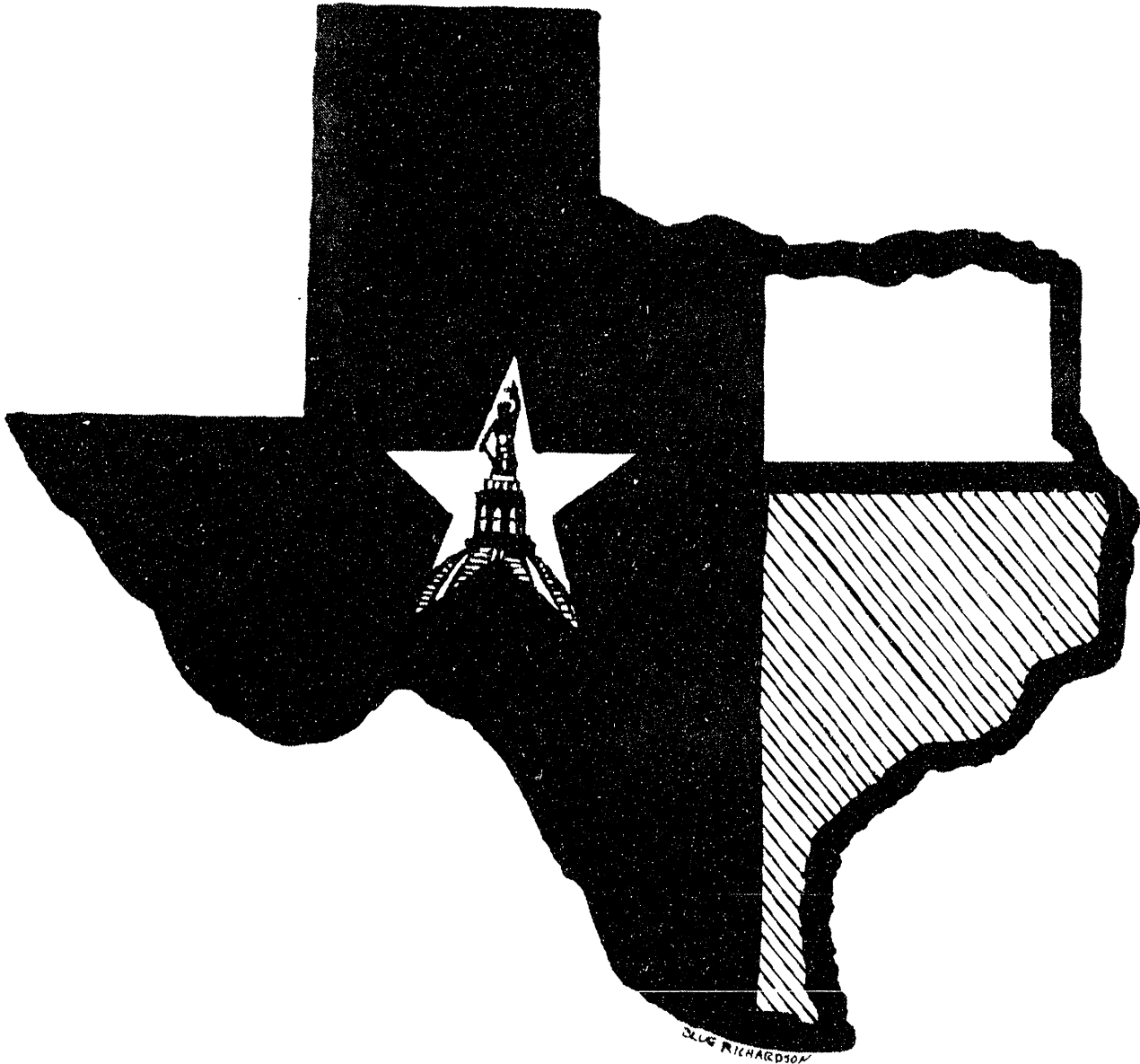


Texas Register

Volume 12, Number 30, April 21, 1987

Pages 1309-1367



Highlights

The **Office of the Secretary of State** proposes amendments concerning the Texas Register; definition of terms, agency liaison, filing of documents, and format. Earliest possible date of adoption - May 22 **page 1315**

The **Texas Water Commission** proposes amendments establishing commission policy for the efficient and effective processing of applications for

permits, licenses, and other types of approvals under the commission's jurisdiction. Earliest possible date of adoption - May 18 . . . **page 1326**

The **Texas Education Agency** adopts new sections concerning the State Textbook Program, state adoption, acquisition, and custody of textbooks. Effective date - May 5 **page 1359**

**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 1987 with the exception of January 6, September 1, December 1, and December 29 by the Office of the Secretary of State.

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

Information Available: The 10 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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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
- 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 accumulative quarterly and annual indexes to aid in researching material published.

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

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2, in the lower left-hand corner of the page, would be written: "12 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 12 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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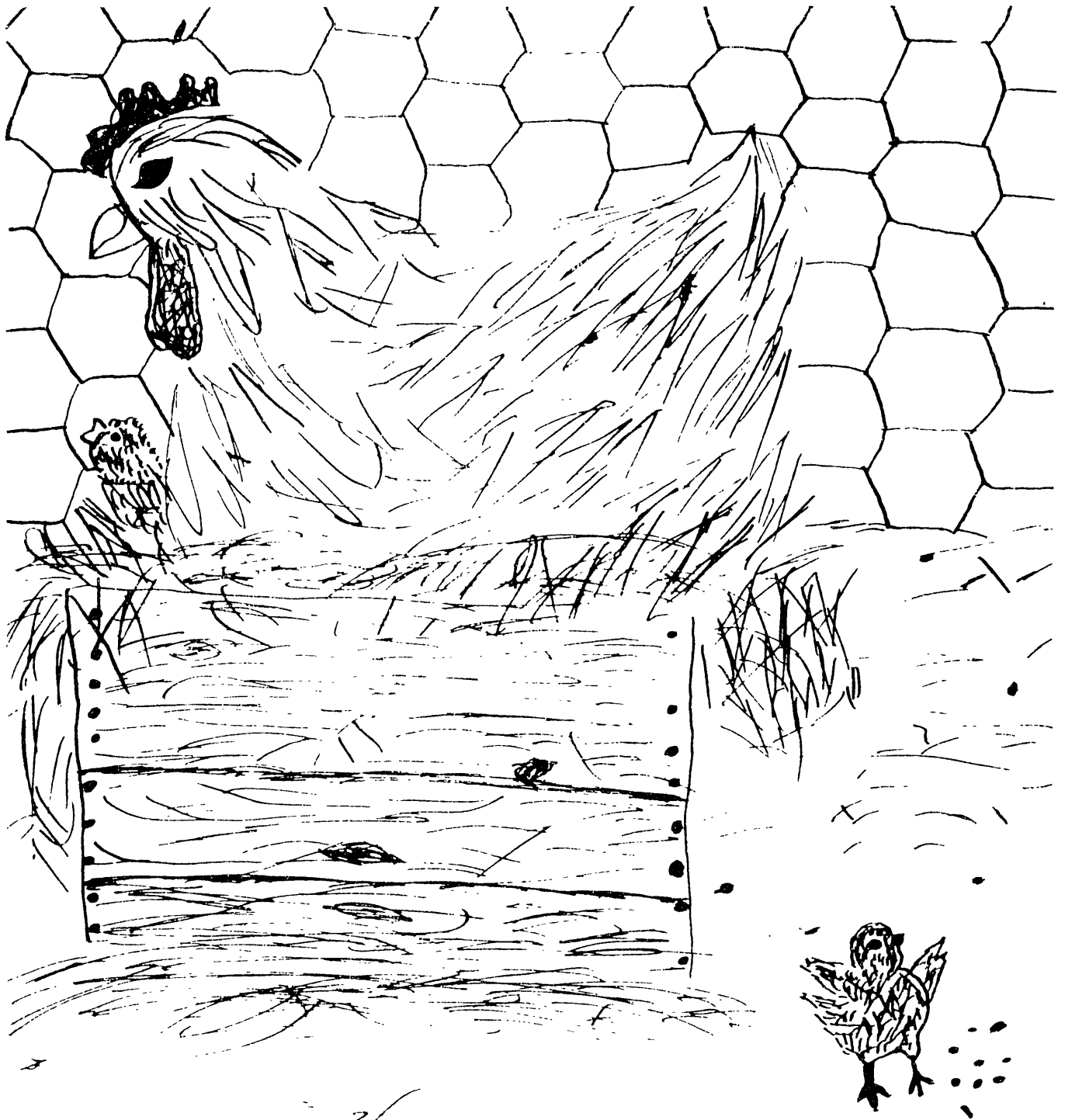
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TAC Titles Affected

TAC Titles Affected—April

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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 91. Texas Register

The Texas Register, Office of the Secretary of State, proposes amendments to §§91.1, 91.11, 91.12, 91.21-91.39, 91.41-91.43, 91.51-91.59, 91.71-91.75, 91.91, 91.93-91.98, 91.113, 91.131, and 91.133-91.135, concerning Texas Register. The amendments add new definitions; delete the word "division," as the Texas Register is no longer a division in the Office of the Secretary of State; delete the word "rule" and replace it with the word "section;" replace the word "shall" with the word "must," in order to more clearly explain Texas Register policies and procedures; list acceptable typetypes for submissions; delete all references to the old 10-digit numbering scheme of the Register; and add the following requirements: proposals may only be adopted once; extra pages may not be inserted in the preamble forms; agenda summaries for open meetings may not exceed the blanks provided on the submission form; actual text of sections proposed for repeal must not be submitted; style changes made in the proposed text must be included in the adopted text; and new language in proposed amendments must be underscored, rather than in all caps as previously required.

Dan Procter, director, 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. Procter also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more clear policies regarding submissions to the Texas Register, thereby decreasing the chances of submissions being rejected. 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 Dan Procter, Director, Texas

Register, P.O. Box 13824, Austin, Texas 78711-3824. Comments will be accepted for 30 days after publication in the *Texas Register*.

Definition of Terms

★ 1 TAC §91.1

The amendment is proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which created the *Texas Register* within the Office of the Secretary of State and authorize the office to adopt rules governing the submission of documents for publication.

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

ACA—The Administrative Code Act, Texas Civil Statutes, Article 6252-13b.

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

Agency—Any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, and institutions of higher education, that makes rules or determines contested cases.

Certifying official—A person authorized by an agency to certify documents submitted for filing with the Texas Register [Division], Office of the Secretary of State.

Code—The Texas Administrative Code established by the ACA, also referred to as [the] TAC.

Electronic transmission—The transmission of data between word or data processors over either dedicated cables or commercial lines.

Letter of certification—A statement which specifies the type of submission that has been transmitted by electronic means to the *Texas Register*, and which has been signed by the agency's designated certifying official and agency liaison.

Liaison—A person designated by an agency to act as its representative to the Texas Register [Division].

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

ization of any character other than an agency.

Register—The *Texas Register* established by the APTRA.

Rule—Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency.

(A) The term includes the amendment or repeal of a prior **section** [rule], but does not include statements concerning only the internal management, organization, or personnel practices of an agency and not affecting private rights or procedures.

(B) The following shall not constitute rulemaking:

(i) a statement applied only to specifically named persons or agencies;

(ii) the duplication or paraphrasing of Texas statutes. The one exception allowed is that of repeating statutory definitions as rule definitions;

(iii) a statement applied exclusively to employees of the issuing agency and not affecting the rights or procedures of persons or agencies outside of the employment of the issuing agency.

(C) If the use of a specific form is required by an agency, and if the form imposes requirements not imposed by statute or by rule, the portions of the form itself which impose such requirements shall be adopted as a **section** [rule].

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

Issued in Austin, Texas, on April 14, 1987.

TRD-8703277

Randall H. Erben
Assistant Secretary of
State

Earliest possible date of adoption:

May 22, 1987

For further information, please call
(512) 463-5561

★ ★ ★



Agency Liaison

★ 1 TAC §91.11, §91.12

The amendments are proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which created the Texas Register within the Office of the Secretary of State and authorize the office to adopt rules governing the submission of documents for publication.

§91.11. *Function.*

(a) A representative. The liaison shall represent his or her agency or agencies in all matters relating to the *Texas Register*.

(b) Background knowledge. The liaison should be familiar with:

- (1) the Administrative Procedure and Texas Register Act;
- (2) the Administrative Code Act;
- (3) the Texas Open Meetings Law;
- (4) other legislation relating to the *Texas Register*;
- (5) statutes governing the liaison's agency;

(6) rules of the Texas Register, Office of the Secretary of State; and

(7) the most recent edition of the *Texas Register Form and Style Manual*.

(c) Responsibilities. All documents filed by an agency shall be coordinated through the agency liaison whose responsibilities include the following.

(1) He or she shall, by signing the [rule] submission form, verify that the filings have been carefully reviewed and, to the best of his or her knowledge and belief, the documents have been processed properly and are correct as to format and content. For purposes of this section:

(A) correct as to format means the section [rule] is organized in the proper structure (i.e., subsections, paragraphs, etc.);

(B) correct as to content means the submission contains all the procedural requirements of the APTRA and the necessary information for the proper filing of documents.

(2) He or she must, by signing the [rule] submission form, verify that the submitted sections [rules] have been reviewed by legal counsel whose responsibility, according to the APTRA, it is to determine whether the [rule] action is within the agency's legal authority.

§91.12. *Appointment.* The director of the Texas Register [Division] must [shall] be notified in writing as to the appointment of a liaison and certifying official, and as to any changes that may occur in those appointments [that appointment].

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

Issued in Austin, Texas, on April 14, 1987.

TRD-8703278 Randall H. Erben
Assistant Secretary of
State

Earliest possible date of adoption:
May 22, 1987
For further information, please call
(512) 463-5561.

★ ★ ★

Filing of Documents

★ 1 TAC §§91.21-91.39

The amendments are proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which created the *Texas Register* within the Office of the Secretary of State and authorize the office to adopt rules governing the submission of documents for publication.

§91.21. *Compliance; Nonacceptance of Documents.*

(a) The following documents shall be filed with the Texas Register, Office of the Secretary of State, and published by the secretary of state in the *Texas Register*: emergency, proposed, and final rulemaking action; notices of open meetings; **appointments**, executive orders and **proclamations** of the governor of Texas; summaries of requests for opinions, opinions, and open records decisions of the attorney general of Texas; summaries of opinions issued by the State Ethics Advisory Commission; **election law and lobby law** opinions of the Texas secretary of state pursuant to Texas Civil Statutes, Article 6252-9c; notices filed by the banking commissioner pursuant to Texas Civil Statutes, Article 342-401a(B)(6); notices filed by the savings and loan commissioner pursuant to Texas Civil Statutes, Article 5069-1.07; notices filed by the Office of Consumer Credit Commissioner pursuant to Texas Civil Statutes, Article 5069-1.04; notices filed by agencies, regional councils of government, and the Texas State Library pursuant to Texas Civil Statutes, Article 6252-11c; notices of adoptions filed by the State Board of Insurance pursuant to the Insurance Code, Article 5.96 and Article 5.97; **proposal requests for private consultant services pursuant to Texas Civil Statutes, Article 6252-11c; Court of Criminal Appeal rules of appellate procedure and rules of criminal evidence pursuant to Texas Civil Statutes, Article 1811f, §3;** and miscellaneous notices of general interest to the public of Texas.

(b) All documents **must** [shall] be filed with the Texas Register, Office of the Secretary of State, in accordance with the format, content, and procedural requirements specified by the APTRA, the ACA, the Texas Open Meetings Law, the law relating to use of private consultants by state agencies, and by the rules of the Texas Register, Office of the Secretary of State. The Office of the Secretary of State is vested with the authority to ensure the effective administration of the governing statutes cited in this subsection as they relate to the *Texas Register*. Therefore, pursuant to the re-

quirements contained in Texas Civil Statutes, Articles 6252-11c, 6252-13a, 6252-13b, and 6252-17, as they relate to the *Texas Register*, and the requirements set forth in the promulgated sections [rules] of the *Texas Register* contained in this chapter [Chapter 91 of this title (relating to *Texas Register*)], the Texas Register, Office of the Secretary of State, may refuse to accept for filing and publication any document that does not conform to such requirements. Should any document not be accepted for filing and publication, the Texas Register, Office of the Secretary of State, shall issue notice of such fact to the liaison of the issuing agency and shall set forth the reason(s) why the document was not accepted for filing and publication by the Texas Register, Office of the Secretary of State.

(c) Supplemental information concerning *Texas Register* policies, procedures for submission of documents, and style guidelines is contained in the *Texas Register Form and Style Manual*, as revised 1987 [1980], and as periodically updated.

§91.22. *Transmittal Methods; Receipt; Acknowledgment.*

(a) Two certified copies of each document to be filed with the Texas Register [Division], Office of the Secretary of State, together with the appropriate submission forms, shall be mailed to the following address: Texas Register [Division], Office of the Secretary of State, P.O. Box 13824, Austin, Texas 78711-3824, or delivered to the office of the Texas Register [Division], Room 503F [503E], Sam Houston Building, 201 East 14th Street, Austin, Texas. Documents may be sent through the means most expedient to the sender, e.g.: U.S. mail, commercial courier, hand delivery, and so on.

(b) A document is received for filing when the document is date/time stamped in the office of the Texas Register [Division]. Pursuant to the provisions set forth in §91.21 of this title (relating to Compliance; Nonacceptance of Documents), a document is either accepted for public inspection filing in the office of the Texas Register [Division] and publication in the *Texas Register* or not accepted and returned to the issuing agency.

(c) If acknowledgment of receipt by the Texas Register [Division] is requested by checking the appropriate blank on the submission form, the agency **must** [shall] submit an additional submission form, completed and verified or certified, at the same time the document is filed with the Texas Register [Division] (three copies in all). The agency **must** [shall] only submit a third copy of the submission form and not the entire document to be filed. The additional submission form will be date/time stamped and returned to the issuing agency and will serve as the acknowledgment. Any material accompanying the additional submission form will not be returned to the issuing agency.

(d) The submission of documents via electronic transmission is the only exception to subsections (a)-(c) of this section. (See §91.40 of this title (relating to Electronic Transmission) for filing procedures under this method.)

§91.23. General Filing Procedures: [Rules or] Sections.

(a) [Rules or] Sections must [may] be filed individually, by subchapter, or by an undesignated head; where chapters are not divided into subchapters or undesignated heads, [rules or] sections may be filed by chapter.

(b) Agency policies based in whole or part upon opinions or similar determinations of the attorney general of Texas shall be promulgated and filed with the Texas Register [Division], Office of the Secretary of State, as [rules or] sections when applicable.

(c) [Rules or] Sections which have been rendered obsolete, inconsistent, or invalid by legislation, constitutional amendment, or court decision must [shall] be formally revised or repealed in accordance with rulemaking procedures and filed with the Texas Register [Division], Office of the Secretary of State.

§91.24. Procedure for Filing Withdrawals.

(a) Agency withdrawals.

(1) Withdrawal of emergency adoptions.

(A) The period of effectiveness of an emergency adoption may be terminated prior to the date originally specified by submitting two completed and verified submission forms. The withdrawal of emergency adoptions must be submitted in accordance with the provisions of §91.93 of this title (relating to Form for Section [Rule] Action).

(B) (No change.)

(2) Withdrawal of proposed sections [rules].

(A) A proposal may be withdrawn prior to its adoption or before the effective date of the automatic withdrawal (see subsection (b) of this section) by submitting two completed and verified submission forms. The withdrawal of a proposed section [rule] must be submitted in accordance with the provisions of §91.93 of this title (relating to Form for Section [Rule] Action).

(B) (No change.)

(b) Automatic withdrawals.

(1) If a proposal is not adopted or withdrawn within six months after the date of publication in the *Texas Register*, it will be automatically withdrawn by this office. Notice of the automatic withdrawal will appear in the next regularly scheduled issue of the *Texas Register*. The effective date of the automatic withdrawal will appear immediately following the published notice.

(2) No further action may be taken on a proposal which has been automatically withdrawn. However, this does not preclude a new proposal of an identical or similar section [rule] following normal

rulemaking procedures.

(3) (No change.)

§91.25. Procedure for Filing Emergency Adoptions.

(a) According to the provisions of the APTRA, §5(d), emergency rulemaking action may be promulgated on fewer than 30 days' notice.

(b) The notice of adoption of emergency action must [shall] contain the following information in the order shown:

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

(4) the text of the [rule or] section;

(5) certification by an authorized agency official according to §91.58 of this title (relating to Certification).

(c) (No change.)

(d) Subsequent to the original filing of an emergency amendment to a permanently adopted [rule or] section or the emergency adoption of a new [rule or] section, an emergency amendment may be made to the original action as many times as needed during the 180-day period of effectiveness of the original emergency action (120 days original period of effectiveness plus 60 days renewal of effectiveness). All such amendments shall have identical expiration dates.

(e) (No change.)

(f) The effectiveness of original emergency action taken shall be renewable once for a period not exceeding 60 days by filing two completed and verified submission forms. A renewal notice shall be filed during the last 20 days of the original period of effectiveness. The renewal must [shall] take effect immediately upon the expiration of the original period of effectiveness.

(g) (No change.)

§91.26. Procedure for Filing Proposals.

(a) Thirty days' notice. Prior to the adoption of a proposal, an agency must [shall] give at least 30 days' notice of its intended action.

(b) Adoption by reference. The Texas Register, [Division of the] Office of the Secretary of State, adopts by reference the proposed preamble form, as amended [1983], which shall be used when submitting proposals. Copies of this form may be obtained from the Office of the Secretary of State, Texas Register, P.O. Box 13824, Austin, Texas 78711-3824.

(c) Exceptions. If the proposed preamble form does not suit the needs of the agency by not allowing for adequate space and/or not addressing specifics that would only apply to the particular agency, the agency may design its own form. The agency must ensure that all of the information listed in paragraphs (1)-(5) of this subsection is included in the following order.

(1) (No change.)

(2) Fiscal note. A fiscal note containing one of the following:

(A) a listing of the fiscal implications for enforcing or administering the section [rule] as proposed. The listing should include:

(i) (No change.)

(ii) the effect on state government for each year of the first five years the section [rule] is in effect:

(I)-(III) (No change.)

(iii) the effect on local government for each year of the first five years the section [rule] is in effect:

(I)-(III) (No change.)

(iv) the effect on small businesses:

(I) a statement that the section [rule] is promulgated under the authority of the Texas Tax Code, Title 2; or

(II) an analysis of the cost of compliance with the section [rule] for small businesses; and

(III) a comparison of the cost of compliance for small businesses with the cost of compliance for the largest businesses affected by the section [rule], based on at least one of the following standards:

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

(B) (No change.)

(3) Public benefit/cost note. A public benefit/cost note containing the following:

(A) (No change.)

(B) the public benefits to be anticipated for each year of the first five years the section [rule] will be in effect. If no dollar amount can be determined, then this may be set out in narrative form;

(C) the possible economic cost to persons who are required to comply with the section [rule]. This should include the specific areas that apply to the agency in which this proposal will have an effect for each year of the first five years the section [rule] will be in effect.

(4) (No change.)

(5) Statutory requirements. A statement containing the statute (article and section) or other authority under which the proposal is submitted. The agency must also explain how it interprets the provisions as authorizing or requiring the section [rule] as proposed.

(d) Text. The text of the proposal must [shall] be formatted according to the provisions set forth in §91.53 of this title (relating to Format for Emergency and Proposed Repeal Action) and §91.56 of this title (relating to Typography).

(e) Certification. Following the text of the section [rule], the agency must provide a certification as set out in §91.58 of this title (relating to Certification).

(f) Proposed effective date. In calculating the proposed date of adoption, day one of the 30-day period begins on the day after the date of publication in the *Texas Register* and continues for 30 full calendar days before the day the section [rule] may be submitted for adoption. Therefore, the earliest date the section [rule] may be submitted for adoption is the 31st day after publication of the proposal.

§91.27. Procedure for Filing Adoptions.

(a) Thirty days' notice. Under normal rulemaking procedures, at least 30 days must elapse between the publication of the proposal in the *Texas Register* and filing of the adoption. **A proposal may only be adopted once.**

(b) (No change.)

(c) Exceptions. If the adoption preamble form does not suit the needs of the agency by not allowing for adequate space and/or not addressing specifics that would only apply to the particular agency, the agency may use the forms as a guide and type the information according to §91.51 of this title (relating to Paper Size and Form) [design its own form]. The agency must ensure that all of the information listed in paragraphs (1)-(7) of this subsection is included in the following order:

(1) the board, agency, or commission issuing the adoption, TAC section [and/or Texas Register rule code number]; whether the adoption is with or without changes to the proposed text; date of the issue in which the proposal was published; and the *Texas Register* citation;

(2) reasoned justification of the section [rule];

(3) restatement of factual bases (i.e., how the section [rule] will function);

(4) summary of comments received regarding the proposal, or a statement that no comments were received (if no comments were received, omit paragraphs (5) and (6) of this subsection);

(5) list of groups or associations for and against the section [rule];

(6) reasons why the agency disagrees with comments; and

(7) a statement containing statute (article and section) or other authority, explaining agency's interpretation of the provisions of this particular authority, and how it authorizes or requires the section [rule].

(d) Extra pages may not be used within the form. Either the form or typed pages may serve as the preamble.

(e)[(d)] Text. The document must contain the text of the section [rule] being submitted for adoption. The text **must** [shall] be formatted according to the provisions set forth in §91.54 of this title (relating to Format for Final Repeal Action) and §91.55 of this title (relating to Format for Adopted Text).

(f)[(e)] Certification. Following the text of the section [rule], the agency must provide a certification as set out in §91.58 of this title (relating to Certification)

(g)[(f)] Effective date of adoption. The adoption shall take effect 20 full calendar days after filing of the notice of final action with the *Texas Register*, unless a later date is specified. In calculating the effective date, day one shall be the first calendar day after filing, therefore, the earliest date the [rule or] section may become effective is the 21st calendar day after filing.

(h)[(g)] Exempt insurance adoptions.

Notice of adoption under the Insurance Code, Article 5.96 and Article 5.97, shall be filed in accordance with §91.36 of this title (relating to Procedure for Filing Notice of Adoption under the Insurance Code, Article 5.96 and Article 5.97).

§91.28. Procedure for Filing Notice of Open Meeting.

(a) Notice of an open meeting **must** [shall] be submitted to the Texas Register [Division], Office of the Secretary of State, in accordance with the provisions of the Texas Open Meetings Law, Texas Civil Statutes, Article 6252-17.

(b) Notice of an open meeting **must** [shall] be submitted on two copies of Form TR-3, Submission Form—Notice of Open Meeting, and on one three-inch by five-inch index card, according to the requirements set forth in §91.94 of this title (relating to Form for Notice of Open Meeting).

(c) If the complete agenda cannot be stated in the blanks provided on the submission form, the agency **must** [shall] summarize the agenda in the blanks provided for publication purposes only. **The Texas Register will not accept for filing any notice that contains a summary exceeding the blanks provided.** The agency **must** [shall] then attach three copies of the complete agenda for filing, one copy attached to each submission form and one copy attached to the index card. When an agenda is summarized, the *Texas Register* shall publish with the notice a statement that the agenda is summarized for publication purposes.

(d) Both the submission forms and the index card **must** [shall] be certified by an authorized agency official, according to the requirements set forth in §91.94 of this title (relating to Form for Notice of Open Meeting).

(e) The Texas Register [Division] shall be responsible for delivering all notices of open meetings to the Office of the Secretary of State in the State Capitol for posting, except in the following instances. A notice of open meeting submitted on the last possible day in order to meet the seven-day requirement imposed by the Texas Open Meetings Law, and received and filed by the Texas Register [Division] after 4:30 p.m. on the last day, shall be delivered to the capitol for posting by the issuing agency. Likewise, an emergency notice received and filed by the Texas Register [Division] 30 minutes or less before the two-hour requirement imposed by the Texas Open Meetings Law shall be delivered to the capitol for posting by the issuing agency. In order to meet the 72-hour requirement imposed by the Texas Open Meetings Law, regional agencies and institutions of higher education which utilize the U.S. postal service as a means of submitting notice of open meeting are encouraged to have such notice postmarked at least 10 days prior to the scheduled day of the meeting. For a notice [postmarked at least 10 days prior to the scheduled day of the meeting

but] received too late to comply with the 72-hour provision, the issuing agency will be called by telephone and notified of the late receipt. The Texas Register [Division] will not accept for filing a late notice unless the agency wishes to take one of the following four alternative courses of action.

(1) The agency may cancel or **reschedule** the [scheduled] meeting if it has not already been conducted.

(2) The agency may authorize the Texas Register [Division] to designate the meeting as an emergency meeting if the agency determines such designation may be justified under the emergency provisions of the Open Meetings Law. An agency shall not designate a meeting as an emergency merely for purpose of administrative expediency.

(3) The agency may take no remedial action at all and conduct the meeting, risking judicial invalidation of any business conducted if it is challenged in court.

(4) If an agency has already conducted a meeting before being notified by the Texas Register [Division] that the notice was received too late to comply with the 72-hour provision, the agency may give due notice of a new meeting at which any business conducted at the originally scheduled session will be ratified.

(f) An agency is not required by the Open Meetings Law to file and post a cancellation notice of a meeting which has previously been filed and posted. However, if an agency desires, it may notify the Texas Register [Division] by telephone of a meeting cancellation. The Texas Register [Division] will then [notify the appropriate staff of the secretary of state's office to] remove the notice from the bulletin board in the State Capitol. If a meeting is canceled by telephone, the agency **must** [shall] submit a follow-up letter to the Texas Register [Division].

(g) The seven-day posting requirement imposed by the Texas Open Meetings Law is interpreted by the Texas Register [Division], Office of the Secretary of State, to mean seven full 24-hour periods preceding the day of the meeting. In calculating the seven-day period, day one begins on the first calendar day after the notice is posted and continues for seven full calendar days preceding the day of the meeting. Thus, the day of posting and the day of the meeting shall not be included in calculating the seven-day period.

(h) Open meetings that are rescheduled for a new day/date, time, and/or location must be submitted according to the requirements of this section and §91.94 of this title (relating to Form for Notice of Open Meeting).

§91.29. Procedure for Filing Actions of the Governor. Appointments, executive orders, and proclamations of the governor of Texas submitted for publication in the governor's section of the *Texas Register* **must** [shall] be certified and submitted with the ap-

appropriate submission form, according to the requirements set forth in §91.96 of this title (relating to Form for Governor, Attorney General, Secretary of State, and State Ethics Advisory Commission). Such documents shall be published in the next issue of the *Texas Register* following the date such documents are received by the Texas Register, subject to the deadline requirements contained in §91.113 of this title (relating to Deadlines).

§91.30. *Procedure for Filing Actions of the Attorney General.* Summaries of opinions, requests for opinions, and open records decisions of the attorney general of Texas submitted for publication in the attorney general's section of the *Texas Register* must [shall] be certified and submitted with the appropriate submission form, according to the requirements set forth in §91.96 of this title (relating to Form for Governor, Attorney General, Secretary of State, and State Ethics Advisory Commission). Such documents shall be published in the next issue of the *Texas Register* following the date such documents are received by the Texas Register, subject to the deadline requirements contained in §91.113 of this title (relating to Deadlines).

§91.31. *Procedure for Filing a Miscellaneous Notice.*

(a) A miscellaneous notice not required to be published in the *Texas Register* will be published at the discretion of the Texas Register [Division], Office of the Secretary of State. **Such a notice must be no more than three double-spaced typed pages.**

(b) A miscellaneous notice must [shall] conform to the format requirements specified for other documents as to paper size and form as set forth in §91.51 of this title (relating to Paper Size and Form) and must [shall] be certified and submitted with the appropriate submission form.

(c) **Miscellaneous documents required by statute to be published in the *Texas Register* must contain a statutory citation on the submission form.**

§91.32. *Procedure for Filing Notice of Application To Acquire State Bank Securities.*

(a) Each notice required to be submitted by the banking commissioner for publication in the *Texas Register*, pursuant to Texas Civil Statutes, Article 342-401a(B)(6), must [shall] be filed in accordance with §91.22 of this title (relating to Transmittal Methods; Receipt; Acknowledgment).

(b) Each copy of each notice must [shall] be accompanied by the appropriate submission form, completed and verified, according to the requirements set forth in §91.95 of this title (relating to Form for Miscellaneous Document).

(c) The notice shall be published in the next issue of the *Texas Register* following the date the notice is received by the Texas Register [Division], subject to the deadline requirements contained in §91.113 of this title

(relating to Deadlines).

§91.33. *Procedure for Filing Notice Related to the Use of Private Consultant Services.*

(a) Notice relating to the use of private consulting services must [shall] be filed pursuant to the provisions of Texas Civil Statutes, Article 6252-11c.

(1) In addition to the requirements set forth in Texas Civil Statutes, Article 6252-11c, §6(a), a state agency or regional council of government must [shall] include in the notice a statement that the request for consulting services is filed pursuant to the provisions of Texas Civil Statutes, Article 6252-11c.

(2) In addition to the requirements set forth in Texas Civil Statutes, Article 6252-11c, §6(b), a state agency or regional council of government must [shall] include in the notice:

(A) a statement that the award of consulting services is filed pursuant to the provisions of Texas Civil Statutes, Article 6252-11c; and

(B) the *Texas Register* citation of the consultant proposal request.

(b) The Texas State Library must [shall] comply with the requirements set forth in Texas Civil Statutes, Article 6252-11c, §6(c).

(c) The quarterly list of reports required to be filed by the Texas State Library and each notice required to be filed by a state agency or a regional council of government for publication in the *Texas Register*, pursuant to Texas Civil Statutes, Article 6252-11c, must [shall] be filed in accordance with §91.22 of this title (relating to Transmittal Methods; Receipt; Acknowledgment).

(d) Each copy of each notice or list of reports must [shall] be accompanied by the appropriate submission form, completed and verified, according to the requirements set forth in §91.95 of this title (relating to Form for Miscellaneous Document).

(e) The notice shall be published in the next issue of the *Texas Register* following the date the notice is received by the Texas Register [Division], subject to the deadline requirements contained in §91.113 of this title (relating to Deadlines).

(f) (No change.)

§91.34. *Procedure for Filing Notice of Interest Rate.*

(a) Each notice required to be submitted by the savings and loan commissioner for publication in the *Texas Register*, pursuant to Texas Civil Statutes, Article 5069-1.07, must [shall] be filed in accordance with §91.22 of this title (relating to Transmittal Methods; Receipt; Acknowledgment).

(b) Each copy of each notice must [shall] be accompanied by the appropriate submission form, completed and verified, according to the requirements set forth in §91.95 of this title (relating to Form for Miscellaneous Document).

(c) The notice shall be published in the

next issue of the *Texas Register* following the date the notice is received by the Texas Register [Division], subject to the deadline requirements contained in §91.113 of this title (relating to Deadlines).

§91.35. *Procedure for Filing Notice of Rate Ceiling.*

(a) Each notice required to be submitted by the Office of Consumer Credit Commissioner for publication in the *Texas Register*, pursuant to Texas Civil Statutes, Article 5069-1.04, must [shall] be filed in accordance with §91.22 of this title (relating to Transmittal Methods; Receipt; Acknowledgment).

(b) Each copy of each notice must [shall] be accompanied by the appropriate submission form, completed and verified, according to the requirements set forth in §91.95 of this title (relating to Form for Miscellaneous Document).

(c) The notice shall be published in the next issue of the *Texas Register* following the date the notice is received by the Texas Register [Division], subject to the deadline requirements contained in §91.113 of this title (relating to Deadlines).

§91.36. *Procedure for Filing Notice of Adoption under the Insurance Code, Article 5.96 and Article 5.97.*

(a) Actions under these articles are exempt from the requirements of the Administrative Procedure and Texas Register Act and are subject to the requirements of the Insurance Code, Article 5.96 and Article 5.97, Chapter 5, Subchapter L.

(b) Each notice required to be submitted by the State Board of Insurance for publication in the *Texas Register*, pursuant to the Insurance Code, Article 5.96 and Article 5.97, must [shall] be filed in accordance with §91.22 of this title (relating to Transmittal Methods; Receipt; Acknowledgment).

(c) The notice shall be published in the next issue of the *Texas Register* following the date the notice is received by the Texas Register subject to the deadline requirements contained in §91.113 of this title (relating to Deadlines).

(d) Each copy of each notice must [shall] be accompanied by the appropriate submission form, completed and verified, according to the requirements set forth in §91.98 of this title (relating to Form for Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L).

(e) The notice need not contain the text of the action submitted for adoption.

(f) Each notice must [shall] include the following certification: this notification is filed pursuant to the Insurance Code, Article 5.96, (or Article 5.97, whichever is appropriate), which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

(g) The adoption shall take effect 15 full calendar days after filing of the notice of final action with the Texas Register unless a later date is specified. In calculating

the effective date, day one shall be the first calendar day after filing; therefore, the earliest date the [rule or] section may become effective is the 16th calendar day after filing.

§91.37. Procedure for Filing Notice of Public Hearing under the Insurance Code, Article 5.96 and Article 5.97.

(a) Each notice required to be submitted by the State Board of Insurance for publication in the *Texas Register*, pursuant to the Insurance Code, Article 5.96[,] and Article 5.97, **must** [shall] be filed in accordance with §91.22 of this title (relating to Transmittal Methods; Receipt; Acknowledgment).

(b) Each copy of each notice **must** [shall] be accompanied by the appropriate submission form, completed and verified, according to the requirements set forth in §91.95 of this title (relating to Form for Miscellaneous Document).

(c) The notice shall be published in the next issue of the *Texas Register* following the date the notice is received by the Texas Register, subject to the deadline requirements contained in §91.113 of this title (relating to Deadlines), provided that the notice is submitted in time to be published in the *Texas Register* at least 10 days prior to the public hearing.

§91.38. Procedure for Filing Actions of the Secretary of State. Summaries of election law opinions, requests for lobby law opinions, and lobby law opinions of the Texas secretary of state submitted for publication in the secretary of state's section of the *Texas Register* **must** [shall] be certified and submitted with the appropriate submission form, according to the requirements set forth in §91.96 of this title (relating to Form for Governor, Attorney General, Secretary of State, and State Ethics Advisory Commission). Such documents shall be published in the next issue of the *Texas Register* following the date such documents are received by the *Texas Register*, subject to the deadline requirements contained in §91.113 of this title (relating to Deadlines).

§91.39. Procedure for Filing Actions of the State Ethics Advisory Commission. Summaries of opinions of the State Ethics Advisory Commission of Texas submitted for publication in the State Ethics Advisory Commission's section of the *Texas Register* **must** [shall] be certified and submitted with the appropriate submission form, according to the requirements set forth in §91.96 of this title (relating to Form for Governor, Attorney General, Secretary of State, and State Ethics Advisory Commission). Such documents shall be published in the next issue of the *Texas Register* following the date such documents are received by the *Texas Register*, subject to the deadline requirements contained in §91.113 of this title (relating to Deadlines).

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

Issued in Austin, Texas, on April 14, 1987.

TRD-8703279 Randall H. Erben
Assistant Secretary of
State

Earliest possible date of adoption:
May 22, 1987
For further information, please call
(512) 463-5561.

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Adoption by Reference: Adoption under Federal Mandate

★ 1 TAC §§91.41-91.43

The amendments are proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which created the *Texas Register* within the Office of the Secretary of State and authorize the office to adopt rules governing the submission of documents for publication.

§91.41. Documents Allowed to Be Adopted by Reference.

(a) Rules contained in the following documents may be adopted by reference:

- (1) federal statutes;
- (2) federal regulations;
- (3) state plans, including those circulated under OMB Circular A-95 for review and comment;
- (4) forms.

(b) The prior approval of the director of the Texas Register [Division], Office of the Secretary of State, shall be required for an agency to adopt by reference a document not included under subsection (a) of this section. Approval shall be based upon the general availability of the document and upon the impracticality of submitting the document in the standard [rule] format. An agency requesting approval shall submit in writing to the director of the Texas Register [Division] its reasons for the request to adopt by reference.

(c) An agency may adopt by reference amended versions of a document. An agency **must** [shall] not adopt by reference a document as it may be amended in the future.

§91.42. Procedure for Filing a Document by Reference.

(a) The procedure for filing a document by reference shall be the same as that required for other sections [rules], except that the actual text of the document need not conform to Texas Register [Division] format requirements. However, notice of intention to adopt by reference shall be given in the form of a numbered section [rule]. The notice shall follow usual rulemaking and filing procedures for emergency, proposed, or

final action on sections [rules].

(b) Notice of the adoption by reference shall contain information as required by the type of action being taken (e.g.: emergency, proposed, final). In addition:

(1) the preamble of the notice shall contain a concise description of the document, including a brief summary of its major provisions;

(2) the text of the numbered section which adopts the document by reference shall include:

(A) any differences or variations existing between the verbatim copy of the document and that which is to be adopted by reference, if any; and

(B) information concerning where the document has been published, if applicable, and where and how copies of it may be obtained.

(c) An agency shall submit an adoption by reference to the Texas Register [Division] according to the following procedure.

(1) Two completed and verified submission forms shall accompany the notices of adoption by reference and the document.

(2) Two copies of the notice of adoption by reference, in the form of a numbered section, shall accompany the submission forms and the document.

(3) One copy of the document, attached to one of the submission forms, shall accompany the notices of adoption by reference.

(d) If an agency wishes to adopt amendments to a document previously adopted by reference, it shall amend the section [rule] adopting the document by reference.

(e) Notice periods **are as follows**[:]

(1) Full notice. The notice period for adopting a document by reference shall be the same as the usual notice period requirements set forth in §91.25 of this title (relating to Procedure for Filing Emergency Adoptions), §91.26 of this title (relating to Procedures for Filing Proposals), and §91.27 of this title (relating to Procedure for Filing Adoptions).

(2) Abbreviated notice.

(A) An abbreviated notice period is allowed if a federally specified effective date is less than 30 days after publication in the *Texas Register*. The agency shall indicate in the blank provided on the submission form the date on which the document must take effect.

(B) If a federally specified effective date does not allow time for 20 days to elapse before the date the document takes effect, the agency shall indicate in the blank provided on the submission form the date on which the document must take effect.

§91.43. Procedure for Filing a Federally Mandated Document.

(a) If an agency is required by federal statute or regulation to implement a new section [rule] or an amendment to an existing

section [rule] by a certain date, it is effective on that date.

(b) If time allows, the agency must [shall] give notice of its intention to adopt a new section or an amendment to an existing section. Notice must [shall] be in the form of proposed action and must [shall] fulfill all format and content requirements prescribed for proposed action on sections. The agency must [shall] state in the preamble of the proposal the circumstances under which the section action is proposed and that the notice period is abbreviated, if applicable.

(c) If the federally specified date does not allow time for notice of proposed action, the agency may take final action on a new section or an amendment to an existing section without prior notice. Notice of that final action must [shall] fulfill all format and content requirements prescribed for final action on sections.

(d) The statement of legal authority must [shall] include a statement that the new section or amendment to existing section is proposed or adopted pursuant to federal requirements.

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

Issued in Austin, Texas, on April 14, 1987.

TRD-8703280 Randall H. Erben
Assistant Secretary of
State

Earliest possible date of adoption:
May 22, 1987

For further information, please call
(512) 463-5561.

★ ★ ★

Document Format

★ 1 TAC §§91.51-91.59

The amendments are proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which created the *Texas Register* within the Office of the Secretary of State and authorize the office to adopt rules governing the submission of documents for publication.

§91.51. *Paper Size and Form.* Documents must [shall] be submitted on white 8½ inch by 11 inch paper. The right margin must not be justified. The margins must [shall] be approximately 1½ inches at the top, one inch at the left and right sides, and one inch at the bottom. Submissions must [shall] be typed on only one side of the paper. Standard pica type must [shall] be used. Type smaller than standard elite must [shall] not be used. [Unusual type, such as italic or script, or unusually large type, shall not be used.] Only the following typestyles will be accepted for publication: Courier 10

(Xerox Titan 10), Courier 10 (Xerox Titan 12), Elite, Letter Gothic, OCR-B, Pica, Prestige Elite (Xerox Vintage 12), or Prestige Pica. Dot matrix printer type will not be accepted. The text of all documents submitted for filing and publication in the *Texas Register* must [shall] be double-spaced and must [shall] be typed in black.

§91.52. *Headings.* Each page of each document submitted shall contain an identifying heading.

(1) The complete name of the issuing agency shall be typed in the upper left-hand corner of each page, above the top margin and flush with the left-hand margin.

(A) When submitting section action, the title of the chapter of sections shall be typed on the line below the name of the issuing agency, flush with the left-hand margin.

(B) When submitting a miscellaneous notice, the title of the document shall be typed on the line below the name of the issuing agency, and centered on the page.

(2) Each page of each document shall be numbered in the upper right-hand corner of the page as follows: "Page ____ of ____." Each page must be numbered consecutively, with page one being the first page of the preamble and the last page being the certification page at the end of the document.

§91.53. *Format for Emergency and Proposed Repeal Action.*

(a) Notice of emergency or proposed repeal action must [shall] be formatted according to the following requirements.

(1) One copy of the notice shall include the complete text of the section, including Register code number and TAC code number, if applicable, and respective title.

(2) The other copy of the notice shall list only the [Register code number and] TAC [code] number[, if applicable,] and respective title of the section. The text must not be included.

(b) The requirements set forth in subsection (a)(1) and (2) of this section shall not preclude other requirements for submission and filing of emergency or proposed section action.

§91.54. *Format for Final Repeal Action.*

(a) Notice of final repeal action [shall not include the text of a repealed section. However, the notice] shall include:

(1) the [Register code number and] TAC [code] number[, if applicable,] and respective title;

(2) a concise statement of the reason why the [rule or] section is repealed; and

(3) the *Texas Register* citation of the proposed notice of repeal.

(b) The requirements set forth in subsection (a)(1)-(3) of this section shall not preclude other requirements for submission and filing of final section action.

§91.55. *Format for Adopted Text.* The text of a [rule or] section submitted during

the final action stage of the rulemaking process must [shall] be formatted in the same manner as the proposed text was formatted and published in the *Texas Register*, with the exception of final repeal action. Final action taken on a proposed repeal shall be subject to the provisions of §91.54 of this title (relating to Format for Final Repeal Action). Style changes made in the proposed text must be included in the adopted text.

§91.56. *Typography.*

(a) All documents must [shall] be typed in conventional upper-case and lower-case format[, except as provided in subsection (b) of this section].

(b) Emergency and proposed amendments [section action]: indicating new and removed language.

(1) Existing text must [shall] be typed in upper-case and lower-case letters.

(2) New material in an existing text must [shall] be typed in upper-case and lower-case letters and underscored [only].

(3) Brackets must [shall] be used to indicate deletion of existing material. Do not bracket out part of a word; bracket the entire word and underscore [type] new material [in upper-case letters].

(4) New material must [shall] be placed before deleted material.

(5) Underscoring must [shall] be used to indicate italicization, [or to indicate] new numbers, or other symbols [which cannot be upper-cased].

§91.57. *Statement of Legal Authority.* A statement of the legal authority under which any section action is proposed or promulgated shall accompany each submission of section action. It shall appear immediately preceding the text of the first [rule or] section contained in the submission, and it shall be as specific as is necessary to enable a reader to locate the authority. Codified statutes shall reference the appropriate code. Uncodified statutes shall reference Texas Civil Statutes.

§91.58. *Certification.* Immediately following the text on the last page of all documents, the certification information must [shall] be typed.

(1) The certification for proposed sections must [shall] include:

(A) a statement containing the wording "This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt."; and

(B) the information listed in paragraph (3) of this section.

(2) The certification for adopted sections must [shall] include:

(A) a statement containing the wording "This agency hereby certifies that the section [rule] as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority."; and

(B) the information listed in

paragraph (3) of this section.

(3) The certification for all documents except open meetings **must** [shall] include the city in which the document is signed, the date of signing, the signature of the certifying official, the typed name and title of the certifying official, and the typed name of the agency. A signature stamp or other facsimile may be used for certification in place of an original signature.

§91.59. *Photoslicks.*

(a) A map, an illustration, or tabular material submitted for filing and publication **must** [shall] be prepared by the issuing agency on a photoslick for inclusion in the *Texas Register*. A photoslick **must** [shall] be prepared according to the following requirements.

(1) The area of text on a photoslick **must** [shall] not exceed 6¼ [9½] inches by 9½ [6¼] inches.

(2) The text of a photoslick **must** [shall] conform to the type requirements set forth in §91.51 of this title (relating to Paper Size and Form).

(3) Two photocopies of the photoslick **must** [shall] accompany each submission package, in addition to the photoslick itself.

(b) A photoslick which is of poor or marginal quality will not be published. A **photoslick** [slick] of poor or marginal quality will be returned to the issuing agency.

(c) A photoslick submitted for publication **must** [shall] accompany the submission package and **must** [shall] be subject to the deadline requirements contained in §91.113 of this title (relating to Deadlines).

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

Issued in Austin, Texas, on April 13, 1987.

TRD-8703281 Randall H. Erben
Assistant Secretary of
State

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For further information, please call
(512) 463-5561.

★ ★ ★

Classification Systems

★ 1 TAC §§91.71-91.75

The amendments are proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which created the Texas Register within the Office of the Secretary of State and authorize the office to adopt rules governing the submission of documents for publication.

§91.71. *Classification Terms.* When classifying agency [rules or] sections, the

following terms shall have the following meanings.

(1) Title shall identify the specific classification of subject matter under which an agency has been grouped by the Texas Register [Division], according to the Code title system. The title subject matter shall be preceded by the appropriate Arabic numeral designation.

(2) Part shall identify the individual agency under the title subject matter, according to the Code part system. The part name shall be preceded by the appropriate Roman numeral designation assigned by the Texas Register [Division].

(3) Chapter of [rules or] sections shall identify:

(A) a group of [rules or] sections which is related to the same general subject;

(B) a group of [rules or] sections which depend on a common set of definitions; or

(C) a group of [rules or] sections which are independent on another chapter in meaning or effect.

(4) Subchapter of [rules or] sections shall identify a group of [rules or] sections related to the same general subject within a chapter.

(A) The division of a chapter of [rules or] sections into subchapters is optional.

(B) An agency's **sections** [rules] which have been codified and published in the Code shall use a subchapter classification only if the subchapter is designated with a specific upper-cased letter.

(5) Undesignated head shall identify a group of sections related to a specific subject within a chapter or subchapter. [An undesignated head shall be assigned only when classifying sections under the Texas Administrative Code (TAC) numbering scheme.]

(6) [Rule or] Section.

(A) Rule [shall identify a specific agency statement which has not been codified and published in the Code. The term "rule" shall be [retained when] used in a quote or in an ambiguous phrase (i.e.: does not refer to a particular rule, but rather to laws or regulations in general).

(B) Section shall identify a specific agency statement which has been codified and published in the Code.

§91.72. *Numbering Schemes.*

[(a) Register. Each rule submitted for filing under the *Texas Register* numbering scheme shall be identified by a unique 10-digit code number, divided by decimal points into four units, as follows:

[(1) a three-digit number, assigned by the Texas Register Division, Office of the Secretary of State, identifying the agency submitting the rule;

[(2) a two-digit number, assigned by the agency, identifying the chapter of rules to which the individual rule belongs;

[(3) a two-digit number, assigned by

the agency, identifying the subchapter of rules, if any, to which the individual rule belongs. The subchapter unit of the code number shall be designated ".00" if the chapter of rules is not divided into subchapters;

[(4) a three-digit number, assigned by the agency, identifying the individual rule.

[(b) TAC. During the conversion period from *Texas Register* to TAC numbering scheme, both the new TAC number and *Texas Register* 10-digit number will be published. During the conversion period, as agency rules are codified and published in the Code, an agency may submit its rules according to the new TAC scheme as follows.]

[(a)][(1)] Identification. Each section [under the TAC numbering scheme] shall be identified by a code number, divided by a decimal point into two units, as follows:

[(1)][(A)] a specific number, assigned by the Texas Register [Division], Office of the Secretary of State, or by the agency, identifying the chapter in which the individual section is contained;

[(2)][(B)] a specific number, assigned by the Texas Register [Division], Office of the Secretary of State, or by the agency, identifying the individual section.

[(b)][(2)] Gapping. To allow for future expansion under the TAC numbering scheme, gapping is used for all components identified by Arabic numbers. Chapters shall be gapped by one within parts. Thus, only odd numbers shall be used for chapters on initial publication. The beginning chapter of each part shall end in the number "1." The beginning section within a chapter, subchapter, or undesignated head shall begin with the number "1" following the chapter designation. If the chapter, subchapter, or undesignated head contains more than five sections, a minimum of "10" shall be left before the first section designation of the next chapter, subchapter, or undesignated head. If it is anticipated that additional sections will be added to the chapter, subchapter, or undesignated head, additional space shall be left before the first section designation of the next chapter subchapter, or undesignated head.

§91.73. *Structure; Terminology.*

(a) An agency shall subdivide a [rule or] section according to the following structure, in the order shown, subject to the provisions of subsections (b), (c), and (e) of this section. The appropriate terminology shall be used in all preambles to **section** [rule] action and in the text of all **section** [rule] action.

(1) A subsection shall be designated by a lower-cased letter of the alphabet (e.g.: (a), (b), etc.).

(2) A paragraph shall be designated by an Arabic numeral (e.g.: (1), (2), etc.).

(3) A subparagraph shall be designated by an upper-cased letter of the alphabet (e.g.: (A), (B), etc.).

(4) A clause shall be designated by

a lower-cased Roman numeral (e.g.: (i), (ii), etc.).

(5) A subclause shall be designated by a Roman numeral (e.g.: (I), (II), etc.).

(b) An agency **must** [shall] not designate a subsection if it is the only subsection in the [rule or] section. This policy shall apply to all subdivisions, as set forth in subsection (a)(1)-(5) of this section.

(c) **The implied (a) policy is as follows.** [:] The term implied "(a)" shall identify any undesignated text which immediately follows a [rule or] section title and precedes the first designated subdivision of the [rule or] section. According to the implied (a) policy, the first designated subdivision shall be at the paragraph level.

(d) **The (No change.) policy is as follows.**

(1) The term "(No change.))" means that neither a change, deletion, nor addition of wording is made to a subdivision of an existing **section** [rule], nor to the format of an existing **section** [rule] structure. When no change occurs in the language or structure of a **section** [rule] subdivision, the subdivision may be designated as (No change.) The text of a subdivision designated as (No change.) need not be submitted, subject to the provisions of paragraph (2) of this subsection.

(2) When the text of a subdivision is amended, the agency shall include the text of the preceding higher-level subdivision. Although the higher-level subdivision may not have any changes itself, its publication is necessary for clarification. For example, if paragraph (2) of subsection (a) is amended, the entire text of subsection (a) must be included in the submission. Paragraph (1) of the subsection may be designated as (No change.) if there are no changes in the paragraph.

(e) [Formatting definitions. This subsection shall apply to all agencies whose rules have been codified and published in the Code.] Definitions of specific terms shall be formatted in an alphabetical listing and shall not be structured according to subsection (a)(1)-(5) of this section. The alphabetical listing shall be preceded by the sentence "The following words and terms, when used in this (part, chapter, subchapter, section), shall have the following meanings, unless the context clearly indicates otherwise." Verbs like is, means, etc., shall be omitted. When adding, amending, and/or deleting definitions, only the definition or definitions to be added, amended, and/or deleted shall be submitted. Subsections (c) and (d) of this section shall not apply to formatting of definitions.

(f) **Any reference to another section within the same title must be followed by the phrase "of this title (relating to . . .)" and the title of the section inserted within the parenthesis. Any reference to another TAC section must be cited by the title and section number, followed by the phrase "(relating to . . .)," with the title of the section inserted within the parenthesis. For example: 1 TAC**

§91.75 (relating to Identification).

§91.74. [Rule or] Section Titles.

(a) Each chapter, each subchapter, each undesignated head, and each [rule or] section of each submission of **section** [rule] action **must** [shall] be titled.

(b) The title shall reflect the subject matter of the chapter, subchapter, undesignated head, or individual [rule or] section.

§91.75. Identification.

(a) The [Register code number, and] TAC [code] number[, if applicable,] of a proposed [rule or] section **must** [shall] be used to identify the [rule or] section as adopted.

(b) The [Register code number and] TAC [code] number[, if applicable,] of a [rule or] section adopted on an emergency basis **must** [shall] be used to identify the [rule or] section if it is proposed or adopted on a nonemergency basis.

(c) The amendment or repeal of a [rule or] section **must** [shall] be identified by the [Register code number, and] TAC [code] number[, if applicable,] of the affected [rule or] section.

(d) The [Register code number, and] TAC [code] number[, if applicable,] of a proposed [rule or] section which is not adopted or is withdrawn may be used to identify another [rule or] section.

(e) [According to the Register numbering scheme, the code number of a repealed section shall not be used to identify another section. According to the TAC numbering scheme,] The code number of a repealed section may be used to identify another section.

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

Issued in Austin, Texas, on April 14, 1987

TRD-8703282 Randall H. Erben
Assistant Secretary of
State

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For further information, please call
(512) 463-5561

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Submission Forms

★ 1 TAC §§91.91, 91.93-91.98

The amendments are proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which created the *Texas Register* within the Office of the Secretary of State and authorizes the office to adopt rules governing the submission of documents for publication.

§91.91. Use of Submission Forms.

(a) Each copy of each document submitted **must** [shall] be accompanied by the

appropriate submission form, as revised December 1986 [1983] (Forms TR-2, TR-3, TR-4, and TR-5) and as adopted December 1986 [1983] (Form TR-6). These forms are adopted by reference and blank sample copies of each may be obtained by each agency, as specified in §91.97 of this title (relating to Reproduction of Forms), in the Texas Register Office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin, Texas 78701.

(b) Each submission form **must** [shall] be completed by the agency before submission, according to the instructions set forth in this section and in §91.93 of this title (relating to Form for **Section** [Rule] Action), §91.94 of this title (relating to Form for Notice of Open Meeting), §91.95 of this title (relating to Form for Miscellaneous Document), §91.96 of this title (relating to Form for Governor, Attorney General, Secretary of State, and State Ethics Advisory Commission), §91.97 of this title (relating to Reproduction of Forms), and §91.98 of this title (relating to Form for Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L), and according to the instructions set forth on the reverse side of the appropriate submission form.

(c) All information, except signatures, **must** [shall] be typewritten.

(d) The submission form **must** [shall] be stapled to the front of each copy of each document submitted.

§91.93. Form: for Section [Rule] Action.

(a) Form TR-2, Submission Form—**Section** [Rule] Action, **must** [shall] be used for submitting emergency, proposed, or final action on **sections** [rules].

(b) Form TR-2 **must** [shall] be completed according to the following instructions.

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

(4) [If the agency's rules have been codified and published in the Code,] Enter the numerical designation for the chapter of **sections** [rules] and enter the complete name of the chapter. [If the agency's rules have not been codified and published in the Code, enter the complete name of the chapter.]

(5) [If the agency's rules have been codified and published in the Code and a letter designation and subchapter have been designated,] Enter the letter designation for the subchapter of **sections** [rules] and enter the complete name of the subchapter. [If the agency's rules have not been codified and published in the Code, enter the complete name of the subchapter, if a subchapter has been designated.]

(6) [If the agency's rules have been codified and published in the Code and a letter designation has not been assigned to the name of the subchapter,] Enter the complete name of the undesignated head.

(7) [If the agency's rules have been codified and published in the Code,] Enter the TAC section number(s) affected by the action being taken.

[(8)] If the agency's rules have been codified and published in the Code, enter the corresponding *Texas Register* rule number(s) affected by the action being taken. If the agency's rules have not been codified and published in the Code, enter the *Texas Register* rule number(s) affected by the action being taken.]

(8) [(9)] Emergency action.

(A) Enter whether the emergency action is an original filing or whether it is a renewal of effectiveness. If the period of effectiveness is renewed, enter the Texas Register [Division] docket number assigned to the original filing and enter the volume and beginning page number of the *Texas Register* where the original action was published.

(B) Enter whether the emergency action is new, an amendment, a repeal, or an adoption by reference.

(C) Enter the number of days the emergency action is in effect and whether the emergency action is effective immediately on filing with the Texas Register [Division] or on another date (specify).

(9) [(10)] Proposed action.

(A) Enter the Texas Register [Division] docket number or numbers assigned the last time adopted action was taken on the submission.

(B) Enter whether the proposed action is new, an amendment, a repeal, or an adoption by reference.

(C) Enter whether identical emergency action is filed for simultaneous publication with the proposed action.

(D) Enter whether the proposed date of adoption is 30 days after publication in the *Texas Register* or on another date (specify).

(10) [(11)] Final action.

(A) Enter the Texas Register [Division] docket number assigned to the proposed action on the submission and enter the date of the *Texas Register* in which the proposed action was published.

(B) Enter whether the final action is new, an amendment, a repeal, or an adoption by reference.

(C) Enter whether the final action taken is with or without changes to the proposed action.

(D) Enter whether the emergency effectiveness and/or proposed action is withdrawn.

(E) Enter whether the effective date is 20 days after filing the final action with the Texas Register [Division] or on another date (specify).

(11) [(12)] Enter the verification information. Verification shall include the telephone number of the liaison; name, title, and signature of the liaison; and date of verification.

(12) [(13)] The agency may request an acknowledgment of receipt by the Texas Register [Division], Office of the Secretary of State, in the blanks provided on Form TR-2.

§91.94. Form for Notice of Open Meeting.

(a) Notice of an open meeting **must** [shall] be submitted on two copies of Form TR-3, Submission Form—Notice of Open Meeting, and on one three-inch by five-inch index card.

(b) Form TR-3 **must** [shall] be completed according to the following instructions.

(1) Enter the three-digit agency code number assigned by the Texas Register [Division] to the agency.

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

(6) Enter whether the agenda to be typed on the submission form is a complete agenda or a summarized agenda and enter the complete or summarized agenda in the space provided on the submission form. **The agenda must not be resubmitted if the open meeting is a rescheduled day/date, time, and/or location.**

(7) (No change.)

(8) Enter the certification information. Certification **must** [shall] include the name, title, and signature of the certifying official, the date of certification, and the signature of the agency liaison, if different from certifying official.

(9) The agency may request an acknowledgment of receipt by the Texas Register [Division], Office of the Secretary of State, in the blanks provided on Form TR-3.

(c) The index card **must** [shall] be typed according to the following instructions.

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

(5) Enter the agenda of the meeting. If there is inadequate space on the index card, the agency **must** [shall] attach a complete agenda of standard paper size to the card and indicate on the card that the agenda is attached. No summary shall be required on the card if a complete agenda is attached.

(6) If the meeting is designated as an emergency meeting or if the original agenda is revised on an emergency basis, the agency **must** [shall] state in writing on the card the reason for the emergency.

(7) Enter the certification information. Certification **must** [shall] include the name, title, and signature of the certifying official and date of certification.

(d) Each Form TR-3 and each index card **must** [shall] be stapled to the front of attachments, if any.

§91.95. Form for Miscellaneous Document.

(a) Form TR-4, Submission Form—Miscellaneous Document, **must** [shall] be used to submit all documents other than **section** [rule] actions; notices of open meetings; appointments; executive orders, and proclamations of the governor of Texas; [and] summaries of requests for opinions, opinions, and open records decisions of the attorney general of Texas; summaries of election law opinions, requests for lobby law opinions, and lobby law opinions of the Texas secretary of state; and summaries of

opinions of the State Ethics Advisory Commission.

(b) Form TR-4 **must** [shall] be completed according to the following instructions.

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

(5) Enter the verification information. Verification **must** [shall] include the telephone number of the liaison; the name, title, and signature of the liaison; and date of verification.

(6) (No change.)

§91.96. Form for Governor, Attorney General, Secretary of State, and State Ethics Advisory Commission.

(a) Form TR-5, Submission Form—Governor, Attorney General, Secretary of State, and State Ethics Advisory Commission **must** [shall] be used to submit appointments, executive orders, and proclamations of the governor of Texas; summaries of requests for opinions, opinions, and open records decisions of the attorney general of Texas; summaries of election law opinions, requests for lobby law opinions, and lobby law opinions of the Texas secretary of state; and summaries of opinions of the State Ethics Advisory Commission.

(b) Form TR-5 **must** [shall] be completed according to the following instructions.

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

(5) Enter the verification information. Verification **must** [shall] include the telephone number of the liaison; name, title, and signature of the liaison; and date of verification.

(6) (No change.)

§91.97. Reproduction of Forms.

(a) Each agency **must** [shall] produce each submission form from blank sample copies provided by the Texas Register, Office of the Secretary of State.

(b) The format for Texas Register submission forms (TR-2, TR-3, TR-4, TR-5, and TR-6) **must** [shall] not be altered by state agencies without the permission of the director of the Texas Register.

§91.98. Form for Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L.

(a) Actions taken by the State Board of Insurance pursuant to the Insurance Code, Chapter 5, Subchapter L, shall be submitted on two copies of Form TR-6, Submission Form—Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L. The Texas Register, Office of the Secretary of State, adopts by reference the proposed Form TR-6, Submission Form—Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L, which **must** [shall] be used when submitting action. Copies of this form may be obtained from the Office of the Secretary of State, Texas Register, P.O. Box 13824, Austin, Texas 78711.

(b) Form TR-6 **must** [shall] be com-

pleted according to the following instructions.

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

(7) Enter the verification information. Verification **must** [shall] include the telephone number of the liaison; the name, title, and signature of the liaison; and date of verification.

(8) (No change.)

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

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Assistant Secretary of
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Publication Schedule

★ 1 TAC § 91.113

The amendments are proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which created the *Texas Register* within the Office of the Secretary of State and authorizes the office to adopt rules governing the submission of documents for publication.

§91.113. *Deadlines.*

(a) For a Tuesday edition, all copy except notices of open meetings **must** [shall] be received by 10 a.m. the previous Wednesday. All notices of open meetings **must** [shall] be received by 10 a.m. the previous Thursday.

(b) For a Friday edition, all copy except notices of open meetings **must** [shall] be received by 10 a.m. the previous Monday. All notices of open meetings **must** [shall] be received by 10 a.m. the previous Tuesday.

(c) Agencies **must** [shall] be notified

in advance of any changes that may occur in the publication schedule and deadlines for submission of documents by notice published in the *Texas Register*.

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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Miscellaneous Provisions

★ 1 TAC §§91.131, 91.133-91.135

The amendments are proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which created the *Texas Register* within the Office of the Secretary of State and authorizes the office to adopt rules governing the submission of documents for publication.

§91.131. *Editing of Documents.*

(a) (No change.)

(b) Editor's notes will be written and published by the Texas Register [Division] preceding the text of **section** [rule] action and other documents not published, and preceding other documents, as needed, for clarification.

§91.133. *Text of Documents Not Published.*

The Texas Register [Division] will not include for publication in the *Register* the text of the following documents submitted for filing:

(1) (No change.)

(2) renewal of effectiveness of emergency **section** [rule] action;

(3) proposed **section** [rule] action

when identical emergency action is published simultaneously;

(4) emergency or proposed **section** [rule] action which has been withdrawn from further effectiveness or consideration, respectively;

(5) final **section** [rule] action adopted with no changes from the text as proposed and published; and

(6) (No change.)

§91.134. *Serialization of Documents To Be Published.* If necessary, the Texas Register [Division] will serialize documents submitted for filing and publication in order to process lengthy submissions, and in order to meet production and printing deadlines for the *Texas Register*. Serializations will be published in consecutive regular issues of the *Texas Register*.

§91.135. *Form for Correction of Error.*

(a) When an agency finds an error in the published text of a document, the issuing agency **must** [shall] notify the director of the Texas Register [Division] in writing within **10** [seven] days of the date of the issue in which the error occurred requesting a correction of error.

(b) The written notification **must** [shall] include the following information:

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

(c) (No change.)

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 281. Applications Processing

★ 31 TAC §§281.2, 281.3, 281.5, 281.22

The Texas Water Commission proposes amendments to §§281.2, 281.3, 281.5, and 281.22, concerning applications processing. Chapter 281 establishes commission policy for the efficient and effective processing of applications for permits, licenses, and other types of approvals under the commission's jurisdiction, as specified in the chapter.

The proposed amendment to §281.2(4) updates the reference to §305.401 as a provision concerning compliance plans, rather than groundwater compliance plans, since that amended section title is now being proposed by the Texas Water Commission in addition to other amendments to Chapter 305 of this title.

The proposed amendment to §281.3, entitled "Initial Review," adds a new subsection (c) to apply to hazardous waste permit applications. The new subsection explains that applicants shall have a 30-day period from the receipt of a letter from the commission to respond to notices of deficiency in Part A permit applications before the executive director of the commission pursues enforcement actions concerning deficient applications. This new provision corresponds to 40 Code of Federal Regulations §270.70(b), which governs the United States Environmental Protection Agency's approach to deficient Part A permit applications and the failure to qualify for interim status.

In §281.5, concerning applications for wastewater discharge, underground injection, hazardous waste and industrial solid waste management, the list of items to be included in those applications is amended to clarify that the addresses of the adjacent and potentially affected landowners shall also be submitted to the commission. A listing of landowners and their addresses is very important to the agency when notices are mailed to those persons.

In §281.22, a new subsection (b) is added to clarify that the commission shall not issue permits before receiving complete applications for hazardous waste permits. However, the added language also recognizes the possibility of permits by rule or emergency orders.

William Monroe, chief fiscal officer, has determined that for the first five-year

period these sections will be in effect there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the proposed sections.

Mr. Monroe also has determined that for each year of the first five years these sections are in effect the public benefit anticipated as a result of enforcing the sections will be the clarification of the agency's response to incomplete or deficient hazardous waste permit applications (and the applicant's opportunity to cure deficiencies) and the clarification of the agency's information needs concerning lists of adjacent and potentially affected landowners in a permit application submittal. 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 Cynthia C. Smiley, Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-0387. To facilitate public comments on the proposal, the agency has scheduled a hearing to receive comments at 9 a.m. on May 14, 1987, in Room 118 of the Stephen F. Austin State Office Building, 1700 North Congress Avenue, Austin, Texas. Written comments will also be received on the proposal until May 20, 1987.

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

§281.2. *Applicability.* These sections are applicable to the processing of:

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

(4) applications for new, amended or renewed industrial solid waste permits filed pursuant to §335.2 of this title (relating to Permit Required) and §335.43 of this title (relating to Permit Required) or for new or amended compliance plans filed pursuant to §305.401 of this title (relating to [Groundwater] Compliance Plan);

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

§281.3. *Initial Review.*

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

(c) **For applications involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, applicants shall have 30 days from receipt of notice of deficiency in a Part A permit application to respond to the notification and to explain or cure the alleged deficiency in the Part A application. Applicants shall be afforded this opportunity to cure the deficiencies before the executive director pursues enforcement action concerning deficient applications.**

§281.5. *Application for Wastewater Discharge, Underground Injection, Hazardous Waste and Industrial Solid Waste Management Permits.* Applications for wastewater discharge, underground injection, hazardous waste and industrial solid waste management permits must include:

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

(6) a list of adjacent and potentially affected landowners **and their addresses** along with a map locating the property owned by these persons; and

(7) (No change.)

§281.22. *Referral to Commission.*

(a) When administrative and technical review has been completed, the application shall be forwarded to the commission for filing and setting. For the purpose of providing adequate notice, the executive director shall include a recommendation to the commission of the area wherein the application, if granted, would have a potential impact, and a mailing list of persons who may be affected.

(b) **For applications involving hazardous waste, the commission shall not issue a permit before receiving a complete application for a permit. However, a facility may be eligible for a permit by rule or may be subject to an emergency order.**

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

Issued in Austin, Texas, on April 13, 1987

TRD-8703210

J. D. Head
Director
Legal Division
Texas Water
Commission

Earliest possible date of adoption

May 18, 1987

For further information, please call
(512) 463-8087.

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Chapter 305. Consolidated Permits

The Texas Water Commission (TWC) proposes amendments to §§305.23-305.25, 305.30, 305.42-305.44, 305.46, 305.50, 305.51, 305.62-305.65, 305.68, 305.96, 305.101-305.104, 305.125, 305.128, and 305.401, and new §305.106; concerning consolidated permits.

The proposed amendments to §§305.23-305.25 clarify that these provisions relating to emergency orders, notice of emergency orders, and executive director authorizations to discharge when emergency conditions exist, do not apply to discharges of hazardous waste, and do not enable the executive director to authorize discharges of hazardous waste. These provisions in Chapter 305 relate to other programs under TWC jurisdiction,

such as the water quality and waste discharge program under the Texas Water Code, Chapter 26.

When emergency actions are taken concerning hazardous waste, §305.30 governs those actions. The proposed revision to §305.30 removes the possibility of an emergency order concerning hazardous waste without notice and hearing and adds language providing for public notice to accompany the emergency order and to allow specified time periods for that notice. Public notice of the emergency order may be given at the same time as public notice and opportunity for comment on the emergency order, and the two notices may be combined. If an emergency order is issued without a hearing, the commission shall fix a time and place for a hearing to be held in accordance with commission rules, so as to affirm, modify, or set aside the emergency order. The notice shall include the name and address of the commission, which is the office granting the emergency order.

In §305.42, amendments are proposed to clarify some permit application issues relating to the hazardous waste permitting program. In new subsection (b), statements are added to explain that persons currently authorized to operate under interim status prior to the granting or denial of a permit are required to apply for permits when requested by the executive director. This statement does not preclude applicants from voluntarily submitting applications at an earlier date. The new subsection also clarifies that persons covered by federal permits by rule under §335.47 need not apply for permits. These amendments track the language of 40 Code of Federal Regulations §270.10(a). The proposed amendments also specify a six month minimum time period for owners or operators to submit Part B applications when they are requested, and specifies that the deadlines for 40 Code of Federal Regulations §270.73 are applicable to the specified facilities. These amendments track the language of 40 Code of Federal Regulations §270.10(e)(4).

In §305.43, concerning who applies for permits under the Texas Water Code, Chapters 26, 27, and 28; and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7; the section is amended to state that, in general, it is the duty of the owner of a facility to submit an application for a permit. However, for solid and hazardous waste permit applications, it may be the duty of the operator of a facility to submit an application where the facility is owned by one person and operated by another person.

In §305.44, concerning signatories to applications, references are made to §305.50(9) and (10), and §305.44(a) and (b), respectively, to clarify that the provisions governing signatories to hazardous waste permit applications and the certifications for hazardous waste permit applications

are set forth in §305.50, which applies specifically to solid waste permit applications.

In §305.46, concerning the designation of material as confidential, a statement is added to subsection (d) to clarify that any information withdrawn by or returned to the applicant under a claim of confidentiality shall not be considered by the commission in its decision to grant or deny the application and shall not be considered by the executive director in preparing a draft permit.

In §305.50, which sets forth additional requirements for applications for solid waste permits, paragraph (4) is amended to provide an exception to the referenced requirements set forth in 40 Code of Federal Regulations §§270.13-270.21. The proposed amendment requires closure cost estimates to be prepared in accordance with the cited provisions in 40 Code of Federal Regulations §264.142 and with §335.178 in the state regulations. This exception reflects the partial incorporation of the federal requirements and the incorporation of a more stringent state requirement for estimating closure costs

Proposed §335.178 appears elsewhere in this issue of the *Texas Register*. Proposed §305.50 also includes a new paragraph (9), which describes the signatory requirements for hazardous waste permit applications submitted by a corporation, a partnership or sole proprietorship, or a municipality, state, federal, or other public agency. These requirements track the language of 40 Code of Federal Regulations §270.11, published in the *Federal Register* on September 1, 1983 at 48 FedReg 39622. Proposed §305.50 also includes a new paragraph (10), which sets forth the certification statement to be made by persons signing hazardous waste permit applications. This language also tracks the language of 40 Code of Federal Regulations §270.11, as published in the *Federal Register* on September 1, 1983.

In proposed §305.51, language is added to describe the requirements for changes in the ownership or operational control of a hazardous waste management facility that has not yet received a permit. In such cases, the new owner or operator shall submit a revised Part A permit application at least 90 days prior to the scheduled change and shall comply with the other requirements set forth in 40 Code of Federal Regulations §270.72(d).

Proposed amendments to §305.62, concerning permit amendments, include a revision of subsection (c)(2)(C) by adding a new clause (x) to clarify that a change in ownership or operational control of a facility may be considered a minor amendment if no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility between the current and new permittees has been submitted to the executive director and pro-

vided that the requirements of §305.64 of this title (relating to Transfer of Permits) have been satisfied. Also in §305.62, new subsection (h) clarifies that for applications filed under the Texas Water Code, Chapter 26, an application for an amendment to a permit is also considered as a request by the permittee for a renewal of the permit.

In §305.63, concerning permit renewals, language specifically applicable to hazardous waste permits has been added to track the language of 40 Code of Federal Regulations §270.10(h). The new language states that any hazardous waste management facility with an effective permit shall submit a new application at least 180 days before the expiration date of the permit, unless permission for later submittal has been granted by the executive director. In §305.63(3), language has been added to clarify that applications for amendment shall be filed in place of applications for renewal for renewal applications filed under the Texas Water Code, Chapter 26, that are in fact requesting permit modifications.

In §305.64, concerning transfer of permits, a new subsection (g) is proposed to govern hazardous waste permits for facilities that experience a change in ownership or operational control of the facility. The new language describes the financial responsibilities of the old and new owners of a facility as set forth in 40 Code of Federal Regulations §270.42(d), which provides for minor modifications of permits. The amendments to §305.64 also include a provision imposing a \$100 fee to be submitted with applications for transfer of permits. The \$100 fee shall be submitted with the application for transfer of the permit. Existing §305.53(a) already provides that an applicant shall include a \$100 fee with each application, except as provided otherwise in that section. The imposition of a fee for transfer of permits is a new requirement, but is not expected to cause financial hardship.

In §305.65, paragraph (5) is amended by deleting references to the updating of a permit provision as a means of correcting a permit. Under the amended §305.65, the commission may correct permits for the purpose of stating permit provisions more accurately without changing the substance of the provision and does not have to observe formal amendment procedures.

In §305.68, concerning revocations or suspensions, subsection (a) is amended by extending the time period for notice to a permittee from 10 days to 30 days prior to a hearing on a petition to revoke or suspend a permit or other order of the commission. In §305.68, which governs revocations or suspensions that are not requested by the permittee (as opposed to §305.67, which governs revocations and suspensions upon request or consent), public notice of the revocations or

suspensions of permits or orders involving hazardous waste shall be given by publication, by mail and by radio broadcast. If the permittee requests or consents to the revocation or suspension of the permit and the executive director has not revoked or suspended the permit, the commission may act at a regular meeting without holding a permit hearing, provided notice of the hearing is given by first class mail at least 30 days prior to the meeting when hazardous waste permits are involved.

In §305.96, concerning actions on applications for amendment, subsection (c) is amended to clarify that, as a general rule, the commission shall conduct public hearings on petitions for major amendments to permits, unless no person requests a hearing and the permittee files sufficient consent and waiver of hearing. If no one requests a hearing and the permittee files sufficient consent and waiver of hearing, the commission may take action on a major amendment application at a regular meeting.

Section 305.101, concerning notice of hearing, is amended to clarify that the notice of hearing for hazardous waste permit applications shall contain a statement that a draft permit for the facility has been prepared and that a copy of the draft permit is available to the public.

In §305.102, relating to notice by publication, language is added to subsection (d) to assure that notices by publication are issued in a timely manner. If an applicant does not cause the notice approved by the commission to be published within 30 days of receipt of the notice from the commission, the commission shall cause the notice to be published and the applicant shall reimburse the commission for the cost of publication within 30 days of the publication date.

The provision governing notice by mail, §305.103, has been amended by providing more specific language on which persons will receive notice by mail. In §305.103 (b)(9), the amended language provides that persons who request to be put on the mailing list may include participants in past commission permit proceedings for the facility or activity who have submitted a written request to be put on the mailing list. This revision clarifies that all participants in past commission permit proceedings are not automatically included in future mailing lists for a facility or activity.

In provision §305.104, concerning radio broadcasts, amendments are proposed to impose an obligation on hazardous waste permit applicants to cause the public notice prepared by the commission to be broadcast over one or more local radio stations located in the affected area of a pending application to store process or dispose of hazardous waste. If the applicant does not cause the notice approved by the commission to be broadcast in the

affected area within 30 days of receipt of the notice from the commission, the commission shall cause the notice to be broadcast and the applicant shall reimburse the commission for the cost of the broadcast within 30 days of each broadcast.

The amendments propose to add new §305.106, entitled "Response to Comments," to provide a regulation that is equivalent to 40 Code of Federal Regulations §124.17 by establishing a procedure for describing and responding to significant public comments received on a draft hazardous waste permit application. The response to comments may be included in an examiner's proposal for decision or may be a separate document. The response to comments will specify whether provisions of the draft permit has been changed in response to comments and will be made available to the public.

In §305.125, relating to standard permit conditions, there is a list of conditions applicable to all permits issued within the scope of Chapter 305. In paragraph (4), language is added to emphasize that a permittee shall take all reasonable steps to minimize or correct adverse impacts on the environment resulting from noncompliance with the permit and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment. In §305.125(11)(C), the provisions governing monitoring and reporting requirements are amended to clarify that records of monitoring activities shall include the identify of the individual and the laboratory who performed an analysis.

In §305.128, amendments are proposed to reference the signatory requirements and certifications for persons signing hazardous waste permits or reports that have been proposed in §305.50(9) and (10).

In §305.401, amendments are proposed to revise the name of the section to refer to the compliance plan rather than the groundwater compliance plan. This amendment recognizes that a compliance plan may address more than groundwater and therefore should have a title that is broader in scope.

William Monroe, chief fiscal officer, has determined that for the first five-year period the proposed sections will be in effect, there will be fiscal implications as a result of certain proposed regulations for applicants and permittees involved in hazardous waste management and for persons who wish to transfer permits held under the authority of the Texas Water Code, Chapters 26, 27, or 28; or the Texas Solid Waste Disposal Act. Mr. Monroe does not anticipate fiscal implications from the proposal and adoption of the regulations that are not discussed specifically in this preamble. In proposed §305.64, a \$100 fee is proposed to be imposed to apply toward the processing of applications for transfer of permits. For

the water quality program under the Texas Water Code, Chapter 26, the effect on state government will be an estimated increase in revenue of \$15,000 for each year from 1987-1991. The effect on small businesses will be in the cost of compliance. Approximately 65% of the water quality permit transfers involve small business. The estimated cost of compliance for small businesses will be \$9,750 for each year from 1987-1991. The estimated cost of compliance for large businesses for each year from 1987-1991 is \$12,750. The cost of compliance for small business as compared with the cost of compliance for large businesses is \$3000 for each year from 1987-1991, based on cost per \$100 of sales (permit transfers). There will be no effect on local government.

Mr. Monroe also has determined that for each year of the first five years the transfer fee requirement is in effect the public benefit anticipated as a result of enforcing the section will be provision of more efficient services in processing the applications for transfer. The anticipated economic cost to individuals who are required to comply with the proposed section will be \$5,250 for each year from 1987-1991. Previously, no fee was charged for permit transfers.

For the underground injection program under of the Texas Water Code, Chapter 27, the imposition of a fee for permit transfers will be an estimated increase in revenue of \$200 for each year from 1987-1991. There are no fiscal implications for small businesses or local government.

For each year of the first five years the transfer fee requirement is in effect the public benefit anticipated as a result of enforcing the section will be provision of more efficient services in processing the applications for transfer. The anticipated economic costs to individuals who are required to comply with the proposed section will be \$200 for each year from 1987-1991.

For the drilled or mine shafts program under the Texas Water Code, Chapter 28, the imposition of a fee for permit transfers will have no fiscal implications at this time, since the commission has not issued any permits under Chapter 28.

For the solid and hazardous waste program under the Solid Waste Disposal Act, the imposition of a fee for transfers of permits will be an increase in state revenue of \$100 each year from 1987-1991. There will be no fiscal implications for small businesses or local governments. For each year of the first five years the transfer fee requirement is in effect the public benefit anticipated as a result enforcing the section will be provision of more efficient services in processing the applications for transfer. The anticipated economic costs to individuals who are required to comply with the proposed section will be \$100 each year from 1987-1991.

In proposed §305.104, the provision concerning radio broadcasts for hazardous waste permit applications has been amended to place the responsibility of causing public notice to be broadcast over the radio on permit applicants. The applicants will be responsible for the costs of broadcasts and shall act expeditiously to assure that broadcasts are made. Mr. Monroe has determined that there will be fiscal implications for state government and the regulated community as a result of enforcing or administering this section. The effect on state government will be an estimated increase of \$750 each year from 1987-1991. There will be no fiscal implications for small business or local government.

Mr. Monroe has also determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance of this method of public notice concerning pending hazardous waste permit applications. The anticipated economic costs to individuals who are required to comply with the proposed section will be \$7500 each year from 1987-1991.

The only economic cost to individuals as a result of enforcing these sections will be certain proposed regulations for applicants and permittees involved in hazardous waste management and for persons who wish to transfer permits held under the authority of the Texas Water Code, Chapters 26, 27, or 28, or the Texas Solid Waste Disposal Act.

Subchapter B. Emergency Orders, Temporary Orders, and Executive Director Authorizations

★ 31 TAC §§§305.23-305.25, 305.30

The amendments and new section are proposed under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission

§305.23. *Emergency Orders.*

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

(c) This section does not apply to discharges of hazardous waste.

§305.24. *Notice.*

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

(d) This section does not apply to discharges of hazardous waste.

§305.25. *Executive Director Authorizations to Discharge.* If emergency conditions exist which make it necessary to take action more expeditiously than is otherwise provided by this subchapter, the executive director may authorize the discharge of untreated or

partially treated wastewater from a permitted facility into or adjacent to water in the state if he determines that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss, or to make necessary and unforeseen repairs to the facility, that there are no feasible alternatives to the discharge, and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant. If the executive director issues an authorization to discharge under this authority, the commission shall hold a hearing as provided for in §305.23(b) of this title (relating to Emergency Orders) as soon as practicable but in no event later than 10 days after issuance of the authorization, to affirm, modify, or set aside the authorization. **This section does not enable the executive director to authorize the discharge of hazardous waste.**

§305.30. *Emergency Actions Concerning Hazardous Waste.*

(a) Whenever there is good reason to believe that the storage, processing, or disposal of hazardous waste should be authorized in order to alleviate an imminent and substantial endangerment to human health or safety or the environment and if there are no alternative, permitted facilities that are reasonably available for the proper management of the waste, the commission, on its own motion or the request of the executive director or any other party, may issue an emergency order authorizing the processing, storage, or disposal of the hazardous waste at a nonpermitted facility or at a permitted facility with no authorization under its permit to receive the hazardous waste in need of immediate management. [The order may be issued without notice and hearing, or with such notice and hearing as the commission deems practicable under the circumstances.]

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

(f) **Public notice [and hearing] shall accompany the emergency order.** [be provided in accordance with §305.24 of this title (relating to Notice).] The notice [of hearing] shall allow at least 45 days for public comment and shall be given at least 30 days before the hearing on the emergency order. **Public notice of the emergency order may be given at the same time as public notice and opportunity for comment on the emergency order, and the two notices may be combined. If an emergency order is issued without a hearing, the commission shall fix a time and place for a hearing to be held by the commission in accordance with the commission rules, so as to affirm, modify, or set aside the emergency order. The notice shall include:**

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

(4) a brief description of the action authorized or to be authorized, and the reasons for authorization; [and]

(5) the duration of the emergency order; and[.]

(6) the name and address of the commission (the office granting the emergency order).

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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Director
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Texas Water
Commissioners

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For further information, please call
(512) 463-8087

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Subchapter C. Application for Permit

★ 31 TAC §§305.42--305.44, 305.46, 305.50, 305.51

These amendments are proposed under Texas Water Code, §§5.103 and 5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission

§305.42. *Application Required.*

(a) Any person who is required to obtain a permit, or who requests an amendment or renewal of a permit, shall complete, sign, and submit an application to the executive director, according to the provisions of this chapter.

(b) **For applications involving hazardous waste, persons currently authorized to continue hazardous waste management under interim status in compliance with §335.2(c) (relating to Permit Required) and the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(f)(2) shall apply for permits when required by the executive director. Owners or operators shall be allowed at least six months from the date of request to submit a Part B permit application. Owners or operators of existing hazardous waste management facilities may voluntarily submit Part B of the permit application at any time. However, owners or operators of existing hazardous waste management facilities must submit Part B permit applications in accordance with the dates specified in 40 Code of Federal Regulations §270.73. Owners or operators of land disposal facilities in existence on the effective date of statutory or regulatory amendments under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7 or the Resource Conservation and Recovery Act of**

1976, as amended, 42 United States Code §6901 et seq., that render the facility subject to the requirement to have a hazardous waste permit must submit a Part B permit application in accordance with the dates specified in 40 Code of Federal Regulations §270.73.

§305.43. *Who Applies.*

(a) It is the duty of the owner of a facility to submit an application for a permit.

(b) For solid waste and hazardous waste permit applications, it is the duty of the owner of a facility to submit an application for a permit, unless a facility is owned by one person and operated by another, in which case it is the duty of the operator to submit an application for a permit.

§305.44. *Signatories to Applications.*

(a) Except as provided in §305.50(9) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit), all [All] applications shall be signed as follows:

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

(b) Except as provided in §305.50(10) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit), a person signing an application shall make the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of civil penalty and criminal fine."

(c) (No change.)

§305.46. *Designation of Material as Confidential.*

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

(d) The executive director will review each claim of confidentiality. If a claim is not approved, the applicant will be notified and informed whether the material is essential to the application. The applicant may elect to withdraw any material submitted with an application. If the applicant elects to withdraw certain material which the executive director has determined is not confidential, such material will be withheld from public review until withdrawn. Any information withdrawn by or returned to the applicant under this provision shall not be considered by the commission in its decision to grant or deny the application, or by the executive director in preparing a draft permit.

(e)-(g) (No change.)

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

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

(4) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain any additional information required by 40 Code of Federal Regulations §§270.13-270.21, except that closure cost estimates shall be prepared in accordance with 40 Code of Federal Regulations §264.142(a)(1), (3), and (4); (b) and (c) and §335.178 of this title (relating to Cost Estimate for Closure). At any time after the effective date of the requirements contained in Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), the executive director may require the owner or operator of an existing hazardous waste management facility to submit that portion of his application containing the information specified in 40 Code of Federal Regulations §§270.14-270.21. Any owner or operator shall be allowed a reasonable period of time from the date of the request to submit the information. An application for a new hazardous waste management facility must be submitted at least 180 days before physical construction of the facility is expected to commence.

(5)-(8) (No change.)

(9) All applications for hazardous waste permits shall be signed as follows.

(A) For a corporation, the application shall be signed by a responsible corporate officer. For purposes of this paragraph, a responsible corporate officer means a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions rather than to specific individuals.

(B) For a partnership or sole proprietorship, the application shall be signed by a general partner or the proprietor, respectively.

(C) For a municipality, state, federal, or other public agency, the application shall be signed by either a principal executive officer or a ranking elected official. For purposes of this paragraph, a principal executive officer of a federal agency includes the chief executive officer of the agency, or a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g. regional administrator of the United States Environmental Protection Agency).

(10) For hazardous waste permit applications, the person signing an application shall make the following certification. "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

§305.51. *Revision of Applications for Hazardous Waste Permits.*

(a) (No change.)

(b) The purpose of this section is to delineate requirements for filing a revised application, not to authorize any changes in facility operation. Changes in facility operations will be reviewed and approved by the executive director. In deciding whether to approve the proposed change, the executive director may consider the requirements set forth in 40 Code of Federal Regulations §270.72. For changes in the ownership or operational control of a facility, the new owner or operator shall submit a revised Part A permit application no later than 90 days prior to the scheduled change and shall also comply with the requirements set forth in 40 Code of Federal Regulations §270.72(d). A permit will be required for the operation of an above-grade landfill not described in a Part A application filed pursuant to §335.43 of this title (relating to Permit Required) prior to the effective date of this section.

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

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TRD-8703208 J.D. Head
Director
Legal Division
Texas Water
Commission

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For further information, please call
(512) 463-8087.

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Subchapter D. Amendments,
Renewals, Transfers,
Corrections, Suspension
of Permits

★ 305 TAC §§305.62—305.65,
§305.68

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

§305.62. *Amendment.*

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

(c) Types of amendments.

(1) (No change.)

(2) A minor amendment is an amendment to improve or maintain the permitted quality or method of disposal of waste or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge or injection. A minor amendment includes any other change to a permit issued under this chapter that will not cause a potential deterioration of quality of water in the state nor relax a standard or criterion which may result in a potential deterioration of quality of water in the state. A minor amendment also includes, but is not limited to, the following:

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

(C) for solid waste permits, the following changes:

(i)-(vii) (No change.)

(viii) a minor change to any conditions specified in the permit for land treatment units to reflect the results of field tests or laboratory analyses used in making a treatment demonstration in accordance with §§305.181-305.184 of this title (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analysis); [or]

(ix) authorization for a second treatment demonstration for land treatment to be conducted when the results of the first demonstration have not shown the conditions under which the waste or wastes can be treated completely as required by 40 Code of Federal Regulations §264.272(a), provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration; or[.]

(x) change in ownership or operational control of a facility where the executive director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility between the current and new permittees has been submitted to the executive director and provided that the requirements of §305.64 of this title (relating to Transfer of Permits)

have been satisfied.

(d)-(g) (No change.)

(h) Amendment application considered a request for renewal. For applications filed under the Texas Water Code, Chapter 26, an application for an amendment to a permit is also considered as a request by the permittee for a renewal of the permit.

§305.63. *Renewal.* The permittee or the executive director may file an application for renewal of a permit. The application shall be filed with the executive director before the permit expiration date. For permits involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, any hazardous waste management facility with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the executive director. The executive director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

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

(3) If an application for renewal in fact requests a modification of requirements and conditions of the existing permit, an application for amendment shall also be filed before further action is taken. For applications filed under the Texas Water Code, Chapter 26, if an application for renewal in fact requests a modification of requirements and conditions of the existing permit, an application for amendment shall be filed in place of an application for renewal.

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

§305.64. *Transfer of Permits*

(a) (No change.)

(b) Except as provided otherwise in subsection (g) of this section, the permittee shall submit to the executive director an application for transfer at least 30 days before the proposed transfer date. The application shall contain the following:

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

(3) if the permit requires financial responsibility, the method by which the proposed transferee intends to assume or provide financial responsibility, including proof of such financial responsibility to become effective when the transfer becomes effective; [and]

(4) a fee of \$100 to be applied toward the processing of the application, as provided in §305.53(a) of this title (relating to Application Fees); and

(5)[(4)] any other information the executive director may reasonably require.

(c)-(f) (No change.)

(g) For permits involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised permit application no later than 90 days prior to the scheduled change. When a transfer of own-

ership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of 40 Code of Federal Regulations Part 264, Subpart H, as adopted by reference in §335.152(a)(6), until the new owner or operator has demonstrated to the executive director that he is complying with the requirements of 40 Code of Federal Regulations Part 264, Subpart H. The new owner or operator must demonstrate compliance with 40 Code of Federal Regulations Part 264, Subpart H requirements within six months of the date of the change in the ownership or operational control of the facility. Upon demonstration to the executive director by the new owner or operator of compliance with 40 Code of Federal Regulations Part 264, Subpart H, the executive director shall notify the old owner or operator in writing that he no longer needs to comply with 40 Code of Federal Regulations Part 264, Subpart H as of the date of demonstration.

§305.65. *Corrections of Permits.* The commission may make corrections to permits, either by reissuing the permit or by issuing an endorsement to the permit, without the necessity of observing the formal amendment procedures prescribed in this chapter:

(1) (4) (No change.)

(5) to state more accurately [or update] any provision in a permit [but] without changing the substance of any such provision[, including the updating of provisions of an application which have been incorporated by reference in a permit.]

§305.68. *Action and Notice on Petition for Revocation or Suspension*

(a) In the absence of a request filed by the permittee or of sufficient consent and waiver, the commission shall conduct a public hearing on a petition to revoke or suspend a permit or other order of the commission, notice of which shall be given to the permittee not less than 30 [10] days prior to the hearing by certified mail, return receipt requested, of the time and place of the hearing. For permits or orders involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, public notice shall be given by publication, by mail and by radio broadcast, in accordance with §§305.102-305.104 of this title (relating to Notice by Publication; Notice by Mail; and Radio Broadcasts).

(b) If the permittee requests or consents to the revocation or suspension of the permit and the executive director has not revoked or suspended the permit, the commission may take action at a regular meeting of the commission without holding a public hearing, provided notice of the hearing is given by first-class mail at least 10 days prior to the meeting. For permits involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, notice of the hearing shall be given by first-class mail at least 30 days prior to the meeting.

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-8703207 J.D. Head
Director
Legal Division
Texas Water
Commission

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For further information, please call
(512) 463-8087

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Subchapter E. Actions, Notice and Hearing

★ 31 TAC §§305.96, 305.101--305.104

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

§305.96. *Action on Application for Amendment.*

(a) (No change.)

(c) The commission shall conduct a public hearing on a petition for a major amendment, unless **no person requests a hearing** and the permittee files sufficient consent and waiver of hearing, in which case the provisions of subsection (a) of this section apply.

§305.101. *Notice of Hearing.* A notice of hearing shall identify the application, the date, time, place, and nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held, the proposed action, the requirements for submitting written protests, the method for obtaining additional information, and such other information the commission deems necessary. The notice shall state whether a draft permit has been prepared by the executive director. **For applications involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, the notice shall include a statement that a draft permit for the facility has been prepared and that a copy of the draft permit is available to the public.**

§305.102. *Notice by Publication.*

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

(d) The applicant is responsible for the cost of publication. **If the applicant does not cause the notice approved by the commission to be published within 30 days of receipt of the notice from the commission, the commission may cause the notice to be published**

and the applicant must reimburse the commission for the cost of publication within 30 days of publication.

§305.103. *Notice by Mail.*

(a) (No change.)

(b) The notice shall be mailed to the following:

(1)-(8) (No change.)

(9) persons who request to be put on the mailing list, **including [and] participants in past commission permit proceedings for the facility or activity who have submitted a written request to be put on the mailing list;**

(10)-(12) (No change.)

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

§305.104. *Radio Broadcasts.* For an application to store, process, or dispose of hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, the **applicant [commission]** shall **cause the [mail a summary of the] public notice prepared by the commission to be broadcast over one or more local radio stations[, listed in the latest edition of the Texas Broadcasters Directory,] which are located in the affected area of a pending hazardous waste permit application [to be available to such stations for broadcast as a public service.]** For purposes of this section, the affected area is an area to be determined by the commission on each application which includes the county in which the site is to be located and may include contiguous counties at the discretion of the commission. [Local radio stations are encouraged to broadcast the summary of the notice to assist the commission in informing the affected community of the pending hazardous waste application. The failure to mail the summary of the notice, the failure to show evidence of radio broadcasts, or the failure of a radio station to broadcast the summary of the notice will not affect the commission's jurisdiction to consider the application.] **If the applicant does not cause the notice approved by the commission to be broadcast in the affected area within 30 days of receipt of the notice from the commission, the commission may cause the notice to be broadcast and the applicant shall reimburse the commission for the cost of the broadcast within 30 days of each broadcast.**

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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(512) 463-8087.

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★ 31 TAC §305.106

This section is proposed under the Texas Water Code §§5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§305.106. *Response to Comments.* This section shall apply only to applications for hazardous waste permits under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, and is adopted for the purposes of conforming commission procedures to 40 Code of Federal Regulations §124.17. The commission, through the executive director or the Office of Hearings Examiners, shall prepare and make available to the public a brief description and response to all significant comments on the draft permit which are filed with the commission during the 45-day comment period in accordance with the provisions of §305.93 of this title (relating to Action on Application for Permit), or which are made during the public comment session of a hearing held pursuant to §305.105 of this title (relating to Request for Public Hearing) and the Texas Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a. The response to comments shall include a specification of which provisions of the draft permit, if any, have been changed in response to comments, and the reasons for the change. If a hearing is held and a hearings examiner's proposal for decision is issued, the response to comments may be incorporated into the proposal for decision.

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

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Subchapter F. Permit Characteristics and Conditions

★ 31 TAC §305.125, §305.128

These amendments are proposed under Texas Water Code, §§5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and

other laws of the State of Texas, and to establish and approve all general policy of the commission.

§305.125. *Standard Permit Conditions.*

The following conditions are applicable to all permits issued within the scope of this chapter, and shall be incorporated into each permit expressly or by reference to this chapter.

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

(4) The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment.

(5)-(10) (No change.)

(11) Monitoring and reporting requirements are as follows:

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

(C) Records of monitoring activities shall include the following:

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

(iv) identity of the individual and laboratory who performed the analysis;

(v)-(vi) (No change.)

(12)-(19) (No change.)

§305.128. *Signatories to Reports.*

(a) All reports requested by permits and other information requested by the executive director shall be signed by a person described in §305.44(a) of this title (relating to Signatories to Applications) or by a person described in §305.50(9) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit), or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) the authorization is made in writing by a person described in §305.44(a) of this title (relating to Signatories to Applications) or described in §305.50(9) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit);

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

(b) If an authorization under this section is no longer accurate because of a change in individuals or position, a new authorization satisfying the requirements of this section must be submitted to the executive director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(c) For matters involving hazardous waste, any person signing a report required by a permit shall make the certification set forth in §305.50(10) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit).

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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(512) 463-8087.

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Subchapter L. [Groundwater]
Compliance Plan

★31 TAC §305.401

This amendment is proposed under Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission

§305.401. [Groundwater] Compliance Plan.

(a)-(f) (No change.)

(g) Whenever a facility is subject to permitting under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, and is further required under §§335.156-335.167 of this title (relating to Applicability of Groundwater Monitoring and Response; Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; Corrective Action Program; and Corrective Action for Solid Waste Management Units) to conduct compliance monitoring or corrective action, processing of the permit application for the facility and the establishment of the [groundwater] compliance plan shall be consolidated in one proceeding.

(h) (No change.)

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

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Chapter 335. Industrial
Solid Waste and Municipal
Hazardous Waste

The Texas Water Commission proposes amendments to §§335.1, 335.2, 335.6, 335.11-335.15, 335.22-335.24, 335.41, 335.43, 335.61, 335.69, 335.71, 335.74-335.77, 335.111, 335.112, 335.114, 335.118, 335.119, 335.121, 335.123, 335.125, 335.126, 335.152, 335.154, 335.156, 335.175, 335.221, and 335.251, the repeal of §§335.9 and §335.10, and new §§335.9, 335.10, 335.28, 335.29, 335.74, 335.78, 335.127, and 335.178, concerning industrial solid waste and municipal hazardous waste. Throughout the regulations, references to municipal hazardous waste are shortened, when appropriate, to reference hazardous waste and Class I industrial solid wastes are referenced as Class I wastes. The proposed regulations incorporate recent rules promulgated by the United States Environmental Protection Agency (EPA) pursuant to the Resource Conservation and Recovery Act of 1976 (RCRA) as amended (42 United States Code §6901 et seq.) In addition, changes to the notification, recordkeeping, and reporting requirements for generators, transporters, and facility owners and operators are proposed. These proposed changes are made to lessen the reporting burden on all generators and reduce the workload impact on the commission staff due to increased regulation of small quantity generators of hazardous waste. Clarifying amendments to §335.26 and §335.43(b) are also proposed to make the language of these regulations conform to the language in the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, referred to as the Act. In §335.6, notification requirements are updated to reflect the added provisions concerning small quantity generators. Specifically, the proposed changes incorporate the following promulgations by the EPA under RCRA:

Sections 335.112(a), 335.121, and 335.126 are proposed to be amended to incorporate interim status requirements for hazardous waste surface impoundments, land treatment units, and landfills promulgated by EPA on April 23, 1985 (50 FedReg 16044). These amendments provide for a variance to the two-foot freeboard requirements for surface impoundments; final cover performance requirements for landfills; an additional variance allowing for placement of some ignitable or reactive wastes in surface impoundments; more definitive requirements regarding placement of containers

in landfills; and a clarification of the allowable treatment mechanisms at land treatment units. Subchapter C is amended to incorporate new requirements applicable to small quantity generators and conditionally exempt small quantity generators promulgated by EPA on March 24, 1986 (51 FedReg 10146). Specifically, §335.69 is amended to include new requirements applicable to the storage of hazardous waste by certain small quantity generators (i.e., those generating greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month). Requirements applicable to such generators are also proposed in §335.74. The new requirements applicable to conditionally exempt small quantity generators (those generators of no more than 100 kilograms of hazardous waste in a calendar month) are contained in proposed new §335.78. Requirements pertaining to small quantity generators will therefore no longer be contained in §335.61(c), and the references to this provision are changed throughout Chapter 335. The term "small quantity generator" is proposed to be defined in §335.1. In proposing the small quantity generator requirements, the commission is not incorporating the exemption from manifesting applicable to waste shipped pursuant to a reclamation agreement that is provided in the corresponding EPA regulations. For reasons more fully set out in the following, the commission is proposing to require manifesting of all hazardous waste regardless of quantity or special circumstances. The provisions of §335.41(e) are also amended to reflect regulation of hazardous waste generated in quantities between 100-1,000 kilograms per month.

Section 335.2(c) and §335.43(b)(3) are amended to acknowledge the federal requirement to file a Part A application with EPA by March 24, 1987, for small quantity generators engaging in on-site waste management. This filing requirement is imposed in 40 Code of Federal Regulations §270.10(e)(1)(iii).

Section 335.111 is amended by adding subsection (b) prohibiting the management of certain dioxin-containing wastes at interim status facilities unless certain provisions of the section are met. This proposal relates to EPA rules listing certain dioxin-containing wastes as hazardous waste and establishing requirements applicable to persons managing these wastes, promulgated on January 14, 1985 (50 FedReg 1978). The other provisions of this EPA rulemaking have previously been incorporated into Chapter 335. Section 335.111 is also amended by adding a phrase to subsection (a) to clarify that Subchapter E applies to owners and operators of hazardous waste management facilities who have fully complied with the requirements for interim status under the federal Resource Conservation and Recovery Act, §3005(e).

Section 335.112(a)(6) and (7) and §335.152(a)(5) and (6) are amended to incorporate requirements applicable to closure and post-closure care and financial responsibility promulgated by EPA on May 2, 1986 (51 FedReg 16422). Among other requirements, these amendments modify the closure performance standard and requirements to furnish closure and post-closure plans to the executive director, clarify the contents of closure plans, and include new requirements applicable to amendments of closure and post-closure plans and notification of partial and final closure. The federal provisions that are not adopted by reference in §335.112(a)(6) (specifically, 40 Code of Federal Regulations §265.112(d)(3) and (4) and §265.118(e) and (f)) appear in a modified form in §335.118 and §335.119, respectively. The proposed commission regulations correspond very closely to the federal provisions, but include a reference to judicial decrees or compliance orders issued under the Texas Solid Waste Disposal Act and include the statement in the existing rules that establishes the owner or operator's responsibility for the cost to publish notice. The proposed amendments also contain requirements applicable to cost estimates for closure and post-closure care. In proposing amendments based on the May 2, 1986, promulgation, the commission regulation differs from 40 Code of Federal Regulations (CFR) §264.142(a)(2) and §265.142(a)(2), which allow the closure cost estimate to be based on on-site disposal if the owner or operator can demonstrate that on-site disposal capacity will exist at all times over the life of the facility. In new §335.127 and §335.178 (concerning interim standards and permitting standards, respectively), the commission proposes that all cost estimates be based on third party removal and shipment off-site to an authorized facility. The proposal conforms to the approach that the commission has historically taken in calculating such costs. The commission believes that calculations based on third party costs avoid the speculation which necessarily surrounds an evaluation of whether on-site disposal capacity will exist at all times over the life of the facility, and provide greater assurance that resources will in fact be available for closure and post-closure care. In addition, §335.1 is amended to include definitions of the terms "active life," "final closure," "hazardous waste management unit," and "partial closure."

Section 335.112(a)(7) and §335.152(a)(6) are amended to incorporate by reference the July 11, 1986, EPA rule allowing the use of a corporate guarantee to satisfy the requirements of 40 Code of Federal Regulations §264.147 and §265.147 (relating to liability insurance). The federal rule is promulgated at 51 FedReg 25350. As required in 40 Code of Federal Regulations §264.147(g)(2) and 40 Code of Federal Regulations §265.147(g)(2), a corporate

guarantee may be used to satisfy the liability requirements of 40 Code of Federal Regulations §264.147 and 40 Code of Federal Regulations §265.147 only if the attorney general or insurance commissioner of the state in which the guarantor is located and the state in which the facility covered by the guarantee is located have submitted a written statement to EPA that a corporate guarantee executed as described in 40 Code of Federal Regulations §264.147 or §265.147 and §264.151(h)(2) is a legally valid and enforceable obligation in that state. On March 24, 1987, the attorney general of Texas issued an opinion stating that a corporate guarantee which is executed to comply with the third party liability requirements for hazardous waste facilities and which tracks the language of the corporate guarantee set forth in 40 Code of Federal Regulations §264.151(h)(2) creates a third party creditor beneficiary contract which can be enforced in Texas (Texas Attorney General Opinion JM-653 (1987)). The commission anticipates the adoption of emergency rules in April that will allow the use of the corporate guarantee.

Section 335.112(a)(9) and §335.152(a)(8) are amended to incorporate by reference the requirements applicable to the storage and processing of hazardous waste in tank systems promulgated by EPA on July 14, 1986 (51 FedReg 25422). The referenced date of January 12, 1987, in the opening paragraphs of §335.112 and §335.152 is taken from the July 14, 1986, *Federal Register* promulgation of regulations concerning tank systems, which establishes an effective date of January 12, 1987, for those federal rules. These requirements address the design and installation of the primary containment vessel, release detection and response, and closure and post-closure requirements. In addition, §335.1 is amended to add definitions relating to tank and tank system requirements. The definition of solid waste contained in §335.1 is also amended to establish an exemption for certain wastes reclaimed and returned to the original process in which they were generated, provided that only tank storage is involved. This closed-loop tank system exclusion was included in the EPA promulgation on tank systems issued on July 14, 1986. The definition of industrial solid waste in §335.1 is amended to clarify that the universe of industrial solid wastes may include hazardous wastes. The commission has jurisdiction over wastes defined as hazardous by the administrator of the EPA, regardless of the waste's municipal or industrial origin. The definition of solid waste in §335.1 is also amended to incorporate some explanatory language from the federal regulations setting forth exclusions from the definition of solid waste in 40 Code of Federal Regulations §261.4(a)(2). This agency believes that it is helpful to include this explanatory language concerning the

scope of the exclusion from definition as a solid waste for industrial discharges in the Texas regulations in order to provide further clarification of the existing commission policy. The explanatory language, which appears as a comment following 40 Code of Federal Regulations §261.4(a)(2), clarifies that only the actual point source discharges are not solid wastes under the terms of the industrial solid waste regulatory system. Industrial wastewaters that are managed prior to the actual discharge, which is regulated pursuant to the Texas Water Code, Chapter 26, and sludges generated by industrial wastewater treatment are within the universe of industrial solid wastes prior to their regulation as actual point source discharges under the Texas Water Code.

Sections 335.71, 335.114, and 335.154 are amended to track specifically the informational requirements of 40 Code of Federal Regulations §262.41 (applicable to generators) and 40 Code of Federal Regulations §264.75 and §265.75 (applicable to owners and operators). In addition, information that is needed to facilitate the reporting and tracking systems of the commission is included in these amendments. The commission also proposes certain changes to its recordkeeping and reporting requirements in Subchapter A. Section 335.6 concerns notification requirements for persons who generate, transport, store, process, or dispose of hazardous wastes and industrial solid wastes. Subsection (e), which establishes notification requirements for transporters, is amended to exempt conditionally exempt small quantity generators from the requirement to notify as a transporter of hazardous waste when they are only transporting their own hazardous wastes. Further, the commission proposes to amend subsection (f), which requires persons who ship, store, process, or dispose of hazardous or industrial solid wastes to perform a chemical analysis of the solid waste, in order to relieve persons from the requirement to furnish samples of their wastes to the commission for analysis for the sole purpose of assigning a waste classification.

The commission proposes to repeal existing §335.9, concerning recordkeeping and annual reporting requirements for generators, and to replace it with a new §335.9. New §335.9 establishes specific recordkeeping requirements for all generators of hazardous wastes and industrial solid wastes regardless of generation size or waste classification. It also requires submission of a detailed annual report to the commission by January 25 of each year for the previous calendar year by all generators of hazardous waste and Class I industrial solid waste, except for those who qualify for the exemptions as identified in subsection (a)(3) and (4). The exemption for conditionally exempt small quantity generators (CESQGs) of hazardous waste and very small quantity

generators of Class I industrial solid waste from the requirement to submit an annual summary report is an attempt by the commission to lessen the differences in reporting requirements imposed upon generators of municipal hazardous waste and Class I industrial solid waste. Present regulations do not exempt any generators of Class I industrial solid waste from the submission of an annual report when they store, process, or dispose of such wastes on their own property. Further, the amendment relieves generators of Class II industrial solid waste from any reporting requirements. Adoption of this amendment will allow commission staff time to be redirected to recording and verifying waste disposition reports submitted by operators of solid waste facilities. This change also standardizes many generators' reporting requirements and allows them to focus their efforts upon the completion of one reporting document instead of a combination of monthly and annual forms. These changes are intended to substantially reduce for generators and the commission the clerical workload that is encountered under the present system without sacrificing the commission's ability to collect information necessary to perform compliance monitoring, make hazardous waste fee assessments, and compile reports required at the state and federal level. The commission also proposes to repeal §335.10, concerning shipping procedures applicable to generators of hazardous waste or Class I industrial solid waste and proposes a new §335.10, which establishes revised shipping procedures and manifest completion instructions applicable to all generators of hazardous waste or Class I industrial solid waste. Section 335.10(a) requires all generators of hazardous wastes and Class I industrial solid waste to manifest their off-site shipments regardless of generation status or amount shipped, using the manifest forms cited in the section. This subsection reflects new federal requirements for manifesting off-site shipments by persons such as small quantity generators (SQGs) who generate from 100 kilograms to 1,000 kilograms per month of hazardous waste. Further, the commission has decided to extend the manifesting requirement to all hazardous waste generators regardless of the amount of hazardous waste or acute hazardous waste generated or shipped. The commission feels that this action is justified for the following reasons:

First, the commission is required under the Texas Solid Waste Disposal Act to adopt and promulgate rules consistent with the general intent of the Act, and establish minimum standards of operation for all aspects of the management and control of the solid waste over which it has jurisdiction. One of the minimum standards of operation specified in the Act requires persons who generate, transport, process, store, or dispose of

Class I industrial solid waste or hazardous waste to provide recordkeeping and use a manifest or other appropriate system to assure that such wastes are transported to a processing, storage, or disposal facility permitted or otherwise authorized for that purpose. Second, the changes adopted by the commission pursuant to the Act under Chapter 335 state that owners and operators of facilities permitted or authorized by the executive director to receive hazardous waste or Class I industrial solid waste cannot accept such shipments without an accompanying manifest or proper shipping paper. Also, information received by the commission from several commercial transporters and facility operators indicates that they will not accept hazardous wastes without a manifest and appropriate identification numbers regardless of the person's generation rate or the amount being shipped.

Finally, utilization of a uniform manifest for all off-site shipments of hazardous waste provides CESQGs one method in which to maintain records in order to support any contentions or claims they may have with respect to the need to notify under §335.6 of this title or the requirement to pay hazardous waste generation fees required in Subchapter J of this chapter.

Proposal of the manifesting requirement for CESQGs of municipal hazardous waste is also an attempt by the commission to lessen the differences in the regulations for generators of municipal hazardous waste and Class I industrial solid waste. The EPA definition of hazardous waste does not distinguish between municipal versus industrial generators, as the Texas statute has historically made this distinction. Under present regulations, generators of Class I industrial hazardous waste are required to manifest all off-site shipments regardless of generation status or amount shipped. This requirement does not currently exist for conditionally exempt small quantity generators of municipal hazardous waste. The commission recognizes that there are drawbacks to imposing the requirement to manifest on CESQGs. Among some of the commission's concerns are whether adequate resources are available to enforce the requirement; the difficulty in disseminating the manifest instructions to the affected generators; and whether this requirement may increase the incidences of illegal disposal by small quantity generators. The commission does not believe the adoption of minimum standards for the utilization of a manifest by all generators creates an unenforceable regulation or increases the incidences of illegal disposal. The inclusion of this requirement in the commission's regulations is viewed as an attempt to comply with the requirements of the Act and to provide for the needs of hazardous waste transporters and operators of solid waste facilities. The regulations provide

a method whereby CESQGs can manifest without first obtaining various state and federal identification numbers, thus facilitating and encouraging the placement of all hazardous wastes in facilities authorized under the RCRA, Subtitle C, or an approved state program. This action does not restrict CESQGs from shipping their hazardous wastes to solid waste facilities regulated by the Texas Department of Health (TDH), provided that the waste is manifested and the facility operator has received approval from the TDH and concurrence from the commission to receive the waste. This approval and concurrence requirement is stipulated in the Act and must be complied with by all generators of hazardous waste and Class I industrial solid waste. The commission plans to continue its efforts to enhance existing technical materials, as well as to develop new materials, for distribution to the SQG and CESQG community in order to facilitate compliance with these requirements. A SQG unit has been established in the commission's Hazardous and Solid Waste Division's Program Support Section to provide assistance to these persons and develop the necessary guidance materials. This unit's activities are also supported by two other units within the section: the Technical Support Unit and the Waste Management Reports Unit. The commission solicits comments on whether imposing this requirement on persons who meet the generator category determination of CESQGs of municipal hazardous waste will prove too burdensome for that segment of the regulated community. Further, the commission solicits comments on whether to modify this requirement to make it applicable to only those CESQGs who ship greater than some specified minimum amount. New §335.10(b), which addresses the information required on the Texas uniform hazardous waste manifest, is amended to more precisely track the procedures for completion of this document. It also addresses special informational needs of CESQGs and persons shipping Class I industrial nonhazardous solid waste who are required to use a manifest when shipping their wastes off-site. Finally, it includes the revised language of the generator's certification, which declares a generator's efforts to reduce the volume and toxicity of his hazardous wastes, and which is required of persons shipping hazardous waste.

Section 335.13 concerns the recordkeeping and reporting requirements of generators shipping hazardous wastes and Class I industrial solid wastes. The commission proposes to amend subsection (b), which concerns the requirement for persons to submit a monthly shipment summary to the commission. The commission proposes to require that only generators who ship out of Texas, who import shipments from outside the United States through Texas, or who export hazardous waste or Class I industrial solid

waste to a foreign country need to prepare and submit a shipment summary. A generator would be required to submit the shipment summary by the 25th day of the month following any month in which such shipments were made out of Texas. No shipment summaries would be required for months in which shipments were not made or when shipments were made only to solid waste facilities located in Texas.

CESQGs of hazardous waste would be exempt from this requirement provided the waste originated in Texas. The commission has concluded that under new federal regulations it will be necessary to solicit annual reports from persons who qualify as SQGs of municipal hazardous waste. These reports are necessary in order for the commission to collect information necessary to perform compliance monitoring, make hazardous waste fee assessments and compile reports required by state law and its grant commitments to EPA. The commission believes, however, that imposing submission of monthly shipment summary reports on SQGs of municipal hazardous waste, especially in light of the ever increasing number of monthly reports received from large quantity generators of hazardous waste and other industrial solid waste generators, is unreasonable.

There are several reasons for the establishment and maintenance of the manifest and reporting program. First, the manifest program seeks to provide the generator with assurances that his wastes have reached their proper destination. Second, the manifest program provides the transporter a formal declaration of the contents of the shipment and useful information if needed for potential uncontrolled releases or spill response events. Third, the manifest program, as it has grown over the years, provides a comprehensive source of regulatory information for both public and private utilization. Although at no point is it stated in either the federal or state regulations that the EPA or the commission is to assume the generator's responsibility of tracking wastes from the cradle to the grave, this responsibility was assumed by the state from the very beginning of the regulatory program in late 1975 and an intensive shipment-by-shipment reporting program was developed. The commission no longer possesses the resources necessary to process the current volume of approximately 40,000 reports received each year or the anticipated increased number of monthly summary reports which would be submitted by CESQGs of municipal hazardous waste if this requirement were imposed upon them. The commission estimates that this regulatory change will result in an immediate reduction of some 15,000 to 20,000 pieces of paper that will not have to be processed in the first year alone. The commission proposes to acquire the necessary shipment information through the submission of an annual report as described earlier in this preamble.

However, the commission is concerned that shipments of hazardous wastes and Class I industrial solid wastes shipped to solid waste facilities outside of Texas may not receive adequate attention since no mechanism exists for the commission to confirm the receipt of the shipments at designated solid waste facilities outside of Texas. Also, generators may not adequately document such shipments on their annual summary reports since in most cases such shipments will be accompanied by the consignment state's manifest and not the commission manifest.

Thus, the commission has deemed that such information does need to be reported on a monthly basis to verify proper waste management and correct assessment of hazardous waste generation fees. The commission, however, welcomes comments on whether to drop the requirement for submission of shipment summaries altogether. The commission proposes to amend §335.23 and §335.24(h) to reflect proper rule references based on its recent rulemaking concerning hazardous waste burned for energy recovery. (See the August 19, 1986, issue of the *Texas Register* (11 TexReg 3692)) The commission also proposes to amend §335.251, concerning requirements applicable to persons reclaiming spent lead acid batteries. The amendment maintains the current exemption from regulation under Chapter 335 for those persons generating, transporting, or collecting spent batteries, or those storing spent batteries but not reclaiming them, but the amendment specifies that such persons remain subject to the requirements of the Texas Water Code, Chapter 26. Specifically, the commission would invoke its authority under Chapter 26 in those instances where the activities of such persons were causing an unauthorized discharge of waste to the waters in the state.

New §335.28 is added to these regulations to establish a mechanism for adopting memoranda of understanding between the commission and other state agencies by rule, as required by the Texas Water Code, §5.104. Copies of the memoranda of understanding will be made available when requests are submitted to the Texas Water Commission, Legal Division, P. O. Box 13087, Austin, Texas 78711-3087, (512) 463-8078. The memorandum of understanding (MOU) between the attorney general of Texas and the Texas Water Commission is the first MOU to be proposed as a section. The MOU relates to public participation in the judicial enforcement process. The commission will soon be proposing other MOUs for adoption as sections.

New §335.29 is added to clarify that the appendices to 40 Code of Federal Regulations Part 261 are adopted by reference in the commission regulations governing hazardous waste.

Section 335.2(g) is amended to correct the date cited in the regulations to conform

to §335.156(a)(2), which establishes the requirements for groundwater monitoring and response for regulated units, as defined by EPA in 40 Code of Federal Regulations §264.90(a)(2). The regulation is amended to refer to July 26, 1982 (rather than January 26, 1983), as the key date for units that received hazardous waste and therefore are regulated units under the federal definition in 40 Code of Federal Regulations §264.90(a)(2).

The commission proposes to amend §335.221(b)(2) to reflect the updated reference to the provision governing conditionally exempt small quantity generators in §335.78 (rather than in §335.61(c)). William Monroe, chief fiscal officer, has determined that for the first five-year period the sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections. Hazardous waste regulations resulting from the enactment of the federal Hazardous and Solid Waste Amendments of 1984 are effective in the state upon adoption by the United States Environmental Protection Agency (EPA) of those requirements. This fiscal note does not address the fiscal impact of those requirements because state adoption of equivalent rules does not create any additional economic impact. This fiscal analysis addresses the impact of those requirements which are not effective until state adoption and those requirements which are beyond the scope of the federal hazardous waste program. The effect on state government for the first five-year period the sections will be in effect is an estimated additional cost of \$82,000 each year in 1987 and 1988, and \$64,000 each year in 1989—1991. These costs result from the state's efforts to register and monitor newly regulated entities covered by these sections. There should be no loss or increase in revenue as a result of this rulemaking. These proposed sections should have only minimal effects on local units of government. The effect on small businesses results from new reporting and recordkeeping requirements on generators of small quantities of hazardous waste. Businesses that produce less than 220 pounds (100 kilograms) of hazardous waste during a calendar month will bear an overall cost of compliance totalling approximately \$400,000 per year on a statewide basis, or about \$9.00 per year for each company. Businesses that produce between 220 and 2,200 pounds of hazardous waste per month will be essentially unaffected financially by the proposed sections. Larger businesses, particularly industrial and manufacturing firms, can expect to experience an overall savings of approximately \$335,000 per year on a statewide basis, or \$100 per year for a large business, as a result of reduced reporting requirements for nonhazardous industrial solid waste. The new operating standards for interim status land disposal facilities are not expected to result in additional fiscal impacts. This proposal in-

corporates federal regulations which would implement some operating requirements sooner than would have been the case under the existing sections. These standards would have been imposed during the permitting process; therefore, there is no significant fiscal impact. The new requirements for closure and post-closure care clarify existing rules but do not change the methods used by the agency to calculate these costs. The proposed section for financial assurance incorporates the federal regulations which provide an additional financial mechanism (the corporate guarantee) to meet the liability insurance requirements. These two sections would not result in additional costs to businesses. The proposed sections also incorporate the federal standards for tank systems used to store or process hazardous wastes. The sections apply to new and existing underground and aboveground tanks. These regulations would result in significant costs to owners and operators. Costs include initial non-capital costs, capital costs, and operating and maintenance costs. The commission estimates (based upon EPA's analysis that initial compliance costs would be \$500,000) capital costs of \$8 million and operating and maintenance costs at \$600,000 on a statewide basis.

Mr. Monroe 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 is greater protection of human health and the environment through improved regulation of hazardous waste. The system for manifesting, reporting, and recordkeeping is better tailored to track the movement of hazardous waste without excessive regulation and oversight. In addition, the threat of groundwater and surface water contamination from underground and aboveground storage tanks is greatly diminished by the proposed sections. Finally, the proposed sections provide clarification that achieves consistency with the Texas Solid Waste Disposal Act and additions to state regulations that are necessary to update the hazardous waste program delegated to the state by EPA. There is no anticipated economic cost to individuals who are required to comply with the proposed sections. To facilitate public comment on the proposed new sections and amendments to Chapter 335, the commission has scheduled a public hearing to receive such comments at 9 a.m., May 14, 1987, Room 118, Stephen F. Austin State Office Building, 1700 North Congress Avenue, Austin, Texas. Persons desiring to provide written comments on the proposal may do so by sending them to Cynthia C. Smiley, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069. Written comments will be accepted until May 20, 1987. Persons participating in the public hearing are encouraged to summarize their testimony in

written presentations.

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

★ 31 TAC §§335.1, 335.2,
335.6, 335.11-335.15, 335.22-
335.24

These amendments are proposed under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules 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 amendments 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:

Aboveground tank—A device meeting the definition of tank in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

Active site—The period from the initial receipt of hazardous waste at the facility until the executive director receives certification of final closure.

Ancillary equipment—Any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps,

that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or processing tank(s), between hazardous waste storage and processing tanks to a point of disposal on-site, or to a point of shipment for disposal off-site.

Component—Either the tank or ancillary equipment of a tank system.

Corrosion expert—A person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

Existing tank system or existing component—A tank system or component that is used for the storage or processing of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(A) a continuous on-site physical construction or installation program has begun; or

(B) the owner or operator has entered into contractual obligations which cannot be canceled or modified without substantial loss for physical construction of the site or installation of the tank system to be completed within a reasonable time.

Final closure—The closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) are no longer conducted at the facility unless subject to the provisions in §335.69 of this title (relating to Accumulation Time).

Hazardous waste—Any solid waste identified or listed as a hazardous waste by

the administrator of the United States Environmental Protection Agency (EPA) 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.

Hazardous waste management unit—A contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

Industrial solid waste—Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation, which may include hazardous waste as defined in this section.

Inground tank—A device meeting the definition of tank in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

Installation inspector—A person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

Leak-detection system—A system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

Manifest—The uniform hazardous waste manifest form, Form TWC-0311, and, if necessary, TWC-0311B, furnished by the executive director to accompany shipments of municipal hazardous waste or Class I industrial solid waste.

New tank system or new tank component—A tank system or component that will be used for the storage or processing of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of 40 Code of Federal Regulations §264.193(g)(2) (incorporated by reference at §335.152(a)(8) of this title (relating to Standards)) and 40 Code of Federal Regulations §265.193(g)(2) (incorporated by reference at §335.112(a)(9) of this

title (relating to Standards)), a new tank system is one for which construction commences after July 14, 1986 (see also existing tank system).

Onground tank—A device meeting the definition of tank in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

Partial closure—The closure of a hazardous waste management unit [discrete part of a facility] in accordance with the applicable closure requirements of Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) at a facility that contains other active hazardous waste management units [this chapter]. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), [trench, a unit operation,] landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, [or a pit,] while other units [parts] of the same facility continue to operate [in operation or will be placed in operation in the future].

Small quantity generator—A generator who generates less than 1,000 kg of hazardous waste in a calendar month.

Solid Waste

(A) Any garbage, refuse, sludge from a waste treatment 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 (an exclusion applicable only to the actual point source discharge that does not exclude industrial wastewaters while they are being collected, stored, or processed before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment);

(ii)-(iv) (No change.)

(B)-(E) (No change.)

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

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

(iv) secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process, provided:

(1) only tank storage is involved, and the entire process through com-

pletion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(II) reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(III) the secondary materials are never accumulated in such tanks for over 12 months without being reclaimed; and

(IV) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(G)-(I) (No change.)

Sump—Any pit or reservoir that meets the definition of tank in this section and those troughs/trenches connected to it that serves to collect hazardous waste for transport to hazardous waste storage, processing, or disposal facilities.

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

Tank system—A hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

Underground tank—A device meeting the definition of tank in this section whose entire surface area is totally below the surface of and covered by the ground.

Unfit-for-use tank system—A tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or processing hazardous waste without posing a threat of release of hazardous waste to the environment.

Zone of engineering control—An area under the control of the owner-operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to groundwater or surface water.

§335.2 Permit Required

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

(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, or the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code §6901, et seq., that render the facility subject to the requirement to 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 F 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; or for generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who process, store, or dispose of these wastes on-site, a Part A permit application shall be submitted to the U. S. Environmental Protection Agency by March 24, 1987, as required by 40 Code of Federal Regulations §270.10(e)(1)(iii). This subsection shall not apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated. Applications filed under this section shall meet the requirements of §335.44 of this title (relating to Application for Existing On-Site Facilities). For purposes of this subsection, a 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)-(2) (No change.)

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

(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 July 26, 1982 [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.

§335.6 Notification Requirements.

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

(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 §335.78 [§335.61(c)(5)] of this title (relating to **Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators** [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 **Recordkeeping** [Shipping] and **Annual 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). 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)-(3) (No change.)

(4) a proper hazardous waste determination **which includes the appropriate EPA hazardous waste number(s) described in 40 Code of Federal Regulations Part 261**. 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) (No change.)

(d) (No change.)

(e) **Except for conditionally exempt small quantity generators who only transport their own hazardous waste**, any person who transports [municipal] hazardous waste or Class I waste shall notify the executive direc-

tor 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 and 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)-(h) (No change.)

§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) (3) (No change.)

(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) (No change.)

(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) (No change.)

(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) (No change.)

(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) (No change.)

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

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

(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 subsections (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)-(C) (No change.)

(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) (No change.)

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

(A) (No change.)

(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 non-rail transporter, a rail transporter must:

(A) (No change.)

(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) (No change.)

(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) (No change.)

(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)-(4) (No change.)

(i) (No change.)

§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)-(4) (No change.)

(b) If a facility receives, 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)-(4) (No change.)

(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] hazardous waste or Class I waste a facility actually received. Significant discrepancies in type are 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)-(B) (No change.)

(2) (No change.)

§335.13. Recordkeeping and Reporting Procedures Applicable to Generators Shipping [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) **Generators who ship to other states, or import shipments from outside the United States through Texas to other states, or export** [The generator, including any person exporting] hazardous waste to a foreign country, shall prepare a **shipment** [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

shipment [monthly] summary shall be prepared on forms provided or approved by the executive director and submitted to the Texas Water Commission on or before 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 prepare and submit a shipment summary for only those months in which he actually made shipments. Conditionally exempt small quantity generators shipping hazardous waste subject to the requirements of §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) are not subject to the requirements of this subsection [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) 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 be retained by the generator for at least three years from the date the waste was accepted by the initial transporter and 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 hazardous waste or Class I waste and the results of those efforts.

(d)[(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) The requirements of subsection (c) of this section do not apply to generators generating hazardous waste or Class I waste in quantities less than 100 kilograms in a calendar month, or acute hazardous waste in quantities specified in §335.78(e)(1) or (2) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators). [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 I waste 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) (No change.)

§325.15. *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) (No change.)

(2) Except as provided in paragraph (6) of this section, 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, transporter identity, 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 prepared on forms provided or approved by the executive director and submitted to the Texas Water Commission on or before the 25th day of each month for wastes or manifests received during the previous [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. An owner or operator receiving hazardous waste shall prepare a monthly summary which also includes the following information:

(A) the Environmental Protection Agency (EPA) identification number, name and address of the facility;

(B) the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator;

(C) a description and the quantity of each hazardous waste the facility received during the year. This information must be listed by EPA identification number of each generator; and

(D) the method of processing, storage, or disposal for each hazardous waste.

(3) The owner or operator shall submit a [monthly] report on forms provided or approved by the executive director sum-

marizing the types and volumes of any [municipal] hazardous waste or Class I waste received without manifests, or, [as] in the case of shipments by rail or water (bulk shipments), without shipping papers. This report shall be **submitted within 15 days of receiving the waste** [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)-(C) (No change.)

(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)-(G) (No change.)

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

(6) An owner or operator reclaiming hazardous wastes received from conditionally exempt small quantity generators is subject to the requirements of this section requiring completion of a monthly summary from his copy of all manifests received during the month, unless he has requested in writing a modification in the reporting requirements. A modification relieving the owner or operator of having to report each manifested shipment on the monthly summary may be granted at the discretion of the executive director on a case-by-case basis.

§335.22. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-By-Case Basis. The commission may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in **§335.24(b)(4)** [§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)] -(f) 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)-(5) (No change.)

§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)(4)**

[§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)] -(f) 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)-(2) (No change.)

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

(a)-(f) (No change.)

(g) Except as provided in subsection (h) of this section, recyclable materials (excluding those listed in subsection (c)(1) and (5)-(9) 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 **Recordkeeping** [Shipping] and **Annual 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 [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 Recordkeeping and Reporting Procedures Applicable to Generators **Shipping** [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; and recyclable materials listed in subsection (b)(5) [(b)(4)] and subsection (c)(2)-(4) of this section 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, Process-

ing, or Disposal Facilities), §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators **Shipping** [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 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)-(9) (No change.)

(i) (No change.)

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

Issued in Austin, Texas, on May 13, 1987

TRD-8703199 J. D. Head
Director
Legal Division
Texas Water Commission

Earliest possible date of adoption

May 18, 1987

For further information, please call
(512) 463-8087

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★31 TAC §335.9, §335.10

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Water Commission, P.O. Box 13087, Capitol Station, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeals are proposed under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules 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 repeals 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.

§335.9 Shipping and Reporting Procedures Applicable to Generators.

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

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

Issued in Austin, Texas, on April 13, 1987

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 Director
 Legal Division
 Texas Water
 Commission

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For further information, please call
(512) 463-8087

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**★ 31 TAC §§335.9, 335.10,
335.28, 335.29**

These new 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 regulations necessary to carry out its powers and duties under the Code and other laws of this state and to establish and approve all general policy of the commission. These new 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 regulations 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 requirements 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.

§335.9. Recordkeeping and Annual Reporting Procedures Applicable to Generators.

(a) Except with regard to nonhazardous recyclable materials regulated pursuant to §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), each generator of hazardous waste or industrial solid waste shall comply with the following.

(1) The generator shall keep records of all hazardous waste and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of on-site or shipped off-site for storage, processing, or disposal and which, at a minimum, includes the information described in subparagraphs (A)-(G) of this paragraph. These records may be maintained in any format provided they are retrievable and easy to copy. The required records must be sufficiently detailed and complete to support any contentions or claims made by the generator with respect to:

(A) the description, character, and classification of each waste;

(B) the quantity generated;

(C) except for conditionally exempt small quantity generators regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators), the quantity held in on-site storage as of December 31 of each calendar year;

(D) the quantity processed or disposed of at each on-site facility unit during the calendar year;

(E) the method of storage, processing, or disposal (as described by codes in Appendix 1, Table 2, titled Handling Codes for Storage, Processing, and Disposal Methods, of 40 Code of Federal Regulations Parts 264 and 265);

(F) the quantity shipped off-site for storage, processing, or disposal each calendar year, including the name, address, and location of each off-site facility and transporter receiving shipments;

(G) the location of all hazardous waste accumulation areas, situated at or near any point of generation, where hazardous wastes under the control of the operator of the process generating the wastes are placed in containers and initially accumulated without a permit or interim status in accordance with §335.69(d) of this title (relating to Accumulation Time).

(2) The generator shall submit to the Texas Water Commission on or before January 25 of each year an annual generation, storage, processing, and disposal sum-

mary for all hazardous and Class I wastes. The summary shall be submitted on forms furnished or approved by the executive director and shall contain at a minimum the information specified in paragraph (1) of this subsection. Upon written request by the generator, the executive director may authorize a modification in the reporting period.

(3) Generators are not required to submit the information required in paragraph (1) of this subsection if they certify on the annual summary that all of the following conditions have been met:

(A) during the year, total on-site accumulation of hazardous and Class I waste did not equal or exceed 1,000 kilograms;

(B) during the year, no hazardous or Class I waste was processed or disposed of on-site;

(C) no acute hazardous waste was generated during the year or remained in storage at the end of the year;

(D) a total of less than 1,200 kilograms of hazardous waste, a total of less than 1,200 kilograms of Class I nonhazardous waste, and a combined total of less than 1,200 kilograms of hazardous waste and Class I nonhazardous waste was generated during the year.

(4) Generators who are regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators) and also meet the requirements of paragraph (3) of this subsection are not required to submit an annual summary.

(b) A generator who ships his hazardous waste off-site must also include the information specified in §335.71 of this title (relating to Annual Reporting). Any generator who stores, processes, or disposes of hazardous waste on-site shall also submit an annual report in accordance with the requirements of §335.114 of this title (relating to Reporting Requirements).

§335.10 Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste

(a) Except as provided in subsection (g) of this section, no generator of hazardous waste or Class I waste shall cause, suffer, allow, or permit the shipment of 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 on Form TWC-0311, and, if necessary, TWC-0311B. Any 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 in the event an emergency prevents delivery of 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 manifest shall contain the generator's United States Environmental Protection Agency (EPA) 12-digit identification number and the unique five-digit number assigned to the manifest by the generator. This requirement does not apply if the waste being shipped is nonhazardous or if the generator is a conditionally exempt small quantity generator of hazardous waste.

(2) The manifest shall contain the total number of pages used to complete the manifest, plus the number of continuation sheets, if any (page 1 of _____).

(3) The manifest shall contain the name, mailing address, and telephone number of the generator.

(4) The manifest shall contain the telephone number where an authorized agent of the generator may be reached in the event of an emergency.

(5) The manifest shall contain the generator's Texas Water Commission (TWC) registration and/or permit number. Conditionally exempt small quantity generators shipping hazardous waste regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) may utilize the letters "CESQG" for their TWC generator registration number unless they have previously been assigned a TWC generator registration number.

(6) The manifest shall contain the first transporter's company name.

(7) The manifest shall contain the first transporter's EPA 12-digit identification number. This requirement does not apply if the waste being shipped is nonhazardous or the transporter is a conditionally exempt small quantity generator transporting only his own hazardous waste.

(8) The manifest shall contain the first transporter's state registration number. Conditionally exempt small quantity generators of hazardous waste are instructed to use the letters "CESQG" as the TWC state transporter's registration number when transporting their own hazardous waste unless they have previously been assigned a TWC registration number.

(9) The manifest shall contain a telephone number where an authorized agent of first transporter may be reached in the event of an emergency.

(10) The manifest shall contain the second transporter's company name.

(11) The manifest shall contain the second transporter's EPA 12-digit identification number. This requirement does not apply if the waste being shipped is nonhazardous.

(12) The manifest shall contain the second transporter's state registration number.

(13) The manifest shall contain a telephone number where an authorized agent of the second transporter may be reached in the event of an emergency.

(14) The manifest shall contain the company name and site address of the facility designated to receive the waste identified on the manifest and an alternate facility, if designated. For the shipment of hazardous wastes, generators 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. Conditionally exempt small quantity generators may ship their hazardous wastes to solid waste facilities regulated by the Texas Department of Health (TDH) provided that the waste is manifested and the operator of the facility has received approval from the TDH and concurrence from the Texas Water Commission.

(15) The manifest shall contain the designated facility's EPA 12-digit identification number; however, this requirement does not apply if the waste being shipped is nonhazardous.

(16) The manifest shall contain the Texas Water Commission's or Texas Department of Health's state storage, processing, or disposal facility registration and/or permit number.

(17) The manifest shall contain the appropriate notation in the hazardous materials (HM) column of the Texas uniform hazardous waste manifest. The 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 waste, as required by United States Department of Transportation (DOT) regulations (49 Code of Federal Regulations §172.201(a)(1)), the Texas Water Commission has added a hazardous materials (HM) column on the manifest before the United States Department of Transportation 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.

(18) The manifest shall contain the United States Department of Transportation proper shipping name, hazard class, and identification number (UN/NA) for each hazardous waste as identified in 49 Code of Federal Regulations Parts 171-177. If the shipment contains nonhazardous waste sole-

ly regulated by the Texas Water Commission, then the Texas Water Commission waste classification code description should be used. If additional space is needed for waste descriptions, enter these additional descriptions in Item 28 on the continuation sheet.

(19) The manifest shall contain the number of containers for each waste and the appropriate abbreviation from Table 1 in §335.30 of this title (relating to Appendix I) for the type of container.

(20) The manifest shall contain the total quantity of each waste described on each line. The quantity description should be the most accurate possible.

(21) The manifest shall contain the 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.

(22) The manifest shall contain the Texas Water Commission waste classification code assigned to the waste by the state. Conditionally exempt small quantity generators who on any single shipment transport or offer for transport a total of less than 1,000 kilograms of hazardous waste may, provided a specific waste classification code has not been previously assigned for the waste being shipped, enter in Item 1 of the manifest as an appropriate Texas Water Commission waste classification code, the number 990000. Conditionally exempt small quantity generators must, if they choose to use the general waste classification code 990000, also enter in Item 15 of the manifest the words "generator qualifies as a CESQG".

(23) The manifest shall contain 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 government regulations, including applicable state regulations. If I am a large quantity generator, I 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 practicable method of processing, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; or, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."

(24) 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 Shipping Hazardous Waste or Class I Waste); and

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

(e) For shipments of 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 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 nonrail 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.

§335.28. *Adoption of Memoranda of Understanding by Reference.* The following memoranda of understanding between the commission and other state agencies, required to be adopted by rule as set forth in the Texas Water Code, §5.104, are adopted

by reference. Copies of these documents are available upon request from the Texas Water Commission, Legal Division, P. O. Box 13087, Austin, Texas 78711-3087, (512) 463-8078. The first of these memoranda of understanding is between the attorney general of Texas and the Texas Water Commission, which concerns public participation in the state hazardous waste enforcement process.

§335.29. *Adoption of Appendices by Reference.* The following appendices contained in 40 Code of Federal Regulations Part 261, which are in effect as of April 1, 1987, are adopted by reference:

(1) Appendix I—Representative Sampling Methods;

(2) Appendix II—EP Toxicity Test Procedures;

(3) Appendix III—Chemical Analysis Test Methods;

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

(5) Appendix VIII—Hazardous Constituents;

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

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

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

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(512) 463-8087.

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Subchapter B. Hazardous Waste Management General Provisions

★ 31 TAC §335.41, §335.43

These amendments are proposed under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules 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 amendments 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.

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

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

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

(1) a person who stores, processes, or disposes of hazardous waste on-site and meets the requirements of §335.78 [§335.61(c)] of this title (relating to **Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators** [Purpose, Scope, and Applicability]); or

(2) the owner or operator of a solid waste facility under the jurisdiction of the Texas Department of Health [a person] who stores, processes, or disposes of hazardous waste received from a conditionally exempt small quantity generator [in quantities less than 1,000 kilograms in a calendar month at a facility under the jurisdiction of the Texas Department of Health (TDH)].

(f)-(g) (No change.)

§335.43. *Permit Required.*

(a) (No change.)

(b) Any person who has commenced on-site storage, processing, or disposal of 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 and operators of hazardous waste management facilities who have commenced the on-site storage, processing, or disposal of hazardous waste as defined in subsection (c) of this section, 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, or the Resource Conservation and Recovery Act of 1976, as amended, 42

United States Code, §6901, et seq., that render the facility subject to the requirement to have a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no later than:

(1) (No change.)

(2) 30 days after the date they first become subject to 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), whichever first occurs; or [.]

(3) for generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who process, store, or dispose of these wastes on-site, a Part A permit application shall be submitted to the Environmental Protection Agency by March 24, 1987, as required by 40 Code of Federal Regulations §270.10(e)(1)(iii).

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

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

Issued in Austin, Texas, on April 13, 1987

TRD-8703198 J.D. Head
Director
Legal Division
Texas Water
Commission

Earliest possible date of adoption:

May 18, 1987

For further information, please call
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Subchapter C. Standards Applicable to Generators of Hazardous Waste

★ 31 TAC §§335.61, 335.69 335.71, 335.74—335.77

These amendments are proposed under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules 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 amendments 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.

§335.61. Purpose, Scope, and Applicability.

(a) Except as provided in subsection [subsections] (b) [and (c)] of this section, this subchapter establishes standards for generators of hazardous waste. These standards are in addition to any applicable provisions contained in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General).

(b) (No change.)

[(c) Generators of small quantities of hazardous waste are subject to the following requirements.

[(1) A generator is a small quantity generator in a calendar month if he generates less than 1,000 kilograms of hazardous waste in that month.

[(2) Except for those wastes identified in paragraphs (5), (6), (7), and (8) of this subsection, a small-quantity generator is not subject to regulation under this subchapter, provided the generator complies with the requirements of paragraphs (6), (7), and (8) of this subsection. Persons exempted under this provision, who generate hazardous waste, are still subject to the requirements in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General) applicable to generators of municipal hazardous waste or Class I waste.

[(3) Hazardous waste that is recycled and that is excluded from regulation under §335.24(b)(4) and (c) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), is not included in the quantity determinations of this subsection and is not subject to any requirements of this section. Hazardous waste that is subject to the requirements of §335.24(d)-(f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) and §§335.211—335.214 of this title (relating to Recyclable Materials Used in a Manner Constituting Disposal), §335.271 of this title (relating to Applicability), §§335.223-335.226 of this title (relating to Standards Applicable to Generators of Hazardous Waste Fuel; Standards Ap-

plicable to Transporters of Hazardous Waste Fuel; Standards Applicable to Marketers of Hazardous Waste Fuel, and Standards Applicable to Burners of Hazardous Waste Fuel), and §335.241 of this title (relating to Applicability and Requirements) is included in the quantity determination of this subsection and is subject to the requirements of this section.

[(4) In determining the quantity of hazardous waste he or she generates, a generator need not include:

[(A) his or her hazardous waste when it is removed from on-site storage; or

[(B) hazardous waste produced by on-site processing of his hazardous waste.

[(5) A small quantity generator who generates acutely hazardous waste in a calendar month in quantities greater than those set forth as follows is subject to the requirements of this subchapter:

[(A) a total of one kilogram of acute hazardous wastes listed in 40 Code of Federal Regulations §§261.31, 261.32, or 261.33(e); or

[(B) a total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in 40 Code of Federal Regulations §§261.31, 261.32, or 261.33(e).

[(6) In order for hazardous wastes generated by a small quantity generator of acutely hazardous wastes in quantities equal to or less than those set forth in paragraph (5)(A) or (B) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements.

[(A) The small quantity generator shall comply with §335.62 of this title (relating to Hazardous Waste Determination).

[(B) The small quantity generator may accumulate acutely hazardous waste on-site. If he or she accumulates at any time acutely hazardous wastes in quantities greater than those set forth in paragraph (5)(A) or (B) of this section, all those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under this chapter and Chapter 305 of this title (relating to Consolidated Permits). The time period of §335.69 of this title (relating to Accumulation Time) for accumulation of wastes on-site begins when the accumulated wastes exceed the applicable exclusion limit.

[(C) A small quantity generator may either process or dispose of his or her hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing, or disposal facility, either of which is:

[(i) permitted by the U. S. Environmental Protection Agency under 40 Code of Federal Regulations Part 270;

[(iii) in interim status under 40 Code of Federal Regulations Parts 270 and 265;

(iii) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 Code of Federal Regulation Part 271;

(iv) permitted, licensed, or registered by a state to manage municipal or industrial solid waste; or

(v) a facility which beneficially uses or reuses, or legitimately recycles or reclaims its waste; or processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(7) In order for a generator generating quantities of hazardous waste less than 100 kilograms during a calendar month to be excluded from regulation under this subsection, the generator must comply with the following requirements.

(A) The small quantity generator shall comply with §335.62 of this title (relating to Hazardous Waste Determination).

(B) The small quantity generator may accumulate hazardous waste on-site. If he or she accumulates at any time more than a total of 1,000 kilograms of this hazardous waste, all of those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under this chapter and Chapter 305 of this title (relating to Consolidated Permits). The time period of §335.69 of this title (relating to Accumulation Time) for accumulation of wastes on-site begins for a small quantity generator when the accumulated wastes exceed 1,000 kilograms.

(C) A small quantity generator may either process or dispose of his or her hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing, or disposal facility, either of which is:

(i) permitted by the Environmental Protection Agency under 40 Code of Federal Regulations Part 270;

(ii) in interim status under 40 Code of Federal Regulations Parts 270 and 265;

(iii) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 Code of Federal Regulations Part 271;

(iv) permitted, licensed or registered by a state to manage municipal or industrial solid waste; or

(v) a facility which beneficially uses or re-uses, or legitimately recycles or reclaims his waste; or processes the waste prior to beneficial use or re-use, or legitimate recycling or reclamation.

(8) In order for hazardous waste generated by a small quantity generator in a quantity greater than 100 kilograms but less than 1,000 kilograms during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements.

(A) The small quantity generator shall comply with §335.62 of this title (relating to Hazardous Waste Determination).

(B) A small quantity generator may accumulate hazardous waste on-site. If he or she accumulates at any time more than a total of 1,000 kilograms of his or her hazardous waste, all those accumulated wastes for which the accumulation limit was exceeded are subject to full regulation under this chapter and Chapter 305 of this title (relating to Consolidated Permits).

(C) Beginning August 5, 1985, for any hazardous waste shipped off-site, the generator must ensure that such waste is accompanied by a copy of the manifest (EPA form 8700-22) signed by him or her and containing the following requirements:

(i) the name and address of the generator of the waste,

(ii) the U. S. Department of Transportation description of the waste, including the proper shipping name, hazard class, and identification number (UN NA);

(iii) the number and type of containers;

(iv) the quantity of waste being transported, and

(v) the name and address of the facility designated to receive the waste.

(D) A small quantity generator may either process or dispose of his or her hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing, or disposal facility, either of which is:

(i) permitted by the U. S. Environmental Protection Agency under 40 Code of Federal Regulations Part 270;

(ii) in interim status under 40 Code of Federal Regulations Parts 270 and 265;

(iii) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 Code of Federal Regulations Part 271;

(iv) permitted, licensed, or registered by a state to manage municipal or industrial solid waste; or

(v) a facility which beneficially uses or reuses, or legitimately recycles or reclaims its waste; or processes its waste prior to beneficial use or re-use, or legitimate recycling or reclamation.

(9) A generator of hazardous waste subject to the reduced requirements of this subsection may mix the hazardous waste with nonhazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this subsection, unless the mixture meets any of the characteristics of hazardous wastes identified in 40 Code of Federal Regulations Part 261, Subpart C.

(10) A small quantity generator who mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this subsection is subject to full regulation under this chapter and Chapter 305 of this title (relating to Consolidated Permits).

(11) If a small quantity generator's hazardous wastes are mixed with used oil, the mixture is subject to the requirements of

§335.4 of this title (relating to General Prohibitions) and §335.6 of this title (relating to Notification Requirements) and are regulated by the United States Environmental Protection Agency pursuant to 40 Code of Federal Regulations Part 266, Subpart E, if the mixture is destined for energy recovery. Any material produced from such mixture by processing, blending, or other treatment is also so regulated if it is destined for energy recovery.]

(c) [(d)] Any person who imports hazardous waste into the state from a foreign country shall comply with standards applicable to generators [of such waste].

(d) [(e)] An owner or operator who initiates a shipment of hazardous waste from a processing, storage, or disposal facility must comply with the generator standards contained in §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 **shipping** [of Municipal; Hazardous Waste or Class I [Industrial Solid] Waste), and this subchapter. The provisions of §335.69 of this title (relating to Accumulation Time) are applicable to on-site accumulation of hazardous wastes by generators. Therefore, the provisions of §335.69 of this title (relating to Accumulation Time) only apply to owners or operators who are shipping hazardous waste which they generate at that facility.

(e) [(f)] A farmer who generates waste pesticides which are hazardous waste and who complies with §335.77 [§335.76] of this title (relating to Farmers) is not required to comply with this chapter with respect to those pesticides.

§335.69. Accumulation Time.

(a) **Except as provided in subsections (f)-(h) of this section**, a generator may accumulate hazardous waste on-site without a permit **or interim status** for 90 days or less, provided that:

(1) the waste is placed in containers and the generator complies with the provisions adopted by reference in §335.112(a)(8) of this title (relating to Standards) or the waste is placed in tanks, and the generator complies with the requirements adopted by reference in §335.112(a)(9) of this title (relating to Standards), except 40 Code of Federal Regulations §265.197(c) and §265.200. [§265.193;] **In addition, such a generator is exempt from all requirements adopted by reference in §335.112(a)(6) and (7) of this title (relating to Standards), except 40 Code Of Federal Regulations §265.111 and §265.114;**

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

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

(d) A generator, **other than a conditionally exempt small quantity generator regulated under §335.78 of this title (relating to Special Requirements for Hazardous**

Waste generated by Conditionally Exempt Small Quantity Generators, may accumulate on-site in containers of acutely hazardous waste listed in 40 Code of Federal Regulations §261.33(e) in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subsection (a) of this section provided he:

(1)(2) (No change.)

(c) (No change.)

(d) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

(1) the quantity of waste accumulated on-site never exceeds 6,000 kilograms;

(2) the generator complies with the requirements of Subpart I of 40 Code of Federal Regulations Part 265, except 40 Code of Federal Regulations §265.176;

(3) the generator complies with the requirements of 40 Code of Federal Regulations §265.201 in Subpart J of 40 Code of Federal Regulations Part 265;

(4) the generator complies with the following requirements.

(A) At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in subsection (f)(3)(D) of this section. This employee is the emergency coordinator.

(B) The generator must post the following information next to telephones that may be used to summon emergency assistance:

(i) the name and telephone number of the emergency coordinator;

(ii) location of fire extinguishers and spill control material, and, if present, fire alarm; and

(iii) the telephone number of the fire department, unless the facility has a direct alarm.

(C) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

(D) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows.

(i) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher.

(ii) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable,

clean up the hazardous waste and any contaminated materials or soil.

(iii) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center (using their 24-hour toll free number (800) 424-8802) and the commission according to the procedures set out in the State of Texas oil and hazardous substances spill contingency plan. The reports must include the following information:

(I) the name, address, and United States Environmental Protection Agency (EPA) identification number of the generator;

(II) date, time, and type of incident (e.g., spill or fire);

(III) quantity and type of hazardous waste involved in the incident;

(IV) extent of injuries, if any; and

(V) estimated quantity and disposition of recovered materials, if any.

(g) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site processing, storage, or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status, provided that he complies with the requirements of subsection (f) of this section.

(h) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6,000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of this chapter and Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and the permit requirements of Chapter 305 of this title (relating to Consolidated Permits), unless he has been granted an extension to the 180-day (or 270-day, if applicable) period. Such extension may be granted by the Texas Water Commission if hazardous wastes must remain on-site for longer than 180 days (or 270 days, if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the executive director on a case-by-case basis.

§335.71 Annual Reporting

(a) Any generator who ships [stores, processes, or disposes of] hazardous waste off-site [on-site] shall prepare and submit a single copy of an annual report to the executive director by January 25 [21] of each year. The annual report must cover facility activities during the previous calendar year and must include the following information:

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

(3) the EPA identification number, TWC registration number, name, and address for each off-site processing, storage, or disposal facility to which waste was shipped during the year; for exported shipments, the report must give the name and address of the foreign facility [a description and the quantity of each hazardous waste generated during the year and a description and the quantity of the hazardous waste stored, processed, or disposed of at each facility component during the year];

(4) the name and EPA identification number and TWC registration number of each transporter used during the reporting year [the method of processing, storage, or disposal for each hazardous waste, as described by codes in Appendix 1, Table 2, Handling Code for Storage, Processing, and Disposal Methods, of 40 Code of Federal Regulations Parts 264 and 265];

(5) the TWC hazardous waste code and a description, EPA hazardous waste number from 40 Code of Federal Regulations Part 261, Subpart C or D, United States Department of Transportation (DOT) hazard class, and quantity of each hazardous waste shipped off-site. This information must be listed by EPA identification number of each off-site facility to which waste was shipped [monitoring data under §335.117 (a)(2)(B) and (C) and (b)(2) of this title (relating to Recordkeeping and Reporting), where required];

(6) The most recent closure cost estimated under the financial requirements adopted by reference in §335.112(a)(7) of this title (relating to Standards) and for disposal facilities, the most recent post-closure cost estimate under the financial requirements adopted by reference in §335.112(a)(7) of this title (relating to Standards);

(6) [(7)] a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(7) [(8)] a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

(8) [(9)] The certification signed by the generator or his or her authorized representative.

(b) Any generator who processes, stores, or disposes of hazardous waste on-site must submit a report in accordance with the provisions of §335.114 of this title (relating to Reporting Requirements) and §335.154 of this title (relating to Reporting Requirements for Owners and Operators).

§335.75/§335.74] *Notification Requirements for Interstate Shipments* (No change.)

§335.76/§335.75] *Additional Requirements Applicable to International Shipments.*

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

(d) When importing hazardous waste into the state from a foreign country, a person must **prepare a manifest in accordance with** [meet] the requirements of §335.10[(b)] of this title (relating to Shipping and Reporting Procedures Applicable to Generators of [Municipal] Hazardous Waste or Class I [Industrial Solid] Waste) for the manifest except that:

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

(e) **Any person exporting hazardous waste shall file an annual report with the executive director as required in §335.71(a) of this title (relating to Annual Report) summarizing the types, quantities, frequency and ultimate destination of all such hazardous waste exported during the previous calendar year.**

§335.77/§335.76]. *Farmers.* (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 April 13, 1987.

TRD-8703197 J.D. Head
Director
Legal Division
Texas Water
Commission

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For further information, please call
(512) 463-8087

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★ 31 TAC §335.74, §335.78

These new sections are proposed under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules 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 new 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.

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

§335.78. *Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators.*

(a) A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month.

(b) Except for those wastes identified in subsections (e)-(g), and (j) of this section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Subchapters C-H of this chapter (relating to 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, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; and Standards for the Management of Specific Wastes and Specific Types of Facilities) and Chapters 261, 263, 265, 267, 269, 271, 273, and 305 of this title (relating to Introductory Provisions; General Rules; Procedures Before Public Hearing; Procedures During Public Hearing; Procedures After Public Hearing Before An Examiner; Procedures After Public Hearing Before the Full Commission; Procedures After Final Decision; and Consolidated Permits and the notification requirements of the Resource Conservation and Recovery Act, §3010, provided the generator complies with the requirements of subsections (f), (g), and (j) of this section.

(c) Hazardous waste that is not subject to regulation or that is subject only to §§335.62, 335.63, 335.70, and 335.71 of this

title (relating to Hazardous Waste Determination; EPA Identification Numbers, Recordkeeping, and Annual Reporting) is not included in the quantity determinations of this section and Subchapters C - H of this chapter (relating to 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, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; and Standards for the Management of Specific Wastes and Specific Types of Facilities) and Chapter 305 of this title (relating to Consolidated Permits) and is not subject to any of the requirements of such subchapters or chapter. Hazardous waste that is subject to the requirements of §335.24(d)-(f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) and §§335.211-335.214, 335.221-335.226, and 335.241 of this title (relating to Recyclable Materials Used in a Manner Constituting Disposal; Hazardous Waste Burned for Energy Recovery; and Applicability and Requirements) is included in the quantity determination of this section and is subject to the requirements of Subchapters C - H of this chapter (relating to 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, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; and Standards for the Management of Specific Wastes and Specific Types of Facilities) and Chapter 305 of this title (relating to Consolidated Permits).

(d) In determining the quantity of hazardous waste generated, a generator need not include:

(1) hazardous waste when it is removed from on-site storage provided that the waste was counted at the time it was generated;

(2) hazardous waste produced by on-site processing (including reclamation) of his hazardous waste, so long as the hazardous waste that is processed was counted once; or

(3) spent materials that are generated, reclaimed, and subsequently re-used on site, so long as such spent materials have been counted once.

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth in paragraphs (1) or (2) of this subsection, all quantities of that acute hazardous waste are subject to full regulation under Subchapters C-H of this chapter (relating to 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, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; and Standards for the Management of Specific Wastes and Specific Types of Facilities) and Chapters 261, 263, 265, 267, 269, 271, 273, and 305 of this title (relating to Introductory Provisions; General Rules; Procedures Before Public Hearing; Procedures During Public Hearing; Procedures After Public Hearing Before An Examiner; Procedures After Public Hearing Before the Full Commission; Procedures After Final Decision; and Consolidated Permits) and the notification requirements of the Resource Conservation and Recovery Act, §3010:

(1) a total of one kilogram of acute hazardous waste listed in 40 Code of Federal Regulations §§261.31, 261.32, or 261.33(e); or

(2) a total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in 40 Code of Federal Regulations §§261.31, 261.32, or 261.33(e).

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in subsection (e)(1) or (2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) The generator must comply with the requirements in §335.62 of this title (relating to Hazardous Waste Determination).

(2) The generator may accumulate acute hazardous waste on-site. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in subsection (e)(1) or (2) of this section, all of those accumulated wastes are subject to regulation under Subchapters C—H of this chapter (relating to 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, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; and Standards for the Management of Specific Wastes and Specific Types of Facilities) and Chapters 261, 263, 265, 267, 269, 271, 273, and 305 of this title (relating to Introductory Provisions; General Rules; Procedures Before Public Hearing; Procedures During Public

Hearing; Procedures After Public Hearing Before An Examiner; Procedures After Public Hearing Before the Full Commission; Procedures After Final Decision; and Consolidated Permits) and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title (relating to Accumulation Time) for accumulation of wastes on-site begins when the accumulated wastes exceed the applicable exclusion limit.

(3) A conditionally exempt small quantity generator may either process or dispose of his acute hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing, or disposal facility, either of which is:

(A) permitted by the United States Environmental Protection Agency under 40 Code of Federal Regulations Part 270;

(B) in interim status under 40 Code of Federal Regulations Parts 270 and 265;

(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 Code of Federal Regulations Part 271;

(D) permitted, licensed, or registered by a state to manage municipal or industrial solid waste; or

(E) a facility which:

(i) beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) The conditionally exempt small quantity generator must comply with §335.62 of the title (relating to Hazardous Waste Determination).

(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1,000 kilograms of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of this subchapter applicable to generators of between 100 kilograms and 1,000 kilograms of hazardous waste in a calendar month as well as the requirements of Subchapters D—H of this chapter (relating to 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, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; and Stan-

dards for the Management of Specific Wastes and Specific Types of Facilities) and Chapters 261, 263, 265, 267, 269, 271, 273, and 305 of this title (relating to Introductory Provisions; General Rules; Procedures Before Public Hearing; Procedures During Public Hearing; Procedures After Public Hearing Before An Examiner; Procedures After Public Hearing Before the Full Commission; Procedures After Final Decision; and Consolidated Permits) and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title (relating to Accumulation Time) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1,000 kilograms.

(3) A conditionally exempt small quantity generator may either process or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing, or disposal facility, either of which is:

(A) permitted by the United States Environmental Protection Agency under 40 Code of Federal Regulations Part 270;

(B) in interim status under 40 Code of Federal Regulations Parts 270 and 265;

(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 Code of Federal Regulations Part 271;

(D) permitted, licensed, or registered by a state to manage municipal or industrial solid waste; or

(E) a facility which:

(i) beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(h) Hazardous waste subject to the reduced requirements of this section may be mixed with nonhazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in 40 Code of Federal Regulations Part 261, Subpart C.

(i) If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation under this chapter.

(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to 40 Code of Federal Regulations Part 266, Subpart E, if it is destined to be burned for energy recovery. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated if it is destined to be burned for energy recovery.

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

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★ ★ ★

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

★ **31 TAC §§335.111, 335.112,
335.114, 335.118, 335.119,
335.121, 335.123, 335.125,
335.126**

These amendments are proposed under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules 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 amendments 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.

§335.111. Purpose, Scope, and Applicability.

(a) The purpose of this subchapter is

to establish minimum requirements that define the acceptable management of hazardous waste prior to the issuance or denial of a hazardous waste permit and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled. This subchapter applies to owners and operators of hazardous waste storage, processing or disposal facilities **who have fully complied with the requirements for interim status under the Resource Conservation and Recovery Act, §3005(e).**

(b) Environmental Protection Agency (EPA) Hazardous Waste Numbers F020, F021, F022, F023, F026, or F027 must not be managed at facilities subject to regulation under this subchapter, unless:

(1) the wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

(2) the waste is stored in tanks or containers;

(3) the waste is stored or processed in waste piles that meet the requirements of 40 Code of Federal Regulations §264.250(c) as well as all other applicable requirements of 40 Code of Federal Regulations Part 265, Subpart L, and §335.120 of this title (relating to Containment for Waste Piles);

(4) the waste is burned in incinerators that are certified pursuant to the standards and procedures in 40 Code of Federal Regulations §265.352; or

(5) the waste is burned in facilities that thermally process the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in 40 Code of Federal Regulations §265.383.

§335.112. Standards.

(a) Except to the extent that they are clearly inconsistent with the express provisions of the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, or the rules of the commission (including the provisions set forth in this subchapter), the following regulations contained in 40 Code of Federal Regulations Part 265 (including all appendices to Part 265) which are in effect as of **January 12, 1987**, [October 1, 1985, and as amended at 50 FedReg 49165 (November 29, 1985),] are adopted by reference:

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

(6) Subpart G—Closure and Post-Closure, except 40 Code of Federal Regulations §265.112 [(c) and (d)(3) and (4) and §265.118(e) [§265.118(c)] and (f)](d);

(7) Subpart H—Financial Requirements, **except 40 Code of Federal Regulations §265.142(a)(2);**

(8) (No change.)

(9) Subpart J—**Tank Systems** [Tanks];

(10)-(16) (No change.)

(b) (No change.)

§335.114. Reporting Requirements.

(a) **The owner or operator must**

prepare and submit to the executive director by January 25 of each year a single copy of an annual report which covers facility activities during the previous year and contains the following information [An owner or operator required to file a monthly summary under §335.15(b) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) shall include the following information in that report]:

(1) the EPA identification number, name, and address of the facility;

(2) the **calendar year covered by the report** [EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the month; for imported shipments, the report must give the name and address of the foreign generator];

(3) the **TWC hazardous waste code** and a description and the quantity of each hazardous waste the facility received during the year [month, listed according to the EPA identification number of each generator];

(4) the **method of processing, storage, or disposal for each hazardous waste;**

(5) **monitoring data under §335.117 (a)(2)(B) and (C), and (b)(2) of this title (relating to Recordkeeping and Reporting) where required;**

(6) the **most recent closure cost estimate under 40 Code of Federal Regulations §265.142, and §335.127 of this title (relating to Cost Estimate for Closure), and, for disposal facilities, the most recent post-closure cost estimate under 40 Code of Federal Regulations §265.144; and**

(7) [(4)] the certification signed by the owner or operator of the facility or his authorized representative.

(b) An [The] owner or operator receiving waste from off-site sources shall also file a monthly summary in accordance with §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities). The annual report required by this section for such owners and operators need not contain the information required by subsection (a)(3) and (4) of this section if such information has already been submitted pursuant to §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities). [must prepare and submit a single copy of an annual report to the executive director by January 21 of each year. The report shall include the following information:]

[(1) the EPA identification number, name, and address of the facility;

[(2) the calendar year covered by the report;

[(3) monitoring data under §335.117(a)(2)(B) and (C) and (b)(2) of this title (relating to Recordkeeping and Report-

ing), where required,

(4) the most recent closure cost estimate under 40 Code of Federal Regulations §265.142 and for disposal facilities, the most recent post-closure cost estimate under 40 Code of Federal Regulations §265.144; and

(5) the certification signed by the owner or operator of the facility or his authorized representative]

§335.118. *Closure Plan, Submission and Approval of Plan*

(a) Except as provided in this section, the owner or operator must submit his closure plan to the executive director in accordance with 40 Code of Federal Regulations §265.112 [at least 180 days before the date he expects to begin closure]. The owner or operator must submit his closure plan to the executive director no later than 15 days after:

(1) termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

(2) issuance of a judicial decree or compliance order under the Resource Conservation and Recovery Act of 1976, §3008, as amended, or the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, to cease receiving wastes or close.

(b) The date when closure commenced should be within 30 days after the date on which the owner or operator expects to receive the final volume of wastes.]

(b)(c) The executive director will provide the owner or operator and the public, through newspaper notice, the opportunity to submit written comments on the plan and request modifications of the plan within 30 days of the date of the notice. The owner or operator is responsible for the cost of publication. The executive director may, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The executive director will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The executive director will approve, modify, or disapprove the plan within 90 days of receipt. If the executive director does not approve the plan, **he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan within 30 days after receiving such written statement.** The executive director will approve or modify this plan in writing within 60 days. If the executive director modifies the plan, this modified plan becomes the approved closure plan. The executive director's decision must assure that the approved closure plan is consistent with 40 Code of Federal Regulations §§265.111 -[, and

265.113-] 265.115 and the applicable closure requirements contained in this chapter for specific waste management methods. A copy of this modified plan **with a detailed statement of reasons for the modifications** must be mailed to the owner or operator. If the owner or operator plans to begin closure before November 19, 1981, he must submit the closure plan by May 19, 1981.

§335.119. *Post-Closure Plan; Submission and Approval of Plan.*

(a) The owner or operator of a [disposal] facility **with hazardous waste management units subject to the post-closure care requirements in 40 Code of Federal Regulations Part 265, Subpart G,** must submit his post-closure plan to the executive director at least 180 days before the date he expects to begin **partial or final closure of the first hazardous waste disposal unit.** The date when he expects to begin closure **must [should] be either within 30 days [immediately] after the date on which the hazardous waste management unit receives the known [he expects to receive the] final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous waste no later than one year after the date on which the unit received the most recent volume of hazardous wastes.** The owner or operator must submit his **post-closure [closure] plan** to the executive director no later than 14 days after:

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

(b) The date when closure commences should be within 30 days after the date on which the owner or operator expects to receive the final volume of wastes.]

(b)(c) The executive director will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the **post-closure** plan and request modifications of the plan, including modification of the 30-year post-closure period required in 40 Code of Federal Regulations §265.117 within 30 days of the date of the notice. The owner or operator is responsible for the cost of publication. The executive director may, in response to a request or at his own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The executive director will give the public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments and the two notices may be combined.) The executive director will approve, modify, or disapprove the plan within 90 days of its receipt. If the executive director does not approve the plan, **he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement.** The executive director will

approve or modify this plan in writing within 60 days. If the executive director modifies the plan, this modified plan becomes the approved post-closure plan. The executive director must **ensure that the approved post-closure plan is consistent with 40 Code of Federal Regulations §§265.117-265.120** [base his decision upon the criteria required of petitions under 40 Code of Federal Regulations §265.118(f)(1)(i)]. A copy of this modified plan **with a detailed statement of reasons for the modifications** must be mailed to the owner or operator. If an owner or operator plans to begin closure before November 19, 1981, he must submit the post-closure plan by May 19, 1981

§335.121. *General Operating Requirements (Land Treatment Facilities).*

(a) Hazardous waste must not be placed in or on a land treatment facility unless the waste can be made less hazardous or non-hazardous by [biological] degradation, [or chemical reactions] **transformation, or immobilization processes** occurring in or on the soil.

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

§335.123. *Closure and Post-Closure (Land Treatment Facilities).*

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

(f) In addition to the requirements of 40 Code of Federal Regulations §265.117 (relating to post-closure care and use of property), during the post-closure care period, the owner or operator of a land treatment unit must:

(1) continue **soil-core [soil-pore] monitoring** by collecting and analyzing samples in a manner and frequency specified in the post-closure plan;

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

§335.125. *Special Requirements for Bulk and Containerized Waste.*

(a) Bulk or **noncontainerized [containerized] liquid waste or waste containing free liquids** may be placed in a landfill prior to May 8, 1985, only if prior to disposal, the liquid waste or waste containing free liquids is processed or stabilized, chemically or physically (e.g., by mixing with an absorbent solid), so that free liquids are no longer present.

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

(d) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (paint filter liquids test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods." (EPA Publication SW-846 **Second Edition, 1982, as amended by Update I (April 1984) and Update II (April 1985)**)

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

§335.126. *Special Requirements for Containers.*

(a) **Containers** [An empty container] must be crushed flat, shredded, or similarly reduced in volume **to the maximum extent practicable** before burial in [it is buried

beneath the surface of land
(b) (No change)

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

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★ 31 TAC §335.127

This new section is proposed under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules 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. This new section is also proposed under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorize 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

§335.127. *Cost Estimate for Closure.* In addition to the requirements of 40 Code of Federal Regulations §265.142 (excluding 40 Code of Federal Regulations §265.142(a)(2)), the closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator (see the definition of parent corporation in 40 Code of Federal Regulations §265.141(d)). Not

withstanding other closure costs, such estimate must also include the costs associated with third party removal, shipment off-site, and processing or disposal off-site of the following wastes to an authorized storage, processing, or disposal facility.

- (1) maximum inventory of wastes in storage and/or processing units, including, but not limited to, storage surface impoundments, waste piles, tanks, and containers;
- (2) wastes generated as a result of closure activities (e.g. decontamination, removal of liquids from surface impoundments, or waste piles);
- (3) contaminated stormwater; or
- (4) leachate

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★ ★ ★

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

★ 31 TAC §§335.152, 335.154 335.156, 335.175

These amendments are proposed under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules 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 amendments 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

§335.152. *Standards*

(a) Except to the extent that they are clearly inconsistent with the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, or the rules of the commission (including the provisions set forth in this subchapter), the following regulations contained in 40 Code of Federal Regulations Part 264 (including all appendices to Part 264), which are in effect as of **January 12, 1987**, [October 1, 1985, and as amended at 50 FedReg 49165 (November 29, 1985),] are adopted by reference:

- (1)-(5) (No change.)
- (6) Subpart H—Financial Requirements, **except 40 Code of Federal Regulations §264.142(a)(2)**;
- (7) (No change.)
- (8) Subpart J—Tank Systems [Tanks];
- (9)-(13) (No change.)
- (b)-(c) (No change.)

§335.154. *Reporting Requirements for Owners and Operators.*

(a) **The [An] owner or operator must prepare and submit to the executive director by January 25 of each year an annual report which covers facility activities during the previous calendar year and which contains the following information** [required to file a monthly summary under §335.15(b) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) shall include the following information in that report]:

- (1) the EPA identification number, name, and address of the facility;
- (2) the **calendar year covered by the report** [EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the month; for imported shipments, the report must give the name and address of the foreign generator];
- (3) the **TWC hazardous waste code** and a description and the quantity of each hazardous waste the facility received during the year [month, listed according to the EPA identification number of each generator];
- (4) the method of storage, processing, or [and] disposal for each hazardous waste; [and]
- (5) the **most recent closure cost estimate under 40 Code of Federal Regulations §264.142 and §335.178 of this title (relating to Cost Estimate For Closure) and, for disposal facilities, the most recent post-**

closure cost estimate under 40 Code of Federal Regulations §264.144; and

(6)(5) The certification signed by the owner or operator of the facility or his authorized representative

(b) An [The] owner or operator receiving hazardous waste from off-site shall file a monthly summary in accordance with §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities). The annual report required by this section by such owners or operators need not include the information required by subsection (a)(3) and (4) of this section if such information has already been submitted pursuant to §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) [of a facility where hazardous waste is processed, stored, or disposed of on-site must prepare and submit a single copy of an annual report to the executive director by January 21 of each year. The report shall include the calendar year covered by the report and the information stated in subsection (a) of this section, except that required by subsection (a)(2) of this section].

§335.156. *Applicability of Groundwater Monitoring and Response.*

(a) Except as provided in subsection (b) of this section, the rules pertaining to groundwater monitoring and response apply to owners and operators of facilities that process, store, or dispose of hazardous waste.

(1) (No change.)

(2) All solid waste management units must comply with the requirements in §335.167 of this title (relating to Corrective Action for Solid Waste Management Units). A surface impoundment, waste pile, [and] land treatment unit, or [as] landfill that receives hazardous waste after July 26, 1982, (hereinafter referred to as a regulated unit) must comply with the requirements of §§335.157-335.166 of this title (relating to Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; and Compliance Monitoring Program; and Corrective Action Program); in lieu of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) for purposes of detecting, characterizing, and responding to release to the uppermost aquifer. The financial responsibility requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) apply to regulated units.

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

§335.175. *Special Requirements for Bulk and Containerized Waste.*

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

(c) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in Test Methods for Evaluating Solid Wastes, Physical Chemical Methods. (EPA Publication SW-846 Second Edition, 1982, as amended by Update I (April 1984) and Update II (April 1985)).

(d) (No change.)

(e) Containers holding liquid waste or waste containing free liquids must not be placed in a landfill unless:

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

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

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★ ★ ★

★ 31 TAC §335.178

This new section is proposed under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules 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. This new section is 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

§335.178. *Cost Estimate for Closure.* In addition to the requirements of 40 Code of Federal Regulations §264.142 (excluding 40 Code of Federal Regulations §264.142(a)(2)), the closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither the parent nor a subsidiary of the owner or operator (see definition of parent corporation in 40 Code of Federal Regulations §264.141(d)). Notwithstanding other closure costs, such estimate must also include the costs associated with third party removal, shipment off-site, and processing or disposal off-site of the following wastes to an authorized storage, processing, or disposal facility:

(1) maximum inventory of wastes in storage and/or processing units, including, but not limited to, storage surface impoundments, waste piles, tanks, and containers;

(2) wastes generated as a result of closure activities (e.g. decontamination, removal of liquids from surface impoundments, or waste piles);

(3) contaminated stormwater; and
(4) leachate

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★ ★ ★

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

★ 31 TAC §335.221

This amendment is proposed under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules 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. This amendment is 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.

§335.221. *Applicability.*

(a) (No change.)

(b) The following hazardous wastes are not regulated under §§335.221-335.226 of this title (relating to Hazardous Waste Burned for Energy Recovery):

(1) used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in 40 Code of Federal Regulations Part 261, Subpart C. Such used oil is subject to regulation by the United States Environmental Protection Agency under 40 Code of Federal Regulations Part 266, Subpart E. This exception does not apply if the used oil has been mixed with hazardous waste, or if the used oil is considered to be a hazardous waste by EPA under 40 Code of Federal Regulations §266.40(c). Used oil exhibiting a characteristic of hazardous waste, as well as hazardous waste fuels, **remains** [remain] subject to the requirements of §335.24(g) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Material); and

(2) hazardous wastes that are exempt from regulation under the provisions of 40 Code of Federal Regulations §261.4, and §335.24(c)(5)-(9) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Material), and hazardous wastes that are subject to the special requirements for **conditionally exempt** small quantity generators under the provisions of §335.78 [§335.61(c)] of this title (relating to **Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators** [Purpose, Scope, and Applicability]).

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

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For further information, please call
(512) 463-8087

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★ 31 TAC §335.251

The amendment is proposed under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules 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. The amendment to this section is 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.

§335.251. *Applicability and Requirements.*

(a) The regulations of this section apply to persons who reclaim spent lead-acid batteries that are recyclable materials (spent batteries). Persons who generate, transport, or collect spent batteries, or who store spent batteries but do not reclaim them, are not subject to regulation under this chapter, Chapter 305 of this title (relating to Consolidated Permits), 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 Commis-

sion), or Chapter 273 of this title (relating to Procedures After Final Decision). **Such persons, however, remain subject to the requirements of the Texas Water Code, Chapter 26.**

(b) (No change.)

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

Issued in Austin, Texas, on April 13, 1987.

TRD 8703249 J. D. Head
Director
Legal Division
Texas Water Commission

Earliest possible date of adoption
May 18, 1987
For further information, please call
(512) 463-8087

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TITLE 34. PUBLIC FINANCE
Part I. Comptroller of Public Accounts
Chapter 3. Tax Administration
Subchapter C. Crude Oil Production Tax

★ 34 TAC §3.32

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Comptroller of Public Accounts, 111 East 17th Street, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §3.32, concerning voluntary amendments; penalty. This section is being repealed so that a substantially revised section dealing with the same subject matter may be adopted.

John Moore, director of the comptroller's economic analysis center, has determined that for the first five-year period the repeal will be in effect there will be no fiscal implications for state or local government. This repeal is promulgated under the Tax Code, Title 2, and no statement of the fiscal implications for small businesses is required.

Mr. Moore also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal is that this change will provide the public with new information regarding their tax responsibilities. There is no anticipated economic cost to individuals who are required to comply with the repeal.

Comments on the proposal may be submitted to G. C. Edgar, Tax Administration,

PO Box 13528, Austin, Texas 78711

This proposal is proposed 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 provisions of the Tax Code, Title 2.

§3.32 Voluntary Amendments; Penalty.

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

Issued in Austin, Texas, on April 13, 1987

TRD-8703226 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption
May 22, 1987

For further information, please call
(512) 463-4004

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The Comptroller of Public Accounts proposes new §3.32, concerning prepayment procedure to replace §3.32 that is being repealed. The new section provides for a prepayment procedure that will enable the taxpayer to avoid penalty and interest assessments for late filing. The proposal will not limit the taxpayer to the current maximum allowance of \$15.

John Moore, director of the comptroller's economic analysis center, 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. Moore 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 is that this change provides the public with new information regarding their tax responsibilities. 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 G. C. Edgar, Tax Administration, PO Box 13528, Austin, Texas 78711

The new section is proposed 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 provisions of the Tax Code, Title 2.

§3.32. Prepayment Procedure.

(a) Any crude oil taxpayer may voluntarily prepay the amount of tax that may become due as the result of filing amended reports after the due date.

(b) If the prepayment is sufficient to cover the additional tax and the postmark for the prepayment is on or before the due date for the period being amended, no penalty and interest will be assessed.

(c) If the prepayment is insufficient to cover the additional tax, or if the prepayment postmark date is not timely, the prepayment will be applied in such a manner that the maximum amount of penalty and interest will be eliminated based upon the account balances at that time.

(d) A prepayment will be applied only when a payment is received along with the amended report and only if the application would eliminate or reduce penalty and interest. A prepayment will not be automatically applied against penalty and interest. Any prepayment used will be replaced with

the payment received with the amended reports. The replacement will then be available for use as a prepayment under the actual postmark date that it was sent to the comptroller.

(e) Any taxpayer electing to use the prepayment procedure may not designate the application of payments. The application will be made by the comptroller and will be made in such a manner that the maximum amount of penalty and interest will be eliminated based upon the balances at the time of receipt of the amended reports and payments.

(f) A prepayment will not automatically be applied against a liability reflected on an original report or against a liability established by audit of the taxpayer's records.

(g) The comptroller may apply a prepayment to any unpaid tax, penalty, and interest existing in the taxpayer's account.

(h) A taxpayer may increase the amount of the prepayment at any time.

(i) A taxpayer may request a refund of the unused prepayment, or any part of it, at any time. The granting of the refund is subject to existing law and rules of the comptroller.

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

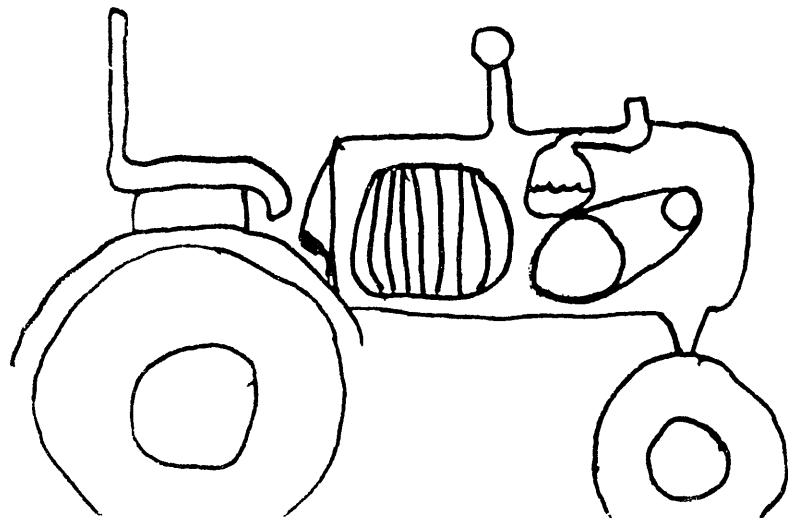
Issued in Austin, Texas, on April 13, 1987

TRD-8703227 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption
May 22, 1987

For further information, please call
(512) 463-4004

★ ★ ★



Name: Eric Lindh
Grade: 5
School: Merriman Park Elementary,
Dallas

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 or 20 days after 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 19. EDUCATION

Part II. Texas Education

Agency

Chapter 77. Comprehensive Instruction

Subchapter B. General Education Program

★ 19 TAC §§77.26

The Texas Education Agency has withdrawn the emergency effectiveness of new section to §77.26, concerning the general education program. The text of the emergency new section appeared in the February 27, 1987, issue of the *Texas Register* (12 TexReg 624).

Issued in Austin, Texas, on April 14, 1987

TRD-8703265

Beverly J. Bardsley
Director for Policy
Development
Texas Education Agency

Filed April 14, 1987

For further information, please call
(512) 463-9212

★ ★ ★

Chapter 149. Education Personnel Development

Subchapter C. Appraisal of Certified Personnel

★ 19 TAC §149.43

The Texas Education Agency has

withdrawn the emergency effectiveness of an amendment to §149.43, concerning the appraisal of certified personnel. The text of the emergency amendment appeared in the February 27, 1987, issue of the *Texas Register* (12 TexReg 625).

Issued in Austin, Texas, on April 14, 1987

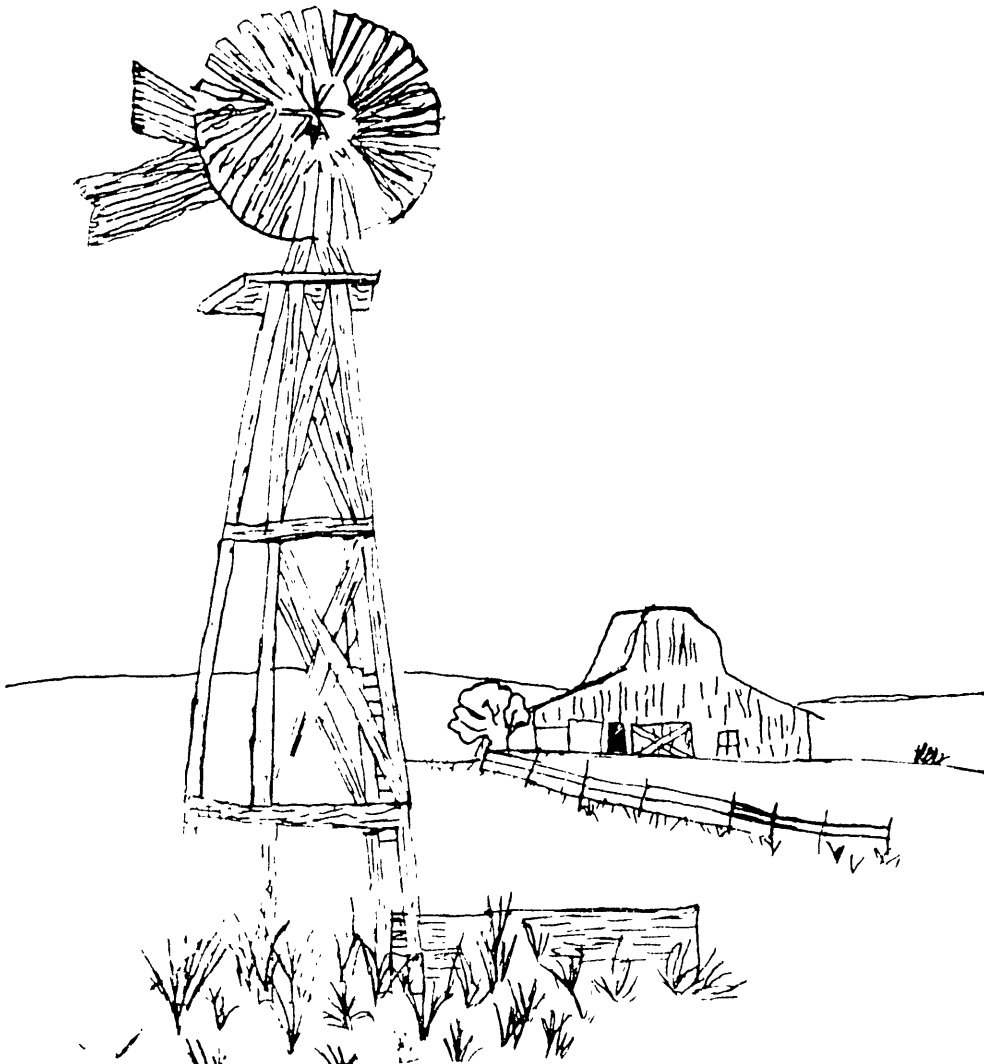
TRD-8703266

Beverly J. Bardsley
Director for Policy
Development
Texas Education Agency

Filed April 14, 1987

For further information, please call
(512) 463-9212

★ ★ ★



Name: Jeremy Sharp
Grade: 5
School: Bruce Shulkey Elementary
School, Fort Worth

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 19. EDUCATION Part II. Texas Education

Agency

Chapter 73. Goals

Subchapter A. Goals for Public School Education

★ 19 TAC §§73.1-73.3

The Texas Education Agency adopts the repeal of §§73.1-73.3, without changes to the proposed text published in the February 24, 1987, issue of the *Texas Register* (12 TexReg 589). The new appointed board adopted in January 1987, a long-range plan for public education in Texas, including goals, objectives, and action plans. Therefore the goals in Chapter 73 are being adopted for repeal.

The Texas Education Agency and local school districts will implement the Long-Range Plan for Public Education in Texas as adopted by the State Board of Education in January 1987.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Education Code, §11.26(b), which directs the State Board of Education to establish goals for the public school system and adopt and promote four-year plans for meeting these needs and goals.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 14, 1987.

TRD-8703257 W. N. Kirby
Commissioner of
Education

Effective date: May 5, 1987
Proposal publication date: February 24, 1987
For further information, please call
(512) 463-9212

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Subchapter B. Adoption of Goals for Public School Education

★ 19 TAC §73.21

The Texas Education Agency adopts the repeal of §73.21, without changes to the proposed text published in the February 24, 1987, issue of the *Texas Register* (12 TexReg 589). The new appointed board adopted in January 1987, a long-range plan for public education in Texas, including goals, objectives, and action plans. Therefore the goals in Chapter 73 are being adopted for repeal.

The Texas Education Agency and local school districts will implement the Long-Range Plan for Public Education in Texas as adopted by the State Board of Education in January 1987.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Education Code, §11.26(b), which directs the State Board of Education to establish goals for the public school system and adopt and promote four-year plans for meeting these needs and goals.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 14, 1987

TRD-8703258 W. N. Kirby
Commissioner of
Education

Effective date: May 5, 1987
Proposal publication date: February 24, 1987
For further information, please call
(512) 463-9212

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Subchapter C. Priorities

★ 19 TAC §73.41

The Texas Education Agency adopts the repeal of §73.41, without changes to the proposed text published in the February 24, 1987, issue of the *Texas Register* (12 TexReg 589). The new appointed board

adopted in January 1987, a long-range plan for public education in Texas, including goals, objectives, and action plans. Therefore the goals in Chapter 73 are being adopted for repeal.

The Texas Education Agency and local school districts will implement the Long-Range Plan for Public Education in Texas as adopted by the State Board of Education in January 1987.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Education Code, §11.26(b), which directs the State Board of Education to establish goals for the public school system and adopt and promote four-year plans for meeting these needs and goals.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 14, 1987.

TRD-8703259 W. N. Kirby
Commissioner of
Education

Effective date: May 5, 1987
Proposal publication date: February 24, 1987
For further information, please call
(512) 463-9212

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Subchapter D. Public Information

★ 19 TAC §73.61

The Texas Education Agency adopts the repeal of §73.61, without changes to the proposed text published in the February 24, 1987, issue of the *Texas Register* (12 TexReg 589). The new appointed board adopted in January 1987, a long-range plan for public education in Texas, including goals, objectives, and action plans. Therefore the goals in Chapter 73 are being adopted for repeal.

The Texas Education Agency and local school districts will implement the Long-

Range Plan for Public Education in Texas as adopted by the State Board of Education in January 1987.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Education Code, §11.26(b), which directs the State Board of Education to establish goals for the public school system and adopt and promote four-year plans for meeting these needs and goals.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 14, 1987.

TRD-8703260 W. N. Kirby
Commissioner of
Education

Effective date: May 5, 1987
Proposal publication date: February 24, 1987
For further information, please call
(512) 463-9212.

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Chapter 77. Comprehensive Instruction Subchapter B. General Education Program

★19 TAC §77.26

The Texas Education Agency adopts new §77.26, without changes to the proposed text published in the February 27, 1987, issue of the *Texas Register* (12 TexReg 642).

The new section allows school districts to apply to the commissioner of education for approval to establish a program in which students could earn college credit while meeting high school graduation requirements. Section 75.167, permits students to earn high school credit for college courses and this new section makes no change in that section. The new section permits programs which are more innovative than those currently operating, which may be for at risk students as well as for the gifted and talented, and which may require more regulatory flexibility than do current programs.

School districts may apply to establish pilot and demonstration projects under the new section. When necessary for implementation of an approved program, the commissioner is authorized to waive rules of the State Board of Education.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Education Code, §21.101(e), which directs the State Board of Education to provide for curriculum options to allow districts to address local needs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 14, 1987.

TRD-8703261 W. N. Kirby
Commissioner of
Education

Effective date: May 5, 1987
Proposal publication date: February 27, 1987
For further information, please call
(512) 463-9212.

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Chapter 81. Instructional Resources Subchapter D. State Textbook Program State Adoption, Acquisition, and Custody of Textbooks

★19 TAC §81.137

The Texas Education Agency adopts new §81.137, without changes to the proposed text published in the February 27, 1987, issue of the *Texas Register* (12 TexReg 643).

School districts have experienced some difficulty in getting prompt responses to their orders for textbooks, especially when books are in the last one or two years of the contract period.

The new section requires each publisher to keep all adopted textbooks in stock and available for distribution to local school districts for the entire term of the textbook contract. Violations of the new section may be just cause for the State Board of Education to refuse to allow a publisher to participate in the current adoption period.

Comments on the new section were received from a representative of the Association of American Publishers, who expressed concern that the new section was ambiguous, that it introduces a penalty for failure to live up to a contract different from the statutory penalty of damages of \$100 per day as provided in the Texas Education Code, §12.32, and that due process issues are not addressed.

The agency does not believe the new section is ambiguous. The penalty in the new section is indeed different from the penalty provided in statute. The intent of the new section is to ensure that state-adopted textbooks are available for the use of students. Having a dollar amount as a penalty would not necessarily ensure this.

A show-cause hearing would be held for the publisher before any recommendation concerning sanctions for violation of the new section was brought to the board. The more elaborate due process provisions in Chapter 157, Hearings and Appeals, would also be available.

The new section is adopted under authority of the Texas Education Code, §12.24, which authorizes the State Board of Education to make rules for the adoption and use of textbooks in Texas public schools.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 14, 1987.

TRD-8703262 W. N. Kirby
Commissioner of
Education

Effective date: May 5, 1987
Proposal publication date: February 27, 1987
For further information, please call
(512) 463-9212.

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Chapter 141. Teacher Certification Subchapter U. Alternative Teacher Certification

★19 TAC §141.481

The Texas Education Agency adopts amendments to §141.481, with changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 722).

In §141.481(a)(6) the phrase "an intern certificate" has been changed to "a probationary certificate." Provision for collection of a fee has been deleted. Proposed paragraphs (7) and (8) in subsection (a), concerning creditable service and fees, have been deleted from the adopted section. In (b)(1) reference to full accreditation has been added. Subsection (c)(3)(C) and (D) have been edited for clarity. In subsection (c)(4) and (5) the word "contributions" has been made plural.

The amendments are intended to strengthen the Alternative Certification Program. The amendments provide for cooperative alternative certification programs between school districts and institutions of higher education, add a certificate for prekindergarten-12 English as a second language, strengthen the grade point average requirement from 2.5 in selected semester hours to an overall GPA of 2.5 as well as in the semester hours applied to the certificate, add provisions for program accountability, and add options for extensions of internships, added certificates, and requests to vary from the approved program.

Plans for alternative certification must be approved by the State Board of Education prior to implementation. Requests for re-approval of programs must include the percentage of interns receiving acceptable scores on state-mandated tests for content specializations as well as satisfactory or better scores on performance appraisals.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §13.035, which directs the State Board of Education to provide by rule for the certification of persons who are not graduates of teacher education programs.

§141.481. Requirements for the Alternative Certification of Teachers.

(a) General provisions. Approval of alternative certification of teachers by the State Board of Education shall be based on the following requirements:

(1) that alternative certification of teachers is to be a local education agency program or a cooperative program between local education agencies and institutions of higher education and delivered through Texas public schools;

(2) that no individual who is a graduate of a teacher education program or holds or has held a teacher certificate may be admitted to an alternative teacher certification program;

(3) that an individual may be recommended to the commissioner of education for teacher certification based upon at least satisfactory completion of specified requirements of the approved program by the program administrator and/or the district superintendent as provided in the approved program;

(4) that the certificates which may be earned through an alternative certification program are grades prekindergarten-six, grades six-12, prekindergarten-six bilingual/English as a second language (ESL), and prekindergarten-12 English as a second language;

(5) that the implementation of this procedure for the training and certifying of teachers be precipitated by staffing needs for which a participating district has actual or projected teaching positions to be filled; and

(6) an individual admitted into an alternative teacher certification program that has been approved in accordance with the requirements of this section shall be issued a probationary certificate that is valid for one calendar year and may be extended for one additional year only in accordance with provisions set forth in the Texas Education Code, §13.306.

(b) Requirements for an approved plan. Effective with the 1985-1986 school year, local education agencies or cooperatives as described in subsection (a)(1) of this section which choose to staff positions via the alternative certification process shall be

required to submit a plan to be approved by the State Board of Education prior to implementation. The plan must include, but not be limited to, evidence of the following:

(1) full accreditation status of the participating school districts, colleges, or universities;

(2) commitment to program through adequate funding, a sufficient number of qualified personnel, and other resources to deliver the approved program;

(3) clearly designated program administration;

(4) a calendar of program activities for the duration of each school year for which the program is approved;

(5) the alternative certification plan must include, but need not be limited to, training during the year of classroom assignment as an intern in teaching methods and classroom management including:

(A) knowledge and skills concerning the unique needs of all students, including emphasis upon special learners, such as the impact of cultural, ethnic, language, and social differences upon the instructional processes as well as the characteristics, assessment, least restrictive alternatives, and admission, review, and dismissal processes for special students requiring individualized or specialized education programs, and growth and development of learners;

(B) legal and ethical aspects of teaching, including special responsibilities in recognizing and responding to signs of abuse and neglect in students and to dyslexia and related disorders;

(C) instructional methods and strategies that emphasize practical applications of the teaching learning process; and

(D) curriculum organization, planning, and evaluation which focus upon the curriculum to be taught, especially the essential elements to be included;

(6) an internship of at least one calendar year under the supervision of a teacher or teachers in the subject area or areas and/or at the level for which the intern is to be certified; provisions shall be made for each intern to have scheduled released time during the internship to observe the teaching of the supervising teacher or teachers;

(7) the supervising teacher shall be identified on the career ladder as level two or higher and shall have scheduled released time periodically to observe and evaluate the actual teaching of the intern;

(8) pre-assignment training and student contact experiences supervised by the district prior to assignment as a teacher of record;

(9) pre-assignment screening, including initiation of a criminal record review, for interns;

(10) monitoring, review, and evaluation of the program;

(11) maintenance of follow-up data which attest to the effectiveness of interns; and

(12) post-internship appraisal and

preparation with remediation as needed.

(c) Admission, assignment, and certification. Each applicant shall meet the following minimum requirements for admission as an intern to the alternative teacher certification program:

(1) a bachelor's degree from a regionally-accredited institution of higher education with a grade point average of no less than 2.5 on a four-point system on all semester hours attempted and on semester hours required for the certificate as specified in paragraph (3)(A)-(D) of this subsection;

(2) possession of basic skills in mathematics, reading, and writing as evidenced by acceptable scores on the state-mandated basic skills test or its equivalent as determined by the commissioner of education;

(3) appropriate semester hours in a subject or combination of subjects to be taught and related to the certificate to be earned:

(A) grades six-12: 24 semester hours in a subject included in Chapter 75 of this title (relating to Curriculum) for the secondary level of assignment; 12 semester hours must be upper division;

(B) grades prekindergarten-six: 24 semester hours in a combination of subjects taught in the elementary school which must include English, mathematics, a natural science, and a subject in the social studies;

(C) grades prekindergarten-six bilingual/English as a second language (ESL): evidence of oral and written proficiency in the language of the target population for bilingual education assignments and 24 semester hours in a combination of subjects which must include English, mathematics, a natural science, and a subject in the social studies;

(D) grades prekindergarten-12 English as a second language (ESL): 18 semester hours, six of which must be upper division, in English; and

(E) courses which focus on topics closely related to the semester hour requirements listed in subparagraphs (A)-(D) of this paragraph may be accepted for admission to the alternative certification program; however, such substitutions shall not exceed six hours for the six-12 certificate or three semester hours for all other certificates.

(4) Prior to assignment as a teacher of record, each intern must complete requirements for the certificate to be earned:

(A) grades prekindergarten-six: three semester hours of reading, with an additional three hours to be completed no later than the completion of the first semester as an intern; and

(B) grades prekindergarten-six bilingual/ESL and prekindergarten-12 ESL: six semester hours inclusive of the concepts of linguistics, language acquisition, bilingual/ESL methodology, and culture (concepts, patterns, contributions) of the target population.

(5) Prior to certification, each in-

tern must complete requirements for the certificate to be earned:

(A) for grades prekindergarten-six bilingual/ESL and grades prekindergarten-12 ESL, six additional hours, inclusive of the concepts of linguistics, language acquisition, bilingual/ESL methodology, and culture (concepts, patterns, contributions) of the target population;

(B) for grades prekindergarten-six: six additional semester hours emphasizing early childhood and kindergarten curriculum and instructional methods;

(C) possession of acceptable scores on appropriate state-adopted examination(s) of content knowledge in the teaching field(s) related to the certificate sought and the level of assignment; and

(D) full appraisal requirements of the state and the local district in accordance with §149.41 of this title (relating to General Provisions).

(d) Procedures for approval, review, and reapproval of alternative certification programs.

(1) School districts choosing to staff positions by means of the alternative certification process shall direct the program administrator to submit to the commissioner of education, prior to implementing a program, a plan that specifies its means of fulfilling requirements for school district plans in accordance with subsections (b) and (c) of this section.

(2) As of the effective date of this section, the commissioner of education may approve a limited number of plans for alternative teacher certification. Initial approval of alternative teacher certification plans shall not extend more than one year. In subsequent years, after evaluation of the program by the State Board of Education, plans may be approved for a period not to exceed three years and shall be reviewed annually.

(3) The administrator of an approved alternative teacher certification program shall submit to the commissioner of education an annual report that includes the names of candidates in the program and other information that may be required, including monitoring, review, and evaluation of the program.

(4) Programs for alternative teacher certification shall be subject to review by the Central Education Agency.

(5) Requests for reapproval of alternative teacher certification programs must include the percentage of interns receiving acceptable scores by test on the state-mandated tests for content specialization(s) and at least satisfactory scores on performance appraisals. The State Board of Education shall consider these program results when granting reapproval requests.

(e) Options available to alternative certification programs and interns.

(1) During the internship, the intern may choose to pursue an additional alternative certificate at the same level of assignment or to add additional subject areas at the level of assignment to the certificate by taking the appropriate state-mandated test for certification when the requirements stated in paragraph (3)(A)-(D) are met for the certificate or subject area to be added.

(2) In the event that an intern fails to complete all program requirements within the internship year, the superintendent or his or her designee may apply to retain the intern in the alternative certification program for an additional year.

(3) If the sponsor of an alternative certification program chooses not to seek reapproval or the State Board of Education does not grant a reapproval request, interns currently enrolled in the program will be provided an opportunity to complete requirements within a reasonable time.

(4) In the event that local conditions prevent the assignment of an intern as a teacher of record as provided in the approved program, the commissioner of education may recognize an alternative assignment, at the level and in the area appropriate for the certificate sought, which will fulfill internship requirements, so long as all requirements for supervision and appraisal are met.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 14, 1987.

TRD-8703263 W. N. Kirby
Commissioner of
Education

Effective date: May 5, 1987
Proposal publication date: March 3, 1987
For further information, please call
(512) 463-9212.

**Chapter 149. Education
Personnel Development
Subchapter C. Appraisal of
Certified Personnel**

★ 19 TAC §149.43

The Texas Education Agency adopts an amendment to §149.43, without changes to the proposed text published in the February 27, 1987, issue of the *Texas Register* (12 TexReg 643).

Many teachers and school districts had expressed concern about the large number of professional growth plans required under the appraisal process.

The amendment deletes the requirement for professional growth plans to be developed for any domain judged satisfactory at the end of the second appraisal period. Instead, a professional growth plan must be developed for any domain judged less than satisfactory at the end of the first appraisal period. A professional growth plan must be developed or modified for any teacher whose overall summary performance score is less than satisfactory. At the teacher's request, a plan must be developed or modified if the teacher's overall summary performance score is satisfactory.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §13.302, which directs the State Board of Education to adopt an appraisal process and criteria on which to appraise the performance of teachers for career ladder level assignments purposes.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 14, 1987.

TRD-8703264 W. N. Kirby
Commissioner of
Education

Effective date: May 5, 1987
Proposal publication date: February 27, 1987
For further information, please call
(512) 463-9212.

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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 Alcoholic Beverage Commission

Monday, April 27, 1987, 1:30 p.m. The Texas Alcoholic Beverage Commission will meet in the Hearing Room, Third Floor, 1600 West 38th Street, Austin. According to the agenda, the commission will approve minutes of the March 23, 1987, meeting, hear administrator's and staff's report of agency activity, and approve affidavit of destruction of tested alcoholic beverages.

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

Filed: April 14, 1987, 1:02 p.m.
TRD-8703268

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Texas Antiquities Committee

Friday, May 8, 1987, 9:30 a.m. The Texas Antiquities Committee will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the committee will approve minutes 96, TAC meeting, March 13, 1987; resolution of appreciation for Orion Knox; resolution supporting passage in the United States Congress of House of Representatives 74 and Senate 858, the Abandoned Shipwreck Act of 1987; consider nominations to the state archeological landmark status of Armour and Swift Plaza, Ft. Worth; and designation of state archeological landmarks of Millington Archeological Site, 41PS14, Presidio County, and Randall County Courthouse, Canyon.

Contact: William C. Griggs, P.O. Box 12276, Austin, Texas 78711-2276, (512) 463-6098.

Filed: April 15, 1987, 9:07 a.m.
TRD-8703289

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Texas Cosmetology Commission

Tuesday, April 28, 1987, 4 p.m. The Texas Cosmetology Commission will meet in emergency session in the Embassy Suites Hotel-North, 5901 North IH-35, Austin. According to the agenda, the commission will discuss Dr. Tarter's memorandum of March 23, 1987. The emergency status is necessary because urgent public necessity requires consideration of this matter.

Contact: Jo Ann Reeves, 1111 Rio Grande, Austin, Texas 78701, (512) 463-5542.

Filed: April 14, 1987, 11:56 a.m.
TRD-8703267

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Employees Retirement System of Texas

Tuesday, April 28, 1987, 9 a.m. The Board of Trustees of the Employees Retirement System of Texas will meet in the ERS Building, 18th and Brazos Streets, Austin. According to the agenda summary, the board will review and approve minutes of the previous meeting, review and interpret statutory restriction on common stock purchases, consider and act on request for proposal to solicit security clearance banking services, hear a report on results of annual audit of insurance carrier's operations under the Uniform Group Insurance Program, consider and act on appointment to fill vacancy on Group Insurance Advisory Committee, appeal of Ernest Testoni (insurance), hear a status report on state auditor's management letter, and the executive director's report. The board will also meet in executive session.

Contact: James T. Herod, 18th and Brazos Streets, Austin, Texas 78701, (512) 476-6431, ext. 178.

Filed: April 14, 1987, 3:19 p.m.
TRD-8703285

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Tuesday, April 28, 1987, 9 a.m. The Board of Trustees of the Employees Retirement System of Texas submitted a revised agenda for a meeting held in the ERS Building, 18th and Brazos Streets, Austin. According to the revised agenda summary, the board will review and approve the minutes of the previous meeting, review and interpret statutory restrictions on common stock purchases, consider and act on request for proposal to solicit security clearance banking services, hear a report on results of annual audit of insurance carrier's operations under the Uniform Group Insurance Program, consider and act on appointment to fill vacancy on Group Insurance Advisory Committee, appeal of Ernest Testoni (insurance), hear a status report on state auditor's management letter, and the executive director's report. The board will also meet in executive session.

Contact: James T. Herod, 18th and Brazos Streets, Austin, Texas 78701, (512) 476-6431 ext. 178.

Filed: April 15, 1987, 8:15 a.m.
TRD-8703288

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Texas Department of Human Services

Friday, April 24, 1987, 8:30 a.m. The Texas Council of Child Welfare Board of the Texas Department of Human Service will meet in Classroom One, Second Floor, West Tower, 701 West 51st Street, Austin. According to the agenda summary, the council will meet in executive session at 8:30 a.m. to discuss plans for the open meeting. At 9:30 a.m. the council will hear a report from the state office, remarks by the Deputy Commissioner for Families and Children, a legislative information report, Issues Committee report, committee meetings, and committee reports

on education and public information.

Contact: Shirley Richburg, P.O. Box 2960, Austin, Texas 78769, (512) 450-3447.

Filed: April 14, 1987, 3:53 p.m.
TRD-8703287

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State Board of Insurance

The State Board of Insurance will meet at 1110 San Jacinto Boulevard, Austin. Dates, times, rooms, and agendas follow.

Thursday, April 16, 1987, 10 a.m. The board met in emergency session in Room 414 to consider pending litigation. The emergency status was necessary because of an impending trial.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: April 14, 1987, 2:12 p.m.
TRD-8703269

Wednesday, April 22, 1987, 10 a.m. The board will meet in Room 414 to meet with the chairman of the Accident Prevention Education Committee, consider board orders on several different matters, personnel matters concerning the Fire Marshal and Research and Information Services, personnel and litigation matters concerning the Commissioner, and a report on update on National Association of Insurance Commissioner's data capture and diskette filings.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: April 14, 1987, 2:13 p.m.
TRD-8703270

Wednesday, April 29, 1987, 10 a.m. The State Board of Insurance will meet in Room 414 to hold a public hearing to reconsider a filing by American Physicians Insurance Exchange for a rate increase for medical professional liability insurance for physicians and surgeons which was denied by board order 50276.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: April 14, 1987, 2:13 p.m.
TRD-8703271

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Polygraph Examiners Board

Thursday-Saturday, April 30-May 2, 1987, 9 a.m. daily. The Polygraph Examiners Board will meet in the Holidome (Holiday Inn), Estes Parkway and I-20, Longview.

According to the agenda summary, the board will consider applications for licensure, amendment to Regulation 397.26, appearance of Ricardo W. Walker, appearance of Jerrienne Fisher, appearance of Shirley Sturm, approval of meeting minutes from October 1986, and January 1987, and consideration of any other polygraph related business that may come before the board.

Contact: Debbie Speicher, P.O. Box 4087, Austin, Texas 78773, (512) 465-2058.

Filed: April 15, 1987, 1:36 p.m.
TRD-8703296

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Public Utility Commission of Texas

The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Dates, times, and agendas follow.

Friday, April 24, 1987, 9 a.m. The Hearings Division will consider Docket 7355—Application of Navasota Valley Electric Cooperative, Inc. for authority to change rates.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 14, 1987, 2:46 p.m.
TRD-8703272

Wednesday, April 29, 1987, 3 p.m. The Hearings Division will consider Docket 7330—Inquiry into intralata wats competition on multijurisdictional wats access lines.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 14, 1987, 2:46 p.m.
TRD-8703273

Tuesday, May 5, 1987, 1:30 p.m. The Hearings Division will consider Docket 7437—Application of Rio Grande Electric Cooperative, Inc. for a certificate of convenience and necessity for a proposed transmission line within Brewster County.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 15, 1987, 2:57 p.m.
TRD-8703299

Tuesday, June 9, 1987, 10 a.m. The Hearings Division will consider Docket 7444—Complaint of Alpha Payphones, Ltd. against General Telephone Company of the Southwest.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 14, 1987, 2:46 p.m.
TRD-8703274

June 10, 1987, 10 a.m. The Hearings Division will consider Docket 7423—Application of Southwestern Bell Telephone Company for amendment of its information delivery service-dial 976 tariff.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 14, 1987, 2:45 p.m.
TRD-8703275

Monday, June 29, 1987, 10 a.m. The Hearings Division will consider Docket 7423—Application of Southwestern Bell Telephone Company for amendment of its information delivery service-dial 976 tariff.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 14, 1987, 2:45 p.m.
TRD-8703276

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Regional Agencies

Meetings Filed April 14

The Bastrop County Appraisal District, Board of Directors, met at 1200 Cedar Street, Bastrop, on April 16, 1987, at 7:30 p.m. Information may be obtained from Lorraine Perry, P.O. Drawer 578, Bastrop, Texas 78602, (512) 321-3925.

The Carson County Appraisal District, Appraisal Review Board, will meet at 102 Main Street, Panhandle, on April 22, 1987, at 9 a.m. Information may be obtained from Dianne Lavake, P.O. Box 970, Panhandle, Texas 79068, (806) 537-3569.

The Ellis County Tax Appraisal District, will meet at 406 Sycamore Street, Waxahachie, on April 21, 1987, at 9 a.m. Information may be obtained from Gray Chamberlain, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552.

The Houston-Galveston Area Council, Projects Review Committee and Board of Directors, will meet in the boardroom, Fourth Floor, 3555 Timmons, Houston, on April 21, 1987, at 9 a.m. and 10 a.m., respectively. Information may be obtained from Jack Steele, 3555 Timmons, Houston, Texas 77027, (713) 627-3200.

TRD-8703256

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Meetings Filed April 15

The Alamo Area Council of Governments, Executive Committee, will meet in Suite 400, 118 Broadway, San Antonio, on April 22,

1987, at 12:30 p.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201.

The Brazos River Authority, Board of Directors, met at 4400 Cobbs Drive, Waco, on April 20, 1987, at 9 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441.

The Lower Colorado River Authority, Audit and Budget Committee, Finance and Administration Committee, Energy Operations Committee, Natural Resources Committee,

Planning and Public Policy Committee, will meet at 3700 Lake Austin Boulevard, Austin, on April 22, 1987, at 9 a.m. The Board of Directors will meet on April 23, 1987, at 9 a.m. Information may be obtained from John E. Bagalay, Jr., 3700 Lake Austin Boulevard, Austin, Texas 78703, (512) 473-3200.

The Mills County Appraisal District, will meet in the Mills County Courthouse, Goldthwaite, on April 23, 1987, at 6:30 p.m. Information may be obtained from Doran E. Lemke, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253.

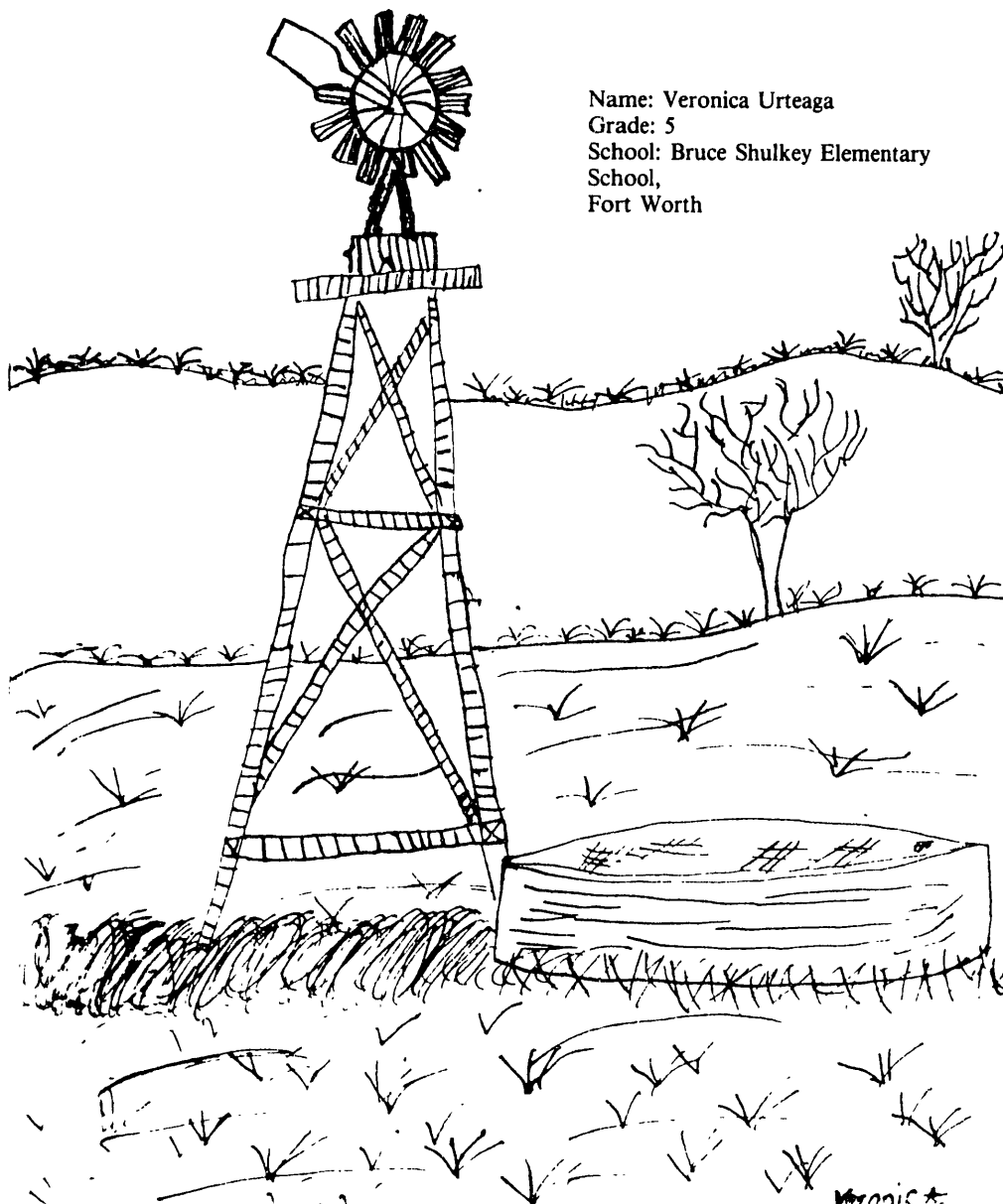
TRD-8703290



Meeting Filed April 16

The Panhandle Regional Planning Commission, Board of Directors, will meet in the PRPC Conference Room, 2736 West 10th Avenue, Amarillo, on April 23, 1987, at 1:30 p.m. Information may be obtained from Polly Jennings, P.O. Box 9257, Amarillo, Texas 79105-9257, (806) 372-3381.

TRD-8703314



Name: Veronica Urteaga
Grade: 5
School: Bruce Shulkey Elementary
School,
Fort Worth

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.

Texas Air Control Board Applications for Construction Permits

The Texas Air Control Board gives notice of applications for construction permits received during the period of March 30-April 3, 1987.

Information relative to the following applications, including projected emissions and the opportunity to comment or to request a hearing, may be obtained by contacting the office of the executive director at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

A copy of all material submitted by the applicant is available for public inspection at the central office of the Texas Air Control Board at the previously mentioned address, and at the regional office for the air quality control region within which the proposed facility will be located.

Listed are the names of the applicants and the cities in which the facilities are located; type of facilities; location of the facilities (if available); permit numbers; and type of application—new source or modification.

Exxon Company U.S.A., gas sweetening plant; Kingsville, Kleberg County; 17995; Kingsville; new

Rendrag, Inc., sandblasting; San Felipe, Austin County; 18003; San Felipe; new

Owens Corning Fiberglass, fiberglass tank manufacturing; Conroe, Montgomery County; 18004; Conroe; new

Texas Utilities Electric Company, lignite and fly ash handling; Bremond, Robertson County; 18005; Bremond; new

Issued in Austin, Texas, on April 13, 1987.

TRD-8703228 Bill Ehret
Director of Hearings
Texas Air Control Board

Filed: April 13, 1987
For further information, please call (512) 451-5711, ext. 354.

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State Banking Board Notice of Hearing Cancellation

As no opposition has been noted in the application for domicile change by State Bank and Trust Company, Ovilla, located in Ovilla, the hearing previously scheduled for April 14, 1987, has been cancelled.

Issued in Austin, Texas, on April 8, 1987.

TRD-8703215 William F. Aldridge
Director of Corporate Activities
Banking Department of Texas

Filed: April 13, 1987
For further information, please call (512) 479-1200.

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Texas Department of Community Affairs

Notice of Consultant Contract Award

Contract. The Texas Department of Community Affairs announces that the Intercultural Development Research Association has been awarded a contract, under the provisions of Texas Civil Statutes, Article 6252-11c, for the period of April 15, 1987, through July 14, 1988. The contract is for the purpose of conducting an independent evaluation of five special programs for at-risk youth funded by the Texas Department of Community Affairs under the Job Training Partnership Act. The consultant proposal request was published in the December 5, 1986, issue of the *Texas Register* (11 TexReg 4916).

Description of Services. The services to be provided by the Intercultural Development Research Association shall include, but not be limited to, the following: to develop a standard evaluation design and conduct a comparative evaluation for five participant-serving programs funded under the special programs for at-risk youth request for proposal (JTPA Title IIA §123 funds), and to further ensure that individual program evaluation designs serve to identify programs that work for particular types of participants in particular types of situations.

Business Address. The business address of the Intercultural Development Research Association is 5835 Calaghan Road, Suite 350, San Antonio, Texas 78228.

Contract Amounts. The total cost of services to be performed under the contract with Intercultural Development Research Association is presently estimated to be \$49,433.00.

Project Reports. Reports to be generated under this contract shall be submitted to TDCA upon completion.

Issued in Austin, Texas, on April 10, 1987.

TRD-8703216 Anne O. Paddock
Acting General Counsel
Texas Department of Community
Affairs

Filed: April 13, 1987
For further information, please call (512) 834-6060.

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Texas Education Agency Bids for Large Type Textbooks for the Visually Handicapped

The Texas Education Agency is requesting bids for the reproduction in large type of textbooks. Bids previously submitted were rejected due to questions related to compliance with bid specifications. Specifications have been revised to ensure the highest quality of large type textbooks for visually handicapped students.

Companies are required by the State Board of Education to submit a sample textbook which has been constructed within specifications. Specifications may be obtained from the Texas Education Agency, Textbook Division. The book to be enlarged will be designated.

Bids should be submitted in two parts:

- (1) a cost per page basis which should include:
 - (a) cost of the book being enlarged;
 - (b) cost of page reproduction; and
- (2) a per volume binding cost.

Bids are to be received in the Textbook Division on or before May 18, 1987. The bids will be documented and reviewed as received.

Inquiries or requests for specifications for production of large type textbooks should be addressed to Deanna Marotz, Textbook Division, (512) 463-9601.

Issued in Austin, Texas, on April 14, 1987.

TRD-8703244 W. N. Kirby
 Commissioner of Education

Filed: April 13, 1987
For further information, please call
(512) 463-9212.

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Texas Department of Health Correction of Error

Proposed amendments submitted by the Texas Department of Health contained errors as submitted and published in the March 20, 1987, issue of the *Texas Register* (12 Tex-Reg 935).

In §37.85(d) the first part of the paragraph should read "(d) Emergency situations. Emergency situations are treated as any other request and notification must be received within ten working days of emergency care. The program will require the following specific information: the nature of the emergency; diagnosis; services being requested; name and address of facility; name and address of physician; name, current address, and date of birth of patient; name, address, and telephone of **parent/guardian/conservator** [parents] if patient is a minor."

In §37.90, subsection (1)(A)(vi) should read:
(vi) on-site visits and/or audit privileges to program staff.

In §37.93, subpart (6) should read:

(6) 90-day claims submission deadline. No claim may be considered for program payment if it reaches the program later than 90 calendar days after the date of service, or **90 [30] days from the date of standard authorization** [the voucher was issued], whichever is later. Claims involving third party reimbursement, as provided in paragraph (1) of the section, are an exception."

In §37.93, subpart (8) should read:

"(8) Linkage with Medically Needy Program. Patients eligible for both the program (MNP) [—] **through the Texas Department of Human Services [Resources] (DHS) [DHR]** may submit unpaid claims used in meeting the MNP spend-down provision, for payment consideration by the program if the services were rendered for a program eligible condition and the services were rendered no more than 30 days prior to the date the program received the patient's application. Claims must be submitted to the program after submission to [DHR's] (DHS's) Medically Needy Program. The program may consider these claims for payment if funds are available and if the program receives within 30 days the claim returned by [DHR] (DHS). These are the only claims that the program may consider for payment without authorization."

National Research Laboratory Commission Meeting of Texas National Research Laboratory Commission Advisory Council

The Texas National Research Laboratory Commission SSC High Energy Research Facility Advisory Council will meet on Tuesday, April 14, 1987, at 10 a.m., at the University of Texas at Austin, Balcones Research Center, Commons, Conference Room 1.106, located at 10100 Burnet Road, Austin. The purpose of the meeting is to cover the following agenda items: chairman's remarks; approval of minutes of the March 25, 1987, meeting; commission report; governor's staff report; committee reports; review of the DOE invitation to propose a site; and process for evaluating regional proposals. This is in preparation for the Texas Superconducting Super Collider proposal for the Department of Energy.

Issued in Austin, Texas, on April 13, 1987.

TRD-8703241 Pete Wassdorf
 Deputy Director
 Governor's General Counsel

Filed: April 13, 1987
For further information, please call (512) 463-1788.

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Texas Water Commission Applications for Waste Disposal Permits

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of April 6-10, 1987.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hear-

ing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Listed is the name of the applicant and the city in which each facility is located; type of facility; location of the facility; permit number; and type of application—new permit, amendment, or renewal.

Period of April 10, 1987

Brazoria County MUD 5, wastewater treatment facilities; approximately 2,200 feet south of Clear Creek and 3,400 west of FM Road 518 in Brazoria County; Houston; 12295-01; amendment

Harris County WCID 113, wastewater treatment plant; approximately two miles northeast of the intersection of U.S. Highway 290 and Telge Road and ½ mile east of Telge Road in Harris County; Houston; 10962-01, amendment

Azrock Industries, Inc., vinyl composition floor tile plant; at 1705 Oliver Street in the City of Houston, Harris County; Houston; 00785; renewal

Ideal Basic Industries, Inc., Cement Division Galena Park, cement distribution terminal; in the 9600 block of Clinton Drive in the City of Galena Park, Harris

County; Galena Park; 00456; renewal

Marathon Petroleum Company, light oil storage terminal; at 431 North South Avenue in the City of Pasadena, Harris County; Pasadena; 02557; renewal

Happy Country Homes of Texas, Inc., wastewater treatment facilities; approximately 400 feet south of the Rockwall Lake Dam and approximately 400 feet northwest of the point FM Road 3097 crosses Buffalo Creek in Rockwall County; Rockwall; 11974-01; renewal

The Kelly-Springfield Tire Company, plant which manufactures automobile tires; on the south side of State Highway 31, three miles west of the intersection of State Highway 31 and Loop 323 in the City of Tyler, Smith County; Tyler; 01589; renewal

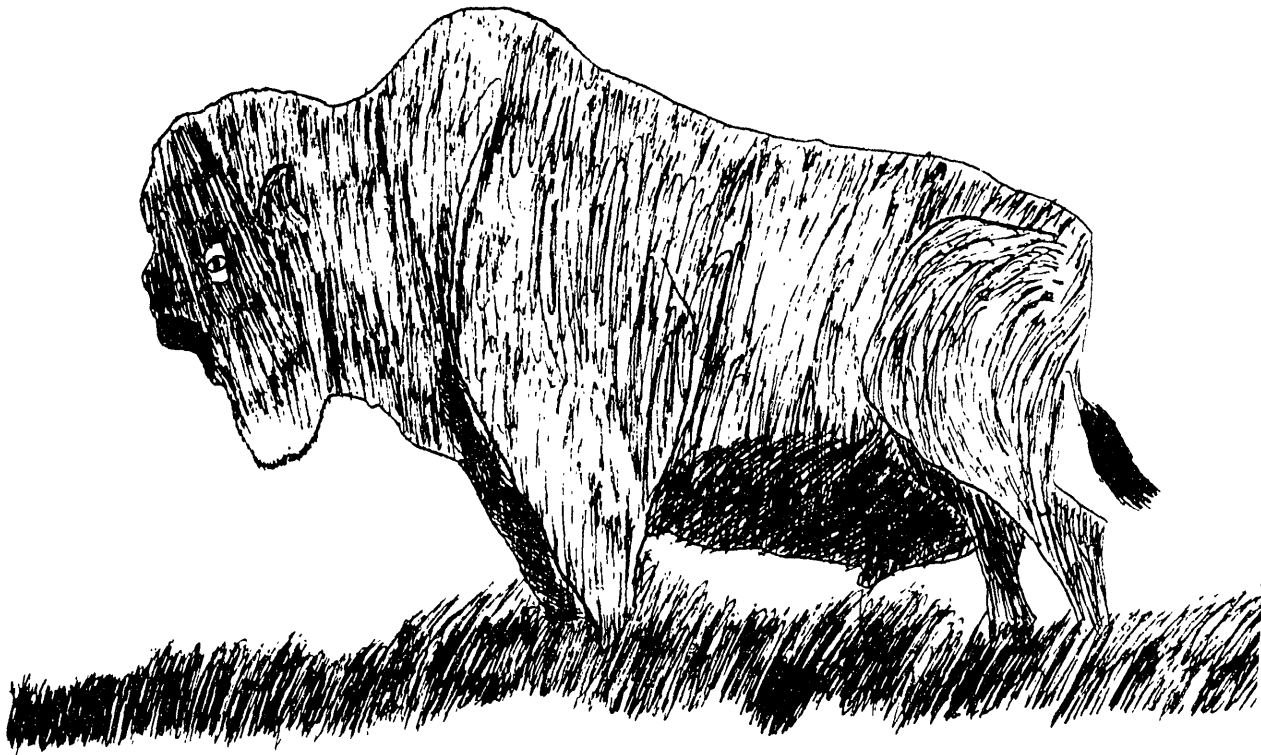
City of San Antonio, regulates discharges and quality of water from Mitchell Lake to the Medina River; south of the City of San Antonio, about one mile south of Loop 410 and east of Pleasanton Road in Bexar County; 10137-04; renewal

Issued in Austin, Texas, on April 10, 1987.

TRD-8703218 Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: April 13, 1987
For further information, please call (512) 463-7898.

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Name: Hillary Thomas
Grade: 5
School: Bruce Shulkey Elementary
School,
Fort Worth



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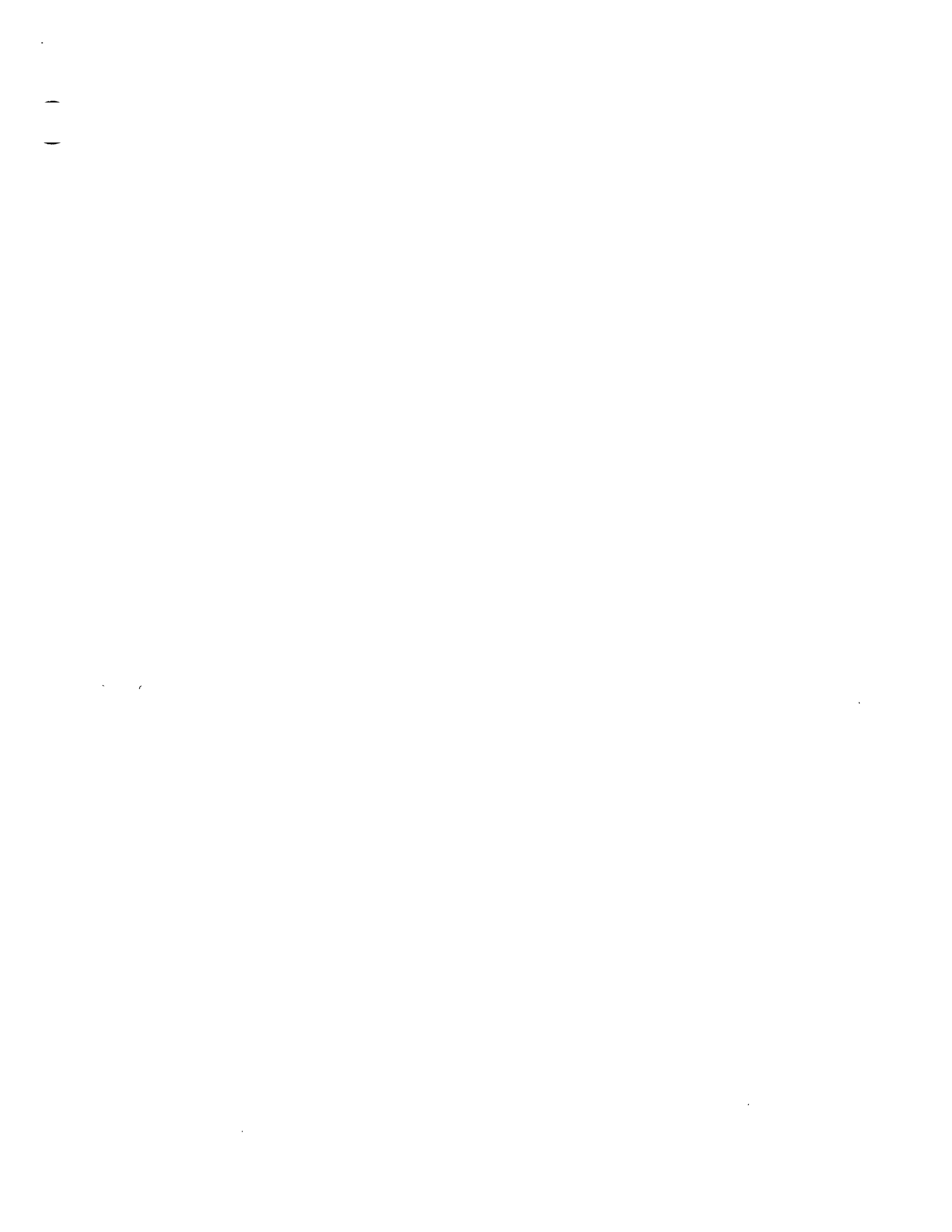
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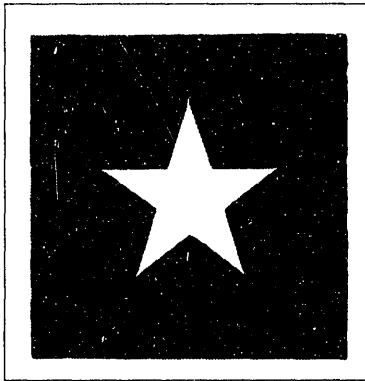


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