

TEXAS REGISTER

IN THIS ISSUE

Volume 20, Number 31 April 25, 1995

Page 3067-3110

Proposed Sections

Railroad Commission of Texas

Transportation Division

16 TAC §§5.401, 5.402, 5.404, 5.407, 5.411, 5.412,
5.423, 5.424, 5.431, 5.456-5.464, 5.466, 5.467 3077

16 TAC §§5.701-5.721 3078

Texas Parks and Wildlife Department

Fisheries

31 TAC §57.45 3087

31 TAC §57.61 3087

31 TAC §57.241 3087

31 TAC §57.282 3088

Parks

31 TAC §59.75 3089

Wildlife

31 TAC §65.174, §65.182 3089

Resource Protection

31 TAC §69.6, §69.9 3090

31 TAC §69.91, §69.93 3091

Withdrawn Sections

State Board of Examiners of Perfusionists

Perfusionists

22 TAC §761.16, §761.17 3093

Adopted Sections

Texas Department of Health

Home and Community Support Service Agen- cies

25 TAC §115.7 3095

Contents Continued Inside



The Texas Register is printed on recycled paper

Texas Register



a section of the Office of the Secretary of State P.O. Box 13824 Austin, TX 78711-3824 (512) 463-5561 FAX (512) 463-5569

Secretary of State Antonio O. Garza, Jr.

Director Dan Procter

Assistant Director Doc Wright

Circulation/Marketing Tamara Joiner Jill S. Ledbetter

TAC Editor Dana Blanton

TAC Typographer Madeline Chrimer

Documents Section Supervisor Patty Webster

Document Editors Roberta Knight

Open Meetings/Editor Jamie Alworth

Production Section Supervisor Ann Franklin

Production Editors/Typographers Carla Carter Roy Felps Mimi Sanchez

Receptionist Dancene Jarzombek

Texas Register, ISSN 0362-4781, is published semi-weekly 100 times a year except July 7, November 10, November 28, and December 29, 1995. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: one year - printed, \$95 and electronic, \$90; six-month printed, \$75 and electronic, \$70. Single copies of most issues are available at \$7 per copy. Material in the Texas Register is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the Texas Register Director, provided no such republication shall bear the legend Texas Register or "Official" without the written permission of the director. The Texas Register is published under the Government Code, Title 10, Chapter 2002. Second class postage is paid at Austin, Texas.

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

How to Use the Texas Register

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

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

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

Adopted Rules - sections adopted following a 30-day public comment period.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

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

How to Cite: Material published in the Texas Register is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 19 (1994) is cited as follows: 19 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 "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using Texas Register indexes, the Texas Administrative Code, section numbers, or TRD number.

Texas Administrative Code

The Texas Administrative Code (TAC) is the official compilation of all final state agency rules published in the Texas Register. Following its effective date, a rule is entered into the Texas Administrative Code. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC. West Publishing Company, the official publisher of the TAC, publishes on an annual basis.

The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals).

The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The Official TAC also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the TAC or to inquire about WESTLAW access to the TAC call West: 1-800-328-9352.

The Titles of the TAC, and their respective Title numbers are:

- 1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the TAC scheme, each section is designated by a TAC number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the Texas Administrative Code; TAC stands for the Texas Administrative Code; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the Texas Administrative Code, please look at the Table of TAC Titles Affected. The table is published cumulatively in the blue-cover quarterly indexes to the Texas Register (January 21, April 15, July 12, and October 11, 1994). In its second issue each month the Texas Register contains a cumulative Table of TAC Titles Affected for the preceding month. If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more Texas Register page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part 1. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year).

Update by FAX: An up-to-date Table of TAC Titles Affected is available by FAX upon request. Please specify the state agency and the TAC number(s) you wish to update. This service is free to Texas Register subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of \$2.00 per page (VISA, MasterCard). (512) 463-5561.

**Texas Natural Resource
Conservation Commission**

Control of Air Pollution From Motor Vehicles
30 TAC §114.13 3097

**Texas Parks and Wildlife
Department**

Fisheries

31 TAC §§57.111, 57.113-57.115, 57.117-57.120, 57.123,
57.129, 57.130-57.134 3097

31 TAC §57.130 3097

Parks

31 TAC §59.91 3097

**Texas Department of Protective and
Regulatory Services**

Child Protective Services

40 TAC §§700.1901-700.1903 3098

40 TAC §§700.1901-700.1902 3098

Open Meetings Sections

Texas State Board of Public Accountancy 3099

Texas Department of Agriculture 3099

State Employee Charitable Campaign 3100

Texas Growth Fund 3100

Texas Department of Health 3100

Texas Department of Housing and Community Af-
fairs 3100

Texas State Library and Archives Commission 3101

Texas Natural Resource Conservation Commission 3101

Texas Parks and Wildlife Department 3102

State Pension Review Board 3102

Texas Department of Protective and Regulatory Ser-
vices 3102

Public Utility Commission of Texas 3102

Texas Racing Commission 3103

Texas Sustainable Energy Development Council 3103

Texas Department of Transportation 3103

The University of Texas at El Paso 3103

Texas Workers' Compensation Insurance Fund 3103

Regional Meetings 3104

In Addition Sections

**Texas Commission on Alcohol and
Drug Abuse**

Revised Notice of Request for Proposals 3107

**Texas Boll Weevil Eradication
Foundation**

Correction of Error 3108

Notice of Public Hearing 3108

Texas Education Agency

Correction of Error 3108

Notice of Public Hearing Concerning Proposed State
Board of Education Rules for Driver Training Schools and
Programs 3108

Texas Department of Health

Correction of Error 3108

Texas Department of Insurance

Correction of Error 3109

Notice of Public Hearing 3109

Third Party Administrator Applications 3109

Texas Lottery Commission

Correction of Error 3109

**Teacher Retirement System of
Texas**

Request for Proposal for Investment Advisory Ser-
vices 3109

The University of Texas System

Consultant Award Notification 3110

Veterans Land Board

Request for Proposal-Financial Advisor 3110

Request for Proposal-Land Program Bond Counsel 3110

Prints

1

T.M.P

2)

and

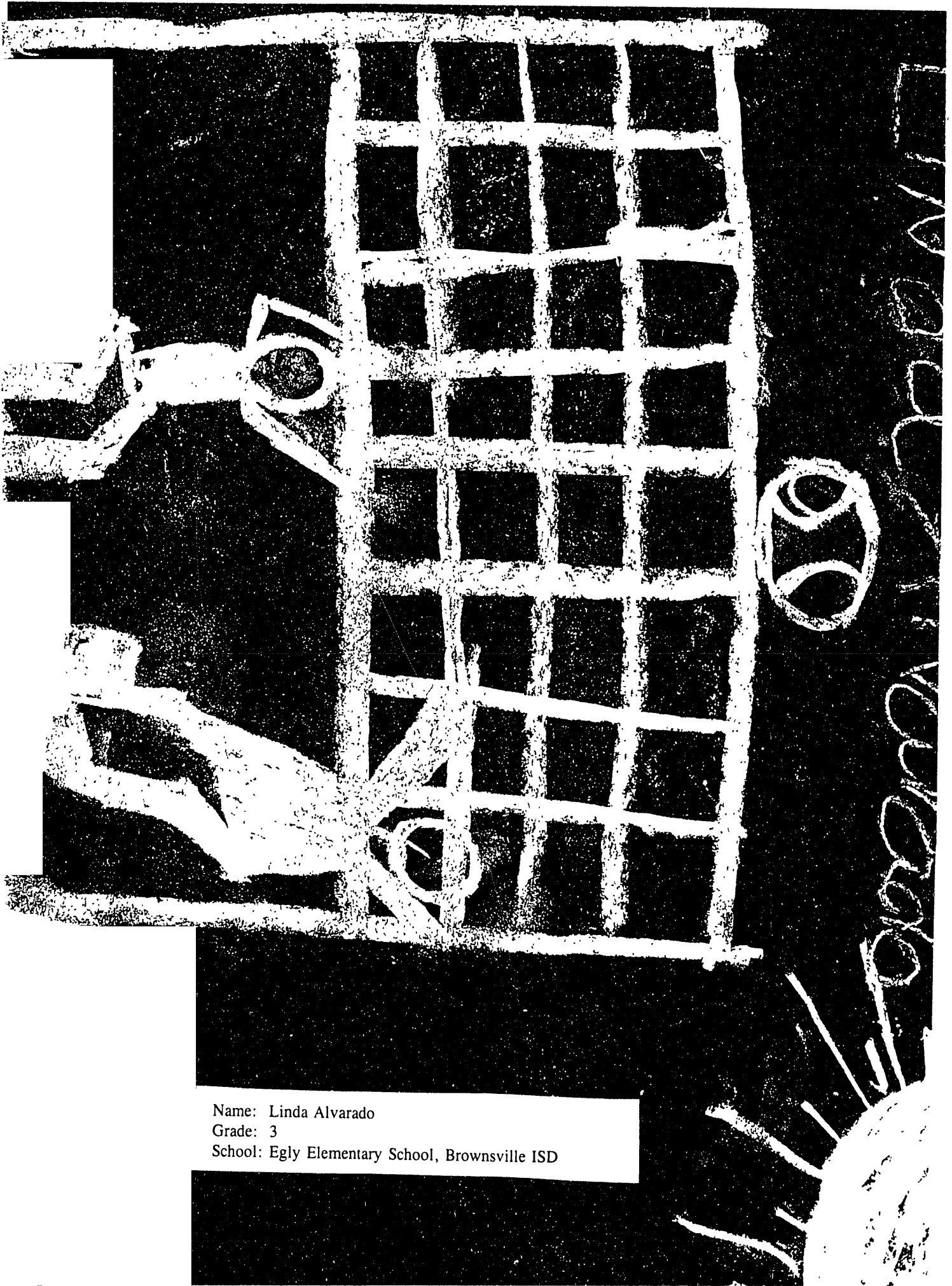
N

Division



Name: Gaby Carrion
Grade: 4
School: Egly Elementary School, Brownsville ISD

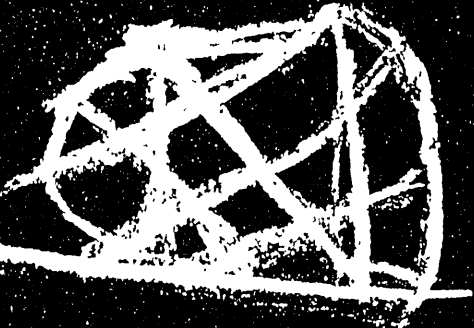
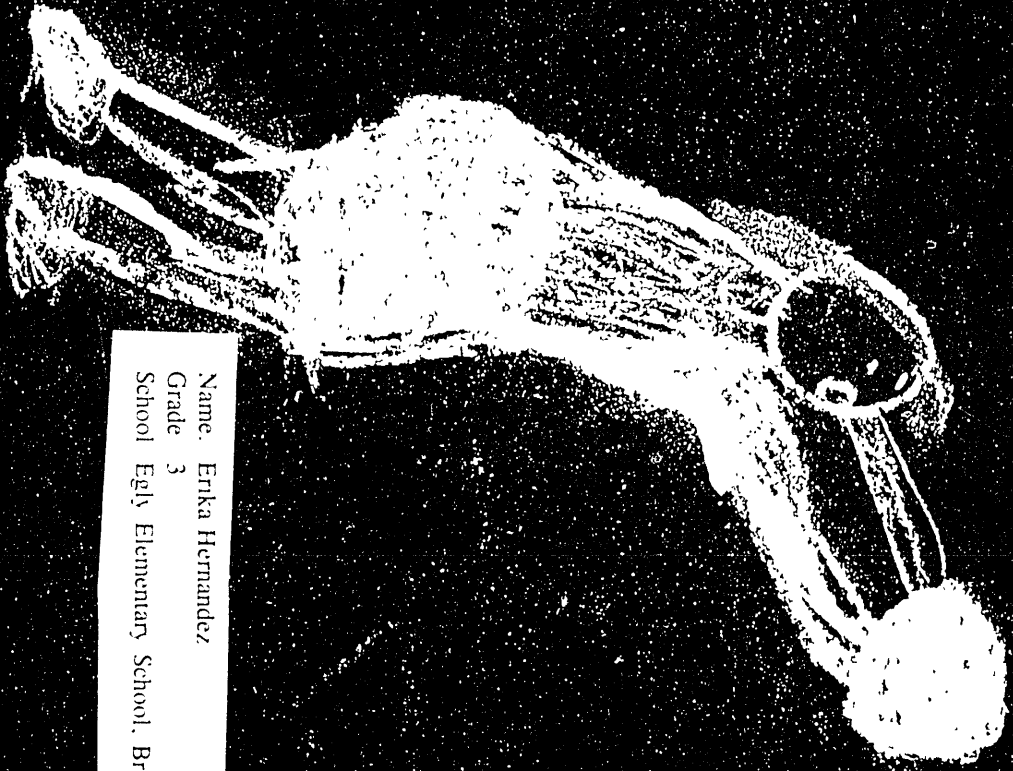




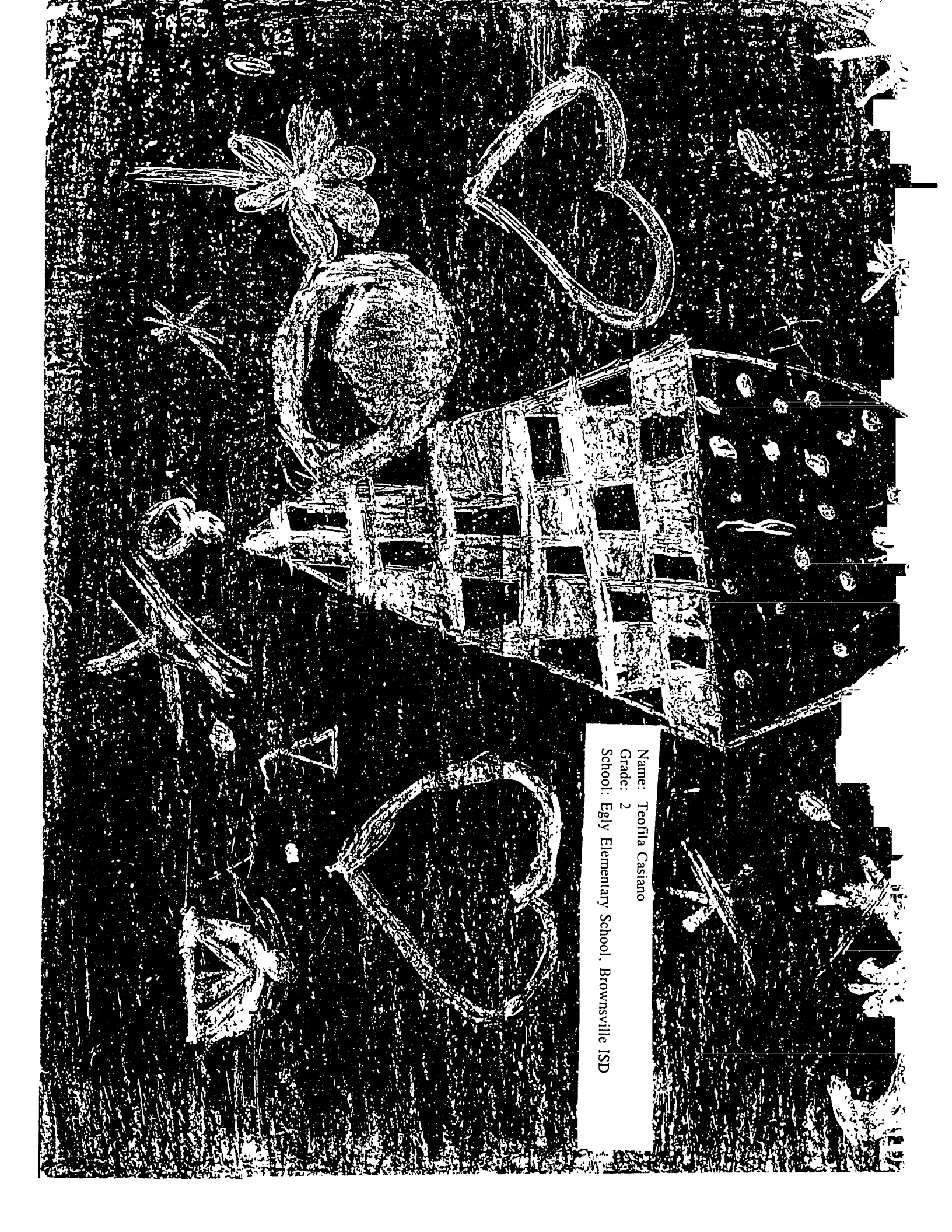
Name: Linda Alvarado
Grade: 3
School: Egly Elementary School, Brownsville ISD



Name: Jose Alfredo Garcia
Grade: 3
School: Egly Elementary School, Brownsville ISD

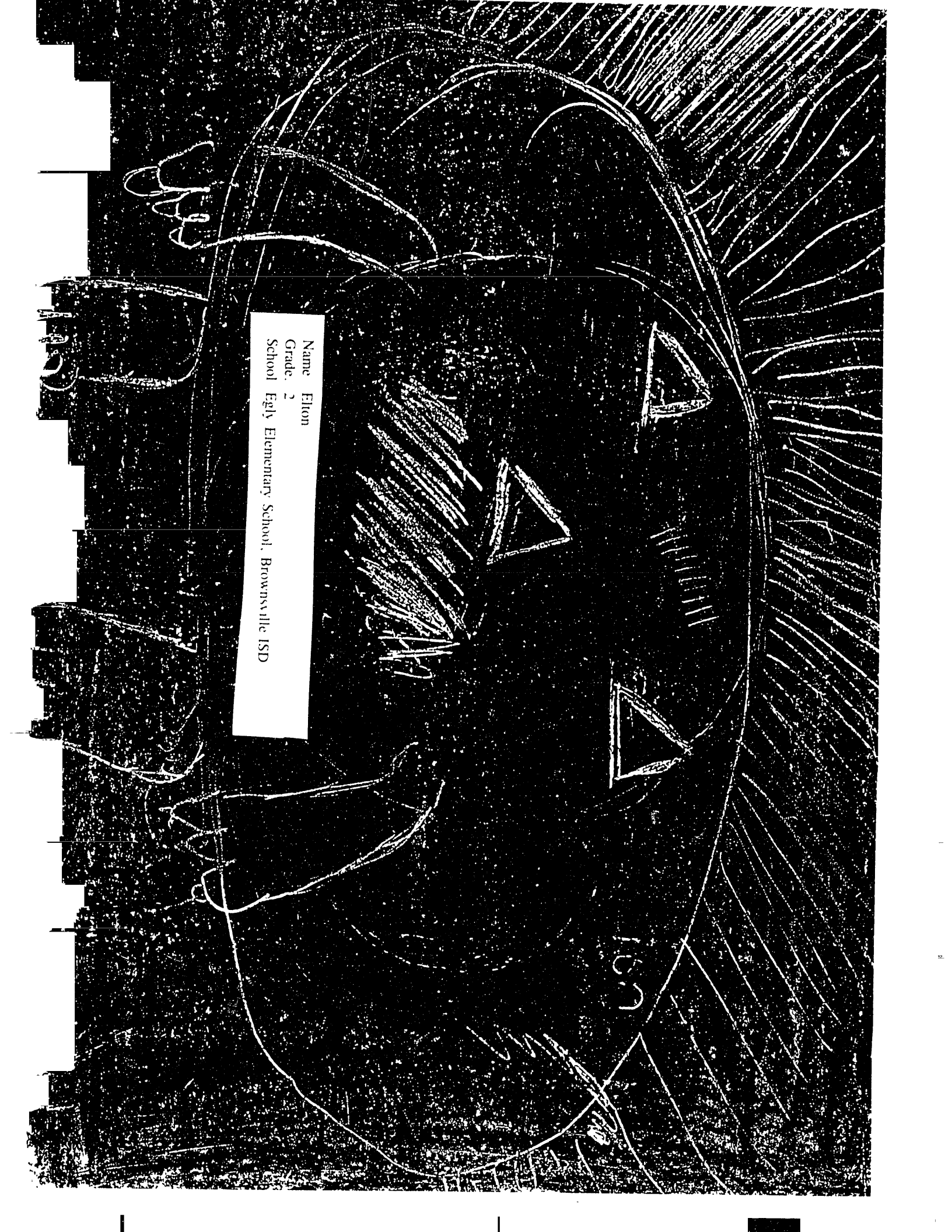


Name: Erika Hernandez
Grade 3
School Egly Elementary School, Brownsville ISD

A black and white drawing of a house with a porch, a large flower, and a heart shape. The drawing is done in a simple, sketchy style. The house has a gabled roof and a porch with a railing. To the left of the house is a large, multi-petaled flower. To the right of the house is a large heart shape. The background is dark and textured.

Name: Teofila Castano
Grade: 2
School: Egly Elementary School, Brownsville ISD

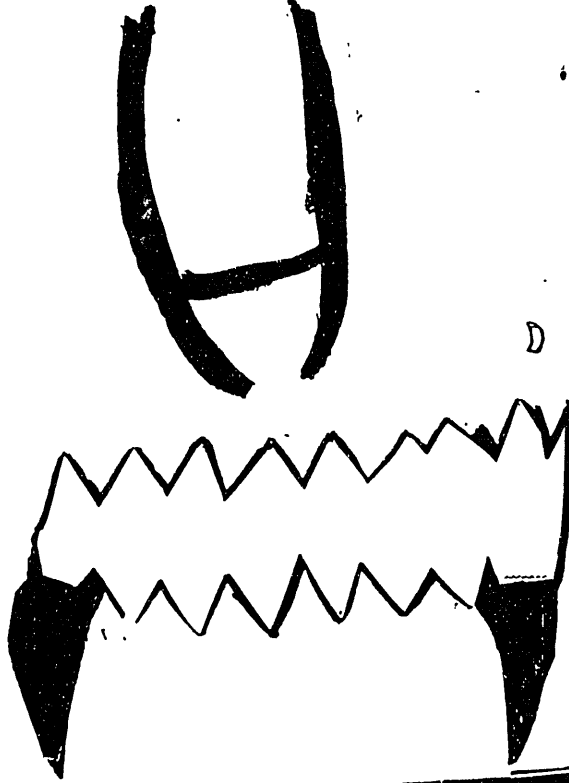
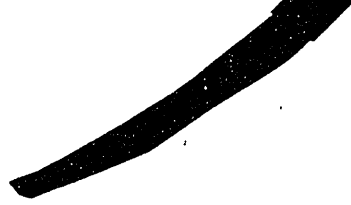
Name Elton
Grade: 2
School Egly Elementary School, Brownsville ISD



Name: Tony V.

Grade: 4

School: Yurria Elementary School, Brownsville ISD



PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter U. General Rules of Practice and Procedure

- 16 TAC §§5.401, 5.402, 5.404, 5.407, 5.411, 5.412, 5.423, 5.424, 5.431, 5.456-5.464, 5.466, 5.467

(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 Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Railroad Commission of Texas proposes the repeal of §§5.401, 5.402, 5.404, 5.407, 5.411, 5.412, 5.423, 5.424, 5.431, 5.456-5.464, 5.466, and 5.467, concerning definitions, object of rules, filing of documents, service of notice in nonrulemaking proceedings, parties in interest, appearances personally or by representative, applications to establish or change rates, unprotested proceedings, reporters and transcript, effective date, additional representatives authorized, filing fee accompanying application, document subscriptions, certification of minority-owned applicants, commission survey of fuel prices, certification of disadvantaged businesses for motor carrier and motor bus authority, administrative penalties procedures, filing requirements for applications in authority cases, proposals for decision, and final decisions and orders. This proposal is made to reorganize the rules into concise subchapters and to allow adoption of new §§5.401-5.412, within a new Subchapter F, concerning the single state registration system for interstate motor carriers operating in this state; the proposal of which was published in the February 7, 1995, issue of the *Texas Register* (20 TexReg 857).

A federal district court in *Bilbo Freight Lines, Inc. vs. Morales*, Civil Action Number H-93-3808, ruled §4 of Senate Bill 1313, 73rd Legislature, unconstitutional. The district court permanently enjoined the commission

from issuing any order or operating authority under the commission's rule 16 TAC §5.462 which implemented §4. The Defendants appealed that ruling to the United States Fifth Circuit Court of Appeals. Subsequently, in light of federal legislation preempting most state economic regulation of motor carriers, the Defendants filed a motion to dismiss, on the basis of mootness. That motion is pending. Depending on the ruling of the appellate court, the commission may consider adoption of proposed new §5.714 (currently §5.462) or proposed new §5.716 (currently §5.460) in this issue. The proposed new §5.714 will not be implemented or enforced while the injunction remains in effect. The proposed new §5.716 is a measure to implement state and commission minority business enterprise policies during the pendency of the court proceedings.

Jackye Greenlee, assistant director-central operations, Transportation/Gas Utilities Division, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Craig H. Smith, assistant director-transportation section, Legal Division, has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be better organized rules that will enable more efficient use. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Craig H. Smith, Assistant Director, Transportation Section, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The repeals are proposed under the Texas Motor Carrier Act and the Texas Motor Bus Act, Texas Civil Statutes, Articles 911a and 911b, which authorize the commission to prescribe rules and regulations for certain motor carriers and motor bus companies; and Texas Government Code, §§2001.004 and 2001.051-2001.902, which requires state agencies to adopt rules of practice for formal and informal procedures and which specify standards for contested cases.

The following articles are affected by these repeals: Texas Civil Statutes, Articles 911a and 911b and Texas Government Code, §§2001.004 and 2001.051-2001.902.

§5.401. *Definitions.*

§5.402. *Object of Rules.*

§5.404. *Filing of Documents.*

§5.407. *Service of Notice in Nonrulemaking Proceedings.*

§5.411. *Parties in Interest.*

§5.412. *Appearances Personally or by Representative.*

§5.423. *Applications to Establish or Change Rates.*

§5.424. *Unprotested Proceedings.*

§5.431. *Reporters and Transcript.*

§5.456. *Effective Date.*

§5.457. *Additional Representatives Authorized.*

§5.458. *Filing Fee Accompanying Application.*

§5.459. *Document Subscriptions.*

§5.460. *Certification of Minority-Owned Applicants.*

§5.461. *Commission Survey of Fuel Prices.*

§5.462. *Certification of Disadvantaged Businesses for Motor Carrier and Motor Bus Authority.*

§5.463. *Administrative Penalties Procedures.*

§5.464. *Filing Requirements for Applications in Authority Cases.*

§5.466. *Proposals for Decision.*

§5.467. *Final Decisions and Orders.*

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

Issued in Austin, Texas, on April 19, 1995.

TRD-9504775

Mary Ross McDonald
Assistant Director, Legal
Division-Gas Utilities/LP
Gas
Railroad Commission of
Texas

Earliest possible date of adoption: May 26, 1995

For further information, please call: (512) 463-7094

Subchapter I. General Rules of Practice and Procedure

• 16 TAC §§5.701-5.721

The Railroad Commission of Texas proposes new §§5.701-5.721, concerning definitions, object of rules, filing of documents, service of notice in nonrulemaking proceedings, parties in interest, appearances personally or by representative, applications to establish or change rates, unprotested proceedings, reporters and transcript, effective date, additional representatives authorized, filing fee accompanying application, document subscriptions, certification of minority-owned applicants, commission survey of fuel prices, certification of disadvantaged businesses for motor carrier and motor bus authority, administrative penalties procedures, filing requirements for applications in authority cases, proposals for decision, final decisions and orders, and statement of philosophy. This proposal is made to reorganize the rules into concise subchapters. The proposed rules are substantially the same rules as previously contained in §§5.401, 5.402, 5.404, 5.407, 5.411, 5.412, 5.423, 5.424, 5.431, 5.456-5.464, 5.466, 5.467, and 5.471. This proposal will allow the adoption of new §§5.401-5.412, within a new Subchapter F, concerning the single state registration system for interstate motor carriers operating in this state, as published in the February 7, 1995, issue of the *Texas Register* (20 TexReg 857).

A federal district court in *Bilbo Freight Lines, Inc. vs. Morales*, Civil Action Number H-93-3808, ruled §4 of Senate Bill 1313, 73rd Legislature, unconstitutional. The district court permanently enjoined the commission from issuing any order or operating authority under the commission's rule 16 TAC §5.462 which implemented §4. The Defendants appealed that ruling to the United States Fifth

Circuit Court of Appeals. Subsequently, in light of federal legislation preempting most state economic regulation of motor carriers, the Defendants filed a motion to dismiss, on the basis of mootness. That motion is pending. Depending on the ruling of the appellate court, the commission may consider adoption of proposed new §5.714 (currently §5.462) or proposed new §5.716 (currently §5.460). The proposed new §5.714 will not be implemented or enforced while the injunction remains in effect. The proposed new §5.716 is a measure to implement state and commission minority business enterprise policies during the pendency of the court proceedings.

Jackye Greenlee, assistant director-central operations, Transportation/Gas Utilities Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Craig H. Smith, assistant director-transportation section, Legal Division, 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 greater ease of use and thus greater compliance by a reorganizing the commission's rules into a concise subchapter for each category. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed because the requirements are presently contained in §§5.401, 5.402, 5.404, 5.407, 5.411, 5.412, 5.423, 5.424, 5.431, 5.456-5.464, 5.466, 5.467, and 5.471.

Comments on the proposal may be submitted to Craig H. Smith, Assistant Director, Transportation Section, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The new sections are proposed under Texas Civil Statutes, Articles 911a and 911b, which authorize the commission to prescribe rules and regulations for certain motor carriers and motor bus companies; and under Texas Government Code, §2001.004 and 2001.051-2001.902, which requires state agencies to adopt rules of practice for formal and informal procedures and which specify standards for contested cases.

The following articles are affected by these new sections: Texas Civil Statutes, Articles 911a and 911b and Texas Government Code, §2001.004 and 2001.051-2001.902.

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

Applicant or petitioner—A party seeking a license, rate, or rule from the commission.

Commission—The Railroad Commission of Texas.

Commissioner—One of the elected or appointed members of the decision-making body defined as the commission.

Complainant—Any party who has filed a signed, written complaint with the agency against any party subject to the jurisdiction of the commission.

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

Director—Administrator in charge of one of the respective divisions within an agency.

Division—One of the administrative units for regulation of specific activities within the jurisdiction of the commission.

Examiner—Any person appointed by the commission to conduct hearings on matters within the commission's jurisdiction.

Intervenor—Any party otherwise not defined.

License—Includes the whole or part of any agency permit, certificate, approval, registration, or similar form of permission required by law.

Licensing—Includes the agency process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

Order—The whole or a part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, of the regulatory authority in a matter other than rulemaking, but including issuance of licenses and ratemaking.

Party—Each person or agency named or admitted as a party.

Person—Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

Petitioner to suspend—An interested party, including the commission or commission staff, who by written petition, requests or proposes that the commission suspend a proposed rate, charge, or other provision.

Pleading—Written allegations filed by parties concerning their respective claims.

Protestant—Any party opposing an application or petition filed with the commission.

Rate—Includes every compensation, tariff, charge, fare, toll, rental, and classification, or any of them demanded, observed, charged, or collected, whether directly or indirectly by any person for any service within the jurisdiction of the commission, and any regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

Register—The Texas Register.

Respondent—Any party against whom any complaint has been filed.

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

amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures. This definition includes substantive regulations.

§5.702. Object of Rules.

(a) The purpose of these rules is to provide for a simple and efficient system of procedure before the Transportation Division, to provide for standards of practice and procedure in accord with special circumstances in Transportation proceedings, to insure public participation and notice of agency actions, and a fair and expeditious determination of causes. These rules shall be liberally construed, with a view towards the purpose for which they were adopted.

(b) This subchapter shall govern the procedure for the institution, conduct and determination of all causes and proceedings before the Transportation Division. To the extent that these rules conflict with Chapter 1 of this title (relating to General Rules of Practice and Procedure), these rules shall apply. To the extent that this subchapter does not relate to any situation, the General Rules shall apply. This subchapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the agency or the substantive rights of any person.

§5.703. Filing of Documents. Applications, complaints, protests, and all other documents relating to any proceeding pending or to be instituted before the Transportation/Gas Utilities Division shall be filed with the director or the designee. Documents shall be deemed filed only when actually received by the director or the designee of the Transportation/Gas Utilities Division, accompanied by any required fee. The time and date of filing shall be determined by the file stamp affixed thereon. Documents filed after 5:00 p.m. local time of the commission shall be deemed filed the first day following that is not a Saturday, Sunday or official state holiday. Only documents that do not require a fee may be filed by telephonic document transfer, and shall be considered filed after 5:00 p.m. local time if the last page of the document is received after 5:00 p.m. local time.

§5.704. Service of Notice in Nonrulemaking Proceedings.

(a) Publication. Where published notice is permitted or prescribed by these rules or by statute, it shall be made by incorporating it in the printed memorandum of notices regularly circulated by the agency to those persons entitled by law to receive such notices.

(b) Personal service, registered or certified mail. Where personal notice by the agency is required, the agency shall give notice by personal service or by registered or certified mail to the last known place of address of the person entitled to receive such notice.

§5.705. Parties in Interest.

(a) Any party in interest may appear in any proceeding before the agency. All appearances shall be subject to a motion to strike upon a showing that the party has no justiciable or administratively cognizable interest in the proceeding.

(b) Any interested person, public official, agency, or department of the State of Texas or any of its political subdivisions, or any civic or trade organization shall be permitted to intervene:

(1) in support of or in opposition to all or part of the relief sought in any protested proceeding by filing a petition for leave to intervene showing the nature of its interest in the proceeding within ten days following the expiration date of the protest period provided for in §1.63 of this title (relating to Notice of Protest in Nonrulemaking Proceedings);

(2) in support of or in opposition to all or part of the relief sought in any protested rate proceeding by filing a petition for leave to intervene showing the nature of its interest in the proceeding at least ten days in advance of the hearing date; or

(3) in support of the relief sought in any unopposed proceeding by filing a petition for leave to intervene showing the nature of its interest in the proceeding at least five days in advance of the hearing date. A petition to intervene in an unopposed proceeding shall not delay or change the nature of the proceeding, its purpose, or method of procedure.

(c) Any interested person, public official, or department of the State of Texas or any of its political subdivisions, or any civic or trade organization shall be permitted to file a petition to suspend any application to establish rates, charges, or other tariff provisions for transportation services by filing a petition to suspend not later than the tenth day after the date of the weekly publication in which the commission has provided notice to the public of the proposed rate, charge, or other tariff provision.

(d) The commission or commission staff member may file a petition to suspend an application only if that application is for an increase in rates, charges, or other tariff provisions for transportation services by filing a petition to suspend not later than the tenth day after the date of the weekly publication in which the commission has provided notice to the public of the proposed

increase in rates, charges, or other tariff provisions.

(e) Any interested person may, subject to the provisions of subsections (f) and (g) of this section, be granted leave to intervene or protest upon a showing of a cognizable interest under the Motor Carrier Act.

(f) No person shall have standing to appear as a party in opposition to an application for new or amended specialized motor carrier authority unless such person:

(1) shall have filed either:

(A) a timely and valid notice of protest to the application;

(B) a timely and valid petition to intervene in opposition to a protested application in compliance with this section; or

(C) a late-filed protest showing good cause for having failed to protest in a timely manner; and

(2) shall be:

(A) the holder of specialized motor carrier authority in good standing authorizing it to provide service within the scope of the application; and

(B) willing and able to provide such service that meets the reasonable needs of the shippers involved, and have transported or actively and in good faith solicited traffic within the geographical scope of the application during the 24-month period immediately preceding filing of the application; or

(3) have been granted leave to protest or intervene upon a showing of other cognizable interest under the Motor Carrier Act.

(g) No person shall have standing to appear as a party in opposition to an application for new or amended contract carrier authority unless such person shall have met the requirements of subsection (f) of this section, and shall either:

(1) be the holder of specialized motor carrier authority in good standing authorizing it to provide service within the scope of the application; or

(2) have been granted leave to protest or intervene upon a showing of other cognizable interests under the Motor Carrier Act.

(h) Any intervention in opposition shall be recognized only so long as persons who have timely filed protests (or who have shown good cause for filing a late-filed protest) continue as active protestants in the proceeding. If all persons who have timely

filed protests (or who have shown good cause for filing a late-filed protest) be withdrawn or are stricken as protestants, the case shall proceed as an unprotested matter.

§5.706. Appearances Personally or by Representative.

(a) Any party may appear and be represented by an attorney at law authorized to practice law before the highest court of any state.

(b) Any person may appear on his own behalf, or by a bona fide full-time employee.

(c) A corporation, partnership, or association may appear and be represented by any bona fide officer, partner, or full-time employee.

§5.707. Applications to Establish or Change Rates.

(a) Filing of application.

(1) Generally. Applications to establish or change rates, charges, or other tariff provisions may be submitted and prosecuted, or opposed by any person or entity having an administratively cognizable or justiciable interest, including carriers, shippers, consignees, associations, and the commission or commission staff. Unless a petition to suspend a proposed rate, charge, or other tariff provision is filed, an applicant shall not be required to provide a justification of its proposal based on cost.

(2) Form of Application. An application to establish or change rates must be submitted on appropriate commission forms, under oath, and contain:

(A) an identification of the tariff and the tariff item number proposed to be established or changed;

(B) a legible copy of the proposed tariff or item(s) in tariff format (8 1/2 x 11 inch paper). If the proposed amendment affects an existing tariff item, only the affected part of the item showing the changes proposed need be submitted.

(b) Not later than the tenth day after the date the notice of an application to establish a rate, charge, or other provision is published in the commission's weekly publication of such applications, a petitioner to suspend may file a petition requesting that the commission suspend the proposed rate, charge, or other provision.

(1) If no suspension petition is filed within the ten-day period, the proposed rate, charge, or other provision shall take effect on the 15th day after the date of the weekly notice in which the application was published, without a hearing or an or-

der of the commission. Notice of the newly effective rate, charge, or other provision shall be published by the commission as soon as practicable after its effective date.

(2) If a suspension petition is filed within the ten-day period, the proposed rate, charge, or other provision shall not take effect automatically. Instead, the commission shall conduct a hearing on the merits to consider the application, and shall enter an interim order suspending or affirming the proposed rate, charge, or other provision not later than the 30th day after notice of the application is published.

(3) If a suspension petition is filed within the ten-day period, but it is later withdrawn or dismissed, the proposed rate, charge, or other provision shall take effect without a hearing or order of the commission, either on the 15th day after the date of the weekly notice in which the application was published, or on the date the suspension petition is withdrawn or dismissed, whichever date is later. Notice of the newly effective rate, charge, or other provision shall be published by the commission as soon as practicable after its effective date.

(c) Evidence in support of motor bus rate applications.

(1) Evidence submitted in support of a motor bus application to establish or change rates shall include, but is not limited to:

(A) a description of pertinent current rates, if any;

(B) revenues at proposed rates—a statement of operating revenues projected to be received under the proposed rates by any motor bus company(s) for which rates would apply;

(C) expenses at proposed rates—a statement of operating expenses incurred, or which would be incurred, by any motor bus company(s) for which rates would apply;

(D) operating ratio—a statement of resulting operating ratio (operating expenses divided by operating revenues) based upon projected revenues and expenses at proposed rates; and

(E) allocations, methodology, or special studies—a statement of any allocation, methodology, or special study used in preparation of the evidence in support of an application to establish or change rates.

(2) Where the application does not directly seek establishment of a rate or change of an existing rate, it must include

evidence to show that the proposal would be reasonable and not unduly discriminatory.

(3) The commission may require that the evidence included in rate applications demonstrate that the revenues and expenses submitted are representative of the revenues and expenses of motor bus company(s) for which the rates would apply.

(4) Unless otherwise specified in the application or as provided in subsections (d) and (e) of this section, rates shall apply to all motor bus companies having authority to provide transportation services under the application.

(d) Within ten days after the date of the published transportation notice of hearing of an application for a reduction in rates, a motor carrier or motor bus company may request in writing that it be allowed to participate or not to participate in the application as published. A copy of the request shall be timely served upon the applicant. The request will be granted upon good cause shown. If the request is not granted, it may be refiled as a separate application, subject to all applicable commission rules.

(e) On any application for an increase in rates:

(1) any motor carrier or motor bus company may file a written request with the commission within ten days after the date of the published transportation notice of hearing of the application, that it not be subject to the rates as proposed. A copy of the request shall be timely served upon the applicant. The request will be granted upon good cause shown. If the request is not granted, it may be refiled as a separate application, subject to all applicable commission rules;

(2) any motor carrier or motor bus company seeking to participate in the rates proposed for the account of a named motor carrier(s) or motor bus company(s) must file as an intervenor in support thereof in accordance with §5.705 of this title (relating to Parties in Interest) and offer evidence supporting its participation.

(f) Applications seeking rate changes based on overall revenue needs will not be subject to the provisions of subsections (d) and (e) of this section.

(g) In all motor bus rate applications, and in motor carrier rate applications in which a petition to suspend is filed, documents and workpapers which underlie evidence submitted by a party shall be made available for inspection on request by a party or the commission.

(h) The provisions of this section shall not apply to annual review of base rates or charges held pursuant to §5.236 of this title (relating to Annual Review of Motor Bus Base Rates and Charges), deviation

procedures held pursuant to §5.237 of this title (relating to Deviations from Motor Bus Base Rates), or suspension procedures held pursuant to §5.239 of this title (relating to Suspension of Deviations).

§5.708. *Unprotected Proceedings.*

(a) An application before the Transportation Division may be given expedited processing if the applicant, in addition to meeting all other requirements of an application, submits with the application all supporting evidence that would be required at oral hearing. The applicant shall state in writing that, in the event a favorable decision is reached by the commission, he expressly waives opportunity for adjudicative hearing and any requirements for preparation of a proposal for decision.

(b) If an application contains all information necessary to enable the commission to reach a decision, it shall be docketed and published in the Transportation Notice of Hearing as an expedited application. If no protest has been filed against the application by the filing deadline, an order will be prepared and presented to the commission without further proceedings.

(c) If the application does not contain all necessary information for processing without an oral hearing the application will be docketed and published in the Transportation Notice of Hearing and the Director shall assign the application to be heard as an unprotected case. An application that has not been noticed for expedited processing and that seeks to establish or change a rate may be processed without an oral hearing, if the applicant submits, under oath, all evidence required by §5.707(b) of this title (relating to Applications to Establish or Change Rates) within 15 days from the publication of notice, and if the application is not protested.

§5.709. *Reporters and Transcript.*

(a) Request for transcript. When a party makes a written request that proceedings be transcribed, the party shall state in writing its election to furnish its own stenographic reporter or to utilize the reporter on the staff of the agency, if the agency has a stenographic reporter available at the time of the request.

(b) Assessment of costs. In the event the agency does not have a stenographic reporter available at the time of the request, or the party elects to furnish a stenographic reporter, the cost of the original transcripts shall be assessed:

(1) one-half to the party requesting the transcript, and one-half to the other parties equally, if the case is a rate case; or

(2) to all parties equally, in cases other than rate cases, except in cases

where the commission may determine that the entire cost of the transcript should be assessed to the applicant. Cases where the entire cost of the original transcript will be assessed to the applicant include, but are not limited to applications for discontinuance of a railroad agency, applications for authority to deviate from the Texas Clearance Law, and proceedings involving the change or discontinuance of a schedule of motor bus service.

(c) Transcript charge. The cost of the original transcript shall not exceed \$3.25 per page plus cost of postage.

(d) Transcript copies for sale.

(1) The original transcript shall be delivered to the director not more than 14 working days after the close of the hearing.

(2) The stenographic reporter may sell a copy of the transcript to a requesting party at not more than \$.50 per page plus the cost of postage, if any. The director or agency may exclude any stenographic reporter for late delivery or poor workmanship in previous hearings.

(e) Corrections to transcript. Suggested corrections to the transcript of the record may be offered within ten days after the transcript is filed in the proceeding, unless the examiner or the agency shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record, the official reporter, and the examiner. If suggested corrections are not objected to, the examiner will direct the corrections to be made and the manner of making them. In case the parties disagree on suggested corrections, they may be heard by the examiner, who shall then determine the manner in which the record shall be changed, if at all.

(f) Appearance fee. A \$50 appearance fee will be charged to the applicant for appearing at hearings in which the hearing ultimately becomes unprotected before the record is closed. The fee will be waived if a transcript is prepared and delivered to the commission.

§5.710. *Effective Date.* These rules govern all proceedings filed after they take effect; and they also govern all proceedings then pending, except to the extent that the director shall determine that their application in a particular pending proceeding would not be feasible or would work injustice, in which event the former procedure applies.

§5.711. *Additional Representatives Authorized.* In all proceedings for the determination, establishment, interpretation or enforcement of tariffs, rates, charges, or any classification, rule or regulation pertaining thereto, any party may appear and be repre-

sented by any person who is licensed to practice before the Interstate Commerce Commission, or by any person who has regularly represented clients before the Transportation Division of the Railroad Commission of Texas for at least ten years prior to the effective date of these rules. Further, in all proceedings with respect to structures near railroad tracks under the provisions of Articles 6559a-6559f, Texas Civil Statutes, any party may appear and be represented by any person who has ten or more years of experience in such proceedings prior to the effective date of these rules.

§5.712. *Filing Fee Accompanying Application.* Every application seeking a specialized motor carrier certificate, contract carrier permit, or an amendment to a certificate or permit shall be accompanied by a filing fee of \$100. Every application for a sale, transfer, division, consolidation, name change, reinstatement, suspension, lease (or cancellation of a lease), change in rates or charges, any application seeking approval of action by a railroad, or other applications, shall be accompanied by a filing fee in the sum of \$25, except that an application seeking an approval of a sale, transfer or lease of a contract carrier permit shall be accompanied by a filing fee in the sum of \$10, and that an application for a broker's license shall be accompanied by a filing fee in the amount of \$5.00. Every complaint shall be accompanied by a filing fee in the sum of \$25. All filing fees shall be non-refundable.

§5.713. *Document Subscriptions.*

(a) The following documents are available by subscription from the Transportation/Gas Utilities Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967.

(1) Transportation Notice of Hearing (Bi-monthly Notice).

(2) Motor Freight Circulars and Orders.

(3) All Railroad Commission-issued tariffs and supplements.

(b) Subscriptions to the documents listed in this section are available free of charge, upon request, for State of Texas agencies having statewide jurisdiction, the Governor, the Lieutenant Governor, the Attorney General, each member of the legislature, each county clerk, the Supreme Court, the Court of Criminal Appeals, the courts of civil appeals and city offices. Individual copies are available free of charge, upon request, to any of these agencies and officials.

(c) All paid free subscriptions to the Transportation Notice of Hearing and the Motor Freight Circulars and Orders

cover a 12-month period from the filing date of the application. Renewal notices are mailed 30 days prior to each subscription's expiration date. If the subscriber does not return the renewal notice, with remittance of the fee (for paid subscriptions), before the expiration date, the subscription will be cancelled.

§5.714. Certification of Minority-Owned Applicants.

(a) It shall be the policy of the Railroad Commission of Texas to encourage, within the limits of its discretion and statutory authority, more equitable participation in the for-hire motor carrier and motor bus industries by minority-owned businesses.

(b) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) American Indian and Alaskan Native—A person having origins in any of the original peoples of North America.

(2) Asian American—A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

(3) Black—A person having origins in any of the black racial groups of Africa.

(4) Bona fide MBE applicant—Any individual applicant for new or amended motor carrier or motor bus authority that is a woman, or is Black, Hispanic, Asian American, American Indian, or Alaska Native, and who is also a citizen of the United States. In the case of a corporate applicant for new or amended motor carrier or motor bus authority, it shall mean any corporation, the controlling interest of which is held by a woman or an individual that is Black, Hispanic, Asian American, American Indian, or Alaska Native, and who is also a citizen of the United States. In the case of an applicant company that is owned by a partnership, the controlling interest in the partnership must be specifically affirmed in writing as being held by a woman, Black, Hispanic, Asian American, American Indian, or Alaska Native, and who is also a citizen of the United States.

(5) Bona fide MBE certificate holder—Any individual who holds motor carrier or motor bus authority issued by the commission, who is a woman, Black, Hispanic, Asian American, American Indian, or Alaska Native, and who is also a citizen of the United States. In the case of a certificate holder by a corporation or partnership, it shall mean any corporation or partnership, the controlling interest in which is held by a woman, or an individual that is Black, Hispanic, Asian American, American Indian, or Alaska Native, and who is also a citizen of the United States.

(6) Bona fide MBE transportation contractor—Any owner-operator and/or a multi-truck lessor who is a United States citizen and who is a woman or who is Black, Hispanic, Asian American, American Indian, or Alaska Native, and who is leased to a for-hire motor carrier or motor bus company.

(7) Hispanic—A person of Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish culture or origin, regardless of race.

(c) The director of the transportation division shall designate a bona fide MBE applicant liaison officer within the transportation division who shall have the responsibility of advising bona fide MBE applicants as to the manner of initiating the certificate, permit, and rate processes and as to the manner of the compliance by successful bona fide MBE applicants with transportation division rules, regulations, and procedures. The field auditors of the transportation division, operating under the supervision of the assistant director-enforcement of the transportation division, shall have the responsibility of advising prospective bona fide MBE applicants of the assistance available for the transportation division bona fide MBE applicant liaison officer.

(d) In order to obtain a for-hire motor carrier or motor bus certificate or permit, a bona fide MBE applicant shall be required to meet the burden of proof imposed by law on regular applicants. In multiple applicant proceedings where the demonstrated public need will support a grant of some, but not all, of the applicants, and the evidence establishes a need for the availability of bona fide MBE applicant transportation not being met by existing bona fide MBE certificate holders and/or by other existing carriers through the use of bona fide MBE transportation contractors, the commission may consider an applicant's status as a bona fide MBE applicant as a factor, along with all other relevant factors, in determining which of the applications should be approved.

(e) The unavailability of existing bona fide MBE certificate holders may be considered as a factor in determining adequacy of existing carrier service:

(1) where a bona fide MBE applicant demonstrates, through public witness evidence, a public necessity for use of the services of a bona fide MBE certificate holder as a primary means of meeting requirements of state or federal law, and local ordinances for use of contractors qualifying as a bona fide MBE certificate holder and/or bona fide MBE transportation contractor under the regulations; and

(2) where existing carriers opposing the applicant fail to establish that

they are capable of adequately meeting the demonstrated need for the availability of bona fide MBE certificate holders and/or bona fide MBE transportation contractors.

(f) An applicant under this section shall have the burden of proving that it is a bona fide MBE applicant. In determining the entitlement of an applicant to the benefit of this section, the commission may consider the de facto management control of the applicant as well as incidents of ownership. Evidence that any applicant or any of its owners, officers, employees, agents, or representatives has employed any device whatsoever as a sham or subterfuge for the purpose of attempting to gain the benefit of this section shall be considered as evidence of the lack of an applicant's fitness to receive a grant of a certificate or permit.

(g) MBE certificate holders must continue to meet the definition of a bona fide MBE certificate holder in subsection (b) of this section and the commission may revoke the certificate granted to a bona fide MBE certificate holder if such holder fails to meet that definition.

(h) All certificates or permits granted under this section may not be sold, transferred, or leased unless the purchaser, transferee, or lessee is a bona fide MBE.

§5.715. Commission Survey of Fuel Prices. The commission may conduct a periodic survey of fuel prices within the State of Texas.

(1) Each survey shall include a representative number of locations and may cover:

(A) both diesel and gasoline prices; and

(B) both bulk and pump prices.

(2) The results of each survey will be posted at a clearly designated place in the Transportation Division of the commission.

(3) Except as provided in paragraph (4) of this subsection, no fuel adjustment charge prescribed after the posting of a current fuel survey may be based on fuel prices higher than those reflected in the most current fuel price survey conducted by the commission.

(4) The commission may prescribe a fuel adjustment charge based on fuel prices higher than those reflected in the most current fuel price survey conducted by the commission where the higher prices were actually paid by the applicant carriers and good cause is shown for having paid the higher price.

(5) Fuel adjustment charges over which the commission has continuing jurisdiction may be reduced to reflect the level of fuel prices shown in the most current fuel price survey conducted by the commission.

(A) The commission or the director of the commission's transportation division may direct that a proceeding be instituted in accordance with §5.707 of this title (relating to Applications to Establish or Change Rates), to consider changing fuel adjustment charges under this subsection, and shall serve notice on the affected carriers that such a proceeding has been instituted.

(B) The commission may issue an interim or a final order reducing a fuel adjustment charge over which the commission has continuing jurisdiction to a level which reflects the level of fuel prices shown in the most current fuel price survey conducted by the commission.

(6) Fuel adjustment charges may not be increased based on fuel price levels reflected in any price survey conducted by the commission.

§5.716. Certification of Disadvantaged Businesses for Motor Carrier and Motor Bus Authority.

(a) Policy. It shall be the policy of the Railroad Commission of Texas to encourage, within the limits of its discretion and statutory authority, more equitable participation in the for-hire motor carrier and motor bus industries by disadvantaged businesses.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Disadvantaged business--

(A) a corporation formed for the purpose of making a profit in which at least 51% of all classes of the shares of stock or other equitable securities are owned by one or more persons who are socially disadvantaged because of their identification as members of certain groups, including African Americans, Hispanic Americans, women, Asian Americans, American Indians, Alaska natives, and Pacific islanders, who have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control;

(B) a sole proprietorship for the purpose of making a profit that is 100% owned, operated, and controlled by a person

described by subparagraph (A) of this subsection;

(C) a partnership for the purpose of making a profit in which 51% of the assets and interest in the partnership is owned by one or more persons described by subparagraph (A) of this paragraph who have a proportionate interest in the control, operation, and management of the partnership's affairs; or

(D) a joint venture in which each entity in the joint venture is a disadvantaged business under this subsection.

(2) Disadvantaged business applicant--Any disadvantaged business applying for new or amended motor carrier or motor bus authority.

(3) Disadvantaged business certificate holder--Any disadvantaged business that holds motor carrier or motor bus authority issued by the commission

(4) Disadvantaged business transportation contractor--Any owner-operator and/or a multi-truck lessor leased to a for-hire motor carrier or motor bus company, who is socially disadvantaged because of his or her identification as a member of certain groups, including African Americans, Hispanic Americans, women, Asian Americans, American Indians, Alaska natives, and Pacific islanders, who have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control.

(c) Liaison officer. The director of the Transportation Division shall designate a bona fide disadvantaged business liaison officer within the Transportation Division who shall have the responsibility of advising bona fide disadvantaged business applicants as to the manner of initiating the certificate, permit, or rate processes and as to the manner of compliance by successful disadvantaged business applicants with Transportation Division rules, regulations, and procedures. The field auditors of the Transportation Division, operating under the director of the Transportation Division, shall have the responsibility of advising prospective disadvantaged business applicants of the assistance available from the Transportation Division disadvantaged business liaison officer

(d) Burden of proof for motor carrier authority. In order to obtain a for-hire motor carrier certificate, a disadvantaged business applicant shall be required to make a prima facie case that it is fit, willing, and able to perform the proposed service and to meet the requirements of the Texas Motor Carrier Act. For purposes of this rule, a disadvantaged business applicant may show that it is fit, willing, and able by demonstrating that it has insurance coverage as

required by the commission, and its equipment, safety record, expertise, and financial status are satisfactory; if the applicant chooses to support its application with an affidavit from a prospective or present shipper, that shipper's satisfaction with the applicant's equipment, expertise, and financial status shall be sufficient for the commission's review of those items. In addition to making a prima facie case that it is fit, willing, and able to perform the proposed service, a disadvantaged business applicant for motor carrier authority shall make a prima facie case that it is fit, willing, and able otherwise to meet the requirements of the Act and the regulations the commission adopts under the Act relating to the disadvantaged business applicant's fitness, willingness, and ability to provide the proposed service.

(e) Consideration of opposing parties. In making a determination on granting an application for motor carrier authority, the commission may not consider evidence presented by an opposing party that:

(1) does not show that the applicant is not fit, willing, and able to perform the service proposed and to meet the requirements of the Act and the regulations the commission adopts under the Act;

(2) shows that an opposing party or another carrier already adequately provides or could adequately provide the proposed service; or

(3) shows that a complaint has been or will be filed against the disadvantaged business applicant for a violation of the Act, unless the complaint is in regard to a safety violation.

(f) Burden of proof for motor bus authority. In order to obtain a motor bus certificate or permit, a disadvantaged business applicant shall be required to meet the burden of proof imposed by law on regular applicants. In multiple applicant proceedings where the demonstrated public need will support a grant of some, but not all, of the applicants, and the evidence establishes a need for the availability of disadvantaged business transportation services not being met by existing disadvantaged business certificate holders and/or by other existing carriers through the use of disadvantaged business transportation contractors, the commission may consider an applicant's status as a disadvantaged business applicant as a factor, along with all other relevant factors, in determining which of the applications should be approved. The unavailability of existing disadvantaged businesses may be considered as a factor in determining adequacy of existing bus service where a disadvantaged business applicant demonstrates, through public witness evidence, a public necessity for use of the services of a disadvantaged business certificate holder

and/or disadvantaged business transportation contractor as a primary means of meeting requirements of state or federal law, and local ordinances for use of a contractor qualifying as a disadvantaged business certificate holder or disadvantaged business transportation contractor under these regulations, and where existing bus companies opposing the applicant fail to establish that they are capable of adequately meeting the demonstrated need for the availability of disadvantaged business certificate holders and/or disadvantaged business transportation contractors.

(g) Determination of disadvantaged business status. In determining whether an applicant qualifies as a disadvantaged business under this subsection, the commission may consider the actual management or control of the applicant as well as incidents of ownership. If the commission determines that an applicant has used any method or device to enable a person or entity that is not a disadvantaged business to qualify for a certificate or permit under this subsection, it shall deny the applicant status as a disadvantaged business under this subsection.

(h) Transfer of certificates of motor carrier authority. A certificate awarded to a motor carrier of property under this subsection may not be transferred to another person for five years after the date the certificate is awarded unless the transferee also qualifies as a disadvantaged business under this subsection. This limitation applies even if the holder of the certificate seeks to transfer the certificate because the disadvantaged business is unable to maintain financial viability. The commission shall require a disadvantaged business that is awarded a certificate under this subsection to notify the commission during the period the transfer of a certificate is restricted under this subsection of each change of ownership of the business. The commission may revoke the certificate of a disadvantaged business that fails to provide notice required under this subsection.

(i) Maintenance of status. Except as provided in this subsection, the commission shall revoke a certificate or permit awarded under this subsection if the commission determines, following notice and hearing, that during the period the transfer of the certificate or permit is restricted under subsection (h) of this section, the holder of the certificate or permit no longer qualifies as a disadvantaged business. The commission may not revoke a certificate or permit awarded under this subsection if the holder of the certificate or permit no longer qualifies as a disadvantaged business because of a change in ownership of the business through devise or descent.

§5.717. Administrative Penalties Procedures.

(a) Purpose and scope.

(1) The purpose of this section is to establish hearing and related procedures which the agency will follow when administrative penalties are sought against any motor bus company, motor carrier, shipper, or other person whomsoever under authority of:

(A) Texas Civil Statutes, Article 911a;

(B) Texas Civil Statutes, Article 911b; and

(C) Texas Civil Statutes, Article 6701d, §139.

(2) This section establishes procedures to interpret, clarify, and supplement requirements and procedures described in each of the Texas Civil Statutes listed in paragraph (1) of this subsection. The agency will follow the requirements and procedures in these statutes, the procedures in this section, and the provisions of the Administrative Procedure Act (Texas Government Code, §§2001.001 et seq). If there is any conflict between the statutes and this section, the statutory requirements and procedures shall be followed.

(3) Any references in this section to statute or statutes means a statute or the statutes described in paragraph (1) of this subsection or the Administrative Procedure Act (Texas Government Code, §§2001.001 et seq).

(b) Assessing administrative penalties.

(1) Except as provided in subparagraphs (A) and (B) of this paragraph, any person, motor carrier, motor bus company, or shipper that violates any provision of Texas Civil Statutes, Article 911a or Article 911b, respecting safety, certificates or rates or any commission rule, regulation, or order respecting safety, certificates, or rates may be assessed a penalty of up to \$10,000.

(A) Any person, motor carrier, or shipper that knowingly commits multiple violations of Texas Civil Statutes, Article 911b respecting safety, certificates, or rates, or any commission rule, regulation, or order respecting safety, certificates, or rates may be assessed an aggregate penalty of up to \$25,000.

(B) Any person that violates §139 of the Uniform Act Regulating Traffic on the Highways Texas Civil Statutes, Article 6701d, or any regulation adopted under such section shall be subject to a penalty not to exceed the maximum amount that may be assessed for violation of current

federal regulations and their subsequent amendments under the Hazardous Materials Regulations (49 Code of Federal Regulations, Parts 101-199) and the Federal Motor Carrier Safety Regulations (49 Code of Federal Regulations, Parts 386 and 388-399).

(2) For purposes of assessing administrative penalties, a violator is defined as a corporation, association, partnership, firm, individual, person, company, co-partnership, joint stock association, motor bus company, motor carrier, shipper owner or operator of a commercial motor vehicle, or other entity or person whomsoever and their lessees, receivers, or trustees appointed by any court who commits an act, omission, or violation of the statutes respecting safety, certificates, or rates, or any commission rule, regulation, or order respecting safety, certificates, or rates.

(A) A person acts knowingly if such person has knowledge of the facts that give rise to such violation, or a reasonable person acting in the same circumstances and exercising due care would have had such knowledge. The commission may consider past violations of this Act.

(B) Multiple violations are all violations respecting safety, certificates, or rates arising during a single episode pursuant to one scheme or course of conduct.

(3) Each act, omission, or violation of the statutes respecting safety, certificates, or rates or any commission rule, regulation or order respecting safety, certificates or rates that occurred prior to September 1, 1993, may subject the violator to an administrative penalty of up to \$10,000 per violation.

(4) The commission shall have discretion in determining the appropriate amount of the administrative penalty assessed for each violation. In determining the amount of the penalty, the commission may consider:

(A) the violator's history of previous violations;

(B) the seriousness of the violation or violations;

(C) any hazard to the health or safety of the public caused by the violation or violations;

(D) the economic benefit gained by the violation or violations;

(E) the amount necessary to deter future violations;

(F) the demonstrated good faith of the violator; and

(G) other circumstances as the public welfare may require or as the commission may determine.

(c) Initiator of administrative penalty proceedings before the agency.

(1) An administrative penalty proceeding may be initiated by any entity, carrier, shipper, association, the agency, other state or federal agencies, or by any person whomsoever or their legal representative. The complaint initiating an administrative penalty proceeding shall be filed with docket services of the Transportation Division and shall consist of a signed, written pleading containing the names of the complainant and the alleged violator or violators, a concise statement of the facts relied upon by the complainant, a prayer stating the type of relief, action, or order desired by the complainant, and any other matter required by statute.

(2) Before an administrative penalty complaint filed by anyone other than the agency can proceed to hearing, a copy of said complaint shall be delivered to the director of the Transportation Division. Said director or its designate shall have 60 days to intervene in support of said complaint, intervene in opposition to said complaint, dismiss said complaint or issue a letter advising the complainant that the Transportation Division has taken no position in the proceeding. In the event said Director or its designate takes no action after 60 days from the date of delivery of the complaint on said director, the party who filed the administrative penalty complaint may proceed to hearing on the complaint. Nothing contained herein shall preclude the agency from intervening as otherwise allowed under commission rules.

(3) Administrative penalty complaints initiated by the agency or other state agencies shall be initially prepared by the director of the Transportation Division or his designee. The administrative penalty complaint prepared pursuant to this subparagraph shall be filed by the director of the Transportation Division or his designee.

(4) An administrative penalty complaint may be amended any time prior to the hearing as authorized by commission rules. An administrative penalty complaint may be jointly filed or consolidated with a show cause complaint seeking cancellation of a certificate, permit, or registration. An administrative penalty proceeding shall be cumulative of all other remedies available under Texas Civil Statutes, Article 911a or Article 911b. Nothing herein shall be construed so as to preclude the agency or any

other party, person or entity from seeking any remedy in law or equity not specifically mentioned in this section.

(5) An administrative penalty complaint may be dismissed without prejudice to refile upon the same facts by compliance with §1.126 of this title (relating to Dismissal).

(d) Notice of administrative penalty proceeding. The agency shall notify the alleged violator by remitting a copy of the administrative penalty complaint by certified mail, return receipt requested, to the last known business or resident address of the alleged violator. In the event the alleged violator cannot be notified by certified mail, the agency may give notice as provided in the Texas Rules of Civil Procedure

(e) Answer.

(1) The alleged violator shall submit to the agency a written answer not later than 30 days after the date on which notice of the administrative penalty complaint is mailed, served, or published. Such answer may contain one or more of the following:

(A) a general denial of one or more of the facts alleged in the administrative penalty complaint;

(B) a response to facts alleged in the administrative penalty complaint which are not denied;

(C) a response which affirmatively alleges claims, defenses, or mitigating factors and the reasoning in support thereof; or

(D) any other facts desired to be alleged or shown.

(2) Supplemental pleadings shall be in writing and may be filed by the alleged violator, with the director of the Transportation Division and distributed to all interested parties, under a certificate of service at any time until five days before the hearing date. Supplemental pleadings filed five days or less prior to the hearing date may be allowed by the hearings examiner upon a showing of good cause and undue surprise does not disadvantage other parties of record.

(3) If the alleged violator fails to timely file an answer as required by this subsection, or fails to appear at the hearing, the commission may enter an order which assesses an administrative penalty as provided by law for the violations alleged in the administrative penalty complaint, or the agency may proceed with a hearing to receive evidence on the alleged violations and the commission may assess administrative penalties as provided by law.

(f) Settlement orders.

(1) An alleged violator may enter into a compromise settlement agreement and final order which does not constitute an admission by the alleged violator of any alleged violations contained in the Railroad Commission's complaint. The compromise settlement agreement and final order shall be signed by the alleged violator and all parties to the proceeding, and shall reflect that the alleged violator consents to the assessment of a specific administrative penalty. Such settlement of the matters raised in the administrative penalty complaint and the proposed agreed order and recommended penalty is subject to the approval of the commission.

(2) If the alleged violator and all the parties to the proceeding and the director of the Transportation Division or his designee enter into a compromise settlement agreement and final order, the settlement shall include a recommended penalty to the commission. Simultaneously with the filing of a compromise settlement agreement and final order, the alleged violator shall remit to the Railroad Commission a cashier's check or money order payable to the "State Treasurer of Texas". These funds shall be held in an escrow account until appropriately allocated upon final order. The agreed order shall be submitted to the commission. If the commission approves the agreed order and the recommended administrative penalty and said order becomes final, the administrative penalty proceeding shall cease. If the commission decides not to approve the agreed order and does not accept the recommended administrative penalty, the staff shall set the administrative penalty complaint for hearing.

(g) Final commission order with no administrative penalty assessed. In the event the commission enters an order which becomes final wherein the commission does not assess an administrative penalty, the commission shall return any portion of the administrative penalty which might have been received by the commission with a certificate of its return.

(h) Post order requirements.

(1) Issuance of order. On the issuance of an order finding that a violation or violations have occurred, the commission shall inform the violator or his legal representative as soon as practicable of the rendition of the order of the amount of the penalty, if any. The commission shall inform the violator by remitting a copy of the order by certified mail, return receipt requested, or by first class mail, at the last known business or resident address of the violator.

(2) Payment of administrative penalty. Within the 30-day period immediately following the day on which the deci-

sion or order is final as provided in the Administrative Procedure Act (Texas Government Code, §§2001. 001, et seq), the violator who has not previously paid all the administrative penalty ordered to be paid shall pay the penalty in full by remitting a cashier's check or money order to the Railroad Commission payable to the "State Treasurer of Texas".

(3) Judicial review and failure to perfect appeal

(A) If the violator against whom a penalty is assessed seeks judicial review as authorized by the statute, the violator shall forward to the Railroad Commission a cashier's check or money order payable to the "State Treasurer of Texas" for placement in an escrow account. As an alternative to paying the penalty into an escrow account, the violator may post with the agency a supersedeas bond approved by the commission and payable to the "State Treasurer of Texas" for the amount of the penalty, which will remain in effect until all judicial review of the order or decision is final. The violator shall either remit the escrow payment or post an approved supersedeas bond with the agency within the 30-day period immediately following the day on which the commission's order is rendered. If the violator is unable financially to comply with the requirements of this subparagraph, the violator seeking judicial review shall file with the Railroad Commission of Texas an affidavit stating his financial inability and shall attach thereto a balance sheet describing, with particularity, the violator's assets and liabilities. If the commission concludes that the balance sheet and affidavit sufficiently show the violator's financial inability to comply with this subparagraph, the commission may waive payment of the administrative penalty into an escrow account or the filing of a supersedeas bond, and so notify the presiding hearings examiner and the parties of record in writing.

(B) Failure to pay the penalty in full or failure to forward the amount of the penalty for placement in an escrow account, failure to post a supersedeas bond within the 30-day period immediately following the day on which the agency's order is final or failure to obtain a waiver of such requirements, shall result in a waiver of all legal rights to judicial review. In the event the violator fails to take any of the actions in paragraph (2) of this subsection or subparagraph (A) of this paragraph, the commission may forward the matter to the attorney general for enforcement.

(4) Unfavorable appellate determination. In the event the final appellate determination is against the alleged violator (the person assessed a penalty):

(A) The violator shall forward to the Railroad Commission a cashier's check or money order payable to the "State Treasurer of Texas" for any amount owing on the administrative penalties assessed and not held in escrow; or

(B) The surety or principal of the supersedeas bond shall forward to the Railroad Commission a check or money order payable to the "State Treasurer of Texas" for any amount owing on the administrative penalties assessed.

(5) Favorable appellate determination. In the event that the final appellate determination is in favor of the person assessed, he or she shall be absolved of all liability for payment of the amount of the penalty. The commission shall return the amount of the penalty assessed and paid with a certificate of its return or shall release the supersedeas bond by commission order, as shall be required under the circumstances.

(6) Form of supersedeas bond or escrow agreement. Any supersedeas bond or escrow agreement filed with the agency for the purpose of appeal of the final decision of the commission shall be drawn according to a form approved by the Railroad Commission of Texas and on file in docket services of the Transportation Division. Upon request, the commission shall certify the receipt of the funds or the supersedeas bond by the agency for purposes of appeal.

§5.718. Filing Requirements for Applications in Authority Cases. An applicant for authority shall file with its application such evidence as is sufficient to meet the applicant's prima facie burden of proof as may be required on the statutory issues relevant to the application. Failure to file all necessary information or failure to file written evidence in the required form shall be sufficient cause for the application to be rejected for filing.

§5.719. Proposals for Decision. In a contested case involving applications for authority or ratemaking, the proposal for decision must be submitted to the commission no later than the 30th day following the concluding date of the hearing. For purposes of this rule, "submitted to the commission" means issuance of the proposal for decision by the examiner to the parties to afford the parties an opportunity to file exceptions and replies.

§5.720. Final Decisions and Orders.

(a) The final decision on applications for authority or ratemakings must be rendered within 120 days of the concluding date of the hearing. Upon the filing of a written agreement of all parties, the dead-

line for the commission's final decision is extended for an additional period as provided in the agreement, not to exceed 60 days, unless otherwise disapproved or acted upon by the commission.

(b) With respect to an application for authority, the director of the Transportation Division shall grant the application within ten days after the later in time of the expiration of the protest period or the withdrawal of the last protestant. The director of the Transportation Division shall notify the applicant that the application has been granted and that a certificate will issue once the applicant has complied with all insurance requirements of this title.

§5.721. Statement of Philosophy.

(a) The philosophy of the State of Texas and the purpose of the United States Congress enunciated in the Railroad Revitalization and Regulatory Reform Act of 1976, as amended ("4R" Act) are similar: to provide the means to rehabilitate and maintain the physical facilities, improve the operations and structure, and restore the financial stability of the railway system of the United States, and to promote the revitalization of such railway system, so that this mode of transportation will remain viable in the private section of the economy and will be able to provide energy-efficient, ecologically compatible transportation services with greater efficiency, effectiveness, and economy.

(b) The State of Texas is dedicated to the proposition that the role of its rail system is of vital importance to the economic and social life of its citizens. Therefore, the economic strength, social responsiveness, and operational efficiency of the Texas rail system must be enhanced. In order to bring the rail carriers of the Texas rail system into an equitable competitive posture with other transportation modes, a fair and just regulatory climate will be maintained.

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

Issued in Austin, Texas, on April 19, 1995.

TRD-9504776 Mary Ross McDonald
Assistant Director, Legal
Division-Gas Utilities/LP
Gas
Railroad Commission of
Texas

Earliest possible date of adoption: May 26, 1995

For further information, please call: (512) 463-7094

Title 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 57. Fisheries

The Texas Parks and Wildlife Commission proposes amendments to §57.45 and §57.61, concerning department compliance with the provisions of the Coastal Management Program.

The Coastal Management Program (CMP) was developed by the General Land Office (GLO) in conjunction with other agencies and the public. The regulations for that program direct the department to develop rules which ensure consistency with the CMP for four classes of activities: leases for oyster transplant or harvest; permits for taking, transporting, and possessing threatened or endangered species; disturbance of sand, shell, gravel, or marl under Parks and Wildlife Code, Chapter 86; and development by entities other than the department in state parks, wildlife management areas, and preserves. The proposed amendments contain a general requirement of consistency and propose thresholds for referral. The thresholds for referral determine which actions can be taken to the Coastal Coordination Council for review if a consistency issue is raised during the permit process. The GLO interprets the threshold requirement to apply only to permit and lease issuance, not denial.

The proposed amendments affect the disturbance of sand, shell, gravel, or marl under the provisions of Parks and Wildlife Code, Chapter 86. The proposed thresholds for sand, shell, gravel, or marl dredging are equivalent to a zero threshold, in that the ability of the Council to review an action is triggered when an administratively complete application is received.

Robin Reichers, staff economist, has determined that for each of the first five years the rules as proposed are in effect there will be minimal fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Reichers also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be consistency of department rules and activities with the Coastal Management Plan.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rules as proposed. The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001.022, as this agency has determined that the rules as proposed will not impact local economies.

Comments on the proposed rules may be submitted to Catherine Livingston, Resource Protection Division, Texas Parks and Wildlife

Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8006 or 1-800-792-1112, extension 8006.

Shell Dredging on the Texas Gulf Coast

• 31 TAC §57.45

The amendment is proposed under Parks and Wildlife Code, Chapter 86, which gives the commission authority to manage, control, and protect marl and sand of commercial value and all gravel, shell, and mudshell located within the tidewater limits of the state

The proposed amendment implements Senate Bill 1053, Subchapter F, Acts of the 72nd Legislature, and affects Parks and Wildlife Code, Chapters 43, 76, and 86.

§57.45. Permit Applications.

(a) The following procedures will be followed for the issuance of general permits:

(1)-(14) (No change.)

(15) Prior to issuing a permit under this section for shell dredging within the Coastal Management Program Boundary as defined in §503.1 of this title (relating to Coastal Management Program Boundary) the department shall comply with the requirements of §69.91 and §69.93 of this title (relating to Consistency; Thresholds for Referral) and §505.30 of this title (relating to Agency Consistency Determination). Grant or denial of an application for a permit under this section is not a final agency action appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, §2001.171, until the jurisdiction of the Coastal Coordination Council to review that action has lapsed.

(b) (No change.)

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

Issued in Austin, Texas, on April 11, 1995.

TRD-9504720 Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: May 26, 1995

For further information, please call: (512) 389-4642

Issuance of Marl, Sand, and Gravel Permits

• 31 TAC §57.61

The amendment is proposed under Parks and Wildlife Code, Chapter 86, which gives the commission authority to manage, control,

and protect marl and sand of commercial value and all gravel, shell, and mudshell located within the tidewater limits of the state.

The proposed amendment implements Senate Bill 1053, Subchapter F, Acts of the 72nd Legislature, and affects Parks and Wildlife Code, Chapter 86.

§57.61. Management and Protection.

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

(c) Prior to issuing a permit under this section for the disturbance of marl, sand, and gravel within the Coastal Management Program Boundary as defined in §503.1 of this title (relating to Coastal Management Program Boundary) the department shall comply with the requirements of §69.91 and §69.93 of this title (relating to Consistency; Thresholds for Referral) and §505.30 of this title (relating to Agency Consistency Determination). Grant or denial of an application for a permit under this section is not a final agency action appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, §2001.171, until the jurisdiction of the Coastal Coordination Council to review that action has lapsed.

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

Issued in Austin, Texas, on April 11, 1995.

TRD-9504719 Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: May 26, 1995

For further information, please call: (512) 389-4642

Issuance of Oyster Leases

• 31 TAC §57.241

The Texas Parks and Wildlife Commission proposes an amendment to §57.241, concerning department compliance with the provisions of the Coastal Management Program.

The Coastal Management Program (CMP) was developed by the General Land Office (GLO) in conjunction with other agencies and the public. The regulations for that program direct the department to develop rules which ensure consistency with the CMP for four classes of activities: leases for oyster transplant or harvest; permits for taking, transporting, and possessing threatened or endangered species; disturbance of sand, shell, gravel, or marl under Parks and Wildlife Code, Chapter 86; and development by entities other than the department in state parks, wildlife management areas, and preserves. The proposed amendment contains a general requirement of consistency and proposes a

threshold for referral. The threshold for referral determines which actions can be taken to the Coastal Coordination Council for review if a consistency issue is raised during the permit process. The GLO interprets the threshold requirement to apply only to permit and lease issuance, not denial.

The proposed amendment affects leases for oyster transplant or harvest. The proposed threshold for oyster leases is equivalent to a zero threshold, in that the ability of the Council to review an action is triggered when an administratively complete application is received.

Robin Reichers, staff economist, has determined that for each of the first five years the rule as proposed is in effect there will be minimal fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Reichers also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule as proposed will be consistency of department rules and activities with the Coastal Management Plan.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rule as proposed. The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001.022, as this agency has determined that the rule as proposed will not impact local economies.

Comments on the proposed rule may be submitted to Catherine Livingston, Resource Protection Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8006 or 1-800-792-1112, extension 8006.

The amendment is proposed under Parks and Wildlife Code, Chapter 76, which gives the commission authority to regulate the planting and taking of oysters in public waters.

The proposed amendment implements Senate Bill 1053, Subchapter F, Acts of the 72nd Legislature, and affects Parks and Wildlife Code, Chapter 76.

§57.241. Application for Oyster Lease.

(a)-(s) (No change.)

(t) Prior to issuing a lease under this section, the department shall comply with the requirements of §69.91 and §69.93 of this title (relating to Consistency; Thresholds for Referral) and §505.30 of this title (relating to Agency Consistency Determination). Grant or denial of an application for a lease under this section is not a final agency action appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, §2001.171, until the jurisdiction of the Coastal Coordination Council to review that action has lapsed.

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

Issued in Austin, Texas, on April 11, 1995.

TRD-9504716

Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: May 26, 1995

For further information, please call: (512) 389-4642

Scientific and Zoological Permits

• 31 TAC §57.282

The Texas Parks and Wildlife Commission proposes new §57.282, concerning department compliance with the provisions of the Coastal Management Program.

The Coastal Management Program (CMP) was developed by the General Land Office (GLO) in conjunction with other agencies and the public. The regulations for that program direct the department to develop rules which ensure consistency with the CMP for four classes of activities: leases for oyster transplant or harvest; permits for taking, transporting, and possessing threatened or endangered species; disturbance of sand, shell, gravel, or marl under Parks and Wildlife Code, Chapter 86; and development by entities other than the department in state parks, wildlife management areas, and preserves. The proposed new rule contains a general requirement of consistency and proposes a threshold for referral. The threshold for referral determines which actions can be taken to the Coastal Coordination Council for review if a consistency issue is raised during the permit process. The GLO interprets the threshold requirement to apply only to permit and lease issuance, not denial.

The proposed new rule affects permits for taking, transporting, and possessing threatened or endangered species. The proposed threshold for permits to take, transport, or possess endangered or threatened species provides for Council review of zoological and commercial propagation permits and mandates department compliance with the Coastal Management Plan with respect to permits for taking, transporting, and possessing threatened or endangered species.

Robin Reichers, staff economist, has determined that for each of the first five years the rule as proposed is in effect there will be minimal fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Reichers also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule as proposed will be consistency of department rules and activities with the Coastal Management Plan.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rule as proposed. The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001.022, as this agency has determined that the rule as proposed will not impact local economies.

Comments on the proposed rule may be submitted to Catherine Livingston, Resource Protection Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8006 or 1-800-792-1112, extension 8006.

The new rule is proposed pursuant to Senate Bill 1053, Subchapter F, Acts of the 72nd Legislature, which requires the Texas Parks and Wildlife Department to comply with the goals and policies of the coastal management plan.

The proposed new rule implements Senate Bill 1053, Subchapter F, Acts of the 72nd Legislature.

§57.282. Compliance with Coastal Management Plan. If the department determines that a permit issued under this section authorizes the take, transport, or possession of an endangered or threatened species within the Coastal Management Program Boundary as defined in §503.1 of this title (relating to Coastal Management Program Boundary), the department shall comply with the requirements of §69.91 and §69.93 of this title (relating to Consistency; Thresholds for Referral) and §505.30 of this title (relating to Agency Consistency Determination) prior to the issuance of the permit. Grant or denial of an application for a permit under this section is not a final agency action appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, §2001.171, until the jurisdiction of the Coastal Coordination Council to review that action has lapsed.

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

Issued in Austin, Texas, on April 11, 1995.

TRD-9504717

Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: May 26, 1995

For further information, please call: (512) 389-4642

Chapter 59. Parks

Administration of the Texas State Park System

• 31 TAC §59.75

The Texas Parks and Wildlife Commission proposes new §59.75, concerning department compliance with the provisions of the Coastal Management Program.

The Coastal Management Program (CMP) was developed by the General Land Office (GLO) in conjunction with other agencies and the public. The regulations for that program direct the department to develop rules which ensure consistency with the CMP for four classes of activities: leases for oyster transplant or harvest; permits for taking, transporting, and possessing threatened or endangered species; disturbance of sand, shell, gravel, or marl under Parks and Wildlife Code, Chapter 86; and development in state parks, wildlife management areas, and preserves by entities other than the department. The proposed new rule contains a general requirement of consistency and proposes a threshold for referral. The threshold for referral determines which actions can be taken to the Coastal Coordination Council for review if a consistency issue is raised during the permit process.

The new rule affects development in state parks, wildlife management areas, and preserves by entities other than the department. The proposed thresholds for outside development on department lands are equivalent to a zero threshold in that the ability of the Council to review an action is triggered when an administratively complete application is received or initial commission approval for development on department lands is secured.

Robin Reichers, staff economist, has determined that for each of the first five years the rule as proposed is in effect there will be minimal fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Reichers also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule as proposed will be consistency of rules and activities under the Coastal Management Plan.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rule as proposed. The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001.022, as this agency has determined that the rule as proposed will not impact local economies.

Comments on the proposed rule may be submitted to Catherine Livingston, Resource Protection Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8006 or 1-800-792-1112, extension 8006.

The new section is proposed under Parks and Wildlife Code, Chapter 26, which gives

the commission authority to protect public parks and recreational lands.

The new section implements Senate Bill 1053, Subchapter F, Acts of the 72nd Legislature, and affect Parks and Wildlife Code, Chapter 26.

§59.75. Coastal Management Program. Before approving development on any state park, state wildlife management area, or state preserve located wholly or partially within the Coastal Management Program Boundary as defined in §503.1 of this title (relating to Coastal Management Program Boundary), the Texas Parks and Wildlife Department shall ensure that the applicable requirements of §69.91 and §69.93 of this title (relating to Consistency; Thresholds for Referral) and §505.30 of this title (relating to Agency Consistency Determination) have been met. Grant or denial of an application under this section is not a final agency action appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, §2001.171, until the jurisdiction of the Coastal Coordination Council to review that action has lapsed.

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

Issued in Austin, Texas, on April 11, 1995.

TRD-9504721

Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: May 26, 1995

For further information, please call: (512) 389-4642

Chapter 65. Wildlife

Subchapter G. Regulations for Taking, Possessing, and Transporting Threatened Nongame Species

• 31 TAC §65.174, §65.182

The Texas Parks and Wildlife Commission proposes amendments to §65.174 and §65.182, concerning department compliance with the provisions of the Coastal Management Program.

The Coastal Management Program (CMP) was developed by the General Land Office (GLO) in conjunction with other agencies and the public. The regulations for that program direct the department to develop rules which ensure consistency with the CMP for four classes of activities: leases for oyster transplant or harvest; permits for taking, transporting, and possessing threatened or endangered species; disturbance of sand, shell, gravel, or marl under Parks and Wildlife

Code, Chapter 86; and development by entities other than the department in state parks, wildlife management areas, and preserves. The proposed amendments contain a general requirement of consistency and propose thresholds for referral. The thresholds for referral determine which actions can be taken to the Coastal Coordination Council for review if a consistency issue is raised during the permit process. The GLO interprets the threshold requirement to apply only to permit and lease issuance, not denial.

The amendments affect permits for taking, transporting, and possessing threatened or endangered species. The proposed threshold for permits to take, transport, or possess endangered or threatened species provides for Council review regarding zoological and commercial propagation permits.

Robin Reichers, staff economist, has determined that for each of the first five years the rules as proposed are in effect there will be minimal fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Reichers also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be consistency of rules and activities under the Coastal Management Plan.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rules as proposed. The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001.022, as this agency has determined that the rules as proposed will not impact local economies.

Comments on the proposed rules may be submitted to Catherine Livingston, Resource Protection Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8006 or 1-800-792-1112, extension 8006.

The amendments are proposed under Parks and Wildlife Code, Chapter 43, which gives the commission authority to regulate the taking, transporting, and possession of protected wildlife for scientific, zoological, rehabilitation, and propagation purposes.

The proposed amendments implement Senate Bill 1053, Subchapter F, Acts of the 72nd Legislature, and affect Parks and Wildlife Code, Chapter 43.

§65.174. Permit Required.

(a) No person may take, possess, or transport fish or wildlife from the wild, classified as threatened by §65.173 of this title (relating to Threatened Species), for scientific or zoological purposes unless a valid scientific or zoological permit has been obtained from the department as required by the Texas Parks and Wildlife Code, §§43.021-43.030.

(b) If the department determines that a permit issued under this section authorizes the take, transport, or possession of threatened species from within the Coastal Management Program Boundary as defined in §503.1 of this title (relating to Coastal Management Program Boundary), the department shall comply with the requirements of §69.91 and §69.93 of this title (relating to Consistency; Thresholds for Referral) and §505.30 of this title (relating to Agency Consistency Determination) prior to the issuance of the permit. Grant or denial of an application for a lease under this section is not a final agency action appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, §2001.171, until the jurisdiction of the Coastal Coordination Council to review that action has lapsed.

§65.182. Permits to Take Certain Fish or Wildlife.

(a) No person may take, possess, or transport fish or wildlife classified as endangered species and named in §65.183 of this title (relating to Closed Seasons) for zoological gardens or scientific purposes, or take or transport fish or wildlife classified as endangered species from the wild or from their natural habitat, for propagation for commercial purposes, unless he has obtained a valid permit from the department as required by the Texas Parks and Wildlife Code, §§43.021-43.030.

(b) If the department determines that a permit issued under this section authorizes the take, transport, or possession of endangered species from within the Coastal Management Program Boundary as defined in §503.1 of this title (relating to Coastal Management Program Boundary), the department shall comply with the requirements of §69.91 and §69.93 of this title (relating to Consistency; Thresholds for Referral) and §505.30 of this title (relating to Agency Consistency Determination) prior to the issuance of the permit. Grant or denial of an application under this section is not a final agency action appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, §2001.171, until the jurisdiction of the Coastal Coordination Council to review that action has lapsed.

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

Issued in Austin, Texas, on April 11, 1995.

TRD-9504722

Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: May 26, 1995

For further information, please call: (512) 389-4642

◆ ◆ ◆
Chapter 69. Resource
Protection

Endangered, Threatened, and
Protected Native Plants

• 31 TAC §69.6, §69.9

The Texas Parks and Wildlife Commission proposes amendments to §69.6 and §69.9, concerning department compliance with the provisions of the Coastal Management Program.

The Coastal Management Program (CMP) was developed by the General Land Office (GLO) in conjunction with other agencies and the public. The regulations for that program direct the department to develop rules which ensure consistency with the CMP for four classes of activities: leases for oyster transplant or harvest; permits for taking, transporting, and possessing threatened or endangered species; disturbance of sand, shell, gravel, or marl under Parks and Wildlife Code, Chapter 86; and development in state parks, wildlife management areas, and preserves by entities other than the department. The proposed amendments contain a general requirement of consistency and propose thresholds for referral. The thresholds for referral determine which actions can be taken to the Coastal Coordination Council for review if a consistency issue is raised during the permit process. The GLO interprets the threshold requirement to apply only to permit and lease issuance, not denial.

The amendments affect permits for take endangered, threatened, and protected native plants. The proposed threshold for permits provides for Council review regarding endangered, threatened, and protected native plants.

Robin Reichers, staff economist, has determined that for each of the first five years the rules as proposed are in effect there will be minimal fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Reichers also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be consistency of rules and activities under the Coastal Management Plan.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rules as proposed. The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001.022, as this agency has determined that the rules as proposed will not impact local economies.

Comments on the proposed rules may be submitted to Catherine Livingston, Resource Protection Division, Texas Parks and Wildlife Department, 4200 Smith School Road,

Austin, Texas 78744; (512) 389-8006 or 1-800-792-1112, extension 8006.

The amendments are proposed under Parks and Wildlife Code, Chapter 88, which gives the commission authority to regulate the taking of endangered, threatened, and protected native plants.

The proposed amendments implement Senate Bill 1053, Subchapter F, Acts of the 72nd Legislature, and affect Parks and Wildlife Code, Chapter 88.

§69.6. Scientific Plant Permit—Criteria for Issuance.

(a) The department will consider the following criteria in determining whether to issue or deny an application for a scientific plant permit:

(1) the performance of the applicant with respect to the observance of the terms of past permits;

(2) whether the information obtained will benefit the department in the management of the species requested by the applicant;

(3) whether the applicant has supplied adequate justification to substantiate the need to conduct the research;

(4) whether the research would substantially or unnecessarily duplicate existing research being conducted by other permittees who hold permits from the department;

(5) whether the applicant has adequate facilities to properly care for the plants requested;

(6) whether the applicant has adequate experience and professional qualifications in the field of study relating to the research requested to properly conduct the research with reasonable expectations of success; and

(7) whether the applicant has submitted a research proposal adequate to allow the department to properly evaluate the proposed research.

(b) If the department determines that a permit issued under this section authorizes the take, transport, or possession of endangered or threatened species from within the Coastal Management Program Boundary as defined in §503.1 of this title (relating to Coastal Management Program Boundary), the department shall comply with the requirements of §69.91 and §69.93 of this title (relating to Consistency; Thresholds for Referral) and §505.30 of this title (relating to Agency Consistency Determination) prior to the issuance of the permit. Grant or denial of an application under this section is not a final agency action appealable for purposes of judicial review under the Texas Administrative Proce-

dure Act, Texas Government Code, Title 10, Subtitle A, §2001.171, until the jurisdiction of the Coastal Coordination Council to review that action has lapsed.

§69.9. *Commercial Plant Permit.*

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

(d) If the department determines that a permit issued under this section authorizes the take, transport, or possession of endangered or threatened native species from within the Coastal Management Program Boundary as defined in §503.1 of this title (relating to Coastal Management Program Boundary), the department shall comply with the requirements of §69.91 and §69.93 of this title (relating to Consistency; Thresholds for Referral) and §505.30 of this title (relating to Agency Consistency Determination) prior to the issuance of the permit. Grant or denial of an application under this section is not a final agency action appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, §2001.171, until the jurisdiction of the Coastal Coordination Council to review that action has lapsed.

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

Issued in Austin, Texas, on April 11, 1995.

TRD-9504723

Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: May 26, 1995

For further information, please call: (512) 389-4642

◆ ◆ ◆
Compliance with Coastal Management Plan

• 31 TAC §69.91, §69.93

The Texas Parks and Wildlife Commission proposes new §69.91 and §69.93, concerning department compliance with the provisions of the Coastal Management Program.

The Coastal Management Program (CMP) was developed by the General Land Office (GLO) in conjunction with other agencies and the public. The regulations for that program direct the department to develop rules which ensure consistency with the CMP for four classes of activities: leases for oyster transplant or harvest; permits for taking, transporting, and possessing threatened or endangered species; disturbance of sand, shell, gravel, or marl under Parks and Wildlife Code, Chapter 86; and development by entities other than the department in state parks, wildlife management areas, and preserves. The proposed new rules specify that the ac-

tions and rules of the department with regard to the Coastal Management Plan shall be consistent with the applicable goals, policies, and procedures set forth by the Coastal Coordination Council, and propose thresholds for referral. The thresholds for referral determine which actions can be taken to the Coastal Coordination Council for review if a consistency issue is raised during the permit process. The GLO interprets the threshold requirement to apply only to permit and lease issuance, not denial.

The proposed new rules affect leases for oyster transplant or harvest; permits for taking, transporting, and possessing threatened or endangered species; disturbance of sand, shell, gravel, or marl under Parks and Wildlife Code, Chapter 86; and development by entities other than the department in state parks, wildlife management areas, and preserves.

Robin Reichers, staff economist, has determined that for each of the first five years the rules as proposed are in effect there will be minimal fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Reichers also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be consistency of department rules and activities with the Coastal Management Plan.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rules as proposed. The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001.022, as this agency has determined that the rules as proposed will not impact local economies.

Comments on the proposed rules may be submitted to Catherine Livingston, Resource Protection Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8006 or 1-800-792-1112, extension 8006.

The new rules are proposed under Parks and Wildlife Code, Chapter 43, which gives the commission authority to regulate the taking, transporting, and possession of protected wildlife for scientific, zoological, rehabilitation, and propagation purposes; Chapter 76, which gives the commission authority to regulate the planting and taking of oysters in public waters; Chapter 86, which gives the commission authority to manage, control, and protect marl and sand of commercial value and all gravel, shell, and mudshell located within the tidewater limits of the state; and Chapter 88, which gives the commission authority to regulate the taking of endangered, threatened, or protected native plants for the purpose of propagation, education, or scientific studies.

The proposed new rules implement Senate Bill 1053, Subchapter F, Acts of the 72nd Legislature, and affect Parks and Wildlife Code, Chapters 43, 76, 86, and 88.

§69.91. *Consistency.* Pursuant to the requirements of Chapter 501 of this title (re-

lating to Coastal Management Program), the actions and rules of the Texas Parks and Wildlife Department with regard to the items listed in §505(a)(2)(G)(i)-(iv) of this title (relating to Actions and Rules Subject to the Coastal Management Program) shall be consistent with the applicable goals, policies, and procedures set forth by the Coastal Coordination Council in Chapters 501 and 505, when such actions or rules may adversely affect a coastal natural resource area as defined in §503.1 of this title (relating to Coastal Management Program Boundary). Specifically, permits or actions authorized by the Texas Parks and Wildlife Department related to activities listed in §505.11(a)(2)(G)(i)-(iv) shall include the statements and determinations required by §505.30 of this title (relating to Agency Consistency Determination).

§69.93. *Thresholds for Referral.* The thresholds for referral of actions of the Texas Parks and Wildlife Department listed in §505.11(a)(2)(G)(i)-(iv) of this title (relating to Actions and Rules Subject to Coastal Management Program) shall be as follows:

(1) For oyster leases issued pursuant to §57.241 of this title (relating to Application for Oyster Lease), the threshold for referral shall be an administratively complete application for a lease.

(2) For permits issued pursuant to §§57.271-57.281 of this title (relating to Scientific or Zoological Permits) as they concern the taking, transporting, or possession of threatened or endangered species; §§65.171-65.177 and 65.181-65.184 of this title (relating to Regulations for Taking, Possessing, and Transporting Threatened Nongame Species); or permits issued pursuant to §§69.1-69.14 and 69.41, 69.43, 69.45, 69.47, 69.49, 69.51, 69.53, 69.55, 69.57, and 69.71 of this title (relating to Endangered, Threatened, and Protected Native Plants; Wildlife Rehabilitation Permits), the threshold shall be an administratively complete application for the taking from the wild of such species for zoological or commercial propagation purposes.

(3) For permits authorizing the disturbance or removal of sand, shell, gravel, and marl issued pursuant to §§57.11, 57.41-57.51, and 57.61-57.76 of this title (relating to Authorized Methods for Removing Sand and Gravel from Public Waters; Shell Dredging on the Texas Gulf Coast; and Issuance of Marl, Sand, and Gravel Permits), the threshold shall be an administratively complete application for a permit.

(4) For approval of development which requires the use or taking of any public land in state parks, wildlife management areas, and preserves by a person or

entity other than the Texas Parks and Wildlife Department and which would be subject to Parks and Wildlife Code, Chapter 26 and §§59.31-59.34, 59.41-59.47, and 59.62-59.64 of this title (relating to Park Planning and Development Projects, Acquisition and Development of Historic Sites and Structures, and Administration of the Texas State Park System), the threshold for

referral shall be initial approval by the Texas Parks and Wildlife Commission of the project concept.

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

Issued in Austin, Texas, on April 11, 1995.

TRD-9504718

Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: May 26, 1995

For further information, please call: (512) 389-4642

◆ ◆ ◆

WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the **Texas Register**. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the **Texas Register**, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the **Texas Register**.

TITLE 22. EXAMINING BOARDS

Part XXX. Texas State Board of Examiners of Perfusionists

Chapter 761. Perfusionists

• 22 TAC §761.16, §761.17

The Texas State Board of Examiners of Perfusionists (board) withdraws the emergency effectiveness of new §761.16 and §761.17 effective April 18, 1995. The board inadvertently excluded those sections in its March 28, 1995, submission for withdrawal of the emergency effectiveness. The text of the emergency sections appeared in the December 23, 1994, issue of the *Texas Register* (20 TexReg 10147).

On March 28, the board submitted the withdrawal of the emergency effectiveness of §§761.1-761.3, 761.6-761.8, 761.10, and 761.15 and final adoption of proposed §§761.1-761.13 and 761.15-761.19 which appeared in the April 4, 1995, issue of the *Texas Register* (20 TexReg 2525 and 20 TexReg 2527 respectively) with the intention of the emergency sections being withdrawn effective the same day that the new sections would become effective (20 days after filing). However, the effective date printed in the *Texas Register* for the withdrawal of the emergency sections was April 17, 1995, which did not represent the department's intention. The correct date should be April 18, 1995, for withdrawal of §§761.1-761.3, 761.6-761.8, 761.10, and 761.15-761.17.

Issued in Austin, Texas, on April 17, 1995.

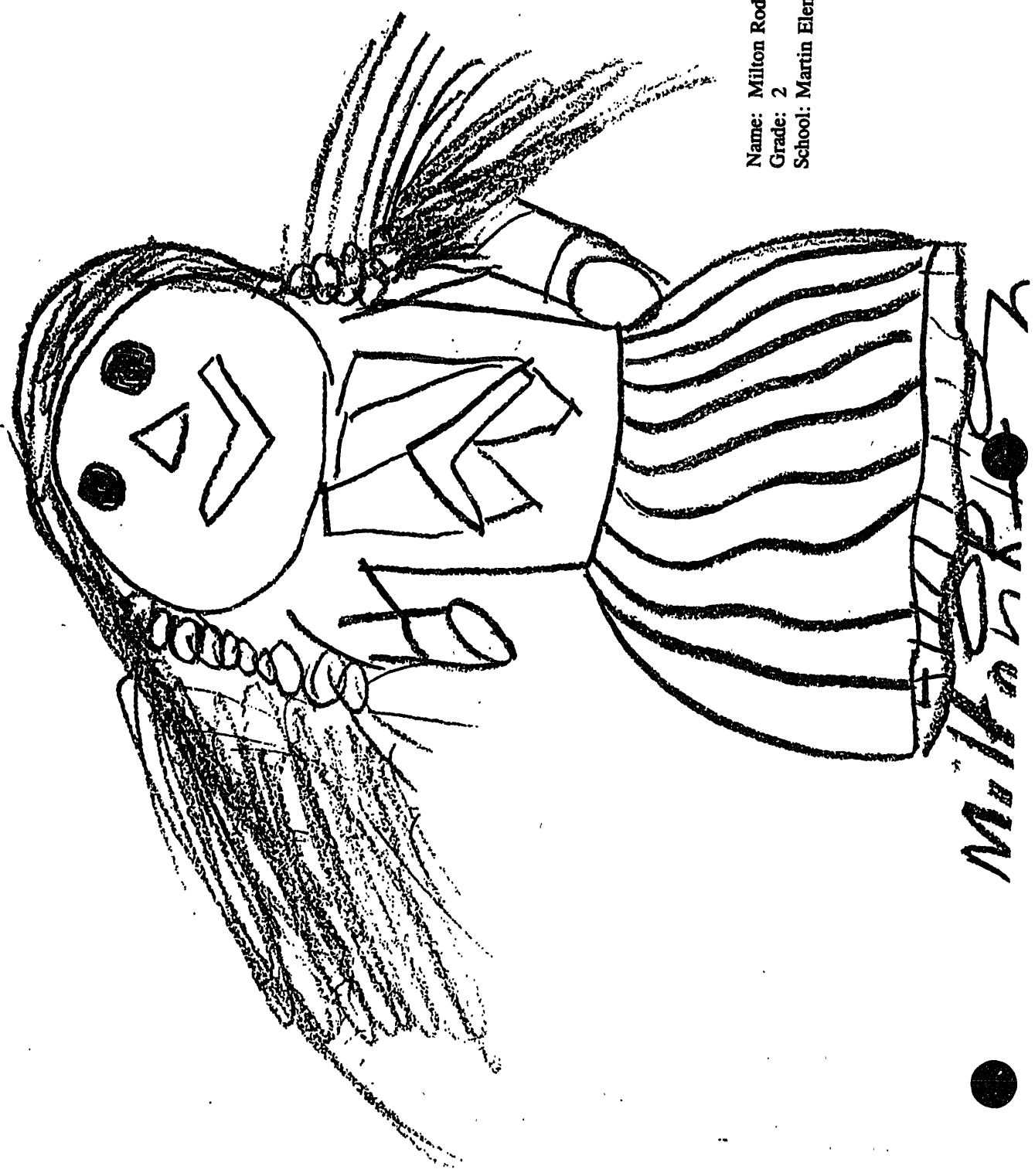
TRD-9504731 Shannon E. Ballard
 Chairman
 Texas State Board of
 Examiners of
 Perfusionists

Effective date: December 23, 1994

Proposal publication date: April 18, 1995

For further information, please call: (512)
458-7236





Name: Milton Rodriguez

Grade: 2

School: Martin Elementary School, Brownsville ISD

MILTON RODRIGUEZ

ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 115. Home and Community Support Services Agencies

Subchapter A. General Provisions

• 25 TAC §115.7

The Texas Department of Health (department) adopts new §115.7, concerning the Texas Department of Health/Board of Nurse Examiners Memorandum of Understanding Advisory Committee, with changes to the proposed text as published in the December 2, 1994, issue of the *Texas Register* (19 TexReg 9450).

The new section implements Texas Civil Statutes, Article 6252-33 (Senate Bill 383, Acts of the 73rd Legislature, Regular Session, 1993) which requires the department to adopt rules relating to the purpose and tasks of each advisory committee and the manner in which committees will report to the department.

The new section will establish rule language which describes the tasks of the advisory committee, member composition, members' terms of office, election of officers, meeting times, meeting minutes, meeting attendance requirements, meeting procedures, departmental staff support, establishment of subcommittees, statements made by members, reports to the board, and reimbursement for expenses. Since this committee will also advise the Board of Nurse Examiners, that board will also consider proposing rules as required by Texas Civil Statutes, Article 6252-33 at their May 10, 1995 meeting.

The following comment was received regarding the proposed section.

Comment: Concerning §115.7(a)(2), department staff commented that the statutory reference should be to the Health and Safety Code, §11.016, which gives the Texas Board of Health authority to establish advisory committees.

Response: The department made the change.

Minor editorial changes were made for clarification purposes.

The new section is adopted under the Texas Civil Statutes, Article 6252-33 relating to agency review of advisory committees; the Health and Safety Code, §11.016, which provides the Texas Board of Health (board) with the authority to establish advisory committees; and the Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

§115.7. Texas Department of Health/Board of Nurse Examiners Memorandum of Understanding Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be Texas Department of Health/Board of Nurse Examiners Memorandum of Understanding Advisory Committee.

(2) The committee is established under the Health and Safety Code, §11.016.

(b) Applicable law. The committee is subject to Texas Civil Statutes, Article 6252-33 relating to state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the Texas Board of Health (board) and the Board of Nurse Examiners (BNE) in the area of defining certain tasks or services provided by home and community support services agencies.

(d) Tasks.

(1) The committee shall advise the board and the BNE concerning the development, modification, and renewal of a memorandum of understanding (MOU) governing the circumstances under which the provision of health-related tasks or services do not constitute the practice of professional nursing.

(2) The committee shall carry out any other tasks given to the committee by the board and the BNE.

(e) Review and duration. By July 1, 1999, the board will initiate and complete a

review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of ten members jointly appointed by the board and the BNE. The members of the committee shall be appointed as follows:

(1) one representative from the BNE and one representative from the Texas Department of Health (department);

(2) one representative from the Texas Department of Mental Health and Mental Retardation;

(3) one representative from the Texas Department of Human Services;

(4) one representative from the Texas Nurses Association;

(5) one representative from the Texas Association for Home Care, Incorporated, or its successor;

(6) one representative from the Texas Hospice Organization, Incorporated, or its successor;

(7) one representative of the Texas Respite Resource Network or its successor; and

(8) two representatives of organizations such as the Personal Assistance Task Force or the Disability Consortium that advocate for clients in community-based settings.

(g) Terms of office. The term of office of each member shall be six years.

(1) Members shall be appointed for staggered terms so that the terms of a substantially equivalent number of members will expire on January 31 of each even-numbered year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The representatives from the department and the BNE will serve as co-chairmen of the committee.

(1) The co-chairmen shall preside at all committee meetings at which they are in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board.

(2) The co-chairmen may serve as ex-officio members of any subcommittee of the committee.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of department staff, BNE staff, and either the co-chairmen or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The co-chairmen may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify a co-chairman or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or

disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the co-chairmen shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the co-chairmen.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The co-chairmen shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The co-chairmen may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The re-

ports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members. The board, the department, and the committee shall not be bound in anyway by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each January. It shall be signed by the co-chairmen and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in Texas Civil Statutes, Article 6252-33, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official business.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel

and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 17, 1995.

TRD-9504782 Susan K. Steeg
General Counsel
Texas Department of
Health

Effective date: May 10, 1995

Proposal publication date: December 2, 1994

For further information, please call: (512)
458-7236

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 114. Control of Air Pollution From Motor Vehicles

• 30 TAC §114.13

The Texas Natural Resource Conservation Commission (TNRCC or Commission) adopts an amendment to §114.13, concerning Oxygenated Fuels, without changes to the proposed text as published in the January 17, 1995, issue of the *Texas Register* (20 TexReg 279).

The amendment responds to a petition for rulemaking filed by Exxon Company, U.S.A. to reduce administrative costs for the company and others providing oxygenated fuels in El Paso. The existing §114.13(f) stated that from October 1 to March 31, gasoline pumps dispensing oxygenated gasoline shall display a legible and conspicuous label with the following statement: "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide from motor vehicles." The new §114.13(f) will allow owners of pumps dispensing oxygenated gasoline to add the relevant dates to the required label in order to eliminate the need to remove the label during months in which oxygenated gasoline is not dispensed.

A public hearing on the proposal was held February 16, 1995, in Austin to consider the proposed amendment. The staff requested comments from the public, the regulated community, and the United States Environmental Protection Agency (EPA) regarding the effects of the proposed rule change. Comments supporting the amendment to §114.13(f) were received from EPA and from Exxon.

The amendment is adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

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

Issued in Austin, Texas, on April 12, 1995.

TRD-9504745 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Effective date: May 9, 1995

Proposal publication date: January 17, 1995

For further information, please call: (512)
239-1966

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 57. Fisheries

The Texas Parks and Wildlife Commission, in a regularly scheduled public hearing held on March 23, 1995, adopted the repeal of §57.130, amendments to §§57.111, 57.113-57.115, 57.117-57.120, 57.123, and 57.129, and new §§57.130-57.134, concerning harmful or potentially harmful exotic fish, shellfish and aquatic plants, without changes to the proposed text as published in the December 27, 1994, issue of the *Texas Register* (19 TexReg 10331).

The repeal was necessary for implementation of new rules. The amendments and new rules effect three changes to existing regulations. First, new mechanisms are established through which zoological parks and research facilities may possess harmful or potentially harmful exotic fish, shellfish and aquatic plants for display or research purposes. The new rules and amendments further provide enhanced protection means for prevention of release of exotic species into Texas waters as a result of hurricanes or other weather-related disasters. Finally, the amended and new rules provide a means to allow transportation of harmful or potentially harmful exotic fish, shellfish and aquatic plants through Texas when a site in Texas is not the ultimate destination of these exotic species.

The repeal, amendments and new rules function by providing substantial improvement in preventing release of harmful or potentially harmful exotic fish, shellfish and aquatic plants into Texas waters.

Three respondents provided comments in favor of removal of *Egeria densa* from the list of aquatic plants classified as harmful or potentially harmful plants.

The agency received no comments from organizations or groups regarding the proposed repeal, amendments and new rules.

Harmful or Potentially Harmful Exotic Fish, Shellfish, and Aquatic Plants

• 31 TAC §§57.111, 57.113-57.115, 57.117-57.120, 57.123, 57.129, 57.130-57.134

The amendments and new rules are adopted under authority of Parks and Wildlife Code, §66.007, which provides the department with authority to regulate importation, possession, sale and release of harmful or potentially harmful exotic species.

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 authority.

Issued in Austin, Texas, on April 11, 1995.

TRD-9504713 Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife
Department

Effective date: May 8, 1995

Proposal publication date: December 27, 1994

For further information, please call: (512)
389-4642

• 31 TAC §57.130

The repeal is adopted under authority of Parks and Wildlife Code, §66.007, which provides the department with authority to regulate importation, possession, sale and release of harmful or potentially harmful exotic species.

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 authority.

Issued in Austin, Texas, on April 11, 1995.

TRD-9504714 Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife
Department

Effective date: May 8, 1995

Proposal publication date: December 27, 1994

For further information, please call: (512)
389-4642

Chapter 59. Parks

Naming State Parks and Park Features

• 31 TAC §59.91

The Texas Parks and Wildlife Commission, in a regularly scheduled public hearing held on March 23, 1995, adopted the repeal of §59.91, concerning Naming Sites and Features, without changes to the proposed text as published in the February 17, 1995, issue of the *Texas Register* (20 TexReg 1067).

The existing policy for naming state parks and features in was adopted by the Parks and Wildlife Commission in 1976. The Texas Parks and Wildlife Department Wildlife Division also has a similar practice for the naming of Wildlife Management Areas. Repeal of the current rules regarding naming of sites and features allows formulation of new policy which provides a uniform naming policy for both park and wildlife management areas.

The repeal will prevent conflict with new Commission policy regarding naming of state parks and state park features.

The department received no public comment concerning the proposed repeal.

The repeal is adopted under Parks and Wildlife Code, Chapter 13, §13 001, which provides the Parks and Wildlife Commission with authority to establish a classification system for state parks and wildlife management areas.

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 authority.

Issued in Austin, Texas, on April 11, 1995.

TRD-9504712 Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife
Department

Effective date: May 8, 1995

Proposal publication date: February 17, 1995

For further information, please call: (512) 389-4642

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

**Part XIX. Texas
Department of Protective
and Regulatory Services
Chapter 700. Child Protective
Services**

The Texas Department of Protective and Regulatory Services (TDPRS) adopts the repeal of §§700.1901-700.1903 and adopts new §§700.1901-700.1902, without changes

to the proposed text as published in the March 10, 1995, issue of the *Texas Register* (20 TexReg 1744)

The justification for the repeals and new sections is to reorganize, update, and clarify the department's policies for coordinating placements under the Interstate Compact on the Placement of Children (ICPC). The department's rules for coordinating interstate placements have not been systematically revised since 1984. The department is revising the rules now to integrate them with the department's new rules for substitute-care services, to incorporate regulations adopted by the Association of Administrators of the ICPC, and to improve the presentation of policies and procedures for interstate placements in the CPS Handbook.

The repeals and new sections will function by improving the quality and efficiency of the department's services to children who must be placed across state lines.

No comments were received regarding adoption of the repeals and new sections.

Subchapter S. Interstate Placement of Children

◆ ◆ ◆
• **40 TAC §§700.1901-700.1903**

The repeals are adopted under the Human Resources Code, Title 2, Chapter 45, which authorizes the department to operate under the Interstate Compact on the Placement of Children. The repeals are also adopted under the Texas Family Code, Title 2, Chapter 34, which authorizes the department to provide services to alleviate the effects of child abuse and neglect. And finally, the repeals are adopted under Texas Civil Statutes, Article 4413 (503), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to the child protective services program from the Texas Department of Human Services (TDHS) to the Texas Department of Protective and Regulatory Services.

The repeals implement the Human Resources Code, Title 2, Chapter 45, which authorizes the department to operate under the Interstate Compact on the Placement of Children.

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 authority.

Issued in Austin, Texas, on April 17, 1995.

TRD-9504705 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Protective and
Regulatory Services

Effective date: June 1, 1995

Proposal publication date: March 10, 1995

For further information, please call: (512) 450-3765

◆ ◆ ◆
• **40 TAC §700.1901, §700.1902**

The new sections are adopted under the Human Resources Code, Title 2, Chapter 45, which authorizes the department to operate under the Interstate Compact on the Placement of Children. The new sections are also adopted under the Texas Family Code, Title 2, Chapter 34, which authorizes the department to provide services to alleviate the effects of child abuse and neglect. And finally, the new sections are adopted under Texas Civil Statutes, Article 4413 (503), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to the child protective services program from the Texas Department of Human Services (TDHS) to the Texas Department of Protective and Regulatory Services.

The new sections implement the Human Resources Code, Title 2, Chapter 45, which authorizes the department to operate under the Interstate Compact on the Placement of Children.

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 authority.

Issued in Austin, Texas, on April 17, 1995.

TRD-9504706 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Protective and
Regulatory Services

Effective date: June 1, 1995

Proposal publication date: March 10, 1995

For further information, please call: (512) 450-3765

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 before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the **Texas Register**.

Emergency meetings and agendas. Any of the governmental entities listed 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. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas State Board of Public Accountancy

Monday, May 1, 1995, 10:00 a.m.

333 Guadalupe, Room 100

Austin

Meeting

AGENDA:

To consider the adoption of proposed amendments to Board rules 501.2-501.4 and 501.40 concerning the definition of the practice of public accountancy, the practice of public accountancy through registered entities and identifying the application of the Board's rules to licensees in "client" practice and "industry and government" practice. To consider the adoption of a proposed revision to Board Rule 501.41 concerning "Discreditable Acts," which revision would specifically identify activities by CPAs which would be improper. To consider the adoption on an emergency basis, pursuant to Chapter 2001, §2001.034 of the Government Code, of a proposed revision to Board Rule 523.32 (Ethics Course) which would require Board approval of CPE courses. An imminent peril to the public welfare exists which necessitates the immediate adoption of a revision to Rule 523.32 (Ethics Course) because CPAs may currently receive the required credit for ethics courses which do not meet Board standards.

Contact: J. Randel (Jerry) Hill, 333 Guadalupe, Tower III, Room 900, Austin, Texas 78701-3900, (512) 505-5542.

Filed: April 20, 1995, 9:37 a.m.

TRD-9504826

Monday, May 1, 1995, 10:30 a.m.

333 Guadalupe, Room 100

Austin

Public Hearing

AGENDA:

To receive oral testimony on a proposed amendment to Board Rule 501.41 concerning Discreditable Acts which if adopted would more specifically identify inappropriate actions of Certified Public Accountants.

Contact: J. Randel (Jerry) Hill, 333 Guadalupe, Tower III, Room 900, Austin, Texas 78701-3900, (512) 505-5542.

Filed: April 20, 1995, 9:37 a.m.

TRD-9504827

Texas Department of Agriculture

Friday, April 28, 1995, 9:30 a.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 931A

Austin

State Seed and Plant Board Seed Arbitration Board

AGENDA:

Meeting before the Board to review and take possible action on a seed arbitration

complaint filed by Robert Ruiz against Petoseed Company, Incorporated and Baxter Seed Company in accordance with the Texas Seed Arbitration Law (Texas Agriculture Code, Chapter 64).

Contact: Charles Leamons, P.O. Box 629, Giddings, Texas 78942, (409) 542-3691.

Filed: April 20, 1995, 9:57 a.m.

TRD-9504830

Thursday, May 4, 1995, 10:30 a.m.

Board Room, Texas Sheep and Goat Raisers, 233 West Twobig

San Angelo

Texas Sheep and Goat Commodity Board

AGENDA:

Opening remarks and welcome

Review and approval on minutes of last meeting

Review and approval of fiscal affairs

Reports of officers and directors

Discussion and action: New business-review of telephone messages; possible purchase of FAX for board president's use; review "hot spots" proposal from four associations.

Unfinished business-review status on various projects; review reports from Gary Nunley on Animal Damage Control

Scheduling of next meeting

Discussion: other businesses

Adjourn

Contact: Minnie Savage, 233 West Twohig, San Angelo, Texas 76902-3543, (915) 659-8777.

Filed: April 19, 1995, 9:45 a.m.

TRD-9504781

Tuesday, May 16, 1995, 10:00 a.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 924A

Austin

Office of Hearings

AGENDA:

Alleged violation of Texas Agriculture Code Annotated, §§103.001-103.015 (Vernon 1982) by Sillaway Produce as petitioned by Wade Pennington and Sons.

Contact: Joyce C. Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: April 18, 1995, 3:26 a.m.

TRD-9504759



State Employee Charitable Campaign

Monday, April 24, 1995, Noon

2000 East Martin Luther King, Jr. Boulevard

Austin

Local Employee Committee

AGENDA:

I. Welcome

II. Review/Approval Local Organization/Federation Applications

Adjourn

Contact: Anne Murphy, P.O. Box 1925, Austin, Texas 78767-1925, (512) 472-6267, or Fax: (512) 482-8309.

Filed: April 18, 1995, 4:06 p.m.

TRD-9504767

Tuesday, April 25, 1995, 10:00 a.m.

2000 East Martin Luther King, Jr. Boulevard

Austin

Local Employee Committee

AGENDA:

I. Welcome

II. Review/Approve Local Organization/Federation Applications

Adjourn

Contact: Anne Murphy, P.O. Box 1925,

Austin, Texas 78767-1925, (512) 472-6267, or Fax: (512) 482-8309.

Filed: April 18, 1995, 4:06 p.m.

TRD-9504768

April 28, 1995, 10:30 a.m.

2201 19th Street

Lubbock

Local Employee Committee-Lubbock

AGENDA:

Review and approval of 1995 participating agencies

Contact: Diane L. Stewart, 2201 19th Street, Lubbock, Texas 79401, (806) 747-2711, or Fax: (806) 747-2716.

Filed: April 19, 1995, 8:27 a.m.

TRD-9504771

Tuesday, May 2, 1995, 10:00 a.m.

2000 East Martin Luther King, Jr. Boulevard

Austin

Local Employee Committee

AGENDA:

I. Welcome

II. State Employee Charitable Campaign Overview

III. Campaign Committees

Adjourn

Contact: Anne Murphy, P.O. Box 1925, Austin, Texas 78767-1925, (512) 472-6267, or Fax: (512) 482-8309.

Filed: April 18, 1995, 4:06 p.m.

TRD-9504766

Thursday, May 4, 1995, Noon

1212 North Velasco

Angleton

Local Employee Committee Brazoria County

AGENDA:

Meeting to select local federations and agencies for participation in State Employee Charitable Campaign. Review local campaign manager budget.

Contact: Stephanie Cone, P.O. Box 1959, Angleton, Texas 77516-1959, (409) 849-9402 or Fax: (409) 848-0259.

Filed: April 19, 1995, 2:41 p.m.

TRD-9504807



Texas Growth Fund

Wednesday, April 26, 1995, 10:30 a.m.

1000 Red River

Austin

Board of Trustees

AGENDA:

1. Review and approve minutes of the March 7, 1995, special meeting.

2. Review and approve treasurer's report.

3. Review and approve reimbursement expense reports from the current and former trustees.

4. Receive an activity report from TGF Management Corporation.

5. Review and approve proposed investment(s).

6. Such other matters as may come before the Board of Trustees.

Contact: Janet Waldeler, 100 Congress Avenue, Suite 980, Austin, Texas 78701, (512) 322-3100.

TRD-9504756



Texas Department of Health

Thursday, April 20, 1995, 2:00 p.m.

Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health, Human Resources Committee

Emergency Revised Agenda:

AGENDA:

The committee will discuss and possibly act on: appointments to the Scientific Advisory Committee on Birth Defects in Texas; proposed rules concerning hospital and medical staff bylaws for Texas Center for Infectious Disease and South Texas Hospital; and final adoption of rules concerning the Emergency Health Care Advisory Committee.

Reason for Emergency: Unforeseeable Circumstances.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, contact Richard Butler at (512) 458-6410, or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: April 16, 1995, 4:05 p.m.

TRD-9504764



Texas Department of Housing and Community Affairs

Thursday, April 27, 1995, 8:30 a.m.

1700 North Congress Avenue, Room 118, Stephen F. Austin State Office Building

Austin

Programs Committee Meeting

AGENDA:

The Programs Committee will meet to consider and possibly act on the following: Section 8 Demonstration Program; authorizing the allocation of \$2 million dollars from the Housing Trust Fund in accordance with the Memorandum of Understanding dated June 29, 1994, Creating a Partnership for Communities (HUD, TDHCA, and City of Dallas); final approval for resolution trust corporation contract assignments to selected non-profits; HOME Program Waiver of State of Texas HOME rules §53.38(2)(B); HOME Program funding recommendations for FY 1994-first time homebuyer assistance, owner occupied housing assistance; adjourn.

Contact: Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934.

Filed: April 18, 1995, 11:40 a.m.

TRD-9504751

Thursday, April 27, 1995, 10:30 a.m.

1700 North Congress Avenue, Room 118, Stephen F. Austin State Office Building Austin

Low Income Housing Tax Credit Committee Meeting

AGENDA:

The Low Income Housing Tax Credit Committee will meet to consider and possibly act on the following: Repeal of Low Income Housing Tax Credit Plan 1995A; approval to publish the Low Income Housing Tax Credit 1995B Qualified Allocation Plan in the Texas Register; adjourn.

Contact: Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934.

Filed: April 18, 1995, 11:32 a.m.

TRD-9504747

Thursday, April 27, 1995, 11:30 a.m.

1700 North Congress Avenue, Room 118, Stephen F. Austin State Office Building Austin

Board Meeting

AGENDA:

The Board of the Texas Department of Housing and Community Affairs will meet to consider and possibly act on: minutes of meeting of March 29, 1995; Section 8 Demonstration Program; authorizing the allocation of \$2 million dollars from the Housing Trust Fund in accordance with the Memorandum of Understanding dated June 29, 1994, Creating a Partnership for Communities (HUD, TDHCA, and City of Dallas);

final approval for resolution trust corporation contract assignments to selected non-profits; HOME Program Waiver of State of Texas HOME rules §53.38(2)(B); HOME Program funding recommendations for FY 1994-first time homebuyer assistance and owner occupied housing assistance; repeal of Low Income Housing Tax Credit Plan 1995A; approval to publish the Low Income Housing Tax Credit 1995B Qualified Allocation Plan in the Texas Register; executive directors report-legislative session and other items deemed necessary by the executive director; adjourn.

Contact: Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934.

Filed: April 18, 1995, 11:32 a.m.

TRD-9504746

Texas State Library and Archives Commission

Thursday-Friday, April 20-21, 1995, Noon and 9:00 a.m., respectively.

Thursday, Thompson Auditorium, 401 West 15th Street

Friday, 1201 Brazos, Room 314, Lorenzo de Zavala State Library and Archives Building

Austin

Emergency Meeting and Revised Agenda

Library Services Construction Act Advisory Council

AGENDA:

Change Location for Thursday Meeting

1. Review and Approval of SFY 1996-1999 LSCA Long Range Plan.

2. Review and Approval of FFY 1996 LSCA Annual Program

3. Review and Approval of Statewide Library Development Budget for 1996.

4. Information Items:

a. Status Report on new State Librarian

b. Status Report on Library Development Biennial Budget Request

c. Status Report on Library-related legislation

d. Status Report on Access Texas

e. Status Report on Project Link

f. Status Report on TexNet Interlibrary Loan and Texas Group

g. Status Report on Congressional re authorization of LSCA.

5. Election of a new Chair of the LSCA Advisory council for a two-year term

6. Review of Special Services Grant Guidelines and Procedures

7. Review of Title I Grant Applications (Special Services)

Reason for Emergency: Local Change.

Contact: Ed Seidenberg, Box 12927, Austin, Texas 78711-2927, (512) 463-5459.

Filed: April 19, 1995, 1:42 p.m.

TRD-9504803

Texas Natural Resource Conservation Commission

Wednesday, April 26, 1995, 9:30 a.m.

12118 North Interstate 35, Building E, Room 201S

Austin

AGENDA:

Addendum to agenda to correct language in District Captions. Appointment of directors for Clovercreek Municipal Utility District and approval of Contract Revenue Bonds for Harris County Utility District Number 5.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: April 18, 1995, 3:25 p.m.

TRD-9504757

Thursday-Friday, April 27-28, 1995, 9:00 a.m.

12015 Park 35 Circle, Building E, Room 201S

Austin

Municipal Solid Waste Management and Resource Recovery Advisory Council

AGENDA:

The Municipal Solid Waste Management and Resource Recovery Advisory Council will hold its next meeting on April 27-28, 1995, at the Texas Natural Resource Conservation Commission's facility, located at 12015 Park 35 Circle, Building E, Room 201S, Austin, Texas.

The following meetings will be held on Thursday, April 27: Border Affairs Committee, Waste Minimization/Recycling/Composting Committee, Education Committee, and Regulatory Oversight Committee. The meetings will begin at 9:00 a.m. in Room 201S.

The meeting on Friday, April 28 will begin at 9:00 a.m. with opening remarks, approval of minutes of March 23-24 meeting, Conference Planning Committee update, committee reports from previous day, legislative update, Office of Pollution Prevention and Recycling report, Waste Planning and Assessment Division report, Municipal Solid

Waste Division report, and public comments/open discussion.

Contact: Gary W. Trim, 12015 Park 35 Circle, Building E, Austin, Texas 78753, (512) 239-6708.

Filed: April 19, 1995, 4:24 p.m.

TRD-9504819

Wednesday, May 3, 1995, 9:30 a.m.

12118 North Interstate 35, Building E, Room 201S

Austin

AGENDA:

The Commission will consider approving the following matters on the agenda: district matters; water utility matter; superfund agreed order; on-site sewage; municipal solid waste management plans; municipal waste discharge enforcement; industrial hazardous waste enforcement; municipal solid waste enforcement; petroleum storage tank enforcement; rules; executive session; in addition, the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

(Registration begins at 8:45 a.m. until 9:30 a.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: April 19, 1995 1:07 p.m.

TRD-9504801

Thursday, May 11, 1995, 9:00 a.m.

Building A, Room 315H, 12100 Park 35 Circle

Austin

Office of Hearings Examiners

AGENDA:

On April 19, 1995, the executive director of the Texas Natural Resource Conservation Commission (TNRCC) issued an emergency order to Mission Shippers, Inc. An examiner for the TNRCC will conduct a contested case hearing to consider whether the executive director's emergency order to authorize the emission of methyl bromide from operation of a fumigation chamber at the Mission Shippers, Inc. facility located at 721 Walsh Avenue, Mission, Hidalgo County, Texas should be affirmed, modified, or denied and set aside.

Contact: Bill Ehret, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: April 20, 1995, 9:08 a.m.

TRD-9504824

Texas Parks and Wildlife Department

Wednesday, May 3, 1995, 1:30 p.m.

Parks and Wildlife Headquarters, 4200 Smith School Road

Austin

Operation Game Thief Committee

AGENDA:

(October 1, 1994-March 31, 1995); approval of committee minutes for the November 1, 1994 public hearing; financial report; consideration of payment of rewards; date of next meeting; discussion-a. House Bill 2182; b. Awareness and funding efforts; c. Membership structure; d. Brochure revision

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

Filed: April 18, 1995, 11:39 a.m.

TRD-9504752

State Pension Review Board

Wednesday, April 19, 1995, Noon

State Pension Review Board Conference Room, Fourth Floor, Room 406, William Clements Building

Austin

PRB Legislative Advisory Committee

Emergency Meeting

AGENDA:

Preparation of actuarial impact statements on bills from which actuarial information is available by meeting time, and for which requests have been received from legislative committees.

Reason For Emergency: In order to obtain a quorum and respond to request in appropriate time.

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: April 19, 1995, 9:43 a.m.

TRD-9504779

Texas Department of Protective and Regulatory Services

Tuesday, May 2, 1995, 10:00 a.m.

701 West 51st Street, Room 125-E

Austin

Protective Services for Families and Children Advisory Committee

AGENDA:

Call to order, housekeeping, approval of February minutes, and term renewals. Updates. Foster parent recruitment and retention. Draft of State Plan for Child and Family Services. Policy and program directions: Transition planning for students receiving special education services and effective utilization of staff and resources. Allocation of funds to regions. Subcommittees: Post Adoption Services and Youth Services. Issues/suggestions for next meeting. Adjourn.

Contact: Virginia Guzman, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3025.

Filed: April 19, 1995, 10:32 a.m.

TRD-9504786

Public Utility Commission of Texas

Thursday, April 27, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A prehearing conference has been scheduled in Docket Number 13949-petition of West Texas Utilities for approval of deferred accounting treatment of certain Oklaunion related costs (remand).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 19, 1995, 3:39 p.m.

TRD-9504812

Monday, May 1, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A prehearing conference will be held at the above date and time in Docket Number 14008-application of GTE Southwest, Inc., to revise its general local exchange tariff, Section 6, Map Supplement, Sheet Numbers 75 and 75A, to expand the Dripping Springs Base Rate Area (BRA).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 19, 1995, 2:33 p.m.

TRD-9504805

Thursday, May 4, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Rescheduled From: April 20, 1995

Hearings Division

AGENDA:

A prehearing conference has been rescheduled at the above date and time in Docket Number 13054-petition of Central Telephone Company of Texas for authority to recover lost revenues and cost of implementing expanded local calling service.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 19, 1995, 2:33 p.m.

TRD-9504804

Texas Racing Commission

Monday, May 1, 1995, 10:30 a.m.

1101 Camino La Costa

Austin

AGENDA:

Call to order, roll call; action on the following rules; §§303.33, 305.42, 305.44, 309.183, 309.184, 309.355, 311.159, 313.103, 313.132, 313.503, 319. 102, 321.32, 321.204, 321.207, 321.208, 321.276; presentation by T. J. Smith and possible action regarding accessibility by disabled persons at Texas pari-mutuel race-tracks; presentation by R. L. Odom and possible action regarding policy on payment of fines; consideration of and action on proposals for decision in the following contested cases: SOAH Number 476-94-515, TxRC Number 93-02-08, In Re: the Appeal by James C. Hudson from Stewards' Ruling Trinity 1183; SOAH Number 476-94-1890, TxRC Number 94-02-17, In Re: the Appeal by Susan Barrington from Stewards' Ruling Sam Houston 116, SOAH Number 476-95-0224, TxRC Number 94-02-21, In Re: the Appeal by Roy Lee Marcom from Stewards' Ruling Trinity 1533; consideration of and action on request by Bandera Downs for approval of ownership change; report by and possible action regarding Sam Houston Race Park's restructuring and bankruptcy; consideration of and action on allocation of revenue from simulcasting for purses and Texas-bred programs among the various breeds; old and new business; adjourn.

Contact: Paula Cochran Carter, P.O. Box 12080, Austin, Texas 78701, (512) 794-8461.

Filed: April 19, 1995, 3:20 p.m.

TRD-9504810

Texas Sustainable Energy Development Council

Friday, April 28, 1995, 4:30 p.m.

98 San Jacinto Boulevard, Four Seasons Hotel Ballroom

Austin

AGENDA:

Call to order

Old Business: Discuss format for strategic plan

Other Business: Administrative matters

Adjourn

Contact: Charlotte Banks, 1700 North Congress Avenue, Room 850, Austin, Texas 78701, (512) 463-1745.

Filed: April 19, 1995, 8:28 a.m.

TRD-9504773

Texas Department of Transportation

Thursday, April 27, 1995, 9:00 a.m.

200 East Riverside Drive, Room 101

Austin

Texas Transportation Commission

AGENDA:

Public hearing on proposed five-year aviation capital improvement program. Approve minutes. City of Pharr presentation. Contract awards/rejections/defaults. Programs. Routine minute orders. District/division/special office reports. Environmental projects. Transportation planning. Multimodal transportation. Transportation corporations. Building and ground improvements. Ferryboat construction. Rulemaking: 43 TAC Chapters 1, 9, 17, and 30. Executive session for legal counsel and land acquisition matters. Open comment period.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630.

Filed: April 19, 1995, 10:30 a.m.

TRD-9504785

The University of Texas at El Paso

Wednesday, April 26, 1995, 2:00 p.m.

500 University, Psychology Building, Room 310

El Paso

Institutional Animal Care and Use Committee

AGENDA:

I. Call to order by Chairman James V. Devine

II. Approval of November 1, 1994 meeting minutes

III. OPRR report, antibody protection

IV. Other business initiated by committee members

Contact: James V. Devine, Ph.D., The University of Texas at El Paso, El Paso, Texas 79968-0500, (915) 747-5551.

Filed: April 20, 1995, 8:45 a.m.

TRD-9504820

Texas Workers' Compensation Insurance Fund

Wednesday, April 26, 1995, 8:30 a.m.

100 Congress Avenue, Suite 600

Austin

Board of Directors

AGENDA:

Call to order, roll call; review and approval of the minutes of the March 29, 1995, board meeting; acting items; proposed amendments to board governance policy; consideration of ratification of termination of investment agreement with Harbor Capital Management Company, Inc; financial report quarterly budget variance report; fund status report and legislative update on certain legislation affecting the fund; informational items; report of the audit committee; report of the administrative committee; report of the organizational effectiveness committee; update on statutory mandates; public participation; executive session; action items resulting from executive session deliberations; announcements; adjourn.

Contact: Jeanette Ward, 100 Congress Avenue, Austin, Texas 78701, (512) 404-7142.

Filed: April 18, 1995, 4:05 p.m.

TRD-9504762

Wednesday, April 26, 1995, 11:30 a.m. or upon conclusion of the Board meeting.

100 Congress Avenue, Suite 600

Austin

Organizational Effectiveness Committee

AGENDA:

Call to order; roll call; executive session; acting items resulting from executive session deliberations; adjourn

Contact: Jeanette Ward, 100 Congress Avenue, Austin, Texas 78701, (512) 404-7142.

Filed: April 18, 1995, 4:05 p.m.

TRD-9504763

Regional Meetings

Meetings Filed April 18, 1995

The Colorado County Appraisal District Appraisal Review Board will meet at 400 Spring Street (County Courtroom), Columbus, April 25, 1995, at 1:30 p.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, (409) 732-8222. TRD-9504750.

The East Texas Quality Work Force Planning Committee Board of Directors will meet at 3900 University Boulevard, Muniz Library, UT Tyler, Room 424, Tyler, April 27, 1995, at 11:45 a.m. Information may be obtained from Karen Christensen, 3900 University Boulevard, Tyler, Texas 75799, (903) 566-7315. TRD-9504749.

The Houston-Galveston Area Council Transportation Policy Council will meet at 3555 Timmons Lane, Second Floor, Room A, Houston, April 28, 1995, at 9:30 a.m. Information may be obtained from Alan C. Clark, P.O. Box 22777, Houston, Texas 77227-2777, (713) 627-3200. TRD-9504770.

The Lubbock Regional MHMR Center Board of Trustees met at 1602 Tenth Street, Board Room, April 24, 1995, at Noon. Information may be obtained from Gene Menefee, P.O. Box 2828, Lubbock, Texas 79408, (806) 766-0202. TRD-9504769.

The Martin County Appraisal District MCAD-Board of Directors met at 308 North St. Peter, Stanton, April 24, 1995, at 7:00 p.m. Information may be obtained from Elaine Stanley, P.O. Box 1349, Stanton, Texas 79782, (915) 756-2823. TRD-9504748.

The Northeast Texas Municipal Water District Board of Directors will meet at Highway 250 South, Hughes Springs, April 25, 1995, at 1:00 p.m. Information may be obtained from J. W. Dean, P.O. Box 955, Hughes Springs, Texas 75656, (903) 639-7538. TRD-9504753.

The Sabine Valley Center Board of Trustees met at 107 Woodbine Place, Administration Building, Longview, April 20, 1995, at 2:00 p.m. Information may be obtained from Mack Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 237-2362. TRD-9504765.

The Southwest Milam Water Supply Corporation Board and Annual met at Patterson Civic Center, Rockdale, April 24, 1995, at 7:00 p.m. Information may be obtained from Dwayne Jekel, P.O. Box 232, Rockdale, Texas 76567, (512) 446-2604. TRD-9504760.



Meetings Filed April 19, 1995

The Coastal Bend Council of Governments Executive Board will meet at 2910 Leopard Street, Conference Room, Corpus Christi, April 28, 1995, at Noon. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743. TRD-9504796.

The Coastal Bend Council of Governments Membership will meet at 2910 Leopard Street, Conference Room, Corpus Christi, April 28, 1995, at 2:00 p.m. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743. TRD-9504797.

The Deep East Texas Council of Governments Grants Application Review Committee will meet at the Center Country Club, Highway 96 North, Center, April 27, 1995, at 11:00 a.m. Information may be obtained from Rusty Phillips, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9504783.

The Education Service Center, Region XIII Board of Directors met at 5701 Springdale Road, Room H, Austin, April 24, 1995, at 12:30 p.m. Information may be obtained from Dr. Roy C. Benavides, 5701 Springdale Road, Austin, Texas 78723, (512) 929-1300. TRD-9504798.

The Golden Crescent Regional Planning Commission Board of Directors will meet at 408 West Putnam, Ganado, April 26, 1995, at 6:00 p.m. Information may be obtained from Rhonda Stastny, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587. TRD-9504813.

The Gulf Bend Center Board of Trustees will meet at 1502 East Airline, Victoria, April 27, 1995, at Noon. Information may be obtained from Agnes Moeller, 1502 East Airline, Victoria, Texas 77901, (512) 575-0611. TRD-9504808.

The Henderson County Appraisal District Appraisal Review Board will meet at 1751 Enterprise Street, Athens, April 26, 1995, at 9:00 a.m. Information may be obtained from Lori Fetterman, P.O. Box 430, Athens, Texas 75751, (903) 675-9296. TRD-9504802.

The Lee County Appraisal District Board of Directors will meet at 218 East Richmond Street, Giddings, April 26, 1995, at 9:00 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9504799.

The Leon County Central Appraisal District Board of Directors met at 103 North Commerce, Corner Highway 7 and 75, Centerville, April 24, 1995, at 7:30 p.m. Information may be obtained from Jeff Beshears, P.O. Box 536, Centerville, Texas

75833-0536, (903) 536-2252. TRD-9504800.

The North Central Texas Council of Governments Executive Board will meet at Centerpoint Two, 616 Six Flags Drive, Second Floor, Arlington, April 27, 1995, at 12:45 p.m. Information may be obtained from Edwina J. Shires, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 640-3300. TRD-9504814.

The Permian Basin Regional Planning Commission Board of Directors Permian Basin Private Industry Council will meet 2910 LaForce Boulevard, Midland, April 26, 1995, at 10:00 a.m. Information may be obtained from Carole Burrow, P.O. Box 60660, Midland, Texas 79711-0660, (915) 563-1061. TRD-9504809.

The San Antonio-Bexar County Metropolitan Planning Organization Intermodal Terminal Planning and Feasibility Study Oversight Committee will meet at the Municipal Plaza Building, "B" Room, 114 West Commerce, San Antonio, April 25, 1995, at 1:30 p.m. Information may be obtained from Charlotte A. Roszelle, 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9504780.

The San Antonio-Bexar County Metropolitan Planning Organization Bicycle Mobility Task Force will meet at Henry B. Gonzalez Convention Center, Administration Conference Room (Alamo and Market), San Antonio, April 26, 1995, at 4:00 p.m. Information may be obtained from Charlotte A. Roszelle, 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9504818.

The Trinity River Authority of Texas Board of Directors will meet at 5300 South Collins Street, Arlington, April 26, 1995, at 10:00 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9504806.



Meetings Filed April 20, 1995

The Eastland County Appraisal District Appraisal Review Board will meet at 100 Main Street, Eastland, May 2, 1995, at 10:00 a.m. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 76448, (817) 629-8597. TRD-9504829.

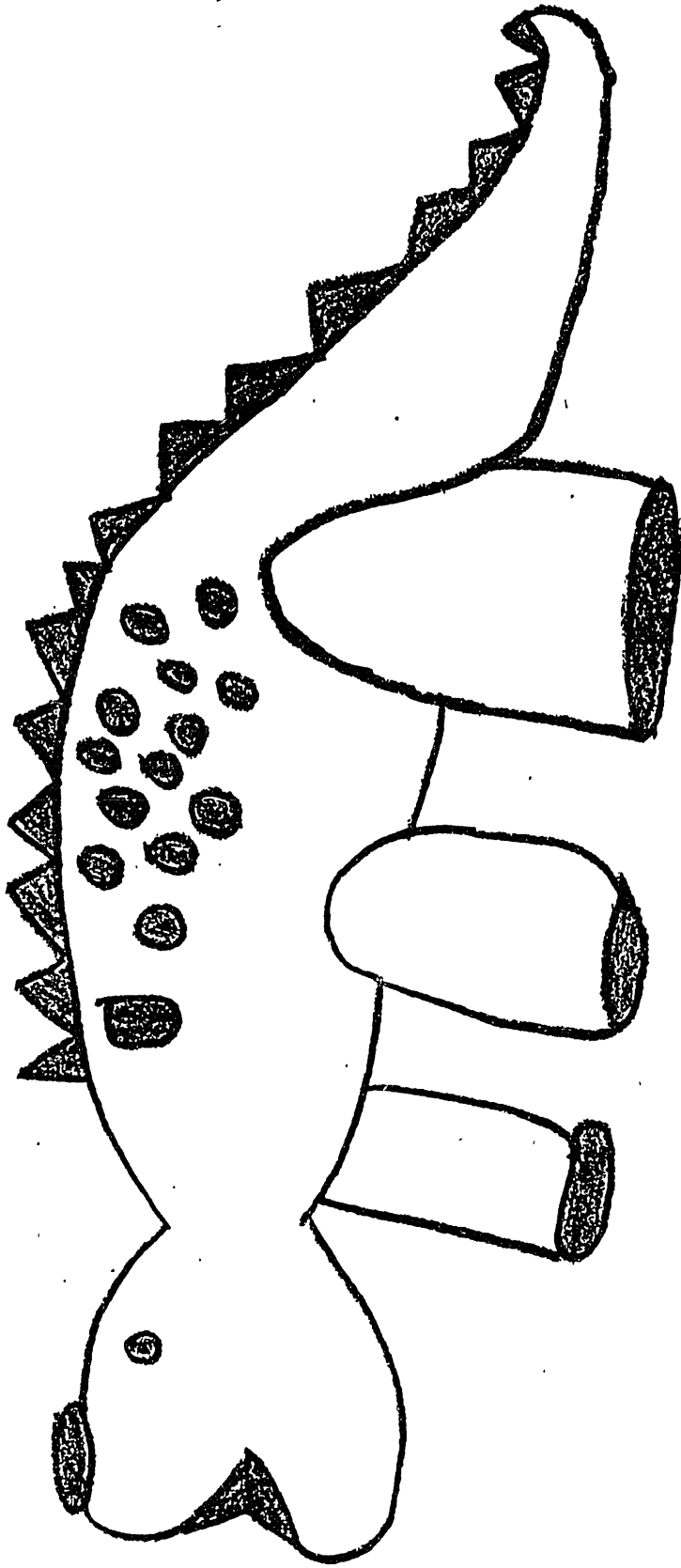
The Gulf Bend Center (Revised Agenda.) Board of Trustees will meet at 1502 East Airline, Victoria, April 27, 1995, at Noon. Information may be obtained from Agnes Moeller, 1502 East Airline, Victoria, Texas 77901, (512) 575-0611. TRD-9504828.

The Lower Rio Grande Valley Development Council Hidalgo County Metropolitan Planning Organization will meet at the

TxDOT District Office, 600 West Expressway, US 83, Pharr, April 27, 1995, at 7:00 p.m. Information may be obtained from Edward L. Molitor, 4900 North 23rd Street, McAllen, Texas 78504, (210) 682-3481. TRD-9504821.

The Middle Rio Grande Development Council Texas Review and Comment System will meet at the Holiday Inn, 920 East Main Street, Uvalde, April 26, 1995, at 9:00 a.m. Information may be obtained from Erma Alejandro, 209 North Getty Street, Uvalde, Texas 78801, (210) 278-4151, Fax: (210) 278-2929. TRD-9504822.





Name: Elizabeth Castillo
Grade: 2
School: Martin Elementary School, Brownsville ISD

Elizabeth Ambriz Castillo 3 02 24

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Commission on Alcohol and Drug Abuse

Revised Notice of Request for Proposals

The Texas Commission on Alcohol and Drug Abuse submitted a Notice of Request for Proposals for the Treatment Alternatives to Incarceration Program (TAIP) and was published in the April 18, 1995, issue of the *Texas Register* (20 TexReg 2947). The notice is being revised to include for-profit entities as eligible applicants for the screening, assessment, and referral component of the TAIP.

Texas Commission on Alcohol and Drug Abuse (TCADA), under the authority of the Texas Health and Safety Code, Title 6, Subtitle B, Chapter 461, is issuing a Request for Proposals (RFP) for the Treatment Alternatives to Incarceration Program (TAIP) in counties with populations in excess of 550,000 which are: Bexar, Dallas, El Paso, Harris, Tarrant, and Travis.

TAIP is a collaborative effort designed to provide chemically-dependent offenders with screening, assessment, referral, and placement into an approved chemical dependency treatment program. The project is designed as a linkage between community-based chemical dependency treatment systems and the criminal justice system in order to serve a common population more efficiently. It serves as a source of relief to the overburdened criminal justice system by providing an avenue of direct treatment referrals for chemically-dependent offenders who may benefit more from treatment than incarceration. TAIP allows for the coerciveness of criminal justice sanctions to benefit treatment approaches by exerting additional pressure on the offender to remain compliant with treatment plans. It creates an alternative which may deter the offender from further chemical dependency related offenses or incarceration and may also have impact on participating offenders which prevents them from victimizing the community-at-large with on-going criminal behavior.

To request a copy of the RFP, call Monica Ruedas at TCADA's Funding Processes Department at (512) 867-8267 or write to: Texas Commission on Alcohol and Drug Abuse, Funding Processes Department, 710 Brazos, Suite 433, Austin, Texas 78701-2576.

The closing date for receipt of applications by TCADA is 5:00 p.m. on May 23, 1995.

Approval for funding will be made through TCADA's eligibility/technical review, peer review process, the applicant's local Texas Review and Comment System agency, and TCADA's governing board.

Eligible applicants for the screening, assessment, and re-

ferred component of the TAIP are public, private nonprofit, or for-profit entities.

Eligible applicants for the treatment component of the TAIP are public, private nonprofit, or for-profit entities that are licensed or in the process of being licensed by TCADA to provide the proposed treatment services.

Private nonprofit and for-profit organizations shall be incorporated and shall maintain good standing as a corporation. There are additional eligibility requirements found in the RFP.

The amount of funds that will be available for the contract period is not known at the time of the Notice. The amount of funds available for State Fiscal Year 1996 (FY96) is subject to the action of the 74th State Legislature.

Note: TCADA reserves the right to consider applications received through this RFP as funds become available and service needs emerge. In addition, it is not known whether TCADA will issue a subsequent TAIP RFP for State Fiscal Year 1997 (FY97). Therefore, organizations interested in being considered for funding in FY96 and FY97 should apply through this RFP.

Technical assistance will be offered through a workshop which will be held on Friday April 28, 1995 for all potential applicants. The workshop will be devoted to discussion of RFP requirements and technical assistance with application preparation. The following is helpful workshop information: date: April 28, 1995; time: 9:00 a.m.-4:00 p.m.; location: LBJ School of Public Affairs, Bass Lecture Hall, 2313 Red River, Austin, Texas; contact person: Monica Ruedas; telephone: (512) 867-8265

It is TCADA's intent that all programmatic questions asked and answered be made in the presence of those attending, therefore, the only questions which will be answered after the workshop will be limited to form completion and information regarding submission requirements.

Individuals needing auxiliary aids or services should notify Monica Ruedas at (512) 867-8265 at least five working days prior to the workshop by mail or telephone.

Issued in Austin, Texas, on April 17, 1995.

TRD-9504710

Otis E. Williams
Interim Executive Director
Texas Commission on Alcohol and Drug
Abuse

Filed: April 17, 1995

Texas Boll Weevil Eradication Foundation

Correction of Error

The Texas Boll Weevil Eradication Foundation proposed §§195.1-195.5, concerning organic cotton regulations. The rules appeared in the April 11, 1995, issue of the *Texas Register* (20 TexReg 2692).

The publication incorrectly listed Franklin D. Myers as the Executive Director of the Texas Department of Agriculture. The correct information should be Franklin D. Myers, Executive Director, Texas Boll Weevil Eradication Foundation

Notice of Public Hearing

The Texas Boll Weevil Eradication Foundation (the Foundation) and the Texas Department of Agriculture (the department) will hold a hearing to take public comment on the Foundation's Organic Cotton Regulations, as published in the April 11, 1995, issue of the *Texas Register* (20 TexReg 2692). The hearing will be held on May 9, 1995, at the Foundation's offices located at 3103 Oldham Lane, Abilene, Texas 79602, beginning at 7:00 p.m. Please contact Frank Myers, Executive Director, Texas Boll Weevil Eradication Foundation, 3103 Oldham Lane, Abilene, (915) 672-2800 for more information, or to obtain copies of the regulations.

Issued in Austin, Texas, on April 17, 1995.

TRD-9504727 Franklin D. Myers
Executive Director
Texas Boll Weevil Foundation

Filed April 17, 1995

Texas Education Agency

Correction of Error

In the March 28, 1995, issue of the *Texas Register*, an error as submitted appears in the notice of a request for proposals (RFP) concerning an evaluation study of the Bexar County Summer Academy (20 TexReg 2349). The paragraph specifying the filing authority for the RFP was omitted. The paragraph reads as follows: "Filing Authority. This request for proposals is filed under the Texas Education Code, §11.32(e)."

Notice of Public Hearing Concerning Proposed State Board of Education Rules for Driver Training Schools and Programs

The Driver Training Section of the Division of Proprietary Schools, Veterans Education, and Driver Training will conduct a public meeting to solicit testimony and input for the development of proposed State Board of Education rules for driver training schools and programs. Proposed rules developed by two committees, one that focused on driver education issues and the other that concentrated on driving safety, as well as revisions to other current rules, will be discussed.

The hearing will be held on Friday, May 19, 1995, 10:00 a.m. to 4:00 p.m., at the William B. Travis Building, Room 1-100, 1701 North Congress Avenue, Austin, Texas 78701.

Individuals who wish to testify at the hearing should sign in at the hearing site; however, no prior registration is necessary. Speakers are encouraged, but not required, to provide written copies of their testimony if they are recommending specific revisions to the proposed rules. Ten copies are sufficient. Depending on the number of individuals who sign up to testify, testimony may be limited to three minutes.

The staff of the Driver Training Section recognize that access to this hearing may be limited; therefore, individuals who are unable to attend may send written comments to: Eileen Johnson, Driver Training Section, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494. Individuals may contact Eileen Johnson at (512) 719-5247 for additional information.

Issued in Austin, Texas, on April 19, 1995.

TRD-9504774 Criss Cloudt
Executive Associate Commissioner for
Policy Planning and Information
Management
Texas Education Agency

Filed: April 19, 1995

Texas Department of Health

Correction of Error

The Texas Department of Health proposed amendments to §289.116, §289.122, and new §289.230, concerning the control of radiation. The rules appeared in the March 28, 1995, issue of the *Texas Register* (20 TexReg 2257).

On page 2258, immediately following the preamble for the amendments to §289.116 and 289.122, the heading information was inadvertently left out of the site for §289.116.

The Texas Department of Health proposed new §289.230. The rule appeared in the March 28, 1995, issue of the *Texas Register* (10 TexReg 2258).

On page 2260, in new §289.230(d)(1)(B), approximately one-half way through the subparagraph, there was an incorrect cross-reference. The sentence was proposed as: "Correction or repair on all other items specified in this subparagraph (A) of this paragraph and this subparagraph shall begin within 30 days..."

The sentence should read: "Correction or repair on all other items specified in this subparagraph and subparagraph (C) of this paragraph shall begin within 30 days..."

On page 2260-2261, the "+/-" symbol was missing in four places throughout the text of new §289.230. The following cites indicate the location of the errors, followed by the correct text:

§289.230(d)(1)(B)(i)(I), deviations of +/-0.15 or more...

§289.230(e)(1)(F), Accuracy of kVp. The actual kVp shall be within +/-5.0% of the indicated kVp.

§289.230(e)(1)(G), ... shall be able to maintain constant film density to within +/-0.3 OD...

§289.230(e)(1)(j), Compression. The x-ray... the image receptor to within +/-1.0% of the SID with the ...

The University of Texas System Consultant Award Notification

The University of Texas Medical Branch at Galveston (UTMB) is pleased to announce the award of Request for Proposal Number 5-12, Laboratory Information System Validation Services, to Weinberg, Spelton and Sax pursuant to the provisions of the Government Code, Chapter 2254. This request was originally published in the January 19, 1995, issue of the *Texas Register* (20 TexReg 594).

Weinberg, Spelton and Sax's principle address is 1440 Conchester Highway, Boothwyn, Pennsylvania 19061. The amount of the contract is \$55,200. The project is scheduled to begin on May 1, 1995, and be completed by August 31, 1995.

Weinberg, Spelton and Sax will be responsible for determining the reliability, accuracy, and completeness of UTMB's Laboratory Information System, in addition to the validity of its validation evidence (i.e., protocol/plan) and the ability of that system to perform appropriate regulated tasks free of system induced variance.

Issued in Austin, Texas, on April 18, 1995.

TRD-9504754 Arthur H. Dilly
Executive Secretary to the Board of
Regents
The University of Texas System

Filed: April 18, 1995

Veterans Land Board Request for Proposal-Financial Advisor

The Texas Veterans Land Board (board) is extending invitations to submit proposals for the purpose of retaining a firm to act as the board's Financial Advisor on all items of financing necessary to the day-to-day operations of the Texas Veterans Land Program, the Texas Veterans Housing Assistance Program, the Texas Veterans Home Improvement Program and, from time to time, other programs the board deems necessary and appropriate. For a copy of the request for proposals package, call or write Bruce R. Salzer, Director of Funds Management, Texas Veterans Land Board, 1700 North Congress Avenue, Room 890, Austin, Texas 78701-1495, (512) 463-5198.

All proposals must be submitted in a sealed envelope and clearly marked in the lower left corner: "Sealed Proposal-

Financial Advisory Services." Five copies of the proposals must be received no later than 4:00 p.m. Central Daylight Time on May 31, 1995.

Significant HUB participation in delivery of services is encouraged. Each firm will be evaluated on experience in providing services; expertise of participating personnel; organization size, structure, and location; responsiveness to proposals; and fairness and reasonableness of cost.

Issued in Austin, Texas, on April 19, 1995.

TRD-9504777 Deborah B. Schilling
Staff Services Officer II
Veterans Land Board

Filed: April 19, 1995

Request for Proposal-Land Program Bond Counsel

The Texas Veterans Land Board (board) is extending invitations to submit proposals for the purpose of retaining a firm(s) to act as the board's Land Bond Counsel on all items of financing necessary to the day-to-day operations of the Texas Veterans Land Program and, from time to time, other programs the board deems necessary and appropriate. For a copy of the request for proposals package, call or write Bruce R. Salzer, Director of Funds Management, Texas Veterans Land Board, 1700 North Congress Avenue, Room 890, Austin, Texas 78701-1495, (512) 463-5198.

All proposals must be submitted in a sealed envelope and clearly marked in the lower left corner: "Sealed Proposal-Bond Counsel Services." Five copies of the proposals must be received no later than 4:00 p.m. Central Daylight Time on May 31, 1995.

Significant HUB participation in delivery of services is encouraged. Each firm will be evaluated on experience in providing services; expertise of participating personnel; organization size, structure, and location; responsiveness to proposals; and fairness and reasonableness of cost.

Issued in Austin, Texas, on April 19, 1995.

TRD-9504778 Deborah B. Schilling
Staff Services Officer II
Veterans Land Board

Filed: April 19, 1995