

Texas Register

Volume 18, Number 66, August 31, 1993

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How to Use the Texas Register

Information Available: The 10 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 Sections - sections adopted by state agencies on an emergency basis.

Proposed Sections - sections proposed for adoption.

Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

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

Open Meetings - notices of open meetings.

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

Specific 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 18 (1993) is cited as follows: 18 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 "18 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 18 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, releases cumulative supplements to each printed volume of the TAC twice each year.

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
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 22, April 16, July 13, and October 12, 1993). 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 I. 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.

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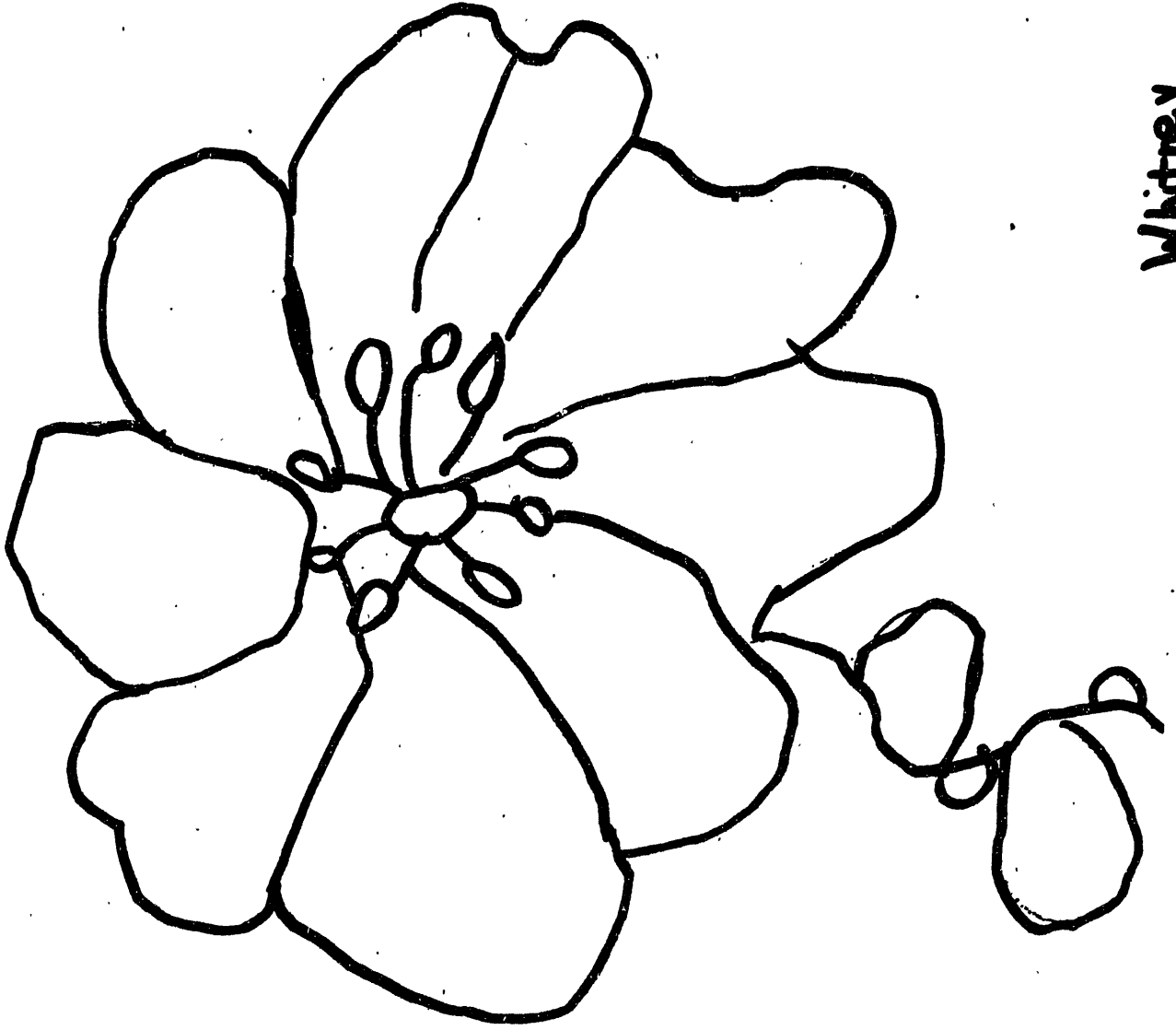
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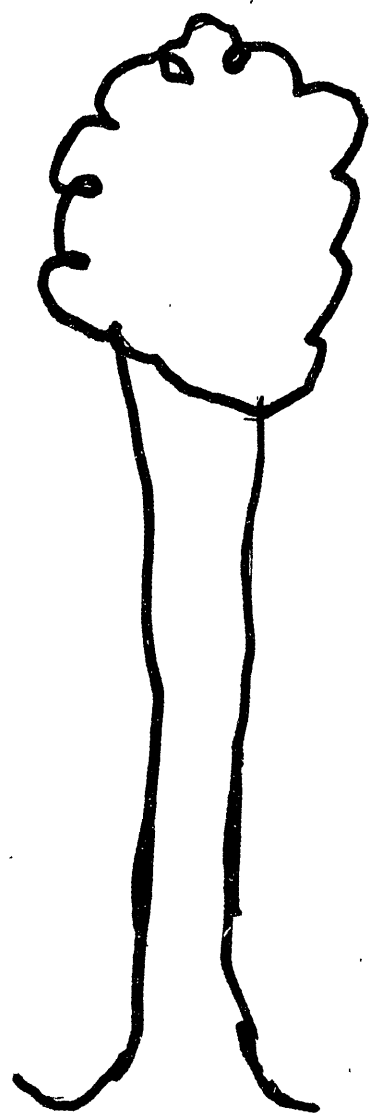


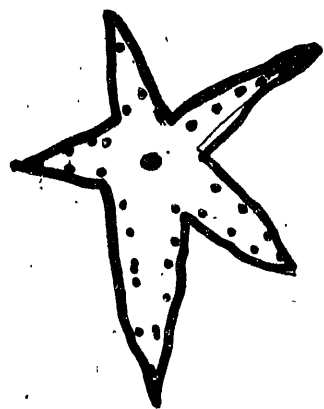
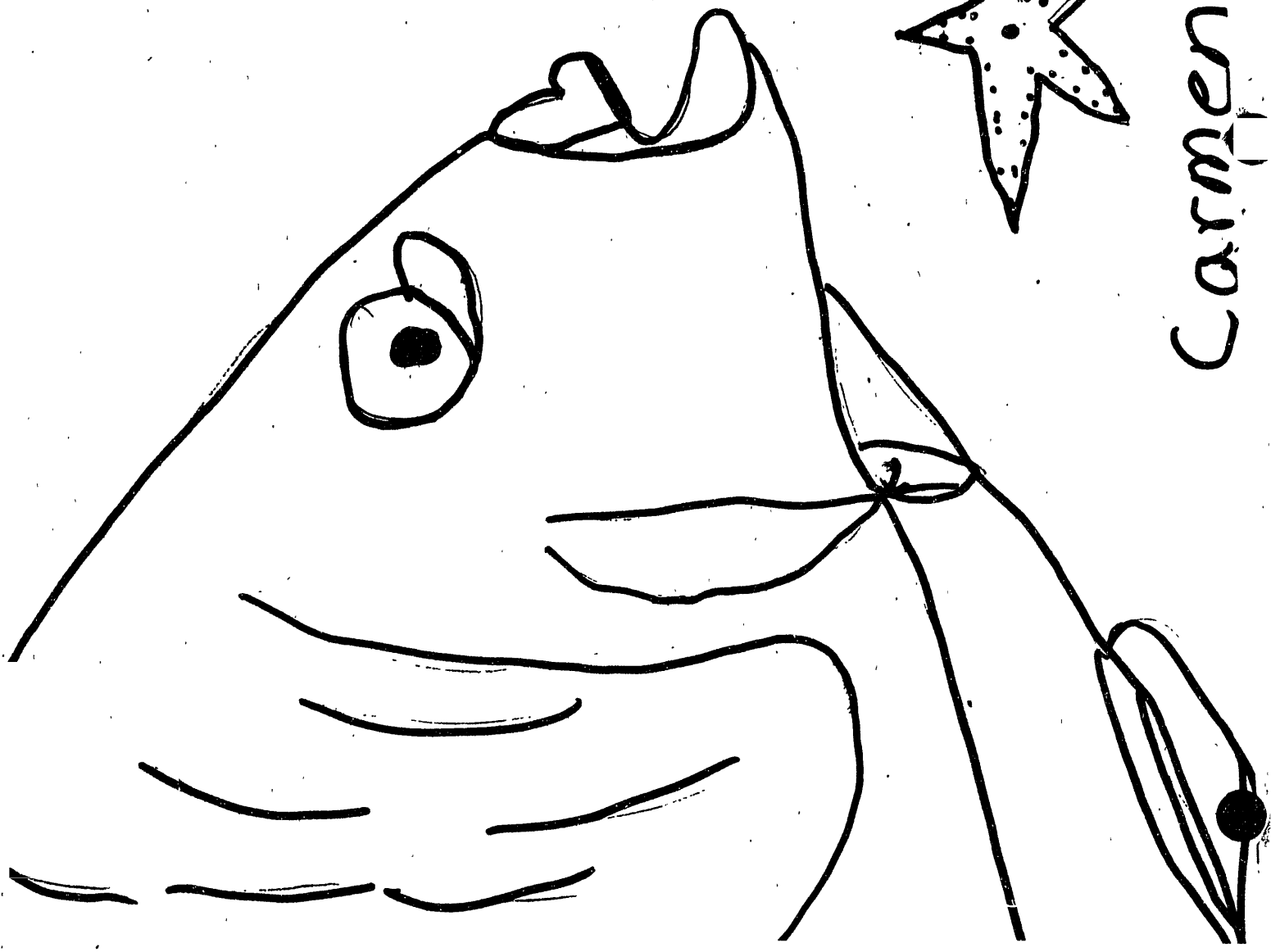
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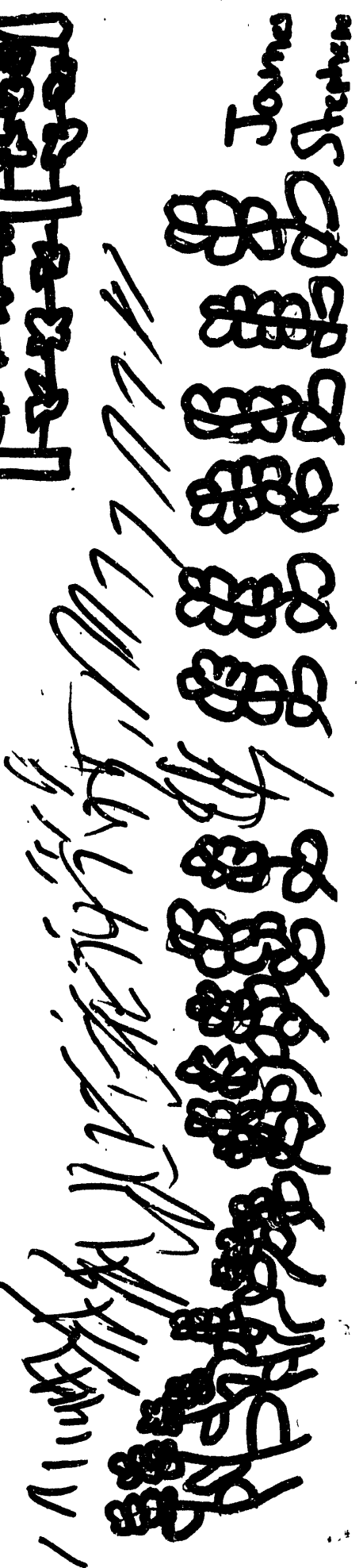
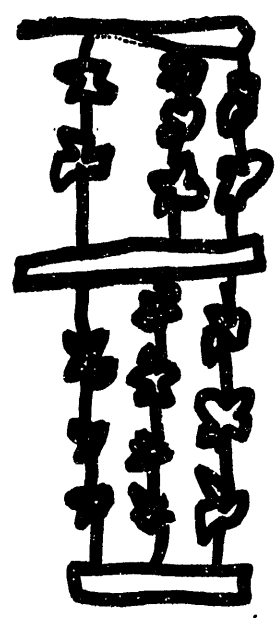
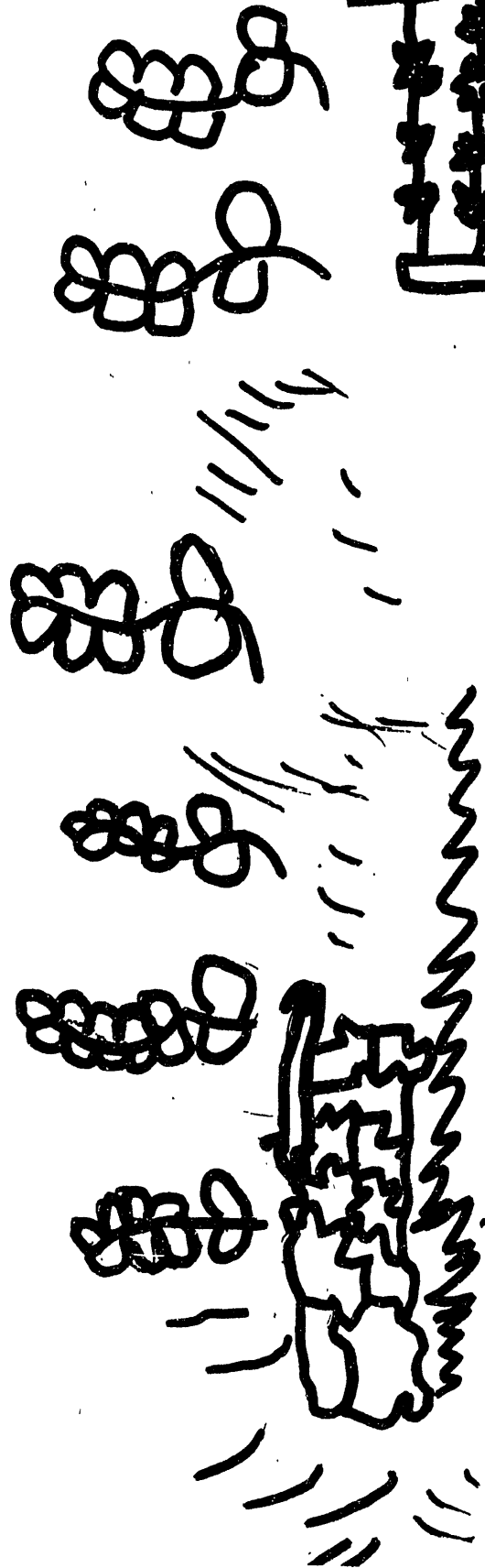


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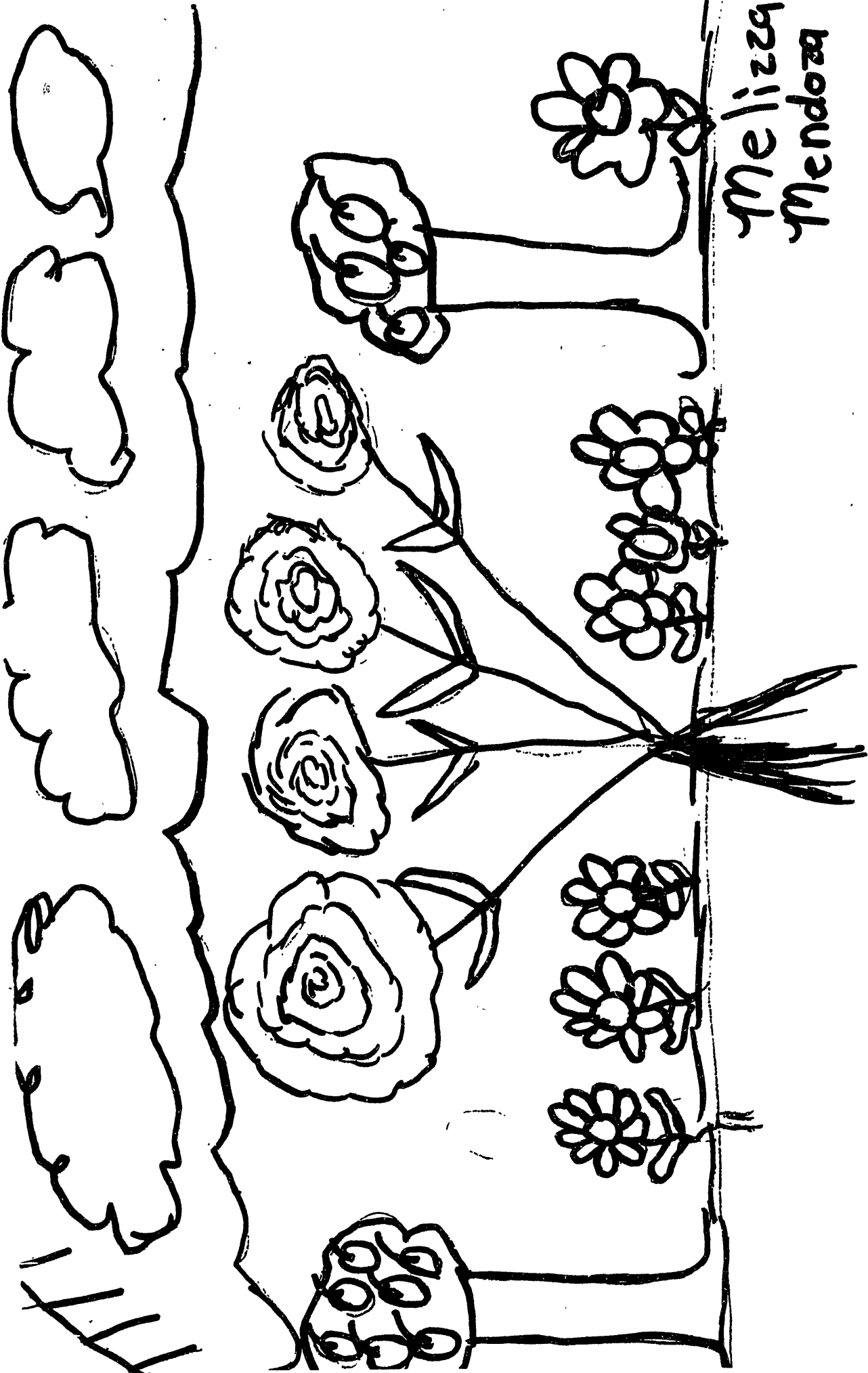




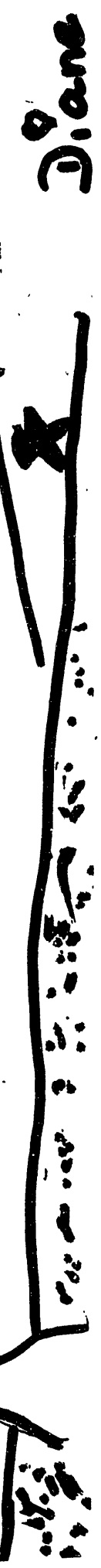
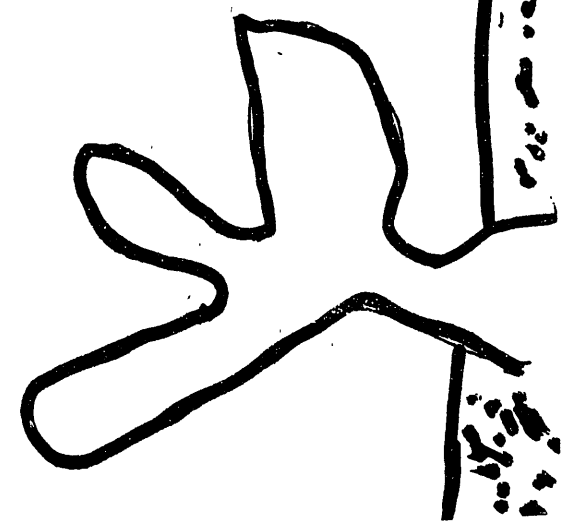
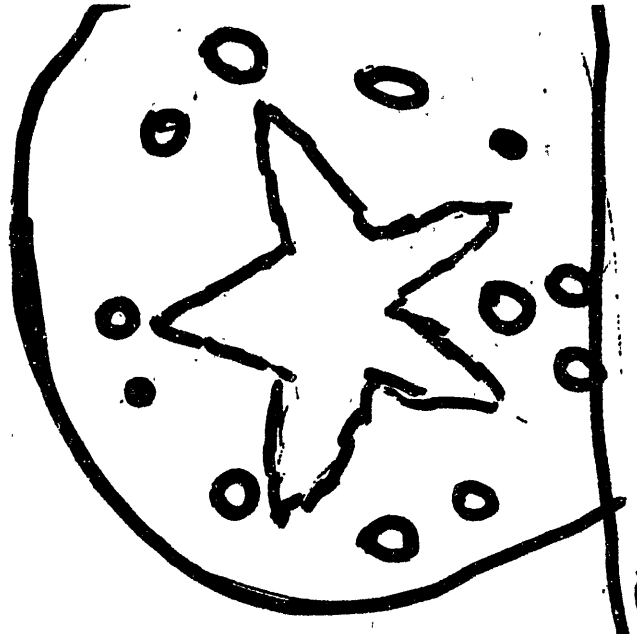
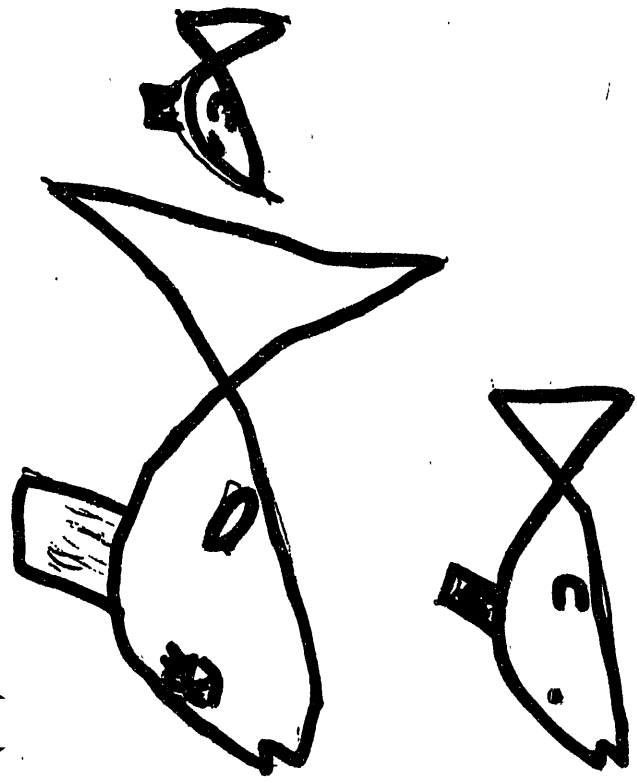
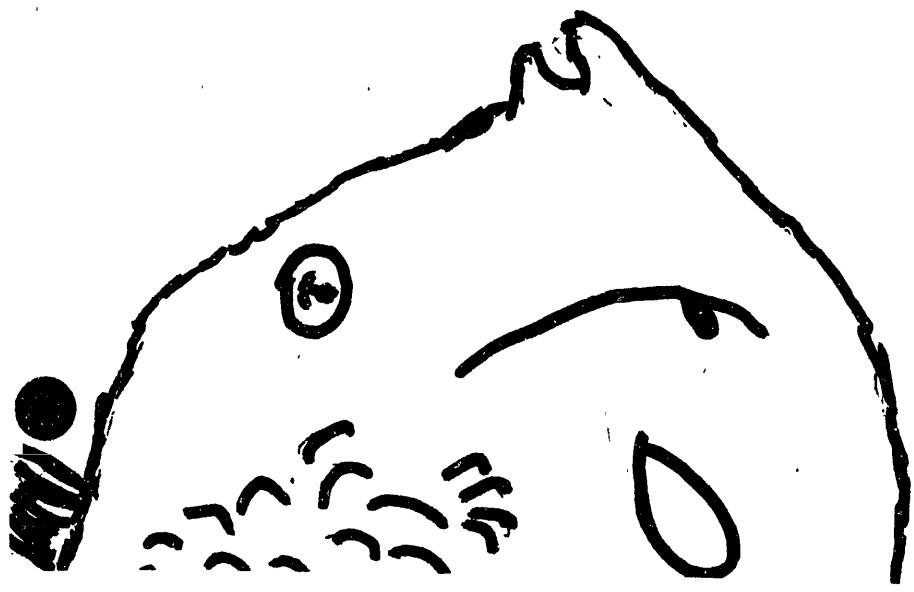
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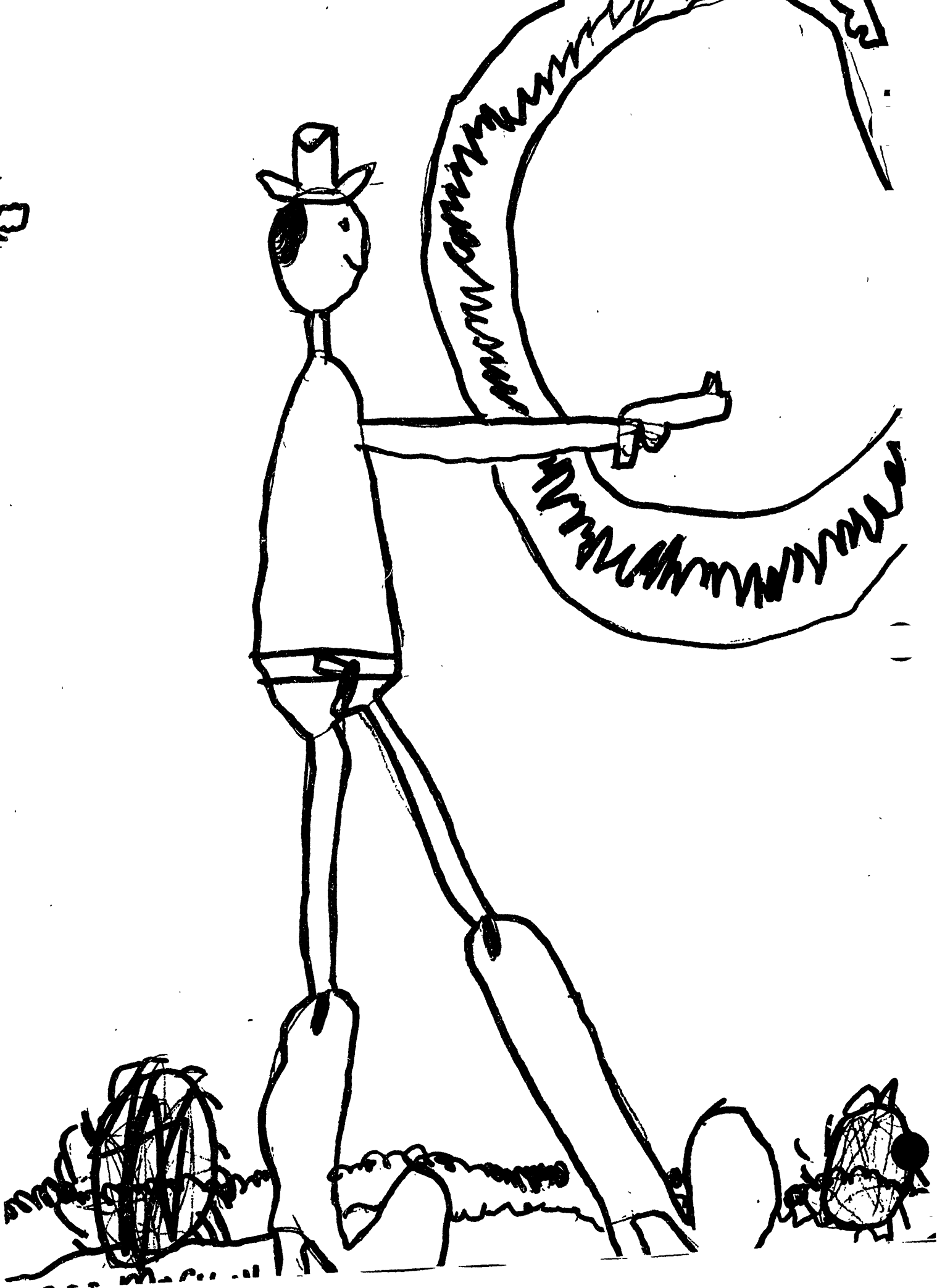


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Proposed Sections

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 any action may be taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive sections, 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 4. AGRICULTURE

Part I. Texas Animal Health Commission

Chapter 33. Miscellaneous Contagious Diseases and Disinfection

• 4 TAC §33.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Animal Health Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Animal Health Commission proposes the repeal of §33.1 concerning Contagious Diseases and Disinfection.

The proposed rule is proposed for repeal in order to remove old and outdated language and to reorganize and renumber the rule.

Bill Hayden, director of administration, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the repeal is in effect the public benefit anticipated is to advise the public with information concerning miscellaneous diseases. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The repeal is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

§33.1. Contagious Diseases and Disinfection.

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

Issued in Austin, Texas, on August 20, 1993.

TRD-9327742

Terry Beals, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: October 1, 1993

For further information, please call: (512) 479-6697

• 4 TAC §§33.1, 33.2, 33.3, 33.4

The Texas Animal Health Commission proposes new §§33.1, 33.2, 33.3, and 33.4, concerning miscellaneous diseases.

The proposed rule is necessary to provide the manner in which the commission would deal with Ornithosis, hog cholera, and other miscellaneous diseases in regard to quarantine, treatment, and cleaning and disinfection.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the sections are in effect the public benefit anticipated is to advise the public on the methods of quarantine, treatment and cleaning and disinfection for these diseases. 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.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendments are proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

§33.1. Ornithosis; Quarantine and Treatment.

(a) All poultry or flocks of poultry infected with ornithosis shall be immediately quarantined by the Texas Animal Health Commission. No poultry will be allowed to move from quarantined premises except to slaughter at a slaughtering establishment maintaining federal or state post-mortem inspection. The owner shall treat the infected flock at the owner's expense with Aureomycin in accordance with label

directions or with other remedies approved by the Executive Director.

(b) All dead birds shall be burned or buried as described in the Texas Agriculture Code, §161.004.

§33.2. Hog Cholera; Quarantine and Treatment. All swine infected with or exposed to hog cholera shall be immediately quarantined by the Texas Animal Health Commission. The quarantine will be removed from the premises 21 days after depopulation of the entire herd, and after cleaning and disinfection is completed under supervision of commission personnel. All dead hogs must be disposed of in a manner approved by the commission.

§33.3. Miscellaneous Contagious Diseases; Quarantine of Exposed and Infected Animals.

(a) All animals exposed to or infected with any contagious or infectious disease may be immediately quarantined by the Texas Animal Health Commission.

(b) The owner or any other person having in his care or possession any animals infected with any contagious or infectious disease if he knows, or has reason to believe, such infectious or contagious diseases exist shall not allow such animals to run at large upon the public highway or elsewhere. The owner shall not keep any such infected animal where other animals not infected with or exposed to such disease are likely to mingle with or become exposed to infection from the diseased animals. No one shall move or allow the movement of any animal which has been exposed to any contagious or infectious disease.

(c) The carcasses of animals that have died from any contagious or infectious disease shall be disposed of as directed by the Commission.

(d) All animal products known to be from animals which have died or have been infected with any contagious or infectious disease communicable to man or animal shall be thoroughly disinfected.

§33.4. Cleaning and Disinfecting Vehicles, Premises, and Equipment. Vehicles, premises, and equipment required to be cleaned and disinfected shall be treated un-

der the direction of a representative of the Commission with a disinfectant authorized by the Executive Director. All brands of disinfectants used to comply with regulations of the Texas Animal Health Commission must have met the specifications of the United States Department of Agriculture and be approved by that agency for the purpose used.

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

Issued in Austin, Texas, on August 20, 1993.

TRD-9327741 Terry Beale, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: October 1, 1993

For further information, please call: (512) 479-6697

Chapter 35. Brucellosis

Subchapter A. Eradication of Brucellosis in Cattle

• 4 TAC §35.1

The Texas Animal Health Commission proposes an amendment to §35.1 concerning definitions.

The proposed amendment is necessary to prohibit the reuse of official backtags and the removal of official eartags from cattle.

Bill Hayden, director of administration, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated is to advise the public that official backtags cannot be re-used and official eartags cannot be removed. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The section is proposed under the Agriculture Code, Texas Civil Statutes, Chapters 161, and 163, which provide the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

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

Official Backtag—A United States

Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS) approved identification backtag that conforms to the national uniform tagging system. It uniquely identifies each individual animal with alpha-numeric identification. The official backtag may not be reused on another animal.

Official Eartag—A veterinary Services approved identification eartag (metal, plastic or other) that conforms to the nine-character alpha-numeric National Uniform Eartagging System. It uniquely identifies each individual animal with no duplication of the alpha-numeric identification, regardless of the materials or colors used. The term includes the special orange-colored eartag series used to identify calfhood vaccines. The official eartag may not be removed from the animal.

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

Issued in Austin, Texas, on August 20, 1993.

TRD-9327743 Terry Beale, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: October 1, 1993

For further information, please call: (512) 479-6697

• 4 TAC §35.4

The Texas Animal Health Commission proposes an amendment to §35.4 concerning entry and change of ownership.

The proposed amendment is necessary to provide an entry permit for all cattle entering Texas from Mexico rather than just for breeding cattle.

Bill Hayden, director of administration, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated is to know when cattle are entering Texas from Mexico. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

§35.4. Entry and Change of Ownership.

(a) Requirements for cattle from foreign countries without comparable brucellosis status that enter and remain in Texas. (Note: Cattle from foreign countries with comparable brucellosis status would enter by meeting the requirements for a state with similar status.)

(1) Permit requirement. All cattle [except steers and spayed heifers] must obtain a permit from the Texas Animal Health Commission prior to moving to a destination in Texas. The permit number must be entered on the Importation Certificate (VS Form 17-30) and a copy of that certificate forwarded to the Commission's office in Austin immediately following issuance.

(2)-(7) (No change.)

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

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

Issued in Austin, Texas, on August 20, 1993.

TRD-9327744 Terry Beale, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: October 1, 1993

For further information, please call: (512) 479-6697

Chapter 37. Screwworms

• 4 TAC §37.1, §37.2

The Texas Animal Health Commission proposes new §37.1 and §37.2 concerning screwworms.

The proposed rule is necessary to provide the manner in which livestock are handled when screwworm infestations are suspected.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, had determined that for each of the first five years the section is in effect the public benefit anticipated is to advise the public that livestock must be handled in a specific manner when screwworm infestation is suspected. 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.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the commission with au-

thority to adopt rules and sets forth the duties of this commission to control disease.

§37.1. Control and Eradication.

(a) Any area, county, or part of a county within the state which has been determined to be infested with screwworms may be quarantined when deemed necessary by the Texas Animal Health Commission.

(b) All livestock or any animals that are susceptible to screwworm infestation and fowl leaving an area quarantined for screwworm infestation must be accompanied by an inspection certificate issued by personnel designated by the Texas Animal Health Commission, certifying that the animals are free from screwworms and screw-worm fly eggs and wounds.

(1) Any livestock or any animals that are susceptible to screwworm infestation or fowl which are determined to have open wounds must be restrained for the purpose of having these wounds treated with a remedy approved by the Executive Director. The inspection certificate must state the date and method of treatment.

(2) In addition to the treatment of wounds, all animals other than lactating dairy animals and young animals under two weeks of age must be sprayed with a spray approved by the Executive Director.

(c) Any animals that are susceptible to screwworm infestation are to be removed from the shipment, and will be permitted to leave the quarantined area only after any wounds have been determined to be free of screwworms, or the animal has been treated by an agent of the Texas Animal Health Commission. An agent of the Commission will issue a certificate certifying that such animals are free of screwworms.

(1) Animals with open wounds from castrating, dehorning, or other causes must be inspected and treated at the point of origin and may be held at the quarantine line until wounds are individually treated and the animal is certified as being free of danger of screwworm infestation.

(2) Shipments of animals with open wounds are made at the owner's or hauler's risk and the owner and hauler are responsible for any costs incurred because of the treatment required by these regulations.

(d) Any shipment of livestock or any animals that are susceptible to screw-worm infestation which are transported to the screwworm quarantine line without inspection and treatment as required in this regulation must be unloaded, inspected, and treated as required by these regulations prior to crossing the screwworm quarantine line.

(e) All livestock trucks, trailers,

railroad cars, or other vehicles which have carried livestock or fowl within a quarantined area within two weeks prior to leaving the quarantined area must be cleaned and disinfected under the supervision of Texas Animal Health Commission personnel before leaving the area.

(f) The commission, at its discretion, may check the movement of any animals or fowl leaving the quarantined area and determine that all animals and fowl have been inspected and treated as required. When such inspection stations are established, all trucks or vehicles which have hauled animals or fowl in the quarantined area within the last two weeks and are leaving the quarantined area must obtain clearance at one of these inspection stations.

(g) Representatives of the Texas Animal Health Commission and the United States Department of Agriculture, are authorized to inspect, treat, and spray as necessary any animals or fowl at any public or private premise within the state in order to effect screwworm eradication.

§37.2. Interstate Movement Requirements. All animals presented for entry into Texas from any area in which the screwworm is known to exist must be free of screwworms and screwworm fly eggs. Wounds (infested or noninfested) must be treated with United States Department of Agriculture approved screwworm killer and fly repellent. Animals other than lactating dairy animals and young animals under two weeks of age must be sprayed with a spray approved by the Executive Director.

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

Issued in Austin, Texas, on August 20, 1993.

TRD-9327745

Terry Beals, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: October 1, 1993

For further information, please call: (512) 479-6697

• 4 TAC §37.2

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Animal Health Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Animal Health Commission proposes the repeal of §37.2 concerning Screw-worms.

The rule is proposed for repeal in order to remove old and outdated language and to reorganize and renumber the rule.

Bill Hayden, director of administration, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the repeal is in effect the public benefit anticipated is to advise the public with information concerning handling livestock when screwworm infestation is suspected. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The repeal is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

§37.2. Interstate Movement Requirements.

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

Issued in Austin, Texas, on August 20, 1993.

TRD-9327746

Terry Beals, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: October 1, 1993

For further information, please call: (512) 479-6697

Chapter 43. Tuberculosis

• 4 TAC §43.1

The Texas Animal Health Commission proposes an amendment to §43.1 concerning cattle, dairy, and beef animals.

The proposed amendment is necessary to define a tuberculosis quarantined feedlot.

Bill Hayden, director of administration, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated is to advise the public that a person may apply for and establish a tuberculosis quarantined feedlot to accept cattle which have restricted movement under the tuberculosis regulations. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

§43.1. Cattle (All Dairy and Beef Animals, (genus *Bos*) and Bison, (genus *Bison*)).

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

(t) A Tuberculosis Quarantined Feedlot is a feedlot under a plan of restricted movement, approved by the Commission, in which all cattle are classified as exposed to tuberculosis. All tuberculosis exposed cattle moving to the feedlot must be "S"-branded prior to movement and must move under permit. All other cattle must be "S"-branded prior to or upon arrival at the feedlot. All cattle leaving the feedlot must go directly to slaughter. Community notification will be accomplished as set out in §35.2 of this title (relating to General Requirements).

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

Issued in Austin, Texas, on August 20, 1993.

TRD-9327749 Terry Beals, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: October 1, 1993

For further information, please call: (512) 479-6697

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Subchapter A. Cattle

• 4 TAC §43.2

The Texas Animal Health Commission proposes an amendment to §43.2 concerning interstate movement requirements.

The proposed amendment is necessary to require a TB test on all steers and spayed heifers within 60-days prior to entry into the state. Steers and spayed heifers may enter the state without further restrictions following a negative test conducted in cooperation with a USDA accredited veterinarian within 60-days prior to entry provided the cattle area accompanied by a negative test document co-signed by both testing veterinarians. All other steers and spayed heifers arriving at the port can only enter for movement to a TB quarantined feedlot in sealed trucks after being "S"-branded prior to entering the state. The amendment would further require a negative TB test at the port of entry under the supervision of the port veterinarian for all sexually intact cattle entering the state. If these cattle move from the port to a TB quarantined feedlot in Texas they must be "S"-

branded prior to entry and be moved in sealed trucks. If they enter to any other destination in Texas they will be held for retest not less than 120-days after arrival rather than 60-days.

Bill Hayden, director of administration, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Robert L. Daniel, director of program records also has determined that for each year of the first five years the section is in effect the public benefit anticipated is to advise the public that all sexually intact cattle entering the United States from a foreign country without a comparable status to that of the United States will be tested for TB under the supervision of the port veterinarian and be held for testing at the premise of destination unless they are consigned to slaughter or "S"-branded before entering the state and moved to a TB quarantined feedlot in sealed trucks. The public would further benefit by knowing that steers and spayed heifers would be tested negative, with a test in cooperation with a USDA accredited veterinarian within 60 days prior to entry and enter unrestricted or be tested with a Mexican test within 60 days prior to entry and be "S"-branded and consigned to a TB quarantined feedlot in sealed trucks. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

§43.2 Interstate Movement Requirements.

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

(c) Cattle from any foreign country or part thereof with no recognized comparable tuberculosis status may enter as follows:

(1) All sexually intact cattle to be held for purposes other than for immediate slaughter or feeding for slaughter in a tuberculosis quarantined feedlot shall be tested at the port of entry into Texas under the supervision of the port veterinarian, and be held under quarantine on the first premise of destination in Texas pending a negative tuberculosis test no earlier than 120 days and no later than 10 days after arrival. The testina will be performed at the owner's expense.

(2) All sexually intact cattle destined for feeding for slaughter in a tuberculosis quarantined feedlot, must be tested at the port of entry into Texas under the supervision of the port veterinarian. These cattle must be "S"-

branded prior to entry into the state and may move into the Tuberculosis Quarantined Feedlot only in sealed trucks with a permit issued by TAHC or USDA personnel.

(3) Steers and spayed heifers must have been tested negative within 60 days prior to entry. Those steers and spayed heifers tested negative within 60 days prior to entry in cooperation with a USDA Accredited Veterinarian, that arrive at the port of entry accompanied by a test document co-signed by both testing veterinarians may enter without further restriction. All other steers and spayed heifers may enter only for feeding for slaughter in a Tuberculosis Quarantined Feedlot provided they are "S"-branded prior to entry into the state. These cattle may move into the tuberculosis quarantined feedlot only in sealed trucks with a permit issued by TAHC or USDA personnel.

[(c) All sexually intact cattle, from any foreign country or part thereof with no recognized comparable Tuberculosis status to be held for purposes other than for immediate slaughter or feeding for slaughter in a quarantined feedlot, shall be under quarantine on the first premise of destination in Texas pending a negative tuberculosis test no earlier than 60 days and no later than six months after arrival. The test will be performed at the owner's expense.]

(d) (No change.)

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

Issued in Austin, Texas, on August 23, 1993.

TRD-9327751 Terry Beals, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: October 1, 1993

For further information, please call: (512) 479-6697

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TITLE 10. COMMUNITY DEVELOPMENT
Part V. Texas Department of Commerce
Chapter 176. Enterprise Zone Program

• 10 TAC §§176.1-176.12

The Texas Department of Commerce proposes amendments to §§176.1-176.4 and new §§176.5-176.12, implementing the Texas Enterprise Zone Act, Texas Civil Statutes, Article 5190.7. The purpose of the amendments and new sections is to comply with changes made to the Enterprise Zone Act by

the 73rd Texas Legislature and to clarify the rules.

Section 176.1, General Provisions, is being amended to add or amend definitions due to changes made by the 73rd Legislature to existing laws, or through the enactment of new laws affecting the Texas Enterprise Zone Act, and to clarify the existing definitions and rules.

Section 176.2, Filing Requirements for Applications and Claims, is being amended to provide application filing guidelines for recycling market development zones and qualified hotel projects and to provide qualified business certification guidelines for businesses other than designated enterprise projects and residential builders in response to new laws passed by the 73rd Legislature which affect the Texas Enterprise Zone Program. Section 176.2 is also being amended to provide guidelines for filing a new zone designation to become effective upon the expiration of the existing zone designation and to explain the Department review procedure to be followed in considering applications for zone designation of previously granted zone designations. It is being further amended to require that a non-refundable fee be included with the application in response to newly-enacted §481.029 of the Government Code, which requires the Department to recover the cost of providing direct technical assistance and management training services to businesses and communities when reasonable and practical. Section 176.2 is also being amended to clarify that applicants will receive written notification of the final status of their application or claim and that written notice of enterprise project designation will be given simultaneously to the applicant governing body's or bodies' designated liaison or liaisons and the enterprise project applicant.

Section 176.3, Eligibility Requirement for Designation of an Enterprise Zone, is being amended to clarify that advanced Department approval is required when providing population estimates based on data provided by other than the Texas State Data Center and to delete the requirement that documentation submitted supporting enterprise zone designation be no more than 90 days old prior to submission to the Department and to allow local surveys to be three, rather than two years old. Section 176.3 is also being amended to allow recycling market development zone applications to be submitted simultaneously with, or separate to, an application for enterprise zone designation in response to legislation passed by the 73rd Legislature.

Section 176.4, Application Contents for Designation of Enterprise Zones, is being amended to include application contents for recycling market development zones in response to legislative changes creating such zones; to revise application contents to include Telecommunication Devices for the Deaf numbers and facsimile numbers, if available; to require that the most recent census data be submitted in applications; to explain the requirements for filing for enterprise zone designation for a zone with an approaching expiration date; and to make certain grammatical and typographical corrections.

Section 176.5, Requirement for Designation as a Recycling Market Development Zone and Respective Loans or Grants, and §176.6, Application Contents for Designation as a Recycling Market Development Zone, are proposed in order to implement the newly-created recycling market development zones, loans, and grants which were established in Senate Bill 1051 by the enactment of §§481.371-481.375 of the Government Code.

Section 176.7, Requirements for Designation of Enterprise Projects, sets forth the requirements for enterprise project designation and provides that the Department may approve assumptions of enterprise projects, leasing or transferring ownership of the project designation to another entity, under certain circumstances.

Section 176.8, Application Contents for an Enterprise Project, sets forth the contents of enterprise project applications and the procedure for receiving Department approval of an enterprise zone project name change.

Section 176.9, Certification of Neighborhood Enterprise Associations, establishes the process for obtaining neighborhood enterprise association certifications.

Section 176.10, Approval Standards, sets forth the approval process for enterprise zone projects and zones, including recycling market development zones which were created by the 73rd Legislature. Section 176.10 establishes when applications will be received; sets out the deadlines for filing applications during the September, 1993, biennium for designated enterprise projects; specifies the number of new permanent and retained jobs which may be certified after August 31, 1993, for projects designated between September 1, 1993 and August 31, 1994 in response to amendments made by the 73rd Legislature; authorizes designation of up to six enterprise projects per zone per year; and establishes a procedure under which the Department can allow an enterprise zone to exceed the maximum number of projects within it upon a showing of just cause and upon the governing body's agreement to concomitantly reduce the number of enterprise projects within another enterprise zone within its jurisdiction. Section 176.10 also establishes an effective term for recycling market development zones as well as certification and loan procedures for such zones in response to the Legislature's creation of such zones; establishes procedures by which enterprise project designations may be assumed by another entity; and specifies that tax refunds under §151.429 or tax reductions under §151.1015 of the Tax Code may not be applied for prior to September 1, 1995, for projects designated after August 31, 1993, as a result of changes made to the Texas Enterprise Zone Act by the 73rd Legislature. Due to enactment of additional laws affecting the Texas Enterprise Zone Act, §176.10 also establishes certification standards for builders to qualify as qualified businesses under the Act.

Section 176.11, Reporting Requirements, establishes certain reporting requirements. It also requires that local governing bodies notify the Department of each commitment made to qualified business for one-time state

sales and franchise tax refunds; delineates factors to be considered in evaluating the public entity's effort relating to the sale of publicly owned land when such property is sold at less than fair market value; includes a provision concerning the newly-enacted statutory requirement that the Department must prepare and submit to the state auditor an annual cost-benefit analysis of the Enterprise Zone Program; and requires that neighborhood enterprise associations furnish an annual statement, by September 1 of each year, to the appropriate governing body concerning the programmatic and financial status of approved projects, together with an audited financial statement for such projects. This information is to be provided by the governing body in its annual report to the Department.

Section 176.12, Boundary Agreements, sets forth the process by which enterprise zone boundaries may be amended and by which, under certain circumstances, proposed zone boundaries may be amended to delete land area prior to the enterprise zone designation being approved.

Camille Berry, CED, director, Enterprise Zone Program, has determined that there will be fiscal implications as a result of enforcing or administering the rules. For the first five years that the rules are in effect, the effect on state government will be the administrative costs which the Texas Department of Commerce incurs in administering the Texas Enterprise Zone Act under the proposed rules. While such costs cannot be quantified, Ms. Berry anticipates that such costs will be no more than the Department is presently incurring, because the proposed rules provide for the recovery of fees in certain instances by the Department.

Ms. Berry does not believe that the costs to local government associated with the proposed rules will be any greater or less than were such costs prior to the proposed changes and deletions to the rules. Ms. Berry also believes that the costs to local government are more than offset by the economic, and other, benefits gained by the local community through participation in the Enterprise Zone Program.

Ms. Berry also has determined that there will be a public benefit for each of the first five years that the rules are in effect. The benefit is that local communities which participate in the Enterprise Zone Program may realize the creation and retention of jobs within the community; investment in the community by businesses; new residential construction projects; and the initiation, sustenance, or increase in recycling activities in areas identified as economically distressed. The cost of the rules to local government cannot be quantified because it depends upon the volume of applications for enterprise project status processed; the number of enterprise zones within the jurisdiction of the local government; the amount of staff time spent on processing Enterprise Zone Program activities, and the wages of the staff performing the work.

The cost to persons complying with the rules is not completely quantifiable since it depends, in large part, on the amount of staff time spent, and the wages of such staff, in

meeting the requirements of the Enterprise Zone Program. Other costs include the non-refundable fees of \$500 to apply for enterprise zone designation, an enterprise zone boundary amendment, or a residential builder certification; and \$300 to apply for enterprise project designation, to change or assume an enterprise project designation, for recycling market development zone designation, or for neighborhood enterprise association certification. These costs, which will be incurred only by applicants who seek to receive benefits under the Enterprise Zone Program, will be more than offset by the economic benefits which the applicants will receive from participating in the Program. The cost to small business of complying with the rules is no different than the cost to other Program applicants.

A local employment impact statement has not been requested from the Texas Employment Commission concerning the impact of these rules.

Two copies of written comments on the proposed rules should be submitted to Renee Mauzy, Staff Attorney, Texas Department of Commerce, 816 Congress Avenue, Suite 1180, Austin, Texas 78701 within 30 days of the publication of the proposed rules.

The rules are proposed under the authority of the Texas Enterprise Zone Act, Texas Civil Statutes, Article 5190.7; the Government Code, §481.005; and §481.375; and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which provide the Texas Department of Commerce with the authority to promulgate rules and regulations necessary for the performance of its duties.

§176.1. General Provisions.

(a) Introduction. Pursuant to the authority granted by the Texas Enterprise Zone Act, Texas Civil Statutes, Article 5190.7, and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, as amended, the Texas Department of Commerce prescribes the following section regarding practice and procedure before the department in the administration and implementation of the Enterprise Zone Program.

(b) Purpose. It is the purpose of the Texas Enterprise Zone Act to establish a process that clearly identifies those distressed areas and provides incentives by both state and local government to induce private investment in those areas by means of the removal of unnecessary governmental regulatory barriers to economic growth and the provision of tax incentives and economic development program benefits. The purpose of these sections is to provide standards of eligibility and procedures for applications for designation of qualified areas as enterprise zones and recycling market development zones and for designation of qualified businesses as enterprise projects.

(c) Definition of terms. The following word and terms, when used in this

chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act—The Texas Enterprise Zone Act, Texas Civil Statutes, Article 5190.7, as amended.

(2) Administrative authority—A board, commission, or committee appointed by the governing body to administer the Act within an enterprise zone.

(3) Affected entity—The applicant, qualified business, qualified employee, or any other person that is a party to a transaction involving the designation of an enterprise zone or project.

(4) Applicant—The municipality, county, or combination of municipalities or counties filing an application with the department for designation of an enterprise zone or enterprise project or affected entity filing with the department for certification under the Act, §§3(a)(9) or (11) and this chapter.

(5) Application—An application, including supporting and supplemental instruments and documentation, for designation of an enterprise zone or for designation of an enterprise project or for certification by the department or local governing body as a qualified business or neighborhood enterprise association under the Act and this chapter.

(6) Board—The Board of Directors of the Texas Department of Commerce.

(7) Day—The period of time between 8 a.m. and 5 p.m. on any day other than a Saturday, Sunday, or state or federal holiday.

(8) Department—The Texas Department of Commerce.

(9) Depressed area—An area within the jurisdiction of a county or municipality designated by ordinance, [resolution,] or order that is an area with pervasive poverty, unemployment, and economic distress. An area is an area of pervasive poverty, unemployment, and economic distress if:

(A) the average rate of unemployment in the area during the most recent 12-month period for which data is available was at least one and one-half times the local, state, or national average for that period or if the area has had at least a 9.0% population loss during the most recent six-year period or a population loss of at least 3.0% for the most recent three-year period; and

(B) the area meets one or more of the following criteria:

(i) the area was a low-income poverty area;

(ii) the area is in a jurisdiction or pocket of poverty eligible for urban development action grants under federal law according to the most recent certification available from the United States Department of Housing and Urban Development;

(iii) at least 70% of the residents or households of the area have an income below 80% of the median income of the residents or households of the locality or state, whichever is lower;

(iv) the nominating government establishes to the satisfaction of the department that:

(I) chronic abandonment or demolition of commercial or residential structures exists in the area;

(II) substantial tax arrearages for commercial or residential structures exist in the area;

(III) substantial losses of businesses or jobs exist in the area; or

(IV) the area is part of a disaster area declared by the state or federal government during the most recent 18-month period.

(10) Economically disadvantaged individual—An individual who:

(A) for at least three months before obtaining employment with a qualified business was unemployed;

(B) receives public assistance benefits, such as welfare payments and food stamp payments, based on need and intended to alleviate poverty;

(C) is an economically disadvantaged individual, as defined by the Job Training Partnership Act, §4(8), (29 United States Code, §1503(8));

(D) is an individual with handicaps, as defined by 29 United States Code, §706(8);

(E) is an individual who is an inmate, as defined by the Government Code, §498.001, or who is entering the workplace after being confined in a unit of the institutional division of the Texas Department of Criminal Justice or a correctional facility authorized by the Government Code, Chapter 494; or

(F) is an individual who meets the current low-income or moderate

income limits developed under the United States Housing Act of 1937, §8 (42 United States Code, §1437f).

(11) **Eligible taxable proceeds**—means taxable proceeds generated, paid, or collected by a qualified hotel project or a business at a qualified hotel project including hotel occupancy taxes, ad valorem taxes, sales and use taxes, and mixed beverage taxes.

(12)[(11)] **Enterprise project—A qualified business** designated by the department an enterprise project under the Act, §10 and §76.5 of this title (relating to Requirements for Designation of Enterprise Projects) that is eligible for the state tax incentives provided by law for an enterprise project.

(13)[(12)] **Enterprise zone—An area of the state** designated by the department an enterprise zone under the Act, §9, and §176.3 of this title (relating to Eligibility Requirements for Designation of an Enterprise Zone).

(14) **Enterprise project eligible enterprise zone**—means a state-designated enterprise zone that meets economic distress levels set forth in of the Act §10(a).

(15)[(13)] **Executive director**—The executive director of the department or his or her authorized designee.

(16)[(14)] **Extraterritorial jurisdiction—Territory in the extraterritorial jurisdiction of a municipality** that is considered to be in the jurisdiction of the municipality. Except in a county with a population of 750,000 or more, according to the most recent federal census, the governing body of a county may not nominate territory in a municipality or in the extraterritorial jurisdiction of a municipality to be included in an enterprise zone unless the governing body of the municipality also nominates the territory pursuant to a joint application made with the county.

(17)[(15)] **Governing body**—The governing body of a municipality or county that has applied to have an area within its jurisdiction designated as an enterprise zone.

(18)[(16)] **Local Government—A municipality or county.**

(19)[(17)] **Neighborhood enterprise association—A private sector neighborhood organization** within an enterprise zone that meets the criteria set forth in the Act, §21, and §176.7 of this title (relating to Certification of Neighborhood Enterprise Associations).

(20)[(18)] **New permanent job—A new employment position** created by a qualified business that has provided employment to a qualified employee of at least

1,040 hours annually and intended to be an employment position retained during the period the business is designated as an enterprise project.

(21)[(19)] **Qualified business—A person, including a corporation or other entity** that the department, for purposes of state benefits under this Act, and a governing body, for purposes of local benefits, certifies to have met the following criteria:

(A) the person is engaged in or has provided substantial commitment to initiate the active conduct of a trade or business in the zone; and

(B) at least 25% of the business's new employees in the zone are residents of any zone within the governing body's or bodies' jurisdiction or economically disadvantaged individuals; and

(C) a franchise or subsidiary of a new or existing business may be certified by the governing body or an enterprise zone as a qualified business if the franchise or subsidiary is located entirely in the zone and maintains separate books and records of the business activity conducted in the zone ; or

(D) as a builder that has demonstrated proficiency in residential construction, financial stability, and participation in a 10-year insured warranty program in accordance with the Act and §176.10(f) of this chapter (relating to Certification of Qualified Business); or

(E) is a qualified hotel project that is owned by a municipality with a population of 1,500,000 or more or a nonprofit municipality sponsored local government corporation created pursuant to the Texas Transportation Corporation Act (Article 15281, Texas Civil Statutes) proposed to be constructed within 1,000 feet of a convention center owned by a municipality having a population of 1,500,000 or more, including all facilities ancillary thereto such as shops and parking facilities.

(22)[(20)] **Qualified employee—An employee who works for a qualified business and who performs at least 50% of his service for the business within the enterprise zone.**

(23)[(21)] **Qualified property—Any one or more of the following:**

(A) tangible personal property located in the zone that was acquired by a taxpayer not earlier than the 90th day before the date of designation of the area as an enterprise zone or enterprise project, as

applicable, and was used predominantly by the taxpayer in the active conduct of a trade or business;

(B) real property located in a zone that:

(i) was acquired by the taxpayer not earlier than the 90th day before the date of designation of the zone or enterprise project, as applicable, and used predominantly by the taxpayer in the active conduct of a trade or business; or

(ii) was the principal residence of the taxpayer on the date of the sale or exchange; or

(C) interest in a corporation, partnership or other entity if, for the most recent taxable year of the entity ending before the date of sale or exchange, the entity was a qualified business.

(24) **Recycling market development loan or grant**—means a loan or grant that may be made by the department to the governing body of an enterprise zone designated as a recycling market development zone to fund an activity that sustains or increases recycling efforts.

(25) **Recycling market development zone**—means an enterprise zone that the department may designate for the development of local business and industry in the zone to recycle materials that have served their intended use or that are scrapped, discarded, used, surplus, or obsolete by collecting, separating or processing the materials for use in the production of new products.

(26) **Retained job**—means a job that existed with a business prior to designation as an enterprise project or certification as a qualified business that has provided employment to a qualified employee of at least 1,820 hours annually intended to be an employment position retained during the period the business is designated as an enterprise project or certified as a qualified business in accordance with the Texas Tax Code, Chapter 151.

(27)[(22)] **Staff**—The staff of the department.

(d) Amendment and suspension of rules. These sections may be amended by the executive director at any time in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, as amended. The executive director may suspend or waive a section, not statutorily imposed, in whole or in part, upon the showing of good cause or when, at the discretion of the executive director, the particular facts or circumstances render such waiver of the section appropriate in a given instance.

(e) Application of sections. All sections shall be applied collectively, to the extent relevant, in connection with specific determinations made by the department in the course of its administrative functions. The department will make its determination on the basis of specific characteristics and circumstances of the individual application, and in light of the basic statutory purposes in the particular area.

(f) Examination of records. Any party requesting the examination of records pursuant to the Open Records Act, Texas Civil Statutes, Article 6252-17a, shall indicate in writing the specific nature of the documents to be viewed, and if photocopying is desired, the prevailing standard fee of the department will be charged to cover the cost of the request.

(g) Written communication with the department. Applications and other written communications to the department should be addressed to the attention of the Texas Enterprise Zone Program, Business Development Division, Texas Department of Commerce, P.O. Box 12728, Austin, Texas 78711.

§176.2. Filing Requirements for Applications and Claims.

(a) Form.

(1) Enterprise Zones and Enterprise Projects. An application must be filed on letter-sized paper and must contain all information and documentation required under the Act and this chapter, as applicable. The application must be submitted in a three-ring loose-leaf binder with the information tabbed according to §176.4 of this title (relating to Application Contents for Designation of Enterprise Zones) or to amend the boundaries of a designated enterprise zone. Each application for designation as an enterprise zone, for enterprise zone boundary amendments, and for enterprise project designation must include an application/review guide as provided by the department.

(2) Certification or Refunds. An application to request refunds, tax deductions, or certification of new permanent jobs created or jobs that have been retained, or certification as a qualified business to qualify for refunds or deductions of state sales, use, [or] franchise taxes, or other state benefits encouraged under the Act, as appropriate, or an application to request certification by the department of a Neighborhood Enterprise Association, must be made to the department in writing on the appropriate forms provided by the department or the Comptroller of Public Accounts.

(b) Filing.

(1) Enterprise Zones.

(A) Applications for enterprise zone designation, [or] enterprise zone

boundary amendments, or recycling market development zone designation may be filed with the department on any day. The applicant shall file with the department an original and one copy of an application for designation of an enterprise zone, [or] enterprise zone boundary amendment, or recycling market development zone if by separate application from an enterprise zone or zone boundary amendment application. A separate application must be submitted to the department for each area nominated for designation as an enterprise zone or to amend the boundaries of a designated enterprise zone.

(B) During the six-month period preceding the expiration of designation as an enterprise zone, an application may be filed for a new zone designation for the area or portions of the area, to become effective upon the designation expiration date or no later than the 90th day after the day of receipt of the application. An application that includes land area previously designated as an enterprise zone will be subject to review by the department for evaluation of past performance to promote and develop the zone in accordance with the applicant's or applicants' attempts to meet the original zone objectives and to fulfill commitments outlined in the zone application from which zone designation was previously approved. In the event that the department determines from the evaluation of prior zone performance that the applicant or applicants have made insufficient use of the zone designation to advance the purposes of the Act as represented in its original enterprise zone application and its agreement with the department to designate the area as an enterprise zone, the department may deny approval of an area or portions of areas previously designated as an enterprise zone under the seven-year limitation for an area to be designated as a zone under the Act, §4(c) as an exception to the Act, §7(c), that the department may reject an application only if the department determines that the nominated area does not satisfy the criteria established by the Act, §4. Eligibility requirements for designation of an enterprise zone as set forth in the Act and §176.3 of this title (relating to Eligibility Requirements for Designation of an Enterprise Zone) will apply in any case.

(2) Recycling market development zones. Applications for recycling market development zone designation may be simultaneously submitted to the department as part of an application for enterprise zone designation. To achieve designation as a recycling market development zone for an enterprise zone designated prior to September 1, 1993, a separate application must be filed with the department that meets the require-

ments for designation as a recycling market development zone.

(3) Recycling market development zone loans and grants. Applications to the department in the form prescribed by the department and procedures for filing will be established as funds become available from appropriated funds or from any special fund and interest earned therefrom, less administrative recovery portion determined by the department. The department may adopt rules concerning interest rates, repayment plans, or any other operational details as determined appropriate.

(4)[(2)] Enterprise Projects. Applications for enterprise project designation may be filed on or before, but no later than, bi-monthly deadlines published by the department in §176.8(b)(1) of this title, (relating to Approval Standards) for consideration. Applications received after a published deadline will not be considered until after the next published deadline. The applicant shall file with the department an original and one copy of an application for designation as an enterprise project.

(5) Qualified hotel project. Application to the department in the form prescribed by the department is required for enterprise project designation, but a qualified hotel project shall be deemed to have met the employment, income, and other criteria of a qualified business and an enterprise project and the enterprise zone in which the qualified hotel project is located shall be deemed to have met all qualifications of the Act to permit the department to designate the qualified hotel project as an enterprise project. New permanent jobs created by a qualified hotel project shall not be considered in determining the number of enterprise projects that the department may approve pursuant to the other provisions of this Act.

(6)[(3)] Certifications.

(A) Enterprise projects.

(i) Requests for job certifications and refunds for designated enterprise projects may be filed on any day with the department annually or semiannually at the discretion of the entity holding designated project status.

(ii) An enterprise project must be annually certified by the department as a qualified business to receive its state sales and use tax refunds and franchise tax reductions.

(B) Qualified business.

(i) Requests for job certifications and refunds for qualified businesses, other than designated enterprise projects, may be filed with the department on any day within 12 months

after the last day of the nomination period as a qualified business in the applicable governing body's or bodies' nominating resolution.

(ii) Through the applicable governing body or bodies to the department a residential builder may request certification as a qualified business to construct single or multifamily housing in the governing body's or bodies' enterprise zone even though the builder's principle office or headquarters is located in the state of Texas outside the zone. The governing body or bodies shall adopt criteria and guidelines to advance the Act and zone objectives including establishing a minimum commitment of the number of housing units that are to be constructed in an enterprise zone within its jurisdiction(s) within a specific period of time by a builder or group of builders before requesting state qualified business status. A builder or group of builders that form a consortium for the purpose of constructing housing in an enterprise zone that has met requirements established by the local governing body or bodies may be nominated for enterprise project designation by the local governing body or bodies. In considering such nominations the governing body or bodies shall give preference to project that address affordable housing as set forth in the criteria established by the governing body or bodies. The application for certification as a qualified business for state benefits may be submitted to the department on any day in a form prescribed by the department. The applicable governing body or bodies may certify a residential builder as a qualified business to receive local benefits in connection with housing construction activity in an enterprise zone within its or their jurisdiction without making an application to the department to assure compliance with the Act, §3(a)(11)(B).

[(A) Qualified Businesses. Requests for certification as a qualified business for state benefits, requests for certification of new permanent jobs created, and requests for refunds may be filed with the department on any day.]

(C) Forms. Two original form must be submitted to the department to request certification as a qualified business or to request certification of new permanent jobs created. Two original forms as provided by the comptroller must also be submitted to the department to request refunds. One original will be retained by the department and one original will be forwarded to the comptroller. The rules promulgated by the comptroller must also be followed to file a claim for tax refunds or reductions [refund].

(D)[(B)] Neighborhood Enterprise Associations. applications to the department for certification of a Neighborhood Enterprise Association may be filed with the department on any day.

(c) Completeness. Each application or claim must be as complete as practicable, and must include the fee set forth in §176.2(d) of this title (relating to Filing Requirements for Applications and Claims). The department will stamp or otherwise designate the date on which it receives each application. The date stamped or otherwise designated for any application received after the close of business on any day will be the next day. A day is as defined in the Act and §176.1 of this title (relating to General Provisions).

(d) Fees. A non-refundable fee to recover the department's cost of providing direct technical assistance relating to the enterprise zone program [of \$500] must accompany an application to the department in the amount of:

- (1) \$500 for an enterprise zone designation;
- (2) \$500 to amend the boundaries of a state designated enterprise zone;
- (3) \$300 for an enterprise project designation;
- (4) \$300 for application to change/assume enterprise project designation as defined in §176.10(c)(2)(B) of this title (relating to Approval Standards);
- (5) \$300 for designation as a recycling market development zone;
- (6) \$500 for residential builder certification as a qualified business for a three-year period; or
- (7) \$300 for certification as a neighborhood enterprise association. The fee must be submitted in the form of a cashiers check made payable to the Texas department of Commerce/Texas Enterprise Zone Program.

(e) Staff Consideration of Applications or Claim Requests. The staff shall review the application or claim request to determine if the application meets the eligibility criteria under the Act and this title. [Following staff review, the application will be submitted to the executive director for consideration.] An application for designation or [A] request for certification will initiate a site visit by the department, written, or telephone instruction for a desktop review as appropriate. Following staff review, the application will be submitted to the executive director for consideration. Written notification will be given to applicants of the final status of an application or claim.

(1) Not later than 15 days after the receipt of the application for enterprise zone designation for zone boundary amend-

ment, the department shall notify the applicant that it has received the application and note any omissions or clerical errors that exist in the application. The applicant has at least ten days after the date it receives notice of application omissions or clerical errors or 45 days from the date the application is received by the department to correct any deficiencies and to submit corrections to the application to the department.

(2) Not later than five days after the deadline for accepting applications for enterprise project designation, the department shall notify the applicant that it has received the application. A preliminary review of an enterprise project application will be conducted to determine eligibility and completeness if the application is received at least 15 days prior to the application deadline. If a preliminary review is conducted of an enterprise project application by the department, the enterprise project applicant or applicants will be notified of application omissions or clerical errors at least seven days before the application deadline and application deficiencies must be corrected and returned to the department by the enterprise project deadline for consideration.

(f) Consideration of Enterprise Zone and Enterprise Project Applications.

(1) Complete or corrected applications for enterprise zone designation that staff determines to meet the eligibility criteria set forth in the Act and this chapter will be considered by the executive director. The executive director may approve the application or remand it to the applicant for further action. If the executive director approves the application for enterprise zone designation, a negotiated agreement to designate the enterprise zone will be initiated by the department and must be fully executed no later than the 90th day after the day of receipt of the application. If the agreement is not executed before the 90th day of the receipt of the application by the department the application is considered to be denied. The department shall inform the governing body or bodies of the specific reason for the denial.

(2) The department shall review the enterprise project applications that have qualified for consideration following staff review. The department will either approve the application, disapprove it, remand it to the applicant for further action, or make such other disposition of the application as may be appropriate. Enterprise project designation becomes effective immediately upon department approval of an enterprise project application and action to grant the designation. Written notice of the designation will simultaneously be given to the applicant governing body's or bodies' designated liaison or liaisons and the enterprise project applicant. The notice will include an effective date and an expira-

tion date of the project designation which shall include the 90-day period immediately preceding the designation during which benefits under the designation may be allowed.

(g) Consideration of recycling market development zone applications. In the event that a recycling market development zone application is included as part of an enterprise zone designation, the consideration process will be the same as for enterprise zone designation except that the criteria to qualify an area for recycling market development zone designation must be met must as it must be met for an area already designated as an enterprise zone to be further designated as a recycling market development zone.

§176.3. Eligibility Requirements for Designation of an Enterprise Zone.

(a) An applicant may make written application to the department for designation of an area within the applicant's jurisdiction as an enterprise zone if such area meets the following eligibility criteria:

(1) the area has a continuous boundary;

(2) the area is at least one square mile in size but does not exceed the larger of the following:

(A) Ten square miles exclusive of lakes, waterways and transportation arteries; or

(B) 5.0% of the area of the municipality, county or combination of municipalities or counties nominating the area, but not more than 20 square miles, exclusive of lakes, waterways, and transportation arteries; and

(3) the area is an area with pervasive poverty, unemployment, and economic distress which meets the following criteria:

(A) the average unemployment in the area during the most recent 12-month period for which data is available was at least one and one-half times the local, state, or national average for that period or if the area has had at least a 9.0% population loss during the most recent six-year period or a population loss of at least 3.0% for the most recent three-year period; and

(B) the area meets one or more of the following criteria:

(i) the area was a low-income poverty area;

(ii) the area is in a jurisdiction or pocket of poverty and is certified by the United States Department of Housing and Urban Development as eligible at the time of enterprise zone or enterprise project application for urban development action grants under federal law. Such certification must be current within 90 days of the date application is received by the department.

(iii) at least 70% of the residents or households of the area have an income below 80% of the median income of the residents or households of the locality or state, whichever is lower;

(iv) the governing body or the applicant establishes to the satisfaction of the department that:

(I) chronic abandonment or demolition of commercial or residential structures exists in the area;

(II) substantial tax arrearages for commercial or residential structures exist in the area;

(III) substantial losses of businesses or jobs exist in the area; or

(IV) the area is part of a disaster area declared by the state or federal government during the most recent 18-month period.

(b) The department may not designate an area as an enterprise zone if in the jurisdiction of the municipality or county nominating the area as an enterprise zone there are three enterprise zones in existence that were nominated as enterprise zones by the governing body of that municipality or county.

(c) Documentation. For the purpose of showing that an area is qualified to be designated as an enterprise zone, the applicant must submit documentation, including the source, methodology and certification of the data by the person or persons responsible for its preparation. The applicant may, subject to the prior approval of the department, submit data, analysis, or other information which is generated locally by the applicant or on behalf of the applicant. The department will consider current any documentation, if at the time an application is received by the department, such documentation was the most current data that was available [not more than 90 days] preceding the date the application was received by the department. The department will consider current, at the time of application to amend an enterprise zone boundary or nominate an enterprise project, any documentation generated by local survey that is allowed by the Act and this chapter, within 3 [2] years of the date the survey was conducted.

(1) Unemployment Data. The average rate of unemployment for the area nominated during the most recent 12-month period for which data is available from the Texas Employment Commission must be at least one and one-half times the local, state, or national average for that period. Computation of the average unemployment rate for the proposed enterprise zone area will require choosing the smallest area that contains the zone for which unemployment data is available from the Texas Employment Commission or by local survey. Unemployment data obtained by local survey may be used to meet unemployment criteria only if the area to be surveyed represents no more than 25% of the proposed zone and the Texas Employment Commission certifies that it cannot provide data for that area. An applicant must use the survey instruments provided by the department. A 100% effort with an 80% response rate is required. Local survey data for 25% of the nominated land area must be averaged with data provided by the Texas Employment Commission for the remainder (at least 75%) of the nominated land area.

(2) Loss of Population. Loss of population may be calculated using population estimates for the applicant's jurisdiction produced by the Texas State Data Center or by other methods approved by the department in advance of submitting the application to the department. The total loss of population is the accumulated population loss experienced during the most recent six-year period for which data is available. The alternative annual 3.0% population loss is the average annual loss of population experienced during the most recent three-year period for which data is available.

(3) Income Data. If a proposed zone includes portions of more than one city or county, the median income should be calculated using figures for each city or county which includes part of the zone. In order to meet the low-income criteria, the smallest number of census areas that entirely contain the zone must reflect that at least 70% of the households in that zone have below 80% of the median household income for the locality or state, whichever is lower. To determine a low-income poverty area, at least 20% of the residents of the zone must have an income below the national poverty level as determined by the most recent available census data that contains the zone area. Census tracts, block groups, enumeration districts, or other comparable areas may be used to show poverty rates.

(4) Chronic Abandonment or Demolition. To qualify, the applicant must demonstrate to the department that 25% or more of the structures in such area are found by the governing body to constitute

substandard, slum, deteriorated, or deteriorating structures as defined by local law. If local law does not define what constitutes a substandard, slum, deteriorated, or deteriorating structure, the governing body of the applicant may consider as substandard a structure which:

(A) is abandoned;

(B) does not have plumbing;

(C) has been condemned or cited for building or fire code violations by appropriate city authority;

(D) is in an inadequate state of repair under applicable, public health, safety, fire, or building codes;

(E) is the subject of a tax or special assessment delinquency stated as a percentage of total taxes assessed, which exceeds the fair market value of the land involved and the improvements, thereon; or

(F) is functionally or economically obsolete as determined by a qualified appraiser.

(5) **Substantial Tax Arrearages.** The applicant must certify and submit evidence that within the proposed zone area, commercial or residential taxes are at least 25% in arrears and that such tax arrearages have been delinquent for at least one year. For purposes of determining substantial tax arrearages, the tax rolls of the applicable city or county nominating an area as an enterprise zone must be used.

(6) **Substantial Losses of Businesses or Jobs in the Area.** The applicant must seek advance approval of documentation to be provided to the department. Such evidence of loss will be evaluated on a case-by-case basis for eligibility, with consideration to be given to the critical impact of the jobs lost to the area nominated.

(7) **Declaration of an Area as a State or Federal Disaster Area.** The applicant must provide documentation by the applicable state or federal government that the area has been declared a state or federal disaster area within the most recent 18-month period.

(d) **Citizen Participation.** The department will not approve the designation of an area as an enterprise zone unless:

(1) the governing body of the applicant shall first notify the department of the date it will hold a public hearing as required under the Act, §5(b) and these rules for the purpose of nominating an area as an enterprise zone or to amend the boundaries of a designated enterprise zone by encompassing additional land area into

the zone. The notice to the department shall be given in writing not less than seven days prior to the date of the public hearing; and

(2) notice of such hearing is given to the public by publishing once in a newspaper of general circulation in the municipality or county or combination of municipalities or counties and posting a copy of the same at the city hall or county courthouse not later than seven days prior to the date of the hearing. Such notice shall contain a description of the area proposed by the municipality or county or combination of municipalities or counties to be designated as an enterprise zone, and the date, time, and location of such hearing. The description of the area should be worded so that residents of the area and other interested parties may reasonably identify the area to be discussed at the public hearing. The notice shall also encourage all interested parties, including residents of the proposed zone to present their views at the hearing. The hearing must include a presentation on the proposed location of the zone and the provisions for any tax or other incentives applicable to business enterprises in the zone.

(e) **An application for enterprise zone designation may simultaneously be an application to the department for the area to be designated as a recycling market development zone. A previously designated enterprise zone may be designated a recycling market development zone by separate application to the department in the form prescribed by the department.**

§176.4. application Contents for Designation of Enterprise Zones.

(a) Each application for designation of an enterprise zone, [or] application to amend the boundaries of a designated enterprise zone, or for designation of a recycling market development zone must contain the following information and documentation, as applicable, and numerically tabbed in the order listed in paragraphs (1)-(7) of this subsection. If a certain tab is not applicable, please state.

(1) **The Participants.** The application must list the name, street, mailing address, and telephone numbers, including the **Telecommunication Devices for the Deaf (TDD) number, if available, [number] and facsimile number, if available, of each of the following:**

(A) the applicant governing body or bodies, applicant governing body or bodies' representative;

(B) the applicant governing body's or bodies' designated liaison to communicate and negotiate with the department, the administrative authority, if any, of an

enterprise project, and other entities in or affected by an enterprise zone.

(C) if any, the administrative authority, the administrative authority's representative; and

(D) if any, the neighborhood enterprise association, and neighborhood enterprise association's representative.

(2) **The applicant.** If a joint application is being submitted by a municipality and [,] county, or a combination of municipalities and/or [or] counties, the information must be provided for each entity. The application must contain the following information and documentation concerning the applicant:

(A) a statement signed by the applicant certifying that the contents of the application are true and correct to the best information and belief of the applicant and that the applicant has read the Act and this chapter and is familiar with the provisions of the enterprise zone program;

(B) a certified copy of the ordinance or order as appropriate of the governing body of the applicant nominating the area within its jurisdiction as an enterprise zone under the Act, containing the information set forth in the Act, §6, and designating a liaison in accordance with paragraph (1)(B) of this subsection. The ordinance or order may include nomination of more than one zone area within the limits of the Act and within the jurisdiction of the applicant governing body to be filed with separate zone applications; and

(C) if a joint application, a description and certified copy of the agreements between joint applicants providing for the joint administration of the zone. An agreement must include a statement that each applicant is committing one of it three allowed enterprise zone designations to the joint application.

(3) **Zone Administration.** The application must contain the following information and documentation concerning administration of the zone

(A) a brief description of how the zone will be managed, including the unit or department within the municipality or county responsible for oversight of zone activities and person or persons responsible for zone administration within the municipality or county;

(B) the procedures for negotiating with residents, community groups, and other entities affected by the zone and qualified businesses within the zone;

(C) a description of the administrative authority, if any, including a list of members with representation as set forth in the Act, §22, including the street address, mailing address, and telephone number of each member; and

(D) a description of the functions and duties of the administrator or administrative authority, if any, including decision-making authority and the authority to negotiate with affected entities.

(4) The neighborhood enterprise association, if any. The application must contain the following information and documentation concerning the neighborhood enterprise association, if any:

(A) a description of the neighborhood enterprise association, including a list of officers, with the street address, mailing address and telephone number of each;

(B) a statement describing the functions, programs, and services to be performed by designating neighborhood associations in the zone at the time of application; and

(C) a copy of the proposed agreement between the neighborhood enterprise association and the applicant to include, if applicable, a statement on the amount of dedicated revenue from a tax increment fund to pay the neighborhood enterprise association for providing services or carrying out authorized projects. The term of an agreement with a neighborhood enterprise association may not exceed 10 years.

(5) The Zone. The application must contain the following information and documentation concerning the proposed zone:

(A) a map of the proposed enterprise zone location which clearly shows zone boundaries, including existing streets and highways, rail, and air facilities;

(B) an official census map of the proposed enterprise zone area that clearly identifies and reflects the most recent census data areas within the proposed zone boundaries applicable to the eligibility criteria referenced in the application;

(C) certification of the geographic makeup of the proposed zone including the total square miles in the proposed enterprise zone, the total square miles of each applicant's jurisdiction, in-

cluding the total square miles of proposed zone area inside each applicant's city limits, each applicant's extraterritorial jurisdiction, and if applicable, the total square miles outside a city's extraterritorial jurisdiction in the county;

(D) an analysis and any supporting documents and statistics demonstrating that the proposed zone area qualifies for designation as an enterprise zone under the Act;

(E) a statement setting forth the current business and labor conditions and the economic development and planning objectives for the zone;

(F) an annualized seven-year estimate of the economic impact of the zone that reflects at least the number of jobs and capital investment expected as a result of the designation of the zone, considering all of the tax incentive, financial benefits, and programs contemplated, on the revenues of the municipality or county. The estimate must be provided in tabular form and must describe the bases and assumptions used.

(6) The Local Business Incentives. For the purposes of tax abatement under the Property Redevelopment and Tax Abatement Act (the Tax Code, Chapter 312), an enterprise zone designated after August 28, 1989 is considered to be a reinvestment zone without further designation. The application must contain the following information and documentation concerning any incentives to be provided by the local government:

(A) a brief narrative detailing any tax, or other incentives to be provided in the zone, as described in the ordinance or order nominating the area as an enterprise zone; and

(B) a statement detailing any incentives or benefits and any programs to be provided by the municipality or county to business enterprises in the zone, that are not to be provided throughout the municipality or county. At least one tax or other incentive must be applicable to business enterprises in the zone that is not applicable throughout the municipality or county and any applicable incentive should be specifically noted in the ordinance or order to nominate the enterprise zone or zone boundary amendment as appropriate.

(7) Public Hearings. The application must contain a transcript or tape recording of all public hearings on the zone, including copies of the published notices and copies of the publisher's affidavits.

(b) An application nominating an area or portions of an area for enterprise zone designation that is approaching a

designation expiration date or for which designation has previously expired must follow the application process required of a first-time application for designation and will further be required to meet filing requirements under §176.2(b)(1)(B) of this title (relating to Filing Requirements for Applications and Claims).

(c)[(b)] The department may require additional information at any time for evaluation purposes.

§176.5. Requirements for Designation as a Recycling Market Development Zone and Respective Loan or Grants.

The department may not designate a nominated area as a recycling market development zone unless it has first determined from an application submitted by the governing body or bodies within whose jurisdiction(s) the area is contained that:

(1) the area is a state designated enterprise project-eligible enterprise zone, or meets the requirements for designation as an enterprise project-eligible state enterprise zone. No additional distress criteria is or from any special fund. Funds granted or loaned under this section may be used to:

(A) add or upgrade infrastructures within a recycling market development zone;

(B) provide or improve utilities within a recycling market development zone;

(C) make loans to recycling businesses for asset financing or working capital;

(D) fund for-profit and not-for-profit organizations for the purpose of establishing recycling programs; or

(E) fund any other activity mutually agreed upon between the department and the enterprise zone governing body or bodies which leads to sustainable, increased recycling activity.

§176.6. Application Contents for Designation as a Recycling Market Development Zone.

(a) An application for designation as a recycling market development zone must include:

(1) the ordinance nominating the area for designation as a recycling market development zone to include:

(A) all requirements for designation as a state enterprise zone and a

nomination of the area as an enterprise zone unless by prior application, the area has already been designated by the department as a state enterprise zone;

(B) the name or employment position and affiliation of the person to be the governing body's or bodies' recycling market development liaison to communicate with the department and others on recycling matters regarding the zone;

(C) a commitment to encourage and enable recycling activities;

(D) a finding that a waste-stream analysis for the area to be affected by the recycling market development zone has been completed including the date it was completed; and

(E) a finding that a survey of dependable markets for recyclable materials and sources for post-industrial/post consumer secondary materials has been conducted;

(2) the application must also contain:

(A) name, title, affiliation, mailing and street address, telephone number and facsimile number of designated recycling market development zone liaison, including the Telecommunication Devices for the Deaf (TDD) number if available;

(B) map of the zone;

(C) summaries of the waste-stream analysis and the survey of markets for recyclable materials and sources for post-industrial/post-consumer secondary materials including the periods covered, dates completed, and names and affiliations of persons conducting the analysis and survey and name of entity or person that authorized analysis or survey;

(D) a statement that outlines the procedures for zone administration and implementation specifically relating to recycling activities in the zone; and

(E) a statement outlining the economic and social impacts anticipated as a result of the recycling efforts.

(b) Enterprise zones designated as recycling market development zones will emphasize recycling businesses and/or community-based recycling efforts within the stated enterprise zone economic objectives.

(c) To receive a recycling market development loan, each governing body or bodies must:

(1) complete an application in a form provided by the department, together with supporting documents and information required in the application;

(2) pay a non-refundable application fee;

(3) pay a non-refundable minimum closing fee at the time of loan closing;

(4) sign a loan agreement which will stipulate their particular accounting, management, and reporting requirements along with any penalty clauses;

(5) administer the loan funds and implement the incentives agreed upon in the enterprise zone application, including the recycling marketing developing zone option; and

(6) be liable for loan repayment, in accordance with an established, mutually agreeable schedule.

(d) Applicant governing body or bodies may apply for recycling market development zone designation and project specific loans simultaneously or they may apply for a loan after designation on behalf of a specific project. Funds repaid into the loan fund will be carried forward, added to new funds which may be made available, and loaned out again.

(e) The department may further define the application process to include additional information as deemed appropriate.

§176.7. Requirements for Designation of Enterprise Projects.

(a) The department may not designate a nominated qualified business as an enterprise project unless it determines that:

(1) the business meets the requirements set forth in the Act, §3(a)(11), and this chapter;

(2) the qualified business is located in or has made substantial commitment to locate in an enterprise zone having an unemployment rate at the time of enterprise zone designation, or enterprise project application, whichever is the higher, of not less than one and one-half times the average state unemployment rate or a population loss of at least 12% during the most recent six-year period or a population loss of at least 4.0% for the most recent three-year period at the time of project application;

(3) the project demonstrates viability as determined by the department;

(4) the applicant's governing body or bodies have demonstrated that a high level of cooperation between public, private, and neighborhood entities exists in the zone; and

(5) the designation of the qualified business as an enterprise project will contribute significantly to the achievement of the plans of the applicant for development and revitalization of the zone.

(b) The department may approve the assumption of a state-designated enterprise project that leases or transfers ownership to another entity that will continue operations in the enterprise zone in the same way that was originally committed to in the initial enterprise project application or which otherwise demonstrates to the satisfaction of the department that the designation assumption is warranted to avoid disruption of operations and loss of jobs.

§176.8. Application Contents for an Enterprise Project.

(a) The application for designation of an enterprise project must contain the following information and documentation, as applicable. If a joint application is being filed by one or more municipalities and/or counties, the information must be included for each applicant governing body.

(1) The Participants. The application must contain the name, street address, mailing address, and telephone number for each of the following involved in the designation of qualified businesses as enterprise projects:

(A) the applicant governing body, applicant governing body's representative, and its designated enterprise zone liaison;

(B) the qualified business, qualified business's representative;

(C) if any, the administrative authority, the administrative authority's representative; and

(D) if any, the neighborhood enterprise association, and neighborhood enterprise association's representative.

(2) The applicant. The application must contain the following information and documentation concerning the applicant:

(A) a statement signed by the qualified business and a statement signed by the applicant governing body or bodies certifying that the contents of the application are true and correct to the best information and belief of the qualified business and that the qualified business has read the Act and this chapter and is familiar with the provisions thereof;

(B) a certified copy of a resolution from the applicant governing body or bodies nominating the qualified business for designation as an enterprise project containing the findings required by the Act, §10(c);

(C) a complete description of the conditions in the zone that constitute pervasive poverty, unemployment, and economic distress for purposes of the Act, §4(b);

(D) a description of each municipality's or county's procedures and efforts to facilitate and encourage participation by and negotiation between all affected entities in the zone in which the qualified business is located including:

(i) any agreements made since the designation of the zone between affected entities;

(ii) minutes of meetings or other written documents that outline the means of establishing cooperation and communication between any affected entities in the zone where the project will be located; if regular meetings are scheduled, state when the meeting will occur;

(E) a description of the local effort made by the municipality or county, the administrative authority, if any, the qualified business, and other affected entities to achieve development and revitalization of the zone as described in the Act, §10(h).

(3) The Project. The application must contain the following information and documentation concerning the proposed project. Any analysis or breakdown, where applicable, should show benefits to economically disadvantaged individuals:

(A) a brief description of the project, location, and intended use;

(B) an economic analysis of the plans of the qualified business for expansion, revitalization, or other activity in the zone for at least the first two years of the project, including:

(i) the anticipated number of new permanent jobs it will create, including a statement indicating the number of full-time employees working for the business and the number of new or additional employees that the qualified business commits to hire and the percentage of new or additional employees expected to be residents of any zone within the governing body's or bodies' jurisdiction or employees

that are economically disadvantaged individuals;

(ii) the number of permanent jobs to be retained;

(iii) types of permanent jobs created or retained;

(iv) estimated total annual payroll of new and retained jobs and new jobs by job types or classifications;

(v) the number and types of part-time or seasonal employees currently on payroll;

(vi) the anticipated number of part-time or seasonal jobs to be created;

(vii) the number, types, and period of job training currently being provided;

(viii) the anticipated number, types, and period of job training to be provided jobs to be created during the project designation;

(ix) the status of any required local, state, or federal permits or licenses that must be obtained to enable the project to go forward as represented in the application;

(x) the amount of investment to be made in the zone including estimated project costs and sources of payment;

(xi) approximate date of commencement and completion of the project; and

(xii) a description of the qualified business including the following:

(I) description and introduction of the business, including the name and location, legal structure, principal owners, nature of the business, and history of the business. If the business is a franchise, the department will require a certified copy of the document from the applicable governing unit(s) certifying the franchisee or subsidiary of a new or existing business as a qualified business. The department will also require a certified statement from an authorized representative of the franchisee or subsidiary that it is located entirely in the zone and that it maintains separate books and record of the business activity conducted in the zone;

(II) summary of future plans, including short and long range plans to include any expansions in the zone; and

(C) an analysis of the social impact that the designation of the qualified business as an enterprise project would have on the zone.

(4) The Zone. The application must contain the following information concerning the zone:

(A) an analysis and any supporting documents demonstrating that the project is located in a zone with an unemployment rate of not less than one and one-half times the average state unemployment rate or a population loss of at least 12% during the most recent six-year period or a population loss of at least 4.0% for the most recent three-year period at the time the enterprise project application is submitted to the department;

(B) a brief historical description of the trade or business conducted in the zone and its function or, if a qualified business making substantial commitment to locate in a zone, a brief historical description of its business in other locations with respect to its location in the zone and its functions; and

(C) a description which includes the types of projects that have been completed within the last year of designation of the zone or within the last year prior to designation of the zone; if the zone has been designated for less than one year, the description must demonstrate the cooperation among the public and private sectors; and information on the number of jobs created and revenue generated as a result of the projects.

(b) A designated enterprise project may apply to the department for a name change for the project different from the name under which the project made application and was granted project designation. To receive department approval for a name change, the project must submit through the applicant governing body or bodies:

(1) a written explanation by the designee of the reasons for the name change, the date the name change occurred, and any changes to the commitments made by the business in the original enterprise project application, if applicable; and

(2) if applicable, a copy of the certificate of amendment to the articles of incorporation and the amended articles of incorporation filed with the Secretary of State of the State of Texas or the dba statement under which the business operates; and

(3) written acknowledgement from the applicant governing body or bodies that it is aware of the name change for the project as a qualified business operating in an enterprise zone within its jurisdiction.

§176.9. Certification of Neighborhood Enterprise Associations.

(a) Individuals residing in an enterprise zone may establish, under the Act, §21, a neighborhood enterprise association. Following organization of the association, its board of directors must apply to the governing body or the department for certification as a neighborhood enterprise association.

(b) The application for certification of a neighborhood enterprise association must include the following:

(1) a certified statement signed by the chief executive officer of the association which contains the following:

(A) that the proposed association is the only one for the geographic neighborhood area being represented;

(B) that the association membership is composed of residents of the enterprise zone;

(C) that the association is a non-profit corporation organized under the Texas Non-Profit Corporation Act;

(D) that the association is eligible for federal tax exemption status under the Internal Revenue Code of 1986, §501(c);

(E) that the incorporators have published in a newspaper of general circulation in the municipality or county an explanation of the proposed new association and their rights in it and that a copy of the association's articles of incorporation and bylaws are available for public inspection at the office of the city manager or comparable municipal officer or at the county judge's office, as applicable.

(2) a map showing that the geographic neighborhood area has a continuous boundary, exclusive of lakes and waterways;

(3) a listing of the officers, including the chief executive officer, the board of directors, including the street address, mailing address, and telephone number of each;

(4) a certified copy of the articles of incorporation and the bylaws of the association;

(5) a certified copy of the governing body's resolution granting certification as a neighborhood enterprise association; and

(6) in the event that the application is to the department for certification of

an Association, documentation that shows how an Association has made diligent effort, before applying to the department, to obtain certification from the applicable governing body or bodies and why certification was not obtained from the applicable governing body or bodies.

§176.10. Approval Standards.

(a) Final approval standards for designation of enterprise zones and recycling market development zones. Within ten business days of final approval of the designation of a zone by the executive director, the staff shall present the form of the negotiated agreements to the governing body or bodies of the applicant. Such agreements must include designation of the zone and the administrative authority, if any, and its function and duties and any other information required under the Act and this chapter. The department shall complete the negotiations and sign the agreements in accordance with the Act, §9(c).

(b) Approval standards for designation of enterprise projects. The department shall designate qualified businesses as enterprise projects on a competitive basis. Applications for designation of enterprise projects will be accepted on a bi-monthly basis on or before the following application deadlines:

(1) During the state fiscal biennium beginning September 1, 1993, the application deadlines for receipt of enterprise project applications by the department are 5:00 p.m. on the first business day of every other month beginning with September, 1993. For projects designated after August 31, 1993, the department may not certify more than 8,000 new permanent jobs or retained jobs during the state fiscal biennium beginning September 1, 1993. A state-designated project may request certification of its jobs created or retained, as appropriate, by the department on an annual or semi-annual basis during the applicable five-year designation period within the limits of the number of jobs allocated at the time of its project designation in accordance with the Act, §10(f).

(2) The department will not designate a qualified business as an enterprise project if there were six enterprise projects designated during the current fiscal year in the enterprise zone in which the business is located. A governing body may make written request to the department for approval to exceed the number of projects in one zone within its jurisdiction by reducing the number of projects it will nominate for designation in another zone within its jurisdiction, if the governing body can satisfy the department that there is just cause for the need to nominate more projects in one zone than in another within its jurisdiction and

that equal effort to develop all of the enterprise zones within its jurisdiction are being made to help the governing body reach the objectives of the zones represented to the department in each zone application.

(3) In determining which qualified businesses will be designated enterprise projects, based on relative factors as determined by the department the department shall base its decision on a weighted scale with 60% dependent on the economic distress of the enterprise zone in which a proposed project is located and 40% dependent on the local effort to achieve development and revitalization of the enterprise zone.

(A) Economic Distress. This evaluation is designed to measure the level of documented economic distress as indicated by such things as high levels of poverty, unemployment, job and population loss, and general distress. In addition, the evaluation criteria is designed to assess the overall potential impact that the project is likely to have on the distress factors identified within the zone, as well as the impact within the applicant's jurisdiction at large.

(B) Local Effort. This evaluation criteria is designed to measure the level of local support on the part of a public entity and a private entity and includes but is not limited to, such factor as set forth in the Act, §10(h)-(j), §§12-14 and §20.

(c) Period for which designation is in effect.

(1) An area may be designated as an enterprise zone for a maximum period of seven years. Designation of an enterprise zone as a recycling market development zone will run concurrently to begin with the date the recycling market development zone is designated and to end with the date the applicable enterprise zone designation expires. However, if an area is designated as a federal enterprise zone, the area may be designated for a longer period not to exceed that permitted by federal law. Any designation of an area as an enterprise zone and a recycling market development zone, if applicable, shall remain in effect during the period beginning on the date of the designation and ending on the earliest of:

(A) September 1 of the 7th calendar year following the calendar year in which such date ending the enterprise zone designation occurs, or in the case of federal enterprise zone designation, the date federal designation period ends; or

(B) following a public hearing, the date the department removes the designation of zone for the following reason:

(i) the area no longer qualifies for designation as an enterprise zone as set forth in the Act, §4, or this chapter; or

(ii) the department determines that the governing body has not complied with commitments made in the ordinance or order nominating the area as an enterprise zone or recycling market development zone, as applicable.

(2) A qualified business may be designated as an enterprise project for a maximum period of 5 years. The designation of a qualified business as an enterprise project shall remain in effect during the period beginning on the date of the designation and ending on the earliest of:

(A) five years after the date the designation is made; or

(B) the last day that completes the original project designation period of a qualified business that has assumed the designation of the enterprise project through a lease or purchase of a designated qualified business for the purpose of continuing its operations in the applicable enterprise zone under a name or legal structure other than that of the qualified business originally receiving the designation and that has met the requirements of the department to qualify for the assumption. Assumption by a lessee or purchaser of an existing enterprise project designation may be accomplished by:

(i) the qualified business that is the project designee providing a written commitment to the governing body or bodies of the enterprise zone where the project is located and to the department, to release all claim to the project designation and any benefits represented thereunder and agreeing to the assumption of the designation as of a specific date by the qualified business seeking to assume the designation.

(ii) the proposed assumptee of the designation must provide the governing body or bodies with written certification, on a form to be provided by the department, that it will be a qualified business under the Act, §3(a)(11); a letter of commitment addressed to the enterprise zone governing body or bodies and to the department such as the letter of commitment filed in the original application for project designation that outlines investment and jobs relative to the designation to be assumed and a statement as to why the assumption is essential to the continuing operations of the designated project in the enterprise zone. A copy of the articles of incorporation filed with the Secretary of State of the State of Texas or the dba statement under which the business operates and financial statements must accompany the

commitment letter to satisfy concerns about the ability of the assumptee to fulfill its commitments. Before submitting to the department the assumptor's written release of the designation, and the information specifically required of the assumptee, the applicable enterprise zone governing body or bodies must take official action by resolution to request the department to approve the assumption of the project designation. The assumption of a project designation by a qualified business does not extend the original designation period, which is applicable to the original and subsequent designee, and which will end on the earliest of the last day of the original five-year designation; or

(C) following a public hearing by the governing body or bodies that nominated the qualified business for enterprise project designation, the date the department determines that the qualified business is not in compliance with any requirement for designation as an enterprise project. The governing body or bodies will be deemed to have held a public hearing, if the removal of the designation of an enterprise project is included as an agenda item of a regular session in which the governing body or bodies meet to take official action. The department will act to dedesignate an enterprise project upon the written request of a governing body or bodies after:

(i) The governing body or bodies has provided written notice to the qualified business that has been designated an enterprise project, 30 calendar days in advance of the proposed action, that the governing body or bodies is initiating proceedings to remove the project designation. The notice must specify the reason why the governing body or bodies believes the project is in non-compliance and specify the time, date, and location where the enterprise zone governing body or bodies plans to take official action to request the department to remove the designation. A copy of the notice and copies of any written responses to the notice by the qualified business must be provided to the department;

(ii) A public hearing is held and a resolution adopted that requests the department to remove the project designation as of a specific date. The resolution must specify the conditions that caused the dedesignation process to be initiated and include a finding that written notice as specified under this title has been given;

(iii) Following the governing body's or bodies' written request to the department to dedesignate an enterprise project, the qualified business may appeal the governing body's or bodies' action to the department's executive director. Such appeal must be made in writing within 30 days of the governing body's or bodies'

written request to the department for dedesignation. Upon receipt of such appeal, the executive director shall act upon the appeal within 30 days from the date the appeal is received.

(d) Approval standards for certification of a recycling market development zone.

(1) Selection of recycling market development zones will be based upon the commitment level and incentives offered by each applicant.

(2) Recycling development zone loans will be made to applicants on a first-come, first served basis. Recycling market development zones having outstanding loans of the maximum allowed, will not be eligible for new loans until retirement of their existing loans. Each recycling marketing development zone governing body or bodies will receive no more than the maximum amount allowed each year to ensure equal distribution of funds.

(e) Approval standards for certification of a qualified business. Such standards will be determined and final certification may be granted by the local governing body or bodies or department as applicable in accordance with the Act. To receive a refund or a reduction of taxable capital in a designated state or federal enterprise zone under applicable sections of the Tax Code, Chapters 151 and 171, the certified qualified business must apply to the Comptroller of Public Accounts for the refund or the reduction of taxable capital and to department or local governing body or bodies for certification of retained jobs or new permanent jobs created as applicable. The department shall provide the comptroller with the assistance that the comptroller requires in administering this section.

(1) Refunds of state sales or use taxes provided to an enterprise project under the Tax Code, §151.429, are conditioned on the enterprise project maintaining at least the same level of employment of qualified employees as existed on the date it was certified as eligible for a refund for a period of three years from that date. The department shall annually certify to the comptroller and the Legislative Budget Board whether that level of employment of qualified employees has been maintained. In the event that the department certifies that such a level has not been maintained, the comptroller shall assess that portion of the refund attributable to any such decrease in employment, including penalty and interest from the date of refund.

(2) An enterprise project designated after August 31, 1993, may not receive a tax refund under the Tax Code, §151.429, or a tax reduction under the Tax Code, §171.1015, before September 1, 1995.

(3) Only qualified businesses that have been certified by the department to the comptroller and the Legislative Budget Board as eligible for a tax deduction under the Tax Code, §171.1015, are entitled to a tax deduction.

(f) Approval standards for certification of a builder as a qualified business.

(1) A builder must apply to the department through the applicable applicant governing body or bodies in whose jurisdiction a housing construction project will occur in such form as provided by the department. Housing construction by a builder that meets the requirements of the Act and this chapter meet the requirements for certification as a qualified business and eligibility for benefits allowed a qualified business under the Act. To be eligible to apply for enterprise project designation, the builder or consortium of builders that is certified as a qualified business must have permanent offices located in Texas. The application for certification as a qualified business will include:

(A) the name of the builder, name of company under which building occurs, principle business location, address of office serving the enterprise zone construction activity, telephone numbers, including the Telecommunication Devices for the Deaf (TDD) number, if available, and facsimile numbers if applicable;

(B) five written references from satisfied homeowners for whom properties were constructed by the builder in the three years preceding the date of the application;

(C) current bank references and bank references for the past three years;

(D) financial evidence including two years of tax returns or other satisfactory evidence to substantiate financial viability as a builder; and

(E) documentation that supports participation in a 10-year insured warranty program.

(2) If the builder is a builder proposing a housing project in an enterprise zone, a complete description of the new residential housing to be constructed, a statement concerning whether the housing constitutes affordable housing under the governing body or bodies criteria; including preliminary plans, location(s) of planned construction, number of units to be constructed, estimated sales price of homes, statement of affirmative action participation in employment practices, statement of coordinate use of other federal, state, or local

funds to enhance the project and other enhancements to the project. The applicant builder(s) must meet all requirements other than physical headquarters location in the zone required of other enterprise projects.

(g) Approval standards for certification of neighborhood enterprise associations.

(1) Such standards will be determined and final certification may be granted by local governing body or bodies or the department as applicable in accordance with the Act, §21.

(A) The governing body or bodies or the department may not grant it approval unless the association has hired or appointed a chief executive officer;

(B) The department may not grant state certification to a neighborhood enterprise association, unless that association has first made a diligent effort to obtain certification from the applicable enterprise zone governing body or bodies and the association provides documentation to the department of that effort to obtain local certification and the reasons the association was unable to obtain certification from the applicable governing body or bodies;

(2) The neighborhood enterprise association may implement projects, other than those enumerated in the Act, by submitting an application to the governing body or the state for approval of the specific project or activity. Applications submitted for approval to the governing body or the state must describe the nature and benefit of the project, including:

(A) how it will contribute to the self-help efforts of the residents of the area involved;

(B) how it will involve the residents of the area in project planning and implementation;

(C) whether there are sufficient resources to complete the project and whether the association will be fiscally responsible for the project; and

(D) how it will enhance the enterprise zone in one of the following ways:

(i) by creating permanent jobs;

(ii) by physically improving the housing stock;

(iii) by stimulating neighborhood business activity; or

(iv) by preventing crime.

(3) An existing responsible unit of government may contract with a neighborhood enterprise association to provide services in an amount corresponding to the amount of money saved by the unit of government through this method of providing a service.

(h) If the governing body or bodies does not specifically disapprove of a project proposed by the association before the 45th day after the day of the receipt of the application, it shall be considered approved. If the governing body or bodies disapproves of the application, it shall specify its reasons for this decision and allow 60 days for the applicant to make amendments.

(i) The association may enter into contracts and participate in joint ventures with the state or a state agency or institution. The association may receive money without approval of the governing body or bodies.

§176.11. Reporting Requirements.

(a) Annual Report.

(1) Each municipality, county, or combination of municipalities and/or counties that authorized the creation of an enterprise zone shall submit an annual report to the department on or before October 1 of each year. The report must be in a form prescribed by the department and contain the information listed in the Act, §23. The information in the report will be used by the department to compile an annual report to the governor, legislature, and the Legislative Budget Board by December 1 as required by the Act. If such report is not received by the deadline, the department may, following a public hearing, consider termination of the designation of the enterprise zone.

(2) State agency rules may provide encouragements and incentives to increase rehabilitation, renovation, restoration, improvement, or new construction of housing and to increase the economic viability and profitability of business and commerce in enterprise zones. In addition, each state agency annually shall review the rules it administers that may negatively impact the rehabilitation, renovation, restoration, improvement, or new construction of housing or the economic viability and profitability of business and commerce in enterprise zones, or that may otherwise affect the implementation of the Act, and shall report the results of each review to the department no later than October 1, of each year. The department shall disseminate the results to enterprise zone governing bodies and others as necessary to advance the purposes of the Act.

(b) Governing body or bodies must provide notification to the department of each commitment made to a qualified business for one-time state sales tax refund or franchise tax refund. The notification shall be in letter form accompanied by an original copy of the resolution adopted to nominate the qualified business and setting the nomination period during which the qualified business will create or retain the required jobs to receive the intended benefit. A copy of the application by the business to the governing body or bodies must be filed with the notice and the resolution.

(c) Land Sold at Less than Fair Market Value. A municipality or county may sell a surplus building or vacant land in the zone at less than fair market value if the governing body of the municipality by ordinance or the governing body of the county by order adopts criteria, specifying the conditions and circumstances under which the sale may occur and the public purposes that will be achieved. The surplus building or vacant land may be sold to a buyer who is not the highest bidder if the criteria and public purpose specified in the ordinance or order are satisfied. A copy of the ordinance or order must be filed with the department not later than the day the sale occurs. Factors to be considered in evaluating the local effort on the part of public entity include provisions of publicly owned land for development purposes including residential, commercial or industrial development.

(d) Other Reports of Document.

(1) The applicant shall furnish additional information, reports, or statements as the department may from time to time request in connection with the Act and this chapter.

(2) Annual cost-benefit analysis of program. Not later than December 1 of each year, the department shall prepare an annual cost-benefit analysis of the program and submit it to the state auditor for review and comment on the methodology and conclusions of the study. Before each regular legislative session convenes, the state auditor shall submit the analyses and the state auditor's comments on the analyses to the governor, the lieutenant governor, and the speaker of the house of representatives.

(3) The department, the comptroller, and the Texas Employment Commission shall provide the state auditor with data and assistance as necessary to complete a study to review the impact of the program created under the Act since its implementation. The state auditor shall complete the study required and submit a report of its findings to the governor, lieutenant governor, and the speaker of the house of representatives not later than October 1, 1994. The study, at a minimum, shall include:

(A) An examination of the impact of the program on the state as a whole as well as the impact on individual communities with enterprise zones, including the program's effect on state and local:

- (i) tax revenues;
- (ii) tax bases;
- (iii) socio-economic conditions; and
- (iv) unemployment rates;

(B) a review of the incentives offered by local communities and the relative impact of the incentives on company location, expansion, and retention; and

(C) a survey of companies to determine the role of the state enterprise zone incentives on decisions of companies to locate, expand, or retain jobs in the zone.

(4) No later than September 1 of each year, a neighborhood enterprise association shall furnish an annual statement to the applicable governing body or bodies on the programmatic and financial status of any approved project and an audited financial statement of the project. The governing body or bodies shall include information about all reports filed by the neighborhood enterprise association in its annual report on the applicable enterprise zone due the department by each October 1 during the zone designation period.

§176.12. Boundary Amendments.

(a) If an enterprise zone has been lawfully designated, the original nominating governing body or bodies, by ordinance or order adopted following public hearing, may apply to the department to amend the original boundaries subject to the following limitations.

(1) The boundaries as amended must not exceed the size limitations and boundary requirements set by the Act and may not exclude any part of the zone within the boundaries as originally designated.

(2) The enterprise zone, including any added land area, must continue to meet all unemployment or other economic distress criteria for enterprise zone designation throughout the zone as required by the Act and this chapter.

(3) The governing body or bodies may not make more than one boundary amendment during each calendar year of the enterprise zone designation agreement.

(b) The governing body or bodies must provide certifications and evidence of public hearing and notices with respect to the boundary changes in the same form as required to make application for enterprise

zone designation. As a result of a public hearing or other reasonable considerations necessary to meeting zone qualifications, zone boundaries proposed in the public hearing may be amended to delete land area before zone designation is approved. If the hearing is for a zone boundary amendment, no land previously designated as part of the enterprise zone may be deleted. No area may be added to the proposed enterprise zone after a public hearing unless that area is first held out to the public in a subsequent public hearing for inclusion into the enterprise zone.

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

Issued in Austin, Texas, on August 23, 1993.

TRD-9327820 Sedora Jefferson
General Counsel
Texas Department of
Commerce

Earliest possible date of adoption: October 1, 1993

For further information, please call: (512) 320-9401

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• 10 TAC §§176.5-176.10

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Commerce or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Commerce proposes the repeal of §§176.5-176.10, concerning the Enterprise Zone Program. Simultaneously with this proposed rulemaking, the Texas Department of Commerce is proposing changes to its Enterprise Zone Program Rules. The repeals are being proposed in order to renumber existing §§176.5-176.10.

Renee Mauzy, staff attorney for the department has determined that for the first five-year period the repeals are in effect, there will be fiscal implications for state or local government as a result of the repeals.

Ms. Mauzy also 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 that the Department's rules implementing the Texas Enterprise Zone Program will be in the proper sequential order to enable the public to understand the rules. 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.

Two copies of written comments on the proposed repeal should be submitted to Renee Mauzy, Staff Attorney, Texas Department of Commerce, 816 Congress Avenue, Suite 1180, Austin, Texas 78701 within 30 days of the publication of the proposed repeal.

The repeals are proposed under the authority of the Texas Enterprise Zone Act, Texas Civil Statutes, Article 5190.7; the Government Code, §481.005; and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which provide the Texas Department of Commerce with the authority to promulgate rules and regulations necessary for the performance of its duties.

§176.5. *Requirements for Designation of Enterprise Projects.*

§176.6. *Application Contents for Designation of an Enterprise Project.*

§176.7. *Certification of Neighborhood Enterprise Associations.*

§176.8. *Approval Standards.*

§176.9. *Reporting Requirements.*

§176.10. *Boundary Amendments.*

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

Issued in Austin, Texas, on August 23, 1993.

TRD-9327819

Sedora Jefferson
General Counsel
Texas Department of
Commerce

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For further information, please call: (512) 320-9401

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**TITLE 16. ECONOMIC
REGULATIONS**

**Part I. Railroad
Commission of Texas**

**Chapter 3. Oil and Gas
Division**

**Conservation Rules and Regu-
lations**

• **16 TAC §3.83**

The Railroad Commission of Texas proposes new §3.83, concerning 3-year inactive wells. The rule specifies which wells qualify as 3-year inactive wells for the purpose of the 10-year severance tax exemption provided for in House Bill 1975. Adoption of the proposed rule will increase oil and gas production in Texas by providing an incentive to operators to produce wells which have been inactive for three years or more.

Rita E. Percival, systems analyst for the Oil and Gas Division, has determined that for the first five-year period the rule is in effect there will be fiscal implications for state govern-

ment as a result of enforcing or administering the rule. The effect on state government for the first five-year period §3.83 will be in effect is an estimated additional cost of \$5,155 for Fiscal Year 1994, and \$303 for FY 1995 with no additional costs for FY 1996-1998. There will be no fiscal implications for local government.

David Clarkson, hearings examiner, Legal Division, has determined that for each year of the first five years the rule is in effect the public will benefit from increased oil and gas production and the associated increase in economic activity. There will be no cost of compliance with the proposed rule for small business. There is no anticipated economic cost to persons required to comply with the proposed rule.

Comments on the proposed rule may be submitted to David Clarkson, Legal Division-Oil and Gas Section, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*. The docket number is 20-0202382.

The Railroad Commission proposes the rule pursuant to the Texas Natural Resources Code, §§81.052, 85.046, 85.202, and Tax Code, §202.056, which provides the commission with authority to adopt rules for the following purposes: to govern and regulate persons and their operations under the jurisdiction of the commission; to prevent the waste of oil in producing operations; to provide for issuance of permits and other evidences of permission when the issuance of permits or permission is necessary or incident to the enforcement of the commission's rules or orders for the prevention of waste; and to implement House Bill 1975. The following statutes are affected by this rule: Tax Code, §§201.053, 202.052, and 202.056.

§3.83. *Tax Exemption for 3-Year Inactive Wells.*

(a) Purpose. The purpose of this section is to provide a procedure by which an operator can obtain commission certification of a wellbore as a 3-year inactive well in order to qualify for the tax exemptions provided for in the Tax Code, §§201.053, 202.052, and 202.056.

(b) Definitions.

(1) 3-year inactive well—A well that has not produced any hydrocarbons in more than one month in the three years prior to the date of application to the commission or designation by the commission under this section. Wells eligible under this section include those that:

(A) have been plugged and abandoned; or

(B) are active injection wells.

(2) Well—A wellbore with single or multiple completions.

(c) Certification.

(1) The commission or its delegate may designate a well as a 3-year inactive well without application if the well qualifies during the period from September 1, 1993-August 31, 1995.

(2) An application for certification as a 3-year inactive well may be made by the owner or operator of the well from September 1, 1993-August 31, 1995.

(3) Applications shall be submitted to the Oil and Gas Division-Production Allocation Section. Applications shall contain identification of the well by commission district number, field name, lease name, lease or gas identification number, well number, API number and county. Applications shall also contain the operator's name, operator's P-5 (Organization Report) number and an affidavit stating that the wellbore has not produced any hydrocarbons in more than one month in the three years prior to the date of application. The commission may require the applicant to provide any other relevant information needed to certify the well.

(4) If the commission or its delegate declines to administratively certify a well, the applicant may request a hearing on the application. At such hearing, the applicant shall have the burden of proving that the well has not produced any hydrocarbons in more than one month in the three years prior to application. A hearing is required for applications involving active injection wells. The applicant shall present evidence showing the period of time the well has been on injection and that the conversion will result in increased recovery over the current enhanced recovery plan.

(d) Revocation of Certification. Certification may be revoked by the commission for cause which includes, but is not limited to, receipt of information by the commission that a certified well produced hydrocarbons in more than one month in the three years prior to application or if production from other wells is credited to the 3-year inactive well. Upon notice from the commission that the certification for a 3-year inactive well has been revoked, the tax exemption obtained as a result of such certification shall not apply to oil or gas production sold after the date of notification.

(e) Certified Wells. Production from certified wells shall begin by February 29, 1996, to qualify for severance tax exemption. The ten-year period for tax exemption runs continuously from the first day of production after certification and runs with the well. A change in ownership or operator status does not renew the exemption period.

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

Issued in Austin, Texas, on August 23, 1993.

TRD-9327842

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

Earliest possible date of adoption: October 1, 1993

For further information, please call: (512) 463-6655

Chapter 5. Transportation Division

Subchapter M. Motor Bus Companies

• 16 TAC §5.233

The Railroad Commission of Texas proposes an amendment to §5.233, concerning charter operation. The proposed amendments are a result of petition by Texas Association Independent Tour Bus Operators and by the Adjutant General's Department.

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

Carrie L. McLarty, hearings examiner, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to increase the number of motor bus companies to transport charter or special parties and military troops. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Carrie L. McLarty, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

Comments may also be submitted regarding the following alternatives to the text as proposed:

Change subsection (e) to read as follows: Motor bus companies may be authorized to originate charter or special party transportation only at:

(1) points along the route or routes which they are authorized to serve and are actually serving;

(2) points not being served by any other regular scheduled motor bus company; and

(3) points served by a regular scheduled motor bus company

which does not provide charter at that point.

Add the following subsection (f): The destination of charter and special parties may be any point within the State of Texas. The amendment is proposed under Texas Civil Statutes, Article 911a, §4(a), which authorize the Railroad Commission of Texas to prescribe all rules and regulations necessary for the government of motor bus carriers, and to supervise and regulate motor bus carriers in all matters affecting the relationship between such carriers and the public.

The following is the article that is affected by this rule: §5. 233-Texas Civil Statutes, Article 911a.

§5.233. Charter Operation.

(a) "Charter or special party" means a group of persons who, pursuant to a common purpose and under a single contract, have acquired exclusive use of a passenger-carrying motor vehicle to travel together as a group to a specified destination or on a particular itinerary, either agreed to in advance or subject to modification; provided, however, that said term shall not include:

(1) students 19 years of age or younger, who in the course of secondary or elementary school activities, under the direction of public, private, or parochial school authorities, acquire the exclusive use of a passenger-carrying vehicle registered to a bus company with insurance on file with the commission, and travel together as a group; or

(2) military troops whose transportation is contracted for by the state or federal government.

(b) Authority to transport charter or special parties may be obtained by demonstrating a public convenience and necessity for such service [motor bus companies holding and operating under certificates by the same procedure which is applicable to the obtaining of a certificate under the rules].

(c) (No change.)

[(d) No order of the commission granting authority to transport charter or special parties or promulgating rates, fare, or charges applicable thereto shall be construed to affect or amend any certificate which is theretofore or thereafter issued to a motor bus company.

[(e) Motor bus companies will be authorized to originate charter or special party transportation only at points along the route or routes which they are authorized to serve and are serving or within the territory adjacent thereto which is not served by any other motor bus company. The destination of charter and special parties may be any point within the State of Texas.]

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

Issued in Austin, Texas, on August 25, 1993.

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

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

Subchapter W. Registration of Commercial Carriers

• 16 TAC §5.507

The Railroad Commission of Texas proposes an amendment to §5.507, concerning temporary registration of international commercial carrier. The amendment is proposed as a result of Senate Bill 5, adopted by the regular session of the 73rd Legislature, which is effective on September 1, 1993. The amendment reduces the fee for international registration stamps from \$20 to \$10 per stamp.

Jackye Greenlee, assistant director-central operations, has determined that for the first five-year period the amendment will be in effect there will be fiscal implications as a result of enforcing or administering the section. Assistant Director Greenlee estimates that the state will experience a reduction in revenues of approximately \$250,000 annually as a result of the reduction in cost of international registration stamps. This estimate is based upon the number of stamps sold during fiscal year 1993. There will be no fiscal implications for local governments as a result of enforcing or administering the proposed amendment.

Gary W. Elkins, hearings examiner, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an increased level of compliance with international commercial carrier registration requirements and a decreased burden on such carriers operating for short periods of time in Texas. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal rule may be submitted to Gary W. Elkins, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed under the Texas Civil Statutes, Article 911b, §4(a)(13), which requires all commercial motor vehicles to be registered with the commission and to pay a registration fee, and under Texas Civil Stat-

utes, Article 6701d, §139(c), which requires all commercial motor vehicles to file proof of insurance with the commission and to pay a fee for those filings. The amendment is also proposed under Senate Bill 5, Regular Session, 73rd Legislature, which directed the commission to lower the fee for international stamps to \$10 per stamp.

The following are the articles that are affected by this rule: Texas Civil Statutes, Article 911b, §4(a)(13) and Article 6701d, §139(c).

§5.507. Temporary Registration of International Commercial Carriers.

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

(c) Procedures.

(1) In lieu of maintaining registration as a commercial motor vehicle in accordance with §§5.501-5.506 of this title (relating to Definitions; Applications for Registration of Commercial Motor Vehicles; Liability Insurance for Commercial Carriers; Cab Cards; Identification Decals; Cancellation of Registration; and Implementation), and upon providing proof of insurance at or above the levels required by the commission, an international commercial carrier shall purchase, for each commercial motor vehicle operating in this state, an international registration stamp. The fee for each stamp is \$10 [\$20], will be good for one trip of up to seven days in duration.

(2) An insurance agent that has filed evidence of a master liability policy under which temporary insurance policies are issued shall obtain international registration stamps from the commission. Stamps shall be ordered on a form approved by the director. Once the evidence of the master insurance policy is filed with the commission, an identification number will be assigned to that policy and to all stamps issued under that policy. Stamps may be obtained, in lots of five stamps per lot, either:

(A) By purchase, at a cost of \$10 [\$20] per stamp; or

(B) (No change.)

(4) For each international registration stamp sold by the insurance agent, the insurance agent or his designee shall record the name of the company to whom the stamp is sold, the vehicle identification number, the year, the make, and the license number of the vehicle for which the stamp is sold, the date of sale, the port of entry, the trip policy number, and the effective period of the temporary insurance policy. This information shall be recorded on a form approved by the director. Neither an insurance agent nor its designee shall charge an international commercial carrier

more than \$10 [\$20] for each international registration stamp.

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

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

Issued in Austin, Texas, on August 23, 1993.

TRD-9327812 Mary Ross McDonald
Assistant Director, Legal
Division-Gas Utilities/LP
Gas
Railroad Commission of
Texas

Earliest possible date of adoption: October 1, 1993

For further information, please call: (512) 463-7095

Subchapter Z. Base Rates, Deviations, and Suspensions

• 16 TAC §5.590

The Railroad Commission of Texas proposes an amendment to §5.590, concerning Specific Rates and Charges. The proposed amendment authorizes specific rates for specific shippers upon commission approval. The section is the result of a petition by the Common Carrier Motor Freight Association.

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

John S. Teer, hearings examiner, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide for uniform and consistent rate information relating to particular shippers. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to John S. Teer, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed under the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, §4(a), which provide the commission with power and authority to prescribe all rules and regulations necessary for the government of motor carriers and for the safety of operations of motor carriers, and to supervise and regulate motor carriers in all matters affecting the relationship between such carriers and the shipping public.

The following is the article that is affected by this rule: §5.590-Texas Civil Statutes, Article 911b.

§5.590. Specific Rates and Charges.

(a) In addition to the base rates, fares, and charges established pursuant to §5.581 of this title (relating to Establishment and Annual Review of Base Rates and Charges), the commission may establish specific rates, fares, and charges applicable to:

(1) transportation of shipments of general commodities [weighing in excess of 500 pounds] by motor carrier(s) (other than specialized motor carrier(s) and contract carrier(s) subject to commission prescribed tariffs governing transportation of specialized commodities); and

(2) transportation of passengers by motor bus companies.

(b) (No change.)

(c) Applications to establish or change specific rates shall be filed and determined pursuant to the provisions of §5.423 [Chapter 5, Subchapter H] of this title (relating to Tariffs and Schedules).

(d) The commission may approve specific rates or charges which name specific consignors or consignees or which otherwise are confined to specific consignors' or consignees' traffic. Upon application, an additional specific consignor or consignee may participate in such specific rates or charges where the traffic controlled moves in identical or substantially similar circumstances between the involved points and the non-inclusion of which would be unduly discriminatory and unreasonable.

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

Issued in Austin, Texas, on August 25, 1993.

TRD-9327840 Mary Ross McDonald
Assistant Director, Legal
Division-Gas Utilities/LP
Gas
Railroad Commission of
Texas

Earliest possible date of adoption: October 1, 1993

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

TITLE 22. EXAMINING BOARDS

Part III. Texas Board of Chiropractic Examiners

Chapter 76. Investigations

• 22 TAC §§76.1-76.7

The Texas Board of Chiropractic Examiners proposes new §§76.1-76.7, concerning investigations conducted by the Enforcement Com-

mittee of the Texas Board of Chiropractic Examiners.

Patte B. Kent, executive director, 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.

Ms. Kent also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be protection from those licensees of this Board who may be in violation of the Chiropractic Act. 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.

Comments on the proposal may be submitted to Patte B. Kent, Executive Director, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701.

The new sections are proposed under Texas Civil Statutes, Article 4512b, §4a, which provide the Texas Board of Chiropractic Examiners with the authority to promulgate rules and regulations as may be necessary for the regulations of the practice of Chiropractic and the enforcement of the Act.

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

Act—Texas Civil Statutes, Article 4512b, Practice of Chiropractic.

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

Board—The Texas Board of Chiropractic Examiners.

Board member—One of the appointed members of the decision-making body defined in this section as the board.

Licensee—An individual who has been granted a license to practice chiropractic by the Texas Board of Chiropractic Examiners and whose license is active and not under suspension.

Practitioner—A doctor of chiropractic, who is licensed and authorized to practice under the Act.

§76.2. Confidentiality. All complaints, adverse reports, investigation files, other investigation reports, and other investigative information in the possession of, received, or gathered by the board shall be confidential subject to the Texas Civil Statutes, Article 6252-17a, the Open Records Act; Texas Civil Statutes, Article 6252-17, the Open Meetings Act; and APTRA. No employee, agent, or member of the board may disclose information contained in such files except in the following circumstances:

(1) to the appropriate licensing authorities in other states, the District of Columbia, or a territory or country in which the practitioner is licensed;

(2) to a peer review committee considering a practitioner's application to obtain or retain privileges;

(3) to appropriate law enforcement agencies if the investigative information indicates a crime may have been committed;

(4) to a health care entity upon receipt of written request. Disclosures by the board to a health care entity shall include only information concerning whether a complaint has been filed, whether the licensee is under investigation, and its current status; and

(5) to other persons if required during the conduct of the investigation.

§76.3. Request for Information and Records from Practitioners.

(a) Medical records. The patient, or other person authorized to consent, has the right to withdraw his consent to the release of any information. Withdrawal of consent does not affect any information disclosed prior to the written notice of the withdrawal. Any person who received information made confidential by this Act may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release information was obtained. These records shall be furnished to the board within two weeks of the date of the board's request. A licensee shall furnish copies of medical records, or a summary or narrative of the records, or the original records if the board provides the licensee with a medical record release form signed by the patient, or a parent or legal guardian if the patient is a minor, or a legal guardian if the patient has been adjudicated incompetent to manage his personal affairs, or an attorney ad litem appointed for the patient, as authorized by the Texas Mental Health Code (Texas Civil Statutes, Article 5547-1 et seq.); the Mentally Retarded Persons Act of 1977 (Texas Civil Statutes, Article 5547-300); Acts of the 53rd Legislature, Regular Session, 1953, Chapter 411, §9 (Texas Civil Statutes, Article 5561c); Acts of the 61st Legislature, Regular Session, 1969, Chapter 543, §2 (Texas Civil Statutes, Article 5561c-1); the Texas Probate Code, Chapter 5; and the Family Code, Chapter 11; or a personal representative if the patient is deceased, provided that the written consent specifies the following:

(1) the information or medical records to be covered by the release;

(2) the reasons or purposes for the release; and

(3) the person to whom the information is to be released.

(b) Renewal of licenses. A licensee shall furnish a written explanation of his or her answer to any question asked on the application for license renewal, if requested by the board. This explanation shall include

all details as the board may request and shall be furnished within two weeks of the date of the board's request.

(c) Impaired practitioners.

(1) The board shall require a licensee to submit to a mental and/or physical examination by the appropriate health care provider designated by the board if the board has probable cause to believe that the licensee is impaired. An impaired practitioner is considered to be one who is unable to practice chiropractic with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material; or as a result of any mental or physical condition.

(2) Probable cause may include, but is not limited to, any one of the following:

(A) sworn statements from two people, willing to testify before the board, that a certain licensee is impaired;

(B) evidence that a licensee left a treatment program for alcohol or chemical dependency before completion of that program;

(C) evidence that a licensee is guilty of intemperate use of drugs or alcohol;

(D) evidence of repeated arrests of a license for intoxication;

(E) evidence of recurring temporary commitments to a mental institution of a licensee; or

(F) medical records showing that licensee has an illness or condition which results in the inability to function properly in his or her practice.

§76.4. Initiation of Investigations.

(a) Any person, public officer, association, or board may file reports of alleged violations of the Act or of these sections.

(b) Anonymous reports of alleged violations will be evaluated individually before an investigation is initiated.

(c) The agency on its own initiative may undertake an investigation with reasonable cause.

§76.5. Undercover Investigations.

(a) Undercover investigations will be conducted only when other investigative

techniques have failed or are not efficient or appropriate. Undercover investigations shall NOT be used indiscriminately.

(b) If an investigator determines an undercover investigation is needed on a specific complaint, the investigator shall submit a written request to the Enforcement Committee Chair or the Executive Director, which will contain:

(1) the specific complaint addressed;

(2) the information which an undercover investigation may reveal;

(3) the relevance of the information obtained pursuant to paragraph (2) of this subsection;

(4) all previous attempts to gather the information referenced in paragraphs (2) and (3) of this subsection by alternate techniques or the reason alternative techniques are not appropriate or efficient; and

(5) what undercover investigative acts will be performed and by whom.

(c) The Director will evaluate the need and appropriateness of the request and will consult with the Enforcement Committee prior to approval of the request.

(d) The Executive Director and Enforcement Committee Chair will assume direct responsibility for an investigation while undercover activities are being conducted.

§76.6. Other Reports.

(a) Relevant information required to be reported to the board pursuant to the Act, indicating that a practitioner's practice of chiropractic poses a continuing threat to the public welfare shall include a narrative statement describing the time, date, and place of the acts or omissions on which the report is based; and

(b) A report that a practitioner's practice of chiropractic constitutes a continuing threat to the public welfare shall be made to the board as soon as possible after the Enforcement Committee reaches that conclusion and is able to assemble the relevant information.

§76.7. Criminal Conviction.

(a) Upon initial conviction of a felony or of a misdemeanor involving moral turpitude, or the initial finding of the trier of fact of a practitioner's guilt in such a criminal proceeding, the board may suspend the practitioner's license. Upon final conviction, the board may revoke the practitioner's license. In either case, the board shall secure a certified true and correct abstract of record of the court that considered the case.

(b) A misdemeanor involving moral turpitude shall be defined as an offense involving baseness, vileness, or depravity in the private and social duties one owes to others or to society in general, or an offense committed with knowing disregard for justice, honesty, principle, or good morals.

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

Issued in Austin, Texas, on August 18, 1993.

TRD-9327582

Patte B. Kent
Executive Director
Texas Board of
Chiropractic Examiners

Earliest possible date of adoption: October 1, 1993

For further information, please call: (512) 343-1895

Part XVI. Texas State Board of Physical Therapy Examiners

Chapter 339. Fees

• 22 TAC §339.5

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Physical Therapy Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Physical Therapy Examiners proposes the repeal of §339.5, concerning Issuance Fees.

Sherry L. Lee, executive director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Lee also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will not be applicable as the public is relatively unaffected by this particular rule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Sherry Lee, 3001 South Lamar Boulevard, Suite 101, Austin, Texas 78704.

The repeal is proposed under Texas Civil Statutes, Article 4512e, §3e, which provide the Texas State Board of Physical Therapy Examiners with the authority to adopt rules consistent with the Texas Physical Therapy Practice Act to carry out its duties in administering the Act.

§339.5. Issuance.

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

Issued in Austin, Texas, on August 24, 1993.

TRD-9327832

Sherry L. Lee
Executive Director
Texas State Board of
Physical Therapy
Examiners

Earliest possible date of adoption: October 1, 1993

For further information, please call: (512) 443-8202

Title 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales and Use Tax

• 34 TAC §3.319

The Comptroller of Public Accounts proposes an amendment to §3.319, concerning prior contracts. One amendment in paragraph (a)(2) deletes the requirement that both parties sign the contract. The second amendment excludes two-party contracts from the prior contract exemption when the exemption is enacted under enabling legislation that allows the exemption when the items are used for or in the performance of a contract. The comptroller will follow the provisions of the court case *Calvert v. British-American Oil Producing Company*, 397 S.W.2d 839 (Tex. 1965), when administering the exemption. This second amendment applies retroactively. The third amendment allows the prior contract exemption for contracts with "open price terms." The fourth amendment is to subsection (d). The sentence stating that notice of prior contracts or bids should not be sent to the comptroller has been deleted.

Mike Reissig, chief revenue estimator, has determined that for each year of the first five-year period the section is in effect there will be no significant fiscal impact on the state or units of local government as a result of enforcing or administering the section.

Mr. Reissig also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section would be in providing new information regarding tax responsibilities. The section is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no anticipated significant economic cost to persons who are required to comply with the proposed section.

Comments on the amendment may be submitted to Charles C. Johnstone, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.319. Prior Contracts.

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

(1) Bid—A written offer by a seller directed to a specific person making a binding commitment to perform a contract for specified work and labor or for supplying specified taxable items at a specified price. A general statement by a seller listing current prices is not a written bid.

(2) Contract—A written agreement between two persons [and signed by both parties to the agreement] binding one party to perform specified work and labor or to supply specified taxable items to another party at a specified price. A purchase order issued by a purchaser may qualify as a contract only if signed and dated by the seller.

(3) Enabling legislation—A bill passed into law by the Texas Legislature that authorizes an exemption for prior contracts.

(4)[(3)] Prior contract or bid—A bid offered or a contract signed before any change in the tax rate or tax base. A purchase order issued by the purchaser prior to a [the] rate change is not a prior contract unless signed and/or fulfilled by the seller prior to the rate change.

(b) Exemptions. Taxable items purchased, leased or rented subject to the provisions of a written contract or bid signed on or before the date provided for prior contracts in the enabling legislation [for use in or sold pursuant to the performance of prior contracts or bids] are exempted from the amount of the increase in tax or change in the tax base.

(c) Exceptions [Exception].

(1) Contracts with third parties. When the enabling legislation exempts from tax items to be used for the performance of a written contract, "written contract" means a contract between the purchaser of the items and a third party other than the seller of the items. "Written contract" does not mean the contract between the purchaser and seller of the items for which exemption is claimed. The items are exempt only if the items are required for the performance of the purchaser's written contract with a third party, and the purchaser's written contract with the third party qualifies as an exempt prior contract under this sec-

tion. Example 1: Before the effective date of a change in the Tax Code, a contractor had a written contract with a customer to improve real property. At the time the contract was executed, the tax rate was X%. Before the work was started, the tax rate increased from X% to X 1/2%. When the contractor, after the effective date of the tax rate increase, purchased lumber from a lumber yard to fulfill the terms of the contract, the tax was due at a rate of X%. The lumber was purchased to fulfill the terms of a contract between the contractor and the contractor's customer. The lumber yard was required to collect tax only at the X% rate. Example 2: Before the effective date of a change in the Tax Code, a contractor ordered a computer from a seller. At the time the purchase order was issued, the tax rate was X%. Before the seller delivered the computer, the tax rate increased to X 1/2%. The taxable item was delivered from the seller to the contractor after the effective date of the tax rate increase. The tax on this transaction was due at the new rate of X 1/2%. The taxable item was not purchased by the contractor to fulfill the terms of a contract with a third party, so the prior contract exemption did not apply.

(2) Cancellation clauses. A cancellation clause in a contract will not cause the loss of a prior contract exemption. [However, a contract may not qualify for a prior contract exemption in the following situations.]

(3)[(1)] Change orders. Change orders that [which] constitute additions to the contract or increases in coverage or taxable items, labor or services added to the contract are not included in the prior contract exemption. The original part of the contract may still retain its prior contract exemption if the change orders can be separately identified.

(4)[(2)] Renewals or extensions. Any renewal or exercise of an option to extend the terms (either by action of either party to the contract or automatically) [or renegotiation of terms, or price changes] will be considered a new contract.

(5) Price changes. A contract will not lose the prior contract exemption solely due to a change in price if:

(A) the parties intend that the contract shall remain binding regardless of the change in price; and

(B) the contract does not expressly provide that changes in price terminate the contract.

(6)[(3)] Tax pass-through clauses. Any contract whose terms state the

customer will be liable for any tax rate increases or for the applicable tax rate will not qualify for the prior contract exemption, even though the contract was in effect prior to the tax rate change. Such phrases are intended to transfer the burden of the tax increase from the seller to the customer and violate the statutory qualifications for exemption. Note: this paragraph applies only to tax rate increases and not to new services added to the tax base.

(7)[(4)] Fixed-price/as-needed terms. Contracts that [which] contain a fixed price that [which] must be paid whether or not the service is performed, and specify the work to be performed by type and quantity, and contracts that [which] state that "services or taxable items will be supplied as needed or upon request" will qualify as prior contracts if they otherwise meet the requirements of this section.

(8)[(5)] Bids vs. contracts. A bid submitted prior to a change [changes] in the tax rate or base and a contract signed after the change pursuant to that bid [after the change.] will qualify for the prior contract exemption if the terms of the contract are substantially similar to the original bid.

(9)[(6)] Transfer of contracts. With the exception of contracts that [which] may be substantially changed or modified, a contract that [which] is transferred by either party will retain its prior contract exemption so long as the transferee is bound by the original terms of the contract.

(d) Records. Persons claiming the prior contract exemption must maintain records that [which] may be verified by audit. Failure to maintain adequate records subject to examination by the comptroller results in an automatic loss of the exemption. [Written notice of prior contracts or bids should not be sent to the comptroller; however, the prior contracts or bids should be available for review upon request.]

(e) Prior contracts/limitations. This section applies only when there is enabling legislation [the statute enacting the change in the tax rate or tax base provides for prior contract exemptions]. The effective date and statute of limitations date on prior contracts will also be governed by the enabling legislation [enacting statute].

(f) Identification number. An identification number is required on prior contract exemption certificates furnished to sellers. The identification number should be the person's sales or use tax permit number, if the person issuing the certificate is required to hold a permit under the terms of the Tax Code. If a permit is not required, the person's federal employer's identification (FEI) number or social security number may be used. A suggested form for the exemption certificate is a part of this [the] section.

Prior Contract Exemption Certificate

This certificate is issued to _____ and is intended to be applicable to the following taxes (check appropriate square)

State ___ City ___ MTA ___ County ___

Taxpayer's Name Identification Number

Project Identification, where appropriate. Date of Execution of Contract/Bid

Description of Taxable Item Purchased

I hereby claim an exemption from the payment of the sales and use tax indicated at the beginning of the form on the basis that I have complied or shall comply with the provisions of the appropriate tax code, relating to written contracts or bids executed prior to the effective date of the tax or a tax rate change.

I will be liable for payment of the sales and use tax if I use the taxable item in some other manner or for some other purpose than the reason stated above and shall pay the tax based on the price paid for the taxable item.

Taxpayer's Name: _____

Taxpayer's Address: _____

Signature of Authorized Agent: _____

Date Issued: _____

Printed Name of Authorized Agent: _____

Telephone Number: _____

[(g) Other contracts. This section also applies to contracts for sales, rentals, leases, and the performance of taxable services.]

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

Issued in Austin, Texas, on August 25, 1993.

TRD-9327834

Martin Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Earliest possible date of adoption: October 1, 1993

For further information, please call: (512) 463-4028



Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn six months after 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 4. AGRICULTURE

Part II. Animal Health Commission

Chapter 43. Tuberculosis

Subchapter A. Cattle

• 4 TAC §43.1

The Animal Health Commission has withdrawn from consideration for permanent adoption a proposed amendment to §43.1 which appeared in the July 9, 1993, issue of the *Texas Register* (18 TexReg 4437). The effective date of this withdrawal is August 23, 1993.

Issued in Austin, Texas, on August 23, 1993.

TRD-9327748 Terry Beals, DVM
Executive Director
Animal Health Commission

Effective date: August 23, 1993

For further information, please call: (512)
479-6697



• 4 TAC §43.2

The Animal Health Commission has withdrawn from consideration for permanent adoption a proposed amendment to §43.2 which appeared in the July 9, 1993, issue of the *Texas Register* (18 TexReg 4437). The effective date of this withdrawal is August 23, 1993.

Issued in Austin, Texas, on August 23, 1993.

TRD-9327750 Terry Beals, DVM
Executive Director
Animal Health Commission

Effective date: August 23, 1993

For further information, please call: (512)
479-6697



TITLE 37. PUBLIC SAFETY AND CORREC- TIONS

Part III. Texas Youth Commission

Chapter 85. Admission and Placement

Placement Planning

• 37 TAC §85.23

The Texas Youth Commission has withdrawn from consideration for permanent adoption a proposed amendment to §85.23 which appeared in the July 27, 1993, issue of the *Texas Register* (18 TexReg 5194). The effective date of this withdrawal is September 14, 1993.

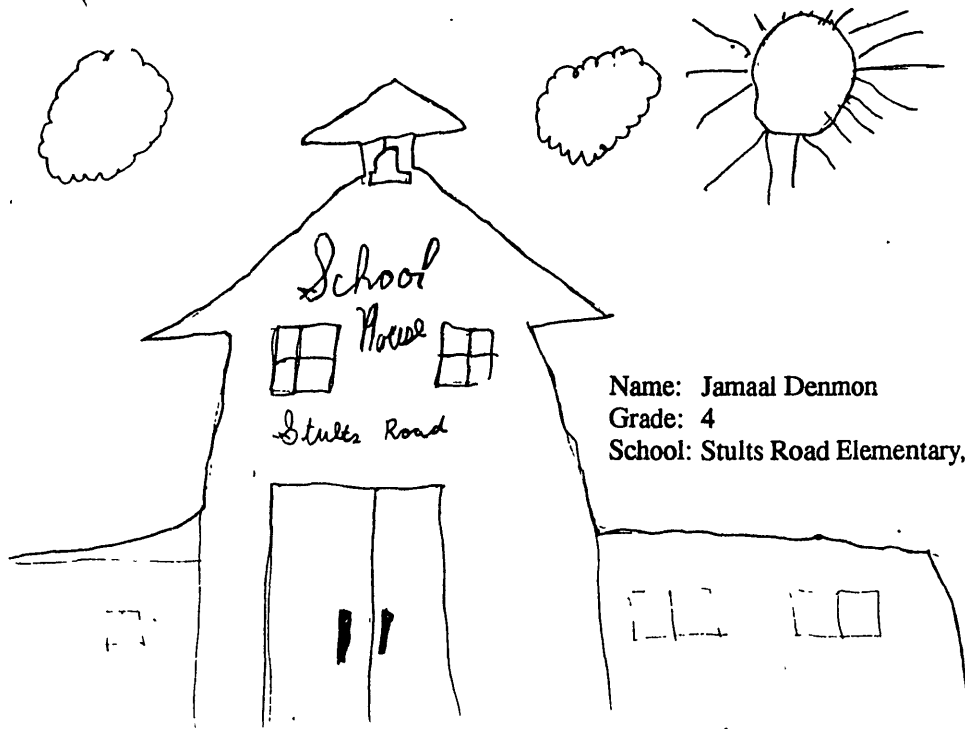
Issued in Austin, Texas, on August 23, 1993.

TRD-9327786 Ron Jackson
Executive Director
Texas Youth Commission

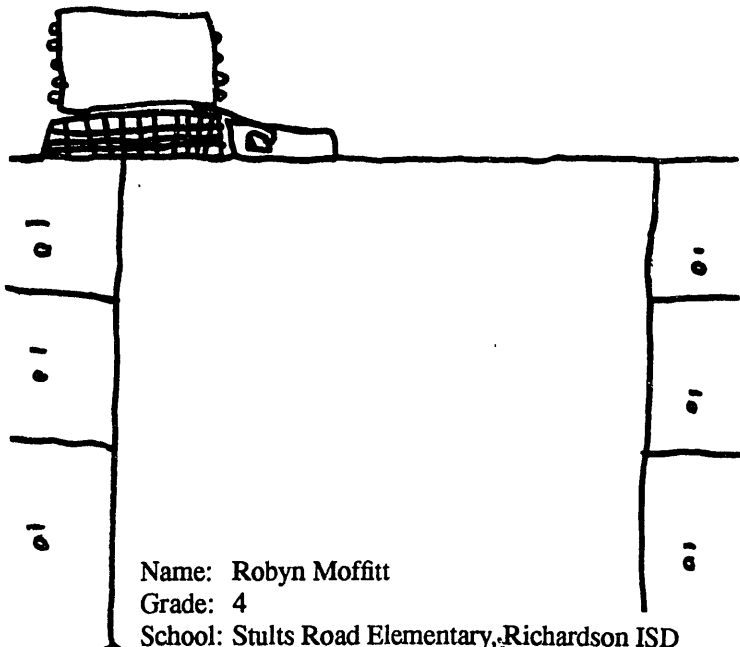
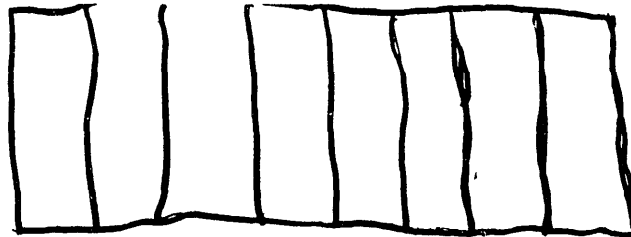
Effective date: September 14, 1993

For further information, please call: (512)
483-5244





Name: Jamaal Denmon
Grade: 4
School: Stults Road Elementary, Richardson ISD



Name: Robyn Moffitt
Grade: 4
School: Stults Road Elementary, Richardson ISD

Adopted Sections

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 4. AGRICULTURE

Part III. Texas Animal Health Commission

Chapter 35. Brucellosis

Subchapter A. Eradication of Brucellosis in Cattle

• 4 TAC §35.4

The Texas Animal Health Commission adopts an amendment to §35.4 concerning entry and change of ownership, with changes to the proposed text as published in the July 9, 1993, issue of the *Texas Register* (18 TexReg 4437). The phrase "and out of" was removed from Subsection (a)(B)(6).

The amendment is necessary to require a brucellosis test on all sexually intact cattle at the port of entry under supervision of the port veterinarian before moving into the state. The requirement for adult vaccination of non-vaccinated females over 12 months of age after they arrive in this state from another state or country has been deleted.

Sexually intact cattle moving to a quarantined feedlot must be "S"-branded before entry into the state and moved in sealed trucks. The post entry test for cattle entering to a destination other than to slaughter or a quarantined feedlot has been extended to no less than 120-days after entry rather than 60-days. All cattle entering the United States must either be from a foreign country that has a brucellosis status comparable to that of the United States or meet additional restrictions or testing requirements.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

§35.4. Entry and Change of Ownership.

(a) Requirements for cattle from foreign countries without comparable brucellosis status that enter and remain in Texas. (Note: Cattle from foreign countries with comparable brucellosis status would enter by meeting the requirements for a state with similar status.)

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

(A) Sexually intact cattle destined for a quarantined feedlot must be "S"-branded prior to entry into the state.

(B) Spayed heifers shall be spade-branded prior to entry as specified in §35.1 of this title (relating to Definitions).

(3) Vaccination requirement. Nonvaccinated sexually intact female cattle between four and 12 months of age entering for purposes other than immediate slaughter or feeding for slaughter in a quarantined feedlot shall be placed under quarantine on arrival and officially brucellosis vaccinated as outlined in §35.2(m) of this title (relating to General Requirements). The quarantine may be released after meeting test requirements.

(4) Testing requirements for bulls entering for purposes other than immediate slaughter or feeding in a quarantined feedlot. Bulls entering for purposes other than immediate slaughter or feeding in a quarantined feedlot shall be tested at the port of entry into Texas under the supervision of the port veterinarian, and placed under quarantine and retested 120 to 180 days after arrival. The quarantine will be released following a negative brucellosis test.

(5) Testing requirements for females entering for purposes other than immediate slaughter or feeding in a quarantined feedlot. All sexually intact female cattle entering for purposes other than immediate slaughter or feeding for slaughter in a quarantined feedlot shall be tested at the port of entry into Texas under the supervision of the port veterinarian, and placed under quarantine on arrival and retested for brucellosis in no less than 120 days nor more than 180 days after arrival for release of the quarantine. The releasing negative test shall not be sooner than 30 days after the animal has had its first calf.

(6) Testing requirements for sexually intact cattle entering for feeding in a quarantined feedlot. All sexually intact cattle destined for feeding for slaughter in a quarantined feedlot must be tested at the port of entry into Texas under the supervision of the port veterinarian. These cattle must be "S"-branded prior to entry into the state, and may move into the quarantined

feedlot only in sealed trucks with a permit issued by TAHC or USDA personnel.

(7) Responsibility for costs. All costs of calfhood vaccination, testing and retesting shall be borne by the owner.

(b) Requirements for cattle entering Texas from other states.

(1) Vaccination. All female cattle between four and 12 months of age shall be officially vaccinated prior to entry. Exceptions to these vaccination requirements:

(A) female cattle entering for purposes of shows, fairs and exhibitions;

(B) female cattle moving within commuter herds;

(C) spayed heifers;

(D) nonvaccinated female cattle between four and 12 months of age consigned from an out-of-state farm of origin will be accompanied by a waybill to a Texas market, quarantined feedlot or slaughter. Upon arrival at the livestock market, they may be vaccinated at no expense to the state, and be sold and moved freely. If these cattle are not vaccinated upon arrival then they shall be consigned from the market only to a quarantined feedlot or slaughter, accompanied by an "S" permit;

(E) nonvaccinated female cattle between four and 12 months of age consigned from an out-of-state livestock market to a Texas livestock market, quarantined feedlot or slaughter will be accompanied by an "S" permit or certificate of veterinary inspection. Individual identification is not required. Upon arrival at the Texas livestock market, they may be vaccinated at no expense to the state, be sold and moved freely. If these cattle are not vaccinated upon arrival then they shall be consigned from the market only to a quarantined feedlot or slaughter, accompanied by an "S" permit;

(F) nonvaccinated female cattle between four and 12 months of age moving may enter on a calfhood vaccination permit and must be vaccinated at no

expense to the state within 14 days after arriving at the premise of destination.

(2) (No change.)

(c) (No change.)

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

Issued in Austin, Texas, on August 20, 1993.

TRD-9327740

Terry Beale, DVM
Executive Director
Texas Animal Health
Commission

Effective date: September 17, 1993

Proposal publication date: July 9, 1993

For further information, please call: (512) 479-6697

Chapter 41. Fever Ticks

• 4 TAC §41.1

The Texas Animal Health Commission adopts amendments to §41.1 concerning tick eradication, without changes to the proposed text as published in the July 9, 1993, issue of the *Texas Register* (18 TexReg 4438).

The amendment is necessary to require that all Mexican cattle entering Texas for movement to a Texas destination to be "M"-branded prior to movement. Metal ear tags which are applied in Mexico are prohibited from removal from the animal.

All Mexican cattle entering the United States from Mexico will be identified with an "M"-brand. Metal ear tags that are applied in Mexico cannot be removed from the animals as they distinguish the origin of the cattle.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

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

Issued in Austin, Texas, on August 20, 1993.

TRD-9327747

Terry Beale, DVM
Executive Director
Texas Animal Health
Commission

Effective date: September 17, 1993

Proposal publication date: July 9, 1993

For further information, please call: (512) 479-6697

TITLE 16. ECONOMIC REGULATIONS

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter B. Operating Certificates, Permits, and Licenses

• 16 TAC §5.33

The Railroad Commission of Texas adopts an amendment to §5.33, concerning regular contract carriers and truckload contract carriers, without changes to the proposed text as published in the July 20, 1993, issue of the *Texas Register* (18 TexReg 4726).

The rule is adopted in order to conform the commission's regulations with the enactment of Senate Bill 1313 by the 73rd Legislature, 1993, which amends the Texas Motor Carrier Act. The provisions of Senate Bill 1313 relating to this rule become effective January 1, 1994, and this rule will not become effective until January 1, 1994.

The amendment will clarify that a contract carrier permit may authorize transportation for no more than ten shippers, while a truckload contract carrier permit may authorize transportation for an unlimited number of shippers.

Public comments regarding this rule generally suggested eliminating the portion of the rule stating that contract carriers may serve only ten shippers, thus allowing regular contract carriers to serve an unlimited number of shippers.

The Texas Association for Competitive Transportation and the Shippers Oil Field Traffic Association made comments against the amendment.

The commission disagrees with the comments for the reason that the number of shippers a regular contract carrier may serve was not addressed by Senate Bill 1313 and is the subject of a separate petition for rulemaking. In addition, the absence of any limitation on the number of shippers that may be served by a contract carrier would effectively give contract carriers the type of authority currently held by common carriers.

The amendment is adopted pursuant to Texas Civil Statutes, Article 911b, §4(a), which vest the commission with power and authority to prescribe all rules and regulations necessary for the government of motor carriers, and to supervise and regulate motor carriers in all matters affecting the relationship between such carriers and the shipping public.

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

Issued in Austin, Texas, on August 24, 1993.

TRD-9327815

Mary Rosa McDonald
Assistant Director
Railroad Commission of
Texas

Effective date: January 1, 1994

Proposal publication date: July 20, 1993

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

• 16 TAC §5.46

The Railroad Commission of Texas adopts new §5.46, concerning truckload contract carriers, with changes to the proposed text as published in the July 20, 1993, issue of the *Texas Register* (18 TexReg 4727). The rule defines truckload contract carriers and delineates the burden of proof for an applicant for a truckload contract carrier permit. In addition, it sets out the standing requirements for a protestant to an application for truckload contract carrier authority.

The rule is adopted in order to conform with the enactment of Senate Bill 1313 by the 73rd Legislature, 1993, which amends the Texas Motor Carrier Act. The provisions of Senate Bill 1313 relating to this rule become effective January 1, 1994, and this rule will not become effective until January 1, 1994.

The change made to the proposed text clarifies that a protestant to a truckload contract carrier application must demonstrate that the protestant generated \$25,000 in annual intrastate revenues from the shipper that applicant seeks to serve for each of the two years preceding the filing date of the application.

Comments regarding this rule opposed the omission of part of the standing requirement for a protestant to a truckload contract permit application, as specified in Senate Bill 1313. The rule, as proposed, stated that a protestant must demonstrate that it had generated \$25,000 in annual intrastate revenues from the party the applicant seeks to serve. However, the proposed rule failed to state that these revenues had to be generated in each of the two years preceding the filing of the application. This requirement has been added to the rule. In addition, in subsection (d) of this section, the reference to a protestant's "application" is changed to "protest."

Comments were also received suggesting that the \$25,000 annual intrastate revenue requirement for protestant standing should be amended to require that the annual intrastate revenue be from regulated transportation. Comments went on to suggest that the definition of "eligible contract" be amended to require that the contract provide for \$12,000 a year in intrastate regulated compensation rather than compensation only, without clarification. These comments also suggested that the contract be required to be for a term on not less than one year, with reasonable limitations on the rights of parties to terminate the contract if they so desire.

Comments were also made suggesting that the definition of "specialized motor carrier commodity" conform to §1(i) of the Motor Carrier Act. One other comment suggested

that the definition of "truckload quantity" be limited so as not to include brokers, freight forwarders, or freight consolidators.

Comments were also received that suggested that an applicant attempting to prove an eligible contract or intent to enter into an eligible contract might try to do so by introducing hearsay evidence. It was also suggested that the rule specify that an applicant be allowed to prove up the intent to contract through live witnesses.

Comments suggested that the "fit, willing and able" definition contained in paragraph (c) of the rule be changed to that proposed in the disadvantaged business rule, §5.462.

Comments were made suggesting that a protestant to a truckload contract carrier permit application not be required to file an affidavit as to its statutory standing requirement at the time its protest is filed.

Finally, comments proposed that an additional section be added to require truckload contract carriers of general commodities to file copies of their eligible contracts with the Division Director of Transportation, for public inspection, prior to the issuance of a permit. It was also suggested that provision be made that a failure to file the contract would result in an administration penalty action. Other related comments suggested that any grant of contract carrier authority made under this rule specify the name of the parties to be served, the commodities to be transported, and the territory to be served, and that grants of authority remain in effect only so long as the contract is valid. Permit holders, the comments suggested, should be required to notify the commission within ten days of the termination of the contract. These same comments suggested that holders of truckload contract carrier permits be required to file a yearly, verified report with the Director of Transportation detailing the revenues derived under the contract, and that such report be made open to the public.

The Texas Association for Competitive Transportation and the Shippers Oil Field Traffic Association made comments suggesting the change regarding protestant standing, but did not otherwise comment on the rule.

The commission agrees with the comments regarding the changes made to this rule. It disagrees with the remainder of the comments for the reason that they are not addressed by Senate Bill 1313, despite its specificity in other areas. Specifically, the commission does not agree with the comments suggesting that the protestant standing requirement of \$25,000 of revenue or the applicant requirement of a contract to generate \$12,000 in income are limited to regulated intrastate transportation, because such is not specified in Senate Bill 1313. Similarly, the commission believes the rule's definition of specialized motor carrier accurately reflects the Motor Carrier Act's position with regard to specialized motor carriers.

The commission disagrees with the comment suggesting that "truckload quantity" be further clarified because this term is defined in Senate Bill 1313 and the rule uses this definition.

The commission also disagrees with the comments regarding the ultimate admissibility of eligible contracts or documents evidencing an intent to enter into an eligible contract. The rule, as proposed, does not contemplate that an applicant will receive a permit merely by showing an eligible contract or intent to contract; instead, the rule states that at least the existence of a contract or intent to enter a contract is required in addition to any other requirements of the act. Any evidentiary objections regarding hearsay may be addressed at a hearing and considered at that time.

The commission also disagrees with the comments that a protestant should not be required to file an affidavit with its protest stating that it has standing, in the form of showing that it has generated the required revenue from the shippers sought to be served by applicant.

The commission disagrees that the "fit, willing, and able" standard as set out in the proposed rule should be changed to reflect the same language contained in the proposed rule regarding disadvantaged businesses. A contract carrier and a regular contract carrier applicant have different burdens of proof than certificated carriers. Contract carriers and truckload contract carriers, rather than being service providers to the general public, serve specific shippers, and their standards, as regard fitness, willingness, and ability, while similar, are distinctively different.

Finally, the commission disagrees with the comments suggesting that an applicant for a truckload contract carrier permit file a statutory affidavit regarding contractual authority, file copies of contracts for public record, and submit yearly reports to the commission. Much, if not all, of the information referred to in the comments will be in the annual operating report. Similarly, nothing in Senate Bill 1313 contemplates putting an applicant to the additional burden of filing records with the commission in excess of the proof required at the hearing. On the other hand, requiring a protestant to file an affidavit related to its standing is not inappropriate, because the standing of a protestant is keyed to the filing of the application, and because the application process is streamlined by an initial determination as to whether the hearing is properly protested.

The new rule is adopted under Texas Civil Statutes, Article 911b, §4(a), which vest the Commission with power and authority to prescribe all rules and regulations necessary for the government of motor carriers, and to supervise and regulate motor carriers in all matters affecting the relationship between such carriers and the shipping public.

§5.46. Truckload Contract Carriers.

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

(1) Eligible contract—A contract to provide transportation services for compensation in an amount not less than \$12,000 per year.

(2) General commodity—A commodity other than:

(A) a commodity that requires temperature control; or

(B) a specialized motor carrier commodity.

(3) Specialized motor carrier commodity—Any commodity which by reason of length, width, weight, height, size, or other physical characteristics requires the use of special devices, facilities, or equipment for its transportation and handling.

(4) Truckload contract carrier—Any contract carrier authorized to transport a general commodity in a truckload quantity.

(5) Truckload contract carrier permit—A contract carrier permit issued to a truckload contract carrier.

(6) Truckload quantity—A single shipment that:

(A) is transported for a single consignor who has exclusive use of the transporting vehicle; and

(B) weighs 25,000 pounds or more or constitutes a capacity load under tariffs, rules, or regulations adopted by the commission.

(b) An applicant for a truckload contract carrier permit shall, in addition to any other requirements in these rules, demonstrate sufficient evidence of an eligible contract or an intent to enter into an eligible contract with the party the applicant proposes to serve, by producing:

(1) the contract, executed by both parties;

(2) a pre-existing contract between the parties for interstate or local transportation;

(3) a letter of intent to enter into an eligible contract, executed by both parties, setting forth the general agreement between the parties; or

(4) an affidavit from the party contracting with applicant, setting forth the general agreement between the parties.

(c) An applicant shall also demonstrate that it is fit, willing, and able to perform the proposed services. For purposes of this rule, a truckload contract carrier applicant may show that it is fit, willing, and able by demonstrating that it has insurance coverage as required by the commission, and that the shipper is satisfied with the applicant's equipment, safety record, expertise, and financial status.

(d) Any motor carrier protesting the issuance of a truckload contract carrier permit must file with its protest an affidavit and evidence sufficient to demonstrate that it has generated at least \$25,000 in annual intrastate revenue from the party the applicant proposes to serve during each of the two years preceding the filing date of the application.

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

Issued in Austin, Texas, on August 23, 1993.

TRD-9327814 Mary Ross McDonald
Assistant Director, Legal
Division-Gas Utilities/LP
Gas
Railroad Commission of
Texas

Effective date: January 1, 1994

Proposal publication date: July 20, 1993

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

Subchapter Z. Base Rates, Deviations and Suspensions

• 16 TAC §5.582

The Railroad Commission of Texas adopts an amendment to §5.582, concerning deviations from commission established base rates, without changes to the proposed text as published in the July 20, 1993, issue of the *Texas Register* (18 TexReg 4726).

The amendment will bring commission regulations into conformity with Senate Bill 1313 and House Bill 1156 of the 73rd Legislature, 1993, which amend the Texas Motor Carrier Act.

The amendment will allow common carriers to deviate from established base rates by greater amounts than currently allowed in certain shipment weight and capacity configurations.

Public comments regarding the proposed rule generally concerned further extension of authority to deviate from established base rates. One comment stated that proposed §5.582 reflects the intent of the legislation. However, two other comments argued that a 5.0% deviation should be extended to shipments of general commodities weighing 500 pounds or less. Another comment stated that the 40% deviation was intended to apply to all capacity load shipments, including those weighing less than 10,000 pounds.

The Texas Motor Transportation Association commented in favor of the amendment as proposed. However, both the Texas Motor Transportation and the Texas Association for Competitive Transportation commented that the proposed rule should, in addition, provide deviations for shipments in a lighter weight category than currently allowed.

The commission disagrees with the comments related to extending the 5.0% deviation

for the reason that deviations for shipments weighing 500 pounds or less were addressed by neither Senate Bill 1313 nor House Bill 1156, and because proposed deviations for such shipments are the subject of a separate rulemaking petition that is pending before the commission. The commission disagrees with the comment regarding 40% deviation authority for shipments weighing less than 10,000 pounds based on the statutory construction of Senate Bill 1313 and House Bill 1156.

The amendment is adopted pursuant to Texas Civil Statutes, Article 911b, §4(a), which vest the commission with power and authority to prescribe all rules and regulations necessary for the government of motor carriers, and to supervise and regulate motor carriers in all matters affecting the relationship between such carriers and the shipping public.

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

Issued in Austin, Texas, on August 23, 1993.

TRD-9327813 Mary Ross McDonald
Assistant Director
Railroad Commission of
Texas

Effective date: September 14, 1993

Proposal publication date: July 20, 1993

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

TITLE 22. EXAMINING BOARDS

Part XIV. Texas Optometry Board

Chapter 271. Examinations

• 22 TAC §271.5

The Texas Optometry Board adopts the repeal of §271.5, without changes to the proposed text as published in the July 6, 1993, issue of the *Texas Register* (18 TexReg 4378).

The repeal is necessary because the 73rd Legislature amended the Texas Optometry Act by passage of House Bill 1479, and eliminated all language regarding licensure by endorsement.

The repeal of the section will eliminate all language regarding licensure by endorsement and licensees will be informed of the current law regarding licensure in Texas to practice optometry.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4552, which provide the Texas Optometry Board with the authority to promulgate substantive and procedural rules, and to set fees.

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

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

Issued in Austin, Texas, on August 19, 1993.

TRD-9327790 Lois Ewald
Executive Director
Texas Optometry Board

Effective date: September 14, 1993

Proposal publication date: July 6, 1993

For further information, please call: (512) 835-1938

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

(Editor's Note: Senate Bill 2, First Called Session, 72nd Legislature, created the Texas Natural Resource Conservation Commission (TNRCC) as the successor to the Texas Water Commission (TWC) and Texas Air Control Board (TACB) with the responsibility of carrying out the respective duties, responsibilities and functions of those agencies. The rights, powers, and duties delegated by law to the TWC and TACB were expressly assigned to the TNRCC. Senate Bill 2 also transferred all personnel, equipment, data, documents, facilities, and other items of the TWC and TACB to the TNRCC.)

A member of the Texas Water Commission is a member of the TNRCC. Any reference in any law or rule to the TACB or to the TWC mean TNRCC. The change in the name of the TWC or the abolition of the TACB does not affect or impair any act done or obligation, right, license, permit, rule, criteria, standard, or requirement, or penalty accrued or existing under former law, and that law remains in effect for any action concerning such an obligation, right, license, permit, rule, criterion, standard, requirement, or penalty.

An action brought or proceeding commenced before September 1, 1993, including a contested case or a remand of an action or proceeding by a reviewing court, is governed by the law and rules applicable to the action or proceeding before September 1, 1993. Administrative hearings on applications for permits and prehearing proceedings which had commenced prior to September 1, 1993, shall not be delayed or continued as a result of Senate Bill 2 or any resulting organizational changes. Refer to Senate Bill 2, First Called Session, 72nd Legislature for the exact language in this article.

To comply with the requirements of Senate Bill 2, the Texas Register is creating a new title in the Texas Administrative Code, Title 30. Environmental Quality and is administratively transferring all rules from TWC and TACB to Title 30, Part I. Texas Natural Resource Conservation Commission laterally, effective September 1, 1993.

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 9. Property Tax Administration

Subchapter A. Practice and Procedure

• 34 TAC §9.17

The Comptroller of Public Accounts adopts an amendment to §9.17, concerning notice of public hearing on a tax increase, with changes to the proposed text as published in the July 23, 1993, issue of the *Texas Register* (18 TexReg 4864).

The changes in §9.17 correct the date of amendments to the form adopted by reference. In addition, the form §9.17 adopted by reference is changed to add optional information for school districts concerning county education districts.

The amendments to §9.17 are necessary because Senate Bill 7, 73rd Legislature, 1993, abolished county education districts. The abolishment of county education districts returned to school districts the portion of the school district is tax rate formerly levied by the county education district. The notice currently in effect does not reflect the abolishment of county education districts. The rule adopts by reference an amended form for publication of notice of hearing on tax increase that provides information related to the abolishment of county education districts. The form requires school districts to inform taxpayers that the school districts proposed percentage increase over last years effective tax rate is partially caused by the abolishment of county education districts and the subsequent exercise by the school districts of their full taxing authority. The amendment gives school districts the option of publishing information related to last years county education districts taxes on the average homestead. The amendment does not, however, relieve a school district from holding a hearing on a proposed tax increase that exceeds statutory limits.

Comments from individuals were received. Two of the comments requested that the section be amended to permit school districts to add county education district revenue to the effective and rollback tax rates. These suggestions were rejected because they did not conform to the Tax Code, §§26.012, 26.04, and 26.06.

Two of the comments requested that §9.17 permit a school district to add to the form adopted by reference information concerning last years county education district taxes on the average homestead. These comments were accepted because the addition of this information could clarify for taxpayers the effect on the average homestead of the abolishment of the county education district. This additional information, however, will not change a school districts effective tax rate and therefore, will not change the school dis-

tricts legal responsibility to hold a public hearing if the proposed tax rate exceeds statutory limits. The addition of this information will be optional for school districts.

The amendment is adopted under the Tax Code, §26.06, which requires the comptroller to prescribe the form for publishing notice of public hearing on a tax increase, and the Tax Code, §26.04, which requires the comptroller to prescribe the form for publishing notice of effective and rollback tax rates.

§9.17. Notice of Public Hearing on Tax Increase.

(a) A taxing unit that is required by the Tax Code, §26.06, to publish a notice of public hearing on a proposed tax increase shall use the form and wording of Model Form 26.06 in publishing the notice.

(b) Model Form 26.06, as amended August 23, 1993, is adopted by reference. Copies may be obtained from the Comptroller of Public Accounts, Property Tax Division, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

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

Issued in Austin, Texas, on August 23, 1993

TRD-9327734

Martin E. Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Effective date: September 13, 1993

Proposal publication date: July 19, 1993

For further information, please call: (512) 463-4028

• 34 TAC §9.19

The Comptroller of Public Accounts adopts an amendment to §9.19, concerning notice of effective and rollback tax rates, with changes to the proposed text as published in the July 23, 1993, issue of the *Texas Register* (18 TexReg 4864).

The change in §9.19 corrects the date of amendments to the form adopted by reference.

The amendments to §9.19 are necessary because Senate Bill 7, 73rd Legislature, 1993, required a change in the rollback tax rate calculation for a school district. In addition, Senate Bill 668, 73rd Legislature, 1993, requires that a taxing unit transferring by written contract discontinued departments, functions, or activities to another taxing unit publish certain information in the notice. Likewise, a taxing unit accepting the transfer by written contract of these discontinued functions must publish certain information. Section 9.19 adopts by reference an amended form for publication of notice of effective and rollback tax rates. The form reflects the change in a school district's rollback tax rate calculation

and provides the information required of taxing units transferring departments, functions, or activities.

Comments from individuals were received regarding adoption of §9.19. The comments requested that the section be amended to permit school districts to add county education district revenue to the effective and rollback tax rates. These suggestions were rejected because they did not conform to the Tax Code, §§26.012, 26.04, and 26.06.

§9.19. Notice of Effective and Rollback Tax Rates.

(a) A taxing unit shall use the form and wording of Model Form 26.04 in publishing the notice of effective tax rate and other information required to be published by the Tax Code, §26.04(e). A county may modify the model form by inserting additional columns of effective and rollback rate calculations for each type of tax the county levies. A form so modified must also state the total effective and rollback tax rates for the county.

(b) The type size used in the notice may not be smaller than eight points.

(c) Notice for taxing units may be combined, provided each meets the requirements of subsection (b) of this section.

(d) Model Form 26.04 amended August 23, 1993, is adopted by reference.

(e) Copies may be obtained from the Comptroller of Public Accounts, Property Tax Division, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

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

Issued in Austin, Texas, on August 23, 1993.

TRD-9327735

Martin E. Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Effective date: September 13, 1993

Proposal publication date: July 19, 1993

For further information, please call: (512) 463-4028

**TITLE 40. SOCIAL SERVICES
AND ASSISTANCE
Part I. Texas Department
of Human Services**

**Chapter 27. Intermediate Care
Facilities for the Mentally
Retarded (ICFs-MR)**

**Subchapter D. Reimbursement
Methodology**

• 40 TAC §27.413, §27.415

The Texas Department of Human Services (DHS) adopts amendments to §§27.413 and 27.415, concerning rate setting methodology and ICF-MR/RC VIII experimental class, in its Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) chapter. The amendments are adopted without changes to the proposed text published in the July 16, 1993, issue of the *Texas Register* (18 TexReg 4631).

The justification for the amendment to §27.413(c)(3)(B) is to delete from the reimbursement methodology the name of a facility which recently changed from a large facility to a six-bed facility and is no longer eligible for the children's facility rate class. The purpose for the amendment to §27.413(f) and §27.415(c)(1)(B) is to incorporate changes resulting from implementation of the new Form 3650, Level of Care. These changes amend the qualifying scores for supplemental reimbursement for high-need ICF-MR VI clients and supplemental payments for qualifying ICF-MR clients with related conditions.

The amendments will function by clarifying which facilities are in the children's rate class and continuing appropriate reimbursement for high-need clients.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs, and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

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

Issued in Austin, Texas, on August 24, 1993.

TRD-9327796

Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Effective date: October 1, 1993

Proposal publication date: July 16, 1993

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

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**Chapter 48. Community Care
for Aged and Disabled**

**Medicaid Waiver Program for
Persons with Related Condi-
tions**

• 40 TAC §48.2103

The Texas Department of Human Services (DHS) adopts an amendment to §48.2103, with changes to the proposed text as published in the July 16, 1993, issue of the *Texas Register* (18 TexReg 4634).

The justification for the amendment is to allow certain foster care children and Aid to Families with Dependent Children recipients to receive Community Living Assistance and Support Services (CLASS) waiver services.

The amendment will function by allowing qualified individuals to receive needed waiver services.

No comments were received regarding adoption of the amendment. DHS, however, has initiated a minor change to clarify the text of §48.2103(a)(5)(B). DHS has deleted the word "family."

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provide the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

§48.2103. Participant Eligibility Criteria.

(a) To be determined eligible by the Texas Department of Human Services (DHS) for waiver program services, an applicant must:

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

(4) be an individual who would be financially eligible for Medicaid if residing in a Medicaid-certified institution. For these individuals, the policies specified in subparagraphs (A) and (B) of this paragraph apply.

(A) Spousal impoverishment provisions.

(i)-(iv) (No change.)

(B) Calculation of participant copayment.

(i)-(ii) (No change.)

(iii) Participants must pay the copayment amount to the provider contracted to deliver authorized waiver services; or

(5) be an individual under age 19:

(A) for whom the Texas Department of Protective and Regulatory Services (TDPRS) assumes financial responsibility for, in whole or in part (not to exceed level II foster care payment); and

(B) who is being cared for in a foster care home licensed or certified and supervised by:

(i) TDPRS; or

(ii) a licensed public or private nonprofit child-placing agency; or

(6) be a member of a family that receives Medicaid as a result of qualifying for AFDC.

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

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

Issued in Austin, Texas, on August 24, 1993.

TRD-9327797

Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Effective date: October 1, 1993

Proposal publication date: July 16, 1993

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

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Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the Office of the Secretary of State in lobby of 221 East 11th Street, Austin. These notices may contain 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

Thursday, September 2, 1993, 9:00 a.m.
The Full Board of the Texas State Board of Public Accountancy will meet at 333 Guadalupe Street, Tower III, Suite 900, Austin. According to the revised agenda summary, the board will review and discuss Investigation Numbers: 93-05-30L, 93-05-23L, 93-06-18L, 93-05-18L, 93-04-17L, 93-05-14L, 93-05-12L, 93-05-13L, 93-05-17L, 93-05-32L, 92-06-27L; Informal Conference: 93-04-31L, 93-04-22L, 93-04-23L, 93-04-24L, 93-04-25L, 93-04-26L, 93-04-27L, 93-04-28L, 93-04-29L, 93-04-30L, 93-09-08L; and discuss: Cronan, Laine, Neller-moe, Newton, and Stephens.

Contact: Letty L. Callaway, 333 Guadalupe Street, Tower III, Suite 900, Austin, Texas 78701-3942, (512) 505-5542.

Filed: August 25, 1993, 4:27 p.m.

TRD-9327868

Texas Department of Agriculture

Friday, September 3, 1993, 11:00 a.m.
The Texas Department of Agriculture will meet at the Texas Department of Agriculture, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the complete agenda, the department will hold a public hearing to receive public comment on proposed amendments to the Texas Department of Agriculture's Seed Certification Standards (4 TAC, Chapter 21) as published in the August 24, 1993 issue of the *Texas Register* (18 TexReg 5643).

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

Filed: August 25, 1993, 9:43 a.m.

TRD-9327836

Friday, September 10, 1993, 10:30 a.m.
The Office of Hearings of the Texas Department of Agriculture will meet at the Texas Department of Agriculture, 8918 Tesoro Drive, Suite 120, San Antonio. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code, §103.001, et seq. (Vernon 1982) by Henry J. Berry Company as petitioned by Javier Mancha and Blake Dobbins.

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

Filed: August 25, 1993, 2:50 p.m.

TRD-9327855

Tuesday, September 14, 1993, 2:00 p.m.
The Office of Hearings of the Texas Department of Agriculture will meet at the Texas Department of Agriculture, Expressway 83, Two Blocks West of Morningside Road, San Juan. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code, §103.001 et seq. (Vernon 1982) by Henry J. Berry Company as petitioned by Nowel Borders.

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

Filed: August 25, 1993, 2:50 p.m.

TRD-9327854

Tuesday, September 14, 1993, 3:00 p.m.
The Office of Hearings of the Texas Department of Agriculture will meet at the Texas Department of Agriculture, Expressway 83, Two Blocks West of Morningside

Road, San Juan. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code, §103.001 et seq. (Vernon 1982) by Henry J. Berry Company as petitioned by Raul Garza, Jr.

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

Filed: August 25, 1993, 2:50 p.m.

TRD-9327853

Texas Commission on Alcohol and Drug Abuse

Thursday, September 2, 1993, 9:00 a.m.
The Offender Credentialing Committee of the Texas Commission on Alcohol and Drug Abuse will meet at 2911 Turtle Creek Boulevard, #1150, Dallas. According to the complete agenda, the committee will call the meeting to order; review applications for the licensed chemical dependency counselor; and adjourn.

Contact: Mike Ezzell, 720 Brazos Street, Suite 403, Austin, Texas 78701-2576, (512) 867-8110.

Filed: August 24, 1993, 10:51 a.m.

TRD-9327799

Friday, September 3, 1993, 9:00 a.m. (Rescheduled from Thursday, September 2, 1993). The Offender Credentialing Committee of the Texas Commission on Alcohol and Drug Abuse will meet at 2911 Turtle Creek Boulevard, #1150, Dallas. According to the complete agenda, the committee will call the meeting to order; review applications for the licensed chemical dependency counselor; and adjourn.

Contact: Mike Ezzell, 720 Brazos Street, Suite 403, Austin, Texas 78701-2576, (512) 867-8110.

Filed: August 25, 1993, 4:27 p.m.

TRD-9327866

Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons

Friday, September 3, 1993, 9:00 a.m. The Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons will meet at the Texas Commission for the Blind, Criss Cole Rehabilitation Center, Staff Training Room, 4800 North Lamar Boulevard, Austin. According to the agenda summary, the committee will call the meeting to order; introduce committee members and guest; discuss acceptance of minutes from June 4, 1993 meeting; discuss and possibly act on new services; renewal services; "Hearing Impaired Interpreter Services"; cereal enclave; catalog purchase procedures for automated information systems; new products; product changes and revisions; discuss Office Quality Furniture Fast Ship versus Quantity Discounts; discuss and possibly act on Texas Industries for the Blind and Handicapped's Programs; discuss budget, agreement, and commission rates for Fiscal Year 1994.

Contact: Michael T. Phillips, P.O. Box 12866, Austin, Texas 78711, (512) 459-2605.

Filed: August 25, 1993, 10:25 a.m.

TRD-9327841

Coastal Coordination Council

Thursday, September 2, 1993, 10:00 a.m. The Coastal Coordination Council will meet at 300 West 15th Street, Senate Committee Room Five, Fifth Floor, William P. Clements Building, Austin. According to the complete agenda, the council will call the meeting to order; make opening remarks; discuss approval of minutes of the June 3, 1993 meeting; review of outline and development schedule for Coastal Management Program (CMP) submission document; status reports on Federal Agency Task Force and CMP focus groups; definition of Coastal Natural Resource Areas; adoption of CMP boundary; discuss state consistency review process and request for guidance; status report on CMP policy development process and agencies' written policy evaluations; hear public comments; and adjourn.

Contact: Janet Fatheree, 1700 North Congress Avenue, Room 831, Austin, Texas 78701, (512) 463-5385.

Filed: August 25, 1993, 3:35 p.m.

TRD-9327860

Texas Department of Commerce

Thursday, September 2, 1993, 10:00 a.m. The Capital Certified Development Corporation Board of Directors of the Texas Department of Commerce will meet at the Anson Jones Building, Second Floor Board Room, 410 East Fifth Street, Austin. According to the agenda summary, the board will call the meeting to order in open meeting; discuss approval of minutes of July 22, 1993 meetings; possibly act on: board member resignation and general member resignation; board nominating committee report; election of new board member for duration of board members' term; election of new general members; election of alternate loan committee member; treasurer's report; loan activity report; report on Midland Manufacturer's Conference; CCDC marketing plan outline; press release discussion; board suggestions for specific 504 loan prospects; discuss board resource packets; general membership policy; any other old or new business; and adjourn. Notice: Persons with disabilities who plan to attend this meeting and may need auxiliary aids or services are requested to contact Eileen Kelley (512) 320-9649, at least two days before this meeting so that appropriate arrangements can be made. Please contact Eileen Kelley (512) 320-9649 if you need assistance in having English translated into Spanish.

Contact: Colleen Rowland, 410 East Fifth Street, Austin, Texas 78701, (512) 320-9649.

Filed: August 24, 1993, 3:22 p.m.

TRD-9327817

Texas Education Agency

Monday, August 30, 1993, 8:30 a.m. The Texas Environmental Education Advisory Committee of the Texas Education Agency held an emergency meeting at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete agenda, the committee made introductions; reported on Texas Education Agency reorganization; reported on environmental education initiatives, including interagency contracts with other agencies, and participation of affiliate sites; motion to add environmental health to the ten core themes of environmental education; science frame work status; review of draft of Governor's report; TEEAC reorganization; heard committee reports on communications on Governor's report and kick-off campaign for Take Stock in Texas; teacher standards

report on up-coming affiliate's workshop; instructional standards report on recent review of curriculum materials; and finance report on fundraising efforts. The emergency status was necessary to resolve the downsizing and reconfiguration of TEEAC before the end of the fiscal year.

Contact: Irene Pickhardt, 1701 Congress Avenue, Austin, Texas 78701, (512) 463-9566.

Filed: August 24, 1993, 2:09 p.m.

TRD-9327809

Tuesday, August 31, 1993, 8:30 a.m. The Texas Environmental Education Advisory Committee of the Texas Education Agency held an emergency meeting at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete agenda, the committee welcomed visitors and guests; held subcommittee meetings to discuss the following issues: Finance-Eisenhower grant possibilities; Take Stock in Texas Campaign; EPA grants; other funding sources; communications-the kick-off campaign for Take Stock in Texas; design of the certificates for Take Stock in Texas; reviewed draft of the Governor's report; teacher standards-reviewed and critiqued the materials for affiliate meeting on September 3, 1993; resolved issued related to the issuance of TEEAC stickers, such as whether trainers may received them; discussed whether to pursue an endorsement in environmental education; instructional resources-will begin to review materials that have been received within the last two months; and discuss new and unfinished business, including the new structure and size for TEEAC. The emergency status was necessary to resolve their reconfiguration of TEEAC before the end of the fiscal year.

Contact: Irene Pickhardt, 1701 Congress Avenue, Austin, Texas 78701, (512) 463-9566.

Filed: August 24, 1993, 2:09 p.m.

TRD-9327808

Texas Ethics Commission

Thursday, September 2, 1993, 9:30 a.m. The Texas Ethics Commission will meet at 1101 Camino La Costa, Room 235, Austin. According to the agenda summary, the commission will take roll call; hear comments by the commissioners and the executive director; communications from the public; discuss approval of minutes of the June 24, 1993 meeting; discuss and possibly act to issue a request for proposals relating to status of project to establish an electronic database; concerning adoption of an agency budget Fiscal Year 1994; discuss registration and reporting requirements and forms

to be used by persons who represent inmates for compensation before the Texas Board of Pardons and Parole, as those requirements are established by the Texas Code of Criminal Procedure, Article 42.18 (enacted by Senate Bill 532); discuss and possibly act regarding waiver or reduction of late filing penalties for certain filers; to adopt Rule 1 TAC §7.1, Adoption and Revision of Forms; to repeal 1 TAC Part II, Chapter 20, Campaign Financing, Subchapter B, Reporting Forms, 1 TAC §§20.2-20.23, and Chapter 30, Personal Financial Statement, Subchapter B, Reporting Forms, 1 TAC §30.51; to repeal all or part of 1 TAC, Part II, Chapters 6-40 (all adopted rules) and replace in whole or in part with substantive recodification of Ethics Commission rules; discuss and possibly act on SP-1 and AORs 163, 182, 183, 185, 190, 162, 180 and 184; and adjourn.

Contact: John Steiner, 1101 Camino La Costa, Austin, Texas 78752, (512) 463-5800.

Filed: August 25, 1993, 3:35 p.m.

TRD-9327862

Texas Department of Health

Saturday, September 11, 1993, 9:30 a.m. The Texas Radiation Advisory Board Medical and Fee Committee of the Texas Department of Health will meet at the Exchange Building, Room N-100, 8407 Wall Street, Austin. According to the complete agenda, the committee will discuss and possibly act on: revisions to *Texas Regulations for Control of Radiation* (TRCR) Parts 11, 12, 32, and Part 42; petition to consider changing TRCR, Part 41.26(c)(1); Nuclear Regulatory Commission proposed Rule 10, Code of Federal Regulations, Parts 30, 32, and 35-items of compatibility with TRCR; hear report from staff on Cyclotron produced radiopharmaceuticals; update on medical physics board guidelines; and items not requiring board action at this time.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6688. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: August 24, 1993, 4:13 p.m.

TRD-9327825

Saturday, September 11, 1993, 10:30 a.m. The Texas Radiation Advisory Board Executive Committee of the Texas Department of Health will meet at the Exchange Building, Room N-100, 8407 Wall Street, Austin. According to the complete agenda, the committee will discuss and possibly act on: Nuclear Regulatory Commission review of radiation programs; *Texas Regulations for Control of Radiation* (TRCR), Part 11, Memorandum of Understanding between

Bureau of Radiation Control (BRC) and Texas Natural Resources Conservation Commission (TNRCC); status of radiation control programs of BRC and TNRCC; rule making procedures and plans (TNRCC rules for radiation control; BRC consideration of deletion of Parts 43 and 45 of the TRCR); proposed Part 21 to TRCR; public information news media seminar; rules of procedure; review of status of board recommendations October 1990-September 1993; appointment of nominating committee and public information committee members; and other items not requiring board action at this time.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6688. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: August 24, 1993, 4:13 p.m.

TRD-9327827

Saturday, September 11, 1993, 1:00 p.m. The Texas Radiation Advisory Board of the Texas Department of Health will meet at the Exchange Building, Room N-100, 8407 Wall Street, Austin. According to the complete agenda, the board will discuss approval of the minutes of previous meeting; discuss and possibly act on: Texas Low-Level Radioactive Waste Disposal Authority information: radiation control activities including the emergency response exercise and activities at the department's Bureau of Radiation Control (BRC) and the Texas Natural Resources Conservation Commission (TNRCC); committee reports and rules including fee committee (revisions to *Texas Regulations for Control Radiation* (TRCR); committee reports and rules including fee committee (revisions to *Texas Regulations for Control Radiation* (TRCR), Part 12); medical committee (revisions to TRCR, Parts 11, 12, 32 and 42 and petition to change TRCR, Part 41.26(c)(1)); executive committee (revisions to TRCR, Part 11 memorandum of understanding between BRC and TNRCC, TRCR, Part 21: TRCR, Parts 43 and 45; rules of procedure; review and status of TRAB recommendations; nominating committee and public information committee appointments); rules and regulatory guides; and other items not requiring board action.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6688. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: August 24, 1993, 4:13 p.m.

TRD-9327826

Health and Human Services Commission

Friday, September 3, 1993, 9:30 a.m. The Hospital Payment Advisory Committee of the Health and Human Services Commission will meet at the Texas Department of Health Tower Building, Sixth Floor, Room T-607, 1100 West 49th Street, Austin. According to the complete agenda, the committee will hear opening comments; State Medicaid Director's comment; discuss approval of minutes; disproportionate share program update; revised reimbursement methodologies for outpatient hospital and home health services; open discussion; plan next meeting; and adjourn.

Contact: Geri Willems, P.O. Box 13247, Austin, Texas 78711, (512) 502-3256.

Filed: August 25, 1993, 11:33 a.m.

TRD-9327846

Texas High-Speed Rail Authority

Thursday, September 2, 1993, 8:00 a.m. The Board of Directors of the Texas High-Speed Rail Authority will meet in the Public Hearing Room, D. C. Greer Building, 125 East 11th Street, Austin. According to the agenda summary, the board will call the meeting to order; consider minutes from the July 9, 1993 board meeting; citizen communication; authority operations: consideration of Fiscal Year 1994 operating budget; franchise regulation: special report from Charles River Associates on the results of the Ridership Study required by the provisions of §3.3(D) of the franchise agreement; report from the Texas TGV Corporation, in accordance with the provisions of the communications protocol, including a report on the proposed "preferred route"; report on and of §2(e) and 2(g), Texas Civil Statutes, Article 6252-17; deliberation and action on, if necessary, matters discussed in executive session; environmental impact study; report from Woodward-Clyde Consultants on environmental impact statement, action as required on: the status of proposed Operations Manual; status of prospective interagency contracts with the Office of the Attorney General, the Texas Railroad Commission, Comptroller of Public Accounts, and the Texas Department of Transportation, and additional citizen communication.

Contact: Allan Rutter, 823 Congress Avenue, #1502, Austin, Texas 78701, (512) 478-5484.

Filed: August 25, 1993, 4:27 p.m.

TRD-9327865

Texas Department of Human Services

Thursday, September 2, 1993, 10:00 a.m. The Aged and Disabled Advisory Committee of the Texas Department of Human Services will meet at 701 West 51st Street, First Floor, East Tower, Public Hearing Room, Austin. According to the complete agenda, the committee will hear opening comments; deputy commissioner's comments; discuss approval of the minutes; election of officers; reports on proposed rule changes for advisory committees, federal legislative update and subcommittee on services to person with disabilities; ICF-MR/NF programs regarding incorporation of Hepatitis B inoculation costs into the per diem rate; NF reimbursement methodology on elimination of the pediatric nursing facility experimental class; nursing facility waiver rule changes; department rules regarding criminal history checks for applicants for employment with providers contracting to provide LTC to the aged and disabled; ICF/MR rules regarding surrogate decision making; PASAAR; changes to discharge rules in LTC/NFR for licensure and medicaid certification; changes to the licensure application rules; amendment to licensure regulations regarding nurse aide training; LTC/NFR for licensure and Medication certification regarding goal-directed therapy and oxygen; ICF-MR/NF reimbursement methodology deletion of the customary change exception rule; open discussion by members; set next meeting; and adjourn.

Contact: Anthony Venza, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4943.

Filed: August 24, 1993, 4:04 p.m.

TRD-9327821

Texas Department of Insurance

Thursday, September 2, 1993, 9:00 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at 333 Guadalupe Street, Room 100, Austin. According to the agenda summary, the board will consider personnel; litigation; solvency; hear commissioner's orders; staff reports; and Legislative implementation; consider filings by: Hartford Underwriters Insurance Company, Federal Insurance Company, Cimarron Insurance Company, Inc., Amerisure Insurance Company, et al, Laurier Indemnity Company, Liberty Mutual Insurance Company, Church Mutual Insurance Company and the St. Paul Insurance Company.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: August 24, 1993, 1:57 p.m.

TRD-9327803

Texas State Board of Medical Examiners

Saturday, August 28, 1993, 9:00 a.m. The Search Committee of the Texas State Board of Medical Examiners met at the Four Seasons Hotel, 98 San Jacinto Boulevard, Austin. According to the complete emergency revised agenda, the committee called the meeting to order; took roll call; discussed search for a new executive director, reviewed applications; and adjourned. The emergency status was necessary as we were unable to hold the meeting at the board office.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728.

Filed: August 26, 1993, 9:19 a.m.

TRD-9327875

Texas State Board of Podiatry Examiners

Thursday-Friday, August 26-27, 1993, 10:00 and 8:00 a.m. respectively. The Texas State Board of Podiatry Examiners met at the Embassy Suites Downtown, 300 South Congress Avenue, Austin. According to the emergency revised agenda summary, the board inspected credentials; appearance by Robert D. Leisten, DPM; appearance by Paul Resignato, DPM; board discussion in executive session 2(g) of Article 6252-17 with candidates for executive director position and possible board action concerning evaluation, employment, duties or expectations of the board; cancellation of delinquent licenses; discussed CME requirement change request; malpractice claims discussion; discussed FPMB dues; Beaumont Foot clinic-shoe store; PMLexis grading criteria; review newsletter; heard report on complaint status; appearance by Dr. Bellacosa and Mark Hanna; hearing-Dr. Gregson Edwards at 512-92-245; set time, place and date for next scheduled board meeting. The emergency status was necessary as the original agenda listed "Rehearing-Dr. Gregson Edwards" and it should list "Hearing-Dr. Gregson Edwards."

Contact: Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

Filed: August 25, 1993, 3:35 p.m.

TRD-9327861

Public Utility Commission of Texas

Wednesday, September 1, 1993, 9:00 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the commission will consider the following: Dockets P-11232, P-12136, P-12222, P-12223, 11969, 11044, 11045, 9981, 11531, 11738, 11868, 11745, and 11037.

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

Filed: August 24, 1993, 1:57 p.m.

TRD-9327805

Wednesday, September 1, 1993, 9:05 a.m. The Administrative Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the division will discuss: reports, discussion and action on recognize summer interns; telecommunications infrastructure issues procedural options; hear report on Docket Number 8585 compliance; private pay telephone survey; fiscal year 1994 regulatory agenda; appointment of PUC representative to the Texas Committee on Energy Policy; El Paso Electric Company bankruptcy case in U.S. Bankruptcy Court; Gulf States Utilities merger with Entergy Services case at the Federal Energy Regulatory Commission; budget and fiscal matters; adjournment for executive session to consider litigation and personnel matters; reconvene for discussion and decisions on matters considered in executive session; set time and place for next meeting; and adjourn.

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

Filed: August 24, 1993, 1:58 p.m.

TRD-9327806

Tuesday, September 7, 1993, 10:00 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 12207-application of Brazos Electric Power Cooperative, Inc. for authority to surcharge an under-recovery of fuel cost.

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

Filed: August 24, 1993, 4:13 p.m.

TRD-9327824

Wednesday, September 8, 1993, 10:00 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division

will hold a prehearing conference in Docket Number 12233-application of Harmon Electric Association, Inc. for reciprocity rates.

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

Filed: August 25, 1993, 11:44 a.m.

TRD-9327847

Wednesday, September 15, 1993, 9:00 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 12225-application of Central Texas Telephone Cooperative, Inc., for authority to depreciation change rates.

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

Filed: August 25, 1993, 11:32 a.m.

TRD-9327845

Monday, October 18, 1993, 10:00 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 12206-petition of Texas Utilities Company for authority to surcharge and undercollection of fuel cost revenues.

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

Filed: August 24, 1993, 4:42 p.m.

TRD-9327829

Monday, January 24, 1994, 10:00 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 12176-petition of Southwestern Bell Telephone Company for waiver of certain requirements of Substantive Rule 23.12.

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

Filed: August 25, 1993, 11:27 a.m.

TRD-9327844

Interagency Council on Sex Offender Treatment

Wednesday, September 1, 1993, 11:00 a.m. The Credentials Work Group of the Interagency Council on Sex Offender Treatment will meet at the UTMB Medical School, Administration Building (#5.106), 301 University Boulevard, Galveston. According to the agenda summary, the work

group will be chaired by Chairman Collier Cole; review RSOTP existing criteria; review previously proposed criteria for RSOTP; and discuss the implication of Senate Bill 1130 with respect to criteria for the "Registry".

Contact: Eliza May, 205 West 14th Street, #103, Austin, Texas 78701, (512) 454-1314.

Filed: August 24, 1993, 11:51 a.m.

TRD-9327800

Texas Guaranteed Student Loan Corporation

Wednesday, September 1, 1993, 9:00 a.m. The Finance Committee of the Texas Guaranteed Student Loan Corporation will meet at 12015 Park 35 Circle, Suite 400, Austin. According to the complete agenda, the committee will discuss approval of the minutes of July 22, 1993; budget presentation; salary review update; pension plan options; internal audit report; and adjourn.

Contact: Peggy Irby, 12015 Park 35 Circle, Suite 300, Austin, Texas 78754, (512) 834-1900.

Filed: August 24, 1993, 1:57 p.m.

TRD-9327804

The University of Texas Health Center at Tyler

Thursday, September 2, 1993, 11:30 a.m. The Animal Research Committee of the University of Texas Health Center at Tyler will meet at the Biomedical Research Building, Room 116, UTHCT, Highway 155 at 271, Tyler. According to the complete agenda, the committee will discuss approval of minutes; acting chair and veterinarian's report-Dr. Schmid; discuss old business-addenda #87A-maternal medication of Haloperidol induced catalepsy; addenda #97B-teaching surgical stapling and endoscopic techniques; protocol #110-Clenbuterol protocol; new business-addenda #40A-activation of the alternative pathway of complement; addenda #92B-permeability factors in lung fluids from patients with ARDS; protocol #109-saleterol and airspace protein concentrations; protocol #111-visualization and intubation of the guinea pig larynx; protocol #112-antimycobacterial barrier vaccines; and adjourn.

Contact: Louisa Schmid, P.O. Box 2003, Tyler, Texas 75710, (903) 877-7657.

Filed: August 24, 1993, 1:45 p.m.

TRD-9327802

Texas Workers' Compensation Commission

Thursday, September 2, 1993, 9:00 a.m. The Texas Certified Self-Insurer Guaranty Association of the Texas Workers' Compensation Commission will meet at the Southfield Building, Rooms 910-911, 4000 South IH-35, Austin. According to the agenda summary, the association will call the meeting to order; discuss approval of minutes; discuss and possibly act on the following applicants: Browning-Ferris Industries, Inc. (Delaware); Lockheed Corporation; Kiewit Construction Group Inc. and The Limited, Inc.; discuss future public meetings; and adjourn.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-3973.

Filed: August 24, 1993, 12:10 p.m.

TRD-9327801

Thursday, September 2, 1993, 9:00 a.m. The Texas Certified Self-Insurer Guaranty Association of the Texas Workers' Compensation Commission will meet at the Southfield Building, Rooms 910-911, 4000 South IH-35, Austin. According to the revised agenda summary, the association will call the meeting to order; discuss approval of minutes; discuss and possibly act on rules for proposal; discuss and possibly act on the following applicants: Browning-Ferris Industries, Inc. (Delaware); Lockheed Corporation; Kiewit Construction Group Inc. and The Limited, Inc.; discuss future public meetings; and adjourn.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-3973.

Filed: August 25, 1993, 12:11 p.m.

TRD-9327848

Thursday, September 2, 1993, 10:00 a.m. The Texas Workers' Compensation Commission will meet at the Southfield Building, Rooms 910-911, 4000 South IH-35, Austin. According to the agenda summary, the commission will call the meeting to order; discuss approval of minutes; consider and possibly act on TWCC Commission procedure; act on rule for adoption: Chapter 110-required notice of coverage-general provisions; discuss and possibly act on a rule making petition; rules for possible proposal and/or amendment: Chapters 124, 126, 129, 130 and 141; rules for amendment: Chapter 152; applications for certificate of authority to self-insure; meet in executive session; act on matters in executive session; discussion and possible staff direction on any issues regarding policy or rules; hear general reports; discuss future public meetings; and adjourn.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-3973.

Filed: August 24, 1993, 3:29 p.m.

TRD-9327818

Friday, September 3, 1993, 9:30 a.m. The Medical Advisory Committee of the Texas Workers' Compensation Commission will meet at the Southfield Building, Rooms 910-911, 4000 South IH-35, Austin. According to the agenda summary, the committee will call the meeting to order; discuss approval of July 23, 1993 minutes; discuss and possibly approve treatment guidelines; establish draft agenda; establish next meeting date; and adjourn.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-3973.

Filed: August 25, 1993, 9:41 a.m.

TRD-9327835

Regional Meetings

Meetings Filed August 24, 1993

The Education Service Center, Region XIII Board of Directors met at 5701 Springdale Road, ESC Region XIII Conference Rooms 202/203, Austin, August 30, 1993, at 12:45 p.m. Information may be obtained from Dr. Roy C. Benavides, 5701 Springdale Road, Austin, Texas 78723, (512) 929-1300. TRD-9327822.

The Gillespie Central Appraisal District Board of Directors will meet at the Gillespie County Courthouse, County Courtroom, Fredericksburg, September 2, 1993, at 9:00 a.m. Information may be obtained from Mary Lou Smith, P.O. Box 429, Fredericksburg, Texas 78624, (210) 997-9807. TRD-9327811.

The Hood County Education District Board of Trustees met at the GISD Administration Annex, 600 West Pearl Street, Granbury, August 30, 1993, at 7:30 p.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471. TRD-9327794.

The Kendall County Appraisal District Appraisal Review Board will meet at 121 South Main Street, Conference Room, Boerne, August 31, 1993, at 9:00 a.m. Information may be obtained from Joe P. Davis, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012. TRD-9327807.

The Nueces River Authority Board of Directors held an emergency meeting at the Conrad Blucher Institute for Surveying and Science, 6300 Ocean Drive, Corpus Christi State University, Corpus Christi, August 27,

1993, at 10:00 a.m. The emergency status was necessary as meeting must be held as scheduled, but does not meet the 72 hour filing requirement due to mix-up with postal service. Information may be obtained from Con Mims, P.O. Box 349, Uvalde, Texas 78802-0349, (210) 278-6810. TRD-9327810.

The Texas Political Subdivisions Joint Self-Insurance Board of Trustees held an emergency meeting (teleconference) at 14135 Midway Road, Suite 300, Dallas, August 25, 1993, at 3:00 p.m. The emergency status was necessary to discuss TPS legal representation. Information may be obtained from James R. Gresham, P.O. Box 803356, Dallas, Texas 75380, (214) 392-9430. TRD-9327816.

The Upper Leon River Municipal Water District Board of Directors met at the General Office of the Filter Plant, Comanche County, Lake Proctor, August 26, 1993, at 6:30 p.m. (Emergency revised agenda). The emergency status was necessary as failure to get notice sent in before 72 hours prior to meeting. Information may be obtained from Gary D. Lacy, P.O. Box 67, Comanche, Texas 76442, (817) 879-2258. TRD-9327798.

Meetings Filed August 25, 1993

The Alamo Area Council of Governments Board of Directors will meet at 118 Broadway, Suite 420, San Antonio, August 31, 1993, at 1:00 p.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201. TRD-9327870.

The Deep East Texas Regional Mental Health Mental Retardation Services Board of Trustees will meet at the Ward R. Burke Community Room, Administration Facility, 4101 South Medford Drive, Lufkin, August 31, 1993, at 3:00 p.m. Information may be obtained from Sandra J. Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9327852.

The Edwards Aquifer Authority (formerly Edwards Underground Water District) Board will meet at 1615 North St. Marys Street, San Antonio, September 1, 1993, at 10:00 a.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Marys Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9327849.

The Kendall County Education District Board of Trustees met at 121 South Main Street, Boerne, August 30, 1993, at 5:00

p.m. Information may be obtained from J. P. Davis, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9327859.

The Leon County Central Appraisal District Board of Directors met at the Leon County Central Appraisal District Office, Gresham Building, Centerville, August 30, 1993, at 7:00 p.m. Information may be obtained from Donald Gillum, P.O. Box 53, Centerville, Texas 75833, (903) 536-2252. TRD-9327843.

The South Central Texas Water Advisory Committee will meet at 1615 North St. Marys Street, San Antonio, September 2-3, 1993, at 1:00 p.m. and 9:00 a.m. respectively. Information may be obtained from Sally Tamez-Salas, 1615 North St. Marys Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9327850.

The Texas Political Subdivisions Joint Self-Insurance Funds Board of Trustees held an emergency meeting at Strasburger and Price, L.L.P., 901 Main Street, 43rd Floor, Dallas, August 26, 1993, at 9:00 a.m. The emergency status was necessary to discuss personnel employment matters and to meet with attorneys to consult on this matter. Information may be obtained from James R. Gresham, P.O. Box 803356, Dallas, Texas 75380, 1 (800) 588-0013. TRD-9327869.

Meetings Filed August 26, 1993

The County Education District Number Six Board of Trustees met at the Brownfield ISD Administration Building, 601 Tahoka Road, Brownfield, August 30, 1993, at 7:00 p.m. Information may be obtained from Larry Throm, Lubbock ISD, 1628 19th Street, Lubbock, Texas 79401, (806) 766-1092. TRD-9327874.

The Hays County Appraisal District Appraisal Review Board will meet at 632 A East Hopkins Street, Municipal Building, San Marcos, August 31, 1993, at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 632 A East Hopkins Street, San Marcos, Texas 78666, (512) 754-7400. TRD-9327878.

The Hays County Appraisal District Appraisal Review Board will meet at 632 A East Hopkins Street, Municipal Building, San Marcos, September 2, 1993, at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 632 A East Hopkins Street, San Marcos, Texas 78666, (512) 754-7400. TRD-9327879.

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 School for the Blind and Visually Impaired Consultant Proposal Request

Pursuant to Texas Civil Statutes, Article 6252-11c, the Texas School for the Blind and Visually Impaired announces the availability of up to \$50,000 to design and implement a 12-month research project examining the academic, social, daily living, and vocational pursuits of visually impaired adolescents and young adults (16-22 year olds) and comparing same with the academic, social, daily living, and vocational pursuits of sighted youth. TSBVI is requesting proposals for the provision of services including, but not limited to: develop a research design which examines and compares the lives of youth with visual impairments and those without visual impairments; contact schools and agencies in at least two without visual impairments; contact schools and agencies in at least two states who might consider participating in such a research project; establish a subject pool of no less than 60 youth, consisting of equal numbers of blind, visually impaired, and sighted adolescents, matched by sex, race, socio-economic status; develop research questions and instrumentation; prepare data collection formats, collect and analyze data; prepare a comprehensive report discussing the findings; and present the results of the research project through conferences and inservice training sessions. Proposed projects should include evidence of personnel with expertise in the field of visual disabilities, abilities in both quantitative and qualitative research design and implementation, as well as recognized skills in the area of transition services to youth with visual disabilities. Proposals that demonstrate the respondents' ability and willingness to work with organizations, schools, and agencies representing or providing services to individuals who are blind or visually impaired will be viewed favorably. These services are for the 12-month period which begins favorably. These services are for the 12-month period which begins October 1, 1993 and ends September 30, 1994.

Based on prior experience and expertise, it is our intent to award this contract to Dr. Sharon Sacks, San Jose State University, San Jose, California, and Dr. Karen Wolffe, Career Counseling and Consultation, Austin, Texas, unless another organization can demonstrate superior knowledge and expertise in the field of research related to blindness and visual impairment.

Contact Person. Requests for application packets and for further information regarding the provision of the above stated services may be directed to Dr. Phil Hatlen, Superintendent, Texas School for the Blind and Visually Impaired, 1100 West 45th Street, Austin, Texas 78756, (512) 454-8631.

Issued in Austin, Texas, on August 23, 1993.

TRD-9327764

Dr. Phil Hatlen
Superintendent
Texas School for the Blind and Visually
Impaired

Filed: August 23, 1993

East Texas Council of Governments Request for Proposals

This is to provide notice as required by Texas Civil Statutes, Article 2368a, that the East Texas Private Industry Council is requesting proposals from qualified and interested parties to serve as an independent monitor and to assist with the general oversight of programs under the jurisdiction of the Council and provide technical assistance in resolving problems identified during monitoring. Interested parties may contact Wendell Holcombe, Director-Occupational Training Programs, East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662 to receive a copy of the Request for Proposals (RFP).

Proposals must be submitted to the Attention of Mr. Holcombe at the address shown above by Wednesday, September 8, 1993. A special task force of the Council will review and rank the proposals. The results of that review will be taken to the full Council for adoption at its next regular meeting.

Issued in Kilgore, Texas, on August 23, 1993.

TRD-9327795

Glynn Knight
Executive Director
East Texas Council of Governments

Filed: August 24, 1993

Texas Education Agency Notice of Contract Award

Authority. This notice of contract award is filed under Texas Civil Statutes, Article 6252-11b.

Description. The Texas Education Agency (TEA) has entered into contract with Wertheim Schroder and Company, Inc., for investment counsel services TEA and the State Board of Education (SBOE). The investment counsel advises SBOE, through the Committee on the Permanent School Fund, regarding investments of the Permanent School Fund. The investment counsel serves in an advisory capacity with respect to investment policy and specific securities transactions. The investment counsel outlines the monthly investment program of the Permanent School Fund, which includes advice and recommendations regarding general economic conditions, the amount of funds to be invested, the allocation of funds between equities and fixed income securities, the diversification

among industries, specific stocks or bond issues, and general advice on the timing of purchases and sales.

Period of Contract. The beginning date of the contract is September 1, 1993, and the ending date is August 31, 1995.

Contract Amount. The total fee is \$400,000 or \$200,000 annually.

Issued in Austin, Texas, on August 25, 1993.

TRD-9327837 Lionel R. Meno
Commissioner of Education
Texas Education Agency

Filed: August 25, 1993

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Texas Department of Health Adult Health Services Request for Proposals

The Chronic Disease Prevention Division, Texas Department of Health (TDH), invites governmental, public, and non-profit community-based primary care agencies such as federally-funded community health centers, local health departments, church-operated clinics, and family practice residency programs, located within the state of Texas to submit "Put Prevention Into Practice" (PIIP) proposals. The proposals should describe the applicants' plans to develop and implement projects that strengthen the quality of, and expand access to, chronic disease prevention services to adults ages 19 and older. The plans must include a systems approach designed to change the practice of organizations providing care. The preventive component includes assessment of clients' health risks, screening for early detection of chronic disease, education to reduce risks or minimize disease-related complications, medical evaluation for diagnosis and treatment of abnormal findings, and appropriate follow-up.

PIIP activities are intended to maintain a programmatic focus which targets disproportionately affected populations. In awarding grants for PIIP, TDH will endeavor to complement existing programs in an organization to avoid unnecessary duplication of services.

The TDH will fund six to eight projects with a maximum budget of \$50,000 per project.

The budget period for proposed projects is January 1, 1994, through September 30, 1994 (nine months). It is expected that successful applicants will receive continuation funding annually on a 12-month budget year thereafter, depending on the availability of funds and documented progress of the project(s). Preference will be given to applicant(s) with the lowest budget request if all other variables are equal. The TDH reserves the right to reject any or all proposals.

Proposals must be received by the Texas Department of Health, Chronic Disease Prevention Division, ATTN: Adult Health Program, 1100 West 49th Street, Austin, Texas 78756-3199, no later than 5:00 p.m. (CDT), October 15, 1993. Applications received after this time will not be considered and will be returned to the applicant.

Entities interested in submitting a proposal may contact Marcia Sims, Chronic Disease Prevention Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 458-7534 or (512) 458-7650 (FAX) for an application packet.

Issued in Austin, Texas, on August 24, 1993.

TRD-9327823 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: August 25, 1993

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Notice of Intent to Revoke Certificates of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Thomas B. Williams, D.V.M., Dallas, R01156; Parkway Hospital, Houston, R01744; Glenn E. Baker, D.D.S., P.C., Hurst, R08199; E. Dean Harmison, D.D.S., San Antonio, R08528; McKee Chiropractic Clinic, Tomball, R12750; William N. Harkness, Jr., M.D., Garland, R14823; General Medical Technologies, Pasadena, R17250; Benedict Chiropractic Office, Granbury, R17971; Northwest Dallas Family Medical Clinic, Dallas, R18744.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on August 20, 1993.

TRD-9327782 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health.

Filed: August 24, 1993

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Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following licensees: Research & Diag-

nostic Laboratories, Inc., Houston, G01556; Houston Inspection, Inc., Huffman, L04255; Darco Supply, Inc., Houston, L04474.

The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing; to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on August 20, 1993.

TRD-9327783 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: August 24, 1993

Notice of Revocation of a Certificate of Registration

The Texas Department of Health, having duly filed a complaint pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code §289.112), has revoked the following certificate of registration: Total Equipment Management Service, Inc., Dallas, R15626, August 4, 1993.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on August 20, 1993.

TRD-9327785 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: August 24, 1993

Notice of Revocation of Radioactive Material License

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code §289.112), has revoked the following radioactive material licenses: Quantitative Analysis, Galveston, L03031, August 4,

1993; Clinlab, Incorporated, Dallas, L02383, August 4, 1993; Jerry L. Race, Lubbock, L02952, August 4, 1993; Leon County Memorial Hospital, Buffalo, L03860, August 4, 1993.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on August 20, 1993.

TRD-9327784 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: August 24, 1993

Lower Colorado River Authority Amendments to the Lower Colorado River Authority Highland Lakes Marina Ordinance

The Board of Directors of the Lower Colorado River Authority (LCRA) amended the Highland Lakes Marina Ordinance (Ordinance), effective June 24, 1993, in order to give the Board and LCRA staff more flexibility in considering site-specific issues in the approval of marina permits on the Highland Lakes of the Colorado River.

The amendments allow consideration of factors such as conflicts between existing water surface uses and proposed new uses on the Highland Lakes. More specifically, the following factors may be taken into account in issuing a marina permit:

- (1) historical use and characteristics of the proposed marina site;
- (2) level of boating traffic in the area;
- (3) impact on existing patterns of use of the water surface;
- (4) impact on existing land uses;
- (5) underwater topography;
- (6) historical weather conditions;
- (7) health and safety of the general public; and
- (8) beneficial uses to the general public.

Other amendments include the following:

Allowing a waiver of the requirement that LCRA be named as an additional insured party on insurance policies required for non-commercial boat docks that fall under the jurisdiction of the Ordinance. By this change, these non-commercial docks can be covered by homeowner's insurance policies.

Marina facilities existing on February 1, 1990, exceeding the 400-foot from shoreline limitation of the Ordinance and marinas with permit applications pending on February 1, 1990, may be allowed to exceed 400 feet from the shoreline if;

- (a) there is no reasonable alternative to comply with the 400-foot requirement;
- (b) the intent of the ordinance will not be violated; and
- (c) the exceedence does not create a safety or navigation hazard as a result of being over 400 feet from the shoreline.

70512	15	POTTER	VELMA DUNN	800
70513	18	POTTER	G.C. HROMETZ	6000
70514	18	POTTER	ROBERT PARKER	5000
70515	19	GRAY	M.D. SNIDER TRUCKING	5000
70516	15	GRAY	DURWARD DUNLAP	3000
70517	18	GRAY	JAMES I. SHAW	5000
70518	19	HUTCHINSON	RAY NIXON	4000
70519	34	JONES	WILLIE MCALMARE	0
70520	24	MCLENNAN	KENNETH MAYS	3500
70521	18	BELL	WANDA & JAMES HAMBY	3500
70522	30	PARKER	PATRICIA HAMMONS	1500
70523	33	GRAYSON	RICHARD SUCKLE	1000
70524	32	DALLAS	DOWDY FERRY AUTO WRECKING	1000
70525	31	DALLAS	ENVIROTECH INDUSTRY	1500
70526	25	DENTON	HICKORY ST. SELF STORAGE	1300
70527	32	JOHNSON	LOU ELLA FORSYTHE	1700
70528	40	RED RIVER	ANNA LOU WILLIAMS	3000
70529	33	HARRIS	PAULINO AGUILAR	2000
70530	34	HARRIS	AIRTEX	1700
70531	34	GALVESTON	CHAPOTON	1500
70532	36	HARRIS	ROBERT WEIS	1500
70533	36	VAL VERDE	VALADEZ	4000
70534	40	BEXAR	COKER METHODIST CHURCH	3000
70535	40	BEXAR	HYATT	3000
70536	40	BEXAR	FLORES	1000

70537	32	BEXAR	SNELL ROAD	3000
70538	19	COLEMAN	PATRICIA MILLAR	4000
70539	16	ECTOR	C & R AUTO SALVAGE	1000
70540	26	ECTOR	GRIMES METALS	40000
70541	25	ARANSAS	NEIL STREET	500
70542	19	NUECES	CTS CLUBB TESTING SERVICE	550
70543	34	SAN	GATEWAY CHURCH OF CHRIST	3000
70544	31	WILLIAMSON	MOLLY SEGGERN	700
70545	38	BASTROP	CURTIS SPEERS	650
70546	29	TRAVIS	WEIR LANDFILL	1400
70547	22	TRAVIS	CRIDER LOT	3000
70548	30	HARRIS	WASTE RECOVERY	500000
70549	16	POTTER	SOUTHWEST SPEEDWAY	2000
70550	32	DENTON	GENE HUGHES BOAT STALL	511
70551	33	MIDLAND	RAY'S TOW SALVAGE	1000
70552	18	RANDALL	PHIL HOLTON	800
70553	18	MOORE	K.R. KEYS	1000
70554	16	POTTER	DAVID C. CRAWFORD	1000
70555	16	POTTER	PAUL EVERETT MILLER TRUST	1000
70556	30	PARKER	TROY J. SESSUMS	600
70557	32	PARKER	NED PUGH	25000
70558	31	TARRANT	INDOOR GRAND PRIX	1200
70559	34	PARKER	JB WHITE	6500
70560	29	WISE	TIM WALTERS	2000
70561	30	COLLIN	GENE SPARKS	10000

70562	21	DELTA	LAKE CREEK	1000
70563	30	RED RIVER	DETROIT	2000
70564	17	VAN ZANDT	JACK THOMPSON	2000
70565	34	BEXAR	PAREDEZ SITE	50000
70566	34	BEXAR	HENDERSON	2500
70567	27	ECTOR	JONES & CUPP DIRT	1000
70568	31	MONTGOMERY	NAURU PHOSPHATE ROYALTIES	600
70569	27	HARRIS	EVERGREEN ROAD	500
70570	28	FORT BEND	BOSS GASTON	500
70571	29	SMITH	MOORE	650

SITES DELETED

PRIORITY ENFORCEMENT LIST

<u>site #</u>	<u>Rank</u>	<u>County</u>	<u>Name</u>	<u>#Tires</u>
70035	0	WISE	RICK SMITH	1000
70052	0	ELLIS	TELICO / T. D. F.	300000
70065	0	BURNET	DR. BOB HUGHS RANCH	1500
70179	31	DENTON	JERRY CONKLIN	2000
70187	28	WISE	ROBERT BETHKE	20000
70189	34	BEXAR	VERDUZCO	10000
70202	40	BEXAR	PIZZINI	10000
70238	23	COKE	RICHARD JORDAN	600
70274	24	TAYLOR	GOGGINS & SONS	2500
70277	40	BEXAR	JENNINGS	4000
70294	25	LA SALLE	CITY OF COTULLA	9000

70301	32	WISE	RUSSELL NORTH	13000
70330	28	DALLAS	SOUTH CREEK RANCH	5000
70342	26	ANDERSON	BISHOP	80000
70347	34	JOHNSON	BILL DAVIS	650
70365	33	WISE	KEN SHAW	33000
70372	31	JASPER	WOOD TIRE SERVICE	20000
70406	36	BEXAR	NAEF	2000
70478	40	BEXAR	VIDAL	5000
70479	36	BEXAR	CARDENAS	4000

Issued in Austin, Texas, on August 25, 1993.

TRD-9327833 Mary Ruth Holder
 Director, Legal Services
 Texas Water Commission

Filed: August 25, 1993

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