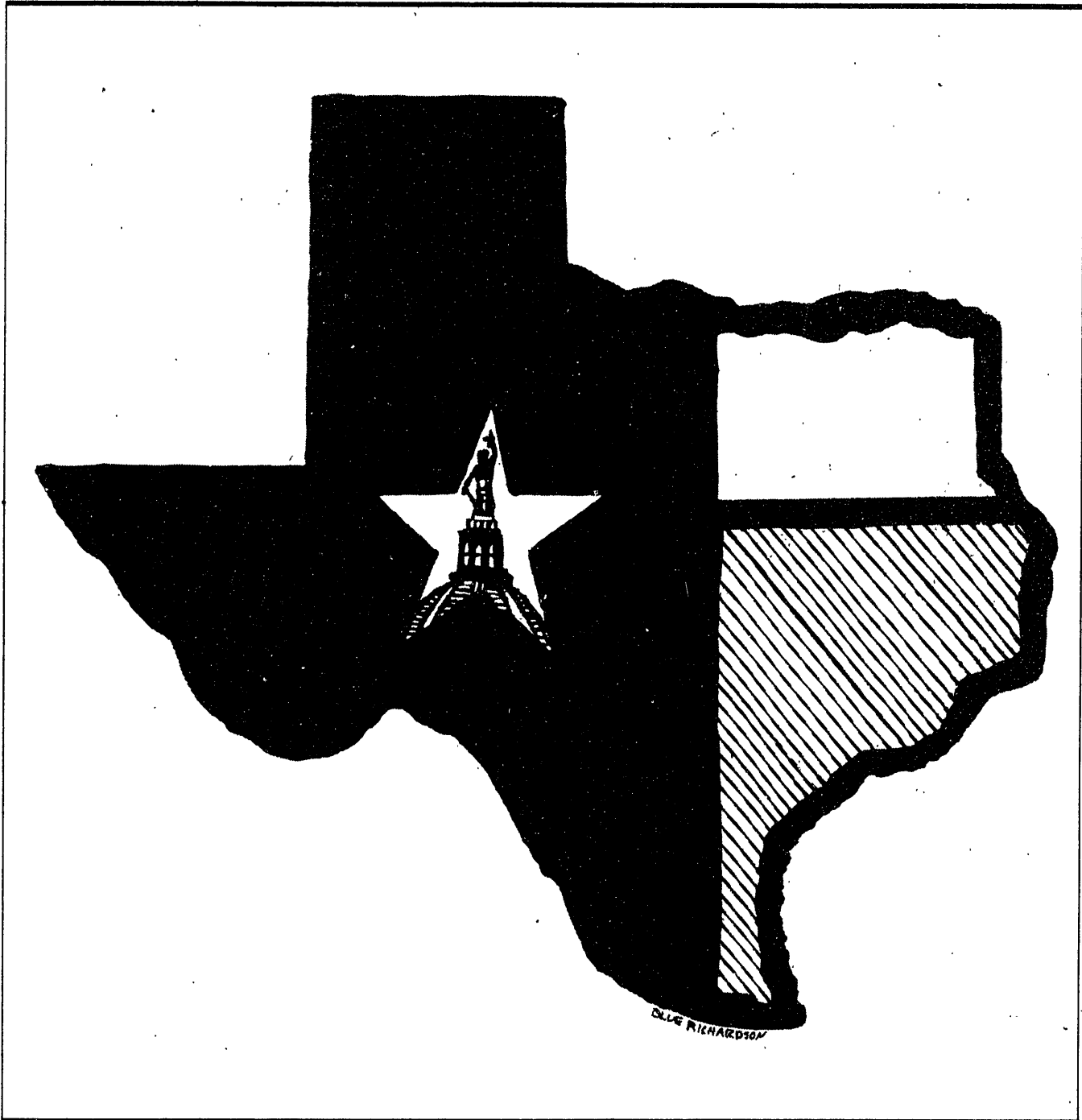


Texas Register

Volume 12, Number 49, June 30, 1987

Pages 2065-2123



Highlights

The **Polygraph Examiners Board** adopts on an emergency basis an amendment concerning practice and procedure regarding reporters and transcripts. Effective date - June 23 **page 2081**

The **Texas Water Commission** adopts amendments clarifying the roles of emergency orders, temporary orders, and executive authorizations

in regards to discharges of hazardous waste. Effective date - July 14 **page 2102**

The **Texas Department of Human Services** proposes new sections which provide clearer and more concise policies and procedures about the department's day care services. Proposed date of adoption, - November 23 **page 2087**

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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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



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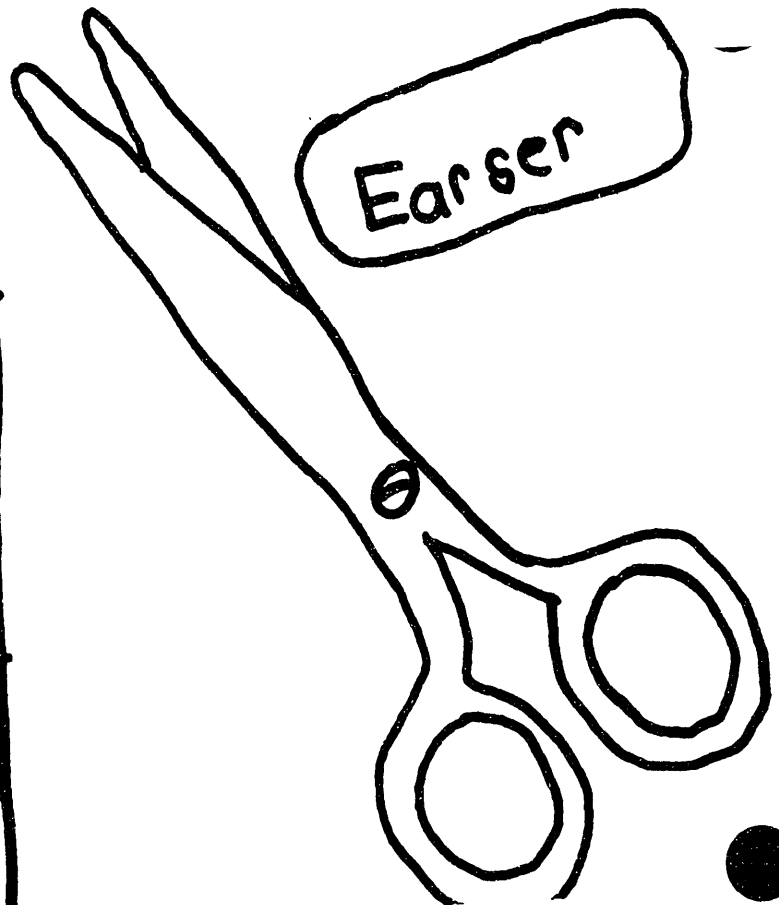
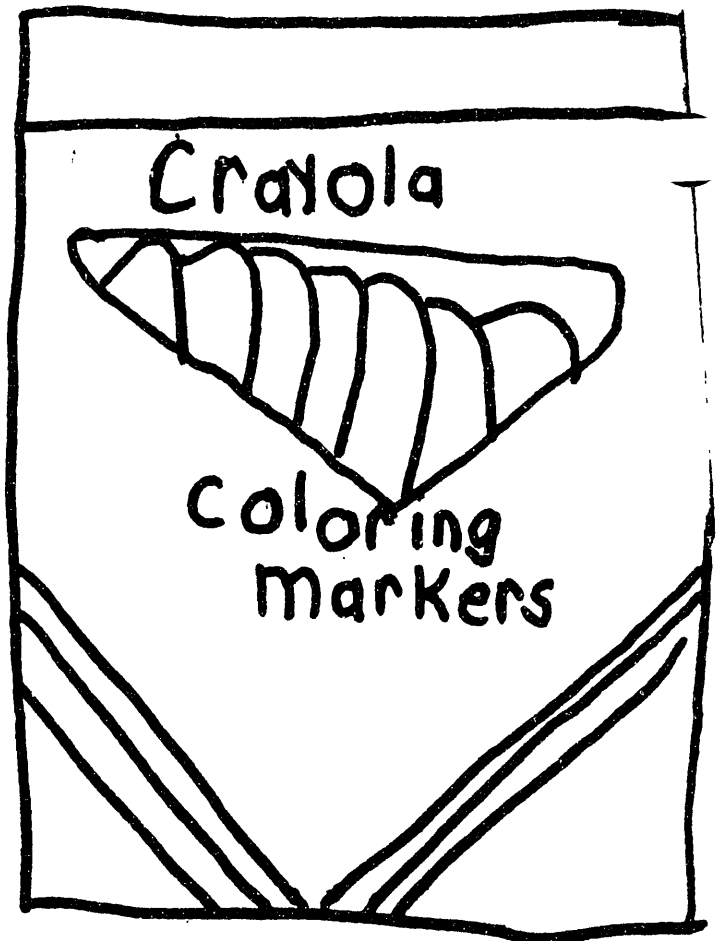
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- Library
- Music
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TAC Titles Affected

TAC Titles Affected—June

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

TITLE 1. ADMINISTRATION

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1 TAC §71.41	1807, 1809
1 TAC §§101.22, 101.30, 101.40	1866
1 TAC §101.23, 101.24	1866

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4 TAC §5.85	1809
4 TAC §11.2	1865, 1887

Part II. Texas Animal Health Commission

4 TAC §§32.1-32.12	1807, 1810
4 TAC §§32.1-32.8	1807, 1810
4 TAC §35.2, §35.5	1958
4 TAC §35.4	1929, 1931
4 TAC §37.2	1858
4 TAC §§39.1, 39.3, 39.4	1858
4 TAC §41.1	1859
4 TAC §43.2	1860
4 TAC §49.1, §49.2	1866
4 TAC §§51.1-51.3	1890
4 TAC §51.1, §51.2	1890

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Part IV. Texas Savings and Loan Department

7 TAC §1.302	2100
7 TAC §51.14	1767, 1891
7 TAC §53.3	1892
7 TAC §53.5	1892
7 TAC §53.12	1893
7 TAC §55.3	1893
7 TAC §57.4	1894
7 TAC §65.12	1902

Part VII. State Securities Board

7 TAC §105.2	1775
7 TAC §113.3	1774
7 TAC §§115.1, 115.3, 115.5	1768
7 TAC §133.29	1775

TITLE 10. COMMUNITY DEVELOPMENT

Part IV. Texas Housing Agency

10 TAC §§149.1-149.10	1887
10 TAC §§149.1-149.11	1894
10 TAC §§149.2-149.6, 149.8, 149.10, 149.11	1887

TITLE 16. ECONOMIC REGULATION

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16 TAC §3.34	2000
16 TAC §5.173	2046
16 TAC §5.249	2011
16 TAC §5.317	1769
16 TAC §5.411	1775
16 TAC §5.535	1770

Part II. Public Utility Commission of Texas

16 TAC §23.23	1828
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Part IV. Texas Department of Labor and Standards

16 TAC §65.17	2012
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TITLE 19. EDUCATION

Part II. Texas Education Agency

19 TAC §75.142	2040
19 TAC §75.151, §75.152	200
19 TAC §§75.167, 75.169, 75.170	2083

19 TAC §75.195	2047
19 TAC §81.63	2013
19 TAC §81.152	2013
19 TAC §105.463	2011, 2014
19 TAC §109.61	2048
19 TAC §137.560	2045, 2040
19 TAC §141.294, §141.295	2041
19 TAC §141.442	2039, 2042
19 TAC §§141.453-141.455	2042
19 TAC §§149.41-149.44	2013

TITLE 22. EXAMINING BOARDS

Part II. State Board of Barber Examiners

22 TAC §51.27	2100
22 TAC §51.59	2101
22 TAC §51.63	2101

Part III. Texas Board of Chiropractic Examiners

22 TAC §75.1	2015
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Part IV. Texas Cosmetology Commission

22 TAC §83.3	1965
22 TAC §§89.4, 89.10, 89.14, 89.15, 89.20, 89.28, 89.30, 89.31, 89.40, 89.51, 89.52, 89.55, 89.75	1967
22 TAC §89.33	1967
22 TAC §89.35	1968

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22 TAC §131.71, §131.72	1897
22 TAC §131.101	1898
22 TAC §131.138	1898
22 TAC §131.152	1899

Part XI. Board of Nurse Examiners

22 TAC §217.3	1902
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Part XIV. Texas Optometry Board

22 TAC §279.1	2101
22 TAC §279.7	2101

Part XV. Texas State Board of Pharmacy

22 TAC §281.2, 281.25	1932
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22 TAC §393.2	2083
22 TAC §395.1, §395.13	2084
22 TAC §397.22	2084
22 TAC §397.26	2081
22 TAC §399.1	2084

Part XXII. Texas State Board of Public Accountancy

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22 TAC §511.122	1770

Part XIII. Texas Board of Licensure of Nursing Home Administrators

22 TAC §249.3	1968
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25 TAC §31.1	1776
25 TAC §157.63, §157.64	1955
25 TAC §289.125	1930

Part II. Texas Department of Mental Health and Mental Retardation

25 TAC §§402.281-402.301	1969
25 TAC §§405.4, 405.5, 405.7	1978
25 TAC §§405.726-405.728	1955

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28 TAC §5.4001	1902
28 TAC §7.55	1903
28 TAC §25.711	1930
28 TAC §27.413	1957

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31 TAC §3.9	1777
31 TAC §3.11	1777, 1888
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31 TAC §§65.6, 65.11, 65.13, 65.32, 65.33, 65.38, 65.42, 65.44, 65.46, 65.62, 65.63, 65.71, 65.78	1867
31 TAC §65.20	1867
31 TAC §65.27	1867
31 TAC §65.33, §65.63	1860
31 TAC §§65.190-65.194, 65.196-65.198, 65.201, 65.202, 65.208, 65.210-65.212, 65.215, 65.218-65.220, 65.222, 65.224-65.226, 65.229	1861
31 TAC §65.333, §65.335	1861
31 TAC §65.500	1868
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31 TAC §101.24	1862
31 TAC §113.71	1811
31 TAC §116.11	1813
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31 TAC §§285.1-285.15	1814
31 TAC §§285.21-285.35	1816
31 TAC §§285.41-285.55	1818
31 TAC §§285.61-285.75	1820
31 TAC §§285.81-285.96	1822
31 TAC §303.71	2006
31 TAC §§303.71-303.73	2006
31 TAC §§305.23-305.25, 305.30	2102
31 TAC §§305.42-305.44, 305.46, 305.50, 305.51	2105
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31 TAC §305.401	2106
31 TAC §§321.91-321.97	1825
31 TAC §§335.1, 335.2, 335.6, 335.11-335.15, 335.22-335.24	2106
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34 TAC §5.113	1889
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37 TAC §103.41	1978
37 TAC §103.41	1978
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37 TAC §211.82, §211.85	2115

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40 TAC §3.802	1868
40 TAC §3.1102	1868
40 TAC §3.1104	1868
40 TAC §3.2704, §3.2705	1869
40 TAC §3.2802	1869
40 TAC §8.1	1774
40 TAC §8.2	1778
40 TAC §§10.3101-10.3136, 10.3150-10.3180	2087
40 TAC §15.3206, §15.3225	1771
40 TAC §15.3312	1779
40 TAC §15.3322	1779
40 TAC §15.3408	1779
40 TAC §§27.1801-27.1805, 27.8107	1869
40 TAC §§27.1801-27.1085	1869
40 TAC §27.2504	1864, 1865
40 TAC §29.101, §29.104	1779
40 TAC §29.1112	1772
40 TAC §29.1125	1772
40 TAC §§29.1701-29.1703	1869
40 TAC §33.402, §33.405	1780
40 TAC §48.2915	1864
40 TAC §§49.309-49.311	1780
40 TAC §85.1801	1772
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40 TAC §§153.4, 153.36-153.38, 153.41	2094
40 TAC §155.26	2095
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40 TAC §251.9	1904
40 TAC §273.5	1932
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43 TAC §§17.61, 17.70, 17.71	2086
43 TAC §17.71	2097
43 TAC §25.5	1834
43 TAC §51.5, §51.6	1834

The Governor

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

Proclamation 41-2156

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto House Bill 384 because of the following objections:

The original intent of this bill dealing with licensing of crane operators in Texas was a good idea. However, as this bill passed it does not address the problem to the extent it should.

The bill is ambiguous in that it excludes many operators from being tested, gives licenses to some operators without being tested, and the cost which are to be defrayed could take as much as \$900 per application.

This bill would not address accidents in the assembling and disassembling cranes, like the one that happened in Dallas under the same circumstances, because they were not under contract.

A liberal interpretation of this legislation would allow a company who is a member of an association or union who has a qualified training program to not have to license any of their employees.

It is clear that the Senate legislative intent during the debate on the bill eliminates the need to read and write to take the examination. Yet, 1436-C VTCS contains provisions for signs and warning to be in writing.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

William P. Clements, Jr.
Governor of Texas

Proclamation 41-2157

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto House Bill 396 because of the following objections:

House Bill 396 would extend the time for preparation of criminal cases for defendants who are released on bond. By implication it may repeal preparation time for jailed defendants, thereby rendering it unconstitutional. Moreover, if this bill were to become law, already crowded and backlogged criminal court dockets would become worse.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

William P. Clements, Jr.
Governor of Texas

Proclamation 41-2158

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto House Bill 484 because of the following objections:

This new program would require an additional appropriation for the Texas Department of Corrections for which there are not sufficient funds at the present time.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

William P. Clements, Jr.
Governor of Texas

Proclamation 41-2159

Pursuant to Article IV, Section 14 of the Texas I, William P. Clements, Jr., Governor of Texas, do hereby veto House Bill 543 because of the following objections:

House Bill 543 would replace the current eligibility requirements for an election judge with a requirement that the judge must be a qualified voter of the precinct. It further requires an election clerk to be a resident of the precinct.

I am persuaded that the current law is working well and there is no need for further restrictions on the appointment of election judges and clerks.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

William P. Clements, Jr.
Governor of Texas

Proclamation 41-2160

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto House Bill 651 because of the following objections:

This bill would establish state regulation of opticians. Since opticians only fill prescriptions written by ophthalmologists or optometrists, I can see no need for licensing opticians. The marketplace has done a good job of determining which opticians are doing a good job.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

William P. Clements, Jr.
Governor of Texas

Proclamation 41-2161

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto House Bill 782 because of the following objections:

Section 2 of House Bill 782 contains a drafting error which would expand the subject matter jurisdiction of the county civil courts of Harris County to include *any* case. Subject matter jurisdiction this broad is not appropriate for a statutory county court.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

William P. Clements, Jr.
Governor of Texas

Proclamation 41-2162

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto House Bill 982 because of the following objections:

This bill deals with laws regarding public and common nuisances. It adds habitual delivery or use of a controlled substance as conduct that constitutes both a common and public nuisance.

This bill duplicates the provisions of Senate Bill 417 that I have previously signed. Therefore, this bill is not needed.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

William P. Clements, Jr.
Governor of Texas

Proclamation 41-2163

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto House Bill 1078 because of the following objections:

(1) House Bill 1078 would remove the current requirement that a sworn answer be filed by a party contesting forfeiture of property seized under the Texas Controlled Substances Act, and would remove the time limits for filing such an answer. If this requirement were removed, drug dealers could go to court at any time and lie with impunity to recover the proceeds of their illegal activity.

(2) The current statutory formula for allocating the proceeds of property forfeited under the Texas Controlled Substances Act gives law enforcement agencies incentive vigorously to pursue drug dealers while at the same time allowing up to 10% of these funds to be used for drug enforcement and treatment where there is a determination of need by the local authorities. House Bill 1078 would require that 25% of all forfeited funds be used for drug treatment programs, thereby removing local discretion as to the disposition of these funds. I believe the current formula strikes an appropriate balance between these two worthy objectives, and the change contemplated by House Bill 1078 is unwarranted.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

*William P. Clements, Jr.
Governor of Texas*

Proclamation 41-2164

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto House Bill 1183 because of the following objections:

Farmers and ranchers in Texas, as in the rest of the country, know that more debt is not the way to a solvent, productive agricultural enterprise. The answer is now, and always has been, adequate world markets in which American farmers can sell their products. The State of Texas, through its Agriculture Department, has embarked upon the mission of opening these foreign markets. I believe we can best aid Texas agriculture by concentrating our efforts in these areas.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

*William P. Clements, Jr.
Governor of Texas*

Proclamation 41-2165

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto House Bill 1237 because of the following objections:

This bill, which would eliminate the Highway Fund dedication of the motor fuels tax was contingent on the passage of House Bill 942.

Since I vetoed House Bill 942, this bill becomes inoperative.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

*William P. Clements, Jr.
Governor of Texas*

Proclamation 41-2166

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto House Bill 1318 because of the following objections:

This bill would require cities to reimburse municipal sanitation employees for certain traffic fines. Cities should be permitted to decide for themselves whether reimbursement of this kind is in the best interest of their employees and their citizens.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

*William P. Clements, Jr.
Governor of Texas*

Proclamation 41-2167

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto House Bill 1694 because of the following objections:

Current law provides that "qualified open-space land" is land that is currently devoted principally to agricultural use and that has been for five of the preceding seven years.

This bill would add a new category called "Expanded Qualified Open-Space Land", and sets out various criteria for qualification. When the major Property Tax Code amendments were passed by the Legislature in 1979, access to the qualified open space land definition was very carefully restricted, after much study and deliberation.

This bill would circumvent those restrictions, and would reduce taxes on land that would not otherwise have qualified. Land that has taxes reduced requires other land to pick up those taxes.

I feel the current restrictions are fair, and do not need to be eroded.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

William P. Clements, Jr.
Governor of Texas

Proclamation 41-2168

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto House Bill 1814 because of the following objections:

House Bill 1814 would extend the time a property owner has to give a notice of appeal. With the passage of Senate Bill 751, which provides for notifying a property owner of their right to appeal, it is not necessary to extend the period to file a notice of appeal. An extension of time to file the notice would disrupt the budgetary process of many of our school districts and inhibit the negotiation of a compromised value by the property owner and appraisal district.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 19th day of June, 1987.

William P. Clements, Jr.
Governor of Texas

Proclamation 41-2169

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto House Bill 1933 because of the following objections:

House Bill 1933 would allow the Board of Fire Commissioners, by its own initiative or by petition, to exclude from a district territory inside the boundaries of another, overlapping taxing authority if the other taxing authority provides the same services.

The provisions of this bill are incorporated in Senate Bill 865 that I have previously signed, and House Bill 1933 is therefore not needed.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

William P. Clements, Jr.
Governor of Texas

Proclamation 41-2170

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto House Bill 2235 because of the following objections: The concept underlying this bill is a good one, but programs are already in place to address the problems to which this bill is directed. The Job Training Partnership Act and university small business centers throughout Texas are specifically designed to assist farmers and others who have been displaced from agricultural work because of adverse economic conditions.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

William P. Clements, Jr.
Governor of Texas

Proclamation 41-2171

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto House Bill 2514 because of the following objections:

Certain bonds currently do not require approval by the Attorney General. House Bill 2514 would require certain bonds, long-term installment sales, or long-term lease-purchase obligations to be submitted to the Attorney General. It would apply to bonds issued by any department, board, district, public corporation, political subdivision, body politic, and any nonprofit corporation representing those entities.

This would bring a dramatic increase in the number of these instruments the Attorney General would review.

It would force a number of issuers to hire attorneys to assist in the review and issuance process.

I am unaware of any problem that would necessitate such a review. Bondholders are satisfied with the current system, and I see no need to change it.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

William P. Clements, Jr.
Governor of Texas

Proclamation 41-2172

Pursuant to Article IV, Section 14 of the Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto Senate Bill 484 because following objections:

Senate Bill 484 seeks to change the which housing authority boards are appointed by governing bodies. To replace the present whereby the mayor appoints the housing authority board with a system of appointments by the entire governing body would politicize the board to an unwarranted extent.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

William P. Clements, Jr.
Governor of Texas

Proclamation 41-2173

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto Senate Bill 698 because of the following objections:

Civil statutes regulate assignment pay to firemen and police in Texas cities which have voted to adopt the provisions.

This bill would mandate what has been a previously permissive law regarding the authorization of assignment pay for certain personnel. I feel the cities are perfectly capable of deciding these issues themselves under the permissive law, and that this is an unwarranted intrusion into city affairs.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

William P. Clements, Jr.
Governor of Texas

Proclamation 41-2174

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto Senate Bill 1011 because of the following objections:

Senate Bill 1011 would require political subdivisions to establish an excessively burdensome administrative procedure for enforcement of the prevailing wage law. The benefits of this procedure would be far outweighed by its costs.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

William P. Clements, Jr.
Governor of Texas

Proclamation 41-2175

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto Senate Bill 1239 because of the following objections:

Senate Bill 1239 would authorize Harris County to pay a supplemental salary to the district judges in that county in an amount up to \$2,000 more than the salary paid a statutory county court judge.

At present, county court at law judges in Harris County are paid \$80,577. Thus, this bill would allow district judges in Harris County to receive a salary of \$82,577, or \$3,782 more than that paid to judges in the highest state appellate courts. This is approximately \$26,000 more than the state paid salary of \$56,135 for district judges.

While I generally don't object to county supplements to district judges, particularly as compensation for work done for the counties, a pay raise of this magnitude would cause discontent, friction, and discord among state judges across the state performing the same functions but receiving differing amounts of compensation.

Such a large increase in one county would prove disruptive to the entire judiciary throughout the state.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

*William P. Clements, Jr.
Governor of Texas*

Proclamation 41-2176

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto Senate Bill 1265 because of the following objections:

Changing the cancellation date for persons on the returned voter certificate list from August 16 to November 30 of even-numbered years would increase the chance of vote fraud and decrease the chance that it would be detected.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

*William P. Clements, Jr.
Governor of Texas*

Proclamation 41-2177

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto Senate Bill 1279 because of the following objections:

S.B. 1279, as originally passed by the Senate, amended the competitive bidding statutes governing state, county, and city purchasing to authorize taking into consideration the safety record of a bidder in determining the lowest responsible bid. These same provisions are contained in House Bill 662, which I have already signed into law.

During its passage, provisions were hastily added to Senate Bill 1279 which would criminalize what the bill labels "separate," "sequential" and "component" purchases by cities, counties, and school districts. Also added to the bill was a provision to permit a county clerk or recorder to use an optical data storage process for the storage of records.

The original intent of this bill has been addressed and, in my opinion, the amendments cause the bill to violate the letter, spirit and intent of Article III, Section 35(a) of the Texas Constitution. Moreover, I am persuaded that the amendment relating to separate, sequential and component purchasing is not in the public interest.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

*William P. Clements, Jr.
Governor of Texas*

Proclamation 41-2178

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto Senate Bill 1345 because of the following objections:

The new Texas Department of Commerce established by the Legislature in its regular session is a better entity to administer community development programs of the kind contemplated by Senate Bill 1345.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

*William P. Clements, Jr.
Governor of Texas*

Proclamation 41-2179

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto Senate Bill 1444 because of the following objections:

The present fee structure for state-supported institutions of higher education recognizes the policy that these institutions are established primarily for the benefit of Texas citizens. I agree with this policy and am therefore opposed to changing the fee structure for in the manner contemplated by Senate Bill 1444.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 20th day of June, 1987.

TRD-8705108

*William P. Clements, Jr.
Governor of Texas*

Proclamation 41-2180

WHEREAS, the mild climate and pleasant temperatures that bless our winter and spring are with us no more and the rigors of summer are upon us; and

WHEREAS, it befits us all to roll up our sleeves and devote our best energies to addressing the challenges facing our great state; and

WHEREAS, government as well as private business must seek every possible alternative to reduce cost and save energy; and

WHEREAS, to forgo the traditional necktie, suit jacket, and long-sleeved dress shirt in no way conflicts with good grooming and maintenance of acceptable office decorum and, in fact, exhibits a relaxed informality in keeping with Texas traditions and is entirely sensible and appropriate until the traditional close of summer;

THEREFORE, I, as Governor of Texas, do hereby designate the Summer of 1987 as NO TIE SUMMER in Texas, from June 22 to September 7, 1987 (Labor Day), and encourage all citizens of the State to enjoy the observance of a more relaxed dress code.

This executive order shall be effective immediately and shall remain in full force and effect until modified, amended, or rescinded by me.

William P. Clements, Jr.
Governor of Texas

Proclamation 41-2181

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto House Bill 8 because of the following objections:

House Bill 8 would allow employees of any state agency to transfer not less than one nor more than three days of their accrued sick leave time to a sick leave pool, to be administered by the agency. The bill would require expenditure of an additional \$300,000 per year and require 13 additional employees to administer its provisions. This is an inordinate expenditure considering the state's current financial situation.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the state to be affixed hereto at Austin, this 19th day of June, 1987.

William P. Clements, Jr.
Governor of Texas

Proclamation 41-2182

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto House Bill 2119 because of the following objections:

House Bill 2119 was amended in the Senate to add a provision prohibiting the City of Houston from housing prisoners overnight. I can see no reason for this provision, and I am advised that it would result in massive dislocations in the City of Houston's law enforcement and criminal justice system. As a result of this unfortunate amendment, I am reluctantly compelled to disapprove this otherwise acceptable bill.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the state to be affixed hereto at Austin, this 19th day of June, 1987.

William P. Clements, Jr.
Governor of Texas

Proclamation 41-2183

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto Senate Bill 1266 because of the following objections:

Senate Bill 1266 amends the Election Code to allow volunteer deputy registrars to deliver completed voter registration applications by mail or in person through another designated volunteer deputy registrar. Delivery of applications by mail would open the registration process to the potential of massive abuse because there would be no way to verify compliance with applicable legal requirements.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the state to be affixed hereto at Austin, this 19th day of June, 1987.

William P. Clements, Jr.
Governor of Texas

Proclamation 41-2184

Pursuant to Article IV, Section 14 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby veto House Bill 1178 because of the following objections:

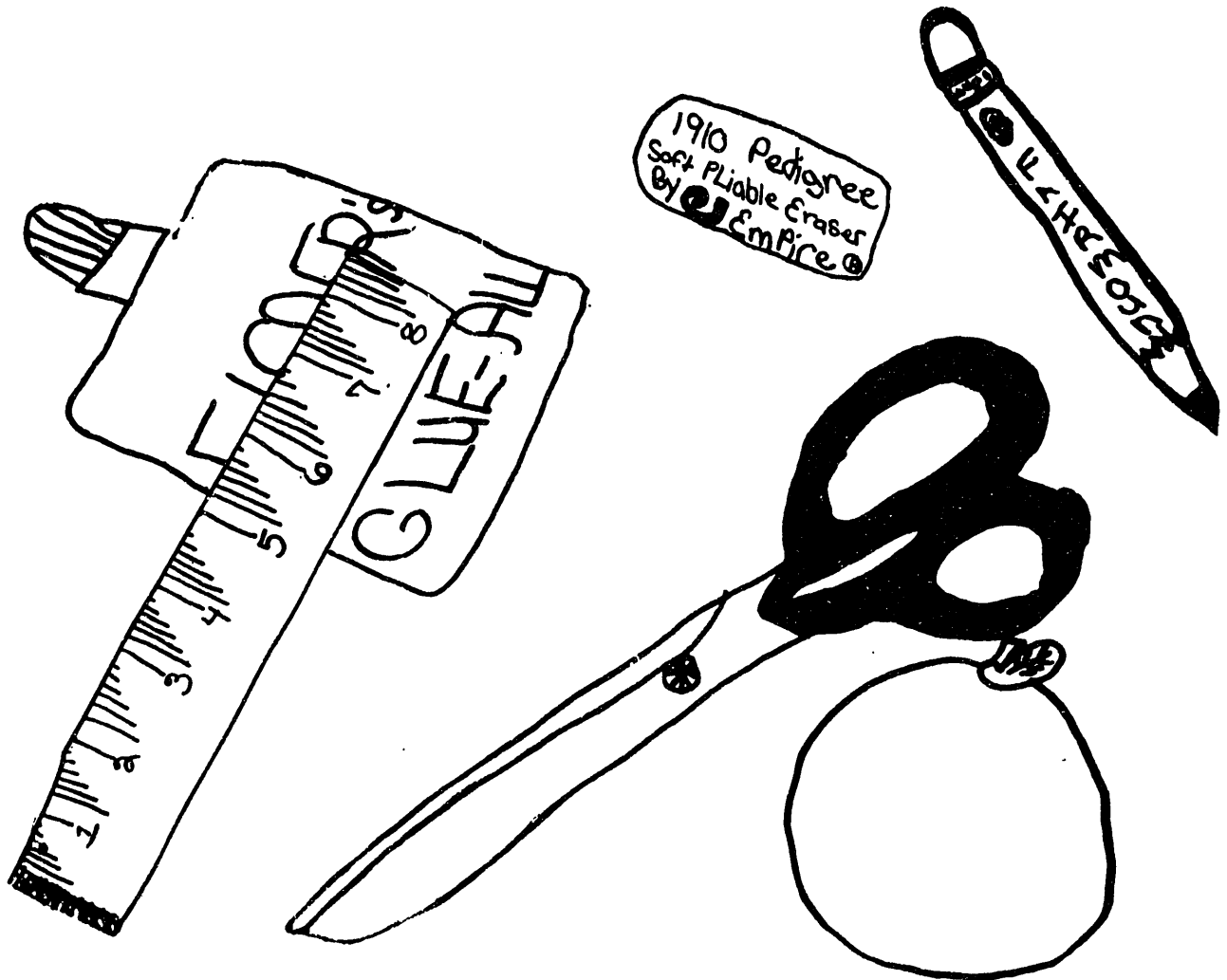
House Bill 1178 is identical to Senate Bill 878 which I have already signed into law.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the state to be affixed hereto at Austin, this 19th day of June, 1987.

TRD-8705090

William P. Clements, Jr.
Governor of Texas



Name: Amanda Copeland
Grade: 4
School: Mark Twain Elementary School,
Richardson

Attorney General

Description of attorney general submissions. Under provisions set out in the Texas Constitution, Texas Civil Statutes (Article 4399), and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Register*.

Requests for Opinions

RQ-1132. Request from Mark W. Stiles, Chairman, House of Representatives, Austin, concerning the authority of a constable to provide traffic enforcement outside of his precinct.

TRD-8705117

★ ★ ★

RQ-1133. Request from Stan Schleuter, Chairman, House Ways and Means Committee, Austin, concerning clarification of Attorney General Opinion JM-670 (1987).

TRD-8705118

★ ★ ★

RQ-1134. Request from Jack Skeen, Jr., Criminal District Attorney, Smith County Courthouse, Tyler, concerning whether a member of a board of directors of a water control and improvement district must reside in the district.

TRD-8705119

★ ★ ★

RQ-1135. Request from Mike Driscoll, Harris County Attorney, Houston, concerning which county official is responsible for preparation of the county payroll and the printing and distribution of its checks.

TRD-8705120

★ ★ ★

RQ-1136. Request from John Vance, Dallas District Attorney, Dallas, concerning whether securities pledged by a county depository through contractual agreement with a county and held by a federal reserve bank are the property of the holding county or an asset of the depository bank.

TRD-8705121

★ ★ ★

RQ-1137. Request from Robert W. Post, DeWitt County Attorney, Cuero, concerning whether the Texas Constitution, Article VIII, §1-a and §9 permit the application of the Property Tax Code, §26.07 to county taxes.

TRD-8705122

RQ-1138. Request from David Brabham, Criminal District Attorney, Gregg County Courthouse, Longview, concerning whether House Bill 803, Acts 54th Legislature, 1955, Chapter 339, at 886, a special law governing the administration of roads and bridges in Gregg County, has been superseded by Texas Civil Statutes, Article 6702-1, the County Road and Bridge Act.

TRD-8705123

★ ★ ★

RQ-1139. Request from Stephen C. Howard, Orange County Attorney, Orange, concerning whether certain intake review records submitted by a sheriff to a county attorney are exempted from disclosure under the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(8).

TRD-8705124

★ ★ ★

RQ-1140. Request from Travis Hiestler of Atlas and Hall, Representing McAllen Independent School District, McAllen, concerning the availability under the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, of college transcripts of all school teachers and administrators who have taken six or more semester hours per semester since 1975.

TRD-8705125

★ ★ ★

RQ-1141. Request from Stephen G. Williams, Galveston City Attorney, Galveston, concerning whether information relating to computer assisted employee performance evaluation of city council appointees is subject to the Texas Open Records Act.

TRD-8705126

★ ★ ★

RQ-1142. Request from Fred S. Brinkley, Executive Director/Secretary, Texas State Board of Pharmacy, Austin, concerning whether certain documents relating to an investigation by the Board of Pharmacy are available under the Texas Open Records Act.

TRD-8705127

★ ★ ★

RQ-1143. Request from Rex N. Leach, District/County Attorney, Limestone County Courthouse, Groesbeck, concerning the authority of a county to provide legal counsel for a sheriff on certain legal proceedings.

TRD-8705128

★ ★ ★

RQ-1144. Request from Richard G. Morales, Sr., Webb County Attorney, Laredo, concerning the authority of a sheriff to make certain purchases on behalf of the operation of the jail.

TRD-8705129

★ ★ ★

RQ-1145. Request from Mark W. Stiles, Chairman, House County Affairs Committee, Austin, concerning permanent zoning of newly annexed territory in Bridge City.

TRD-8705130

★ ★ ★

RQ-1146. Request from Jon R. Hale, Commissioner, Credit Union Department, Austin, concerning conditions under which a credit union may make certain loans to insiders.

TRD-8705131

★ ★ ★

RQ-1147. Request from Richard D. Latham, Securities Commissioner, State Securities Board, Austin, concerning construction of Attorney General Opinion JM-707, regarding the rule-making authority of the State Securities Board.

TRD-8705132

★ ★ ★

RQ-1148. Request from Vernon M. Arrell, Commissioner, Texas Rehabilitation Commission, Austin, concerning whether the Texas Commission on Human Rights may require a state agency to seal, remove, and/or modify documents contained in the personnel file of an individual found to have been the subject of discriminatory action.

TRD-8705133

RQ-1149. Request from Dale Hanna,
County Attorney, Johnson County, Cle-
burne, concerning whether the individual
who keeps the minutes for a commissioners
court is required to be a certified shorthand
reporter.

TRD-8705134

★ ★ ★



Name: Mitchell Born
Grade: 4
School: Mark Twain Elementary School,
Richardson

Emergency

Rules

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

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

TITLE 22. EXAMINING BOARDS

Part XIX. Polygraph Examiners Board

Chapter 397. Practice and Procedure

★ 22 TAC §397.26

The Polygraph Examiners Board adopts on an emergency basis §397.26, concerning reporters and transcripts. This section is being amended as a cost saving measure for the state. The Polygraph Examiners Board proposes this amendment on an emergency basis to immediately defer costs for transcription of board records concerning proceedings before the board.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 4413(29cc), which provide the Polygraph Examiners Board with the authority to regulate persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation and to issue regulations consistent with the provisions of this Act for the administration and enforcement of this Act.

§397.26. *Reporters and Transcript.*

(a) ~~While the board shall undertake to have the proceedings recorded, the cost of preparing the original transcript shall be assessed to the party appealing the board's decision or to any other party or parties requesting the transcription, upon written request that the record be transcribed. A written request shall be addressed to the secretary stating the full name and address of the appealing party or parties requesting the transcript, which request shall be relayed to the court reporter.~~ [Proceedings, or any part of them, must be transcribed on written request of any party. The board may pay the cost of the transcript or assess the cost of one or more parties. This rule does not limit the board to a stenographic record of proceedings.]

(b) [A stenographic reporter may sell a copy of a transcript upon approval of the board. Upon approval of the request by the board, the stenographic] The court reporter shall furnish the party [a copy to the] requesting the transcription with the original transcript upon payment of its cost. Upon notice of appeal the board shall at its own expense obtain a certified copy of the transcript for submission to the reviewing court.

[party at not more than \$.30 per page plus the cost of postage, if any. The board may exclude any stenographic reporter for late delivery or poor workmanship in previous hearings. A written request for permission shall be addressed to the secretary combining:

[(1) the full name and address of the party requesting the copy;

[(2) the number of pages in the transcript;

[(3) and the cost of the copy to the party.]

(c) (No change.)

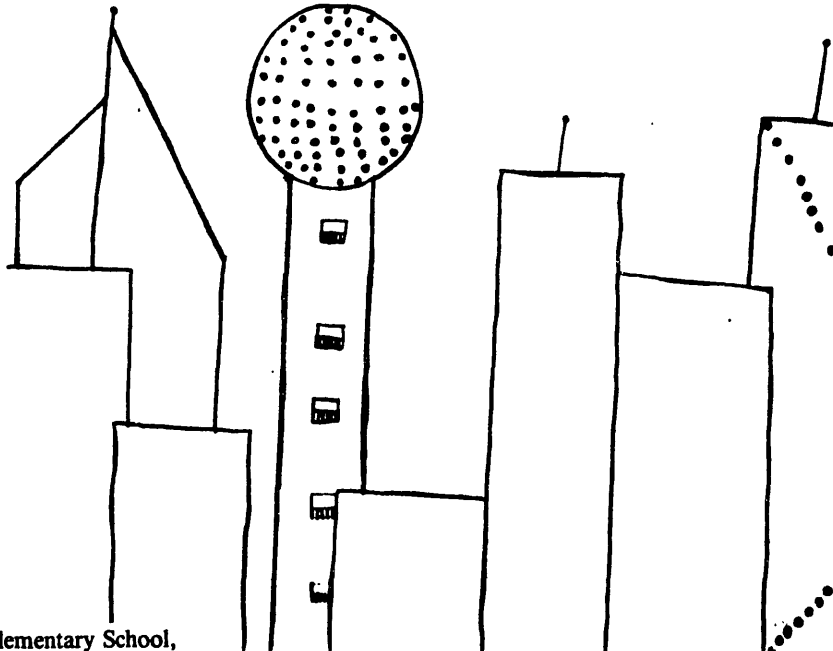
Issued in Austin, Texas, on June 22, 1987.

TRD-8705135

Bryan M. Parot
Executive Officer
Polygraph Examiners
Board

Effective date: June 23, 1987
Expiration date: October 21, 1987
For further information, please call
(512) 465-2058.

★ ★ ★



Name: David Torres
Grade: 4
School: Mark Twain Elementary School,
Richardson

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 19. EDUCATION

Part II. Texas Education

Agency

Chapter 75. Curriculum

Subchapter G. Other Provisions

★19 TAC §§75.167, 75.169, 75.170

The Texas Education Agency proposes amendments to §§75.167, 75.169, and 75.170, concerning high school credit for college courses; award of credit, grades 9-12; and school district policy on grading, promotion, retention, remediation, and placement.

The amendment to §75.167 authorizes high school credit for college courses from institutions of higher education which are accredited by one of the regional accrediting associations listed in the section. Currently, the section lists only the Southern Association of Colleges and Schools. This limitation works a hardship on students in West Texas, who may take college courses in New Mexico, as well as students who may attend university summer programs in other regions of the United States.

The amendment to §75.169 requires school districts to ensure that records or transcripts of transfer students are evaluated and that such students are promptly placed in appropriate classes.

The amendment to §75.170, concerning placement of students; requires school districts to have policies that include specific criteria for placement, to ensure that students in need of remedial instruction are placed in appropriate courses and that all students are placed in academically challenging courses. The principal or his or her designee must ensure that criteria for placement in remedial courses have been met before a student is placed in such a course or courses.

Lynn M. Moak, deputy commissioner for research and information, has determined that for the first five-year period proposed §75.167 and §75.169 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. For the first five-year period proposed §75.170 is in effect there will be no fiscal implications for state government or small businesses as a

result of enforcing or administering the section. For the first five-year period the proposed §75.170 will be in effect there will be fiscal implications for local government. There will be some cost to local districts associated with the additional staff time that will be needed to evaluate students and make the appropriate placement. Exact costs will vary from district to district and cannot be estimated.

Mr. Moak and Dr. Beverly Bardsley, director for policy development, have 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 greater attention to placement of students in appropriate courses and greater fairness in awarding high school credit for college courses. 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 Dr. Beverly Bardsley, Director for Policy Development, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9682. All requests for a public hearing on proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in sections has been published in the *Texas Register*.

These amendments are proposed under the Texas Education Code, §21.101, which authorizes the State Board of Education to make rules concerning the public school curriculum.

§75.167. High School Credit for College Courses.

(a) A school district board of trustees may adopt a policy that allows students enrolled in grades 9-12 to be awarded credit toward high school graduation for completing college-level courses. Such courses shall be provided only by institutions of higher education that are accredited by one of the following regional accrediting associations:

- (1) Southern Association of Colleges and Schools;
- (2) Middle States Association of Colleges and Schools;
- (3) New England Association of

Schools and Colleges;

(4) North Central Association of Colleges and Schools;

(5) Western Association of Schools and Colleges; or

(6) Northwest Association of Schools and Colleges.

(b) To be eligible to enroll and be awarded credit toward state graduation requirements, a student must have the approval of the high school principal or other school official designated by the district. The course for which credit is awarded shall provide advanced academic instruction beyond or in greater depth than the essential elements in Subchapter D of this chapter (relating to Essential Elements—Grades 9-12). Local districts may use a variety of means to determine to what extent the essential elements are provided.

§75.169. Award of Credit, Grades 9-12.

(a) The award of credit for a course by a school district affirms that a student has satisfactorily met all state and local requirements. Courses for which credit is awarded shall be provided in accordance with this subsection.

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

(5) Credit earned toward state graduation requirements by students in accredited Texas school districts shall be transferable and must be accepted by any other school district in the state. [Credit for courses offered for local credit only may be transferred only with the consent of the receiving school district. Districts shall ensure that transfer students are evaluated and placed in classes promptly.] Districts shall not prohibit new students from attending school pending receipt of transcripts or records from the district the student previously attended. Credit earned in local credit courses may be transferred only with the consent of the receiving school district.

(6) School districts shall ensure that the records or transcripts of out-of-state transfer students and transfer students from Texas nonpublic schools are evaluated, and that the students are placed in appropriate classes promptly. Districts may use a variety of methods to verify the content of courses for which transfer students have earned credit.

(b) (No change.)

§75.170. School District Policy on Grading, Promotion, Retention, Remediation, and Placement.

(a) Each school district board of trustees shall establish policies on grading, promotion, retention, remediation, and placement of students based upon mastery of prerequisite essential elements as required by §75.193(a) of this title (relating to Grade Level Advancement and Course Credit). Each board of trustees shall be charged with the responsibility of providing a policy ensuring mastery of the essential elements of each subject or course of study. In addition, each board shall establish an acceptable procedure to reteach nonmastering students.

(b) (No change.)

(c) [Decisions regarding student promotion, retention, or placement into alternative programs shall be determined by locally developed policies for the placement of students into the next appropriate grade level, course, or alternative program based upon mastery of prerequisite essential elements as required by §75.193(a) of this title (relating to Grade Level Advancement and Course Credit).] Districts are expected to set levels of mastery to ensure that each student is challenged to perform at a level commensurate with his/her ability. The policies shall identify all alternative programs available and the criteria for placement in each alternative program. **The principal or his or her designee shall determine that such criteria have been met prior to the student's being placed in an alternative program. For these purposes, alternative programs shall be deemed to be lower level or remedial courses including: Correlated Language Arts I-IV; Fundamentals of Mathematics; Consumer Mathematics; Introductory Biology; and Introductory Physical Science.** The identified alternative programs shall have the probability of meeting the academic needs of students based upon achievement data and ongoing evaluation. [The policies shall include specific criteria for entry into high school courses to ensure that students in need of remedial instruction are placed in appropriate courses and that all] Students shall be [are] placed in academically challenging courses.

(d)-(e) (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 June 22, 1987.

TRD-8705115 W. N. Kirby
Commissioner of
Education

Proposed date of adoption:
September 12, 1987
For further information, please call
(512) 463-9212.

★ ★ ★



TITLE 22. EXAMINING BOARD

Part XIX. Polygraph Examiners Board Chapter 391. Polygraph Examiner Internship

★22 TAC §391.1

The Polygraph Examiners Board proposes an amendment to §391.1, concerning authority. The amendment is proposed in order to clarify the language of the text.

Bryan M. Perot, executive officer, 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. Perot also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of language. 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 Bryan M. Perot, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773.

The amendment is proposed under Texas Civil Statutes, Article 443(29cc), which provide the Polygraph Examiners Board with the authority to regulate persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation.

§391.1. Authority. The provisions of this chapter [following rules and regulations] pertaining to the internship program under the Texas Board of Polygraph Examiners as authorized under the Texas Polygraph Examiners Act, Texas Civil Statutes, Article 4413(29cc), §6(a) and (b), shall be and the same are hereby designated the rules and regulations of intern program.

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 June 22, 1987.

TRD-8705136 Bryan M. Perot
Executive Officer
Polygraph Examiners
Board

Earliest possible date of adoption:
July 31, 1987
For further information, please call
(512) 465-2058.

★ ★ ★

Chapter 393. General Rules and Regulations

★22 TAC §393.2

(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 Polygraph Examiners Board, 5805 North Lamar Boulevard, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Polygraph Examiners Board proposes the repeal of §393.2, concerning internal affairs and operations. The repeal is proposed in order to bring the agency's internal affairs and operations section into compliance with the Administrative Procedure and Texas Register Act.

Bryan M. Perot, executive officer, 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. Perot also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to bring the agency internal affairs and operations section into compliance with Administrative Procedure and Texas Register Act. 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 Bryan M. Perot, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773.

The repeal is proposed under Texas Civil Statutes, Article 4413(29cc), which provide the Polygraph Examiners Board with the authority to regulate persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation.

§393.2. Internal Affairs and Operations.

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 June 22, 1987.

TRD-8705137 Bryan M. Perot
Executive Officer
Polygraph Examiners
Board

Earliest possible date of adoption:
July 31, 1987
For further information, please call
(512) 465-2058.

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Chapter 395. Code of Operating Procedure for Polygraph Examiners

★22 TAC §395.1, §395.13

The Polygraph Examiners Board proposes amendments to §395.1 and §395.13, concerning authority; and expiration of licenses. The amendments are proposed in order to change the wording to read as the board intended.

Bryan M. Perot executive officer, 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. Perot also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the clarification of language. 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 Bryan M. Perot, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773.

The amendments are proposed under Texas Civil Statutes, Article 4413 (29cc) which provide the Polygraph Examiners Board with the authority to regulate persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation.

§395.1. Authority.

(a) The provisions of this chapter [following rules and regulations] are to establish a minimum standard for a licensed polygraph examiner to conduct a polygraph examination on a subject in the State of Texas.

(b) (No change.)

§395.13. *Expiration of Licenses* At the end of the 31st day of December of the current year, every original and subsequently renewed polygraph examiner's license covered under the Polygraph Examiners Act shall expire. Thereafter, each original and subsequently renewed polygraph examiner's license shall be issued to cover a period from January 1st of each calendar year through December 31 of that same calendar year, dates inclusive. Originally and subsequently renewed licensed examiners shall be issued a license dated [date] in accordance with §13A(a) of this Act and date of expiration will be December 31 of that calendar year. Prior to the issuance of such license or renewal license, the examiner shall annually furnish to the board a bond or insurance policy which covers the same period of time covered by the license to be issued or renewed.

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 June 22, 1987.

TRD-8705138

Bryan M. Perot
Executive Officer
Polygraph Examiners
Board

Earliest possible date of adoption:
July 31, 1987

For further information, please call
(512) 465-2058.

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Chapter 397. General Rules of Practice and Procedure

★22 TAC §397.22

The Polygraph Examiners Board proposes an amendment to §397.22, concerning motions for postponement, continuance, withdrawal, or dismissal of applications and appeals, or other matters before the board. The amendment clarifies the language of the section.

Bryan M. Perot, executive officer, 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. Perot also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of language. 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 Bryan M. Perot, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773.

The amendment is proposed under Texas Civil Statutes, Article 4413(29cc), which provide the Polygraph Examiners Board with the authority to regulate persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation.

§397.22. *Motions for Postponement, Continuance, Withdrawal, or Dismissal of Applications and Appeals, or Other Matters before the Board.*

(a) (No change.)

(b) Motions for postponement, continuance, withdrawal, or dismissal of appeals, or other matters which have been duly set for hearing, shall be in writing, shall be filed with the secretary and distributed to all interested parties, under a certificate of service, not less than five days prior to the designated date that the matter is to be heard. Such motion shall set forth, under

oath, the specific grounds upon which the moving party seeks such action and shall make reference to all prior motions of the same nature filed in the same proceeding. Failure to comply with these requirements, except for good cause shown, may be construed as lack of diligence on the part of the moving party, and at the discretion of the board, may result in the dismissal of the appeal or other matter in issue, with prejudice to refiling. Once an application has actually proceeded to a hearing, pursuant to the notice issued thereon, no postponement or continuance shall be granted by the board without the consent of all parties involved, unless the board shall have ordered such postponement or continuance.

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 June 22, 1987.

TRD-8705139

Bryan M. Perot
Executive Officer
Polygraph Examiners
Board

Earliest possible date of adoption:
July 31, 1987

For further information, please call
(512) 465-2058.

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Chapter 399. Out-of-State Polygraph Examiners

★22 TAC §399.1

(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 Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773 or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Polygraph Examiners Board proposes the repeal of §399.1, concerning reciprocal licensing. The repeal is proposed to bring the agency's reciprocal licensing section into compliance with the Administrative Procedure and Texas Register Act.

Bryan M. Perot, executive officer, has determined that for the first five-year period the proposed repeal 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 repeal.

Mr. Perot also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the compliance of the reciprocal licensing section with APTRA. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal

Comments on the proposal may be submitted to Bryan M. Perot, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773.

The repeal is proposed under Texas Civil Statutes, Article 4413 (29cc), which provide the Polygraph Examiners Board with the authority to regulate persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation

§399.1. Reciprocal Licensing.

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 June 22, 1987.

TRD-8705140 Bryan M. Perot
Executive Officer
Polygraph Examiners
Board

Earliest possible date of adoption:
July 31, 1987
For further information, please call
(512) 465-2058.

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**TITLE 34. PUBLIC
FINANCE
Part I. Comptroller of
Public Accounts
Chapter 1. Central
Administration
Practice and Procedure**

★34 TAC §1.3

The Comptroller of Public Accounts proposes an amendment to §1.3, concerning contested cases. The section is being amended so that a tax dispute may be resolved without the need for an administrative hearing if the agency agrees with taxpayer's objections to an assessment or refund claim. The requirement for a proposed decision is deleted in certain circumstances.

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 will be provision of a simpler and expedited procedure for the resolution of tax disputes when the agency agrees with the taxpayer. 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 Wade Anderson, Executive Counsel, P.O. Box 13528, Austin, Texas 78711.

The amendment 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 Title 2 of the Tax Code.

§1.3. Contested Cases.

(a) A contested case is a proceeding in which the legal rights, duties, or privileges of a party are to be determined by the agency after an opportunity for adjudicative hearing. It includes a request for redetermination or refund, as well as actions initiated by the agency to revoke or suspend permits or licenses administered by this agency on grounds other than failure to pay a final tax deficiency or failure to file a tax security.

[(b) A contested case] It does not include forfeitures of rights to do business, of certificates of authority, of articles of incorporation, or requests for or revocation of exemptions from taxation.

[(c)] Requests for settlement of amounts assessed or paid as penalty or interest with respect to a tax assessment are not contested cases. However, if a contested case results in an adjustment to a tax liability, the corresponding penalty and interest adjustment will also be made.

[(d)] Contested cases are within the jurisdiction of the agency's administrative law judges.

(b) A dispute may, at the option of the agency, cease being a contested case if the taxpayer's contentions are fully accepted or if the parties agree on a resolution of all contentions. If the dispute ceases being a contested case, an amended determination or a final billing will be mailed to the taxpayer.

(c) The agency may elect to grant a requested refund or credit or accept an amended return filed by the taxpayer without making it a contested case or by removing it from contested case status. The refund or credit may be later reclaimed by the comptroller with penalty and interest if an audit or other investigation concludes that the refund or credit was not due.

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 June 23, 1987.

TRD-8705146 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:
July 31, 1987
For further information, please call
(512) 463-4004.

★ ★ ★

★34 TAC §1.9

The Comptroller of Public Accounts proposes an amendment to §1.9, concerning position letters. The section is being amended so that a tax dispute may be resolved without the need for an administrative hearing if the agency agrees with taxpayer's objections to an assessment or refund claim. The requirement for a proposed decision is deleted in certain circumstances.

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 will be provision of a simpler and expedited procedure for the resolution of tax disputes when the agency agrees with the taxpayer. 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 Wade Anderson, Executive Counsel, P.O. Box 13528, Austin, Texas 78711.

This amendment 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 Title 2 of the Tax Code.

§1.9. Position Letter.

(a) Following receipt of the taxpayer's statement of grounds, documentary evidence, and any additional evidence requested by the hearings attorney, a position letter will be sent to the taxpayer. The position letter will accept or reject, in whole or in part, each contention of the taxpayer. The position letter will set forth what the hearings attorney, after consultation with the tax division, finds is properly subject to or exempt from taxation according to his or her understanding of the facts and the law. No position will be taken on the basis of expediency, hazards of litigation, nuisance value, or other form of settlement, compromise, or abatement where not authorized by law. The position letter will be sent to the taxpayer after its contentions are fully presented to the hearings attorney and reviewed by the audit and tax divisions.

(b) The agency or the hearings attorney may elect to amend the determination or to issue a final billing, rather than issue a position letter, if the taxpayer's contentions are fully accepted or if the parties agree on a resolution of all contentions. If the determination is amended, it will become

final 15 days after mailing and payable 20 days later. A final billing is payable 20 days after mailing unless otherwise specified.

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 June 23, 1987.

TRD-8705147 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:

July 31, 1987

For further information, please call
(512) 463-4004.

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★ 34 TAC §1.10

The Comptroller of Public Accounts proposes an amendment to §1.10, concerning the acceptance or rejection of position letters (motion to dismiss petition or set for hearing). The section is being amended so that a tax dispute may be resolved without the need for an administrative hearing if the agency agrees with taxpayer's objections to an assessment or refund claim. The requirement for a proposed decision is deleted in certain circumstances.

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 will be provision of a simpler and expedited procedure for the resolution of tax disputes when the agency agrees with the taxpayer. 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 Wade Anderson, Executive Counsel, P.O. Box 13528, Austin, Texas 78711.

This amendment 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 Title 2 of the Tax Code.

§1.10. Acceptance or Rejection of Position Letter (Motion to Dismiss Petition or Set for Hearing).

(a) The taxpayer must accept or reject, in whole or in part, the position letter within 15 days after the day the letter is dated. A form for this purpose will be enclosed with the letter. Acceptance is indicated by sign-

ing the motion to dismiss portion of the form and mailing it to the administrative law judges; rejection is indicated by completing and signing the motion to set portion of the form and mailing it. Expiration of the 15-day period without filing of a motion to set or dismiss by the taxpayer will result in the filing of a motion to dismiss the hearing and dispose of the case according to the tax division's position.

(b) **The taxpayer is not required to respond to an amended determination or a final billing, other than by payment, unless the amount of the assessment is incorrect. An amended final determination or final billing concludes the administrative proceeding unless the taxpayer notifies the agency within 15 days of the mailing date the amount is in error.**

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 June 23, 1987.

TRD-8705148 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:

July 31, 1987

For further information, please call
(512) 463-4004.

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★ 34 TAC §1.28

The Comptroller of Public Accounts proposes an amendment to §1.28, concerning comptroller's decisions. The section is being amended so that a tax dispute may be resolved without the need for an administrative hearing if the agency agrees with taxpayer's objections to an assessment or refund claim. The requirement for a proposed decision is deleted in certain circumstances.

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 will be provision of a simpler and expedited procedure for the resolution of tax disputes when the agency agrees with the taxpayer. 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 Wade Anderson, Executive Counsel, P.O. Box 13528, Austin, Texas 78711.

The amendment 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 Title 2 of the Tax Code.

§1.28. Comptroller's Decision.

(a) The proposed decision of an administrative law judge must be approved by the comptroller of public accounts before it is given any effect. The comptroller's decision will be sent to the taxpayer and any authorized representative and is final 15 days from the date issued, unless a motion for rehearing is filed on or before midnight of the 15th day. If the motion for rehearing is granted, the decision is vacated pending a subsequent decision upon rehearing. If the motion for rehearing is overruled, whether by order or operation of law, the decision is final on the date it is overruled.

(b) **The administrative law judge may issue a comptroller's decision without the issuance of a proposed decision if the taxpayer and the hearings attorney are in agreement on all contested issues.**

(c) **The administrative law judge will not issue a proposed decision or a final decision if the dispute ceased to be a contested case and either an amended determination or a final billing was sent.**

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 June 23, 1987.

TRD-8705149 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:

July 31, 1987

For further information, please call
(512) 463-4004.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 10. Family Self-Support Services

The Texas Department of Human Services (DHS) proposes the repeal of §§10.3101-10.3111, 10.3113, 10.3114, 10.3118, 10.3119, 10.3121, 10.3122, 10.3124-10.3151, 10.3153, and 10.3154, and new §§10.3101-10.3136 and 10.3150-10.3180, concerning day care and child development services and child day care services.

Sections concerning the department's day care services are reorganized and revised to clarify and further define policies concerning enrollment, atten-

dance, absenteeism, hours in care, contracting, and payment. New sections include the following policy changes.

Parents who have completed an associate degree or its equivalent are eligible to receive purchased day care for employment purposes only and not for more training.

The minimum hours a parent must work or receive training to receive part-day and full-day care are specified. Full-time care is authorized if a parent works for 30 hours or more a week. Part-time care is authorized if the parent works at least 15 hours but less than 30 hours a week.

The conditions under which a contract (purchase of service, broker, or provider agreement) can be terminated or fiscal sanctions can be imposed are clearly delineated.

Providers paid for full-days of care must offer 10 hours of care per day. This coincides with current practice among day care providers and meets working parents' needs.

Providers may no longer bill for four extra days after notice of discontinuation of care for a child.

Requirements that parents must meet for their children to be enrolled have been added.

The policy concerning providers' enrollment and attendance records and absenteeism follow-up requirements is clarified. Providers must keep attendance records for each child showing whether the child is present or absent on each day that the child is enrolled and must conduct follow-up activities depending on the type of enrollment authorization.

A child can be dropped if absent more than 10 days in a billing period, unless the absences were approved by DHS staff.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the repeals and new 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 repeals and new sections.

Mr. Packard also has determined that for each year of the first five years the repeals and new sections are in effect, the public benefit anticipated as a result of enforcing the repeals and new sections will be clearer and more concise policies and procedures about the department's day care services. Also, adoption of the sections will assist in continuity of day care for families involved in training programs. There is no anticipated economic cost to individuals who are required to comply with the proposed repeals and new sections.

The department will hold a hearing to accept comments on the proposal begin-

ning at 9 a.m., July 17, 1987, in the public hearing room, 701 West 51st Street, Austin. Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-025, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

Day Care and Child Development Services

★40 TAC §§10.3101-10.3111, 10.3113, 10.3114, 10.3118, 10.3119, 10.3121, 10.3122, 10.3124-10.3151, 10.3153, 10.3154

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Services, 701 West 51st Street, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public assistance programs and financial assistance and related services.

- §10.3101. *Types of Purchased Day Care Services.*
- §10.3102. *Eligibility for Day Care Services.*
- §10.3103. *Priorities for Provision of Purchased Day Care Services.*
- §10.3104. *Services to Abused and Neglected Children.*
- §10.3105. *Employment and Training-Related Day Care.*
- §10.3106. *Children Served in Purchase of Service (POS) Facilities.*
- §10.3107. *Children Served in Provider Agreement Facilities.*
- §10.3108. *Determination of Need for Employment or Training-Related Day Care.*
- §10.3109. *Working with Providers.*
- §10.3110. *Serving Eligible Handicapped Children.*
- §10.3111. *Authorization for Additional Payment.*
- §10.3113. *Individual Developmental Plans.*
- §10.3114. *Determination of Compliance with Day Care Purchase Specifications (POS Contracts).*
- §10.3118. *Provider Agreement Purchase Procedures.*
- §10.3119. *Determining Provider's Potential for a Provider Agreement.*
- §10.3121. *Renewal of Provider Agreements.*
- §10.3122. *Service Plans for Day Homes.*
- §10.3124. *Methods of Rate Determination for Provider Agreements.*
- §10.3125. *Published Rate Method.*
- §10.3126. *Standard Rate Method.*
- §10.3127. *Notification of Possible Suspension or Termination of Contract.*
- §10.3128. *Finalization of Contract Suspen-*

sion or Termination.

- §10.3129. *Basis of Payment—Purchase of Service (POS) Contract.*
- §10.3130. *Unit of Service Determination.*
- §10.3131. *Purchasable Calendar Days of Enrollment for POS Contracts.*
- §10.3132. *Enrollment Days.*
- §10.3133. *Payment for Enrollment.*
- §10.3134. *Payment for Continued Enrollment.*
- §10.3135. *Facilities Documentation of Attendance/Absenteeism.*
- §10.3136. *Absenteeism Follow-up for Children in Family Support Case Plans.*
- §10.3137. *Absenteeism Follow-up for Protective Services Children.*
- §10.3138. *Absenteeism Follow-up for Other Children Served by POS Contractors.*
- §10.3139. *Overenrollment.*
- §10.3140. *Drop-in Care of DHS Ineligible Children.*
- §10.3141. *Other Plans for Supplementing Capacity.*
- §10.3142. *Maximum Rates for Day Care.*
- §10.3143. *Transportation for Day Care in Provider Agreement Facilities.*
- §10.3144. *Cost Reimbursement.*
- §10.3145. *Audited Unit Rate Method.*
- §10.3146. *Published Unit Rate.*
- §10.3147. *Budget Based Unit Rate.*
- §10.3148. *Rate Renegotiation.*
- §10.3149. *Co-pay by Families to POS Facilities.*
- §10.3150. *Co-pay by Families to Provider Agreement Facilities.*
- §10.3151. *Food Program Reimbursements to POS Facilities.*
- §10.3153. *Deficits and Surplus Funds.*
- §10.3154. *Required Forms.*

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 June 24, 1987.

TRD-8705192 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption:
November 23, 1987
For further information, please call
(512) 450-3766.

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Child Day Care Services

★40 TAC §§10.3101-10.3136, 10.3150-10.3180

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public assistance programs and financial assistance and related services.

§10.3101. *Basis of Payment for Purchase of Service Contracts.* For the purchase of

service (POS) contractor to be paid, the following criteria must be met when services are provided.

(1) There must be a signed contract between DHS and the contractor on the first date services are delivered.

(2) The facility must be licensed or registered and comply with the appropriate set of minimum standards for child care facilities.

(3) The contractor must document that children served are eligible and meet the criteria for one of the priorities for service.

(4) The contractor must comply with the general family self-support policies and procedures for eligibility determination, authorization, and documentation.

(5) The owner of the facility must not have a parental relationship with the child, as described in Title 2 of the Texas Family Code (usually a biological parent, adoptive parent, or legal guardian).

(6) The contractor must document that children are within the age group specified in the DHS contract and in the facility's license or registration.

(7) The contractor must document that the children are enrolled according to either:

(A) the DHS worker's authorization; or

(B) for self referrals, the client's need for care (number of hours the parents or caretakers work or are in training).

(8) The contractor bills DHS for units of service provided to enrolled children on specified days of operation and subject to the limits in the contract, including:

(A) any day the facility routinely provides care;

(B) up to nine additional days per year, including holidays;

(C) any additional days the facility normally provides care but cannot because of inclement weather, natural disasters, or other circumstances that make operation of the facility impossible. The contract manager must give written approval before the contractor bills for this type of enrollment day.

(9) The care must not exceed one full-day unit of care for a child per 24-hour period unless authorized by DHS.

(10) The contractor must have an attendance record for each child showing whether the child is present or absent on each day the child is enrolled.

(11) The contractor must follow up on an enrolled child who is absent, depending on the type of authorization under which the child was enrolled.

(12) The contractor's rate of payment must not exceed the DHS maximum rate for the age group served or the rate specified in the contract.

(13) The contractor's payment rate must be based on the rate or budgeted costs in the DHS contract and is subject to DHS rate setting procedures, allowable costs, and the limit on the DHS funds allocated in the contract.

(14) The contractor is not paid for any child in the facility for any day or time that attendance exceeds the licensed capacity for the facility.

(15) Any facility providing care must be identified in the DHS contract, or the contract terms must explicitly allow the contractor to subcontract for services at other facilities without prior approval by DHS.

§10.3102. Eligibility and Priorities for Service in POS Facilities.

(a) DHS purchases day care services from POS or broker contract facilities for children from birth through 10 years of age who meet the eligibility criteria specified in §10.1001 of this title (relating to People Who Are Eligible) and the criteria for one of the following priorities:

(1) Priority 1—children referred by DHS child protective services staff without regard to income;

(2) Priority 2—children who receive or whose parents or caretakers receive AFDC, SSI, or refugee/entrant cash assistance who need day care so their parents or caretakers can participate in employment or training;

(3) Priority 3—children who receive or whose parents or caretakers receive food stamps who need day care so their parents or caretakers can participate in employment or training;

(4) Priority 4—other children who meet income eligibility guidelines and who need day care so their parents or caretakers can participate in employment or training.

(b) DHS also purchases day care for children who are 11-13 years of age if they are in Priority 1 or have a documented handicap that makes day care necessary but allows for mainstreaming.

(c) Contractors must enroll children in order of priority.

(d) Once enrolled, children may receive day care as long as they are eligible and meet one of the priorities. A child in Priority 1 may receive day care for up to six months unless a continuation is authorized by DHS based on the child's need for care.

§10.3103. Enrollment of Handicapped Children in POS Facilities.

(a) By the first day a handicapped child is enrolled, the parent, caretaker, or DHS submits to the contractor a completed screening and assessment form signed by a licensed physician. It must include a professional assessment and diagnosis regarding the appropriateness of day care and special recommendations for care. The form also is required if a handicap is found after enrollment.

(b) If DHS documents that emergency day care is needed or a handicap is found after enrollment, completion of the assessment form may be delayed for up to 30 calendar days.

(c) Recommendations from the child's physician or another specialist for special services which require additional funds must be on file before payment can be approved.

§10.3104. Developmental Plan for Handicapped Children in POS Facilities.

(a) The contractor must prepare a developmental plan based on the needs of the handicapped child enrolled in the facility.

(b) The plan must be based on professional recommendations from the physician or specialist involved in the child's assessment.

(c) The contractor must keep the plan in the child's folder and update it at least annually or more often as the child reaches the planned goals.

§10.3105. Abused and Neglected Children in POS Facilities.

(a) Only children in open protective services cases are classified as Priority 1 for day care.

(b) DHS purchases protective day care based on the case plan for the child or the family and as authorized by the child protective services worker. Protective day care may be used for children living at home to:

(1) enable the child to remain in the home while the parents work toward rehabilitation; and

(2) reduce the detrimental effects of abuse and neglect on the child by helping the child receive physical, social, and mental growth opportunities.

(c) Children in foster care or adoption qualify for day care as Priority 1 only if needed to prevent disruption of the placement or relocation by ensuring adequate care and supervision. Day care needed for any other reason is not Priority 1.

§10.3106. Employment-Related and Training-Related Day Care in POS Facilities.

(a) DHS purchases day care for children in Priorities 2, 3, and 4 to allow parents or caretakers to obtain or retain employment or to participate in training. At the time of enrollment, a child's parent or caretaker must be employed, in training, or actively participating in DHS employment services unless incapacitated.

(b) If one parent or caretaker is incapacitated, the child must also have a parent or caretaker participating in employment, training, or DHS employment services.

(c) If children are enrolled in employment-related or training-related day care and the parent or caretaker is temporarily incapacitated, day care may continue for up to two additional months. The parent or caretaker must obtain a doctor's statement verifying the incapacity and that the condition should end within the two-month timeframe.

(d) Children of employed students may receive day care services needed to support their parents' or caretakers' employment.

(e) As a condition of the DHS employment services case plan, parents or caretakers may enroll their children for up to 30 calendar days while they seek employment. If the employment of a parent or caretaker is interrupted or if participation in training ends, day care may be continued for a currently enrolled child for up to 30 calendar days while the parent or caretaker seeks employment.

(f) Training-related day care is provided for children to allow their parents or caretakers to:

(1) complete high school or the equivalent; or

(2) obtain additional training to assist them to become self supporting.

(g) The training should be expected to lead to employment. For DHS employment services clients, the training must be part of an employability plan.

(h) The parents or caretakers must participate in training through institutions that are approved, licensed, or accredited by the state or a professional regulatory body. The regional director for family self-support may grant exceptions for programs that are:

(1) designed to train and place the types of clients served by DHS; and

(2) successful in placing clients in employment as a result of the training.

(i) To determine if the training program can be expected to lead to employment, the success of recent graduates in obtaining employment as a result of the training is considered.

(j) Training-related day care may continue until the parent or caretaker completes one of the following:

(1) an associate degree;

(2) 65 semester hours of college credit; or

(3) two years of adult vocational education or training.

(k) A maximum of two years of post high school, training-related day care purchased by DHS may be received regardless of the training completed.

(l) Extensions may be granted for up to six weeks if they will enable parents or caretakers to complete a term or a course of study.

(m) Parents or caretakers who have completed training or education identified in subsection (j)(1), (2), or (3) of this section are considered employable and their children are not eligible for training-related day care.

(n) The regional director for family self-support services may grant exceptions to the requirements concerning time in training if a four- to six-week refresher course will enable parents or caretakers to qualify for employment or a better job.

§10.3107. Hours of Care in POS Facilities.

(a) Children in Priorities 2, 3, and 4 are enrolled based on the hours needed to support the parent's or caretaker's employment and training.

(b) Full-time care is authorized only if the parent or caretaker works or is in training 30 hours or more a week. For a full-time high school student or a college student, 12 or more semester hours of coursework is equivalent to 30 hours of training per week.

(c) Part-time care is authorized if the parent or caretaker works or is in training 15 hours or more per week, but less than 30. Six semester hours of coursework is equivalent to 15 hours of training per week.

(d) Combinations of work and training may be used to determine the amount of day care to authorize.

(e) An employed parent or caretaker should earn gross pay of at least \$200 per month to be considered employed full time and eligible for full-time day care. To receive part-time care, the gross pay should be at least \$100 a month.

§10.3108. Units of Service in POS Facilities.

(a) The unit of service for day care is either a full day or a part day of care for an enrolled child. A full day is at least six hours of care within a 24-hour period. A part day is any amount less than six hours within a 24-hour period.

(b) Additional units may be approved for the following reasons:

(1) a parent has to work two continuous shifts during a 24-hour period;

(2) a parent participates in work or training that spans both daytime and evening hours, making two shifts of care necessary; and

(3) a child in a protective services case needs care for more than one shift.

(c) Time in care begins when the facility assumes responsibility for the child, but does not include more than two hours of transportation (not counting field trips) a day. Except for after school care programs, contractors that are paid full day rates must offer at least 10 hours of care per day.

§10.3109. Enrollment Days in POS Facilities.

(a) DHS bases the units of service on the duration of an eligible child's enrollment. A contractor is neither penalized when a child enrolled for full days attends occasionally for a part day nor paid extra when a child enrolled for part days attends occasionally for a full day.

(b) Enrollment begins when a child's name is placed on the rolls of the facility after being determined eligible, and the child's parent or caretaker or DHS worker assures the contractor that the child will attend on a specified basis. The contractor must document the child's expected arrival and departure times and the unit of service (full day or part day) in the child's folder.

(c) Telephone calls made by DHS workers to reserve a space for a child must be followed by the appropriate authorization form for the child. Contractors may refuse enrollment until they receive the authorization form if DHS workers abuse this procedure.

(d) All clients must meet the following basic requirements for enrollment:

(1) the eligibility criteria;

(2) a day care priority;

(3) the intake documentation requirements;

(4) the contractor's rules for enrollment; and

(5) the requirements for attendance.

(e) If these requirements are not met, contractors may drop the child from the enrollment rolls.

(f) A parent or caretaker must sign a statement of understanding that the child's care will end if the child is absent five consecutive days or more than 10 days within a month without the parent or caretaker contacting the facility or DHS.

§10.3110. Attendance in POS Facilities. Contractors must maintain an attendance record for each enrolled child and document the child's attendance. Contractors must follow up on a child's absence within a billing period using specific procedures outlined by DHS in its *Family Self-Support Handbook*. Failure to do so may result in suspension of the contractor's payment for the child. Payments will resume once the child's absence ends or the contractor complies with the absenteeism follow-up requirements.

§10.3111. Termination for Excessive Absence in POS Facilities. If a child is absent five consecutive days or more than 10 days in a month, enrollment termination must begin for that child. In these cases, the contractor must request authorization to continue enrollment from the DHS contract manager before billing DHS for the month in which the excessive absences occurred.

§10.3112. Over Enrollment in POS Facilities. If contractors enroll more than their licensed capacity, they must justify the over enrollment and have a DHS-approved contingency plan for caring for children when attendance exceeds capacity. DHS will not pay for any child in a facility for any day that attendance at any time exceeds the state licensed capacity.

§10.3113. Drop-in Care in POS Facilities. Contractors may accept drop-ins after determining that the attendance of regularly enrolled children is below their licensed capacity for a specific day. Contractors must comply with DHS licensing requirements for drop-in care. Contractors may also serve children of DHS employment services clients on a drop-in basis if the care is authorized in accordance with DHS procedures for drop-in care.

§10.3114. Maximum Payment Rates for POS Facilities. DHS establishes maximum payment rates for each day of enrollment for each age group. The maximum rates are listed in DHS' *Family Self-Support Handbook* or may be obtained from DHS regional day care staff.

§10.3115. Payments for Handicapped Children in POS Facilities. Facilities that mainstream handicapped children may be paid up to 190% of the contracted rate for special services to these children. This does not apply to facilities that use the cost reimbursement method of rate determination.

§10.3116. Rate Determination Methods in POS Facilities.

(a) Contractors must use one of three methods to determine their payment rate: cost reimbursement, published unit rate, or budget based unit rate. Rates of payment are based on reasonable and allowable costs of service.

(b) Payment rates do not include:

(1) transportation costs if transportation is not part of the children's DHS case plan;

(2) health assessments, except for assessment of handicapped children;

(3) cost of staff or expenditures used exclusively for referring or providing other services to children or their families;

(4) costs reimbursed by the Child Care Food Program; and

(5) other costs not allowed by state and federal regulations.

(c) Payment will not exceed the applicable DHS maximum rates.

§10.3117. Cost Reimbursement Method in POS Facilities. Only new day care programs or contracts may use the cost reimbursement method. The contractor and DHS negotiate a budget of allowable costs not to exceed the maximum rate for the age group served. The contractor bills for costs incurred under that budget each month. If eligible and ineligible clients are served, the reimbursement amount is based on the percentage of eligible units.

§10.3118. Published Unit Rate Method in POS Facilities.

(a) Contractors using the published rate method must document that at least 20% of the care they provide is not purchased by DHS. The 20% applies to payments collected from parents or caretakers. If a contractor has several published rates, these must be documented separately. If contractors use a sliding fee scale, DHS will not pay a higher fee than the fee paid by at least 20% of the parents. DHS pays the provider a daily rate resulting from the sum of the published rate and allowable costs such as administrative fees and transportation or the maximum daily rate for the age group served, whichever is less.

(b) The administrative fee for the cost of additional requirements and paperwork is \$.81 per child, per day. The same rate is paid for both full and part days of care. If the contractor has a special fee for registration or art, the amount is prorated over the length of time the fee covers. One-time fees are prorated over one year.

(c) DHS pays an additional transportation cost only if the same rate is paid by families of children for whom DHS does not purchase care. The published rate for transportation is a maximum of \$1.50 per child, per day. Registered family homes are not eligible to receive payment for transportation because transportation is not included in minimum licensing standards for family homes.

(d) During negotiation and renegotiation of a contract, the contractor selects any three of the preceding six months' enrollment records for DHS staff to review. The percentage of non-DHS purchased day care is determined by comparing the number of enrollment days for children whose care is not purchased by DHS to the total enrollment days for the same period. Separate rates may be established for the basic care and transportation to accommodate the different needs of families.

§10.3119. Budget Based Unit Rate Method in POS Facilities. Any contractor may use the budget based unit rate. The contractor and DHS negotiate a budget of expected allowable costs based on state and federal regulations for the contracted period and an estimate of expected enrollment days. The contracted rate is the budget total divided by expected enrollment days not to exceed the maximum rate for the age group served.

§10.3120. Rate Renegotiation in POS Facilities.

(a) The contractor's rate is effective for the period of the contract, unless renegotiation is needed because of substantial losses or gains by the contractor that were not predictable when the contract was negotiated. The contract manager renegotiates the rate, if necessary.

(b) The contractor must notify the contract manager if substantial losses or gains are expected or experienced. The contract manager must review a contractor's rates every six months and whenever any of the following changes occur:

(1) a change in the minimum wage;

(2) a change in federal regulations or policies affecting staffing ratios;

(3) an extended strike or shutdown of a major industry that seriously affects enrollment;

(4) receipt of a grant or subsidy that replaces budgeted salaries included when the current rate was negotiated;

(5) denial of a grant or subsidy that requires inclusion of salaries not included when the current rate was negotiated; and

(6) a change in the Child Care Food Program reimbursement rate.

(c) If circumstances other than the preceding six occur and rate renegotiation seems appropriate, the assistant commissioner for family self-support must approve a higher rate before renegotiation is completed. The Texas Constitution provides that once a contract is entered into, extra compensation cannot be granted for the work

originally agreed upon. Therefore, rates may not be increased or the certified local resources percentages may not be lowered unless services to be performed increase. DHS will not approve retroactive rate changes.

§10.3121. Parent or Caretaker Fees in POS Facilities.

(a) Contractors must establish their own fee schedule, based on a family's ability to pay. DHS must approve the schedule and any changes to it before implementation. Contractors must assess a weekly amount to all income eligible and nonpublic assistance food stamp clients.

(b) The weekly fee for a family with one child receiving day care is 2.0% to 3.0% of the family's gross monthly income. The weekly fee for a family with more than one child receiving day care is 2.5% to 4.0% of the family's gross monthly income. The family's gross monthly income is the amount recorded on the most recent eligibility certification. Contractors must not charge more than the cost of the service to DHS as determined by the contracted rate.

(c) Parents who receive a child care allocation from another state or federal program such as JTPA must pay that amount in addition to the assessed parent or caretaker fee.

§10.3122. Collection of Parent or Caretaker Fees in POS Facilities. Contractors must collect the fees from the family at least monthly before or after services are delivered. Contractors keep the collected fees and may use them as the local participation share or to provide additional day care services. Contractors must document compliance with their collection policies and keep copies of receipts given to the parents or caretakers.

§10.3123. Waiver or Reduction of Fees in POS Facilities.

(a) Contractors must establish policies, subject to DHS approval, for reducing or waiving parent or caretaker fees based on the following criteria:

(1) other expenses the family has; and

(2) extenuating circumstances that would jeopardize the family's economic self-sufficiency.

(b) Contracted agency boards may also establish policies to reduce parent or caretaker fees proportionate to the amount of time care is provided. These policies must be documented in the minutes of the board or advisory group meetings.

(c) Contractors must use criteria in their policies to evaluate the need to waive or reduce the fees. The policies and guidelines must not result in blanket waivers or reductions.

(d) Parents or caretakers are responsible for notifying contractors of changes in circumstances that might affect the fee amount.

§10.3124. Nonpayment of Fees in POS Facilities. Contractors must suspend or deny services to children whose parents or caretakers are capable of paying the full or reduced fee but have not paid. Before denying or suspending services, contractors must notify parents or caretakers and must wait 10 days from the date on the notice if the notice is given in person or 12 days if mailed before taking action. If a child is receiving services and the parent or caretaker requests a fair hearing before the denial is effective, the contractor must continue services according to policies in §79.1204 of this title (relating to Notice Requirement—Proposed Termination or Reduction of Assistance).

§10.3125. Child Care Food Program Reimbursement.

(a) Contractors must apply for and, if qualified, participate in the Child Care Food Program (CCFP) for supplemental payments for food service costs and for surplus commodities.

(b) Until CCFP supplements and commodities begin, necessary food costs may be reimbursed if an application is being processed. If CCFP participation is denied or terminated for a reason other than not having at least 25% of children eligible for subsidy, no food costs are allowable. Additionally, DHS considers the CCFP termination as grounds for contract termination.

(c) If the USDA income guidelines for CCFP eligibility are below DHS' income guidelines for day care eligibility, the difference in costs incurred for serving DHS clients is reimbursable.

(d) Contractors may not be reimbursed for the same expense by both the CCFP and day care purchase of service contracts. The CCFP payments must be subtracted from DHS bills.

§10.3126. Billing in POS Facilities. Contractors must only bill DHS after the services are provided. Bills and any statistical reports required by DHS must be sent within the time limit set by DHS and specified in the contract document. DHS is not liable for bills submitted after this time limit.

§10.3127. Client Registration by POS Facilities. Contractors must register in the social services management system (SSMS) all children receiving day care purchased by DHS. Contractors must maintain documentation of registration in the facility's files.

§10.3128. Required Forms for POS Facilities. As a contractual requirement, contractors must maintain or submit to DHS, as appropriate, forms specified in the day care plan of operation.

§10.3129. Broker Contracts.

(a) Day care brokers are contractors that provide all or part of the care through subcontracts or agreements with facilities from which the brokers purchase care on an individual basis.

(b) Brokers must:

(1) meet the requirements for contracting, including the capacity to provide quality day care services and eligibility determination and documentation;

(2) have a child development or early childhood specialist on staff or under contract to monitor service delivery and to deliver training and technical assistance to subcontractors;

(3) monitor service delivery on-site at each facility at least twice annually;

(4) offer training and technical assistance to subcontractor's staff; and

(5) subcontract only with facilities that are licensed, registered, or certified.

§10.3130. Broker Subcontracts with Day Care Centers.

(a) Brokers must have written subcontracts with the centers that deliver the day care services. These subcontracts must contain the following information:

(1) rates of payment;

(2) hours, days, and location of service;

(3) maximum number of children to be served;

(4) description of service;

(5) beginning date and ending date of agreement;

(6) responsibility for collection and disposition of parent or caretaker fees;

(7) absenteeism follow-up requirements;

(8) recordkeeping requirements;

(9) payment procedures; and

(10) responsibility to report suspected child abuse and neglect to DHS.

(b) DHS staff must approve each subcontract individually or approve the broker's subcontract form and minimum facility requirements, thereby waiving the right of prior approval for each individual subcontract. Subcontracts must be signed before enrolling children in the facility.

§10.3131. Broker Subcontracts with Registered Family Homes.

(a) Brokers using registered family homes must have written agreements or subcontracts with the family home operators that specify the rights and responsibilities of both parties. Representatives for both the brokers and the family home operators must sign and date the agreement or subcontract before enrolling children in the home. Agreements or subcontracts must contain the following information:

(1) rate of payment;

(2) hours and days of service;

(3) number of children to be served;

(4) description of services to be provided;

(5) beginning and ending dates of the agreement;

(6) responsibility for collection and disposition of parent or caretaker fees;

(7) recordkeeping requirements;

(8) proof of registration;

(9) name, address, and telephone

number of the family home operator;

(10) responsibility to report suspected child abuse and neglect to DHS;

(11) absenteeism follow-up requirements;

(12) payment procedures;

(13) documentation of training received; and

(14) name and address of substitute caregiver if the family home caregiver becomes ill or has an emergency.

(b) DHS staff must approve each subcontract individually or approve the broker's minimum facility requirements, thereby waiving the right of prior approval for each individual family home. Subcontracts must be signed before enrolling children in a family home.

§10.3132. Monitoring Program Compliance in POS Facilities. Contractors must participate in the monitoring system as specified by DHS.

§10.3133. Contract Violations and Service Improvement Plans in POS Facilities. Contractors must comply with all terms of the contract. When contract violations are documented and an improvement agreement reached, improvements must take place within the agreed upon time limit or the contract is subject to suspension, nonrenewal, or termination.

§10.3134. Minimum Licensing Standards Violations in POS Facilities.

(a) Day care facilities must comply with the appropriate licensing standards. When informed of adverse action against a facility for minimum standards violations, DHS may take adverse action on the day care contract.

(b) Depending upon the severity of the licensing standard violation, adverse action which could be taken includes closing intake, suspending payments, and terminating the contract.

§10.3135. Waiver Request for POS Facilities. The assistant commissioner for family self-support may waive day care policies or procedures if the waiver benefits a client or a contractor and does not harm DHS services or violate state or federal laws and regulations. Contractors may request waivers from DHS regional day care staff.

§10.3136. Audits of POS Facilities.

(a) Day care facilities are subject to DHS audit or review. DHS may audit all relevant records or statistically sample records and project overpayments based on that sample.

(b) Contractors must submit any reports required by DHS. DHS may audit cost or rate study data submitted.

§10.3150. Selection of Provider Agreement Facilities. Through provider agreements, DHS purchases 30% or less of the licensed capacity of a day care center. Providers that want more than 30% of their licensed capacity to be purchased by DHS must apply for

a day care purchase of service contract. Providers selected for provider agreements must:

- (1) be licensed or registered and not currently violating licensing standards;
- (2) be willing to have a provider agreement and abide by its terms;
- (3) offer services that meet regional need regarding location, ages served, and hours of operation; and
- (4) be able to meet DHS purchase requirements as specified in the provider agreement for child day care and policy and procedures agreement for day care provider agreements.

§10.3151. Service Plans in Provider Agreement Facilities.

- (a) Providers must be able to deliver services that comply with DHS purchase specifications for day care.
- (b) Day care center and group day home providers must submit a completed and signed plan for providing services in day care centers to DHS staff.
- (c) Registered family home providers must submit a completed and signed day home service description and agreement to DHS staff.

§10.3152. Completion of Provider Agreements. A provider agreement must be signed by the DHS representative and the provider before children are referred for care.

§10.3153. Renewal of Provider Agreements. Provider agreements are limited to six months and end on the date shown on the provider agreement form. DHS may renew provider agreements with providers that:

- (1) comply with licensing minimum standards;
- (2) comply with purchase requirements;
- (3) have no unresolved service improvement agreements; and
- (4) are located in an area where there is a client need.

§10.3154. Basis of Payment for Provider Agreements. For the provider to be paid, the following criteria must be met when services are provided.

- (1) There must be a signed provider agreement between DHS and the provider on the first date services are delivered.
- (2) The facility must be licensed or registered and comply with the appropriate set of minimum standards for child care facilities.
- (3) The provider must document that children served are eligible and meet the criteria for one of the priorities for service.
- (4) The provider must comply with the general family self-support policies and procedures for eligibility determination, authorization, and documentation.

- (5) The owner of the facility must not have a parental relationship with the child as described in Title 2 of the Texas

Family Code (usually a biological parent, adoptive parent, or legal guardian).

- (6) The provider must document that the children are within the age group specified in the provider agreement and in the facility's license or registration.
- (7) The provider must document that the children are enrolled according to a DHS worker's authorization.
- (8) The provider bills DHS for units of service provided to enrolled children on specified days of operation and subject to the limits in the provider agreement including:

- (A) any day the facility routinely provides care;
- (B) up to nine additional days per year, including holidays;
- (C) any additional days the facility normally provides care but cannot because of inclement weather, natural disasters, or other circumstances that make operation of the facility impossible. DHS staff must give written approval before the provider bills for this type of enrollment day.

- (9) The care must not exceed one full-day unit of care for each child per 24-hour period unless authorized by DHS.
- (10) The provider must have an attendance record for each child showing whether the child is present or absent on each day the child is enrolled.

- (11) The provider must follow up on an enrolled child who is absent depending on the type of authorization under which the child is enrolled.

- (12) The provider's payment rate must not exceed the DHS maximum rate for the age group served or the rate specified in the provider agreement.

- (13) The provider's payment rate is the rate in the provider agreement and is subject to DHS rate setting procedures and allowable costs.

- (14) The provider is not paid for any child in the facility for any day or time that attendance exceeds the licensed capacity for the facility.

- (15) Any facility providing care must be identified in the DHS provider agreement, or the provider agreement terms must explicitly allow the provider to subcontract for services at other facilities without prior approval by DHS.

§10.3155. Eligibility and Priorities For Service in Provider Agreement Facilities.

(a) DHS purchases day care services from provider agreement facilities for children from birth through 10 years of age who meet the eligibility criteria specified in §10.1001 of this title (relating to People Who Are Eligible) and the criteria for one of the following priorities:

- (1) Priority 1—children referred by DHS child protective services staff without regard to income;
- (2) Priority 2—children who receive or whose parents or caretakers receive AFDC, SSI, or refugee/entrant cash

assistance who need day care so their parents or caretakers can participate in employment or training;

(3) Priority 3—children who receive or whose parents or caretakers receive food stamps who need day care so their parents or caretakers can participate in employment or training;

(4) Priority 4—other children who meet income eligibility guidelines and who need day care so their parents or caretakers can participate in employment or training.

(b) DHS also purchases day care for children who are 11-13 years of age if they are in Priority 1 or have a documented handicap that makes day care necessary but allows for mainstreaming.

(c) Providers must enroll children in order of priority.

(d) Children must be in Priority 1 or 2 when initially referred by a DHS worker. Children in Priority 1 may receive day care for six months, unless child protective services staff authorizes continued care. Children in Priority 2 may receive day care while they or their parents or caretakers receive an assistance grant and the parents or caretakers are employed or participating in training. Children may continue receiving day care for up to two years after grant denial under Priorities 3 or 4 if they are still eligible and their parents or caretakers are employed or participating in training.

§10.3156. Handicapped Children in Provider Agreement Facilities.

(a) By the first day a handicapped child is enrolled, the parent, caretaker, or DHS submits to the provider a completed screening and assessment form signed by a licensed physician. It must include a professional assessment and diagnosis about the appropriateness of day care and special recommendations for care. The form also is required if a handicap is found after enrollment.

(b) If DHS documents that emergency day care is needed or a handicap is found after enrollment, completion of the assessment form may be delayed for up to 30 calendar days.

(c) Recommendations from the child's physician or another specialist for special services which require additional funds must be on file before payment can be approved.

§10.3157. Developmental Plan for Handicapped Children in Provider Agreement Facilities.

(a) The provider must prepare a developmental plan based on the needs of the handicapped child enrolled in the facility.

(b) The plan must be based on professional recommendations from the physician or specialist involved in the child's assessment.

(c) The provider must keep the plan in the child's folder and update it at least an-

nually or more often as the child reaches the planned goals.

§10.3158. Abused and Neglected Children in Provider Agreement Facilities.

(a) Only children in open protective services cases are classified as Priority 1 for day care.

(b) DHS purchases protective day care based on the case plan for the child or the family and as authorized by the child protective services worker. Protective day care may be used for children living at home to:

(1) enable the child to remain in the home while the parents work toward rehabilitation; and

(2) reduce the detrimental effects of abuse and neglect on the child by helping the child receive physical, social, and mental growth opportunities.

(c) Children in foster care or adoption qualify for day care as priority one only if needed to prevent disruption of the placement or relocation by ensuring adequate care and supervision. Day care needed for any other reason is not Priority 1.

§10.3159. Employment-Related and Training-Related Day Care in Provider Agreement Facilities.

(a) DHS purchases day care for children in Priorities two, three, and four to allow parents or caretakers to obtain or retain employment or to participate in training. At the time of enrollment, a child's parent or caretaker must be employed, in training, or actively participating in DHS employment services unless incapacitated.

(b) If one parent or caretaker is incapacitated, the child must also have a parent or caretaker participating in employment, training, or DHS employment services.

(c) If children are enrolled in employment-related or training-related day care and the parent or caretaker is temporarily incapacitated, day care may continue for up to two additional months. The parent or caretaker must obtain a doctor's statement verifying the incapacity and that the condition should end within the two-month time frame.

(d) Children of employed students may receive day care services needed to support their parents' or caretakers' employment.

(e) As a condition of the DHS employment services case plan, parents or caretakers may enroll their children for up to 30 calendar days while they seek employment.

(f) Training-related day care is provided for children to allow their parents or caretakers to:

(1) complete high school or its equivalent; or

(2) obtain additional training to assist them to become self supporting.

(g) The training should be expected to lead to employment. For DHS employment

services clients, the training must be part of an employability plan.

(h) The parents or caretakers must participate in training through institutions that are approved, licensed, or accredited by the state or a professional regulatory body. The regional director for family self-support may grant exceptions for programs that are:

(1) designed to train and place the types of clients served by DHS; and

(2) successful in placing clients in employment as a result of the training.

(i) To determine if the training program can be expected to lead to employment, the success of recent graduates in obtaining employment as a result of the training is considered.

(j) Training-related day care may continue until the parent or caretaker completes one of the following:

(1) an associate degree,

(2) 65 semester hours of college credit, or

(3) two years of adult vocational education or training.

(k) A maximum of two years of post high school training-related day care purchased by DHS may be received regardless of the training completed.

(l) Extensions may be granted for up to six weeks if they will enable parents or caretakers to complete a term or a course of study.

(m) Parents or caretakers who have completed training or education identified in subsection (j)(1), (2), or (3) of this section are considered employable and their children are not eligible for training-related day care.

(n) The regional director for family self-support services may grant exceptions to the requirements concerning time in training if a four- to six-week refresher course will enable parents or caretakers to qualify for employment or a better job.

§10.3160. Hours of Care in Provider Agreement Facilities.

(a) Children in Priorities 2, 3, and 4 are enrolled based on the hours needed to support the parent's or caretaker's employment and training.

(b) Full-time care is authorized only if the parent or caretaker works or is in training 30 hours or more a week. For a full-time high school student or a college student, 12 or more semester hours of coursework is equivalent to 30 hours of training per week.

(c) Part-time care is authorized if the parent or caretaker works or is in training 15 hours or more per week but less than 30. Six semester hours of coursework is equivalent to 15 hours of training per week.

(d) Combinations of work and training may be used to determine the amount of day care to authorize.

(e) An employed parent or caretaker should earn gross pay of at least \$200 a month to be considered employed full time and eligible for full-time day care. To receive part-time care, the gross pay should be at least \$100 a month.

§10.3161. Units of Service in Provider Agreement Facilities.

(a) The unit of service for day care is either a full day or a part day of care for an enrolled child. A full day is at least six hours of care within a 24-hour period. A part day is any amount less than six hours within a 24-hour period.

(b) Additional units may be approved for the following reasons:

(1) a parent has to work two continuous shifts during a 24-hour period;

(2) a parent participates in work or training that spans both daytime and evening hours making two shifts of care necessary; and

(3) a child in a protective services case needs care for more than one shift.

(c) Time in care begins when the facility assumes responsibility for the child, but does not include more than two hours of transportation (not counting field trips) a day. Except for after school care programs, providers that are paid full day rates must offer at least 10 hours of care per day.

§10.3162. Enrollment Days in Provider Agreement Facilities.

(a) DHS bases the units of service on the duration of an eligible child's enrollment. The provider is neither penalized when a child enrolled for full days attends occasionally for a part day nor paid extra when a child enrolled for part days attends occasionally for a full day.

(b) Enrollment begins when a child's name is placed on the rolls of the facility after being determined eligible and the child's parent or caretaker or DHS worker assures the provider that the child will attend on a specified basis. The provider must document the child's expected arrival and departure times and the unit of service (full day or part day) in the child's folder.

(c) All clients must meet the following basic requirements for enrollment:

(1) the eligibility criteria;

(2) a day care priority;

(3) the intake documentation requirements;

(4) the provider's rules for enrollment; and

(5) the requirements for attendance.

(e) If these requirements are not met, providers may drop the child from the enrollment rolls.

(f) A parent or caretaker must sign a statement of understanding that the child's care will end if the child is absent five consecutive days or more than 10 days in a month without the parent or caretaker contacting the facility or DHS.

§10.3163. Attendance in Provider Agreement Facilities. Providers must maintain an attendance record for each enrolled child and document the child's attendance. Providers must follow up on a child's absence within a billing period using specific procedures outlined by DHS in its *Family Self-Support Handbook*. Failure to do so may

result in suspension of the provider's payment for the child. Payments will resume once the child's absence ends or the provider complies with the absenteeism follow-up requirements.

§10.3164. Termination for Excessive Absences in Provider Agreement Facilities. If a child is absent five consecutive days or more than 10 days in a month, enrollment termination must begin for that child. In these cases, the provider must request authorization to continue enrollment from the child development specialist or contract manager before billing DHS for the month in which the excessive absences occurred.

§10.3165. Maximum Payment Rates for Provider Agreements. DHS establishes maximum payment rates for each day of enrollment for each age group. The maximum rates are listed in DHS' *Family Self-Support Handbook* or may be obtained from DHS regional day care staff.

§10.3166. Payments for Handicapped Children in Provider Agreement Facilities. Facilities that mainstream handicapped children may be paid up to 190% of the rate specified in the provider agreement for special services to these children. The child's need for special services must be verified.

§10.3167. Rate Determination Methods in Provider Agreement Facilities. Payment rates for provider agreement facilities are determined by either the published rate method or standard rate method. Payment may not exceed the applicable DHS maximum rate.

§10.3168. Published Rate Method in Provider Agreement Facilities.

(a) Providers using the published rate method must document that at least 20% of the care they provide is not purchased by DHS. The 20% applies to payments collected from parents or caretakers. If a provider has several published rates, these must be documented separately. If a provider uses a sliding fee scale, DHS will not pay a higher fee than the fee paid by at least 20% of the parents. DHS pays the provider a daily rate resulting from the sum of the published rate and allowable costs such as administrative fees and transportation or the maximum daily rate for the age group served, whichever is less.

(b) The administrative fee for the cost of additional requirements and paperwork is \$.81 per child, per day. The same rate is paid for both full and part days of care. If the provider has a special fee for registration or art, the amount is prorated over the length of time the fee covers. One-time fees are prorated over one year.

(c) DHS pays an additional transportation cost only if the same cost is paid by families of children for whom DHS does not purchase care. The published rate for transportation is a maximum of \$1.50 per

child, per day. Registered family homes, for which there are no minimum licensing standards relating to transportation, are not eligible to receive payment for transportation.

§10.3169. Standard Rate Method in Provider Agreement Facilities.

(a) DHS uses the standard rate method for providers that do not qualify to use a published rate or those that choose the standard rate. DHS determines the rate for full-day or part-day basic care. The administrative fee and applicable special fees are already included in the standard rate.

(b) The standard rate is \$6.40 per child, per day. Providers may receive up to \$1.50 extra per child, per day for transportation.

§10.3170. Transportation of Children by Provider Agreement Facilities.

(a) Children in Priority 1 and Priority 2 are provided transportation services if available. Providers must observe all applicable licensing standards related to transportation for children in care.

(b) Children in Priority 1 are eligible for transportation services if a need is documented on the authorization form and they are referred by a child protective services worker. Children in Priority 2 qualify for transportation services if the parent or caretaker is employed or in training as part of a family self-support case plan, and the transportation is necessary for the parent to continue the employment or training. Transportation may be continued for children enrolled as either Priority 1 or 2 if their service priority changes but the need for transportation continues.

§10.3171. Parent or Caretaker Fees in Provider Agreement Facilities.

(a) DHS staff assesses fees for all nonpublic assistance food stamp clients and other income eligible families receiving provider agreement day care services. DHS informs providers of the assessed fees.

(b) The weekly fee for a family with one child receiving day care is 2.0% to 3.0% of the family's gross monthly income. The weekly fee for a family with more than one child receiving day care is 2.5% to 4.0% of the family's gross monthly income. A family's income is the amount recorded on the most recent eligibility certification. The fees will not exceed the cost of the service to DHS as determined by the rate in the provider agreement document.

(c) DHS child protective services workers may negotiate fees with the parent or caretaker if the parent or caretaker has agreed to or is capable of paying for the child's day care.

§10.3172. Collection of Parent or Caretaker Fees in Provider Agreement Facilities.

(a) Providers must collect the fees from the family at least monthly before or after services are delivered. Providers may

use the same collection procedures for DHS purchased day care as for other families served.

(b) Providers must inform the parent or caretaker about collection procedures and provide a receipt for fees paid.

(c) Providers must notify DHS within 10 work days after the due date if the parent or caretaker does not pay the assessed fee. Providers are not reimbursed for the uncollected fees if DHS is not notified of the overdue amount.

§10.3173. Waiver or Reduction of Fees in Provider Agreement Facilities.

(a) DHS waives or reduces parent or caretaker fees for income eligible families and families receiving nonpublic assistance food stamps using the following criteria:

(1) other expenses the family has; and
(2) extenuating circumstances that jeopardize the family's economic self-sufficiency.

(b) The family is responsible for notifying DHS of changes in its circumstances that might affect the assessed fee. Extenuating circumstances under which the fees may be waived or reduced include, but are not limited to, the following:

(1) time spent in care. The child is enrolled only for after school care, part-day care, or only for part of the week;

(2) new employment. The parent or caretaker has a new job and has no money until pay day;

(3) work-related expenses. The parent or caretaker has unusual transportation costs or costs for tools and special uniforms;

(4) relocation. The parent or caretaker has relocated and lacks money;

(5) disability. The parent, caretaker, or child has high medical costs as a result of a handicap and cannot pay all or part of the assessed fee; and

(6) unemployment. The parent or caretaker is not employed and is or will be participating in employment-related programs.

§10.3174. Nonpayment of Fees in Provider Agreement Facilities. DHS may suspend or deny day care if the family is capable of paying the fee and does not pay. DHS notifies parents or caretakers. DHS must wait 10 days from the date on the notice before taking action. If a family was receiving services and requests a fair hearing within 10 days, providers must continue services according to policies in §79.1204 of this title (relating to Notice Requirement—Proposed Termination or Reduction of Assistance).

§10.3175. Reduction of Reimbursement Based on Fees Collected in Provider Agreement Facilities. DHS reduces its reimbursement to the provider by an amount equal to the fees collected by the provider.

§10.3176. Monitoring Program Compliance in Provider Agreement

Facilities. DHS staff monitors service delivery by providers to ensure compliance with the provider agreement.

§10.3177. Provider Agreement Violations and Service Improvement Plans in Provider Agreement Facilities. Providers must comply with all the terms of the provider agreement. When violations are documented and an improvement agreement reached, improvements must take place within the agreed upon time limit or the provider agreement is subject to suspension, nonrenewal, or termination.

§10.3178. Minimum Licensing Standards Violations in Provider Agreement Facilities.

(a) Day care providers must comply with the appropriate licensing standards. When informed of adverse action against a facility for minimum standards violations, the day care program staff may take adverse action on the day care provider agreement.

(b) Depending upon the severity of the licensing standards violation, adverse action which could be taken includes closing intake, suspending payments, and terminating the provider agreement.

§10.3179. Waiver Requests for Provider Agreement Facilities. The assistant commissioner for family self-support may waive day care policies or procedures if the waiver benefits a client or a provider and does not harm DHS services or violate state or federal laws and regulations.

§10.3180. Audits of Provider Agreement Facilities.

(a) Day care facilities are subject to DHS audit or review. DHS may audit all relevant records or statistically sample records and project overpayments based on that sample.

(b) Providers must submit any reports required by DHS. DHS may audit cost or rate study data submitted.

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 June 24, 1987.

TRD-8705193 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption:

November 23, 1987

For further information, please call
(512) 450-3766.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 153. DWI Education Program Standards and Procedures

DWI Education Program Procedures

★ 40 TAC §§153.4, 153.36-153.38, 153.41

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §§153.4, 153.36-153.38, and 153.41, concerning program certification requirements, class size, program operation requirements, program staffing requirements, record keeping, and reporting. These amendments are needed in order to enhance the quality of program operations, get all new programs on the same reporting period as existing programs, and get all instructors on the same reporting/certification period.

Larry Goodman, administrator, Fiscal and Administration Services, 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. Goodman also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the enhancement of state-approved DWI education program operations offered throughout the state. The possible economic cost to individuals who are required to comply with the sections as proposed cannot be determined at this time because cost of services will vary.

Comments on the proposal may be submitted to Patricia Kubsch, Texas Commission on Alcohol and Drug Abuse, 1705 Guadalupe, Austin, Texas 78701.

The amendments are proposed under the Code of Criminal Procedure, Article 42.12, §6d, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to publish rules and regulations for approved DWI education and the authority to monitor and coordinate the approved educational programs.

§153.4. Program Certification. [A certificate issued under this Act expires two years from the date of issuance.] A program seeking certification must comply with the provisions of this Act and with the rules, regulations, and standards of the commission adopted under this Act. A certificate

may be issued when the commission receives a prescribed application form and the DWI Certification Committee grants approval of the application. The certificate will become effective on the first day of the following month after approval and will expire on August 31 of every even numbered year [the date of issuance]. A program shall be monitored by the commission or its designated representative prior to issuing program certification/recertification or during the [two-year] certification period. Programs certified after March 1 of even numbered years may be monitored during their initial certification period and/or their recertification period. Certified programs may be monitored without prior notice. Certified programs will be listed as potential referral schools in the Statewide DWI Education Program directory. Noncertified programs are not eligible to receive referrals. Applications for certification are available from the commission's Statewide DWI Education Program Director, Texas Commission on Alcohol and Drug Abuse, 1705 Guadalupe, Austin, Texas 78701-1214.

§153.36. Program Operation Requirements. All certified programs designed to rehabilitate persons who have been placed on probation for driving while intoxicated under the provisions of this Act shall:

(1) (No change.)

(2) provide a minimum of eight hours of instruction per course[,] and complete all pre-registration, data collection, and screening instrument(s) prior to the first class. Instruction shall not exceed four hours in any one day;

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

(5) utilize all required films, transparencies, and other required resources in instruction. Any supplemental films used in the program must have prior approval from the DWI Certification Committee according to the following criteria:

(A) the program uses the required film(s) in the appropriate modules; and

(B) the program exceeds the minimum of eight hours of instruction [or the program completes all required data gathering prior to the first class]; and

(C) the supplemental film relates directly to the objectives of the curriculum module in which it is used.

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

(8) administer, evaluate, and formulate a [referral] recommendation using the required screening instrument. Additional instruments may be used as supplements. [The screening instrument shall be administered before or during the first class session.] The purpose of the testing is to make [referrals] a recommendation for further evaluation where indicated[;]. The recommendation shall be forwarded to the appropriate probation department and/or other referral resource(s) within 10 working days after completion of the course and/or exit interview;

(9) maintain a referral program for treatment of those participants whose screening instrument indicates may have an alcohol abuse or addiction problem;

(9)(10) administer, at the end of each course, a student course evaluation;

(10)(11) set fees for client services, have other resources which are sufficient to carry out the program, or both;

(11) make provisions to provide the program for persons who are unable to read and/or speak English;

(12)-(13) (No change.)

§153.37. Program Administration.

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

(d) Class size shall not exceed 30 [35] participants per class.

(e) (No change.)

§153.38. Program Staff. Program staff should be selected using the following criteria.

(1) Instructors.

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

(F) [Instructor certification shall be for a period of two years beginning January 1, 1984.] Instructors certified prior to September 1, 1987, shall have a recertification period of two years to expire on August 31 of odd numbered years.

(G) Instructors certified after September 1, 1987, shall have an initial certification period of no less than two years to expire on the last day of August or February, whichever occurs first, following their initial certification date.

(H)(G) Instructors shall be required to teach a minimum of four [three] courses 32 hours [(24 hours)] during [each year of] the instructor's certification period in order to retain certification.

(I) Should an instructor's certification lapse due to failure to comply with the recertification requirement, the instructor must repeat and successfully complete the initial administrator/instructor DWI education training program approved by the DWI certification committee.

(J) Instructors shall keep the commission informed of their current mailing address at all times.

(2) (No change.)

§153.41. Record Keeping and Reporting.

(a) Data collection.

(1) The program administrator is responsible for collecting the following data on each class participant for use by the program in developing class profiles:

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

(Q) evaluation[referral] recommendation.

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

(b) The following items shall be reported to the commission annually and shall be used for statistical purposes only:

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

(6) percent of total participants indicating evident problem drinking as defined in the required screening procedure; and

(7) (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 June 18, 1987.

TRD-8705085

Ross Newby
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Proposed date of adoption:

September 1, 1987

For further information, please call
(512) 483-5510.

★ ★ ★

Chapter 155. Community Services

Peer Assistance Program

★ 40 TAC §155.26

The Texas Commission on Alcohol and Drug Abuse proposes an amendment to §155.26, concerning the requirement that peer assistance programs established under Texas Civil Statutes, Article 5561c-3, shall be statewide and available for all of the professionals registered, licensed, or certified by the regulatory board involved in the establishment of a peer assistance program for its professionals to prevent geographic or other discriminatory limitations or access to the program.

Larry Goodman, Fiscal and Administrative Services Division administrator, 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. Goodman also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the development of comprehensive peer assistance programs which will be made available to all professionals registered, licensed, or certified by regulatory boards involved in the establishment of such programs. The possible economic cost to individuals who are required to comply with the section as proposed cannot be determined because cost and program scope of services will vary.

Comments on the proposal may be submitted to Patricia Kubsch, Texas Commission on Alcohol and Drug Abuse, 1705 Guadalupe, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 5561c-2 §1.14(11); and Article 5561c-3, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to provide written rules

and standards reflecting minimum criteria for the establishment and operation of peer assistance programs.

§155.26. Minimum Criteria. A peer assistance program established under Texas Civil Statutes, Article 5561c-2, §1.14(11) and Article 5561c-3, §1, must satisfy the following minimum criteria.

(1) Requirement. The program must be administered by a committee of professionals who have no potential for direct financial gain from these activities.

(2) Requirement. The program must be statewide and made available to all members of the profession for which the program is established. Recommendation—committee members should be geographically representative of Texas, and should have as members one or more practitioners who are recovering from alcohol or drug abuse.

(3)(2) Requirement. The program must have written policies and procedures, including a workbook for peer intervenors which state philosophy and methods for program operation. Recommendation—such policies and procedures should include at least the following:

(A)-(G) (No change.)

(4)(3) Requirement. The program must be strictly confidential within the requirements of the Act. Record keeping should be kept to a minimum and wherever possible, case numbers should be used in place of names. Where applicable, the peer assistance program shall enter into a qualified service organization agreement to protect confidentiality of patient records under federal law.

(5)(4) Requirement. The program must be available seven days a week, 24 hours a day. Recommendation—a telephone hotline with a recording device for after-hour calls should be used.

(6)(5) Requirement. The program must show evidence of a plan to recruit and train volunteers from among its professionals who will become intervenors with their colleagues. Such intervenors must receive training in intervention skills, chemical dependency, and other job impairing problems. Recommendation—training events should be scheduled at least quarterly during the first 18 months of the program's existence and at least annually thereafter.

(7)(6) Requirement. The program must have an active plan for ongoing program evaluation and for promotion and publicity to encourage referrals.

(8)(7) Requirement. The program must show evidence of a working arrangement with a network of evaluation and referral specialists throughout Texas.

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

Earliest possible date of adoption:

July 31, 1987

For further information, please call
(512) 463-5510.

★ ★ ★

TITLE 43.

TRANSPORTATION

Part I. State Department of Highways and Public Transportation

Chapter 17. Division of Motor Vehicles

Dealer License Plate Cancellation

★43 TAC §§17.60, 17.61, 17.70, 17.71

The new sections and amendments are proposed under Texas Civil Statutes, Articles 6686 and 6688, which provide the State Highway and Public Transportation Commission with the authority to establish rules and regulations for the conduct of the work of the department and for the orderly administration of statutory provisions relating to dealer's and manufacturer's license plates.

§17.60. Definitions. The following words and terms, when used in the sections under this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise.

Commission—State Highway and Public Transportation Commission.

Dealer—Any person who is regularly and actively engaged in the business of buying, selling, or exchanging new or used motor vehicles, motorcycles, house trailers, or trailers or semitrailers as defined in the Registration Law, Texas Civil Statutes, Article 6675a-1; or the Certificate of Title Law, Texas Civil Statutes, Article 6687-1, at either wholesale or retail, either directly, indirectly, or by consignment.

Department—State Department of Highways and Public Transportation.

Director—Director, Division of Motor Vehicles, State Department of Highways and Public Transportation.

License—A dealer's general distinguishing number assigned by the State Department of Highways and Public Transportation.

Person—Any individual, firm, partnership, corporation, or other legal entity.

Regional office—The regional office of the Division of Motor Vehicles, State Department of Highways and Public Transportation.

Regional supervisor—The supervisor of a regional office of the Division of Motor Vehicles, State Department of Highways and Public Transportation.

§17.61. General Distinguishing Number [Dealer]. No person may engage in business as a dealer as that term is defined in §17.60 of this title (relating to Definitions), unless that person has a currently valid general distinguishing number assigned by the department; [Any person who is regularly and actively engaged in the business of buying, selling, or exchanging new or used motor vehicles, motorcycles, house trailers, or trailers or semi-trailers as defined in the Registration Law, Texas Civil Statutes, Article 6675a-1; or the Certificate of Title Law, Texas Civil Statutes, Article 6687-1, at either wholesale or retail, either directly, indirectly, or by consignment, is in violation of the Dealer License Law, Texas Civil Statutes, Article 6686, if such person does not have a valid general distinguishing number. However, such person is excluded if he] provided, however, that this section does not apply to a person who sells or offers for sale less than five vehicles of the same type as herein described in a calendar year and such vehicles are owned by him and registered and titled in his name.

§17.70. Cancellation of Dealer License. The director shall cancel a dealer's license or general distinguishing number if that dealer [shall be subject to cancellation for any of the following reasons]:

(1) fails [failure] to maintain a good and sufficient bond in the amount of \$25,000 or to be currently licensed by the Texas Motor Vehicle Commission [constitutes immediate cancellation];

(2) fails [failure of the dealer] to maintain an established and permanent place of business conforming to the department's regulations pertaining to office, sign, and display space requirements;

(3) refuses [refusal by the dealer] to permit a representative of the department to examine, during normal working hours, the current and previous years' sales records and ownership papers for vehicles owned by him or under his control and evidence of ownership or lease agreement on the property upon which the dealership is located;

(4) holds [a dealer holding] a special wholesale dealer license and is found to be selling a vehicle to someone other than a licensed dealer;

(5) holds [a dealer holding] a travel trailer dealer license or a trailer/semitrailer dealer license and is found to be selling a motor vehicle or a motorcycle;

(6) fails [failure of the dealer] to notify the department of a change of address within 10 days after such change;

(7) fails [failure] to notify the department of a change of dealership name or ownership within 10 days after such change;

(8) issues [issuing] more than one buyer's temporary cardboard tag for the purpose of extending the purchaser's operating privileges for more than 20 days;

(9) fails [failure] to immediately remove out-of-state license plates from vehicles which are purchased by the dealer or consigned to the dealer;

(10) misuses [misuse of] a metal dealer license plate or a temporary cardboard tag;

(11) fails [failure] to display dealer license plates or cardboard tags in a manner conforming to the department's regulations pertaining to the display of such plates and cardboard tags on unregistered vehicles;

(12) fails [failure] to notify the State Department of Highways and Public Transportation of a sale or transfer of a motor vehicle, motorcycle, house trailer, trailer, or semitrailer to a retail purchaser as provided in Texas Civil Statutes, Article 6686(d). Notification to the department shall be an application for certificate of title in the name of the retail purchaser filed with the appropriate county tax assessor-collector as provided by law;

(13) holds [holding] open titles or fails to take assignment of all certificates of title, manufacturer's certificates, or other basic evidence of ownership for vehicles acquired by the dealer or fails to assign the certificate of title, manufacturer's certificate, or other basic evidence of ownership for vehicles sold. (All certificates of title, manufacturer's certificates, or other basic evidence of ownership for vehicles owned by a dealer must be properly executed showing transfer of ownership into the name of the dealership;)

(14) fails [failure of a dealer] to remain regularly and actively engaged in the business of buying, selling, or exchanging vehicles of this type for which the general distinguishing number is issued;

(15) violates [violation of] any of the provisions of Texas Civil Statutes, Article 6686, or any rule or regulation of the department [filed herein.]; or

(16) has not assigned at least five vehicles in the prior 12 months, provided the dealer has been licensed more than 12 months.

§17.71. Notice and Appeal.

(a) Notice of proposed cancellation. Upon a determination that a dealer's license or general distinguishing number should be canceled, the director shall mail a notice of proposed cancellation by certified mail to the last known address of the dealer, notifying the dealer of the facts underlying the proposed cancellation and of the dealer's right to request a conference to review those circumstances and the proposed action

(b) Conference. A request for a conference under this section must be made in writing to the director within 15 days of the date of the notice of proposed cancellation. If timely requested, the conference shall be

scheduled and conducted by the regional supervisor at the regional office. In the event matters are resolved in the dealer's favor, the director shall send the dealer a notice of withdrawal, notifying the dealer that the notice of proposed cancellation is withdrawn, and stating the basis for that action. Failure to resolve matters in the dealer's favor, however, shall cause the director to send the dealer a notice of cancellation as provided in subsection (c) of this section.

(c) Notice of cancellation. If, pursuant to subsection (b) of this section, a dealer fails to request a conference, or does not receive a notice of withdrawal as the result of a conference, the director shall mail a notice of cancellation by certified mail to the last known address of the dealer, notifying the dealer of the factual grounds for cancellation, the effective date of the cancellation which shall be the 31st day following the date of the notice, and the dealer's right to request an administrative hearing on the matter.

(d) Administrative hearing. A request for an administrative hearing under this section must be made in writing and must be received by the director no later than the 20th day following the date of the notice of cancellation. If timely requested, the hearing shall be conducted in accordance with §§1.21-1.63 of this title (relating to Contested Case Procedure), and shall serve to abate the cancellation unless and until that cancellation is affirmed by order of the commission.

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 June 22, 1987.

TRD-8705088 Diane L. Northam
Administrative
Technician
State Department of
Highways and Public
Transportation

Earliest possible date of adoption:
July 31, 1987
For further information, please call
(512) 463-8630.

★ ★ ★

★43 TAC §17.71

(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 11th and Brazos, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The State Department of Highways and Public Transportation proposes the repeal of §17.71, new §17.60 and §17.71, and amendments to §17.61 and §17.70, concerning notification-hearing-cancellation of a motor vehicle dealer's license; the qualification of dealers; use of general distinguishing number; and notice, appeal, and cancellation of a dealer's license. The department proposes the repeal, new and amended sections in order to protect the interests of the citizens of Texas by defining certain regulatory terms and restructuring notification, hearing, and appeal procedures to assure that an action to cancel a dealer's license will be consistent with principles of due process and the Administrative Procedure and Texas Register Act.

Dian K. Neill, director, Division of Motor Vehicles, 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 and repeal.



Mrs. Neill also has determined that for each year of the first five years the sections and repeal are in effect the public benefit anticipated as a result of enforcing the sections and repeal will be the controlled use of dealer plates, more uniform enforcement of dealer law, assurance of dealer's right to due process of law, and the uniform regulation of per-

sons engaged in the business of buying, selling, or exchanging motor vehicles. There is no anticipated economic cost to individuals who are required to comply with the proposed sections and repeal.

Comments on the proposal may be submitted to Dian K. Neill, Director, Division of Motor Vehicles, 40th and Jackson Avenue, Austin, Texas 78779.

The repeal is proposed under Texas Civil Statutes, Articles 6666 and 6686, which provide the State Highway and Public Transportation Commission with the authority to establish rules and regulations for the conduct of the work of the department and for the orderly administration of statutory provisions relating to dealer's and manufacturer's license plates.

§17.71. Notication-Hearing-Cancellation.

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 June 22, 1987.

TRD-8705089 Diane L. Northam
Administrative
Technician
State Department of
Highways and Public
Transportation

Earliest possible date of adoption:
July 31, 1987
For further information, please call
(512) 463-8630.

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Withdrawn

Rules

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a rule by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing 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 31. NATURAL
RESOURCES AND
CONSERVATION**
Part IX. Texas Water
Commission

Chapter 335. Industrial Solid
Waste and Municipal
Hazardous Waste

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

★31 TAC §335.112

The Texas Water Commission has withdrawn the emergency effectiveness of an amendment to §335.112, concerning the interim standards for owners and operators of hazardous waste storage, processing, or disposal. The text of the emergency amendment appeared in the May 5, 1987, issue of the *Texas Register* (12 TexReg 1438).

Issued in Austin, Texas, on June 23, 1987.

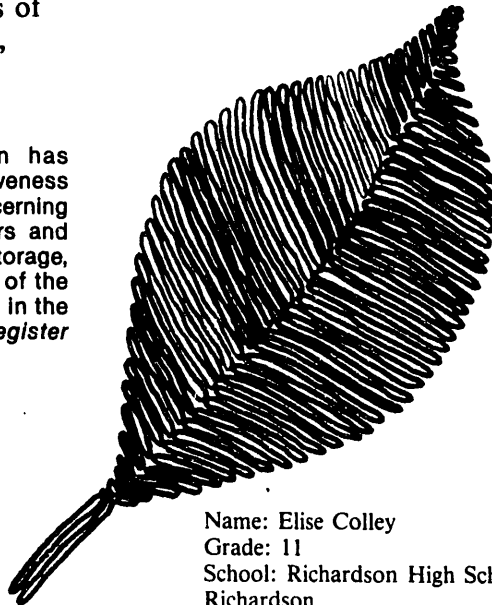
TRD-8705188

J. D. Head
Director
Legal Division
Texas Water
Commission

Filed: June 23, 1987

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

★ ★ ★



Name: Elise Colley
Grade: 11
School: Richardson High School,
Richardson

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

★31 TAC §335.152

The Texas Water Commission has withdrawn the emergency effectiveness of the emergency amendment to §335.152, concerning the permitting standards for owners and operators of hazardous waste storage, processing, or disposal facilities. The text of the emergency amendment appeared in the May 5, 1986, issue of the *Texas Register* (12 TexReg 1439).

Issued in Austin, Texas, on June 23, 1987.

TRD-8705189

J. D. Head
Director
Legal Division
Texas Water
Commission

Filed: June 23, 1987

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

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 7. BANKING AND SECURITIES

Part IV. Office of Consumer Credit Commissioner

Chapter 1. Consumer Credit Commission

Subchapter B. Miscellaneous Notice in Written Contracts

★7 TAC §1.302

The Office of Consumer Credit Commissioner, consumer credit section, adopts new §1.302, with changes to the proposed text published in the January 2, 1987, issue of the *Texas Register* (12 TexReg 5).

The new section makes the public aware that all written contracts made under the authority of Texas Civil Statutes, Article 5069, Chapters 6, 6A, or 7, are subject to Texas law and that any retail buyer may contact the Office of Consumer Credit Commissioner if they have any question concerning the contract or their rights under such contract. This new section provides that effective January 1, 1988, when a written contract or agreement is made under the authority of Texas Civil Statutes, Article 5069, Chapters 6, 6A, or 7, of the contract must contain the legend "This contract is subject in whole or in part to Texas law which is enforced by the Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207. Phone (512) 479-1285, (214) 263-2016, (713) 461-4074."

The Consumer Credit Section of the Finance Commission received two comments on the proposed section. Will Ehrle, president and general counsel of Texas Manufactured Housing Association, objected to the adoption of the proposed section or in the alternative that Chapter 6A be deleted from the section. Mr. Ehrle objected to the section on the grounds that it was not necessary, that the cost of printing such notice on retail installment contracts is too costly, and it is deceptive and misleading because such contracts are subject to federal law and regulation as well as state law. R. Stanley Hall, Merchandise Group, Sears, offered the following comments in objection to the adoption of the proposed section: added administrative expenses will be

caused to consumer creditors in issuing separate contracts for Texas residents and in adapting the supply of unexecuted contracts on hand as of the effective date of this section; there would be an apparent conflict with the contractual provision of credit agreements of Sears and other consumer creditors which provide that the contract terms are governed by the customer's state of residence; the notice may result in federal truth-in-lending complaints being misdirected; this section offers no substantive consumer protection.

The Consumer Credit Section of the Finance Commission does not agree with the conclusions reached by either of the commenters. While the Consumer Credit Section of the Finance Commission will agree that the new section is not made necessary by statutory mandate, it is felt that it is necessary to inform the consumer of the administrative assistance available at the Office of the Consumer Credit Commissioner. It is felt that there will be only minimal additional cost to creditors because the section allows the creditor to exhaust the supply of forms on hand by adding the notice to any such forms. Merit is found in the comment that such contracts are also subject to federal law, and the adopted notice is modified accordingly. It is not understood how it may be contended that truth-in-lending complaints may be misdirected. It is felt that with the assistance of the Consumer Credit Commissioner such complaints will be more accurately directed. For all of the reasons stated, the Consumer Credit Section of the Finance Commission disagrees with the comment that the notice offers the consumer no substantive protection.

The new section is adopted under Texas Civil Statutes, Article 342-114a, which authorize the Consumer Credit Section to adopt rules necessary for ensuring compliance with Texas Civil Statutes, Article 5069-1.01, et seq.

§1.302. *Notice In Written Contracts.* Effective January 1, 1988, when a written contract or agreement is made under the authority of Texas Civil Statutes, Article 5069, Chapter 6, 6A, or 7, the contract must contain the legend: "This contract is subject in whole or in part to Texas law which is enforced by the Consumer Credit Commissioner, 2601 North Lamar Boulevard, Aus-

tin, Texas 78705-4207. Phone (512) 479-1285, (214) 263-2016, (713) 461-4074." Any unexecuted contracts in the hands of a retail seller as that term is defined in Chapter 6 and Chapter 7 or any such contracts in the hands of a creditor as that term is defined in Chapter 6A may be adapted to conform with this regulation until the supply of such unexecuted contracts is exhausted.

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 June 19, 1987.

TRD-8705071

Leopoldo Palacios
Member, Consumer
Credit Section
Texas Finance
Commission

Effective date: July 13, 1987
Proposal publication date: January 2, 1987
For further information, please call
(512) 479-1280.

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TITLE 22. EXAMINING BOARDS

Part II. State Board of Barber Examiners

Chapter 51. Practice and Procedure

Barber Colleges, Schools, and Students

★22 TAC §51.27

The State Board of Barber Examiners adopts an amendment to §51.27, without changes to the proposed text published in the April 28, 1987, issue of the *Texas Register* (12 TexReg 1414).

The amendment protects consumers who are given services by barbers who have had recent training in the practice of barbering and the use of up-to-date sanitation and sterilization procedures.

The amendment provides a time limit for use of student hours and a requirement that the student retake the complete barber course.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8407(a), §28(a), which provide the State Board of Barber Examiners with the authority to make and enforce rules and regulations necessary for the performance of its duties.

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 June 17, 1987.

TRD-8705082 Jo King McCrorey
Executive Director
State Board of Barber
Examiners

Effective date: July 13, 1987
Proposal publication date: April 28, 1987
For further information, please call
(512) 835-2040.

★ ★ ★

Examinations and Licensing

★ 22 TAC §51.59

The State Board of Barber Examiners adopts an amendment to §51.59, without changes to the proposed text published in the April 28, 1987, issue of the *Texas Register* (12 TexReg 1414).

The amendment protects consumers who are given services by barbers who have had recent training in the practice of barbering and the use of up-to-date sanitation and sterilization procedures.

The amendment provides that a student must retake the entire examination and if the examination is failed again, another 12-month limit is provided.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8407(a), §28(a), which provide the State Board of Barber Examiners with the authority to make and enforce rules and regulations necessary for the performance of its duties.

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 June 17, 1987.

TRD-8705106 Jo King McCrorey
Executive Director
State Board of Barber
Examiners

Effective date: July 13, 1987
Proposal publication date: April 28, 1987
For further information, please call
(512) 835-2040.

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★ 22 TAC §51.63

The State Board of Barber Examiners adopts an amendment to §51.63, without changes to the proposed text published in the April 28, 1987, issue of the *Texas Register* (12 TexReg 1415).

The amendment assures that consumers are given services by barbers who have better knowledge of skin and scalp disorders.

The amendment provides that a student who fails the written part of the examination must return to school for further study.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8407(a), §28(a), which provide the State Board of Barber Examiners with the authority to make and enforce rules and regulations necessary for the performance of its duties.

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 June 17, 1987.

TRD-8705105 Jo King McCrorey
Executive Director
State Board of Barber
Examiners

Effective date: July 13, 1987
Proposal publication date: April 28, 1987
For further information, please call
(512) 835-2040.

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Part XIV. Texas Optometry Board

Chapter 279. Interpretations

★ 22 TAC §279.1

The Texas Optometry Board adopts an amendment to §279.1, without changes to the proposed text published in the May 15, 1987, issue of the *Texas Register* (12 TexReg 1559).

The amendment informs the licensees (optometrists) regarding what constitutes a fully-written contact lens prescription and informs the licensees that a signature is required and an expiration date must be placed thereon. The amendment is a housekeeping one.

Licensees will have full information regarding a fully-written contact lens prescription in order to issue a proper prescription for contact lenses.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4552, §2.14, which authorize the Texas Optometry Board to

promulgate procedural and substantive rules.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 19, 1987.

TRD-8705091 Lois Ewald
Executive Director
Texas Optometry Board

Effective date: July 13, 1987
Proposal publication date: May 15, 1987
For further information, please call
(512) 835-1938.

★ ★ ★

★ 22 TAC §279.7

The Texas Optometry Board adopts amendments to §279.7, without changes to the proposed text published in the May 15, 1987, issue of the *Texas Register* (12 TexReg 1559).

The rule establishes what the board feels is basic competence and professional responsibility in the prescribing of contact lenses: the amendment is to inform licensees that an expiration date must be placed on contact lens prescriptions, if issued.

The rule will inform licensees regarding basic competence and professional responsibility in the prescribing of contact lenses. The rule (amendment) is a housekeeping change to clarify that an expiration date is required to be placed on a contact lens prescription if issued.

No comments were received regarding adoption of the amendment.

Texas Civil Statutes, Article 4552, §2.14, authorizes the Texas Optometry Board to promulgate procedural and substantive rules.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 19, 1987.

TRD-8705092 Lois Ewald
Executive Director
Texas Optometry Board

Effective date: July 13, 1987
Proposal publication date: May 15, 1987
For further information, please call
(512) 835-1938.

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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 (TWC) adopts amendments to §§281.2, 281.3, 281.5, and 281.22. Section 281.3 is adopted with changes to the proposed text published in the April 21, 1987, issue of the *Texas Register* (12 *TexReg* 1326). The other sections are adopted without changes and will not be republished.

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 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 adopted by the Texas Water Commission in addition to other amendments to Chapter 305. The amendment to §281.3 adds a new subsection (c) to apply to hazardous waste permit applications. The new subsection explains that applicants for existing hazardous waste management facilities 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 may exercise the option of pursuing enforcement actions concerning deficient applications. This new provision corresponds to 40 Code of Federal Regulations §270.70(b), which governs the Environmental Protection Agency's approach to deficient Part A permit applications and the failure to qualify for interim status.

In §281.5, 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) clarifies 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.

The commission received one comment on the proposed sections. The law firm of Brown, Maroney, Rose, Barber & Dye suggested that the proposed section should

be clarified to explain that it applies only to existing hazardous waste management facilities in order to more accurately incorporate 40 Code of Federal Regulations §270.70(b) into the Texas Water Commission regulations. The commission agrees and has revised the language of §281.3(c) to clarify that it applies to existing hazardous waste management facilities that are submitting Part A permit applications. Also in response to this commenter, the Texas Water Commission has added language to §281.3(c) to clarify that the executive director of the Texas Water Commission has discretion in deciding whether to pursue enforcement action concerning deficient permit applications. This change is also made to more closely correspond to the language in the federal regulation.

These amendments are adopted under the 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.

§281.3. 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 for existing hazardous waste management facilities 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 may pursue enforcement action concerning deficient applications.

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 June 23, 1987.

TRD-8705166 J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: July 14, 1987
Proposal publication date: April 21, 1987
For further information, please call
(512) 463-8087.

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Chapter 305. Consolidated Permits

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

★ 31 TAC §§305.23-305.25, 305.30

The Texas Water Commission (TWC) adopts 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, 305.106, 305.125, 305.128, and 305.401. Section 305.62 is adopted with changes to the proposed text published in the April 21, 1987, issue of the *Texas Register* (12 *TexReg* 1326). The other sections are adopted without changes and will not be republished.

The 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 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, the amendment clarifies 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 amendment also specifies 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. This amendment tracks the language of 40 Code of Federal Regulations §270.10(e)(4).

Section 305.43 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, references are made to §305.50(9) and (10) in §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, 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 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. New §335.178 appears elsewhere in this issue of the *Texas Register*. Please refer to the adoption preamble for Chapter 335 for further discussion of new §335.178.

Amended §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, (48 FedReg 39622).

Amended §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 §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).

Amendments to §305.62 include a revision of subsection (c)(2)(C) by adding a new subsection (c)(2)(C)(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 provided that the requirements of §305.64 have been satisfied. Also in §305.62, new subsection (h) states that for applications filed under the Texas Water Code, Chapter 26, an application for a major amendment to a permit may also be considered as an application for a renewal of the permit if so requested by the applicant. The language of the proposed section is revised in response to comments, as described elsewhere in this preamble.

In §305.63, language specifically applicable to hazardous waste permits is 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 is added to clarify that applications for amendment shall be filed in place of applications for renewal applications filed under the Texas Water Code, Chapter 26, that are in fact requesting permit modifications.

In §305.64, a new subsection (g) is added 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 §305.53. 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, 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, 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 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, 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, is 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 §305.104, the amendments 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.

New §305.106, provides 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 is changed in response to comments and will be made available to the public.

In §305.125, 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 non-compliance with the permit and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment. This language tracks the provisions of the corresponding federal regulation at 40 Code of Federal Regulations §270.30(d). In §305.125(11)(C), the provisions governing monitoring and reporting requirements are amended to clarify that records of monitoring activities shall include the identity of the individual and the laboratory who performed an analysis.

In §305.128, the amendment references the signatory requirements and certifications for persons signing hazardous waste permits or reports that have been adopted in §305.50(9) and (10).

In §305.401, the amendment revises 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.

The Texas Water Commission (TWC) received several comments on the pro-

posed sections. Comments from Texas Eastman Company and the law firm of Brown, Maroney, Rose, Barber & Dye (Brown Maroney) expressed concern about new §305.106, and its function in the regulations. Texas Eastman Company noted the apparent inconsistency between §305.93 and §305.106, since §305.93 does not appear to invite public comments that would then be addressed in §305.106. The commission does not believe that these sections are inconsistent. Section 305.106 is added for the specific purpose stated in the section—to conform commission procedures to the U.S. Environmental Protection Agency (EPA) procedures described in 40 Code of Federal Regulations §124.17. The response to comments is prepared for the purpose of describing and responding to comments received on a draft permit for a hazardous waste management facility, and the procedure for the response to comments in §305.106 operates independently and without interfering with the procedures for TWC actions on applications for permits set forth in §305.93. New §305.106 does not affect the commission's existing mechanisms for the receipt and consideration of public comments on hazardous waste permit applications. Brown Maroney opposed the inclusion of the response to comments under §305.106 in an examiner's proposal for decision, noting that the response to comments is not subjected to the scrutiny and protections of a contested case hearing. The commission recognizes these concerns and agrees that the response to comments prepared under §305.106 is a different type of writing than that which results from a contested case hearing. However, the commission does not believe that the language of the proposed section poses any threat to the administrative process in contested case hearings, since the inclusion of the response to comments in a proposal for decision is optional and, if included, it will be clearly identified as a document prepared to satisfy 40 Code of Federal Regulations §124.17, as stated in §305.106.

Comments were received from the League of Women Voters on several issues presented in the proposed regulations. The commenter supported the inclusion of information concerning the availability of draft permits for hazardous waste facilities in the notice of hearing under §305.101, but suggested that the notice should also include information on where to find the draft permit. The commission wishes to advise the commenter that a notice of hearing also includes information on how a citizen can obtain a copy of the draft permit. The League of Women Voters also submitted comments expressing their support for the use of radio broadcasts to notify citizens of proposed actions regarding hazardous waste permits. The commission has adopted the proposed section without changes.

The Lone Star Chapter of the Sierra Club presented comments on several issues. The Sierra Club expressed concern about the use of the word "reasonable" in the phrase added to §305.125(4) and suggested that the word "necessary" be used in its place. The commission does not perceive a significant practical difference in the use of these two words and does not feel that a change in the proposed language is needed to bolster the agency's authority to require necessary actions under the terms of §305.125(4).

The Sierra Club also opposed the addition of the language in §305.62(c)(2)(C)(x) that lists a change in ownership or operational control of a facility as a change on a solid waste permit that may be considered a minor amendment, provided that other requirements and conditions are satisfied. The Sierra Club reasons that the proposed amendment would make a change in owner or operator of a hazardous waste facility a minor amendment, not subject to public notice or hearing, which would arguably circumvent the statutory provision in the Texas Solid Waste Disposal Act, §4(e)(11), requiring the permitting agency to consider compliance history in issuing or amending permits for solid waste management activities. The Sierra Club feels that transfer of hazardous waste permits should be subject to full public scrutiny and not relegated to a ministerial function of the TWC staff. In response, the commission does not believe that the proposed language removes the subject of solid waste permit transfers from public scrutiny or acts to circumvent the Texas Solid Waste Disposal Act. A minor amendment requires commission action at a meeting that is open to the public and that is publicly noticed. Commission staff members that review information concerning permit transfers have a wealth of information available to them concerning the past performance of entities under the jurisdiction of the TWC and are receptive to further information from the public. In acting on requests for minor amendments, the commission considers each item seriously and is responsive to concerns raised by interested persons. Although the Sierra Club notes that §281.23 requires additional notice if an application is attempted to be transferred after the chief clerk of the TWC has issued notice of an application and draft permit, the commission does not believe that this provision conflicts with the proposed language in §305.62(c)(2)(C)(x). Indeed, the requirement for additional notice in §281.23 reflects the TWC's concern for receiving public input on the issues presented by transfers of permits. The TWC also wishes to emphasize that the language of amended §305.62(c)(2)(C)(x) and §305.64 includes a number of conditions that must be satisfied in the event of permit transfer that operate to protect the public interest. Comments concern-

ing proposed §305.62(h) were received from Houston Lighting & Power Company (HL&P) and the Sierra Club. HL&P requested clarification that proposed §305.62(h) does not operate such that a permit amendment request constitutes a request for renewal in the sense that the entire permit is open to modification outside of the protection for good cause amendments in §305.62(d). The commission has revised the language in §305.62(h) to clarify that an application for a major amendment may also be considered as an application for renewal if so requested by an applicant. This revision would allow the applicant to choose whether to request a renewal. At the same time, the commission retains its authority to seek permit amendments for good cause under the terms of §305.62(d). The Sierra Club expressed concern that proposed §305.62(h) could operate in conflict with notice provisions and opportunity for involvement in the decisionmaking process if the notice of amendment did not also describe the contemplated renewal of the permit and allow for affected persons to participate in the decisionmaking process. The commission anticipates that the revisions to the proposed section will alleviate this concern, since major amendments are subject to public hearing, if requested, and the commission will specify that amendments and renewals are contemplated in public notices of proposed commission actions.

The Sierra Club also requested that the notice resulting from an application for renewal and other changes to an existing permit as a result of §305.63 should specify that an application for both renewal and amendment is being considered. The commission agrees that public notices issued as a result of such applications should specify that both renewal and amendment is contemplated. The League of Women Voters also submitted a comment on §305.63 in which they expressed support for the proposed regulation.

These amendments are adopted 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.

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 June 23, 1987.

TRD-8705167 J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: July 14, 1987
Proposal publication date: April 21, 1987
For further information, please call
(512) 463-8087.

Subchapter C. Application for Permit

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

These amendments are adopted 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 Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

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 June 23, 1987.

TRD-8705168 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

★ 31 TAC §§305.62-305.65, 305.68

These amendments are adopted 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);

(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 a major amendment to a permit may also be considered as an application for a renewal of the permit if so requested by the applicant.

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 June 23, 1987.

TRD-8705169 J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: July 14, 1987
Proposal publication date: April 21, 1987
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 adopted 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.

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 June 23, 1987.

TRD-8705170 J. D. Head
Director
Legal Division
Texas Water Commission

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Proposal publication date: April 21, 1987
For further information, please call
(512) 463-8087.

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★ 31 TAC §305.106

This new section is adopted 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.

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 June 23, 1987.

TRD-8705171 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 F. Permit
Characteristics and Conditions

★ 31 TAC §305.125, §305.128

These amendments are adopted 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 Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

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 June 23, 1987.

TRD-8705172 J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: July 14, 1987
Proposal publication date: April 21, 1987
For further information, please call
(512) 463-8087.

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Subchapter L. Compliance Plan

★ 31 TAC §305.401

This amendment is adopted 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 Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

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 June 23, 1987.

TRD-8705173 J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: July 14, 1987
Proposal publication date: April 21, 1987
For further information, please call
(512) 463-8087.

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Chapter 335. Industrial Solid
Waste and Municipal
Hazardous Waste

Subchapter A. Industrial Solid
Waste and Municipal
Hazardous Waste Management

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

The Texas Water Commission (TWC) adopts new §§335.9, 335.10, 335.28, 335.29, 335.74, 335.78, 335.127, and 335.178; amendments to §§335.1, 335.2, 335.6, 335.11-335.15, 335.22-335.24, 335.29, 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; and the repeal of §§335.9 and §335.10. Section 335.10 and §335.13 are adopted with changes to the proposed text published in the April 21, 1987, issue of the *Texas Register* (12 TexReg 1333). The other sections are adopted without changes and will not be republished.

Throughout the regulations, references to municipal hazardous waste have been shortened, when appropriate, to reference hazardous waste and Class I industrial solid wastes are referenced as Class I wastes. The adopted 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 adopted. These changes are being made to streamline the agency's reporting and recordkeeping requirements to avoid unnecessary or repetitious information-gathering. Clarifying amendments to §335.2(c) and §335.43(b) are also adopted 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. Section 335.6 notification requirements are updated to reflect the added provisions concerning small quantity generators.

Specifically, the changes incorporate the following promulgations by the EPA under RCRA.

Sections 335.112(a), 335.121, and 335.126 of Subchapter E are 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 (SQGs) and conditionally exempt small quantity generators (CESQGs) 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 1000 kilograms of hazardous waste in a calendar month). Requirements applicable to such generators are also set forth 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 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 have also been changed throughout Chapter 335. The term small quantity generator is now defined in §335.1. In adopting the small quantity generator requirements, the commission is not incorporating the exemption from manifesting applicable to waste shipped pursuant to a reclamation agree-

ment that is provided in the corresponding EPA regulations at 40 Code of Federal Regulations §262.20(e). The agency believes that the exemption from manifesting for CESQGs of municipal hazardous waste should alleviate the concerns expressed by commenters on the rules who urged its adoption.

For reasons more fully set out in the discussion of the comments received on the proposed sections, the commission has decided not to require manifesting of municipal hazardous waste generated by CESQGs. As a result, §335.10 and §335.13 have been revised in response to comments. In §335.10(a), the language of the opening sentence has been revised to return to the agency's existing requirements for manifesting of all Class I industrial solid waste (including hazardous waste), specified amounts of acute hazardous waste and manifesting of municipal hazardous waste from generators of municipal hazardous waste in quantities greater than 100 kilograms per month. A sentence has also been added to explain that CESQGs of municipal hazardous waste who choose to manifest their hazardous waste may do so using the simplified instructions for CESQGs that are included in §335.10(b). In §335.10(b)(14), the concluding sentence that discussed the shipment of hazardous waste from CESQGs to solid waste facilities regulated by the Texas Department of Health has been deleted to reflect the reduced manifesting requirements for some municipal hazardous waste. The provision is revised to reflect the exemptions from manifesting under §335.10(a) and the broader range of designated facilities allowed under §335.78. In §335.10(b)(20), the sentence stating that quantity descriptions on manifests should be the most accurate possible has been deleted in response to comments, as discussed elsewhere in this preamble. In §335.10(b)(22), additional descriptive phrases have been added to clarify that the waste classification code requirements may be modified for CESQGs of municipal hazardous waste.

In §335.13, which describes recordkeeping and reporting procedures applicable to generators shipping hazardous waste or Class I waste, subsection (b) has been revised to clarify that CESQGs of municipal hazardous waste are not subject to the shipment summary requirements imposed in §335.13(b).

Also as a result of the incorporation of EPA's small quantity generator regulations, the provisions of §335.41(e) are amended to reflect regulation of hazardous waste generated in quantities between 100-1000 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 amendment 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 (12 FedReg 11) 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 of Chapter 335 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 (12 FedReg 11) 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 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 amendments also contain requirements applicable to cost estimates for closure and post-closure care. In adopting amendments based on the May 2, 1986, promulgation, the commission regulation differs from 40 Code of Federal Regulations §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), all cost estimates must be based on third party removal and shipment off-site to an authorized facility. 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 (12 FedReg 11) 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)).

Section 335.112(a)(9) and §335.152(a)(8) (relating to Interim Status and Permitting Standards Applicable to Tanks) 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 (12 FedReg 11) 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, (12 FedReg 11) 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 ex-

emption 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 has been 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.

Section 335.71 (relating to Annual Reporting Requirements Applicable to Generators) and §335.114 and §335.154 (relating to Interim Status and Permitting Standards Applicable to Owners and Operators) 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 adopts 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 amends 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 has repealed existing §335.9, concerning recordkeeping and annual reporting requirements for generators, and replaced 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 25th 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 paragraphs (3) and (4) of subsection (a).

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 under §335.9 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 will also standardize many generators' reporting requirements and allow 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 repealed §335.10, concerning shipping procedures applicable to generators of hazardous waste or Class I industrial solid waste, and has adopted a new §335.10, which establishes revised shipping procedures and manifest

completion instructions applicable to the specified generators of hazardous waste or Class I industrial solid waste.

New subsection (b) of §335.10, which addresses the information required on the Texas Uniform Hazardous Waste Manifest, has been amended in order 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 non-hazardous solid waste who 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 has amended subsection (b), which concerns the requirement for persons to submit a monthly shipment summary to the commission. Amended §335.13(b) requires 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 is 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 are required for months in which shipments were not made or when shipments were made only to solid waste facilities located in Texas. CESQGs of municipal hazardous waste are exempt from the requirements in §335.13(b). In §335.13(e), the proposed language is adopted, which states that the exception report requirements in §335.13(c) do not apply to generators generating hazardous waste or Class I waste in quantities less than 100 kilograms in a calendar month, or generating less than the specified amounts of acute hazardous waste.

The commission has amended §335.23 and §335.24(h) to reflect proper rule references based on its earlier rulemaking concerning hazardous waste burned for energy recovery. See (12 TexReg 11) 3692, August 19, 1986. The commission also has amended §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 will invoke its authority under Chapter 26 in those instances where the activities of

such persons are 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 adopted in this section. The MOU relates to public participation in the judicial enforcement process.

Section 335.29 is a new section 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 has amended §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)).

The commission received several oral and written comments on the proposed regulations. A majority of the comments focused on the issue of whether to require manifesting of all hazardous waste, regardless of the quantity of waste generated in a month. The existing commission regulations in §335.10 require manifesting of all industrial hazardous waste and of municipal hazardous waste produced by generators that generate greater than 100 kilograms of hazardous waste in a month. The proposed regulations sought to impose manifesting requirements on all generators of hazardous waste, without regard to the type or quantity of waste generated.

The commission received comments in support of the proposed section from the Sierra Club and the League of Women Voters. Ameripol Synpol Company expressed support for the adoption of the proposed small quantity generator (SQG) regulations. The law firm of Brown, Maroney, Rose, Barber & Dye expressed concern about the vague nature of the last sentence of proposed §335.10(b)(20),

which concerns the items to be included on manifests. The commission has deleted this statement that the quantity description on the manifest "should be the most accurate possible" to alleviate the commenter's concerns. However, the agency believes that persons responsible for information on a manifest remain obligated to exercise due care in describing the quantity of waste on a manifest.

A second group of commenters expressed serious concerns about the significant impacts of requiring manifesting for all generators of hazardous waste. These commenters included the Texas Department of Health, Safety-Kleen Corporation, Southern Metal Refining, and the Texas State Department of Highways and Public Transportation. The Texas Department of Health opposed the manifesting requirement for conditionally exempt small quantity generators (CESQGs), which generate less than 100 kilograms per month of hazardous waste, predicting that the large number of CESQGs and the large number of their hazardous waste shipments would prove to be an unmanageable burden on solid waste facilities and the regulating agencies. Safety-Kleen Corporation argued that manifesting requirements should not vary according to the size or type of generators and that the reclamation agreement exemption in 40 Code of Federal Regulations, §262.20 should be incorporated into the Texas regulations for at least the CESQGs. Safety-Kleen also cited large numbers of generators and manifested shipments that would be brought into the hazardous waste regulatory system if the proposed section is adopted, thus arguing that the commission's fiscal impact analyses were greatly underestimated. Safety-Kleen also presented arguments that the manifesting of hazardous waste by all generators is unnecessary in view of the commission's ability to monitor the management of waste through other mechanisms. Southern Metal Refining urged the commission to remember the intent set forth in the title of the federal Resource Conservation and Recovery Act (RCRA) and to encourage recycling by incorporating the reclamation agreement exemption from manifesting into the commission regulations. The Texas Highway Department expressed concern about the increased regulation of its sites that may generate small quantities of hazardous waste and the implications of that regulation on their reporting and other obligations.

The commission has carefully evaluated all of the comments received on the proposed sections and has concluded that a requirement for manifesting of municipal hazardous waste from CESQGs is not appropriate at this time. Although the commission agrees that, ideally, manifest requirements should be applied uniformly regardless of the amount or type of waste generated, the commission be-

lieves that the reporting requirements in §335.9 and other existing requirements applicable to CESQGs provide an appropriate system to oversee the responsible management of solid waste. As several commenters noted, the magnitude of the task of manifesting wastes from all generators in Texas is greater than anyone expected. In addition, the commission does not wish to undertake a regulatory scheme that leads to illegal waste disposal and economic hardships on small businesses because it is unrealistic and impractical when the commission can pursue other methods of accomplishing the state's solid waste management objectives. For these reasons, the proposed sections have been revised to withdraw the manifesting requirement for CESQGs of municipal hazardous waste, as described in the previous discussions of the adopted sections. At the same time, the commission wishes to strongly encourage CESQGs of municipal hazardous waste to obtain and utilize manifests for their hazardous wastes and hopes that the adopted rules will support the use of the manifest system. Revisions to §335.10 reflect the response to comments and state that municipal CESQGs may utilize the simplified manifest information instructions in §335.10 if they choose to ship hazardous waste with a manifest.

Some comments were also received on proposed §335.13 and the decreased requirements for monthly shipment summaries and other reports. Ameripol Synpol supported the reduced reporting requirements for Class II Industrial solid wastes and suggested that the monthly shipment summary requirement be deleted for all generators, even for the narrow group of entities that were subject to the requirement in the proposed section. The commission believes that monthly shipment summaries are important for generators that import or export hazardous waste because this allows the commission to efficiently track the final destination of waste going to out-of-state facilities. The League of Women Voters submitted comments in support of the section clarifying shipment summary requirements for waste importers and exporters and in support of the annual reporting requirement for small quantity generators. The commenter objected to the lack of monthly reporting requirements for all generators. The commission has not modified the proposed section because it believes monthly reporting is unnecessary for many entities, except as provided otherwise in the proposed section. The agency can efficiently track the movement of waste shipments throughout the year without the additional and repetitive paperwork resulting from monthly reporting. The agency has a variety of reporting methods in a computerized system that allow it to achieve equivalent results using only the monthly reporting requirements outlined in the proposed section.

Two commenters addressed the proposed new §335.127 and §335.178, which require cost estimates for closure of hazardous waste facilities to be based on the costs to the owner or operator of hiring a third party to close the facility and remove the waste from the site. The proposed sections are more stringent than the corresponding federal rules at 40 Code of Federal Regulations §264.142(a)(2) and §265.142(a)(2), which allow an owner or operator to use costs for on-site disposal when estimating closure costs if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility. The law firm of Brown, Maroney, Rose, Barber and Dye (Brown Maroney) submitted comments urging the incorporation of the more flexible federal version of the regulations and the corresponding revision of §305.50(4), which references the provisions governing closure costs estimates. The League of Women Voters submitted comments in support of the proposed sections requiring closure cost estimates to be based on hiring a third party to close the facility, even though off-site disposal may not always be necessary, in order to prepare for the possibility that off-site disposal may be the only feasible option for closure. The commission believes that adoption of the sections as proposed is the alternative that best fulfills the agency's goals of protecting human health and the environment in the event that a hazardous waste management facility is suddenly and unforeseeably abandoned. In that situation, the state may need access to sufficient financial resources to completely remove the waste remaining at the site, and the option of on-site disposal may not be a practical or desirable solution to the problem. The proposed sections require financial resources to be available for third party removal and off-site shipment and disposal, but do not preclude the option of on-site disposal in appropriate situations.

The law firm of Brown Maroney also questioned the revision to the definition of tank in §335.1, which was changed to reference solid waste as opposed to hazardous waste. The incorporation of the broader term solid waste in this definition is not meant to form any basis for permitting standards for tanks containing solid wastes other than hazardous waste. The proposed amendment merely reflects the fact that tanks may hold solid wastes that are not defined as hazardous wastes.

Comments from the Sierra Club were received on the proposed memorandum of understanding between the commission and the attorney general's office concerning public participation in hazardous waste enforcement matters, as incorporated by reference in §335.28. In the language regarding the attorney general's consent to a proposed judgment only after publishing notice and providing at least 30 days for public comment on the

proposed judgment prior to its entry by the court, the Sierra Club suggested that the language allowing an exception to the 30-day comment provision be revised to provide a more specific standard for allowing exceptions. In response, the commission has replaced the proposed language referencing a standard in which the public interest will not be compromised with the suggested language stating the exceptions to the 30-day comment period will only be made when settlement or judgment is required to avoid delays that would adversely affect public health or the environment. The Sierra Club also suggested that the publication of notice of proposed judgments be made in newspapers having general circulation in the area where the violations have occurred or are occurring. The commission believes that the current practice of publishing notice in the *Texas Register* is an effective mechanism for providing notice to the public and that newspaper notice would not significantly broaden the universe of people who would receive actual notice of proposed actions.

The Sierra Club also submitted comments in opposition to the portions of proposed §335.112 and §335.152 which incorporate the federal rules on financial requirements by reference and thus make the corporate guarantee available as a mechanism for satisfying liability coverage requirements for some hazardous waste management facilities. The Sierra Club expressed concern that the corporate guarantee provisions fail to include a means of preventing a parent corporation from overextending its financial resources by using the corporate guarantee for multiple subsidiary companies. The commission believes that it will be receiving information on the number of facilities using the corporate guarantee through the existing federal regulations. In 40 Code of Federal Regulations §264.147(g)(1) and §265.147(g)(1), there is a statement that the guarantor must meet the requirements for owners or operators in paragraphs (f)(1)-(7) of those sections. Under 40 Code of Federal Regulations §264.147(f)(3)(i) and §265.147(f)(3)(i), the owner or operator must submit a letter signed by the owner's or operator's chief financial officer and worded as specified in §264.151(g). In 40 Code of Federal Regulations §264.151(g), as amended by the July 11, 1986, 51 (12 FedReg 11) 25350, the letter from the chief financial officer requires information describing which facilities are being guaranteed through the corporate guarantee. In paragraphs 1-4 of the letter, there is information on the financial assurance being provided by the parent company for all hazardous waste management facilities in the United States. Therefore, the TWC's reviewer of the financial test has the necessary information available to determine whether the parent corporation has sufficient assets to cover all hazardous and solid waste financial obligations. For these reasons,

the proposed sections have been adopted without changes because the agency believes that it can effectively monitor the use of this financial mechanism and that the availability of the corporate guarantee serves an important purpose in enabling some facilities to comply with applicable regulations.

These new sections and amendments are adopted under the Texas Water Code, §5.103 and §5.105, which provides 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 and amendments are also adopted under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorize 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.

§335.13. Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I 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 Hazardous Waste or Class I 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 hazardous waste to a foreign country, shall prepare a shipment summary from the manifests, summarizing the quantity and classification of each waste shipment itemized by manifest document number. Such shipment 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. 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 municipal hazardous waste are not subject to the requirements of this subsection.

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

(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).

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.

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(512) 463-8087.

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★ 31 TAC §335.9, §335.10

The repeal of these sections is adopted 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 repeal of these sections is also adopted 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.

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.

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

These new sections are adopted 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 also adopted 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.

§335.10. *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 Class I waste, and no generator of municipal hazardous waste shipping municipal hazardous waste which is part of a total quantity of municipal hazardous waste generated in quantities greater than 100 kilograms in a calendar month, or quantities of acute hazardous waste in excess of quantities specified in §335.78(e) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) 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. Conditionally exempt small quantity generators (CESQGs) of municipal hazardous waste who choose to manifest their hazardous waste may do so using the simplified instructions for CESQGs that are included in subsection (b) of this section. 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 identifica-

tion 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. Except as provided otherwise in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) for the shipment of hazardous wastes that are required to be manifested under subsection (a) of this section, 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.

(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 solely 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.

(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 of municipal hazardous waste 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 I of the manifest as an appropriate Texas Water Commission waste classification code, the number 990000. Conditionally exempt small quantity generators of municipal hazardous waste 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.

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.

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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 adopted 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 adopted 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.

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.

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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 adopted 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 adopted 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.

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★ 31 TAC §§335.74, §335.78

These new sections are adopted 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 adopted 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.

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.

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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 adopted 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 adopted 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 accomplish-

ment 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.

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★31 TAC §335.127

This new section is adopted 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 adopted 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.

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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 adopted 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 adopted 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.

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★31 TAC §335.178

This new section is adopted 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 adopted 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.

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 June 23, 1987.

TRD-8705184 J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: July 14, 1987
Proposal publication date: April 21, 1987
For further information, please call
(512) 463-8087.

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

★31 TAC §335.221

This amendment is adopted 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 section is also adopted 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.

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 June 23, 1987.

TRD-8705183 J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: July 14, 1987
Proposal publication date: April 21, 1987
For further information, please call
(512) 463-8087.

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Spent Lead-Acid Batteries Being Reclaimed

★31 TAC §335.251

This amendment is adopted 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 adopted 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.

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 June 23, 1987.

TRD-8705185 J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: July 14, 1987
Proposal publication date: April 21, 1987
For further information, please call
(512) 463-8087.

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS
Part VII. Texas Commission on Law Enforcement Officer Standards and Education
Chapter 211. Administrative Division
Substantive Rules
★37 TAC §211.82, §211.85

The Texas Commission on Law Enforcement Officer Standards and Education, adopts amendments to §211.82 and §211.85, without changes to the proposed

text published in the April 14, 1987, issue of the *Texas Register* (12 TexReg 1267).

These amendments allow the commission to cancel any license or proficiency certificate which was either issued in error or issued based on false or incorrect information. Each of these situations require some mechanism selected by the commission. The commission has selected cancellation rather than revocation or suspension or any other mechanism which may have collateral and harmful impact on the license holder.

Previously, the sections empowered the commission to revoke a proficiency certificate issued based on mistaken, incor-

rect, or false information, but was silent as to licenses. The amendments allow for cancellation for either licenses or certificates so issued based upon proof of such error or incorrect or false information.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 4413(29aa), §§2(a)(1), 2(a)(3), and 2(a)(19), which provide the Texas Commission on Law Enforcement Officer Standards and Education to promulgate rules for the administration of this act, to issue permanent licenses, and to issue proficiency certificates.

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 June 22, 1987.

TRD-8705081 David M. Boatright
General Counsel
Texas Commission on
Law Enforcement
Officer Standards and
Education

Effective date: August 1, 1987
Proposal publication date: April 14, 1987
For further information, please call
(512) 834-9222.

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State Board of Insurance Exempt Filings

State Board of Insurance Notifications Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act, and the final actions printed in this section have not been previously published as proposals.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 1110 San Jacinto Street, Austin.)

The State Board of Insurance has approved a revision to the new Simplified Commercial Inland Marine Program, including the change in the effective date of the program from July 1, 1987, to September 1, 1987. The change in effective date allows the new Simplified Commercial Inland Marine Program to be implemented in conjunction with the new Texas Commercial Package Policy.

The revisions to the new Simplified Commercial Inland Marine Program consist of editorial changes and clarification to

rules, rates, and forms that produce no major changes to the approved Simplified Commercial Inland Marine Program.

These changes are to be effective September 1, 1987.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on June 16, 1987.

TRD-8705083 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: September 1, 1987
For further information, please call
(512) 463-6327.

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The State Board of Insurance has adopted a filing by the Insurance Services Office, Inc., of revised rules and rates for Commercial Crime Insurance, Division Three of the Commercial Lines Manual.

In accordance with the provisions of the Insurance Code, Article 5.97, a text of the proposed filing has been filed in the Office of the Chief Clerk of the State Board of Insurance since March 31, 1987. The proposed filing has been available for public inspection for 15 days and a public hearing was not requested by any party.

The revised rules, rates, and rating procedures will be used with the simplified commercial crime forms and endorse-

ments. This revision reflects changes in the policy structure and in the available coverages, reduces rating steps, separates the rates from the rules, presents the coverages options in a clear and logical manner, and simplifies the rating procedures wherever possible. This revision contains a few rate changes, but in most cases the rates were unaffected. The revisions also necessitated a change in the territorial multipliers to reflect changes in the available coverages.

This revision becomes effective September 1, 1987, under the following rule of application. These changes are applicable to all policies effective on or after September 1, 1987. No policy effective prior to September 1, 1987, shall be endorsed, or cancelled and rewritten to take advantage of or to avoid the application of these changes except at the request of the insured using the cancellation procedures applying on the date of such request.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on June 17, 1987.

TRD-8705093 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: September 1, 1987
For further information, please call
(512) 463-6327.

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Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agendas than what is published in the *Register*.

Texas Department of Agriculture

Wednesday, July 15, 1987, 11:30 a.m. The Texas Department of Agriculture will meet in the District Office, Expressway 83, two blocks west of Morningside Road, San Juan. According to the agenda, the department will hold an administrative hearing to review alleged violations of Texas Agriculture Code, §103.001 by Pat Womack, Jeffrey Womack, Donna Adams, Pat Womack, Inc. and Quality Valley Growers, as petitioned by Tex-Sun Produce, Inc.

Contact: Margo P. Wilton, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: June 25, 1987, 8:51 a.m.
TRD-8705216

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Texas Employment Commission

Wednesday, July 1, 1987, 8:30 a.m. The Texas Employment Commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission will approve minutes of the previous meeting, consider internal procedures of commission appeals, and act on tax liability cases and higher level appeals in unemployment cases listed on commission docket 26.

Contact: Courtenay Browning, 101 East 15th Street, Austin, Texas 78778, (512) 463-2226.

Filed: June 23, 1987, 12:23 p.m.
TRD-8705141

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Texas Health and Human Services Coordinating Council

Tuesday, June 30, 1987, 9 a.m. The Public/Private, Policy Group of the Texas Health and Human Services Coordinating Council will meet in emergency session in the

Justice Room, Radison Plaza Hotel, 700 San Jacinto Street, Austin. According to the agenda summary, the group will hear the Texas Health and Human Services Coordinating Council report, consider legislative update concerning THHSCC and agency representatives, hear agency reports on phase implementation, committee reports, and consider old and new business. The emergency status is necessary due to scheduling conflicts of the members.

Contact: Patrice Thomas, 311-A, East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: June 23, 1987, 2:15 p.m.
TRD-8705142

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Texas Historical Commission

Friday-Saturday, July 10-11, 1987, 1 p.m. and 9 a.m., respectively. The State Board of Review of the Texas Historical Commission will meet in the County Courtroom, DeWitt County Courthouse, 307 North Gonzales Street, Cuero. According to the agenda summary, the board will approve minutes of the previous meeting, hear announcements, and review the National Register nominations.

Contact: Marlene Casarez, P.O. Box 12276, Austin, Texas 78711, (512) 463-6094.

Filed: June 23, 1987, 2:55 p.m.
TRD-8705143

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State Board of Insurance

The State Board of Insurance will meet at 1110 San Jacinto Street, Austin. Dates, times, rooms, and agendas follow.

Wednesday, July 1, 1987, 10 a.m. The board will meet in Room 414, to consider proposal for decision in the appeal of John Morrell from action of the Texas Catastrophe Prop-

erty Insurance Association; personnel matters concerning the Fire Marshall, Research and Information Services, and the Commissioner; litigation matters concerning the Commissioner; rules relating to statutory amendments to Texas Insurance Code, Articles 5.75-1 and 3.54; and agreement with Employee Assistance Center of Texas.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: June 23, 1987, 3:27 p.m.
TRD-8705159

Wednesday, July 1, 1987, 2 p.m. The board will meet in emergency session in Room 414, to consider an appeal from Commissioner's Order 87-0688 placing Petra Foundation, Inc., under the supervision of the Commissioner of Insurance. The emergency status is necessary to provide for immediate review of an order by the commissioner appointing a supervisor in accordance with Texas Insurance Code, Article 21.28-A, §7.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: June 24, 1987, 4:28 p.m.
TRD-8705206

Wednesday, July 8, 1987, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 353, to consider Docket 9516—Whether disciplinary action should be taken against Vance A. Jordan, Dennison, who holds a Group II, health and accident insurance agent's license issued by the State Board of Insurance.

Contact: O.A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498.

Filed: June 23, 1987, 3:09 p.m.
TRD-8705150

Thursday, July 9, 1987, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9578—Whether International Society's of Independent Business Administrators, Arlington, has complied with

Commissioner's Order 87- 0487, dated May 11, 1987.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

Filed: June 23, 1987, 3:09 p.m.
TRD-8705151

Thursday, July 9, 1987, 10 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9579—Whether Nassau Life Insurance Company, Ltd., Arlington, has complied with Commissioner's Order 87-0488, dated May 11, 1987.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

Filed: June 23, 1987, 3:09 p.m.
TRD-8705152

Thursday, July 9, 1987, 11 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9580—Whether International Society of Senior Citizens, Arlington, has complied with Commissioner's Order 87-0489, dated May 11, 1987.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

Filed: June 23, 1987, 3:09 p.m.
TRD-8705153

Thursday, July 9, 1987, 1 p.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9581—Whether Dunhill Management Company, Arlington, has complied with Commissioner's Order 87-0490, dated May 11, 1987.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

Filed: June 23, 1987, 3:09 p.m.
TRD-8705154

Thursday, July 9, 1987, 2 p.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9582—Whether Norman Cowart, Arlington, has complied with Commissioner's Order 87-0491, dated May 11, 1987.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

Filed: June 23, 1987, 3:09 p.m.
TRD-8705155

Monday, July 13, 1987, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9590—Whether Charles Carl Beber, doing business as Insuror-Dyne Southwest Insurance Agency, San Augustine, has complied with Commissioner's Order 87-0531, dated May 14, 1987.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

Filed: June 23, 1987, 3:09 p.m.
TRD-8705156

Tuesday, July 14, 1987, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9591—Whether Old World Society of Health and Finance, Houston, has complied with Commissioner's Order 87-0534, dated May 15, 1987.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

Filed: June 23, 1987, 3:10 p.m.
TRD-8705157

Tuesday, July 14, 1987, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9592—Whether South Star Management, Inc., Houston, has complied with Commissioner's Order 87-0533, dated May 15, 1987.

Contact: J.C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

Filed: June 23, 1987, 3:10 p.m.
TRD-8705158

Wednesday, July 15, 1987, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9621—Application of Joseph A. Martinez, San Antonio, for a Group I, legal reserve life, health, and accident insurance agent's license.

Contact: J.C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

Filed: June 23, 1987, 3:10 p.m.
TRD-8705160

Monday, July 20, 1987, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9565—Whether Federal Title Company, Houston, has complied with Commissioner's Order 87-0554, dated May 21, 1987.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

Filed: June 23, 1987, 3:10 p.m.
TRD-8705161

Tuesday, July 21, 1987, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9594—Whether Pet Care, Inc., Dallas, has complied with Commissioner's Order 87-0587, dated May 22, 1987.

Contact: J.C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

Filed: June 23, 1987, 3:10 p.m.
TRD-8705162

Tuesday, July 21, 1987, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9535—Whether the application of Lester Wilson Eckert, Houston, for a solicitor for local recording agent's license should be denied.

Contact: O.A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-

6498.

Filed: June 23, 1987, 3:11 p.m.
TRD-8705163

Wednesday, July 22, 1987, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9619—Application of Samuel James Blunson, Houston, for a Group I, legal reserve life insurance agent's license.

Contact: J.C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

Filed: June 23, 1987, 3:11 p.m.
TRD-8705164

Friday, July 24, 1987, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9617—License renewal application of Isaiah White, Dallas, for a Group I, legal reserve life insurance agent's license.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

Filed: June 23, 1987, 3:11 p.m.
TRD-8705165

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Board of Nurse Examiners

(Editors Note: The following meeting was originally published in the June 19, 1987, issue. Due to an incorrect contact address the notice is being republished with the correct contact information.)

Tuesday, June 30, 1987, 10 a.m. The Board of Nurse Examiners will meet in Room 3.102, Joe C. Thompson Conference Center, 26th and Red River Streets, Austin. According to the agenda, the board will receive additional testimony regarding §218, delegation of selected nursing tasks by registered nurses to unlicensed personnel. Oral testimony will be limited to five minutes—written testimony is encouraged in addition to the oral testimony. All comments must be received by June 30, 1987, in order to be considered by the task force.

Contact: Louise Sanders, 1300 East Anderson Lane, C-225, Austin, Texas 78752, (512) 835-4880.

Filed: June 11, 1987, 10:30 a.m.
TRD-8704873

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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, June 26, 1987, 9 a.m. The Hearings Division made an emergency addition to the

agenda of a meeting concerning the appeal of general counsel to examiners oral order of June 15, 1987, relating to CAUR's first RFI in Dockets 7195 and 6755—Application of Gulf States Utilities Company for authority to change rates and inquiry of the Public Utility Commission of Texas into the planning and management of the construction of the River Bend Nuclear Generating Station. The emergency status was necessary because prompt decision on appeal is necessary to timely final commission action in the case; failure to act timely would result in rates being deemed approved under statute.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 23, 1987, 3:37 p.m.
TRD-8705144

Tuesday, September 2, 1987, 10 a.m. The Hearings Division has rescheduled a meeting originally scheduled for Tuesday, August 18, 1987, 10 a.m. The division will consider Docket 7502—Application of Lufkin-Conroe Telephone Exchange to offer customer-owned coin telephones.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 23, 1987, 2:58 p.m.
TRD-8705145

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State Textbook Committee

Monday-Wednesday, July 13-15, 1987, 8:30 a.m. daily. The State Textbook Committee will meet in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the committee will consider public hearings before the commissioner of education and the State Textbook Committee on textbooks being considered for adoption in 1987.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: June 25, 1987, 8:30 a.m.
TRD-8705207

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Texas Water Commission

Wednesday, July 8, 1987, 2 p.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider the executive director's preliminary enforcement report and petition for an order assessing administrative penalties and requiring certain actions of West Montgomery Utility Com-

pany, Inc. (Permit 11005-01) and proposal for decision on an appeal of Barbara M. Barron, trustee of Briarcliff Utilities, Inc. from the November 18, 1986, order of the Village of Briarcliff (Docket 7166-W).

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: June 24, 1987, 3:59 p.m.
TRD-8705204

Tuesday, July 14, 1987, 2 p.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider Permit 10612-01—Substantial noncompliance and requiring certain actions of Saint Francis Village, Inc., Permit 10994-01—The City of Jacksboro, Permit 13353-01—Kenneth Jackson and Phillip Mischel, doing business as Pelican Bay Joint Ventures, and Solid Waste Registration 31653—Standard Industries, Inc.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: June 24, 1987, 3:59 p.m.
TRD-8705205

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Regional Agencies Meetings Filed June 23

The Carson County Appraisal District, Appraisal Review Board, will meet at 102 North Main Street, Panhandle, on July 1, 1987, at 8:15 a.m. Information may be obtained from Dianne Lavake, P.O. Box 970, Panhandle, Texas 79068-0970, (806) 537-3569.

The Coryell County Appraisal District, Board of Directors, met at the appraisal district office, 113 North Seventh Street, Gatesville, on June 29, 1987, at 7 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593.

The Lampasas County Appraisal District, Review Board, met at 109 East Fifth Street, Lampasas, on June 29, 1987, at 10 a.m. Information may be obtained from Dana Ripley, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058.

TRD-8705116

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Meetings Filed June 24

The Bastrop County Appraisal District, Appraisal Review Board, will meet at 1200 Cedar Street, Bastrop, on July 1, 1987, at 8 a.m. Information may be obtained from Lorraine Perry, P.O. Box 578, Bastrop, Texas 78602, (512) 321-3925.

The Tax Appraisal District of Bell County, Appraisal Review Board, will meet at 411 East Central, Belton, on July 7, 1987, at 9 a.m. Information may be obtained from Tolly Moore, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-3521, ext. 301.

The Blanco County Appraisal District, Board of Directors and Appraisal Review Board, will meet at the Blanco County Courthouse Annex, Johnson City, on July 7, 1987, at 6 p.m. and July 9-10, 1987, at 3 p.m. daily; respectively. Information may be obtained from Hollis Petri, P.O. Box 338, Johnson City, Texas 78636, (512) 868-4624.

The Capital Area Rural Transportation System (CARTS), Board of Directors Executive Committee, met in the Conference Room, 5021 East First Street, Austin, on June 29, 1987, at 2 p.m. Information may be obtained from Edna Burroughs, 5021 East First Street, Austin, Texas 78702, (512) 478-7433.

The Carson County Appraisal District, Appraisal Review Board, will meet at 102 Main Street, Panhandle, on July 1, 1987, at 8:15 a.m. Information may be obtained from Dianne Lavake, P.O. Box 970, Panhandle, Texas 79068-0970, (806) 537-3569.

The Coryell County Appraisal District, Board of Directors, met at 113 North Seventh Street, Gatesville, on June 23, 1987, at 7 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593.

The Gillespie County Appraisal District, Board of Review, will meet in Room 101-B, Gillespie County Courthouse, Fredericksburg, on July 7, 1987, at 9 a.m. Information may be obtained from Mary Lou Smith, P.O. Box 429, Fredericksburg, Texas 78624, (512) 997-9809.

The Harris County Appraisal District, Board of Directors, will meet on the Eighth Floor, 2800 North Loop West, Houston, on June 30, 1987, at 1:30 p.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292-0975, (713) 957-5291.

The Henderson County Appraisal District, Board of Directors, will meet at 101 East Corsicana, Athens, on July 13, 1987, at 7:30 p.m. Information may be obtained from Helen Marchbanks, 101 East Corsicana, Athens, Texas 75751, (214) 675-9296.

The Jack County Appraisal Review Board, Appraisal Review Board, met at the Jacksboro ISD Agriculture Science and Technology Building, 819 West Belknap and 216-D South Main, Jacksboro, on June 29-July 1, 1987, at 9 a.m. daily. Information may be obtained from Doris G. Ray or Linda Williams, 216-D South Main, Jacksboro, Texas 76056, (817) 567-6301.

The Central Appraisal District of Johnson County, Appraisal Review Board, will meet at 109 North Main, Cleburne, on July 2, 1987, at 9 a.m. Information may be obtained from Don Gilmore, 109 North Main, Cleburne, Texas 76031, (817) 645-3986.

The Lampasas County Appraisal District, Review Board, met at 109 East Fifth, Lampasas, on June 29, 1987, at 10 a.m. Information may be obtained from Dana Ripley, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058.

The Sabine Valley Regional Mental Health and Mental Retardation Center, Board of Trustees, will meet in the Panola County Family Services, 1701A South Adams, Carthage, on July 6, 1987, at 7 p.m. Information may be obtained from Ron Cookston, P.O. Box 6800, Longview, Texas 75608, (214) 297-2191.

The Texas Political Subdivision Workers' Compensation Joint Insurance Fund, Board of Trustees, met at the Stouffer Austin Hotel, 9721 Arboretum Boulevard, Austin,

on June 29, 1987, at 8:30 a.m. Information may be obtained from Thomas P. Vick, P.O. Box 2759, Dallas, Texas 75221, (214) 760-6183.

TRD-8705191

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Meetings Filed June 25

The Comal Appraisal District, Board of Directors, will meet at 644 North Loop 337, New Braunfels, on July 1, 1987, at 7:30 p.m. Information may be obtained from R. Richard Rhodes, Jr., P.O. Box 311222, New Braunfels, Texas 78131-1222, (512) 625-8597.

The Dawson County Central Appraisal District, Board of Directors, will meet at 920 North Dallas, Lamesa, on July 1, 1987, at 7 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060.

The Gonzales County Appraisal District,

Appraisal Review Board, will meet at 928 St. Paul Street, Gonzales, on July 6-7, 1987, at 9 a.m. and 7 p.m., respectively. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879.

The Hunt County Tax Appraisal District, Appraisal Review Board, will meet in the Boardroom, 4815-B King Street, Greenville, on July 13-17 and 20, 1987, at 9 a.m. daily. Information may be obtained from Joe Pat Davis or Jeanette Jordan, P.O. Box 1339, Greenville, Texas 75401, (214) 454-3510.

The Tarrant Appraisal District, Appraisal Review Board, will meet in Suite 505, 1701 River Run, Fort Worth, on July 7, 1987, at 8:30 a.m. Information may be obtained from Linda Freeman, 1701 River Run, Suite 505, Fort Worth, Texas 76101, (817) 332-3151.

TRD-8705214

★ ★ ★



Name: Sejada Pathan
Grade: 6
School: Richardson High School,
Richardson

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 Commission for the Blind Requests for Proposals

Pat D. Westbrook, executive director of the Texas Commission for the Blind, has announced the availability of funds for competitive establishment grant applications to serve the blind.

Funding Areas. Grant applications will be considered for facilities eligible under 34 Code of Federal Regulations 361.63 for: equipment and other direct expenditures as are appropriate to the establishment of new permanent employment opportunities for blind and/or visually impaired persons; and initial staffing and other direct expenditures as are appropriate to the establishment of new direct vocational rehabilitation service delivery programs for blind and/or visually impaired persons. At least 20% of the total amount of funds requested must be provided by local matching funds.

Application Process. Facilities interested in receiving a format for the application and federal guidelines for establishment grant projects should write Bill Agnell, program specialist, Texas Commission for the Blind, P.O. Box 12866, Austin, Texas 78756.

Deadline. Proposals will be accepted at the previously listed address until 5 p.m. on July 15, 1987. Funding will begin August 15, 1987. For further information, call (512) 459-2586.

Issued in Austin, Texas, on June 17, 1987.

TRD-8705079 Pat D. Westbrook
Executive Director
Texas Commission for the Blind

Filed: June 22, 1987
For further information, please call (512) 459-2801.



Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings Effective Period (Dates are Inclusive)	Consumer ⁽³⁾ /Agricultural/Commercial ⁽⁴⁾ thru \$250,000	Commercial ⁽⁴⁾ over \$250,000
Indicated (Weekly) Rate—Article 1.04(a)(1) 06/29/87-07/05/87	18.00%	18.00%

Monthly Rate— Article 1.04(c)(1) 06/01/87-06/30/87	18.00%	18.00%
Standard Quarterly Rate—Article 1.04(a)(2) 07/01/87-09/30/87	18.00%	18.00%
Retail Credit Card Quarterly Rate— Article 1.11(3) 07/01/87-09/30/87	18.00%	N/A
Lender Credit Card Quarterly Rate— Article 15.02(d)(3) 07/01/87-09/30/87	14.00%	N/A
Standard Annual Rate—Article 1.04(a)(2)(2) 07/01/87-09/30/87	18.00%	18.00%
Retail Credit Card Annual Rate— Article 1.11(3) 07/01/87-09/30/87	18.00%	N/A
Annual Rate Applicable to Pre-July 1, 1983, Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from 07/01/87-09/30/87	18.00%	N/A
Judgment Rate—Article 1.05, §2 07/01/87-07/31/87	10.00%	10.00%

- (1) For variable rate commercial transactions only.
(2) Only for open-end credit as defined in Texas Civil Statutes, Article 5069-1.01(f).
(3) Credit for personal, family, or household use.
(4) Credit for business, commercial, investment, or other similar purpose.

Issued in Austin, Texas, on June 22, 1987.

TRD-8705072 Al Endsley
Consumer Credit
Commissioner

Filed: June 22, 1987
For further information, please call (512) 479-1280.



Texas Education Agency Revised Request for Proposals

A request for proposals concerning the early childhood program evaluation and an adaptive/assistance device center was published in the June 23, 1987, issue of the *Texas Register* (12 TexReg 2022).

This request for proposals is revised to set the closing date for receipt of proposals as August 11, 1987, rather than July 24, 1987, as published.

Issued in Austin, Texas, on June 24, 1987.

TRD-8705190 W. N. Kirby
Commissioner of Education

Filed: June 24, 1987
For further information, please call (512) 463-9212.



**Office of the Governor
Criminal Justice Division
Crime Victims Assistance Program
(VOCA)**

The Office of the Governor, Criminal Justice Division (CJD) announces the deadline for accepting Crime Victim Assistance Programs (VOCA) grant applications has been extended to 5 p.m. on Friday, July 24, 1987.

Prospective applicants should consult the June 16, 1987, issue of the *Texas Register* (12 TexReg 1944) concerning the VOCA grant application guidelines.

Additional information concerning the application forms, guidelines, or submission date will be provided by the Criminal Justice Division upon request. Requests should be directed to the Crime Victims Assistance Section, Criminal Justice Division, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, (512) 463-1919.

Issued in Austin, Texas, on June 22, 1987.

TRD-8705084 Rider Scott
Executive Director
Criminal Justice Division
Office of the Governor

Filed: June 22, 1987
For further information, please call (512) 463-1919.



**State Board of Insurance
Company Licensing**

The following applications have been filed with the State Board of Insurance and are under consideration.

(1) Application for incorporation of Capital Fidelity Insurance Company, to be a domestic fire and casualty insurance company. The home office is to be in Houston.

(2) Application for admission to do business in Texas of Frontier National Life Insurance Company, a foreign life, accident, and health insurance company. The home office is in Cleveland, Ohio.

(3) Application for admission to do business in Texas of J.M.I.C. Life Insurance Company, a foreign life, accident, and health insurance company. The home office is in Deerfield Beach, Florida.

(4) Application for incorporation of Partners Life Insurance Company of America, to be a domestic life insurance company. The home office is to be in Austin.

(5) Application for admission to do business in Texas of Star Insurance Company, a foreign fire and casualty insurance company. The home office is in Southfield, Michigan.

Issued in Austin, Texas, on June 18, 1987.

TRD-8705094 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: June 22, 1987
For further information, please call (512) 463-8327.



**Office of the Secretary of State
Texas Register Publication Schedule**

Following are the deadline dates of the July, August, and September 1987 issues of the *Texas Register*. Unless noted by a ☆, deadline for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. For further information, please call (512) 463-5561.

FOR ISSUE
PUBLISHED ON

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OF OPEN MEETINGS BY 10 A.M.

ALL NOTICES OF
OPEN MEETINGS BY 10 A.M.

Friday, July 3
Tuesday, July 7
Friday, July 10
Tuesday, July 14
Friday, July 17
Tuesday, July 21
Friday, July 24
Tuesday, July 28
Friday, July 31

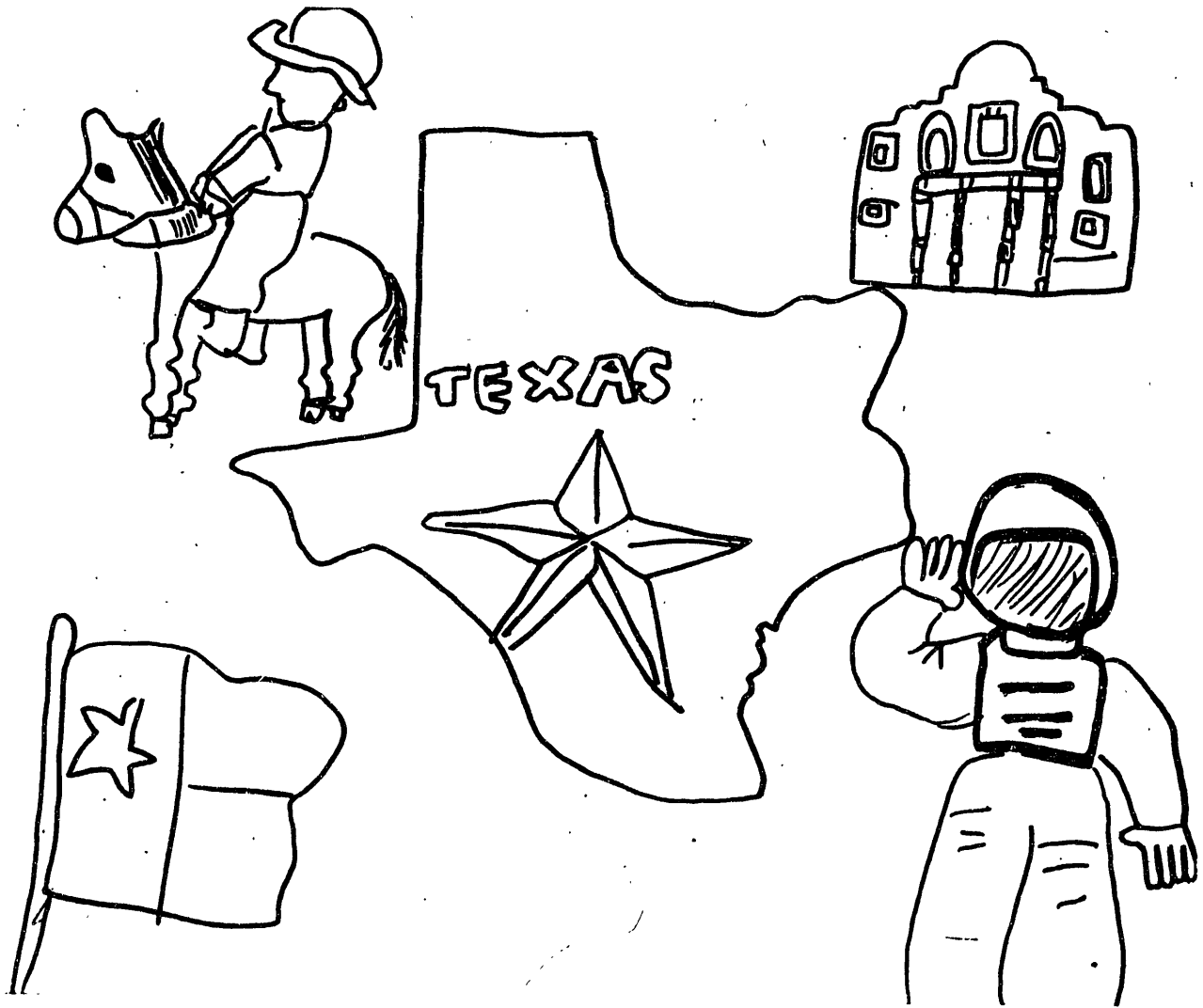
Monday, June 29
Wednesday, July 1
Monday, July 6
Wednesday, July 8
Monday, July 13
Wednesday, July 15
Monday, July 20
Wednesday, July 22
Monday, July 27

Tuesday, June 30
Thursday, July 2
Tuesday, July 7
Thursday, July 9
Tuesday, July 14
Thursday, July 16
Tuesday, July 21
Thursday, July 23
Tuesday, July 28

TEXAS



Name: Jason McConnell
Grade: 4
School: Mark Twain Elementary School,
Richardson



Name: Yukika Shirai
Grade: 4
School: Mark Twain Elementary School,
Richardson

Friday, August 4
Friday, August 7
Tuesday, August 11
Friday, August 14
Tuesday, August 18
Friday, August 21
Tuesday, August 25
Friday, August 28

Monday, August 3
Wednesday, August 5
Monday, August 10
Wednesday, August 12
Monday, August 17
Wednesday, August 19
Monday, August 24

2ND QUARTERLY INDEX

Tuesday, August 4
Thursday, August 6
Tuesday, August 11
Thursday, August 13
Tuesday, August 18
Thursday, August 20
Tuesday, August 25

Tuesday, September 1
Friday, September 4
Tuesday, September 8
Friday, September 11
Tuesday, September 15
Friday, September 18
Tuesday, September 22
Friday, September 25
Tuesday, September 29

Monday, August 31
Wednesday, September 2
Monday, September 7
Wednesday, September 9
Monday, September 14
Wednesday, September 16
Monday, September 21
Wednesday, September 23

NO ISSUE PUBLISHED

Tuesday, September 1
Thursday, September 3
Tuesday, September 8
Thursday, September 10
Tuesday, September 15
Thursday, September 17
Tuesday, September 22
Tuesday, September 24

Texas Tech University Consultant Contract Award

Description. This notice is filed pursuant to Texas Civil Statutes, Article 6252-11c. Following publication of the Consultant Proposal Request in the February 6, 1987, issue of the *Texas Register* (12 TexReg 447), Texas Tech University and Texas Tech University Health Sciences Center executed a contract with Telecommunications International, Inc., 215 Union Boulevard, Suite 300, Lakewood, Colorado, to serve as a consultant.

Under the contract, the consultant will:

- (1) assist in the preparation of systems specifications and development of an RFP;
- (2) assist in identifying and selecting the appropriate vendor;
- (3) assist with project implementation, including project management, functional assistance, and contingency technical assistance.

Cost and Dates. The amount of the contract will not exceed \$116,010. The beginning date of this contract is July 1, 1987, and the closing date is June 30, 1989.

Due Date for Documents. The consultant will report to the University on or before June 30, 1989.

Issued in Lubbock, Texas, on September 9, 1985.

TRD-8705194 Freda Pierce
Liaison and Certifying Official
Texas Tech University

Filed: June 24, 1987

For further information, please call (806) 742-3841.

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Texas Water Commission Enforcement Order

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to the City of Bowie, on June 22, 1987, assessing \$17,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Bill Thompson, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on June 22, 1987.

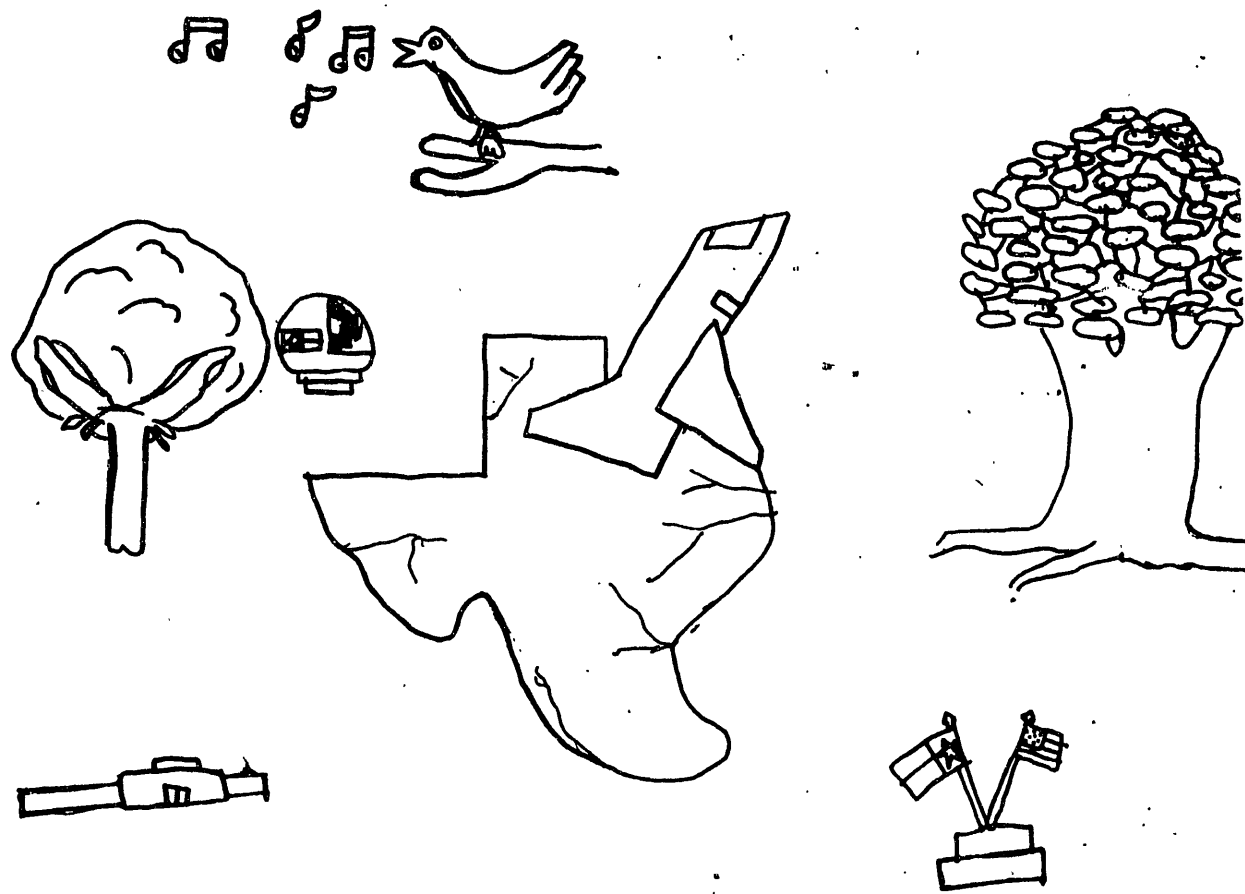
TRD-8705104 Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: June 22, 1987

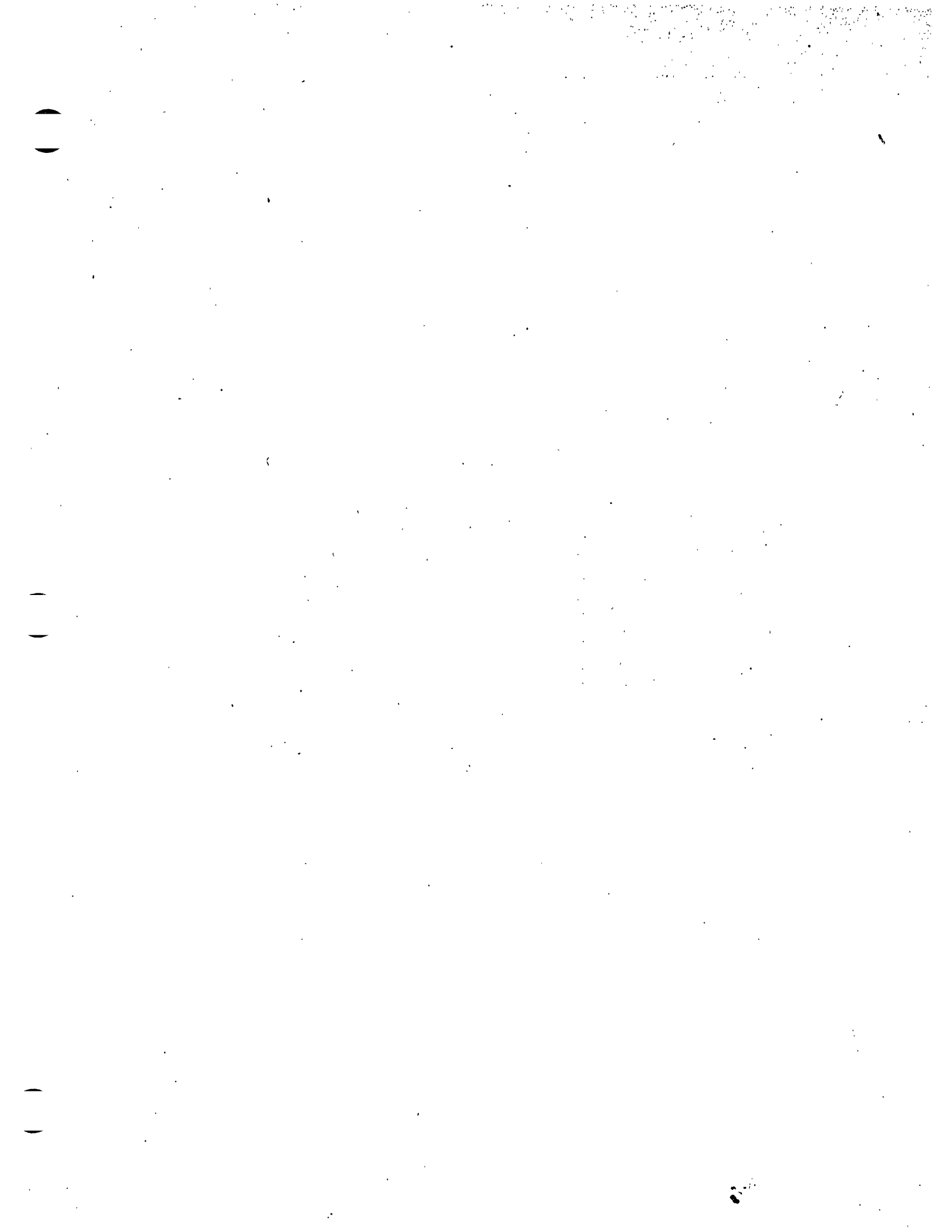
For further information, please call (512) 463-7898.

★ ★ ★





Name: Frank Dewey
Grade: 4
School: Mark Twain Elementary School,
Richardson

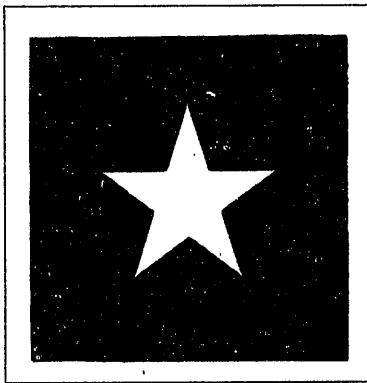


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