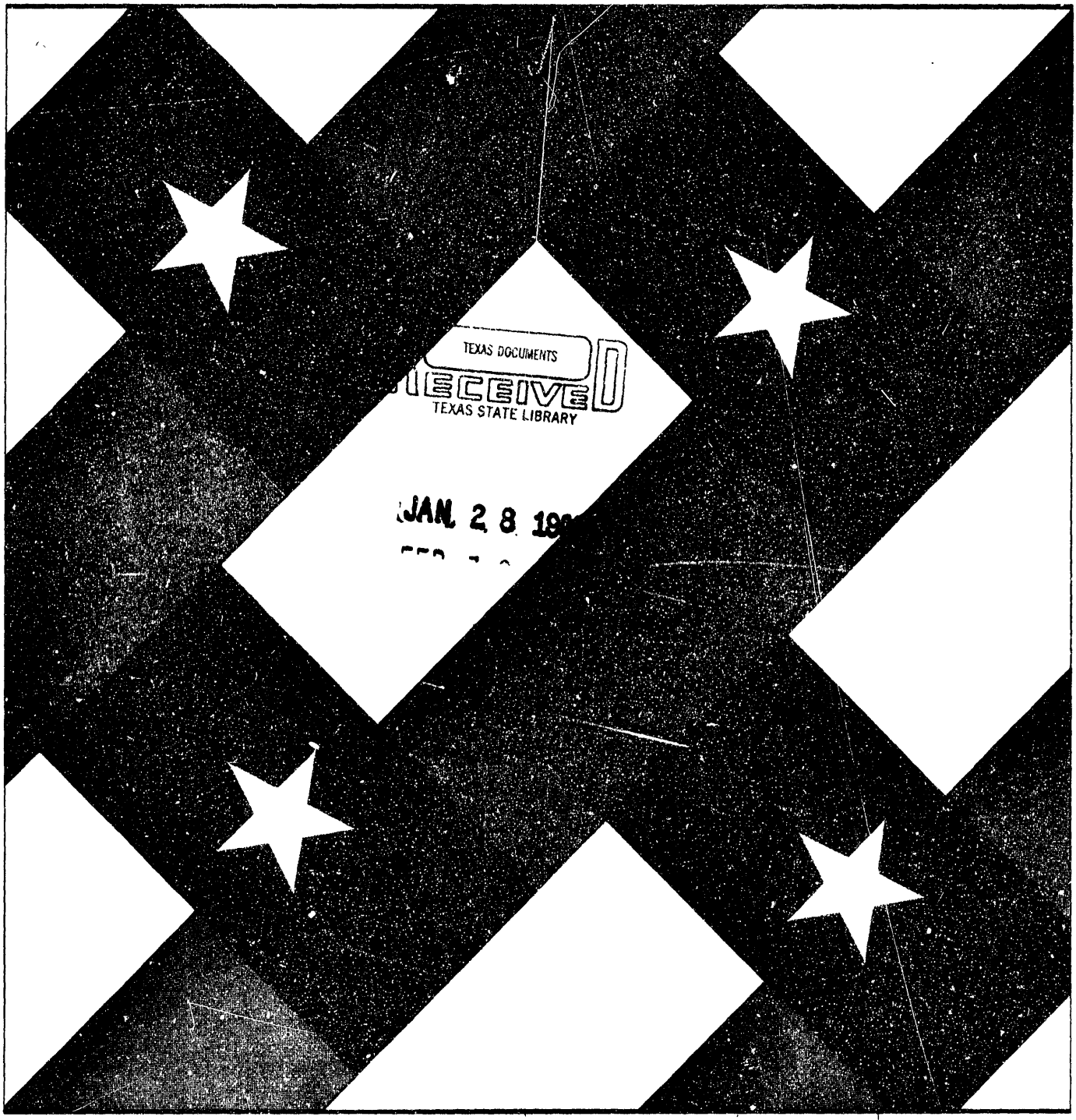
Texas Register

Volume 11, Number 8, January 28, 1986 *Pages 484-569*



Highlights

The **Secretary of State** adopts emergency new sections concerning practice and procedure in administration. Effective date - January 20.....**page 492**

The **Texas Water Commission** proposes new sections concerning industrial solid waste and municipal hazardous waste. Earliest possible date of adoption - February 25.....**page 500**

The **Texas Education Agency** adopts new sections concerning accreditation of school districts. Effective date - February 12.....**page 545**

Office of the Secretary of State

Texas Register

The *Texas Register* (ISN 0362-4781) is published twice each week at least 100 times a year. Issues will be published on every Tuesday and Friday in 1986 with the exception of June 24, September 2, December 2, and December 30 by the Office of the Secretary of State.

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

Information Available: The 11 sections of the *Register* represent various facets of state government. Documents contained within them include:

Governor—appointments, executive orders, and proclamations
Secretary of State—summaries of opinions based on election laws
State Ethics Advisory Commission—summaries of requests for opinions and opinions
Attorney General—summaries of requests for opinions, opinions, and open records decisions
Emergency Rules—rules adopted by state agencies on an emergency basis
Proposed Rules—rules proposed for adoption
Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
Adopted Rules—rules adopted following a 30-day public comment period
Open Meetings—notices of open meetings
The Legislature—bills submitted to, signed by, and vetoed by the Governor and bills that are submitted to the Governor and enacted without his signature
In Addition—miscellaneous information required to be published by statute or provided as a public service

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

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

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2, in the lower left-hand corner of the page, would be written: "11 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 11 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, 503E Sam Houston Building, Austin. Material can be found by using *Register* indexes, the *Texas Administrative Code*, rule number, or TRD number.

Texas Administrative Code

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

How To Cite: Under the TAC scheme, each agency rule 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 rule is under Chapter 27 of Title 1; 15 represents the individual rule within the chapter).

Texas Register Publications

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Myra A. McDaniel
Secretary of State

Director
Dan Procter

Documents Section Coordinator
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Cynthia Cooke
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Jody Allen
Lisa Bauer

Typographers
Dawn VanCleave
Glynn Fluitt

Circulation Section Coordinator
Dee Wright

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Kristine Hopkins Mohajer

TAC Editors
William Craig Howell
Hollis Glaser

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TAC Titles Affected

TAC Titles Affected—January

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

TITLE 43. TRANSPORTATION

Part I. State Department of Highways and Public Transportation

The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1814.

Appointments Made January 8

Polygraph Examiners Board

For a term to expire June 18, 1991:

William W. Fisher
2342 Avenell
Houston, Texas 77002

Mr. Fisher is replacing William R. Knight of Midland, whose term expired.

Teachers' Professional Practices Commission

For a term to expire August 31, 1987:

Mike Sampson
East Texas State University
Elementary Education
ET Station
Commerce, Texas 75428

Mr. Sampson is replacing Thomas J. Cleaver of Hempstead, whose term expired.

Appointments Made January 10

Texas Cosmetology Commission

For a term to expire December 31, 1985:

Lucille Coronado Garcia
1002 Tamworth
San Antonio, Texas 78213

Ms. Garcia is replacing Evelyn Hunter of Dallas, whose term expired.

5th Supreme Judicial District Court of Appeals

For terms to expire the next general election and until his successor shall be duly elected and qualified:

R. T. Scales
3101 Lovers Lane
Dallas, Texas 75225

Judge Scales is replacing James K. Allen of Dallas, who resigned.

Fred L. Tinsley, Jr.
6770 Keswick Drive
Dallas, Texas 75232

Mr. Tinsley is replacing R. T. Scales of Dallas, who resigned.

Appointments Made January 14

Teachers' Professional Practices Commission

For terms to expire August 31, 1987:

Louise Daniel
3805 Overlook
Amarillo, Texas 79109

Ms. Daniel is being reappointed.

Bernard Jackson
5535 Firefly
Houston, Texas 77017

Mr. Jackson is being reappointed.

Kathryn White
3003 Fox Hill Drive
Arlington, Texas 76015

Ms. White is being reappointed.

Jeff Sanders
1807 Garner Field Road
Uvalde, Texas 78801

Mr. Sanders is being reappointed.

Edward Wilson
2118 Robin Road
Abilene, Texas 79605

Mr. Wilson is being reappointed.

Canadian River Compact Commissioner

For a term to expire December 31, 1991:

John C. Sims
4407 15th Street
Lubbock, Texas 79416

Mr. Sims is being reappointed.

Texas Advisory Commission on Intergovernmental Relations

For a term to expire September 1, 1991:

E. C. Green
721 Ansley Lane
Denison, Texas 75020

Mr. Green is replacing Edward J. Drake of Dallas, whose term expired.

Hospital Advisory Council

For terms to expire July 17, 1989:

Kippy Caraway
15803 Brookforest Drive
Houston, Texas 77059

Ms. Caraway is replacing A. J. Gallerano of Houston, who resigned.

Ray Branson
President
Midland Memorial Hospital
2200 West Illinois
Midland, Texas 79701

Mr. Branson is replacing J. R. Maxfield of Dallas, whose term expired.

Appointments Made January 15

Texas Board of Private Investigators and Private Security Agencies

For a term to expire January 31, 1991:

Patti Ivey
P.O. Box 344
Robert Lee, Texas 76945

Ms. Ivey is replacing Harold R. King of Fort Worth, whose term expired.

Appointments Made January 16

Texas Board of Land Surveying

For a term to expire January 31, 1991:

Walter Fortney
3200 Texas American Bank
32nd Floor
Fort Worth, Texas 76102

Mr. Fortney is replacing Calvin Dudley of San Antonio, whose term expired.

Texas Advisory Commission on Intergovernmental Relations

For a term to expire September 1, 1991:

Emmett Hutto
4604 Country Club View
Baytown, Texas 77521

Mayor Hutto is replacing Mary Clair Hill of Kingsville, who resigned.

The Governing Board of the Texas School for the Deaf

For a term to expire January 31, 1991:

Gayle Lindsey
404 Juniper Road
Austin, Texas 78746

Ms. Lindsey is being reappointed.

Issued in Austin, Texas, on January 20, 1986.

TRD-8600734 Mark White
Governor of Texas

★ ★ ★

Emergency Rules

An agency may adopt a new or amended rule, or repeal an existing rule on an emergency basis, if it determines that such action is necessary for the public health, safety, or welfare of this state. The rule 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 rules. New language added to an existing rule is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a rule.

TITLE 1. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 101. Practice and Procedure Before the Office of the Secretary of State

★1 TAC §§101.1-101.10, 101.20-101.22, 101.30-101.34, 101.40-101.44, 101.50-101.53, 101.60, 101.61

The Office of the Secretary of State adopts on an emergency basis new §§101.1-101.10, 101.20-101.22, 101.30-101.34, 101.40-101.44, 101.50-101.53, 101.60, and 101.61, concerning the practice and procedure of administrative hearings before the Secretary of State's office. These sections are adopted under the emergency provisions to comply more fully with the requirements of administrative hearings under Texas Civil Statutes, Article 6252-13a. These emergency sections are adopted under Texas Civil Statutes, Articles 9.03, 1396-9.03, 1528d, §10, and 6252-13a, §4 (a)(1); the Texas Election Code, §31.003; and the Texas Business and Commerce Code, §17.08(d), which provide the Office of the Secretary of State with the authority to adopt regulations necessary to administer the duties of the Office of the Secretary of State efficiently.

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

Agency—The Office of the Texas Secretary of State.

Complaint—The short and plain written statement by which an individual alleges that a person has violated or is violating a statute within the jurisdiction of the agency to regulate.

Contested case or hearing—A proceeding, including but not limited to rate making and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the agency after an opportunity for an adjudicative hearing.

Hearings examiner—The individual assigned by the agency to conduct a proceeding on matters within the agency's jurisdiction.

Motion—A written or oral request to the agency for a ruling made before, during, or after a contested case.

Office—The department, section, or division of the agency which supervises the regulation of the applicable statute.

Party—Each person with sufficient legal, economic, or other interest to be named or admitted as such by the agency to a contested case proceeding before the agency.

Person—Any individual, partnership, corporation, association, governmental subdivision, or public or private organization.

Pleading—A formal statement by a party or the agency containing their respective claims or defenses.

§101.2. Object of sections. The objective of these sections is to provide for a straightforward, comprehensive, and efficient system of procedure before the agency to the end that justice may be served, the public's interest and welfare may be protected, and the disposition of cases may not be unduly delayed.

§101.3. Scope, Applicability, and Construction of Sections. This chapter shall govern the conduct of all contested cases before the agency. The sections contained in this chapter shall be construed liberally, with a view toward the objective for which they were adopted. They shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the agency or the substantive rights of any person. Unless otherwise expressly provided, the past, present, or future tense includes the other; the masculine, feminine, or neuter gender each includes the other; and the singular and plural number each includes the other. In addition to this chapter, parties participating in a contested case before this agency should make reference to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a; to the Automobile Club Services Act, Texas Civil Statutes, Article 1528d; to the Great Seal of Texas Act, Texas Business and Commerce Code, §17.08; to the Texas Notaries Public Act, Texas Civil Statutes, Article 5949; to the Texas Election Code, Chapter 122; and to the substantive rules, administrative regulations, and orders of the agency.

§101.4. Computation of Time. In computing any period of time prescribed or allowed by these sections, by order of the agency, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included, but the last day of the period so computed shall be included, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday. Complaints, pleadings, or other documents required to be filed or served are filed or served when actually received, or are deemed filed or served when deposited with the United States Postal Service, postage paid. The postmark date indicated on a complaint, a pleading, or other document shall be presumed to be the date of mailing.

§101.5. Agreements To Be in Writing. No stipulation or agreement between the parties, their attorneys, or their representatives, with regard to any matter involved in any contested case before the agency, shall be enforced, unless it has been reduced to writing and signed by the parties or their authorized representatives, or unless it has been dictated into the record during the course of a hearing, or incorporated in any order bearing their written approval. This section does not limit a party's ability to waive or modify by stipulation or agreement any right or privilege afforded by these sections or by law, unless otherwise precluded by law.

§101.6. Ex Parte Communications. Unless otherwise provided by law, there shall be no verbal communications with the hearings examiner regarding any issue of fact or law in a contested case without notice and opportunity for all parties to participate, and there may be no written communications that are not transmitted at the same time to all parties, except that an individual involved in rendering the decision in a contested case may communicate *ex parte* with employees of the agency who did not participate in the hearing for the purpose of utilizing their special skills or knowledge in evaluating the evidence.

§101.7. Personal Service by the Agency. Where personal service of notice, complaint, pleading, or other document by the

agency is required, the agency shall mail the same by certified mail, return receipt requested, to the last known address of the person entitled to receive such notice, complaint, pleading, or documents.

§101.8. Personal Service by Parties.

(a) Pleadings and all other documents, except complaints, filed by any party with the agency or a hearings examiner shall be served by such party upon all parties to the proceeding in which it is filed. Proof of service shall accompany all pleadings and documents when they are tendered for filing with the agency.

(b) Unless otherwise required by statute, service may be made by regular mail, by certified mail, or by personal delivery.

(c) If any party has appeared in a proceeding by attorney or other authorized representative, service shall be on such attorney or representative.

(d) The willful failure of any party to make service in accordance with these sections shall be sufficient grounds for the entry of an order striking the pleading or document from the record.

(e) A certificate of service executed by the person filing the pleading or document, stating that it has been served on all parties to the proceeding, shall be *prima facie* evidence of proof of service. Unless otherwise required by law, the certificate of service shall be in the form prescribed by the agency.

§101.9. Parties.

(a) Participation as a party. Any person with sufficient legal, economic, or other interest as determined by the agency or the hearings examiner, shall be admitted as a party to a contested case before the agency. Any person who has the statutory right to be made a party to a contested case before the agency shall also be made a party. Any person whose appearance is determined by the hearings examiner to be conducive to the ends of justice and will not unduly delay the conduct of such proceeding may be permitted to participate as a party. Parties may appear and present evidence and argument relevant to the issues and shall have the right to cross-examine witnesses. Unless otherwise required by law, proceedings are not open to the public. Any person desiring to observe or participate at any stage of the proceedings who is not a party, not employed by a party, or not called as a witness, must obtain the permission of the hearings examiner and the agreement of all parties.

(b) Appearances personally or by representative. Any party may be represented by an attorney authorized to practice law before the highest court of any state. A natural person who is a party may also appear on his own behalf. A corporation, partnership, or association may also appear and be represented by any *bona fide* officer, partner, or employee.

§101.10. Conduct and Decorum. Every party, witness, attorney, or representative shall comport himself in all proceedings with the proper dignity, courtesy, and respect for the agency, the hearings examiner, and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe the standards of ethical behavior prescribed for attorneys at law by the Texas State Bar. Violation of this section shall be sufficient cause for the agency or the hearings examiner to enter an order denying the offender further standing as a party.

§101.20. Filing, Form, and Content of Complaints, Pleadings, and Other Documents.

(a) Where applicable, all complaints and documents relating to the initiation of a contested case shall be filed with the appropriate office. Unless otherwise required by statute, all pleadings and other documents filed during the pendency of a contested case shall be filed with and acted upon by the hearings examiner.

(b) Complaints shall be filed on the form prescribed by the appropriate office. Pleadings and other documents shall be typewritten or legibly printed upon standard size paper, 8½ inches wide and 11 inches long. To the extent possible, exhibits attached thereto shall conform to the same size requirements. Every motion relating to a contested case, unless made during a hearing, shall be written and shall set forth the relief sought and the specific reasons therefore.

(1) The original of every pleading shall be signed in ink by the person filing same, or by the officer, partner, attorney, or other representative who appears for such party.

(2) All pleadings shall contain a certificate of service, where service is required, in the form prescribed by §101.8(e) of this title (relating to Personal Service by Parties) and the address of the party filing the pleading, or if by an attorney or other representative, the name, business address, and telephone number of such attorney or other representative.

(3) Unless otherwise provided by these sections or by statute, any pleading may be amended at any time, provided that such amendment does not abridge the rights of any other party to the proceedings.

(c) Except as prescribed by these sections or by statute, no official form or format is required for pleadings or other documents.

§101.21. Time for Filing.

(a) Unless otherwise provided by law, a complaint may be filed at any time.

(b) The time for filing any pleading or other document shall be as prescribed by statute, by these sections, by the appropriate office, or by the hearings examiner.

(c) Unless otherwise provided by statute or by these sections, the time for filing any pleading or other document may be extended by order of the hearings examiner.

(d) Unless otherwise required by law, a motion for extension of time to file shall be filed with the hearings examiner at least seven days prior to the expiration of the applicable period of time for filing.

(1) Such a motion must show that there is good cause for such an extension of time and that the need therefore is not caused by the neglect, indifference, or lack of diligence of the person making such motion.

(2) A copy of any such motion shall be served contemporaneously with the filing thereof upon all parties to the contested case.

§101.22. Initiation of Proceedings and Examination of Pleadings.

(a) Where applicable, upon the filing of a complaint with the appropriate office, the office shall determine whether the complaint complies with its prescribed form, if any, and whether a hearing is required.

(1) If the office determines that the complaint does not substantially comply with its form, the office may return the complaint to the person who filed it, together with a statement of the office's reasons for returning the complaint.

(A) The person who filed the complaint shall thereafter have the right to correct and refile the complaint.

(B) The refiling of the complaint shall be within the time limit prescribed by the office.

(2) If a hearing is required, the office shall assign a hearings examiner to hear the contested case unless otherwise required by law.

(A) Immediately following the setting of the hearing and the assignment of the hearings examiner, the office shall cause notice of the pending contested case to be served on all parties, in accordance with §101.7 of this title (relating to Personal Service by the Agency), not less than 10 days prior to the date of the hearing.

(B) Unless otherwise provided by law, said notice must include the following:

(i) the name and address of the person initiating the proceeding, or the name and address of the party's attorney or representative, if any;

(ii) a statement of the time, the place and the nature of the hearing;

(iii) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(iv) a reference to the particular sections of the statutes and the sections involved; and

(v) a short and plain statement of the matters asserted.

(3) Where the office with which a complaint has been filed determines that no further action by the office is required, the office shall send the person filing the com-

plaint a brief statement of that determination.

(b) Unless otherwise provided by law, where an office initiates a contested case on its own volition, it shall assign a hearings examiner to hear the case and follow the notice procedures as outlined by §101.22 (a)(2)(A) and (B) of this title (relating to Initiation of Proceedings and Examination of Pleadings).

(c) Upon the filing of any pleading, the hearings examiner shall forthwith examine same and determine its sufficiency under these sections.

(1) If the hearings examiner finds that the pleading does not substantially comply with these sections, he may return it to the person who filed it, together with a statement of the reasons for returning the pleading.

(2) The person who filed such pleading shall thereafter have the right to correct and refile the pleading, provided that the refiling of such shall not be permitted to delay any contested, case unless the hearings examiner determines that the interest of justice so requires.

§101.30. Informal Disposition of a Contested Case. Unless otherwise precluded by law, the agency may informally dispose of a contested case by stipulation, agreed settlement, consent order, or default.

§101.31. Postponement, Continuance, or Withdrawal.

(a) Unless otherwise prescribed by law, motions for postponement, continuance, or withdrawal of matters which have been set for hearing, shall be filed with the hearings examiner and served on all parties, not less than seven days prior to the hearing date. Failure to comply with the requirements set forth in this section, except for a showing of good cause, shall be sufficient cause for the hearings examiner to refuse to consider the motion.

(b) After the commencement of a contested case, the hearings examiner shall not grant a postponement or continuance without the consent of all parties, unless he finds that failure to grant the requested postponement or continuance would be unjust, inequitable, and not in the public's interest.

§101.32. Prehearing Conference.

(a) The hearings examiner may, at his discretion, direct the parties or their authorized representatives or attorneys to appear before the hearings examiner at a specified time and place for a conference prior to the hearing, for the purpose of formulating and simplifying the issues and scope of the contested case.

(b) Matters which may be considered at the prehearing conference include:

(1) the possibility of making admissions of certain allegations of fact;

(2) the possibility of making stipulations concerning the use of matters of public record to the end of avoiding the necessity of introducing proof;

(3) procedure at the hearing;

(4) limitation on the number of witnesses;

(5) admissibility of evidence; and

(6) such other matters as may aid in the simplification of the hearing and in the disposition of the matters in controversy.

(c) Action taken at the prehearing conference shall be recorded in an appropriate order by the hearings examiner, unless the parties enter into a written stipulation as to such matters.

§101.33. Discovery.

(a) A hearings examiner, acting on his own motion, may, or on the written request of any party, shall:

(1) subpoena any person to appear and testify and to produce certain documents or other tangible items at a hearing;

(2) commission the taking of a deposition in the witness' county of residence or the county where the witness does business, and require the production of certain documents or other tangible items at the time of the deposition; and

(3) order any party to allow entry upon property under the party's control for the purpose of doing any act or making any inspection not protected by privilege and reasonably calculated to lead to the discovery of evidence material to the contested case.

(b) Unless otherwise prescribed by law, all discovery proceedings shall be governed by the Administrative Procedure and Texas Register Act.

§101.34. Witness Fees.

(a) Any witness who is not a party and who is subpoenaed or otherwise compelled to attend any hearing or proceeding is entitled to receive $.10 a mile for travel to and from any place more than 25 miles from the witness' place of residence and a fee of $10 a day, or any part of a day.

(b) At the time the request for a witness' attendance is filed with the hearings examiner, the requesting party is required to deposit the estimated amount to which the witness will be entitled with the designated representative of the appropriate office.

(c) Deposit of the witness fees is not required when the agency is the requesting party.

§101.40. The Hearings Examiner.

(a) Unless otherwise prescribed by law, a hearings examiner shall have the following powers:

(1) to give notice and issue orders relating to a contested case;

(2) to hold and regulate the course and conduct of a contested case;

(3) to administer oaths and affirmations;

(4) to call and to examine witnesses;

(5) to issue subpoenas and to cause depositions to be taken pursuant to the applicable provisions of the Administrative Procedure and Texas Register Act;

(6) to rule on the admissibility of evidence and amendments to pleadings;

(7) to hold conferences, before or during the contested case for the settlement or simplification of issues;

(8) to direct any party to prepare and submit material relevant to the contested case;

(9) to rule on motions and to dispose of procedural requests or similar matters;

(10) to issue a proposal for decision for review and the final consideration by the secretary of state; and

(11) to take any other action authorized by these sections or the Administrative Procedure and Texas Register Act.

(b) The hearings examiner's authority in each contested case shall terminate upon the approval of the proposal for decision by the secretary of state.

(c) If the hearings examiner dies, becomes disabled, withdraws, or is otherwise removed from assignment to a contested case at any time prior to the approval of the proposal for decision by the secretary of state, the office may appoint another hearings examiner, who may perform any function remaining to be performed without the necessity of repeating any proceedings.

§101.41. Place of Hearings. Unless otherwise authorized or required by statute, all contested cases shall be held in Austin.

§101.42. Order of Procedure.

(a) Unless otherwise prescribed by law, the following shall be the order of procedure in a contested case.

(1) The hearing will be convened by the hearings examiner, who shall direct all parties to enter their appearances on the record.

(2) The hearings examiner shall next consider any preliminary motions or matters.

(3) Each party shall then have an opportunity to present its case by calling and examining witnesses and introducing documentary evidence. The testimony of witnesses shall be made under oath or affirmation.

(A) The agency shall have the right to open and close the presentation of evidence.

(i) A representative from the appropriate office shall present the agency's case, regardless of whether the contested case was initiated by complaint or by the agency's own volition.

(ii) The party contesting the agency's position shall be the next to present evidence.

(iii) Where there are several parties contesting the agency's position, the hearings examiner shall decide the order of such parties.

(B) The hearings examiner shall determine the order of any remaining parties.

(b) Each party to a contested case shall have the opportunity to cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in direct examination.

(c) Any objection to testimony or evidence should be made, and the basis for the objection stated.

(d) The hearings examiner is responsible for closing the record and may hold it open for stated purposes.

(e) The hearings examiner, in his sole discretion, may request that the parties submit proposed findings of fact and conclusions of law.

§101.43. Evidence.

(a) In accordance with of the the Administrative Procedure and Texas Register Act, §14(a), the rules of evidence promulgated by the Supreme Court of Texas shall apply to all contested cases, unless otherwise provided by statute.

(b) The hearings examiner may take official notice, on request of a party or acting independently, of matters which trial judges can judicially notice and of facts within the specialized knowledge of the agency.

(1) The taking of official notice must be stated on the record.

(2) Parties must have an opportunity to contest the material or facts officially noticed.

(3) A party requesting official notice must give sufficient information to enable the hearings examiner to comply.

§101.44. Transcripts. All contested cases heard by a hearings examiner will be recorded. A copy of the recording and/or a transcription of the recording will be furnished to any party to the proceeding upon written request to the hearings examiner and payment of a reasonable fee established by the agency. Any party desiring the hearing to be transcribed by a court reporter must make the necessary arrangements with the court reporter and bear the cost.

§101.50. Proposal for Decision.

(a) In contested cases which have proceeded to the conclusion of a hearing, the hearings examiner shall, within 20 days after the record is closed, prepare and file with the appropriate office a proposal for decision which shall be forwarded to the secretary of state.

(1) A copy of the proposal shall be served forthwith by the office on each party in accordance with §101.7 of this title (relating to Personal Service by the Agency).

(2) The proposal for decision shall contain the following:

(A) a brief statement of the issues;

(B) a discussion of the evidence;

(C) findings of fact and conclusions of law;

(D) a recommended order for adoption by the secretary of state.

(b) If, in accordance with §101.42(e) of this title (relating to the Order of Procedure), a party submitted proposed findings of fact, the proposal for decision shall include a ruling by the hearings examiner on each proposed finding.

§101.51. Exceptions and Replies.

(a) Any party of record, within 15 days after the date of service of a proposal for decision, may file exceptions to the hearings examiner's proposal for decision with the appropriate office, serving copies of such on all other parties.

(b) If a party files exceptions, the other parties shall have 15 days after the date of filing to reply.

(c) Exceptions and replies shall conform to §101.20 of this title (relating to Filing, Form, and Content of Complaints, Pleadings, and Other Documents).

(d) Exceptions and replies filed with an office shall be immediately forwarded to the secretary of state.

§101.52. Secretary of State's Decision.

(a) The proposed decision of the hearings examiner must be approved by the secretary of state before it is given any effect.

(b) Unless otherwise provided by law or these sections, the secretary of state shall render a decision on the hearings examiner's proposed decision on the following date which occurs first:

(1) 20 days after the date of service of the hearings examiner's proposed decision on the parties, where no exceptions have been timely filed; or

(2) 20 days after the timely filing of exceptions to the hearings examiner's proposed decision with the appropriate office.

(c) After approval by the secretary of state, the proposed decision of the hearings examiner shall become the agency's decision. The agency's decision will be served on all parties and is final 15 days from the date rendered, unless a motion for rehearing is filed with the appropriate office on or before the 15th day.

(d) If the motion for rehearing is granted, the decision is vacated pending a subsequent decision upon rehearing. If the motion for rehearing is overruled, whether by order or by the operation of law, the decision is final on the date it is overruled.

§101.53. Remand to the Hearings Examiner. If the secretary of state concludes that substantial errors of procedure or the insufficiency or exclusion of evidence has so affected the record, such as to render it impractical to determine the contested case justly and fairly upon the record, the secretary of state may remand the case to the hearings examiner for further hearing.

§101.60. Motion for Rehearing.

(a) Unless otherwise permitted by law, a motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed, with the appropriate office, within 15 days after the rendition of the agency's decision. The motion must state each specific ground upon which the party believes the agency's decision is erroneous. The motion for rehearing will be acted on within 45 days after the date the agency's decision was rendered.

(b) Any reply to a motion for rehearing must be filed, with the appropriate office, within 25 days after the date the agency's decision is rendered.

(c) If the agency has not acted on the motion for rehearing within the 45 day period, the motion for rehearing is overruled by the operation of law, 45 days after the rendition of the agency's decision.

(d) By written order, the agency may extend the period of time for filing the motions and replies and for taking agency action, except that an extension may not extend the period for agency action beyond 90 days after the date that the agency's decision was rendered.

(e) In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the agency's decision or, in the absence of a fixed date, 90 days after the date of the agency's decision.

§101.61. Original or Certified Copies of Record. A party who appeals a final decision in a contested case shall pay all of the cost of preparation of any original or certified copy of the record of the agency proceedings that is required to be transmitted to the reviewing court.

Issued in Austin, Texas, on January 20, 1986.

TRD-8600725 Myra A. McDaniel
Secretary of State

Effective date: January 20, 1986
Expiration date: May 20, 1986
For further information, please call (512) 463-5701.

★ ★ ★

TITLE 10. Community Development

Part II. Texas Economic Development Commission

Chapter 107. Industrial Projects

General Rules and Industrial Revenue Bond Program

★10 TAC §107.2

The Texas Economic Development Commission is renewing the effectiveness of the emergency adoption of amended §107.2 for a 60-day period effective January 29, 1986. The text of the amended §107.2 was originally published in the October 8, 1985, issue of the *Texas Register* (10 TexReg 3871).

Issued in Austin, Texas, on January 21, 1986

TRD-8600775 Alexa Richter
Administrative Assistant
Texas Economic Development Commission

Effective date: January 29, 1986
Expiration date: March 30, 1986
For further information, please call (512) 472-5059.

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Proposed Rules

Before an agency may permanently adopt a new or amended rule, or repeal an existing rule, a proposal detailing the action must be published in the *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 rule. Also, in the case of substantive rules, 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 rule is indicated by the use of **bold text.** [Brackets] indicate deletion of existing material within a rule.

TITLE 1. ADMINISTRATION
Part IV. Office of the Secretary of State.
Chapter 101. Practice and Procedure Before the Office of the Secretary of State

★1 TAC §§101.1-101.10, 101.20-101.22, 101.30-101.34, 101.40-101.44, 101.50-101.53, 101.60, 101.61,

The Office of the Secretary of State proposes new §§101.1-101.10, 101.20-101.22, 101.30-101.34, 101.50-101.44, 101.50-101.53, 101.60, and 101.61, concerning practice and procedure before the Office of the Secretary of State's administrative hearings.

Hyattye O. Simmons, assistant general counsel, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Simmons, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a straightforward, comprehensive, and efficient system of procedure and practice before administrative hearings of the Office of Secretary of State. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Hyattye O. Simmons, Assistant General Counsel, Executive Division, P.O. Box 12697, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Articles 9.03, 1396-9.03, 1528d, §10, and 6252-13a, §4(a)(1); the Texas Election Code, §31.003; and the Texas Business and Commerce Code, §17.08(d), which provide the Office of the Secretary of State with the authority to adopt regulations necessary to administer the duties of the Office of the Secretary of State efficiently.

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

Issued in Austin, Texas, on January 20, 1986.

TRD-8600724 Myra A. McDaniel
Secretary of State

Earliest possible date of adoption:
February 24, 1986
For further information, please call
(512) 463-5701.

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TITLE 19. EDUCATION
Part I. Coordinating Board, Texas College and University System
Chapter 25. Administrative Council
Subchapter B. Administration of the Texas State College and University Employees Uniform Insurance Benefits Program

★19 TAC §§25.32, 25.34, 25.49

The Coordinating Board, Texas College and University System proposes amendments to §§25.32, 25.34, and 25.49, concerning definitions, basic procedural and administrative practices and automatic coverage. These amendments will specify in the definitions that the term "employee" will not include retired employee if excluded specifically in a rule; clarify when preexisting conditions limitations and evidence of insurability may be required when a retired employee is enrolling for coverage in a retiree plan; and remove from the automatic coverage provisions any reference to a retired employee.

James McWhorter, executive secretary to the administrative council, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. McWhorter also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the clarification of intent in the rules and regulations concerning a retiree's eligibility for insurance coverage. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to James McWhorter, Executive Secretary to the Administrative Council, Coordinating Board, Texas College and University System, P.O. Box 12788, Austin, Texas 78711.

The amendments are proposed under the Insurance Code, Article 3.50-3, which provides the Administrative Council with the authority to adopt rules and regulations consistent with the provisions of this Act to carry out statutory responsibilities.

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

Employee—Any person employed by a governing board of a state university, senior or community/junior college, medical or dental unit, technical institute or any other agency of higher education within the meaning and jurisdiction of Texas Education Code, Chapter 61:

(A) who retires under the provisions cited in the definition of retired employee **unless specifically excluded in a rule;**

(B)-(C) (No change.)

§25.34. Basic Procedural and Administrative Practices.

(a)-(k) (No change.)

(l) The institutions shall apply the following practices and procedures with respect to the notification and enrollment of retirees and dependents of retirees in the uniform group insurance plan established for retired employees:

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

(3) Individuals retiring after September 1, 1979, and their dependents will not be required to provide evidence of insurability **and preexisting conditions limitations will not apply** provided, however, [there is not an intervening time period between the date of termination from the active employee plan and enrollment in the retiree plan (e.g.,] the individual enrolls in the retiree plan during the first premium due date following the date of **termination from the active employee plan** [(retirement)].

(4) If an intervening time period occurs between the first premium due date following the date of termination from the active employee plan and the date of retirement, any preexisting conditions limitations included in the institution's plan may be applied.

(5) [(4)] Individuals retiring after September 1, 1979, and their dependents

who do not enroll in the retiree plan within 31 days of [during the first premium due date following] the date of retirement may be required by the institution to provide evidence of insurability prior to enrollment in the retiree plan.

(6) [(5)] Retirees shall be allowed to enroll new dependents in the uniform group health insurance plan upon the acquisition of the new dependents (e.g., marriage, adoption, birth of children, etc.) provided the retiree enrolls the new dependents in the insurance plan within 31 days of the acquisition date or during the first premium due date following the date of acquisition.

(7) [(6)] An individual who has been employed at two or more public institutions of higher education will, at retirement, be eligible to participate in the group insurance program at the institution where he or she was last employed in a benefits eligible status.

(m)-(n) (No change.)

§25.49. Automatic Coverage.

(a) This section excludes retired employees.

(b) [(a)] An active employee is eligible for coverage as of that person's first day actively at work for an institution [or first day as an annuitant of a retirement program].

(c) [(b)] No eligible active employee shall be denied enrollment in any of the coverages provided by the Act; provided, however, that the employee may waive in writing any or all such coverages. [Each policy of insurance shall provide for automatic coverage on the date the employee becomes eligible for insurance.] From the first day of employment, each active full-time employee who has not waived basic coverage or selected optional coverages shall be protected by a basic plan of insurance coverage automatically. If the cost of an active employee's basic coverage exceeds the amount appropriated by the legistlature for an employee, the institution must provide optional coverage at no cost to the employee. If the employee chooses the basic coverage rather than optional coverage, the institution may deduct from the monthly compensation of the employee up to one-half of the amount that exceeds the state's contribution for an employee, and the institution shall pay the difference. Each active employee who is automatically covered under this section may subsequently retain or waive the basic plan and may make application for any other coverages provided under the Act within institutional and Administrative Council standards.

(d)[(c)] An active employee who is ineligible for an employer contribution adequate to pay the full premium for the basic plan is eligible for coverage only after appropriate payroll deduction is authorized.

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

Issued in Austin, Texas, on January 20, 1986.

TRD-8600758 James McWhorter
Executive Secretary
Administrative Council
Texas College and
Univeristy System
Coordinating Board

Earliest possible date of adoption:
February 28, 1986
For further information, please call
(512) 462-6420.

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★19 TAC §25.33

The Coordinating Board, Texas College and University System, proposes amendments to §25.33, concerning basic coverage standards. This amendment would remove from the rules and regulations the restrictions and/or limitations of benefits for the treatment of alcohol dependency.

James McWhorter, executive secretary to the administrative council, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. McWhorter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide benefits for the treatment of alcohol dependency that are not less favorable than benefits for other physical illnesses generally. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to James McWhorter, Executive Secretary to the Administrative Council, Coordinating Board, Texas College and University System, P.O. Box 12788, Austin, Texas 78711.

The amendment is proposed under the Insurance Code, Article 3.50-3, which provides the Administrative Council with the authority to adopt rules and regulations consistent with the provisions of the Act to carry out its statutory responsibilities.

§25.33. Basic Coverage Standards.

(a) Each institution shall provide in its program of group insurance a basic plan for active employees and retired employees that includes at least the following minimum coverage standards:

(1) Hospital care expense. The plan shall cover the reasonable charges for the following hospital services:

(A) room allowance of semiprivate rate for 365 days per year, except for the treatment of mental illness, which may be limited to 90 days per calendar year, and the treatment of [alcoholism and] drug addiction, which may be limited to 30 days per calendar year; and

(B) (No change.)

(2) Other medical expense. The plan shall cover the reasonable charges for the following items of services or supplies furnished by or at the direction or prescription of a physician. If any of the following services or supplies are used while the participant is confined as a hospital bedpatient, other than professional services of a physician, psychologist, or certified registered nurse-anesthetist, the charges will be considered as hospital care expenses rather than other medical expenses:

(A)-(P) (No change.)

(Q) services of a psychologist or a doctor of psychiatry during the first 90 days of hospital confinement for mental illness and during the first 30 days of hospital confinement for [alcoholism or] drug abuse.

(3) (No change.)

(4) Out-patient [alcoholism and] drug abuse treatment. Benefits shall cover services for treatment of [alcoholism and other] drug dependency. Benefits may not be limited to less than $1,200 per benefit year. The benefit percentage may not be less than 50% of usual, customary, and reasonable charges. The plan may require that the deductible be satisfied prior to the availability of benefits.

(5)-(9) (No change.)

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

Issued in Austin, Texas, on January 20, 1986.

TRD-8600760 James McWhorter
Executive Secretary
Administrative Council
Texas College and
University System
Coordinating Board

Earliest possible date of adoption:
February 28, 1986
For further information, please call
(512) 462-6420.

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★19 TAC §25.50

The Coordinating Board, Texas College and University System, proposes an amendment to §25.50, concerning coverage for dependents. This amendment will provide a continuation option for insurance benefits for up to one year for the spouse and/or dependents covered under the group whose relationship to the employee is severed due to divorce.

James McWhorter, executive secretary to the administrative council, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. McWhorter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be ensurance that the spouse and/or dependents whose relationship to the employee is severed because of divorce will have access to group insurance coverage for up to one year after the divorce occurs. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to James McWhorter, Executive Secretary to the Administrative Council, Coordinating Board, Texas College and University System, P.O. Box 12788, Austin, Texas 78711.

The amendment is proposed under the Insurance Code, Article 3.50-3, which provides the Administrative Council with the authority to adopt rules and regulations consistent with the provisions of the Act to carry out its statutory responsibilities.

§25.50. Coverage for Dependents.

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

(d) As a minimum standard, a spouse and/or dependents who are covered by the group at the time of the severance of the family relationship to the employee or retired employee and who have been covered by the group for at least one year or is an infant under one year of age, may, at their option, continue such coverage, subject to continued payment of group premiums which may not exceed the premiums charged under the group contract had the family relationship not been severed. Upon leaving the group, the spouse and/or dependents have the right to convert to an individual policy without evidence of insurability, if application for conversion is made within 31 days of the termination of group status.

(1) The institution shall make a good faith effort to publicize this provision to employees and spouses and/or dependents, including, but not limited to, a statement of such in the plan description and/or certificate/booklet.

(2) The institution shall require the employee or retired employee or covered spouse and/or dependents to give written notice within 15 days of any severance of the family relationship that might activate this continuation option. In addition, the institution may require spousal acknowledgement of any spouse and/or dependent coverage cancellation and request the current address of the spouse and dependent children so affected.

(3) Immediately upon receiving the notice required in paragraph (2) of this subsection, the institution shall give written notice to each affected spouse and/or dependent of the continuation option. This notice shall include a statement of the amount of premium to be charged and the necessary enrollment forms.

(4) The spouse and/or dependents must exercise this option within 45 days of the date of the severance of the family relationship and coverage will remain in effect during this period if appropriate premiums are paid.

(5) Coverage continued under this subsection shall not be cancelled or terminated until/unless one of the following occurs:

(A) premium payments are not made within the time period required to make such payments;

(B) the spouse and/or dependents establish residence outside the state;

(C) the spouse and/or dependents become eligible for substantially similar coverage elsewhere; or

(D) a period of one year elapses since the severance of the family relationship.

(e) The institution may assess an administrative handling fee of not more than $5.00 per month for the spouse and/or dependents cited in (a)-(d) of this section who are covered and elect to continue such coverage.

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

Issued in Austin, Texas, on January 20, 1986.

TRD-8600761

James McWhorter
Executive Secretary
Administrative Council
Coordinating Board,
Texas College and
University System

Earliest possible date of adoption:
February 28, 1986
For further information, please call
(512) 462-6420.

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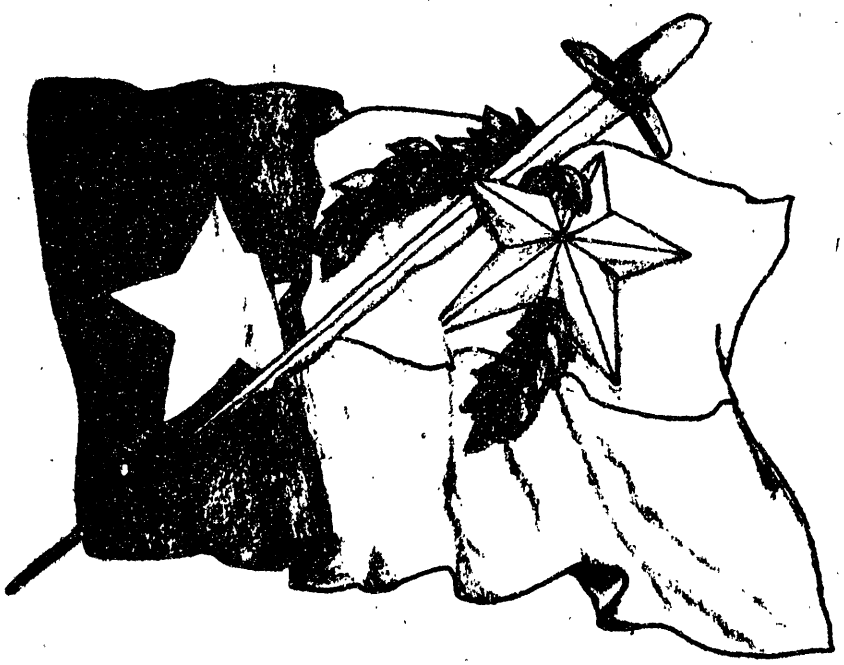


TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

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

★31 TAC §§335.1-335.15, 335.17-335.24, and 335.30

The Texas Water Commission proposes new §§335.1-335.15, 335.17-335.30, 335.41, 335.43-335.47, 335.61-335.63, 335.65-335.71, 335.73-335.86, 335.91-335.94, 335.111-335.126, 335.151-335.177, concerning industrial solid waste and municipal hazardous waste.

Although these sections are proposed as new sections, most of these regulations have been in effect in 31 TAC Chapter 335 under the jurisdiction of the Texas Department of Water Resources, the predecessor agency to the Texas Water Commission. Senate Bill 249, 69th Legislature, 1985, and effective September 1, 1985, abolished the Texas Department of Water Resources and transferred jurisdiction under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, to the Texas Water Commission. On September 3, 1985, the Texas Water Commission adopted sections in Chapter 335 on an emergency basis to extend the substantive requirements of sections adopted by the Texas Water Development Board for the former Texas Department of Water Resources, to extend certain requirements of the existing commission sections relating to industrial solid waste management to municipal hazardous waste, and to change references in the sections to reflect the transfer of jurisdiction to the Texas Water Commission. The emergency sections were published in the September 24 and 27, 1985, issues of the *Texas Register*.

To reduce the volume of hazardous waste regulations, Subchapters E-T of the sections passed by the Texas Water Development Board (which correspond generally to 40 Code of Federal Regulations Part 265) have been consolidated into one subchapter entitled Subchapter E. This consolidated subchapter adopts many of the provisions in the Environmental Protection Agency (EPA) rules by reference and expressly includes other provisions in the subchapter. Other subchapters under the Water Development Board sections have been rearranged in response to this consolidation of subchapters in the proposed section.

The proposal incorporates changes necessitated by recent legislative actions of the 69th Legislature and incorporates regulatory changes promulgated by the EPA under the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the hazardous and solid waste amendments of 1984 (HSWA). The proposed sections respond to regulations published by the EPA on several dates. On December 20, 1984, the EPA published rules allowing generators of hazardous waste to accumulate specified maximum amounts of waste in satellite areas at their facility (49 FedReg 49568). On January 4, 1985, the EPA promulgated a revised definition of solid and hazardous waste at 50 FedReg 614. This definition was subsequently amended by technical corrections published on April 11, 1985 and August 20, 1985. Regulations setting forth new listings of acute hazardous wastes were published in the January 14, 1985, issue of the Federal Register at 50 FedReg 1978. The EPA regulations codifying the hazardous and solid waste amendments of 1984 were published in the July 15, 1985, issue of the Federal Register at 50 FedReg 28702.

In addition to the federal regulatory changes, recent actions of the Texas Legislature also are reflected in these proposed sections. In Senate Bill 249, the powers and authorities of the Texas Department of Water Resources under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, were transferred to the Texas Water Commission and the department abolished. Senate Bill 249, effective on September 1, 1985, the bill also transferred jurisdiction over municipal hazardous waste from the Texas Department of Health to the Texas Water Commission. House Bill 2358, effective September 1, 1985, includes provisions concerning the siting of hazardous waste facilities. House Bill 1867, effective June 15, 1985, includes a definition of solid waste which provides additional information on the Railroad Commission of Texas' jurisdiction over waste materials resulting from certain oil and gas activities.

The proposed sections establish a regulatory system for the management of solid and hazardous waste under the jurisdiction of the Texas Water Commission and to include recent developments in federal and state law. The January 4, 1985, publication in the Federal Register revised the definition of solid and hazardous waste in the EPA regulations implementing the Resource Conservation and Recovery Act (RCRA), Subtitle C. The EPA regulations address the question of which materials are solid and hazardous wastes when recycled and set forth standards for various types of waste recycling activities. The January 4 rules, effective July 5, established an April 4, 1985 notification deadline for persons who generate, transport, process, store, or dispose of wastes covered by the January 4 rule, unless those persons had previously notified the EPA or a state authorized by the EPA to operate the hazardous waste program under the RCRA, §3006.

In emergency sections adopted by the Texas Water Development Board (the rulemaking predecessor to the Texas Water Commission) on April 18, 1985 and published in the April 26, 1985, issue of the *Texas Register* at 10 TexReg 1310, Texas (an authorized state under the RCRA program) established the July 5 filing deadline for submitting a Part A permit application for persons managing wastes covered by the new federal regulations. The emergency sections were effective for 120 days and were renewed in a notice published on August 13, 1985 at 10 TexReg 3042. These sections have also been adopted by the Texas Water Commission in its emergency rule making on September 3, 1985.

In Subchapter A, the proposal includes §§335.1-335.15, which existed prior to September 1, 1985 as provisions governing industrial solid waste management in general and have been updated to reflect the statutory and regulatory changes described in the preceding paragraphs. Section 335.1 includes the definitions for the entire chapter, except as provided elsewhere. It includes a lengthy definition of the term "solid waste" in accordance with the federal regulations published on January 4, 1985 at 50 FedReg 614. Secondary materials that are considered solid wastes when recycled are described by using a chart, referred to as Table 1, that has asterisks in the columns of secondary materials that are considered solid wastes when recycled in certain ways. The key concept to the proposed recycling provision is to know what a material is and how it is being recycled before determining whether it is defined as a solid waste. Assessment of the economic value of a recycling transaction is not part of the definition of solid waste. Although many materials and activities are deemed to be solid waste activities in Table 1, there are some solid waste activities that are not regulated at this time, as provided in other sections. The regulation of scrap metal that is Class III waste under the Texas waste classification scheme is not altered by these proposed sections concerning recycling. The preamble to the January 4, 1985 EPA regulations may provide assistance in understanding the intent and the scope of the regulations in defining a solid waste. In the definition of "solid waste," subparagraph (F) lists situations in which materials are not solid wastes when they are shown to be recycled by being used or reused in specified ways that resemble the use of products. Subparagraph (G) describes materials that are solid wastes, even if used or reused, because they are used in a manner constituting disposal, burned for energy recovery, accumulated speculatively, or

deemed to be inherently waste-like. Subparagraph (H) explains that persons who raise a claim that a certain material is not a solid waste, or is excluded or exempted in some way, have the responsibility for supporting their claim. Subparagraph (I) provides that materials that are reclaimed from solid wastes and used beneficially are not solid wastes, and therefore not hazardous wastes under 40 Code of Federal Regulations §261.3(c) unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

Section 335.2 describes when a permit is required, and §§335.3-335.8 describe technical guidelines, general prohibitions, notification requirements, bond requirements, and facility closures. Sections 335.9-335.15 govern shipping, manifesting, record keeping and reporting requirements applicable to generators, transporters, and owners or operators of storage, processing, or disposal facilities.

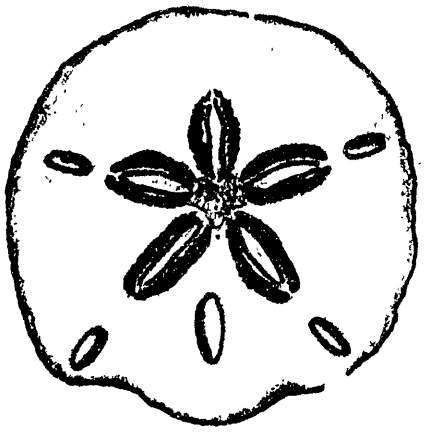
Section 335.17 provides special definitions for the purposes of the definition of solid waste and §335.24.

Section 335.18 provides for a variance from classification as a solid waste for some recycled materials meeting the standards and criteria set forth in §335.19. Variances will be granted on a case-by-case basis, according to procedures in §335.21. Section 335.20 provides for a variance for certain enclosed devices using controlled flame combustion to be classified as a boiler, even though they do not otherwise meet the definition of boiler in §335.1. This variance is also granted by the executive director on a case-by-case basis in accordance with the procedures in §335.21.

Section 335.22 allows the commission to decide on a case-bycase basis that persons accumulating or storing recyclable materials from which precious metals are reclaimed, which would usually be excepted from the requirements for generators, transporters and storage facilities under §335 24(a), should be regulated under §335.24(d) and (e). Section 335.23 sets forth the procedures to follow in determining whether to regulate persons handling recyclable materials from which precious metals are reclaimed under §335.24(d) and (e), rather than under Subchapter H of this chapter.

Section 335.24 establishes the requirements for recyclable materials (hazardous wastes that are recycled) and nonhazardous recyclable materials (nonhazardous wastes that are recycled). Section 335.24(b) describes four activities involving recyclable materials that will be subject to regulation under Subchapter H, except as otherwise provided in §335.24(g) and (h). Section 335.24(c) specifies seven types of recyclable materials that are not subject to regulation under the listed subchapters and chapters, except as provided in §335.24(g) and (h). Section 335.24(d) states the general rule that generators and transporters of recyclable materials are subject to the hazardous waste regulations and the notification requirement of §335.6, except as otherwise provided in §335.24(a)-(c). Owners and operators of facilities that store recyclable materials before recycling are also subject to the hazardous waste regulations and the notification requirement in §335.6, except as provided in §335.24(a)-(c). The recycling process itself is exempt from regulation. Owners and operators of facilities that recycle without prior storage are subject to notification requirements and shipping requirements, unless excepted from regulation under §335.24(a)-(c). Section 335.24(g) provides that hazardous recyclable materials (excluding industrial ethyl alcohol, certain fuels and reclaimed oils involved in petroleum refining, and coke from the iron and steel industry) are subject to the general prohibitions established in §335.4, the notification requirements of §335.6, and the applicable provisions governing manifesting, reporting and record keeping in §§335.9-335.15, except as provided in §335.24(h). Section 335.24(h) explains that nonhazardous recyclable materials, the specified hazardous recyclable materials (including used batteries returned to a battery manufacturer for regeneration, used oil that is characteristically hazardous and scrap metal), and certain hazardous waste fuels are subject to the general prohibitions of §335.4 and the notification requirements of §335.6. These nonhazardous and hazardous recyclable materials may also be subject to manifesting, reporting, and record keeping requirements if the executive director determines that such requirements are necessary to protect human health and the environment, considering criteria described in the regulation. Under §335.24(i), facilities managing hazardous recyclable materials that are required to obtain a permit may also be permitted to manage nonhazardous recyclable materials at the same facility if the executive director determines that such regulation is necessary to protect human health and the environment, considering the criteria outlined in the regulation.

Section 335.30 is the introduction to the Subchapter A appendices, including a copy of the uniform hazardous waste manifest form. Item 16 of the manifest form, the generator's certification, now includes a waste minimization statement, as required by the RCRA, as amended by the hazardous and solid waste amendments of 1984.



It is further proposed that the sections implementing §4(f)(1) of the Solid Waste Disposal Act, relating to nonhazardous industrial solid waste, be revised for clarification purposes. No substantive change in regulation is proposed. Section 335.1 would provide for a single definition of "on-site". Section 335.2(d), which contains the permit exemption of §4(f)(1), tracks the language of that statutory provision rather than reference the term "on-site," which is not used in §4(f)(1). Section 335.10 adds subsection (g), which allows shipment of Class I nonhazardous waste to §4(f) sites without the use of a manifest. These revisions preserve the regulatory scheme for sites operating within the scope of §4(f)(1), but clarifies the sections which formerly would provide for two different definitions of "on-site storage, processing, or disposal."

In Subchapter B, concerning general provisions for hazardous waste management, §335.41 describes the applicability of these sections to certain wastes, recyclable materials, or waste management activities. The definitions contained in §335.42 of the Texas Water Development Board sections have been consolidated into §335.1 in Subchapter A of these proposed rules. Sections 335.43-335.45 establish when a permit is required for hazardous waste activities and describe the contents and deadlines for the submittal of applications. Sections 335.46 and 335.47 discuss the sharing of information with the EPA and the requirements for persons eligible for a federal permit by rule. The appendices to Subchapter B that were included in the Texas Water Development Board sections are not included in the proposed sections. The appendices to 40 Code of Federal Regulations Parts 264 and 265 are the appropriate references for purposes of the proposed sections. References in the EPA sections to the Regional Administrator should be considered references to the executive director of the Texas Water Commission, and the term "treatment" should be considered "processing" in the state sections.

In Subchapter C, concerning standards applicable to generators of hazardous waste, §335.61 includes explanations of the small quantity generator requirements. Importers of hazardous waste from foreign countries are subject to hazardous waste generator standards. Section 335.62 requires a generator of solid waste to determine if that waste is hazardous, and §335.63 establishes requirements for EPA identification numbers. Sections 335.65-335.68 provide packaging, labeling, marking, and placarding requirements for off-site hazardous waste shipments. Section 335.69 allows generators to accumulate hazardous

waste on-site for 90 days or less without a permit and accumulate specified maximum amounts of hazardous waste near their point of generation, if certain requirements are satisfied. Sections 335.70, 335.71 and 335.73 establish record keeping, annual reporting, and additional reporting requirements for generators. Requirements for interstate shipments and international shipments appear in §335.74 and §335.75. Section 335.76 relates to farmers disposing of waste pesticides.

In Subchapter D, concerning standards applicable to transporters of hazardous waste, §335.91 and §335.92 describe the scope of the sections and require an EPA identification number for hazardous waste transportation. Section §335.93 prescribes procedures to follow in the event of hazardous waste discharges. Requirements for transfer facilities are set forth in §335.94.

Subchapter E, concerning interim standards for owners and operators of hazardous waste storage, processing, or disposal facilities, is a consolidation of Subchapters E-T of the Texas Water Development Board sections. Under §335.112, many of the EPA rules and appendices appearing in 40 Code of Federal Regulations Part 265, in effect on October 1, 1985, are adopted by reference. Other provisions are expressly included in Subchapter E. Sections 335.111 and 335.113-335.115 discuss the applicability of the subchapter and emergency and other reporting requirements for owners or operators of hazardous waste storage, processing, or disposal facilities. Sections 335.116 and 335.117 establish the applicability of groundwater monitoring requirements and the associated record keeping and reporting requirements. Sections 335.118 and 335.119 relate to closure and post-closure plans and the procedures for submission and approval of those plans. Containment requirements for waste piles are set forth in §335.120. General operating requirements, record keeping requirements, and closure and post-closure requirements for land treatment facilities are provided in §§335.121-335.123. Section 335.124 establishes general operating requirements for landfills, followed by the special requirements for bulk and containerized waste in landfills outlined in §335.125. Effective May 8, 1985, the placement of bulk or noncontainerized liquid hazardous waste or hazardous waste containing free liquids in any landfill is prohibited. Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited, with some exceptions. Section 335.126 requires empty containers to be reduced in volume before burial beneath a landfill's surface.

The EPA regulations adopted by reference in §335.112 of Subchapter E include the rules codifying the hazardous and solid waste amendments of 1984 which were published by the EPA in the July 15, 1985, issue of the Federal Register. These regulations impose design requirements on owners or operators of surface impoundments, monofills, waste piles, and landfills, including requirements on liners and leachate collection systems.

Subchpater F, concerning permitting standards for owners and operators of hazardous waste storage, processing, or disposal facilities, establishes minimum standards to define the acceptable management of hazardous waste in evaluating permit applications, groundwater protection investigation reports, and corrective action measures for solid waste management activities. Subchapter F also includes the EPA rules codifying the hazardous and solid waste amendments of 1984, which appear at 50 FedReg 28702 in the July 15, 1985 issue. Section 335.152 incorporates by reference the provisions of 40 Code of Federal Regulations Part 264 in effect as of October 1, 1985, except as specifically provided. Section 335.153 establishes requirements applicable to reporting of emergency situations by the emergency coordinator, including a requirement to notify pursuant to the State of Texas oil and hazardous substances spill contingency plan. Section 335.154 establishes reporting requirements relating to annual reports and monthly summaries. Section 335.155 establishes additional reporting requirements. Section 335.156, relating to applicability of groundwater monitoring and response, reflects the new requirements of 40 Code of Federal Regulations §264.90: the redefinition of regulated unit; and the variance from groundwater monitoring for certain engineered structures. Section 335.157 sets forth the required programs for groundwater monitoring and response. Sections 335.158-335.166 provide the basic elements of the groundwater protection program and correspond to 40 Code of Federal Regulations §§264.92-264.100. Section 335.167 requires corrective action for solid waste management units at permitted facilities and corresponds to 40 Code of Federal Regulations §264.101. Corrective action will be established pursuant to compliance plans issued under §305.401.

Section 335.168, relating to design and operating requirements for surface impoundments, establishes requirements for double liners and leachate collection systems and corresponds to newly amended 40 Code of Federal Regulations §264.221. Section 335.169 establishes requirements for closure and post-closure care for surface impoundments. Section 335.170 establishes design and operating requirements for waste piles. Section 335.171 establishes design and operating requirements for land treatment facilities. Section 335.172 establishes closure and post-closure care requirements for land treatment facilities. Section 335.173, relating to design and operating requirements for landfills, establishes requirements for double liners and leachate collection systems and relates to 40 Code of Federal Regulations §264.301. Section 335.174 establishes requirements for closure and post-closure care requirements for landfills. Section 335.175 establishes special requirements for bulk and containerized waste and includes in subsections (b) and (c) the ban on placement of bulk liquid hazardous waste and nonhazardous waste liquids in landfills. Section 335.176 establishes special requirements for the landfilling of containers. Section 335.177 establishes a general environmental performance standard relating to discharges of hazardous waste, nuisance conditions, and endangerment of the public health or welfare. Provisions for variance from the groundwater monitoring and response program for double-lined landfills, surface impoundments and waste piles, eliminated by the hazardous and solid waste amendments of 1984, are not being carried forward in these proposed sections.

Subchapter G, concerning location standards for hazardous waste storage, processing or disposal, establishes minimum standards to be applied in evaluating hazardous waste permit applications for new facilities and areal expansions of existing facilities filed on or after September 1, 1984. Sections 335.201 and 335.202 establish the applicability of the subchapter and provide definitions for use in this subchapter. Section 335.203 sets forth site selection factors for the protection of groundwater or surface water. Unsuitable site characteristics for storage or processing facilities, land treatment facilities, waste piles, storage surface impoundments, and landfills are outlined in §335.204. Under the mandate of House Bill 2358, restrictions are imposed on the distance from an established residence, church, school, or public park for land treatment facilities and landfills. Additional restrictions on location of landfills in a 100 year floodplain, location of hazardous waste management units in wetlands, and location of certain units in recharge zones of aquifers are incorporated into §335.204. Section 335.204(f) prohibits the placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave. The prohibitions against permit issuance for new facilities or areal expansions of existing facilities are set forth in §335.205. Local governments may petition the commission for a rule restricting or prohibiting the siting of a new facility under the terms of §335.206.

Subchapter H, relating to standards for the management of specific wastes and specific types of facilities, includes provisions on four types of waste recycling activities that are not subject to the existing regulations for generators, transporters, and storage facilities, but that are regulated in this subchapter. Provisions concerning recyclable materials used in a manner constituting disposal appear in §§335.211-335.214. Section 335.211 explains that these sections apply to recyclable materials that are applied to or placed on the land without mixing with

other substances, or after mixing with other substances (unless it becomes physically inseparable after a chemical reaction), or after combination with any other substances if the resulting material is not produced for the general public's use. Sections 335.212-335.214 establish the standards applicable to generators, transporters, storers and users of materials used in a manner that constitutes disposal.

Provisions governing hazardous waste burned for energy recovery appear in §§335.221-335.227 of Subchapter H. Section 335.221 explains that these regulations are applicable to hazardous wastes burned for energy recovery in any boiler or industrial furnace that is not regulated under the provisions governing incinerators, with the noted exceptions listing unregulated hazardous wastes. Hazardous waste fuels produced from hazardous waste by blending or other processing by a person who neither generated the waste nor burns the fuel are not subject to regulation under Chapter 335, except as provided in §335.24(h). Section 335.222 imposes restrictions on the burning of fuel containing hazardous waste in a cement kiln which is located within the boundaries of an incorporated municipality with a population greater than 500,000. This requirement relates to federal requirements imposed under the hazardous and solid waste amendments of 1984. Section 335.223 imposes the requirements of Subchapter C on generators of hazardous waste fuel, except as §335.227 provides otherwise. Generators who are marketers or burners are subject to other sections in this subchapter. Section 335.224 imposes the requirements of Subchapter D on transporters of hazardous waste fuel from generator to marketer, or from generator to burner, except as §335.227 provides otherwise. Transporters are not regulated when they transport hazardous waste fuel from marketers (who are not also the waste generators) to burners or other marketers. Section 335.225 defines marketers of hazardous waste fuel and provides that marketers who are generators are subject to the 90-day accumulation time provision or to all the applicable provisions of the hazardous waste regulations and permitting requirements, unless the material is exempted under §335.227. Marketers who receive hazardous waste from generators and who produce, process, or blend hazardous waste fuel from those wastes are subject to regulation under all applicable provisions in Chapter 305 and the associated commission rules, except as §335.227 provides otherwise. Section 335.225(d) also contains a labeling requirement for fuel containing hazardous waste, with some exceptions for certain wastes involved in petroleum refining. This requirement relates to federal requirements imposed under HSWA. Section 335.226 provides that burners that store hazardous waste fuel prior to burning are subject to the 90-day accumulation time provision or to all the applicable provisions of the hazardous waste regulations and permitting requirements, unless the material is exempt under §335.227. In §335.227, hazardous waste fuels that are spent materials and by-products and that are hazardous only because they exhibit a characteristic of hazardous waste are not subject to the industrial solid waste and municipal hazardous waste regulations, unless the spent material or by-product is stored in a surface impoundment prior to burning or unless §335.24(h) provides otherwise.

Provisions governing recyclable materials utilized for precious metal recovery appear in §335.241. This section establishes the requirements applicable to recyclable materials that are reclaimed to recover economically significant amounts of the eight metals specified in §335.241(a). Persons who generate, transport, or store recyclable materials regulated under this section are subject to the general prohibitions of §335.4, the notification requirements of §335.6, and the applicable manifesting requirements in §§335.9-335.12. Persons who store these materials shall keep records to document that they are not accumulating them speculatively (as defined in §335.17), or shall be subjected to the industrial solid waste and municipal hazardous waste regulations and permitting requirements if speculative accumulation occurs.

Provisions concerning spent lead-acid batteries being reclaimed appear in §335.251 of Subchapter H. This section provides that persons who generate, transport, or collect spent batteries, or who store spent batteries but do not reclaim them, are not subject to regulation under the Chapter 335 regulations or the associated permitting regulations. Owners or operators of facilities that store spent batteries before reclaiming them are subject to all applicable provisions in Subchapters A, B, E, and F of Chapter 335, except for the requirements in §335.12 and 40 Code of Federal Regulations §265.13, and the applicable provisions in 31 TAC Chapters 261-273 and 305.

In Subchapter I, concerning prohibitions on open dumps, §335.301 authorizes the executive director to evaluate nonhazardous industrial solid waste land disposal facilities and practices to determine whether they constitute open dumps. Section 335.302 sets forth the prohibitions on open dumps, and §335.303 and §335.304 set forth the criteria and describe the classification of disposal facilities and practices. Section 335.305 discusses upgrading or closure of open dumps, and §§335..306-335.308 concern lists of interested or affected persons in a state plan developed pursuant to the RCRA, the notification to owners or operators of a classification as an open dump, and complaint procedures for open dumps.

Bobbie J. Barker, chief fiscal officer, Fiscal Services Division has determined that for the first five-year period the sections will be in effect there will be some fiscal implications as a result of enforcing or administering the sections. The anticipated effect on state government due to the incorporation of the definition of solid waste in the Federal Register publication of the January 4, 1985, sections is an estimated additional cost of $168,000 each year from 1986-1990. There is no anticipated effect on local governments or small businesses. The anticipated economic cost on a statewide basis to individuals who are required to comply with the rule as proposed is $250,000 each year in 1986-1990. The cost of compliance covers the cost of submitting permit applications and manifest paperwork.

There will be no fiscal impact as a result of enforcing or administering these proposed sections that existed prior to September 1, 1985, as sections adopted by the Texas Water Development Board and enforced and administered by the Texas Department of Water Resources. There will be no fiscal implications as a result of enforcing or administering the sections extended to municipal hazardous wastes, since similar sections were previously administered by the Texas Department of Health. There will be no additional fiscal implications as a result of enforcing or administering the regulatory changes resulting from the federal hazardous and solid waste amendments of 1984 and the EPA's codification section published on July 15, 1985, because the EPA is required to administer these sections in Texas until the state receives final authorization to administer these additions to the hazardous waste program, which must be equivalent to the federal program. There will be no fiscal implications as a result of administering or enforcing the regulatory changes inspired by the bills passed by the 69th Legislature, such as House Bill 1867, House Bill 2358, and Senate Bill 249.

Ms. Barker also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed is the continuation of the substantive requirements of rules adopted by the Texas Water Development Board for the former Texas Department of Water Resources, and the improvement of the state's ability to assure protection of human health and the environment, including ground and surface water resources, by establishing more comprehensive regulatory control over certain materials that are deemed to be solid wastes when disposed of, burned, incinerated, or recycled. The proposed sections also update the solid waste program in Texas to include recent federal and state statutory and regulatory changes. In addition to providing guidance on the definition of solid and hazardous waste and on the regulation of recycling activities, the proposed regulations in Subchapter H establish new standards for the management of specific

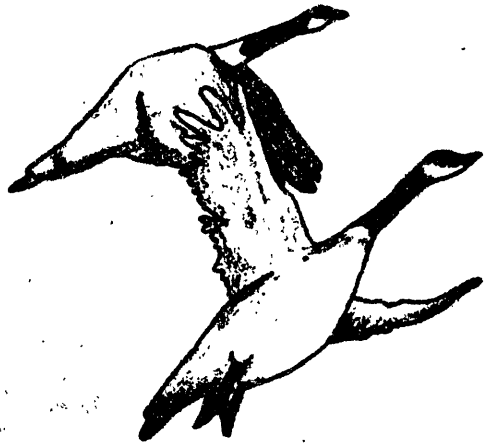
hazardous wastes and specific types of hazardous waste management facilities.

Comments on the proposals may be submitted to Mary Reagan, Staff Attorney, Texas Water Commission, P. O. Box 13087, Austin, Texas 78711.

These sections are proposed under the Texas Water Code, §5.103 and §5.105, which provide the Texas Water Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Water Code and other laws of this state and to establish and approve all general policy of the commission.

These sections are also proposed under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

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



Act—The Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7.

Active portion—That portion of a facility where processing, storage, or disposal operations are being or have been conducted after November 19, 1980 and which is not a closed portion. (See also closed portion and inactive portion.)

Administrator—The administrator of the United States Environmental Protection Agency or his designee.

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

Authorized representative—The person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent, or person of equivalent responsibility.

Boiler—An enclosed device using controlled flame combustion and having the following characteristics:

(A) the unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

(B) the unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and super heaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(C) while in operation, the unit must maintain athermal energy recovery efficiency of at least 60%, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) The unit must export an utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air and the driving of induced or forced draft fans or feedwater pumps); or

(E) the unit is one which the executive director has determined, on a case-by-case basis, to be boiler, after considering

Certification—A statement of professional opinion based upon knowledge and belief.

Class I wastes—Any industrial solid waste or mixture of industrial solid wastes which because of its concentration, or physical or chemical characteristics, is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, including hazardous industrial waste.

Class II wastes—Any individual solid waste or combination of industrial solid waste which cannot be described as Class I or Class III as defined in this regulation.

Class III wastes—Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable.

Closed portion—That portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also active portion and inactive portion.)

Confined aquifer—An aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

Container—Any portable device in which a material is stored, transported, processed, or disposed of, or otherwise handled.

Contingency plan—A document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

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 nonhazardous 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 Muni-

cipal Hazardous Waste or Class I Industrial Solid Waste).

Dike—An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

Discharge or hazardous waste discharge—The accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of waste into or on any land or water.

Disposal—The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

Disposal facility—A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure.

Elementary neutralization unit—A device which:

(A) is used for neutralizing wastes which are hazardous only because they exhibit the corrosivity characteristic defined in 40 Code of Federal Regulations §261.22, or are listed in 40 Code of Federal Regulations Part 261, Subpart D, only for this reason; and

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

Environmental Protection Agency hazardous waste number—The number assigned by the Environmental Protection Agency to each hazardous waste listed in 40 Code of Federal Regulations Part 261, Subpart D and to each characteristic identified in 40 Code of Federal Regulations Part 261, Subpart C.

Environmental Protection Agency identification number—The number assigned by the Environmental Protection Agency or the commission to each generator, transporter, and processing, storage, or disposal facility.

Essentially insoluble—Any material, which if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of current United States Public Health Service or United States Environmental Protection Agency limits for drinking water as published in the Federal Register.

Equivalent method—Any testing or analytical method approved by the administrator under 40 Code of Federal Regulations §260.20 and §260.21.

Existing portion—That land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

Facility—Includes all contiguous land, and structures, other appurtenances, and improvements on the land for storing, processing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several storage, processing, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations thereof).

Food-chain crops—Tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

Freeboard—The vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

Free liquids—Liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

Generator—Any person, by site, who produces municipal hazardous waste or industrial solid waste; any person who possesses municipal hazardous waste or industrial solid waste to be shipped to any other person; or any person whose act first causes the solid waste to become subject to regulation under this chapter. For the purposes of this regulation, a person who generates or possesses Class III wastes only shall not be considered a generator.

Groundwater—Water below the land surface in a zone of saturation.

Hazardous industrial waste—Any industrial solid waste or combination of industrial solid wastes identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, §3001. The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 Code of Federal Regulations Part 261. The executive director will maintain in the offices of the commission a current list of hazardous wastes, a current set of characteristics of hazardous waste, and applicable appendices, as promulgated by the administrator.

Hazardous waste constituent—A constituent that caused the administrator to list the hazardous waste in 40 Code of Federal Regulations Part 261, Subpart D or a constituent listed in Table 1 of 40 Code of Federal Regulations §261.24.

Inactive portion—That portion of a facility which is not operated after November 19, 1980. (See also active portion and closed portion.)

Incinerator—An enclosed device using controlled flame combustion that neither meets the criteria for classification as a boiler nor is listed as an industrial furnace.

Incompatible waste—A hazardous waste which is unsuitable for:

(A) placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(B) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

Individual generation site—The contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

Industrial furnace—Any of the following enclosed devices that are integral components of manufacturing processes and that use controlled flame devices to accomplish recovery of materials or energy:

(A) cement kilns;

(B) lime kilns;

(C) aggregate kilns;

(D) phosphate kilns;

(E) coke ovens;

(F) blast furnaces;

(G) smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(H) titanium dioxide chloride process oxidation reactors;

(I) methane reforming furnaces;

(J) pulping liquor recovery furnaces;

(K) combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(L) such other devices as the executive director may, after notice and comment, add to this list on the basis of one or more of the following facts:

(i) the design and use of the device primarily to accomplish recovery of material products;

(ii) the use of the device to burn or reduce raw materials to make a material product;

(iii) the use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

(iv) the use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

(v) the use of the device in common industrial practice to produce a material product; and

(vi) other factors, as appropriate.

Industrial solid waste—Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation.

In operation—Refers to a facility which is processing, storing, or disposing of hazardous waste.

Injection well—A well into which fluids are injected. (See also underground injection.)

Inner liner—A continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

International shipment—The transportation of hazardous waste into or out of the jurisdiction of the United States.

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

Landfill cell—A discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

Land treatment facility—A facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

Leachate—Any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

Liner—A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

Management or hazardous waste management—The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

Manifest—The uniform hazardous waste manifest form furnished by the executive director to accompany shipments of municipal hazardous waste or Class I industrial solid waste.

Manifest document number—A number assigned to the manifest by the commission for reporting and record keeping purposes.

Movement—That hazardous waste transported to a facility in an individual vehicle.

Municipal hazardous waste—A municipal solid waste or mixture of municipal solid wastes which has been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency.

Municipal solid waste—Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial waste.

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

On-site—he same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit beween the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

Open burning—The combustion of any material without the following characteristics:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of emission of the gaseous combustion products. (See also incineration and thermal treatment.)

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

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

Partial closure—The closure of a discrete part of a facility in accordance with the applicable closure requirements of this chapter. For example, partial closure may include the closure of a trench, a unit operation, a landfill cell, or a pit, while other parts of the same facility continue in operation or will be placed in operation in the future.

Permit—A written permit issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify or operate a specified municipal hazardous waste or industrial solid waste storage, processing, or disposal facility in accordance with specified limitations.

Person—Any individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association or any other legal entity.

Personnel or facility personnel—All persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of this chapter.

Pile—Any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for processing or storage.

Processing—The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of hazardous waste, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code §6901 *et seq.*, as amended.

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

Regional administrator—The regional administrator for the Environmental Protection Agency Region in which the facility is located, or his designee.

Representative sample—A sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

Run-off—Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

Run-on—Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

Saturated zone or zone of saturation—That part of the earth's crust in which all voids are filled with water.

Shipment—Any action involving the conveyance of municipal hazardous waste or industrial solid waste by any means off-site.

Solid Waste—

(A) Any garbage, refuse, sludge from a wastetreatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to the Texas Water Code, Chapter 26;

(ii) soil, dirt, rock, sand and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements;

(iii) waste materials which result from activities associated with the exploration, development, or production of oil

or gas or geothermal resources, and any other substance or material regulated by the Railroad Commission of Texas pursuant to the Natural Resources Code, 91.101, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as delined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code §6901 *et seq.*, as amended; or

(iv) a discarded material excluded by 40 Code of Federal Regulations §261.4(a) or by variance granted under 335.18 of this title (relating to Variances from Classification as a Solid Waste) and 335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste).

(B) A discarded material is any material which is:

(i) abandoned, as explained in subparagraph (C) of this paragraph;

(ii) recycled, as explained in subparagraph (D) of this paragraph; or

(iii) considered inherently waste-like, as explained in subparagraph (E) of this paragraph.

(C) Materials are solid wastes if they are abandoned by being:

(i) disposed of;

(ii) burned or incinerated; or

(iii) accumulated, stored, or processed (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(D) Materials are solid wastes if they are recycled or accumulated, stored, or processed before recycling as specified in this subparagraph. The chart referred to as Table 1 indicates only which materials are considered to be solid wastes when they are recycled and is not intended to supersede the definition of solid waste provided in subparagraph (A) of this paragraph.

(i) Used in a manner constituting disposal. Materials noted with an asterisk in Column 1 of Table 1 are solid wastes when they are:

(I) applied to or placed on the land in a manner that constitutes disposal; or

(II) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste). However, commercial chemical products listed in 40 Code of Federal Regulations §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(ii) Burning for energy recovery. Materials noted with an asterisk in Column 2 of Table 1 are solid wastes when they are:

(I) burned to recover energy; or

(II) used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste). However, commercial chemical products listed in 40 Code of Federal Regulations 261.33 are not solid wastes if they are fuels themselves.

(iii) Reclaimed. Materials noted with an asterisk in Column 3 of Table 1 are solid wastes when reclaimed.

(iv) Accumulated speculatively. Materials noted with an asterisk in Column 4 of Table 1 are solid wastes when accumulated speculatively.

TABLE 1

	Use Constituting Disposal (1)	Energy Recovery/Fuel (2)	Reclamation (3)	Speculative Accumulation (4)
Spent materials (listed hazardous & non-listed characteristically hazardous)	*	*	*	*
Spent materials (Class I non-hazardous and Class II)	*	*	*	*
Sludges (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
Sludges (non-listed characteristically hazardous)	*	*		*
Sludges (Class I non-hazardous and Class II)	*	*		*
By-products (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
By-products (non-listed characteristically hazardous)	*	*		*
By-products (Class I non-hazardous and Class II)	*	*		*
Commercial chemical products listed in 40 CFR §261.33	*	*		
Scrap metal (hazardous)	*	*	*	*
Scrap metal (Class I non-hazardous and Class II)	*	*	*	*

NOTE: The terms "spent materials", "sludges", "by-products", and "scrap metal" are defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

(E) Materials that are identified by the administrator of the Environmental Protection Agency as inherently waste-like materials under 40 Code of Federal Regulations §261.2(d) are solid wastes when they are recycled in any manner.

(F) Materials are not solid wastes when they can be shown to be recycled by being:

(i) used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed;

(ii) used or reused as effective substitutes for commercial products; or

(iii) returned to the original process from which they were generated, without first being reclaimed. The material must be returned as a substitute for raw material feedstock, and the process must use raw materials as principal feedstocks.

(G) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, as described in subparagraph (F) of this paragraph:

(i) materials used in a manner constituting disposal, or used to produce products that are applied to the land;

(ii) materials burned for energy recovery, used to produce a fuel, or contained in fuels;

(iii) materials accumulated speculatively; or

(iv) materials deemed to be inherently waste-like by the Administrator of the Environmental Protection Agency, as described in 40 Code of Federal Regulations §261.2(d).

(H) Respondents in actions to enforce the industrial solid waste regulations who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do soand that the recycling activity is legitimate and beneficial.

(I) Materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under 40 Code of Federal Regulations §261.3(c) unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

Spill—The accidental spilling, leaking, pumping, emptying, or dumping of hazardous wastes or materials , when spilled, become hazardous wastes into or on any land or water.

Storage—The holding of solid waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere.

Surface impoundment or impoundment—A facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

Tank—A stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of nonearthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

Thermal processing—The processing of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.(See also incinerator and open burning.)

Totally enclosed treatment facility—A facility for the processing of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during processing. An example is a pipe in which acid waste is neutralized.

Transfer facility—Any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

Transport vehicle—A motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle. The term Vessel, includes every description of watercraft, used or capable of being used as a means of transportation on the water.

Transporter—Any person who conveys or transports municipal hazardous waste or industrial solid waste by truck, ship, pipeline,or other means.

Treatment zone—A soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transferred, or immobilized.

Underground injection—The subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also injection well.)

Unsaturated zone or zone of aeration—The zone between the land surface and the water table.

Uppermost aquifer—The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected within the facility's property boundary.

Wastewater treatment unit—A device which:

(A) is part of a wastewater treatment facility subject to regulation under either the Federal Water Pollution Control Act (Clean Water Act), 33 United States Code 466 *et seq.*, §402 or §308(b);

(B) receives and processes or stores an influent wastewater which is a hazardous waste, or generates and accumulates a wastewater treat ment sludge which is a hazardous waste, or processes or stores a wastewater treatment sludge which is a hazardous waste; and

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

Water (bulk shipment)—The bulk transportation of municipal hazardous waste or Class I industrial solid waste which is loaded or carried on board a vessel without containers or labels.

Well—Any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

§335.2. Permit Required.

(a) Except with regard to storage, processing, or disposal to which subsections (c)-(f) of this section apply, and as provided in §335.45(b) of this title (relating to Effect on Existing Facilities), and in accordance with the requirements of §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), no person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste or municipal hazardous waste unless such activity is authorized by a permit, amended permit, or other authorization from the Texas Water Commission or its predecessor agencies, the Texas Department of Health, or other valid authorization from a Texas state agency. No person may commence physical construction of a new hazardous waste management facility without first having submitted Part A and Part B of the permit application and received a finally effective permit.

(b) In accordance with the requirements of subsection (a) ofthis section, no generator, transporter, owner or operator of a facility, or any other person may cause, suffer, allow, or permit its wastes to be stored, processed, or disposed of at an unauthorized facility or in violation of a permit. In the event this requirement is violated, the executive director will seek recourse against not only the person who stored, processed, or disposed of the waste, but also against the generator, transporter, owner or

operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed.

(c) Any person who has commenced on-site storage, processing, or disposal of a hazardous waste on or before November 19, 1980, and who has filed a hazardous waste permit application with the commission on or before November 19, 1980, and in accordance with the rules and regulations of the commission, may continue the on-site storage, processing, or disposal of hazardous waste until such time as the Texas Water Commission approves or denies the application. 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 hazardous waste management facilities who have commenced the on-site storage, processing, or disposal of hazardous waste as defined in this subsection, or of hazardous waste management facilities in existence on the effective date of statutory or regulatory amendments under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, that render the facility subject to the requirement to have 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 regulations 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 occurs. This subsection shall not apply to a facility if it has been previ ously 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 person has commenced the on-site storage, processing or disposal of hazardous waste 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) a continuous physical, on-site construction programhas begun; or

(2) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for construction of the facility to be completed within a reasonable time.

(d) No permit shall be required for the storage, processing, or disposal of industrial solid waste which is not hazardous industrial waste, if the waste is disposed of on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation or agricultural operation from which the waste results or is produced; the property is within 50 miles of the plant or operation; and the waste is not commingled with waste from any other source or sources. An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an other source with respect to other plants and operations owned by the same person. Any person who intends to conduct such activity under this subsection shall comply with the notification requirements of 335.6 of this title (relating to Notification Requirements).

(e) No permit shall be required for the on-site storage of hazardous waste by a person who is a small quantity generator as defined in §335.61(c) of this title (relating to Purpose, Scope, and Applicability).

(f) No permit under this chapter shall be required for the storage, processing or disposal of hazardous waste by a person described in §335.41(b), (c), and (d) of this title (relating to Purpose, Scope, and Applicability) or for the storage of hazardous waste under the provisions of 40 Code of Federal Regulations §261.4(c) and (d).

(g) Owners or operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit, and, for any unit that receives hazardous waste after January 26, 1983, 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.

§335.3. Technical Guidelines. In order to promote the proper collection, handling, storage, processing, and disposal of industrial solid waste or municipal hazardous waste in a manner consistent with the purposes of the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, the executive director will make available on request copies of technical guidelines outlining methods designed to aid in the prevention of the conditions prohibited in this chapter. Guidelines should be considered as suggestions only.

§335.4. General Prohibitions. In addition to the requirements of §335.2 of this title (relating to Permit Required), no person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste or municipal hazardous waste in such a manner so as to cause:

(1) the discharge or imminent threat of discharge ofindustrial solid waste or municipal hazardous waste into or adjacent to the waters in the state without obtaining specific authorization for such a discharge from the Texas Water Commission;

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the public health and welfare.

§335.5. Deed Recordation.

(a) Recording required. No person may cause, suffer, allow, or permit the disposal of industrial solid waste or municipal hazardous waste prior to recording in the county deed records of the county or counties in which the disposal takes place, the following information:

(1) a metes and bounds description of the portion or portions of the tract of land on which disposal of solid waste will take place;

(2) the class or classes of wastes to be disposed of and waste description; and

(3) the name or permanent address of the person or persons operating the facility where more specific information on the waste can be secured.

(b) Proof of recordation. Proof of recordation shall be provided to the executive director in writing prior to instituting disposal operations.

(c) Additional requirements. Owners of property on which facilities for disposal of hazardous waste are located are subject to further requirements adopted by reference in §335.112(a)(6) of this title (relating to Standards).

§335.6. Notification Requirements.

(a) A person who intends to store, process, or dispose of industrial solid waste without a permit, as authorized by §335.2(d), (e) or (f) of this title (relating to Permit Required) or §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), shall notify the executive director in writing that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such storage, processing, or disposal is compliant with the terms of this chapter. Such information may include, but is not limited to, information concerning waste composition, waste management methods, facility engineering plans and specifications, or the geology where the facility is located. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

(b) Any person who stores, processes, or disposes of municipal hazardous waste or industrial solid waste shall have the continuing obligation to immediately provide

written notice to the executive director of any changes or additional information concerning waste composition, waste management methods, facility engineering plans and specifications, and the geology where the facility is located, to that reported in subsection (a) of this section, authorized in any permit, or stated in any application filed with the commission. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

(c) Any person who generates municipal hazardous waste in quantities greater than or equal to 1,000 kilograms in a calendar month or quantities of acute municipal hazardous waste in excess of quantities specified in §335.61(c)(5) of this title (relating to Purpose, Scope, and Applicability) in a calendar month; or any quantities of industrial solid waste shall notify the executive director of such activity on forms furnished or approved by the executive director. Such person shall also submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether the storage, processing, or disposal is compliant with the terms of this chapter. Notifications submitted pursuant to this section shall be in addition to information provided in any permit applications required by §335.2 of this title (relating to Permit Required), or any reports required by §335.9 of this title (relating to Shipping and Reporting Procedures Applicable to Generators), §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste), and §335.13 of this title (relating to Record-keeping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste). Any person who notifies pursuant to this subsection shall have the continuing obligation to immediately provide written notice to the executive director of any changes or additional information, to that reported previously. If waste is recycled on-site or managed pursuant to §335.2(d) of this title (relating to Permit Required), the generator must also comply with the notification requirements specified in subsection (h) of this section. The information submitted pursuant to the notification shall include, but is not limited to:

(1) a description of the waste;

(2) a description of the process generating the waste;

(3) the composition of the waste;

(4) a proper hazardous-waste determination. Generators must determine whether such waste is hazardous as defined in 40 Code of Federal Regulations Part 261, and submit the results of that hazardous waste determination to the executive director;

(5) the disposition of each solid waste generated, if subject to the notification requirement of this subsection, including the following information:

(A) whether the waste is managed on-site and/or off-site;

(B) a description of the type and use of each on-site waste management facility unit;

(C) a listing of the wastes managed in each unit;

(D) whether each unit is permitted, or qualifies for an exemption, under §335.2 of this title (relating to Permit Required).

(d) Persons generating more than 100 kilograms but less than 1000 kilograms or hazardous municipal waste in any given calendar month shall notify the executive director of such activity on forms provided by the executive director. Such person shall also submit to the executive director upon request such information as may be reasonably required to enable the executive director to determine whether the storage, processing, or disposal of such waste is compliant with the terms of these sections. Notifications submitted pursuant to this section shall be in addition to any information provided on any permit application required by §335.2 of this title (relating to Permit Required), or any reports required by §335.9 of this title (relating to Shipping and Reporting Procedures Applicable to Generators), §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste), and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste).

(e) Any person who transports municipal hazardous waste or Class I waste shall notify the executive director of such activity on forms furnished or approved by the executive director. Persons operating transfer facilities in accordance with §335.94 of this title (relating to Transfer Facility Requirements) shall notify the executive director of such activity.

(f) Upon written request of the executive director, any person who ships, stores, processes or disposes of industrial solid waste or municipal hazardous waste, as defined in this subchapter, shall perform a chemical analysis of the solid waste, provide results of the analysis to the executive director, or furnish samples of the waste for analysis in order to assign a waste classification.

(g) A person who stores, processes or disposes of industrial solid waste or municipal hazardous waste shall notify the executive director in writing of any closure activity or activity of facility expansion not authorized by permit, at least 90 days prior to conducting such activity. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such activity is compliant with this chapter. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

(h) Any person who conducts or intends to conduct the recycling of industrial solid waste or municipal hazardous waste as defined in §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and who is required to notify under §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) must submit in writing to the executive director, at a minimum, the following information: the type(s) of industrial solid waste or municipal hazardous waste to be recycled, the method of storage prior to recycling, and the nature of the recycling activity. New recycling activities require such notification a minimum of 90 days prior to engaging in such activities. Persons engaged in recycling of industrial solid waste or for municipal hazardous waste prior to the effective date of this section shall submit such notification within 60 days of the effective date of this subsection.

§335.7. Bond Required. Authority to store, process, or dispose of industrial solid waste or municipal hazardous waste pursuant to a permit issued by the commission is contingent upon the execution and maintenance of a surety bond or other financial assurance acceptable to the executive director, in an amount specified in the permit, which provides for the closing of the solid waste storage, processing, or disposal facility in accordance with the permit issued for the facility and all other rules of the commission. The commission may require the execution and maintenance of a surety bond or other financial assurance acceptable to the executive director for the closing of any solid waste facility exempt from the requirement of a permit under this chapter but subject to the requirement of a permit under the Texas Water Code, Chapter 26. Persons storing, processing or disposing of hazardous waste are subject to further requirements concerning closure and post-closure contained in Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities).

§335.8. Closure.

(a) Any person who stores, processes, or disposes of industrial solid waste or municipal hazardous waste at a facility permitted under §335.2(a) of this title (relating to Permit Required), shall, unless specifically modified by other order of the commission, close the facility in accordance with the closing provisions of the permit.

(b) Any person who stores, processes, or disposes of hazardous waste is subject to

the applicable provisions relating to closure and post-closure in Subchapters E and F of this chapter (relating to Interim Standards for Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities).

§335.9. Shipping and Reporting Procedures Applicable to Generators.

(a) Except with regard to the shipments of municipal hazardous waste or Class I industrial solid waste to which §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste) applies, and except with regard to generators of Class II industrial solid waste with less than 100 employees, each generator shall:

(1) keep records of:

(A) all industrial solid waste storage, processing, and disposal activities, and

(B) all municipal hazardous waste storage, processing, or disposal activities for all hazardous waste generated or accumulated on-site in quantities greater than 100 kilograms in a calendar month or quantities of acute hazardous waste in excess of those quantities specified in §335.61(c)(5) of this title (relating to Purpose, Scope, and Applicability). Records pertaining to on-site activities shall include, at a minimum, information regarding the waste character, classification and quantity, and the method (as described by codes in Appendix I, Table 2, handling codes for storage, processing and disposal methods of 40 Code of Federal Regulations Parts 264 and 265) and location of storage, processing, and disposal. Records regarding off-site activities shall include, at a minimum, the transporter identity, date of shipment and waste character, classification, and quantity;

(2) retain such records required by paragraph (1) ofthis subsection for a minimum of three years from the date of reporting in paragraph (3) of this subsection; and

(3) submit an annual storage, processing, and disposal summary on forms furnished or approved by the executive director containing such information for the calendar year as is specified in paragraph (1) of this subsection to the Texas Water Commission on or before January 21 of each year; provided, however, upon request by the generator the executive director may authorize a modification in the reporting period.

(b) Any generator who stores, processes, or disposes of hazardous waste on-site shall submit an annual report in accordance with the requirements of §335.71 of this title (relating to Annual Reporting).

§335.10. Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste.

(a) Except as provided in subsection (g) of this section, no generator of Class I industrial solid waste and no generator of municipal hazardous waste shipping municipal hazardous waste which is a part of a total quantity of waste generated in quantities greater than 100 kilograms in a calendar month, or quantities of acute hazardous waste in excess of quantities specified in §335.61 (c)(5) of this title (relating to Purpose, Scope, and Applicability) shall cause, suffer, allow, or permit the shipment of municipal hazardous waste or Class I waste consigned to an off-site solid waste, storage, processing, or disposal facility in Texas without preparing a Texas Water Commission (TWC) manifest. Any municipal hazardous waste or Class I waste generated in Texas for consignment to another state must be accompanied by the consignment state's manifest, if provided, or by a TWC manifest if the consignment state does not provide a manifest. A generator shall designate on the manifest one facility which is authorized to receive the waste described on the manifest. A generator may also designate one alternate facility which is authorized to receive the waste to the primary designated facility. An alternate facility shall be identified on the manifest in the item marked "special handling instructions and additional information." If the transporter is unable to deliver the waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste.

(b) The manifest shall contain the following information:

(1) the generator's U.S. Environmental Protection Agency (EPA) 12-digit identification number and the unique five-digit number assigned to the manifest (applicable to hazardous waste only);

(2) the total number of pages used to complete the manifest, plus the number of continuation sheets, if any (page 1 of);

(3) the company name, mailing address, and telephone number of the generator;

(4) the TWC state generator's registration and/or permit number;

(5) the first transporter's company name, EPA 12-digit identification number (applicable to hazardous waste only) and the state transporter's registration number;

(6) the company name, EPA 12-digit identification number (applicable to hazardous waste only) and state transporter's registration number for the second transporter. If more than two transporters are used, enter each additional transporter's company name, EPA 12-digit identification number, if appli cable, and the state transporter's registration number on the continuation sheet. Each continuation sheet has space to record two additional transporters. Every transporter must be listed;

(7) the company name, site address, EPA 12-digit identification number (applicable to hazardous waste only) and TWC state facility permit number of the storage, processing, or disposal facility and an alternate facility, if designated. The generator shall designate on the manifest only those storage, processing, or disposal facilities which are authorized under the Resource Conservation and Recovery Act (RCRA) of 1976, Subtitle C, or an approved state hazardous waste program administered in lieu thereof (applicable to hazardous waste only);

(8) the U.S. Department of Transportation (DOT) proper shipping name, hazard class, and ID number (UN/NA) for each hazardous waste as identified in 49 Code of Federal Regulations Parts 171-177. For Class I nonhazardous waste, use the TWC waste classification code description as it appears on the TWC notice of registration. If additional space is needed for waste descriptions, enter these additional descriptions in item 28 on the continuation sheet. The uniform hazardous waste manifest form has been designed to allow the listing of both federally regulated wastes and wastes regulated solely by the state. In order to distinguish between federally regulated wastes and other wastes, as required by DOT regulations (49 Code of Federal Regulations §172.201(a)(1)), the TWC has added a hazardous materials (HM) column on the manifest before the DOT description. When a waste shipment consists of both federally-regulated materials and state-regulated wastes, the hazardous materials (HM) column must be checked or marked for only those line entries which are regulated under federal law as hazardous wastes or hazardous materials;

(9) the number of containers for each waste and the appropriate abbreviation from Subchapter A, Appendix I, Table 1, for the type of container:

(10) the total quantity and unit of measure of each waste described on each line. The appropriate abbreviation for the unit of measure may be found in Appendix I, Table 1 of 40 Code of Federal Regulations Parts 264 or 265;

(11) the TWC waste classification code as assigned by the state; and

(12) a certification by the generator stating: "I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations, including applicable state regulations." If a mode other than highway is used, the word "highway" should be lined out and the appropriate mode (rail, water, or air) inserted in the space provided below the word "highway". If another mode in addition to the highway mode is used, enter the appropriate additional mode (e.g., and rail) in the space provided below the word "highway".

(c) the manifest shall consist of at least the number of copies which will provide the generator, each transporter, and the owner

or operator of the storage, processing, or disposal facility with one copy each for their records and another copy to be returned to the generator.

(d) at the time of waste transfer, the generator shall:

(1) sign the manifest by hand;

(2) obtain the handwritten signature of the initial transporter and date of acceptance on the manifest;

(3) retain one copy, in accordance with §335.13(a) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste); and

(4) give the transporter the remaining copies of the manifest.

(e) Forshipments of municipal hazardous waste or Class I waste within the United States solely by water (bulk shipments only), the generator shall send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(f) For rail shipments of municipal hazardous waste or Class I waste within the United States which originate at the site of generation, the generator shall send at least three copies of the manifest dated and signed in accordance with this section to:

(1) the next non-rail transporter, if any;

(2) the designated facility if transported solely by rail; or

(3) the last rail transporter to handle the waste in the United States if exported by rail.

(g) No manifest is required for the shipment of Class I waste which is not hazardous waste to property owned or otherwise effectively controlled by the owner or operator of an industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, provided that the property is within 50 miles of the plant or operation and the waste is not commingled with waste from any other source or sources. An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants or operations owned by the same person.

§335.11. Shipping Requirements for Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste.

(a) No transporter may cause, suffer, allow, or permit the shipment of solid waste for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste) to an off-site storage, processing, or disposal facility, unless the transporter:

(1) obtains a manifest completed by the generator in accordance with 335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste);

(2) upon receipt and prior to shipment, signs and dates the manifest acknowledging the acceptance of waste from the generator; and

(3) returns a signed copy to the generator before leaving the generator's property.

(b) The transporter shall ensure that the manifest accompanies the municipal hazardous waste or Class I waste.

(c) No transporter may cause, suffer, allow, or permit the delivery of a shipment of municipal hazardous waste or Class I waste to another transporter designated on the manifest, unless the transporter:

(1) obtains the date of delivery and the handwritten signature of the accepting transporter on the manifest;

(2) retains one copy of the manifest in accordance with §335.14(a) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste); and

(3) gives the remaining copies of the manifest to the accepting transporter.

(d) No transporter may cause, suffer, allow, or permit the delivery of a shipment of municipal hazardous waste or Class I waste to a storage, processing, or disposal facility, unless the transporter;

(1) obtains the date of delivery and the handwritten signature on the manifest, of the owner or operator of the facility designated on the manifest;

(2) retains one copy of the manifest in accordance with §335.14(a) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste); and

(3) gives the remaining copies of the manifest to the owner or operator of the facility designated on the manifest.

(e) The requirements of subsections (b)-(d) and (f) of this section do not apply to water (bulk shipment) transporters if:

(1) the waste is delivered by water (bulk shipment) to the facility designated on the manifest;

(2) a shipping paper containing all the information required on the manifest (excluding the identification numbers, generator certification, and signatures) accompanies the waste;

(3) the delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the facility on either the manifest or the shipping paper;

(4) the person delivering the waste to the initial water (bulk shipment) transporter obtains the date of delivery and the signature of the water (bulk shipment) transporter on the manifest and forwards it to the facility; and

(5) a copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with §335.14(b) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste).

(f) For shipments involving rail transportation, the requirements of subsection (b)-(e) of this section do not apply and the following requirements do apply:

(1) when accepting Class I waste from a nonrail transporter, the initial rail transporter must:

(A) sign and date the manifest acknowledging acceptance of the waste;

(B) return a copy of the manifest to the nonrail transporter;

(C) forward at least three copies of the manifest to:

(i) the next nonrail transporter, if any;

(ii) the designated facility, if the shipment is delivered to that facility by rail; or

(iii) the last rail transporter designated to handle the waste in the United States;

(D) retain one copy of the manifest and rail shipping paper in accordance with §335.14(c) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste).

(2) rail transporters must ensure that a shipping paper containing all the information required on the manifest (including the EPA identification numbers, generator certification, and signatures) accompanies the waste at all times. Intermediate rail transporters are not required to sign either the manifest or shipping paper.

(3) when delivering Class I waste or municipal hazardous waste to the designated facility, a rail transporter must:

(A) obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or shipping paper (if the manifest has not been received by the facility); and

(B) retain a copy of the manifest or signed shipping paper in accordance with §335.14(c) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste).

(4) when delivering municipal hazardous waste or Class I waste to a nonrail transporter, a rail transporter must:

(A) obtain the date of delivery and the handwritten signature of the next nonrail transporter on the manifest; and

(B) retain a copy of the manifest in accordance with §335.14(c) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Municipal

Hazardous Waste or Class I Industrial Solid Waste).

(5) before accepting municipal hazardous waste or Class I waste from a rail transporter, a nonrail transporter must sign and date the manifest and provide a copy to the rail transporter.

(g) Transporters who transport municipal hazardous waste or Class I industrial solid waste out of the United States shall:

(1) indicate on the manifest the date the municipal hazardous waste or Class I waste left the United States under the item labeled "special handling instructions and additional information";

(2) sign the manifest and retain one copy in accordance with §335.14(c) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste); and

(3) return a signed copy of the manifest to the generator.

(h) The transporter must deliver the entire quantity of municipal hazardous waste or Class I waste which he has accepted from a generator or a transporter to:

(1) the designated facility listed on the manifest;

(2) the alternate designated facility if the waste cannot be delivered to the designated facility because an emergency prevents delivery;

(3) the next designated transporter; or

(4) the place outside the United States designated by the generator.

(i) If the transporter cannot deliver the waste in accordance with subsection (h) of this section, the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

§335.12. Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities.

(a) No owner or operator of a storage, processing, or disposal facility may accept delivery of solid waste for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste), for off-site storage, processing, or disposal unless:

(1) a manifest accompanies the shipment which designates that facility to receive the waste; and

(2) the owner or operator signs the manifest and immediately gives at least one copy of the signed manifest to the transporter;

(3) retains one copy of the manifest in accordance with §335.15(a) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities); and

(4) within 30 days after the delivery, sends a copy of the manifest to the generator.

(b) If a facility recives, from a rail or water (bulk shipment) transporter, municipal hazardous waste or Class I waste which is accompanied by a shipping paper containing all the information required on the manifest, the owner or operator, or his agent, shall:

(1) sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the municipal hazardous waste or Class I waste covered by the manifest or the shipping paper was received;

(2) immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(3) within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper signed and dated to the generator; and

(4) retain at the facility a copy of each shipping paper and manifest in accordance with §335.15(a) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities).

(c) If a facility receives municipal hazardous waste or Class I waste accompanied by a manifest, or in the case of shipments by rail or water (bulk shipment), by a shipping paper, the owner or operator, or his agent, must note any significant discrepancies on each copy of the manifest or shipping paper (if the manifest has not been received).

(1) manifest discrepancies are differences between the quantity or type of municipal hazardous waste or Class I waste designated on the manifest or shipping paper, and the quantity or type of municipal hazard ous waste or Class I waste a facility actually received. Significant discrepancies in type ar obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid or toxic constituents not reported in the manifest or shipping paper. Significant discrepancies in quantity are:

(A) for bulk weight, variations greater than 10% inweight; and

(B) for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload.

(2) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the executive director a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. The commission does not intend that the owner or operator of a facility perform the general waste analysis required by 40 Code of Federal Regulations §264.13 or §265.13 before signing the manifest and giving it to the transporter. However, subsection (c) of this section does require reporting an unreconciled discrepancy discovered during later analysis.

§335.13. Recordkeeping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste.

(a) The generator shall retain a copy of each manifest required by §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste) for a minimum of three years from the date of shipment by the generator.

(b) The generator, including any person exporting hazardous waste to a foreign country, shall prepare a monthly summary from the manifests, regardless of whether shipments were made during the month, summarizing the quantity and classification of each waste shipment itemized by manifest document number. Such monthly summary shall be submitted to the Texas Water Commission on the 25th day of each month for shipments originating during the previous month on monthly summary forms provided or approved by the executive director. A generator must keep a copy of each summary for a period of at least three years from the due date of the summary. A generator required to comply with this subsection shall continue to prepare and submit monthly summaries, regardless of whether shipments were made during a particular month, by preparing and submitting a monthly summary indicating that no shipments were made during that month. Upon request of the generator, the executive director may authorize a modification in the reporting period.

(c) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

(d) In addition to the requirements of this section, generators of hazardous waste are subject to the reporting and recordkeeping requirements of §335.70 of this title (relating to Recordkeeping) and §335.71 of this title (relating to Annual Reporting).

(e) A generator 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 that 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 municipal hazardous waste or Class I industrial solid waste.

(f) A generator 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. The exception report must include:

(1) a legible copy of the manifest for which the generator does not have confirmation of delivery; and

(2) a copy of a letter signed by the generator or his authorized representative explaining the efforts taken to locate the municipal hazardous waste or Class I industrial solid waste and the results of those efforts.

§335.14. Recordkeeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste.

(a) A transporter of municipal hazardous waste or Class I industrial solid waste shall retain a copy of each manifest signed by the generator, the transporter, and the next designated transporter, or the owner or operator of the facility designated on the manifest for a minimum of at least three years from the date of initial shipment.

(b) For shipments delivered to the facility designated on the manifest by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of a shipping paper containing all the information required by §335.11(e) of this title (relating to Shipping Requirements for Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste) for a minimum of three years from the date of initial shipment.

(c) For shipments of municipal hazardous waste or Class Iwaste by rail within the United States:

(1) the initial rail transporter must keep a copy of the manifest and shipping paper with all of the information required in §335.11(f)(2) of this title (relating to Shipping Requirements for Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste) for a period of three years from the date the municipal hazardous waste or Class I waste was accepted by the initial transporter; and

(2) the final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the municipal hazardous waste or Class I waste was accepted by the initial transporter.

(d) A transporter who transports waste out of the United States must retain a copy of the manifest indicating that the municipal hazardous waste or Class I waste left the United States for a minimum of three years from the date of initial shipment.

(e) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

§335.15. Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities. This section does not apply to owners and operators that store, process or dispose of municipal hazardous waste or Class I industrial solid waste on-site and do not receive any Class I waste from off-site sources.

(1) the owner or operator of the storage, processing, or disposal facility designated on the manifest shall retain a copy of each manifest or, in the case of shipments by rail or water (bulk shipment), a copy of each manifest and shipping paper, for a minimum of three years from the date of initial shipment by the generator.

(2) the owner or operator shall prepare a monthly summary from his copy of all manifests received during the month (in those cases where a manifest is required), summarizing the quantity, character, and the method of storage, processing, and disposal of each municipal hazardous waste or Class I waste shipment received, itemized by manifest document number. Such monthly summary report shall be submitted to the Texas Water Commission on the 25th day of each month for wastes or manifests received during the prior month and on monthly summary forms provided or approved by the executive director. Persons who store, process, or dispose of hazardous waste are subject to the further requirements of §335.114(a) of this title (relating to Reporting Requirements) and §335.154(a) of this title (relating to Reporting Requirements for Owners and Operators) for the preparation of a monthly summary. The appropriate abbreviations from Appendix I, Tables 1 and 2 of 40 Code of Federal Regulations Parts 264 or 265 are to be used for units of measure and for handling codes for storage, processing, and disposal methods.

(3) the owner or operator shall submit a monthly report on forms provided or approved by the executive director sumarizing the types and volumes of any municipal hazardous waste or Class I waste received without manifests, as in the case of shipments by rail or water (bulk shipments) without shipping papers. This report shall be prepared with respect to any Class I waste or municipal hazardous waste received without a manifest, regardless of quantity, and shall include the following information:

(A) the Environmental Protection Agency (EPA) identification number (applicable to hazardous waste only), name, and address of the facility;

(B) the date the facility received the waste;

(C) the EPA identification number (applicable to hazardous waste only), name, and address of the generator and the transporter, if available;

(D) a description and the quantity of each municipal hazardous waste or Class I industrial solid waste the facility received which was not accompanied by a manifest;

(E) the method of storage, processing, or disposal for each municipal hazardous waste or Class I industrial solid waste;

(F) the certification signed by the owner or operator of the facility or his authorized representative; and

(G) a brief explanation of why the waste was unaccompanied by a manifest, if known.

(4) The owner or operator shall retain a copy of each summary required by paragraphs (2) and (3) of this subsection for a minimum of three years from the date of each summary.

(5) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

§335.17. Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials. For the purposes of the definition of solid waste in this title (relating to Definitions) and §335.24 of this title (relating to Re quirements for Recyclable Materials and Nonhazardous Recyclable Materials):

(1) a spent material is any material that has beenused and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(2) sludge has the same meaning used in the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §2.

(3) a by-product is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form in which it is produced by the process;

(4) a material is reclaimed if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents

(5) a material is used or resued if it is either:

(A) employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metalcontaining secondary materials); or

(B) employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(6) scrap metal is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wires) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled.

(7) a material is recycled if it is used, reused, or reclaimed.

(8) a material is accumulated speculatively if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that, during the calendar year (commencing on January 1), the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75% by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75% requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under 40 Code of Federal Regulations §261.4(c) are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however.

§335.18. Variances from Classification as a Solid Waste. In accordance with the standards and criteria in 335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste) and the procedures in §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste orto be Classified as a Boiler), the executive director may determine on a case-by-case basis that the following recyclable materials and nonhazardous recyclable materials are not solid wastes:

(1) materials that are accumulated speculatively without sufficient amounts being recycled (as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials));

(2) materials that are reclaimed and then reused within the original primary production process in which they were generated; or

(3) materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.

§335.19. Standards and Criteria for Variances from Classification as a Solid Waste.

(a) The executive director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The executive director's decision will be based on the following standards and criteria:

(1) the manner in which the material is expected to berecycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);

(2) the reason that the applicant has accumulated the material for one or more years without recycling 75% of the weight or volume accumulated at the beginning of the year;

(3) the quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(4) the extent to which the material is handled to minimize loss;

(5) other relevant factors.

(b) The executive director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original primary production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(1) how economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

(2) the prevalence of the practice on an industry-wide basis;

(3) the extent to which the material is handled before reclamation to minimize loss;

(4) the time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

(5) the location of the reclamation operation in relation to the production process;

(6) whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(7) whether the person who generates the material also reclaims it;

(8) other relevant factors.

(c) The executive director may grant requests for a variance from classifying as a solid waste those materials that have been reclaimed but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:

(1) the degree of processing the material has undergone and the degree of further processing that is required;

(2) the value of the material after it has been reclaimed;

(3) the degree to which the reclaimed material is like an analogous raw material;

(4) the extent to which an end market for the reclaimed material is guaranteed;

(5) the extent to which the reclaimed material is handled to minimize loss;

(6) other relevant factors.

§335.20. Variance to be Classified as a Boiler. In accordance with the standards and criteria in §335.1 of this title (relating to Definitions) (definition of boiler), and the procedures in §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler), the executive director may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in §335.1 of this title (relating to Definitions), after considering the following criteria:

(1) The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

(2) The extent to which the combustion chamber and energy recovery equipment are of integral design;

(3) The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel;

(4) The extent to which exported energy is utilized;

(5) The extent to which the device is in common and customary use as a boiler functioning primarily to produce steam, heated fluids, or heated gases; and

(6) Other factors, as appropriate.

§335.21. Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler. The executive director will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed flame combustion devices as boilers.

(1) The application must address the relevant criteria contained in §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste) and §335.20 of this title (relating to Variance to be Classified as a Boiler).

(2) The executive director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement

and radio broadcast in the locality where the recycler is located. The executive director will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The executive director will issue a final decision after receipt of comments and after the hearing (if any). Any person affected by a final decision of the executive director may petition the commission to review the decision. Any person affected by the final decision or order of the commission may file a petition for judicial review within 30 days after the decision or order is final and appealable, in accordance with Chapter 273 of this title (relating to Procedures after Final Decision) and the Texas Administrative Procedure and Texas Register Act, Article 6252-13a.

§335.22. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-By-Case Basis.

(a) The commission may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in §335.24(b)(3) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) should be regulated under §335.24(d) and (e) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials). The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. The procedures for this decision are set forth in §335.23 of this title (relating to Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities). In making this decision, the commission will consider the following factors:

(1) the types of materials accumulated or stored and the amounts accumulated or stored;

(2) the method of accumulation or storage;

(3) the length of time the materials have been accumulated or stored before being reclaimed;

(4) whether any contaminants are being released into the environment, or are likely to be so released; and

(5) other relevant factors.

§335.23. Procedures for Case-By-Case Regulation of Hazardous Waste Recycling Activities. The commission will use the following procedures when determining whether to regulate hazardous waste recycling activities described in §335.24(b) (3) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) under the provisions of §335.24(d) and (e) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), rather than under the provisions governing recyclable materials utilized for Precious Metal Recovery under Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities).

(1) If a generator is accumulating the waste, the commission will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of Subchapters A-C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of Hazardous Waste), respectively. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the commission will hold a public hearing The commission will provide notice of the hearing to the public and allow public participation at the hearing. The commission will issue a final order after the hearing stating whether or not compliance with Subchapters A-C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of Hazardous Waste), respectively, is required. A person affected by a final decision or order of the commission may file a petition for judicial review within 30 days after the decision or order is final and appealable, in accordance with Chapter 273 of this title (relating to Procedures After Final Decision) and the Texas Administrative Procedure and Texas Register Act, Article 6252-13a.

(2) If the person is accumulating the recyclable material at a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of Chapter 305 of this title (relating to Consolidated Permits) and Chapter 261 of this title (relating to Introductory Provisions; Chapter 263 of this title (relating to General Rules); Chapter 265 of this title (relating to Procedures Before Public Hearing); Chapter 267 of this title (relating to Procedures During Public Hearing); Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner); Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission); and Chapter 273 of this title (relating to Procedures After Final Decision). The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the commission's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The proposal for decision accompanying the permit will include the reasons for the commission's determination. The question of whether the commission's decision was proper will remain open for consideration during the public comment period and in any subsequent hearing.

§335.24. Requirements For Recyclable Materials and Nonhazardous Recyclable Materials.

(a) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections (d)-(f) of this section, except for the materials listed in subsections (b) and (c) of this section. Hazardous wastes that are recycled will be known as recyclable materials. Non hazardous indus trial wastes that are recycled will be known as non hazardous recyclable materials. Nonhazardous recyclable materials are subject to the requirements of subsections (h) and (i) of this section.

(b) The following recyclable materials are not subject to the requirements of this section, except as provided in subsections (g) and (h) of this section, but are regulated under the applicable provisions of Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and all applicable provisions in Chapter 305 of this title (relating to Consolidated Permits) and Chapter 261 of this title (relating to Introductory Provisions; Chapter 263 of this title (relating to General Rules); Chapter 265 of this title (relating to Procedures Before Public Hearing); Chapter 267 of this title (relating to Procedures During Public Hearing); Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner); Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission); and Chapter 273 of this title (relating to Procedures After Final Decision):

(1) recyclable materials used in a manner constituting disposal;

(2) hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) or Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities);

(3) recyclable materials from which precious metals are reclaimed;

(4) spent lead-acid batteries that are being reclaimed.

(c) The following recyclable materials are not subject to regulation under Subchapters B-I of this chapter, (relating to Hazardous Waste Management-General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting

Standards for Owners and Operators of Hazardous Waste Storage, Processing, and Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Prohibition on Open Dumps), respectively, or Chapter 305 of this title (relating to Consolidated Permits), or Chapter 261 of this title (relating to Introductory Provisions; Chapter 263 of this title (relating to General Rules); Chapter 265 of this title (relating to Procedures Before Public Hearing); Chapter 267 of this title (relating to Procedures During Public Hearing); Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner); Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission); and Chapter 273 of this title (relating to Procedures After Final Decision), except as provided in subsections (g) and (h) of this section:

(1) industrial ethyl alcohol that is reclaimed;

(2) used batteries (or used battery cells) returned to a battery manufacturer for regeneration;

(3) used oil that exhibits one or more of the characteristics of hazardous waste;

(4) scrap metal;

(5) fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices;

(6) oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility; or

(7) coke from the iron and steel industry that contains hazardous waste from the iron and steel production process.

(d) Generators and transporters of recyclable materials are subject to the applicable requirements of Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste), and the notification requirements of §335.6 of this title (relating to Notification Require ments), except as provided in subsections (a)-(c) of this section.

(e) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of this chapter, and Chapter 305 of this title (relating to Consolidated Permits) and Chapter 261 of this title (relating to Introductory Provisions; Chapter 263 of this title (relating to General Rules); Chapter 265 of this title (relating to Procedures Before Public Hearing); Chapter 267 of this title (relating to Procedures During Public Hearing); Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner); Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission); and Chapter 273 of this title (relating to Procedures After Final Decision), and the notification requirement under §335.6 of this title (relating to Notification Requirements), except as provided in subsections (a)-(c) of this section. The recycling process itself is exempt from regulation.

(f) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsections (a)-(c) of this section:

(1) notification requirements under §335.6 of this title (relating to Notification Requirements);

(2) Section 335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities.

(g) Except as provided in subsection (h) of this section, recyclable materials (excluding those listed in subsections (c)(1) and (c)(5)-(c)(7) of this section), remain subject to the requirements of 335.4 of this title (relating to General Prohibitions), §335.6 of this title (relating to Notification Requirements), §335.9 of this title (relating to Shipping and Reporting Procedures Applicable to Generators), §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste), §335.11 of this title (relating to Shipping Requirements for Transporters of Class I Industrial Solid Waste), §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste), §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste), and §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), as applicable.

(h) Industrial solid wastes that are nonhazardous recyclable materials; recyclable materials listed in subsection (b)(4) and subsections (c)(2)-(c)(4) of this section; hazardous waste fuels that are spent materials and by-products and that are hazardous only because they exhibit a characteristic of hazardous waste; and hazardous waste fuels produced from hazardous waste by blending or other processing by a person who neither generated the waste nor burns the fuel remain subject to the requirements of §335.4 of this title (relating to General Prohibitions) and §335.6 of this title (relating to Notification Requirements). Such wastes may also be subject to the requirements of §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste), §335.11 of this title (relating to Shipping Requirements for Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste), §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing or Disposal Facilities), §335.13 of this title (relating to Record-Keeping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste), §335.14 of this title (relating to Record-Keeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste), and §335.15 of this title (relating to Record Keeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), as applicable, if the executive director determines that such requirements are necessary to protect human health and the environment. In making the determination, the executive director shall consider the following criteria:

(1) the waste's toxicity, corrosivity, flammability,ability to sensitize or irritate, or propensity for decompcsition and creation of sudden pressure;

(2) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;

(3) the persistence of any objectionable constituent or any objectionable degradation product in the waste;

(4) the potential for the objectionable constituent to degrade into non-harmful constituents;

(5) the degree to which the objectionable constituent bioaccumulates in ecosystems;

(6) the plausible types of improper management to which the waste could be subjected;

(7) the nature and severity of potential damage to the public health and environment;

(8) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment;

(9) other relevant factors.

(i) Except as provided in the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, 4(f)(1), facilities managing recyclable materials that are required to obtain a permit under this section may also be permitted to manage non-hazardous recyclable materials at the same facility if the executive director determines that such regulation is necessary to protect human health and the environment. In making this determination, the executive director shall consider the following criteria:

(1) whether managing nonhazardous recyclable materials will create an ad-

ditional risk of release of the hazardous recyclable materials into the environment;

(2) whether hazardous and nonhazardous wastes that are incompatible are stored and/or processed in the same or connected units;

(3) Whether the management of recyclable materials and nonhazardous recyclable materials is segregated within the facility;

(4) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;

(5) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;

(6) the persistence of any objectionable constituent or any objectionable degradation product in the waste;

(7) the potential for the objectionable constituent to degrade into nonharmful constituents;

(8) the degree to which the objectionable constituent bioaccumulates in ecosystems;

(9) the plausible types of improper management to which the waste could be subjected;

(10) the nature and severity of potential damage to the public health and environment;

(11) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment;

(12) other relevant factors.

§335.30. Appendix I. The following appendix will be used for the purposes of Subchapter A which relate to municipal hazardous waste and industrial solid waste.

Table 1

Types of Containers

DM = Metal drums, barrels, kegs

DW = Wooden Drums, barrels, kegs

DF = Fiberboard or plastic drums, barrels, kegs

TP = Tanks portable

TT = Cargo tanks (tank trucks)

TC = Tank cars

DT = Dump truck

CY = Cylinders

CM = Metal boxes, cartons, cases (including roll-offs)

CW = Wooden boxes, cartons, cases

CF = Fiber or plastic boxes, cartons, cases

BA = Burlap, cloth, paper or plastic bags.

TEXAS WATER COMMISSION
P.O. Box 13087, Capitol Station
Austin, Texas 78711-3087

Please print or type (Form designed for use on elite (12-pitch) typewriter)

Form approved OMB No. 2000-0404, Expires 7-31-86

UNIFORM HAZARDOUS WASTE MANIFEST	1 Generator's US EPA ID No.	Manifest Document No.	2. Page 1 of	Information in the shaded areas is not required by Federal law.

3 Generator's Name and Mailing Address 4. Generator's Phone ( )	A. State Manifest Document Number B. State Generator's ID
5. Transporter 1 Company Name — 6. US EPA ID Number	C. State Transporter's ID D. Transporter's Phone
7. Transporter 2 Company Name — 8. US EPA ID Number	E. State Transporter's ID F. Transporter's Phone
9. Designated Facility Name and Site Address — 10. US EPA ID Number	G. State Facility's ID H. Facility's Phone

11A. HM	11. US DOT Description (including Proper Shipping Name, Hazard Class, and ID Number)	12 Containers No	Type	13 Total Quantity	14 Unit Wt/Vol	I. Waste No
	a.					
	b.					
	c.					
	d.					

J. Additional Descriptions for Materials Listed Above	K. Handling Codes for Wastes Listed Above

15. Special Handling Instructions and Additional Information

GENERATOR

16. **GENERATOR'S CERTIFICATION:** I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations.

Unless I am a small quantity generator who has been exempted by statute or regulation from the duty to make a waste minimization certification under Section 3002(b) of RCRA, I also certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the method of processing, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment.

Printed/Typed Name	Signature	Month Day Year

TRANSPORTER

17. Transporter 1 Acknowledgement of Receipt of Materials — Date

Printed/Typed Name	Signature	Month Day Year

18. Transporter 2 Acknowledgement of Receipt of Materials — Date

Printed/Typed Name	Signature	Month Day Year

FACILITY

19. Discrepancy Indication Space

20. Facility Owner or Operator: Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19. — Date

Printed/Typed Name	Signature	Month Day Year

EPA Form 8700-22 (Rev. 4-85) Previous edition is obsolete. White - original Pink-TSD Facility Yellow-Transporter Green-Generator's first copy
TWC 0311 (Rev. 09-01-85)

Please print or type. (Form designed for use on elite (12-pitch) typewriter.)

Form approved OMB No. 2000-0404 Expires 7-31-86

UNIFORM HAZARDOUS WASTE MANIFEST
(Continuation Sheet)

21. Generator's US EPA ID No. | Manifest Document No.

22. Page | Information in the shaded areas is not required by Federal law.

23. Generator's Name

L. State Manifest Document Number

M. State Generator's ID

24. Transporter ____ Company Name | 25. US EPA ID Number

N. State Transporter's ID

O. Transporter's Phone

26. Transporter ____ Company Name | 27. US EPA ID Number

P State Transporter's ID

Q. Transporter's Phone

28A. HM	28. US DOT Description (including Proper Shipping Name, Hazard Class, and ID Number)	29. Containers No	Type	30 Total Quantity	31 Unit Wt/Vol	R Waste No
	a.					
	b.					
	c.					
	d.					
	e.					
	f.					
	g.					
	h.					
	i.					

S. Additional Descriptions for Materials Listed Above

T. Handling Codes for Wastes Listed Above

32. Special Handling Instructions and Additional Information

GENERATOR

33. Transporter ____ Acknowledgement of Receipt of Materials | Date

Printed/Typed Name | Signature | Month Day Year

34. Transporter ____ Acknowledgement of Receipt of Materials | Date

Printed/Typed Name | Signature | Month Day Year

TRANSPORTER

35 Discrepancy Indication Space

FACILITY

EPA Form 8700-22 (3-84) White - original Pink-TSD Facility Yellow-Transporter Green-Generator's first copy

TDWR-0311B

When using the Uniform Waste Manifest for rail or water (bulk shipment) or international shipments refer to the applicable TWC regulations.

REPORT SPILLS AND/OR DISCHARGES TO THE TEXAS SPILL RESPONSE CENTER AT 512/463-7727 (24 HOURS)

INSTRUCTIONS TO GENERATOR Please Type or Print Clearly)

(1) Enter the Generator's U.S. EPA twelve digit identification number and the unique five digit number assigned to this manifest by the generator if you are shipping hazardous waste.

(2) Enter the total number of pages used to complete this manifest.

(3) Enter the company name and mailing address.

(4) Provide a phone number where an authorized agent of your firm may be reached in the event of an emergency.

(5) Enter the company name of the first transporter and their U.S. EPA ID Number.

(6) If applicable, enter the company name of the second transporter and their U.S. EPA ID Number. If more than two transporters are used, enter each additional transporter's information on the Continuation Sheet (EPA form 8700-22A).

(7) Enter the company name, site address, and U.S. EPA ID Number of the facility designated to receive the waste listed on this manifest.

(8) **COMPLETE ALL STATE OF TEXAS INFORMATION A. THROUGH H. IN THE SHADED AREAS.**

(9) Complete the waste description table as follows:

(A) ITEM 11A—When shipping an EPA/DOT regulated hazardous waste or material in conjunction with solely state regulated waste enter an "x" in the HM box before each EPA/DOT regulated wate/material description.

(B) ITEM 11—Enter the U.S. DOT Proper Shipping Name, Hazard Class, and ID Number (UN/NA) for each waste identified. If it is a Class I nonhazardous waste use the Texas Waste Code description.

(C) ITEM 12—Enter the number of containers for each waste and the appropriate abbreviation for type located in Subchapter A of the TDWR Industrial Solid Waste Rules.

(D) ITEM 13—Enter the total quantity of waste described on each line.

(E) ITEM 14—Enter the appropriate letter from the table below for the unit of measure.

G = Gallons (liquids only)	L = Liter (liquids only)
P = Pounds	K = Kilograms
T = Tons (2000 lbs.)	M = Metric Tons (1000 kg.)
Y = Cubic Yards	N = Cubic Meters

(F) ITEM I—Enter the appropriate TWC State Waste Code for each waste you are shipping.

(10) The Generator must read, sign (by hand), and date the certification statement. If a mode other than highway is used, the word "highway" should be lined out and the appropriate mode (rail, water or air) inserted in the space below. In signing the waste minimization certification statement, those generators shipping hazardous waste who have not been exempted by statute or regulation from the duty to make a waste minimization certification are also certifying that they have complied with the waste minimization requirements.

(11) The manifest must be signed and dated by the first transporter in the presence of the Generator. If more than one transporter is to be used, the Generator must provide additional copies for their use

*(12) Generator retains green copy, sending remaining copies with the driver.

INSTRUCTIONS FOR THE TRANSPORTER (Please Type or Print Clearly)

(1) As driver of the transport vehicle, you are responsible for ensuring that all waste received by you arrives at the specified destination.

(2) Sign and date the space provided, certifying the waste amounts in **PART I** were received for transport. **NOTE:** If you are unable to carry out the delivery of the shipment as specified, dial the emergency phone numbers given in **PART I** notifying the **GENERATOR**.

(3) Upon delivery of the shipment, the **TSD** Facility Owner/Operator is to sign for the shipment in your presence and fill in "date received"

*(4) Separate the yellow copy and retain for your records. Leave the remaining copies with the **TSD** Facility Owner/Operator.

INSTRUCTIONS TO TREATMENT, STORAGE AND DISPOSAL (TSD) FACILITY OWNER/OPERATOR (Please Type or Print Clearly)

(1) The authorized representative of the designated (or alternate) facility's owner or operator must note in **ITEM 19** any significant discrepancy between the waste described on the manifest and the waste actually received at the facility.

(2) Enter date received and sign in the presence of the driver declaring receipt of the wastes and verifying the quantities in the table in **PART I**.

(4) Retain the pink copy for your records and return the completed original (white) copy to the **GENERATOR**.

* U.S. EPA and TWC regulations require that copies of this Uniform Hazardous Waste Manifest be retained for a period of three (3) years in your company records. Do not send to TWC unless otherwise notified by these departments.

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

Issued in Austin, Texas, on January 17, 1986.

TRD-8600151 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Earliest possible date of adoption:
February 25, 1986
For further information, please call
(512) 463-7875.

★ ★ ★

Introductory Provisions

★31 TAC §§355.1-355.3

The Texas Water Development Board proposes the repeal of §§355.1-355.3, 355.31, 355.32, 355.51-355.60, 355.71-355.76, 355.81-355.86, and 355.91, concerning the water assistance fund. These sections cover the policy and procedures governing loans to political subdivisions under the Texas Water Code, Chapter 15.

The provisions of House Bill 2, 69th Legislature, 1985, which became effective November 5, 1985, substantially revise the financial programs which the board administers. Therefore, these sections require substantial revisions, which can best be accomplished by the repeal of the current sections and adoption of new sections. The new sections will be located in Chapter 353, which will incorporate all rules regarding board loans and acquisition in projects, including provisions necessitated by House Bill 2.

Gladys Stansberry, director of accounting, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Ms. Stansberry also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the increased efficiency of having all rules relating to board loan and acquisition programs in one chapter. There will be no economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to M. Reginald Arnold II, Development Fund Manager, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711.

The repeals are proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§355.1. Scope of Rules.

§355.2. Definitions of Terms.

§355.3. Suspension of Rules.

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

Issued in Austin, Texas, on January 10, 1986.

TRD-8600432 Suzanne Schwartz
General Counsel
Texas Water Development Board

Earliest possible date of adoption:
February 17, 1986
For further information, please call (512) 463-7850.

★ ★ ★

Policy Declarations

★31 TAC §355.31, §355.32

The repeals are proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§355.31. General Policies.

§335.32. Requirements as to Maturities.

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

Issued in Austin, Texas, on January 10, 1986.

TRD-8600433 Suzanne Schwartz
General Counsel
Texas Water Development Board

Earliest possible date of adoption:
February 17, 1986
For further information, please call (512) 463-7850.

★ ★ ★

Applications to the Board

★31 TAC §§355.51-355.60

The repeals are proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§355.51. Application for Financial Assistance.

§355.52. Required General Information.

§355.53. Required Environmental Data.

§355.54. Required Fiscal Data.

§355.55. Required Engineering Feasibility Data.

§355.56. Required Legal Data.

§355.57. Return of Insufficient Application.

§355.58. Certification of Complete Application.

§355.59. Board Consideration of Application.

§355.60. Action of the Board on Application.

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

Issued in Austin, Texas, on January 10, 1986.

TRD-8600434 Suzanne Schwartz
General Counsel
Texas Water Development Board

Earliest possible date of adoption:
February 17, 1986
For further information, please call (512) 463-7850.

Closing of Loans

★31 TAC §§355.71-355.76

The repeals are proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§355.71. Engineering Design Data Prerequisites.

§355.72. Land and Right-of-Way Acquisition Prerequisites.

§355.73. Permits, Approvals, and Resolution Prerequisites.

§355.74. Legal and Fiscal Document Prerequisites.

§355.75. Bid Tabulation and Awarding Contracts.

§355.76. Closing.

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

Issued in Austin, Texas, on January 10, 1986.

TRD-8600435 Suzanne Schwartz
General Counsel
Texas Water Development Board

Earliest possible date of adoption:
February 17, 1986
For further information, please call (512) 463-7850.

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Construction Phase

★31 TAC §§355.81-355.86

The repeals are proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§355.81. Preconstruction Requirements.

§355.82. Inspection During Construction.

§355.83. Alterations in Approved Plans and Specifications.

§355.84. Inspection of Materials.

§355.85. Approval of Completion of Work.

§355.86. Contractor Bankruptcy and Bonding Company.

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

Issued in Austin, Texas, on January 10, 1986.

TRD-8600436 Suzanne Schwartz
General Counsel
Texas Water Development Board

Earliest possible date of adoption:
February 17, 1986
For further information, please call (512) 463-7850.

Post-Construction Responsibilities Compliance Procedures

★31 TAC §355.91

The repeal is proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§355.91. General Responsibilities.

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

Issued in Austin, Texas, on January 10, 1986.

TRD-8600437 Suzanne Schwartz
General Counsel
Texas Water Development Board

Earliest possible date of adoption:
February 17, 1986
For further information, please call (512) 463-7850.

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Chapter 363. Rules Relating to Financial Programs

Introductory Provisions

★31 TAC §§363.1-363.3

The Texas Water Development Board proposes the repeal of §§363.1-363.3, 363.31-363.34, 363.52-363.57, 363.71, 363.72, 363.81-363.84, 363.91, 363.92, 363.102-363.107, 363.111, 363.112, 363.121-363.126, 363.141, 363.161-363.166, and 363.181, concerning rules relating to financial programs. These sections cover the policy and procedures governing loans to political subdivisions under the Texas Water Code, Chapter 17, and board participation on behalf of the state in water, storage, and wastewater facilities under the Texas Water Code, Chapter 16.

The provisions, of House Bill 2, 69th Legislature, 1985, which became effective November 5, 1985, substantially revise the financial programs which the board administers. Therefore, these sections require substantial revisions which can best be accomplished by the repeal of the current sections and adoption of new sections under Chapter 363. The new sections will combine that current Chapter 363 and portions of Chapter 355, and also will incorporate changes necessitated by House Bill 2.

Gladys Stansberry, director of accounting, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Ms. Stansberry also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the increased efficiency of having all rules relating to board loan and acquisition programs in one chapter. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to M. Reginald Arnold II, Development Fund Manager, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711.

The repeal of these sections is proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§363.1. Scope of Rules

§363.2. Definition of Terms.

§363.3. Suspension of Rules.

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

Issued in Austin, Texas, on January 10, 1986.

TRD-8600438 Suzanne Schwartz
General Counsel
Texas Water Development Board

Earliest possible date of adoption:
February 17, 1986
For further information, please call (512) 463-7850.

★ ★ ★

★31 TAC §§363.1-363.4

The Texas Water Development Board proposes new §§363.1-363.4, 363.31-363.38, 363.52-363.60, 363.71, 363.72, 363.81-363.85, 363.91, 363.92, 363.101-363.108, 363.111, 363.112, 363.121-363.126, 363.141, 363.161-363.165, and 363.181, concerning rules relating to financial programs.

These new sections replace existing Chapter 363 and part of Chapter 355, which are proposed for repeal, and incorporate additions and changes to the board's financial programs necessitated by House Bill 2, 69th Legislature, 1985, effective November 5, 1985. The new sections contain many provisions similar to those in Chapters 363 and 355. Substantial changes and additions will be noted in the following. These new sections provide policy and procedural guidance for the preparation and processing of all applications for board loans under the Texas Water Code, Chapters 15 and 17, from development funds and water assistance funds, and for the state acquisition of water, storage, and wastewater facilities under the Texas Water Code, Chapter 16.

In §363.2, the definitions of conservation, developer project, flood control program, optimum development, regional facility, wastewater client and water treatment client are added. Nonprofit water supply corporations are included within the definition of participating political subdivision, thereby making them eligible for board financial assistance in accordance with the provisions of House Bill 2. Definitions of terms relating to the flood control program are also added. Various definitions are revised to reflect changes necessitated by House Bill 2, including the additional purposes of loans and state acquisition authorized under that Act.

Sections 363.31-363.38, set out proposed interpretation of the various loan and acquisition programs. These policies include requiring applicants to use their own resources to the maximum extent possible, to utilize the loan program rather than the acquisition program, and the board's policy to promote water conservation. In §363.33, priority is placed on funding projects which will alleviate existing flooding problems of developed areas, and for projects where the applicant and the board will share costs. Section 363.36 provides for the board to report to the legislature, legislative budget board, and governor concerning projects for which the board does not have the financial resources to assist applicants. Section 363.37 provides that, as a general rule, an applicant for financial assistance must obtain required state permits before the board would provide financial assistance. Section 363.38 requires that the board be provided a specific schedule for purchase of the state's interest in an acquisition project. As part of the regional water and wastewater treatment facility acquisition program, the board will participate in the acquisition of facility sites and excess capacity in water and wastewater mains and interceptors. The board also would participate in the purchase of reserve capacity in treatment facilities. Preference in the acquisition program would be given to regional wastewater treatment entities designated under the Texas Water Code, Chapter 26.

Sections 363.52-363.60 concern application requirements. Most of the requirements of the previous sections from Chapters 363 and 355 regarding application requirements will remain, but with modifications based on the expanded functions provided by House Bill 2. Application requirements concerning engineering feasibility data for flood control projects are provided in §363.56; the feasibility data required for sewer related projects are set out in §363.57.

The applicant is required to submit information concerning its existing water conservation program in §363.52(b)(12) and (13), and to submit a water conservation plan for approval (§363.59). Section 363.85 requires approval of an applicant's water conservation program before loan funds may be released.

Gladys Stansberry, director of accounting, has determined that for the first five-year period the sections will be in effect, there will

be no fiscal implications as a result of enforcing or administering the sections.

Ms. Stansberry also has determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of enforcing the sections as proposed will be increased ease in dealing with one set of rules for all board loan and acquisition programs under the development fund and water assistance fund, and the ability of political subdivisions to participate in the loan and acquisition programs, as expanded by House Bill 2. There will be no economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to M. Reginald Arnold II, Development Fund Manager, P.O. Box 13231, Austin, Texas 78711-3231.

The new sections are proposed under the Texas Water Code, §6.101, which provides the board with the authority to make rules necessary to carry out its powers and duties.

§363.1. Scope of Rules. These sections, adopted pursuant to the Texas Water Code, §6.101, shall govern the board's Water Loan Assistance Program, Water Development Program, Water, Wastewater, and Storage Facilities Acquisition Program, Water Quality Enhancement Program, and Flood Control Program as authorized by the constitution of the State of Texas, Article III, §§49-c, 49-d, 49-d-1, 49-d-2, and 49-d-3 and the Texas Water Code, Chapters 15, 16, and 17.

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

Applicant—Any participating political subdivision or group of participating political subdivisions who shall formally petition the board for approval with respect to a particular project, proposal, or request by filing the necessary application documents required by these sections.

Board—The Texas Water Development Board.

Change order—The documents issued by the participating political subdivision, with concurrence of the contractor upon recommendation of the project engineer and with the approval and consent of the executive administrator, development fund manager, board, and/or commission, as may be appropriate, authorizing a change, alteration, or variance in previously approved engineering plans and specifications, including, but not limited to, additions or deletions of work to be performed pursuant to the contract or a change in costs for work performed pursuant to the contract.

Client—A storage client, water client, water treatment client, or wastewater client.

Closing or date of closing—The time of actual transfer of funds from the board to a participating political subdivision for purposes of developing, constructing, or acquiring a project.

Commission—The Texas Water Commission or its predecessors.

Conservation—The development of water resources; and those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

Construction—Any one or more of the following:

(A) preliminary planning to determine the feasibility of a project;

(B) engineering, architectural, environmental, legal, title, fiscal, or economic studies;

(C) surveys, designs, plans, working drawings, specifications, procedures;

(D) any condemnation or other legal proceeding; and

(E) erection, building, acquisition, alteration, remodeling, improvement, or extension of a project or the inspection or supervision of any of the foregoing items.

Developer project—An engineering project of a district which provides water, sewer, or drainage service for property owned by a developer, as defined by the Texas Water Code, §50.023(d).

Development funds—Such monies as are accumulated in the treasury of the State of Texas from the sale of Texas water development bonds authorized by the Texas Constitution, Article III, §49-c and §49-d and from bonds dedicated to use for the purposes of those sections under the Texas Constitution, Article III, §49-d-2.

Direct cost—The principal amount the board pays or agrees to pay for the state's interest in facilities acquired by the board.

Financial assistance—Loans by the board pursuant to the Texas Water Code, Chapters 15 and 17, or state facilities acquisition pursuant to the Texas Water Code, Chapter 16.

Firm annual yield—The amount of water that can be supplied annually from a reservoir under the minimum streamflow conditions during a recurrence of the historical drought of record.

Flood control program—The procedure for the investment of flood control funds by the purchase of bonds or other obligations of a political subdivision to finance a project for flood control as authorized by the Texas Constitution, Article III, §49-d-2, and by the Texas Water Code, Chapter 17, Subchapter H.

Lending rate—

(A) When applied to the Water, Wastewater, and Storage Acquisition Program, the amount of interest calculated when one-half of 1.0% is added to the weighted average net effective interest rate on the three most recent issues of water development bonds;

(B) When applied to the Water Development, Flood Control, or Water Quality Enhancement Programs, an amount of interest calculated by adding one-half of 1.0% to the weighted average of the cost of uncommitted funds secured from the sale of Texas water development bonds as of the date of the latest sale of Texas water development bonds;

(C) When applied to the Water Loan Assistance Program, the annual rate of interest which is the lower of 12% or the lowest point of the bond buyer index (of 11 municipal bonds) during the six months immediately preceding the month in which the board extends a loan commitment to an applicant.

Master agreement—The agreement between the board and the participating political subdivision for a project in which the board had acquired or is to acquire an interest.

Net effective interest rate—The rate of interest computed by dividing the total value of all interest coupons attached to the bonds included in an issue after deducting all premiums and adding all discounts involved by the total number of years from the date of issuance to the date of maturity of each bond included in the issue.

Optimum development—The project that will develop the water resources at a site giving consideration to maximum yield, efficiency, economics, environmental concerns, and projected long-range water needs of the region.

Participating political subdivision—Any political subdivision or body politic and corporate of the State of Texas which proposes to obligate itself in a particular project and seeks the board's participation under the Water Loan Assistance Program, Water Development Program, Water, Wastewater, and Storage Facilities Acquisition Program, Flood Control Program, and/or the Water Quality Enhancement Program, including, but without limitation, any type of authority or district created or organized pursuant to the provisions of the Constitution of the State of Texas, Article III, §52 or Article XVI, §59; any interstate compact commission to which the State of Texas is a party; any municipal corporation or city, whether operating under the Constitution of the State of Texas, Article XI, §5 (Home Rule Amendment), or under the general law; any county; and any nonprofit water supply corporation created and operating pursuant to Texas Civil Statutes, Article 1434a.

Permit—Includes any one of the following:

(A) the authority granted by the commission to appropriate, divert, and use state waters;

(B) the authority granted by the commission to construct a dam and reservoir;

(C) the authority granted by the commission to establish the treatment which shall be given to and the conditions under

which waste may be discharged into or adjacent to waters in the state; and

(D) plan approval required by the Texas Water Code, §16.236, for projects that change the flood waters of a stream.

Project—Any engineering undertaking, acquisition, or construction for the purpose of any one or more of the following as applied to the Water Loan Assistance Program, Water Development Program, Water, Wastewater, and Storage Facilities Acquisition Program, Water Quality Enhancement Program, or Flood Control Program, as may be appropriate:

(A) conservation and development of the surface or subsurface water resources in the State of Texas, including the control, storage, and preservation of its storm and flood waters and waters of its rivers and streams for all useful and lawful purposes by the acquisition, improvement, extension, or construction of dams, reservoirs, and other water storage facilities, including underground storage and the acquisition or purchase of rights in the underground water and the drilling of wells;

(B) development of the saline and brackish water resources in the state, including any system necessary for desalting;

(C) transportation of water, including any system necessary for the transporting of water to filtration and treatment plants to storage, including facilities for transporting waters from such storage or plants to wholesale purchasers;

(D) water treatment, including filtration and water treatment plants and wastewater treatment plants;

(E) treatment works, including any devices and systems used in the storage, treatment, recycling, and reclamation of waste or which are necessary to recycle or reuse water at the most economical cost over the estimated life of the works;

(F) structural and nonstructural flood control and drainage facilities, including any property and any system of canals, drainage channels, dams, reservoirs, detention ponds, siphons, or combinations thereof, intended to protect human life or property or essential as an integral part of other kinds of projects eligible for financial assistance.

Project engineer—The engineer or engineering firm retained by the applicant to provide complete professional engineering services during the planning, design, and construction of the project.

Regional facility—A water supply, wastewater collection and treatment, or other system which incorporates multiple service areas or drainage areas into an areawide service facility, thereby reducing the number of required facilities, or any system which serves an area that is other than a single county, city, special district, or other political subdivision of the state the specified size of which is determined by any one or combination of population, number of governmental entities served, and/or service capacity. Regional wastewater treatment facilities may also include those identified in the approved state water quality management plan and the annual updates to that plan.

Storage client—Any person acting within his authority who acquires or seeks to acquire by purchase, transfer, or lease all or any part of the storage facilities owned by the state in a particular reservoir.

Storage facilities—The whole or any definable part or portion of a dam or reservoir, whether existing or planned, in which water may be stored for useful purposes.

Treatment works—Any devices and systems which are used in the storage, treatment, recycling, and reclamation of waste or which are necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including sites therefor and acquisition of the land that will be a part of, or used in connection with, the treatment process or is used for ultimate disposal of residues resulting from such treatment; and any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste; or facilities to provide for the collection, control, and disposal of waste.

Waste—The same meaning as provided by the Texas Water Code, §26.001.

Wastewater client—Any person acting within his authority who acquires or seeks to acquire by purchase, transfer, or lease all or any part of a wastewater facility owned by the state in a particular regional wastewater treatment facility.

Wastewater facility—The whole or any definable part or portion of a regional wastewater treatment and/or collection facility, whether existing or planned, in which the board has an interest.

Water client—Any person acting within his authority who acquires or seeks to acquire the right to use water from storage facilities owned by the state in a particular reservoir.

Water conservation plan—A report outlining the methods and means by which water conservation may be achieved.

Water conservation program—A comprehensive description and schedule of the methods and means to implement and enforce a water conservation plan.

Water development bonds—The Texas water development bonds authorized by the Texas Constitution, Article III, §49-c and §49-d, and bonds dedicated to use for the purposes of those sections and for flood control purposes under the Texas Constitution, Article III, §49-d-2.

Water development program—The procedure for the investment of development funds by the purchase of bonds or other obligations issued by a political subdivision to finance a project as authorized by the Texas Constitution.

Water facility—The whole or any definable part or portion of a regional water treatment and distribution facility, whether existing or planned, in which the board has an interest.

Water Loan Assistance Program—The procedure for the investment of water loan assistance funds by contracts to purchase bonds issued by a political subdivision to finance a project as authorized by the Texas Water Code, Chapter 15, Subchapter C.

Water quality enhancement bonds—The Texas water development bonds authorized by the Texas Constitution, Article III, §49-d-1, and bonds dedicated to use for the purposes of that section by the Texas Constitution, Article III, §49-d-2.

Water quality enhancement funds—The proceeds from the sale of Texas water development bonds issued under the authority of the Texas Constitution, Article III, §49-d-1, and proceeds from bonds dedicated to use for the purposes of that section by the Texas Water Constitution, Article III, §49-d-2.

Water quality enhancement loan—The purchase by the state of the bonds or other obligations of a political subdivision with water quality enhancement funds.

Water Quality Enhancement Program—The procedure for the investment of water quality enhancement funds by the purchase of bonds issued by a political subdivision to finance treatment works for the purposes authorized by the Texas Constitution, Article III, §49-d-1.

Water treatment client—Any person acting within his authority who acquires or seeks to acquire by purchase, transfer, or lease all or any part of the water treatment and distribution facilities owned by the state in a particular regional water treatment facility.

Water, Wastewater, and Storage Facilities Acquisition Program—The procedure for investment of development funds in a project by the purchase or acquisition of an interest in such project as authorized by the Texas Constitution, Article III, §49-d and §49-d-2, and pursuant to the board rules.

§363.3. Definition of Terms for Flood Control Program. The following words and terms, when used in this chapter, in relation to the Flood Control Program, shall have the following meanings, unless the context clearly indicates otherwise.

Financial assistance—Any loan of flood control funds made to a political subdivision for structural or nonstructural flood control measures through the purchase of bonds or other obligations of the political subdivision.

Flood control funds—The proceeds from the sale of Texas water development bonds issued under the authority of the Texas Constitution, Article III, §49-d-2, and

reserved for flood control purposes.

Floodplain—Land subject to inundation by the 100-year-frequency flood.

Floodplain management plan—A comprehensive plan for flood control within a watershed, based on analyses of alternative nonstructural and structural means of reducing flood hazards, including assessments of costs, benefits, and environmental effects, and may include preliminary design of structural flood control projects.

Nonstructural flood control—Includes such measures as:

(A) acquisition of floodplain land for use as public open space;

(B) acquisition and removal of buildings located in a floodplain; and

(C) relocation of residences or buildings removed from a floodplain.

Structural flood control—Includes such measures as construction of stormwater retention basins, enlargement and/or realignment of stream channels, and modification or reconstruction of bridges.

Watershed—The area directly impacted by a change in the flood water characteristics of a stream caused by a project, and those areas potentially impacted, including those areas upstream and downstream of the project and, when appropriate, adjacent drainage basins.

100-year flood—The peak flood discharge of a stream, based upon statistical data, which would have a 1.0% chance of occurring in any given year.

100-year flood-fringe—That area of the 100-year floodplain outside the 100-year floodway.

100-year floodplain—That area along a stream which is inundated by floodwaters of a stream during the time the stream is subject to the statistical 100-year frequency flood, as determined by a registered professional engineer using the U.S. Army Corps of Engineers Hydrologic Engineering Center I and II procedures or other standard procedure acceptable to the executive administrator.

100-year floodway—The channel of a stream and the adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot.

§363.4. Suspension of rules. The board may suspend or waive a rule, in whole or in part, upon the showing of good cause or when, at the discretion of the board, the particular facts or circumstances render such waiver of the rule appropriate in a given instance.

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

Issued in Austin, Texas, on January 10, 1986.

TRD-8600439 Suzanne Schwartz
General Counsel
Texas Water
Development Board

Earliest possible date of adoption:
February 17, 1986
For further information, please call
(512) 463-7850.

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Policy Declarations

★31 TAC §§363.31-363.34

The repeals are proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§363.31. General Policies.

§363.32. use of Water Quality Enhancement Funds for Water Quality Enhancement Only.

§363.33. Ancillary Recreational Facilities.

§363.34. Requirements as to Maturities.

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

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TRD-8600456 Suzanne Schwartz
General Counsel
Texas Water Development
Board

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★31 TAC §§363.31-363.38

The new sections are proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§363.31. General Policies.

(a) The board will require the participating political subdivision to use its own resources to the maximum extent possible and to exhaust all other reasonable means of financing before seeking state participation. This is especially true with respect to the optimum development of a reservoir site in which the board may be requested to participate. As a general rule, where state financial assistance is necessary to develop a project, the board prefers that the application be under one of the several programs in which the board purchases bonds of the local political subdivisions rather than under the Water, Wastewater or Storage Facilities Acquisition Program.

(b) In the absence of any legislative appropriation for operation and maintenance expenses or other sources of revenue specifically for that purpose, the board will not bear any portion of the operation and maintenance expenses for state-owned interest in any Water, Wastewater, or Storage Facilities Acquisition Project, and any state interest is acquired without the assumption of any obligation relating to future operation and maintenance expenses. This section is subject to the provisions of the Texas Water Code, §16.1341.

(c) Unless otherwise specified in the master agreements with the participating parties, the character of interest which the state acquires under the Water, Wastewater and Storage Facilities Acquisition Program shall be an undivided interest and the rights and responsibilities of the board and other participating interests shall be governed by the rules and principles of the law relating to tenants in common.

(d) It is the policy of the board to promote the conservation of water through development of water resources and by requiring implementation of those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

§363.32. Use of Water Quality Enhancement: Funds for Water Quality Enhancement Only. It is the policy of the board, with the exception of loans for the construction of regional wastewater facilities, that loans from water quality enhancement funds will not be made for developer projects.

§363.33. Flood Control Program Funds.

(a) Recognizing the magnitude of flooding problems in the state and the limited funds with which the board has to assist political subdivisions in correcting these problems, it is the policy of the board to place a priority on flood control projects which will alleviate existing flooding problems of already developed areas rather than on projects to benefit areas with development potential but for flooding problems. The board will prefer funding of projects in which projects costs will be shared by the board and the applicant. Developer projects for internal drainage within water districts will not be eligible for funding under this program.

(b) An applicant for a flood control loan shall be a participant in the National Flood Insurance Program at the time of application and throughout the life of the board's financial assistance.

§363.34. Ancillary Recreational Facilities. The board will consider applications by participating political subdivisions for assistance for purchase of land required for development of needed recreational facilities on a dam and reservoir project. The primary emphasis in considering the recreational function of a project shall be the optimum public use and enjoyment of such project and recoupment of the state's investment in the development of the project. It is expressly provided that such planned facilities:

(1) shall be an integral part of the proposed dam and reservoir project;

(2) shall be in an area where needed and not otherwise available to the general public;

(3) cannot be financed by any other source of funds;

(4) shall be operated so that any recreational use of water in the project will be in accordance with the commission's permit for same;

(5) shall have been submitted to the Texas Parks and Wildlife Department and/or other agencies having responsibility and jurisdiction in the premises for review and comment as to:

(A) the facilities for which there is the greatest need;

(B) adherence to applicable provisions of the state's comprehensive outdoor recreational plan; and

(C) consistency with an existing regional outdoor recreational plan;

(6) be supported by a system of fees and charges for use of recreational areas to ensure proper operation and maintenance of such facilities and recoupment of the state's investment therein.

§363.35. Requirements as to Maturities. Maturities should be arranged to create a schedule of debt service requirements which is reasonably uniform over the life of the issue. However, where warranted, principal maturities may be arranged to accommodate reasonably expected future growth in payment ability. Under certain conditions, term bonds may be acceptable. Ordinarily, the maturity schedules will be expected to reflect the maturities of water development bonds. Bonds may be made callable at par at the option of the issuer on any interest payment date on and after 10 years from the date of issuance. Any earlier call date must be approved by the development fund manager.

§363.36. Financing Requirements Beyond Current Board Capability. If the board does not have financial resources available to meet the needs of all applicants for financial assistance, the staff of the development fund will prepare a complete report for the board as if funds were available and recommend to the board that the particular project be included or excluded from its biennial budget request to the legislative budget board, and to the presiding officers of each house of the legislature and to the governor. The list of projects submitted to the legislative budget board, to the presiding officers or each house of the legislature, and to the governor shall include relevant information relating to each project, recommendations relating to the terms under which loans of financial assistance should be made to each applicant, and projected amounts of money that will be required each biennium to fund each project to its completion.

§363.37. Permits. As a general rule, the board will require an applicant to obtain appropriate state permits before the board will extend a commitment for financial assistance.

§363.38. Participation. The legislature has placed limitations on the Water, Wastewater and Storage Facilities Acquisition program to avoid large potential draws on general revenue, to increase the number of projects constructed, and to minimize the risks to the state. In furtherance of these legislative objectives, it is the policy of the board that a specific schedule for repurchase of the state's interest in a project be developed and presented to the board at the time the application is considered by the board. As a part of the regional Water and Wastewater Treatment Facilities Acquisition Program, the board will participate in the acquisition of facility sites and excess capacity in water and wastewater mains and wastewater interceptors. In addition, the state may purchase reserve capacity in treatment facilities. The board is authorized to contract with any political subdivision of the state with requisite water and sewer powers. However, with respect to proposed regional wastewater treatment facilities, preference will be given to designated regional entities created pursuant to the Texas Water Code, Chapter 26.

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

Issued in Austin, Texas, on January 10, 1986.

TRD-8600455 Suzanne Schwartz
General Counsel
Texas Water Development Board

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For further information, please call (512) 463-7850.

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Application to the Board

★31 TAC §§363.52-363.57

The repeals proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§363.52. Required General Information.

§363.53. Required Environmental Data.

§363.54. Required Fiscal Data.

§363.55. Required Engineering Feasibility Data.

§363.56. Required Legal Data.

§363.57. Return of Insufficient Application.

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

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TRD-8600458 Suzanne Schwartz
General Counsel
Texas Water Development Board

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★31 TAC §363.52-363.60

The new sections are proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§363.52. Required General Information.

(a) An applicant seeking financial assistance should make an appointment with the staff of the development fund. At a minimum, the preapplication conference should be attended by a member of the governing body of the political subdivision, the entity's engineer, and financial advisor. The primary purpose of the meeting is to establish basic eligibility of the political subdivision for financial assistance. The determination of eligibility will, in most cases, be made at this meeting.

(b) Forty copies of an application shall be filed with the board. The following information is required on all applications to the board for financial assistance:

(1) legal name(s) of applicant and authority of law under which created;

(2) name, title and address of official correspondent or representative for applicant and each participating political subdivision;

(3) names and titles, of principal officers, including the managing official of applicant and each participating political subdivisions;

(4) name and address of project engineer; or if engineering will be performed by a federal agency, the name and address of the office of the federal agency performing such work;

(5) name and address of legal counsel for applicant. In an application for financial assistance which envisions the purchase of applicant's bonds by the board, the name and address of bond counsel is also required (if other than legal counsel) and the name and address of financial advisor or consultant;

(6) brief description of project including, but not limited to, the following:

(A) location;

(B) a comprehensive statement clearly demonstrating the project need in sufficient detail to support and justify the project;

(C) the total estimated cost and allocation of cost to each purpose such as water supply, recreation, flood control, transportation, or sewage treatment;

(D) if a dam and reservoir pro-

ject is proposed, the estimated firm annual yield and accordance proposed reservoir capacities for conservation storage, sediment storage, flood control storage, and storage for other purposes (specify each purpose);

(E) proposed allocation and source of project cost to each participating subdivision, state, and federal agency;

(F) proposed division of the total ownership interest in the project for each participating subdivision (and the board, if acquisition is contemplated); and

(G) source of project's water supply;

(7) if a federal project, the name of the federal agency and the extent to which federal planning has progressed. If a federal grant is involved, the amount of the total federal grant and the status of the applicant for the federal grant;

(8) with respect to each participating political subdivision, the legal procedures, such as confirmation elections, annexation proceedings, and contract and bond elections, required to enable the applicant to assume its obligations with respect to the project, including the state to which any such procedures have progressed;

(9) information on the basis of which the board can determine whether;

(A) the state will recover its investment;

(B) the cost of such facilities to be acquired exceeds current financing abilities of the area involved; and

(C) whether such facilities can be otherwise financed without state participation;

(10) status of any proceedings to obtain a permit or other authorization from the commission or any other state of federal agency;

(11) if the application is for a water, wastewater, or storage facilities acquisition project, the following additional material:

(A) information regarding the inability of the applicant to finance development without state participation;

(B) estimated time and means for the recovery of the board's investment in the project from revenues, repurchase obligations of participating political subdivisions, or both; and

(C) evidence that the proposed facilities are consistent with the objectives of the state water plan and/or the state water quality management plan;

(12) required general information regarding any existing water conservation program, including the following;

(A) education and information programs;

(B) plumbing code standards for water conservation in new construction;

(C) retrofit programs to improve water use efficiency in existing buildings;

(D) conservation-oriented water rate structures;

(E) universal metering and meter repair and replacement;

(F) leak detection and repair;

(G) drought contingency plans; and

(H) ordinances and emergency procedures;

(13) if an exemption from the water conservation program is requested, information by which the board can determine whether:

(A) an emergency exists;

(B) the amount of financial assistant request is $500,000 or less; or

(C) submission of a program is not necessary to facilitate water conservation.

§363.53. Required Environmental Data. The application shall address the environmental effects of the project in accordance with the requirements of §§341.21-341.26 of this title (relating to Environmental Impact Statements) and §§341.41-341.43 of this title (relating to Guidelines on the Preparation of Environmental Social and Economic Impact Statements). It shall be the responsibility of the executive administrator to ascertain that the proposed project is environmentally sound based on the criteria and guidelines of the board and full consideration of the views and comments of other agencies. Thereafter, the executive administrator shall certify completion of the foregoing requirements and the application may be considered by the board.

§363.54. Required Fiscal Data.

(a) The applicant shall submit a statement of the project engineer's most current estimate of project cost itemized as to major facilities or items including land and right-of-way costs, fees of engineers, all legal fees, fees of financial advisors and/or consultants, contingencies, and interest during construction.

(b) The following information is to be furnished when the applicant proposes to sell bonds to finance the project, whether the purchasers are to be the board or others than the board:

(1) citation of statutory authority for issuance;

(2) type of bonds (i.e., general obligation, revenue, or combination). If revenues are to be pledged, state the source and nature of such revenue;

(3) amount of the issue;

(4) full name of issue(s);

(5) approximate date of issue(s);

(6) proposed maturities; and

(7) details of option for prior payments.

(c) The applicant shall submit the amount and source of any funds to be expended on the project.

(d) If applicant is authorized by law to levy and collect ad valorem taxes, give the information in paragraphs (1) and (2) of this subsection.

(1) If such right and power have been exercised, give the following information for each of the five preceding years:

(A) assessed valuation of taxable property;

(B) ratio of assessed valuation to actual market value in a specified year;

(C) maximum tax rate permitted by law per $100 of assessed valuation;

(D) aggregate rate of all taxes levied and aggregate amount in dollars of taxes collected;

(E) total amount in dollars of taxes collected; and

(F) distribution of tax rate as between interest and sinking fund and other purposes.

(2) If applicant is newly created, or if it has never exercised its taxing power, give the following information:

(A) assessed valuation of taxable property if valuations have been established, and if not, the estimated total amount of the assessed valuation of taxable property. Indicate whether the figure represents actual valuation or an estimate; and

(B) maximum tax rate permitted by law per $100 of assessed valuation.

(e) The applicant shall give details of any limitation governing amount of bonded or general obligation debt which applicant may incur.

(f) If applicant has bonds outstanding which are payable wholly or in part from ad valorem taxes, the following information shall be submitted:

(1) a complete description of each such issue of bonds, including title, date, interest rate, maturities, amount outstanding, and prepayment options;

(2) consolidated schedule of future requirements of principal and interest extended so as to reflect total annual requirements; and

(3) direct and overlapping debt statement.

(g) If financing of project will involve sale of bonds or other securities payable wholly or in part from ad valorem taxes, the following information shall be submitted:

(1) schedule of proposed future maturities of principal and interest of proposed bonds plus total maturities of any outstanding bonds from subsection (f) of this section; and

(2) rate of interest assumed in computing future interest maturities on proposed bonds.

(h) If project for which state participation is desired is for purpose of extending, enlarging, or improving an existing system or facility, the following shall be submitted for each of the five preceding years to the extent available:

(1) comparative operating statement;

(2) schedule of water rates or service charges; and

(3) number of customers or patrons of system.

(i) The applicant shall provide a schedule of proposed rates required for financing the project under consideration, if

different from subsection (h)(2) of this section.

(j) If applicant has bonds outstanding which are payable either wholly or in part from net revenues of a system or facility in connection with which the current project is planned, the following information shall be submitted:

(1) a complete description of each such issues of bonds, including title, date, interest rate, maturities, amount outstanding, and prepayment options; and

(2) consolidated schedule of future requirements of principal and interest extended so as to reflect total annual requirements.

(k) If financing of the project will require the sale of bonds or other securities payable either wholly or in part from net revenues of one or more facilities or systems, the following information shall be submitted:

(1) schedule of proposed future bonds plus total maturities of any outstanding bonds referred to in subsection (j)(2) of this section; and

(2) rate of interest assumed in computing future interest requirements on proposed bonds.

(l) The applicant shall provide a statement as to whether or not there has been a default in the payment of items of matured principal or interest and if so, give details.

(m) The applicant shall provide an annual audit of financial report prepared by an independent auditor as of the close of the preceding fiscal year. (Not required if applicant has no operating history).

(n) Where the project envisions the sale of revenue bonds, a schedule of the project engineer's estimate of future income and expense, showing the estimated amount of net revenue to accrue in each year during the life of any bonds to be issued.

§363.55. Required Engineering Feasibility Data for Water Related Projects. The applicant shall submit for approval four copies of an engineering feasibility report. Prior to submission of the report in the application, the applicant's engineer shall have met with the board's engineering staff to discuss the scope of the feasibility report. The report as presented in the application shall include:

(1) legal name of applicant and authority of law under which it was created and operates;

(2) name, address, and telephone number of project engineer;

(3) the location and description of the proposed project. As a minimum, this requirement may be met by showing location on a Texas Department of Highways and Public Transportation Planning Survey Division map (one/half size);

(4) if water development and/or water facilities acquisition project, the need for the project, including proposed purposes for which water will be stored or used and places of use for the water and projections of future estimated needs, uses, and places of use for the water;

(5) a description of facilities to be acquired or replaced;

(6) proposed improvements or enlargements of existing facilities;

(7) the basis of the design, including a detailed scope of operations for the project. Where extensions are proposed to an existing project, include an engineering functional evaluation of the existing facilities;

(8) the relationship of the project to other existing and proposed facilities in meeting long-range water quantity or water quality needs;

(9) the feasibility of the project, including description of all alternatives considered, evaluation of each alternative, and reasons for the selection of the proposed project. The report shall demonstrate that the proposed project represents the best alternative for development considering the economic, financial, environmental, and engineering aspects involved;

(10) if a dam and reservoir project, the proposed conservation, sediment, flood control, and other storage capacities; corresponding areas and elevations; the expected firm annual yield; expected quality of water impounded; and existing water rights and purposes of use affected by the project;

(11) total estimated cost and allocation of cost of each of the project purposes. Sufficient detail should be provided to support the estimated costs;

(12) when a dam and reservoir is proposed:

(A) an area map on which the estimated acreage to be acquired and the proposed project take-line encompassing such acreage are shown. The area shall be delineated on a topographic quad sheet or equivalent such that areas can be easily determined;

(B) a detailed gross appraisal report, including a land-use and improvement summary for all proposed land purchases, prepared by a professional land appraiser. An additional land appraisal report may be required at the discretion of the board. The land values so determined shall be used as a basis for feasibility calculations. The estimated total land acquisition cost should include a provision for projected appraisal, title search, legal, and other associated costs;

(C) description of all improvements (including roads, cemeteries, railroads, and public utilities) in the project area that must be relocated or protected;

(D) letters, agreements, or other evidence from owners and/or responsible entities on improvements to be relocated or protected stating their position on acceptable means for such relocation or protection and the estimated cost therefore; and

(E) the proposed recreational development and management plan, including anticipated buildup in demand, initial facilities to be provided and proposed area to be dedicated to recreational use;

(13) a geologic evaluation of the site, accompanied by drilling logs showing sufficient density of test holes and sufficient lithologic details to indicate that a suitable development site has been selected;

(14) description and evaluation of the relationship between proposed surface water development and ground water resources, or the converse, and the effects of each upon the other;

(15) if a ground water development, complete analyses of the hydrologic and hydraulic characteristics of the aquifer including, if necessary, subsurface data obtained from drilling test holes and test pumping;

(16) the engineering report, which shall be signed and sealed by a professional engineer registered in the state of Texas and which report shall not be more than six months old. If the report is more than six months old, it shall be accompanied by a statement from the engineer that he has reviewed the project as originally prepared and finds that it is substantially current and correct in view of all existing circumstances. In such event, a detailed updated cost estimate shall be provided; and

(17) additional information or data which the executive administrator or development fund manager may require, including additional subsurface explorations prior to the submission of the application or as a condition precedent to final approval.

§363.56. Required Engineering Feasibility Data for Flood Control Projects. The applicant shall submit for approval four copies of an engineering feasibility report. Prior to submission of the report, the applicant's engineer shall have met with the engineering staff of the board to discuss the scope of the feasibility report. In the case of flood control projects, the report as presented in the application shall include the following information.

(1) If the loan is for the purpose of developing a floodplain management plan, the following information shall be submitted:

(A) a statement indicating the authority of the applicant to prepare a comprehensive floodplain management plan, and the applicant's legal authority, if any, to enforce such a plan;

(B) location and background history of the watershed or watersheds in the area. Maps and drawings of watersheds should be included. Information should be provided for the entire watershed drained by a river, creek, bayou, or other channels and their tributaries within the planning area.

(2) If the proposed loan is for structural or nonstructural flood control, the following information will be required:

(A) the name of the political subdivision and its principal officers;

(B) a citation of the law under which the political subdivision operates and was created;

(C) a description of the flood

control measures for which the financial assistance will be used;

(D) the estimated total cost of the measures;

(E) the amount of state financial assistance requested;

(F) the method for obtaining the financial assistance, whether by purchase of bonds or purchase of other obligations of the political subdivision;

(G) the plan for repaying the financial assistance;

(H) the availability of revenue to the political subdivision, from all sources, for the ultimate repayment of the cost of the project, including interest;

(I) the capacity of the watershed to accommodate stormwater runoff;

(J) the impact of the project on watershed capacity along the entire watershed and the degree to which that capacity was considered in planning the project;

(K) whether the project will increase or decrease the volume or rate of stormwater runoff into any channel in the watershed;

(L) the effect of the project on surface water elevations within the watershed and any downstream watershed;

(M) the relationship of the project to any floodplain management plan for the watershed;

(N) whether adequate consideration was given to the effects of the project with regard to erosion and sediment control; and

(O) additional information on or data which the executive administrator or development fund manager may require.

§363.57. Required Engineering Feasibility Data for Sewer Related Projects. The applicant shall submit for approval four copies of an engineering feasibility report. Prior to submission of the report in the application, the applicant's engineer shall have met with the board's engineering staff to discuss the scope of the feasibility report. The report, as presented in the application, shall include the information regarding design criteria for sewerage systems listed under §317.1(b) of this title (relating to General Provisions) and the following general information:

(1) legal name of applicant;

(2) name and address of the project engineer;

(3) type of treatment plant being proposed. The selection of a treatment process must take into account the cost-effectiveness and environmental compatibility of various processes;

(4) cost breakdown. A detailed cost estimate for all work shall be submitted, including operation and maintenance;

(5) environmental considerations. In conjunction with the requirements of §363.53 of this title (relating to Required Environmental Data), prepared statements demonstrating that the proposed project is compatible with the social and environmental conditions listed in sub paragraphs (A)-(J) of this paragraph. The statements shall describe the conditions and discuss how the proposed project would adversely and/or beneficially affect them, directly by construction and indirectly by growth and development encouraged or accommodated by the project. The statement shall consider how adverse impacts can be avoided, reduced to an acceptable level, or mitigated by counteracting measures. The applicant shall consult with local, state, and federal agencies which can provide information about environmental conditions and potential impacts, and coordinate project planning with those agencies and entities having primary responsibility for the environmental effect of the proposed project. The applicant shall provide statements regarding:

(A) water resources—surface water and ground water quantity and quality, established water uses and water rights;

(B) fish, wildlife, and their habitats, particularly rare, endangered, and protected species of animal and plant life;

(C) floodplains, wetlands, forests, coastal zones, and other environmentally sensitive areas;

(D) cultural resources, including historical and archeological sites, cemeteries, and other culturally significant locales. If necessary, staff archeologists of the board's construction grants division will conduct an archeological reconnaissance to determine whether or not significant archeological sites occur in proposed project areas and will help to develop measures for the avoidance or mitigation of damage to any archeological resources that might occur;

(E) air quality, including consideration of the potential for odor and noise nuisances generated by the proposed facilities, as well as air quality problems related to urbanization and industrial development;

(F) land use trends and land values, particularly related to agricultural lands, open space, zoning, and other ordinances controlling land use, and land use planning;

(G) public health and safety, including mitigative and precautionary measures to be taken during the construction, operation, and maintenance of the proposed facilities, and the availability of approved sludge disposal facilities;

(H) public services and facilities, including energy supplies, water supplies, transportation, and recreational facilities;

(I) regional and local planning; and

(J) other federal, state, and local programs and projects currently underway or proposed to be undertaken.

§363.58. Required Legal Data.

(a) The applicant shall submit a statement setting forth the existing or futher need for the project, the probable benefits to the are to be served by the project, the steps previously taken or currently being taken to finance the project without state assistance, and the reasons why other financing is not available to defray the entire project cost.

(b) If a bond election is required by law to authorized the issuance of bonds to finance the project, such election should be held prior to consideration of the application by the board. Applicant shall provide the development fund manager with the election date and election results as to each proposition submitted.

(c) The applicant shall submit a certified copy of a resolution of the governing body of each participating political subdivision requesting financial assistance from the board, authorizing the submission of the application, designating the official representative for executing the application and appearance before the board, and containing a finding that the applicant cannot reasonably finance the project without assistance from the board in the amount requested. Additional evidence on inability to finance the project without state investment may also be required by the board.

(d) The applicant shall submit a copy of any actual or proposed contract under which any portion of the applicant's water supply is purchased or transported or under which sewer service is provided. Before a loan is closed, a certified copy of such contract shall be required.

(e) If financing of the project will require the sale of bonds to the board payable either wholly or in part from revenues of contracts with others, the applicant shall submit a copy of any actual or proposed contracts under which applicant's gross income is expected to accrue. Before a loan is closed, an applicant shall submit certified copies of such contracts to the development fund manager.

(f) The applicant shall submit a pro formance draft of an ordinance, resolution, or similar instrument to be adopted by the governing body authorizing the issuance of each of the bond issues described in §363.54(g) and§363.54(k) of this title (relating to Required Fiscal Data). When application for financial assistance which envisions the purchase of applicant's bonds by the board is made, such ordinance, resolution, or similar instrument shall contain, in addition to the usual provisions, sections providing:

(1) that a construction fund shall be created which shall be separate from all other funds of the political subdivision. The construction fund shall be established at an official depository of the political subdivision and all funds in the construction fund shall be secured in the manner provided by law for the security of county funds or city funds, as appropriate. If the political subdivision is not required by law to maintain its funds in an official depository, then it shall designate a depository with the approval of the development fund manager and shall maintain the construction fund in such depository and require that funds therein be secured in the manner provided by law for county funds. All proceeds from the sale of bonds to the board and all other

proceeds acquired by the political subdivision to construct or acquire the project shall be placed in the construction fund. All proceeds in the construction fund shall be used for the sole purpose of constructing the project as approved by the board except as otherwise stated in these sections or approved by the board;

(2) that a final accounting be made to the board of the total cost of the project upon its completion. Such resolution or ordinance shall also provide that if the project be finally completed at a total cost less than the amount of available funds for constructing the project, or if the development fund manager disapproves construction of any portion of the project as not being in accordance with the plans and specifications, the participating political subdivision shall immediately, after filing the final accounting, return to the board the amount of any such excess and/or the cost as determined by the development fund manager relating to the parts of the project not constructed in accordance with the plans and specifications, to the nearest multiple of $1,000 or $5,000, depending upon the denomination of the bonds being sold. Thereupon, the board shall cancel and deliver to the participating political subdivision a like amount of the bonds of the participating political subdivision held by the board in inverse numerical order. Any remaining funds will be deposited in the interest and sinking fund for bonds purchased by the board. Unless otherwise stated in the loan commitment, in determining the amount of available funds for constructing the project, the political subdivision shall account for all monies in the construction fund, including all loan funds extended by the board, all other funds available from the project as described in the project engineer's sufficiency of funds statement required for closing the board's loan, and all interest earned by the political subdivision on money in the construction fund. This requirement shall not be interpreted as prohibiting the board from enforcing such other rights as it may have under law;

(3) that an annual audit of the participating political subdivision, prepared by a certified public accountant or licensed public accountant be provided to the development fund manager;

(4) that the participating political subdivision shall maintain adequate insurance coverage on the project in an amount adequate to protect the board's interest in the same manner as would a municipal corporation operating a similar project;

(5) that as built plans be provided to the board; and

(6) that the issuer covenants to abide by the board's rules and relevant state statutes, including the Texas Water Code, Chapters 15, 16, and 17.

(g) The applicant shall submit an affidavit executed by the official representative of the participating political subdivision stating that the facts contained in the application are true and correct to his best knowledge and belief.

(h) The applicant shall submit a copy of any proposed construction contract.

(1) All proposed contracts shall have provisions assuring compliance with the board's rules and all relevant statutes, including the Texas Water Code, Chapters 15, 16, and 17, as appropriate. Further, the contract shall provide that failure to construct the project according to the plans and specifications approved by the executive administrator, development fund manager, board, and/or the commission, as is appropriate, for any and all modifications, amendments, or changes to such engineering plans, regardless of the nature, character, or extent of such changes; failure to construct the project in accordance with sound engineering principles; or failure to comply with any term or terms of the construction contract, shall be considered by the development fund manager as grounds for refusal to give a certificate of final approval for any construction contract. Such contract shall also require the contractor to observe all rules of the board. The provisions of the contract shall constitute an agreement for the benefit of the board under principles applicable to third party beneficiary contracts; however, such provisions are not intended nor shall they be in such form as to constitute an agreement for the benefit of any other third party or parties other than the board.

(2) The participating political subdivisions shall be represented by a registered professional engineer who shall inspect the project at each phase of construction to assure construction in substantial compliance with the plans and specifications and in accordance with sound engineering principles and the terms and provisions of the construction contracts.

(3) The applicant shall submit such other provisions as may be deemed necessary to provide the board and the participating political subdivision adequate control to ensure that materials furnished or work performed conform with the provisions of the construction contracts.

(i) The applicant shall submit copies of any proposed or existing contracts for consultant services necessary for construction of the proposed project and included as part of the total cost of the project.

(j) The applicant shall submit a certification by the designated representative of the participating political subdivision in a form acceptable to the board which warrants compliance by the participating political subdivision with all representations in the application, all laws of the State of Texas, and all rules and published policies of the board.

(k) If bonds to be sold to the board are revenue bonds secured by a subordinate lien, then a copy of the authorizing instrument of the governing body in the issuance of the prior lien bonds shall be furnished.

(l) The applicant shall submit a copy of any proposed or existing lease or other agreement transferring interests in any land acquired for the project.

(m) The applicant shall submit other information, plans, and specifications requested by the board or the executive administrator which are reasonably necessary for an adequate understanding of the project.

§363.59. Required Water Conservation Plan. The applicant, if not eligible for an exemption, shall submit for approval two copies of a water conservation plan. Prior to submission of the plan in the application, the applicant or his representative shall discuss the scope and content of the plan at a preapplication conference. At the applicant's request, and to the extent that personnel are available, the executive administrator may provide educational material and technical assistance in developing a comprehensive water conservation plan that is designed to meet existing and anticipated local needs and conditions. The executive administrator shall review and approve all water conservation plans submitted as part of an application for financial assistance for a project. The water conservation plan shall be developed according to criteria and guidelines on water conservation planning available from the executive administrator and shall serve as the basis for developing and implementing a conservative program. The plan shall contain the following:

(1) need for and goals of a water conservation program;

(2) methods to reduce water consumption;

(3) methods to reduce the loss or waste of water;

(4) methods to improve efficiency in use of water; and

(5) methods to increase the recycling and reuse of water.

§363.60. Return of Insufficient Application. The development fund manager may return any application not in compliance with these rules.

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

Issued in Austin, Texas, on January 10, 1986.

TRD-8600457 Suzanne Schwartz
General Counsel
Texas Water Development Board

Earliest possible date of adoption:
February 17, 1986
For further information, please call (512) 463-7850.

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Formal Action by the Board

★31 TAC §363.71, §363.72

The repeals are proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§363.71. Board Consideration of Application.

§363.72. Action of the Board of Application.

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

Issued in Austin, Texas, on January 10, 1986.

TRD-8600460 Suzanne Schwartz
General Counsel
Texas Water Development Board

Earliest possible date of adoption:
February 17, 1986.
For further information, please call (512) 463-7850.

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The sections are proposed under the Texas Water Code, §6.101, which provides the board with the authority to make rules necessary to carry out its powers and duties.

§363.71. Board Consideration of Application. After all required instruments and data have been supplied and routine processing by the development fund manager is complete, the development fund manager shall submit the application to the board with comments concerning the best method of making financial assistance available. Upon a recommendation by the development fund manager that such application is complete and in order for board review, the application shall be scheduled on the agenda for board consideration not earlier than the second regularly scheduled board meeting following the development fund manager's certification of the sufficiency of the application. The applicant and other interested parties known to the board shall be notified of the time and place of such meeting. Evidence and arguments both for and against the granting of the application may be heard at such meeting.

§363.72. Action of the Board on Application. At the conclusion of the meeting to consider the project, the board may resolve to approve, disapprove, amend, or continue consideration of the application. If the board commits itself to participate in the project, such commitment for financial assistance shall expire 360 days after the board's action making the commitment, unless another time for expiration of the commitment is stated by the board or the period of time for expiration of the commitment is extended by the board. Any extension must be requested of the board by application filed with the development fund manager. Prior to referring such request to the board for consideration, the development fund manager may require the refiling of or updating of information contained in the original application. After such information is provided, the development fund manager will refer the request to the board along with his recommendation. Notice of the time and place of board consideration will be given to the applicant's designated representative.

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

Issued in Austin, Texas, on January 10, 1986.

TRD-8600459 Suzanne Schwartz
General Counsel
Texas Water Development Board

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For further information, please call (512) 463-7850.

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Prerequisites to Release of State Funds

★31 TAC §§363.81-363.84

The repeals are proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§363.81. Engineering Design Date Prerequisites.

§363.82. Land and Right-of-Way Acquisition Procedures Prerequisites.

§363.83. Commission Permit and Resolution Prerequisite.

§363.84. Legal and Fiscal Document Prerequisites.

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

Issued in Austin, Texas, on January 10, 1986.

TRD-8600462 Suzanne Schwartz
General Counsel
Texas Water Development Board

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★31 TAC §§363.81-363.85

The sections are proposed under the Texas Water Code, §6.101, which provides the board with the authority to make rules necessary to carry out its powers and duties.

§363.81. Engineering Design Data Prerequisites.

(a) An applicant seeking financial assistance for flood control, water, and storage projects, pursuant to the Water Development Program, the Water, Wastewater, and Storage Facilities Acquisition Program, the Water Loan Assistance Fund, or the Flood Control Program shall submit for development fund manager approval three copies of plans, specifications, and an engineering report on the project, which data shall be as detailed as would be required for submission to contractors bidding on the work, and which shall include, as appropriate:

(1) analyses of the quality and quantity of water to be used. If a dam and a reservoir project is proposed, complete hydrology, flood routing, and storage capacities and corresponding elevations shall be provided;

(2) details of the hydraulic gradient calculations for pipelines and/or open channels based on maximum flow conditions;

(3) if a dam and reservoir project is involved;

(A) a topographic map of the dam site with contour intervals not exceeding five feet. A plan of the dam shall be superimposed on this map showing the location of spillways, outlet conduit, cut-off walls, etc. If an existing map is used, the source and date of such map shall be given;

(B) a geologic evaluation of the project area relating the local geologic setting to the regional geologic setting, accompanied by drilling logs showing sufficient density of test holes and sufficient lithologic details to verify that a suitable development site has been selected. A geologic profile of the dam and a profile of the spillway along its axis shall be provided. The profile shall also show the location of the conduit, spillway, etc. Core drill holes shall be located and spaced to show geologic conditions at the site and shall be of sufficient depth to determine foundation conditions. Geologic cross sections of the reservoir area shall also be shown on a suitable map, including descriptions that represent the local geologic conditions. Logs of the core drill holes and descriptions of the geologic sections shall be prepared by a professional geologist. All cores and bag samples recovered shall be available for examination, by the staff of the executive administrator, in proper condition and properly labeled. This evaluation should include a survey of any oil and gas wells to determine the possibility of contamination of the reservoir due to mineral wastes or to inadequately plugged wells;

(C) a soils report giving the recommended embankments slopes, berms, etc.; location of types of soil on the embankment (designate all borrow areas on construction plans related to the embankment zones of the dam); location of core trench and slope of core trench; stability analyses

of the embankments; and seepage studies and recommended drainage systems for the embankment. Data from all soil tests performed should be included. The above information shall also be shown and correctly plotted on the plans, on both plan view and elevation. A soils engineer assisted by a geologist, when necessary, shall be responsible for the planning and supervision of field studies;

(D) cross sections of the dam embankment and spillway sections at the maximum width section showing complete details and dimensions;

(E) complete details on hydraulic design of spillway structure. Unless otherwise justified and approved by the commission, the combined spillway capacity will be large enough to pass and properly still the probable maximum flood without overtopping the dam;

(4) cross-sections of all structures in sufficient number and detail to adequately define all features of the structure, and to permit complete hydraulic and structural analyses; and

(5) if a pipeline is proposed, the location shown by stationing and bearing. Profiles of proposed pipeline routes will also be required.

(b) An applicant seeking financial assistance for wastewater projects pursuant to the Water Quality Enhancement Program, the Water, Wastewater, and Storage Acquisition Program, and the Water Loan Assistance Program shall submit for approval to the executive administrator three copies of plans and specifications and an engineering design report, each of which shall conform to the requirements regarding design criteria for sewerage systems in §317.1(b) of this title (relating to General Provisions) and shall be as detailed as would be required for submission to contractors bidding on the work. The commission shall also review and approve all plans and specifications for wastewater treatment plants. In addition, the applicant shall submit for approval a draft copy of the construction contract bid document for each construction contract to be let and a draft operation and maintenance manual for the sewerage system. The final operation and maintenance manual shall be submitted for approval by the time constuction is 90% complete. If a federal grant or loan is involved, the applicant may also be required to submit additional documents to satisfy the requirements of the Environmental Protection Agency's Construction Grant Program, Public Law 92-500, Title II.

(c) All applicants shall comply with the following.

(1) The plans and the engineer report shall be signed and sealed by a professional engineer registered in the State of Texas. The report shall not be dated more than six months prior to filing with the executive administrator or development fund manager.

(2) Maps prepared and submitted in conjunction with the project shall measure 22 or 24 inches by 36 inches outside, with a two-inch binding edge at the left; other margins shall be not less than ½-inch wide.

(3) Each engineering sheet, map, etc., shall bear a title in the lower right-hand corner showing the name and address of the owner, the county, the sheet number, total number of sheets, a description of details, and shall bear the seal and signature of a registered professional engineer. Each set of complete engineering plans and specifications shall be accompanied by a certificate signed and sealed by a registered professional engineer certifying that such plans and specifications were prepared in accordance with generally accepted engineering practices and standards.

(4) All specifications for materials and workmanship shall conform to such specifications as may be promulgated or recognized by the board.

(5) The applicant shall provide evidence that requirements and regulations of all state and federal agencies having jurisdiction have been met.

(d) The board, executive administrator, or development fund manager may require the submission of additional engineering data and information, if deemed necessary.

§363.82. Land and Right-of-Way Acquisition Procedures Prerequisites.

(a) A general outline of practices, procedures, and policies for land acquisition, including procedures for acquisition of rights-of-way, easements, and relocations, both voluntary and involuntary, shall be presented for the executive administrator or development fund manager's approval.

(b) The board may require procedures for control over project funds during construction to assure disbursement within approved appraisals and estimates or as may be required by judicial decree. In such event, the procedures will require certification to the executive administrator or development fund manager that individual acquisitions or relocations are within the appraised value or engineer's estimate prior to request for final release of funds for such acquisition or relocation. The procedures should make provision for submission to the executive administrator or development fund manager for approval of individual tract appraisal reports prior to contact with the owner of the tracts to be acquired.

(c) In the event of necessity for release of funds in excess of the appraised value or engineer's estimate, the board may require that requests be accompanied by a satisfactory explanation and justification of the participating political subdivision, together with evidence of the extent, if any, that such excess will affect the estimated total project cost.

(d) The applicant should include, within the general outline of the procedures, the qualifications of the personnel proposed for appraisal work, and the qualifications of land agents.

(e) The foregoing is not intended to be inclusive of all of the procedures which may be deemed necessary in the judgment of the board for an effective land acquisition and relocation program or which may be required for proper control of the disbursement of funds, but rather are intended as illustrative of the areas to which such procedures will have application. Provision for amendment of the initially approved procedures in the event of an anticipated increase in total estimated project costs will be required.

§363.83. Commission Permits and Resolution Prerequisite.

(a) As a general rule, the board will not extend a commitment for financial assistance until appropriate permits have been obtained from the commission. In any event, prior to the release of state fund the applicant must obtain all required permits from the commission to appropriate, impound, divert, use, or transport state waters, or to construct wastewater facilities as may be appropriate under the circumstances, or any other permit or approval that may be required by the commission.

(b) In addition to furnishing the board with certified copies of appropriate permits, the applicant shall furnish the board a resolution adopted by the commission certifying that an applicant proposing surface water development has the necessary water right authorizing it to appropriate and use the water the project will provide and/or that an applicant proposing underground water development has the right to use water that the project will provide.

(c) For a water or storage facilities acquisition project, the board may at its discretion become a coapplicant for a commission permit.

§363.84. Legal and Fiscal Document Prerequisites. The documents which shall be required prior to the release of state funds shall include the following as appropriate:

(1) a statement of the project engineer as to sufficiency of funds, including proceeds to be derived from sale of bonds to the board and to others and any other available funds to complete the project;

(2) in those projects involving the sale of bonds to the board or to others, a binder of a corporate surety company, to execute good and sufficient payment and performance bonds each in the full amount of the contract price. Such surety company must be authorized to do business in Texas in accordance with Texas Civil Statutes, Article 5160. The board may, at its discretion, waive this requirement for a binder if the chief executive officer of the participating political subdivision and the project engineer certify to the board that the contractor shall not be notified to proceed until the performance bond and payment bond have been executed and filed and the participating

political subdivision demonstrates to the board's satisfaction it is financially capable of meeting its bond requirements without income which may be generated from the improvements to be constructed with the bond proceeds;

(3) a certified copy of an escrow agreement providing that funds for construction costs shall be disbursed only in accordance with the provisions of the Texas Water Code. This escrow agreement may be waived if the bond proceedings contain a covenant that construction funds will be disbursed only in accordance with the provisions of the Texas Water Code, and if the applicant demonstrates to the board's satisfaction that it is financially capable of meeting its bond requirements without income which may be generated from the improvements to be constructed with the bond proceeds;

(4) a certified copy of the bond transcript including the ordinance, resolution, or similar instrument adopted by the governing body authorizing issuance of bonds sold to the board containing the covenants as agreed upon or as may be required in the board's resolution. The board may require that bond resolutions and covenants reflect provisions consistent with the executive administrator's or development fund manager's approved land acquisition procedures framed in the application and supporting documents;

(5) if not combined in the preceding document, a certified copy of the ordinance, resolution, or similar instrument adopted by the governing body authorizing issuance of any other bonds to finance the balance of the cost of the project;

(6) bonds delivered in proper form to the office of the State Treasurer, Austin, or other place specified by the development fund manager, accompanied by written instructions for delivering the proceeds of the bonds, i.e., written instructions as to whom the state warrant shall be made payable and to whom it shall be delivered;

(7) a contingently executed copy of each proposed construction contract to be entered into by the participating political subdivision for construction of the project;

(8) a certified copy of each contract relating to the sale of water by the participating political subdivision;

(9) a certified copy of each contract relating to the purchase or transport of water to the participating political subdivision;

(10) a proposed act of assurance in a form acceptable to the board to be executed by the contractor which shall warrant compliance by the contractor with all laws of the State of Texas and all rules and published policies of the board;

(11) a certified copy of appropriate commission permits for those projects involving the appropriation, impoundment, use, diversion, or transportation of state water, or for discharge of waste into or adjacent to water in the state;

(12) for a wastewater project, evidence of commission approval of plans and specifications;

(13) any further proposed leases or other agreements transferring any interest in land acquired for the project subsequent to those furnished under §363.58(1) of this title (relating to Required Legal Data);

(14) such other instruments or documents as the board may determine to be in the public interest and containing such terms and conditions as the resolution of conditional approval may require; and

(15) approval of project plans and specifications. Water projects funded by the water loan assistance fund or water development fund, water or storage facilities acquisition projects, or structural flood control projects shall not be eligible for state participation in the event engineering plans and specifications have not been approved by the development fund manager or executive administrator, as appropriate, prior closing the loan. A water quality enhancement project shall not be eligible for state participation in the event engineering plans and specifications have not been approved by the executive administrator and/or commission, as is appropriate, prior to closing the loan.

§363.85. Water Conservation Program Prerequisites.

(a) Prior to the release of funds, two copies of the applicant's water conservation program, including documentation of local adoption, shall be submitted to and approved by the executive administrator. To the extent personnel are available, the executive administrator may provide technical assistance to an applicant in developing a comprehensive water conservation program that is consistent with the approved conservation plan. The water conservation program shall be developed according to criteria and guidelines on water conservation planning available from the executive administrator. The program shall be composed of a long-term water conservation program and an emergency demand management program.

(b) The long-term water conservation program may include:

(1) education and information programs;

(2) plumbing codes or ordinances for water conserving devices in new construction;

(3) retrofit programs to improve water-use efficiency in existing buildings;

(4) conservation-oriented water rate structures;

(5) universal metering and meter repair and replacement;

(6) leak detection and repair; and

(7) means of implementation and enforcement.

(c) The emergency demand management program shall, at a minimum, address drought contingencies, and may include:

(1) education and information programs;

(2) procedures for program initiation and termination and emergency response; and

(3) means of implementation and enforcement.

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

Issued in Austin, Texas, on January 10, 1986.

TRD-8600461 Suzanne Schwartz
General Counsel
Texas Water Development Board

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Water Development and Water Quality Enhancement Programs, Final Procedures and Requirements

★31 TAC §363.91, §363.92

The repeals are proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§363.91. Instruments Needed for Closing.

§363.92. Escrow of Papers.

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

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TRD-8600464 Suzanne Schwartz
General Counsel
Texas Water Development Board

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These sections are proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§363.91. Instruments Needed for Closing. Upon approval by the board and/or certification by the development fund manager, the participating political subdivision shall make necessary arrangements with the development fund manager as may be appropriate, consistent with established policy of the board and these sections, for actual transfer of funds from the treasury of the State of Texas to the participating political subdivision and the receipt from the participating political subdivision of those bonds theretofor authorized and issued for the purpose of financing the project. The documents which shall be required at the time of closing shall include the following:

(1) unqualified approving opinions of the attorney general of Texas as to the legality of bonds sold to the board and also as to bonds sold to finance the balance of the project cost. On each of which opinions shall appear a certification from the comptroller of public accounts that such bonds have been registered in that office; and

(2) unqualified approving opinion by a recognized bond attorney acceptable to the board as to legality of bonds sold to the board and to others. Such attorney shall also furnish the board a transcript of bond proceedings relating to the bonds purchased by the board which shall contain those instruments normally furnished a purchaser of a bond issue, but the participating political subdivision need not duplicate any material previously supplied to the board.

§363.92. Escrow of Papers. Any of the instruments required by §363.91 of this title (relating to Instruments Needed for Closing) which cannot be filed prior to delivery of the bonds and payment therefore shall be escrowed in an Austin bank under arrangements which permit their delivery to the board simultaneously with payment for the bonds.

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

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TRD-8600463 Suzanne Schwartz
General Counsel
Texas Water Development Board

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★ ★ ★

Construction Phase For Water Development Project and Water Quality Enhancement Project

★31 TAC §§363.102-363.107

The repeals are proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§§363.102. Awarding Construction Contracts.

§363.103. Inspection During Contruction.

§363.104. Alteration in Approved Plans and Specifications.

§363.105. Inspection of Materials.

§363.106. Certificate of Approval.

§363.107. Contractor Bankruptcy.

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

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TRD-8600441 Suzanne Schwartz
General Counsel
Texas Water Development Board

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★ ★ ★

★31 TAC §§363.101-363.108

The sections are proposed under the Texas Water Code, §6.101, which provides the board with the authority to make rules necessary to carry out its powers and duties.

§363.101 Floodplain Management Plan. The floodplain management plan being financed by the board shall include the following:

(1) information on sources of data and records available for the watershed, including a summary of historical flooding in the watershed;

(2) a detailed description of flood situation and flood potential. This should include flood season and flood characteristics, and factors affecting flooding and its impacts;

(3) projections of future flood potential by evaluating flood magnitudes and frequencies, identifying flood hazard areas, flood obstructions, velocities of flow, rates of rise, and duration of flooding. The plan should be based on a statistical 100-year or larger flood as a minimum where substantial property loss and/or risk of life may be possible. Consideration should be given to ultimate anticipated development in the watershed, although a minimum of 20 years of anticipated development in the watershed may be acceptable. The plan should include drainage ways and profiles of water surface elevations;

(4) identification of problems and needs, establishment of objectives, and identification of solutions. The plan should include assessments of costs, benefits, environmental effects and effects of any proposed project on surface water elevations within the watershed and in any adjacent watersheds if applicable. A method for implementation should be included in the plan and the plan should provide for maintenance of flood control facilities;

(5) information on uncontrolled flood-flows in the upstream reaches of the watershed that are outside the boundary of the applicant, and documentation that this information has been taken into account in projecting flood water elevations and in designing structural projects; and

(6) sufficient data to demonstrate that flood damage can be reduced or eliminated in existing developed areas as a result of implementing this plan, and that downstream flooding problems are not significantly increased as the result of the implementation.

§363.102. Final Report of Floodplain Management Plan. Upon completion of the floodplain management plan, ten copies of the plan will be submitted to the board.

§363.103. Awarding Construction Contracts. The participating political subdivision shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and awarding the construction contract. The text of the construction contract shall not vary from the text of the executive administrator approved pro forma draft submitted by the participating political subdivision.

§363.104. Inspection During Construction. After the construction contract is awarded, the participating political subdivision shall provide for adequate inspection of the project by the project engineer and require his assurance that the work is being performed in a satisfactory manner in accordance with the approved plans and specifications, approved alterations, and in accordance with sound engineering principles and construction practices. The executive administrator is authorized to inspect the construction of any project at any time in order to assure that plans and specifications are being followed and that the works are being constructed in accordance with sound engineering principles and construction practices, but such inspection shall never subject the State of Texas to any action for damages. The executive administrator shall bring to the attention of the participating political subdivision and the project engineer any variances from the approved plans and specifications. The participating political subdivision and the project engineer shall immediately initiate necessary corrective action.

§363.105. Alterations in Approved Plans and Specifications. If after the executive administrator or development fund manager approves engineering plans and specifications it becomes apparent that changes in such plans and/or specifications are necessary or appropriate, a change order and justification therefore shall be submitted for approval, well in advance of the construction alteration when possible. The executive administrator or development fund manager may approve and authorize a change, alteration, or variance in previously approved engineering plans and specifications, including but not limited to additions or deletions of work to be performed pursuant to the contract, if such change, alteration, or variance does not change, vary, or alter the basic purpose or effect of a project, is not a substantial or material alteration in the plans and specifications, and does not increase the loan commitment of the board for the project. Any change, alteration, or variance in the previously approved plans and specifications, which involves an alteration in the basic purpose or effect of a project, substantially or materially alters the previously approved plans and specifications

of the project, or which involves an increase in the loan commitment of the board for the project, must be approved and authorized by the board. If there is an immediate danger to life or property, tentative approval of change orders may be secured from the executive administrator or development fund manager via telephone and confirmed by letter or telegraph. A request for a change order should contain sufficient information, with plans or drawings and cost estimates, to enable the executive administrator or development fund manager to review the proposal. Engineering computations shall be included if structural changes are involved. After approval of the proposed alterations by the board, executive administrator or development fund manager, as is appropriate, copies of the approved change order shall be forwarded to the project engineer. If commission approval of plans for a wastewater treatment plant or other facility has been required, commission approval also must be obtained before any substantial or material alteration is made in those plans.

§363.106. Inspection of Materials.

(a) The executive administrator is also authorized to inspect all materials furnished, including inspection of the preparation or manufacture of the materials to be used. A resident engineer or inspector may be stationed at the construction site to report to the executive administrator on the manner and progress of the construction or to report conditions relating to the materials furnished and the compliance by the contractor with approved plans and specifications for the project. Such inspection will not release the contractor from any obligation to perform the work in accordance with the requirements of the contract documents.

(b) In the event construction procedures or materials are determined by the executive administrator to be substandard or otherwise unsatisfactory and/or not in conformity with approved plans and specifications, the executive administrator may order the participating political subdivision to take such action through the project engineer in the manner provided for in the construction contract to correct any such deficiency.

(c) In those instances of dispute between the participating political subdivision's project engineer and the executive administrator's representative as to whether material furnished or work performed conforms with the terms of the construction contract, the executive administrator may order the participating political subdivision to direct the project engineer to reject questionable materials, and/or initiate other action provided for in the construction contract, including suspension where necessary, until all disputed issues are resolved in accordance with the terms of the construction contract.

(d) The contractor shall furnish the executive administrator's representative with every reasonable facility for ascertaining whether the work as performed is in accordance with the requirements and intent of the contract.

(e) The executive administrator or development fund manager is authorized to conduct engineering and financial audits of every project which is financed in whole or in part by Texas water development funds. For purposes of this section, the following definitions are applicable.

(1) Financial audit—A financial audit consists of a review of all the board's files for historical background for the project, a visit to the project offices or site to gather sufficient information to perform a detailed review of documents which substantiate the project expense, a tabulation of expenses, and issuance of an audit report to document the findings.

(2) Engineering audit—An engineering audit consists of a physical inspection of the project to analyze and compare the project with the approved plans and specifications, resulting in the issuance of a technical report which itemizes any variances from the construction contract and approved plans and specifications and recommends corrective action.

(f) In addition to normal testing procedures required of the participating political subdivision, the executive administrator may require reasonable additional tests of construction materials or processes which the executive administrator determines to be necessary during the construction of projects financed in whole or in part by Texas water development funds. All tests, whether for the executive administrator or the project engineer, will conform to current American Water Works Association, American Association of State Highway and Transportation Officials, American Society of Testing and Materials, Texas Department of Highways and Public Transportation published procedures, or similar criteria. The executive administrator shall specify which tests are applicable. Samples for testing shall be furnished free of cost to the executive administrator upon request on the construction site.

§363.107. Certificate of Approval. Upon the resolution of disputes and/or completion of work, the development fund manager shall issue a final, unqualified certificate of completion. This certificate shall be called a certificate of approval.

§363.108. Contractor Bankruptcy. In the event of a contractor bankruptcy, any agreements entered into with the bonding company (other than the bonding company serving as general contractor or fully bonding another contractor acting as their agent) must be submitted for approval of the executive administrator or development fund manager. The participating political subdivision shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and re-awarding a construction contract.

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

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TRD-8600440 Suzanne Schwartz
General Counsel
Texas Water Development Board

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Water Facilities Acquisition Program

★31 TAC §363.111, §363.112

The repeals are proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§363.111. Master Agreement.

§363.112. Other Contracts.

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

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TRD-8600443 Suzanne Schwartz
General Counsel
Texas Water Development Board

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The new sections are proposed under the Texas Water Code, §6.101, which provides the board with the authority to make rules necessary to carry out its powers an duties.

§363.111. Master Agreement. The text of the master agreement may encompass the following provisions, where applicable:

(1) with regard to project facilities, including storage, diversion, treatment, wastewater treatment, transportation and collection facilities:

(A) the formula to be used in determining the cost to the board of acquiring its portion of the project;

(B) procedures by which development funds shall be made available for payment of the board's portion of the project. See §363.125 of this title (relating to Disbursement of State Funds);

(C) the character of the interest which the board shall acquire in the facilities, which will customarily be an undivided interest;

(D) for a federal project, whether the board shall contract on behalf of the participating political subdivisions for the interests to be acquired by them and manner of payment therefor;

(2) contract provisions consistent with the development fund manager's approved land (site) acquisition procedures framed in the participating political subdivision's application and supporting documents;

(3) for a project not constructed by the federal government, the duties and functions of the participating political subdivision for the construction of the project, including the awarding of the construction contract, supervision of construction, and manner of payment to the contractor;

(4) provisions governing lease or rental of lands in which the board has an interest, including the party or parties which shall have the responsibility for such leasing and rental; and the basis of reimbursement to the board for revenues derived therefrom. Such provisions shall include a stipulation that all lease, rental, and other transfers be approved by the development fund manager;

(5) the governmental entity or entities which shall provide for the development and operation of recreational facilities at a reservoir project; and the basis of reimbursement to the board for the use of board-owned storage facilities and the water stored therein for recreational purposes;

(6) the governmental entity or entities which shall operate and maintain the board's facilities and the basis of allocation of costs for operation and maintenance between the board and others having an interest in the same facilities;

(7) procedures governing emergency releases of water stored in storage facilities acquired by the board and under the board's control;

(8) provisions governing sales of water by participating political subdivisions to customers who were not foreseen at the time board participation in the project was approved, and the basis of allocation of revenues from such customers between the board and the participating political subdivisions;

(9) requirement that participating political subdivisions shall indemnify and hold harmless the state against any and all claims and causes of action arising from the construction, acquisition, operation, and maintenance of the facilities;

(10) provisions for notice to the particiating political subdivisions, storage clients, water clients, water treatment clients, and wastewater treatment clients prior to any sale, transfer, or lease of board-owned facilities or the sale of the use of water, water treatment capacity, wastewater treatment capacity therefrom, and recognizing the preferential right of participating political subdivision to purchase or lease acquisition faciltites, or to purchase the right to use water in storage, or capacity in water and wastewater treatment from the board upon a showing of need;

(11) provision that the board will not compete with participating political subdivision in the sale of water or the treatment of water or wastewater when such competition will jeopardize the ability of the participating political subdivision to meet financial obligations for its own water supply and/or water and wastewater treatment projects;

(12) requirement that the participating political subdivision supply the development fund manager with certified copies of all minutes of official actions of the participating political subdivision during the period when construction of the project is in progress and of suubsequent action significantly affecting the project;

(13) provisions relating to the interest to be acquired in lands necessary for, or ancillary to, the project;

(14) covenants by the participating political subdivision with respect to inspection standards and techniques, award of contracts, compliance with appropriate statutes and indentures, fund disbursement procedures, recreational development and administration, operation annd maintenance procedures, and other provisions appropriate to the master agreement;

(15) provision for delivery to the development fund manager of as built plans of the project upon completion;

(16) a schedule for repurchase of the state's interest in the project; and

(17) any other provisions which may be deemed appropriate and needed by the executive administrator or the development fund manager.

§363.112. Other Contracts. After the master agreement has been executed, the executive administrator may proceed to negotiate and the board may approve entry into any other contract or contracts necessary to implement the master agreement, including contracts with federal agencies.

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

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TRD-8600442 Suzanne Schwartz
General Counsel
Texas Water
Development Board

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(512) 463-7850.

★ ★ ★

Water Facilities Acquisition Program Construction Phase

★31 TAC §§363.121-363.126

The repeals are proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§363.121. General Information.

§363.122. Awarding Construction Contracts.

§363.123. Inspection During Construction.

§363.124. Alterations in Approved Plans and Specifications.

§363.125. Disbursement of State Funds.

§363.126. When Project Costs Exceed Estimates.

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

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TRD-8600445 Suzanne Schwartz
General Counsel
Texas Water Development
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The new sections are proposed under the Texas Water Code, §6.101, which provides the board with the authority to make rules necessary to carry out its powers and duties.

§363.121. General Information. On projects to be constructed or enlarged by a participating political subdivision or subdivisions, one participating political subdivision may be designated under an agreement with the board to act as manager for the project and perform the functions customarily performed by a manager-owner.

§363.122. Awarding Construction Contracts. The designated participating political subdivision shall be responsible for assuring that proper procedures are observed in advertising for bids and selecting the bidder to construct the project. Before notifying the successful bidder or awarding the contract, the designated participating political subdivision shall submit to the executive administrator for review and approval a complete transcript of the bidding procedures which shall consist of: the invitation to bid and the advertisement of bids; bid plans and specifications; names of parties who obtain sets of bidding documents and plans and specifications; a summary of the results of the bid-opening; and a copy of the proposed contract to be awarded. When requested by the

board or the executive administrator, the designated participating political subdivision shall also submit information on the qualifications of the contractor or contractors selected to perform the work. The contract shall comply with the provisions of the Texas Water Code, §17.135 and §17.279. If the executive administrator approves the bidding procedures, the bidder selected, and the proposed construction contract, the designated participating political subdivision shall notify the successful bidder. If the executive administrator disapproves the bidding procedures, the executive administrator shall advise the designated participating political subdivision of the specific matters which must be remedied before the executive administrator will grant approval. After the executive administrator's approval is granted, the successful bidder shall obtain usual and customary insurance for the project and shall execute a contractor's performance bond and a payment bond, as required by Texas Civil Statutes, Article 5160, each with a corporate surety company authorized to do business in Texas and each for 100% of the value of the construction contract. Before the construction contract is awarded, the executive administrator shall approve the insurance and bonds, and the project engineer shall submit a statement to the executive administrator as to the sufficiency of available funds to complete the project.

§363.123. Inspection During Construction. After the construction contract is awarded, the designated participating political subdivision shall provide for adequate inspection of the project by the project engineer and require his assurance that the work is performed in a satisfactory manner in accordance with the approved plans, specifications, and approved alterations, and in accordance with sound engineering principles and practices, but such inspection shall never subject the State of Texas and the Texas Water Development Board to any action for damages. Unless other provisions are contained in the master agreement, the executive administrator's inspector shall bring to the attention of both the project engineer and the designated participating political subdivision any variance from the approved plans and specifications. The participating political subdivision and the project engineer shall immediately initiate necessary corrective action.

§363.124. Alterations in Approved Plans and Specifications. The provisions of §363.105 of this title (relating to Alterations in Approved Plans and Specifications) shall apply to projects contracted under the water, wastewater, and storage facilities acquisition program.

§363.125. Disbursement of State Funds. State funds expended for the acquisition and/or development of facilities in a nonfederal project shall be disbursed in accordance with the provisions of the master agreement and any other contracts by the board pursuant thereto, subject to the following: in projects involving the acquisition of land, the board shall not pay or agree to pay any of the costs of land acquisition in advance, but may pay or agree to pay its *pro rata* portion of such costs as they accrue or on any other reasonable basis agreed to by the board; provided, that if construction is to be paid for as work progresses, the board shall not pay or agree to pay more than 90% of its *pro rata* portion of the amount due at the time of each progress payment, as certified to by the project engineer; and provided further that the remaining 10% thereunder shall be paid only after approval by the project engineer and, in addition, upon final certification by the development fund manager that work to be performed under the terms of the construction contract has been completed in a satisfactory manner and in accordance with:

(1) approved plans and specifications, and

(2) sound engineering principles and practices. Upon the resolution of any disputes and completion of work, the development fund manager shall issue a final, unqualified certificate of completion. This certification shall be called a certificate of approval.

§363.126. When Project Costs Exceed Estimates. In the event project costs exceed the estimates on the basis of which the board's commitment has been made, the board may reopen the proceedings in which the original findings approving the project were made, and may hold further meetings or hearings thereon as provided in §363.71 and §363.72 of this title (relating to Formal Action by the Board). The board may request information reasonably necessary for an adequate review of the findings previously made and may amend the prior resolution of approval on the basis of the information developed. Any contracts made pursuant to the original resolution of approval shall likewise be subject to review and may be renegotiated on the basis of amendments to the resolutions. If project costs exceed the estimates, the board may follow any procedure deemed appropriate under the circumstances, including amendment of the resolution and renegotiation of any contracts made pursuant thereto.

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

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TRD-8600444 Suzanne Schwartz
General Counsel
Texas Water
Development Board

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(512) 463-7850.

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Procedures For State Acquisition Initiated By the Board

★31 TAC §363.141

The repeal is proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§363.141. General.

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

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TRD-8600447 Suzanne Schwartz
General Counsel
Texas Water Development
Board

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The new section is proposed under the Texas Water Code, §6.101, which provides the board with the authority to make rules necessary to carry out its powers and duties.

§363.141. General. The board may initiate proceedings for state acquisition under the Texas Water Code, §16.131 and §16.132, in an eligible project. The procedures governing state participation in such instances shall be established by the board for each project and shall be consistent with the requirements of Texas Water Code, Chapter 16, Subchapter E.

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

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TRD-8600446 Suzanne Schwartz
General Counsel
Texas Water
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Application to Acquire State Interests of to Purchase Water

★31 TAC §§363.161-363.166

The repeals are proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§363.161. Requirements of Application.

§363.162. Notice to Participating Political Subdivision and Others.

§363.163. Consideration by Board.

§363.164. Findings.

§363.165. Resolution Authorizing Transfer.

§363.166. Negotiation of Contracts.

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

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TRD-8600452 Suzanne Schwartz
General Counsel
Texas Water Development Board

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★31 TAC §§363.161-363.165

The new sections are proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§363.161. Requirements of Application. A prospective storage client, water client, water treatment client, or wastewater treatment client shall make application to the board for the interest it proposes to acquire. The application, together with supplements and exhibits, shall contain the following information in the order listed, as applicable:

(1) name of the applicant and, if a governmental entity, the authority of law under which it was created and operates and date of creation or incorporation;

(2) name, title, and address of official correspondent or representative;

(3) if application is by other than an individual, names, and titles of principal officers including the managing official;

(4) name and address of project engineer, if appropriate;

(5) name and address of legal counsel;

(6) statement of project engineer's estimate of cost, itemized as to major facilities or items needed to make use of the facilities to be acquired or used, or of the water to be used;

(7) brief description of the use to be made of the facilities and the places and purposes for which water developed therefrom is to be used or the places or population which the water or wastewater treatment will serve; or a brief description of the use to be made of water diverted from state-owned storage facilities;

(8) if the water to be developed or purchased from the storage facilities is not to be used by applicant, or if the treatment capacity will not be used by applicant, the following information:

(A) the names or classes of parties to be served by applicant;

(B) the charges to be made for such service;

(C) the basis used in determining such charges;

(D) data showing engineering and economic feasibility of furnishing such services;

(9) for water treatment of wastewater facilities, a brief description and the proposed use of the facilities to be acquired including:

(A) line and plant capacities available and portion to be acquired;

(B) areas and population to be served; and

(C) proposed plan for acquiring plant site;

(10) a copy of the permit application submitted to the commission;

(11) proposed transfer agreement covering the points prescribed in §363.165 of this title (relating to Negotiation of Contracts), as applicable;

(12) such additional information as may be required by the board which is reasonably necessary for an adequate understanding of the project.

§363.162. Notice to Participating Political Subdivision and Others. Upon receipt of an application by a prospective water, storage, wastewater, or water treatment client, the board will send notice of its receipt by regular United States mail to all participating political subdivisions, and any water, storage, wastewater, or water treatment clients in the project in question.

§363.163. Consideration by Board. The application shall be scheduled on the board's agenda, and representatives of the prospective client, the participating political subdivisions, other clients in the project, and other interested parties shall be notified of the time the presentation of the application may be made to the board. Consideration of the application may be continued from time to time and from place to place until the board has obtained the information deemed necessary in making the required findings.

§363.164. Resolution Authorizing Transfer. If the board approves the application, a transfer resolution will be adopted which shall rpescribe the terms and conditions necessary for the sale, transfer, or lease.

§363.165. Negotiation of Contracts.

(a) Before the board's adoption of the transfer resolution, the executive administrator shall negotiate a transfer agreement with the water, storage, wastewater, or water treatment client to effectuate the sale, transfer, or lease of board-owned interests. The client may not use the project facilities or any water stored in storage facilities until it has been issued the necessary permits by the commission. The transfer agreement shall cover the following points as applicable:

(1) interest transferred:

(A) the character of the interest which is conveyed in the board-owned facilities or in the use of water stored therein;

(B) the formula to be used in computing the price to be paid for the facilities to be acquired, including diversion facilities, or for the purchase of the right to use the facilities or water stored in storage facilities, which formula shall be consistent with the requirements of the Texas Water Code, §16.186 and §16.187;

(2) provisions governing lease or rental of facilities or facilities lands in which the state has an interest and the basis of reimbursement to the board for revenues derived therefrom;

(3) the governmental entity or entities which shall provide for the development and operation of recreational facilities at any reservoir and the basis of allocation of costs for operation and maintenance between the board and others owning facilities in the same reservoir;

(4) procedures governing emergency releases of unappropriated public waters stored in storage facilities owned by the board and under the board's control;

(5) requirement that water, storage, water treatment, or wastewater clients shall indemnify and hold harmless the state against any and all claims and causes of action arising from the construction, acquisition, operation, and maintenance of the project;

(6) provision for notice to participating political subdivisions and clients prior to any sale, transfer, or lease of board-owned facilities or the sale of the use of the facility's capacity or water therefrom, and recognizing the preferential right of participating political subdivisions and other political subdivisions to purchase or lease such or similar facilities or to purchase the right of use of the facility's capacity or water in storage from the board;

(7) provisions that the transfer agreement and any other contracts executed with the board pursuant thereto shall be subject to termination by the board upon the failure of a client to make continued payment of the obligations assumed under the contract with the board or upon other breach of the contract. The transfer agreement or other contracts executed with the board pursuant thereto may also be subject to termination by the board if the commission determines that the client has failed to comply with the terms or conditions of the applicable permit. The board shall provide the water client reasonable notice of the board's consideration of termination of the water supply contract. This provision shall not be applicable to transfer agreement by which the board sells an ownership interest in a storage facility;

(8) other provisions appropriate to the subject of the transfer agreement including provisions setting standards for operation and maintenance of the project.

(b) The attorney general of Texas shall approve as to legality any contract authorized under this subchapter.

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

Issued in Austin, Texas, on January 10, 1986.

TRD-8600448 Suzanne Schwartz
General Counsel
Texas Water
Development Board

Earliest possible date of adoption:
February 17, 1986
For further information, please call
(512) 463-7850.

★ ★ ★

Post-Construction Responsibilities Compliance Procedures

★31 TAC §363.181

The repeal is proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§363.181. General Responsibilities.

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

Issued in Austin, Texas, on January 10, 1986.

TRD-8600454 Suzanne Schwartz
General Counsel
Texas Water Development
Board

Earliest possible date of adoption:
February 17, 1986
For further information, please call
(512) 463-7850.

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The new section is proposed under the Texas Water Code, §6.101, which provides the board with the authority to make rules necessary to carry out its powers and duties.

§363.181. General Responsibilities. After the satisfactory completion of the project, the participating political subdivisions shall be held accountable by the board for the continued validity of all representations and assurances made to the board. Continuing cooperation with the board is expected. To facilitate such cooperation and to enable the board to protect the state's monetary investment and the public interest, the following provisions shall be observed:

(1) operation and maintenance requirements. The executive administrator is authorized to inspect the project and the records of operation and maintenance of the project at any time. If it is found that the project is being improperly or inadequately operated and maintained to the extent that the project purposes are not being properly fulfilled or that integrity of the state's investment is being endangered, the executive administrator shall require the participating political subdivisions to take corrective action;

(2) financial requirements. The development fund manager may request certified copies of all minutes, operating budgets, monthly operating statements, contracts, leases, deeds, audit reports, and other documents concerning the operation and maintenance of the project in addition to the requirements of the covenants of the bond indenture and/or the master agreement. The financial assistance provided by the board is based on the project's economic feasibility, and the board shares the participating political subdivision's desire to maintain this feasibility in the project's operation and maintenance at all times. The development fund manager shall periodically inspect, analyze, and monitor the project's revenues, operation, and any other information the board requires in order to perform its duties and to protect the public interest;

(3) water conservation reporting. Applicants with required water conservation programs shall report annually to the executive administrator on the implementation, status, and effectivenss of the water conservation programs.

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

Issued in Austin, Texas, on January 10, 1986.

TRD-8600453 Suzanne Schwartz
General Counsel
Texas Water
Development Board

Earliest possible date of adoption:
February 17, 1986
For further information, please call
(512) 463-7850.

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VII. Texas Commission on Law Enforcement Officer Standards and Education.

Chapter 211. Administrative Rules

Substantive Rules

★37 TAC §§211.97-211.99

The Texas Commission on Law Enforcement proposes new §§211.97-211.99, concerning minimum entry level age requirement for licensing, psychological examinations, and provisional licenses. The proposed sections are mandated by House Bill 1592, 69th Legislature, 1985, which requires the agency to adopt rules raising to 21 years of age the minimum entry level age requirement for licensing; to adopt rules relating to exceptional circumstances in the administration of psychological evaluations of applicants for licensing; to adopt rules which allow a law enforcement agency to petition the commission for a temporary probationary license for a law enforcement officer license. Applicants who are 18 years of age or older and attending a basic police training course or who have complete a basic police training course on the effective date of §211.97 will be "grandfathered." Law enforcement agencies located in counties where the services of a licensed psychologist or a psychiatrist are not available to the law enforcement agency may petition the commission for authorization to use the services of a qualified licensed physician for the psychological evaluation of license applicants. Law enforcement agencies which demonstrate a manpower shortage may petition the commission for a temporary probationary license which has been designated as a provisional license under proposed §211.99.

Alfredo Villarreal, general counsel, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections. The commission does not impose a licensing fee for the issuance of a provisional license, and §211.98 will allow qualifying law enforcement agencies to use the services of a physician as authorized prior to September 1, 1985.

Mr. Villarreal also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the reasonable anticipation of the delivery of a higher standard of law enforcement services, as the minimum age requirement is designed to provide an educational and experience adquisition incentive to individuals desiring to enter law enforcement. Additionally, the rules as proposed will insure that psychological evaluations of peace officer license applicants will be conducted, as authorized, by qualified licensed physicians. Furtner, the rules as proposed will require a law enforcement officer appointed under a provisional license to complete a basic training course for police at the earliest possible time. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Alfredo Villarreal, General Counsel, 1606 Headway Circle, Suite 100, Austin, Texas, 78754.

The new sections are proposed under Texas Civil Statutes, Article 4413 (29aa), §6(b(2), 6(q) and 7(A), which provide the Texas Commission on Law Enforcement Officer Standards and Education with the authority to adopt rules raising to 21 years of age the minimum entry level age requirement for licensing as a peace officer or reserve law enforcement officer, adopt rules that will allow for exceptional cir-

cumstances in the administration of the declaration of psychological and emotional health, including the use of qualified licensed physicians instead of licensed psychologists or psychiatrists, and adopt rules to allow a law enforcement agency to petition for a temporary probationary license for a peace officer or reserve law enforcement officer when the law enforcement agency can substantiate that it has a manpower shortage.

§211.97 Minimum Entry Level Age Requirement for Licensing.

(a) A person who is an applicant for a peace officer license or a reserve law enforcement officer license shall be at least 21 years of age.

(b) A person who is an applicant for a jailer or guard of county jail license shall be at least 18 years of age.

(c) The commission may issue a peace officer or a reserve law enforcement officer license to a person who is at least 18 years of age and has:

(1) successfully completed and received credit for at least 60 semester hours of study at an accredited college or university;

(2) received an associate degree from an accredited college or university; or

(3) received an honorable discharge from the armed forces of the United States after at least two years service.

(d) Subsection (a) of this section does not apply to a person who is licensed as a peace officer or as a reserve law enforcement officer prior to the effective date of this section.

(e) Subsection (a) of this section does not apply to a person who is enrolled and attending a basic training course for peace officers or reserve law enforcement officers on the effective date of this section and successfully completes the basic training course and receives a passing score on the licensing examination required by Texas Civil Statutes, Article 4413(29aa), §6(B).

(f) Subsection (a) of this section does not apply to a person who successfully completes a basic training course for peace officers or reserve law enforcement officers prior to the effective date of this section and receives a passing score on the licensing examination required by Texas Civil Statutes, Article 4413(29aa), §6(B).

§211.98. Psychological Examination.

(a) A person who is an applicant for a peace officer, reserve law enforcement officer, jailer, or guard of county jail license shall undergo the psychological examination required by Texas Civil Statutes, Article 4413(29aa), §7A.

(b) A law enforcement agency may use a psychological examination report form developed by the commission or a report developed entirely by the examining psychologist or psychiatrist.

(c) A law enforcement agency hiring a person desiring to be licensed as a peace officer, reserve law enforcement officer, jailer or guard of county jail may petition the commission to allow the law enforcement agency to select a qualified licensed physician to conduct the psychological examination required by Texas Civil Statutes, Article 4413(29aa), §7A.

(d) Upon the filing of a petition the commission shall set the matter for a hearing at a date and location agreed upon by the law enforcement agency and the commission, except that the law enforcement agency shall have the right to notice of hearing of at least 10 days. The law enforcement agency may waive the 10 day notice requirement.

(e) Hearing.

(1) A law enforcement agency shall show that there exists the necessity for allowing exceptional circumstances in the administration of declaration of psychological and emotional health.

(2) A law enforcement agency shall show the necessity for allowing the law enforcement agency to select a qualified licensed physician to conduct the examination required by Texas Civil Statutes, Article 4413(29aa), §7A.

(3) A law enforcement agency shall show that the services of a licensed psychologist are not available to the law enforcement agency in the county of the law enforcement agency .

(4) A law enforcement agency shall show that the services of a psychiatrist are not available to the law enforcement agency in the county of the law enforcement agency.

(5) A law enforcement agency shall show that the services of a qualified licensed physician are available and the law enforcement agency shall submit the name of the qualified licensed physician.

(f) Determination allowing exceptional circumstances.

(1) If the hearing examiner appointed to preside over a hearing allowed by this section finds that a law enforcement agency has shown the necessity for allowing exceptional circumstances in the administration of the declaration of psychological and emotional health the hearing examiner shall enter the appropriate order making such finding.

(2) In his order the hearing examiner shall name the qualified licensed physician who shall conduct the examination required by Texas Civil Statutes, Article 4413(29aa), §7A.

(3) The hearing examiner shall order the law enforcement agency to inform the commission when the services of a licensed psychologist or psychiatrist become available in the county of the law enforcement agency.

§211.99. Provisional License

(a) The commission shall have the authority to issue a provisional license to a person seeking appointment as a peace officer or as a reserve law enforcement officer.

(b) The commission may issue a provisional license to a person who complies with the standards for licensing as required by §211.80 of this title (relating to Minimum Standards for Licensing), but is not eligible for issuance of a permanent license.

(c) A law enforcement agency desiring to appoint a person pursuant to the issuance of a provisional license shall petition the commission for a provisional peace officer license or a provisional reserve law enforcement license.

(d) Upon the filing of a petition for a provisional license the commission shall set the petition for a hearing before a hearing examiner appointed by the commission.

(e) The provisional license petition hearing shall be set in Austin, Texas, at a regional commission office or at a location agreed to by the commission and the applicant law enforcement agency at a time and date agreed to by the commission and the applicant law enforcement agency; however, the applicant law enforcement agency shall have the right to request a notice period of at least 10 days. The 10 day minimum notice period may be waived by the applicant law enforcement agency.

(f) Provisional license petition hearing

(1) The applicant law enforcement agency shall substantiate that it has a manpower shortage.

(2) The applicant law enforcement agency shall substantiate that it has a manpower shortage through the use of (but not limited to):

(A) sworn testimony

(B) exhibits

(C) public Records and any other competent and relevant evidence deemed admissible by the hearing examiner.

(3) Relevant factors that may be considered by the hearing examiner include but are not limited to:

(A) evidence that the applicant law enforcement agency is operating at a manpower shortage rate of 25% or more of the agency's authorized strength, or evidence that the applicant law enforcement agency has operated with a manpower shortage for a period of time exceeding 45 days,

(B) evidence that the applicant law enforcement agency has made each and every effort to fill each vacancy with a licensed peace officer or licensed reserve law enforcement officer;

(C) the nature of the manpower shortage (i.e. patrol division, administration, jail, dispatch, etc.),

(D) the relationship of the manpower shortage to the overall efficient operation of the agency,

(E) the extent to which the manpower shortage hinders the ability and capacity required to perform the duties and discharge the responsibilities of the law enforcement agency,

(F) the availability of a basic training course for the type of provisional license requested, including evidence of the next available basic training course to be offered in the regional training area which

serves the applicant law enforcement agency.

(4) A finding that a provisional license shall be issued shall be made in writing by the hearing examiner.

(A) The effective date of the provisional license, if issuance is made, shall be the date the hearing is closed.

(B) The expiration date of a provisional license shall be the date set by the hearing examiner, except that the expiration date of the provisional license shall not be set for a date later than the beginning date of the next available basic training course as determined by the hearing examiner.

(C) The provisional license period shall terminate at the expiration date of the provisional license, except that if the holder of a provisional license is enrolled and attending a basic training course on or before the expiration date, the provisional license period is automatically extended until the holder of the provisional license completes or ceases to attend the basic training course.

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

Issued in Austin, Texas, on January 17, 1986.

TRD-8600744 Alfred Villareal
General Counsel
Texas Commission on Law Enforcement

Earliest possible date of adoption:
July 1, 1986
For further information, please call (512) 834-9222.

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Withdrawn Rules

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

TITLE 16. ECONOMIC REGULATIONS

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter H. Tariffs and Schedules

★16 TAC §5.121

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed new section to §5.121, submitted by the Railroad Commission of Texas, has been automatically withdrawn, effective January 21, 1986. The section as proposed appeared in the July 19, 1985, issue of the *Texas Register* (10 TexReg 2309).

TRD-8600739
Filed: January 21, 1986

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★16 TAC §5.122

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed section to §5.122, submitted by the Railroad Commission of Texas has been automatically withdrawn, effective January 21, 1986. The section as proposed appeared in the July 19, 1985, issue of the *Texas Register* (10 TexReg 2310).

TRD-8600740
Filed: January 21, 1986

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★16 TAC §5.123

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed section to §5.123, submitted by the Railroad Commission of Texas has been automatically withdrawn, effective January 21, 1986. The section as proposed appeared in the July 19, 1985, issue of the *Texas Register* (10 TexReg 2310).

TRD-8600741
Filed: January 21, 1986

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★16 TAC §5.141

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed amendment to §5.141, submitted by the Railroad Commission of Texas has been automatically withdrawn, effective January 21, 1986. The amendment as proposed appeared in the July 19, 1986, issue of the *Texas Register* (10 TexReg 2311).

TRD-8600742
Filed: January 21, 1986

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★16 TAC §5.458

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed amendment to §5.458, submitted by the Railroad Commission of Texas has been automatically withdrawn, effective January 21, 1986. The amendment as proposed appeared in the July 19, 1986, issue of the *Texas Register* (10 TexReg 2312).

TRD-8600743
Filed: January 21, 1986

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Adopted Rules

An agency may take final action on a rule 30 days after a proposal has been published in the *Register*. The rule 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 rule 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 rule with changes to the proposed text, the proposal will be republished with the changes.

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

★16 TAC §§3.6, 3.16, 3.41

The Railroad Commission of Texas adopts amendments to §§3.6, 3.16, and 3.41, with changes to the proposed text published in the October 1, 1985, issue of the *Texas Register* (10 TexReg 3793).

The amendments are adopted to implement recent legislation which requires the filing with and disclosure by the commission of certain electric logs. The amendments will require basic electric logs run after September 1, 1985, to be filed with a completion report for each well, or, in the case of a dry hole, a plugging report. The amendments provide for periods of confidentiality upon written request by the owner or operator of the well. Further, the amendments clarify that well logs filed with the commission for other purposes will be considered public information.

Written comments on the proposed amendments were received from at least six companies and/or individuals. In addition, a public hearing was called and attended by at least 17 individuals, most of whom represented companies listed as follows.

Several commenters did not want electric logs filed pursuant to Statewide 6 and 41 to be public information. These commenters suggested different methods regarding how to utilize the log in acquiring multiple completion or new field designation approval without the logs becoming public information. One commenter suggested that an applicant desiring public information. One commenter suggested that an applicant desiring confidential treatment of the log must go to hearing and put the log into evidence adn then retain such log. One commenter suggeted submitting the log for the purpose of having the application approved and then requiring the commission to send the log back to the applicant after making its determination. The methods were considered by the commission and rejected. The commission believes that one a log is used for the aforementioned purpose, it becomes public and must remain public information.

Several commenters suggested that it was not the intent of the legislature to require logs to be filed on wells which were being deepened and wanted this language revised to reflect their interpretation of the legislative intent. Another commenter stated that it was the legislative intent to require logs to be filed on wells which were being deepened into a different horizon. The commission agrees with this interpretation of the legislative intent and revised the language in subsection (a) to clarify that a log should be submitted in cases of deepening, if such a log is run.

Several commenters suggested that the filing of logs with amended completion reports should not be required. This provision was revised to clarify that the commission will not require a log to be run but if such log is run, it must be filed with amended completion reports only in the situation where the well has been deepened.

Those who were against adoption of the proposed amendments were Mitchell Energy Corporation, Calumet Corporation, Cequin Corporation, and Gibson Drilling Company.

The Society of Independent Professional Earth Scientists were for adoption of the proposed amendments.

Those commenting, but not expressing specific support or opposition were Texas Mid-Continent Oil & Gas Association, Texas Independent Producers Producers and Royalty Owners Association, Exxon, Texaco, Amoco Production Company, Sun Exploration and Production Corporation, Chevron USA, West Central Texas Oil and Gas Association, and Malcolm McGregor, Petroleum Geologist, Mobil Producing Texas and New Mexico, Incorporated, Panhandle Producers and Royalty Owners Association.

The amendments are adopted under the Texas Natural Resources Code, §91.551, which provides the Railroad Commission with the authority to make rules concerning the definition of basic electric log and concerning the filing with and disclosure by the commission of such electric logs.

§3.6 Rule 6—Application for Multiple Completion.

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

(d) Multiple completion authority for a well will not be granted unless the following required data have been filed with the Engineering Department of the commission:

(1) (No change.)

(2) electrical log or portion of the electric log of the well or a type electric log or a portion of the type electric log showing clearly thereon the subsurface location of the separate reservoirs claimed. Any electric log filed will be considered public information pursuant to §3.16 of this title (relating to Rule 16-Log and completion or Plugging Report) Statewide Rule 16.

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

§3.16 Rule 16—Log and Completion or Plugging Report.

(a) The owner or operator of an oil, gas, or geothermal resource well, within 30 days after the completion of such well or the plugging of such well, if the well is a dry hole, shall file with the commission the appropriate completion or plugging report, and if a basic electric log is run on the well, as legible, unaltered final copy of such a log shall be attached. A basic electric log means a lithology, porosity, orr resistivity log run over the entire wellbore or in the alternative, if no such log is run over the entire wellbore, the log which is the most complete of such logs run. Amended completion reports must be filed for any change in perforations, or openhole or casing records within 30 days after recompleting the well. In addition, if the well is deepened, a copy of a basic electric log run after September 1, 1985, shouldd be submitted if such log is run over a deeper interval than the interval covered by a basicc electric log already of file with the Commission for that wellbore.

(b) Each log filed with the commission shall be considered public information and shall be available to the public during normal business hours. If the owner or operator of such well described in subsection (a) of this section desires log(s) to be confidential, the owner or operator must submit a written request for a delayed filing of the log(s). When filing such a request, the owner or operator must retain the log(s) and may delay filing such log(s) for one year beginning from the date the completion or plugging report is required to be filed with the commission. The owner or operator of such well may request an additional filing dealy of two years, provided the written request is filed prior to the expiration date of the initial confidentiality period. If a well is drilled on land submerged in state water, the owner or oper-

ator may request an additional filing delay of two years so that a possible total filing delay of five years may be obtained. A request for the additional two year filing delay period must be in writing and be received prior to the expiration of the first two year filing delay. Logs must be filed with the commission within 30 days after the expiration of the final confidentiality period.

(c) If the logs are not filed in accordance with the provisions of this section, the commission may refuse to assign an allowable to a well or may set the allowable for such well at zero. If the well is a dry hole and the logs are not filed in accordance with the provisions of this section, the commission may initiate penalty action pursuant to thhe Texas Natural Resources Code, Title 3.

§3.41 Rule 41—Application for New Oil or Gas Field Designation and/or Allowable.

(a) Evidence proving that a well is a discovery must be received in the commission's Austin office prior to the assignment of a new field designation and/or discovery allowalbe. Evidence other than horizontal distance is required. An application must include the following:

(1) (No change.)

(2) a complete, legible electriic log of the well. The filing of an electric log is not necessary provided that all other required data is submitted and satisfactorily proves discovery as a new reservoir. Any electric log filed will be considered public information pursuant to §3.16 of this title (relating to Rule 16—Log and Completion or Plugging Report) Statewide Rule 16.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 20, 1986.

TRD-8600768 Buddy Temple
Chairman
Jim Nugent and Mack Walace
Commissioners

Effective date: February 28, 1986
Proposal publication date: October 1, 1985
For further information, please call (512) 463-7149.

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TITLE 19. EDUCATION
Part II. Texas Education Agency
Chapter 97. Accreditation
Subchapter A. Accreditation
★19 TAC §97.1

The Texas Education Agency adopts the repeal of §§97.1, 97.21, 97.61, 97.62, 97.71-97.78, 97.91-97.101, 97.112, 97.114, 97.116, 97.120, 97.121, and 97.141, without changes to the proposed text published in the December 13, 1985, issue of the *Texas Register* (10 TexReg 4778). This repeal includes all rules previously in Chapter 97, except for §§97.113, 97.115, and 97.117.

The Texas Education Agency has adopted new principles and standards for the accreditation of school districts which shift the emphasis in accreditation to the quality of instruction and instructional leadership.

No comments were received regarding adoption of the repeal.

This repeal is adopted under the Texas Education Code, §21.753, which directs the State Board of Education to adopt an accreditation process and standards which school districts must meet to be accredited.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 20, 1986.

TRD-8600789 W. N. Kirby
Commissioner of Education

Effective date: February 12, 1986
Proposal publication date: December 13, 1985
For further information, please call (512) 463-9212.

★ ★ ★

Subchapter A. General Provisions
★19 TAC §§97.1-97.7

The Texas Education Agency adopts new §97.3, with changes to the proposed text published in the December 13, 1985, issue of the *Texas Register* (10 TexReg 4778). Sections 97.1, 97.2, 97.4-97.7, and 97.21-97.30 are adopted without changes, and will not be republished.

Section 97.3(a) has been strengthened to clarify that the commissioner of education will establish the level of investigative effort and frequency with which districts will be monitored based upon a district's history of compliance with accreditation requirements and the academic performance record of its students.

There are no other changes from the text as proposed.

The new principles and standards for accreditation shift the emphasis in accreditation to the quality of instruction and instructional leadership being provided in Texas public schools.

Each school district in the state will be monitored at least once every three years. Districts with records of poor student academic performance or with a history of difficulty in complying with accreditation standards will be monitored more frequently and more intensively. Districts found to be out of compliance will be placed on advised, warned, or unaccreditated status as appropriate. In some cases a monitor or master may be placed in the district.

During the public comment period, one individual suggested that in §97.23, Principle III, Standard 4, wording be added to refer to administrative procedures, as well as local district policies, to ensure a clear distinction between policy making and administration at the local level. The Texas Education Agency believes that Principle III emphasizes the importance of the distinction between policy making and administration, and there is no intent to blur that distinction in the wording of Standard 4.

These new sections are adopted under the Texas Education Code, §21.753, which directs the State Board of Education to adopt an accreditation process and standards which a school district must satisfy to be accredited.

§97.3. The Accreditation Monitoring Process.

(a) Each school district in the state receives an accreditation monitoring visit at least once every three years. The commissioner will establish the level of investigative effort and frequency, based upon a district's history of compliance with accreditation requirements and the academic performance records of it's students.

(b) The agency gives written notice to the superintendent and board of trustees of each district to be monitored before a visit is conducted.

(c) Each monitoring visit begins with an opening session during which administrators and others, as appropriate, are given information about procedures to be followeed during the visit.

(d) During the course of the visit, members of the monitoring team review pertinent documents, make observations on campuses and in classrooms, and interview administrators, teachers, and parents of students enrolled in the district.

(e) At the conclusion of each visit, the monitoring team orally reports its preliminary findings to administrators, representatives from the board of trustees, and others as appropriate. District representatives may, if they wish, respond to the preliminary report orally during the closing session. The district may also make written responses to the preliminary findings.

(f) The official written report is sent to the superintendent and the board of trustees. The report includes the same categories of information that were given in the visit's closing session. If corrective actions are required, deadlines for their completion are specified. If follow-up visits are required, timelines for those visits are included. The report ends with a recommendation concerning the district's accreditation status. Upon the district's receipt of the writ-

ten report, the report becomes a public document, subject to the provisions of statutes dealing with open records.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 22, 1986.

TRD-8600779 W. N. Kirby
Commissioner of
Education

Effective date: February 12, 1986
Proposal publication date: December 13, 1986
For further information, please call
(512) 463-9212.

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Subchapter B. Adopting or Altering Principles and Standards for Accreditation

★19 TAC §97.21

This repeal is adopted under the Texas Education Code, §21.753, which directs the State Board of Education to adopt an accreditation process and standards which school districts must meet to be accredited.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 20, 1986.

TRD-8600788 W. N. Kirby
Commissioner of
Education

Effective date: February 12, 1986
Proposal publication date: December 13, 1985
For further information, please call
(512) 463-9212.

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★19 TAC §§97.21-97.30

These new sections are adopted under the Texas Education Code, §21.753, which directs the State Board of Education to adopt an accreditation process and standards which a school district must satisfy to be accredited.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 22, 1986.

TRD-8600778 W. N. Kirby
Commissioner of
Education

Effective date: February 12, 1986
Proposal publication date: December 13, 1985
For further information, please call
(512) 463-9212.

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Subchapter D. Principles, Standards, and Procedures for the Accreditation of School Districts

General Provisions

★19 TAC §97.61, §97.62

This repeal is adopted under the Texas Education Code, §21.753, which directs the State Board of Education to adopt an accreditation process and standards which school districts must meet to be accredited.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 20, 1986.

TRD-8600787 W. N. Kirby
Commissioner of
Education

Effective date: February 12, 1986
Proposal publication date: December 13, 1985
For further information, please call
(512) 463-9212.

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Conditions and Procedures for Accreditation

★19 TAC §§97.71-97.78

This repeal is adopted under the Texas Education Code, §21.753, which directs the State Board of Education to adopt an accreditation process and standards which school districts must meet to be accredited.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 20, 1986.

TRD-8600786 W. N. Kirby
Commissioner of
Education

Effective date: February 12, 1986
Proposal publication date: December 13, 1985
For further information, please call
(512) 463-9212.

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Principles and Standards

★19 TAC §§97.91-97.101

This repeal is adopted under the Texas Education Code, §21.753, which directs the State Board of Education to adopt an accreditation process and standards which school districts must meet to be accredited.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 20, 1986.

TRD-8600785 W. N. Kirby
Commissioner of
Education

Effective date: February 12, 1986
Proposal publication date: December 13, 1986
For further information, please call
(512) 463-9212.

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Additional Accreditation Regulations

★19 TAC §§97.112, 97.114, 97.116, 97.120, 97.121

This repeal is adopted under the Texas Education Code, §21.753, which directs the State Board of Education to adopt an accreditation process and standards which school districts must meet to be accredited.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 20, 1986.

TRD-8600784 W. N. Kirby
Commissioner of
Education

Effective date: February 12, 1986
Proposal publication date: December 13, 1985
For further information, please call
(512) 463-9212.

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★19 TAC §97.115

The Texas Education Agency adopts an amendment to §97.115, without changes to the proposed text published in the December 13, 1985, issue of the *Texas Register* (10 TexReg 4783).

Subchapter D is renamed "Additional Accreditation Regulations." The title of §97.115 is changed from "Description of Content in Secondary Grades" to "Competitive Athletics During the School Day," and all subsections which do not address athletics during the school day have been deleted.

The description of course content for secondary grades is not found in Chapter 75, Curriculum. As amended, §97.115 requires schools to limit individual students to one period during the regularly scheduled school day for practice of interschool competitive athletics and for programs in which body conditioning, training, or team sport activities are the objectives of the teacher and students.

No comments were recieved regarding adoption of the amendment.

This amendment is adopted under the Texas Education Code, §21.753, which directs the State Board of Education to adopt an acreditation process and standards which a school district must satisfy to be accredited.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 21, 1986.

TRD-8600774 W. N. Kirby
Commissioner of Education

Effective date: February 12, 1986
Proposal publication date: December 13, 1985
For further information, please call (512) 463-9212.

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Subchapter E. Comprehensive Planning and Evaluation

★19 TAC §97.141

This repeal is adopted under the Texas Education Code, §21.753, which directs the State Board of Education to adopt an accreditation process and standards which school districts must meet to be accredited.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 20, 1986.

TRD-8600783 W. N. Kirby
Commissioner of Education

Effective date: February 12, 1986
Proposal publication date: December 13, 1985
For further information, please call (512) 463-9212.

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales And Use Tax

★34 TAC §3.312

The Comptroller of Public Accounts adopts an amendment to §3.312, without changes to the proposed text published in the December 6, 1985, issue of the *Texas Register* (10 TexReg 4687).

The amendment clarifies the comptroller's position on painting, waxing, polishing, or applying decorative or protective material to tangible personal property. The amendment also taxes the mass or multiple production of printed material when produced by a word processor or computer. This material, which is now taxable when produced by a printer with a printing press, will also be taxable when produced by a person using a word processor or computer.

No comments were regarding adoption of the amendment.

The amendment is adopted under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the sales tax.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 22, 1986.

TRD-8600773 Bob Bullock
Comptroller of Public Accounts

Effective date: February 12, 1986
Proposal publication date: December 6, 1985
For further information, please call (512) 463-4604.

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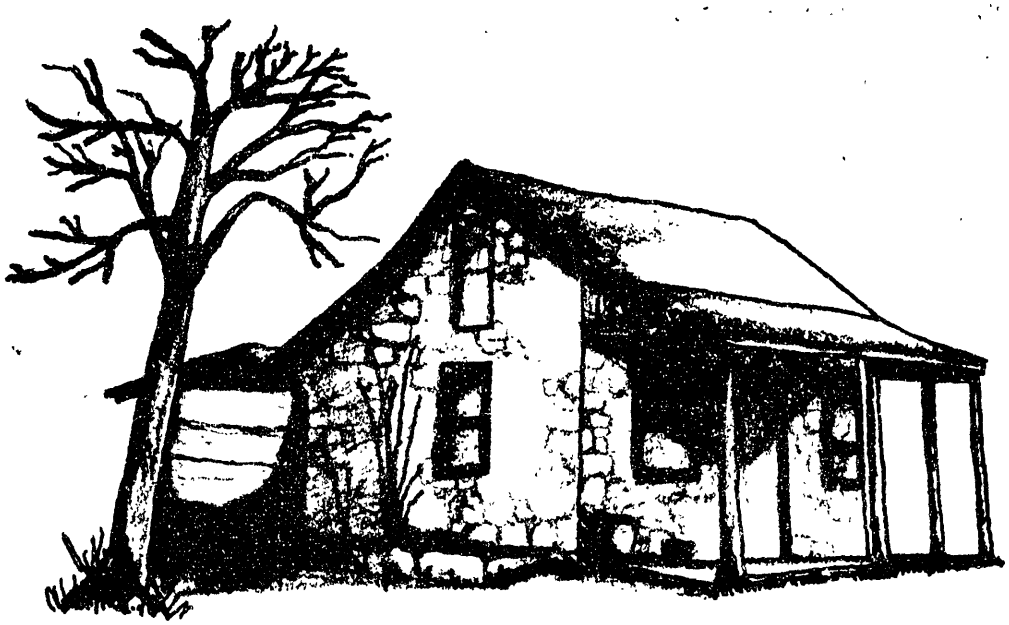

Open Meetings

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 *Register*.

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

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

Texas Department of Agriculture

Wednesday, January 29, 1986, 1:30 p.m. The Texas Department of Agriculture will meet in the district office, Expressway 83, two blocks west of Morningside Road, San Juan. According to the agenda, the department will conduct an administrative hearing to review the alleged violation of Texas Agriculture Code, §76.006(a)(1), by Larry Wayne Skalitsky, doing business as Rio Grande Aviation.

Contact: Deborah E. Brown, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: January 21, 1986, 3:43 p.m.
TRD-8600757

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Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons

Thursday, January 30, 1986, 10 a.m. The Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons will meet at 4800 North Lamar Boulevard, Austin. Items on the agenda include the introduction of visitors; minutes from October 10, 1985, meeting; discussion on annual report to the legislature; discussion and action on new products, service, price revisions; discussion of 1986 program goals, and new business.

Contact: Ron P. Mansolo, P.O. Box 12866, Austin, Texas 78711, (512) 475-6731.

Filed: January 21, 1986, 11:12 a.m.
TRD-8600735

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Credit Union Department

Tuesday, January 28, 1986, 1 p.m. The Credit Union Commission of the Credit Union Department made an emergency addition to the agenda for a meeting to be held at the Credit Union Department, 914 East Anderson Lane, Austin. The addition concerns a change to Rule 91.506, Director Meeting Fees and Bond Requirements, and a change to Rule 97.112, Supervision Fees. The emergency status is necessary to preclude having to reschedule the meeting of the Credit Union Commission previously set for January 28, 1986.

Contact: Harry L. Elliott, 914 East Anderson Lane, Austin, Texas 78752, (.

Filed: January 21, 1986, 12:27 p.m.
TRD-8600746

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Texas State Board of Examiners of Dietitians

Friday, January 31, 1986, 8:30 a.m. The Consumer Information Committee of the Texas State Board of Examiners of Dietitians will meet in Room T-507, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda summary, the committee will consider the publication of the registry and newsletter; the Texas A&M University engineering extension service diet reference manual; and setting of next meeting date.

Contact: Becky Berryhill, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7501.

Filed: January 21, 1986, 4:07 p.m.
TRD-8600674

Friday, January 31, 1986, 10 a.m. The Texas State Board of Examiners of Dietitians will meet in Room T-507, Texas Department of Health, 1100 West 49th Street, Austin. Items on the agenda summary include the approval of minutes; approval and presentation of the certificate; reports of Hospital and Professional Licensure Division director, director of special programs, executive secretary, chairman, and committee; the approval of commmittee appointments; review and action on a contract for use of the registration examination for licensing purposes, on expired licenses, and on applications for licensure, provisional licensure, and examination eligibility; action on resolutions; adoption of 22 TAC §711; ratification of applications, other matters relating to regulation of dietitians not requiring board action; and setting of next meeting date. The board also will meet in executive session.

Contact: Becky Berryhill, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7501.

Filed: January 21, 1986, 4:06 p.m.
TRD-8600765

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Texas Employment Commission

Thursday, January 30, 1986, 9 a.m. The Texas Employment Commission (TEC) will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission will consider the FICA reporting of wages; the evidence guidelines; communications; the appeal tribunal level discussion; and other procedures affecting the appeal tribunal or commission appeal.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: January 22, 1986, 4:04 p.m.
TRD-8600812

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Commission on Fire Protection Standards and Education

Friday, January 24, 1986, 1:30 p.m. The Board of the Commission on Fire Protection Personnel Standards and Education made an emergency revision to the agenda for a meeting held in the St. Augustine Room, La Posada Hotel, 1000 Zaragoza, Laredo. According to the agenda, the board considered old business concerning the fire science degree survey from William Wekenborg, Dallas/Fort Worth Airport training officer, and new business concerning Chief Wayne Sibley, Dallas/Fort Worth Airport, request for a formal attorney general's opinion regarding fire fighter's annual recer-

tification fees. The emergency status was necessary because the old business item was noticed for the October 16, 1985, meeting and was passed. These items must be considered as a matter of urgent public necessity.

Contact: Ray L. Goad, Suite 406, 510 South Congress, Austin, Texas 78704, (512) 474-8066.

Filed: January 21, 1986, 11:30 a.m.
TRD-8600736

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General Land Office

Wednesday, January 29, 1986, 3:30 p.m. The Veterans Land Board of the General Land Office will meet in the Stephen F. Austin Building. According to the agenda summary, the board will approve the December 10, 1985, Veterans Land Board minutes; consider appointment of the administrator of the Veterans Housing Assistance Program; discuss the appointment of the amdinistrator of the Home Improvement Program; consider adoption of revised Veterans Land Board rules; accounts 117424, 428-74771, 410-79407; discuss the three-year occupancy restriction under VHAP; consider waiver requests of Kathryn Tortoreto, Claud and John Lookinghill; forfeiture action on Veterans Land Board accounts; the status report of La Moca Ranch Subdivision; and the report of the executive secretary.

Contact: Richard Keahey, Stephen F. Austin Building, Room 636, Austin, Texas 78701, (512) 463-5198.

Filed: January 21, 1986, 3:55 p.m.
TRD-8600759

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Texas Department of Health

Thursday, January 30, 1986. Committees of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Austin. Times, rooms, committees, and agendas follow.

8 a.m. In Room G-107, the State Primary Care Program Advisory Committee will meet in executive session to discuss personnel matters.

Contact: Mike Ezzell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7723.

Filed: January 22, 1986, 4:07 p.m.
TRD-8600814

9:30 a.m. In the auditorium, the Primary Care Advisory Committee will meet jointly with the Maternal and Infant Health Improvement Act Advisory Committee to consider the Maternal and Infant Health Improvement Act update; the Maternal and Child Health Activities and Regional activities; the Primary Care Program update; the Texas Review and Comment System; Senate Bill 1, 69th Legislature, 1985, concerning the medically needy, teenage pregnancy, and family planning; the Health and Human Services Coordinating Council oversight; and the regional discussion group.

Contact: Mike Ezzell, 1100 West 49th Street, Asutin, Texas 78756, (512) 458-7723.

Filed: January 21, 1986, 4:05 p.m.
TRD-8600767

Thursday, January 30, 1986, 12 noon. In Room G-107, the State Primary Care Program Advisory Committee will approve the minutes; consider a report from plans development and evaluation subcommittee; a report from the program standards and criteria subcommittee; the report from needs assessment and data subcommittee; and open business requiring no committee action.

Contact: Mike Ezzell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7723.

Filed: January 22, 1986, 4:06 p.m
TRD-8600813

Thursday, January 30, 1986, 12 noon. In Room T-507, the Maternal and Infant Health Improvement Act Advisory Committee will review the Six-Year Plan; present the transportation subcommittee report; discuss the role the advisory committee will play in the final contracts after review of requests for proposal; and the summary of questions and answers.

Contact: Mike Ezzell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7723.

Filed: January 21, 1986, 4:07 p.m.
TRD-8600763

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State Department of Highways and Public Transportation

Thursday and Friday, January 30 and 31, 1986, 9 a.m. daily. The State Highway and Public Transportation Commission of the State Department of Highways and Public Transportation will meet in Room 101 and Room 101-A, auditorium, the Dewitt C. Greer State Highway Building, 11th and Brazos Streets, Austin. According to the agenda summary, the commission will consider presentations by the public for various highway, bridge, and FM road requests of various counties requesting improvements to State Highway 6, Trinity, Jefferson, Hidalgo, Harris, Fort Bend, Wharton, Matagorda, Brazoria, Hays, San Augustine, and Dallas Counties. Docket is available in the second floor commission office in the Dewitt C. Greer Building. Upon completion of public hearings, the commission will meet in Room 101-A to execute contract awards and routine minute orders, consider decisions on presentations from public hearing dockets, review staff reports relative to planning, and construction programs and projects.

Contact: Lois Jean Turner, Room 203, Dewitt C. Greer State Highway Building, 11th and Brazos Streets, Austin, Texas 78701, (512) 463-8616.

Filed: January 22, 1986, 4:01 p.m.
TRD-8600815

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Texas Historical Commission

Friday, January 24, 1986, 9:30 a.m. The Texas Historical Commission made an emergency revision to the agenda for a meeting held in the Austin History Center, 810 Guadalupe Street, Austin. According to the agenda, the commission met in executive session to consider personnel matters. The emergency status was necessary in order to discuss emergency personnel matters.

Contact: Curtis Tunnell, 1511 Colorado Street, Asutin, Texas 78701, (512) 475-3092.

Filed: January 20, 1986, 4:10 p.m.
TRD-8600729

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University of Houston System

Tuesday, January 28, 1986, 2 p.m. The Board of Regents of the University of Houston System will meet in Room 510, Enterprise Bank Building, 4600 Gulf Freeway, Houston. According to the agenda summary, the board will discuss and/or approve the minutes, guidelines, various reports, recap of endowment fund events, athletic facilities, property exchange, consultants, various contracts, schematic presentation, the child care center expansion, various projects, personnel recommendations, the State Employee Training Act, policies, continuance beyond retirement age, various requests, various plans, budget calendar, medical insurance claim forms, development planning committee, and consent docket.

Contact: Michael T. Johnson, Suite 500, 4600 Gulf Freeway, Houston, Texas 77023, (713) 749-7545.

Filed: January 22, 1986, 1:42 p.m.
TRD-8600826

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Texas Department of Human Services

Committees of the Texas Department of Human Services (DHS) will meet in the West Tower, 701 West 51st Street, Austin. Days, times, rooms, committees, and agendas follow.

Thursday, January 30, 1986, 9:30 a.m. In Room 3-W, the Family Self-Support Services Advisory Council will approve the minutes; consider the revised by-laws; the local match alternatives; the LAR alternatives; the Gramm-Rudman deficit reduction bill; ENTERP rule change; the role of members at public hearings and report of meeting with

Mary Polk; the report on the Family Planning Committee meeting; the report on the Employment Committee meeting; the report on the statewide coalition on child care; the preliminary report on family planning ESS allocation; and the briefing on the teenage parent initiative.

Contact: Joan M. Reeves, P.O. Box 2960, Austin, Texas 78769, (512) 450-4140.

Filed: January 21, 1986, 3:14 p.m.
TRD-8600754

Friday, January 31, 1986, 9 a.m. In Room 4-W, the Family Violence Advisory Committee will consider the minutes; announcements regarding the use of summary statements, explanations of absences, speaking from the audience, the previous "carry-forward" items, and regional information sharing; reports on program status, the Office of Families and Children, the Texas Council on Family Violence, policy status, and subcommittee reports; old business concerning the regional public hearings, meeting dates, objectives, FVAC, research, criminal justice, and public education.

Contact: James C. Marquart, P.O. Box 2960, Austin, Texas 78769, (512) 450-3365.

Filed: January 21, 1986, 3:15 p.m.
TRD-8600752

Friday, January 31, 1986, 9:30 a.m. In the DHS boardroom, the Board will consider the moratorium on contracting for Medicaid nursing home beds; the eligibility for nursing home clients; the primary home care and day activity and health service-require annual physician's visit; emergency response services-reimbursement methodology; the hospice service demonstration project; the vendor drug program-reimbursement methodology changes and reimbursement level for 1986; emergency nutrition and temporary emergency relief program-change in payment methodology; the intermediate care facilities for the mentally retarded; the nursing home program; the change in claims submission for community care contract agencies; transportation for indigent cancer patients; amendments to policies and procedures; appointments to advisory committees; and commissioner's report.

Contact: Bill Woods, P.O. Box 2960, Austin, Texas 78769, (512) 450-3047.

Filed: January 23, 1986, 9:03 a.m.
TRD-8600829

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State Board of Insurance

Wednesday, January 29, 1986, 2 p.m. The State Board of Insurance will meet in Room 414, State Insurance Building, 1110 San Jacinto Street, Austin. According to the agenda summary, the board will consider final action on amendments to §9.1, board orders on several different matters as itemized on the comlete agenda, proposal for decision in the appeal of Billy E. Creech from action of the Texas Catastrophe Property Insurance Association, the fire marshal's report on personnel matters, review of the five year budget projection to be presented to the legislative budget board, the commissioner's report on personnel matters, pending and contemplated litigation, and the premium tax implications of Medicare capitation fee.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: January 21, 1986, 3:33 p.m.
TRD-8600755

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Texas Board of Land Surveying

Monday-Wednesday, February 10-12, 1986, 8 a.m. daily. The Texas Board of Land Surveying will conduct their second regular meeting at the Marriott Hotel, 6121 IH 35 North, Austin, and Suite 304, 7703 North Lamar, Austin. Monday, February 10, the board will conduct examinations for registered public surveyor, licensed state land surveyor, and surveyor in training - Marriott Hotel. Tuesday, February 11, the board will grade and evaluate the examination papers and any other business to come before the board - Marriott Hotel. Wednesday, February 12, the board will grade examination papers and any other business to come before the board - office of the board.

Contact: Betty J. Pope, Suite 304, 7703 North Lamar, Austin, Texas 78752, (512) 452-9427.

Filed: January 21, 1986, 3:44 p.m.
TRD-8600756

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Legislative Budget Board

Thursday, January 23, 1986, 1 p.m. The Legislative Budget Board met in emergency session in Room 309, State Capitol. According to the agenda, the board considered the hearing testimony on the proposal by the Texas Department of Corrections to acquire new prison facilities through a lease purchase arrangement, related matters which led to the department's decision to pursue a lease-purchase arrangement, and any other subjects that came before the board. The emergency status was necessary because the Legislative Budget Board desires to complete hearing testimony of the TDC proposal and alternatives as soon as possible.

Contact: Jim Oliver, Room 207-A, State Capitol, Austin, Texas 78711, (512) 463-1166.

Filed: January 21, 1986, 2:17 p.m.
TRD-8600748

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Texas State Board of Public Accountancy

Wednesday, January 29, 1986, 1:30 p.m. The Enforcement Committee of the Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. According to the agenda, the committee will review of December workload status; review of complaint numbers 85-11-03L, 85-11-20L, 85-11-11L, 85-10-06L, 84-08-59L, 84-07-09L, 85-11-04L, 85-11-04L, 85-11-12L, 85-11-01L, and 85-11-21L; a discussion regarding advertising, independence, and certain complaints; and a review of other matters as appropriate.

Contact: Bob E. Bradley, Suite 340, 1033 La Posada, Austin, Texas 78752, (512) 451-0241.

Filed: January 21, 1986, 11:27 a.m.
TRD-8600737

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Public Utility Commission of Texas

The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Days, times, and dockets follow.

Monday, February 3, 1986, 10 a.m. A rescheduled hearing in Docket 6480—application of Ingram Water Supply for authority to change rates. Rescheduled from January 22, 1986

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757 (512) 458-0100.

Filed: January 21, 1986, 2:36 p.m.
TRD-8600749

Tuesday, February 4, 1986 10 a.m. A seventh prehearing conference Dockets 6477 and 6525—inquiry of the Public Utility Commission of Texas concerning the fixed fuel factor of Gulf States Utilities Company and application of Gulf States Utilities Company for authority to change rates.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 22, 1986, 2:55 p.m.
TRD-8600797

Tuesday, February 4, 1986, 10 a.m. An informal meeting in Docket 6672—in the matter of P.U.R.A. §43(h) rate increase of Thompson Utility Services.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 21, 1986, 2:35 p.m.
TRD-8600750

Monday, February 10, 1986, 10 a.m. An informal meeting in Docket 6675—customer protests regarding §43(h) rate increase of Lollipop Water Works, Inc.

Contact: Rhonda Colbert Ryan, 7800 Shoal

Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 22, 1986, 2:56 p.m.
TRD-8600799

Tuesday, February 18, 1986, 10 a.m. A rescheduled hearing on the merits in Docket 6439—application of AT&T Communications of the Southwest, Inc. for approval of software defined network services. Rescheduled from January 27, 1986.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 21, 1986, 2:34 p.m.
TRD-8600751

Friday, February 28, 1986, 10 a.m. A rescheduled hearing in Docket 6618—petition of Dewitt County Electric Cooperative, Inc. for authority to change rates. Rescheduled from March 5, 1986.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 22, 1986, 2:54 p.m.
TRD-8600798

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Texas Rehabilitation Commission

Thursday, February 6, 1986, 9 a.m. The Planning Committee, Monitoring and Evaluation Committee, and Texas Planning Council for Developmental Disabilities of the Texas Rehabilitation Commission will meet in Room 302, Texas Rehabilitation Commission, 118 Riverside Drive, Austin. According to the agenda, the commission will approve of minutes, discuss the Developmental Disabilities State Plan for fiscal year 1987-1989 including comments from the public, reviews of state plans of other agencies, and further revisions to draft of the state plan; and a preliminary discussion of fiscal 1987 RFP recommendations.

Contact: Roger Webb, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8004.

Filed: January 22, 1986, 8:49 a.m.
TRD-8600771

Friday, February 7, 1986, 9:30 a.m. The Advocacy and Public Information Committee, and Texas Planning Council for Developmental Disabilities will meet in Room 302, Texas Rehabilitation Commission, 118 East Riverside Drive, Austin. Items on the agenda include approval of minutes, the federal legislation review, discussion of Sunset Review process, a review of state appropriations process, a discussion of legislative strategies, a discussion of public information strategies, and review of the council recognition awards.

Contact: Roger Webb, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8004.

Filed: January 22, 1986, 8:50 a.m.
TRD-8600772

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State Committee of Examiners for Speech-Language Pathology and Audiology

Thursday, February 6, 1986, 2:30 p.m. The State Committee of Examiners for Speech-Language Pathology and Audiology will meet in Room T-507, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda summary, the committee will approve the minutes, discuss special senses regulations and proposed changes to committee rules; correspondence; the executive secretary's report; the financial reports; a formal hearing relating to the application for licensure of Tom Brennan as a speech-language pathologist (scheduled for 10 a.m., Friday, February 7, 1986); a review of complaint investigations and criteria; preparation of statement regarding hearing-screening procedures; other matters relating to licensing and regulation not requiring committee action, and setting of next meeting date. The meeting will reconvene on Friday, February 7, 1986, 9 a.m. in Room T-507.

Contact: June Robertson, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7502.

Filed: January 21, 1986, 4:06 p.m.
TRD-8600766

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Texas A&M University System

Tuesday, January 28, 1986, 8:30 a.m. The Board of Regents of Texas A&M University System will meet in the MSC Annex, Texas A&M University, College Station. According to the agenda, the board will consider the adoption of a five-year plan and adoption of a debt management policy.

Contact: Vickie Burt, College Station, Texas 77834, (409) 845-9603.

Filed: January 23, 1986, 8:53 a.m.
TRD-8600827

Tuesday, January 28, 1986, 10:30 a.m. The Committee for the Search for a Chancellor, Board of Regents of the Texas A&M University System will meet in the MSC Annex, College Station. According to the agenda, the committee will consider any and all things leading to the selection of an individual for the position of chancellor of the Texas A&M University System.

Contact: Vickie Burt, College Station, Texas 77843, (409) 845-9603.

Filed: January 23, 1986, 8:53 a.m.
TRD-8600828

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University of Texas at Austin

Friday, January 24, 1986, 2 p.m. The Council for Intercollegiate Athletics for Women of the University of Texas at Austin met in Room 606, conference room, Bellmont Hall, Memorial Stadium, San Jacinto Street, Austin. According to the agenda summary, the council approved the minutes of the previous meeting, considered announcements of the Longhorn Band/Women's Athletics Joint Scholarship Benefit and Scholarship Triathalon; old business including the council's Spring meeting schedule, the Erwin Center reserved seat section security review, review of the fast break/guest coach set-up, and review of 1986-1987 proposed budget and salary schedule.

Contact: Rhonda Lands, Toom 606, Bellmont Hall, University of Texas, Austin, Texas 78712, (512) 471-7693.

Filed: January 21, 1986, 12:12 p.m.
TRD-8600745

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Texas Water Commission

Tuesday, February 11, 1986, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider the application by Denton County Reclamation, Road and Utility District (RE-0244) for approval of a proposed plan of reclamation.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 22, 1986, 1:35 p.m.
TRD-8600803

Tuesday, March 4, 1986, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in Room 618, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the office will consider application of Texas Commerical Investments, Inc., P.O. Box 1389, Austin, Texas 78767 to the Texas Water Commission for a Permit 13130-01 to authorize the disposal of treated domestic sewage by irrigation at a volume not to exceed an average flow of 220,000 galions per day from a residential development. The wastewater treatement and disposal facilities are to consist of an activated sludge-extended aeration treatment plant, a 52.5 acre-foot holding pond, and 100 acres of land available for irrigation. No discharge of pollutants into the waters of the state is authorized by this permit.

Contact: Carl X. Forrester, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 22, 1986, 1:37 p.m.
TRD-8600805

Wednesday, March 5, 1986, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at fire station

2, 22nd Street and Sam Houston Avenue, Huntsville. According to the agenda summary, the office will consider application by Glenn Peters, Pine Prairie Mobile Home Park, Pine Prairie Park #12, Huntsville, Texas 77340 to the Texas Water Commission for Permit 13174-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 9,000 gallons per day from the proposed Pine Prairie Mobile Home Park Wastewater Treatment Plant.

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

Filed: January 22, 1986, 1:36 p.m.
TRD-8600802

Wednesday, March 5, 1986, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in the City of Denton Council Chambers, 215 East McKinney, Denton. According to the agenda summary, the office will consider application by Connell Development Company, P.O. Box 201069, 10939 Shady Trail, Suite B, Dallas, Texas 75220 to the Texas Water Commission for Permit 13217-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 500,000 gallons per day from the Connell Development Wastewater Treatment Plant. The applicant proposes to construct a wastewater treatment facility in two phases to serve a multi-use development project.

Contact: Joe O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 22, 1986, 1:37 p.m.
TRD-8600800

Thursday, March 6, 1986, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in the auditorium, MBank, 910 Travis, Houston. According to the agenda summary, the office will consider application by Edgar E. Lackner, 2000 Post Oak Boulevard, Post Oak Bank Building, Suite 420, Houston, Texas 77056 to the Texas Water Commission for a Permit 13156-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 300,000 gallons per day from the proposed Lackner Wastewater Treatment Plant which is to serve a proposed mixed use development.

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

Filed: January 22, 1986, 1:36 p.m.
TRD-8600801

Thursday, March 6, 1986, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in the auditorium, MBank, 910 Travis, Houston. According to the agenda summary, the commission will consider application by Tristar Developers, Inc., 5718 Westheimer, Suite 555, Houston, Texas 77057 to the Texas Water Commission for a Permit 13181-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 75,000 gallons per day from the proposed Dashwood Wastewater Treatment Plant which is to serve a proposed apartment project.

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

Filed: January 22, 1986, 1:37 p.m.
TRD-8600804

Tuesday, March 25, 1986, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Agendas follow.

The commission will consider Application 23-831C on Cameron County Fresh Water Supply District 1, which seeks to amend Certificate of Adjudication 23-831 as amended, to change the purpose of use from irrigation to municipal use of the above mentioned 90 acres of Class A water rights; to change the place of use from the authorized TWC Tract C-41 to the applicant's service area in Cameron County; and change the point of diversion from the presently authorized point, Cameron County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 22, 1986, 1:38 p.m.
TRD-8600807

The commission will consider Application 23-93A on Cameron County Fresh Water Supply District 1, which seeks to amend certificate of adjudication 23-93 to change the purpose of use from irrigation to municipal use of the 125 acres of Class B water rights; change the place of use from TWC Tract C-135 as authorized to the applicant's service area in Cameron County; and change the point of diversion from the presently authorized point to the diversion faciltiy of Cameron County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 22, 1986, 1:38 p.m.
TRD-8600808

The commission will consider Application 23-245A on Cameron County Fresh Water Supply District 1, which seeks to amend Certificate of Adjudication 23-245, to authorize change the purpose of use from irrigation to municipal use of the 22.60 acres of Class A water rights, to change the place of use from TWC Tract C-16 as authorized, to the applicant's service area in Cameron County, and change the point of diversion from the presently authorized point to the diversion facility of Cameron County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 22, 1986, 1:40 p.m.
TRD-8600811

The commission will consider Application 23-793A on Cameron County Fresh Water Supply District 1, which seeks to amend Certificate of Adjudication 23-793 to change the purpose of use of the 30.22 acres of Class B water rights from irrigation to municipal use, to change the place of use from TWC Tract S-238 as authorized to the applicant's service area inCameron County, and to change the point of diversion from the presently authorized point to the diversion faciltiy of Cameron County WCID 6.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 22, 1986, 1:39 p.m.
TRD-8600810

The commission will consider Application 23-233A on Cameron County Fresh Water Supply District 1, to amend Certificate of Adjudication 23-233 to change the purpose of use from irrigation to municpal use of the 20 acres of Class B water rights, change the place of use from the authorized place of use to the application's service area in Cameron County, and change the point of diversion from the presently authorized point to the diversion facility of Cameron County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 22, 1986, 1:43 p.m.
TRD-8600819

The commission will consider Application 12-3575A and 12-3576A, on B. N. Huddleston, who seeks to amend Certificate of Adjudication 12-3575 and 12-3576 to reflect correct ownership and to delete the December 31, 1985, expiration dates of both certificates, all being more fully set out in the application, Comanche County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 22, 1986, 1:39 p.m.
TRD-8600809

The commission will consider Application 12-3621A on E. L. Locke, who seeks to amend Certificate of Adjudication 12-3621 by extending or deleting the December 31, 1985, expiration date of the certificate, all being more fully set out in the application, Comanche County, Brazos River Basin.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 22, 1986, 1:42 p.m.
TRD-8600818

The commission will consider Application 2423D of Franklin County Water District for an amendment to Permit 2231 as amended, to supply additional water to the Cities of Mount Vernon and Winnsboro and to the South Franklin Water Supply District.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 22, 1986, 1:43 p.m.
TRD-8600820

The commission will consider Application 4072A of Diamond Oaks, Inc., for an amendment to Permit 3778 which authorizes the recreational use of three reservoirs on Big Fossil Creek, tributary of West Fork Trinity River, tributary of Trinity River, Trinity River Basin, about six miles northeast of Fort Worth, Tarrant County. Applicant seeks to amend Permit 3778 to delete the expiration date, December 31, 1991, all being more fully set out in the application.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 22, 1986, 1:43 p.m.
TRD-8600821

The commission will consider Application 5004 of Russell Plantation *et al*, for a permit to divert and use 825 acre-feet of water per annum from 450 acre-foot reservoir on Resaca de los Cuates, tributary of Arroyo Colorado, Nueces-Rio Grande Coastal Basin, for the irrigation of 400 acres of land out of 3259.55 acre tract located in the "San Pedro de Carricitos" Pedro Villareal Grant, Abstract 26 and the heirs of Jose Salvador de la Garza Grant, Abstract 2, Cameron County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 22, 1986, 1:45 4.m.p
TRD-8600822

The commission will consider Application 5027 of Lousiana Pacific Corporation for a permit to divert and use 225 acre-feet of water per annum from Sandy Creek, tributary of Angelina River, Tributary of Neches River, Neches River Basin for industrial purposes, Jasper County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 22, 1986, 1:45 p.m.
TRD-8600823

The commission will consider Application 5029 of Southeastern Savings Association for a permit to construct an off-channel dam and 12.24 acre-foot reservoir on the Guadalupe River, Guadalupe River Basin, for recreational purposes about one mile southeast of Kerrville, Kerr County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 22, 1986, 1:46 p.m
TRD-8600824

Bellamah Community Development 5030 seeks a permit to construct eight water control structures and reservoirs with a combined capacity of 1471.17 acre-feet of water on an unnamed tributary of Timber Creek, tributary of Elm Fork Trinity River, tributary of Trinity River, Trinity River Basin for recreational purposes, Denton County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 22, 1986, 1:46 p.m.
TRD-8600825

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Regional Agencies
Meetings Filed January 21

The Deep East Texas Regional Mental Health and Mental Retardation Services, Board of Trustees, will meet in the Ward R. Burke Community Room, Administrative Facility, 4101 South Medford Drive, Lufkin, on January 28, 1986, at 5:30 p.m. Information may be obtained from Jim McDermott, 4101 South Medford Drive, Lufkin, Texas 75901.

The Lower Rio Grande Valley Development Council, Board of Directors, met at 311 East Tyler, on January 23, 1986, at 1:30 p.m. Information may be obtained from Robert A. Chandler, 1701 West Highway 83, Suite 707, McAllen, Texas 78501, (512) 682-3481.

The Trinity River Authority of Texas, Devers Canal System Advisory Committee, met at Devers Canal System Office, Highway 90, Devers, on January 27, 1986, at 10:30 p.m. Information may be obtained from Jack C. Worsham, Highway 90, Devers, Texas 77538.
TRD-8600738

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Meetings Filed January 22

The Carson County Appraisal District, Appraisal Review Board, will meet at 102 Main Street, Panhandle, on January 28, 1986, at 9 a.m. Information may be obtained from Dianne Lavake, P.O. Box 970, Panhandle, Texas 79068.

The Education Service Center Region XIII, Board of Directors, met in Room 200, Education Service Center, 7703 North Lamar, Austin, on January 27, 1986, at 12:30 p.m. Information may be obtained from Joe Parks, 7703 North Lamar, Austin, Texas 78752, (512) 458-9131.

The Hunt County Tax Appraisal District, Board of Directors, met in emergency session in the boardroom, 4815-B King Street, Greenville, on January 23, 1986, at 7 p.m. Information may be obtained from Terry G. Bryan, 4815-B King Street, Greenville, Texas 75401.

The Lower Neches Valley Authority, Board of Directors, will meet in the LNVA Office Building, 7850 Eastex Freeway, Beaumont, on January 28, 1986, at 10:30 a.m. Information may be obtained from J. D. Nixon, P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011.

The Lubbock Regional Mental Health and Mental Retardation Center, Board of Trustees, met at 3800 Avenue H, Lubbock, on January 27, 1986, at noon. Information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79401, (806) 763-4213.

The North Central Texas Council of Governments, Executive Board, met on the second floor, Centerpoint Two, 616 Six Flags Drive, Arlington, on January 23, 1986, at 12 45 p.m. Information may be obtained from Edwina J. Hicks, P.O. Drawer COG, Arlington, Texas 76005-5888.

The Parmer County Appraisal Office, Board of Directors, will meet 305 Third Street, Bovina, on February 3, 1986, at 7 p.m. Information may be obtained from Ron Proctor, P.O. Box 56, Bovina, Texas 79009, (806) 238-1405.

The San Jacinto River Authority, Board of Directors, will meet in the Lake Conroe Office Building, Highway 105 West, Conroe, on January 28, 1986. Information may be obtained from, Jack K. Ayer, (409) 588-1111.

The South Texas Private Industry Council, Inc., will meet in the Zapata Community Center, U.S. Highway 83, Zapata, on January 30, 1986, at 4 p.m. Information may be obtained from Ruben M. Garcia, P.O. Box 1757, Laredo, Texas 78044-1757.
TRD-8600769

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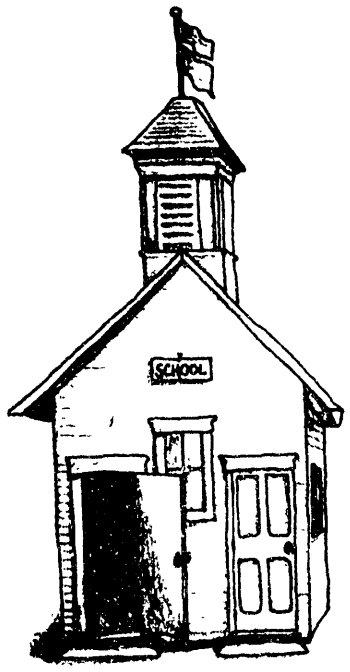

In Addition

The *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.

Banking Department of Texas

Application to Acquire Control of a State Bank

Texas Civil Statutes, Article 342-401a, require any person who intends to buy control of a state bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On December 23, 1985, the banking commissioner received an application to acquire control of the North Texas Bank and Trust, Gainesville, by Robert H. Martindale, Gainesville.

On January 21, 1986, notice was given that the application would not be denied.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451.

Issued in Austin, Texas, on January 21, 1986.

TRD-8600791 William F. Aldridge
Director of Corporate Activities
Banking Department of Texas

Filed: January 22, 1986
For further information, please call (512) 475-4451.

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Office of Consumer Credit Commissioner

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, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings Effective Period (Dates are Inclusive)	Consumer[3]Agricultural/Commercial[4] thru $250,000	Commercial[4] over $250,000
Indicated (Weekly) Rate—Article 1.04(a)(1) 01/27/86-02/02/86	18.00%	18.00%
Monthly Rate—Article 1.04(c)[1] 01/01/86-01/31/86	18.00%	18.00%
Standard Quarterly Rate—Article 1.04(a)(2) 01/01/86-03/31/86	18.00%	18.00%
Retail Credit Card Quarterly Rate—Article 1.11[3] 01/01/86-03/31/86	18.00%	N/A
Lender Credit Card Quarterly Rate—Article 15.02(d)[3] 01/01/86-03/31/86	14.58%	N/A
Standard Annual Rate—Article 1.04(a)(2)[2] 01/01/86-03/31/86	18.00%	18.00%
Retail Credit Card Annual Rate—Article 1.11[3] 01/01/86-03/31/86	18.00%	N/A
Annual Rate Applicable to Pre-July 1, 1983, Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from 01/01/86-03/31/86	18.00%	N/A
Judgment Rate—Article 1.05, §2 02/01/86-02/28/86	10.00%	10.00%

(1) For variable rate commercial transactions only.
(2) Only for open-end credit as defined in Texas Civil Statutes, Article 5069-1.01(f).
(3) Credit for personal, family, or household use.
(4) Credit for business, commercial, investment, or other similar purpose.

Issued in Austin, Texas, on January 22, 1986.

TRD-8600770 Sam Kelley
Consumer Credit Commissioner

Filed: January 22, 1986
For further information, please call (512) 479-1280.

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Court of Criminal Appeals

Texas Rules of Criminal Evidence

The Texas rules of appellate procedure will be in a future issue of the *Texas Register*.

ARTICLE I, GENERAL PROVISIONS

Rule 101. Title and Scope.

(a) These rules shall be known and cited as the Texas Rules of Criminal Evidence.

(b) These rules govern criminal proceedings in courts of Texas except where otherwise provided.

(c) Hierarchical governance shall be in the following order: the Constitution of the United States, those federal statutes which control states under the supremacy clause, the Constitution of Texas, the Code of Criminal Procedure and the Penal Code, civil statutes, these rules, the common law of England. Where possible, inconsistency is to be removed by reasonable construction.

Rule 102. Purpose and Construction. These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Rule 103. Rulings of Evidence.

(a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

(b) Record of offer and ruling. The court may add any other or further statement which shows the character of its evidence, the form in which it was offered, the objection made, and the ruling thereon. It may, or at request of a party shall, direct the making of an offer in question and answer form.

(c) Hearing of jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(d) Fundamental error. Nothing in these rules precludes taking notice of fundamental errors affecting substantial rights although they were not brought to the attention of the court.

Comment: Adoption of this rule is not meant to change the Texas harmless error doctrine. In subsection (d) the federal rule refers to plain error. This has been changed to fundamental error which conforms to Texas practice. The committee intends no change through 103(d) in present Texas law.

Rule 104. Preliminary Questions.

(a) Questions of admissibility generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.

(b) Relevancy conditioned on fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) Hearing of jury. Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused is a witness, if he so requests.

(d) Testimony by accused out of the hearing of the jury. The accused does not, by testifying upon a preliminary matter out of the hearing of the jury, subject himself to cross-examination as to other issues in the case.

(e) Weight and credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

Rule 105. Limited Admissibility.

(a) When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly; but, in the absence of such request the court's action in admitting such evidence without limitation shall not be a ground for complaint on appeal.

(b) When evidence referred to in paragraph (a) above is excluded, such exclusion shall not be a ground for complaint on appeal unless the proponent expressly offers the evidence for its limited, admissible purpose or limits its offer to the party against whom it is admissible.

Rule 106. Remainder of Related Writings or Recorded Statements. When a writing or recorded statement or part thereof is introduced by a party, an adverse party may at that time introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it. "Writing or recorded statement" includes depositions.

Comment: This rule is the federal rule with one modification. Under the federal rule, a party may require his opponent to introduce evidence contrary to the latter's own case. The Committee believes the better practice is to permit the party himself to introduce such evidence contemporaneously with the introduction of the incomplete evidence. This rule does not in any way circumscribe the right of a party to develop fully the matter on cross-examination or as part of his own case. Nor does it alter the common law doctrine that the rule of optional completeness, as to writings, oral conversations, or other matters, may take precedence over exclusionary doctrines such as the hearsay or be'st evidence rule or the firsthand knowledge requirement. See also TEX.R. CRIM.EV. 610(a).

Rule 107. Rule of Optional Completeness. When part of an act, declaration, conversation, writing, or recorded statement is given in evidence by one party, the whole on the same subject may be inquired into by the other, as when a letter is read, all letters on the same subject between the same parties may be given. When a detailed act, declaration, conversation, writing, or recorded statement is given in evidence, any other act, declaration, writing, or recorded statement which is necessary to make it fully understood or to explain the same may also be given in evidence. "Writing or recorded statement" includes depositions.

ARTICLE II, JUDICIAL NOTICE

Rule 201. Judicial Notice of Adjudicative Facts.

(a) Scope of rule. This rule governs only judicial notice of adjudicative facts.

(b) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either:

(1) generally known within the territorial jurisdiction of the trial court, or

(2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When discretionary. A court may take judicial

notice, whether requested or not.

(d) When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing jury. The court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

Rule 202. Determination of Law of Other States. A court upon its own motion may, or upon the motion of a party may, take judicial notice of the constitutions, public statutes, rules, regulations, ordinances, court decisions, and common law of every other state, territory, or jurisdiction of the United States. A party requesting that judicial notice be taken of such matter shall furnish the court sufficient information to enable it properly to comply with the request, and shall give all parties such notice, if any, as the court may deem necessary, to enable all parties fairly to prepare to meet the request. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken. Judicial notice of such matters may be taken at any stage of the proceeding. The court's determination shall be subject to review as a ruling on a question of law.

Rule 203. Determination of the Laws of Foreign Countries. A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice, and at least 30 days prior to the date of trial such party shall furnish all parties copies of any written materials or sources that he intends to use as proof of the foreign law. If the materials or sources were originally written in a language other than English, the party intending to rely upon them shall furnish all parties both a copy of the foreign language text and an English translation. The court, in determining the law of a foreign nation, may consider any material or source, whether or not submitted by a party or admissible under the rules of evidence, including but not limited to affidavits, testimony, briefs, and treatises. If the court considers sources other than those submitted by a party, it shall give all parties notice and a reasonable opportunity to comment on the sources and to submit further materials for review by the court. The court, and not a jury, shall determine the laws of foreign countries. The court's determination shall be subject to review as a ruling on a question of law.

Rule 204. Determination of Texas City and County Ordinances, the Contents of the Texas Register, the Rules of Agencies Published in the Administrative Code. Judicial notice may be taken of the ordinances of municipalities and counties of Texas, of the contents of the Texas Register, and of the codified rules of the agencies published in the Administrative Code. Any party requesting that judicial notice be taken of such matter shall furnish the court sufficient information to enable it properly to comply with the request, and shall give all parties such notice, if any, as the court may deem necessary, to enable all parties fairly to prepare to meet the request. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken. The court's determination shall be subject to review as a ruling on a question of law.

ARTICLE III, PRESUMPTION IN CIVIL ACTIONS AND PROCEEDINGS

[No rules promulgated at this time.]

ARTICLE IV, RELEVANCY AND ITS LIMITS

Rule 401. Definition of "Relevant Evidence." "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible. All relevant evidence is admissible, except as otherwise provided by constitution, by statute, by these rules or by other rules prescribed pursuant to statutory authority. Evidence which is not relevant is inadmissible.

Rule 403. Exclusion of Relevant Evidence on Special Grounds. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence.

Rule 404. Character Evidence not Admissible to Prove Conduct; Exceptions; Other Crimes.

(a) Character evidence generally. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(1) Character of accused. Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same;

(2) Character of victim. Subject to Rule 412, evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of peaceable character of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) Character of witness. Evidence of the character of a witness, as provided in Rules 607, 608, and 609.

(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided, upon timely request by the accused, reasonable notice is given in advance of trial of intent to introduce in the State's case in chief such evidence other than that arising in the same transaction.

(c) Character relevant to punishment. In the penalty phase, evidence may be offered by an accused or by the prosecution as to the prior criminal record of the accused. Other evidence of his character may be offered by an accused or by the prosecution. Nothing herein shall limit provisions of Article 37.071, Code of Criminal Procedure.

Rule 405. Methods of Proving Character.

(a) Reputation or opinion. In all cases in which evidence of character or trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. Provided however that in order to be competent to testify concerning the character or trait of character of the accused, a witness must, prior to the date of the offense, have been substantially familiar with the reputation of the accused. In all cases where testimony is admitted under this rule, on cross-examination inquiry is allowable into relevant specific instances of conduct.

(b) Specific instances of conduct. In cases in which character or trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct.

Rule 406. Habit; Routine Practice. Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

Rule 407. Subsequent Remedial Measures; Notification of Defect.

(a) Subsequent remedial measures. When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of subsequent remedial measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent remedial measures when offered for another purpose, such as proving ownership, control or feasibility of precautionary measures, if controverted, or impeachment. Nothing in this rule shall preclude admissibility in products liability cases based on strict liability.

(b) Notification of defect. A written notification by a manufacturer of any defect in a product produced by such manufacturer to purchasers thereof is admissible against the manufacturer on the issue of existence of the defect to the extent that it is relevant.

Rule 408. Compromise and Offers to Compromise. Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice or interest of a witness or a party, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigtion or prosecution.

Rule 409. Payment of Medical and Similar Expenses. Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

Rule 410. Inadmissibility of Pleas, Plea Discussions, and Related Statements. Except as otherwise provided in this rule, evidence of the following is not admissible against the defendant who made the plea or was a participant in the plea discussions:

(1) a plea of guilty or nolo contendere which was later withdrawn;

(2) any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding a plea of guilty or nolo contendere which was later withdrawn; or

(3) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or a plea of nolo contendere or which result in a plea of guilty or a plea of nolo contendere later withdrawn. However, such a statement is admissible in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it.

Rule 411. Liability Insurance. Evidence that a person was or was not insured against liability is not admissible upon the issue whether he acted negligently. This rule does not require the exclusion of evidence of insurance against liability when offered for another issue, such as proof of agency, ownership, or control, if disputed, or bias or prejudice of a witness.

Rule 412. Evidence of Previous Sexual Conduct.

(a) In a prosecution for sexual assault or aggravated sexual assault, or attempt to commit sexual assault or aggravated sexual assault, reputation, or opinion evidence of the past sexual behavior of an alleged victim of such crime is not admissible.

(b) In a prosecution for sexual assault or aggravated sexual assault, or attempt to commit sexual assault or aggravated sexual assault, evidence of specific instances of an alleged victim's past sexual behavior is also not admissible, unless:

(1) such evidence is admitted in accordance with paragraphs (c) and (d) of this rule;

(2) it is evidence;

(A) that is necessary to rebut or explain scientific or medical evidence offered by the state;

(B) of past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior which is the basis of the offense charged;

(C) that relates to the motive or bias of the alleged victim;

(D) is admissible under Rule 609; or

(E) that is constitutionally required to be admitted; and

(3) its probative value outweighs the danger of unfair prejudice.

(c) If the defendant proposes to introduce any documentary evidence or to ask any question, either by direct examination or cross-examination of any witness, concerning specific instances of the alleged victim's past sexual behavior, the defendant must inform the court out of the hearing of the jury prior to introducing any such evidence or asking any such question. After this notice, the court shall conduct an in camera hearing, recorded by the court reporter, to determine whether the proposed evidence is admissible under paragraph (b) of this rule. The court shall determine what evidence is admissible and shall accordingly limit the questioning. The defendant shall not go outside these limits nor refer to any evidence ruled inadmissible in camera without prior approval of the court without the presence of the jury.

(d) The court shall seal the record of the in camera hearing required in paragraph (c) of this rule for delivery

to the appellate court in the event of an appeal.

(e) This rule does not limit the right of the accused to produce evidence of promiscuous sexual conduct of a child 14 years old or older as a defense to sexual assault, aggravated sexual assault, indecency with a child or an attempt to commit any of the foregoing crimes. If such evidence is admitted, the court shall instruct the jury as to the purpose of the evidence and as to its limited use.

ARTICLE V, PRIVILEGES

Rule 501. Privileges Recognized Only as Provided. Except as otherwise provided by these rules or by Constitution, statute, or court rule prescribed pursuant to statutory authority, no person has a privilege to:

(1) Refuse to be a witness; or

(2) Refuse to disclose any matter; or

(3) Refuse to produce any object or writing; or

(4) Prevent another from being a witness or disclosing any matter or producing any object or writing.

Rule 502. Required Reports Privileged by Statute. A person, corporation, association, or other organization or entity, either public or private, making a return or report required by law to be made has a privilege to refuse to disclose and to prevent any other person from disclosing the return or report, if the law requiring it to be made so provides. A public officer or agency to whom a return or report is required by law to be made has a privilege to refuse to disclose the return or report if the law requiring it to be made so provides. No privilege exists under this rule in actions involving perjury, false statements, fraud in the return or report, or other failure to comply with the law in question.

Rule 503. Lawyer-Client Privilege.

(a) Definitions. As used in this rule:

(1) A "client" is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from him.

(2) A representative of the client is one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client.

(3) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law in any state or nation.

(4) A "representative of the lawyer" is (i) one employed by the lawyer to assist the lawyer in the rendition of professional legal services; (ii) an accountant who is reasonably necessary for the lawyer's rendition of professional legal services.

(5) A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(b) General rule of privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client and made:

(1) between him or his representative and his lawyer or his lawyer's representative,

(2) between his lawyer and the lawyer's representative,

(3) by him or his representative or his lawyer or a representative of the lawyer to a lawyer, or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein,

(4) between representatives of the client or between the client and a representative of the client, or

(5) among lawyers and their representatives representing the same client. A client has a privilege to prevent the lawyer or the lawyer's representative from disclosing any other fact which came to the knowledge of the lawyer or the lawyer's representative by reason of the attorney-client relationship.

(c) Who may claim the privilege. The privilege may be claimed by the client, his guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer or the lawyer's representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

(d) Exceptions. There is no privilege under this rule:

(1) Furtherance of crime or fraud. If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

(2) Claimants through same deceased client. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

(3) Breach of duty by a lawyer or client. As to a communication relevant to an issue of breach of duty by the lawyer to his client or by the client to his lawyer;

(4) Document attested by a lawyer. As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness;

(5) Joint clients. As to a communication relevant to a matter of common interest between or among two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between or among any of the clients.

Comment: This rule governs only the lawyer/client privilege. It does not restrict the scope of the work product doctrine.

Rule 504. Husband-Wife Privileges.

(a) Confidential communication privilege.

(1) Definition. A communication is confidential if it is made privately by any person to his spouse and it is not intended for disclosure to any other person.

(2) General rule of privilege. A person, whether or not a party, or the guardian or representative of an incompetent or deceased person, has a privilege during their marriage and afterwards to refuse to disclose and to prevent another from disclosing a confidential communication made to his spouse while they were married.

(3) Who may claim the privilege. The privilege may be claimed by the person or his guardian or representative, or by the spouse on his behalf. The authority of the spouse to do so is presumed.

(4) Exceptions. There is no privilege under this rule:

(A) Furtherance of crime or fraud. If the communication was made, in whole or in part, to enable or aid anyone to commit or plan to commit a crime or fraud.

(B) In a proceeding in which an accused is charged with a crime against the person of any minor child or any member of the household of either spouse, except

in a proceeding where the accused is charged with a crime committed during the marriage against the spouse.

(b) Privilege not to be called as a witness against spouse.

(1) General rule of privilege. The spouse of the accused has a privilege not to be called as a witness for the state. This rule does not prohibit the spouse from testifying voluntarily for the state, even over objection by the accused. A spouse who testifies on behalf of an accused is subject to cross-examination as provided in Rule 611(b). Failure by an accused to call his spouse as a witness, where other evidence indicates that the spouse could testify to relevant matters, is a proper subject of comment by counsel.

(2) Exceptions. Except in a proceeding where the accused is charged with a crime committed during the marriage against the spouse, there is no privilege under this rule (a) in a proceeding in which an accused is charged with a crime against the person of any minor child or any member of the household of either spouse; or (b) as to matters occurring prior to the marriage.

Rule 505. Communications to Clergymen.

(a) Definitions. As used in this rule:

(1) A "clergyman" is a minister, priest, rabbi, accredited Christian Science Practitioner, or other similar functionary of a religious organization, or an individual reasonable believed so to be by the person consulting him.

(2) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General rule of privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual adviser.

(c) Who may claim the privilege. The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The person who was the clergyman at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.

Rule 506. Political Vote. Every person has a privilege to refuse to disclose the tenor of his vote at a political election conducted by secret ballot unless the vote was cast illegally.

Rule 507. Trade Secrets. A person has a privilege, which may be claimed by him or his agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by him, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. When disclosure is directed, the judge shall take such protective measure as the interests of the holder of the privilege and of the parties and the furtherance of justice may require.

Rule 508. Identity of Informer.

(a) Rule of privilege. The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(b) Who may claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished, except that the privilege shall not be allowed if the state objects.

(c) Exceptions.

(1) Voluntary disclosure; informer a witness. No privilege exists under this rule if the identity of the informer or his interest in the subject matter of his communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the public entity.

(2) Testimony on merits. If it appears from the evidence in the case or from other showing by a party that an informer may be able to give testimony necessary to a fair determination of the issues of guilt, innocence and the public entity invokes the privilege, the judge shall give the public entity an opportunity to show in camera facts relevant to determining whether the informer can, in fact, supply that testimony. The showing will ordinarily be in the form of affidavits, but the judge may direct that testimony be taken if he finds that the matter cannot be resolved satisfactorily upon affidavit. If the judge finds that there is a reasonable probability that the informer can give the testimony, and the public entity elects not to disclose his identity, the judge on motion of the defendant shall dismiss the charges to which the testimony would relate and the judge may do so on his own motion. Evidence submitted to the judge shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the public entity. All counsel and parties shall be permitted to be present at every stage of proceedings under this subdivision except a showing in camera, at which no counsel or party shall be permitted to be present.

(3) Legality of obtaining evidence. If informationfrom an informer is relied upon to establish the legality of the means by which evidence was obtained and the judge is not satisfied that the information was received from an informer reasonably believed to be reliable or credible, he may require the identity of the informer to be disclosed. The judge shall, on request of the public entity, direct that the disclosure be made in camera. All counsel and parties concerned with the issue of legality shall be permitted to be present at every stage of proceedings under this subdivision except a disclosure in camera, at which no counsel or party shall be permitted to be present. If disclosure of the identity of the informer is made in camera, the record thereof shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the public entity.

Rule 509. Physician-Patient Privilege. There is no physician-patient privilege in criminal proceedings.

Rule 510. Communications by Alcohol or Drug Abusers. A communication to any person involved in the treatment or examination of alcohol or drug abuse by a person being treated voluntarily or being examined for admission to treatment for alcohol or drug abuse is not admissible.

Rule 511. Waiver of Privilege by Voluntary Disclosure. A person upon whom these rules confer a privilege against disclosure waives the privilege if (1) he or his predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter unless such disclosure itself is privileged or (2) he or his representative calls a person to whom privileged communications have been made to testify as to his character or a trait of his character, insofar as such

communications are relevant to such character or character trait.

Rule 512. Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim Privilege. A claim of privilege is not defeated by a disclosure which was: (1) compelled erroneously; or (2) made without opportunity to claim the privilege.

Rule 513. Comment Upon or Inference From Claim of Privilege; Instruction.

(a) Comment or inference not permitted. Except as provided in Rule 504(a), the claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel, and no inference may be drawn therefrom.

(b) Claiming privilege without knowledge of jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

(c) Jury instruction. Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

ARTICLE VI, WITNESSES

Rule 601. Competency and Incompetency of Witnesses.

(a) Every person is competent to be a witness except as otherwise provided in these rules. The following witnesses shall be incompetent to testify in any proceeding subject to these rules:

(1) Insane persons. Insane persons who, in the opinion of the court, are in an insane condition of mind at the time when they are offered as a witness, or who, in the opinion of the court, were in that condition when the events happened of which they are called to testify.

(2) Children. Children or other persons who, after being examined by the court, appear not to possess sufficient intellect to relate transactions with respect to which they are interrogated.

Rule 602. Lack of Personal Knowledge. A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Rule 603. Oath or Affirmation. Before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so.

Rule 604. Interpreters. An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation.

Rule 605. Competency of Judge as Witness. The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

Rule 606. Competency of Juror as a Witness.

(a) At the trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which he is sitting as a juror. If he is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, except that a juror may testify as to any matter relevant to the validity of the verdict or indictment. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.

Rule 607. Who May Impeach. The credibility of a witness may be attacked by any party, including the party calling him.

Rule 608. Evidence of Character and Conduct of Witness.

(a) Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime as provided in Rule 609, may not be inquired into on cross-examination of the witness nor proved by extrinsic evidence.

Rule 609. Impeachment by Evidence of Conviction of Crime.

(a) General rule. For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime shall be admitted if elicited from him or established by public record but only if the crime was a felony or involved moral turpitude, regardless of punishment, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to a party.

(b) Time limit. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.

(c) Effect of pardon, annulment, or certificate of rehabilitation. Evidence of a conviction is not admissible under this rule if: (1) based on the finding of the rehabilitation of the person convicted, the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure, and that person has not been convicted of a subsequent crime which was classified as a felony or involved moral turpitude, regardless of punishment, or (2) probation has been satisfactorily completed for the crime for which the person was convicted, and that person has not been convicted of a subsequent crime which was classified as a felony or involved moral turpitude, regardless of punishment, or (3) based on a finding of innocence, the conviction has been the subject of a pardon, annulment, or other equivalent procedure.

(d) Juvenile adjudications. Evidence of juvenile ad-

judications is not admissible under this rule unless required to be admitted by the Constitution of the United States or Texas.

(e) Pendency of appeal. Pendency of an appeal renders evidence of a conviction inadmissible.

(f) Notice. Evidence of a conviction is not admissible if after timely written request by the adverse party specifying the witness or witnesses, the proponent fails to give to adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

Rule 610. Mode and Order of Interrogation and Presentation.

(a) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross-examination. A witness may be cross-examined on any matter relevant to any issue in the case, including credibility.

(c) Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

Rule 611. Writing Used to Refresh Memory. If a witness uses a writing to refresh his memory for the purpose of testifying either while testifying or before testifying, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing in camera, excise any portion not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires, except that when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

Rule 612. Prior Statements of Witnesses; Impeachment and Support.

(a) Examining witness concerning prior inconsistent statement. In examining a witness concerning a prior inconsistent statement made by him, whether oral or written, and before further cross-examination concerning, or extrinsic evidence of, such statement may be allowed, the witness must be told the contents of such statement and the time and place and the person to whom it was made, and must be afforded an opportunity to explain or deny such statement. If written, the writing need not be shown to him at that time, but on request the same shall be shown to opposing counsel. If the witness unequivocally admits having made such statement, extrinsic evidence of same shall not be admitted. This provision does not apply to admissions of a party-opponent as defined in Rule 801(e)(2).

(b) Examining witness concerning bias or interest. In impeaching a witness by proof of circumstances or statements showing bias or interest, on the part of such witness, and before further cross-examination concerning, or extrinsic evidence of, such bias or interest may be allowed, the circumstances supporting such claim or the details of such statement, including the contents and where, when, and to whom made, must be made known to the witness, and the witness must be given an opportunity to explain or to deny such circumstances or statement. If written, the writing need not be shown to him at that time, but on request the same shall be shown to opposing counsel. If the witness unequivocally admits such bias or interest, extrinsic evidence of same shall not be admitted. A party shall be permitted to present evidence rebutting any evidence impeaching one of said party's witnesses on grounds of bias or interest.

(c) Prior consistent statements of witnesses. A prior statement of a witness which is consistent with his testimony is inadmissible except as provided in 801(e)(1)(B).

Rule 613. Exclusion of Witnesses. At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order on its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a defendant which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of his cause.

Rule 614. Production of Statements of Witnesses.

(a) Motion for production. After a witness other than the defendant has testified on direct examination, the court, on motion of a party who did not call the witness, shall order the attorney for the state or the defendant and his attorney, as the case may be, to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter concerning which the witness has testified.

(b) Production of entire statement. If the entire contents of the statement relate to the subject matter concerning which the witness has testified, the court shall order that the statement be delivered to the moving party.

(c) Production of excised statement. If the other party claims that the statement contains matter that does not relate to the subject matter concerning which the witness has testified, the court shall order that it be delivered to the court in camera. Upon inspection, the court shall excise the portions of the statement that do not relate to the subject matter concerning which the witness has testified, and shall order that the statement, with such material excised, be delivered to the moving party. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of appeal.

(d) Recess for examination of statement. Upon delivery of the statement to the moving party, the court, upon application of that party, shall recess proceedings in the trial for a reasonable examination of such statement and for preparation for its use in the trial.

(e) Sanction for failure to produce statement. If the other party elects not to comply with an order to deliver a statement to the moving party, the court shall order that the testimony of the witness be stricken from the record and that the trial proceed, or, if it is the attorney for the state who elects not to comply, shall declare a mistrial if required by the interest of justice.

(f) Definition. As used in this rule, a "statement" of a witness means:

(1) a written statement made by the witness that is signed or otherwise adopted or approved by him;

(2) a substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement and that is contained in a stenographic, mechanical, electrical, or other recording or a transcription thereof; or

(3) a statement, however taken or recorded, or a transcription thereof, made by the witness to a grand jury.

Rule 615. Religious Beliefs or Opinions. In criminal cases, evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature his credibility is impaired or enhanced.

ARTICLE VII, OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion Testimony by Lay Witnesses. If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are: (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue.

Rule 702. Testimony by Experts. If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 703. Bases of Opinion Testimony by Experts. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Rule 704. Opinion on Ultimate Issues. Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion.

(a) Disclosure of facts or data. The expert may testify in terms of opinion or inference and give his reasons therefore without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event disclose on direct examination, or be required to disclose on cross-examination, the underlying facts or data, subject to subparagraphs (b)-(d).

(b) Voir dire. Prior to the expert giving his opinion or disclosing the underlying facts or data, a party against whom the opinion is offered shall, upon request, be permitted to conduct a voir dire examination directed to the underlying facts or data upon which the opinion is based. This examination shall be conducted out of the hearing of the jury.

(c) Admissibility of opinion. If the court determines that the expert does not have a sufficient basis for his opinion, the opinion is inadmissible unless the party offering the testimony first establishes sufficient underlying facts or data.

(d) Balancing test; limiting instructions. When the underlying facts or data would be inadmissible in evidence for any purpose other than to explain or support the expert's opinion or inference, the court shall exclude the underlying facts or data if the danger that they will be used for an improper purpose outweighs their value as explanation or support for the expert's opinion. If the facts or data are disclosed before the jury, a limiting instruction by the court shall be given upon request.

Comment: This rule does not preclude a party from conducting a voir dire examination into the qualifications of an expert.

ARTICLE VIII, HEARSAY

Rule 801. Definitions. The following definitions apply under this article:

(a) Statement. A "statement" is:

(1) an oral or written verbal expression or;

(2) nonverbal conduct of a person, if it is intended by him as a substitute for verbal expression.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Matter asserted. "Matter asserted" includes any matter explicitly asserted, and any matter implied by a statement, if the probative value of the statement as offered flows from declarant's belief as to the matter.

(d) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(e) Statements which are not hearsay. A statement is not hearsay if:

(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

(A) inconsistent with his testimony; and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, except a grand jury proceeding, or in a deposition; or

(B) consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive; or

(C) one of identification of a person made after perceiving him; or

(D) taken and offered in accordance with Article 38.071 of the Texas Code of Criminal Procedure; or

(2) Admission by party-opponent. The statement is offered against a party and is:

(A) his own statement in either his individual or representative capacity; or

(B) a statement of which he has manifested his adoption or belief in its truth; or

(C) a statement by a person authorized by him to make a statement concerning the subject; or

(D) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship; or

(E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

Comment: The definitions in 801(a), (b), (c), and (d) combined bring within the hearsay rule four categories of conduct. These are described and illustrated below.

(1) A verbal (oral or written) explicit assertion. Illustration. Witness testifies that declarant said "A shot B." Declarant's conduct is a statement because it is an oral expression. Because it is an explicit assertion, the mat-

ter asserted is that A shot B. Finally, the statement is hearsay because it was not made while testifying at the trial and is offered to prove the truth of the matter asserted.

(2) A verbal (oral or written) explicit assertion, not offered to prove the matter explicitly asserted, but offered for the truth of a matter implied by the statement, the probative value of the statement flowing from declarants belief as to the matter. Illustration. The only known remedy for X disease is medicine Y and the only known use of medicine Y is to cure X disease. To prove that Oglethorpe had X disease, witness testifies that declarant, a doctor, stated, "The best medicine for Oglethorpe is Y." The testimony is to a statement because it was a verbal expression. The matter asserted was that Oglethorpe had X disease because that matter is implied from the statement, the probative value of the statement as offered flowing from declarant's belief as to the matter. Finally, the statement is hearsay because it was not made while testifying at the trial and is offered to prove the truth of the matter asserted.

(3) Non-assertive verbal conduct offered for the truth of a matter implied by the statement, the probative value of the statement flowing from declarant's belief as to the matter. Illustration. In a rape prosecution to prove that Richard, the defendant, was in the room at the time of the rape, W testifies that declarant knocked on the door to the room and shouted, "Open the door, Richard." The testimony is to a statement because it was a verbal expression. The matter asserted was that Richard was in the room because that matter is implied from the statement, the probative value of the statement as offered flowing from declarant's belief as to the matter. Finally, the statement is hearsay because it was not made while testifying at the trial and is offered to prove the truth of the matter asserted.

(4) Nonverbal assertive conduct intended as a substitute for verbal expression. Illustration. W testifies that A asked declarant "Which way did X go?" and declarant pointed north. This nonverbal conduct of declarant was intended by him as a substitute for verbal expression and so is a statement. The matter asserted is that X went north because that is implied from the statement and the probative value of the statement as offered flows from declarant's belief that X went north. Finally, the statement is hearsay because it was not made at trial and is offered to prove the truth of the matter asserted.

Rule 802. Hearsay Rule. Hearsay is not admissible except as provided by statute or these rules. Inadmissible hearsay admitted without objection shall not be denied probative value merely because it is hearsay.

Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial. The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then existing mental, emotional, or physical condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) Recorded recollection. A memorandum or record concerning a matter about which a witness once had personal knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly, unless the circumstances of preparation cast doubt on the document's trustworthiness. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) Records of regularly conducted activity. A memorandum,report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by affidavit that complies with Rule 902(10), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. "Business" as used in this paragraph includes any and every kind of regular organized activity whether conducted for profit or not.

Comment: This provision rejects the doctrine of Loper v.Andrews, 404 S.W.2d 300, 305 (Tex. 1966), which required that an entry of a medical opinion or diagnosis meet a test of "reasonable medical certainty."

(7) Absence of entry in records kept in accordance with the provisions of paragraph (6). Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Public records and reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies setting forth:

(A) the activities of the office or agency, or

(B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report,excluding, however, matters observed by police officers and other law enforcement personnel, or

(C) against the state, factual findings resulting from an investigation made pursuant to authority granted by law; unless the sources of information or other circumstances indicate lack of trustworthiness.

(9) Records of vital statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) Absence of public record or entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) Records of religious organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) Statements in documents affecting an interest in property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in ancient documents. Statements in a document in existence twenty years or more the authenticity of which is established.

(17) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) Learned treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by him in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) Reputation concerning personal or family history. Reputation among members of his family by blood, adoption, or marriage, or among his associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of his personal or family history.

(20) Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.

(21) Reputation as to character. Reputation of a person's character among his associates or in the community.

(22) Judgment of previous conviction. Evidence of a judgment, entered after a trial or upon a plea of guilty or nolo contendere, adjudging a person guilty of a criminal offense, to prove any fact essential to sustain the judgment of conviction, but not including, when offered by the state for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal renders such evidence inadmissible.

(23) Judgment as to personal, family, or general history, or boundaries. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(24) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability, or to render invalid a claim by him against another, or to make him an object of hatred, ridicule, or disgrace, that a reasonable man in his position would not have made the statement unless he believed it to be true. A statement tending to expose the declarant to criminal liability is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

Rule 804. Hearsay Exceptions; Declarant Unavailable.

(a) Definition of unavailability. "Unavailability as a witness" includes situations in which the declarant:

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of his statement; or

(2) persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of his statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of his statement has been unable to procure his attendance or testimony by process or other reasonable means.

A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay exceptions. The following are not excluded if the declarant is unavailable as a witness:

(1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, if the party against whom the testimony is now offered, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination. The use of depositions is controlled by Chapter 39 of the Texas Code of Criminal Procedure.

(2) Dying declarations. A statement made by a declarant while believing that his death was imminent, concerning the cause or circumstances of what he believed to be his impending death.

(3) Statement of personal or family history.

(A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or

(B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

Rule 805. Hearsay Within Hearsay. Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

Rule 806. Attacking and Supporting Credibility of Declarant. When a hearsay statement, or a statement defined in Rule 801(e)(2), (C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, offered to impeach the declarant, is not subject to any requirement that he may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine him on the statement as if under cross-examination.

ARTICLE IX, AUTHENTICATION AND IDENTIFICATION

Rule 901. Requirement of Authentication or Identification.

(a) General provision. The requirement of authenticationor identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of witness with knowledge. Testimony that a matter is what it is claimed to be.

(2) Nonexpert opinion on handwriting. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) Comparison by trier or expert witness. Comparison by the trier of fact or by expert witness with specimens which have been found by the court to be genuine.

(4) Distinctive characteristics and the like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if:

(A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or

(B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) Public records and reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) Ancient documents or data compilation. Evidence that a document or data compilation, in any form,

(A) is in such condition as to create no suspicion concerning its authenticity,

(B) was in a place where it, if authentic, would likely be, and

(C) has been in existence twenty years or more at the time it is offered.

(9) Process or system. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Methods provided by statute or rule. Any method of authentication or identification provided by statute or by court rule prescribed pursuant to statutory authority.

Rule 902. Self-Authentication. Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) Domestic public documents under seal. A document bearing a seal purporting to be that of the United States, or of any state, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and asignature purporting to be an attestation or execution.

(2) Domestic public documents not under seal. A document purporting to bear the signature in his official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) Foreign public documents. A document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position:

(A) of the executing or attesting person, or

(B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or if in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certifica-

tion. The final certification shall be dispensed with whenever both the United States and the foreign country in which the official record is located are parties to a treaty or convention that abolishes or displaces such requirement, in which case the record and the attestation shall be certified by the means provided in the treaty or convention.

(4) Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraphs (1), (2), or (3) of this rule or complying with any statute or court rule prescribed pursuant to statutory authority.

(5) Official publications. Books, pamphlets, or other publications purporting to be issued by public authority.

(6) Newspapers and periodicals. Printed materials purporting to be newspapers or periodicals.

(7) Trade inscriptions and the like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) Acknowledged documents. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) Business records accompanied by affidavit:

(A) Records or photocopies; admissibility; affidavit; filing. Any record or set of records or photographically reproduced copies of such records, which would be admissible under Rule 803(6) or (7) shall be admissible in evidence in any court in this state upon the affidavit of the person who would otherwise provide the prerequisites of Rule 803(6) or (7), that such records attached to such affidavit were in fact so kept as required by Rule 803(6) or (7), provided further, that such record or records along with such affidavit are filed with the clerk of the court for inclusion with the papers in the cause in which the record or records are sought to be used as evidence at least fourteen days prior to the day upon which trial of said cause commences, and provided the other parties to said cause are given prompt notice by the party filing same of the filing of such record or records and affidavit, which notice shall identify the name and employer, if any, of the person making the affidavit and such records shall be made available to the counsel for other parties to the action or litigation for inspection and copying. The expense for copying shall be borne by the party, parties, or persons who desire copies and not by the party or parties who file the records and serve notice of said filing, in compliance with this rule. Notice shall be deemed to have been promptly given if it is served in the manner contemplated by Rule 21a, Texas Rules of Civil Procedure, fourteen days prior to commencement of trial in said cause.

(B) Form of affidavit. A form for the affidavit of such person as shall make such affidavit as is permitted in paragraph (A) above shall be sufficient if it follows this form, though this form shall not be exclusive, and an affidavit which substantially complies with the provisions of this rule shall suffice, to-wit:

STATE OF TEXAS IN THE_____
v. COURT IN AND FOR
John Roe (Name of Defendant) _____ COUNTY, TEXAS
AFFIDAVIT

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

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

I am the custodian of the records of_____. Attached hereto are ____ pages of records from _____. These said ____ pages of records are kept by _____ in the regular course of business, and it was the regular course of business of _____ for an employee or representative of _____, with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original.

_____
Affiant

My commission expires: _____
Notary Public, State of Texas
_____ Notary's printed name:

(11) Presumptions under statute or court rule prescribed pursuant to statutory authority. Any signature, document, or other matter declared by court rule prescribed pursuant to statutory authority to be presumptively or prima facie genuine or authentic.

Comment: Paragraph (10) is based on portions of the affidavit authentication provisions of Texas Revised Civil Statutes Annotated, Article 3737e. The most general and comprehensive language from those provisions was chosen. It is intended that this method of authentication shall be available for any kind of regularly kept record that satisfies the requirements of Rule 803(6) and (7), including X-rays, hospital records, or any other kind of regularly kept medical record.

Rule 903. Subscribing Witness' Testimony Unnecessary. The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

ARTICLE X, CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

Rule 1001. Definitions. For purposes of this article the following definitions are applicable:

(1) Writings and recordings. "Writings" and "recordings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) Photographs. "Photographs" include still photographs, X-ray films, video tapes, and motion pictures.

(3) Original. An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original."

(4) Duplicate. A "duplicate" is a counterpart

produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original.

Rule 1002. Requirement of Original. To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required except as otherwise provided in these rules or by law.

Rule 1003. Admissibility of Duplicates. A duplicate is admissible to the same extent as an original unless:

(1) a question is raised as to the authenticity of the original; or

(2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

Rule 1004. Admissibility of Other Evidence of Contents. The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

(1) Originals lost or destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(2) Original not obtainable. No original can be obtained by any available judicial process or procedure; or

(3) Original outside the state. No original is located in Texas; or

(4) Original in possession of opponent. At a time when an original was under the control of the party against whom offered, he was put on notice, by the pleadings or otherwise, that the content would be a subject of proof at the hearing, and he does not produce the original at the hearing; or

(5) Collateral matters. The writing, recording, or photograph is not closely related to a controlling issue.

Rule 1005. Public Records. The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

Rule 1006. Summaries. The contents of voluminous writings, recordings, or photographs, otherwise admissible, which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.

Rule 1007. Testimony or Written Admission of Party. Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by his written admission, without accounting for the nonproduction of the original.

Rule 1008. Functions of Court and Jury. When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of Rule 104. However, when an issue is raised:

(a) whether the asserted writing ever existed, or

(b) whether another writing, recording, or photograph produced at the trial is the original, or

(c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

ARTICLE XI, MISCELLANEOUS PROVISIONS

Rule 1101. Applicability of Rules.

(a) General rule. These rules apply in criminal proceedings in all Texas courts and in examining trials before magistrates.

(b) Rule of privilege. These rules with respectto privileges apply at all stages of all actions, cases, and proceedings.

(c) Rules inapplicable. The rules (other than with respect to privileges) do not apply in the following situations:

(1) Preliminary questions of fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104.

(2) Grand jury. Proceedings before grand juries.

(3) Miscellaneous proceedings:

(A) Application for habeas corpus in extradition, rendition, or interstate detainer proceedings;

(B) A hearing under Texas Code of Criminal Procedure, Article 46.02, by the court out of the presence of a jury, to determine whether there is sufficient evidence of incompetency to require a jury determination of the question of incompetency.

(C) Proceedings regarding bail except hearings to deny, revoke, or increase bail;

(D) A hearing on justification for pretrial detention not involving bail;

(E) Issuance of search or arrest warrant;

(F) Direct contempt determination.

(d) Rules applicable in part. In the following proceedings these rules apply to the extent matters of evidence are not provided for in the statutes which govern procedure therein or in another court rule prescribed pursuant to statutory authority'

(1) Sentencing or punishment assessment by the court or the jury;

(2) Probation revocation;

(3) A hearing to proceed to judgment following deferred adjudication of guilt or conditional discharge;

(4) Motions to suppress confessions, or to suppress illegally obtained evidence under Texas Code of Criminal Procedure, Article 38.23.

(5) Proceedings conducted pursuant to Texas Code of Criminal Procedure Article 11.07.

(e) Evidence in hearing under the Texas Code of Military Justice, Article 5788, shall be governed by that Code.

Issued in Austin, Texas, on January 2, 1986.

TRD-8600016 Richard Banks
Executive Administrator
Court of Criminal Appeals

Filed: January 2, 1986
For further information, please call (512) 463-1600.

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Texas Economic Development Commission

Consultant Proposal Request

Pursuant to Texas Civil Statutes, Article 6252-11c, the Texas Economic Development Commission (TEDC) is soliciting proposals for a qualified individual or firm to develop marketing materials, including, but not limited to, logos and brochures.

Proposals will be reviewed and evaluated on criteria such as cost effectiveness, bidder qualifications, proposed schedule for completion, and creative approach.

The period of performance is currently estimated to begin on or about March 31, 1986, until completion of the marketing materials specified.

To be considered for funding through this consultant proposal request, all proposals must be complete and received by March 10, 1986. at 5 p.m. Any modifications to the original proposal must be received prior to the closing date. Proposals and modifications will not be accepted after the 5 p.m. deadline.

A bidders conference will be held in Austin on February 13, 1986, at 2 p.m. at 501 East Fifth Street, Room 221. Interested bidders are urged to attend.

TEDC reserves the right to accept or reject any or all offers submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any offer received. TEDC is under no legal obligation to enter into a contract with any offeror on the basis of this request and intends any material provided herein only as means of identifying the scope of services requested. Further, TEDC will not reimburse any offeror for expenses incurred by such offeror in the preparation and/or submission of an offer. Any contract entered into by TEDC pursuant to this request will be subject to the availability of appropriated funds, and will contain a cancellation clause giving either party to such contract the right to terminate all obligations thereunder upon 10 days written notice to the other party.

Offer Submission. Offers must be submitted to Texas Economic Development Commission, P. O. Box 12728, Austin, Texas 78711, Attention: Andrea Gale, by 5 p.m., C.S.T., March 10, 1986.

Contact. Further information may be obtained by contacting Andrea Gale, P.O. Box 12728, Austin, Texas 78711, (512) 472-5059.

Issued in Austin, Texas, on January 22, 1986.

TRD-8600777 David V. Brandon
Executive Director
Texas Economic Development Commission

Filed: January 22, 1986
For further information, please call (512) 472-5059.

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Texas Education Agency

Consultant Proposal Request

Description. In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Education Agency is requesting applications to develop and implement a series of staff development modules for mathematics teachers of prekindergarten-Grade 8. A set of 21 modules will be developed to prepare PK-Grade 8 teachers to teach the essential elements of mathemathics using manipulative materials, concept development techniques, and problem solving applications. The modules cover eight content areas, broken down as primary, intermediate, and middle school. The focus of the modules will be on teaching the essential elements of the state mathematics curriculum. Modules will also address general issues such as eliminating bias, reducing mathematics anxiety, and improving participation of all students in higher level mathematics courses.

Trainers from each education service center region will be identified and trained to deliver these modules. The contractor will conduct a pilot training session for the delivery of each module. Evaluation of the pilot training session should be incorporated to make revisions in modules. Districts will then recieve guidelines on how to use flowthrough or other funding sources to provide staff development for their staffs.

The development of modules will be contracted to one or more entities. Each contractor must apply to develop at least two modules, and may apply for as many as desired. Applications will be requested from interested districts, service centers, institutes of higher education, and private consulting firms. The development is projected for a two-year period. The approximate funding level for the first year is $409,700.

Contact Person. Any person wishing to obtain additional information about the application may contact Dr. Cathy Seeley-Peavler, Director of Mathematics, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9585.

Period of Contract. The beginning date of this contract is March 3, 1986, and the ending date is September 30, 1987.

Award of Contract. A contract will be awarded based upon the applicant's demonstrated expertise in preparation of instructional materials, quality of key personnel, adequacy of resources, plan of operation, and program evaluation design. Each application will be evaluated as to the cost effectiveness of the budget.

Due Dates of Documents. Application packets may be requested from the Document Control Center, Texas Education Agency, Room 6-108, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Completed applications must be received on or before 5 p.m., March 3, 1986, at the Document Control Center.

Issued in Austin, Texas, on January 17, 1986.

TRD-8600747 W. N. Kirby
Commissioner of Education

Filed: January 21, 1986
For further information, please call (512) 463-9212.

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Comptroller of Public Accounts

Decision 16,493

For copies of the following opinion selected and summarized by the Administrative Law Judges, contact the Administrative Law Judges, P.O. Box 13528, Austin, Texas 78711. Copies will be furnished without charge and edited to comply with confidentiality statutes.

Summary of Decision. The taxpayer, a soft drink bottling and distribution company, which owns and maintains soft drink vending machines, claimed sales tax exemption on the grounds that goods were sold to an instrumentality of federal government, to an exempt organization, or as sales for resale. The issue, therefore, is whether the taxpayer is a full service vendor or a seller for resale.The comptroller held that under the ambiguous contracts with its customers, it is clear that no sale for resale was intended; that title to merchandise remained with the taxpayer until vended and was therefore not sold to the U.S. government. Under the contract, no liability was imposed on the U.S. government; therefore, there was no sale to a government instrumentality which should be exempted; and sales to exempt organizations were for full service, which is not exempt, and were not sales for resale. Therefore all sales should remain in the audit. The decision was issued June 12, 1985.

Issued in Austin, Texas, on January 17. 1986.

TRD-8600753 Bob Bullock
Comptroller of Public Accounts

Filed: January 21, 1986
For further information, please call (512) 463-4606.

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Public Utility Commission of Texas
Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c, the Public Utility Commission of Texas seeks proposals from qualified firms, institutions, or individuals to develop and present a series of eight one-day workshops in energy efficient school planning and design. The target audience for four of these workshops will be school administrators and board members in growth areas of the state; the target audience for the remaining four workshops will be university students in summer educational facility planning classes. Each workshop will provide individual training segments in three disciplines: planning the building for energy efficiency as well as the educational program; architectural strategies for improving energy performance; and energy efficiency in selecting and maintaining mechanical and electrical systems. The contractor or contractors will be expected to use the PUCT publication, *Building for Energy Efficiency: The Not-In-The-Red Schoolhouse*, as the workshop text.

Respondents may propose to do one, two, or all three of the training segments. Bid specifications and existing training materials may be requested from Judy Rogers, Energy Efficiency Division, Suite 400-N, Austin, Texas 78757, (512) 458-0312.

Contractor evaluation will be based on specific criteria; final selection will be made by a review committee.

To be considered, written proposals must arrive at the PUC office no later than 3 p.m. on February 19, 1986. Proposals arriving after 3 p.m. will not be accepted.

Five copies of the proposal should be sent to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400-N, Austin, Texas 78757, Attention: Sandy Becker, Bid Identification Number UC6-180301.

Issued in Austin, Texas, on January 21, 1986.

TRD-8600790 Rhonda Colbert Ryan
Secretary to the Commission
Public Utility Commission of Texas

Filed January 22, 1986
For further information, please call (512) 458-0231.

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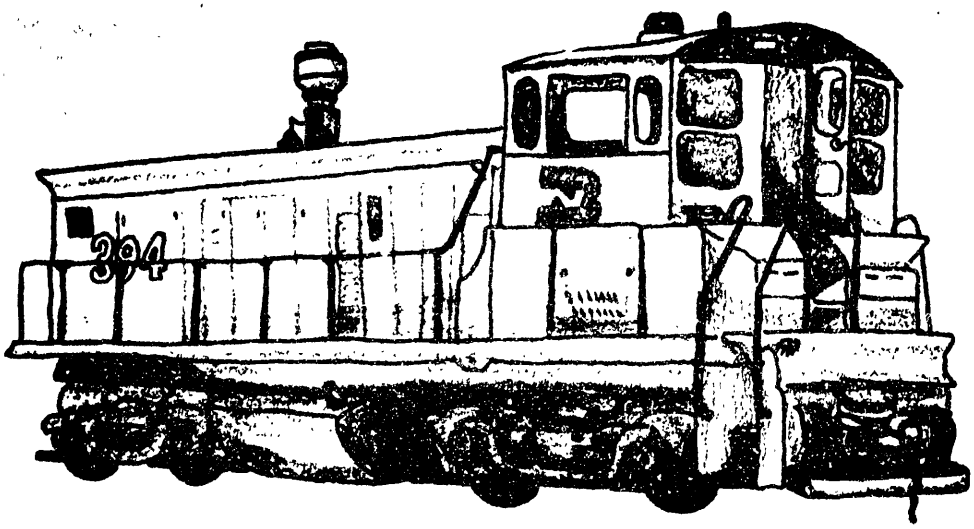

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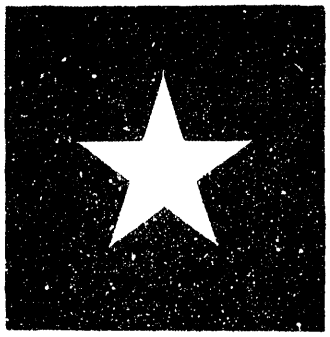

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