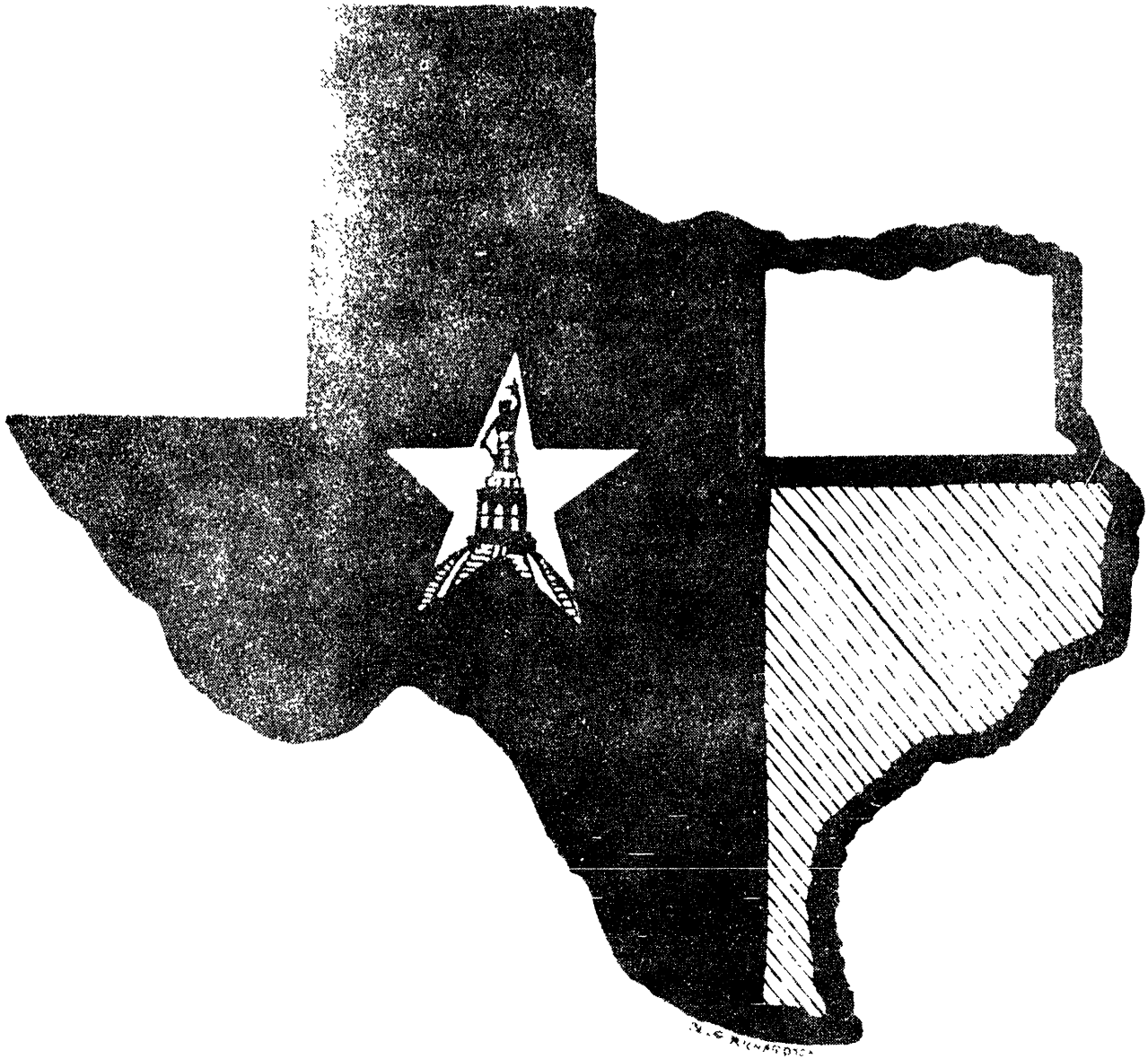


Texas Register

Volume 12, Number 60, August 11, 1987

Pages 2601-2652



Highlights

The **Comptroller of Public Accounts** adopts on an emergency basis an amendment concerning certain licenses, fees, and bonds for manufacturers, distributors, and representatives of bingo supplies, devices, and equipment. Effective date - August 4 **page 2608**

The **Structural Pest Control Board** proposes an amendment concerning distinction between

trained and untrained employees. Earliest possible date of adoption - September 11, 1987 **page 2611**

The **Polygraph Examiners Board** adopts an amendment clarifying language concerning the polygraph examiner internship. Effective date - August 25 **page 2636**

Office of
the Secretary
of State

Texas Register

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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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



Texas Register Publications

a division of the
Office of the Secretary of State
P.O. Box 13824
Austin, Texas 78711-3824
512-463-5561

Jack M. Rains Secretary of State

Director

Dan Procter

Assistant Director

Dee Wright

Documents Section Supervisor

Cynthia Cooke

Document Editors

Lainie Crease

Karen Olson Muldrow

Document Filing

Roberta Knight

Production Section Supervisor

Craig Howell

Production Editor

Jody Allen

Typographers

Ann Franklin

Victoria Parrish

Circulation/Marketing

Kristine Hopkins Mohajer

Richard Kallus

TAC Editor

Jane Orcutt

Subscriptions—one year (96 regular issues and four index issues), \$80, six months (48 regular issues and two index issues), \$60. Single copies of most issues of the *Texas Register* are available at \$3.00 per copy.

Cover illustration by Blue Richardson, Sam Houston High School, Arlington, as part of the *Texas Register* Student Art Contributions.

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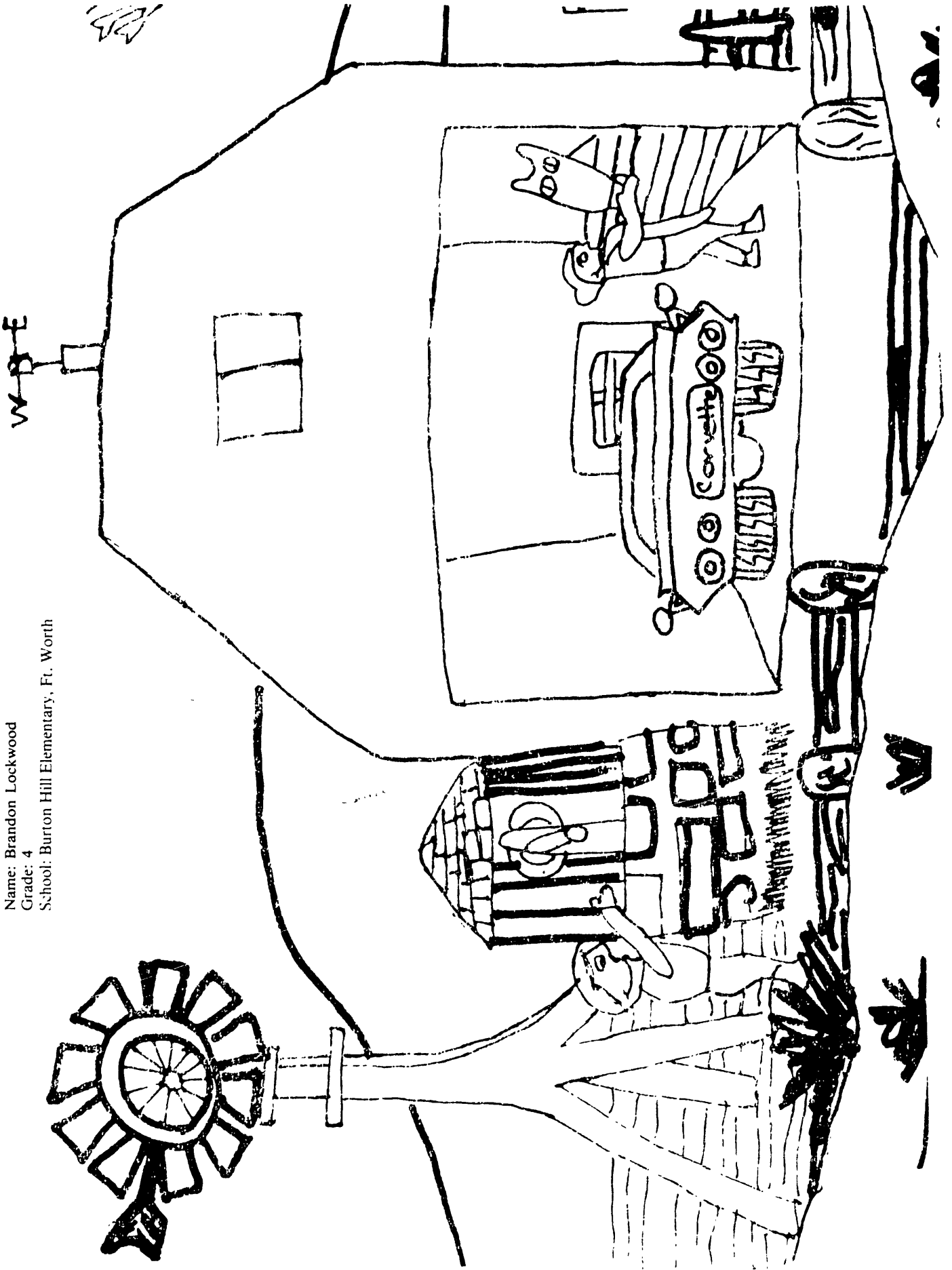
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Name: Brandon Lockwood
Grade: 4
School: Burton Hill Elementary, Ft. Worth



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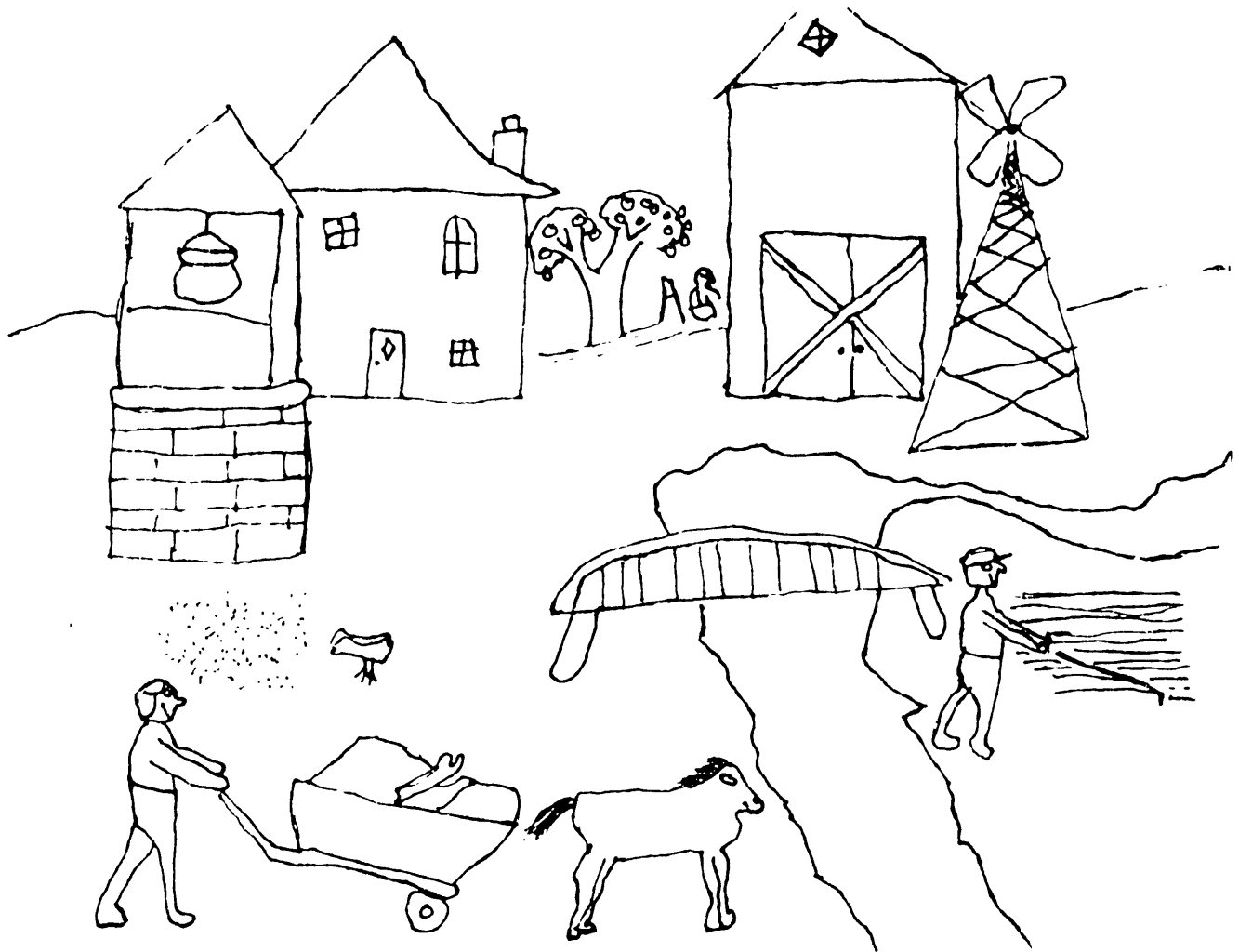
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Name: Chad Szelc
 Grade: 5
 School: Burton Hill Elementary, Ft. Worth

The Governor

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

Appointments Made July 31

To be a branch pilot for the **Galveston Bar and Houston Ship Channel** for a term from May 27, 1987, through May 26, 1991:

Michael K. Lawson, 11118 Smithdale Lane, Houston, Texas 77024. Captain Lawson is being reappointed.

To be a branch pilot for the **Galveston Bar and Houston Ship Channel** for a term from June 1, 1987, through May 31, 1991:

Walter F. Russell, Jr., 1927 Otterbury, Houston, Texas 77039. Captain Russell is being reappointed.

To be a member of the **Lower Concho River Water and Soil Conservation Authority** for a term to expire February 1, 1993:

Leroy Paul Beach, Box 214, Millersview, Texas 76861. Mr. Beach is being reappointed.

To be a member of the **Lower Concho River Water and Soil Conservation Authority** for a term to expire February 1, 1993:

Howard E. Loveless, Rt. 1, Box 56, Eden, Texas 76837. Mr. Loveless is being reappointed.

To be a member of the **Texas Woman's University Board of Regents** for a term to expire February 1, 1993.

Janet Johnson, 410 South Park, San Angelo, Texas 76901. Mrs. Johnson will be replacing June Page of Austin whose term expired.

To be a member of the **East Texas State University Board of Regents** for a term to expire February 15, 1993:

Gaylord T. Hughey, Jr., 114 East Second, Tyler, Texas 75701. Mr. Hughey will be replacing Peggy M. Wilson of Dallas whose term expired.

To be a member of the **Governor's Committee for Disabled Persons** for a term to expire July 8, 1989, and the pleasure of the governor:

Patsy Jean Baker, 6873 Anglebluff, Dallas, Texas 75248. Mrs. Baker will be replacing Joe H. Golman of Dallas who resigned.

To be a member of the **Governor's Committee for Disabled Persons** for a term to expire July 8, 1989, and the pleasure of the governor:

Alvis Kent Waldrep, Jr., 1424 Mockingbird, Plano, Texas 75075. Mr. Waldrep will be replacing Martha Arbuckle of Austin who resigned.

To be a member of the **Texas Advisory Commission on Intergovernmental Relations** for a term to expire September 1, 1991:

June Garrison, Tax Assessor/Collector, 100 East Weatherford Street, Fort Worth, Texas 76196-0301. Mrs. Garrison will be replacing Bill Bailey of Houston whose term expired.

To be a member of the **Texas Literacy Council** pursuant to SCR 48, 70th Legislature for a term at the pleasure of the governor:

Esther P. Gonzalez, P.O. Box 396, Rio Grande City, Texas 78582.

To be a member of the **Nueces River Authority Board of Directors** for a term to expire February 1, 1993:

Stevan R. Gallegos, P.O. Box 479, Castroville, Texas 78009. Mr. Gallegos is being reappointed.

To be a member of the **Nueces River Authority Board of Directors** for a term to expire February 1, 1993:

Asa Beach, Jr., Route 3, Box 69, Alice, Texas 78332. Mr. Beach will be replacing Gus T. Canales of Premont who resigned.

To be a member of the **Upper Neches River Municipal Water Authority Board of Directors** for a term to expire February 1, 1993:

Gordon B. Broyles, P.O. Box 532, Palestine, Texas 75801. Mr. Broyles is being reappointed.

To be a member of the **Runnels County Water Authority Board of Directors** for a term to expire February 1, 1993:

Leon Frerich, Route 2, Box 5, Norton, Texas 76865. Mr. Frerich will be replacing Ray Alderman of Winters whose term expired.

To be a member of the **Lavaca-Navidad River Authority Board of Directors** for a term to expire May 1, 1993:

Gene A. Rathliff, P.O. Box 476, Edna, Texas 77957. Mr. Rathliff is being reappointed.

To be a member of the **Lower Concho River Water and Soil Conservation Authority** for a term to expire February 1, 1993:

Billy Jackson Mikeska, Box 780, Eola, Texas 76937. Mr. Mikeska is being reappointed.

To be a member of the **Lavaca-Navidad River Authority Board of Directors** for a term to expire May 1, 1993:

M. H. Brock, P.O. Drawer 1, Ganado, Texas 77962. Mr. Brock is being reappointed.

Issued in Austin, Texas, on July 31, 1987

TRD-8706370

William P. Clements, Jr.
Governor of Texas



Emergency

Rules

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

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

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration Subchapter V. Bingo Regulation and Tax

★34 TAC §3.552

The Comptroller of Public Accounts adopts on an emergency basis an amendment to §3.552, concerning certain licenses, fees, and bonds for manufacturers, distributors, and representatives of bingo supplies, devices, and equipment. The amendment provides for the calculation and collection of an investigation fee for investigations of an applicant for a manufacturer's license. The amendment also specifies the effect of a license revocation in another state on an applicant's eligibility for a manufacturer's license in Texas.

The amendment is adopted on an emergency basis to provide clear guidelines for collecting fees and granting or denying licenses in cases which are now or may later be pending before this agency.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179d, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the

administration and enforcement of the Bingo Enabling Act

§3.552 *Licenses, Fees, and Bonds for Manufacturers, Distributors, and Representatives of Bingo Supplies, Devices, and Equipment*

(a) Annual manufacturer's license

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

(3) Investigation fee. The comptroller may require an applicant to pay an additional fee in an amount equal to the cost of a background investigation, including the inspection of manufacturing plants and locations. If the comptroller intends to impose the investigation fee, he will notify the applicant in writing prior to starting the investigation that the fee will be imposed and will supply an estimate of the amount of the fee. If the applicant does not wish to pay the investigation fee, he may withdraw the application and the basic fee will be refunded.

The persons making the inspection shall submit travel vouchers and supporting documents to the comptroller and shall receive reimbursement or a travel advance from the comptroller in the same manner as for other state travel, as provided in the state employees travel allowance guide, as most recently revised and issued by the comptroller. The comptroller shall send to the applicant copies of the vouchers and supporting documents together with a statement for the fee, in the same amount as was paid by the comptroller on account of the inspection. The applicant shall reimburse the comptroller, within 30 days of the date of the statement for the amount shown in the statement.

(4) (No change.)

(5) Bond. Each applicant for a manufacturer's license must be accompanied by bond in the amount of \$10,000. No license will be issued until a satisfactory bond has been posted.

(A) (No change.)

(B) Forfeiture. If [a license fails to comply with any pertinent portion of the Act or the rules promulgated under the Act, or, if] the comptroller [suspends or] revokes the licensee's license, the comptroller shall [may] forfeit the licensee's bond.

(C) (No change.)

(6) Revocation in another state. The comptroller may not issue a manufacturer's license to an applicant who has had a license to manufacture, distribute, or supply bingo equipment, devices, or supplies revoked by another state until one year after the effective date of that revocation.

(b) (1) (No change.)

Issued in Austin, Texas, on August 4, 1987.

TRD 8706396 Bob Bullock
Comptroller of Public
Accounts

Effective date: August 4, 1987
Expiration date: December 2, 1987
For further information, please call
(512) 463-4064

✦ ✦ ✦

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 16. ECONOMIC REGULATIONS

Part I. Railroad

Commission of Texas

Chapter 3. Oil and Gas

Division

Conservation Rules and Regulations

★ 16 TAC §3.1

The Railroad Commission of Texas proposes an amendment to §3.1, concerning the organization report the Railroad Commission requires of entities performing activities under its jurisdiction. The amendment provides some flexibility to individuals who currently must submit their driver's license number by allowing such individuals, at their option, to submit their social security number. The amendment also requires, for entities controlled by other organizations, that each such controlling organization submit information concerning the primary individual in control of that organization.

The amendment makes certain non-substantive changes to bring the section in line with approved *Texas Register* format guidelines, and to clarify the requirements of the section for the public.

Rita E. Percival, systems analyst, has determined that for the first five-year period the proposed amendment will be in effect there will be fiscal implications as a result of enforcing or administering the section. The effect on state government will be an estimated additional \$2,500 in fiscal year 1988, with no additional cost after fiscal year 1988. There will be no effect on local government, and no cost of compliance with the section for small business.

Ms. Percival 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 flexibility in the type of information required on the organization report. 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 Bob Biard, Oil and Gas Division,

Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967.

The amendment is proposed under the Natural Resources Code, Title 3, Subtitle A, Chapter 81, §81.052, which provides the Railroad Commission with the authority to adopt all necessary rules for governing and regulating persons and their operations under its jurisdiction, and Subtitle B, Chapter 91, §91.142, which provides the Railroad Commission with the authority to require entities under its jurisdiction to file information concerning their organization with the commission.

§3.1. Rule 1.-Organization Name to be Filled and Records to be Kept.

(a) Filing requirements.

(1) Any entity, including any person, firm, partnership, joint stock association, corporation, or other organization, domestic or foreign, operating wholly or partially within this state, acting as principal or agent for another, for the purpose of performing operations within the jurisdiction of the commission **shall file an organization report with the commission prior to performing such operations.** [, including] **Operations within the jurisdiction of the commission include, but are not limited to, the following:**

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

(C) discharging, storing, handling, transporting, reclaiming, or disposing of oil and gas waste, **including hauling salt water for hire by any method other than by pipeline;**

(D) (No change.)

(E) [hauling salt water;

(F)] recovering skim oil from a salt water disposal site;

(F)(G)] nominating crude oil;

(G)(H)] operating a directional survey company;

(H)(I)] cleaning a reserve pit;

(I)(J)] operating a pipeline;

(J)(K)] operating as a cementer approved for plugging wells; or

(K)(L)] operating an underground hydrocarbon or natural gas storage facility [shall file an organization report with the commission prior to performing such operations. The commission will notify entities who perform operations not included in subparagraphs (A)-(L) of this paragraph of any additional activities subject to the jurisdiction of the commission

which require the filing of the organization report. Such notification will make the provisions of this section applicable to such activities. Each entity must maintain a current organization report with the commission until all duties, obligations, and liabilities incurred pursuant to commission rules and to Subtitles A, B, and C, and Chapter 111 of Subtitle D of Title 3 and Chapter 191 of Title 5 of the Natural Resources Code and the Water Code, Chapters 27 and 29, are fulfilled. The organization report must contain the name, street address, and mailing address of the entity and, if applicable, the plan under which it was organized, the names, driver's license numbers, street addresses different than that of the entity and, if different than the mailing address of the entity, the mailing address of the three primary trustees, officers, and directors, of such entity, and the name and street and mailing address of the resident agent. The name and street address of a resident agent of the entity may be filed in lieu of the street address of the three primary trustees, officers, and directors. If the officer, director, or trustee does not have a driver's license number, then such person shall file with the commission a Texas identification card number issued by the Department of Public Safety. If the officer, director, or trustee does not have a Texas identification card, then such person shall file with the commission his or her full legal name].

(2) **The commission will notify organizations that perform operations not included in paragraphs (1)(A)-(K) of this subsection of any additional activities subject to the jurisdiction of the commission which require the filing of the organization report. Such notification will make the provisions of this section applicable to such activities.**

(3) **Each organization must maintain a current organization report with the commission until all duties, obligations, and liabilities incurred pursuant to commission rules, the Natural Resources Code, Titles 3 (Subtitles A, B, C and Chapter 111 of Subtitle D) and 5, and the Texas Water Code, Chapters 27 and 29, are fulfilled.**

(4) **The organization report must contain the following information:**

(A) **the name, street address, and mailing address of the organization;**

(B) the plan of the business organization.

(C) for each of the three (if applicable), primary controlling entities of the organization:

(i) that entity's name;

(ii) the following:

(1) if the entity is an individual, their driver's license number;

(II) if the entity is not an individual, the name and driver's license number of the primary individual in control of the entity, or an active Railroad Commission P-5 number for that entity;

(III) if any individual subject to this subparagraph (ii) has a driver's license, they may, at their option, submit their social security number instead of their driver's license number. If any individual subject to this subparagraph has no driver's license and does not wish to submit a social security number, they shall submit an official state identification number, such as a Texas State Identification Card number issued by the Department of Public Safety. If such individual has no driver's license or official state identification number, and does not wish to submit their social security number, then they shall submit their full legal name;

(iii) a street address different than that of the organization; and

(iv) if different from the mailing address of the organization, a mailing address;

(D) if a foreign or nonresident organization, the name and street address of a resident agent.

(5) Any organization may designate a resident agent with a street address different than that of the organization in place of submitting the street address of the three (if applicable) primary controlling entities of the organization. [(2)] Any foreign or nonresident entity identified in paragraph (1) of this subsection shall designate and maintain a resident agent upon whom may be served any process, notice, or demand required or permitted by law to be served upon such entity by or on behalf of the commission. Failure of such entity to designate and maintain a resident agent will render the organization report invalid. (Reference Order Number 20-617, effective January 1, 1971)

(6)[(3)] Failure by any entity identified in paragraph (1) of this subsection to answer any subpoena, commission-to-take deposition, or directive-to-appear-at-a-hearing served upon such entity by or on behalf of the commission will render the organization report invalid.

(7)[(4)] Each entity who is required to file an organization report is also required to file annually a current organization report according to the schedule assigned by the commission. Prior to the filing date, the commission will mail notification and information to each entity for update of the organization report file. Further, an organization report must be amended and filed upon any change in any information reported on

the organization report during the annual period within 15 days of such change.

(b)-(c) (No change)

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

Issued in Austin, Texas, on August 3, 1987.

TRD-8706409 Walt Lillie
Special Counsel
Railroad
Commission of Texas

Earliest possible date of adoption.

September 11, 1987

For further information, please call
(512) 463-7149.



★ 16 TAC §3.8

The Railroad Commission of Texas proposes an amendment to §3.8, concerning water protection. The amendment adopts by reference a revised memorandum of understanding (MOU) between the Railroad Commission of Texas, the Texas Water Commission, and the Texas Department of Health concerning the division of jurisdiction among the agencies over waste materials that result from, or are related to, activities associated with the exploration, development, and production of oil, gas, or geothermal resources and the refining of oil. Copies of the revised MOU are available upon request from the Railroad Commission of Texas, Oil and Gas Division, Underground Injection Control Section, P.O. Drawer 12967, Austin, Texas 78711-2867, (512) 463-6790. Elsewhere in this issue of the *Texas Register*, the Texas Water Commission and the Texas Department of Health are each proposing to adopt the revised MOU as a section.

Rita E. Percival, systems analyst, Oil and Gas Division, 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.

Lori Wrotenbury, assistant director, Underground Injection Control Section, Oil and Gas Division, 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 the division of waste management jurisdiction among the agencies under the various statutes applicable to oil, gas, or geothermal resource activities. This clarification will promote efficient administration and avoid duplication of effort. 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 Lori Wrotenbury, Assistant Director, Underground Injection Control Sec-

tion, Oil and Gas Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967. The deadline for submitting comments will be 30 days from the date of publication of this proposal in the *Texas Register*. Copies of any comments submitted should be submitted to Cindy Smiley, Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, and to Hector Mendieta, P.E., Division of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

The Railroad Commission of Texas, the Texas Water Commission, and the Texas Department of Health will hold a joint hearing beginning at 10 a.m. on September 2, 1987, in Room 12-126 of the William B. Travis Building, 1701 North Congress Avenue, Austin, to receive public comment on the proposed revised MOU.

The amendment is proposed under House Bill 1407, 67th Legislature, 1981, §10, which requires the Railroad Commission of Texas, the Texas Water Commission, and the Texas Department of Health to amend, as necessary the memorandum of understanding concerning the division of jurisdiction among the agencies over waste materials that result from, or are related to, activities associated with the exploration, development, and production of oil or gas and the refining of oil. This amendment is also proposed under the Natural Resources Code, §§81.052, 85.201, 85.202, 91.101, and 141.102, and the Texas Water Code, §27.034, which provides the Railroad Commission of Texas with the authority to adopt rules to prevent the waste of oil, gas, or geothermal resources and to prevent the pollution of surface and subsurface water that might result from activities associated with the exploration, development, and production of oil, gas, or geothermal resources.

§3.8. *Water Protection.*

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

(i) **Adoption of memorandum of understanding by reference. The memorandum of understanding between the Railroad Commission of Texas, the Texas Water Commission, and the Texas Department of Health, which concerns the division of jurisdiction among the agencies over wastes that result from, or are related to, activities associated with the exploration, development, and production of oil, gas, or geothermal resources, and the refining of oil, is adopted by reference. Copies of the memorandum of understanding are available upon request from the Railroad Commission of Texas, Oil and Gas Division, Underground Injection Control Section, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6790.**

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

Issued in Austin, Texas, on August 4, 1987.

TRD-8706415 Walt F. Little
Special Counsel
Railroad Commission of
Texas

Earliest possible date of adoption
September 11, 1987
For further information, please call
(512) 463-7149



★ 16 TAC §3.14

The Railroad Commission of Texas proposes an amendment to §3.14, concerning the plugging of dry or inactive wells. The amendment prevents loss of reserves through the premature abandonment of marginal wells. The amendment allows for wells which become inactive on or after January 1, 1986, but before January 1, 1989, to have one year instead of 90 days in which to plug or otherwise bring the well into compliance with commission rules. The commission's rules do not allow pollution to occur during the one-year period, any problem well is subject to a plugging order.

Rita E. Percival, systems analyst, 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.

Ms. Percival 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 prevention of the loss of hydrocarbon reserves as a result of premature abandonment of wells. 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 Bob Beard, Oil and Gas Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967.

The amendment is proposed under the Natural Resources Code, Title 3, Subtitle A, §81.052, and Subtitle B, §85.202, and §91.101, which provides the railroad commission with the authority to adopt and enforce rules relating to the operation, abandonment, and proper plugging of wells.

§3.14. *Plugging.*

- (a) (No change.)
- (b) Plugging report and commencement of operations.

(1) (No change.)

(2) Plugging operations on each dry or inactive well must be commenced within a period of 90 days after drilling or operations ceased and shall proceed with due diligence until completed, provided that dry or inactive wells on which drilling or operations ceased on or after January 1, 1986, but before January 1, 1989[1988], must com-

mence such plugging operations within one year of the date on which drilling or operations ceased. For good cause, a reasonable extension of time in which to start the plugging operations may be granted pursuant to the following procedures:

- (A)-(C) (No change.)
- (c)-(h) (No change.)

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

Issued in Austin, Texas on August 3, 1987.

TRD-8706410 Walt Little
Special Counsel
Railroad Commission of
Texas

Earliest possible date of adoption
September 11, 1987
For further information, please call
(512) 463-7149



TITLE 22. EXAMINING BOARDS Part XXV. Structural Pest Control Board Chapter 591. Definitions of Terms

★ 22 TAC §591.21

The Structural Pest Control Board proposes an amendment to §591.21, concerning the licensing and regulation of the structural pest control industry. The amendment replaces the term employee with the new term trainee so that proper distinction can be made between trained and untrained employees for administering new amendments for the Texas Structural Pest Control Act (House Bill 625).

David A. Ivie, executive director, 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. Ivie 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 a clearer understanding of duties for a trainee and a pest control technician. 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 David A. Ivie, 1300 East Anderson Lane, Building C, Suite 250, Austin, Texas 78752.

The amendment is proposed under Texas Civil Statutes, Article 135b-6, which provide the Structural Pest Control Board with the authority to test, license, and

regulate the structural pest control industry.

§591.21 *Definitions of Terms.* In addition to the definitions set out in the Act, §2, the following words[, names,] and terms shall have the following meanings, unless the context clearly indicates otherwise.

Trainee [Employee]—Any person employed by a business licensee who is in training to perform the duties of a technician but who is not a licensed technician nor a certified applicator [to engage in pesticide applications, maintain or utilize structural pest control devices, make sales presentations, or identify pest infestation or damage. The term employee shall not mean those individuals whose sole duties are clerical, or janitorial, or are completely disassociated with the control of arthropods (insects, spiders, mites, ticks, and related pests), wood-infesting organisms, rodents, weeds, nuisance birds, and any other obnoxious or undesirable animals which may infest households, railroad cars, ships, docks, trucks, airplanes, or other structures, or the contents thereof, or the immediate adjacent outside area].

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

Issued in Austin, Texas on August 4, 1987.

TRD 8706411 David A. Ivie
Executive Director
Structural Pest Control
Board

Earliest possible date of adoption
September 11, 1987
For further information, please call
(512) 835-4066



Chapter 593. Licenses

★ 22 TAC §§593.1-593.21

The Structural Pest Control Board proposes amendments to §§593.1-593.3, §§593.5-593.7, and new §593.21, concerning persons required to secure a license; license application; insurance requirements; examinations; license expiration and renewal; fees; and technician license standards, respectively. The board proposes the amendments and new section to explain the licensing requirements for the pest control businesses and their employees, to set insurance coverage in line with the amendments to the Texas Structural Pest Control Act by House Bill 625, and to establish standards and fees for licensing pest control technicians as required by House Bill 625.

David A. Ivie, executive director, has determined that for the first five-year period the sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections. The ef-

fect on state government for the first five-year period the sections will be in effect is an estimated additional cost of \$68,753 for 1988, and \$62,607 for each year from 1989-1991, and an estimated increase in revenue of \$70,000 for 1988, \$70,000 for 1989, \$80,000 for 1990, and \$85,000 for 1991. After subtracting estimated additional cost from the estimated increase in revenue, the final estimated increase in revenue is \$1,247 for 1988, \$7,393 for 1989, \$17,393 for 1990 and \$22,393 for 1991. The cost of compliance with the sections for small businesses will be \$50 per year. The cost of compliance for small businesses compared with the cost of compliance for the largest businesses affected by the sections based on cost per employee will be \$50 per trainee.

Mr. Ivie 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 better qualified pest control technicians working under closer supervision. This will give the public more assurance that safe and effective pest control work is being performed by licensed businesses. The anticipated economic cost to individuals who are required to comply with the sections as proposed will be \$50 per year per trainee.

Comments on the proposal may be submitted to David A. Ivie, 1300 East Anderson Lane, Building C, Suite 250, Austin, Texas 78752.

The amendments and new section are proposed under Texas Civil Statutes, Article 135b-6, which provide the Structural Pest Control Board with the authority to test, license, and regulate the structural pest control industry.

§593.1 Persons Required to Secure License

(a) **Business license.** Any person engaged in the structural pest control business [operations] must secure a business license from the board for each business location, including branch offices, in accordance with the Act and the regulations. Each business license holder shall have a certified applicator who is not also serving as a certified applicator for another business licensee. No person shall advertise in any manner to render services or solicit business within the meaning of the Act without first obtaining a business license and having an applicator certified in each license category in which business is conducted.

(b) **Certified applicator.** The person primarily responsible to provide training and direct supervision for pest inspections, identifications, and control measures of a licensed business must be a certified applicator.

(c) **Technician.** Individuals who perform pest control services under the direct supervision of a certified applicator must obtain a technician license within six months

of the first date of employment in the pest control industry by meeting the standards prescribed by the board in §593.21 of this title (relating to Technician License Standards). The technician licensee shall include his license number on each application for employment with a pest control business.

§593.2 License Application

(a) The application for a business license, [and] a certified applicator license, and technician license shall be submitted on a regular form furnished by the board.

(b) (c) (No change.)

§593.3 Insurance Requirements

(a) Each business license applicant must submit with the application an insurance policy or certificate of coverage in the amount of not less than \$25,000 for [in] bodily injury [coverage] and [\$5,000 in] property damage coverage with a minimum total aggregate of \$50,000 for all occurrences insuring him against liability for damage to persons or property occurring as a result of operations performed in the course of the business of structural pest control to premises or any other property under his care, custody, or control. No new business license will be issued until insurance requirements are met. This policy shall contain a cancellation provision whereby notification of cancellation is received by the board not less than 30 days prior to cancellation.

(b) **If payment of claims results in reducing the total aggregate of coverage below \$50,000, the insurance carrier shall notify the board and the licensee within 30 days. The licensee shall obtain additional coverage to meet the minimum requirements.**

§593.5 Examinations

(a) (No change.)

(b) In order to qualify to take the Texas Structural Pest Control Board test for obtaining a certified applicators license, the applicant must have verifiable employment in the pest control industry under the supervision of a licensed certified applicator for at least 12 months out of the past 24 months and must have possessed a technician license for at least six months.

(1) (No change.)

(2) The following persons with less than 12 months verified employment and who have not been licensed as a technician for six months may apply to the board for permission to take the test:

(A)-(C) (No change.)

(c) The testing procedure will be as follows.

(1)-(11) (No change.)

(12) **Persons who make a passing grade and qualify for a certified applicators license must obtain a license within 12 months of the exam date or be retested.**

(13)[(12)] Categories in which examinations are to be given for which licenses will be issued are as follows:

(A)-(F) (No change.)

§593.6 License Expiration and Renewal.

(a) Licenses shall expire December 31 of each calendar year and must be renewed by submitting an application to the board, paying the required fee, and meeting any additional requirements of the board under subsection (d) of this section, on or before December 31 of each calendar year. **Late renewals are subject to the provisions of the Texas Structural Pest Control Act, §7(c).** [The board may grant to an untimely applicant for renewal a structural pest control business license or a certified applicators license, if such applicant pays a late renewal fee of \$25 and if his or her application is filed with the board not more than 30 days after the expiration of said license. If such application is received between 31 and 60 days after the expiration of the applicant's license, the board may grant the renewal of license when said application is accompanied by a late renewal fee of \$50. An applicant who applies for the renewal of a certified applicators license more than 60 days after the expiration of said license must be re-examined by the board.]

(b) Licenses and [employee] identification cards issued by the board are not transferable.

(c) (d) (No change.)

§593.7 Fees. Applicants and licensees will be charged the following fees for board services:

(1) (No change.)

(2) \$25 [\$20] for an original or renewal of certified applicators license;

(3) \$15 for an original, renewal, or duplicate technician license;

(4)[(3)] \$10 for an original, renewal, or duplicate trainee [employee] identification card;

(5)[(4)] \$20 for a duplicate business or certified applicators license when the original has been lost or destroyed;

(6)[(5)] \$20 for reissuing a business license or certified applicators license due to a name change in the license or a change of address;

(7)[(6)] \$25 for administering exams in each category;

(8)[(7)] \$37.50 [\$25] for late renewal fee for up to 30 days late;

(9)[(8)] \$75 [\$50] for late renewal fee for 31-60 days late.

§593.21 Technician License Standards.

(a) In order to qualify for a technician's license, a trainee must:

(1) be at least 16 years of age; and

(2) receive verifiable training including at least 200 hours on the job training and 20 hours of classroom training. The classroom training shall include at least two hours on each of these subject areas. The on the job training shall cover the following areas:

(A) federal and state laws regulating structural pest control and pesticide application;

(B) recognition of pest and pest damage;

- (C) pesticide labels and label comprehension,
- (D) pesticide safety,
- (E) environmental protection,
- (F) application equipment and techniques;
- (G) pesticide formulations and actions; and
- (H) emergency procedures and pesticide cleanup

(b) The business license holder and certified applicator shall certify to the board on each technician license application submitted that the applicant has satisfactorily completed the required training and demonstrated competency in each of the subject areas in subsection (a)(2) of this section.

(c) The business licensee shall maintain the training records for each trainee in the company files for at least one year after termination of employment. The training records shall be kept on a form prescribed by the board and shall include but not be limited to date of training, number of hours, subject, trainer, type of training as to whether on job training or classroom training and competency evaluation by the certified applicator.

(d) When a licensed technician changes employees the employer who provided the verifiable training shall make the training record available to the technician or the new employer upon written request.

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

Issued in Austin, Texas, on August 4, 1987

TRD-8706412 David A. Ivie
Executive Director
Structural Pest Control
Board

Earliest possible date of adoption
September 11, 1987
For further information, please call
(512) 835-4066

Chapter 595. Compliance and Enforcement

★22 TAC §595.2, §595.3

The Structural Pest Control Board proposes amendments to §595.2 and §595.3, concerning employee registration and employee supervision. The board proposes these amendments to develop rules consistent with the requirements of House Bill 625 which amended the Texas Structural Pest Control Act to require licensing of pest control technicians.

David A. Ivie, executive director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as

a result of enforcing or administering the sections

Mr. Ivie 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 that safer and more effective pest control work will be performed because of increased training and improved supervision of pest control employees. 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 David A. Ivie, 1300 East Anderson Lane, Building C, Suite 250, Austin, Texas 78752.

The amendments are proposed under Texas Civil Statutes, Article 135b.6, which provide the Structural Pest Control Board with the authority to test license, and regulate the structural pest control industry.

§595.2 Employee Registration

(a) It shall be the duty of the business licensee to inform the board in writing of the employment of all **technicians** [employees,] **and trainees**, [as the term employee is defined in the rules.]

(b) Such notice shall be furnished on the date of employment and shall include the full name and home address of the **technician or trainee**, [employee] the date of employment, and, if applicable, the branch office at which he will be employed, and other information as may be required.

(c) Within **30** [90] days of such employment, the business licensee shall obtain from the board an identification card for such **trainee** [employee] **and a license for such technician**. It shall be the responsibility of every business licensee to collect all identification cards **or licenses** from terminated **technicians or trainees** [employees] and mail them to the Structural Pest Control Board within 10 days after termination of employment. If, for any reason, such **documents** [cards] cannot be collected, the structural Pest Control Board shall be so notified in writing. Any registration **or license fees** [fee] paid for **technicians or trainees** [an employee] shall not be refundable or transferred to another **technician or trainee** [employee].

§595.3 Employee Supervision.

(a) (No change.)

(b) In order to provide adequate supervision, the certified applicator must have [daily or frequent] personal contact **at least three days per week** with the **technicians or trainees** [licensed business office and/or the employees] being supervised. The business **technician or trainee** [employee] must reside within the normally accepted commuting area of the licensed business office in order to personally report **at least three days per week** [daily or frequently] to receive instructions.

(c) (No change.)

(d) **Trainees shall not perform pest control services unless a licensed technician or certified applicator is present on the job site to provide supervision.**

(e)[(d)] The business license holder is [will be] responsible for actions of employees when they are performing pest control **services** [work].

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

Issued in Austin, Texas, on August 4, 1987

TRD 8706413 David A. Ivie
Executive Director
Structural Pest Control
Board

Earliest possible date of adoption
September 11, 1987
For further information, please call
(512) 835-4066.

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 61. Chronic Diseases

Kidney Health Care Program

Benefits

★25 TAC §§61.1-61.4, 61.6-61.10

The amendments are proposed under Texas Civil Statutes, Article 4477-20, §3(13), which provide the Texas Department of Health with the authority to adopt sections to provide adequate kidney care and treatment for the citizens of the State of Texas and to carry out the purposes and intent of the Texas Kidney Health Care Act.

§61.1. Introduction and Brief Description of Program Operation.

(a) (No change.)

(b) End-stage renal disease is defined as that stage of renal impairment which is virtually always irreversible and permanent and requires dialysis or kidney transplantation to ameliorate uremic symptoms and maintain life. In order to be eligible for program benefits, persons must make application through an end-stage renal disease facility that has received program approval or interim approval, a Medicare approved hospital licensed in Texas, or a military or Veterans Administration hospital located in Texas which has a Joint Commission on Accreditation of Hospitals (JCAH) **or American Osteopathic Association (AOA)** approved renal unit. Also, the patient must have been certified as having ESRD by a nephrologist licensed to practice in Texas or in the state in which the facility is located through which the application was submit-

ted. Benefits are available for home dialysis supplies, drugs, and transportation.

(c) As used in these sections, the following terms have the meanings indicated:

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

(4) Recipient—ESRD patient that is eligible to receive [for and receiving] program benefits.

(5) (No change.)

(6) Participating facility. Facility approved to participate in the program, which includes contracted outpatient dialysis facilities, contracted out-of-state facilities, Medicare approved hospitals located in Texas, and Veterans Administration and military hospitals located in Texas which have a JCAH or AOA approved renal unit.

(7)-(9) (No change.)

§61.2 Eligibility Requirements

(a) A person will be eligible to receive program benefits when he/she receives program approval after meeting all of the following requirements:

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

(3) makes application through a program-contracted facility, a Medicare approved hospital licensed in Texas, or a military or Veterans Administration hospital located in Texas which has a JCAH or AOA approved renal unit;

(4) applies for benefits under Title XVIII, Social Security Act (Medicare);

(5)[(4)] continues premium payments on health insurance plans under Medicare, individual or group health insurance plans and prepaid medical plans [plan], [and health insurance plans under Title XVIII, Social Security Act, as amended], where eligibility was effective prior to program eligibility, or provide a written explanation [completed form KHP-10] to the department as to why such insurance cannot be maintained.

(b) To maintain eligibility for receipt of program benefits, a recipient must meet the following requirements in addition to those listed in subsection (a) of this section:

(1) (No change.)

(2) apprise the department within 30 days of changes in the following:

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

(C) insurance coverage; [and]

(D) location of treatment; and

(E) the round trip mileage from the recipient's permanent home address to the location of treatment.

(3) (No change.)

(4) reimburse the department as requested for overpayments made to [or in behalf of] the recipient;

(5)-(6) (No change.)

(c) (No change.)

§61.3. Payment of Program Benefits.

(a) Depending on the recipient's eligibility status, benefits are available for dialysis treatments, hospitalization, physician charges, laboratory charges, home dialysis supplies, drugs, and transportation, up to a maximum per recipient based upon:

(1) (4) (No change.)

(b) (No change.)

(c) The department may restrict or categorize service reimbursement to meet budgetary limitations. Categories will be prioritized based upon medical necessity, Medicare eligibility and projected Medicare payments for the different treatment modalities. In the event program benefits must be reduced, they will be reduced in a manner that takes into consideration medical necessity and Medicare coverage. The department may affect changes in benefits by either adding or deleting entire categories or by proportionate changes across categories, or by a combination of both these methods. [The priority list, in order of highest priority, is as follows:

[(1) benefits for drugs and transportation for all patients regardless of Medicare status,

[(2) benefits for dialysis treatments and medical care during the pre-Medicare waiting period;

[(3) benefits for dialysis treatments and medical care for patients not eligible for Medicare coverage,

[(4) benefits for Medicare eligible patients who dialyze at home but do not receive all their support from a dialysis facility;

[(5) benefits for medical care for Medicare eligible patients who dialyze at home and do receive full support from a dialysis facility;

[(6) benefits for medical care for Medicare eligible patients who have received a kidney transplant and;

[(7) benefits for medical care for Medicare eligible patients who dialyze in a dialysis facility.]

(d) Payment methods.

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

(3) Payment to hospitals.

(A) RCC Statements: ratio of Medicaid [Medicare] Allowable Costs to Charges (RCC) statement. Payments to hospitals will be adjusted by the hospital's appropriate RCC, for the date and type of service provided. **The RCC statement rates utilized by the KHP will be the Interim Hospital Rates for Inpatient and Outpatient care as established by the Texas Department of Human Services (TDHS) for the County Indigent Health Care Program. The RCC rate used by the KHP will be established by TDHS on September 1 of each year and will be effective for the following 12 month period. The hospital entry date for inpatient services and the actual service date for outpatient services will be the determining factor on which RCC rates will be utilized; the rates in effect at these specific determination dates will be the rates used to determine claim liability.** [All hospitals participating in the program are required to submit a sworn statement of costs allowable under provisions of Title XVIII, Social Security Act (Medicare allowable costs), as amended, and the charges used to determine their current

RCC. If a submitted RCC exceeds 1.0, the program will reduce the RCC to 1.0 when processing claims. The participating hospitals must submit the RCC statement within 90 days after the close of their fiscal year. By definition, the current RCC statement is the statement for the most recently completed fiscal year for the hospital. The previous RCC statement would be for the fiscal year immediately preceding the fiscal year covered by the current RCC statement. The current RCC statement will become effective 90 days after the end of the hospital's fiscal year and will apply to all services provided after that date. The previous RCC statement will be used for services provided prior to the effective date of the current RCC. If the current RCC statement is not received by the date it is to become effective, claims for services provided after the effective date will be denied/rejected until the current RCC statement is received.]

(B) **If a hospital is not listed in the Interim Rates Appendix of the Indigent Health Care Handbook, a rate of 75% for both inpatient and outpatient services will be utilized until a rate is established by the TDHS.** [Inpatient RCC's will be provided using the Medicare allowable inpatient costs to charges.]

(C) **The RCC rates will be applied to the total charges, excluding personal items and dialysis charges, in order to determine the KHP allowable charges which are applicable. Any third party payments will then be deducted from the allowable charges to determine KHP liability on the claim. An itemized billing detailing services rendered to the recipient must be submitted with the payment voucher along with an explanation of benefits (EOB) from all other liable third parties.** [Outpatient RCC's will be provided using the Medicare allowable outpatient costs to charges, for outpatient services other than dialysis.]

(D) Inpatient dialysis treatments will be reimbursed at the **KHP allowable rate for hospital-based** [of] outpatient dialysis services for the hospital's geographic area **and will be excluded from the RCC calculations.**

(E) Hospitals may request revision of their RCC's during the year by submitting a revised RCC statement. The revision will be effective from the date the revised statement is received at the program.

(F) When requested, hospital records supporting these statements will be made available for examination by duly authorized representatives of the department.

(G) All charges submitted to the program for inpatient and/or non-dialysis outpatient services will be reduced by the amount that is provided by any other third party resource covering the recipient. The RCC will be applied to the total charges, excluding personal items, before deducting the third party payment. An itemized billing detailing services rendered to the recipient must be submitted with the payment voucher.]

(4) Physician services which are related to routine dialysis supervision and follow up services will be reimbursed on a fee-for-service basis with a maximum monthly capitation amount. Dialysis-related physician's services will not be paid above **this KHP** [the] capitation amount. For other than dialysis services, physicians will be reimbursed on the basis of the maximum affordable payment schedule (MAPS) currently approved for the program by the department. Allowable services and reimbursement rates not listed in the MAPS will be as determined by the department.

(e) (No change.)

(f) All benefits paid in behalf of recipients will be for claims received by the program within 90 days after the date of service rendered (90 day filing deadline) and/or within the submission timetables listed in paragraphs (1)-(3) of this subsection. Claims will either be paid, denied or rejected. The procedure in paragraphs (1) and (2) of this subsection will be adhered to for denied or rejected claims. The procedures in paragraph (3) of this subsection apply to the initial submission of claims for newly eligible recipients.

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

(3) Initial claims for newly eligible recipients will be processed according to the provisions of subsection (f)(1) and (2) of this section and must meet the coverage limitations of subsection (h) of this section relating to retroactive coverage. Additionally, the following filing criteria will apply.

(A) For newly eligible recipients, claims received within 60 days after the date of the program **notice** of eligibility [letter] will be processed for payment. The 90 day filing deadline does not apply during this 60 day grace period.

(B) (No change.)

(4) Claims which have been underpaid [in error] by the program may be reconsidered for a payment adjustment if the program receives written notification of the **need for adjustment** [error] within 60 days from the date of the original payment (date on the payment warrant) or within the initial 90-day filing deadline, whichever is later. A copy of the payment warrant (if available) and any claims information which accompanied the payment warrant, or other supporting evidence, should be included with the request for reconsideration.

(5) Denied or rejected claims, which cannot be resolved through paragraphs (1)-(3) of this subsection, may be appealed through the program's appeal process as outlined in §61.11 [61.7(c)] of this title (relating to **Kidney Health Program Appeals Process**) [Denial of Application; Modification, Suspension, or Termination of Patient Benefits].

(g) (No change.)

(h) Program benefits may be retroactive as follows.

(1) (No change.)

(2) Access surgery benefits for

covered services may be retroactive for a maximum period of 80 [120] days before the date on which the department receives a complete application, however, such retroactive benefits will not extend prior to the date on which Texas residency was established or for more than 120 days before the date of the first dialysis.

(i) Benefits for in-center dialysis recipients are available for covered medical services performed during the waiting period required for Medicare chronic renal disease coverage (pre Medicare waiting period). **For recipients who are eligible for Medicare benefits prior to ESRD and do not have Medicare coverage because they have not applied for benefits under Title XVIII or they are not paying the necessary premiums to maintain their Medicare coverage, the pre-Medicare waiting period benefits from the KHP will not exceed four months from the date of the KHP eligibility effective date and will terminate the first day of the third month following the date of first chronic dialysis.**

(j) Long-term benefits for medical care are extended to those recipients who do not qualify for Medicare coverage. Medicare denial must be documented by a copy of an official Social Security Administration denial notification (**based on CRD**) acceptable to the department.

(k) Medicare Part A and B premiums may be paid by the program for those recipients that meet certain criteria.

(1) To be eligible for this benefit, recipients must meet the following criteria.

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

(C) they are not covered by a state buy-in agreement with the Texas Department of Human Services (DHS) [Resources (DHR)]. Buy-in occurs when Medicaid covers hospitalization (Part A) and DHS [DHR] purchases Part B on behalf of their clients.

(2) (No change.)

(l) Drug and transportation (D&T) benefits are available for all program recipients, **subject to co-pay liability limitations** [regardless of their treatment mode].

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

(m) **Outpatient immunosuppressive [cyclosporine A (CYA)] drug (ISD)** benefits are available for program eligible transplant recipients [who are not eligible for drug benefits from any other source (Medicaid, private insurance, VA, etc.)]. The CYA must be provided by a Program-approved facility and billed directly to the program on an appropriate claim form. The CYA cost, when billed under the CYA benefit, will not be included in the recipient's monthly D&T limit. Reimbursement rates will be determined by the department. The program requires that any provider billing the program under this benefit agree to accept the program's payment as payment in full for the drug and not bill the patient for any remaining balance]. **These recipients will fall into two basic categories: Medicare eligible recipients**

equal to or less than one year post-transplant; Medicare eligible recipients greater than one year post-transplant and Medicare non-eligible recipients. Outpatient ISD benefits available to each category include:

(1) **The Medicare eligible recipient equal to or less than one year post-transplant is eligible for program benefits to cover the 20% co-insurance costs not covered by the Medicare immunosuppressive drug program and are covered under the KHP's drug and transportation (D&T) benefits. These benefits are subject to the limitations listed in subparagraph (3) of this paragraph.**

(2) **The Medicare eligible recipient more than one year post-transplant and the Medicare non-eligible recipient are eligible for the KHP Cyclosporine A (CYA) benefits and D&T benefits. These benefits are subject to the limitations listed in subparagraph (3) of this paragraph.**

(3) **Limitations to outpatient ISD benefits include the following.**

(A) The ISD must be provided by a program approved facility unless the drug is being claimed on a patient D&T claim form.

(B) ISD benefits will be subject to the program's \$350 monthly maximum and co-pay liability requirements of KHP D&T benefits with one exception; the Cyclosporine cost, when billed under the KHP's CYA benefit, is not subject to these limitations.

(C) All other third parties (e.g., Medicare, Medicaid, private insurance, VA, etc.) must meet their liability before the KHP will become liable for payment amounts up to the KHP allowable reimbursement rate.

(D) Reimbursement rates will be determined by the department.

(E) Cyclosporine A benefits, in addition to the limitations referred to in Subparagraphs (A)-(D) of this paragraph, must be billed directly to the program on the appropriate claim form and the provider billing the program under the Cyclosporine benefit agrees to accept the program's payment as payment in full for the drug and not bill the patient for any remaining balance.

(n) Transplant patients: Medical [care] benefits for Medicare noneligible recipients will terminate three years after a successful transplant; however, drug and transportation benefits, including Cyclosporine A benefits, will remain available as long as program eligibility is maintained.

(o) In the event a recipient is dialyzing at a **contracted** [participating] facility that loses its program approval, the program will notify the recipient of this situation. The recipient will remain eligible for all program benefits except those benefits covering medical services which are provided under the contract between the department and the **contracted** [participating] facility. To remain eligible for the benefits which cover these contracted medical services, the recipient must transfer to another outpatient dialysis

facility that has a KHP approval. Recipient benefits normally provided under contract by an approved outpatient dialysis facility are not eligible for reimbursement while the recipient is dialyzing at a non-approved facility.

(p) Overpayments made to or in behalf of recipients must be reimbursed to the department. Reimbursement may be made by lump sum payment or, at the department's discretion, out of the current claims due to be paid to or in behalf of the recipient. This will also apply to any person or persons who have a legal obligation to support the recipient and have received the overpayment **in behalf of the recipient**. An opportunity to appeal a program decision related to this subsection will be afforded to the recipient or organization involved in the overpayment at their request, in accordance with §61.11 [61.7(c)] of this title (relating to **Kidney Health Program Appeals Process**) [Denial of Application; Modification, Suspension, or Termination of Patient Benefits].

§61.4. Applications.

(a) Persons meeting the eligibility requirements set forth in §61.2(a)(1), (2), and (4) of this title (relating to Eligibility Requirements) must make application for benefits through a KHP-contracted facility, a Medicare-approved hospital licensed in Texas, or a military or Veterans Administration hospital located in Texas which has a JCAH or AOA approved renal unit.

(1) Completed Application. A complete application shall consist of all of the following:

(A)-(D) (No change.)

(E) a social security card (or allowable substitute):

(i) (No change.)

(ii) a copy of a fully executed application for a replacement social security card **which verifies the social security number; or**

(iii) (No change.)

(iv) a copy of an application for a social security number, if the applicant never had a number issued previously, **or a copy of the application for a replacement card when the social security administration office will not verify the Social security number**. The program Application for benefits will be granted provisional approval pending receipt of the copy of the actual card, assuming the application is otherwise complete. The applicant will be put in a suspended benefits status for 90 days or until the copy of the card is received, whichever occurs first. If the 90 day period elapses **without the KHP receiving a copy of the card**, the provisional approval will be cancelled and the program application will be sent back to the submitting facility. **A new application will need to be submitted before program eligibility will be granted**. Claims filed during the suspended benefits period will be held until the program application is complete and then they will be processed. If

the program application is sent back after 90 days, all claims will also be returned without processing [and]

(2)[(F)] **Medicare denial notification. If available**, a copy of an official social security administration Medicare denial notification **(based on CRD)** acceptable to the department, [if this has already been determined; and]

(3)[(2)] **English translation. All documentation must be provided in English or have an accurate English translation attached to the document.**

(4)[(3)] Applicant financial data. Applicant financial data must be provided to determine applicant co-pay liability. Although basic program eligibility will be determined without the financial data [documents], specific benefit eligibility cannot be determined and claims against the benefit cannot be processed. As an example: D&T benefits eligibility cannot be determined without financial data to establish co-pay liability; therefore, D&T claims would be rejected until the financial data were provided. **The financial data will be provided in the appropriate section on the application for benefits. Additionally, a copy of the first page of the applicant's (or the persons legally obligated to support the applicant) IRS individual income tax return form 1040, 1040A, or 1040EZ for the most recently completed tax year will be provided, if available. Submission of the application should not be delayed if the tax form is not readily available; it can be provided at a later date.** [The financial data documents required are:

{(A) a copy of the first page of the applicant's IRS individual income tax return form 1040, 1040A, or 1040EZ for the most recently completed tax year (or the form for those persons legally obligated to support the applicant); or

{(B) a notarized statement listing the applicant's current annual adjusted gross income (or the current annual adjusted gross income for those persons legally obligated to support the applicant); or

{(C) if the applicant's current annual adjusted gross income is significantly reduced from what is reflected on the IRS Return, then a notarized statement listing the applicant's current annual adjusted gross income information may be included for the program's consideration (or the current annual adjusted gross income information for those persons legally obligated to support the applicant).]

(5)[(4)] Incomplete applications.

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

(6)[(5)] Eligibility date. The KHP eligibility date will be based on the date the department receives a complete KHP application for benefits or reapplication for benefits as specified in this section. The KHP eligibility date will be computed as follows:

(A) (No change.)

(B) 30 days prior to the first dialysis treatment or transplant surgery as **indicated on the HCFA 2728; or**

(C) (No change.)

(D) **if the date of first dialysis is changed or corrected from that shown on the original HCFA 2728, then a copy of the new HCFA 2728, which was submitted to Medicare, must be provided to the KHP before any program eligibility date can be adjusted.**

§61.6. Documentation of Residency.

(a) Except as provided in subsection (c) of this section, an applicant may submit to the department for consideration the following documentary evidence of bona fide Texas residency: copies of three of the following documents, all in the applicant's name and current address:

(1) (3) (No change.)

(4) one of the documents in this paragraph may be used:

(A)-(C) (No change.)

(D) **a statement of provision of rent-free housing signed by the individual providing the housing and indicating the applicant has resided there for two of the three months immediately preceding the date of application;**

(5)[(D)] utility payment receipts from two of the three months immediately preceding the date of the application;

(6)[(5)] a current, valid Texas Medicaid card;

(7)[(6)] current Texas AFDC records;

(8)[(7)] Texas property tax receipts for the most recently completed tax year;

(9)[(8)] one of the documents in this paragraph may be used **if the applicant's current address is imprinted on the document(s):**

(A) (No change.)

(B) employment/unemployment records **prepared within the three consecutive months immediately preceding date of the application;**

(C) a statement from a financial institution **issued within the three consecutive months immediately preceding the date of the application;**

(D) **Social Security Supplemental Income or Disability Income Records;**

{(9) one of the documents in this paragraph may be used:

{(A) a complete copy of United States Immigration and Naturalization Service (INS) Form I-151 or Form I-551 (Alien Registration Receipt Card).

{(B) a copy of the applicant's most recent change of status application, as submitted to INS, and updated every six months;

{(C) a complete copy of the forms issued to the applicant by INS as evidence of lawful temporary entry into the United States. Such forms may include but are not limited to Form I-90, Form I-94, Form I-120, or Form I-181, and these must be renewed every six months.]

(b) If three of the documents listed in subsection (a) of this section cannot be provided, then copies of two of the documents listed in subsection (a) of this section may

be provided along with a copy of one of the following documents (it must support Texas residency):

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

(6) one of the documents in this paragraph may be used:

(A) a complete copy of United States Immigration and Naturalization Service (INS) Form I-151 or Form I-551 (Alien Registration Receipt Card) that shows a Texas port of entry;

(B) a copy of the applicant's most recent change of status application, as submitted to INS that shows a Texas address or a Texas port of entry;

(C) a complete copy of the forms issued to the applicant by INS as evidence of lawful temporary entry into the United States. Such forms may include but are not limited to Form I-90, Form I-94, Form I-120, or Form I-181 and must show a Texas address or a Texas port of entry.

(c) If the requirements of subsection (a)(1)-(9)(8) of this section cannot apply to the applicant, an applicant seeking admission to the program as a bona fide resident under §61.5(5), (6), (7), or (8) of this title (relating to Residency) may submit documentation for consideration as follows:

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

(d) Applications submitted under subsection (c) of this section must also include documentary evidence of the relationship upon which the submission rests as illustrated by, but not limited to, the following:

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

(3) the judgment or other legal document reciting the appointment of the guardian for the minor or adult ward; or

(4) (No change.)

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

§61.7. Denial of Application; Modification, Suspension, or Termination of Patient Benefits.

(a) (No change.)

(b) Procedures for the denial of applications or modification, suspension, or termination of benefits.

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

(6) Any applicant/recipient aggrieved by the program's decision to deny, modify, suspend, or terminate program benefits is entitled to appeal the decision to the Texas Department of Health. The appeal process will be as set forth in §61.11 of this title (relating to Kidney Health Program Appeals Process).

(c) Program Appeal Process

(1) Any applicant/recipient, provider, or facility aggrieved by the program's decision is entitled to appeal the decision to the Texas Department of Health Informal Hearing Procedures, §§1.51-1.55 of this title (relating to Informal Hearing Procedures). The appeal process will be in accordance with the hearing procedures as outlined in paragraph (2) of this subsection. To initiate the appeal process, the applicant/recipient, provider, or facility must

notify the department, in writing, that he/she requests a hearing on the decision. The request must be received by the department within 20 days from the receipt of the program's decision letter. Failure to provide written notice will be deemed a waiver of the opportunity for a hearing and the proposed action will become final. At their option, an applicant/recipient, provider or facility may choose to appeal the program's decision through the program's informal appeal process as outlined in paragraph (3) of this subsection. When this option is used, an appeal may be a two-step process consisting of an Informal Appeal Panel and, if necessary, an administrative hearing under the department's informal hearing procedures. To initiate the informal appeal panel process, the applicant/recipient, provider or facility must notify the program, in writing, that he/she desires to appeal a program decision. The request must be received by the program within 30 days from the date of the program's decision letter. If the appellant disagrees with the decision of the panel, he/she may then request an administrative hearing by providing notification as previously outlined.

(2) The hearing will not be conducted under the contested case provisions of the Administrative Procedure and Texas Register Act, but will include the following:

(A) the department will set a date and time at the Texas Department of Health central office in Austin, for the meeting;

(B) timely written notice to the applicant/recipient of the basis for the decision and disclosure of the evidence on which the decision is taken;

(C) an opportunity for the applicant/recipient to appear before an impartial decision maker to relate the basis for the decision;

(D) an opportunity for the applicant/recipient to be represented by counsel or another representative;

(E) an opportunity for the applicant/recipient or their representatives to be heard in person, to call witnesses, and to present documentary evidence;

(F) an opportunity for the applicant/recipient to cross examine witnesses; and

(G) a written decision by the impartial decision maker, setting forth the reasons for the decision and the evidence upon which the decision is based.

(3) An informal appeal will consist of a review of the actions taken to-date concerning the aggrieved situation. The review will be conducted by a panel consisting of the bureau chief of chronic disease prevention and control, and the director and deputy director of the program or their designated representatives. The panel would have authority to grant exceptions to the rules when extenuating circumstances were involved in the primary reason for the claim or application being rejected/denied. Examples of such illness, extended hospital stays, lost or

misdirected mail, disasters, etc. The panel must be unanimous in its decisions before an exception can be granted. The panel's authority is limited to dealing with specific cases involving problems with claims and/or applications and has no authority to create, alter or dictate program or department policy.

(A) The panel will meet as necessary but not more than once per month.

(B) The panel will review all claims and applications for which an appeal has been requested.

(C) The review will be based primarily on the documentation provided with the request for an appeal, but the party requesting the appeal may appear before the panel, if desired.

(D) Appeals which involve factors that the panel has no authority to deal with will be referred for an administrative hearing.

(E) An appeal which specifically requests an administrative hearing or an appeal of a decision made by the informal appeal panel will be referred for an administrative hearing. An administrative hearing will be conducted in accordance with the procedures outlined in the department's Informal Hearing Procedures, Subsection 1.54 of this title (relating to Conduct of the Hearing.)

§61.8. Kidney Health Care Approved Outpatient Dialysis Facilities and Out-of-State Facilities, Hospitals, and Providers.

(a) An approved outpatient dialysis facility or out-of-state facility is one that meets the following requirements or criteria.

(1) The facility has met all Medicare certification requirements.

(2) The facility has been assigned a Medicare ESRD provider number.

(3) The facility has entered into a contract with the department to participate in the Texas Kidney Health Care Program and agrees to cooperate with the program in accordance with Texas Civil Statutes, Article 4477-20, and the program rules adopted by the Texas Board of Health [and].

(4) The facility has submitted facility operation cost reports for the most recent fiscal year of operation, in a manner prescribed by the department, no later than 90 days after the close of the facility's fiscal year. A copy of the facility cost report, audited by Medicare, must be submitted within thirty (30) days from the date of the final audited report.

(5) The facility has authorized the department to conduct audits of its records, at reasonable time intervals, to determine the cost of providing services.

(6)(b) The program approval date may not be earlier than the approval date granted by the Health Care Financing Administration for Medicare ESRD approval and may be subsequent to the Medicare approval date, depending on when the facility requested to participate in the Texas program.

(7)(c) Facilities under interim approval for Medicare participation also will be classified as interim approval by the program. Recipient claims will be held by the program until the facility is approved by HCFA; however, applications for program benefits will be processed for approval.

(8)(d) The department may contract only with facilities located within the State of Texas. An exception to this requirement may be a situation where it is clearly a hardship or great risk for a program recipient to travel to an adequate medical facility in Texas when an out-of-state medical facility within 50 miles of the Texas border is closer. The out-of-state facility must meet all the requirements of this section for approved facilities within the State of Texas. A contract entered into with an out-of-state facility will be renewed provided all the requirements of this section are met and the department has determined that the hardship or great risk situation continues to exist.

(b) An approved hospital is one that:

(1) has met all Medicare certification requirements; and

(2) has been assigned a Medicare provider number; or

(3) is a military or Veterans Administration hospital located in Texas with JCAH or AOA approval.

(c) An approved provider is:

(1) a physician that has a license to practice medicine in Texas;

(2) a business that can legally operate in Texas;

(3) a physician associated with a contracted out-of-state facility and is licensed to practice medicine in that state;

(4) a business that can legally operate out-of-state and is authorized to provide services to a KHP eligible patient;

(5) a company which provides home dialysis supplies and can legally operate in Texas; or

(6) any other entity which has signed a contractual agreement with the department to provide specified services.

§69.9. Denial, Modification, Suspension, Termination of Facility/Hospital/Provider Approval; Vendor Hold.

(a) The following are reasons for the denial, modification, suspension, or termination of program facility/hospital/provider approval. A program-approved outpatient dialysis facility, [or] out-of-state facility, hospital, or provider will have its privilege to participate in the program denied, modified, suspended, or terminated if:

(1) the facility/hospital loses Medicare approval;

(2) the facility/provider fails or refuses to enter into a contract with the department to participate in the program;

(3) (No change.)

(4) the contract between the facility/provider and the department is terminated for any reason, including:

(A) facility/provider fails to comply with terms of applicable contracts

and fails to correct [cure] such failure within 30 days after receipt of written notice from the department;

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

(D) facility/provider voluntarily withdraws from participation in the program by providing the department with 60 days written notice;

(E) by mutual consent of the department and the facility/provider;

(5) the facility/provider fails or refuses to submit, in a manner prescribed by the department, information which is:

(A) requested by the department for the purpose of determining the facility's/provider's compliance with the provisions of the Texas Kidney Health Care Act or these program rules;

(B) requested by the department for the purpose of monitoring the facility's/provider's performance under the contract between the facility/provider and the department;

(C) (No change.)

(6) the facility/provider submits false or misleading information to the department and the information is material to the department's determination that the facility/provider is:

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

(C) in compliance with the provisions of the contract between the facility/provider and the department;

(7) the facility/provider fails to reimburse the program when overpayments have been made;

(8) the facility/provider fails to reimburse the program where primary liability for payment of recipient claims has not been satisfied;

(9) the facility/provider files false claims.

(b) Procedures for the denial, modification, suspension, or termination of program [facility] approval.

(1) (No change.)

(2) Within 30 days after receiving this notice, the facility/hospital/provider must respond to the program's notice with a written response to the program. The response must be by certified mail to the following address: Kidney Health Care Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Failure to respond will be deemed a waiver of both the opportunity to respond and the opportunity for a hearing and the proposed action will become final.

(3) Upon receipt of the [facility's] written response, the program will affirm or reverse its proposed action in writing to the facility/hospital/provider administrator by certified mail, giving the reason(s) for the decision.

(4) A facility/hospital/provider aggrieved by the program's decision is entitled to appeal the decision to the Texas Department of Health. The appeal process will be the same as that set forth in §61.11 [61.7(c)] of this title (relating to Kidney

Health Program Appeals Process) [Denial of Application, Modification, Suspension, or Termination of Patient Benefits)].

(c) Vendor Hold. If the department has reasonable cause to believe that a reason for the modification, suspension, or termination of facility/hospital/provider approval exists, the department may, without notice to the affected facility/hospital/provider, withhold payments to the facility/hospital/provider during the pendency of the administrative hearing and appeal process set forth in §61.11 of this title (relating to the Kidney Health Program Appeals Process) [subsection (b) of this section].

§61.10. Recipient Reimbursement Obligation/Co-Pay Liability.

(a) Recipient reimbursement obligation (effective until December 31, 1985).

(1) (No change.)

(2) For the purposes of the reimbursement obligation, the program will use the adjusted gross income (AGI) of the recipient or [and of] the person or persons who have a legal obligation to support the recipient) as shown on his/her Federal Income Tax Return, Forms 1040, 1040A, or 1040EZ. A notarized statement of AGI for the same time period is an acceptable substitute if the Form 1040's are not available. The person or persons who have a legal obligation to support the recipient will be determined by the applicable law.

(b) (No change.)

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

Issued in Austin, Texas, on August 4, 1987

TRD-8706445

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption:

October 31, 1987

For further information, please call
(512) 465-2654.

★ 25 TAC §§61.11-61.13

(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 Health, 1100 West 49th Street, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Department of Health proposes the repeal of §§61.11-61.13, concerning Kidney health care program benefits; amendments to §§61.1-61.4 and

§§61.6-61.10, concerning introduction and brief description of program operation, eligibility requirements, payment of program benefits, applications, documentation of residency, denial of application (modification suspension, or termination of patient benefits), kidney health care approved outpatient dialysis facilities and out-of-state facilities, denial, modification, suspension, or termination of facility approval (vendor hold), and recipient reimbursement obligation/co-pay liability, respectively, and new §§61.11-61.14, concerning kidney health program appeals process, confidentiality of information, nondiscrimination statements, and forms, respectively. The proposed amendments, new sections, and repeals clarify the existing program requirements. Specifically, the changes are as follows.

American Osteopathic Association (AOA) approved hospitals will be added to the list of approved facilities; language will be clarified to insure that all applicants to the program also have to apply to Medicare for Medicare chronic renal disease (CRD) benefits; the priority list for service reimbursement will be deleted since it is no longer necessary; the department will use a more reliable means of insuring statement information concerning the ratio of allowable costs to charges (RCC); access surgery benefits for covered services will be retroactive for a maximum period of 180 days instead of 120 days; requirements concerning Cyclosporine A (CYA) benefits will be changed because of the implementation of new Medicare benefits concerning outpatient immunosuppressive drugs (ISD); changes will be made concerning the submission of a social security card with the application; requirements concerning applicant financial data will be emphasized; a requirement will be added concerning the changing or correcting of the date of the first dialysis; a provision will be added allowing a statement of provision of rent-free housing to be used for documenting residency. The use of utility payment receipts to document residency will be emphasized; other provisions concerning documentation of residency have been clarified or added; the requirements concerning the program appeals process will be emphasized by being placed in a separate section; and the section concerning kidney health care approved outpatient dialysis facilities and out-of-state facilities has been expanded to include all providers.

Stephen Seale, chief accountant III, has determined that for the first five-year period the proposed sections will be in effect, there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government will be an estimated reduction in cost of approximately \$280,000 for 1988 and \$426,000 for each year from 1989-1992. There will be no effect on local government or small businesses.

Mr. Seale also has determined that for each year of the first five years the sections are in effect the public benefits anticipated as a result of enforcing the sections as proposed will be to clarify the language of the sections; provide for co-insurance payment for immunosuppressive drugs under Medicare; and to facilitate entry into the program for new applicants. 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 Manuel Zapata, Director, Kidney Health Care Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 465-2654. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register*.

★ 25 TAC §§61.11-61.13

The repeals are proposed under Texas Civil Statutes, Article 4477-20, §3(13), which provide the Texas Department of Health with the authority to adopt sections to provide adequate kidney care and treatment for the citizens of the State of Texas and to carry out the purposes and intent of the Texas Kidney Health Care Act.

§61.11. *Confidentiality of Information.*

§61.12. *Nondiscrimination Statement.*

§61.13. *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 August 4, 1987.

TRD-8706444

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption:

October 31, 1987

For further information, please call
(512) 465-2654.



★ 25 TAC §§61.11-61.14

The new sections are proposed under Texas Civil Statutes, Article 4477-20, §3(13), which provide the Texas Department of Health with the authority to adopt sections to provide adequate kidney care and treatment for the citizens of the State of Texas and to carry out the purposes and intent of the Texas Kidney Health Care Act

§61.11. *Kidney Health Program Appeals Process.*

(a) Any applicant/recipient, provider, or facility aggrieved by the program's decision is entitled to appeal the decision to the

department in accordance with §§1.51—1.55 of this title (relating to Informal Hearing Procedures). The appeal process will be in accordance with the hearing procedures as outlined in subsection (b) of this section. To initiate the appeal process, the applicant/recipient, provider, or facility must notify the department, in writing, that he/she requests a hearing on the decision. The request must be received by the department within 20 days from the receipt of the program's decision letter. Failure to provide written notice will be deemed a waiver of the opportunity for a hearing and the proposed action will become final. At their option, an applicant/recipient, provider, or facility may choose to appeal the program's decision through the program's informal appeal process as outlined in subsection (c) of this section. When this option is used, an appeal may be a two step process consisting of an informal appeal panel and, if necessary, an administrative hearing under the department's informal hearing procedures. To initiate the informal appeal panel process, the applicant/recipient, provider or facility must notify the program, in writing, that he/she desires to appeal a program decision. The request must be received by the program within 30 days from the date of the program's decision letter. If the appellant disagrees with the decision of the panel, he/she may then request an administrative hearing by providing notification as outlined in this subsection.

(b) The hearing will not be conducted under the contested case provisions of the Administrative Procedure and Texas Register Act but will include the following.

(1) the department will set a date and time at the Texas Department of Health central office in Austin, for the meeting;

(2) timely written notice to the applicant/recipient, provider, or facility of the basis for the decision and disclosure of the evidence on which the decision is taken;

(3) an opportunity for the applicant/recipient, provider or facility to appear before an impartial decision maker to relate the basis for the decision;

(4) an opportunity for the applicant/recipient, provider or facility to be represented by counsel or another representative;

(5) an opportunity for the applicant/recipient, provider or facility or their representatives to be heard in person, to call witnesses, and to present documentary evidence;

(6) an opportunity for the applicant/recipient, provider or facility to cross-examine witnesses; and

(7) a written decision by the impartial decision maker, setting forth the reasons for the decision and the evidence upon which the decision is based.

(c) An administrative hearing will be conducted in accordance with the procedures outlined in §1.54 of this title (relating to Conduct of Hearing).

(d) An informal appeal will consist of a review of the actions taken to date concerning the aggrieved situation. The review will be conducted by a three-member panel consisting of the chief of the Bureau of Dental and Chronic Disease Prevention, and the director and deputy director of the Kidney Health Care Program or their designated representatives. The panel would have authority to grant exceptions to the rules when extenuating circumstances were involved in the primary reason for the claim or application being rejected/denied. Examples of such extenuating circumstance might include, but are not limited to, emergency illness, extended hospital stays, lost or misdirected mail, disasters, etc. The panel must be unanimous in its decisions before an exception can be granted. The panel's authority is limited to dealing with specific cases involving problems with claims and/or applications and has no authority to create, alter, or dictate program or department policy.

(1) The panel will meet as necessary but not more than once per month.

(2) The panel will review all claims and applications for which an appeal has been requested.

(3) The review will be based primarily on the documentation provided with the request for an appeal but the party requesting the appeal may appear before the panel, if desired.

(4) Appeals which involve factors that the panel has no authority to deal with will be referred for an administrative hearing.

(5) An appeal which specifically requests an administrative hearing or an appeal of a decision made by the informal appeal panel will be referred for an administrative hearing. An administrative hearing will be conducted in accordance with subsection (b) of this section.

§61.12. Confidentiality of Information.

(a) All information required by these sections to be submitted may be verified at the discretion of the department and without notice to the applicant or recipient of benefits of the program, or to the providers of program services. This information is confidential to the extent authorized by law.

(b) Information may be disclosed in summary, statistical, or other forms which does not identify particular individuals.

§61.13. Nondiscrimination Statement. The department operates in compliance with the Civil Rights Act of 1964, Title VI (Public Law 88-352); and 45 Code of Federal Regulations Part 80 so that no person will be excluded for participation in, be denied benefits, or otherwise subjected to discrimination on the grounds of race, color, or national origin, sex, creed, handicap, or age.

§61.14. Forms. Forms which have been developed by the department for use in the

program will be provided to applicants, participating facilities and providers, as necessary.

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

Issued in Austin, Texas, on August 4, 1987.

TRD-8706446

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption:
October 31, 1987

For further information, please call
(512) 465-2654.



Chapter 133. Hospital Licensing

★ 25 TAC §133.21

The Texas Department of Health proposes an amendment §133.21, concerning hospital licensing standards adopted by reference. The amendment provides an appropriate special hospital category for licensure of private college infirmaries, changes a present requirement that is contradictory to dietary storage equipment manufacturers' specifications, and adds language to the present standards for psychiatric nursing units to include chemical dependency nursing units.

Stephen Seale, chief accountant III, has determined that there will not be fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Seale also has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section will be appropriate standards for private college infirmaries, compatibility with equipment manufacturers' specifications relating to dietary storage, and appropriate standards for chemical dependency units within hospitals licensed by the Texas Department of Health. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gerald W. Guthrie, Director, Hospital and Professional Licensure Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 4437f, §5, which provide the Texas Board of Health with the authority to adopt minimum standards governing the transfer of patients, for staf-

ing by physicians and nurses, hospital services relating to patient care, and safety, fire prevention, and sanitary provisions of hospitals in Texas.

§133.21. Adoption by Reference.

(a) The Texas Department of Health adopts by reference the rules contained in the department publication **effective September 1, 1985**, entitled, "*Hospital Licensing Standards*, as amended, **December, 1987** [July 1987].

(b) (No change.)

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

Issued in Austin, Texas, on August 4, 1987.

TRD-8706443

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption:
October 31, 1987

For further information, please call
(512) 458-7531



Chapter 325. Solid Waste Management

The Texas Department of Health proposes amendments to §§325.5, 325.22, 325.32, 325.133, 325.222, and 325.223; and new §§325.25, 325.155, and 325.912-325.915 concerning solid waste management.

The amendments and new sections are proposed to comply with the provisions in Senate Bill 1383, 70th Legislature, 1987 which requires the Texas Department of Health to enact regulations which apply to Type IV municipal solid waste landfills. Type IV landfills are only authorized to accept semi-inert materials such as brush and construction/demolition waste and rubbish. Many Type IV landfill operators have accepted types of waste which are not authorized, including household garbage. These sections increase the restrictions on Type IV landfills in an effort to prevent putrescible waste from being disposed in these facilities. The amendment to §325.5 defines the term "putrescible waste." The amendment to §325.22 provides for a special permit to be issued to each stationary compactor unit which receives waste that is to be deposited in Type IV landfills. The amendment to §325.32 provides for special permits to be secured by a waste collector for any collection route, and each closed collection vehicle if the waste collector utilizes a closed vehicle, to deliver waste to a Type IV landfill. The amendment to §325.133 removes the existing controls intended to prevent putrescible wastes from entering Type IV landfills and references the new and additional requirements being added

in other sections. The amendment to §325.222 adds a description of the penalty which may be assessed against waste transporters or Type IV landfill operators who violate section provisions. The amendment to §325.223 adds violation descriptions and possible penalties, and restructures existing ratings of the seriousness of violations, as affected by the added section provisions. New §325.25 contains provisions related to the process which must be followed when application is made to permit a stationary compactor which receives waste that is to be deposited in a Type IV landfill. New §325.155 contains provisions with which Type IV landfill operators must comply if they receive waste within closed trucks or containers, including participation in funding a department inspector; allowing entry only to haulers who are permitted or who use open trucks; allowing entry of closed vehicles or containers only when a department inspector is on-site; and collection of a trip ticket from the hauler of each load arriving on-site in an enclosed container or vehicle. New §325.912 is a form for making application to permit a stationary compactor. New §325.913 is a form for making application to permit a transporter's route. New §325.914 is a form for making application to permit a collection route by a municipality. New §325.915 is a data form, which may be utilized for establishments that have a stationary compactor, to establish that a compactor does not receive wastes that are prohibited from entering Type IV landfills. New §325.915 is a trip ticket form to be utilized for each load of waste that a hauler brings to a Type IV landfill in a closed container or truck.

Before September 1, 1987, these sections will be adopted on an emergency basis, to become effective on September 1, 1987, and remain in effect until the permanent sections become effective.

Stephen Seale, chief accountant III, has determined that there will be fiscal implications as a result of enforcing or administering these sections. The effect on state government will be an estimated additional cost of \$320,000 in 1988, and each year from 1989-1992. There will also be an estimated increase in revenue to state government of \$300,000 in 1988, and \$320,000 each year from 1989-1992. There will be additional cost to local governments only if they deliver wastes to Type IV municipal landfills, in enclosed containers or trucks. When local governments utilize closed trucks to haul waste to Type IV landfills, the additional cost to such local governments is expected to be \$300 annually. The additional cost to operators of Type IV municipal landfills that accept municipal waste arriving on-site in enclosed containers or trucks is expected to be \$30,000 per year. The additional annual cost to impacted small businesses is estimated at \$3,000 per employee, while the annual cost to the largest businesses

expected to be impacted is estimated at \$600 per employee.

Mr. Seale also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a reduction in the amount of municipal solid waste being disposed in facilities that are not authorized to receive those wastes, thus, a reduction in risk of environmental pollution or adverse effects on the public health. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

A public hearing is scheduled for 1:30 p.m. on September 3, 1987, in the auditorium of the Texas Department of Health, 1100 West 49th Street, Austin. Written comments will be considered if they are received by 5 p.m. on September 15, 1987. Written comments may be mailed to Hector H. Mendieta, P.E., Director, Division of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 458-7271.

Subchapter A. General Information

★25 TAC §325.5

The amendment is proposed under Senate Bill 1383, 70th Legislature, 1987, which covers restrictions on Type IV municipal solid waste landfills; and Texas Civil Statutes, Article 4477-7, §3(a) and §4(c), which provide the Board of Health with the authority to adopt rules on municipal solid waste management.

§325.5. Definitions of Terms and Abbreviations. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions, pertinent to specific sections, are contained within the appropriate sections.

Putrescible waste—Organic wastes, such as garbage, wastewater treatment plant sludge, and grease trap waste, **that [which] is capable of being decomposed by micro-organisms [anaerobic organisms] with sufficient rapidity as to cause [nuisances from] odors or gases or is capable of providing food for, or attracting, birds, animals, and disease vectors.**

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

Issued in Austin, Texas, on August 4, 1987.

TRD-8706389

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption:
October 31, 1987

For further information, please call
(512) 458-7271.

Subchapter B. Municipal Solid Waste Storage

★25 TAC §325.22, §325.25

These rules are proposed under Senate Bill 1383, 70th Texas Legislature, Regular Session, (1987), which covers restrictions on Type IV municipal solid waste landfills; Texas Civil Statutes, Article 4477-7, §3(a) and §4(c), which authorize the Board of Health to adopt rules on municipal solid waste management.

§325.22. Storage Requirements. All solid waste shall be stored in such a manner that it does not constitute a fire, safety, or health hazard or provide food or harborage for animals and vectors, and shall be contained or bundled so as not to result in litter. It shall be the responsibility of the occupant of a residence, or the owner or manager of an establishment, to utilize storage containers of an adequate size and strength, and in sufficient numbers, to contain all solid waste that the residence or other establishment generates in the period of time between collections. **Stationary compactor units may receive a special permit in accordance with procedures and requirements established in §325.25 of this title (relating to Stationary Compactor Permits).**

§325.25. Stationary Compactor Permits.

(a) A special permit for a stationary compactor the waste from which is to be disposed of at a Type IV landfill may be obtained through the procedures detailed in this section.

(b) Application shall be made to the division on a form (see §325.912 of this title (relating to Special Permit Application for Stationary Compactors)) provided by the department and shall include all information requested thereon and any additional information considered necessary by the applicant or as may be requested by the department.

(c) The application shall include the information in paragraphs (1)-(10) of this subsection as follows:

- (1) applicant contact person, company name, mailing address, street address, city, state, zip code, and telephone number;
- (2) establishment contact person, company name, mailing address, street address, city, state, zip code, and telephone number;
- (3) contract renewal date;
- (4) compaction capability;
- (5) container size;
- (6) complete description of waste stream to enter compactor;
- (7) disposal facility information including permit number, facility name, mailing address, street address, city, state, zip code, telephone number, and contact person;
- (8) disposal information including frequency of disposal and the estimated day of week and time span of day in which disposal is expected to occur;
- (9) an alternate disposal contingency plan; and

(10) a certificate from the establishment which must accompany the application, that states: I (name), (title) of (company name), located at (street address) in (city) certify that the contents of the compactor located at the location stated herein are free of and shall be maintained free of putrescible, hazardous, Class I nonhazardous, infectious, or any other waste not allowable in a Type IV landfill.

(d) Operational standards for permitted stationary compactors shall be as follows.

(1) Stationary compactors shall be operated and maintained in such a way as not to create a public nuisance through material loss or spillage, odor, or other condition.

(2) The certificate within the application and the provisions of the permit must be adhered to at all times.

(e) Enforcement of the requirements of this section shall be in accordance with applicable rules on administrative penalties, civil penalties, or revocation or a combination thereof. These actions will be taken against the permittee, transporter, and/or the establishment as appropriate.

(f) The permit must be renewed annually prior to the date of expiration by submitting the completed application form. Failure to timely renew a permit eliminates the option of disposal of these wastes at a Type IV landfill until a new or renewed permit is issued or the establishment is included within a special transporter permit in accordance with the procedures established in §325.32 of this title (relating to Collection and Transportation Requirements.)

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

Issued in Austin, Texas, on August 4, 1987.

TRD-8706390 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption:
October 31, 1987
For further information, please call
(512) 458-7271.

◆ ◆ ◆
Subchapter C. Municipal Solid
Waste Collection and
Transportation

★ 25 TAC §325.32

The amendment is proposed under Senate Bill 1383, 70th Legislature, 1987, which covers restrictions on Type IV municipal solid waste landfills; Texas Civil Statutes, Article 4477-7, §3(a) and §4(c), which provide the Board of Health with the authority to adopt rules on municipal solid waste management.

§325.32. *Collection and Transportation Requirements.*

(a) (No change.)

(b) Transporters of municipal solid waste shall be responsible for assuring all solid waste they collect is unloaded only at facilities authorized to accept the type of waste being transported. Off-loading at an unauthorized location or at a facility not authorized to accept such waste is a violation of these sections [and, upon conviction, the violator will be subject to civil penalties of no less than \$100 or more than \$2,000 for each act of violation]. **Allowable wastes at a particular solid waste management facility may be determined by reviewing the following as applicable:**

(1) §325.41 and §325.42 of this title (relating to Classification of Municipal Solid Waste Sites);

(2) §§325.111-325.114, 325.121-325.124, and 325.131-325.154 of this title (relating to Operational Standards for Solid Waste Land Disposal Sites);

(3) §§325.171-325.173 and 325.181-325.190 of this title (relating to Operational Standards for Solid Waste Processing and Experimental Sites);

(4) §§325.411-325.415, 325.431, 325.432, 325.441-325.447, 325.461-325.465, 325.481-325.484, 325.501-325.504, 325.511-325.514, and 325.531-325.534 of this title (relating to Management of Sludges and Similar Wastes).

(c) All transporters of solid waste shall maintain records for at least one year to document that waste was taken to an authorized solid waste facility. Upon request of the department or of a local government with jurisdiction, a transporter is responsible for providing adequate documentation regarding the destination of all collected waste[. Collectors shall maintain on each vehicle a written procedure requiring all drivers to unload only at specifically identified authorized solid waste facilities and the owner/operator shall maintain] including billing documents to prove that the procedure is being followed.

(d) Each transporter delivering rubbish and/or waste in enclosed containers or enclosed vehicles to a Type IV municipal solid waste management facility shall obtain a special route permit for each such route he proposes to take to a Type IV landfill, in accordance with paragraphs (1)-(5) of this subsection. For the purposes of this subsection, route refers to the business establishments collected from and not the street route.

(1) The application shall be submitted on a form (see §325.913 of this title (relating to Special Permit Application for Transporter Route)) provided by the department and shall include all information requested thereon and any additional information considered necessary by the applicant or additional information as may be requested by the department.

(2) The application shall include the

information detailed in subparagraphs (A)-(F) of this paragraph, as follows:

(A) transporter contact person, company name, mailing address, street address, city, state, zip code, and telephone number;

(B) landfill contact person, company name, mailing address, street address, city, state, zip code, and telephone number;

(C) information on the hauling vehicle, including as a minimum, the license number, vehicle identification number, year model, make, capacity of vehicle in cubic yards, and rated compaction capability in pounds per cubic yard;

(D) route information, including as a minimum, the collection frequency, the day of the week the route is to be collected, the day and time span within which the route is to arrive at the landfill;

(E) establishment information, provided on a separate sheet for each establishment on a form (see §325.915 of this title (relating to Establishment Data Sheet)) provided by the department, or a computer facsimile thereof, and including, as a minimum, route order, transporter name, collection frequency, the expected day and time of collection, establishment contact person, establishment name, establishment mailing address, establishment street address, city, state, zip code, telephone number, and a description of activities associated with the business with particular emphasis on food handling and products sold or handled that could end up in the waste stream, landfill information to include the name and permit number, and a notarized certificate from the generator that states: I (name), (title) of (company name), located at (street address) in (city) certify that the wastes to be collected from the establishment stated herein for transport to a Type IV landfill are free of and shall be maintained free of putrescible, hazardous, Class I industrial nonhazardous, infectious, or any other waste not allowable at a Type IV landfill; and

(F) an alternate contingency disposal plan.

(3) This subsection does not apply if the waste load is from a single collection point that is a stationary compactor permitted in accordance with §325.25 of this title (relating to Stationary Compactor Permits) or municipal vehicles permitted under paragraph (4) of this subsection.

(4) Municipalities that use enclosed vehicles to collect and transport brush or construction-demolition wastes and rubbish to Type IV landfills may receive a special municipal route permit in accordance with the procedures established in subparagraphs (A) and (B) of this paragraph.

(A) An application must be submitted to the department for each truck to be used on a form (see §325.914 of this title (relating to Special Permit Application for Municipal Route)) provided by the department and shall include all information requested thereon and any addition of infor-

mation considered necessary by the applicant or additional information as may be requested by the department.

(B) The application shall include the information detailed in clauses (i)-(vii) of this subparagraph, as follows:

(i) the applicant name, responsible person, title, mailing address, street address, city, state, zip code, and telephone number;

(ii) the contact person, title mailing address, street address, city, state, zip code, and telephone number;

(iii) information on the hauling vehicle, including as a minimum, the license number, vehicle identification number, year model, make, capacity of vehicle in cubic yards, and rated compaction capability in pounds per cubic yard;

(iv) route information, including as a minimum, the collection frequency, the day of the week the route is to be collected, the day and the approximate time span within which the route is to arrive at the landfill;

(v) a description of the wastes to be transported;

(vi) landfill information including permit number, name, mailing address, street address, city, state, zip code, telephone number, and contact person; and

(vii) a notarized certificate from the city that states: I (name), (title) of the City of (City) in (County), certify that the contents of the vehicle described above will not enter a Type IV landfill unless it is free of putrescible, hazardous, Class I industrial nonhazardous, infectious, or any other waste not allowable in a Type IV landfill.

(5) Amendment requirements are as follows.

(A) An amendment of a special transporter route or special municipal route permit must be submitted any time any information within the original application is to be changed.

(B) An application to amend an existing special transporter route or special municipal route permit must include all of the same documentation required of an original application.

(C) Amendment applications to add one or more establishments or make any other changes to a special transporter route permit not addressed in subparagraph (D) of this paragraph must be submitted and the permit issued by the department in advance of the change.

(D) Amendment applications to delete one or more establishments from a special transporter route permit must be submitted within seven days of the change. [provide a certificate to the operator that he has so arranged his routes to eliminate nonallowable wastes from the loads he transports to that facility. This certificate shall also state that the transporter will remove any nonallowable wastes dumped by him immediately after their discharge or that, at the option

of the disposal facility operator, he will pay any applicable surcharges to have the disposal facility operator accomplish the required immediate removal for him. Allowable wastes at a particular solid waste management facility may be determined by reviewing the following as applicable:

[(1) §§325.41 and §325.42 of this title (relating to Classification of Municipal Solid Waste Sites);

[(2) §§325.111-325.114, 325.121-325.124, and 325.131-325.154 of this title (relating to Operational Standards for Solid Waste Land Disposal Sites);

[(3) §§325.171-325.173 and 325.181-325.190 of this title (relating to Operational Standards for Solid Waste Processing and Experimental Sites);

[(4) §§325.411-325.415, 325.431, 325.432, 325.441-325.447, 325.461-325.465, 325.481-325.484, 325.501-325.504, 325.511-325.514, and 325.531-325.534 of this title (relating to Management of Sludges and Similar Wastes).

[(e) At any time that nonallowable wastes are discovered in a load of waste being discharged at a municipal solid waste facility, the transporter shall immediately take all necessary steps to determine the origin and alter his routes to assure that in the future such wastes are either not collected by him or are taken to a facility approved to accept such wastes.]

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

Issued in Austin, Texas, on August 4, 1987.

TRD-8706391

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption:

October 31, 1987
For further information, please call
(512) 458-7271.



Subchapter E. Permit Procedures and Design Criteria Application Review

★ 25 TAC §325.93, §325.94

The Texas Department of Health proposes amendments to §325.93 and §325.94, concerning scheduling and preparation for a public hearing and conduct of the public hearing. These amendments are in accord with the requirements of House Bill 1869 and House Bill 2124, 70th Legislature, 1987. The amendments provide for residents and property owners who live or own real property located within one mile of any proposed landfill to be notified when a public hearing is scheduled for the proposed landfill. The amendment to §325.93 covers the responsibilities of an

applicant for a landfill permit to publish notice of a hearing in a newspaper and to mail a notice directly to residences and to owners of property located within the one mile of a proposed landfill. The amendment to §325.94 covers the public hearing procedures as regards evidence of the notice given, rights and responsibilities of the Texas Air Control Board at the hearing, and the hearing examiner in closing the record or keeping it open. Before September 1, 1987, these amendments will be adopted on an emergency basis, to become effective on September 1, 1987, and remain in effect until the permanent amendments become effective.

Stephen Seale, chief accountant III, Budget and Planning Division, Texas Department of Health, has determined that there will be fiscal implications as a result of enforcing or administering these sections. The effect on state government will be: an estimated additional cost of \$6,000 each year from 1988-1992. There will be additional cost to local governments and businesses if they make application for a landfill permit. The additional cost to such local governments is expected to be \$3,200 per application. The average cost to a large business is expected to be an additional \$3,500 per application, or \$70 per employee, and the average cost to a small business is expected to be an additional \$2,900, or \$580 per employee.

Mr. Seale also has determined that for each year of the first five years the sections will be in effect, the public benefit anticipated as a result of enforcing of the sections will be widespread awareness, by residents and property owners who live or own real property within one mile of any proposed landfill, when there is a public hearing scheduled for the proposed landfill. For individuals who make application for a landfill permit, the additional cost for each application is expected to be the same as the cost for a small business; or \$2,900.

A public hearing is scheduled for 10 a.m. on September 3, 1987, in the auditorium of the Texas Department of Health, 1100 West 49th Street, Austin. Written comments will be considered if they are received by 5 p.m. on September 15, 1987, at the office of Hector H. Mendieta, P.E., Director, Division of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 458-7271.

The amendments are proposed under House Bills 1869 and 2124, 70th Legislature, 1987, which cover public hearings on solid waste landfills; and Texas Civil Statutes, Article 4477-7, §3(a) and §4(c) which provide the Board of Health with the authority to adopt rules on municipal solid waste management.

§325.93. *Scheduling and Preparation for a Public Hearing.*

(a) The bureau, on its own motion, may request that a hearing be scheduled or

that an opportunity for a public hearing be provided, and will make available copies of its draft brief upon request.

(1) The bureau will provide to the applicant, through the Office of General Counsel, the notice advising the public that any person affected, as defined in the Solid Waste Disposal Act, has a right to request a public hearing. The applicant shall be responsible for ensuring that such notice is published at least once each week, for two consecutive weeks, in the newspaper having the largest circulation that is published [regularly published or circulated] in the county in which the proposed solid waste site will be located, [.] unless no newspaper is published in the county; in which case the notice must be published in a newspaper of general circulation in the county. The applicant shall be responsible for paying for and publishing the notice. The bureau and/or the Office of General Counsel, at their option in any individual case, may require that publication of the notice be made in additional newspapers in the county or in other adjacent or contiguous counties. The applicant shall provide the Office of General Counsel with proof that the publication was timely by submitting, within five days after the publication of the notice, an affidavit of the publisher which shows the date of publication. The affidavit shall be accompanied by a copy of the published notice. The notice shall provide that a hearing may be requested by any affected person within 30 days after the date of publication.

(2) If the bureau does not receive a written request for a public hearing, from a person deemed to have a justiciable interest [for a public hearing], the chief of the bureau will submit to the department's Office of General Counsel a final brief containing the bureau's technical evaluation of the permit application, analysis, conclusions, and recommendations accompanied by the proposed permit.

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

(b) (No change.)

(c) **If the public hearing is for a land-fill application, then the applicant is required to mail a notice of the hearing to individuals. The applicant shall notify each residence, each business, and each owner of real property, located within one mile from the property line of the proposed landfill, listed in the real property records of the county(ies) in which the landfill is sought to be permitted as of the date the department rules the application for a permit administratively complete. To provide documentation of this date, a letter of administrative completeness will be forwarded to the applicant by the chief of the bureau or his department representatives stating the date that the application was ruled to be administratively complete. This will allow the applicant time to research the real property records of the county(ies) involved and have a mailing list ready by the date that notices are required to be mailed. The applicant shall also obtain**

the names and addresses from the tax rolls of the appropriate county, as of the time of the mailing of notices, of all persons shown to own property within one mile from the property line of the proposed landfill. The information shall be used by the applicant, in conjunction with the list obtained from the real property records, to ensure that each person whose name appears on either list shall be mailed a notice. The notices shall be deposited with the United States Postal Service not more than 45 days nor less than 30 days before the date of the public hearing. The notices shall be mailed by certified or registered mail, return receipt requested. Presumption of appropriate mailing shall be assumed to have been accomplished upon verification by the applicant to the department, unless it is demonstrated by no less than 35% of the affected persons that proper deposit with the United States Postal Service not more than 45 days nor less than 30 days before the date of the hearing was not accomplished. Within 20 days after the mailing of notices, the applicant shall cause to be delivered to the department all mail return receipts and copies of the lists of names obtained from the real property records and the tax rolls.

(d)[(c)] The municipal solid waste management rules in effect at the time that the bureau conducted the technical evaluation shall be the rules under which hearing procedures are conducted, including the final decision regarding the application. The public hearing notice and the opportunity for a public hearing notice shall include a statement that identifies the set of rules under which the hearing will be conducted and the final decision rendered.

§325.94. *Conduct of the Public Hearing.*

(a) The public hearing will be conducted by a hearing examiner designated by the commissioner. The bureau will normally be represented at the hearing by the chief of the bureau, his designated representative, and/or the designated project engineer assisted by appropriate staff members. The bureau representatives may offer pertinent information contained in official records into the hearing record. [All testimony and evidence of the state regarding air quality aspects of the application shall be developed and presented by the Texas Air Control Board. All parties, including the bureau, shall have the right to cross-examine any testifying witnesses of the Texas Air Control Board. At the conclusion of the presentation of testimony, the Texas Air Control Board shall be afforded at least 30 days in which to submit a set of proposed findings of fact and conclusions of law and, if applicable, proposed permit language relating to the air quality aspects of the application which relate to the criteria of the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(e)(4)(A)(i). They shall be accepted unless the department finds that the recommendations are not supported by a preponderance of the evidence. The Texas Air

Control Board may seek judicial review of the air quality aspects of any final decision by the department.]

(b) **The hearing examiner will not hear any testimony until evidence is placed in the record to demonstrate that proper notice regarding the hearing was given to affected persons. If mailed notice to an affected person is required, the bureau's designated representative shall submit to the hearing examiner an affidavit attesting to the fact that notice was mailed to the address of the affected persons included in the appropriate county tax rolls and real property records, as required by §325.93(c) (relating to Scheduling and Preparation for a Public Hearing).**

(c)[(b)] The applicant or his duly authorized representative is required to be present at the public hearing to present the application and answer any questions that may arise during the hearing or to clarify any of the information previously submitted. In view of the possibility that legal questions may arise, the applicant should be accompanied by his legal counsel. The professional engineer who prepared the site development plan for the site and other technical personnel who conducted soils or site investigations should also be present at the hearing to answer any technical questions. Failure of an applicant to be present at the public hearing, or to be properly represented, could result in the denial of a permit.

(d)[(c)] All hearings held by the department on solid waste permit applications are conducted in accordance with the department's formal hearing procedure rules and the Administrative Procedure and Texas Register Act which requires that evidence submitted be legally admissible (as opposed to hearsay) if such evidence is to be used as a basis for a final decision. Because this statute requires that administrative hearings follow the same rules of evidence as those used in nonjury district court cases, applicants are advised to seek assistance from their legal counsel in preparing for a hearing and, although not required, it is advisable that the applicant's legal counsel actually participate in the hearing, particularly if there is opposition to the permit application.

[(d)] The hearing record may be closed by the hearing examiner upon conclusion of the public hearing, or he may keep the record open for a specified period of time to receive specific documents or additional information not available during the hearing.]

(e) **All testimony and evidence of the state regarding air quality aspects of the application shall be developed and presented by the Texas Air Control Board. All parties, including the bureau, shall have the right to cross-examine any testifying witnesses of the Texas Air Control Board. At the conclusion of the presentation of testimony, the Texas Air Control Board shall be afforded at least 30 days in which to submit a set of proposed findings of fact and conclusions of law and, if applicable, proposed permit language**

relating to the air quality aspects of the application which relate to the criteria of the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(e)(4)(A)(i). They shall be accepted unless the department finds that the recommendations are not supported by a preponderance of the evidence. The Texas Air Control Board may seek judicial review of the air quality aspects of any final decision by the department.

(f) The hearing record may be closed by the hearing examiner upon conclusion of the public hearing, or he may keep the record open for a specified period of time to receive specific documents or additional information not available during the hearing.

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

Issued in Austin, Texas, on August 4, 1987.

TRD-8706395

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption:

October 31, 1987

For further information, please call
(512) 458-7271.



Subchapter F. Operational Standards for Solid Waste Land Disposal Sites

★ 25 TAC §325.133, §325.155

The amendment and new section are proposed under Senate Bill 1383, 70th Legislature, 1987, which covers restrictions on Type IV municipal solid waste landfills; Texas Civil Statutes, Article 4477-7, §3(a) and §4(c), which provides the Board of Health with the authority to adopt rules on municipal solid waste management.

§325.133. *Access Control.* Uncontrolled access and dumping of unauthorized materials shall be prevented. Operators or their employees are not required to accept any solid waste which they determine will cause or may cause problems in maintaining full and continuous compliance with these sections. Failure to prevent disposal of unauthorized waste shall be deemed a significant threat to public health or the environment and shall be grounds for the department to initiate permit revocation procedures and/or referral to the attorney general for legal relief.

(1) (No change)

(2) At Type IV sites, only brush and [,] construction-demolition wastes[, and rubbish (trash) that are free of putrescible waste] may be accepted, **except in accordance with §325.155 of this title (relating to Rubbish and/or Waste in Enclosed Containers or En-**

closed Vehicles at Type IV Landfills).

[(A) Type IV landfill operators shall not accept completely enclosed containers or vehicles which cannot be inspected unless prior approval of a waste stream quality control plan (WSQCP) has been obtained from the department. This plan shall include or provide for the following as a minimum:

[(i) a procedure to ensure that containers with any significant amounts of putrescible wastes are not accepted. This might include or be a combination of a manifest system, surcharges, contractual agreements with transporters, or other acceptable means;

[(ii) a procedure for removal of any significant amounts of putrescible wastes to an approved disposal facility. This procedure must specify the means to be used for removal of putrescible wastes illegally dumped at the site. In all cases, such wastes shall be removed from the working face immediately upon discharge and placed in suitable collection bins or back on the offending transporter's vehicle and shall not be allowed to remain on the site for more than 24 hours. The equipment necessary to meet the alternatives shall be specified and shall be on site and operable during operating hours;

[(iii) A working-face monitor to inspect each load that is dumped at the site. The monitor shall have the authority and responsibility to reject unauthorized loads, have unauthorized material removed by the transporter, and/or assess appropriate surcharges and have the unauthorized material removed by on-site personnel.

[(iv) A procedure whereby the transporter certificates required by §325.32 of this title (relating to Collection and Transportation Requirements) shall be retained at the landfill for a period of one year and be available for inspection by the department's representatives.

[(B) The approved WSQCP shall become a part of the approved Site Development Plan and §325.111 of this title (relating to General Requirements) is applicable.

[(C) Large, conspicuous warning signs shall be placed at the entrance to the site stating that putrescible wastes are not accepted and stating the landfill's requirements on transporters, such as certificates, manifests, and surcharges or other penalties that may be imposed in the event that transporters do not meet the requirements.]

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

§325.155. *Rubbish and/or Waste in Enclosed Containers or Enclosed Vehicles at Type IV Landfills.* Acceptance of rubbish and/or waste in enclosed containers or enclosed vehicles at Type IV landfills must be in accordance with the following requirements.

(1) No putrescible, infectious, Class I industrial nonhazardous, or hazardous waste is to be accepted at a Type IV landfill.

(2) Rubbish and/or waste in enclosed containers or enclosed vehicles shall not be accepted at a Type IV landfill unless all of the conditions in subparagraphs (A)-(G) of this paragraph have been met.

(A) The landfill to receive the waste must be participating in the funding program to monitor these activities as detailed in paragraph (3) of this section.

(B) Each rubbish and/or waste in enclosed containers or enclosed vehicles must have all required approvals and/or permits from the department in accordance with §325.32 of this title (relating to Collection and Transportation Requirements).

(C) Rubbish and/or waste in enclosed containers or enclosed vehicles may only be accepted at their designated time and on the specified day in accordance with these sections, department permits, or other orders of the department.

(D) A department inspector must be on site and must witness the unloading process.

(E) The Type IV landfill operator shall obtain from each transporter delivering rubbish and/or waste in enclosed containers or enclosed vehicles a transporter trip ticket (see §325.916 of this title (relating to Transporter Trip Ticket)). A copy of each trip ticket obtained by the landfill operator shall be provided to the department inspector on site or the department's appropriate regional office within 24 hours of receipt.

(F) The site must maintain on site the equipment and equipment operator necessary to remove any nonallowable waste from the working face and ample containers to put these materials in.

(G) The landfill operator must have all containers in which nonallowable waste have been placed removed from the site prior to the department inspector's designated time of departure from the site for the day and provide copies of the disposal receipts to the inspector on the next day.

(3) Any waste determined by the department's on-site inspector to be nonallowable shall be removed from the working face and placed in appropriate containers within one hour following its discharge into the working face.

(4) The department shall determine the approximate annual costs of implementing and maintaining the permitting, surveillance, and enforcement of all the activities associated with the acceptance of rubbish and/or waste in enclosed containers or enclosed vehicles at a Type IV landfill.

(A) Notification of these costs shall be provided to each holder of a Type IV landfill permit with notice of public hearing to apportion these costs.

(B) The public hearing shall be held at a location to be determined by the department with 20 days advance notice. Notice shall be provided Type IV landfill operators by written notice in regular and certified mail.

(C) The public hearing shall be for the purpose of establishing the total compensation and expenditures required to administer this program and the apportionment of those costs to the Type IV landfill operators to be reimbursed to the department.

(D) Unless other arrangements are made, the apportioned monthly payments will be due by the 10th day of each month.

(E) The apportioned costs to each Type IV landfill may be altered periodically to add or subtract landfills from the program. A 30-day notice will be provided to each participating Type IV landfill and/or proposed additional landfill and a hearing will be held upon request by one of the affected parties or on the department's own motion.

(5) A Type IV landfill operator that is delinquent in making his monthly payment shall immediately halt acceptance of rubbish and/or waste in enclosed containers or enclosed vehicles and may also be subject to other penalties in accordance with these sections or the SWDA.

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

Issued in Austin, Texas, on August 4, 1987.

TRD-8706392

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption:
October 31, 1987

For further information, please call
(512) 458-7271.

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Subchapter H. Surveillance and Enforcement

★ 25 TAC §325.222, §325.223

The amendments are proposed under Senate Bill 1383, 70th Legislature, 1987, which covers restrictions on Type IV municipal solid waste landfills; Texas Civil Statutes, Article 4477-7, §3(a) and §4(c), which provide the Board of Health with the authority to adopt rules on municipal solid waste management.

§325.222. *Enforcement Policy.*

(a) The department's policy is to gain improvements in solid waste management through voluntary operational compliance by providing the site operator with technical assistance and guidance during routine in-

spections or upon the operator's request. Appropriate legal action as provided by law will be sought where timely voluntary operational compliance is not accomplished.

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

(b) An operator or transporter who violates any provision of these sections which relates to the acceptance of rubbish and/or waste in enclosed containers or enclosed vehicles at Type IV landfills is subject to Class B misdemeanor penalties in addition to other penalties provided by the SWDA and these sections.

§325.223. *Administrative Penalty Determination.*

(a) (No change.)

(b) The procedure for determining a base penalty (BP) amount will be as follows.

(1) For solid waste disposal sites or facilities (either authorized or unauthorized) the BP will be based on the extent of individual violations for each day of violation.

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

(C) Example ratings are listed in this subparagraph with specific violations noted. The referenced violations may typically be given the noted rating; however, changes from the given number may frequently be varied as much as +/-3 or more based on the extent of violation or other circumstances.

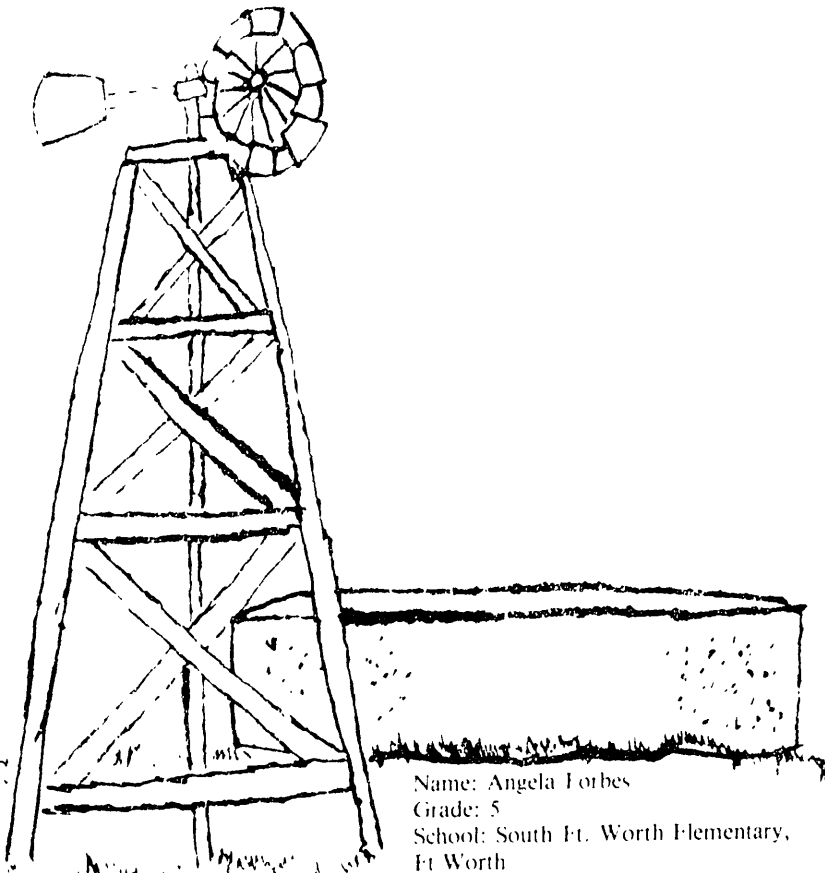
Rating	Relative Violations
2	<p>Failure to provide and or maintain a sign at the entrance meeting Texas Department of Health (TDH) requirements.</p> <p>Failure to properly handle large or bulky items.</p> <p>Failure to implement and or maintain the required grid system</p>
3	<p>Failure to provide or maintain the required markers denoting areas which have had proper soils evaluations accomplished</p> <p>Failure to properly control windblown materials and/or provide for litter collection.</p> <p>Failure to provide or maintain proper screening.</p>
4	<p>Failure to provide or maintain adequate fire protection</p> <p>Failure to protect boundary buffer zones or provide or maintain the required markers</p> <p>Failure to provide or maintain access roads that are all weather.</p> <p>Failure to meet record requirements for sludge disposal or to maintain these records as required.</p>
5	<p>Failure to adequately confine the unloading to as small an area as practical.</p> <p>Failure to operate a site or facility in accordance with an approved site development plan.</p> <p>Failure to provide or maintain access control to prevent the disposal of unauthorized waste.</p> <p>[Acceptance of enclosed containers at a Type IV landfill without an approved waste stream quality control plan (WSQCP) or accepting such containers in other than the approved manner]</p>

- 6 Failure to properly control salvaging.
- 6 Disposal of waste in contact with unconfined waters.
- Failure to provide or maintain required drainage controls.
- Failure to control or clean up material lost from vehicles on access routes.
- Failure to adequately control vectors.
- Failure to provide the required washdown.
- Failure to meet safety requirements.
- 7 [Acceptance of waste at a site not authorized to accept that waste.]
- Failure to control overloading.
- Failure to meet requirements for water under pressure, the provision of fire-fighting equipment, or a fire plan.
- Failure to control sludge application rates.
- Failure to meet sludge storage impoundment requirements at land application for beneficial use sites.
- 8 Failure to meet groundwater protection requirements such as soil and liner evaluation.
- [Acceptance of Class I industrial wastes or special wastes without proper approval or in other than the approved manner.]
- Failure to provide the required compaction, intermediate cover, final cover, or final cover grades.
- Failure to control odors from ponded water
- 9 Failure to operate a site or facility in accordance with permit special provisions.
- 10 Suffering or allowing disposal of solid waste without a permit or registration as required.

(2) For violations of requirements involving solid waste activities other than described in paragraph (1) of this subsection, a base penalty amount will be established that considers the seriousness of the violation. Examples of possible violations and a possible base penalty for each violation and each day of violation are as follows. The violations are not limited to this list and the base penalty may vary depending upon the circumstances.

Violation Description	Possible Penalty
Discharging sludge in or on a site not approved to accept the waste.	\$5,000
Acceptance of waste at a site not authorized to accept that waste.	\$5,000
Acceptance of waste at a Type IV landfill from enclosed containers in any manner not in compliance with the department's applicable rules, permits, or other departmental orders.	\$4,000
Failure of a transporter delivering rubbish and/or waste in enclosed containers or enclosed vehicles to have the required permit.	\$3,000
Failure to properly operate a stationary compactor in accordance with applicable rules, permits, or other departmental orders.	\$3,000

Discharging solid waste other than sludge in or on a site not approved to accept the waste.	\$3,000
Hauling sludges without the proper registration from TDH.	\$2,000
Failure of a sludge waste generator to utilize a TDH registered hauler.	\$2,000
Failure of a sludge waste generator to ensure that a waste control record is used.	\$2,000
Failure of a sludge waste generator to retain copies of waste control records for 12 months.	\$2,000
Failure of a municipal wastewater treatment plant operator to properly notify TDH of their sludge disposal activities.	\$2,000
Failure of a sludge transporter to properly mark and identify all collection and transportation equipment.	\$2,000
Failure of a sludge transporter to initiate or maintain a record of each individual collection and deposit.	\$2,500
Failure of a sludge transporter to retain copies of all control records (collection and deposit) for 12 months.	\$2,000
Failure to timely submit a required annual report or fee.	\$2,000
Failure to make timely payment of fees required to fund the administration and inspection of Type IV landfills in accordance with the enclosed container requirements.	\$1,000
Failure of a site operator to provide the department required operation records upon request or as specified in these rules or permits or other orders of the department.	\$1,000



Name: Angela Forbes
 Grade: 5
 School: South Ft. Worth Elementary,
 Ft Worth

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

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

Issued in Austin, Texas, on August 4, 1987.

TRD-8706393

Robert A. MacLean
 Deputy Commissioner
 Professional Services
 Texas Department of
 Health

Proposed date of adoption
 October 31, 1987

For further information, please call
 (512) 458-7271



**Subchapter Q. Memorandum of Agreement and Joint Rules with Other Agencies
Memorandum of Understanding on Oil and Gas and Geothermal Wastes**

★ 25 TAC §325.721

The Texas Department of Health proposes new §325.721, concerning a memorandum of understanding among the Texas Department of Health, the Texas Water Commission and the Railroad Commission of Texas. The memorandum of understanding contains the agencies' interpretation of jurisdiction over waste associated with exploration, production, and refining of oil and gas, and development of geothermal resources. The memorandum of understanding is proposed to be adopted by reference in §325.711. The memorandum of understanding is proposed as a section in accord with the provisions of House Bill 2091, 69th Legislature, 1985, Article 8, §1, which mandates the department adopt by rule any interagency memorandum of understanding related to solid waste management.

Stephen Seale, chief accountant III, has determined that there will be no fiscal implications to state government, local governments, or small businesses, as a result of enforcing or administering this section.

Mr. Seale 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 enhancement of regulatory authority over the subject waste which should result in better protection of public health and the environment, without any additional cost to individuals.

A public hearing is scheduled for 10 a.m. on September 2, 1987, in Room 12-126 of the William B. Travis Building, 1701 North Congress Avenue, Austin. Public comment, both written or oral, will be received at the public hearing, or written testimony will be considered if it is received by Hector Mendieta, P.E., Division of Solid Waste Management, within 30 days after publication of this proposed section in the *Texas Register*. Questions or comments may be referred to Mr. Mendieta or Glendon Eppler at (512) 458-7271. Copies of the proposed section are available for inspection at the Austin headquarters of the Texas Department of Health, Division of Solid Waste Management, 1100 West 49th Street, Austin, Texas, 78756-3199.

The new section is proposed under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §§3(a), 3(f), and 4(c), which provide the Texas Department of Health with the authority to adopt as a rule a memorandum of understanding covering waste management.

§325.721. Adoption by Reference.

(a) The Texas Department of Health adopts by reference the memorandum of understanding among the Texas Department of Health, the Texas Water Commission, and the Railroad Commission of Texas. The memorandum contains the agencies' interpretation of their jurisdiction over wastes associated with oil and gas exploration, production, and refining and with wastes which result from geothermal resource development activities.

(b) Copies of the memorandum of understanding are on file with the Texas Department of Health and may be reviewed during regular business hours.

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

Issued in Austin, Texas, on August 4, 1987

TRD-8706388

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Proposed date of adoption:

October 31, 1987

For further information, please call
(512) 458-7271



Subchapter X. Forms and Documents

★ 25 TAC §§325.912-325.916

These new sections are proposed under Senate Bill 1383, 70th Legislature, 1987, which covers restrictions on Type IV municipal solid waste landfills; Texas Civil Statutes, Article 4477-7, §3(a) and §4(c), which authorize the Board of Health to adopt rules on municipal solid waste management.

§325.912. *Special Permit Application for Stationary Compactors.* The following form comprises this section:

Special Permit Application
for Stationary Compactors.

Permit No. _____

Applicant: Contact Person _____ Generator: Contact Person _____
 Company: _____ Company: _____
 Mailing Address: _____ Mailing Address: _____
 Street Address: _____ Street Address: _____
 City, State, Zip: _____ City, State, Zip: _____
 Telephone: () _____ Telephone: () _____

Contract Period: _____ Container Size (cu) _____
 Compaction capability _____

Auto Stream _____

1. Describe activities associated with business establishment: _____

2. Is there a food service operation within the establishment? _____

3. Does the establishment sell or handle food products or other potentially putrescible items? _____

4. Does the establishment sell or handle paints, solvents, automobile fuels, aerosol products, cleaning fluids, or other similar or liquid products? _____
 Explain any answers to questions 2, 3, or 4 that were "no." (Attach additional sheet if necessary.) _____

5. Attach a sketch of the compactor unit and the feed mechanism disposal _____

Facility Permit No. _____ Facility Name: _____
 Mailing Address, City, State, Zip _____
 Street Address _____
 Contact Person _____ Telephone No. _____
 Frequency of disposal _____
 Requested day of week and time span for disposal at landfill: _____
 Alternate contingency disposal plan _____

Generator Certificate

I _____, (title) _____ of (company name) _____, located at (street address) _____ in (city) _____ certify that the contents of the compactor located at the location stated herein are free of and shall be maintained free of putrescible, hazardous, Class I industrial nonhazardous, infectious, or any other waste not allowable in a Type IV landfill.

Signature _____

SAID TO BE SUBSCRIBED before me on this the ____ day of _____, ____.

Notary Public in and for _____ County, Texas

Applicant Signature _____ Date _____

§325.913. Special Permit Application for Transporter Route. The following form comprises this section:

Special Permit Application
for Transporter Route

Permit No. _____

Applicant Contact Person _____ Company _____ Mailing Address _____ Street Address _____ City, State, Zip _____ Telephone (____) _____	Landfill Contact Person: _____ Company: _____ Mailing Address: _____ Street Address _____ City, State, Zip _____ Telephone (____) _____ ID# Permit No _____
--	---

Vehicle Information
 License No. _____ Year Model _____ Make _____
 ID No. _____ Capacity (cubic yards) _____ Compaction (pounds/cubic yard): _____

Route Information: Frequency _____ Day of week to be collected _____
 Day of week for Disposal at the landfill and Time Span for Disposal at the landfill: _____

Establishment Information: Attach an establishment data sheet for each establishment on the route. This must be on a form provided by the department, however, a computer generated facsimile will be acceptable. It must include as a minimum: route order, transporter name, collection frequency, collection day of week, collection time of day, establishment contact person, establishment name, establishment mailing address, establishment street address, city, state, zip code, telephone number, and a description of activities associated with the business with particular emphasis on food handling and products sold or handled that could end up in the waste stream, landfill information to include the name and permit number, and a notarized certificate from the generator that states I _____, (title) _____ of (company name) _____, located at (street address) _____ in (city) _____ certify that the contents of the vehicle described above will not enter a Type IV landfill unless it is free of putrescible, hazardous, class I industrial nonhazardous, infectious, or any other waste not allowable in a Type IV landfill.

Alternate Contingency Disposal Plan _____

Applicant Signature _____ Date: _____

§325.914. *Special Permit Application for Municipal route.* The following form comprises this section:

Special Permit Application
for Municipal Route

New _____ | | Permit No. _____
Amendment _____ | |

Applicant Name _____
Responsible Person _____ Contact Person _____
Title _____ Title _____
Mailing Address _____ Mailing Address _____
Street Address _____ Street Address _____
City, State, Zip _____ City, State, Zip _____
Telephone: () _____ Telephone: () _____

Vehicle Information
License No. _____ Year Model: _____ Make: _____
VID No. _____ Capacity (cubic yards): _____ Compaction (pounds/cubic yard): _____

Route Information. Frequency: _____ Day of Week: _____
Day of Disposal _____ Approximate Time of Disposal: _____

Description of wastes to be transported: _____

Landfill Information: Permit No.: _____ Name: _____
Address: Mailing: _____ Street: _____
City: _____ State: _____ Zip: _____
Contact Name: _____ Telephone No.: () _____

City Certificate:

I _____, (title) _____ of the City of _____ in _____ County, certify that the contents of the vehicle described above will not enter a Type IV landfill unless it is free of putrescible, hazardous, Class I industrial nonhazardous, infectious, or any other waste not allowable in a Type IV landfill.

Signature _____

SWORN TO AND SUBSCRIBED before me on this the ____ day of _____, ____

Notary Public in and for _____ County, Texas

Applicant Signature _____ Date: _____

§325.915. *Establishment Data Sheet.* The following form comprises this section.

Establishment Data Sheet Route Order: _____

Transporter Name _____ Permit No. _____

Collection, Frequency: _____ Day of Week: _____ Estimated Time of Day: _____

Establishment Information

Contact Person _____ Company Name: _____
Address, Mailing, _____ Street _____
City _____ State: _____ Zip: _____ Telephone No.: () _____

1. Describe activities associated with business establishment.

2. Is there a food service operation within the establishment? _____
3. Does the establishment sell or handle food products or other potentially putrescible items? _____

4 Does the establishment sell or handle paints, solvents, automobile fuels, aerosol products, cleaning fluids, or other similar or liquid products? _____
Explain any answers to questions 2, 3, or 4 that were yes (Attach additional sheet if necessary)

Landfill Information

Name: _____ Permit No.: _____

Generator Certificate

I _____, (title) _____ of (company name) _____, located at (street address) _____ in (city) _____ certify that the wastes to be collected from the establishment stated here for transport to a Type IV landfill are free of and shall be maintained free of putrescible, hazardous, Class I industrial nonhazardous, infectious, or any other waste not allowable in a Type IV landfill

Signature _____

SWORN TO AND SUBSCRIBED before me on this the ____ day of _____, ____.

Notary Public in and for _____ County, Texas

Applicant Signature _____ Date: _____

§325.916. Transporter Trip Ticket. The following form comprises this section.

TEXAS DEPARTMENT OF HEALTH
1100 West 49th Street
Austin, Texas 78756-3199
Transporter Trip Ticket

Name of Transporter _____
(Company Name)

Name of Driver _____
(Print)

Truck License No. _____ Truck Capacity _____
(cubic yards)

PART I Generator Information: (See reverse side)

PART II Transporter Certification. Transporter Route Permit No.: _____

I certify that the information provided above is correct, and that only wastes in Part I of this ticket are contained in this load. I further certify that this load contains no putrescible, hazardous, Class I industrial nonhazardous, infectious or any other waste not allowable in a Type IV landfill. I am aware that falsification of this ticket may result in penalties, possible legal action and/or forfeiture of the privilege of utilizing Type IV municipal solid waste disposal facilities

Truck Driver's Signature _____

PART III Statement of Disposal Site Operator:

Disposal Site Name _____ Permit/
Reg. No. _____

I certify that I have been authorized by the Texas Department of Health to accept the above type wastes and that I have disposed of the above-indicated wastes in accordance with the requirements outlined in that authorization

Site Operator's Name _____
(Print)

(Signature) / (Date)

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 65. Wildlife

Subchapter U. Type II Wildlife Management Area—Public Hunting Lands

★ 31 TAC §65.701, §65.704

The Texas Parks and Wildlife Commission proposes amendments to §65.701 and §65.704, concerning Type II wildlife management area—public hunting lands proclamation. The amendments provide a season, bag limit, means, methods, and conditions for big horn sheep and restricts the purchase of Type II permits to one per person.

The department has attempted to restore desert bighorn sheep in the mountain ranges in west Texas since 1954. As a result of this program, there are currently 80 bighorns in captivity and 49 free ranging animals. The goal of the program is to restore the bighorn to huntable numbers within its historical range in the trans-Pecos region. Field reports indicate that there is at least one full curl ram and three other rams with a ¾ horn curl in the Sierra Diablo mountains. The staff finds that taking up to two rams will not adversely impact the bighorn sheep restoration program.

The limiting of Type II permits to one per person will equalize the opportunity of the random drawing for the bighorn sheep permit.

James E. Dickinson, director of finance, 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. Dickinson 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 provision of a method to equitably distribute a limited number of bighorn sheep permits. The economic cost to individuals is \$35, which allows hunters opportunity to access over 350,000 acres of land owned or leased by the department. Persons who purchase the Type II wildlife management area—public hunting lands permit will have an equal opportunity for public drawings for restricted game species such as antelope, bighorn sheep, and mule deer.

Comments may be submitted to Phil Evans, Regulatory Coordinator, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4974 or 1-(800)-792-1112, extension 4974.

The amendments are proposed under the Parks and Wildlife Code, Chapter 81, Subchapters A and E, which provides the Texas Parks and Wildlife Commission with authority to regulate seasons, numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas.

§65.701. Application.

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

(c) **No person may purchase more than one Type II wildlife management-public hunting lands permit.**

§65.704. Exceptions.

(a)-(l) (No change.)

(m) **Desert bighorn sheep. Open seasons and bag limits.**

(1) **Season. There is no closed season. Legal hunting dates to be designated on the permit issued by the department.**

(2) **Bag limit. The bag limit is one mature desert bighorn sheep ram by permit only. Any animal taken must be certified as harvestable by a wildlife biologist of the department prior to the kill. The permit must be possessed while hunting.**

(3) **Legal weapons. Only centerfire rifles designed to shoot a bullet of at least .250 inches in diameter may be used. The firearm must be equipped with a telescopic sight capable of four power magnification or greater.**

(4) **Mode of hunting.**

(A) **All hunting shall be on foot or from horseback or mule.**

(B) **No motorized conveyance or aircraft of any type may be used to hunt, spot, herd, or harass desert bighorn sheep.**

(C) **No two-way radio communications may be used in hunting desert bighorn sheep.**

(5) **Tagging. Any bighorn sheep taken must be tagged within 24 hours after being taken with a permanent tag issued and affixed in the horn by a designated representative of the department. The tag shall remain in the horn throughout the existence of the trophy.**

(6) **Hunter orientation. Each person receiving a bighorn sheep hunting permit is required to attend an orientation conducted by the department prior to the hunt.**

(7) **Permit issuance. Bighorn sheep hunting permits are issued under the authority of Texas Parks and Wildlife Code, §§61.204-61.206.**

(8) **Only residents of Texas are eligible to participate in a random drawing for the bighorn sheep permit that is issued to the public.**

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

Issued in Austin, Texas, on August 3, 1987.

TRD-8706352

Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption:
September 11, 1987
For further information, please call
(512) 389-4974.

Part IX. Texas Water Commission

Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

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

★ 31 TAC §335.28

The Texas Water Commission (TWC) proposes an amendment to §335.28, concerning memoranda of understanding between the commission and other state agencies that concern the regulation of industrial solid waste and hazardous waste.

The amendment provides for the adoption of a memorandum of understanding (MOU) by reference in the TWC regulations concerning industrial solid waste and municipal hazardous waste (Chapter 335).

In the amendment, the MOU proposed for adoption is between the Texas Water Commission, the Railroad Commission of Texas (RRC), and the Texas Department of Health (TDH).

The MOU concerns the regulation of waste materials resulting from activities associated with the exploration, development, and production of oil or gas or geothermal resources. This MOU is intended to provide more detail on the interpretation of the division of jurisdiction between the agencies over wastes resulting from oil and gas activities. The proposed MOU will replace an existing MOU between these agencies (including the Texas Department of Water Resources, predecessor of the Texas Water Commission) that became effective on January 1, 1982.

The proposed MOU describes the waste management jurisdiction of each agency and sets forth interpretations of the division of jurisdiction among the agencies over the management of waste from specific activities, including drilling of wells, field treatment of produced fluids, storage of oil and natural gas, transportation of crude oil or natural gas, reclamation plants, oil refining, gasoline plants, manufacturing processes, and spill response.

Under the Texas Water Code, §5.104, the TWC shall adopt by rule any MOU between the TWC and any other state agency. As stated in proposed §335.28, copies

of the proposed MOU are available from the TWC Legal Division upon request. The Railroad Commission of Texas and the Texas Department of Health are also proposing this MOU for inclusion in their rules.

The MOU between the TWC and the Texas Department of Health is listed as an additional MOU that is proposed to be adopted by reference. This MOU was adopted by the TWC and the Texas Department of Health in early August 1987 as a permanent rule. The rule appears in the TWC regulations at §335.35 and its adoption will be published in the *Texas Register* in the near future.

The agencies have already held a public hearing on the MOU and amended the MOU in response to comments. In today's proposed amendment, the reference to this MOU is inserted into §335.28 for the purpose of consolidating the list of the MOUs into one section of Chapter 335. The MOU concerning radioactive mixed waste has not been revised in any way since its adoption by the agencies as a permanent rule. The amendment is merely an administrative convenience for the purpose of consolidating the references to MOUs between the TWC and other state agencies into one section of the industrial solid waste and municipal hazardous waste regulations.

Also, the reference to the already adopted MOU between the TWC and the attorney general is rewritten to comport with the listing of the other MOUs in a consolidated format.

William Monroe, chief fiscal officer, has determined that for the first five-year period this section will be in effect there will be no direct fiscal implications for state or local governments or local businesses as a result of enforcing or administering the proposed section.

Mr. Monroe also has determined that for each year of the first five years this section is in effect the public benefit anticipated as a result of enforcing the section will be the clarification of the jurisdiction of the three involved agencies in the MOU concerning oil and gas wastes and the consolidation of the listing of the MOUs between the TWC and other state agencies into one section of

the regulations. 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 Cynthia C. Smiley, Attorney, Legal Division, Texas Water Commission, P. O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Persons making written comments should do so by filing their comments on the MOU concerning oil and gas matters with the Texas Water Commission, the Texas Department of Health, and the Railroad Commission of Texas. To facilitate public comments on the proposal, the agencies have scheduled a joint hearing to receive comments at 10 a.m. on September 2, 1987, in Room 12-126, of the William B. Travis Building, 1701 North Congress Avenue, Austin.

The amendment is proposed under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any regulations necessary to carry out its powers and duties under the Water Code and other laws of this state and to establish and approve all general policy of the commission. The amendment is also proposed under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate 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.

§335.28. *Adoption of Memoranda of Understanding by Reference.* The following memoranda of understanding between the commission and other state agencies, required to be adopted by rule as set forth in the Texas Water Code, §5.104, are adopted by reference. Copies of these documents are available upon request from the Texas Water Commission, Legal Division, P. O. Box 13087, Austin, Texas 78711-3087, (512) 463-8078:[]

(1) the memorandum [The first of these memoranda] of understanding [is] between the attorney general of Texas and the Texas Water Commission, which concerns public participation in the state hazardous waste enforcement process;

(2) the memorandum of understanding between the Texas Department of Health and the Texas Water Commission, which concerns the regulation and management of radioactive mixed wastes; and

(3) the memorandum of understanding between the Railroad Commission of Texas, the Texas Department of Health, and the Texas Water Commission, which concerns the division of jurisdiction among the agencies over wastes that result from or are related to activities associated with the exploration, development, and production of oil, gas, or geothermal resources, and the refining of oil.

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

Issued in Austin, Texas, on August 4, 1987.

TRD-8706387 J. D. Head
Director
Legal Division
Texas Water
Commission

Earliest possible date of adoption:
September 11, 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 22. EXAMINING BOARDS

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

★ 22 TAC §391.1

The Polygraph Examiners Board adopts an amendment to §391.1, without changes to the proposed text published in the June 30, 1987, issue of the *Texas Register* (12 TexReg 2083).

The amendment clarifies the language of the section.

The section states under what authority the Polygraph Examiners Board designates the rule and regulations of the intern program.

No comments were received regarding adoption of the amendment.

The amendment is adopted 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.

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

Issued in Austin, Texas, on August 3, 1987

TRD-8706435

Bryan M Perot
Executive Officer
Polygraph Examiners
Board

Effective date: August 25, 1987
Proposal publication date: June 30, 1987
For further information, please call
(512) 463-2058



Chapter 393. General

★ 22 TAC §393.2

The Polygraph Examiners Board adopts the repeal of §393.2, without changes to the proposed text published in the June

30, 1987, issue of the *Texas Register* (12 TexReg 2083).

The repeal brings the boards' internal affairs and operations into compliance with the Administrative Procedure and Texas Register Act for the ultimate benefit of the public.

No comments were received regarding adoption of the repeal.

The repeal is adopted 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.

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

Issued in Austin, Texas, on August 3, 1987

TRD-8706436

Bryan M Perot
Executive Officer
Polygraph Examiners
Board

Effective date: August 25, 1987
Proposal publication date: June 30, 1987
For further information, please call
(512) 465-2058.



Chapter 395. Code of Operating Procedure for Polygraph Examiners

★ 22 TAC §395.1, §395.13

The Polygraph Examiners Board adopts amendments to §395.1 and §395.13, without changes to the proposed text published in the June 30, 1987, issue of the *Texas Register* (12 TexReg 2084).

The amendments clarify language in the sections.

The amendments make editing changes concerning authority and expiration of licenses.

No comments were received regarding adoption of the amendments.

The amendments are adopted 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.

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

Issued in Austin, Texas, on August 3, 1987.

TRD-8706437

Bryan M. Perot
Executive Officer
Polygraph Examiners
Board

Effective date: August 25, 1987
Proposal publication date: June 30, 1987
For further information, please call
(512) 465-2058.



Chapter 397. General Rules of Practice and Procedure

★ 22 TAC §397.22

The Polygraph Examiners Board adopts an amendment to §397.22, without changes to the proposed text published in the June 30, 1987, issue of the *Texas Register* (12 TexReg 2084).

The amendment clarifies language in the section.

The amendment establishes guidelines for the timely compliance with the Administrative Procedure and Texas Register Act while affording interested parties due process.

No comments were received regarding adoption of the amendment.

The amendment is adopted 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.

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

Issued in Austin, Texas, on August 3, 1987.

TRD-8706438

Bryan M. Perot
Executive Officer
Polygraph Examiners
Board

Effective date: August 25, 1987
Proposal publication date: June 30, 1987
For further information, please call
(512) 465-2058.



Chapter 399. Out-of-State Polygraph Examiners

★ 22 TAC §399.1

The Polygraph Examiners Board adopts the repeal of §399.1, without changes to the proposed text published in the June 30, 1987, issue of the *Texas Register* (12 TexReg 2084).

The repeal brings the board's reciprocal licensing into compliance with the Administrative Procedure and Texas Register Act for the ultimate benefit of the public.

No comments were received regarding adoption of the repeal.

The repeal is adopted 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.

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

Issued in Austin, Texas, on August 3, 1987

TRD-8706439

Bryan M. Perot
Executive Officer
Polygraph Examiners
Board

Effective date: August 25, 1987
Proposal publication date: June 30, 1987
For further information, please call
(512) 465-2058.



TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 85. Community Health Services

Local Public Health

★ 25 TAC §85.14

The Texas Department of Health adopts an amendment to §85.14, with changes to the proposed text published in the May 22, 1987, issue of the *Texas Register* (12 TexReg 1655).

The amendment reduces the number of public health regions from twelve to eight, and authorizes the commissioner of health to appoint a regional director to service each region; provided, however, that at least 15 days notice shall be given to the members of the Board of Health prior to each appointment. The minor change from the proposal is the addition of a map of public health regional offices showing the modification of the regional boundary lines.

Several commenters suggested that the emergency medical system services

(EMSS) for one of the regions affected by the reorganization not change administratively. The agency disagrees because the EMSS program for the indicated region will not change and the program direction will continue for the activities of this program.

A commenter suggested that the southeast Texas area be maintained within the current regional configuration. The agency disagrees as this area has been serviced by both regions and services to people have not and will not be affected.

Several commenters suggested that services would be weakened and the concerns of rural Texans were not considered in the plan. The agency disagrees in that services under this reorganization plan will not be affected.

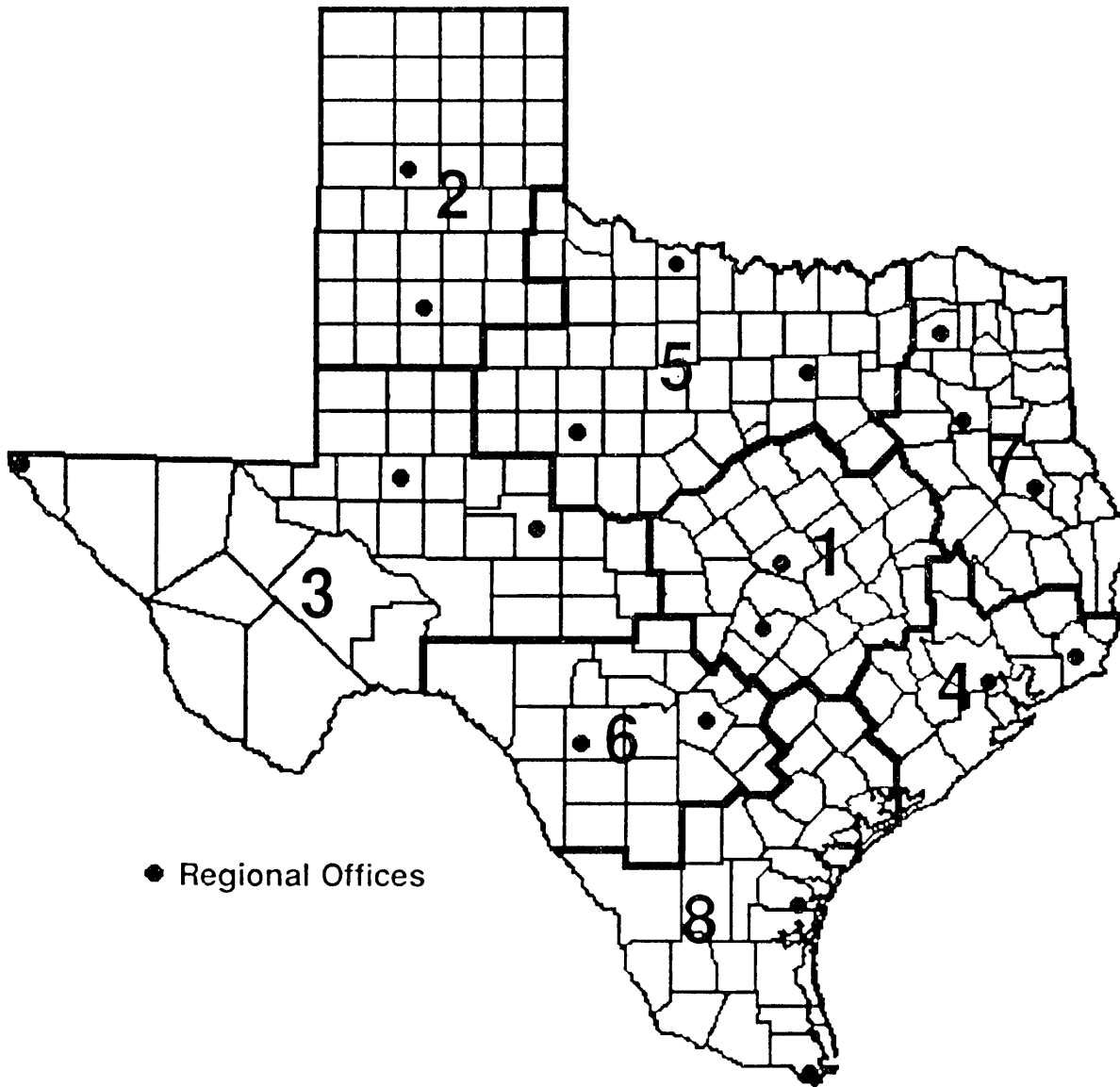
The Honorable Ron Lewis, Texas House of Representatives, Leland Lewis, director, Pan Handle Emergency Medical Services System, Tom Morris, director, Dalhart EMS, and Wanda Riffe, councilman, Stratford, Texas, all expressed concerns and offered suggestions as outlined in the summary of comments. No commenters were totally against the amendment and the comments expressed addressed generalized areas of concern.

The amendment is adopted under Texas Civil Statutes, Article 4436b, §5.01 and §5.03, which authorize the Texas Board of Health to establish public health regions and appoint regional directors to serve as health authorities; and Article 4414b, §1.05, which authorize the Texas Board of Health to adopt rules concerning its duties and procedures.

§85.14. *Public Health Regions.*

(a) The board designates eight public health regions to provide public health services within the state. A map of the public health regional offices showing the modified regional public health boundary lines is as follows:

Public Health Regional Offices



● Regional Offices

(b) The commissioner of health shall appoint a regional director to serve each region; provided, however, that at least 15 days notice shall be given to the members of the board prior to each such appointment.

(c) (No change.)

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

Issued in Austin, Texas, on August 4, 1987.

TRD-8706440

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Effective date: August 25, 1987
Proposal publication date: May 22, 1987
For further information, please call
(512) 458-7770.



Chapter 169. Veterinary Public Health Animal Shelters

★ 25 TAC §§169.61-169.65

The Texas Department of Health adopts new §§169.61-169.65. New §169.62 is adopted with changes to the proposed text published in the May 22, 1987, issue

of the *Texas Register* (12 TexReg 1655). The other sections are adopted without changes and will not be republished.

The new sections set standards and charge fees for the training of animal shelter personnel as regards to animal health and disease control, humane care and treatment, transportation of animals, and the control of animals in an animal shelter.

The enforcement of the new sections provide for better qualified animal shelter personnel to control animal health and disease, provide humane care and treatment of animals, control animals in animal shelters, and improve the quality of animal transportation.

One individual commented on the proposed sections. The commenter supported the sections, but also recommended that the department add a definition of animal shelter personnel to §169.62. The department agrees and has added the definition.

The new sections are adopted under Texas Civil Statutes, Article 4477-6b, §3, which provide the Texas Board of Health with the authority to adopt rules and charge reasonable fees for the training of animal shelter personnel.

§169.62. *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.

Animal control officer (ACO)—Any person enforcing local ordinances and/or Texas Department of Health rules.

Animal shelter—An entity that legally collects, transports, keeps, or impounds stray, homeless, abandoned, or unwanted animals.

Animal shelter personnel—Any person, excluding veterinarians, working in an animal shelter.

Board—The Texas Board of Health.

Course—Any training session administered by the Texas Department of Health for basic animal control officers, advanced animal control officers, or administrative animal control officers for which a certificate is issued.

Department—The Texas Department of Health (TDH).

Director—The director of the Texas Department of Health's Zoonosis Control Division.

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

Issued in Austin, Texas, on August 4, 1987.

TRD-8706441 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Effective date: August 25, 1987
Proposal publication date: May 22, 1987
For further information, please call
(512) 835-8100.

Chapter 301. Water
Surveillance and Technology
Disposal of Waste from
Watercraft

★ 25 TAC §§301.21-301.25

The Texas Department of Health adopts the repeal of §§301.21-301.25, without changes to the proposed text published in the May 22, 1987, issue of the *Texas Register* (12 TexReg 1656).

The repeals delete sections which duplicate existing sections of the Texas Water Commission, concerning boat sewage disposal. The commission is authorized by the Texas Water Code, §5.103 and §5.105, to regulate boat sewage disposal.

The enforcement of the repeals promotes efficiency by deleting existing sections which duplicate sections adopted by the Texas Water Commission.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 4414b, §1.05, which authorize the Texas Board of Health to adopt rules governing the administration of the Texas Department of Health.

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

Issued in Austin, Texas, on August 4, 1987.

TRD-8706442 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Effective date: August 25, 1987
Proposal publication date: May 22, 1987
For further information, please call
(512) 458-7542.

TITLE 31. NATURAL
RESOURCES AND
CONSERVATION
Part III. Texas Air Control
Board
Chapter 118. Control of Air
Pollution

★ 31 TAC §§118.1-118.6

The Texas Air Control Board (TACB) adopts amendments to §§118.1-118.6. Section 118.5 is adopted with changes to the proposed text published in the March 17, 1987, issue of the *Texas Register* (12 TexReg 893). Sections 118.1-118.4 and 118.6 are adopted without changes and will not be republished. Amendments clarify the intent of the chapter and make the chapter consistent with the revised Texas Air Pollution Episode Contingency Plan. In concurrent action, §118.7, concerning effective dates, is repealed.

The effect of the amendments will be more effective control over air pollution episodes by the TACB and by large industrial emitters of air contaminants.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested

any changes in the proposal is categorized as against the proposal, while a commenter who agreed with the proposal in its entirety is categorized as being for the proposal.

A public hearing was held in Austin on April 16, 1987. Testimony was received from six commenters during the comment period. Cities Service Oil and Gas Corporation (Cities Service) commented in favor of the proposal. Those commenting against the proposal were Brandt Mannchen, the Sierra Club, Lone Star Chapter (Sierra Club), El Paso Natural Gas Company (EPNG), the Texas Mid-Continent Oil and Gas Association (TMOGA), and the United States Environmental Protection Agency (EPA). All comments addressed the proposed revisions and have been divided into parts which correspond to the six sections of Chapter 118 which are amended.

Amendments to §118.1, concerning generalized air pollution episodes, include some minor wording changes and the relocation of pollutant concentration levels from the text to a new table. Four commenters submitted remarks concerning the proposed changes to this section. TMOGA and Cities Service supported the changes. Brandt Mannchen recommended the inclusion of a definition of the word "generalized," as used in this and other sections of Regulation VIII. The word "generalized" is used in the Texas Clean Air Act (TCAA), §3.14, and for consistency was proposed for use in Regulation VIII. The term is not defined in the TCAA and the TACB staff has determined that there is no need for a definition in the regulation. The staff has always interpreted the TCAA to intend that a generalized condition of air pollution involves a large geographical area, such as most of a county, an entire county, or perhaps, a multi-county area. An attempt to define the specific boundaries of an episode area would require that Chapter 118 become burdened with a large volume of descriptive parameters which likely would bear no relationship to an episode area and could impede the effective response to and management of a real episode.

Brandt Mannchen and the Sierra Club stated that the action levels for ambient pollutants listed in Table 1 should be lowered so that corrective measures could be implemented before an episode could cause serious health problems. The ambient concentrations listed in Table 1 have existed in the text of the regulation since early 1975 and the Level 2 concentrations are as specified in 40 Code of Federal Regulations 51.151. Since the TACB did not propose substantive changes to the contents of Table 1 in the March 17 proposal, any changes now would be inappropriate without the solicitation of applicable public comment. In response to the suggestions of the two commenters, the TACB staff plans to re-evaluate the health effects information

relating to the action levels for each pollutant listed in Table 1 to determine whether changes to action levels should be considered at a future public hearing.

Amendments to §118.2, concerning provisions governing generalized episode control, include minor wording changes for improved readability. Three commenters submitted remarks concerning the proposed changes to this section. Cities Service supported the proposal while Brandt Mannchen and TMOGA suggested some additional changes. Brandt Mannchen questioned the need for the phrase "concurrence of the governor" if an episode is declared by the executive director. The Texas Clean Air Act, (TCAA) §3.14(a), specifies that the governor's concurrence shall be obtained whenever the executive director orders sources to reduce or discontinue emissions during an episode.

TMOGA noted the absence of specific provisions in §118.2(b) to require the executive director to equitably apportion emissions reductions between or among various sources during a Level 2 episode. Such provisions would not be appropriate for the effective control of a Level 2 episode. The intended response for emissions sources during a Level 2 episode is the reduction of emissions to the lowest levels and, possibly, the complete shut-down of operations. In either case, the emission reduction plan, provided for in §118.5, and developed by each source, should specify the methods and expected results of reductions for each source. In the event of an episode, the executive director will make every effort to be reasonable but will have little time to attempt development of an intricate case-by-case apportionment of reductions, and even less time to ensure that such reductions are equitable. As a source operator develops an emission reduction plan, the operator will have sufficient time and flexibility to determine reduction methods for maximum effect.

Brandt Mannchen requested that a definition be added for the phrase "reasonably available methods" to reduce emissions during a Level 1 episode, as provided in §118.2(a)(2). The methods to reduce emissions are described in the individual plan which is developed by each emission source operator and reviewed by TACB regional staff. The plan content requirements are listed in §118.5, and specific reduction methods are to be determined on a case-by-case basis for each source. Individual reduction methods are not intended to be established in the regulation.

In addition, the same commenter objected to the use of the term "curtail" in §118.2(a)(3) and elsewhere, and he recommended the use of the term "shutdown" for control of a Level 1 episode. The intent of §118.2(a) is that emissions sources, during a Level 1 episode, make a thorough and good-faith effort, in coordination with the TACB staff, to reduce but not neces-

sarily shut down operations in order to prevent ambient levels from reaching amounts specified for Level 2.

The commenter requested that only one level be allowed and that, in effect, emissions sources be required to go from full operation to no operation if Level 1 concentrations are reached. Such a requirement would not permit a reasonable effort by plant managers and the TACB staff to reduce the impact of an episode without causing unnecessary damage to individual operations and the area economy. Section 118.2(b) provides for more comprehensive action if Level 2 concentrations are about to be reached. Even under the emergency conditions of a Level 2 episode, the TACB is required by the TCAA to order sources to reduce or discontinue emissions, but not necessarily to shut down every emission source in the episode area.

Amendments to §118.3, concerning localized air pollution episodes, include a title change and minor wording changes in the text. Three commenters submitted remarks concerning the proposed changes to this section. TMOGA and Cities Service supported the proposal while Brandt Mannchen requested the inclusion of a definition of the term "localized" in the section. The TACB staff chose the term "localized" in an effort to be consistent with the intent of the TCAA, §3.14(b), and yet not repeat the lengthy wording used in the TCAA to describe an episode of notably smaller geographical size than that envisioned for a generalized episode. The TACB staff considers a localized (non-generalized) episode to be small in area, perhaps only one or two square miles in size, and probably centered around a small number of emission sources. As before with the term "generalized," a specific, detailed definition of the term "localized" would be inappropriate in the regulation.

Amendments to §118.4, concerning hearings, include a new title consistent with the text and improved wording of the text. Three commenters submitted remarks concerning the proposed changes to this section. TMOGA and Cities Service supported the proposal. Brandt Mannchen implied that provisions of this section violate the Texas open meetings statute but did not elaborate. Section 3.14(a) of the TCAA requires the board to conduct a hearing as soon as is practicable after an order is issued to reduce or discontinue emissions. The TCAA clearly gives the board and the executive director authority to set a hearing time without conforming to the normal public notice requirements of §3.17 of the TCAA. The minimum notice permitted by the open meetings statute for an emergency meeting is a two-hour posting of the meeting announcement on the Secretary of State's bulletin board. The board and the executive director can meet this requirement easily while satisfying the provisions of

§3.14(a) for a hearing on the episode emission reduction orders.

Amendments to §118.5, concerning the emission reduction plan, include the addition of the names of the five counties to which the section applies, a list of required plan contents, and some minor wording changes. Five commenters submitted remarks concerning the proposed revisions to this section. Cities Service supported the proposal while EPA, Brandt Mannchen, EPNG, and TMOGA objected to various aspects of the proposal.

One of the changes proposed for §118.5 was a listing of the specific counties in which major stationary sources must prepare emission reduction plans. EPA commented that limiting the requirement for emission reduction plans in §118.5 to the five listed counties does not meet the requirements of 40 Code of Federal Regulations §51.16 (Prevention of Air Pollution Emergency Episodes) and amounts to a relaxation of an approved State Implementation Plan (SIP). (EPA cited references 40 Code of Federal Regulations §51.16 and 40 Code of Federal Regulations §51.3 which were designations in effect prior to November 7, 1986, when 40 Code of Federal Regulations Part 51 was recodified.) The commenter acknowledged that both Chapter 118 and the Texas Air Pollution Emergency Episode Contingency Plan are approved parts of the Texas SIP.

Five counties (El Paso, Galveston, Harris, Jefferson, and Orange) are listed currently in Appendix C of the episode contingency plan. The function of Appendix C is to specify which counties are affected by the requirement for major stationary sources to develop emission reduction plans for use during episodes. The TACB did not propose any substantive changes to this requirement or the list of counties. The only change is the relocation of the list of counties from Appendix C of the plan to §118.5 of the regulation in order to clarify the requirement and to enhance enforceability. This change, therefore, is not a relaxation of an existing, approved requirement. TACB concurrently is revising the episode contingency plan and, in doing so, is deleting Appendix C.

As EPA stated, a contingency plan is required for Priority I and II areas. The definitions of Priority I, II, and III areas are provided in 40 Code of Federal Regulations §51.3. The Priority I areas are those areas where ambient air pollution levels are 25-35 percent above the applicable national ambient air quality standards for each criteria pollutant. Based on this and guidelines provided elsewhere in 40 Code of Federal Regulations §51.16 regarding treatment of Priority II and III areas and applicability of federal requirements, the TACB staff believes that continued designation of the five specified counties is appropriate.

Brandt Mannchen suggested that all com-

panies send copies of their emission reduction plans to the TACB and that public hearings be held on the adequacy of each plan. The TACB staff has determined that emission reduction plans should be developed, modified, and maintained by the source operators in coordination with TACB regional personnel. Section 118.5 provides for easy access to these plans by state and local air quality agency personnel. State and local inspectors may suggest plan changes at any time and can advise a source operator in person at the plant site. A filing system with additional paper flow would place an unnecessary burden upon the TACB at a time when the agency is operating with restricted staff and financial resources. Analyzing each reduction plan at a TACB public hearing would require additional state funding and may not improve any plans. State and local agency staff are technically capable of determining that the contents of each plan meet the requirements listed in §118.5.

EPNG expressed concern that the proposed amendment to §118.5 would require the development of more detailed emission reduction plans than are required now and that the requirements are inconsistent with §118.2. The purpose in including the six provisions in §118.5 is to provide guidance to plant operators and to ensure that plans contain information which would be useful in the event an episode were declared. The information provided in the plans should assist the executive director during an episode in making decisions which maximize emissions reductions, while minimizing the economic impact. Most of the provisions listed in the proposal are included in the 40 Code of Federal Regulations Part 51, Appendix L, and all are essential for an informed response to any episode declared in accordance with §118.2.

EPNG and TMOGA recommended the addition of the words "specified in Table 1" to §118.5(2). This change to §118.5(2) and also to §118.5 has been made to clarify that the emission reduction plan addresses the specific episode air contaminants listed in Table 1.

EPNG and TMOGA interpreted §118.5(3) and (4) to require computer modeling in order to estimate area-wide emissions reductions needed to abate a Level 1 or a Level 2 episode. No such requirement exists or is intended. Section 118.5 is designed to support the intent and purpose of §118.2. The plant operator is required only to identify the emission reduction measures which will be taken at the plant during a Level 1 and a Level 2 episode and to estimate the resulting reductions in emissions. Consideration of computer modeling, ambient concentrations, and other parameters will be the responsibility of the TACB.

Additionally, TMOGA was concerned that §118.5(3) would require a source operator

to make predictions regarding some future episode. The only prediction called for under §118.5(3) is the source operator's best estimate of emissions reductions from the plant site during a Level 1 episode. Chapter 118 does not state any need for source operators to predict ambient concentrations of pollutants as TMOGA suggests. The staff has reworded the subsection to clarify that only emissions reductions need be estimated.

Two editorial changes have been made by the staff. The first is the deletion of the superfluous words "facilities which are" from §118.5(1). The second is a change of the subsection numbers to letters for consistency with other parts of Regulation VIII.

Amendments to §118.6, concerning the Texas Air Pollution Episode Contingency Plan and the Emergency Management Center, include a new title for consistency with the text and the addition of a provision for the TACB Emergency Management Center. Cities Service supported the revisions to this section. No other comments were received.

These amendments are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§118.5. Emission Reduction Plan. Any owner or operator of a major stationary source in El Paso, Galveston, Harris, Jefferson, and Orange counties which emits 100 tons or more per year of any air contaminant specified in Table 1 shall prepare and maintain an emission reduction plan. The emission reduction plan shall be made available to any representative of the Texas Air Control Board or local air pollution control agency upon request and shall contain at least the following:

(1) identification of all sources of air contaminants specified in Table 1 or to account for at least 95% of the total major stationary source emissions for each contaminant specified in Table 1 plus volatile organic compounds;

(2) the approximate amount of each air contaminant specified in Table 1 from each facility;

(3) a description of the specific actions to be taken during a Level 1 episode and the amount of emissions reduction expected for each air contaminant specified in Table 1;

(4) a description of specific actions to be taken to curtail or cease operations if so directed during a Level 2 episode;

(5) identification of processes which require relatively lengthy shutdown procedures and of practical limits of production curtailment to prevent equipment damage; and

(6) identification of processes which, under conditions of curtailed production, would affect adversely the activities of raw materials suppliers or product users.

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

Issued in Austin, Texas, on August 31, 1987.

TRD-8706398 Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: August 25, 1987
Proposal publication date: March 17, 1987
For further information, please call
(512) 451-5711, ext 354.



Part X. Texas Water Development Board Chapter 367. Agricultural Water Conservation Grants for Equipment Purchases ★ 31 TAC §367.23

The Texas Water Development Board adopts an amendment to §367.23, without changes to the proposed text published in the February 6, 1987, issue of the *Texas Register* (12 TexReg 402).

The amendment provides greater flexibility in issuing grants for agricultural water conservation purposes. This amendment allows the board to fund equipment not specifically listed in §367.23 if they find the equipment will aid in the measurement and evaluation of irrigation facilities. The amendment allows eligible districts to apply for a wider variety of equipment if it can justify the appropriateness of the equipment.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Water Code, §15.472, which provides the Texas Water Development Board with authority to adopt rules relating to agricultural water conservation grants.

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

Issued in Austin, Texas, on August 3, 1987.

TRD-8706381 Suzanne Schwartz
General Counsel
Texas Water
Development Board

Effective date: August 23, 1987
Proposal publication date: February 6, 1987
For further information, please call
(512) 463-7804.



TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration Subchapter O. State Sales and Use Tax

★ 34 TAC §3.293

The Comptroller of Public Accounts adopts an amendment to §3.293, without changes to the proposed text published in the July 3, 1987, issue of the *Texas Register* (12 TexReg 2139).

Section 151.3141 was added to the Tax Code during the regular legislative session. Section 151.3141 exempts from sales tax items allowed to be purchased with food stamps. The law becomes effective October 1, 1987. This exemption was necessary since the federal government would have begun to withhold federal assistance from all states which collect sales tax on items the federal government considers to be food. The second amendment provides that residents of retirement facilities are exempt from sales tax on food prepared and served to residents by the retirement facilities.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

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

Issued in Austin, Texas, on August 3, 1987.

TRD-8706383

Bob Bullock
Comptroller of Public
Accounts

Effective date: August 24, 1987
Proposal publication date: July 3, 1987
For further information, please call
(512) 463-4004.



★ 34 TAC §3.328

The Comptroller of Public Accounts adopts an amendment to §3.328, with changes to the proposed text published in the July 3, 1987, issue of the *Texas Register* (12 TexReg 2140).

The amendment is needed because of an addition to the Tax Code made during the regular session of the legislature. Section 151.3141 was added that will exempt taxable items from sales tax when purchased with food stamps as provided by 7 United

States Code Chapter 51. The amendment is effective October 1, 1987. Beginning on that date, the federal government will no longer provide federal assistance to the food stamp program for those states which collect sales tax on items the government regards as food.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.328. *Optional Reporting Methods for Grocers and Other Vendors.*

- (a) (No change.)
- (b) Reporting methods.
 - (1) First method (B).
 - (A) (No change.)
 - (B) Procedure.

(i)-(ii) (No change.)
(iii) To the total of exempt merchandise purchased in clause (ii), add the amount of taxable items purchased during the past calendar or fiscal year for which food stamps were accepted from the purchaser in lieu of other consideration.

(iv) Divide the total amount of exempt merchandise purchased (clause (ii) and (iii) of this subparagraph) by the amount of total purchases (clause (i) of this subparagraph) to obtain a percentage relationship.

(v) Multiply the total receipts from all sales during the reporting period by the percentage thus obtained in clause (iv) of this subparagraph.

(vi) Deduct the figure obtained by this multiplication as described in clause (v) of this subparagraph from the total receipts from the reporting period. The remaining amount will be taxable receipts from the sale of taxable items. Any purchases upon which the use tax is due must be added to this amount.

(C) This method of calculating taxable receipts from the sale of taxable items is available for reporting purposes only, and is subject to audits as the comptroller may require. If an audit indicates the actual tax liability differs from the tax reported and paid, then the comptroller will assess additional tax or grant a refund. No penalties or interest will be assessed on additional taxes disclosed to be due by audit unless the audit discloses fraud or willful evasion of the tax.

- (D) (No change.)
- (2) Second method (C).
 - (A) (No change.)
 - (B) Procedure.
 - (i)-(ii) (No change.)

(iii) Grocers electing to use this method of reporting are required to continue in the manner prescribed for a period of three years following such election providing the total receipts of such grocers continue to

be \$100,000 or less. At such time as the gross receipts of any grocer exceed \$100,000, such grocer shall, upon the next succeeding calendar month, be ineligible to use this optional method, and he must promptly inform the comptroller of this fact and cease to use that basis immediately. Any retail grocer who fails to inform the comptroller of his ineligibility loses the immunity for audit assessment otherwise provided and consequently is liable for all back taxes, penalty, and interest prescribed by this section and in accordance with the Texas Tax Code, §151.415.

(3) Third method (E). Any retailer, including those mentioned in this section, who establishes an accounting system in which the tax collected pursuant to the Limited Sales Tax Act is commingled with the receipts from the sale of taxable items, may determine the taxable receipts in the following manner.

(A) (No change.)

(B) If the retailer is subject to state tax only, the remainder must be divided by the state tax rate, expressed as a percentage. If the retailer is subject to both state and city tax, the remainder shall be divided by the combined state and city tax rate, expressed as a percentage.

(i) If the retailer is subject to state, city, and Metropolitan Transit Authority taxes (MTA), the remainder must be divided by the combined state, city, and MTA tax rate, expressed as a percentage.

(ii) If the retailer is within a Metropolitan Transit Authority but not subject to city tax, the remainder must be divided by the combined state and MTA tax rate, expressed as a percentage.

(iii) If the retailer is subject to state, city, and county sales taxes, the remainder must be divided by the combined state, city, and county tax rates, expressed as a percentage.

(iv) If the retailer subject to state and county taxes but not subject to city tax, the remainder shall be divided by the combined state and county tax rates, expressed as a percentage. If the retailer is subject to state, city, MTA, and county taxes, the remainder must be divided by the combined total of all taxes expressed as a percentage.

(C) The answer resulting is the taxable gross receipts of the retailer for reporting purposes as prescribed in the Texas Tax Code, §151.410, of the Limited Sales Tax Act.

(D) The sole purpose of this third method is to permit the widest possible latitude in the internal accounting system of retailers and to avoid requiring certain retailers to remit to the state a tax computed upon a base which already includes the tax imposed by this Act. Nothing in this section may be construed to relieve the retailer of the obligation and duty of collecting the tax in the specific manner prescribed by the Texas Tax Code, §151.053, and the bracket

system provided therein. Neither may anything in this third method be construed to relieve the taxpayer of the obligation of paying tax, penalty, and interest upon delinquent taxes.

(c) (No change.)

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

Issued in Austin, Texas, on August 3, 1987

TRD-8706384 Bob Bullock
Comptroller of Public
Accounts

Effective date: August 23, 1987
Proposal publication date: July 3, 1987
For further information, please call
(512) 463-4004.



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services Chapter 12. Child Nutrition Programs

Special Milk Program

★ 40 TAC §§12.201-12.214

The Texas Department of Human Services (DHS) adopts new §§12.201-12.214, 12.301-12.315, and 12.401-12.415, without changes to the proposed text published in the July 3, 1987, issue of the *Texas Register* (12 TexReg 214).

The justification for adopting the sections is to codify the eligibility standards, terms, and program requirements applicable to the Special Milk Program, the School Breakfast Program, and the National School Lunch Program.

The sections will function by citing applicable references to the federal regulations that are the basis for DHS' administration of the programs.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

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

Issued in Austin, Texas, on August 5, 1987

TRD-8706451 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: September 1, 1987
Proposal publication date: July 3, 1987
For further information, please call
(512) 450-3766.



School Breakfast Program

★ 40 TAC §§12.301-12.315

The new sections are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with

the authority to administer public assistance programs.

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

Issued in Austin, Texas, on August 5, 1987.

TRD-8706452 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: September 1, 1987
Proposal publication date: July 3, 1987
For further information, please call
(512) 450-3766.



National School Lunch Program

★ 40 TAC §§12.401-12.415

The new sections are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

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

Issued in Austin, Texas, on August 5, 1987.

TRD-8706453 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: September 1, 1987
Proposal publication date: July 3, 1987
For further information, please call
(512) 450-3766.

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

Friday, August 7, 1987, 10 a.m. The Texas Rice Producers Board of the Texas Department of Agriculture met in emergency session in Room B, Bear Creek Community Center, Two Abercrombie Drive, Houston. According to the agenda, the board held swearing in of new board, election of officers, procedure for collection of assessment, administration of programs, setting of rate of assessment, and discussion of budget process and budget proposal. The emergency status was necessary to set assessment and begin collection process before the peak of the rice harvest.

Contact: Curtis Leonhardt, 6699 Rookin, Houston, Texas 77074, (409) 270-6699.

Filed: August 4, 1987, 10:41 a.m.
TRD-8706397

The Texas Department of Agriculture will meet in the District Office, Suite C, 5501 West I-40, Amarillo, to hold administrative hearings to review alleged violation of Texas Agriculture Code, §103.001 by Prater and Pal's Produce Company, Inc. and John R. Prater. Dates, times, and petitioners follow.

Wednesday, August 12, 1987, 11 a.m. As petitioned by Charles Francis.

Contact: Margo P. Wilton, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: August 4, 1987, 2:08 p.m.
TRD-8706416

Wednesday, August 12, 1987, 3 p.m. As petitioned by Alvie Francis.

Contact: Margo P. Wilton, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: August 4, 1987, 2:08 p.m.
TRD-8706417

Thursday, August 13, 1987, 9 a.m. As petitioned by Darel Dan Langford.

Contact: Margo P. Wilton, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: August 4, 1987, 2:08 p.m.
TRD-8706418

Thursday, August 13, 1987, 11 a.m. As petitioned by J.E. Patton, Jr.

Contact: Margo P. Wilton, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: August 4, 1987, 2:08 p.m.
TRD-8706419



Texas Board of Architectural Examiners

Friday, August 14, 1987, 9 a.m. The Rules Committee of the Texas Board of Architectural Examiners will meet in Room 107, 8213 Shoal Creek Boulevard, Austin. According to the agenda, the committee will review rules and regulations.

Contact: Robert H. Norris, 8213 Shoal Creek Boulevard, Suite 107, Austin, Texas 78758, (512) 458-1363.

Filed: August 5, 1987, 10:43 a.m.
TRD-8706459



Texas Air Control Board

Friday, August 14, 1987. The Texas Air Control Board will meet in the Monterey/Vera Cruz Room, Embassy Suites Hotel, 2727 Stemmons Freeway, Dallas. Times and agendas follow.

8:30 a.m. The Fee Review Committee will discuss revisions to §116.11 (permit fees) to be considered for adoption and revisions to §101.24 (inspection fees) to be considered for adoption.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354.

Filed: August 5, 1987, 1:57 p.m.
TRD-870464

9 a.m. The Regulation Development Committee will consider adoption of revisions to §116.11 (permit fees) and the state implementation plan; adoption of revisions to

§101.24 (inspection fees); adoption of revisions to Regulation III and the El Paso state implementation plan for lead; discussion of EPA proposal to disapprove revisions to the ozone state implementation plan and to implement sanctions in Dallas and Tarrant Counties, and issues associated with development of ozone control strategies affecting the counties adjacent to Dallas and Tarrant Counties.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354.

Filed: August 5, 1987, 1:58 p.m.
TRD-8706465

10:30 a.m. The board will approve minutes of the July 17, 1987, meeting; hear public testimony; reports; consider and act on proposed rules; consider update on the United States Environmental Protection Agency sanctions and state implementation plan requirements for Dallas and Tarrant Counties; hear the enforcement report; consider agreed enforcement orders; hear the hearing examiner's report; and consider new business.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354.

Filed: August 5, 1987, 1:58 p.m.
TRD-8706466



Texas State Board of Dental Examiners

Friday, August 28, 1987, 5 p.m. The Texas State Board of Dental Examiners, will meet at the UT Dental Branch, 6516 John Freeman, Houston. According to the agenda summary, the board will discuss 1988 examinations; review proposed examination schedules; exam requirements and forms; consider request of Dr. F.A. Khatiblou to take dental exam; request of Dr. Dudley Hodgkins to practice dual specialties; discussion of budgetary matters; 1988 renewal fees; consider anesthesia applications; discuss

Senate Bill 1421; and private legal counsel.

Contact: William S. Nail, 8317 Cross Park Drive, Suite 400, Austin, Texas 78754, (512) 834-6021.

Filed: August 4, 1987, 2:10 p.m.
TRD-8706420



Texas Diabetes Council

Thursday, August 13, 1987, 1:30 p.m. The Texas Diabetes Council will meet in Room G-107, 1100 West 49th Street, Austin. According to the agenda summary, the council will approve minutes of the March 26, 1987, meeting; consider update on current workplan; adoption of new workplan; update on third party reimbursement; follow-up on Mexican American and diabetes conference; and review of council legislation and state plan activities.

Contact: Charlene Laramey, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7534.

Filed: August 4, 1987, 10:58 a.m.
TRD-8706400



Texas Employment Commission

Wednesday, August 12, 1987, 7:30 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, action on tax liability cases and higher level appeals in unemployment compensation cases listed on commission docket 32, and set date of next meeting.

Contact: Courtenay Browning, 101 East 15th Street, Austin, Texas 78778, (512) 463-2226.

Filed: August 4, 1987, 1:54 p.m.
TRD-8706414



Texas Department of Health

Thursday, August 13, 1987, 10:30 a.m. The Task Force on Third Party Reimbursement of the Texas Department of Health will meet in Room G-107, 1100 West 49th Street, Austin. According to the agenda summary, the task force will approve minutes of the previous meeting; hear a report on the July 21, 1987, Baltimore meeting; and follow-up on task force activities.

Contact: Charlene Laramey, 100 West 49th Street, Austin, Texas 78756, (512) 458-7534.

Filed: August 4, 1987, 10:58
TRD-8706401



Texas Health and Human Services Coordinating Council

Monday, August 17, 1987, 9 a.m. The Public/Private Policy Group of the Texas Health and Human Services Coordinating Council will meet in the Sergeants Room, State Capitol, Austin. According to the agenda summary, the group will approve minutes of the June 30, 1987, meeting; hear the council report; consider level classification-TDHS Work Group; hear Common Documents Committee report; Cost Committee report; Program Committee report; consider monitoring subcommittee; Council on Accreditation-David Shover; old and new business; and selection of next meeting date.

Contact: Patrice Thomas, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: August 4, 1987, 1:52 p.m.
TRD-8706429



Texas Housing Agency

Thursday, August 13, 1987, 1 p.m. The Finance and Audit Committee of the Texas Housing Agency will meet in Suite 300, 811 Barton Springs Road, Austin. According to the agenda summary, the committee will consider and possibly act on the format and content for request for proposals for investment bankers and bond counsel, and conduct interviews with public accounting firms and trustee banks responding to an earlier request for proposal.

Contact: Dan A. McNeil, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: August 5, 1987, 10:31 a.m.
TRD-8706458



Texas Department of Human Services

Monday-Wednesday, August 24-26, 1987, 6 p.m., 8:30 a.m., and 9 a.m., respectively. The Children's Trust Fund of the Texas Department of Human Services will meet in the Guest Quarters Hotel, 303 West 15th Street, Austin. According to the agenda, the department on Monday will overview agenda, hear proposal presentations, and follow-up discussion; on Tuesday hear proposal presentations and follow-up discussion; and on Wednesday overview agenda, summary of renewals/contracts, consider legislative review/management policy, hear the administrative report, and consider the calendar.

Contact: Jamie Fields, P.O. Box 160610, Austin, Texas 78716-0610, (512) 345-9218.

Filed: August 5, 1987, 1:58 p.m.
TRD-8706467



State Board of Insurance

Wednesday, August 12, 1987, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance, will meet at 1110 San Jacinto Boulevard, Austin. According to the agenda, the board submitted a revised agenda for a meeting to be held in Room 342, to consider Docket 9642—Application of American Travellers Life Insurance Company, Warrington, Pennsylvania, to acquire control of ISL Life Insurance Company, Dallas.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

Filed: August 4, 1987, 4:38 p.m.
TRD-8706447



Texas Mohair Producers Board

Wednesday, August 19, 1987, 2 p.m. The Texas Mohair Producers Board of the Texas Department of Agriculture, will meet in the Guadalupe Room, Inn of the Hills, Kerrville. According to the agenda, the board will approve minutes of the March 28 and June 2, 1987, meetings, hear financial reports, and consider old and new business.

Contact: Robert M. Paschal, P.O. Box 5337, San Angelo, Texas 76902, (915) 655-3161.

Filed: August 6, 1987, 9:18 a.m.
TRD-8706477



Board of Nurse Examiners

Thursday, August 20, 1987, 11 a.m. The Board of Nurse Examiners will meet in the Sunrise Motor Hotel, 7622 North I-35, Austin. According to the agenda summary, the board will consider the recommendations of the Ad Hoc Committee on Delegation Rules, and discuss a possible fee increase. The board will also meet in executive session pursuant to Texas Civil Statutes, Article 6252-17 to discuss the delegation rules with the board's attorney, scheduled for 11:10 a.m.

Contact: Louise Sanders, 1300 East Anderson C-225, Austin, Texas 78752, (512) 835-4880.

Filed: August 4, 1987, 2:09 p.m.
TRD-8706428



Pan American University

Tuesday, August 11, 1987

The Board of Regents of Pan American University will meet in the Boardroom, Administration Building, Pan American University, Edinburg. Times and agendas follow.

10 a.m. The board will be presented with a 1987-1988 PAU budget review prior to the regular board meeting.

Contact: Miguel A. Nevarez, 1201 West University Drive, Edinburg, Texas 78539, (512) 381-2100.

Filed: August 4, 1987, 2:00 p.m.
TRD-8706421

1:30 p.m. The Buildings and Grounds Committee will consider acceptance of H&PE Building, repair and rehabilitation-roof repairs bid, and informational items.

Contact: Miguel A. Nevarez, 1201 West University Drive, Edinburg, Texas 78539, (512) 381-2100.

Filed: August 4, 1987, 2:00 p.m.
TRD-8706422

1:45 p.m. The Finance Committee will consider request for higher education assistance fund, financial aid/tuition installment policies-revision, flexible benefits plan bids, soft drink vending contract renewal, candy and food vending contract renewal, alumni association lease agreement with PAU-E, alumni association service contract with PAU-E, amusement machines contract renewal, coin-operated laundry contract renewal, proposed budgets for PAU-E for fiscal year 1988, proposed budgets for PAU-B for fiscal year 1988, budget changes, approval for graduate tuition rate, and informational items including MFC Associates.

Contact: Miguel A. Nevarez, 1201 West University Drive, Edinburg, Texas 78539, (512) 381-2100.

Filed: August 4, 1987, 1:58 p.m.
TRD-8706423

2 p.m. The Development Committee will consider greater PAU fund request; Ayleen Procter Wilcox gift; approval of gifts and donations including gift-in-kind-Fausto Yturria, and Domingo Useda; and informational items.

Contact: Miguel A. Nevarez, 1201 West University Drive, Edinburg, Texas 78539, (512) 381-2100.

Filed: August 4, 1987, 1:58 p.m.
TRD-8706424

2:15 p.m. The Brownsville Committee will consider PAU-B lease and service agreements with Texas Southmost College concerning contract-rental of facilities, library services, and student first aid station; and president's informational items.

Contact: Miguel A. Nevarez, 1201 West University Drive, Edinburg, Texas 78539, (512) 381-2100.

Filed: August 4, 1987, 1:59 p.m.
TRD-8706425

2:30 p.m. The Academic Affairs Committee will consider academic short-term priorities and long term planning process; Texas Southmost contract to teach remedial

courses; proposed revisions to faculty duties and responsibilities; and informational items. The committee will also meet in executive session to consider employment of faculty (new hires), promotion re: Dr. Morley Grossman (PAU-E), grievance appeal of Dr. Charles Strong (PAU-E), tenure recommendation re: Dr. A.J. Alamia (PAU-E), imminent litigation concerning deceptive trade practices, promotion appeal of Dr. William Vaughn (PAU-B), and presidents' supplemental salary.

Contact: Miguel A. Nevarez, 1201 West University Drive, Edinburg, Texas 78539, (512) 381-2100.

Filed: August 4, 1987, 1:59 p.m.
TRD-8706426

2:45 p.m. The board will consider reports from the Buildings and Grounds Committee, Finance Committee, Development Committee, Brownsville Committee, Academic Affairs Committee, and Committee of the Whole; PAU-E 1987-1988 holiday schedule; PAU-B 1987-1988 holiday schedule; president's informational items; and date of next meeting. The board will also meet in executive session.

Contact: Miguel A. Nevarez, 1201 West University Drive, Edinburg, Texas 78539, (512) 381-2100.

Filed: August 4, 1987, 1:59 p.m.
TRD-8706427



Department of Public Safety

Thursday, August 20, 1987, 1:30 p.m. The State Emergency Management Council of the Division of Emergency Management for the Department of Public Safety will meet in the Emergency Operations Center, 5805 North Lamar Boulevard, Austin. According to the agenda summary, the council will review and appoint Local Emergency Planning Committees authorized under the superfund amendments and Reauthorization Act, Title III, of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

Contact: Mike L. Scott, 5805 North Lamar Boulevard, Austin, Texas 78773, (512) 465-2138.

Filed: August 5, 1987, 12:53 p.m.
TRD-8706463



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.

Wednesday, August 12, 1987, 9 a.m. The Hearings Division will consider Dockets 7394, 7414, 7016, 6992, 7483, 7367, and 7377.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 4, 1987, 2:32 p.m.
TRD-8706431

Wednesday, August 12, 1987, 11 a.m. The Administrative Division will approve minutes of the previous meeting; discuss and act on budget and fiscal matters; consider briefing regarding telephone rate filing package; proposed membership in Extended Service Advisory Committee; discuss and act on designation and charge to a staff team for the purpose of negotiating nuclear prudence reviews; and set time and place for next meeting. The division will also meet in executive session to consider personnel and litigation matters and reconvene for decisions considered in executive session.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 4, 1987, 2:32 p.m.
TRD-8706432

Friday, August 14, 1987, 1 p.m. The Hearings Division will consider Docket 7623—Application of EDC One, Inc. and Texas Utilities Electric Company for a certification of cogeneration agreement.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 4, 1987, 2:31 p.m.
TRD-8706433

Friday, August 21, 1987, 10 a.m. The Hearings Division has rescheduled a meeting originally scheduled for 9 a.m. on the same date concerning Docket 7581—Petition of National Cogeneration Inc. for an order requiring execution of power purchase contract by Texas Utilities Electric Company.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 5, 1987, 1:59 p.m.
TRD-8706468

Tuesday, September 29, 1987, 10 a.m. The Hearings Division will consider Docket 7444—Complaint of Alpha Payphones, Ltd. against General Telephone Company of the Southwest.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 4, 1987, 2:31 p.m.
TRD-8706434



Secretary of State

Wednesday, August 12, 1987, 10 a.m. The Secretary of State will meet in the House Committee Room, Second Floor, State Capitol, Austin. According to the agenda,

the secretary of state will draw for ballot placement for constitutional amendments for the November 2, 1987, election.

Contact: Randall Erben, 11th and Congress Avenue, Room 127, Austin, Texas 78711, (512) 463-5701.

Filed: August 4, 1987, 4:29 p.m.
TRD-8706474



Texas Tech University

Wednesday, August 12, 1987, 11 a.m. The Finance and Administration Committee of the Board of Regents for Texas Tech University will meet in Room 645, West Tower, Hyatt Regency D/FW, Dallas. Agendas follow.

The committee will consider the fiscal year 1988 operating budget and hear reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: August 5, 1987, 10:48 a.m.
TRD-8706461

The committee will consider the fiscal year 1989 operating budget and hear reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: August 5, 1987, 10:48 a.m.
TRD-8706462



Texas Water Commission

The Texas Water Commission will meet in the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Dates, times, rooms, and agendas follow.

Wednesday, September 2, 1987, 10 a.m. The Office of Hearings Examiner will meet in Room 215, to consider Docket 7253-G—Rate increase of Wren Water Supply.

Contact: Joseph O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 4, 1987, 11:03 a.m.
TRD-8706402

Wednesday, September 2, 1987, 10 a.m. The Office of Hearings Examiner will meet in Room 215, to consider Docket 7215-S—Application for transfer of a water and sewer certificate of convenience and necessity filed by Perare, Inc.

Contact: Joseph O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 4, 1987, 11:02 a.m.
TRD-8706403

Tuesday, September 8, 1987, 10 a.m. The Office of Hearings Examiner will meet in Room 512, to consider Docket 7286-G—Rate increase of Thomas Water System.

Contact: Joseph O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 4, 1987, 11:03 a.m.
TRD-8706404

Wednesday, October 7, 1987, 10 a.m. The commission will meet in Room 118, to consider Application 5146—City of Farmers Branch seeking a permit to impound water in a proposed dam and reservoir on Farmers Branch Creek, tributary of Elm Fork Trinity River, tributary of Trinity River, Trinity Rikver Basin, for in-place recreational purposes in Dallas County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 4, 1987, 11:04 a.m.
TRD-8706405

Wednesday, October 7, 1987, 10 a.m. The commission will meet in Room 118, to consider City of Farmers Branch 5147 seeking a permit to impound water in a proposed dam and reservoir on Rawhide Creek, tributary of Elm Fork Trinity River, tributary of the Trinity River, Trinity River Basin, for in-place recreational use in Dallas County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 4, 1987, 11:04 a.m.
TRD-8706406

Wednesday, October 7, 1987, 10 a.m. The commission will meet in Room 118, to consider hearing on Texas-New Mexico Power Company 5148, seeking a permit to construct and maintain a dam and reservoir on Dry Branch, tributary of Bee Branch and a 61 acre foot capacity reservoir on an unnamed tributary of Bee Branch, tributary of Walnut Creek, tributary of the Little Brazos River, tributary of the Brazos River, Brazos River Basin, to contain runoff from applicant's power plant, which is to be located west-northwest of Franklin in Robertson County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 4, 1987, 11:04 a.m.
TRD-8706450



Regional Agencies Meetings Filed August 4

The Education Service Center, Region VII, Board of Directors, will meet in the Holiday Inn, Henderson, on August 18, 1987, at 7 p.m. Information may be obtained from Don J. Peters, 818 East Main, Kilgore, Texas 75662, (214) 984-3071.

The Hansford County Appraisal District, will meet in a regular board meeting at 709 West Seventh Street, Spearman, on August 12, 1987, at 9 a.m. Information may be obtained from Alice Peddy, P.O. Box 567, Spearman, Texas 79081, (806) 659-5575.
TRD-8706407

Meetings Filed August 5

The Blanco County Appraisal District, Board of Directors, will meet at the Blanco County Courthouse Annex, Johnson City, on August 11, 1987, at 6 p.m. Information may be obtained from Hollis Petri, P.O. Box 338, Johnson City, Texas 78636, (512) 868-4624.

The Cherokee County Appraisal District, Board of Directors, will meet at 107 East Sixth Street, Rusk, on August 13, 1987, at 2:30 p.m. Information may be obtained from S.R. Danner, P.O. Box 494, Rusk, Texas 75785, (214) 683-2296.

The Comal Appraisal District, Appraisal Review Board, will meet at 644 North Loop 337, New Braunfels, on August 25, 1987, at 8:30 a.m. and at 430 West Mill Street, New Braunfels, on September 3 and 14-16, 1987, at 9 a.m. Information may be obtained from R. Richard Rhodes, Jr., P.O. Box 311222, New Braunfels, Texas 78131-1222, (512) 625-8597.

The Concho Valley Council of Governments, Executive Committee, will meet at Horseshoe Bay and Country Club, Marble Falls, on August 12, 1987, at 7:30 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 79606, (915) 944-9666.

The Coryell County Appraisal District, Board of Directors, will meet at 113 North Seventh Street, Gatesville, on August 17, 1987, at 7 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593.

The Deep East Texas Council of Governments, Board of Directors, will meet at the Trinity Community Center, City of Trinity, on August 27, 1987, at 11 a.m. Information may be obtained from Katie Bayliss, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704.

The Education Service Center, Region V, Board of Directors, will meet at 2295 Delaware Street, Beaumont, on August 13, 1987, at 1:15 p.m. Information may be obtained from Fred J. Waddell, 2295 Delaware Street, Beaumont, Texas 77703, (409) 835-5212.

The Edwards Underground Water District, Board of Directors, will meet at 1615 North St. Mary's, San Antonio, on August 11, 1987, at 10 a.m. Information may be obtained from Thomas P. Fox, 1615 North St. Mary's, San Antonio, Texas 78215, (512) 222-2204.

The Garza County Appraisal District, Board of Directors, will meet at the Appraisal Office, Courthouse, Post, on August 13, 1987,

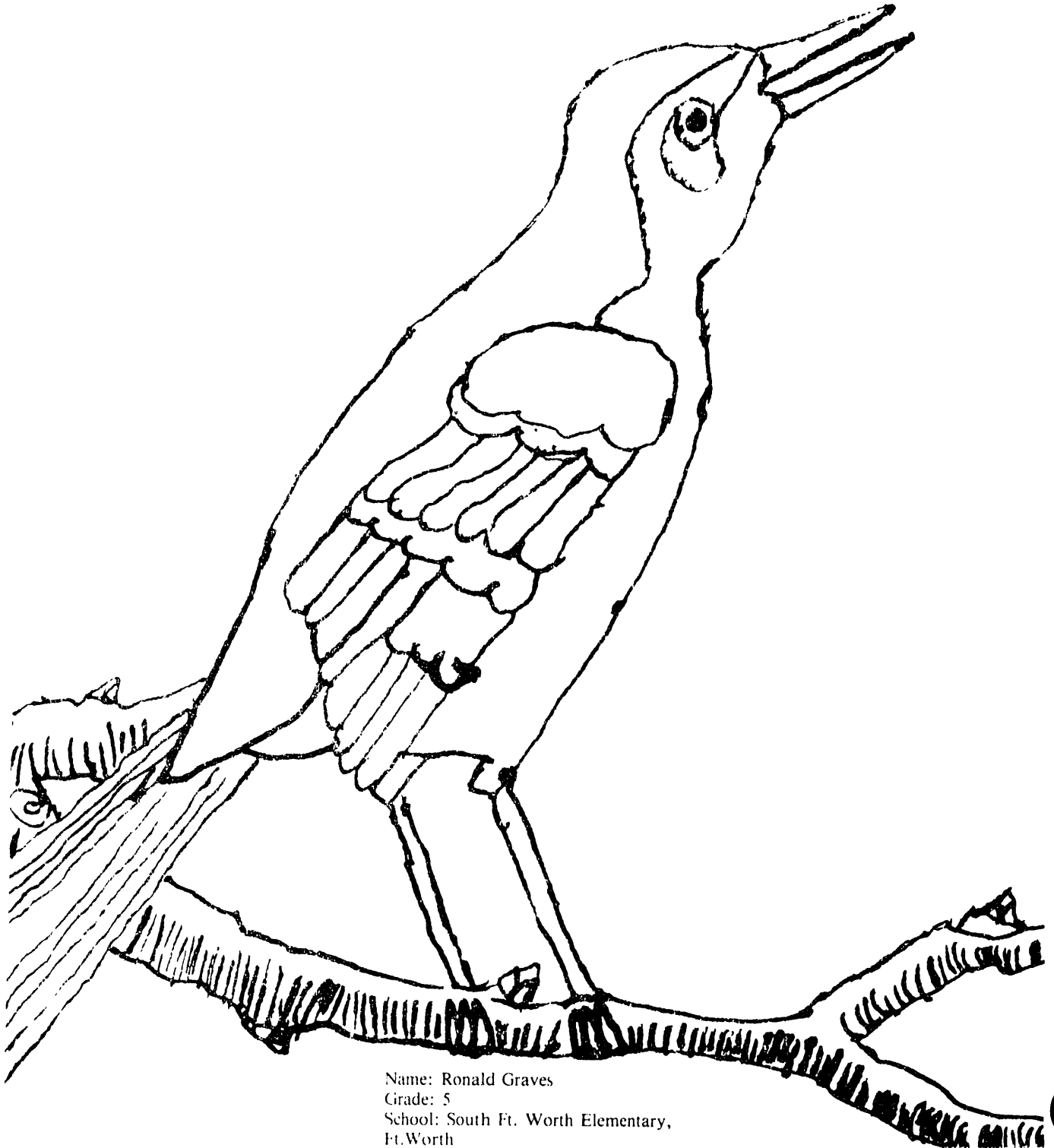
at 9 a.m. Information may be obtained from Jean M. Westfall, P.O. Drawer F. Post, Texas 79356, (806) 495-3518.

The Henderson County Appraisal District, Board of Directors, met at 101 East Corsicana, Athens, on August 10, 1987, at 6:30 p.m. Information may be obtained from Helen Marchbanks, 101 East Corsicana, Athens, Texas 75751, (214) 675-9296.

The Hickory Underground Water Conservation District #1, Board of Advisors, will meet at 2005 Nine Road, Brady, on August 13, 1987, at 7 p.m. Information may be obtained from Rick Illgner, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785.

The Rusk County Appraisal District, Board of Directors, will meet in the Administrative Office, 107 North Van Buren, Henderson,

on August 13, 1987, at 1:30 p.m. Information may be obtained from Melvin R. Cooper, P.O. Box 7, Henderson, Texas 75653-0007, (214) 657-4776.
TRD-8706460



Name: Ronald Graves
Grade: 5
School: South Ft. Worth Elementary,
Ft. Worth

In Addition

The *Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Community Affairs Request for Proposals

The Texas Department of Community Affairs (TDCA), administering agency for the Weatherization Assistance for Low-Income Persons (WAFLIP) Program in Texas, invites proposal to arrange for the delivery of weatherization services in the counties of Galveston, Fort Bend, and Wharton, effective no earlier than September 1, 1987.

Selected offerors will be expected to deliver weatherization services to eligible households in accordance with the rules and regulations 10 Code of Federal Regulations Part 440, issued under the Energy Conservation and Production Act, Title IV, as amended by Public Law 94-385, 90 Statutes 1150 (42 United States Code 6861 et seq.). Services and activities solicited via this request for proposals are those that weatherize houses to make them more energy efficient thereby reducing energy consumption and utility costs. Examples of weatherization measures include weatherstripping, caulking, installation of attic insulation, and other weatherproofing as allowed by program regulations promulgated by the United States Department of Energy.

The designated service area(s) for this solicitation is (are) Galveston, Fort Bend, and/or Wharton counties. The proposed contract performance period is September 1, 1987-August 31, 1988. The initial funds estimate for the entire area, including monies for administration, liability insurance coverage, materials, and program support, is \$80,000.

However, offerors may submit proposals for less than the entire three-county service area. Sub-areas and initial funding amounts are for Galveston County, \$35,027; for Fort Bend County, \$18,089; for Wharton County, \$26,884.

Offerors responding to this notice must be, or become familiar with, the WAFLIP program regulations set forth in 10 Code of Federal Regulations Part 440, including those regulations issued in the January 4, 1985, issue of the *Federal Register* (50 FedReg 708) and prepare a proposal that includes planned publicity and outreach for the program, a description of the organization's financial accounting system and audit records history, the type(s) of work force (existing staff, new-hire staff, subcontractors, etc.) to be used, and any other information required by the request for proposals packet.

Selection of an offeror(s) is competitive and will be based on a grading system that awards points to proposals in the following or more component areas: organization purpose(s); planned outreach methods; financial accounting system; audit history; actual work force and task planning; interagency coordination; and compliance with request

for proposal submission requirements.

Qualifications. Offerors eligible to respond to this request are political subdivisions of Texas, and private, nonprofit, community-based corporations. Offerors must be able to document their capability to accomplish the proposed services. Preference will be given to those organizations whose past performance record demonstrates effectiveness in providing tangible assistance to low-income households or in the actual provisions of weatherproofing services. Furthermore, offerors will be requested to include documentation of their legal authority and eligibility to contract with the TDCA.

Deadline. The request for proposals period will close at 5 p.m. on August 24, 1987, except for proposals officially postmarked on or before August 21, 1987, and received on or before August 26, 1987.

Complete proposals may be mailed to the Energy, Housing and Economic Assistance Division (EHEAD) of the Texas Department of Community Affairs, P.O. Box 13166, Austin, Texas 78711. Proposals which are special mailed or hand-carried may be delivered to the EHEAD, 8317 Cross Park Drive, Third Floor, Austin, Texas 78754-5124.

General Information. The TDCA reserves the right to accept or reject any or all proposals submitted. The TDCA is under no legal requirement to execute a contract on the basis of this notice and intends this material only as a means of identifying the various contractor alternatives. The TDCA intends to use responses as a basis for further negotiation of specific project details with potential contractors. If the TDCA selects a contractor(s) to provide the delivery of services, the TDCA will base its choice(s) upon criteria including, but not limited to, the demonstrated effectiveness to serve the low-income population sector; experience in weatherproofing services; and the capability to establish a weatherization service delivery system intended to meet the needs of the target population-households with annualized income at 125% of poverty level with priority to the elderly and handicapped.

Selection will be for one or more contractor organizations to serve the counties of Galveston, Fort Bend, and Wharton. This request does not commit the TDCA to pay for any costs incurred prior to the execution of a contract and is subject to the availability of fiscal year 1987 and fiscal year 1988 WAFLIP program funds from the United States Department of Energy, the United States Department of Health and Human Services, low-income home energy assistance program block grant, and any other sources.

The TDCA specifically reserves the right to vary any or all provisions at any time prior to the execution of a contract(s) if the TDCA deems such variances to be in the best

interest of the state, and to otherwise act as it determines in its sole discretion.

For a request for proposals packet or additional information regarding this notice, please contact Stanley Burnham, Texas Department of Community Affairs, Energy, Housing and Economic Assistance Division, P.O. Box 13166, Austin, Texas 78711, (512) 834-6050.

Issued in Austin, Texas, on August 4, 1987

TRD-8706455 Bruce Anderson
General Counsel
Texas Department of Community
Affairs

Filed: August 5, 1987
For further information, please call (512) 834-6060



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) 07/27/87-08/16/87	18.00%	18.00%
Monthly Rate— Article 1.04(c) ⁽¹⁾ 08/01/87-08/31/87	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 08/01/87-08/31/87	10.00%	10.00%

(1) For variable rate commercial transactions only
(2) Only for open end credit as defined in Texas Civil Statutes Article 5069.10111
(3) Credit for personal, family, or household use
(4) Credit for business, commercial, investment, or other similar purpose
Issued in Austin, Texas, on August 3, 1987

TRD-8706456 Al Endsley
Consumer Credit
Commissioner

Filed August 5, 1987
For further information, please call (512) 479-1280



Texas Economic Development Commission Private Activity Bond Allocation Report

The Tax Reform Act of 1986 (the Tax Act) imposes a volume ceiling on the aggregate principal amount of private activity bonds that may be issued within the State of Texas during any calendar year. The state ceiling for Texas, imposed by the Tax Act for calendar year 1987 is \$1,227,750,000.

State legislation, 70th Legislature, Senate Bill 1382, was passed, effective June 20, 1987, to establish the allocation process. The Act specifies that one-third of the state ceiling is to be made available to qualified mortgage bonds and of that one-third, one-third is available to the Texas Housing Agency. One-fourth of the state ceiling is available to state-voted issues, and the balance of the state ceiling is available for all other issuers of bonds requiring an allocation.

As a result of Senate Bill 1382, the aggregate amount for qualified mortgage bond subceiling is \$302,376,642, with \$201,584,428 available to the local housing authorities and \$100,792,214 available to the Texas Housing Agency. The aggregate amount for state-voted issues is \$226,782,481, and the amount for all other bonds requiring an allocation is \$377,970,802.

Generally, the state ceiling will be allocated on a first-come, first-served basis within the applicable subceiling, with the Texas Economic Development Commission (the commission) administering the allocation system.

The information that follows is a summary report of the allocation activity for the period July 27, 1987-July 31, 1987.

Weekly Report on the 1987 Allocation of the State Ceiling on Certain Private Activity Bonds as Pursuant to Senate Bill 1382

Total amount of state ceiling remaining unreserved for the \$302,376,642 subceiling for qualified mortgage bonds under Senate Bill 1382 through July 31, 1987: \$302,376,642.

Total amount of state ceiling remaining unreserved for the \$226,782,481 subceiling for state-voted issues under Senate Bill 1382 from July 27, 1987, through July 31, 1987: \$226,782,481.

Total amount of state ceiling remaining unreserved for the \$377,970,802 subceiling for all other bonds under Senate Bill 1382 from July 27, 1987, through July 31, 1987: \$372,470,802.

Total amount of the \$1,227,750,000 state ceiling remaining unreserved as of July 31, 1987: \$901,629,925.

Comprehensive listing of bond issues which have received a reservation date per Senate Bill 1382 from July 27, 1987, through July 31, 1987: None.

Comprehensive listing of bonds issued and delivered as per Senate Bill 1382 from July 27, 1987, through July 31, 1987: None.

Issued in Austin, Texas, on August 4, 1987.

TRD-8706457 David V. Brandon
Executive Director
Texas Economic Development
Commission

Filed August 5, 1987

For further information, please call (512) 472-5059.



Texas Education Agency Notice of Cancellation

The Texas Education Agency is cancelling the request for proposals entitled early childhood program evaluation to evaluate the effectiveness of programs for three to five-year-old handicapped students in the State of Texas. The original request was published in the June 23, 1987, issue of the *Texas Register* (12 TexReg 2022).

It is planned that another request for proposals will be issued at a subsequent time.

Issued in Austin, Texas, on August 3, 1987.

TRD-8706454 W N Kirby
Commissioner of Education

Filed August 5, 1987

For further information, please call (512) 463-9212



Texas Department of Health Correction of Error

Withdrawn rules submitted by the Texas Department of Health contained errors as published in the July 28, 1987, issue of the *Texas Register* (12 TexReg 2478).

In the withdrawn proposed repeals of §§229.141-229.149 and proposed new §§229.271-229.273, 229.301-229.312, 229.321-229.324, 229.331-229.334, the withdrawal notice should include: "The rules are withdrawn because they will be repropose with the cooperation of the Texas Commission on Alcohol and Drug Abuse, which now has authority to regulate and charge fees concerning methadone clinic under authority of House Bill 1085, 70th Legislature, Regular Session, 1987."

Radioactive Material License Amendment

Notice is hereby given by the Texas Department of Health that it has granted an amendment to the following radioactive material license: Radioactive Material License 11-1937, issued to Iso-Fex, Inc. for their facility located in Brazoria County (mailing address: Iso-Fex, Inc., P.O. Box 909, Friendswood, Texas 77546).

The amendment of this license is summarized as follows

The licensee's facility is now classified as a Class A waste processing facility rather than a Class B. The activity possession limits are reduced accordingly to: Group I-10 mCi; Group II-100 mCi; Group III-1 Ci; and Group IV-10 Ci.

The licensee may dispose of waste containing concentrations of carbon-14, hydrogen-3, and iodine-125 equal to or less than 0.05 microcuries per gram without regard to its radioactivity in accordance with *Texas Regulations for Control of Radiation* 21.307.

This notice affords the opportunity for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as required by Texas Civil Statutes, Article 4590f, §11B(b), as amended, and as set out in TRCR 13.6. A person affected is defined as a person who is a resident of a county, or a county adjacent to a county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage. A person affected may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control, 1100 West 49th Street, Austin, Texas 78756. Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing by timely filed, the amendment will remain in effect.

A copy of all material submitted is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin. Information relative to the amendment of this specific radioactive material license may be obtained by contacting David K. Lacker, Chief, Bureau of Radiation Control, 1100 West 49th Street, Austin, Texas 78756. For further information, please call (512) 835-7000.

Issued in Austin, Texas, on July 29, 1987.

TRD-8706430 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: August 4, 1987

For further information, please call (512) 835-7000.



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 American General Health Plan, Inc., a domestic health maintenance organization. The home office is in Dallas.

(2) Application for a name change by Guaranty Insurance Company of America, a foreign life insurance company. The home office is in Portland, Oregon. The proposed new name is American Guaranty Life Insurance Company.

(3) Application for a name change by Kinder Life Insurance Company, a foreign life insurance company. The home office is in Birmingham, Alabama. The proposed new name is Assured Security Life Insurance Company, Inc.

(4) Application for a name change by Allied Life Insurance Company of Texas, a domestic life insurance company. The home office is in Houston. The proposed new name is First Interstate Life Insurance Company of Texas.

(5) Application for admission to do business in Texas of Investors Title Insurance Company, a foreign title insurance company. The home office is in Chapel Hill, North Carolina.

(6) Application for admission to do business in Texas of Midwest Security Life Insurance Company, a foreign life insurance company. The home office is in La Crosse, Wisconsin.

(7) Application for admission to do business in Texas of Penn Treaty Life Insurance Company, a foreign life insurance company. The home office is in Allentown, Pennsylvania.

(8) Application for a name change by Buffalo Reinsurance Company, a foreign fire and casualty company. The home office is in Concord, New Hampshire. The proposed new name is Underwriters Reinsurance Company.

Issued in Austin, Texas, on July 31, 1987.

TRD-8706385 Nicholas Murphy
 Chief Clerk
 State Board of Insurance

Filed: August 3, 1987
For further information, please call (512) 463-6327.



Board of Nurse Examiners Bids Requested for Test Administration Service

The Board of Nurse Examiners for the State of Texas invites bids for a test administration service to administer the licensing examination in February and July of 1988 and 1989.

Scope of Services. The services provided by the test administration service will be to: work with staff of examination site regarding arrangements; receive and secure test booklets at test site or transport booklets to site; inventory test booklets at test site; and provide testing supplies not supplied by board. The test administration service will provide personnel to administer the examination as follows: examiner, one per site; assistant examiner, one per site; proctors, total of one for every 20 candidates. The proctors will be assigned as follows: one for every 35 seated candidates; doorkeepers; and miscellaneous, including proctor supervisors and escorts to restroom. The test administration service will orient personnel to security measures and testing procedures; check test booklets and verify that candidate identifying information is recorded

correctly; prepare necessary forms; return test booklets to testing service as instructed by the board; return specified test materials to board office; and comply with required security measures.

The Board of Nurse Examiners will: obtain examination sites; provide board liaison person to work with examiners; notify staff of examination site regarding number of candidates expected at each site; order test booklets; inventory test booklets upon receipt in board office; provide number of candidates expected at each site approximately 30 days in advance; issue admission cards; provide alpha candidate rosters, test booklet/candidate record in alpha order (one for each proctor), and seating labels; provide guidelines for emergency, late arrivals, etc.; provide copy of security measures and information to orient proctors; provide one copy of test administration manual for each site (to be treated as secure material); provide dialogue of necessary information to be read to candidates (information not in manual); arrange for shipping of test books from examination site.

Deadline for Submission. Bids will be accepted through September 15, 1987.

Contact Person. Should there be any questions regarding the services, please contact Louise Sanders, 1300 East Anderson Lane, Building C, Suite 225, Austin, Texas 78752, (512) 835-4880. This contract is subject to cancellation, without penalty, either in whole or in part, if funds are not appropriated.

Issued in Austin, Texas, on July 31, 1987.

TRD-8706399 Louise Sanders, R.N., Ph.D.
 Executive Secretary
 Board of Nurse Examiners

Filed: August 4, 1987
For further information, please call (512) 835-4880.

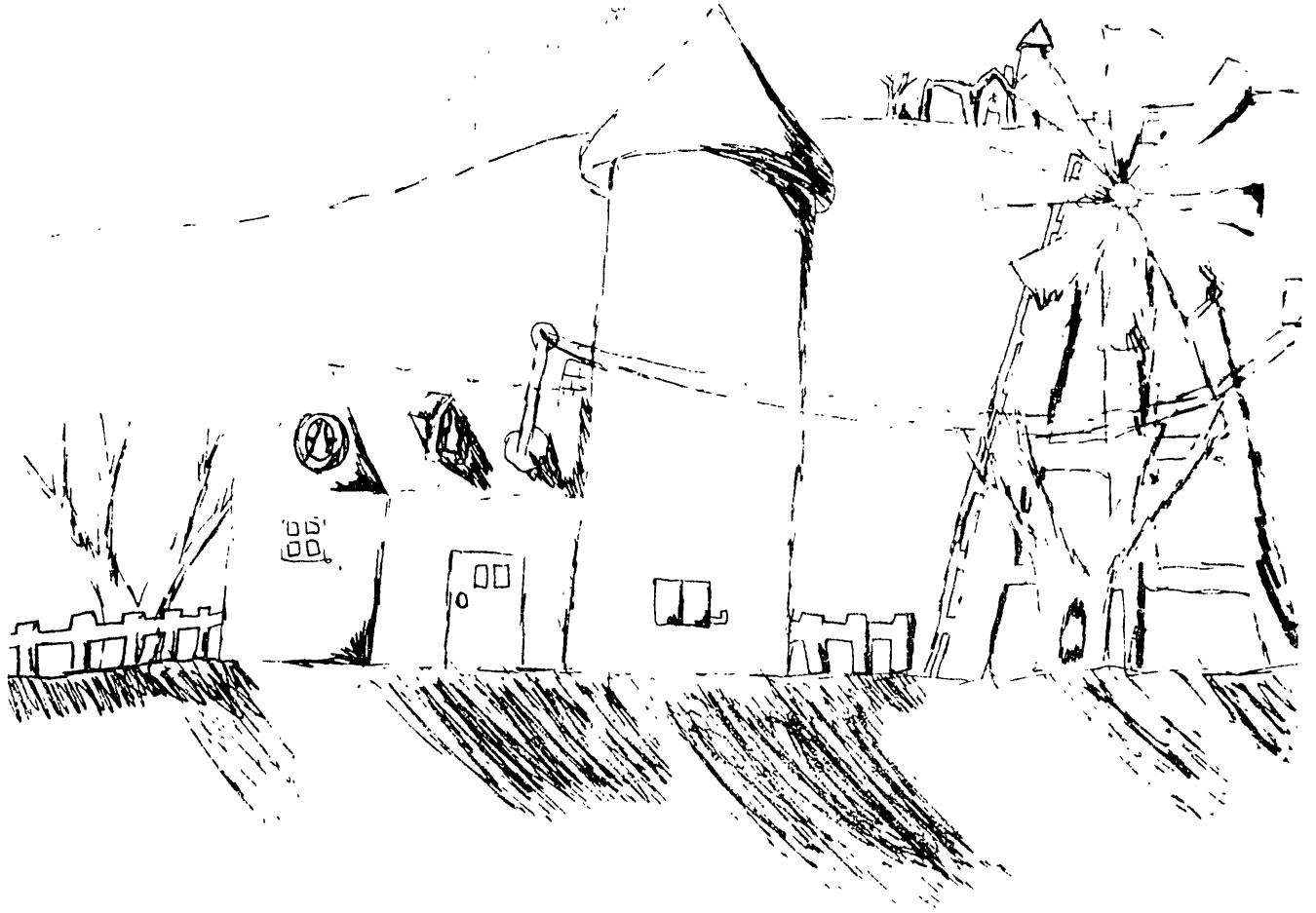


State Securities Board Correction of Error

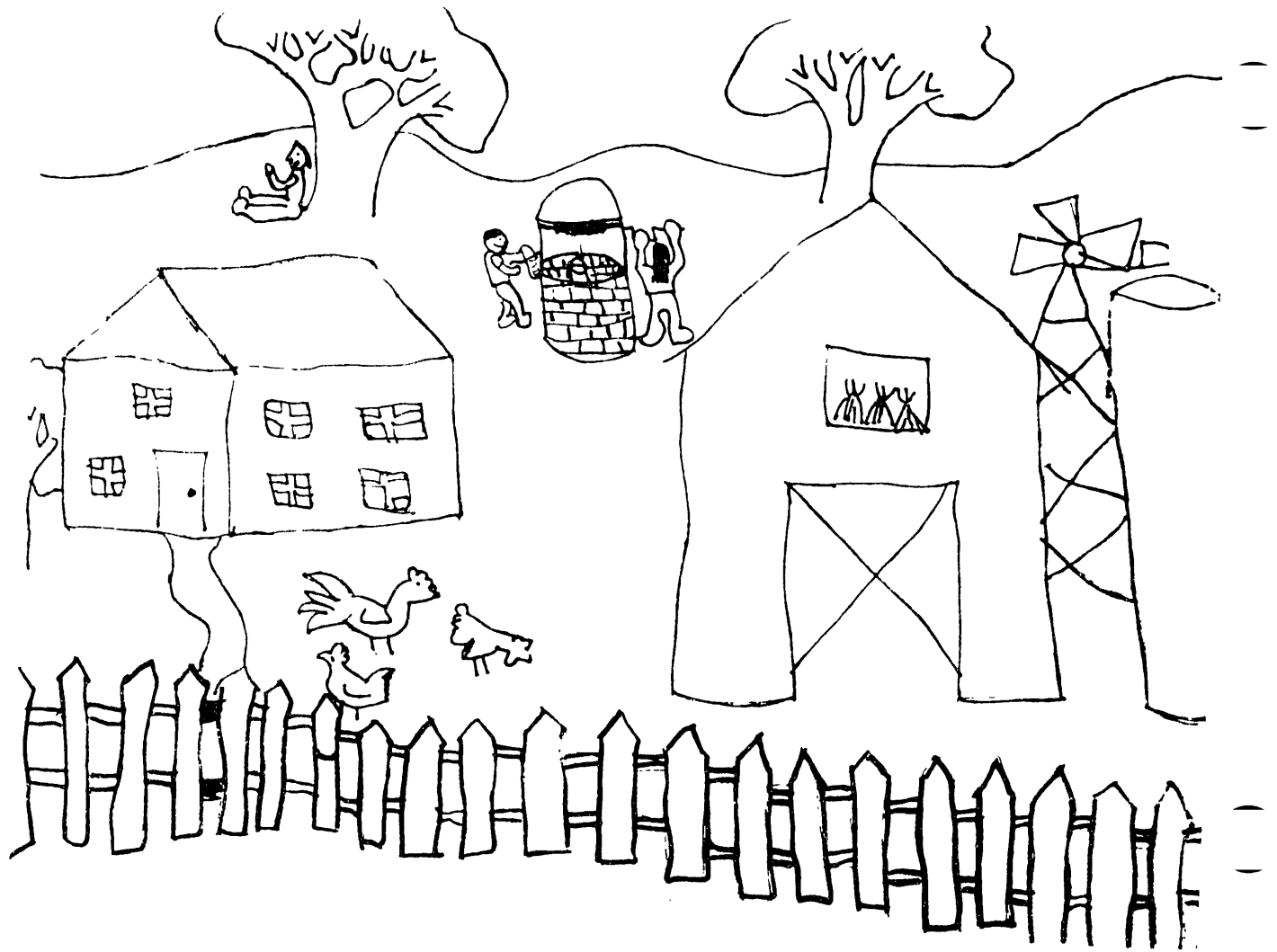
A proposed amendment submitted by the State Securities Board contained an error as published in the July 31, 1987, issue of the *Texas Register* (12 TexReg 2499).

In §109.13(1)(9)(A) the first sentence should read: "For sales under subparagraph (1)(B) of this subsection, in whole or in part to accredited investors listed in paragraph (11)(E)-(H) of this subsection of such definition of "accredited investor" issuers who are not registered securities dealers and who do not sell securities by or through registered securities dealers shall file a sworn notice on Form 133.29 or a reproduction thereof not less than 10 business days before any sale claimed to be exempt under this subsection may be consummated."





Name: Nathan Frazier
Grade: 5
School: Burton Hill Elementary, Ft. Worth



Name: Julie Peters
Grade: 5
School: Burton Hill Elementary, Ft. Worth

11

11

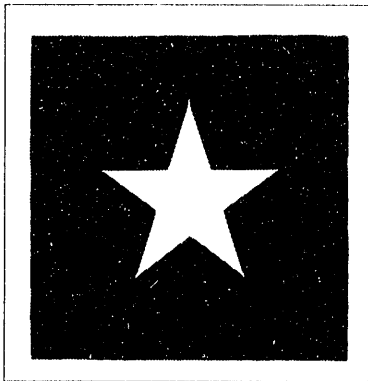
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