
TEXAS REGISTER

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*Kylee Robinson
3rd Grade*



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
<http://www.state.tx.us/>

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have 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 notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for December 3, 2008

Appointed as Judge of the 288th Judicial District Court, Bexar County, for a term until the next General Election and until his successor shall be duly elected and qualified, Solomon Casseb, III of San Antonio (replacing Lori Massey of San Antonio who resigned).

Appointed as the State Administrator for the Interstate Agreement on Detainers for a term to expire at the pleasure of the Governor, Joni M. White of Huntsville (replacing Becky Price of Huntsville).

Appointed to the Texas Commission on Fire Protection for a term to expire February 1, 2013, Arthur Pertile, III of Katy (Mr. Pertile is being reappointed).

Appointed to the Texas Commission on Fire Protection for a term to expire February 1, 2013, Michael L. Melton of Gilmer (replacing David Abernathy of Pittsburg whose term expired).

Appointed to the Texas Commission on Fire Protection for a term to expire February 1, 2013, Rhea Cooper of Lubbock (replacing Juan Adame of Austin whose term expired).

Appointed to the OneStar Foundation for a term to expire March 15, 2010, Joanie Amacker Haley of Houston.

Appointed to the OneStar Foundation for a term to expire March 15, 2011, Bruce H. Esterline of Dallas.

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Glenn Brooks of Austin.

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2009, Representative Jim McReynolds of Lufkin (replacing Lois Kolkhorst of Brenham whose term expired).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2009, Senator Kel Seliger of Amarillo (replacing Kenneth Armbrister of Victoria whose term expired).

Rick Perry, Governor

TRD-200806384



THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

Request for Opinions

RQ-0764-GA

Requestor:

The Honorable Don Allee
Kendall County Attorney
Kendall County Courthouse
201 East San Antonio Street, Suite 306
Boerne, Texas 78006-2050

Re: Authority of a justice of the peace in a county without a medical examiner to amend a death certificate (RQ-0764-GA)

Briefs requested by January 2, 2009

RQ-0765-GA

Requestor:

The Honorable Tony Goolsby
Chair, Committee on House Administration
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Re: Authority of a local government to enact breed-specific legislation with regard to dogs (RQ-0765-GA)

Briefs requested by January 6, 2009

RQ-0766-GA

Requestor:

The Honorable Joseph D. Brown
Grayson County Criminal District Attorney
Grayson County Justice Center, Suite 116A
Sherman, Texas 75090

Re: Whether members of a county juvenile board may participate in the county's group health insurance program (RQ-0766-GA)

Briefs requested by January 6, 2009

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200806414
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 9, 2008

◆ ◆ ◆

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER E. DATE PALM LETHAL DECLINE QUARANTINE

4 TAC §§19.51 - 19.53

The Texas Department of Agriculture (the department) adopts, on an emergency basis, amendments to §§19.51 - 19.53, concerning Date Palm Lethal Decline regulation. The amendments are proposed in order to add Nueces County of Texas and the State of Florida to the quarantined area listed in the Date Palm Lethal Decline Quarantine and to add requirements for quarantined palms coming into Texas. Occurrence of the date palm lethal decline disease in Texas is rare, and when a disease-infected palm tree is found, it is destroyed and the quarantine restrictions enforced. Nueces County is added to the quarantine because the disease was recently detected in that county. The State of Florida is added to the quarantine because scientists from the University of Florida, Institute of Food and Agricultural Sciences recently confirmed that phytoplasma, which causes the date palm lethal decline in Texas also occurs in five Florida counties. However, instead of using the prevalent name of the disease, the date palm lethal decline, the scientists named the disease, Texas Phoenix Palm Decline. Furthermore, the State of Florida has not enacted an intra-state quarantine to restrict movement of the infected host plants and potential vectors from spreading to disease-free counties. Consequently, instead of quarantining just the infected counties, the department has opted to quarantine the entire State of Florida. The entry requirements for the quarantined palms from Florida into Texas were developed in consultation with the Florida Department of Agriculture and Consumer Services, Division of Plant Industry. Silver date palm *Phoenix sylvestris*, queen palm *Syagrus romanzoffiana*, and cabbage palm or sabal palm *Sabal palmetto*, are added to the list of quarantined articles since Florida scientists recently confirmed the occurrence of date palm lethal decline in these species.

The emergency rule adds silver date palm, queen palm, and cabbage palm or sabal palm to the list of quarantined articles. It also adds Nueces County of Texas and the State of Florida to the quarantined areas and prescribes entry requirements for movement of the quarantined articles from Florida into Texas.

The departments believes that it is necessary to take this immediate action to prevent the artificial spread of the date palm lethal decline into non-infected areas of Texas, and adoption of

this quarantine on an emergency basis is both necessary and appropriate. The palm nursery industry, landscapers, homeowners and others who use the quarantined palms are in peril because without this emergency quarantine chances of these palms becoming infected with the disease increase significantly. Treatment options to control the disease are very limited. Moreover, once the spear leaf has died due to the disease, scientists recommend removal of the tree as soon as possible.

Amended §19.51 adds Nueces County of Texas and the State of Florida to the quarantined areas. Amended §19.52 adds silver date palm, queen palm, and cabbage palm or sabal palm to the list of quarantined articles. Amended §19.53 prescribes entry requirements for quarantined palms from Florida into Texas. The amendment prohibits quarantined palms within two miles of a known infected tree and requires the quarantined palms located more than two miles from a known infected tree to be treated within 48 hours of the shipment instead of treating on the day of movement. To align with the Florida requirement, the amendment replaces the special permit provision with a phytosanitary certificate and also makes the treatment requirements consistent. The department will be proposing adoption of this rule amendment on a permanent basis in a separate submission.

The amended section is adopted on an emergency basis under the Texas Agriculture Code, §71.004, which provides the Texas Department of Agriculture with the authority to establish emergency quarantines; §71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§19.51. *Quarantined Areas.*

The quarantined areas are Cameron, Hidalgo, Nueces, and Willacy counties [~~Counties~~] of Texas and the State of Florida.

§19.52. *Quarantined Articles.*

(a) (No change.)

(b) All parts of the Canary Island date palm, *Phoenix canariensis*; silver date palm, *Phoenix sylvestris*; queen palm, *Syagrus romanzoffiana*; cabbage palm or sabal palm, *Sabal palmetto*; and ~~all parts of~~ the date palm, *Phoenix dactylifera* are quarantined.

(c) (No change.)

§19.53. *Restrictions.*

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

(c) Exception.

(1) Shipments of quarantined palms from quarantined areas of Texas may be allowed movement into the free areas of Texas

when accompanied by a phytosanitary certificate issued by ~~under special permit from~~ the department under the following conditions.

(A) Quarantined palms located within one mile of a known infected tree may:

(i) not move from the quarantined area for a period of six months following removal of an infected tree; or

(ii) be allowed to move after six months if no other infected trees are found within a mile radius and the conditions specified in subparagraphs (B) or (C) of this paragraph are met.

(B) Quarantined palms located more than one mile and less than two miles from known infected trees must:

(i) be inspected within 24 hours prior to shipment with no symptoms of lethal decline apparent; and

(ii) have been treated, as approved by the department, for a period of three months prior to shipment; and

(iii) must be treated within 48 hours prior to ~~on the day of~~ movement.

(C) Quarantined palms located more than two miles from known infected trees must:

(i) be inspected within 24 hours prior to shipment with no symptoms of lethal decline apparent; and

(ii) have been treated, as approved by the department, for a period of six weeks prior to shipment; and

(iii) ~~(ii)~~ must be treated within 48 hours prior to ~~on the day of~~ movement.

(2) Tools used in pruning and handling of host plants may be allowed movement from the quarantined area if disinfected with one part liquid household bleach (sodium hypochlorite) to four parts water or some other suitable disinfectant.

(3) Shipments of quarantined palms from Florida may be allowed movement into Texas when accompanied by a phytosanitary

certificate issued by the Florida Department of Agriculture and Consumer Services, Division of Plant Industry, under the following conditions.

(A) Quarantined palms located within two miles of known infected trees are prohibited.

(B) Quarantined palms located more than two miles from known infected trees:

(i) must be inspected within 24 hours prior to shipment with no symptoms of date palm lethal decline apparent;

(ii) must be under a prescribed pest management program for six weeks prior to shipment and receive a final treatment within 48 hours prior to movement; and

(iii) tools used in pruning and handling of host plants must be disinfected with one part liquid household bleach (sodium hypochlorite) to four parts water or some other suitable disinfectant.

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

Filed with the Office of the Secretary of State on December 3, 2008.

TRD-200806324

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective Date: December 3, 2008

Expiration Date: April 1, 2009

For further information, please call: (512) 463-4075



PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING

SUBCHAPTER D. RUNNING OF THE RACE

DIVISION 2. PRE-RACE PROCEDURE

16 TAC §313.426

The Texas Racing Commission proposes new 16 TAC §313.426, concerning Toe Grabs Prohibited. Section 313.426 relates to the horseshoes that racehorses may wear on their front hooves while participating in pari-mutuel racing.

The new rule prohibits Thoroughbred and Arabian horses from competing while wearing front horseshoes that have toe grabs with a height greater than two millimeters. It also prohibits Quarter Horses, Paint Horses, and Apaloosas from competing while wearing front horseshoes that have toe grabs with a height greater than four millimeters. In addition, the rule prohibits bends, jar calks, stickers, or any other traction device on the front hooves of any horse breed while racing.

Charla Ann King, Executive Director for the Texas Racing Commission, has determined that for the first five year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. King has also determined that for each year of the first five years the new section is in effect the anticipated public benefit will be to preserve the eligibility of Texas racetracks to conduct graded stakes races. The American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association has determined that each state must adopt the model rule on toe grabs in order to remain eligible to host graded stakes races. The proposed rule is based on the model rule of the Association of Racing Commissioners International.

The rule will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed section.

All comments or questions regarding the proposed new section may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Carolyn Weiss, Assistant to the Executive Director of the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The new section is proposed under the Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules regulating pari-mutuel wagering on greyhound and horse racing.

The section implements Texas Civil Statutes, Article 179e.

§313.426. Toe Grabs Prohibited.

(a) A Thoroughbred or Arabian horse is ineligible to start in a race when it has shoes (racing plates) that have toe grabs with a height greater than two millimeters (0.07874 inches), bends, jar calks, stickers, or any other traction device on the front hooves.

(b) A Quarter Horse, Paint Horse, or Appaloosa is ineligible to start in a race when it has shoes (racing plates) that have toe grabs with a height greater than four millimeters (0.15748 inches), bends, jar calks, stickers, or any other traction device on the front hooves.

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

Filed with the Office of the Secretary of State on December 8, 2008.

TRD-200806386

Mark Fenner

General Counsel

Texas Racing Commission

Earliest possible date of adoption: January 18, 2009

For further information, please call: (512) 833-6699



CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

SUBCHAPTER D. DRUG TESTING

DIVISION 3. PROVISIONS FOR HORSES

16 TAC §319.364

The Texas Racing Commission proposes new 16 TAC §319.364, Testing for Androgenic-Anabolic Steroids. Section 319.364 relates to the regulation of androgenic-anabolic steroids in horses competing in pari-mutuel racing.

The new section establishes the general principle that a racehorse may not carry androgenic-anabolic steroids or their metabolites in its body while competing. The rule creates limited exceptions for the naturally occurring substances boldenone and testosterone and for the residues of the major metabolites of stanozolol and nandrolone.

Charla Ann King, Executive Director for the Texas Racing Commission, has determined that for the first five year period the new section is in effect there will be no fiscal implications for local governments as a result of the new section. The fiscal implications for state government will be to reduce the amount of revenue available to the Commission through the remittance of outstanding tickets. Each racetrack pays for the charges associated with medication and drug testing out of the money it holds to pay outstanding tickets and vouchers. If the amount the racetrack holds exceeds the amount needed to pay the charges, the racetrack pays the excess to the Commission. The amount needed to pay for this new drug testing program will be approximately \$65,000 in the first year, or approximately \$325,000 over the first five years. Therefore, this rule will reduce the amount of money available to the Commission through remittances from outstanding tickets and vouchers by approximately \$325,000 over the first five years.

Ms. King has also determined that for each year of the first five years the new section is in effect the anticipated public benefit will be to preserve the eligibility of Texas racetracks to conduct graded stakes races. The American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association has determined that each state must adopt the model rule on androgenic-anabolic steroids in order to remain eligible to host graded stakes races. The proposed rule is based on the model rule of the Association of Racing Commissioners International.

The rule will have no adverse economic effect on small or micro-businesses because each affected racetrack holds sufficient funds from outstanding tickets and vouchers to pay the additional drug testing costs and will not have to pay for the costs out of the racetrack's own funds. Therefore, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed new section.

All comments or questions regarding the proposed new section may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Carolyn Weiss, Assistant to the Executive Director of the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The new section is proposed under the Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §3.16, which requires the Commission to adopt rules requiring testing for the use of prohibited substances at a racetrack.

The new section implements Texas Civil Statutes, Article 179e.

§319.364. Testing for Androgenic-Anabolic Steroids.

(a) No androgenic-anabolic steroids shall be permitted in test samples collected from racing horses except for residues of the major metabolite of stanozolol, nandrolone, and the naturally occurring substances boldenone and testosterone at concentrations less than the indicated thresholds.

(b) Concentrations of these androgenic-anabolic steroids shall not exceed the following urine threshold concentrations for total (i.e., free drug or metabolite and drug or metabolite liberated from its conjugates):

(1) 16β-hydroxystanozolol (metabolite of stanozolol (Win-strol))--1 ng/ml in urine for all horses regardless of sex;

(2) Boldenone (Equipose® is the undecylenate ester of boldenone) in male horses other than geldings--15 ng/ml in urine. No boldenone shall be permitted in geldings or female horses.

(3) Nandrolone (Durabolin® is the phenylpropionate ester and Deca-Durabolin® is the decanoate ester)

(A) In geldings--1 ng/ml in urine

(B) In fillies and mares--1 ng/ml in urine

(4) Testosterone

(A) In geldings--20 ng/ml in urine

(B) In fillies and mares--55 ng/ml in urine

(c) Any other anabolic steroids are prohibited in racing horses.

(d) Post-race urine samples must have the sex of the horse identified to the laboratory.

(e) Any horse to which an anabolic steroid has been administered in order to assist in the recovery from illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug or metabolite in urine. After the concentration has fallen below the designated threshold for the administered androgenic-anabolic steroids, the horse is eligible to be removed from the list.

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

Filed with the Office of the Secretary of State on December 8, 2008.

TRD-200806387

Mark Fenner

General Counsel

Texas Racing Commission

Earliest possible date of adoption: January 18, 2009

For further information, please call: (512) 833-6699



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S

RULES ON SCHOOL FINANCE

19 TAC §61.1019

The Texas Education Agency (TEA) proposes new §61.1019, concerning additional state aid for ad valorem tax credits under the Texas Economic Development Act. The proposed new rule would allow the commissioner of education to implement and administer the provisions of the Texas Education Code (TEC), §42.2515, which authorizes an eligible school district to receive state aid equal to the amount of all qualified economic development tax credits credited against the district's ad valorem taxes in a school year under the Texas Tax Code, Chapter 313, Subchapter D.

Pursuant to the Texas Tax Code, Chapter 313 (the Texas Economic Development Act), school districts may offer appraised value limitations on property and tax credits to certain capital-in-

tensive industries that meet dollar and job creation requirements in order to encourage large-scale capital investments in Texas.

The TEC, §42.2515, authorizes the commissioner to adopt rules to implement and administer the provision of additional state aid, including aid for school districts otherwise ineligible for state aid, in order to offset tax credits issued by school districts under the Texas Economic Development Act.

Proposed new 19 TAC §61.1019, Additional State Aid for Ad Valorem Tax Credits under the Texas Economic Development Act, would implement the provisions of the TEC, §42.2515. Specifically, the proposed new rule would address general provisions; provide definitions, eligibility criteria, and the procedures for filing a request for aid; describe the forms to be used to make a request for aid; and establish limitations on state aid, the reasons for which and method by which erroneous tax credits would be recovered, the timeline for submission of application requests, and the method of payment of state aid.

To take advantage of the ad valorem tax credit and receive an adjustment to its state aid, a school district must submit a Request for Additional State Aid for Ad Valorem Tax Credit form to the TEA.

The Request for Additional State Aid for Ad Valorem Tax Credit form requires information on the school district's tax rates, the taxpayer receiving tax credits, the amount of state aid being sought and the year for which it is being sought, and documents dealing with the provision of the tax credits. The form also requires the applicant school district to attach a completed, TEA-provided electronic spreadsheet that allows the applicant school district to calculate the amount of the tax credit to be provided to the taxpayer and details the plans for the period the school district will be subject to the value limitation agreement. The locally maintained paperwork requirements resulting from the proposed new rule correspond with and support the stated procedural and reporting implications.

Shirley Beaulieu, associate commissioner for finance/chief financial officer, has determined that for the first five-year period the new rule is in effect there will be no fiscal implications for local government as a result of enforcing or administering the proposed new rule. However, there will be economic benefits for school districts as a result of the proposed new rule. The rule action does not have any additional fiscal implications to the state beyond what the authorizing statute requires. Although it is known that the costs to the state, required by the authorizing statute, for the provision of aid for ad valorem tax credits will be significant, it is not yet known exactly what those costs will total.

The proposed new rule would result in school districts' gaining additional revenue from the state. School districts granting tax credits pursuant to the Texas Economic Development Act would be fully reimbursed by the TEA. For each school year, a school district, including a district that is otherwise ineligible for state aid, is entitled to state aid in an amount equal to the amount of all tax credits credited against ad valorem taxes of the district in that year. The amount of funds to be received by school districts under this credit is not currently known.

The proposed new rule could result in an economic benefit to all business types, including small businesses. Economic benefits would come from receipt of a Texas Economic Development Act tax credit or from ancillary economic activity generated by Texas Economic Development Act qualifying business projects. How-

ever, the exact amount of cost savings to small businesses as a result of the proposed new rule cannot be known.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Ms. Beaulieu has determined that for each year of the first five years the new rule is in effect the public benefit anticipated as a result of enforcing the new rule will be the provision of additional state aid to school districts for tax credits applied against the school districts' ad valorem taxes. The provisions of this rule would provide an incentive to school districts to provide tax credits to businesses, thus encouraging capital investment, job creation, and an expansion of the state's ad valorem property tax base. The proposed new rule would benefit students with a dollar-for-dollar replacement (subject to annual limitations) of the ad valorem tax dollars school districts credit to qualifying businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new rule.

The public comment period on the proposal begins December 19, 2008, and ends January 20, 2009. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register* on December 19, 2008.

The new rule is proposed under the TEC, §42.2515, which authorizes the commissioner of education to adopt rules to implement and administer additional state aid for ad valorem tax credits under the Texas Economic Development Act.

The proposed new rule implements the TEC, §42.2515.

§61.1019. Additional State Aid for Ad Valorem Tax Credits under the Texas Economic Development Act.

(a) General provisions. This section implements the Texas Education Code (TEC), §42.2515 (Additional State Aid for Ad Valorem Tax Credits Under Texas Economic Development Act). In accordance with the TEC, §42.2515, a school district, including a school district that is otherwise ineligible for state aid under the TEC, Chapter 42, is entitled to state aid in an amount equal to the amount of all tax credits applied against ad valorem taxes of the school district in each year that tax credits were applied pursuant to the Texas Tax Code, Chapter 313, also known as the Texas Economic Development Act. School districts eligible to receive additional state aid under the TEC, §42.2515, must apply to the commissioner of education in order to receive additional state aid equal to the qualifying ad valorem tax credits issued under the Texas Tax Code, Chapter 313, Subchapter D, subject to certain annual limitations.

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

(1) Eligible property--A term that has the meaning assigned in the Texas Tax Code, §313.024.

(2) Limitation on appraised value--A term that has the meaning assigned in the Texas Tax Code, Chapter 313. A school

district may limit the appraised value on a qualified property for the purposes of ad valorem taxation for a period of eight tax years, beginning with the tax year that follows the applicable two-year qualifying time period. A limitation on appraised value applies only to the maintenance and operations portion of a school district's ad valorem tax rate. For each tax year in which the limitation on appraised value is in effect, the appraised value of the qualified property that is described in the written agreement between the school district and taxpayer for school district maintenance and operations ad valorem tax may not exceed the lesser of the market value of the property or the amount to which the school district has agreed, but the limited amount must be at least the minimum amount of limitation that is set for the applicable school district category in the Texas Tax Code, Chapter 313.

(3) Qualified property--A term that has the meaning assigned in the Texas Tax Code, §313.021(2).

(4) Tax credit--A credit that is made to a taxpayer who has applied for and received a limitation on appraised value under the Texas Tax Code, Chapter 313, from the school district that approved the limitation in an amount equal to the amount of ad valorem taxes paid to that school district that were imposed on the portion of the appraised value of the qualified property that exceeds the amount of the limitation agreed to by the governing body of the school district under the Texas Tax Code, §313.027(a)(2), in each year in the applicable qualifying time period.

(5) Tax year--The calendar year beginning January 1 in which the taxpayer incurred ad valorem taxes on the qualified property for which the taxpayer is entitled to a tax credit toward ad valorem taxes paid in that tax year.

(6) Texas Economic Development Act--The Texas Tax Code, Chapter 313.

(c) Eligibility for additional state aid.

(1) A school district may be eligible for additional state aid under the TEC, §42.2515, only pursuant to the provisions of the TEC, §42.2515, and the Texas Tax Code, Chapter 313.

(2) A school district must file an application on a form prescribed by the commissioner in accordance with the applicable timeline as described in subsection (h) of this section. A separate application must be made for each tax year for which additional state aid is being requested. An application, including the required supporting documentation described in subsections (d)(2) and (d)(3) of this section, as applicable, must be complete in order for the Texas Education Agency (TEA) to process it.

(3) A school district must be in compliance with the reporting requirements set forth in 34 Texas Administrative Code Chapter 9, Subchapter F (relating to Limitation on Appraised Value and Tax Credits on Certain Qualified Property), to be eligible for additional state aid under the TEC, §42.2515.

(d) Procedures for filing request for additional state aid for ad valorem tax credits.

(1) Method of filing. All requests for additional state aid under the TEC, §42.2515, must be filed by mail with the TEA, 1701 North Congress Avenue, Austin, Texas 78701, in accordance with instructions on the application.

(2) Information required for first year of tax credit. A school district's initial request for additional state aid under the TEC, §42.2515, must include:

(A) a completed Request for Additional State Aid for Ad Valorem Tax Credit application form, including the template that

comprises a component of the application showing requested and projected additional state aid for each agreement under the Texas Tax Code, Chapter 313;

(B) a copy of the taxpayer's application to the school district for the tax credit, together with all required attachments to the application;

(C) a copy of the school board's resolution or other proof that the school district has approved the taxpayer's application for the tax credit;

(D) a copy of the tax bill sent to the taxpayer (showing the credit) or other proof that the school district has reimbursed the tax credit to the taxpayer; and

(E) confirmation that, as of the date of the tax credit approval, the taxpayer has not relocated its business outside of the school district.

(3) Information required for subsequent years of tax credit. For each year subsequent to the year in which the initial request for the tax credit was approved, the request for additional state aid under the TEC, §42.2515, must include:

(A) a completed Request for Additional State Aid for Ad Valorem Tax Credit application form, including the template that comprises a component of the application showing requested and projected additional state aid for each agreement under the Texas Tax Code, Chapter 313;

(B) a copy of the tax bill sent to the taxpayer (showing the credit) or other proof that the school district has reimbursed the tax credit to the taxpayer; and

(C) confirmation that, as of the date of the tax credit approval, the taxpayer has not relocated its business outside of the school district.

(e) Forms. The division of the TEA responsible for state funding will make available the application form, including the template, required under subsections (d)(2) and (d)(3) of this section.

(f) Determination of additional state aid. For any tax year for which additional state aid authorized by the TEC, §42.2515, is approved, additional state aid will be limited to the amount of the tax credit given to the taxpayer for a qualified property that is receiving a limitation on appraised value for that year as determined in the Texas Tax Code, §313.104.

(g) Erroneous tax credits and recovery of state aid for erroneous tax credits. If the comptroller of public accounts or the governing body of the school district determines that an entity that received a tax credit was ineligible to have received it or received more credit than the entity should have received, the school district must provide a notification of the facts to the commissioner within 30 days of the official action. If the TEA determines that an entity that received a tax credit was ineligible to have received it or received more credit than the entity should have received, the commissioner will notify the school district within 30 days of the determination. Any overpayment of additional state aid provided to the school district based on issuance of an erroneous tax credit by the school district will be fully recovered by the TEA pursuant to the TEC, §42.258.

(h) Timeline for submission of application requests.

(1) For tax credits earned under the TEC, §42.2515, for taxes that became due and payable on January 31, 2009, or at any time before that date, the school district must submit its application for additional state aid for ad valorem tax credits on or before May 31, 2009.

(2) For tax credits earned under the TEC, §42.2515, for taxes that become due and payable on January 31, 2010, or at any time after that date, the school district must submit its application for additional state aid for ad valorem tax credits on or before May 31 each year for which the tax credit is due.

(i) Payment to the school district. On approval of a school district's application for additional state aid for ad valorem tax credits by the commissioner, the amount of the credit will be applied to the entitlement due to the school district under the Foundation School Program as follows.

(1) State aid payments for tax credits on taxes that become due and payable after January 31, 2009, will be applied to the school district entitlement as prescribed by the TEC, §42.2516(b-2)(1). Payments for this credit will be incorporated into the payments made under the schedule prescribed by the TEC, §42.259.

(2) State aid payments for tax credits on taxes that were due and payable on January 31, 2009, or at any time before that date will be paid on or before August 31, 2009. This paragraph expires on September 1, 2009.

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

Filed with the Office of the Secretary of State on December 2, 2008.

TRD-200806304

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: January 18, 2009

For further information, please call: (512) 475-1497



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 139. ABORTION FACILITY REPORTING AND LICENSING

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §§139.1 - 139.8, 139.21 - 139.25, 139.31 - 139.33, and 139.41 - 139.60 and new §§139.1 - 139.8, 139.21 - 139.25, 139.31 - 139.33, and 139.41 - 139.60, concerning the regulation of abortion facilities.

BACKGROUND AND PURPOSE

The repeal and new sections are necessary to update and clarify the rules. Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 139.1 - 139.8, 139.21 - 139.25, 139.31 - 139.33, and 139.41 - 139.60 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

Proposed new §§139.1 - 139.8, 139.21 - 139.25, 139.31 - 139.33, and 139.41 - 139.60 provide clarification to the rules and update references to statutes and rules, the names and contact information of boards, the department and its programs. The new §139.2 deletes definitions not used in the rules, adds the definitions of advanced practice nurse, fetus, medical abortion, physician assistant, and surgical abortion, and revises the definitions of certified registered nurse anesthetist, director licensed vocational nurse, physician, and registered nurse. The new §§139.21 - 139.23 delete references to certain dates. The new §139.49 clarifies the use of steam sterilizers. The new §139.50 and §139.52 clarify that disclosure, patient education and information services are to be provided to a woman on whom the abortion is to be performed. The new §139.54 deletes language concerning the scope of practice for licensed vocational nurses and changes nursing services to licensed health care professionals. The new §139.55 requires a preanesthesia evaluation by a personnel approved to provide anesthesia services. The new §139.59 revises anesthesia services using language similar to the ambulatory surgical center rules for consistency.

FISCAL NOTE

Renee Clack, Section Director, Health Care Quality Section, has determined that for each year of the first five-year period that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Clack has also determined that there will be no negative effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

Ms. Clack has determined that some small businesses are subject to regulation under the proposed rules. However, no additional economic burden is associated with the proposed regulatory changes so no adverse economic impact to small businesses is anticipated. Therefore, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

PUBLIC BENEFIT

In addition, Ms. Clack has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to ensure patient health and safety when abortion facility care is necessary.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy,

a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Debbie Peterson, Health Care Quality Section, Division of Regulatory Services, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6730 or by email to debbie.peterson@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §§139.1 - 139.8

(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 Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Health and Safety Code, §245.009, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the issuance, renewal, denial, suspension, and revocation of each license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The proposed repeals affect the Health and Safety Code, Chapters 245 and 1001; and Government Code, Chapter 531.

§139.1. *Purpose and Scope.*

§139.2. *Definitions.*

§139.3. *Unlicensed Facility.*

§139.4. *Annual Reporting Requirements for All Abortions Performed.*

§139.5. *Additional Reporting Requirements for Physicians.*

§139.6. *Public Information; Toll-Free Telephone Number.*

§139.7. *Unique Identifying Number; Disclosure in Advertisement.*

§139.8. *Quality Assurance.*

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

Filed with the Office of the Secretary of State on December 4, 2008.

TRD-200806364

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: January 18, 2009

For further information, please call: (512) 458-7111 x6972



25 TAC §§139.1 - 139.8

STATUTORY AUTHORITY

The proposed new rules are authorized by Health and Safety Code, §245.009, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the issuance, renewal, denial, suspension, and revocation of each license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The proposed new rules affect the Health and Safety Code, Chapters 245 and 1001; and Government Code, Chapter 531.

§139.1. *Purpose and Scope.*

(a) *Purpose.* The purpose of this chapter is to implement the Texas Abortion Facility Reporting and Licensing Act, Health and Safety Code, Chapter 245, which provides the Department of State Health Services with the authority to establish rules governing the licensing and regulation of abortion facilities and to establish annual reporting requirements for each abortion performed.

(b) *Scope and applicability.*

(1) *Licensing requirements.*

(A) A person may not establish or operate an abortion facility in Texas without a license issued under this chapter unless the person is exempt from licensing requirements.

(B) The following need not be licensed under this chapter:

(i) a hospital licensed under Health and Safety Code, Chapter 241;

(ii) an ambulatory surgical center licensed under Health and Safety Code, Chapter 243; or

(iii) the office of a physician licensed by the Texas Medical Board and authorized to practice medicine in the State of Texas, unless the office is used for the purpose of performing more than 50 abortions in any 12-month period.

(2) *Reporting requirements.* All licensed abortion facilities and facilities and persons exempt from licensing shall comply with §139.4 of this title (relating to Annual Reporting Requirements for All Abortions Performed).

§139.2. *Definitions.*

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

(1) *Abortion*--The use of any means to terminate the pregnancy of a female known by the attending physician to be pregnant,

with the intention that the termination of the pregnancy by those means will, with reasonable likelihood, cause the death of the fetus. The term does not include birth control devices or oral contraceptives. An abortion may be performed only by a physician licensed to practice medicine in this state.

(2) Abortion facility--A place where abortions are performed.

(3) Act--Texas Abortion Facility Reporting and Licensing Act, Health and Safety Code, Chapter 245.

(4) Administrator--A person who:

(A) is delegated the responsibility for the implementation and proper application of policies, programs, and services established for the licensed abortion facility; and

(B) meets the qualifications established in §139.46(2) of this title (relating to Licensed Abortion Facility Staffing Requirements and Qualifications).

(5) Advanced practice nurse (APN)--A registered nurse approved by the Texas Board of Nursing to practice as an advanced practice nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner."

(6) Affidavit--A written statement, sworn to or affirmed, and witnessed by a witness whose signature and printed name appears on the affidavit. "Notarized affidavit" in these rules means an affidavit in which the statement is witnessed by a notary acting pursuant to Government Code, Chapter 406.

(7) Affiliate--With respect to an applicant or owner which is:

(A) a corporation--includes each officer, consultant, stockholder with a direct ownership of at least 5.0%, subsidiary, and parent company;

(B) a limited liability company--includes each officer, member, and parent company;

(C) an individual--includes:

(i) the individual's spouse;

(ii) each partnership and each partner thereof of which the individual or any affiliate of the individual is a partner; and

(iii) each corporation in which the individual is an officer, consultant, or stockholder with a direct ownership of at least 5.0%;

(D) a partnership--includes each partner and any parent company; and

(E) a group of co-owners under any other business arrangement--includes each officer, consultant, or the equivalent under the specific business arrangement and each parent company.

(8) Ambulatory surgical center--An ambulatory surgical center licensed under Health and Safety Code, Chapter 243.

(9) Applicant--The owner of an abortion facility which is applying for a license under the Act. For the purpose of this chapter, the word "owner" includes nonprofit organization.

(10) Certified registered nurse anesthetist (CRNA)--A currently licensed registered nurse who has current certification from the Council on Certification of Nurse Anesthetists and who is currently au-

thorized to practice as an advanced practice nurse by the Texas Board of Nursing.

(11) Change of ownership--A sole proprietor who transfers all or part of the facility's ownership to another person or persons; the removal, addition, or substitution of a person or persons as a partner in a facility owned by a partnership; or a corporate sale, transfer, reorganization, or merger of the corporation which owns the facility if sale, transfer, reorganization, or merger causes a change in the facility's ownership to another person or persons.

(12) Condition on discharge--A statement on the condition of the patient at the time of discharge.

(13) Critical item--All surgical instruments and objects that are introduced directly into the bloodstream or into other normally sterile areas of the body.

(14) Decontamination--The physical and chemical process that renders an inanimate object safe for further handling.

(15) Department--The Department of State Health Services.

(16) Director--The director of the Patient Quality Care Unit of the department or his or her designee.

(17) Disinfection--The destruction or removal of vegetative bacteria, fungi, and most viruses but not necessarily spores; the process does not remove all organisms but reduces them to a level that is not harmful to a person's health. There are three levels of disinfection:

(A) high-level disinfection--kills all organisms, except high levels of bacterial spores, and is effected with a chemical germicide cleared for marketing as a sterilant by the United States Food and Drug Administration;

(B) intermediate-level disinfection--kills mycobacteria, most viruses, and bacteria with a chemical germicide registered as a "tuberculocide" by the United States Environmental Protection Agency (EPA); and

(C) low-level disinfection--kills some viruses and bacteria with a chemical germicide registered as a hospital disinfectant by the EPA.

(18) Education and information staff--A professional or nonprofessional person who is trained to provide information on abortion procedures, alternatives, informed consent, and family planning services.

(19) Facility--A licensed abortion facility as defined in this section.

(20) Fetus--An individual human organism from fertilization until birth.

(21) Health care facility--Any type of facility or home and community support services agency licensed to provide health care in any state or is certified for Medicare (Title XVIII) or Medicaid (Title XIX) participation in any state.

(22) Health care worker--Any person who furnishes health care services in a direct patient care situation under a license, certificate, or registration issued by the State of Texas or a person providing direct patient care in the course of a training or educational program.

(23) Hospital--A facility that is licensed under the Texas Hospital Licensing Law, Health and Safety Code, Chapter 241, or if exempt from licensure, certified by the United States Department of Health and Human Services as in compliance with the conditions

of participation for hospitals in Title XVIII, Social Security Act (42 United States Code, §§1395 et. seq.).

(24) Immediate jeopardy to health and safety--A situation in which there is a high probability that serious harm or injury to patients could occur at any time or already has occurred and may well occur again, if patients are not protected effectively from the harm or if the threat is not removed.

(25) Inspection--An on-site inspection by the department in which a standard-by-standard evaluation is conducted.

(26) Licensed abortion facility--A place licensed by the department under Health and Safety Code, Chapter 245, where abortions are performed.

(27) Licensed mental health practitioner--A person licensed in the State of Texas to provide counseling or psychotherapeutic services.

(28) Licensed vocational nurse (LVN)--A person who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(29) Licensee--A person or entity who is currently licensed as an abortion facility.

(30) Medical abortion--The use of a medication or combination of medications to induce an abortion, with the purpose of terminating the pregnancy of a woman known to be pregnant. Medical abortion does not include forms of birth control.

(31) Medical consultant--A physician who is designated to supervise the medical services of the facility.

(32) Nonprofessional personnel--Personnel of the facility who are not licensed or certified under the laws of this state to provide a service and shall function under the delegated authority of a physician, registered nurse, or other licensed health professional who assumes responsibility for their performance in the licensed abortion facility.

(33) Noncritical items--Items that come in contact with intact skin.

(34) Notarized copy--A copy attached to a notarized affidavit which states that the attached copy(ies) are true and correct copies of the original documents.

(35) Patient--A pregnant female on whom an abortion is performed, but shall in no event be construed to include a fetus.

(36) Person--Any individual, firm, partnership, corporation, or association.

(37) Physician--An individual licensed by the Texas Medical Board and authorized to practice medicine in the State of Texas.

(38) Physician assistant--A person licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners.

(39) Plan of correction--A written strategy for correcting a licensing violation. The plan of correction shall be developed by the facility, and shall address the system(s) operation(s) of the facility as the system(s) operation(s) apply to the deficiency.

(40) Post-procedure infection--An infection acquired at or during an admission to a facility; there shall be no evidence that the infection was present or incubating at the time of admission to the facility. Post-procedure infections and their complications that may occur after an abortion include, but are not limited to, endometritis and other infections of the female reproductive tract, laboratory-confirmed or clinical sepsis, septic pelvic thrombophlebitis, and disseminated intravascular coagulopathy.

(41) Pregnant unemancipated minor certification form--The document prepared by the Department of State Health Services and used by physicians to certify the medical indications supporting the judgment for the immediate abortion of a pregnant minor.

(42) Pre-inspection conference--A conference held with department staff and the applicant or his or her representative to review licensure standards, inspection documents, and provide consultation prior to the on-site licensure inspection.

(43) Professional personnel--Patient care personnel of the facility currently licensed or certified under the laws of this state to use a title and provide the type of service for which they are licensed or certified.

(44) Quality assurance--An ongoing, objective, and systematic process of monitoring, evaluating, and improving the appropriateness, and effectiveness of care.

(45) Quality improvement--An organized, structured process that selectively identifies improvement projects to achieve improvements in products or services.

(46) Registered nurse (RN)--A person who is currently licensed by the Texas Board of Nursing as a registered nurse.

(47) Semicritical items--Items that come in contact with nonintact skin or mucous membranes. Semicritical items may include respiratory therapy equipment, anesthesia equipment, bronchoscopes, and thermometers.

(48) Standards--Minimum requirements under the Act and this chapter.

(49) Sterile field--The operative area of the body and anything that directly contacts this area.

(50) Sterilization--The use of a physical or chemical procedure to destroy all microbial life, including bacterial endospores.

(51) Supervision--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity that includes initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(52) Surgical abortion--The use of instruments, aspiration, and/or suction to induce an abortion, with the purpose of terminating the pregnancy of a woman known to be pregnant.

(53) Third trimester certification form--The document prepared by the Department of State Health Services and used by physicians to certify the medical indications supporting the judgment for the abortion of a viable fetus during the third trimester of pregnancy.

(54) Third trimester--A gestational period of not less than 26 weeks (following last-menstrual period (LMP)).

(55) Unemancipated minor--A minor who is unmarried and has not had the disabilities of minority removed under the Family Code, Chapter 31.

§139.3. Unlicensed Facility.

(a) If the Department of State Health Services (department) has reason to believe that a person or facility may be providing abortion services without a license as required by the Act and this chapter, the department shall notify the person or facility in writing by certified mail, return receipt requested. The person or facility shall submit to the department the following information within 10 days of receipt of the notice:

- (1) an application for a license and the license fee; or

(2) a notarized affidavit to support exemption under Health and Safety Code, §245.004, including any and all documentation. The notarized affidavit shall attest to the fact that the person or facility is exempt from licensing as specified in §139.1(b) of this title (relating to Purpose and Scope). The form of notarized affidavit to support exemption shall be provided by the department.

(b) If the person or facility has submitted an application for a license, the application shall be processed in accordance with §139.23 of this title (relating to Application Procedures and Issuance of Licenses).

(c) If the person or facility fails to respond to the notice, either by submitting an application for a license or a notarized affidavit of exemption, the department may seek injunctive relief as prescribed in Health and Safety Code, Chapter 245.

§139.4. Annual Reporting Requirements for All Abortions Performed.

(a) The purpose of this section is to implement the abortion reporting requirements of the Texas Abortion Facility Reporting and Licensing Act (Act), Health and Safety Code, §245.011, which mandates that each abortion facility shall submit an annual report to the Department of State Health Services (department) on each abortion performed at the abortion facility. This section applies to any place where abortions are performed, and therefore applies to licensed, unlicensed, and exempt facilities (including physicians).

(b) Abortion facilities shall submit an abortion report on each abortion that was performed at the facility on at least an annual basis. The facility may choose to submit the abortion reports on a monthly or quarterly basis for greater efficiency.

(c) The reporting period for each abortion facility is January 1 - December 31 of each year. Each facility shall submit the abortion report(s) to the department no later than January 31 of the subsequent year.

(d) The abortion reports shall be submitted:

(1) on forms approved by the department, by certified mail marked as confidential, to the Department of State Health Services, Vital Statistics Unit, Post Office Box 4124, Austin, Texas 78765-4124;

(2) on a floppy disk in a format approved by the department, by certified mail marked as confidential, to the Department of State Health Services, Vital Statistics Unit, Post Office Box 4124, Texas 78765-4124; or

(3) via a modem in a format approved by the department.

(e) The first annual reporting period for a licensed abortion facility commences on the day the initial license is issued. The report(s) shall contain data for the calendar year in which the initial license is issued. If the abortion facility's licensure status changes, the report(s) shall contain data from the date the initial license was issued through the date the initial license expired, was revoked, was suspended, or was withdrawn.

(f) If a change of ownership has occurred, the previous owner shall submit the report(s) commencing from the date of the previous reporting period and ending on the date the change in ownership of the facility occurred; the report(s) is due 30 days after the date of acquisition. The annual reporting period for the newly acquired facility commences on the day the initial license is issued and shall contain data for the calendar year in which the initial license is issued. If the newly acquired facility's licensure status changes, the report(s) shall contain data from the date the initial license was issued through the date the initial license expired, was revoked, was suspended, or was withdrawn.

§139.5. Additional Reporting Requirements for Physicians.

In addition to the annual reporting required by §139.4 of this title (relating to Annual Reporting Requirements for All Abortions Performed), physicians shall comply with this section when performing third trimester abortions or when performing emergency abortions on certain minors.

(1) Reporting requirements for third trimester abortions.

(A) The purpose of this paragraph is to establish procedures for reporting third trimester abortions as required by the Medical Practice Act, Occupations Code, Chapters 151 - 160, and 162 - 165.

(B) A physician who performs a third trimester abortion of a viable fetus with a biparietal diameter of 60 millimeters or greater shall certify in writing to the Department of State Health Services (department) the medical indications supporting the physician's judgment that the abortion is either necessary to prevent the death or a substantial risk of serious impairment to the physical or mental health of the woman, or the fetus has a severe and irreversible abnormality, as identified through reliable diagnostic procedures.

(C) The certification shall be made on a form approved by the department.

(D) The physician shall return by certified mail, marked as confidential, the certification form and may submit any supporting documents to the Department of State Health Services, Vital Statistics Unit, Post Office Box 4124, Austin, Texas 78765-4124, not later than the 30th day after the date the abortion was performed.

(E) The department shall retain the certification form and supporting documents as a cross-reference to the annual reporting requirements of the Act and this section. The certification form and supporting documents retained by the department are confidential. Any release of the documents shall be in accordance with the provisions of the Medical Practice Act, Occupations Code, Chapters 151 - 160, and 162 - 165.

(F) A physician performing abortions at a licensed abortion facility who fails to submit the certification form required under this paragraph may subject the licensed facility to denial, suspension, probation, or revocation of the license in accordance with §139.32 of this title (relating to License Denial, Suspension, Probation, or Revocation).

(2) Reporting requirements for emergency abortions performed on unemancipated minors.

(A) The purpose of this paragraph is to establish procedures for reporting emergency abortions performed on unemancipated minors, as authorized by Family Code, §33.002(a)(4)(B).

(B) A physician who performs an emergency abortion on an unemancipated minor shall certify in writing to the department the medical indications supporting the physician's judgment that the abortion is necessary either to avert her death or to avoid a serious risk of substantial and irreversible impairment of a major bodily function, as identified through reliable diagnostic procedures.

(C) The certification shall be made on a form approved by the department.

(D) The physician shall return by certified mail, marked as confidential, the certification form to the Department of State Health Services, Vital Statistics Unit, Post Office Box 4124, Austin, Texas 78765-4124 not later than 30 days after the date the abortion was performed.

(E) A physician performing abortions at a licensed abortion facility who fails to submit the certification form required by

this paragraph may subject the licensed facility to denial, suspension, probation, or revocation of the license in accordance with §139.32 of this title.

(F) If the physician provides parental notice as prescribed by Family Code, §33.002(a)(1), or if the minor has obtained judicial approval as authorized by Family Code, §33.002(a)(2) or §33.002(a)(3), the emergency certification form is not required.

§139.6. Public Information; Toll-Free Telephone Number.

(a) An abortion facility shall provide to a woman, at the time the woman initially consults the facility, a written statement indicating the number of the toll-free telephone number maintained under subsection (d) of this section. The written statement shall be available in English and Spanish.

(1) The following form is an example of the statement in English.

Figure: 25 TAC §139.6(a)(1)

(2) The following form is an example of the statement in Spanish.

Figure: 25 TAC §139.6(a)(2)

(b) The department on request shall make the following information available to the public:

(1) the status of the license of any abortion facility;

(2) the date of the last inspection of the facility, any violation discovered during that inspection that would pose a health risk to a patient at the facility, any challenge raised by the facility to the allegation that there was a violation, and any corrective action that is acceptable to the department and that is being undertaken by the facility with respect to the violation; and

(3) an administrative or civil penalty imposed against the facility or a physician who provides services at the facility, professional discipline imposed against a physician who provides services at the facility, and any criminal conviction of the facility or a physician who provides services at the facility that is relevant to services provided at the facility.

(c) Subsection (b) of this section does not require the department to provide information that is not in the possession of the department. In accordance with Health and Safety Code, §245.023(b), the Texas Medical Board (board) is required to provide to the department information in the possession of the board that the department is required to provide under subsection (b) of this section.

(d) In accordance with Health and Safety Code, §245.023(c), the department shall maintain a toll-free telephone number that a person may call to obtain the information described by subsection (b) of this section.

(e) This section does not authorize the department to the release of the name, address, or phone number of any employee or patient of an abortion facility or of a physician, advanced practice nurse, or physician assistant who provides services at an abortion facility.

§139.7. Unique Identifying Number; Disclosure in Advertisement.

(a) The department shall assign to each licensed abortion facility a unique license number that may not change during the period the facility is operating in this state.

(b) A licensed abortion facility shall include the unique license number assigned to the facility by the department in any abortion advertisement directly relating to the provision of abortion services at the facility. If more than one location is advertised in a single advertisement, the license number(s) for each location shall be included in the

advertisement. The facility shall document efforts to place the unique license number in advertisements within each specific deadline for each advertisement.

(c) In this section, "abortion advertisement" means:

(1) any communication that advertises the availability of abortion services at a licensed abortion facility and that is disseminated through a public medium, including an advertisement in a newspaper or other publication or an advertisement on television, radio, or any other electronic medium; or

(2) any commercial use of the name of the licensed facility as a provider of abortion services, including the use of the name in a directory, listing, or pamphlet.

§139.8. Quality Assurance.

(a) Quality Assurance (QA) Program. A licensed abortion facility shall maintain a QA program in the facility which shall be implemented by a QA committee. The QA program shall be ongoing and have a written plan of implementation. This plan shall be reviewed and updated or revised at least annually by the QA Committee. The QA program shall include measures for quality improvement in the measurement of the facility's delivery of service. Quality assurance documents pertinent to the facility shall be kept within the facility.

(b) QA committee membership. At a minimum, the QA committee shall consist of at least:

(1) the medical consultant designated by the facility;

(2) an advanced practice nurse, a physician assistant, a registered nurse, or a licensed vocational nurse; and

(3) at least two other members of the facility's staff.

(c) Frequency of QA committee meetings. The QA committee, by consensus, shall meet at least quarterly to identify issues with respect to which quality assurance activities are necessary.

(d) Minimum responsibilities. The QA committee shall:

(1) evaluate all organized services related to patient care, including services furnished by contract;

(2) ensure that there is a review of any abortion procedure complication(s), and shall make use of the findings in the development and revision of facility policies;

(3) address issues of unprofessional conduct by any member of the facility's staff (including contract staff);

(4) monitor infection control as outlined in §139.49 of this title (relating to Infection Control Standards) and post-procedure infections as outlined in §139.41 of this title (relating to Policy Development and Review);

(5) address medication therapy practices;

(6) address the integrity of surgical instruments, medical equipment, and patient supplies; and

(7) address services performed in the facility as they relate to appropriateness of diagnosis and treatment.

(e) Patient care and service issues. The QA committee shall identify and address patient care services and information issues and implement corrective action plans as necessary.

(1) Identifying issues that necessitate corrective action. The QA committee shall be responsible for identifying issues that necessitate corrective action by the committee, such as issues which negatively affect care or services provided to patients.

(2) Plan of corrective action. The QA committee shall develop and implement plans of action to correct identified deficiencies.

(3) Remedial action. The QA committee shall take and document remedial action to address deficiencies found through the QA program. The facility shall document the outcome of the remedial action.

(f) Departmental review.

(1) The department shall not use good faith efforts by the QA committee to identify and correct deficiencies as a basis for deficiency(ies), citation(s), or sanction(s).

(2) Department surveyors shall verify that:

(A) the facility has a QA committee which addresses concerns; and

(B) the facility staff know how to access that process.

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

Filed with the Office of the Secretary of State on December 4, 2008.

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Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: January 18, 2009

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER B. LICENSING PROCEDURES

25 TAC §§139.21 - 139.25

(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 Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Health and Safety Code, §245.009, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the issuance, renewal, denial, suspension, and revocation of each license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The proposed repeals affect the Health and Safety Code, Chapters 245 and 1001; and Government Code, Chapter 531.

§139.21. *General Requirements for Licensure.*

§139.22. *Fees.*

§139.23. *Application Procedures and Issuance of Licenses.*

§139.24. *Change of Ownership or Services, and Closure of a Licensed Abortion Facility.*

§139.25. *Time Periods for Processing and Issuing a License.*

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

Filed with the Office of the Secretary of State on December 4, 2008.

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Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: January 18, 2009

For further information, please call: (512) 458-7111 x6972



25 TAC §§139.21 - 139.25

STATUTORY AUTHORITY

The proposed new rules are authorized by Health and Safety Code, §245.009, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the issuance, renewal, denial, suspension, and revocation of each license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The proposed new rules affect the Health and Safety Code, Chapters 245 and 1001; and Government Code, Chapter 531.

§139.21. *General Requirements for Licensure.*

An applicant for an abortion facility license shall meet the following requirements.

(1) If the applicant for a license is an individual, the applicant shall be at least 18 years of age.

(2) An abortion facility is required to apply for a separate license for each place of business.

(3) An abortion facility may not admit a patient for an abortion procedure until it has received an initial license.

(4) The licensed location shall be in Texas.

(5) The licensee of the abortion facility is responsible for ensuring the facility's compliance with the Act and this chapter.

(6) Renewal licenses shall expire in two years.

(7) An abortion facility shall prominently and conspicuously post the license issued under the Act for display in a public area of the facility that is readily accessible to patients, employees, and visitors.

(8) An abortion facility license shall not be transferred or assigned from one person to another person.

(9) A licensed abortion facility shall have the financial ability to carry out its functions under the Act and this chapter.

§139.22. *Fees.*

(a) Fees for two-year renewals for an abortion facility license for all initial, change of ownership, and renewal applications are as follows:

(1) initial license fee--\$5,000;

(2) renewal license fee--\$5,000; and

(3) change of ownership license fee--\$5,000.

(b) The department shall not consider an application as officially submitted until the applicant pays the applicable licensing fee. The fee shall accompany the application form.

(c) A license fee paid to the department is not refundable.

(d) Any remittance submitted to the department in payment of a required license fee shall be in the form of a certified check, money order, or personal check made payable to the Department of State Health Services.

(e) For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the TexasOnline Authority, to recover costs associated with application and renewal application processing through TexasOnline, in accordance with Government Code, §2054.111.

(f) The department may make periodic reviews of its license fee schedule to ensure that the fees imposed are in amounts reasonable and necessary to defray the cost to the department of administering the Act.

(g) The department shall assess an annual assessment fee as follows.

(1) In addition to application fees for initial, renewal, and change of ownership license fees, an annual assessment fee per year shall be imposed by the department in amounts reasonable and necessary to defray costs.

(2) The amount of the one-time per year annual assessment fee shall be determined by the department on an annual basis.

(3) Fees shall be divided into three categories based on a three-year history:

(A) the average per year of the previous three years reported abortions equals less than 1,000;

(B) the average per year of the previous three years reported abortions equals 1,000 - 2,999;

(C) the average per year of the previous three years reported abortions equals 3,000 or more.

(4) Facilities identified in each category shall be assessed a proportionate share of the costs.

(5) Licensees receiving an initial license shall be assessed the least of the three fees in effect at the time of application for an initial or change of ownership license. The additional annual assessment fee is due at the same time as the application fee.

(6) The department shall notify each licensee of the amount assessed for the annual assessment fee by the first day of April for each year.

(7) The annual assessment fee shall be received by the department no later than the first day of June for each year.

(8) A licensee who fails to pay the assessed annual assessment fee shall be subject to denial, revocation, probation, or suspension of a license as prescribed in §139.32 of this title (relating to License Denial, Suspension, Probation, or Revocation).

§139.23. Application Procedures and Issuance of Licenses.

(a) Purpose. This section establishes the application procedures that an abortion facility shall follow to obtain a license to operate as a licensed abortion facility in Texas.

(b) Definitions. The following terms when used in this section shall have the following meaning.

(1) Initial license--A license which is issued by the department to all first-time applicants for an abortion facility license, including those from unlicensed operating facilities and licensed facilities for which a change of ownership is anticipated, that meet the requirements of the Act and this chapter and have successfully completed the application procedures for an initial license as set out in subsection (c) of this section. Initial licenses shall expire in two years.

(2) Renewal license--A license issued by the department to a licensed abortion facility that meets all requirements of the Act and this chapter and has completed the application procedures for obtaining a renewal license as set out in subsection (d) of this section. Renewal licenses shall expire in two years.

(c) Application procedures for an initial license. This subsection establishes the application procedures for obtaining an initial license.

(1) Request for an application. Upon request for an abortion facility license, the department shall furnish a person with an application packet. Applications may also be obtained and submitted through the department's web site.

(2) Application requirements. The applicant shall submit the information listed in subparagraph (C) of this paragraph to the department.

(A) An applicant shall not misstate a material fact on any documents required to be submitted under this subsection.

(B) The application form shall be accurate and complete and shall contain original signatures. The initial license fee shall accompany the application.

(C) The following documents shall be submitted with the original application form prescribed by the department and shall be originals or notarized copies:

(i) information on the applicant including name, street address, mailing address, social security number or franchise tax identification number, date of birth, and driver's license number;

(ii) the name, mailing address, and street address of the abortion facility. The address provided on the application shall be the address from which the abortion facility will be operating and providing services;

(iii) the telephone number of the facility, the telephone number where the administrator can usually be reached when the facility is closed, and if the facility has a fax machine, the fax number;

(iv) a list of names and business addresses of all persons who own any percentage interest in the applicant including:

(I) each limited partner and general partner if the applicant is a partnership; and

(II) each shareholder, member, director, and officer if the applicant is a corporation, limited liability company, or other business entity;

(v) a list of any businesses with which the applicant subcontracts and in which the persons listed under clause (iv) of this subparagraph hold any percentage of the ownership;

(vi) if the applicant has held or holds an abortion facility license or has been or is an affiliate of another licensed facility, the relationship, including the name and current or last address of the

other facility, and the date such relationship commenced and, if applicable, the date it was terminated;

(vii) if the facility is operated by or proposed to be operated under a management contract, the names and addresses of any person and organization having an ownership interest of any percentage in the management company;

(viii) a notarized affidavit attesting that the applicant is capable of meeting the requirements of this chapter;

(ix) an organizational structure of the staffing for the abortion facility. The organizational structure shall include full disclosure in writing of the names and addresses of all owners and persons controlling any ownership interest in the abortion facility. In the case of corporations, holding companies, partnerships, and similar organizations, the names and addresses of officers, directors, and stockholders, both beneficial and of record, when holding any percent, shall be disclosed. In the case of a nonprofit corporation, the names and addresses of the officers and directors shall be disclosed;

(x) the name(s), address(es), and Texas physician license number(s) of the physician(s) (including the facility's designated medical consultant), and all advanced practice nurse(s) and physician assistant(s) who will provide services at the abortion facility;

(xi) the following data concerning the applicant, the applicant's affiliates, and the managers of the applicant:

(I) denial, suspension, probation, or revocation of an abortion facility license in any state, a license for any health care facility or a license for a home and community support services agency (agency) in any state or any other enforcement action, such as (but not limited to) court civil or criminal action in any state;

(II) denial, suspension, probation, or revocation of or other enforcement action against an abortion facility license in any state, a license for any health care facility in any state, or a license for an agency in any state which is or was proposed by the licensing agency and the status of the proposal;

(III) surrendering a license before expiration of the license or allowing a license to expire in lieu of the department proceeding with enforcement action;

(IV) federal or state (any state) criminal felony arrests or convictions;

(V) Medicare or Medicaid sanctions or penalties relating to the operation of a health care facility or agency;

(VI) operation of a health care facility or agency that has been decertified or terminated from participation in any state under Medicare or Medicaid; or

(VII) debarment, exclusion, or contract cancellation in any state from Medicare or Medicaid; and

(xii) for the two-year period preceding the application date, the following data concerning the applicant, the applicant's affiliates, and the managers of the applicant:

(I) federal or state (any state) criminal misdemeanor arrests or convictions;

(II) federal or state (any state) tax liens;

(III) unsatisfied final judgments;

(IV) eviction involving any property or space used as an abortion facility or health care facility in any state;

(V) injunctive orders from any court; or

(VI) unresolved final Medicare or Medicaid audit exceptions.

(3) Applicant copy. The applicant shall retain a copy of all documentation that is submitted to the department.

(4) Application processing. Upon the department's receipt of the application form, the required information described in paragraph (2)(C) of this subsection, and the initial license fee from an applicant, the department shall review the material to determine whether it is complete and correct.

(A) The time periods for reviewing the material shall be in accordance with §139.25 of this title (relating to Time Periods for Processing and Issuing a License).

(B) If an abortion facility receives a notice from the department that some or all of the information required under paragraph (2)(C) of this subsection is deficient, the facility shall submit the required information no later than six months from the date of the notice.

(i) A facility which fails to submit the required information within six months from the notice date is considered to have withdrawn its application for an initial license. The license fee shall not be refunded.

(ii) A facility which has withdrawn its application shall reapply for a license in accordance with this subsection, if it wishes to continue the application process. A new license fee is required.

(5) Withdrawal from the application process. If an applicant decides at any time not to continue the application process for an initial license, the application shall be withdrawn upon written request from the applicant.

(6) Issuance of an initial license.

(A) Time periods for processing. The time periods for processing an initial application shall be in accordance with §139.25 of this title.

(B) Effective period of an initial license. The initial license is valid for two years. The initial license expires on the last day of the month ending the licensure period.

(C) Pre-inspection conference. Once the department has determined that the application form, the information required to accompany the application form, and the initial license fee are complete and correct, the department shall schedule a pre-inspection conference with the applicant in order to inform the applicant or his or her designee of the standards for the operation of the abortion facility. The department, at its discretion, may waive the pre-inspection conference. Upon recommendation by the pre-inspection conference, the department shall issue an initial license to the facility.

(D) Pre-inspection recommendation. After the pre-inspection conference has been held, the department shall:

(i) issue an initial license to the owner of a facility, if the facility is found to be in compliance with the department's requirements for initial licensure; or

(ii) deny the application, if the facility has not complied with the department's requirements for issuing an initial license. The procedure for denial of a license shall be in accordance with §139.32 of this title (relating to License Denial, Suspension, Probation, or Revocation).

(7) A department representative shall inspect the abortion facility in accordance with §139.31 of this title (relating to On-Site Inspections and Complaint Investigations of a Licensed Abortion Facil-

ity) within 60 days after the issuance of an initial license. If the department determines that a facility is not in compliance with the provisions of the Act or this chapter after the initial on-site inspection, the department shall notify the facility. Notification shall be in accordance with §139.32 of this title.

(8) If for any reason, an applicant decides not to continue the application process, the applicant shall submit to the department a written request to withdraw its application. If an initial license has been issued, the applicant shall cease providing abortion services and return the initial license to the department with its written request to withdraw. The department shall acknowledge receipt of the request to withdraw. The license fee shall not be refunded.

(9) Continuing compliance by the abortion facility with the provisions of the Act and this chapter is required during the initial license period.

(d) Application procedures for renewal of a license.

(1) The department shall send notice of expiration of a license to the licensee at least 60 days before the expiration date of the license. If the licensee has not received notice of expiration from the department 45 days prior to the expiration date, it is the duty of the licensee to notify the department and request an application for a renewal license.

(2) The licensee shall submit the following items to the department by certified mail, marked confidential, and postmarked no later than 30 days prior to the expiration date of the license:

(A) a complete and accurate renewal application form;

(B) current updated documents containing all the information required in subsection (c)(2)(C) of this section; and

(C) the renewal license fee.

(3) A facility shall not misstate a material fact on any documents required to be submitted to the department or required to be maintained by the facility in accordance with the provisions of the Act and this chapter.

(4) A department surveyor shall inspect a licensed abortion facility in accordance with §139.31(b) of this title.

(5) If a licensee makes timely and sufficient application for renewal, the license shall not expire until the department issues the renewal license or until the department denies renewal of the license.

(A) The department shall issue a renewal license to a licensee who meets the minimum standards for a license in accordance with the provisions of the Act and this chapter.

(B) The department may propose to deny the issuance of a renewal license if:

(i) based on the inspection report, the department determines that the abortion facility does not meet or is in violation of any of the provisions of the Act or this chapter;

(ii) renewal is prohibited by the Education Code, §57.491, relating to defaults on guaranteed student loans;

(iii) a facility discloses any of the actions or offenses listed in subsection (c)(2)(C)(xi) and (xii) of this section; and

(iv) a facility fails to file abortion reports in accordance with §139.4 of this title (relating to Annual Reporting Requirements for All Abortions Performed) or fails to ensure that the physicians report is filed in accordance with §139.5 of this title (relating to Additional Reporting Requirements for Physicians).

(6) If a licensee makes a timely application for renewal of a license, and action to revoke, suspend, place on probation, or deny renewal of the license is pending, the license does not expire but does extend until the application for renewal is granted or denied after the opportunity for a formal hearing. A renewal license shall not be issued unless the department has determined the reason for the proposed action no longer exists.

(7) If a suspension of a license overlaps a renewal date, the suspended license holder shall comply with the renewal procedures in this subsection; however, the department may not renew the license until the department determines that the reason for suspension no longer exists.

(8) If the department revokes or does not renew a license, a person may apply for an initial license by complying with the requirements of the Act and this chapter at the time of reapplication. The department may refuse to issue a license, if the reason for revocation or non-renewal continues to exist.

(9) Upon revocation or non-renewal, a license holder shall return the original license to the department.

(10) The procedures for revocation, suspension, probation, or denial of a license shall be in accordance with §139.32 of this title.

(e) Failure to timely renew a license.

(1) If a licensee fails to timely renew a license in accordance with subsection (d) of this section, the department shall notify the licensee that the facility shall cease operation on the expiration date of the license.

(2) To continue providing services at the abortion facility after the expiration of the license, the owner shall apply for an initial license in accordance with subsection (c) of this section.

(f) Frequency of inspections. Inspections of the abortion facility shall be performed at a frequency prescribed by and in accordance with §139.31 of this title.

§139.24. Change of Ownership or Services, and Closure of a Licensed Abortion Facility.

(a) The following provisions apply to change of ownership of the licensed abortion facility and affect the condition of a license.

(1) A licensee shall not transfer or assign its license from one person to another person.

(2) The licensed abortion facility shall not materially alter any license issued by the department.

(3) A person who desires to receive a license in its name for a facility licensed under the name of another person or to change the ownership of any facility shall submit a license application and the initial license fee at least 60 calendar days prior to the desired date of the change of ownership. The application shall be in accordance with §139.23(c) of this title (relating to Application Procedures and Issuance of Licenses).

(4) An application for a change of ownership shall include a notarized affidavit signed by the previous owner acknowledging agreement with the change of ownership. If the applicant is a corporation, the application shall include a copy of the applicant's articles of incorporation. If the applicant is a business entity other than a corporation, the applicant shall include a copy of the sales agreement.

(5) The pre-inspection conference may, at the department's discretion, be waived for an applicant of a licensed abortion facility for a change in control of ownership. If the pre-inspection conference is

waived, the department shall issue an initial license to the new owner of the facility.

(6) When a change of ownership has occurred, the department shall perform an on-site inspection of the facility within 60 days from the effective date of the change of ownership.

(7) The previous owner's license shall be void on the effective date of the change of ownership.

(8) This subsection does not apply if a licensee is simply revising its name as allowed by law (i.e., a corporation is amending the articles of incorporation to revise its name).

(9) The sale of stock of a corporate licensee does not cause this subsection to apply.

(b) The following business changes affect the condition of a license and shall be reported to the department.

(1) If a licensed abortion facility changes its business name, business address, telephone number of the facility, administrator's telephone number, or fax number (if available), the administrator shall notify the department in writing within 15 calendar days after the effective date of the change.

(2) If a licensed abortion facility changes its administrator, the facility shall provide the name of the new administrator and effective date to the department in writing no later than 15 calendar days following such change.

(c) The licensee shall notify the department at least 30 days in advance of a relocation.

(d) The licensee shall notify the department in writing within 15 calendar days when a licensed abortion facility ceases operation. The licensee shall return the original license to the department.

(e) A licensed abortion facility shall have a written policy for the preservation and release of active and inactive medical records in the event the facility closes.

§139.25. Time Periods for Processing and Issuing a License.

(a) General.

(1) The date a license application is received is the date the application reaches the facility licensing group of the Department of State Health Services (department).

(2) An application for an initial license is complete when the department has received, reviewed, and found acceptable the information described in §139.23(c)(2)(C) of this title (relating to Application Procedures and Issuance of Licenses).

(3) An application for a renewal license is complete when the department has received, reviewed, and found acceptable the information described in §139.23(d)(2) of this title.

(4) An application for a change of ownership license is complete when the department has received, reviewed, and found acceptable the information described in §139.24 of this title (relating to Change of Ownership or Services, and Closure of a Licensed Abortion Facility).

(b) Time periods. An application from an abortion facility for an initial license, renewal license, or change of ownership license shall be processed in accordance with the following time periods.

(1) The first time period begins on the date the department receives the application, and ends on the date the license is issued, or if the application is received incomplete, the period ends on the date the facility is issued a written notice that the application is incomplete. The written notice shall describe the specific information that is required

before the application is considered complete. The first time period is 45 days for initial, renewal, and change of ownership applications.

(2) The second time period begins on the date the last item necessary to complete the application is received and ends on the date the license is issued. The second time period is 45 days for initial, renewal and change of ownership applications.

(c) Reimbursement of fees.

(1) In the event the application is not processed in the time periods stated in subsection (b) of this section, the applicant has the right to request that the department reimburse in full the fee paid in that particular application process. If the department does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request shall be denied.

(2) Good cause for exceeding the period established is considered to exist if:

(A) the number of applications for licenses to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(B) another public or private entity utilized in the application process caused the delay; or

(C) other conditions existed giving good cause for exceeding the established periods.

(d) Appeal. If the request for reimbursement as authorized by subsection (c) of this section is denied, the applicant may then appeal to the commissioner for a resolution of the dispute. The applicant shall give written notice to the commissioner requesting reimbursement of the fee paid because the application was not processed within the established time period. The department shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner shall make the final decision and provide written notification of the decision to the applicant and the department.

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

Filed with the Office of the Secretary of State on December 4, 2008.

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Lisa Hernandez
General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111 x6972



SUBCHAPTER C. ENFORCEMENT

25 TAC §§139.31 - 139.33

(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 Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Health and Safety Code, §245.009, concerning rules and minimum standards to protect and promote the public health and welfare by providing

for the issuance, renewal, denial, suspension, and revocation of each license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The proposed repeals affect the Health and Safety Code, Chapters 245 and 1001; and Government Code, Chapter 531.

§139.31. *On-site Inspections and Complaint Investigations of a Licensed Abortion Facility.*

§139.32. *License Denial, Suspension, Probation, or Revocation.*

§139.33. *Administrative Penalties, Injunction, Criminal Penalties, and Civil Penalties.*

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

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Lisa Hernandez

General Counsel

Department of State Health Services

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25 TAC §§139.31 - 139.33

STATUTORY AUTHORITY

The proposed new rules are authorized by Health and Safety Code, §245.009, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the issuance, renewal, denial, suspension, and revocation of each license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The proposed new rules affect the Health and Safety Code, Chapters 245 and 1001; and Government Code, Chapter 531.

§139.31. *On-site Inspections and Complaint Investigations of a Licensed Abortion Facility.*

(a) General. An on-site inspection shall determine if the requirements of the Act and this chapter are being met.

(1) An authorized representative of the department (surveyor) may enter the premises of a licensed abortion facility at reasonable times during business hours and at other times as it considers necessary to ensure compliance with:

- (A) the Act and this chapter;
- (B) an order of the commissioner;
- (C) a court order granting injunctive relief; or
- (D) other enforcement actions.

(2) The surveyor is entitled to access all books, records, or other documents maintained by or on behalf of the facility to the extent necessary to ensure compliance with the Act, this chapter, an order of the commissioner, a court order granting injunctive relief, or other enforcement action. The department shall maintain the confidentiality of facility records as applicable under federal or state law. Ensuring compliance includes permitting photocopying by a department surveyor or providing photocopies to a department surveyor of any records or other information by or on behalf of the department as necessary to determine or verify compliance with the Act or this chapter.

(3) By applying for or holding a license, the facility consents to entry and inspection of the facility by the department or representative of the department in accordance with the Act and this chapter.

(b) Inspection procedures.

(1) All on-site inspections shall be unannounced and conducted, at least, annually.

(2) The department's surveyor shall hold a conference with the person who is in charge of a licensed abortion facility prior to commencing the inspection for the purpose of explaining the nature and scope of the inspection. The surveyor shall hold an exit conference with the person who is in charge of the facility when the inspection is completed, and the surveyor shall identify any records that were duplicated. Any original facility records that are removed from a facility shall be removed only with the consent of the facility.

(3) The department's authorized representative shall hold an exit conference and fully inform the person who is in charge of the facility of the preliminary finding(s) of the inspection, and shall give the person a reasonable opportunity to submit additional facts or other information to the surveyor in response to those findings. The response shall be made a part of the inspection for all purposes, and shall be received by the department within 14 calendar days of receipt of the preliminary findings of the inspection by the facility.

(4) After the inspection is completed, the department shall provide the administrator of the facility specific and timely written notice of the findings of the inspection in accordance with paragraph (7) of this subsection.

(5) If the department determines that the facility is in compliance with minimum standards at the time of the on-site inspection, the department shall send a license to the facility, if applicable.

(6) If the surveyor finds there are deficiencies, the department shall provide the facility with a statement of the deficiencies; the surveyor's recommendation for further action; or if there are no deficiencies found, a statement indicating this fact.

(7) If the department representative finds there are deficiencies, the facility and the department shall comply with the following procedure.

(A) The department shall provide the facility with a statement of deficiencies on site at the time of the exit conference or within 14 calendar days of the exit conference.

(B) The facility administrator or person in charge shall sign the written statement of deficiencies and return it to the department with its plan of correction(s) for each deficiency within 14 calendar days of its receipt of the statement of deficiencies. The signature does not indicate the person's agreement with deficiencies stated on the form.

(C) The facility shall have the option to challenge any deficiency cited after receipt of the statement of deficiencies. A challenge to a deficiency(ies) shall be in accordance with this subparagraph.

(i) An initial challenge to a deficiency(ies) shall be submitted in writing no later than 14 calendar days from the facility's receipt of the statement of deficiencies to the Manager, Health Facility Compliance Group, Department of State Health Services, Post Office Box 149347, Austin, Texas 78714-9347. The initial written challenge shall include any and all documents supporting the facility's position.

(ii) If the initial challenge is favorable to the department, the facility may request a review of the initial challenge by submitting a written request to the Director, Patient Quality Care Unit, Department of State Health Services, Post Office Box 149347, Austin, Texas 78714-9347. The facility shall submit its written request for review of the initial challenge no later than 14 calendar days of its receipt of the department's response to the initial challenge. The department shall not accept or review any documents that were not submitted with the initial challenge. A determination by the Director of the Patient Quality Care Unit, relating to a challenge to a deficiency(ies) shall be considered the final determination by the department.

(iii) The department shall respond to any written challenge submitted under clauses (i) or (ii) of this subparagraph no later than 14 calendar days from its receipt.

(D) The department shall determine if the written plan of correction is acceptable. If the plan of correction(s) is not acceptable to the department, the department shall notify the facility and request that the plan of correction be modified by telephone or resubmitted no later than 14 calendar days from receipt of such request by the facility.

(E) If the facility does not come into compliance by the required date of correction, the department may propose to deny, suspend, place on probation, or revoke the license in accordance with §139.32 of this title (relating to License Denial, Suspension, Probation, or Revocation).

(F) Acceptance of a plan of correction by the department does not preclude the department from taking enforcement action as appropriate under §139.32 of this title.

(8) The department shall refer issues and complaints relating to the conduct or action(s) by licensed health care professionals to their appropriate licensing boards.

(c) Complaints.

(1) In accordance with §139.50 of this title (relating to Disclosure Requirements), all licensed abortion facilities are required to provide the woman on whom the abortion is to be performed and her guardian, if present, if the patient is a minor at time of the initial visit or if guardianship is required, with a written statement that complaints relating to the abortion facility may be registered with the Manager, Health Facility Compliance Group, Department of State Health Services, Post Office Box 149347, Austin, Texas 78714-9347, (888) 973-0022.

(2) The department shall evaluate all complaints against licensed abortion facilities. All complaints submitted to the department shall be in writing and signed by the complainant. Only those allegations determined to be relevant to the Act or this chapter shall be authorized for investigation. All information pertaining to a complaint is strictly confidential.

(3) The department or its authorized representative may enter the premises of an abortion facility during normal business hours as necessary to assure compliance with the Act and this chapter. The investigation may be conducted on site, by phone or by mail.

(4) Conduct of the on-site investigation of a licensed abortion facility shall include, but not be limited to:

(A) a conference prior to commencing the on-site investigation for the purpose of explaining the nature and scope of the investigation between the department's authorized representative and the administrator of the abortion facility, or his or her designee;

(B) an inspection of the facility;

(C) an inspection of medical records, personnel records, administrative files, reports, other records, and/or working papers;

(D) an interview with any physician or other health care practitioner, including abortion facility personnel who care for the recipient of abortion services;

(E) a conference at the conclusion of the inspection between the department's representative and the administrator, or his or her designee of the facility; and

(F) identification by the department's representative of any facility documents that have been reproduced.

(5) If the department finds that there are deficiencies following the on-site inspection, the provisions of subsection (b)(6) and (7) of this section shall apply.

(6) The department shall review the report of the investigation and determine the validity of the complaint.

§139.32. License Denial, Suspension, Probation, or Revocation.

(a) The department may refuse to issue or renew a license for a facility if the facility fails to comply with any provisions of the Act, or Health and Safety Code, Chapter 171.

(b) The department may suspend, place on probation, or revoke the license of a facility for one or more of the following reasons:

(1) the facility commits fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to the department or required to be maintained by the facility pursuant to the Act;

(2) the facility or any of its employees materially alters any license issued by the department;

(3) the facility or its employees commits an act which causes immediate jeopardy to the health and safety of a patient;

(4) the facility is cited for deficiencies and fails to submit an acceptable plan of correction in accordance with this chapter;

(5) the facility has been cited for deficiencies and fails to timely comply with minimum standards for licensure within the dates designated in the plan of correction;

(6) the facility or any of its employees has aided, abetted, or permitted the commission of an illegal act;

(7) the facility or any of its employees fails to comply with any provisions of the Act or this chapter;

(8) the facility is not in compliance with minimum standards for licensure;

(9) the facility fails to provide the required application or renewal information;

(10) the facility fails to comply with an order of the commissioner or another enforcement procedure under the Act;

(11) the facility discloses an action described in §139.23(c)(2)(C)(xi) and (xii) of this title (relating to Application Procedures and Issuance of Licenses);

(12) the facility knowingly employs as the facility administrator or chief financial officer an individual who was convicted of a felony or misdemeanor listed in subsection (c) of this section;

(13) the facility has a history of failure to comply with the rules adopted under this chapter; or

(14) the facility has aided, abetted or permitted the commission of an illegal act.

(c) The department may deny a person a license or suspend or revoke an existing license on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the ownership or operation of a facility.

(1) In determining whether a criminal conviction directly relates to the duties and responsibilities of the ownership or operation of a licensed abortion facility, and in determining the fitness of a person who has been convicted of a crime to perform such duties and responsibilities, the department shall consider the provisions of Occupations Code, Chapter 53.

(2) The department is entitled to obtain criminal history information maintained by the Texas Department of Public Safety (Government Code, §411.122), the Federal Bureau of Investigation (Government Code, §411.087), or any other law enforcement agency to investigate the eligibility of an applicant for an initial or renewal license and to investigate the continued eligibility of a licensee.

(3) The following felonies and misdemeanors directly relate to the duties and responsibilities of the ownership or operation of a licensed abortion facility because these criminal offenses demonstrate impaired ability to own or operate a facility:

(A) a misdemeanor violation of Health and Safety Code, Chapter 245;

(B) a misdemeanor or felony involving moral turpitude;

(C) a misdemeanor or felony relating to deceptive business practices;

(D) a misdemeanor or felony of practicing any health-related profession without a required license;

(E) a misdemeanor or felony under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(F) a misdemeanor or felony under the Penal Code, Title 5, involving a patient or client of any health care facility, a home and community support services agency, or a health care professional;

(G) a misdemeanor or felony under the Penal Code:

(i) Title 4--offenses of attempting or conspiring to commit any of the offenses in this clause;

(ii) Title 5--offenses against the person;

(iii) Title 7--offenses against property;

(iv) Title 8--offenses against public administration;

(v) Title 9--offenses against public order and decency;

(vi) Title 10--offenses against public health, safety or morals;

(vii) Title 11--offenses involving organized crime.

(4) Offenses listed in paragraph (3) of this subsection are not exclusive in that the department may consider similar criminal convictions from other state, federal, foreign or military jurisdictions

which indicate an impaired ability or tendency for the person to be unable to own or operate a facility.

(5) A license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(d) All proceedings for the denial, suspension, probation, or revocation of a license under this section shall be conducted at the State Office of Administrative Hearings, and in accordance with Health and Safety Code, Chapter 245; Government Code, Chapter 2001; and the Formal Hearing Procedures of the Department of State Health Services set out in §§1.21, 1.23, 1.25, and 1.27 of this title.

(e) A person who has had a facility license revoked under this section may not apply for a license under this chapter for one year following the date of revocation.

(f) After an on-site inspection in which deficiencies were cited by the surveyor, a facility may surrender its license before expiration or allow its license to expire in lieu of the department proceeding with enforcement action. The department may accept such submission, or reject it and proceed with an enforcement action. The facility, its owner(s), and its affiliates may not reapply for a license for six months from the date of the surrender or expiration.

(g) If the department suspends a license, the suspension shall remain in effect until the department determines that the reason for suspension no longer exists. A department surveyor shall conduct an inspection of the facility prior to making a determination.

(1) During the time of suspension, the suspended license holder shall return the original license certificate to the department.

(2) If a suspension overlaps a renewal date, the suspended license holder shall comply with the renewal procedures in this chapter; however, the department may not renew the license until the department determines that the reason for suspension no longer exists.

(3) If suspension is for more than one year, the suspended license holder may apply to the department for cancellation of the suspension only after one year following the initial date of the suspension.

(h) If the department revokes or does not renew a license, a person may reapply for a license (subject to subsection (d) of this section), by complying with the requirements and procedures in this chapter at the time of reapplication. The department may refuse to issue a license, if the reason for revocation or non-renewal continues to exist, and may consider the enforcement history of the applicant, administrator, or clinical director in making such a determination.

(i) Upon revocation or non-renewal, a license holder shall return the original license certificate to the department.

(j) Upon a licensee's felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, the license shall be revoked.

(k) If the department finds that a licensed abortion facility is in repeated noncompliance with Health and Safety Code, Chapter 245, or rules adopted under this chapter, but the noncompliance does not in any way involve the health and safety of the public or an individual, the department may schedule the facility for probation rather than suspending or revoking the facility's license.

(l) The department may suspend or revoke the license of a licensed abortion facility that does not correct items that were in non-compliance or that does not comply with Health and Safety Code, Chapter 245, or rules adopted under this chapter within the applicable probation period.

(m) The department may suspend or revoke a license to be effective immediately when a situation(s) is identified that poses immediate jeopardy to the health and safety of person(s) at the facility.

(1) The department shall immediately give the licensee adequate notice of the action taken, the legal grounds for the action, and the procedure governing appeal of the action.

(2) The department shall set a hearing date not later than the 14th day after the effective date of the suspension or revocation.

(3) The department shall also notify the facility in writing of the emergency action, the legal grounds for the action, the effective date of the emergency action, the procedure governing appeal of the action, and the date set for the hearing. This notice shall be sent by certified mail, return receipt requested, or by personal delivery. The hearing shall be conducted at the State Office of Administrative Hearings, and pursuant to the Health and Safety Code, Chapter 245; Government Code, Chapter 2001; and the department's formal hearing procedures set out in §§1.21, 1.23, 1.25, and 1.27 of this title.

(n) If a person violates the licensing requirements of the Act or rules adopted under the Act, the department may petition the district court for a temporary restraining order to restrain the person from continuing the violation or operating without a license.

(o) If a person operates a facility without a license as required by this chapter and the Act, the person is liable for a civil penalty of not less than \$1,000 nor more than \$2,500 for each day of violation.

(p) If a facility has had enforcement action taken by the department against it, the facility, its owner(s), or its affiliate(s) may not apply for a facility license for one year following the effective date of the enforcement action. For purposes of this subsection only, the term "enforcement action" means license revocation, suspension, emergency suspension, or denial or injunctive action, but does not include administrative penalties or civil penalties. If the department prevails in one enforcement action (e.g., injunctive action) against the facility but also proceeds with another enforcement action (e.g., revocation) based on some or all of the same violations, but the department does not prevail in the second enforcement action (e.g., the facility prevails), the prohibition in this paragraph does not apply.

(q) If the department revokes or does not renew a license and the one-year period described in subsection (p) of this section has passed, a person may reapply for a license by complying with the requirements and procedures in this chapter at the time of reapplication. The department may refuse to issue a license, if the reason for revocation or non-renewal continues to exist.

(r) Upon revocation or non-renewal, a license holder shall return the license to the department.

§139.33. Administrative Penalties, Injunction, Criminal Penalties, and Civil Penalties.

(a) Administrative penalties.

(1) The department may assess an administrative penalty against a person who violates the Act or this chapter.

(2) The penalty may not exceed \$1,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(3) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

(A) the seriousness of the violation;

(B) the history of previous violations;

(C) the amount necessary to deter future violations;

(D) efforts made to correct the violation; and

(E) any other matters that justice may require.

(4) All proceedings for the assessment of an administrative penalty under this section shall be conducted at the State Office of Administrative Hearings, and pursuant to the Health and Safety Code, Chapter 245; the Government Code, Chapter 2001; and the department's formal hearing procedures set out in §§1.21, 1.23, 1.25, and 1.27 of this title.

(5) The department may assess costs against facilities in administrative proceedings in accordance with Health and Safety Code, Chapter 245.

(b) Injunction, criminal penalties, and civil penalties. In addition to administrative penalties, the Health and Safety Code, Chapter 245, provides for injunctive relief and civil penalties for violations of that chapter and violations of these rules and also provides for criminal penalties for certain violations described therein.

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

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Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111 x6972



SUBCHAPTER D. MINIMUM STANDARDS FOR LICENSED ABORTION FACILITIES

25 TAC §§139.41 - 139.60

(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 Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Health and Safety Code, §245.009, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the issuance, renewal, denial, suspension, and revocation of each license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The proposed repeals affect the Health and Safety Code, Chapters 245 and 1001; and Government Code, Chapter 531.

§139.41. *Policy Development and Review.*

§139.42. *Delegation of Authority and Organizational Structure.*

- §139.43. *Personnel Policies.*
- §139.44. *Orientation, Training, and Demonstrated Competency.*
- §139.45. *Personnel Records.*
- §139.46. *Licensed Abortion Facility Staffing Requirements and Qualifications.*
- §139.47. *Licensed Abortion Facility Administration.*
- §139.48. *Physical and Environmental Requirements.*
- §139.49. *Infection Control Standards.*
- §139.50. *Disclosure Requirements.*
- §139.51. *Patient Rights at the Facility.*
- §139.52. *Patient Education/Information Services*
- §139.53. *Medical and Clinical Services.*
- §139.54. *Health Care Services.*
- §139.55. *Clinical Records.*
- §139.56. *Emergency Services.*
- §139.57. *Discharge and Follow-up Referrals.*
- §139.58. *Reporting Requirements.*
- §139.59. *Anesthesia Services.*
- §139.60. *Other State and Federal Compliance Requirements.*

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

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 Lisa Hernandez
 General Counsel
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25 TAC §§139.41 - 139.60

STATUTORY AUTHORITY

The proposed new rules are authorized by Health and Safety Code, §245.009, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the issuance, renewal, denial, suspension, and revocation of each license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The proposed new rules affect the Health and Safety Code, Chapters 245 and 1001; and Government Code, Chapter 531.

§139.41. Policy Development and Review.

(a) The licensee shall be responsible for the conduct of the licensed abortion facility and shall assume full legal responsibility for developing, implementing, enforcing, and monitoring written policies governing the facility's total operation, and for ensuring that these policies comply with the Act and the applicable provisions of this chapter

and are administered so as to provide health care in a safe and professionally acceptable environment. These written policies shall include at a minimum the following:

(1) administrative policies governing the administration of the facility, covering at a minimum:

- (A) personnel;
- (B) employee orientation, training, and evaluation;
- (C) employee and patient record system;
- (D) auditing system for monitoring state or federal funds;
- (E) advertisements for the facility;
- (F) accuracy of public education information materials and activities in relation to abortion, birth control, and sexually-transmitted diseases;
- (G) patient education/information services and referral services;
- (H) reporting requirements; and
- (I) procedures for the resolution of complaints regarding care or services rendered by licensed health professionals and other members of the facility staff, including contract services or staff. The facility shall document the receipt and the disposition of the complaint. The investigation and documentation shall be completed within 30 calendar days after the facility receives the complaint, unless the facility has and documents reasonable cause for a delay.

(2) clinical policies governing medical and clinical practices and procedures of the facility, covering at a minimum:

- (A) the provision of medical and clinical services;
 - (B) the provision of laboratory services;
 - (C) examination of fetal tissue;
 - (D) disposition of medical waste;
 - (E) emergency services;
 - (F) condition on discharge procedures;
 - (G) clinical records;
 - (H) reporting and filing requirements; and
 - (I) monitoring post-procedure infection(s).
- (3) a policy to ensure that the facility is in compliance with fire safety provisions as required by the local codes;
- (4) policies on decontamination, disinfection, and sterilization, and storage of sterile supplies;
- (5) policies for parental notice for unemancipated pregnant minors as stipulated in Family Code, Chapter 33;
- (6) policies for informed consent as stipulated in Health and Safety Code, Chapter 171, the Woman's Right to Know Act;
- (7) policies for reporting suspected abuse or neglect as stipulated in Family Code, Chapter 261; and

(8) policies to ensure all women who present to obtain an abortion provide identification that includes the woman's date of birth.

(A) If the woman does not have identification stating her date of birth, she shall be required to execute an affidavit on a form published by the department indicating that she does not have appropriate identification and indicating her date of birth on the affidavit. Figure: 25 TAC §139.41(a)(8)(A)

(B) The facility shall keep a copy of the identification presented or the affidavit in its files.

(b) The licensee, in fulfilling its responsibility under subsection (a) of this section, shall review the facility's written policies and procedures periodically, but no less than once every two years; date to indicate time of last review; revise as necessary; and enforce.

§139.42. Delegation of Authority and Organizational Structure.

(a) Delegation of authority.

(1) The licensee shall appoint a medical consultant who shall be responsible for:

(A) implementing and enforcing the clinical policies of the facility; and

(B) supervising all medical services provided at the facility, such as medical, nursing, clinical, laboratory, and information/education services.

(2) The licensee shall appoint an administrator who shall be responsible for implementing and supervising the administrative policies of the facility.

(3) The licensee shall designate in writing a person who meets the qualifications of an administrator to act in the absence of the administrator.

(b) Organizational structure. The licensee shall develop a written organizational structure which shall be in a chart format or a narrative explanation that provides a description of the structure of the licensed abortion facility and defines the lines of authority.

(1) The written organizational structure shall include, at a minimum, the identification of the licensee, medical consultant, administrator, and clinical staff.

(2) The written organizational structure shall clearly define the lines of authority and the delegation of responsibility for professional and nonprofessional staff (including the medical consultant, the administrator, the medical and clinical staff, and ancillary staff).

§139.43. Personnel Policies.

The licensee shall develop, implement and enforce policies which shall govern all personnel staffed by the facility using the following minimum criteria:

(1) job descriptions, including qualifications for all personnel providing direct or indirect patient care;

(2) a requirement for orientation of all employees, volunteers, students and contractors to the policies and objectives of the facility and participation by all personnel in employee training specific to their job;

(3) job-related training for each position;

(4) a requirement for an annual evaluation of employee performance;

(5) in-service and continuing education requirements;

(6) a requirement that all personnel providing direct patient care be currently certified in basic life support by the American

Heart Association, the American Red Cross, or the American Safety and Health Institute, or in accordance with their individual professional licensure requirements, and if required in their job description or job responsibilities;

(7) a requirement that all personnel having direct contact with patients (employed or contracting with the facility) sign a statement that they have read, understand, and shall respect the rights of all patients as established in §139.51 of this title (relating to Patient Rights at the Facility); and

(8) a requirement that all personnel complete a training program developed jointly by the department and the Department of Family and Protective Services (DFPS) concerning their individual duties to report child abuse, how to identify and recognize abuse, and the jurisdiction of DFPS and local law enforcement over child abuse.

§139.44. Orientation, Training, and Demonstrated Competency.

(a) A licensed abortion facility shall develop and implement a written orientation and training program to familiarize all employees (including office staff) with the facility's policies, philosophy, job responsibilities of all staff, and emergency procedures.

(b) In implementing the orientation and training program, a licensed abortion facility shall orient and train each employee to ensure, through demonstrated competency, that:

(1) the employee understands his or her specific job description;

(2) the employee understands the facility's policy and procedure manual, including protocols and description of the roles and responsibilities of all personnel;

(3) the employee understands, at a minimum but not limited to, the following:

(A) coordination and treatment of patient care;

(B) sterilization and infection control policies;

(C) patient education/information;

(D) informed consent policies;

(E) abortion techniques provided at that facility;

(F) care of the patient before, during, and after an abortion procedure;

(G) patient rights;

(H) possible complications of the abortion procedure;

and

(I) prevention of infectious diseases.

(c) The facility shall ensure that staff responsible for sterilization of critical surgical instruments are trained by the facility to meet the requirements of §139.49(d) of this title (relating to Infection Control Standards) and demonstrate competency in performing the sterilization procedures at the facility.

(d) The facility shall ensure that all staff are aware of the reporting requirements for child abuse or neglect under Family Code, §261.101; and reporting requirements for family violence under Family Code, §91.002 and §91.003.

(e) The facility shall document in each employee's personnel record evidence of all training and orientation received.

§139.45. Personnel Records.

An individual personnel record shall be maintained on each person employed by the licensed abortion facility which shall include, but not be limited to, the following:

(1) current job description for the employee, which is reviewed and revised as needed;

(2) verification of current license and certification of personnel required to have a license and or certification;

(3) clinical laboratory tests results and vaccinations if required by law (e.g., Mycobacterium tuberculosis, hepatitis B virus);

(4) documentation of the education, training, and experience of the employee, in addition to a copy or verification of the employee's current license or certification credentials, or both; and

(5) documentation of the employee's orientation, in-service, and other educational programs provided by the licensed abortion facility (training), and employee evaluation.

§139.46. Licensed Abortion Facility Staffing Requirements and Qualifications.

A licensed abortion facility shall have an adequate number of personnel qualified under this section available to provide direct patient care as needed by all patients; and administrative and nonclinical services needed to maintain the operation of the facility in accordance with the provisions of the Act and this chapter.

(1) Medical consultant. The medical consultant shall be a physician.

(2) Administrator.

(A) The administrator shall be at least 18 years of age, and shall meet at least one of the following qualifications:

(i) be a licensed health care professional;

(ii) have a baccalaureate degree, a postgraduate degree, or a professional degree and one year administrative experience in a health care or health-related field; or

(iii) have a minimum of two years of administrative experience in a health care or health-related facility.

(B) The administrator shall not have been employed in the last year as an administrator with another abortion facility or health-related facility at the time the facility was cited for violations of a licensing law or rule which resulted in enforcement action taken against the abortion facility or health-related facility. For purposes of this subparagraph only, the term "enforcement action" means license revocation, suspension, emergency suspension, probation, denial or injunctive action, but does not include administrative penalties or civil penalties. If the department prevails in one enforcement action (e.g., injunctive action) against the facility but also proceeds with another enforcement action (e.g., revocation) based on some or all of the same violations, but the department does not prevail in the second enforcement action (e.g., the facility prevails), the prohibition in this paragraph does not apply.

(C) The administrator shall not have been convicted of a felony or misdemeanor listed in §139.32 of this title (relating to License Denial, Suspension, Probation, or Revocation).

(3) Direct patient care staff.

(A) Medical staff. The medical staff shall include a physician and may include an advanced practice nurse or a physician assistant.

(B) Nursing staff. The nursing staff shall include a registered nurse(s) or a licensed vocational nurse(s).

(C) Education and information staff. Staff providing education and information services at the facility shall be a person(s) who is trained to provide information on surgical abortion procedures, medical abortions, alternatives to abortion, consent form, and family planning services, and meets at least one of the following additional qualifications:

(i) has one year experience in a health care facility;

(ii) has a baccalaureate degree; or

(iii) is a licensed professional mental health practitioner who provides therapeutic intervention.

(D) Laboratory staff. The laboratory staff shall include a person(s) who is trained to provide the laboratory services for the facility as determined by the medical consultant.

(4) Ancillary staff. Ancillary staff may include professional or nonprofessional staff who shall have training and experience to perform duties as prescribed by the administrator and the medical consultant as needed.

§139.47. Licensed Abortion Facility Administration.

(a) The administrator shall be responsible for implementing and supervising the administrative policies of the facility.

(b) The administrator shall:

(1) employ a qualified staff adequate in number to:

(A) provide the medical and clinical services;

(B) provide the nonclinical services; and

(C) maintain the abortion facility;

(2) ensure that employment of personnel is without regard to age, race, religion, or national origin;

(3) ensure that all medical and clinical personnel hold current Texas licenses to practice their respective disciplines/professions, if applicable;

(4) develop and make available to all staff and the department, a policy and procedure manual including protocols and description of the roles and responsibilities of all personnel;

(5) ensure that assignment of duties and functions to each employee are commensurate with his/her licensure, certification, and experience and competence;

(6) ensure that staff receive training, education, and orientation to their specific job description, facility personnel policies, philosophy, and emergency procedures in accordance with this section;

(7) schedule employee evaluations;

(8) maintain employee and patient records;

(9) ensure the accuracy of public education information materials and activities in relation to abortion, birth control, and sexually-transmitted diseases. The department shall be the primary resource for human immunodeficiency virus (HIV) education, prevention, risk reduction materials, policies, and information. Educational materials may be obtained by writing or calling the Department of State Health Services Warehouse, Literature and Forms, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7761;

(10) implement an effective budgeting, accounting, and auditing system for receipt of state or federal funds;

(11) ensure that all advertisements for the facility include the unique identifying license number assigned by the department in ac-

cordance with §139.7 of this title (relating to Unique Identifying Number; Disclosure in Advertisement);

(12) ensure that a woman on whom the abortion is to be performed, at the time of initial on-site consultation, receives the information required to be disclosed under §139.50 of this title (relating to Disclosure Requirements); and

(13) ensure that the reporting requirements of §139.4 of this title (relating to Annual Reporting Requirements for All Abortions Performed) are performed.

(c) A licensed abortion facility shall report violations of practice acts and conditions of license for its licensed health care professional(s) to the appropriate licensing board. If the patient is unsatisfied with the facility's findings, the facility shall provide the complainant with the name, address, and telephone number of the appropriate licensing board. The facility shall document the review and action taken by the facility.

§139.48. Physical and Environmental Requirements.

The physical and environmental requirements for a licensed abortion facility are as follows.

(1) A facility shall:

(A) have a safe and sanitary environment, properly constructed, equipped, and maintained to protect the health and safety of patients and staff at all times;

(B) equip each procedure room so that procedures can be performed in a manner that assures the physical safety of all individuals in the area;

(C) have a separate recovery room;

(D) have a written protocol for emergency evacuation for fire and other disasters tailored to the facility's geographic location. Each staff member employed by or under contract with the facility shall be able to demonstrate their role or responsibility to implement the facility's emergency evacuation protocol required by this subparagraph;

(E) store hazardous cleaning solutions and compounds in a secure manner and label substances;

(F) have the capacity to provide patients with liquids. The facility may provide commercially packaged food to patients in individual servings. If other food is provided by the facility, it shall be subject to the requirements of §§229.161 - 229.171 of this title (relating to Texas Food Establishments);

(G) provide clean hand washing facilities for patients and staff including running water, and soap;

(H) have two functioning sinks and a functioning toilet;

and
(I) have equipment available to sterilize instruments, equipment, and supplies in accordance with §139.49(d) of this title (relating to Infection Control Standards) before use in the facility.

(2) The equipment for vacuum aspiration shall be electrically safe and designed to prevent reverse pump action.

(3) Projects involving alterations of and additions to existing buildings shall be programmed and phased so that on-site construction shall minimize disruptions of existing functions. Access, exit ways, and fire protection shall be maintained so that the safety of the occupants shall not be jeopardized during construction.

§139.49. Infection Control Standards.

(a) Written policies. A licensed abortion facility shall develop, implement, and enforce infection control policies and procedures to

minimize the transmission of post-procedure infections. These policies shall include, but not be limited to, the prevention of the transmission of human immunodeficiency virus (HIV), hepatitis B virus (HBV), hepatitis C virus (HCV), Mycobacterium tuberculosis (TB), and Streptococcus species (S. spp.); educational course requirements; cleaning and laundry requirements; and decontamination, disinfection, sterilization, and storage of sterile supplies.

(b) Prevention and control of the transmission of HIV, HBV, HCV, TB, and S. spp.

(1) Universal/standard precautions.

(A) An abortion facility shall ensure that all staff comply with universal/standard precautions as defined in this paragraph.

(i) Universal/standard precautions includes procedures for disinfection and sterilization of reusable medical devices and the appropriate use of infection control, including hand washing, the use of protective barriers, and the use and disposal of needles and other sharp instruments.

(ii) Universal/standard precautions synthesize the major points of universal precautions with the points of body substance precautions and apply them to all patients receiving care in facilities, regardless of their diagnosis or presumed infection status.

(I) Universal/standard precautions apply to:

(-a-) blood;

(-b-) body fluids, secretions, and excretions except sweat, regardless of whether or not they contain visible blood;

(-c-) nonintact skin; and

(-d-) mucous membranes.

(II) Universal/standard precautions are designed to reduce the risk of transmission of microorganisms from both recognized and unrecognized sources of infection in facilities.

(B) A licensed abortion facility shall establish procedures for monitoring compliance with universal/standard precautions described in subparagraph (A) of this paragraph.

(2) Health care workers infected with the HIV or HBV. A licensed abortion facility shall adopt, implement, and enforce a written policy to ensure compliance of the facility and all of the health care workers within the facility with the Health and Safety Code, Chapter 85, Subchapter I, concerning the prevention of the transmission of HIV and HBV by infected health care workers.

(3) Educational course work and training. A licensed abortion facility shall require its health care workers to complete educational course work or training in infection control and barrier precautions, including basic concepts of disease transmission, scientifically accepted principles and practices for infection control and engineering and work practice controls. To fulfill the requirements of this paragraph, course work and training may include formal education courses or in-house training or workshops provided by the facility. The course work and training shall include, but not be limited to:

(A) HIV infection prevention; and

(B) HBV, HCV, TB, and S. spp. infection prevention based on universal/standard precautions as defined in paragraph (1) of this subsection;

(C) bidirectional aspect of disease transmission; and

(D) epidemic control.

(c) Cleaning and laundry policies and procedures.

(1) A licensed abortion facility shall develop, implement, and enforce written policies and procedures on cleaning the procedure room(s).

(2) A licensed abortion facility shall develop, implement, and enforce written policies and procedures for the handling, processing, storing, and transporting of clean and dirty laundry.

(3) A licensed abortion facility may provide cleaning and laundry services directly or by contract in accordance with Occupational Safety and Health Administration's Standards, 29 Code of Federal Regulations, Subpart Z. Bloodborne Pathogens.

(d) Policies and procedures for decontamination, disinfection, sterilization, and storage of sterile supplies. A licensed abortion facility shall have written policies covering its procedures for the decontamination and sterilization activities performed. Policies shall include, but not be limited to, the receiving, cleaning, decontaminating, disinfecting, preparing and sterilization of critical items (reusable items), as well as those for the assembly, wrapping, storage, distribution, and the monitoring and control of sterile items and equipment.

(1) Supervision. The decontamination, disinfection, and sterilization of all supplies and equipment shall be under the supervision of a person qualified by education, training, or experience.

(2) Quantity of sterile surgical instruments. The facility shall ensure that surgical instruments are sufficient in number to permit sterilization of the instrument(s) used for each procedure and adequate to perform conventional cervical dilatation and curettage.

(3) Inspection of surgical instruments.

(A) All instruments shall undergo inspection before being packaged for reuse or storage. Routine inspection of instruments shall be made to assure clean locks, crevices, and serrations.

(B) Inspection procedures shall be thorough and include visual and manual inspection for condition and function.

(i) Cutting edges shall be checked for sharpness; tips shall be properly aligned, and box locks shall be clean and free from buildup of soap, detergent, dried blood, or tissue.

(ii) There shall be no evident cracks or fissures in the box locks, and the hinges shall work freely.

(iii) Ratchets shall hold and be routinely tested.

(iv) There shall be no corrosion or pitting of the finish.

(C) Instruments needing maintenance shall be taken out of service and repaired by someone qualified to repair surgical instruments.

(D) To protect the instrument and its protective finish, impact markers or electric engravers shall not be used for instrument identification. Instrument identification shall be accomplished by the instrument manufacturer, employing methods which shall not damage the instrument or its protective finish.

(4) Items to be disinfected and sterilized.

(A) Critical items.

(i) Critical items include all surgical instruments and objects that are introduced directly into the bloodstream or into other normally sterile areas of the body and shall be sterilized in accordance with this subsection.

(ii) All items that come in contact with the sterile field during the operative procedure shall be sterile.

(B) Semicritical items.

(i) Semicritical items include items that come in contact with nonintact skin or mucous membranes. Semicritical items shall be free of microorganisms, except bacterial spores. Semicritical items may include respiratory therapy equipment, anesthesia equipment, bronchoscopes, and thermometers.

(ii) High-level disinfection shall be used for semicritical items.

(C) Noncritical items.

(i) Noncritical items include items that come in contact with intact skin.

(ii) Intermediate-level or low-level disinfection shall be used for noncritical items.

(5) Equipment and sterilization procedures. Effective sterilization of instruments depends on performing correct methods of cleaning, packaging, arrangement of items in the sterilizer, and storage. The following procedures shall be included in the written policies as required in this subsection to provide effective sterilization measures.

(A) Equipment. A licensed abortion facility shall provide sterilization equipment adequate to meet the requirements of this paragraph for sterilization of critical items. Equipment shall be maintained and operated to perform, with accuracy, the sterilization of critical items.

(B) Environmental requirements. Where cleaning, preparation, and sterilization functions are performed in the same room or unit, the physical facilities, equipment, and the written policies and procedures for their use shall be such as to effectively separate soiled or contaminated supplies and equipment from the clean or sterilized supplies and equipment.

(i) A facility shall have a sink for hand washing. This sink shall not be used for cleaning instruments or disposal of liquid waste.

(ii) A facility shall have a separate sink for cleaning instruments and disposal of liquid waste. Hand washing shall only be performed at this sink after it has been disinfected.

(C) Preparation for sterilization.

(i) All items to be sterilized shall be prepared to reduce the bioburden. All items shall be thoroughly cleaned, decontaminated and prepared in a clean, controlled environment. Cleaning is the removal of all adherent visible soil from the surfaces, crevices, joints, and lumens of instruments. Decontamination is the physical/chemical process that renders an inanimate object safe for further handling.

(ii) One of the following methods of cleaning and decontamination shall be used as appropriate.

(I) Manual cleaning. Manual cleaning of instruments at the sink is permitted.

(II) Ultrasonic cleaning. Ultrasonic cleaning of instruments cleans by cavitation and reduces the need for hand scrubbing. When grossly soiled items are placed in the ultrasonic cleaner the water shall be changed more than once a shift. If using this method for cleaning, chambers shall be covered to prevent potential hazards to personnel from aerosolization of the contents.

(III) Washer-sterilizers. Washer-sterilizers clean by using rotating spray arms to create water jets that clean by im-

pingement and appropriate soap and disinfectant. These machines shall reach a temperature of 140 degrees Celsius (285 degrees Fahrenheit).

(IV) Washer-decontaminator machines. Washer-decontaminator machines clean by numerous water jets and a high pH of detergent even if instruments are grossly soiled. The thorough cleaning is followed by a neutralizing rinse to quickly restore the pH to neutral.

(iii) All articles to be sterilized shall be arranged so all surfaces shall be directly exposed to the sterilizing agent for the prescribed time and temperature.

(D) Packaging.

(i) All wrapped articles to be sterilized shall be packaged in materials recommended for the specific type of sterilizer and material to be sterilized, and to provide an effective barrier to microorganisms. Acceptable packaging includes peel pouches, perforated metal trays, or rigid trays. Muslin packs shall be limited in size to 12 inches by 12 inches by 20 inches with a maximum weight of 12 pounds. Wrapped instrument trays shall not exceed 17 pounds.

(ii) All items shall be labeled for each sterilizer load as to the date and time of sterilization, the sterilizing load number, and the autoclave.

(E) External chemical indicators.

(i) External chemical indicators, also known as sterilization process indicators, shall be used on each package to be sterilized, including items being flash sterilized to indicate that items have been exposed to the sterilization process.

(ii) The indicator results shall be interpreted according to the manufacturer's written instructions and indicator reaction specifications.

(F) Biological indicators.

(i) The efficacy of the sterilizing process shall be monitored with reliable biological indicators appropriate for the type of sterilizer used (e.g., Bacillus stearothermophilus for steam sterilizers).

(ii) Biological indicators shall be included in at least one run each day of use for steam sterilizers.

(iii) A log shall be maintained with the load identification, biological indicator results, and identification of the contents of the load.

(iv) If a test is positive, the sterilizer shall immediately be taken out of service. A malfunctioning sterilizer shall not be put back into use until it has been serviced and successfully tested according to the manufacturer's recommendations.

(v) All available items shall be recalled and reprocessed if a sterilizer malfunction is found. A list of all items which were used after the last negative biological indicator test shall be submitted to the administrator.

(G) Sterilizers.

(i) Steam sterilizers (saturated steam under pressure) shall be utilized for sterilization of heat and moisture stable items. Steam sterilizers shall be used according to manufacturer's written instructions.

(ii) Other sterilizers shall be used in accordance with the manufacturer's instructions.

(H) Maintenance of sterility.

(i) Items that are properly packaged and sterilized shall remain sterile indefinitely unless the package becomes wet or torn, has a broken seal, is damaged in some way, or is suspected of being compromised.

(ii) Medication or materials within a package that deteriorate with the passage of time shall be dated according to the manufacturer's recommendations.

(iii) All packages shall be inspected before use. If a package is torn, wet, discolored, has a broken seal, or is damaged, the item may not be used. The item shall be returned to sterile processing for reprocessing.

(I) Commercially packaged items. Commercially packaged items are considered sterile according to the manufacturer's instructions.

(J) Storage of sterilized items. The loss of sterility is event related, not time related. The facility shall ensure proper storage and handling of items in a manner that does not compromise the packaging of the product.

(i) Sterilized items shall be transported so as to maintain cleanliness and sterility and to prevent physical damage.

(ii) Sterilized items shall be stored in well-ventilated, limited access areas with controlled temperature and humidity.

(iii) Sterilized items shall be positioned so that the packaging is not crushed, bent, compressed, or punctured so that their sterility is not compromised.

(iv) Storage of supplies shall be in areas that are designated for storage.

(K) Disinfection.

(i) The manufacturer's written instructions for the use of disinfectants shall be followed.

(ii) An expiration date, determined according to manufacturer's written recommendations, shall be marked on the container of disinfection solution currently in use.

(iii) Disinfectant solutions shall be kept covered and used in well-ventilated areas.

(L) Performance records.

(i) Performance records for all sterilizers shall be maintained for each cycle. These records shall be retained and available for review for a minimum of two years.

(ii) Each sterilizer shall be monitored during operation for pressure, temperature, and time at desired temperature and pressure. A record shall be maintained either manually or machine generated and shall include:

(I) the sterilizer identification;

(II) sterilization date and time;

(III) load number;

(IV) duration and temperature of exposure phase (if not provided on sterilizer recording charts);

(V) identification of operator(s);

(VI) results of biological tests and dates performed; and

(VII) time-temperature recording charts from each sterilizer (if not provided on sterilizer recording charts).

(M) Preventive maintenance. Preventive maintenance of all sterilizers shall be performed according to individual policy on a scheduled basis by qualified personnel, using the sterilizer manufacturer's service manual as a reference. A preventive maintenance record shall be maintained for each sterilizer. These records shall be retained at least two years and shall be available for review to the facility within two hours of request by the department.

§139.50. Disclosure Requirements.

(a) At the time a woman on whom the abortion is to be performed initially consults with a licensed abortion facility, the facility shall comply with the following:

(1) Provide the woman with a written statement indicating the number of the toll-free telephone line which is maintained by the department to provide specific information relating to licensed abortion facilities in Texas. The statement shall be in accordance with §139.6 of this title (relating to Public Information; Toll-Free Telephone Number).

(2) Provide the woman with a written statement identifying the department as the responsible agency for facility complaint investigations. The statement shall inform persons to register complaints with the Manager, Health Facility Compliance Group, Department of State Health Services, Post Office Box 149347, Austin, Texas 78714-9347. Complaints shall be registered with the department in writing. A complainant shall provide his/her name. All complaints shall be confidential.

(3) Provide the woman with a copy of the department's "A Woman's Right to Know" booklet created for women seeking an abortion, if the woman chooses to view it.

(4) Provide the woman with a copy of the department's "A Woman's Right to Know" resource directory (required by Health and Safety Code, §171.015), if the woman chooses to view it.

(5) Inform the woman of her option to view the department's "A Woman's Right to Know" booklet and resource directory on the World Wide Web and provide her with the Internet address for obtaining the information.

(6) Provide the woman with a written statement that she may call the department at (888) 973-0022, if the facility does not provide her with the information required in paragraphs (3) and (4) of this subsection.

(b) The facility shall ensure that the woman on whom the abortion is to be performed has been provided with all information required for voluntary and informed consent, as mandated by Health and Safety Code, §171.012(a)(1) and (2) at least 24 hours prior to the abortion procedure.

(c) The facility shall initiate a clinical record for the woman on whom the abortion is to be performed at the time of the initial consultation. The following information pertaining to disclosure, as described in this section, shall be documented in the clinical record:

(1) the date and time of the initial consultation;

(2) the method by which the information required under subsections (a) and (b) of this section was provided; and

(3) the name and title of individual(s) who provided or verified the information required under subsections (a) and (b) of this section.

§139.51. Patient Rights at the Facility.

A licensed abortion facility shall ensure that all women on whom the abortion is to be performed:

(1) be allowed to make her own choice and self-determination;

(2) are ensured the right to personal privacy and confidentiality of her choices and decisions;

(3) are ensured the right to voluntary and informed consent as defined in Health and Safety Code, §171.012, without paying a fee for the informational materials;

(4) are ensured individual counseling concerning private medical information and to be given a private opportunity to ask questions;

(5) be allowed to view their medical record, including the sonogram, if one has been performed, at any time as provided by law;

(6) have access to care and treatment consistent with available resources and generally accepted standards regardless of race, creed, and national origin;

(7) are allowed to ask additional questions after giving consent and to withdraw consent while still medically safe to do so;

(8) are provided freedom from abuse, neglect, or exploitation as those terms are defined in §1.204 of this title (relating to Abuse, Neglect, and Exploitation Defined); and

(9) be allowed to review the department's informational materials as described in Health and Safety Code, §171.014 and §171.015.

§139.52. Patient Education/Information Services.

(a) A licensed abortion facility shall ensure patient education/information services are provided to each woman on whom the abortion is to be performed to:

(1) ensure compliance with Health and Safety Code, §171.011 (relating to Informed Consent Required), and §171.012 (relating to Voluntary Informed Consent) concerning informed consent by utilizing the department's certification form, signed by the woman prior to an abortion procedure, and maintained in the patient's clinical record;

Figure: 25 TAC §139.52(a)(1)

(2) prepare the patient for surgery in a manner that facilitates her safety and comfort;

(3) assist the patient in reaching a decision about the method of post-procedure birth control she will use, if any, and respect her choices; and

(4) ensure, when medically appropriate, the patient is advised of the physician's obligation to take all reasonable steps to maintain the life and health of a child who is born alive.

(b) A licensed abortion facility shall, if needed, refer a patient to a licensed mental health practitioner who provides therapeutic intervention.

§139.53. Medical and Clinical Services.

(a) Surgical abortion.

(1) The medical consultant shall be responsible for implementing and supervising the medical and clinical policies of the facility.

(2) All medical and clinical services of the facility, with the exception of the abortion procedure, shall be provided under the direction of a physician or registered nurse who assumes responsibility for the clinical employees' performance in the facility.

(3) A licensed abortion facility shall ensure that a surgical consent form is signed by the patient prior to the procedure be-

ing started, that the patient is informed of the risks and the benefits of the procedure, and that the patient recognizes the alternatives to abortion. Informed consent shall be in accordance with rules adopted by the Texas Medical Disclosure Panel under §601.2 of this title (relating to Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A), §601.4 of this title (relating to Disclosure and Consent Form), and Health and Safety Code, §171.011 (relating to Informed Consent Required), and §171.012 (relating to Voluntary Informed Consent).

(4) A licensed abortion facility shall ensure that the attending physician, advanced practice nurse, or physician assistant has obtained and documented a preoperative history, physical exam, and laboratory studies, including verification of pregnancy.

(5) A licensed abortion facility shall ensure that:

(A) the attending physician examines each patient immediately prior to surgery to evaluate the risk to the procedure; and

(B) the person administering the anesthetic agent(s) examines the patient immediately prior to surgery to evaluate the risk of anesthesia.

(6) The administration of anesthesia shall be in accordance with §139.59 of this title (relating to Anesthesia Services).

(7) An abortion shall be performed only by a physician.

(8) A physician, advanced practice nurse, physician assistant, registered nurse, or licensed vocational nurse shall be in the facility whenever there is a patient in the procedure room or recovery room. While a patient is in the procedure room or recovery room she shall not be left unattended.

(9) The recovery room(s) at the facility shall be supervised by a physician, advanced practice nurse, physician assistant, or registered nurse. This supervisor shall be available for recovery room staff within a recommended 10 minutes with a maximum required 15 minutes while any patient is in the recovery room.

(10) A physician shall be available for the facility while any patient is in the recovery room within a recommended 10 minutes and a maximum required 15 minutes.

(11) The facility shall ensure that a patient is fully reactive and her vital signs are stable before discharging the patient from the facility upon written order by the attending physician.

(12) All fetal tissue shall be examined grossly at the time of the procedure. In the absence of visible fetal parts or placenta, the tissue may be examined by magnification for the detection of villi. If this examination is inconclusive, the tissue shall be sent to a pathology lab. The results of the tissue examination shall be recorded in the patient's clinical record.

(13) A facility shall meet the requirements set forth by the department in §§1.131 - 1.137 of this title (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).

(b) Medical abortion.

(1) The medical consultant shall be responsible for implementing and supervising the medical and clinical policies of the facility.

(2) All medical and clinical services of the facility, with the exception of the abortion procedure, shall be provided under the direction of a physician or registered nurse who assumes responsibility for the clinical employees' performance in the facility.

(3) A licensed abortion facility shall ensure:

(A) the physician(s) providing medical abortion is able to accurately date a pregnancy;

(B) the physician(s) is able to determine that the pregnancy is not an ectopic gestation;

(C) the physician(s) is able to provide surgical intervention or provide for the patient to receive a surgical abortion if necessary; and

(D) patients have access to medical facilities equipped to provide blood transfusion and patient resuscitation, if necessary.

(4) A licensed abortion facility shall ensure follow-up examination and services are provided to patients requesting medical abortion.

(5) A licensed abortion facility shall ensure that the attending physician, advanced practice nurse, or physician assistant has obtained and documented a pre-procedure history, physical exam, and laboratory studies, including verification of pregnancy.

(6) A licensed abortion facility shall ensure:

(A) written consent is obtained from the patient prior to the commencement of the abortion procedure;

(B) the patient is informed of the risks and benefits of the procedure;

(C) the patient is informed of the possibility that a surgical abortion may be required;

(D) the patient is informed of the alternatives to abortion; and

(E) informed consent is in accordance with rules adopted by the Texas Medical Disclosure Panel under §601.2 of this title, §601.4 of this title, and Health and Safety Code, §171.011 and §171.012.

(7) A licensed abortion facility shall provide the patient with written discharge instructions including a direct referral to a physician who shall accept the patient for surgical abortion.

§139.54. Health Care Services.

(a) Definition. For the purposes of this section, the term "health care professional" includes:

(1) a physician;

(2) an advanced practice nurse;

(3) a physician assistant;

(4) a registered nurse;

(5) a licensed vocational nurse; or

(6) a licensed mental health practitioner.

(b) Licensed health care professionals.

(1) A licensed abortion facility shall ensure that its licensed health care professionals practice within the scope of their practice and within the constraints of applicable state laws and regulations governing their practice and follow the facility's written policies and procedures.

(2) A licensed abortion facility may allow physicians to train nonlicensed personnel, age 18 years or above, to extract blood for laboratory testing and to administer intravenous fluids.

(c) Student health care professionals. If the facility has a contract or agreement with an accredited school of health care to use their

facility for a portion of the students' clinical experience, those students may provide care under the following conditions.

(1) Students may be used in facilities, provided the instructor gives class supervision and assumes responsibility for all student activities occurring within the facility. If the student is licensed, such as a licensed vocational nurse attending a registered nurse program for licensure as a registered nurse, the facility shall ensure that the administration of any medication(s) is within the student's licensed scope of practice.

(2) All instruction shall be provided by the school's instructor or his or her designee.

(3) A student may administer medications only if:

(A) on assignment as a student of their school of health care; and

(B) the instructor is on the premises and directly supervises the administration of medication by an unlicensed student, and the administration of such medication is within the instructor's licensed scope of practice.

(4) Students shall not be used to fulfill the requirement for administration of medications by licensed personnel.

(5) Students shall not be considered when determining staffing needs required by the facility

§139.55. Clinical Records.

(a) A licensed abortion facility shall maintain a daily patient roster of all patients receiving abortion services. This daily patient roster shall be retained for a period of five years.

(b) A licensed abortion facility shall establish and maintain a clinical record for each patient. A licensed abortion facility shall maintain the record to assure that the care and services provided to each patient is completely and accurately documented, and readily and systematically organized to facilitate the compilation and retrieval of information. Information required for the annual abortion report shall be readily retrievable from the clinical record.

(1) The facility shall have written procedures which are adopted, implemented, and enforced regarding the removal of records and the release of information. A facility shall not release any portion of a patient record to anyone other than the patient except as allowed by law.

(2) All information regarding the care and services shall be centralized in the record and be protected against loss or damage and unofficial use.

(3) The facility shall establish an area for patient record storage. The patient records shall be retrievable within two hours by the facility for patients whose date of the last visit is less than twelve months. For patients whose date of the last visit is greater than twelve months, records shall be retrievable within ten days.

(4) The facility shall ensure that each record is treated with confidentiality.

(5) The clinical record shall be an original, a microfilmed copy, an optical disc imaging system or other electronic means, or a certified copy. An original record includes manually signed paper records or electronically signed computer records. Computerized records shall meet all requirements of paper records including protection from unofficial use and retention for the period specified in subsection (d) of this section. Systems shall assure that entries regarding the delivery of care or services are not altered without evidence and explanation of such alteration.

(6) A facility shall maintain clinical records in their original state. Each entry shall be accurate, dated with the date of entry, and signed by the individual making the entry. Correction fluid or tape shall not be used in the record. Corrections shall be made by striking through the error with a single line, and shall include the date the correction was made and the initials of the person making the correction.

(c) The clinical record shall contain:

(1) patient identifying information;

(2) name of physician;

(3) diagnosis;

(4) history and physical;

(5) a preanesthesia evaluation performed by personnel approved by the facility to provide anesthesia services;

(6) laboratory reports;

(7) report of gross and/or microscopic examination of tissue obtained during a surgical abortion;

(8) allergies/drug reactions;

(9) physician's orders;

(10) progress notes to include at a minimum notations of vital signs; signs and symptoms; response to medication(s) and treatment(s); and any changes in physical or emotional condition(s). These notations shall be written, dated, and signed by the individual(s) delivering patient care no later than 10 days from the day the patient is discharged from the facility;

(11) education/information and referral notes;

(12) signed patient consent form;

(13) medication administration records. Notations of all pharmaceutical agents shall include the time and date administered, the name of the individual administering the agent, and the signature of the person making the notation if different than the individual administering the agent;

(14) condition on discharge;

(15) the medical examination or written referral, if obtained;

(16) physician documentation of viability or nonviability of fetus(es) at a gestational age greater than 26 weeks; and

(17) for patients receiving moderate sedation/analgesia or deep sedation/analgesia:

(A) a minimum of blood pressure, pulse, and respirations shall be obtained and recorded before sedation, during sedation, during the procedure, during the initial recovery period, and before discharge from the facility; and

(B) the patient's blood oxygenation shall be assessed and recorded, a minimum of at the time of sedation, during the procedure, and after the procedure.

(d) A licensed abortion facility shall retain clinical records for adults for seven years from the time of discharge and clinical records for minors for five years past the age the patient reaches majority.

(e) A licensed abortion facility may not destroy patient records that relate to any matter that is involved in litigation if the facility knows the litigation has not been finally resolved.

(f) If a licensed abortion facility closes, there shall be an arrangement for the preservation of inactive records to ensure compliance with this section. The facility shall send the department written notification of the reason for closure, the location of the patient records, and the name and address of the patient record custodian. If a facility closes with an active patient roster, a copy of the active patient record shall be transferred with the patient to the receiving facility or other health care facility in order to assure continuity of care and services to the patient.

§139.56. Emergency Services.

(a) A licensed abortion facility shall have a readily accessible written protocol for managing medical emergencies and the transfer of patients requiring further emergency care to a hospital. The facility shall ensure that the physicians who practice at the facility have admitting privileges or have a working arrangement with a physician(s) who has admitting privileges at a local hospital in order to ensure the necessary back up for medical complications.

(b) The facility shall have the necessary equipment and personnel for cardiopulmonary resuscitation as described in §139.59 of this title (relating to Anesthesia Services).

(c) Personnel providing direct patient care shall be currently certified in basic life support by the American Heart Association, the American Red Cross, or the American Safety and Health Institute, or in accordance with their individual professional licensure requirements, and if required in their job description or job responsibilities.

§139.57. Discharge and Follow-up Referrals.

(a) A licensed abortion facility shall develop and implement written discharge instructions which shall include:

(1) a list of complications (developed by the facility in conjunction with a physician who practices in the facility) that warrant the patient contacting the facility, which shall include, but not be limited to:

- (A) pain;
- (B) fever; and
- (C) bleeding;

(2) a statement of the facility's plan to respond to the patient in the event the patient experiences any of the complications listed in the discharge instructions to include:

(A) the mechanism by which the patient may contact the facility on a 24-hour basis by telephone answering machine or service, or by direct contact with an individual;

(B) the facility's requirement that every reasonable effort be made and documented to respond to the patient within 30 minutes of the patient's call;

(C) assurance that the responding individual shall be a physician, advanced practice nurse, physician assistant, registered nurse, or licensed vocational nurse; and

(D) information that the patient may also contact the emergency medical service or present for care at the emergency room of a hospital in addition to contacting the facility; and

(3) information concerning the need for a post-abortion examination.

(b) A facility shall provide a patient with a copy of the written discharge instructions described in subsection (a) of this section.

(c) The facility shall develop and implement written policies and procedures for:

(1) examination or referral of all patients who report complications, as identified in the list required by subsection (a)(1) of this section, to the facility after an abortion procedure. The written policy and procedure shall require:

(A) the facility to maintain a written system of documentation of patients who report post-abortion complications within 14 days of the procedure date;

(B) documentation of the facility's action following a patient's reporting of post-abortion complications to be placed in the patient's record; and

(C) the patients' records to be maintained for adults for seven years and for minors five years past the age the patient reaches majority; and

(2) periodic review of the record keeping system for post-abortion complications to identify problems and potential problems and to make changes in order to resolve the problems.

§139.58. Reporting Requirements.

A licensed abortion facility shall report a woman's death if it results from a complication(s) of an abortion. The report shall be made by phone or fax within one business day after the facility is notified of the death to the Manager, Facility Licensing Group, Department of State Health Services, Post Office Box 149347, Austin, Texas 78714-9347, telephone (512) 834-6646, or fax (512) 834-4514 or (512) 834-6709.

§139.59. Anesthesia Services.

(a) Anesthesia services provided in the abortion facility shall be limited to those that are approved by the governing body, which may include the following.

(1) Topical anesthesia--An anesthetic agent applied directly or by spray to the skin or mucous membranes, intended to produce transient and reversible loss of sensation to the circumscribed area.

(2) Local anesthesia--Administration of an agent that produces a transient and reversible loss of sensation to a circumscribed portion of the body.

(3) Regional anesthesia--Anesthetic injected around a single nerve, a network of nerves, or vein that serves the area involved in a surgical procedure to block pain.

(4) Minimal sedation (anxiolysis)--A drug-induced state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected.

(5) Moderate sedation/analgesia ("conscious sedation")--A drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. (Reflex withdrawal from a painful stimulus is NOT considered a purposeful response.)

(6) Deep sedation/analgesia--A drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained. (Reflex withdrawal from a painful stimulus is NOT considered a purposeful response.)

(7) General anesthesia--A drug-induced loss of consciousness during which patients are not arousable, even by painful stimula-

tion. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

(b) The anesthesia department shall be under the medical direction of a physician approved by the governing body upon the recommendation of the abortion facility medical staff.

(c) The medical staff shall develop written policies and practice guidelines for the anesthesia service, which shall be approved, implemented and enforced by the governing body. The policies and guidelines shall include consideration of the applicable practice standards and guidelines of the American Society of Anesthesiologists, the American Association of Nurse Anesthetists, and the licensing rules and standards applicable to those categories of licensed professionals qualified to administer anesthesia.

(d) Only personnel who have been approved by the facility to provide anesthesia services shall administer anesthesia. All approvals or delegations of anesthesia services as authorized by law shall be documented and include the training, experience, and qualifications of the person who provided the service. A qualified registered nurse (RN) who is not a certified registered nurse anesthetist (CRNA), in accordance with the orders of the operating surgeon or an anesthesiologist, may administer topical anesthesia, local anesthesia, minimal sedation and moderate sedation, in accordance with all applicable rules, polices, directives and guidelines issued by the Texas Board of Nursing. When an RN who is not a CRNA administers sedation, as permitted in this paragraph, the facility shall:

(1) verify that the registered nurse has the requisite training, education, and experience;

(2) maintain documentation to support that the registered nurse has demonstrated competency in the administration of sedation;

(3) with input from the facility's qualified anesthesia providers, develop, implement and enforce detailed, written policies and procedures to guide the registered nurse; and

(4) ensure that, when administering sedation during a procedure, the registered nurse has no other duties except to monitor the patient.

(e) Anesthesia shall not be administered unless the physician has evaluated the patient immediately prior to the procedure to assess the risk of the anesthesia and of the procedure to be performed.

(f) The anesthesiologist or the operating surgeon shall be available until all of his or her patients operated on that day have been discharged from the recovery room.

(g) Patients who have received anesthesia shall be evaluated for proper anesthesia recovery by the operating surgeon or the person administering the anesthesia prior to discharge from the recovery room using criteria approved by the medical staff.

(h) Patients who remain in the facility for extended observation following discharge from the recovery room shall be evaluated immediately prior to leaving the facility by a physician, the person administering the anesthesia, or a registered nurse acting in accordance with physician's orders and written policies, procedures and criteria developed by the medical staff.

(i) A physician shall be on call and able to respond physically or by telephone within 30 minutes until all patients have been discharged from the abortion facility.

(j) Emergency equipment and supplies appropriate for the type of anesthesia services provided shall be maintained and accessible to staff at all times.

(1) Functioning equipment and supplies which are required for all facilities include:

(A) suctioning equipment, including a source of suction and suction catheters in appropriate sizes for the population being served;

(B) source of compressed oxygen;

(C) basic airway management equipment, including oral and nasal airways, face masks, and self-inflating breathing bag valve set;

(D) blood pressure monitoring equipment; and

(E) emergency medications specified by the medical staff and appropriate to the type of surgical procedures and anesthesia services provided by the facility.

(2) In addition to the equipment and supplies required under paragraph (1) of this subsection, facilities which provide moderate sedation/analgesia, deep sedation/analgesia, regional analgesia and/or general anesthesia shall provide the following:

(A) intravenous equipment, including catheters, tubing, fluids, dressing supplies, and appropriately sized needles and syringes;

(B) advanced airway management equipment, including laryngoscopes and an assortment of blades, endotracheal tubes and stylets in appropriate sizes for the population being served;

(C) a mechanism for monitoring blood oxygenation, such as pulse oximetry;

(D) electrocardiographic monitoring equipment;

(E) cardiovertor-defibrillator; and

(F) pharmacologic antagonists as specified by the medical staff and appropriate to the type of anesthesia services provided.

§139.60. Other State and Federal Compliance Requirements.

(a) A licensed abortion facility shall be in compliance with all state and federal laws pertaining to handling of drugs.

(b) A licensed abortion facility that provides laboratory services shall meet the Clinical Laboratory Improvement Amendments of 1988, 42 United States Code, §263a, Certification of Laboratories (CLIA 1988). CLIA 1988 applies to all facilities with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(c) A licensed abortion facility shall ensure that its physicians comply with the Medical Practice Act, Occupations Code, Chapters 151 - 160 and 162 - 165, while functioning in his or her capacity at or for the facility.

(d) A licensed abortion facility utilizing the services of a physician assistant(s) shall ensure that its physician assistants comply with the Physician Assistant Licensing Act, Occupations Code, Chapter 204, while functioning in his or her capacity at or for the facility.

(e) A licensed abortion facility utilizing the services of a registered nurse shall ensure that its registered nurses comply with the Nursing Practice Act, Occupations Code, Chapters 301 and 304, while functioning in his or her capacity at or for the facility.

(f) A licensed abortion facility utilizing the services of a licensed vocational nurse(s) shall ensure that its vocational nurse(s) com-

ply with the Nursing Practice Act, Occupations Code, Chapters 301 and 304, while functioning in his or her capacity at or for the facility.

(g) A licensed abortion facility that provides pharmacy services shall obtain a license as a pharmacy if required by the Texas Pharmacy Act, Occupations Code, Chapters 551 - 569.

(h) A licensed abortion facility shall comply with the following federal Occupational Safety and Health Administration requirements:

(1) 29 Code of Federal Regulations, Subpart E, §1910.38, concerning emergency action plan and §1910.39, concerning fire prevention plans;

(2) 29 Code of Federal Regulations, Subpart I, §1910.132, concerning general requirements for personal protective equipment;

(3) 29 Code of Federal Regulations, Subpart I, §1910.133, concerning eye and face protection;

(4) 29 Code of Federal Regulations, Subpart I, §1910.138, concerning hand protection;

(5) 29 Code of Federal Regulations, Subpart K, §1910.151, concerning medical services and first aid;

(6) 29 Code of Federal Regulations, Subpart L, §1910.157, concerning portable fire extinguishers;

(7) 29 Code of Federal Regulations, Subpart Z, §1910.1030, concerning bloodborne pathogens; and

(8) 29 Code of Federal Regulations, Subpart Z, §1910.1200, Appendices A - E, concerning hazard communication (hazardous use of chemicals).

(i) A licensed abortion facility shall not use adulterated or misbranded drugs or devices in violation of the Health and Safety Code, §431.021. Adulterated drugs and devices are described in Health and Safety Code, §431.111. Misbranded drugs or devices are described in Health and Safety Code, §431.112.

(j) A licensed abortion facility shall not commit a false, misleading, or deceptive act or practice as that term is defined in the Deceptive Trade Practices-Consumer Protection Act, Business and Commerce Code, §17.46.

(k) A licensed abortion facility shall comply with the requirements of the Family Code, §33.002, relating to a Consent Form.

(l) A licensed abortion facility shall comply with the requirements of Health and Safety Code, Chapter 171, the Woman's Right to Know Act.

(m) A licensed abortion facility shall comply with the requirements of Occupations Code, Chapter 102, Solicitation of Patients.

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

Filed with the Office of the Secretary of State on December 4, 2008.

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Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: January 18, 2009

For further information, please call: (512) 458-7111 x6972

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER C. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS

31 TAC §65.103

The Texas Parks and Wildlife Department (the department) proposes an amendment to §65.103, concerning Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds (popularly known as "Triple T" permits).

Under current rule, Triple T permits may be issued only after a department biologist and/or technician has approved an applicant's wildlife management plan and approved the prospective trap and release sites following on-site habitat inspections. The current rule does not specify a deadline for permit applications, which has created a problematic situation with respect to workforce logistics and scheduling. Out of 77 Triple T permit applications received during the 2007-08 permit year, 51 (which involved over 120 separate release sites) were received after January 1. This has created conflict with existing job duties of department field personnel during the winter months, when such personnel are typically involved in site inspections for Managed Lands Deer Permits issuance, technical guidance requests, locker plant checks, research, and other activities. Therefore, the department finds it necessary to create a firm deadline for the submission of provisionally complete Triple T permit applications.

The current rules guarantee that applications for Triple T permits received by the department between September 1 and November 15 will be approved or denied within 45 days. The proposed amendment would allow the denial of Triple T permit applications submitted between November 16 and January 1 and would create a final deadline of January 1 for applications seeking permit approval in the current permit year. The proposed amendment also would require applicants to submit provisionally complete applications by the deadlines, i.e., only that information necessary to allow field staff to begin planning and assessing each application, such as trap site information, release sit information, and the number of deer to be trapped and released. Other application materials, such as Chronic Wasting Disease test results, could still be submitted at a later date.

Mr. Clayton Wolf, Big Game Program Director, has determined that for each of the first five years the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Wolf also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be a more effective and efficient use of staff time to execute the duties of the department for the benefit of the people of the state.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement

and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. The department has determined that there will be no direct economic effect on small or micro-businesses or persons required to comply as a result of the proposed rule. The rule would not compel or mandate any action on the part of any entity, including small businesses or microbusinesses. In particular, the proposed rule would not add new reporting or recordkeeping requirements; require any new professional expertise, capital costs, or costs for modification of existing processes or procedures; lead to loss of sales or profits; change market competition; or increase taxes or fees. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Mr. Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775, e-mail: robert.macdonald@tpwd.state.tx.us.

The amendment is proposed under Parks and Wildlife Code, §43.061, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds.

The proposed amendment affects Parks and Wildlife Code, Chapter 43.

§65.103. *Trap, Transport, and Transplant Permit.*

(a) (No change.)

(b) Applications received by the department between September 1 and November 15 in a calendar year shall be approved or denied within 45 days of receipt. Permits for the current trapping year will not be issued for applications received later than January 1. To be processed, an application must contain, at a minimum, the following information as specified on department form PWD 1135A (Trap, Transport, and Transplant Permit Application):

(1) trap site information;

(2) release site information;

(3) the number of deer to be trapped at each trap site; and

(4) the number of deer to be released at each release site.

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

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

Filed with the Office of the Secretary of State on December 5, 2008.

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: January 18, 2009

For further information, please call: (512) 389-4775

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SUBCHAPTER G. THREATENED AND ENDANGERED NONGAME SPECIES

The Texas Parks and Wildlife Department (the department) proposes the repeal of §65.176, an amendment to §65.175, and new §65.176 and §65.177, concerning Threatened and Endangered Nongame Species.

The proposed repeal of §65.176, concerning Violations and Penalties, is necessary to relocate the contents of that section in proposed new §65.177. The proposed amendment to §65.175, concerning Threatened Species, would add the San Felipe gambusia (*Gambusia clarkhubbsi*) to the list of threatened species and remove the Arctic peregrine falcon (*Falco peregrinus tundrius*) from the same list. Proposed new §65.176, concerning Endangered Species, would incorporate by rule the list of species indigenous to Texas that are listed by the federal government as endangered. Proposed new §65.177, concerning Violations and Penalties, would contain the provisions of current §65.176, which is proposed for repeal in order to create a place for proposed new §65.176.

Under current rule, a species of fish and wildlife is designated as threatened if the department has determined that it is "likely to become endangered in the future." The department establishes this status by rule under authority of Parks and Wildlife Code, Chapter 67, which authorizes regulations to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that department consider necessary to manage a species. Since the threatened species list is adopted by rule, the provisions of the Administrative Procedure Act apply, including the requirement that a state agency give at least 30 days' notice of its intention to adopt a rule.

Under Parks and Wildlife Code, Chapter 68, a species is endangered under state law if it 1) indigenous to Texas and listed by the federal government as endangered, or 2) designated by the executive director of the Texas Parks and Wildlife Department as "threatened with statewide extinction." At the current time, there are no species listed by the executive director as "threatened with statewide extinction;" therefore, the only species designated as endangered in Texas are those that are listed by the federal government. Under Chapter 68, the department is not required to list federally endangered species by rule; however, whenever the federal government modifies the list of endangered species, the executive director is required to file an order with the secretary of state accepting the modification. The department is required to provide notice of intent to file such an order at least 60 days prior to the filing of the order.

The proposed amendment to §65.175 would add the San Felipe gambusia to the list of threatened species and remove the Arctic peregrine falcon from the same list. The San Felipe gambusia is known to occur only in San Felipe Springs and San Felipe Creek in Val Verde County. Staff has determined that because of its extremely limited range, extirpation is a certainty if the species ceases to occur in San Felipe Creek.

The Arctic peregrine falcon was declared recovered by the U.S. Fish and Wildlife Service (Service) in 1994 and was removed from the federal list of endangered species at that time. Federal rulemaking is currently underway that would allow states to authorize limited take of Arctic peregrines for falconry use, and staff proposes to remove the Arctic peregrine falcon from the list of threatened species in order to allow their take by selected licensed falconers.

Proposed new §65.176, concerning Endangered Species, would adopt the federal list of endangered species by rule. The intent of the department is to locate the federal list of endangered species and the state list of threatened within a single subchapter of the Texas Administrative Code in order to create single, comprehensive location for threatened and endangered species lists, which should make research, reference and citation more convenient.

Proposed new §65.177, concerning Violations and Penalties, would relocate provisions currently located in §65.176 which is being repealed and replaced with proposed new §65.176, concerning Endangered Species.

Dr. Matt Wagner, Wildlife Diversity Program Director, has determined that for each of the first five years the repeal, amendment, and new rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Wagner also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the protection of rare species, the opportunity for the public to enjoy the regulated use of recovered species, and more informative regulations.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. The department has determined that there will be no direct economic effect on small or micro-businesses or persons required to comply as a result of the proposed rules. The rules would not compel or mandate any action on the part of any entity, including small businesses or microbusinesses. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Ms. Nancy Gallacher, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4978, e-mail: nancy.gallacher@tpwd.state.tx.us.

31 TAC §§65.175 - 65.177

The amendment and new sections are proposed under Parks and Wildlife Code, Chapter 67, which authorizes the commission

to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species, and Chapter 68, which authorizes regulations necessary to administer the provisions of Chapter 68 and to attain its objectives, including regulations to govern the publication and distribution of lists of species and subspecies of endangered fish or wildlife and their products and limitations on the capture, trapping, taking, or killing, or attempting to capture, trap, take, or kill, and the possession, transportation, exportation, sale, and offering for sale of endangered species.

The proposed amendment and new sections affect Parks and Wildlife Code, Chapters 67 and 68.

§65.175. *Threatened Species.*

A threatened species is any species that the department has determined is likely to become endangered in the future. The following species are hereby designated as threatened species:

Figure: 31 TAC §65.175

§65.176. *Endangered Species.*

The following species are endangered species.

Figure: 31 TAC §65.176

§65.177. *Violations and Penalties.*

Penalties for violations of this subchapter involving:

(1) the species listed in §65.175 of this title (relating to Threatened Species) are prescribed by Parks and Wildlife Code, Chapter 67; and

(2) species listed in §65.176 of this title (relating to Endangered Species) are prescribed by Parks and Wildlife Code, Chapter 68.

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

Filed with the Office of the Secretary of State on December 5, 2008.

TRD-200806379

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: January 18, 2009

For further information, please call: (512) 389-4775



31 TAC §65.176

(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 Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Parks and Wildlife Code, Chapter 67, which authorizes the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed repeal affects Parks and Wildlife Code, Chapter 67.

§65.176. *Violations and Penalties.*

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

Filed with the Office of the Secretary of State on December 5, 2008.

TRD-200806380

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: January 18, 2009

For further information, please call: (512) 389-4775



SUBCHAPTER K. RAPTOR PROCLAMATION

31 TAC §65.265

The Texas Parks and Wildlife Department (the department) proposes an amendment to §65.265, concerning Permit Classes: Qualifications and Restrictions. The United States Fish and Wildlife Service (the Service) has authorized the issuance of a special-purpose permit to allow the possession and use of raptors by licensed falconers to abate depredation problems (50 CFR §21.27). Under an abatement permit, raptors may be used by permitted falconers to flush, haze, or take birds or other wildlife to mitigate depredation and nuisance problems, including threats to human health and safety. Under current rule, the number of raptors that may be possessed by a permitted falconer is specified according to the level of permit possessed by the falconer. The proposed amendment would add a new paragraph (6) to clarify that raptors possessed under an abatement permit do not count against the possession limits specified in the rule for each class of falconry permittee.

Dr. Matt Wagner, Director of Wildlife Diversity, has determined that for each of the first five years the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Dr. Wagner also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the ability of licensed falconers to assist in the abatement of nuisance wildlife.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. The department has determined that there will be no direct economic effect on small or micro-businesses or persons required to comply as a result of the proposed rule. The rule would not compel or mandate any action on the part of any entity, including small businesses or microbusinesses. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rule may be submitted to Jennifer Brennan, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4481, e-mail: jennifer.brennan@tpwd.state.tx.us.

The amendment is proposed under Parks and Wildlife Code, §49.014, which authorizes the department to prescribe rules for the taking, capture, possession, propagation, transportation, export, import, and sale of raptors.

The proposed amendment affects Parks and Wildlife Code, Chapter 49.

§65.265. *Permit Classes: Qualifications and Restrictions.*

A person who is not a resident of this state may not hold any permit issued under this subchapter other than a nonresident trapping permit.

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

(6) Federal abatement permittees. The possession limits established in this section for each class of permittee do not apply to raptors possessed under a federal abatement permit.

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

Filed with the Office of the Secretary of State on December 5, 2008.

TRD-200806378

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: January 18, 2009

For further information, please call: (512) 389-4775



TITLE 34. PUBLIC FINANCE

PART 9. TEXAS BOND REVIEW BOARD

CHAPTER 181. BOND REVIEW BOARD

SUBCHAPTER A. BOND REVIEW RULES

34 TAC §181.11

(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 Bond Review Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Bond Review Board (BRB) proposes the repeal of Chapter 181, Subchapter A, §181.11, concerning Filing of Requests for Proposal. The rule is now superseded by Section 1 of Senate Bill 1332 passed in the 80th Legislature that amends §1201.027 of the Texas Government Code by adding subsection (d) that requires an issuer of state securities that selects or contracts with a person to provide services to submit, on request, request for proposals to the BRB to provide the services. Pursuant to this statute, the Bond Finance Office has requested that all issuers provide such request for proposals, and the BRB has

already received three requests for proposals for its review. Section 181.11 has become obsolete and is no longer needed.

Robert Kline, Executive Director for the BRB, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal of the section.

Mr. Kline has also determined that for each year of the first five years the repeal of the section is in effect the public will benefit by removing an obsolete rule from the Texas Administrative Code. There will be no effect on small businesses. There is no anticipated economic cost to persons to comply with the repeal of this section.

Comments on the proposal may be submitted in writing to Robert Kline, Texas Bond Review Board, P.O. Box 13292, Austin, Texas 78711-3292. Comments may also be submitted electronically to kline@brb.state.tx.us with a copy to latsha@brb.state.tx.us or faxed to (512) 475-4802.

The repeal is proposed under Chapter 1231, Texas Government Code, which gives BRB the authority to adopt rules governing application for review, the review process, and reporting requirements involved in the issuance of state securities.

No other codes, articles, or statutes are affected by this proposal.

§181.11. Filing of Requests for Proposal.

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

Filed with the Office of the Secretary of State on December 8, 2008.

TRD-200806389

Rob Latsha

Senior Financial Analyst

Texas Bond Review Board

Earliest possible date of adoption: January 18, 2009

For further information, please call: (512) 475-4800



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.8

The Texas Board of Criminal Justice proposes amendments to §151.8, concerning Advisory Committees. The proposed amendments are necessary to add clarity and conform the rule to the existing organizational structure of the Texas Department of Criminal Justice.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five (5) years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that, for the first five (5) year period, there will not be an economic impact on persons required

to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, is to provide the Board an opportunity to receive advice on a variety of issues related to the management of offenders in the criminal justice system upon which sound policy decisions can be made.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Government Code §2110.005 and §2110.008.

Cross Reference to Statutes: Texas Government Code Chapter 2110 and §§492.006, 492.013, 493.003, and 510.011 - 510.014 and Texas Health and Safety Code §614.002 and §614.009.

§151.8. Advisory Committees.

(a) General. This section identifies advisory committees related to the Texas Department of Criminal Justice (TDCJ) [~~FDCJ~~] and established by or under state law. The TDCJ Business and Finance Division [Financial Services] shall annually evaluate each committee's work, usefulness, and costs of existence, and it shall report that information biennially to the Legislative Budget Board.

(b) Judicial Advisory Council (JAC) [~~"JAC"~~]. The JAC exists pursuant to Texas Government Code §493.003(b). The purpose, tasks[,] and reporting procedure for the JAC are described in §161.21 of this title (relating to Role of the Judicial Advisory Council). The JAC is abolished on September 1, 2011.

(c) Texas State Council for Interstate Adult Offender Supervision (Council) [~~"the Council"~~]. Pursuant to Texas Government Code Chapter 510, the Council shall advise the administrator for the Interstate Compact for Adult Offender Supervision and the state's commissioner to the Interstate Commission for Adult Offender Supervision, on the state's participation in commission activities and the administration of the compact. Periodic reporting takes place through meetings held prior to or following a National Commission meeting. Through these meetings, the administrator can discuss issues on a national scope with the National Commissioner and the Council can provide verbal feedback and direction.

(d) Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments (ACOOMMI) [~~"ACOOMMI"~~]. Pursuant to Texas Health and Safety Code Chapter 614, ACOOMMI shall advise the Texas Board of Criminal Justice (TBCJ or Board) and the Director of the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) [~~"TCOOMMI"~~] on matters related to offenders with medical or mental impairments. The Chairman of the ACOOMMI or designee shall have an opportunity to report to the Board by February 1 of each odd numbered year and at the other times as agreed by the Chairman of the ACOOMMI and Chairman of the Board. The [ACOOMMI shall report to the Board, ordinarily through the Director of TCOOMMI, at the January Board meeting in odd-numbered years, and otherwise at the request of the Chairman of the Board of Criminal Justice.] ACOOMMI is abolished on September 1, 2011.

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

Filed with the Office of the Secretary of State on December 3, 2008.

TRD-200806355

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: January 18, 2009

For further information, please call: (512) 463-0422



37 TAC §151.75

The Texas Board of Criminal Justice proposes amendments to §151.75, concerning Standards of Conduct for Financial Advisors. The proposed amendments are necessary to add clarity.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice (TDCJ), has determined that for each year of the first five (5) years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that, for the first five (5) year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to set standards for financial advisors who advise the Agency in connection with the management or investment of state funds.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Government Code Chapter 2263.

Cross Reference to Statutes: Texas Government Code Chapters 404, 552 and 2256 and §492.013.

§151.75. *Standards of Conduct for Financial Advisors.*

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

~~{(1) TDCJ—The Texas Department of Criminal Justice, and any division or entity within TDCJ or managed by TDCJ.}~~

~~{(2) "Financial Advisor [advisor] or Service Provider" is [service provider—Includes] a person or business entity who acts as a financial advisor, financial consultant, money manager, investment manager[;] or broker.~~

(b) Applicability.

(1) This section applies in connection with the management or investment of any state funds managed or invested by the Texas Department of Criminal Justice (TDCJ) [~~TDCJ~~] under the Texas Constitution or other law, including [~~Government Code,~~] Chapters 404 and 2256, Texas Government Code, without regard to whether the funds are held in the state treasury.

(2) This section applies to financial advisors or service providers who are not employees of the TDCJ, who provide financial services to or advise the TDCJ in connection with the management or investment of state funds, and who:

(A) May [~~may~~] reasonably be expected to receive, directly or indirectly, more than \$10,000 in compensation from TDCJ during a fiscal year; or

(B) Render [~~render~~] important investment or funds management advice to the TDCJ.

(3) The standards adopted in this rule [~~section~~] are intended to identify professional and ethical standards by which all financial advisors or service providers shall [~~must~~] abide in addition to the professional and ethical standards that may already be imposed on financial advisors or service providers under any contracts or service agreements with the TDCJ.

(c) Disclosure Requirements.

(1) A financial advisor or service provider shall disclose in writing to the TDCJ and to the State Auditor [~~state auditor~~]:

(A) Any [~~any~~] relationship the financial advisor or service provider has with any party to a transaction with the TDCJ, other than a relationship necessary to the investment or fund management services that the financial advisor or service provider performs for the TDCJ, if the relationship could reasonably be expected to diminish the financial advisor's or service provider's independence of judgment in the performance of the person's responsibilities to the TDCJ; and

(B) All [~~all~~] direct or indirect pecuniary interests the financial advisor or service provider has in any party to a transaction with the TDCJ, if the transaction is connected with any financial advice or service the financial advisor or service provider provides to the TDCJ in connection with the management or investment of state funds.

(2) The financial advisor or service provider shall disclose a relationship described by paragraph (1) of [~~this~~] subsection (c) without regard to whether the relationship is a direct, indirect, personal, private, commercial[;] or business relationship.

(3) A financial advisor or service provider shall file annually a statement with the TDCJ and with the State Auditor [~~state auditor~~]. The statement shall [~~must~~] disclose each relationship and pecuniary interest described by paragraph (1) of [~~this~~] subsection (c) or, if no relationship or pecuniary interest described by [~~that~~] subsection (c) existed during the disclosure period, the statement shall [~~must~~] affirmatively state that fact.

(4) The annual statement shall [~~must~~] be filed no [~~not~~] later than April 15 on a form prescribed by the TDCJ. The statement shall [~~must~~] cover the reporting period of the previous calendar year.

(5) The financial advisor or service provider shall promptly file a new or amended statement with the TDCJ and with the State Auditor [~~state auditor~~] whenever there is new information to report under paragraph (1) of [~~this~~] subsection (c).

(d) Standards of Conduct.

(1) Compliance.

(A) These standards are intended to be in addition to, and not in lieu of, a financial advisor's or service provider's obligations under its contract or service agreement with the TDCJ. In the event of a conflict between a financial advisor's or service provider's obligations under these standards and under its contract or services agreement, the standard that imposes a stricter ethics or disclosure requirement controls.

(B) A financial advisor or service provider shall be knowledgeable about these standards, keep current with revisions to these standards[;] and abide by the provisions set forth in these standards.

(C) In all professional activities, a financial advisor or service provider shall perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities, including the TDCJ, and in accordance with any established policies of the TDCJ.

(2) Qualification Standards.

(A) A financial advisor or service provider shall render opinions or advice, or perform professional services only in those areas in which the financial advisor or service provider has competence based on education, training or experience. In areas where a financial advisor or service provider is not qualified, the financial advisor or service provider shall seek the counsel of qualified individuals or refer the TDCJ to such persons.

(B) A financial advisor or service provider shall keep informed of developments in the field of financial planning and investments and participate in continuing education throughout the financial advisor's or service provider's relationship with the TDCJ in order to improve professional competence in all areas in which the financial advisor or service provider is engaged.

(3) Integrity.

(A) A financial advisor or service provider has an obligation to observe standards of professional conduct in the course of providing advice, recommendations and other services performed for the TDCJ. A financial advisor or service provider shall perform professional services with honesty, integrity, skill and care. In the course of professional activities, a financial advisor or service provider shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly make a false or misleading statement to a client, employer, employee, professional colleague, governmental, or other regulatory body or official, or any other person or entity.

(B) A financial advisor's ~~adviser~~ or service provider's relationship with a third party shall not be used to obtain illegal or improper treatment from such third party on behalf of the TDCJ.

(4) Objectivity. A financial advisor or service provider shall ~~with~~ maintain objectivity and be free of conflicts of interest in discharging its responsibilities. A financial advisor or service provider shall ~~with~~ remain independent in fact and appearance when providing financial planning and investment advisory services to the TDCJ.

(5) Prudence. A financial advisor or service provider shall exercise reasonable and prudent professional judgment in providing professional services to the TDCJ.

(6) Competence. A financial advisor or service provider shall strive to continually improve its competence and the quality of services, and discharge its responsibilities to the best of its ability.

(7) Conflicts of Interest.

(A) If a financial advisor or service provider is aware of any significant conflict between the interests of the TDCJ and the interests of another person, the financial advisor or service provider shall advise the TDCJ of the conflict and shall also include appropriate qualifications or disclosures in any related communication.

(B) A financial advisor or service provider shall not perform professional services involving an actual or potential conflict of interest with the TDCJ unless the financial advisor's or service provider's ability to act fairly is unimpaired, there has been full disclosure of the conflict to the TDCJ, and the TDCJ has expressly agreed in writing to the performance of the services by the financial advisor or service provider.

(8) Confidentiality.

(A) A financial advisor or service provider shall not disclose to another person any confidential information obtained from the TDCJ or regarding the TDCJ's investments unless authorized to do so by the TDCJ in writing or required to do so by law.

(B) For the purposes of this subsection, "confidential information" refers to information not in the public domain of which the financial advisor or service provider becomes aware during the course of rendering professional services to the TDCJ. It may include information of a proprietary nature, information that is excepted from disclosure under the *Public Information Act*, Chapter 552, Texas Government Code, [~~Chapter 552,~~] or information restricted from disclosure under any contract or service agreement with the TDCJ.

(e) Contract Voidable. A contract under which a financial advisor or service provider renders financial services or advice to the TDCJ is voidable by the TDCJ if the financial advisor or service provider violates a standard of conduct outlined in this rule ~~[section]~~.

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

Filed with the Office of the Secretary of State on December 3, 2008.

TRD-200806356

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: January 18, 2009

For further information, please call: (512) 463-0422



CHAPTER 161. COMMUNITY JUSTICE ASSISTANCE DIVISION ADMINISTRATION

37 TAC §161.21

The Texas Board of Criminal Justice proposes amendments to §161.21, concerning Role of the Judicial Advisory Council. The proposed amendments are necessary to add clarity.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five (5) years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that, for the first five (5) year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, is to provide the Board an opportunity to receive advice on matters of interest to the judiciary upon which sound policy decisions can be made.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Government Code §492.006 and §493.003(b).

Cross Reference to Statutes: Texas Government Code §492.013.

§161.21. *Role of the Judicial Advisory Council.*

(a) Policy. The Texas Board of Criminal Justice (TBCJ or Board) acknowledges the judiciary's statutory responsibility and the valuable and critical role of the judiciary in the growth, development and implementation of community corrections policies and programs in Texas. The Judicial Advisory Council (JAC) is intended to provide a structure for fulfilling that role.

(b) State-level Role of the JAC. In accordance with Texas Government Code, §493.003(b), the function of the JAC is to advise the Board and the Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) director on matters of interest to the judiciary. To accomplish this purpose, the JAC shall:

(1) Act as an information exchange and provide expert advice to the Board and the TDCJ-CJAD director;

(2) Be given an opportunity to report to the Board at each regularly scheduled meeting on matters of interest to the judiciary, including any item related to the operation of the community justice system, as determined by the JAC Chairman to require the Board's consideration; [board annually during the third quarter of the fiscal year on the status and needs of the community corrections component of the criminal justice system;] and

(3) Conduct a review of requests for funding of community corrections programs and projects received by the TDCJ-CJAD, and make recommendations to the TDCJ-CJAD director on the funding of reviewed requests, subject to the review, ratification and final approval by the Board, if such approval is required by Board policy [determined to be necessary by the executive director of the Department of Criminal Justice (department)].

(c) Local-level Role of the JAC. In addition to the duties set out in subsection (b) of this rule, the JAC shall:

(1) Inform and educate, in an appropriate manner, the constituencies that its members represent regarding issues and procedures that affect the corrections system of Texas;

(2) Coordinate its activities with the community justice liaison member of the Board, the TDCJ-CJAD director, the local community supervision and corrections departments (CSCDs), and any other significant entities identified by the TDCJ-CJAD director or the Executive Director of the TDCJ;

(3) Provide a forum for exchange of information and a dialogue with the network of local CSCDs on matters involving community corrections programs.

(d) Additional Authority of the JAC. The JAC Chairman may appoint committees of council members or advisory groups of non-JAC members to achieve the purposes of this rule. The JAC Chairman shall consult with the TDCJ-CJAD director regarding the scheduling of meetings of the JAC, committees of the JAC or advisory groups to the JAC, to ensure that arrangements can be made and that sufficient funds exist to allow reimbursement of expenses for attendance, where authorized by law.

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

Filed with the Office of the Secretary of State on December 3, 2008.

TRD-200806357

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: January 18, 2009

For further information, please call: (512) 463-0422



CHAPTER 195. PAROLE

37 TAC §195.41

The Texas Board of Criminal Justice files this notice of intent to propose a new rule §195.41, Community Residential Facilities.

The purpose of the rule is to set standards for the operation of community residential facilities for offenders on parole or mandatory supervision.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice (TDCJ), has determined that for the first five (5) years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for the first five (5) year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to ensure community residential facilities are operated consistently for the rehabilitation and reformation of persons released to parole and mandatory supervision.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The new rule is proposed under Texas Government Code, §508.119.

Cross Reference to Statutes: Texas Government Code, §492.013.

§195.41. *Community Residential Facilities.*

(a) *General Administration.*

(1) Purpose. Community residential facilities (CRF) that are operated through a contract with the Texas Department of Criminal Justice (TDCJ or Agency) are to provide housing, training, education, rehabilitation and reformation of persons released to parole and mandatory supervision, or whose supervision has been continued or modified. Contractors shall comply with this rule and all contract requirements. This rule does not apply to transitional treatment centers.

(2) Mission Statement. The facility director shall prepare and maintain a mission statement that describes the general purposes and overall goals of the facility's programs.

(b) Building, Safety, Sanitation and Health Codes.

(1) Compliance. The facility director shall ensure that the facility's construction, maintenance and operations complies with all applicable state, federal and local laws, building codes and regulations related to safety, sanitation and health. Records of compliance inspections, audits or written reports by internal and external sources shall be kept on file for examination and review by the TDCJ and other governmental agencies and authorities from program inception forward.

(2) Sanitation. The facility director shall operate the facility in accordance with the sanitation plan described in the Operational Plan.

(3) Physical Plant. The facility's buildings, including the improvements, fixtures, electric and heating and air conditioning, shall conform to all applicable building codes of federal, state and local laws, ordinances and regulations for physical plants and facilities housing residents.

(4) Fires. The facility, its furnishings, fire protection equipment and alarm system shall comply with the regulations of the fire authority having jurisdiction. Fire drills shall be conducted at least monthly. There shall be a written evacuation plan to be used in the event of a fire. The plan is to be certified by an independent qualified governmental agency or department or individual trained in the application of national and state fire safety codes. Such plan shall be reviewed annually, updated if necessary, and reissued to the local fire jurisdiction. Fire safety equipment located at the facility shall be tested as specified by the manufacturer or the fire authority, whichever is more frequent. An annual inspection of the facility shall be conducted by the fire authority having jurisdiction or other qualified person(s).

(5) Emergency Plan. There shall be a written emergency plan for the facility and its operations, which includes an evacuation plan, to be used in the event of a major flood, storm or other emergencies. This plan shall be reviewed annually and updated, if necessary. All facility personnel shall be trained in the implementation of the written emergency plan. The emergency plan shall include the following:

(A) Location of buildings/room floor plan;

(B) Use of exit signs and directional arrows that are easily seen and read; and

(C) Location(s) of publicly posted plan.

(c) Program and Service Areas.

(1) Space and Furnishings. The facility shall have space and furnishings to accommodate activities such as group meetings, private counseling, classroom activities, visitation, recreation and office space for the TDCJ staff.

(2) Housekeeping and Maintenance. The facility director shall ensure the facility is clean and in good repair, and a housekeeping and maintenance plan is in effect.

(3) Other Physical Environment and Facilities Issues. In each facility:

(A) Space shall be provided for janitor closets which are equipped with cleaning implements and kept locked at all times when not in use;

(B) There shall be storage areas in the facility for clothing, bedding and cleaning supplies;

(C) There shall be clean, usable bedding, linens and towels for new residents with provision for exchange or laundering on at least a weekly basis; and

(D) On an emergency or indigent basis, the facility shall provide personal hygiene articles.

(E) There shall be adequate control of vermin and pests;

(F) There shall be timely trash and garbage removal;
and

(G) Sanitation and safety inspections of all internal and external areas and equipment shall be performed and documented on a routine basis to protect the health and safety of all residents, staff and visitors.

(d) Supervision.

(1) Operations Manual. An operations manual shall be prepared for and used by each CRF which shall contain information and specify procedures and policies for resident census, contraband, supervision, physical plant inspection and emergency procedures, including detailed implementation instructions. The operations manual shall be accessible to all employees and volunteers. The operations manual shall be submitted to the TDCJ Private Facility Contract Monitoring/Oversight Division (PFCMOD) for review and approval. The facility director shall ensure that the operations manual is reviewed at least every two (2) years, and new or revised policies and procedures are submitted to the PFCMOD for review and approval. The operations manual shall be made available, including all changes, to designated staff and volunteers prior to implementation.

(2) Staffing Availability. The facility director shall ensure that the facility has the staff needed to provide coverage of designated security posts, surveillance of residents and to perform ancillary functions. Each contract shall have a staffing plan approved by the TDCJ prior to offender arrival.

(3) Activity Log. The facility director shall ensure that CRF staff maintain an activity log and prepare shift reports that record, at minimum, emergency situations, unusual situations and incidents and all absences of residents from a facility.

(4) Use of Force. The facility director shall ensure that a CRF has written policies, procedures and practices that restrict the use of physical force to instances of self-protection, protection of residents or others or prevention of property damage. In no event shall the use of physical force against a resident be justifiable as punishment. A written report shall be prepared following all uses of force, and promptly submitted to the PFCMOD and facility director for review and follow-up. The application of restraining devices, aerosol sprays, chemical agents, etc. shall only be accomplished by an individual who is properly trained in the use of such devices and only in an emergency situation for self-protection, protection of others or other circumstances as described previously.

(5) Access to Facility. The facility shall be secured to prevent unrestricted access by the general public or others without proper authorization.

(6) Control of Contraband/Searches. All facilities shall incorporate into the facility operations manual a list of authorized items offenders are allowed to possess while a resident of the facility. All incoming residents shall receive a copy of this list during the intake/orientation process, along with a written explanation of the provisions of Texas Penal Code, §38.114, which states that any resident found to possess any item not provided by, or authorized by the facility director, or any item authorized or provided by the facility that has been altered to accommodate a use other than the originally intended use, may be charged with a Class C misdemeanor. Any employee or volunteer who provides contraband to a resident of a CRF may be charged with a Class B misdemeanor. There shall also be policies defining facility shake-

downs, strip searches and pat searches of residents to control contraband and provide for its disposal.

(7) Levels of Security. The facility director shall ensure that appropriate levels of security are maintained for the population served by the facility at all times. These levels of security shall create, at minimum, a monitored and structured environment in which a resident's interior and exterior movements and activities can be supervised by specific destination and time.

(8) Exterior Movements. At the discretion of the facility director or designee in conjunction with the Parole Division Regional Director or designee, residents of a CRF may be granted exterior movements. Exterior movements include, but are not limited to employment programs, community service restitution, support/treatment programs and programmatic incentives. The following minimum requirements shall be met for all exterior movements:

(A) The facility director or designee in conjunction with the Parole Division Regional Director or designee approves the exterior movement;

(B) A staff member orally advises the resident of the conditions and limitations of the exterior movement;

(C) The resident acknowledges in writing an understanding of the conditions and limitations of the exterior movement; and

(D) Exterior movements involving programmatic incentives may only be granted if the following additional requirements are met:

(i) The resident meets all established requirements for the programmatic incentive, as determined by the supervisor of the program, and submits a written request for the exterior movement;

(ii) The requested absence shall not exceed 24 hours unless there are unusual circumstances;

(iii) The resident provides an itinerary for the absence including method of travel, departure and arrival times and locations during the exterior movement;

(iv) The facility director or designee in conjunction with the Parole Division Regional Director or designee approves the itinerary and establishes the conditions of the exterior movement involving programmatic incentives; and

(v) A staff member shall make random announced or unannounced personal or telephone contacts with the resident to verify the location of the resident during the exterior movement.

(9) Emergency Furloughs. At the discretion of the Parole Division Regional Director or designee, a resident may be granted an emergency furlough for the purpose of allowing a resident to attend a funeral, visit a seriously ill person, obtain medical treatment or attend to other exceptional business. Emergency furloughs may only be granted if the following conditions are met:

(A) The resident submits a written request for the emergency furlough;

(B) The facility director or designee verifies through an independent source including, but not limited to a physician, Red Cross representative, minister, rabbi, priest or other spiritual leader that the presence of the resident is appropriate;

(C) The resident provides a proposed itinerary including method of travel, departure and arrival times and locations during the emergency furlough;

(D) The requested absence shall not exceed 24 hours unless there are unusual circumstances; and

(E) The Parole Division Regional Director or designee approves the itinerary and establishes the conditions of the emergency furlough.

(10) The CRF shall ensure that Spanish language assistance and the translation of selected documents are provided for Spanish-speaking residents who cannot speak or read English.

(e) Resident Abuse, Neglect and Exploitation. The facility shall protect the residents from abuse, neglect and exploitation. In accordance with the *Prison Rape Elimination Act of 2003* (Public Law 108-79), all CRFs shall establish a zero tolerance standard for the incidence of sexual assault. Each facility shall make prevention of offender sexual assault a top priority. The CRFs shall have policies and procedures in accordance with any national standards published by the Attorney General of the United States. These policies and procedures shall include, but not be limited to the following:

(1) Detection, prevention, reduction and punishment of offender sexual assault;

(2) Standardized definitions to record accurate data regarding the incidence of offender sexual assault;

(3) A disciplinary process for facility staff who fail to take appropriate action to detect, prevent and reduce sexual assaults, to punish residents guilty of sexual assault and to protect the Eighth Amendment rights of all facility residents; and

(4) Notification to the TDCJ in accordance with AD-16.20, "Reporting Incidents to the Office of the Inspector General" and AD-02.15, "Operations of the Emergency Action Center and Reporting Procedures for Serious or Unusual Incidents."

(f) Rules and Discipline. There shall be documentation of program rule violations and the disciplinary process.

(1) Rules of Conduct. All incoming residents and staff shall receive written rules of conduct which specify acts prohibited within the facility and penalties that can be imposed for various degrees of violation.

(2) Limitations of Corrective Actions. Specific limits on corrective actions and summary punishment shall be established and strictly adhered to in an effort to reduce the potential of staff participating in abusive behavior towards residents. Limits shall include:

(A) Notwithstanding the provisions in subsection (d)(4) of this rule, no physical contact by staff shall be made on a resident;

(B) No profanity, sexual or racial comments shall be directed at residents by staff;

(C) Residents shall not be used to impose corrective actions on other residents;

(D) The severity of the corrective action shall be commensurate with the severity of the infraction; and

(E) The duration of corrective action shall be limited to the minimum time necessary to achieve effectiveness.

(3) Grievance Procedure. A grievance procedure shall be available to all residents in a CRF. The grievance procedure shall include at least one (1) level of appeal and shall be evaluated at least annually to determine its efficiency and effectiveness.

(4) Spanish translations of the disciplinary rules and procedures shall be provided for Spanish-speaking residents who cannot speak or read English.

(g) Incident Notification. The facility director or designee shall notify the TDCJ of all serious or unusual events pertaining to the facility's operations and staff in accordance with directives and/or policies issued by the TDCJ.

(h) Residents' Rights. Residents shall be granted access to courts and any attorney licensed in the United States or a legal aid society (an organization providing legal services to residents or other persons) contacting the resident in order to provide legal services. Such contacts include, but are not limited to: confidential telephone communications, uncensored correspondence and confidential visits.

(i) Food Service. The food preparation and designated dining area shall provide space for meal service based on the population size and need.

(1) Dietary Allowances. Meals shall be approved and reviewed annually by a registered dietician, licensed nutritionist, registered nurse with a minimum of a Bachelor of Science degree in nursing, physician assistant, or physician to ensure that the meals meet the nationally recommended allowances for basic nutrition.

(2) Special Diets. Each facility shall provide special diets as prescribed by appropriate medical or dental personnel.

(3) Food Service Management. Food service operations shall meet all requirements established by the local health authorities and/or the TDCJ policies.

(4) Meal Requirements. The facility director shall ensure that at least three (3) meals are provided during each 24-hour period. Variations may be allowed based on weekend and holiday food service demands, or in the event of emergency or security situations, provided basic nutritional goals are met.

(j) Health Care.

(1) Access to Care.

(A) Residents shall have unimpeded access to health care and to a system for processing complaints regarding health care.

(B) The facility shall have a designated health authority with responsibility for health care pursuant to a written agreement, contract or job description. The health authority may be a physician, health administrator or health agency. In the event that the designated health authority is a free community health clinic (one which provides services to everyone in the community regardless of ability to pay), then the CRF is not required to enter into a written contract or agreement. A copy of the mission statement of the free community health clinic and a copy of the criteria for admission shall be on file in lieu of a contract between the two (2) agencies.

(C) Each CRF shall have a policy defining the level, if any, of financial responsibility to be incurred by the resident who receives the medical or dental services.

(2) Emergency Health Care.

(A) Twenty-four hour emergency health care shall be provided for residents, to include arrangements for the following:

(i) On site emergency first aid and crisis intervention;

(ii) Emergency evacuation of the resident from the facility;

(iii) Use of an emergency vehicle;

(iv) Use of one (1) or more designated hospital emergency rooms or other appropriate health facilities;

(v) Emergency on-call services from a physician, advanced practice nurse or physician assistant, a dentist and a mental health professional when the emergency health facility is not located in a nearby community; and

(vi) Security procedures providing for the immediate transfer of residents, when appropriate.

(B) A training program for direct care personnel shall be established by a recognized health authority in cooperation with the facility director that includes the following:

(i) Signs, symptoms and action required in potential emergency situations;

(ii) Administration of first aid and cardiopulmonary resuscitation (CPR);

(iii) Methods of obtaining assistance;

(iv) Signs and symptoms of mental illness, retardation and chemical dependency; and

(v) Procedures for patient transfers to appropriate medical facilities or health-care providers.

(C) First aid kits shall be available in designated areas of the facility. Contents and locations shall be approved by the health authority.

(3) Serious and Infectious Diseases.

(A) The facility shall provide for the management of serious and infectious diseases.

(B) The CRFs shall have policies and procedures to direct actions to be taken by employees concerning residents who have been diagnosed with human immunodeficiency virus (HIV), including, at minimum, the following:

(i) When and where residents shall be tested;

(ii) Appropriate safeguards for staff and residents;

(iii) Staff and resident training;

(iv) Issues of confidentiality; and

(v) Counseling and support services.

(4) Dental Care. Access to dental care shall be made available to each resident.

(5) Medications--General Guidelines.

(A) Staff who dispense medication shall be properly credentialed and trained. Staff that supervise self-administration of medication shall be appropriately trained to perform the task.

(B) Policy and procedure shall direct the possession and use of controlled substances, prescribed medications, supplies and over-the-counter (OTC) drugs. Prescribed medications shall be dispensed according to the directions of the prescribing physician, advanced practice nurse or physician assistant.

(C) Each residential facility shall have a written policy in place that sets forth required procedural guidelines for the administration, documentation, storage, management, accountability of all resident medication, inventory, disposal of medications, handling medication errors and adverse reactions.

(D) If medications are distributed by facility staff, records shall be maintained and audited monthly and shall include, but not be limited to the date, time, name of the resident receiving the medication and the name of the staff distributing the medication.

(E) Each facility shall ensure that the phone number of a pharmacy and a comprehensive drug reference source is readily available to the staff.

(6) Medication Storage.

(A) Prescription and OTC medications shall be kept in locked storage and accessible only to staff who are authorized to provide medication. Syringes, needles and other medical supplies shall also be kept in locked storage.

(B) All controlled/scheduled drugs shall be stored under double lock and key.

(C) Each facility shall ensure that all medications, syringes and needles are stored in the original container.

(D) Medications labeled as internal and external only shall not be stored together in the same medication box or medication drawer.

(E) Sample prescription medications provided by physicians shall be stored with proper labeling information that includes the name of the medication; name of the prescribing physician, advanced practice nurse or physician assistant; date prescribed; and dosage instructions.

(F) Medications that require refrigeration shall be stored in a refrigerator designated for medications only. A thermometer shall be maintained inside the refrigerator with the temperature checked and recorded daily on a temperature log.

(G) Medications that are discontinued, have expired dates or are no longer in use shall be stored in a separate locked container or drawer until destroyed.

(H) Facilities that allow residents to keep medications in the resident's possession shall have written guidelines specific for keep-on-person (KOP) medications. Staff shall ensure that authorized residents keep medication on their person or safely stored and inaccessible to other residents.

(7) Medication Inventory and Disposal.

(A) Facility staff shall conduct an inventory count of all controlled/scheduled prescription medications daily (at a minimum, once per 24-hour period). The count shall be conducted and witnessed by one (1) other staff member. Documentation of inventory counts shall be maintained for a minimum period of three (3) years.

(B) The facility shall conduct a monthly inventory of all prescription and OTC drugs provided to or purchased by the resident. The monthly audit shall be conducted by a staff person who is not responsible for conducting the daily inventory counts.

(C) A monthly audit shall be conducted of all medication administration records to verify the accuracy of recorded information. The monthly audit of medication administration records shall be conducted by a staff person who is not responsible for the documentation of medication administration records.

(D) When a discrepancy is noted between the medication administration record and the monthly inventory count, documentation explaining the reason for the discrepancy and action taken to correct it shall be recorded. In the event an inventory count reveals unaccounted for controlled/scheduled medication, an investigation shall be conducted and a summary report written detailing the steps taken to resolve the matter. Until the discrepancy is resolved, an inventory count shall be conducted three (3) times daily (after each shift). The summary report shall be maintained for a minimum period of three (3) years. If misapplication, misuse or misappropriation of controlled/scheduled

medication leads to an investigation by law enforcement, such information shall be reported pursuant to subsection (g) of this rule.

(E) Discontinued and outdated medications shall be removed from the current medication storage, stored in a separate locked container and disposed of within 30 days. The drugs designated for disposal shall be recorded on a drug disposal form.

(F) Methods used for drug disposal shall prevent medication from being retrieved, salvaged or used in any way. The disposal of drugs shall be conducted, documented and the process witnessed by one (1) other staff member. The documentation shall include:

(i) Name of the resident and date of disposal;

(ii) Name and strength of the medication;

(iii) Prescription number, sample or OTC lot numbers;

(iv) Amount disposed, reason for disposal and the method of disposal; and

(v) Signatures of the two (2) staff members that witnessed the disposal.

(8) Administration of Medication for Non-Medical Model Facilities.

(A) Prescription medications shall be dispensed only by licensed nurses or other staff who are trained and have the appropriate documented medication certification to dispense medications while under the supervision of a physician or registered nurse. Facilities that do not have licensed nurses or other credentialed staff to dispense medications (non-medical model facilities) shall implement the practice of self-administration of medications.

(B) If medications are dispensed through the practice of self-administration in a non-medical model program, staff trained by a qualified health professional to supervise residents in the self-administration of medications shall monitor the residents during the self-administration process.

(C) Each dose of prescription medication received by the resident shall be documented on the prescription medication administration record and maintained in the resident's medical file. The prescription medication record shall include:

(i) Name of the resident receiving the medication;

(ii) Drug allergies or the absence of known drug allergies;

(iii) Name, strength of medication and route of administration;

(iv) Instructions for taking the medication, the amount taken and the route of administration;

(v) Date and time the medication was provided;

(vi) Prescription number (or lot number for sample drugs) and the initial amount of medication received;

(vii) Prescribing physician, advanced practice nurse or physician assistant and the name of the pharmacy;

(viii) Signature of the resident receiving the medication and the staff person supervising the self-administration of medication;

(ix) The remaining amount of medication after each dose dispensed; and

(x) Comment section for recording a variance, discrepancy or change.

(D) Each dose of OTC medication received by the resident shall be documented on the OTC medication administration record and maintained in the resident's medical file. The OTC drugs purchased by the resident or supplied for the resident in quantities larger than single dose packages shall be recorded on the OTC drug record. The OTC drug record shall include:

- (i) The resident's name;
- (ii) The name and strength of the medication dispensed;
- (iii) Drug allergies or the absence of known drug allergies;
- (iv) The dosage instructions and route of administration;
- (v) The initial amount received, OTC lot number and the expiration date;
- (vi) The date and time the medication was dispensed;
- (vii) The amount dispensed and the ending count after each dose;
- (viii) Comment section for recording reason for OTC drug or other notations; and
- (ix) The signature of the resident and the employee who supervised each dose dispensed.

(E) Facility Stock OTC Drugs. Multiple OTC stock drugs supplied in single dose packaging may be recorded on the same form. The medication drug record for facility stock OTC drugs shall include:

- (i) The resident's name;
- (ii) The name, strength and route of administration;
- (iii) Drug allergies or the absence of known drug allergies;
- (iv) The date, time, amount dispensed and the lot number on the container;
- (v) Comment section to record the reason the OTC drug was requested; and
- (vi) The signature of the resident and the employee who supervised each dose dispensed.

(9) Training for Monitoring Self-Administration of Medications. All residential employees responsible for supervising residents in self-administration of medication, who are not credentialed to dispense medication, shall complete required training before performing this task.

(A) The initial training for new employees shall be four (4) hours in length.

(B) Employees shall complete a minimum of two (2) hours of review training annually thereafter.

(C) The training shall be provided by a physician, pharmacist, physician assistant or registered nurse before supervising self-administration of medications. A licensed vocational nurse (LVN) or paramedic (under supervision) may teach the course from an established curriculum. Topics to be covered shall include:

(i) Prescription labels;

(ii) Medical abbreviations;

(iii) Routes of administration;

(iv) Use of drug reference materials;

(v) Monitoring/observing insulin preparation and administration;

(vi) Storage, maintenance, handling and destruction of medication;

(vii) Transferring information from prescription labels to the medication administration record and documentation requirements, including sample medications; and

(viii) Procedures for medication errors, adverse reactions and side effects.

(10) Female Residents. If female residents are housed, access to pregnancy management services shall be available.

(11) Mental Health. Access to mental health services shall be available to residents.

(12) Suicide Prevention. Each facility shall have a written suicide prevention and intervention program reviewed and approved by a qualified medical or mental health professional. All staff with resident supervision responsibilities shall be trained in the implementation of the suicide prevention program.

(13) Personnel.

(A) If treatment is provided to residents by health-care personnel other than a physician, psychiatrist, dentist, psychologist, optometrist, podiatrist or other independent provider, such treatment shall be performed pursuant to written standing or direct orders by personnel authorized by law to give such orders.

(B) If the facility provides medical treatment, personnel who provide health-care services to residents shall be qualified and appropriately licensed. Verification of current credentials and job descriptions shall be on file in the facility. Appropriate state and federal licensure, certification or registration requirements and restrictions apply.

(14) Informed Consent. If the facility provides medical treatment, the facility shall ensure residents are provided information to make medical decisions with informed consent. All informed consent standards in the jurisdiction shall be observed and documented for resident care.

(15) Participation in Research. Residents shall not participate in medical, pharmaceutical or cosmetic experiments. This does not preclude individual treatment of a resident based on resident's need for a specific medical procedure that is not generally available.

(16) Notification. Individuals designated by the resident shall be notified in case of serious illness, injury or death.

(17) Health Records.

(A) If medical treatment is provided by the facility, accurate health records for residents shall be maintained separately and confidentially.

(B) If medical treatment is provided by the facility, the method of recording entries in the records, the form and format of the records, and the procedures for maintenance and safekeeping shall be approved by the health authority.

(C) If medical treatment is provided by the facility, for a resident being transferred to other facility, summaries or copies of the medical history record shall be forwarded to the receiving facility prior to or at arrival.

(k) Discharge From CRFs. Discharge from CRFs shall be based on the following criteria:

(1) The resident has made alternative housing arrangements as approved by the supervising parole officer;

(2) The resident has satisfied a period of placement as a condition of parole or mandatory supervision;

(3) The resident has demonstrated non-compliance with program criteria or Board order; or

(4) The resident manifests an emergency medical or mental problem that requires hospitalization.

(l) Mail, Telephone and Visitation. The facility director shall have written policies which govern the facility's mail, telephone and visitation privileges for residents, including mail inspection, public phone use and routine and special visits. The policies shall address compelling circumstances in which a resident's mail both incoming and outgoing may be opened, but not read, to inspect for contraband.

(m) Religious Programs.

(1) The facility director shall have written policies that govern religious programs for residents. The policies shall provide that residents have the opportunity to voluntarily practice the requirements of a resident's religious faith, have access to worship/religious

services and the use or contact with community religious resources, when appropriate.

(2) Under Texas Civil Practice & Remedies Code, Chapter 110, a CRF may not substantially burden a resident's free exercise of religion unless the application of the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. There is a presumption that a policy or practice that applies to a resident in the custody of a CRF is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. The presumption may be rebutted with evidence provided by the resident.

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

Filed with the Office of the Secretary of State on December 3, 2008.

TRD-200806354

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: January 18, 2009

For further information, please call: (512) 463-0422



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER B. OPERATIONS OF RACETRACKS

DIVISION 2. FACILITIES AND EQUIPMENT

16 TAC §309.111

The Texas Racing Commission withdraws the proposed amendment to §309.111 which appeared in the June 27, 2008, issue of the *Texas Register* (33 TexReg 4960).

Filed with the Office of the Secretary of State on December 8, 2008.

TRD-200806388

Mark Fenner

General Counsel

Texas Racing Commission

Effective date: December 8, 2008

For further information, please call: (512) 833-6699



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 50. LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.1

The Texas Ethics Commission adopts an amendment to §50.1, to set the legislative per diem as required by the Texas Constitution, Article III, §24a. The amendment is adopted without changes to the proposed text as published in the October 31, 2008, issue of the *Texas Register* (33 TexReg 8855) and will not be republished.

Section 50.1 sets the per diem for members of the legislature and the lieutenant governor at \$168 for each day during the regular session and any special session.

No comments were received regarding the proposed rule during the comment period.

This amendment is adopted under the Texas Constitution, Article III, §24a, and the Government Code, Chapter 571, §571.062.

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

Filed with the Office of the Secretary of State on December 8, 2008.

TRD-200806381

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Effective date: December 28, 2008

Proposal publication date: October 31, 2008

For further information, please call: (512) 463-5800



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8052

The Texas Health and Human Services Commission (HHSC) adopts the amendment to 1 TAC §355.8052, to make implementation of the fiscal year 2009 rebased payment division standard dollar amounts (PDSAs) contingent on the availability of state funds for that purpose and federal approval of the Medicaid reform waiver. The amended rule is adopted with changes to the proposed text published in the October 24, 2008, issue of the *Texas Register* (33 TexReg 8702). The text of the rule will be republished.

During the 80th Legislative Session, HHSC received guidance from state leadership that the implementation of the rebasing initiative described in the General Appropriations Act for the 2008-2009 Biennium, Article II, Special Provisions Relating to All Health and Human Services Agencies, §57(c), would be contingent on the approval of the Medicaid reform waiver authorized in §7, Senate Bill 10, 80th Legislature, Regular Session, 2007. HHSC submitted the Medicaid reform waiver request to the Centers for Medicare and Medicaid Services (CMS) in April 2008.

When HHSC adopted §355.8052 in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6362), HHSC anticipated receiving guidance from CMS in the near future in relation to the Medicaid reform waiver request. Based on preliminary information from CMS, however, the final decision on federal approval of the Medicaid reform waiver may not be made before the current rebasing project is completed.

Therefore, HHSC is amending §355.8052 to add contingency language to stop the current hospital rebasing project if HHSC does not receive federal approval of the Medicaid reform waiver or HHSC does not implement the waiver. If the Medicaid reform waiver is not approved or implemented or funds are not available for rebasing, hospitals will continue to be paid based on the rates in effect on August 31, 2008.

A non-substantive change was made to the proposed text, adding clarifying language in subsection (d)(1)(B).

Comments

During the 30-day comment period, which ended November 23, 2008, staff received written comments from the Texas Hospital Association, Teaching Hospitals of Texas, Hospital Corporation of America, Brown McCarroll, LLP, as well as numerous other individuals. Staff did not make changes to the proposed rule in response to the comments received. A summary of the comments and responses follows.

Comment: Approximately 100 comments opposed the proposed changes to the rule that make fiscal year 2009 hospital inpatient rebasing contingent on the federal approval and implementation of the Medicaid reform waiver or available funds. All but one

of these comments was in the same format and received via e-mail. The comments asserted that the 2008-2009 General Appropriations Act, Article II, Special Provisions, §57(c), 80th Legislature, Regular Session, 2007, required HHSC to rebase inpatient hospital rates. Additionally, the commenters stated that the language in §57(c) of the appropriations bill specifically requires HHSC to rebase hospital rates in FY 2009 and that neither the Medicaid reform language in Senate Bill 10, nor additional guidance from state leadership can relieve HHSC of its obligation to rebase the rates. They also stated that the appropriations bill and Senate Bill 10 are not linked and that HHSC cannot legally use one to influence the other.

Response: The language in 2008-2009 General Appropriations Act, Article II, Special Provisions, §57(c), 80th Legislature, Regular Session, 2007, was informational rather than specifically directive, serving to help explain appropriations made elsewhere in the Act. It provided HHSC with the upper limit on the amount of funds that can be used for inpatient hospital rebasing if the agency rebases the hospital rates. Together with the mandates of Senate Bill 10, the method of financing for the Medicaid reform waiver was understood to be intertwined with inpatient hospital rebasing and the DRG-DSH swap, and as such, is dependent on federal approval and implementation of the Medicaid reform waiver.

Comment: Three comments were received during the public hearing on November 21, 2008, from Teaching Hospitals of Texas, Texas Hospital Association, and Hospital Corporation of America. Each commenter expressed concern that the last rebasing of hospital inpatient rates was seven years ago, and since then, the treatment protocols, technology, cost structures and case mix have changed, resulting in higher costs for inpatient hospital services. The commenters also noted that hospital inpatient rates have been reduced related to a 5 percent cost reduction and subsequent 8 percent reduction for SSI-related clients in managed care counties. Each commenter suggested that if the hospital rates are not adjusted, the appropriated funding should be used to eliminate the 5 percent and 8 percent SSI-related reductions, fund graduate medical education, fund a catastrophic care program or expand funding for regional initiatives, including three-share programs.

Response: HHSC is optimistic the Medicaid reform waiver will receive federal approval and will be implemented during state fiscal year 2009, which will allow the rebasing of hospital rates. In the event the Medicaid reform waiver is not approved and implemented, HHSC will rely on state leadership guidance on whether to use the funds identified in the informational rider for alternative purposes.

Legal Authority

The revised rule is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

§355.8052. *Inpatient Hospital Reimbursement.*

- (a) Application and general reimbursement method.

(1) The prospective payment system described in this section applies to inpatient hospital payments for admissions beginning in Fiscal Year (FY) 2009.

(2) HHSC calculates reimbursement for a covered inpatient hospital service, determined in subsection (g) of this section, by multiplying the hospital's payment division standard dollar amount, determined in subsection (d) of this section, by the relative weight for the appropriate diagnosis-related group, determined in subsection (e) of this section.

(3) HHSC will send a hospital an initial notification letter describing the hospital-specific and payment division standard dollar amounts, determined in subsection (d) of this section. HHSC will send a hospital a final notification letter reporting the payment division standard dollar amount, adjusted as described in subsection (d)(2) of this section, to be used in calculating the hospital's reimbursements.

(4) HHSC will rebase hospital-specific and payment division standard dollar amounts in subsequent years when funds are appropriated for that purpose.

(b) Exceptions. The prospective payment system described in this section does not apply to the following types of hospitals for covered inpatient hospital services:

(1) In-state and out-of-state children's hospitals. In-state and out-of-state children's hospitals are reimbursed using the methodology described in §355.8054 of this chapter (relating to Children's Hospital Reimbursement Methodology).

(2) State-owned teaching hospitals. A state-owned teaching hospital is reimbursed in accordance with the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) principles using the methodology described in §355.8056 of this chapter (relating to State-Owned Teaching Hospital Reimbursement Methodology).

(3) Freestanding psychiatric hospitals. A freestanding psychiatric hospital is reimbursed under the methodology described in §355.8063 of this chapter (relating to Reimbursement Methodology for Inpatient Hospital Services).

(c) Definitions. When used in this section, and §355.8054 and §355.8056 of this chapter, the following words and terms will have the following meanings, unless the context clearly indicates otherwise.

(1) Adjudicated--The approval or denial of an inpatient hospital claim by HHSC.

(2) Average base year cost per claim--One factor used in arriving at the hospital-specific standard dollar amount; the arithmetic mean of base year costs per claim for a hospital, obtained by dividing the sum of all base year costs per claim for that hospital by the number of base year claims in the set.

(3) Base year--A period of 12 consecutive months selected by HHSC.

(4) Base year claims--All Medicaid inpatient hospital claims for reimbursement filed by a hospital that:

(A) Have a date of admission occurring within the base year;

(B) Are adjudicated and approved for payment during the base year and the six-month grace period that immediately follows the base year or another grace period designated by HHSC and communicated in writing to all hospitals;

(C) Are not claims for patients who are covered by Medicare; and

(D) Are not Medicaid spend-down claims.

(5) Base year cost per claim--One factor used in arriving at the hospital-specific standard dollar amount; the cost for a claim that would have been made to a hospital if HHSC reimbursed the hospital under methods and procedures used in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), described in subsection (d)(3)(A) of this section.

(6) Case mix index--The average relative weight of a hospital's base year claims, obtained by summing the hospital's relative weights for all base year claims divided by the total number of that hospital's base year claims.

(7) Cost-of-Living Index--An adjustment applied to hospital-specific standard dollar amounts based on the Market Basket Index to account for changes in cost of living.

(8) Cost outlier payment adjustment--A payment adjustment for a claim with extraordinarily high costs.

(9) Cost outlier threshold--One factor used in determining the cost outlier payment adjustment.

(10) Data entry error--An error resulting from mis-keyed or mistyped data that is different from the intended entry. This type of error does not include the omission of claims approved for payment after the base year and grace period.

(11) Day outlier threshold--One factor used in determining the day outlier payment adjustment.

(12) Day outlier payment adjustment--A payment adjustment for a claim with an extended length of stay.

(13) Diagnosis-related group (DRG)--The classification of medical diagnoses as defined in the Medicare DRG system or as otherwise specified by HHSC.

(14) Final settlement--Reconciliation of cost in the Medicare/Medicaid hospital fiscal year end cost report performed by HHSC within six months after HHSC receives the cost report audited by a Medicare intermediary, or in the case of children's hospitals, audited by HHSC.

(15) HHSC--The Texas Health and Human Services Commission or its designee.

(16) Hospital--specific standard dollar amount (HSDA)--One factor used in arriving at the payment division standard dollar amount (PDSDA); the average base year cost per claim for a hospital, adjusted by the case mix index and cost-of-living index.

(17) In-state children's hospital--A hospital located within Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(18) Interim payment--An initial payment made to a hospital that is later settled to Medicaid-allowable costs, for hospitals reimbursed under methods and procedures in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

(19) Interim rate--The ratio of Medicaid allowed inpatient costs to Medicaid allowed inpatient charges filed on a hospital's Medicare/Medicaid cost report, or inpatient cost-to-charge ratio, expressed as a percentage. The interim rate established at tentative settlement includes incentive and penalty payments associated with TEFRA target caps to the extent that they continue to be permitted by federal law and regulation.

(20) Market Basket Index--The Centers for Medicare and Medicaid Services (CMS) projection of the annual percentage increase in hospital inpatient operating costs, as defined in 42 C.F.R. §413.40.

(21) Mathematical error--An error that results from the erroneous application of variables, quotients, or functions within a methodology formula resulting in a different result than intended methodology results. This type of error does not include the omission of claims approved for payment after the base year and grace period.

(22) Mean length of stay (MLOS)--One factor used in determining the payment amount calculated for each diagnosis related group; for each diagnosis related group, the average number of days that a patient stays in the hospital.

(23) Military hospital--A hospital operated by the armed forces of the United States.

(24) New hospital--A hospital that was newly constructed and enrolled as a Medicaid provider after the end of the base year.

(25) Newly enrolled hospital--A hospital that was assigned a new Texas Provider Identification number (TPI) and was enrolled as a Medicaid provider after the end of the base year.

(26) Out-of-state children's hospital--A hospital located outside of Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(27) Payment division--A group of hospitals whose calculated hospital-specific standard dollar amounts fall within a \$100 range, where the \$100 increments begin at zero.

(28) Payment division standard dollar amount (PDSDA)--The weighted average dollar amount per claim calculated for all hospitals in a payment division.

(29) Relative weight--The weighting factor HHSC assigns to a diagnosis related group representing the time and resources associated with providing services for that diagnosis related group.

(30) State-owned teaching hospital--The following hospitals: University of Texas Medical Branch (UTMB); University of Texas Health Center Tyler; and M.D. Anderson Hospital.

(31) TEFRA cost for rebasing--One factor used in arriving at the hospital-specific standard dollar amount; Medicaid allowable charges for base year claims adjusted to cost by the interim rate derived from tentative or final settlement of cost reports that cover time periods in the base year.

(32) TEFRA target cap--A limit set under the Social Security Act §1886(b) (42 U.S.C. §1395ww(b)) and applied to the cost settlement for a hospital reimbursed under methods and procedures in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). TEFRA target cap is not applied to patients under age 21, and incentive and penalty payments associated with this limit are not applicable to patients under age 21.

(33) Tentative settlement--Reconciliation of cost in the Medicare/Medicaid hospital fiscal year-end cost report performed by HHSC within six months after HHSC receives an acceptable cost report filed by a hospital.

(34) Universal Mean--Average base year cost per claim for all hospitals.

(35) Weighted hospital-specific standard dollar amount (HSDA)--One factor used in arriving at the payment division standard dollar amount; the product obtained by multiplying a hospital's hos-

pital-specific standard dollar amount by the number of its base year claims.

(d) Payment Division Standard Dollar Amount (PDSDA).

(1) Recalculation of PDSDA.

(A) HHSC will recalculate PDSDA for payments in FY 2009 unless:

(i) HHSC's application for the Medicaid reform waiver authorized under Senate Bill 10 (80th Legislature, Regular Session, Chapter 268, §7 (2007)) does not receive federal approval;

(ii) HHSC does not implement the Medicaid reform waiver authorized under Senate Bill 10 (80th Legislature, Regular Session, Chapter 268, §7 (2007)); or

(iii) Funds are not available for the purpose of recalculating PDSDA.

(B) In the event HHSC does not recalculate PDSDA for payments in FY 2009, payments will be based on the rates in effect on August 31, 2008.

(C) HHSC recalculates PDSDA for payments in FY 2009 using FY 2006 base year claims. HHSC will not include claims that are adjudicated and approved for payment after the base year and subsequent six-month grace period. The six-month grace period is intended to allow inclusion of as many base year claims as possible, given practical time constraints.

(2) Adjustment of PDSDA.

(A) HHSC may adjust PDSDA in accordance with §355.201 of this title if HHSC determines that a recalculated PDSDA may have a significant and measurable effect on provider participation or have a significant and measurable effect on a provider's ability to deliver services.

(B) If HHSC recalculates PDSDA for payments in FY 2009, HHSC will:

(i) Adjust PDSDA pro rata among hospitals to available funds;

(ii) Exempt a hospital from the adjustment in clause (i) of this subparagraph if such adjustment would result in a lower rate than the hospital received as of August 31, 2008, in order to preserve the Medicaid provider base, ensure access to Medicaid hospital services, and minimize the effects of PDSDA decreases;

(iii) Apply a rate in place of the PDSDA, for a hospital that is exempted under clause (ii) of this subparagraph, that is the lesser of:

(I) the rate the hospital received as of August 31, 2008; or

(II) the fully rebased PDSDA before applying the adjustment described in clause (i) of this subparagraph;

(iv) Apply the PDSDA described in clause (i) of this subparagraph for all hospitals that are not exempted under clause (ii) of this subparagraph, without any recalculation within the payment divisions; and

(v) Not apply to any hospital a rate lower than the minimum PDSDA described in paragraph (7) of this subsection.

(3) Hospital-specific standard dollar amount (HSDA). Using base year claims, HHSC calculates an HSDA for each hospital as follows:

(A) Determines for each claim, the base year cost per claim, which is the greater of:

(i) the amount of TEFRA cost for rebasing, which is calculated under paragraph (10) of this subsection; or

(ii) payments from other insurance;

(B) Sums the dollar amount for each hospital's base year costs per claim determined in subparagraph (A) of this paragraph;

(C) Calculates the average base year cost per claim by dividing the result in subparagraph (B) of this paragraph by the total number of base year claims for the hospital;

(D) Calculates the case mix index by summing the hospital's relative weights for all base year claims divided by the total number of that hospital's base year claims;

(E) Divides the average base year cost per claim determined in subparagraph (C) of this paragraph by the hospital's case mix index determined in subparagraph (D) of this paragraph; and

(F) Multiplies the result in subparagraph (E) of this paragraph by the cost-of-living index described in paragraph (4) of this subsection to adjust costs from the base year to the rate year, which results in the HSDA.

(4) Cost-of-Living Index. HHSC updates HSDA by applying a cost-of-living index to the HSDA established for the base year. HHSC uses the CMS Prospective Payment System Hospital Market Basket Index based on a federal fiscal year adjusted to a state fiscal year.

(5) Payment Divisions. HHSC groups hospital HSDA into payment divisions by one-hundred-dollar (\$100) increments beginning at zero. For example, all hospitals with HSDA between \$1,600.00 and \$1,699.99 are grouped together.

(6) Payment Division Standard Dollar Amount (PDSDA).

(A) HHSC computes a PDSDA for all hospitals within a payment division as follows:

(i) multiplies each hospital's HSDA by the hospital's total number of base year claims, resulting in a weighted HSDA;

(ii) sums the weighted HSDA determined in clause (i) of this subparagraph for all hospitals within a payment division; and

(iii) divides the result in clause (ii) of this subparagraph by the total number of base year claims for all hospitals within a payment division, which results in the PDSDA.

(B) The PDSDA calculation does not include data from the following types of hospitals:

(i) out-of-state hospitals;

(ii) military hospitals;

(iii) new or newly enrolled hospitals;

(iv) in-state and out-of-state children's hospitals;

(v) inpatient psychiatric hospitals; and

(vi) state-owned teaching hospitals.

(C) If a payment division has fewer than 20 total base year claims, HHSC considers that payment division to be statistically invalid. Hospitals within that payment division are assigned a PDSDA equal to the mathematically closest valid PDSDA.

(7) Minimum PDSDA. The minimum PDSDA of \$1,600.00 is applied to any hospital with an HSDA equal to or less than \$1,600.00.

(8) PDSDA calculation for specific types of hospitals.

(A) The following types of hospitals are assigned the Universal Mean plus the cost-of-living update as specified in paragraph (4) of this subsection, as their PDSDA:

- (i) military hospitals;
- (ii) out-of-state hospitals; and
- (iii) newly enrolled hospitals.

(B) New Hospitals.

(i) For new hospitals, HHSC will assign a PDSDA that is three percentile points higher than the Universal Mean in an array of base year costs per claim, plus the cost-of-living update as specified in paragraph (4) of this subsection. This rate applies for five years from enrollment as a new Medicaid hospital or until HHSC recalculates PDSDA, whichever is earlier. After five years from enrollment, if HHSC has not recalculated PDSDA, the hospital's PDSDA will be the Universal Mean.

(ii) A replacement facility constructed for a hospital that is currently enrolled as a Medicaid provider is reimbursed by using either the PDSDA of the existing provider or the PDSDA for new hospitals, whichever is greater.

(9) Merged hospitals.

(A) When two or more Medicaid participating hospitals merge during or after the base year but before the date of HHSC's final PDSDA notification letter, HHSC combines the amounts determined in paragraph (3)(A) of this subsection for all hospitals involved in the merger and calculates the HSDA and PDSDA for the merged entity as described for all other hospitals in this subsection.

(B) When two or more Medicaid participating hospitals merge after the base year and after the date of HHSC's final PDSDA notification letter, HHSC combines the original base year costs per claim determined in paragraph (3)(A) of this subsection from the most recent rebasing period for all hospitals involved in the merger. HHSC calculates a new HSDA for the merged entity and assigns a PDSDA equal to the mathematically closest valid PDSDA.

(C) Acquisitions and buyouts do not result in a recalculation of the PDSDA of an acquired hospital unless acquisitions or buyouts result in the purchased or acquired hospital becoming part of another Medicaid participating provider. The acquired hospital will continue being reimbursed based on the PDSDA applied before the acquisition or buyout.

(10) TEFRA Cost for Rebasing. HHSC adjusts base year claims to arrive at a result based on cost reimbursement principles described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), and calculates TEFRA cost for rebasing as follows:

(A) HHSC adjusts each hospital's base year claims using the interim rate computed as a result of tentative or final cost reports covering the base year. The adjustments are applied to claims in months within the base year that coincide with months within the hospital's cost reporting periods.

(B) The TEFRA cost for rebasing is calculated by multiplying the Medicaid allowed charges for each base year claim by the interim rate described in subparagraph (A) of this paragraph.

(C) HHSC uses the tentative or final cost report settlement that is complete and available on the date HHSC sends the initial PDSDA notification letter to the hospital. The results of a tentative or final cost report settlement completed after the date HHSC sends the initial PDSDA notification letter to the hospital are not considered for purposes of this subsection.

(D) If there is no tentative or final cost report settlement available, the TEFRA cost for rebasing is calculated using an assigned interim rate of 50 percent.

(11) Correction of payment division error and reprocessing of claims.

(A) HHSC will place a hospital in the correct payment division if HHSC determines that the hospital was incorrectly assigned to a payment division due to a mathematical error or data entry error by HHSC.

(B) HHSC will reprocess all claims adjudicated during that state fiscal year that were paid to the hospital using the incorrect PDSDA by applying the corrected PDSDA to the claims. No corrections are made for claims adjudicated in previous state fiscal years.

(e) Diagnosis Related Groups (DRGs) Statistical Calculations. HHSC adopts the classification of diagnoses defined in the Medicare DRG prospective payment system unless a revision is required based on Texas claims data or other factors, as determined by HHSC. HHSC recalibrates the relative weights, mean length of stay, and day outlier threshold whenever the PDSDA are recalculated.

(1) Recalibration of relative weights. HHSC calculates a relative weight for each DRG as follows:

(A) Base year claims are grouped by DRG;

(B) For each DRG, HHSC:

(i) sums the base year costs per claim as determined in subsection (d)(3)(A) of this section;

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG; and

(iii) divides the result in clause (ii) of this subparagraph by the Universal Mean, resulting in the relative weight for the DRG.

(2) Recalibration of mean length of stay (MLOS). HHSC calculates a mean length of stay (MLOS) for each DRG as follows:

(A) Base year claims are grouped by DRG;

(B) For each DRG, HHSC:

(i) sums the number of days billed for all base year claims;

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG, resulting in the MLOS for the DRG.

(3) Recalibration of day outlier thresholds. HHSC calculates a day outlier threshold for each DRG as follows:

(A) Calculates for all claims the standard deviations from the MLOS in paragraph (2) of this subsection;

(B) Removes each claim with a length of stay (number of days billed by a hospital) greater than or equal to three standard deviations above or below the MLOS. The remaining claims are those with a length of stay less than three standard deviations above or below the MLOS;

(C) Sums the number of days billed by all hospitals for a DRG for the remaining claims in subparagraph (B) of this paragraph;

(D) Divides the result in subparagraph (C) of this paragraph by the number of remaining claims in subparagraph (B) of this paragraph;

(E) Calculates one standard deviation for the result in subparagraph (D) of this paragraph; and

(F) Multiplies the result in subparagraph (E) of this paragraph by two and adds that to the result in subparagraph (D) of this paragraph; resulting in the day outlier threshold for the DRG.

(4) If a DRG has fewer than ten base year claims, HHSC will assign the corresponding Medicare relative weight and Medicare mean length of stay and will calculate the day outlier threshold based on the Medicare mean length of stay and standard deviation.

(5) If one of the DRGs specific to an organ transplant has less than five base year claims, HHSC will assign the corresponding Medicare relative weight and Medicare mean length of stay and will calculate the day outlier threshold based on the Medicare mean length of stay and standard deviation. In addition, HHSC adds a relative weight to account for the cost of procuring the organ to the Medicare relative weight for the DRG. HHSC uses the organ procurement costs published by the Acquisition of Organ Procurement Organization (AOPO). To calculate the relative weight for procurement, HHSC divides the average cost of organ procurement by the universal mean for all claims.

(f) Request for Review. Except as otherwise provided in this subsection, HHSC uses the following process for reviews and appeals.

(1) If a hospital believes that HHSC made a mathematical error or data entry error in calculating the hospital's PDSDA, the hospital may request a review of the disputed calculation.

(A) A review of the calculation of a hospital's PDSDA will not be granted if the disputed calculation is the result of the hospital's submission of incorrect data or the result of the use of an interim rate derived from a cost reporting period occurring before the base year.

(B) The hospital must submit to HHSC a written request for review and appropriate specific documentation supporting its contention that there has been a mathematical or data entry error. The written request for review must be printed on the hospital's letterhead. HHSC Rate Analysis must receive a written request for an informal review by hand delivery, United States (U.S.) mail, or special mail delivery no later than 45 calendar days from the date of the initial PDSDA notification letter. If the 45th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 45th calendar day is the final day the receipt of the written request will be accepted. HHSC will not grant extensions of the 45-day deadline.

(C) If the hospital disagrees with the outcome of the review, the hospital may formally appeal in accordance with §§357.481 - 357.490 of this title (relating to Hearings Under the Administrative Procedure Act).

(2) A hospital may not appeal the elements of the prospective payment methodology used by HHSC, including:

(A) the payment division methodologies, including the HSDA and PDSDA calculations;

(B) the DRGs assigned through claims adjudication;

(C) the DRGs assigned to base year claims as a result of HHSC updating to a new version of the Medicare DRGs;

(D) the relative weights assigned to the DRGs;

(E) the adequacy of payments;

(F) the exclusion of claims that were not adjudicated and paid within the base year or six-month grace period; and

(G) the interim rate, computed as a result of tentative or final cost reports covering the base year that are completed after the date HHSC sends the initial PDSDA notification letter to the hospital.

(g) Reimbursements

(1) Calculating the payment amount. HHSC reimburses a hospital a prospective payment for covered inpatient hospital services by multiplying the PDSDA for the hospital's payment division by the relative weight for the DRG assigned to the adjudicated claim. The resulting amount is the payment amount to the hospital.

(2) The prospective payment as described in paragraph (1) of this subsection is considered full payment for covered inpatient hospital services. A hospital's request for payment in an amount higher than the prospective payment will be denied. The PDSDA result in subsection (d) of this section includes but is not limited to the following:

(A) capital costs;

(B) cost of indirect medical education;

(C) cost of malpractice insurance; and

(D) return on equity.

(3) Day and cost outlier adjustments. HHSC pays a day outlier or a cost outlier for medically necessary inpatient services provided to clients under age 21 in all Medicaid participating hospitals that are reimbursed under the prospective payment system. If a patient age 20 is admitted to and remains in a hospital past his or her twenty-first (21st) birthday, inpatient days and hospital charges after the patient reaches age 21 are included in calculating the amount of any day outlier or cost outlier payment adjustment.

(A) Day outlier payment adjustment. HHSC or its designee calculates a day outlier payment adjustment for each claim as follows:

(i) determines whether the number of medically necessary days allowed for a claim exceeds:

(I) the MLOS by more than two days; and

(II) the DRG day outlier threshold as calculated in subsection (e)(3)(F) of this section;

(ii) if clause (i) of this subparagraph is true, subtracts the DRG day outlier threshold from the number of medically necessary days allowed for the claim;

(iii) multiplies the DRG relative weight by the PDSDA;

(iv) divides the result in clause (iii) of this subparagraph by the DRG MLOS described in subsection (e)(2) of this section, to arrive at the DRG per diem amount;

(v) multiplies the number of days in clause (ii) of this subparagraph by the result in clause (iv) of this subparagraph;

(vi) multiplies the result in clause (v) of this subparagraph by 70 percent.

(B) Cost outlier payment adjustment. HHSC makes a cost outlier payment adjustment for an extraordinarily high-cost claim as follows:

(i) to establish a cost outlier, the cost outlier threshold must be determined by first selecting the lesser of the Universal Mean of base year claims multiplied by 11.14 or the hospital's PDSDA multiplied by 11.14;

(ii) the full DRG prospective payment amount is multiplied by 1.5;

(iii) the cost outlier threshold is the greater of clause (i) or (ii) of this subparagraph;

(iv) the cost outlier threshold is subtracted from the amount of reimbursement for the claim established under cost reimbursement principles described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA); and

(v) the result in clause (iv) of this subparagraph is multiplied by 70 percent to determine the amount of the cost outlier payment.

(C) If an admission qualifies for both a day outlier and a cost outlier payment adjustment, HHSC pays the higher outlier payment.

(4) A hospital may submit a claim to HHSC before a patient is discharged, but only the first claim for that patient will be reimbursed the prospective payment described in paragraph (1) of this subsection. Subsequent claims for that stay are paid zero dollars. When the patient is discharged and the hospital submits a final claim to ensure accurate calculation for potential outlier payments for clients younger than 21 years of age, HHSC recoups the first prospective payment and issues a final payment in accordance with paragraphs (1) and (3) of this subsection.

(5) Patient transfers and split billing. If a patient is transferred, HHSC establishes payment amounts as specified in subparagraphs (A) - (D) of this paragraph. HHSC manually reviews transfers for medical necessity and payment.

(A) If the patient is transferred from a hospital to a nursing facility, HHSC pays the transferring hospital the total payment amount of the patient's DRG.

(B) If the patient is transferred from one hospital (transferring hospital) to another hospital (discharging hospital), HHSC pays the discharging hospital the total payment amount of the patient's DRG. HHSC calculates a DRG per diem and a payment amount for the transferring hospital as follows:

(i) multiplies the DRG relative weight by the PDSDA;

(ii) divides the result in clause (i) of this subparagraph by the DRG MLOS described in subsection (e)(2) of this section, to arrive at the DRG per diem amount; and

(iii) to arrive at the transferring hospital's payment amount:

(I) multiplies the result in clause (ii) of this subparagraph by the lesser of the DRG MLOS, the transferring hospital's number of medically necessary days allowed for the claim, or 30 days; or

(II) for a patient under age 21, multiplies the result in clause (ii) of this subparagraph by the lesser of the DRG MLOS or the transferring hospital's number of medically necessary days allowed for the claim.

(C) HHSC makes payments to multiple hospitals transferring the same patient by applying the per diem formula in subpara-

graph (B) of this paragraph to all the transferring hospitals and the total DRG payment amount to the discharging hospital.

(D) HHSC performs a post-payment review to determine if the hospital that provided the most significant amount of care received the total DRG payment. If the review reveals that the hospital that provided the most significant amount of care did not receive the total DRG payment, an adjustment is initiated to reverse the payment amounts. The transferring hospital is paid the total DRG payment amount and the discharging hospital is paid the DRG per diem.

(h) Cost reports. Each hospital must submit an initial cost report at periodic intervals as prescribed by Medicare or as otherwise prescribed by HHSC.

(1) Each hospital must send a copy of all cost reports audited and amended by a Medicare intermediary to HHSC within 30 days after the hospital's receipt of the cost report. Failure to submit copies or respond to inquiries on the status of the Medicare cost report will result in provider vendor hold.

(2) HHSC uses data from these reports in rebasing years, in making adjustments as described in subsection (d) of this section, and in completing cost settlements for children's hospitals and state-owned teaching hospitals as outlined in §§355.8054 and §355.8056 of this chapter.

(3) Except as otherwise specified in subsection (i) of this section, there are no cost settlements for inpatient services under the prospective payment system in this section.

(4) The cost settlement process is limited by the TEFRA target cap.

(i) Hospitals in counties with 50,000 or fewer persons and certain other hospitals.

(1) Hospitals are reimbursed under this subsection if, as of the most recent decennial census, the hospital is:

(A) located in a county with 50,000 or fewer persons;

(B) a Medicare-designated Rural Referral Center (RRC) or Sole Community Hospital (SCH) not located in a metropolitan statistical area (MSA), as defined by the U.S. Office of Management and Budget; or

(C) a Medicare-designated Critical Access Hospital (CAH).

(2) A hospital that qualifies under this subsection is reimbursed for a cost reporting period the greater of:

(A) All Medicaid payments based on the prospective payment system; or

(B) The cost-reimbursement methodology described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) without the imposition of the TEFRA target cap described in subsection (h)(4) of this section.

(3) The amounts in this subsection are calculated using the most recent data for Medicaid Fee-for-Service (FFS) and Primary Care Case Management (PCCM) inpatient services.

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

Filed with the Office of the Secretary of State on December 8, 2008.

TRD-200806393
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 28, 2008
Proposal publication date: October 24, 2008
For further information, please call: (512) 424-6900



TITLE 4. AGRICULTURE

PART 13. PRESCRIBED BURNING BOARD

CHAPTER 227. CERTIFICATION, RECERTIFICATION, RENEWAL SUBCHAPTER A. CERTIFICATION REQUIREMENTS

4 TAC §227.5

The Prescribed Burning Board (the board) adopts amendments to Chapter 227, §227.5, concerning the date by which annual proof of insurance must be provided to the board by certified prescribed burn managers, without changes to the proposal published in the October 31, 2008, issue of the *Texas Register* (33 TexReg 8856). The amendment to §227.5 is adopted to change the annual date by which proof of insurance is to be submitted to the board from June 1st to December 31st of each year. The board is making this change to have a more reasonable, easily remembered date that also is closer to the burn season, which begins in the new year.

No comments were received on the proposal.

The amendment to §227.5 is adopted under §153.041 of the Natural Resources Code, which authorizes the board to be established within the department and to administer the prescribed burn manager certification program; §153.047, which authorizes the board to adopt standards for prescribed burning and insurance requirements for certified prescribed burn managers.

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

Filed with the Office of the Secretary of State on December 2, 2008.

TRD-200806316
Dolores Alvarado Hibbs
Deputy General Counsel, Texas Department of Agriculture
Prescribed Burning Board
Effective date: December 22, 2008
Proposal publication date: October 31, 2008
For further information, please call: (512) 463-4075



TITLE 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 257. EXECUTIVE COMMITTEE FOR OFFICE OF RURAL COMMUNITY AFFAIRS

The Office of Rural Community Affairs (Office) adopts the repeal of §257.10; and amendments to §§257.21 - 257.24, 257.30, 257.101, 257.103, 257.201, 257.203, 257.301, 257.303, 257.313, 257.325, 257.503, 257.801, 257.809, 257.901, 257.902, 257.906, 257.951 and 257.952, concerning the Executive Committee for the Office, without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6257).

The repeal and amendments are being adopted to change the name of the Office's "Executive Committee" to "Board" and to increase its size from 9 to 11. These changes were mandated by the 80th Legislature. Changes are also made to the Rural Physician Relief Advisory Committee.

No comments were received regarding the adoption of the repeal or amendments.

SUBCHAPTER A. POLICIES AND PROCEDURES

10 TAC §257.10

The repeal is adopted under §487.052 of the Texas Government Code, which provides the Board with authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the adopted repeal.

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

Filed with the Office of the Secretary of State on December 3, 2008.

TRD-200806334
Charles S. (Charlie) Stone
Executive Director
Office of Rural Community Affairs
Effective date: December 23, 2008
Proposal publication date: August 8, 2008
For further information, please call: (512) 936-6726



CHAPTER 257. STATE OFFICE OF RURAL HEALTH

SUBCHAPTER B. TEXAS OUTSTANDING RURAL SCHOLAR RECOGNITION PROGRAM

10 TAC §§257.21 - 257.24, 257.30

The amendments are adopted under §487.052 of the Texas Government Code, which provides the Board with authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the adopted amendments.

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

Filed with the Office of the Secretary of State on December 3, 2008.

TRD-200806335
Charles S. (Charlie) Stone
Executive Director
Office of Rural Community Affairs
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SUBCHAPTER D. TEXAS RURAL PHYSICIAN ASSISTANT LOAN REIMBURSEMENT PROGRAM

10 TAC §257.101, §257.103

The amendments are adopted under §487.052 of the Texas Government Code, which provides the Board with authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the adopted amendments.

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

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SUBCHAPTER E. TEXAS HEALTH SERVICE CORPS PROGRAM

10 TAC §257.201, §257.203

The amendments are adopted under §487.052 of the Texas Government Code, which provides the Board with authority to adopt rules concerning the implementation of the Office's responsibilities.

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SUBCHAPTER F. MEDICALLY UNDERSERVED COMMUNITY-STATE MATCHING INCENTIVE PROGRAM

10 TAC §§257.301, 257.303, 257.313, 257.325

The amendments are adopted under §487.052 of the Texas Government Code, which provides the Board with authority to adopt rules concerning the implementation of the Office's responsibilities.

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SUBCHAPTER H. RURAL TECHNOLOGY CENTER GRANT PROGRAM

10 TAC §257.503

The amendment is adopted under §487.052 of the Texas Government Code, which provides the Board with authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the adopted amendment.

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SUBCHAPTER K. RURAL COMMUNITIES HEALTH CARE INVESTMENT PROGRAM

10 TAC §257.801, §257.809

The amendments are adopted under §487.052 of the Texas Government Code, which provides the Board with authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the adopted amendments.

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SUBCHAPTER L. RURAL PHYSICIAN RELIEF PROGRAM

10 TAC §§257.901, 257.902, 257.906

The amendments are adopted under §487.052 of the Texas Government Code, which provides the Board with authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the adopted amendments.

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SUBCHAPTER M. CRITICAL ACCESS HOSPITAL BOARD OF TRUSTEE CONTINUING EDUCATION PROGRAM

10 TAC §257.951, §257.952

The amendments are adopted under §487.052 of the Texas Government Code, which provides the Board with authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the adopted amendments.

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TITLE 13. CULTURAL RESOURCES

PART 3. TEXAS COMMISSION ON THE ARTS

CHAPTER 35. A GUIDE TO OPERATIONS, PROGRAMS AND SERVICES

13 TAC §35.1

The Texas Commission on the Arts (commission) adopts the amendment of §35.1, concerning a Guide to Operations, without changes to the proposed text as published in the November 14, 2008, issue of the *Texas Register* (33 TexReg 9167) and will not be republished.

The purpose of the amendment is to be consistent with changes to programs and services of the commission and change the name of the Guide to Operations as outlined in the Guide to Programs and Services as amended October 2008.

The Commission received one comment regarding adoption of the amendment. The comment was to recommend the Texas Commission on the Arts revisit and implement another budgetary category for grant eligibility. Commission staff determined implementation of the recommendation would have negative consequences for grant applicants. The Commission acknowledged the comment and extended thanks for the input. The Commission also explained the reason for not acting on the comment.

The amendment is adopted under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

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

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Gary Gibbs, Ph.D.
Executive Director
Texas Commission on the Arts
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Proposal publication date: November 14, 2008
For further information, please call: (512) 936-6562



13 TAC §35.2

The Texas Commission on the Arts (commission) adopts the repeal of §35.2, concerning A Guide to Programs and Services, without changes to the proposed text as published in the November 14, 2008, issue of the *Texas Register* (33 TexReg 9167) and will not be republished.

The purpose of the repeal is to be consistent with changes to programs and services of the commission as outlined in the Guide to Programs and Services as amended October 2008 in §35.1.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

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

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §1.65, §1.66

The Texas Board of Architectural Examiners adopts an amendment to §1.65 and §1.66 of Chapter 1, Subchapter D, pertaining to the annual renewal process and reinstatement. The amend-

ments to §1.66 are adopted with changes to the proposed text as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5206). The amendments to §1.65 are adopted without changes and will not be republished.

The board made the following changes to §1.66 as proposed: The board eliminated proposed amendments to the rule which would have allowed the board greater leeway in reinstating a certificate of registration that had been surrendered or revoked for 5 years or longer. The change maintains current provisions within the rule which require completion of the registration examination or registration in another jurisdiction to reinstate a certificate 5 years after it is surrendered or cancelled. The amendment to §1.65 modifies a provision regarding the issuance of a new certificate of registration to a person after his or her previous registration had been cancelled by operation of law. The current rule allows a person from another jurisdiction to receive a new certificate of registration through a reciprocity agreement with the other jurisdiction if the person meets all requirements for reciprocal registration "including the completion a registration examination." The requirements for reciprocal registration specify that a person licensed in another jurisdiction must have become licensed under substantially equivalent licensure requirements applicable in Texas, including examination. Requiring licensees from other jurisdictions to complete the examination again is contrary to the intent of reciprocity agreement and may impede Texas registrants from gaining registration in other jurisdictions. Therefore, the amendment strikes the reference to completing the registration examination from the reciprocity provision. The amendment to §1.66 provides notice that the Board is not permitted to reinstate a certificate of registration that is cancelled by operation of law two years after it expires. The amendment provides for disciplinary action against a person for practicing or using a title unlawfully during a period in which the person's certificate of registration has been expired. The amendments eliminate the use of the term "cancelled" in two different contexts to remove a confusing aspect of the current rule.

The agency received one comment concerning the proposal to amend §1.66. An individual commented in favor of amending §1.66 to eliminate restriction upon the reinstatement of a registration certificate that has been revoked or surrendered for 5 years or longer. The individual related his experience in which he neglected to renew his registration roughly 9 years ago. The board revoked the certificate one year after its expiration and the certificate may not be reinstated unless he successfully passes all sections of the Architectural Registration Examination. The commentator suggested extending the period in the rule from 5 years to 10 or 15 years. The board notes that the law has changed since the commentator's registration was revoked. Under current law, a certificate of registration is cancelled 2 years after it expires and may not be reinstated. Thus, no change in the rule would address similarly situated individuals under the law as it currently exists. The board determined 5 years is a reasonable period of time for one whose registration was revoked or surrendered to decide whether to seek a reinstatement. A certificate of registration is not revoked or surrendered without notice to the individual who holds it. Thus, a former registrant would have notice regarding the period of time she or he has been unlicensed. Further, the board has a concern that a person who has been absent from the practice of architecture for longer than 5 years may pose a risk to the public health, safety and welfare unless she or he demonstrates minimum competence through examination. For these reasons, the board declines to adopt the proposed change.

The amendments to these rules are adopted pursuant to §§1051.202, 1051.305, and 1051.353(d) of Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners the authority to promulgate rules, including rules related to registration, and which allow the board the authority to waive any prerequisite for registration for an out-of-state registrant from a jurisdiction which has substantially equivalent licensing requirements and a reciprocity agreement with Texas and which provide that a person whose registration has been cancelled by operation of law may obtain a new certificate of registration by complying with the requirements and procedures for obtaining an original certificate--which would include procedures for obtaining an original certificate through reciprocity.

§1.66. *Reinstatement.*

(a) Once the Revocation or Surrender of an Architect's registration is effective, the registration may be reinstated only after an application for reinstatement is properly submitted and approved and the prescribed reinstatement fee is paid. **THE BOARD IS NOT PERMITTED TO REINSTATE A CERTIFICATE OF REGISTRATION WHICH IS CANCELLED BY OPERATION OF LAW DUE TO THE REGISTRANT'S FAILURE TO RENEW THE REGISTRATION WITHIN 2 YEARS AFTER ITS DESIGNATED EXPIRATION DATE.**

(b) If a reinstatement Applicant has practiced architecture unlawfully or used any form of the title "architect" in violation of the Architects' Registration Law since the effective date of the expiration of the Applicant's revoked registration or the Surrender of the Applicant's registration, the reinstatement fee to be paid upon approval of the application shall include an amount equal to the sum of the registration renewal fees for each year since the effective date of the expiration or Surrender.

(c) An application for reinstatement may be denied on the following grounds:

(1) the registration has been revoked for a continuous period of five (5) years or longer;

(2) the reinstatement Applicant has performed an act, omitted an act or allowed an omission, or otherwise engaged in a practice that could serve as the basis for the rejection of an application for registration or for the Revocation of a registration; or

(3) the registration was voluntarily Surrendered in lieu of potential disciplinary action and the Board finds that the approval of the reinstatement application does not appear to be in the public's interest.

(d) If at least five (5) years have passed since the effective date of the Revocation or Surrender of a registration, one of the following shall be required prior to approval of an application for reinstatement:

(1) successful completion of all sections of the current registration examination during the five (5) years immediately preceding reinstatement; or

(2) verification that the Applicant currently holds an architectural registration that is active and in good standing in another jurisdiction where the registration requirements are substantially equivalent to Texas architectural registration requirements.

(e) If a registration was revoked as a result of disciplinary action or Surrendered in lieu of disciplinary action, the registration shall not be reinstated unless the Applicant:

(1) demonstrates that the Applicant has taken reasonable steps to correct the misconduct or deficiency that led to the Revocation or Surrender;

(2) demonstrates that approval of the application is not inconsistent with the Board's duty to protect the public by ensuring that registrants are duly qualified and fit for registration; and

(3) pays all fees and costs incurred by the Board as a result of any proceeding that led to the Revocation or Surrender.

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

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Cathy L. Hendricks

Executive Director

Texas Board of Architectural Examiners

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CHAPTER 3. LANDSCAPE ARCHITECTS SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §3.65, §3.66

The Texas Board of Architectural Examiners adopts amendments to §3.65 and §3.66 of Chapter 3, Subchapter D, pertaining to the annual renewal process and reinstatement. The amendments to §3.66 are adopted with changes to the proposed text as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5210). The amendments to §3.65 are adopted without changes and will not be republished.

The board made the following changes to §3.65 as proposed: reference to §3.21 in subsection (f)(1) and reference to §3.22 in subsection (f)(2) were more clearly identified by including the heading of each rule. The board made the following changes to §3.66 as proposed: The board eliminated proposed amendments to the rule which would have allowed the board greater leeway in reinstating a certificate of registration that had been surrendered or revoked for 5 years or longer. The change maintains current provisions within the rule which require completion of the registration examination or registration in another jurisdiction to reinstate a certificate 5 years after it is surrendered or cancelled.

The amendment to §3.65 modify a provision regarding the issuance of a new certificate of registration to a person after his or her previous registration had been cancelled by operation of law. The current rule allows a person from another jurisdiction to receive a new certificate of registration through a reciprocity agreement with the other jurisdiction if the person meets all requirements for reciprocal registration "including the completion a registration examination." The requirements for reciprocal registration specify that a person licensed in another jurisdiction must have become licensed under substantially equivalent licensure requirements applicable in Texas, including examination. Requiring licensees from other jurisdictions to complete the examination a second time is contrary to the intent of reciprocity agreements and may impede Texas registrants from gaining registration in other jurisdictions. Therefore, the amendment strikes the

reference to completing the registration examination from the reciprocity provision. The amendments to §3.66 provide notice that the Board is not permitted to reinstate a certificate of registration that is cancelled by operation of law because it has expired without renewal for two years. Under the rule as amended, the board may take disciplinary action against a person for practicing or using a title unlawfully during a period in which the person's certificate of registration has been expired. The amendments eliminate the use of the term "cancelled" in two different contexts thus removing a confusing aspect of the current rule.

The agency received no comments concerning the proposal to amend this rule.

The amendment is adopted pursuant to §§1051.202, 1051.305, and 1051.353(d), Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to registration. These laws also allow the board the authority to waive any prerequisite for registration for an out-of-state registrant from a jurisdiction which has substantially equivalent licensing requirements and a reciprocity agreement with Texas and provide that a person whose registration has been cancelled by operation of law may obtain a new certificate of registration by complying with the requirements and procedures for obtaining an original certificate--which would include procedures for obtaining an original certificate through reciprocity.

§3.66. *Reinstatement.*

(a) Once the Revocation or Surrender of a Landscape Architect's registration is effective, the registration may be reinstated only after an application for reinstatement is properly submitted and approved and the prescribed reinstatement fee is paid. **THE BOARD IS NOT PERMITTED TO REINSTATE A CERTIFICATE OF REGISTRATION WHICH IS CANCELLED BY OPERATION OF LAW DUE TO THE REGISTRANT'S FAILURE TO RENEW THE REGISTRATION WITHIN 2 YEARS AFTER ITS DESIGNATED EXPIRATION DATE.**

(b) If a reinstatement Applicant has practiced landscape architecture unlawfully or has used the term "landscape architect," the term "landscape architectural," the term "landscape architecture," or any similar term to describe himself/herself or to describe services he/she has offered or provided in Texas since the effective date of the expiration of the Applicant's revoked registration or the Surrender of the Applicant's registration, the reinstatement fee to be paid upon approval of the application shall include an amount equal to the sum of the registration renewal fees for each year since the effective date of the expiration or Surrender.

(c) An application for reinstatement may be denied on the following grounds:

(1) the registration has been revoked for a continuous period of five (5) years or longer;

(2) the reinstatement Applicant has performed an act, omitted an act or allowed an omission, or otherwise engaged in a practice that could serve as the basis for the rejection of an application for registration or for the Revocation of a registration; or

(3) the registration was voluntarily Surrendered in lieu of potential disciplinary action and the Board finds that the approval of the reinstatement application does not appear to be in the public's interest.

(d) If at least five (5) years have passed since the effective date of the Revocation or Surrender of a registration, one of the following shall be required prior to approval of an application for reinstatement:

(1) successful completion of all sections of the current registration examination during the five (5) years immediately preceding reinstatement; or

(2) verification that the Applicant currently holds a landscape architectural registration that is active and in good standing in another jurisdiction where the registration requirements are substantially equivalent to Texas landscape architectural registration requirements.

(e) If a registration was revoked as a result of disciplinary action or Surrendered in lieu of disciplinary action, the registration shall not be reinstated unless the Applicant:

(1) demonstrates that the Applicant has taken reasonable steps to correct the misconduct or deficiency that led to the Revocation or Surrender;

(2) demonstrates that approval of the application is not inconsistent with the Board's duty to protect the public by ensuring that registrants are duly qualified and fit for registration; and

(3) pays all fees and costs incurred by the Board as a result of any proceeding that led to the Revocation or Surrender.

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

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Cathy L. Hendricks

Executive Director

Texas Board of Architectural Examiners

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CHAPTER 5. INTERIOR DESIGNERS SUBCHAPTER C. EXAMINATION

22 TAC §5.51

The Texas Board of Architectural Examiners adopts an amendment to §5.51 of Chapter 5, Subchapter C, pertaining to requirements for taking the professional exam. The proposal to amend this rule was published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5215). The amendment is being adopted without changes.

As amended, an applicant from a jurisdiction where interior designers are not licensed may take the NCIDQ registration examination after working for six months under the direct supervision of a licensed architect or an interior designer who has passed the NCIDQ examination. The amendment provides an opportunity for out-of-state applicants from certain jurisdictions to take the examination early under similar circumstances in which Texas applicants may sit for an early examination.

The agency received no comments concerning the proposal to amend this rule.

The amendment is adopted pursuant to §1051.202 and §1053.155 of the Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with au-

thority to promulgate rules and provide the board authority to adopt rules to establish standards for the amount and type of professional experience necessary for eligibility to take the interior design registration examination.

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

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SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §5.75, §5.76

The Texas Board of Architectural Examiners (Board) adopts amendments to §5.75 and §5.76 of Chapter 5, Subchapter D, pertaining to the annual renewal process and reinstatement. The amendments to §5.76 are adopted with changes to the proposed text as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5215). The amendments to §5.75 are adopted without changes and will not be republished.

The board made the following changes to §5.76 as proposed: The board eliminated proposed amendments to the rule which would have allowed the board greater leeway in reinstating a certificate of registration that had been surrendered or revoked for 5 years or longer. The change maintains current provisions within the rule which require completion of the registration examination or registration in another jurisdiction to reinstate a certificate 5 years after it is surrendered or cancelled.

The amendment to §5.75 modifies prerequisites for the issuance of a new certificate of registration to a person after his or her previous registration had been cancelled by operation of law. The current rule allows a person from another jurisdiction to receive a new certificate of registration through a reciprocity agreement with the other jurisdiction if the person meets all requirements for reciprocal registration "including the completion a registration examination." The requirements for reciprocal registration specify that a person licensed in another jurisdiction must have become licensed under substantially equivalent licensure requirements applicable in Texas, including examination. Requiring licensees from other jurisdictions to complete the examination a second time is contrary to the intent of reciprocity agreement and may impede Texas registrants from gaining registration in other jurisdictions. Therefore, the amendment strikes the reference to completing the registration examination from the reciprocity provision. The amendment to §5.76 provides notice that the Board is not permitted to reinstate a certificate of registration that is cancelled by operation of law two years after its expiration without renewal. The rule amendment allows the board to take action against a person for using a title or practicing unlawfully during a period in which the person's certificate of registration has been

expired. The amendments eliminate the use of the term "cancelled" in two different contexts to remove a confusing aspect of the current rule. The amendments clarify that the Board is unable under law to reinstate a certificate of registration that has been cancelled by operation of law.

The agency received no comments concerning the proposal to amend this rule.

The amendments are adopted pursuant to §§1051.202, 1051.305, and 1051.353(d), Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to registration. These laws also allow the Board the authority to waive any prerequisite for registration for an out-of-state licensee from a jurisdiction which has substantially equivalent licensing requirements and a reciprocity agreement with Texas. The enabling laws also provide that a person whose registration has been cancelled by operation of law may obtain a new certificate of registration by complying with the requirements and procedures for obtaining an original certificate--which would include procedures for obtaining an original certificate through reciprocity.

§5.76. Reinstatement.

(a) Once the Revocation or Surrender of an Interior Designer's registration is effective, the registration may be reinstated only after an application for reinstatement is properly submitted and approved and the prescribed reinstatement fee is paid. **THE BOARD IS NOT PERMITTED TO REINSTATE A CERTIFICATE OF REGISTRATION WHICH IS CANCELLED BY OPERATION OF LAW DUE TO THE REGISTRANT'S FAILURE TO RENEW THE REGISTRATION WITHIN 2 YEARS AFTER ITS DESIGNATED EXPIRATION DATE.**

(b) If a reinstatement Applicant has used the title "interior designer" or the term "interior design" in violation of the Interior Designers' Registration Law since the effective date of the expiration of the Applicant's revoked registration or the Surrender of the Applicant's registration, the reinstatement fee to be paid upon approval of the application shall include an amount equal to the sum of the registration renewal fees for each year since the effective date of the expiration or Surrender.

(c) An application for reinstatement may be denied on the following grounds:

(1) the registration has been Revoked for a continuous period of five (5) years or longer; or

(2) the reinstatement Applicant has performed an act, omitted an act or allowed an omission, or otherwise engaged in a practice that could serve as the basis for the rejection of an application for registration or for the Revocation of a registration; or

(3) the registration was voluntarily Surrendered in lieu of potential disciplinary action and the Board finds that the approval of the reinstatement application does not appear to be in the public's interest.

(d) If at least five (5) years have passed since the effective date of the Revocation or Surrender of a registration, one of the following shall be required prior to approval of an application for reinstatement:

(1) successful completion of all sections of the current registration examination during the five (5) years immediately preceding reinstatement; or

(2) verification that the Applicant currently holds an interior design registration that is active and in good standing in another

jurisdiction where the registration requirements are substantially equivalent to Texas interior design registration requirements.

(e) If a registration was Revoked as a result of disciplinary action or Surrendered in lieu of disciplinary action, the registration shall not be reinstated unless the Applicant:

(1) demonstrates that the Applicant has taken reasonable steps to correct the misconduct or deficiency that led to the Revocation or Surrender;

(2) demonstrates that approval of the application is not inconsistent with the Board's duty to protect the public by ensuring that registrants are duly qualified and fit for registration; and

(3) pays all fees and costs incurred by the Board as a result of any proceeding that led to the Revocation or Surrender.

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

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Cathy L. Hendricks

Executive Director

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 523. AGRICULTURAL AND SILVICULTURAL WATER QUALITY MANAGEMENT

31 TAC §§523.1 - 523.4, 523.6

The Texas State Soil and Water Conservation Board (State Board or agency) adopts amendments to §§523.1 - 523.4 and §523.6, without changes to the proposal published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6742) and will not be republished.

The rules in Chapter 523 pertain to the abatement of agricultural and silvicultural nonpoint source pollution under the authority of the State Board. These rules include the State Board's scope and jurisdiction (§523.1), as well as the process by which the State Board identifies problem areas related to agricultural and silvicultural nonpoint source pollution (§523.2). The rules also include the administrative and technical procedures of (1) the Water Quality Management Plan Certification Program (§523.3) required by Agriculture Code §201.026(g), (2) resolving complaints related to agricultural and silvicultural nonpoint source pollution (§523.4), and (3) cost-sharing soil and water conservation land improvement measures (§523.6).

The overwhelming preponderance of amendments serves only to improve organization, increase ease of readability, and general clarification of existing rule.

The State Board adopts new §523.1(b) to more clearly declare the water quality programs currently administered by the State Board in implementing Agriculture Code §201.026 relating to the State Board's designation as the lead agency for abating agricultural and silvicultural nonpoint source pollution. The programs listed in §523.1(b) include a (1) water quality management plan certification program required by Agriculture Code §201.026(g), a (2) nonpoint source grant program funded by §319(h) of the federal Clean Water Act through which the State Board and the Texas Commission on Environmental Quality jointly administer the Texas Nonpoint Source Management Program, a (3) total maximum daily load program to address nonpoint source pollution in cooperation with the Texas Commission on Environmental Quality, and a (4) program to address the agricultural and silvicultural management measures of the Texas Coastal Nonpoint Source Management Pollution Control Program as required by Agriculture Code §201.026(g) and related responsibilities associated with the State Board's inclusion as a member of the Coastal Coordination Council. All of these programs are currently administered by the State Board and are funded through a combination of federal Clean Water Act, §319(h) funds and general revenue appropriated by the Texas Legislature.

The State Board adopts new §523.3(a) to include definitions for terms that are unique to the Water Quality Management Plan Certification Program for clarity of their use. The definition of "operating unit," previously only defined in previous §523.6(b)(13) relating to the cost-sharing of soil and water conservation land improvement measures, is adopted to include a definition in new §523.3(a) due to its relevance to the technical aspects of the overall program. This enhanced definition, although not adopted in a manner that modifies the geographic scope of an operating unit in any way, includes additional rule language to provide greater clarification of the State Board's intent of previous rule language.

The State Board adopts amended §523.3(e)(2) to incorporate the agency's longstanding policy that the implementation of a water quality management plan based on the United States Department of Agriculture - Natural Resources Conservation Service Field Office Technical Guide represents the best available technology for abating nonpoint source pollution to an extent that Texas surface water quality standards are being achieved.

The State Board adopts amended §523.6(b)(11), relating to the maintenance agreement between an eligible person and a soil and water conservation district for cost-share assistance, to clarify that it is the expectation that all water quality management plans be maintained by the program participant for an indefinite period of time. Previous rule language in this definition related to the minimum time periods for maintaining cost-shared soil and water conservation land improvement measures has been misinterpreted by the public as a time period after which an individual may qualify for additional cost-share funding. When misinterpreted, this definition appeared to be in conflict with existing §523.6(e)(2) which limits a participant's cost-share opportunities to one time per operating unit unless the criteria for a waiver has been met. As adopted, this amendment clarifies that the existence of a required minimum time period for maintaining cost-shared land improvement measures does not imply additional cost-share opportunities are available once it has expired.

The State Board adopts existing §523.1, Scope and Jurisdiction, to capitalize "State Board." Additionally, the adoption of new §523(b), eliminated the option for an implied "(a)" at the beginning of the existing rule, therefore "(a)" has been added.

Adopted new §523(b) more clearly declares the water quality programs currently administered by the State Board in implementing Agriculture Code §201.026 relating to the State Board's designation as the lead agency for abating agricultural and silvicultural nonpoint source pollution. The programs listed in §523.1(b) include a (1) water quality management plan certification program required by Agriculture Code §201.026(g), a (2) nonpoint source grant program funded by §319(h) of the federal Clean Water Act through which the State Board and the Texas Commission on Environmental Quality jointly administer the Texas Nonpoint Source Management Program, a (3) total maximum daily load program to address nonpoint source pollution in cooperation with the Texas Commission on Environmental Quality, and a (4) program to address the agricultural and silvicultural management measures of the Texas Coastal Nonpoint Source Management Pollution Control Program as required by Agriculture Code §201.026(g) and related responsibilities associated with the State Board's inclusion as a member of the Coastal Coordination Council. All of these programs are currently administered by the State Board and are funded through a combination of federal Clean Water Act, §319(h) funds and general revenue appropriated by the Texas Legislature.

Previous §523.2(a), Identification of Problem Areas, is amended to capitalize "State Board." This specific amendment is carried out in numerous other locations within §523.2 and will not be addressed again in this discussion section.

The State Board adopts amended §523.2(b)(4), relating to assessments, special studies, and programs and research conducted relative to surface and groundwater, to remove the presence of the acronym "(CZARA)" immediately located behind "Coastal Zone Act Reauthorization Amendments" because it is not present again in this section.

Previous §523.2(c)(3), relating to allocation of resources, is adopted as amended to clarify that corrective actions plans to address problem areas may include watershed protection plans, total maximum daily loads, total maximum daily load implementation plans, nonpoint source grant project plans, or certified water quality management plans. The inclusion of these types of corrective action plans is necessary because, depending on the nature, scope, and severity of the problem, any of them may be used as the appropriate mechanism to deliver treatment depending on the situation.

Previous §523.3, Water Quality Management Plans, is adopted as amended so that the title of the section is "Water Quality Management Plan Certification Program." This amendment was necessary to more closely reflect language used in Agriculture Code §201.026(g) which created the program. Additionally, previous §523.3(a), relating to the technical and certification requirements for water quality management plans is moved to §523.3(c) to allow for the inclusion of newly adopted §523.3(a), Purpose, and newly adopted §523.3(b), Definitions. This also results in a cascading reclassification of previous §523.3(b) through previous §523.3(h) to be newly adopted §523.3(d) through newly adopted §523.3(j) for organizational purposes only.

Adopted new §523.3(a), Purpose, establishes the purpose of the program as being the State Board's need to carry out Agriculture Code §201.026(g) relating to the abatement of agricultural

and silvicultural nonpoint source pollution through a water quality management plan certification program.

Adopted new §523.3(b), Definitions, creates a definitions section to clearly define terms that are unique to the Water Quality Management Plan Certification Program. Previous §523.3 did not offer a definitions section.

Adopted new §523.3(b)(1), Animal feeding operation, is added to provide the definition for this term or phrase in this section.

Adopted new §523.3(b)(2), Coastal Zone Act Reauthorization Amendments, is added to provide the definition for this term or phrase in this section.

Adopted new §523.3(b)(3), Dry-litter poultry facility, is added to provide the definition for this term or phrase in this section.

Adopted new §523.3(b)(4), Clean Water Act, is added to provide the definition for this term or phrase in this section.

Adopted new §523.3(b)(5), Field Office Technical Guide (FOTG), is added to provide the definition for this term or phrase in this section.

Adopted new §523.3(b)(6), Natural Resources Conservation Service (NRCS), is added to provide the definition for this term or phrase in this section.

Adopted new §523.3(b)(7), Operating unit, is added to provide the definition for this term or phrase in this section. The definition of "operating unit," previously only defined in previous §523.6(b)(13) relating to the cost-sharing of soil and water conservation land improvement measures, is adopted as a definition in new §523.3(a) due to its relevance to the technical aspects of the overall program. This enhanced definition, although not proposed in a manner that modifies the geographic scope of an operating unit in any way, includes additional rule language to provide greater clarification of the State Board's intent of existing rule language. The definition of "operating unit" in §523.6(b)(13) is adopted to be identical to the adopted new definition in §523.3(b)(7), previously existing §523.6(b)(13).

Adopted new §523.3(b)(8), Practice standard, is added to provide the definition for this term or phrase in this section.

Adopted new §523.3(b)(9), Resource management system, is added to provide the definition for this term or phrase in this section.

Adopted new §523.3(b)(10), Soil and water conservation district (SWCD), is added to provide the definition for this term or phrase in this section.

Adopted new §523.3(b)(11), State Board, is added to provide the definition for this term or phrase in this section.

Adopted new §523.3(b)(12), Status review, is added to provide the definition for this term or phrase in this section.

Adopted new §523.3(b)(13), Texas Nonpoint Source Management Program, is added to provide the definition for this term or phrase in this section.

Adopted new §523.3(b)(14), Texas surface water quality standards, is added to provide the definition for this term or phrase in this section.

Adopted new §523.3(b)(15), Water in the state, is added to provide the definition for this term or phrase in this section.

Adopted new §523.3(b)(16), Water quality management plan, is added to provide the definition for this term or phrase in

this section. A definition for "water quality management plan" was previously only defined in previous §523.3(a); adopted new §523.3(b)(16) moves this definition to the adopted new definitions section.

Adopted new §523.3(c), previously existing §523.3(a), is amended to remove the definition of "water quality management plan" from this section. This definition is added in adopted new §523.3(b)(16). Additionally, the remaining rule language from previous §523.3(a) remains in §523.3(c) with the adopted inclusion of "at a minimum" with respect to the level of technical planning that is required for the State Board to certify a water quality management plan. This rule language clarifies that water quality management plans must minimally meet the resource quality criteria for water quality at the resource management system level specified within the United States Department of Agriculture - Natural Resources Conservation Service Field Office Technical Guide. The rule language "at the resource management system level" is added to this section, but does not represent a substantive amendment as this is already a requirement of the program. The phrase "nonpoint source pollution abatement" is included to emphasize that water quality management plans are solely for that purpose.

Adopted new §523.3(d), previously existing §523.3(b), is amended to include "Texas surface" in front of existing rule language "water quality standards." This amendment makes reference to the standards using their appropriate name found in 30 TAC Chapter 307. This specific amendment is carried out in numerous other locations within §523.3 and is not addressed again in this discussion section.

Adopted new §523.3(e), Process for obtaining a Water Quality Management Plan, previously existing §523.3(c), is amended in numerous locations to establish a consistent manner to refer to a soil and water conservation district or districts. All references are either "soil and water conservation district" or "SWCD." This specific amendment is carried out in numerous other locations within §523.3 and is not addressed again in this discussion section.

Adopted new §523.3(f), Practice selection, previously existing §523.3(d), is amended to replace "Agricultural and Silvicultural Nonpoint Source Management Program" with "Texas Nonpoint Source Management Program" to create consistency with the program's current appropriate name. In the past, the State Board referred to the agricultural and silvicultural aspects of the overall Texas Nonpoint Source Management Program in a manner that implied it was a formal or separate program named the Texas Agricultural and Silvicultural Nonpoint Source Management Program. The overall Texas Nonpoint Source Management Program is jointly administered by the State Board and the Texas Commission on Environmental Quality in a unified manner, so there is no purpose in referencing it as a separate component. This specific amendment is carried out in numerous other locations within §523.3 and is not addressed again in this discussion section. Additionally, a statement referencing this joint administration of the program is included, the term "federal" is shown in lower case, and the acronym for Coastal Zone Act Reauthorization Amendments, or CZARA, is replaced with the fully spelled-out title because it does not reoccur in this section.

Adopted new §523.3(g), Practice standards, previously existing §523.3(e), is amended by replacing "Natural Resources Conservation Service" with the acronym "NRCS," and "Field Office Technical Guide" with "FOTG." These acronyms are present in the definitions section at adopted new §523.3(b)(5) and (6) and

are used in each subsequent case. Additionally, a statement is included that clarifies the State Board's longstanding determination that the implementation of a water quality management plan based on the United States Department of Agriculture - Natural Resources Conservation Service Field Office Technical Guide represents the best available technology for abating nonpoint source pollution to an extent that Texas surface water quality standards are being achieved. This determination was made by the State Board immediately following the passage of Senate Bill 503 during the 73rd Legislative Session, and remains unchanged. The State Board adopts the phrase "selected or" to the statement that describes how practice standards are chosen for use in water quality management plans. Because the Field Office Technical Guide has been adopted by the State Board as the technical basis for water quality management plans, and because the Field Office Technical Guide already includes technical specifications for practice standards, the rule language in this section is amended to indicate that "selecting" practice standards from it is a more accurate way to describe the process. The term "developed" remains for situations where special practice standards need to be developed prior to inclusion. Additionally, the names of several research partners are updated to reflect their current names.

Adopted new §523.3(j)(3), previously existing §523.3(h), is amended by replacing reference to previous §523.3(f) with newly adopted §523.3(h) due to the cascading reclassification of previous §523.3(b) through previous §523.3(h) to be newly adopted §523.3(d) through newly adopted §523.3(j).

Adopted new §523.3(j)(4), previously existing §523.3(h)(4), is amended by replacing "State Soil and Water Conservation Board" with "State Board."

Previous §523.4, Resolution of Complaints, is adopted as amended to replace "Water Quality Management Plan" with "water quality management plan." This specific amendment is carried out in numerous other locations within §523.4 and is not addressed again in this discussion section.

Previous §523.4(3)(C) is adopted as amended to replace reference to "Texas Cooperative Extension" with "Texas AgriLife Extension Service" due to a change in the entity's name.

Previous §523.6(b), Definitions, is adopted as amended so that the definitions would apply to existing §523.6 only. Previous rule language implied the definitions may apply to other sections of Chapter 523.

The State Board adopted as amended §523.6(b)(1), the definition of Allocated funds, is defined with "soil and water conservation district" spelled-out rather than be defined using the acronym "SWCD." All subsequent references are either "soil and water conservation district" or "SWCD" in §523.6; reference is "soil and water conservation district" in all places prior to the actual definition of "soil and water conservation district" in adopted new §523.6(b)(18), previous §523.6(b)(17); all subsequent references are "SWCD" because the acronym is provided in adopted §523.6(b)(18). This specific amendment is carried out in numerous other locations within §523.6 and is not addressed again in this discussion section.

Previous §523.6(b)(2), the definition of "applicant," is adopted as amended to reference "person" rather than "persons" for grammatical correction only.

Previous §523.6(b)(4), the definition of Conservation land treatment measures(s), is adopted as amended to be "conservation

practices" rather than "conservation land treatment measures." The phrases "conservation practices," "conservation land treatment measures," and "soil and water conservation land improvement measures" were previously used indiscriminately throughout Chapter 523, and in §523.6 in particular. With the exception of one instance, the State Board adopts amendments to all references to any of these three phrases to be "conservation practice(s)" for consistency purposes, as the three phrases are considered to be synonymous. The one remaining exception is the presence of "soil and water conservation land improvement measures" in the title of §523.6 due to its use in Agriculture Code §201.301, which is the enabling legislation for the cost-share program. Specific amendments pertaining to this issue are carried out in numerous other locations within §523.6 and are not addressed again in this discussion section.

Previous §523.6(b)(5), the definition of Cost-share assistance, is adopted as amended to reference "Agriculture Code §201.301" rather than "Senate Bill 503, 73rd Texas Legislature." The statute established by Senate Bill 503 has been amended by the Legislature numerous times since the passage of the initial legislation; therefore the State Board adopts amendments to reference the statute citation rather than the legislation for accuracy purposes and to avoid confusion by the public.

Previous §523.6(b)(11), the definition of Maintenance agreement, is adopted as amended to include "measures" rather than "measure(s)" because it is impossible for a water quality management plan to include only a single "measure." Additionally, previous §523.6(b)(11) is adopted as amended to include rule language to clarify that it is the expectation that all water quality management plans be maintained by the program participant for an indefinite period of time. Previous rule language in this definition related to the minimum time periods for maintaining cost-shared soil and water conservation land improvement measures has been misinterpreted by the public as a time period after which an individual may qualify for additional cost-share funding. When misinterpreted, this definition appeared to be in conflict with existing §523.6(e)(2) which limits a participant's cost-share opportunities to one time per operating unit unless the criteria for a waiver has been met. The adopted amendment clarifies that the existence of a required minimum time period for maintaining cost-shared land improvement measures does not explicitly or implicitly create an additional cost-share opportunity once it has expired.

Previous §523.6(b)(13), the definition of Operating Unit, is adopted as amended to be consistent with the new definition in adopted new §523.3(b)(7). This enhanced definition, although not adopted in a manner that modifies the geographic scope of an operating unit in any way, includes additional rule language to provide greater clarification of the State Board's intent of existing rule language. The previous definition only provided that an operating unit was "Land, whether contiguous or noncontiguous, owned and/or operated by the applicant as an independent management unit for agricultural or silvicultural purposes." The adopted enhanced definition clarifies the State Board's existing intent that an operating unit must be determined in a manner that has the abatement of agricultural or silvicultural nonpoint source pollution as the primary goal. Additionally, the enhanced definition clarifies that an operating unit must be mutually agreed upon by the holder of the water quality management plan, the soil and water conservation district, and the State Board. The enhanced definition also provides further clarification on determining operating units for contiguous lands, non-contiguous lands, and lands associated

with an animal feeding operation. The adopted amendment to the definition also clarifies the State Board's intent that land or lands already within the scope of another operating unit for a water quality management plan may not be separated from the existing operating unit unless a change of ownership has occurred; misinterpretation of the existing definition, in conjunction with misinterpretation of existing §523.6(b)(11) pertaining to the maintenance agreement, has lead some members of the public to believe that effectively "carving out" a new operating unit established grounds for additional cost-share assistance. That belief, though factually inaccurate due to the presence of existing §523.6(e)(2) which clearly establishes a one time cost-share opportunity per operating unit, has created confusion to the extent that the State Board has adopted this amendment for clarification purposes. The enhanced definition also explicitly clarifies that the State Board makes a final determination on the appropriateness of all operating units through a decision whether or not to certify the water quality management plan.

Adopted new §523.6(b)(15) adds a definition for "practice standard." "Practice standard" is used frequently throughout §523.6 and the inclusion of a definition is needed for understandability and to prevent confusion between "practices" and "practice standards."

Previous §523.6(b)(15), the definition of Priority system, is moved to adopted new §523.6(b)(16) due to the inclusion of adopted new §523.6(b)(15), the definition of Practice standard. The purpose of this amendment is organizational in purpose only.

Previous §523.6(b)(16), the definition of Program year, is moved to adopted new §523.6(b)(17) due to the inclusion of adopted new §523.6(b)(15), the definition of Practice standard. The purpose of this amendment is organizational in purpose only.

Previous §523.6(b)(17), the definition of Soil and water conservation district (SWCD), is moved to adopted new §523.6(b)(18) due to the inclusion of adopted new §523.6(b)(15), the definition of Practice standard. Additionally, the definition uses the term "governmental" rather than "government" for grammatical correction, and removes "of Texas" from the end of the phrase "Chapter 201 of the Agriculture Code" because it is implicit and unnecessary.

Previous §523.6(b)(18), the definition of Texas State Soil and Water Conservation Board, is moved to adopted new §523.6(b)(19) due to the inclusion of adopted new §523.6(b)(15), the definition of Practice standard. Additionally, "the provisions of" is removed from in front of "Chapter 201 of the Agriculture Code" because it is redundant and unnecessary, and "of Texas" is removed from the end of the phrase "Chapter 201 of the Agriculture Code" because it is implicit and unnecessary.

Previous §523.6(c)(2)(H), relating to a soil and water conservation district's responsibilities for filing applications during program administration, is adopted as amended for ease of readability; "water quality management plan" replaces "Water Quality Management Plan."

Adopted new §523.6(d)(4), Maximum Allowable Amount of Cost-Share Funds per Operating Unit, establishes the maximum amount at \$15,000 in rule for the first time, and specifies that the provision only applies to general revenue funds appropriated by the Texas Legislature. Since the inception of the Water Quality Management Plan Program, the State Board has adopted and maintained a maximum allowable cost-share amount. This amount has never been included in rule prior to this proposal;

however, the State Board wishes to include the amount in rule to offer the public the opportunity to comment on future changes. Occasionally funding from federal sources becomes available for use as cost-share for providing an incentive toward the development and implementation of water quality management plans. Because in these cases special circumstances sometimes require conservation practices that so far exceed the established maximum allowable cost-share amount, the State Board adopts rule to clarify that it retains the right to adopt a different maximum amount when the funds are from sources other than general revenue on a case-by-case basis.

Previous §523.6(e)(2), relating to a one time cost-share opportunity per operating unit, is adopted as amended to replace "cost share" with "cost-share" for consistency with how the term is used throughout the remainder of the section.

The State Board adopts amendments to remove capitalization of the first word in each of previous §§523.6(e)(2)(A) - (D), as well as to place a semi-colon at the end of each section for grammatical correctness.

Previous §523.6(e)(2)(A) is adopted as amended to replace "indicates" with "indicate(s)" for grammatical correctness, and "Texas surface" is included in front of "water quality standards" for consistency with other sections of the chapter.

Previous §523.6(e)(2)(B) is adopted as amended to replace "land treatment measures" with "practices" for consistency with other sections of the chapter, and "Texas surface" is included in front of "water quality standards" for consistency with other sections of the chapter.

Previous §523.6(e)(2)(C) is adopted as amended to include "Texas surface" in front of "water quality standards" for consistency with other sections of the chapter.

Previous §523.6(e)(2)(E) is adopted as amended to replace "The life expectancy of the previously cost-shared best management practice(s) has expired" with "the life expectancy of a conservation practice or practices that was/were previously cost-shared through this program has/have expired and the practice or practices is/are mandated by state law or the laws, rules, or regulations of a political subdivision. This waiver is only applicable to the mandated practice or practices..." This amendment is adopted by the State Board to eliminate confusion by the public regarding the State Board's intent for this waiver. Some members of the public have misinterpreted existing §523.6(e)(2)(D) to mean that once a cost-shared practice's life expectancy has expired, the holder of the water quality management plan may reapply and be granted more cost-share assistance for the same and/or different practices. That is an incorrect interpretation and is not consistent with the intent of the State Board; therefore this amendment is adopted by the State Board to clarify their intent, which is that no operating unit may receive cost-share more than once unless a mandate for the practice exists in law or the criteria for a waiver has been met.

Adopted new §523.6(e)(2)(F) clarifies that if the holder of a water quality management plan has previously received cost-share through this program but an additional practice or practices has/have been subsequently mandated by law, the instance of the previous cost-share does not preclude the holder of the water quality management plan from being eligible for future cost-share assistance for the mandated practice or practices.

Previous §523.6(e)(3)(B) is adopted as amended to replace "his" with "his/her."

Previous §523.6(e)(6) is adopted as amended to include "as needed" with respect to the State Board's approval of a list of eligible practices, and the phrase "at the beginning of each fiscal year" is removed because the State Board has the flexibility to make changes to the list at any point during the year. "Cost-share assistance for" is inserted into the sentence regarding a soil and water conservation district's request to the State Board for the cost-sharing of a practice not already on the State Board's approved list because the purpose of the request is for cost-sharing a practice, not merely the practice itself. "Conform" replaces "conforms" for grammatical correctness.

Previous §523.6(f)(2)(F) is adopted as amended to replace "applicants" with "applicant(s)" for grammatical correctness.

Previous §523.6(f)(3)(C) is adopted as amended to include the term "practice" in front of "standard" for technical accuracy and consistency with the definition of "practice standard."

Previous §523.6(f)(4) is adopted as amended to refer to the "State Board" rather than the "Texas State Soil and Water Conservation Board" because the agency is referred to as "State Board" in all previous instances in the chapter.

Previous §523.6(f)(5) is adopted as amended to refer to subsection "(e)(8)" rather than "(e)(8)(B)" for technical accuracy.

Previous §523.6(f)(7) is adopted as amended to include "year" after the word program for consistency with the State Board's intent and for clarification purposes.

Previous §523.6(g)(1) is adopted as amended to replace "persons" with "person's" for grammatical correctness.

Previous §523.6(g)(4)(B) is adopted as amended to replace "fails" with "fail" for grammatical correctness.

Previous §523.6(j) is adopted as amended to remove "the Texas" from in front of "Agriculture Code" because it is implicit and unnecessary, and "Section" is replaced with "§" for consistency with other sections of the chapter.

The proposed revisions were published in the August 22, 2008, issue of the *Texas Register*. The State Board received written comments from San Patricio Soil and Water Conservation District (SWCD), Tom Green SWCD, and Willacy SWCD during the public comment period, which closed on September 22, 2008.

A commenter stated that the waiver condition at §523.6(e)(2)(E) relating to eligibility for cost-share assistance should be restored to its original language. Previous §523.6(e)(2) stated that an eligible person may receive cost-share only once for an operating unit. Previous §523.6(e)(2)(E) was one of five possible conditions that could be met in order for a waiver to be granted by the State Board to §523.6(e)(2); the condition to be met was stated as "The life expectancy of the previously cost-shared best management practice(s) has expired." The State Board's intent for the waiver condition codified at previous §523.6(e)(2)(E) was to allow for an additional cost-share opportunity only in those situations where a practice which was mandated by state law or the laws, rules, or regulations of a political subdivision and reinstallation is required in order to maintain compliance with those laws. A condition of each waiver codified at §523.6(e)(2)(A) through §523.6(e)(2)(F) is that each case must be brought before the State Board for approval. The rule language used for previous §523.6(e)(2)(E) did not adequately describe this intent, therefore the State Board adopts new §523.6(e)(2)(E) that more clearly communicates it. The State Board maintains that the cost-share component to the Water Quality Management Plan

(WQMP) Certification Program serves only as a one-time financial incentive to potential program participants as evidenced by the past, present, and current inclusion of the rule codified at §523.6(e)(2) which states that an eligible person may receive cost-share only once for an operating unit. Because the State Board recognizes that certain special circumstances could result in a program participant's inability to maintain the WQMP, the State Board has adopted a discrete set of waiver conditions codified at §523.6(e)(2)(A) - §523.6(e)(2)(F). It is not the intent of the State Board to present an all-inclusive set of waiver conditions, nor a single waiver condition that in effect completely contradicts the adopted rule at §523.6(e)(2). No changes were made in response to this comment.

A commenter stated adopted new §523.6(e)(2)(E) should be part of a different section of rule. No suggestions for a more appropriate location are provided in the comment. The State Board is not proposing a new waiver condition or other new aspect to the WQMP Certification Program; the adopted amendment is for clarification purposes only. The State Board believes §523.6(e)(2), which is titled *Eligibility for Cost-Share Assistance*, is the appropriate location within Chapter 523 to list waiver conditions related to eligibility of cost-share. No changes were made in response to this comment.

A commenter stated that WQMPs can be dynamic over time. The State Board concurs, but does not believe the availability of additional cost-share assistance is necessary for a WQMP to be implemented and maintained over the course of time, unless the circumstances for one of the waiver conditions codified at §523.6(e)(2)(A) - §523.6(e)(2)(F) exists. No changes were made in response to this comment.

A commenter stated that the definition for operating unit codified at adopted new §523.3(b)(7) and adopted new §523.6(b)(13) be modified so that contiguous lands operated, but not owned, be considered a separate operating unit. It is the State Board's intent that a WQMP address all the resource needs applicable to the WQMP Program. It is also the intent of the State Board to administer the WQMP Program in a manner which is consistent with Agriculture Code §201.026, which explicitly requires that the purpose of a WQMP is to abate, prevent, and/or manage agricultural and/or silvicultural nonpoint source pollution to water in the state. Accordingly, the agricultural production activities being performed on lands by the person with operational control must be the basis for determining the scope of an operating unit, not the status of ownership of those lands. In cases where a program participant both owns land and operates other contiguous lands, the adopted rules allow for those contiguous operated lands to be either included in the operator's operating unit or within a separate operating unit for a separate WQMP that is in the name of the adjacent owner. The commenter also stated that "the local SWCD should be the one to decide if operated land that is contiguous is to be included in the land unit." The previous definition of operating unit codified at §523.6(b)(13) already required contiguous lands operated but not owned be included in the operating unit for a WQMP. Therefore, the adopted new definition codified at both §523.3(b)(7) and §523.6(b)(13) does not alter the role of the local SWCD in determining the appropriateness of an operating unit. It should also be noted that the importance of the local SWCD's role in determining the appropriateness of an operating unit has been emphasized in the newly adopted definition. No changes were made in response to this comment.

A commenter stated that a practice mandated by state law or the laws, rules, or regulations of a political subdivision should not be eligible for additional cost-share funding under the waiver condition codified at §523.6(e)(2)(F), instead a revised §523.6(e)(2)(F) was submitted that states "change to a land unit has previously received cost-share through this program but additional practice or practices are needed to improve the quality and/or quantity of water. Land unit must wait 4 years from last cost-share paid." The State Board acknowledges receipt of this comment but respectfully does not concur. No changes were made in response to this comment.

A commenter stated that it is "illogical to not allow second cost-sharing." The State Board fully supports additional financial assistance for implementing conservation practices in general. However, the limited amount of funding available for this program, the need to address the most serious water quality concerns first, the availability of other sources of funding, and the institutional knowledge that the legislative intent for this program's funding was to be for one-time incentives to garner as many agricultural and silvicultural operations into the program as possible has led to the State Board administering the cost-share component to the program in the current manner. The State Board acknowledges receipt of this comment but respectfully does not concur. No changes were made in response to this comment.

A commenter stated that amending the program rules to require observance of a WQMP for an "indefinite period of time" and prohibiting program participants from applying for additional cost-share assistance at a later date "unfairly penalizes program participants who wish to modify their water quality conservation plans." For clarification, the agreement to implement and maintain a certified WQMP has always been an indefinite agreement between the participant, the local SWCD, and the State. The apparent confusion lies in not recognizing the difference between the maintenance agreement and the WQMP. The State Board is merely clarifying that the maintenance agreement pertains to a participant's obligation to maintain the practices, including those cost-shared, for specific amounts of time identified in the rules and in the maintenance agreement, not to the participant's voluntary agreement to operate in accordance with the WQMP in order to retain its status as certified by the TSSWCB. This is an important distinction because the State Board is required by law to remove certification of a WQMP if the participant does not continue to maintain its implementation; this could occur at any point during the life of the maintenance agreement or at any point after that into the future. The maintenance agreement requires that (1) all practices, whether cost-shared or not, must be maintained at least two years subsequent to the implementation of all practices within the scope of the WQMP, and (2) all cost-shared practices must be maintained for the life expectancy of those practices plus an additional two years. Maintaining TSSWCB-certification of the WQMP during the implementation phase, as well as into the future, requires indefinite adherence to the WQMP. With respect to "unfairly penalizing" program participants, the State Board does not concur that (1) initially providing cost-share assistance, (2) providing indefinite technical assistance, and (3) assisting in cases where the participant is provided notice of violating the Water Code should be characterized as unfair. As previously stated, the limited amount of funding available for this program, the need to address the most serious water quality concerns first, the availability of other sources of funding, and the institutional knowledge that the legislative intent for the funding was

to be for one-time incentives to garner as many agricultural and silvicultural operations into the program as possible has led to the State Board administering the cost-share component to the program in the current manner. While the State Board acknowledges that conservation implementation is an on-going and evolving process, it is the State Board's decision that the cost-share function of the program remains a one-time incentive to participation unless one of the waiver conditions approved by the State Board is met. No changes were made in response to this comment.

The amended rules are adopted under the Agriculture Code, Title 7, Chapter 201, §201.020, which authorizes the Texas State Soil and Water Conservation Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

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

Filed with the Office of the Secretary of State on December 3, 2008.

TRD-200806358

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Effective date: December 23, 2008

Proposal publication date: August 22, 2008

For further information, please call: (254) 773-2250 x252



TITLE 34. PUBLIC FINANCE

PART 9. TEXAS BOND REVIEW BOARD

CHAPTER 181. BOND REVIEW BOARD SUBCHAPTER A. BOND REVIEW RULES

34 TAC §181.2

The Texas Bond Review Board (BRB) adopts amendments to §181.2, concerning Bond Review Rules, without changes to the proposed text as published in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7143).

The purpose of the amendments are to comply with current statute and clarify existing Bond Review Board processes.

The 30-day comment period ended September 28, 2008, and BRB did not receive any comments on the proposed amendments. No public hearing was requested under Texas Government Code §2001.029.

The amendments are adopted under Texas Government Code §1231.022, which gives BRB the authority to adopt rules governing application for review, the review process, and reporting requirements involved in the issuance of state securities.

The amendments implement the Texas Government Code Chapter 1231.

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

Filed with the Office of the Secretary of State on December 8, 2008.

TRD-200806391

Rob Latsha

Senior Financial Analyst

Texas Bond Review Board

Effective date: December 28, 2008

Proposal publication date: August 29, 2008

For further information, please call: (512) 475-4800



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.51

The Texas Board of Criminal Justice adopts the amendments to §151.51, concerning Custodial Officer Certification and Hazardous Duty Pay Eligibility Guidelines, without changes to the text as published in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7144) and will not be republished.

The amendments are necessary to add clarity and conform the rule to current practice.

No comments were received.

The amendments are adopted under Texas Government Code Chapter 659, Subchapter L and §813.506.

Cross Reference to Statutes: Texas Government Code §§492.013, 508.001, 615.006, 811.001, 815.505 and the General Appropriations Act.

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

Filed with the Office of the Secretary of State on December 3, 2008.

TRD-200806350

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Effective date: December 23, 2008

Proposal publication date: August 29, 2008

For further information, please call: (512) 463-0422



37 TAC §151.53

The Texas Board of Criminal Justice adopts the repeal of §151.53, Multiple Employments with the State, without changes to the text as published in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7146) and will not be republished.

The repeal is necessary to relieve the Texas Board of Criminal Justice from approving multiple employments with the state, as approval by the Board is not required by state law.

No comments were received.

The repeal is adopted under Texas Government Code Chapter 667.

Cross Reference to Statutes: Texas Government Code §492.013.

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

Filed with the Office of the Secretary of State on December 3, 2008.

TRD-200806349

Melinda Hoyle Bozarth
General Counsel

Texas Department of Criminal Justice

Effective date: December 23, 2008

Proposal publication date: August 29, 2008

For further information, please call: (512) 463-0422



37 TAC §151.77

The Texas Board of Criminal Justice adopts new rule §151.77, concerning Purchasing and Contracting with Historically Underutilized Businesses (HUBs), without changes to the text as proposed in the October 10, 2008, issue of the *Texas Register* (33 TexReg 8483) and will not be republished.

The purpose of the rule is to adopt the Texas Comptroller of Public Accounts (CPA) rules related to the HUB program as required by law.

No comments were received.

The new rule is adopted under Texas Government Code Chapter 2161 and §493.012.

Cross Reference to Statutes: Texas Government Code §492.013.

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

Filed with the Office of the Secretary of State on December 3, 2008.

TRD-200806351

Melinda Hoyle Bozarth
General Counsel

Texas Department of Criminal Justice

Effective date: December 23, 2008

Proposal publication date: October 10, 2008

For further information, please call: (512) 463-0422



CHAPTER 155. REPORTS AND INFORMATION GATHERING

SUBCHAPTER B. SITE SELECTION AND FACILITY NAMES

37 TAC §155.21

The Texas Board of Criminal Justice adopts the amendments to §155.21, concerning Naming of a Texas Department of Criminal Justice Owned Facility, without changes to the text as published in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7146) and will not be republished.

The amendments are necessary to add clarity.

No comments were received.

The amendments are adopted under Texas Government Code §492.013.

Cross Reference to Statutes: Texas Government Code §492.013.

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

Filed with the Office of the Secretary of State on December 3, 2008.

TRD-200806352

Melinda Hoyle Bozarth
General Counsel

Texas Department of Criminal Justice

Effective date: December 23, 2008

Proposal publication date: August 29, 2008

For further information, please call: (512) 463-0422



CHAPTER 159. SPECIAL PROGRAMS

37 TAC §159.9

The Texas Board of Criminal Justice adopts the amendments to §159.9, concerning Firearms Proficiency Training for Supervision Officers/Memorandum of Understanding, without changes to the text as published in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7147) and will not be republished.

The amendments are necessary to conform to state law.

No comments were received.

The amendments are adopted under Texas Occupations Code §1701.257.

Cross Reference to Statutes: Texas Government Code §492.013.

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

Filed with the Office of the Secretary of State on December 3, 2008.

TRD-200806353

Melinda Hoyle Bozarth
General Counsel

Texas Department of Criminal Justice

Effective date: December 23, 2008

Proposal publication date: August 29, 2008

For further information, please call: (512) 463-0422



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

**CHAPTER 107. DIVISION FOR REHABILITATION SERVICES
SUBCHAPTER B. VOCATIONAL REHABILITATION SERVICES PROGRAM
DIVISION 1. PROVISION OF VOCATIONAL REHABILITATION SERVICES**

40 TAC §107.113

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), adopts amendments to §107.113, concerning Mental Restoration Services. These amendments to §107.113 are adopted with changes to the proposed text as published in the June 20, 2008, issue of the *Texas Register* (33 TexReg 4841). The text of the rule will be republished.

Section 107.113 establishes the types of mental restoration services provided by DARS' Division for Rehabilitation Services and the types of professionals DARS utilizes to provide those services.

The following statutes and regulations authorize the amendments to §107.113: the Rehabilitation Act of 1973, as amended, 29 U.S.C. §701 et. seq., and the Texas Human Resources Code, Chapters 111 and 117. DARS' counsel certifies that this rule as amended is within its statutory authority.

Comments

DARS received one comment during the 30-day comment period from a representative of the Coalition for Nurses in Advanced Practice, who recommended adding Psychiatric-Mental Health Clinical Nurse Specialists and Psychiatric-Mental Health Nurse Practitioners, licensed by the Texas Board of Nursing, to the list of professionals.

Response

In response to the comment, DARS researched whether the professionals recommended by the commenter, in addition to other professionals, were qualified to provide the mental restoration services required by DARS for its consumers. As a result of its research, DARS concurred with the commenter's recommendation and identified additional professionals whom DARS has determined are also qualified to provide mental restoration services for DARS consumers. DARS has therefore modified §107.113, to add those additional professionals.

The amendment is adopted pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 551, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

§107.113. Mental Restoration Services.

- (a) The Division provides mental restoration services for mental conditions that are stable or slowly progressive.
- (b) The Division provides psychiatric treatment as a limited service on a short-term basis only.
- (c) The Division provides psychotherapy as a limited service only to support the completion or achievement of the employment goal.
- (d) The Division provides mental restoration services utilizing only:
 - (1) physicians licensed by the state and skilled in the diagnosis and treatment of mental or emotional disorders,
 - (2) psychologists licensed or certified in accordance with state law,
 - (3) Licensed Clinical Social Workers licensed by the Texas State Board of Social Work Examiners,
 - (4) Licensed Professional Counselors licensed by the Texas State Board of Examiners of Professional Counselors,
 - (5) Psychiatric-Mental Health Clinical Nurse Specialists and Psychiatric-Mental Health Nurse Practitioners licensed by the Texas Board of Nursing,
 - (6) Physician assistants licensed by the Texas Physician Assistant Board, or
 - (7) Licensed Marriage and Family Therapists licensed by the Texas State Board of Examiners of Marriage and Family Therapists.

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

Filed with the Office of the Secretary of State on December 3, 2008.

TRD-200806333
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: December 23, 2008
Proposal publication date: June 20, 2008
For further information, please call: (512) 424-4050



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Texas Education Agency

Title 19, Part 2

Revised Agency Rule Review Plan

TRD-200806417

Filed: December 10, 2008



Proposed Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §151.8, concerning Advisory Committees. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four (4) years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

TRD-200806346

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Filed: December 3, 2008



The Texas Board of Criminal Justice files this notice of intent to review §151.75, concerning Standards of Conduct for Financial Advisors. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four (4) years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

TRD-200806347

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Filed: December 3, 2008



The Texas Board of Criminal Justice files this notice of intent to review §161.21, concerning the Role of the Judicial Advisory Council. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four (4) years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

TRD-200806348

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Filed: December 3, 2008



Texas Racing Commission

Title 16, Part 8

The Texas Racing Commission files this notice of intent to review Chapter 307, Proceedings Before the Commission, Chapter 313, Officials and Rules of Horse Racing, and Chapter 315, Officials and Rules for Greyhound Racing. This review is conducted pursuant to the Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption their administrative rules every four years. The Chapter 307 rules being reviewed by the Commission are organized under the following subchapters: Subchapter A, General Provisions; Subchapter B, Contested Cases; Subchapter C, Proceedings by Stewards and Racing Judges; and Subchapter D, Rulemaking. The Chapter 313 rules being reviewed by the Commission are organized under the following subchapters: Subchapter A, Officials; Subchapter B, Entries, Scratches and Allowances; Subchapter C, Claiming Races; Subchapter D, Running of the Race; and Subchapter E, Training Facilities. The Chapter 315 rules being reviewed by the Commission are organized under the following subchapters: Subchapter A, Officials; Subchapter B, Entries and Pre-Race Procedures; Subchapter C, Race Procedures; and Subchapter D, Greyhound Breeding Farms.

The review shall assess whether the reasons for initially adopting the rules continue to exist and whether any changes to the rules should be made.

All comments or questions in response to this notice of rule review may be submitted in writing to Carolyn Weiss, Assistant to the Executive Director of the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The Commission will accept public comments regarding the chapter and the rules within it for 30 days following publication of this notice in the *Texas Register*.

Any proposed changes to the rules within Chapters 307, 313, and 315 as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the Commission.

TRD-200806385
Mark Fenner
General Counsel
Texas Racing Commission
Filed: December 8, 2008

◆ ◆ ◆
Adopted Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of §151.51, concerning Custodial Officer Certification and Hazardous Duty Pay Eligibility Guidelines, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined that the reasons for initially adopting §151.51 continue to exist, and it readopts the section.

Notice of the review was published in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7311). No comments were received as a result of that notice.

As a result of that rule review, the Texas Department of Criminal Justice published proposed amendments to §151.51 in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7144). The Board adopted the amended rule on December 3, 2008, and the adoption notice is published in this issue of the *Texas Register*.

TRD-200806342
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: December 3, 2008

◆ ◆ ◆
The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of §155.21, concerning Naming of a Texas Department of Criminal Justice Owned Facilities, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined that the reasons for initially adopting §155.21 continue to exist, and it readopts the section.

Notice of the review was published in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7311). No comments were received as a result of that notice.

As a result of that rule review, the Texas Department of Criminal Justice published proposed amendments to §155.21 in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7146). The Board adopted the amended rule on December 3, 2008, and the adoption notice is published in this issue of the *Texas Register*.

TRD-200806343
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: December 3, 2008

◆ ◆ ◆
The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of §159.9, concerning Firearms Proficiency Training for Supervision Officers/Memorandum of Understanding, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined that the reasons for initially adopting §159.9 continue to exist, and it readopts the section.

Notice of the review was published in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7311). No comments were received as a result of that notice.

As a result of that rule review, the Texas Department of Criminal Justice published proposed amendments to §159.9 in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7147). The Board adopted the amended rule on December 3, 2008, and the adoption notice is published in this issue of the *Texas Register*.

TRD-200806344
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: December 3, 2008

◆ ◆ ◆
Texas Racing Commission

Title 16, Part 8

The Texas Racing Commission (Commission) has completed its review of 16 TAC Part 8, Chapter 309, concerning Racetrack Licenses and Operations, in accordance with Texas Government Code, §2001.039. Notice of the proposed rule review was published in the January 4, 2008, issue of the *Texas Register* (33 TexReg 289).

During the rule review, the Commission completed amendments to the following sections:

- §309.1. Racetrack Licenses.
- §309.7. Horse Racetrack Application Fees.
- §309.9. Denial, Suspension and Revocation of Licenses.
- §309.103. Construction and Renovation of Racetrack Facilities.
- §309.113. Accessibility by Disabled Persons.
- §309.114. Restrooms.
- §309.115. Refreshments.
- §309.116. Complaints.
- §309.117. First Aid.
- §309.118. Regulatory Office Space and Equipment.
- §309.120. Parking for Licensees.
- §309.123. Internal Communication System.
- §309.250. Test Barn.
- §309.253. Postmortem.
- §309.254. Equine Ambulance.
- §309.294. Starting Crew.
- §309.296. Official Program.
- §309.305. Starting Boxes.
- §309.309. Lockout Kennel.

§309.311. Kennel Compound.

§309.312. Turnout Pens.

§309.314. Sprint Path.

During the rule review, the Commission completed adoptions of the following new rules:

§309.168. Hazardous Weather.

§309.255. Chase Vehicle.

§309.317. Facilities and Equipment Maintenance Personnel.

During the rule review, the Commission completed the repeal of the following sections:

§309.251. Isolation Area.

§309.252. Treatment Area.

The Commission received no comments on the Chapter 309 rule review other than comments received in response to individual rule proposals.

The Commission has determined that the reasons for initially adopting each of the rules within the chapter, with the changes described herein, continue to exist and readopts the chapter.

This concludes the review of 16 TAC Part 8, Chapter 309.

TRD-200806390

Mark Fenner

General Counsel

Texas Racing Commission

Filed: December 8, 2008



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 25 TAC §139.6(a)(1)

TOLL-FREE TELEPHONE NUMBER

1-888-973-0022

You have the right to access certain information concerning this abortion facility by using the toll-free telephone number listed above. If you make a call to the number, your identity will remain anonymous.

The toll-free telephone line can provide you with the following information:

- whether this abortion facility is licensed by the Department of State Health Services;
- the date of the last inspection of this facility by the Department of State Health Services and any violations of law or rules discovered during that inspection that may pose a health risk to you;
- any relevant fine, penalty, or judgment rendered against this facility or a doctor who provides services at this facility.

Figure: 25 TAC §139.6(a)(2)

LÍNEA DE INFORMACIÓN GRATUITA

1-888-973-0022

Usted tiene el derecho de obtener cierta información concerniente a este centro de aborto usando la línea de información gratuita que aparece arriba. Si usted llama a este número, su identidad permanecerá anónima.

La línea de información gratuita puede ofrecerle la siguiente información:

- Si este centro de aborto tiene licencia del Departamento Estatal de Servicios de Salud de Texas.
- La fecha de la última inspección de este centro por el Departamento Estatal de Servicios de Salud de Texas, y cualquier infracción de la ley o de las reglas descubierta durante esa inspección, que pudiera poner en peligro su salud.
- Cualquier multa, pena o sentencia impuesta en contra de este centro o de algún doctor que preste servicios en ese lugar.

Figure: 25 TAC §139.41(a)(8)(A)

Affidavit

I, _____, swear or affirm that my date of birth is _____, _____, and that I do not have appropriate identification that states my date of birth.

Signature: _____

Printed name: _____

Witness: _____

Printed name of witness: _____

Figure: 25 TAC §139.52(a)(1)

CERTIFICATION

Each item on this certification form shall be reviewed. The woman should place her initials beside each statement and sign the bottom of the form.

I certify that the following information was presented to me, at least 24 hours prior to the abortion, by the physician who is to perform the abortion or by the referring physician:

_____ the name of the physician who will perform the abortion;

_____ the particular medical risks associated with the particular abortion procedure to be employed; including when medically accurate:

_____ the risk of infection and hemorrhage;

_____ the potential danger to subsequent pregnancy and of infertility; and

_____ the possibility of increased risk of breast cancer following an induced abortion and the natural protective effect of a completed pregnancy in avoiding breast cancer.

_____ the probable gestational age of the unborn child at the time the abortion is to be performed; and

_____ the medical risks associated with carrying the child to term.

The physician who is to perform the abortion or the physician's agent has informed me that:

_____ medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

_____ the father is liable for assistance in the support of the child without regard to whether the father has offered to pay for the abortion;

_____ public and private agencies provide pregnancy prevention counseling and medical referrals for obtaining pregnancy prevention medications or devices; and

I have also been informed that:

_____ I have the right to review the printed materials prepared by the Department of State Health Services entitled the "A Woman's Right to Know" booklet and the resource directory, which describe the unborn child and list agencies that offer alternatives to abortion, and that those materials shall be given to me if I choose to view them;

_____ "A Woman's Right to Know" booklet and resource directory are also accessible on an Internet website sponsored by the department.

I made the following choice (choose one of the following):

- I requested and was provided a printed copy of "A Woman's Right to Know" booklet and the resource directory.
- I chose to review the "A Woman's Right to Know" materials on this website.
- I declined the informational materials.

Signature

Date

Printed Name

State-Listed Threatened Species in Texas

MAMMALS

Margay Leopardus (*Felis (=Felis) wiedii*)
Louisiana Black Bear (*Ursus americanus luteolus*)
Black Bear (*Ursus americanus*)
White-nosed Coati (*Nasua narica*)
Southern Yellow Bat (*Lasiurus ega*)
Spotted bat (*Euderma maculatum*)
Rafinesque's Big-eared Bat (*Corynorhinus rafinesquii*)
Texas Kangaroo Rat (*Dipodomys elator*)
Coues' Rice Rat (*Oryzomys couesi*)
Palo Duro Mouse (*Peromyscus truei comanche*)
Gervais' Beaked Whale (*Mesoplodon europaeus*)
Goose-beaked Whale (*Ziphius cavirostris*)
Pygmy Sperm Whale (*Kogia breviceps*)
Dwarf Sperm Whale (*Kogia simus*)
Killer Whale (*Orcinus orca*)
False Killer Whale (*Pseudorca crassidens*)
Short-finned Pilot Whale (*Globicephala macrorhynchus*)
Pygmy Killer Whale (*Feresa attenuata*)
Atlantic Spotted Dolphin (*Stenella frontalis*)
Rough-toothed Dolphin (*Steno bredanensis*)

BIRDS

Bald Eagle (*Haliaeetus leucocephalus*)
Common Black-hawk (*Buteogallus anthracinus*)
Gray Hawk (*Asturina nitidus*)
White-tailed Hawk (*Buteo albicaudatus*)
Zone-tailed Hawk (*Buteo albonotatus*)
Peregrine Falcon (*Falco peregrinus anatum*)
Cactus Ferruginous Pygmy-owl (*Glaucidium brasilianum cactorum*)
Mexican Spotted Owl (*Strix occidentalis lucida*)
Piping Plover (*Charadrius melodus*)
Reddish Egret (*Egretta rufescens*)
White-faced Ibis (*Plegadis chihi*)
Wood Stork (*Mycteria americana*)
Swallow-tailed Kite (*Elanoides forficatus*)
Sooty Tern (*Sterna fuscata*)
Northern Beardless-tyrannulet (*Camptostoma imberbe*)
Rose-throated Becard (*Pachyramphus aglaiae*)
Tropical Parula (*Parula pitiaiyumi*)
Bachman's Sparrow (*Aimophila aestivalis*)
Texas Botteri's Sparrow (*Aimophila botterii texana*)
Arizona Botteri's Sparrow (*Aimophila botterii arizonae*)

REPTILES

Green Sea Turtle (*Chelonia mydas*)
Loggerhead Sea Turtle (*Caretta caretta*)
Alligator Snapping Turtle (*Macrochelys temminckii*)
Cagle's Map Turtle (*Graptemys caglei*)
Chihuahuan Mud Turtle (*Kinosternon hirtipes murrayi*)

Texas Tortoise (*Gopherus berlandieri*)
Reticulated Gecko (*Coleonyx reticulatus*)
Reticulate Collared Lizard (*Crotaphytus reticulatus*)
Texas Horned Lizard (*Phrynosoma cornutum*)
Mountain Short-horned Lizard (*Phrynosoma hernandesi*)
Scarlet Snake (*Cemophora coccinea*)
Black-striped Snake (*Coniophanes imperialis*)
Indigo Snake (*Drymarchon corais*)
Speckled Racer (*Drymobius margaritiferus*)
Northern Cat-eyed Snake (*Leptodeira septentrionalis*)
Louisiana Pine Snake (*Pituophis ruthveni*)
Brazos Water Snake (*Nerodia harteri*)
Smooth Green Snake (*Liochlorophis vernalis*)
Trans-Pecos Black-headed Snake (*Tantilla cucullata*)
Chihuahuan Desert Lyre Snake (*Trimorphodon vilkinsonii*)
Timber (Canebrake) Rattlesnake (*Crotalus horridus*)

AMPHIBIANS

San Marcos Salamander (*Eurycea nana*)
Cascade Caverns Salamander (*Eurycea latitans*)
Comal Blind Salamander (*Eurycea tridentifera*)
Blanco Blind Salamander (*Eurycea robusta*)
Black-spotted Newt (*Notophthalmus meridionalis*)
South Texas Siren (large form) (*Siren* sp.1)
Mexican Tree Frog (*Smilisca baudinii*)
White-lipped Frog (*Leptodactylus fragilis*)
Sheep Frog (*Hypopachus variolosus*)
Mexican Burrowing Toad (*Rhinophrynus dorsalis*)

FISHES

Shovelnose Sturgeon (*Scaphirhynchus platyrhynchus*)
Paddlefish (*Polyodon spathula*)
Mexican Stoneroller (*Campostoma ornatum*)
Rio Grande Chub (*Gila pandora*)
Blue Sucker (*Cycleptus elongatus*)
Creek Chubsucker (*Erimyzon oblongus*)
Toothless Blindcat (*Trogloglanis pattersoni*)
Widemouth Blindcat (*Satan eurystomus*)
Conchos Pupfish (*Cyprinodon eximius*)
Pecos Pupfish (*Cyprinodon pecosensis*)
Rio Grande Darter (*Etheostoma grahami*)
Blackside Darter (*Percina maculata*)
Opossum Pipefish (*Microphis brachyurus*)
River Goby (*Awaous banana*)
Mexican Goby (*Ctenogobius claytonii*)
San Felipe Gambusia (*Gambusia clarkhubbsi*)
Blotched Gambusia (*Gambusia senilis*)
Devils River Minnow (*Dionda diaboli*)
Arkansas River Shiner (*Notropis girardi*)
Bluehead Shiner (*Pteronotropis hubbsi*)
Chihuahua Shiner (*Notropis chihuahua*)
Bluntnose Shiner (*Notropis simus*)
Proserpine Shiner (*Cyprinella proserpina*)

Endangered Species

MAMMALS

Mexican long-nosed Bat (*Leptonycteris nivalis*)
Jaguar (*Panthera onca*)
Jaguarundi (*Herpailurus (=Felis) yagouaroundi cacomii*)
West Indian Manatee (*Trichecus manatus*)
Ocelot (*Leopardus (=Felis) pardalis*)
Finback Whale (*Balaenoptera physalus*)
Humpback Whale (*Megaptera novaeangliae*)
Gray Wolf (*Canis lupus*)
Red Wolf (*Canis rufus*)

BIRDS

Whooping Crane (*Grus americana*)
Eskimo Curlew (*Numenius borealis*)
Northern Aplomado Falcon (*Falco femoralis septentrionalis*)
Southwestern Willow Flycatcher (*Empidonax traillii extimus*)
Brown Pelican (*Pelecanus occidentalis*)
Attwater's Prairie-chicken (*Tympanuchus cupido attwateri*)
Interior Least Tern (*Sterna antillarum athalassos*)
Black-capped Vireo (*Vireo atricapilla*)
Golden-cheeked Warbler (*Dendroica chrysoparia*)
Red-cockaded Woodpecker (*Picoides borealis*)

REPTILES

Hawksbill Sea turtle (*Eretmochelys imbricata*)
Kemp's Ridley Sea turtle (*Lepidochelys kempii*)
Leatherback Sea turtle (*Dermochelys coriacea*)

AMPHIBIANS

Barton Springs Salamander (*Eurycea sosorum*)
Texas blind Salamander (*Typhlomolge rathbuni*)
Houston Toad (*Bufo houstonensis*)

FISHES

Fountain Darter (*Etheostoma fonticola*)
Big Bend Gambusia (*Gambusia gaigei*)
Clear Creek Gambusia (*Gambusia heterochir*)
Pecos Gambusia (*Gambusia nobilis*)
San Marcos Gambusia (*Gambusia georgei*)
Rio Grande Silvery Minnow (*Hybognathus amarus*)
Comanche Springs Pupfish (*Cyprinodon elegans*)
Leon Springs Pupfish (*Cyprinodon bovinus*)
Smalltooth Sawfish (*Pristis pectinata*)

MOLLUSCS

Pecos Assiminea Snail (*Assiminea pecos*)

CRUSTACEA

Peck's Cave Amphipod (*Stygobromus (=Stygonectes) pecki*)

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 issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Settlement of a Texas Solid Waste Disposal Act Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health & Safety Code. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Case Title and Court: Settlement Agreement in *State of Texas v. Randy Williams, individually, and Roofing Recycle Center, Inc.*; Cause No. D-1-GV-08-002215; Travis County District Court.

Background: This suit alleges violations of rules promulgated under the Texas Solid Waste Disposal Act relating to the disposal of solid waste in Dallas, Texas. The Defendant is Randy Williams and Roofing Recycle Center, Inc. The suit seeks recovery of administrative penalties, attorney's fees, and court costs.

Nature of Settlement: The settlement awards \$10,616.00 in administrative penalties and \$3,680.00 in court costs and attorney's fees to the State.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgments, and written comments on the proposed settlement should be directed to Vanessa Puig-Williams, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For more information regarding this publication, contact Cindy Hodges, Agency Liaison, at (512) 936-1841.

TRD-200806409

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: December 9, 2008



Request for Proposals

This Request for Proposal is filed pursuant to Texas Government Code §2254.021.

The Office of the Attorney General of Texas ("the OAG") requests that professional consultants with documented expertise and experience in the field of indirect cost recovery and cost allocation plans for governmental units submit proposals to prepare Indirect Cost Plans for State Fiscal Years 2008 ("FY08") (based on actual expenditures) and 2010 ("FY10") (based on budgeted expenditures) and to analyze and update

standardized billing rates for legal services provided by the OAG. In accordance with Texas Government Code §2254.029(b), the OAG hereby discloses that similar services related to indirect cost plans and legal billing rates covering earlier fiscal years have been previously provided to the OAG by a consultant.

The OAG administers millions of dollars of federal funds for the Child Support (Title IV-D) and Medicaid (Title XIX) programs. Currently, the OAG is recouping its indirect costs from these federal programs based on rates approved by the United States Department of Health and Human Services ("HHS").

The OAG also provides legal services to other state agencies. The consultant selected will be responsible for analyzing the existing billing rates and actual costs and then updating the legal services rates for use in FY10.

The consultant selected to prepare the Indirect Cost Plans and to develop current, standardized legal billing rates must demonstrate the necessary qualifications and experience listed in the "QUALIFICATIONS" section. The successful consultant will also be required to perform the services and generate the reports listed in the "SCOPE OF SERVICES" section. The acceptance of a proposal by the OAG, made in response to this Request for Proposal, will be based on the OAG's evaluation of the competence, knowledge, and qualifications of the consultant, in addition to the reasonableness of the proposed fee for services. If other considerations are equal, the OAG will give preference to a consultant whose principal place of business is in Texas or who will manage the consulting contract wholly from an office in Texas. The total contract award will not exceed Forty-Nine Thousand and NO/100 Dollars (\$49,000.00).

SCOPE OF SERVICES

The successful consultant will be required to render the following services and reports:

1. Prepare two (2) Indirect Cost Plans in accordance with OMB Circular A-87 - one based on FY08 actual expenditures and one based on FY10 budgeted expenditures

*Identify the sources of financial information;

*Inventory all federal and other programs administered by the OAG;

*Classify all OAG divisions;

*Determine administrative divisions;

*Determine allocation bases for allotting services to benefitting divisions;

*Develop allocation data for each allocation base;

*Prepare allocation worksheets based upon actual FY08 expenditures and budgeted FY10 expenditures;

*Summarize costs by benefitting division;

*Collect cost data for all of the programs included in the inventory of federal and other programs administered by the OAG;

*Determine indirect cost rates throughout the OAG on an annual basis;

*Prepare and present draft Indirect Cost Plans to the OAG by April 10, 2009;

*Formalize the Actual FY08 and Budgeted FY10 Indirect Cost Plans and present them to HHS by April 30, 2009; and

*Negotiate the Indirect Cost Plans' approval with HHS by August 31, 2009.

2. Develop standardized billing rates for legal services

*Review current criteria used by the OAG for charging various agencies;

*Determine the types of legal services provided to the agencies;

*Compile direct hours for each type of service;

*Determine effort reporting requirements;

*Re-examine billing rate options;

*Determine the actual cost of services;

*Analyze and confirm revenues and cost analyses;

*Prepare and present a draft Legal Services Billing Schedule for FY 2008 actual costs and FY 2010 budgeted costs to the OAG by July 31, 2009;

*Formalize a Legal Services Billing Schedule by August 31, 2009.

The selected consultant will accumulate and analyze all data that are required. The OAG is not expected to provide any staff resources to the selected consultant. The OAG will provide a liaison with staff within the OAG and with other state agencies, as appropriate.

QUALIFICATIONS

Each individual, company, or organization submitting a proposal pursuant to this request, must present evidence or otherwise demonstrate to the satisfaction of the OAG that such entity:

1. Has the experience to prepare and successfully negotiate the type of Indirect Cost Plan described above;
2. Has a thorough understanding of cost allocation issues and preparation of Indirect Cost Plans at the state agency level;
3. Has a thorough understanding of legal services billing procedures and preparation of a Legal Services Billing Schedule; and
4. Can program and execute the Indirect Cost Plans and Legal Services Billing Schedule within the required time frames specified in the "SCOPE OF SERVICES" section.

Please provide evidence of the above qualifications and a proposal which includes:

1. A detailed description of the plan of action to fulfill the requirements described in the "SCOPE OF SERVICES" section;
2. Detailed information on the consultant staff to be assigned to the project; and
3. The proposed fee amount for provision of the desired services.

A signed original and five (5) copies of the proposal must be received in the OAG Purchasing Section, 300 West 15th Street, Third Floor, Austin, Texas 78701, no later than 3:00 p.m., Central Standard Time, January 20, 2009. Any proposal received after the specified time and date will not be given consideration. Conditioned on the OAG's receipt of the requisite finding of fact from the Governor's Budget and Planning Office pursuant to Texas Government Code §2254.028, the OAG anticipates entering into the resultant contract on or about February 9, 2009.

A proposal must include all of the references and financial status information as specified below at the time of opening or it will be disqualified. Proposals should be sealed and clearly marked with the specified time and date and the title, "Proposal for Consulting Services for an Indirect Cost Recovery/Cost Allocation Plan and Legal Services Billing Schedule for the OAG".

REFERENCES AND FINANCIAL CONDITION

Prospective consultants will provide the names of at least three (3) different references meeting the following criteria:

1. The reference company or entity must have engaged the prospective consultant for the same or similar services as those to be provided in accordance with the terms of this Request for Proposal;

2. The services must have been provided by the prospective consultant to the reference company or entity within the five (5) years preceding the issuance of this Request for Proposal;

3. The reference company or entity must not be affiliated with the prospective consultant in any ownership or joint venture arrangement;

4. References must include the company or entity name, address, contact name, and telephone number for each reference. The OAG may not be used as a reference. The contact name must be the name of a senior representative of the reference company or entity who was directly responsible for interacting with the prospective consultant throughout the performance of the engagement and who can address questions about the performance of the prospective consultant from personal experience. References will accompany the proposal.

5. The prospective consultant will provide a signed release from liability for each reference provided in response to this requirement. The release from liability will absolve the specified reference company or entity from liability for information provided to the OAG concerning the prospective consultant's performance of its engagement with the reference.

6. The prospective consultant must disclose if and when it has filed for bankruptcy within the last seven (7) years. For prospective consultants conducting business as a corporation, partnership, limited liability partnership, or other form of artificial person, the prospective consultant must disclose whether any of its principals, partners, or officers have filed for bankruptcy within the last seven (7) years.

7. As part of any proposal submission, the prospective consultant must include information regarding financial condition, including income statements, balance sheets, and any other information which accurately shows the prospective consultant's current financial condition. The OAG reserves the right to request such additional financial information as it deems necessary to evaluate the prospective consultant, and by submission of a proposal, the prospective consultant agrees to provide same.

DISCLOSURE

Any individual who provides a proposal for consulting services in response to this Request for Proposal and who has been employed by the OAG or any other state agency(ies) at any time during the two (2) years preceding the tendering of the proposal will disclose in the proposal:

1. the nature of the previous employment with the OAG or any other state agency(ies);
2. the date(s) the employment(s) terminated; and
3. the annual rate(s) of compensation for the employment(s) at the time(s) of termination.

Each consultant that submits a proposal must certify to the following:

1. consultant has no unresolved audit exceptions(s) with the OAG. An unresolved audit exception is an exception for which the consultant has exhausted all administrative and/or judicial remedies and refuses to comply with any resulting demand for payment.
2. consultant certifies that the consultant's staff or governing authority has not participated in the development of specific criteria for award of this contract, and will not participate in the selection of consultant(s) awarded contracts.
3. consultant has not retained or promised to retain an agent or utilized or promised to utilize a consultant who has participated in the development of specific criteria for the award of contract, nor will participate in the selection of any successful consultant.
4. consultant agrees to provide information necessary to validate any statements made in consultant's response, if requested by the OAG. This may include, but is not limited to, granting permission for the OAG to verify information with third parties, and allowing inspection of consultant's records.
5. consultant understands that failure to substantiate any statements made in the response when substantiation is requested by OAG may disqualify the response, which could cause the consultant to fail to receive a contract or to receive a contract for an amount less than that requested.
6. consultant certifies that the consultant's organization has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulation of any state or federal funded program within the past five years nor is it currently prohibited from contracting with a government agency.
7. consultant certifies that its Corporate Texas Franchise Tax payments are current, or that it is exempt from or not subject to such tax.
8. consultant has not given nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.
9. Neither the consultant nor the firm, corporation, partnership or institution represented by the consultant, anyone acting for such firm, corporation partnership or institution has violated the antitrust laws of this State, the Federal antitrust laws nor communicated directly or indirectly its response to any competitor or any other person engaged in such line or business.
10. Under §231.006 Family Code (relating to child support), the consultant certifies that the individual or business entity named in this response is not ineligible to receive a specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
11. If the consultant is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the consultant certifies that it either: (a) holds a permit issued by the Texas comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the consultant's business in Texas; or (b) does not sell tangible personal property or services that are subject to the state and local sales and use tax.
12. consultant certifies that if a Texas address is shown as the address of the vendor, Vendor qualifies as a Texas Resident Bidder as defined in Rule 1 TAC §111.2.
13. consultant certifies that it has not received compensation for participation in the preparation of the specifications for this solicitation.
14. consultant must answer the following questions:

*If an award is issued, do you plan to utilize a subcontractor or supplier for any portion of the contract? If consultant plans to utilize a subcontractor, the subcontractor will comply with the same terms as the consultant as contained in this solicitation and other relevant OAG policy and procedure and the subcontractor must be approved in advance by OAG.

*If yes, what percentage of the total award would be subcontracted or supplied by Historically Underutilized Businesses (HUBs)?

*If no, explain why no subcontracting opportunities are available or what efforts were made to subcontract part of this project.

*Is consultant certified as a Texas HUB?

PAYMENT

Payment for services will be made upon receipt of invoices presented to the OAG in the form and manner specified by the OAG after certification of acceptance of all deliverables.

PROPOSAL PREPARATION AND CONTRACTING EXPENSES

All proposals must be typed, double spaced, on 8 1/2" x 11" paper, clearly legible, with all pages sequentially numbered and bound or stapled together. The name of the prospective consultant must be typed at the top of each page. Do not attach covers, binders, pamphlets, or other items not specifically requested.

A Table of Contents must be included with respective page numbers opposite each topic. The proposal must contain the following completed items in the following sequence:

1. Transmittal Letter: A letter addressed to Ms. Julie Geeslin (address at the end of this Request for Proposal) that identifies the person or entity submitting the proposal and includes a commitment by that person or entity to provide the services required by the OAG. The letter must state, "The proposal enclosed is binding and valid at the discretion of the OAG." The letter must specifically identify the project for this proposal. The letter must include "full acceptance of the terms and conditions of the contract resulting from this Request for Proposal." Any exceptions must be specifically noted in the letter. However, any exceptions may disqualify the proposal from further consideration at the OAG's discretion.
2. Executive Summary: A summary of the contents of the proposal, excluding cost information. Address services that are offered beyond those specifically requested as well as those offered within specified deliverables. Explain any missing or other requirements not met, realizing that failure to provide necessary information or offer required service deliverables may result in disqualification of the proposal.
3. Project Proposal
4. Cost Proposal
5. Relevant Technical Skill Statement (with references and vitae)
6. Relevant Experience Statement (with references and vitae)

To be considered responsive, a proposal must set forth full, accurate, and complete information as required by this request. A non-responsive proposal will not be considered for further evaluation. If the requirement that is not met is considered a minor irregularity or an inconsequential variation, an exception may be made at the discretion of the OAG and the proposal may be considered responsive.

A written request for withdrawal of a proposal is permitted any time prior to the submission deadline and must be received by Ms. Julie Geeslin (address at the end of this Request for Proposal). After the

deadline, proposals will be considered firm and binding offers at the option of the OAG.

Preliminary and final negotiations with top-ranked prospective consultants may be held at the discretion of the OAG. The OAG may decide, at its sole option and in its sole discretion, to negotiate with one, several, or none of the prospective consultants submitting proposals pursuant to this request. During the negotiation process, the OAG and any prospective consultant(s) with whom the OAG chooses to negotiate, may adjust the scope of the services, alter the method of providing the services, and/or alter the costs of the services so long as the changes are mutually agreed upon and are in the best interest of the OAG. Statements made by a prospective consultant in the proposal packet or in other appropriate written form will be binding unless specifically changed during final negotiations. A contract award may be made by the OAG without negotiations if the OAG determines that such an award is in the OAG's best interest.

All prospective consultants of record will be sent written notice of which, if any, prospective consultant(s) is selected for the contract award on or about February 13, 2009 or within ten (10) days of making an award, whichever is later.

All proposals are considered to be public information subsequent to an award of the contract. All information relating to proposals will be subject to the Public Information Act, Texas Government Code Annotated, Chapter 552, after the award of the contract. All documents will be presumed to be public unless a specific exception in that Act applies. Prospective consultants are requested to avoid providing information which is proprietary, but if it is necessary to do so, proposals must specify the specific information which the prospective consultant considers to be exempted from disclosure under the Act and those pages or portions of pages which contain the protected information must be clearly marked. The specific exemption which the prospective consultant believes protects that information must be cited. The OAG will assume that a proposal submitted to the OAG contains no proprietary or confidential information if the prospective consultant has not marked or otherwise identified such information in the proposal at the time of its submission to the OAG.

The OAG has sole discretion and the absolute right to reject any and all offers, terminate this Request for Proposal, or amend or delay this Request for Proposal. The OAG will not pay any cost incurred by a prospective consultant in the preparation of a response to this Request for Proposal and such costs will not be included in the budget of the prospective consultant submitted pursuant to this Request for Proposal. The issuance of this Request for Proposal does not constitute a commitment by the OAG to award any contract. This Request for Proposal and any contract which may result from it are subject to appropriation of State and Federal funds and the Request for Proposal and/or contract may be terminated at any time if such funds are not available.

The OAG reserves the right to accept or reject any or all proposals submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any proposal to the OAG. The OAG is under no legal obligation to enter into a contract with any offeror of any proposal on the basis of this request. The OAG intends any material provided in this Request for Proposal only and solely as a means of identifying the scope of services and qualifications sought.

The State of Texas assumes no responsibility for expenses incurred in the preparation of responses to this Request for Proposal. All expenses associated with the preparation of the proposal solicited by this Request for Proposal will remain the sole responsibility of the prospective consultant. Further, in the event that the prospective consultant is engaged to provide the services contemplated by this Request for Proposal, any

expenses incurred by the prospective consultant associated with the negotiation and execution of the contract for the engagement will remain the obligation of the consultant.

Please address responses to:

Ms. Julie Geeslin

Budget and Purchasing Division

Office of the Attorney General of Texas

300 W. 15th Street, Third Floor

Austin, Texas 78701

Phone: (512) 475-4495

TRD-200806413

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: December 9, 2008

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of November 28, 2008, through December 4, 2008. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on December 10, 2008. The public comment period for this project will close at 5:00 p.m. on January 9, 2009.

FEDERAL AGENCY ACTIONS:

Applicant: 3000 Houston Street Development; Location: The project is located on the Lower Laguna Madre at 3000 Houston Street, Port Isabel, Cameron County, Texas. The site can be located on the U.S.G.S. quadrangle map entitled: Port Isabel, TX. Approximate UTM Coordinates in NAD 83 (meters): Zone 14; Easting: 679000; Northing: 2885640. Project Description: The applicant proposes to modify existing Department of the Army Permit 21524(02). The purpose of the project is to develop a condominium complex, protect the shoreline adjacent to the development, provide recreational vessel mooring, and other water-related recreational opportunities. CCC Project No.: 09-0009-F1. Type of Application: U.S.A.C.E. permit application #SWG-1998-02541 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: RR Development Texas II, Inc.; Location: The project is located adjacent to Port Bay, on a 239-acre site approximately 2.5 miles southwest of the intersection of FM 1069 and State Highway 35

in Rockport, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Bayside, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 14; Easting: 682800; Northing: 3099650. Project Description: The applicant proposes to construct a marina and single family residential subdivision with water access to Port Bay that would be known as The Marina at Port Bay Trophy Club. The overall project purpose is to provide a marina with related marine facilities within a single-family residential housing development in the Live Oak Peninsula of Aransas County, Texas with proximity to water access. The project would include construction of a 27.7-acre saltwater marina excavated almost entirely from uplands and development of a high density residential site. Excavation of the marina would involve conversion of approximately 2.75 acres of freshwater palustrine and 0.17 acre of estuarine emergent wetland into deep-water habitat. Additionally, the development around the marina would involve placement of fill in 0.98 acre of freshwater palustrine wetland and 0.32 acre of estuarine emergent wetland. CCC Project No.: 09-0024-F1. Type of Application: U.S.A.C.E. permit application #SWG-2006-01444 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Mike Sorrell; Location: The project is located east of the intersection of State Highway (SH) 332 and County Road (CR) 690 in southern Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Freeport, Texas. Approximate UTM Coordinates; Zone 15; in NAD 27 (meters): Wetland A - Northing 3208840 and Easting 276238, Wetland B - Northing 3208840 and Easting 276238, Wetland C - Northing 3208025 and Easting 276886, Wetland D - Northing 3207863 and Easting 276955, Wetland E - Northing 3207831 and Easting 276890, Wetland F - Northing 3207898 and Easting 277101, Wetland G - Northing 3207924 and Easting 277157, Wetland H - Northing 3208116 and Easting 277263, Wetland I - Northing 3208248 and Easting 277250, Wetland J - Northing 3208275 and Easting 277245, Wetland K - Northing 3208410 and Easting 277234, Wetland L - Northing 3208627 and Easting 277113, Wetland M - Northing 3208949 and Easting 276620. Project Description: The applicant proposes to impact 60.08 acres of wetlands adjacent to Oyster Creek primarily composed of high marsh within a 129-acre tract located east of the intersection of SH 332 and CR 690 in southern Brazoria County, Texas, for the purpose of constructing a canal residential development. To mitigate for impacts to 60.08 acres of adjacent wetlands, the applicant proposes to avoid and preserve 18.98 acres of open water habitat, 66.69 acres of adjacent wetlands primarily composed of low marsh, 9.30 acres of mudflat waterfowl habitat area, and 65.78 acres of upland prairie within a 160.75 acre area. CCC Project No.: 09-0040-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-01905 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Harborwalk, LP; Location: The project site is located southwest of the confluence of the Highland Bayou Diversion Canal and Galveston Bay, southwest of Tiki Island, in Hitchcock, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Virginia Point, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 308828; Northing: 3241698. Project Description: The proposed project is an after-the-fact permit application. The applicant proposes to amend the original authorization to retain a portion of the unauthorized impacts, as some of the unauthorized impacts will be corrected in the final proposed development plan. The unauthorized impacts consists of the fill of 0.18 acres of interior marsh, 0.78 acres of smooth cordgrass wetlands, 14.51 acres of open water habitat, and 0.03 acres of sand flats. Unauthorized ac-

tivities also include the excavation of 0.46 acres of interior brackish marsh, 0.69 acres of smooth cordgrass wetlands, 51.22 acres of open water habitat, 0.04 acres of sand flats, and 8.42 acres of upland. Lastly, 3.37 acres of unauthorized structures also exist, including marina piers, private boathouses, and private piers. In addition to the retention of a portion of the unauthorized impacts, the applicant proposes the following new impacts; to place fill material onto 1.48 acres of smooth cordgrass wetland, 16.07 acres of open water, and 0.04 acres of sand flats. The propose plan also calls for the additional excavation of 0.27 acres of interior brackish marsh, 2.21 acres of smooth cordgrass wetlands, 13.90 acres of open water, and 6.25 acres of uplands. The applicant also proposes to construct 13.69 acres of new structures located over open water including marina piers, private boathouses, private piers, fishing/boat/kayak piers, and access boardwalks. CCC Project No.: 09-0041-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-00597 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: US Army Corps of Engineers; Location: Inland tidal and non-tidal waters of the United States, including wetlands, within the Galveston District, States of Texas and Louisiana. This Regional General Permit is not applicable in the Gulf of Mexico and Bays and Estuaries of the Texas and Louisiana coast. Project Description: This Regional General Permit (GP) is to authorize applicants to install, operate and maintain structures and equipment necessary for oil and gas drilling, production and transportation activities, provided the attached Special Conditions are met. Impacts to waters of the United States, including wetlands, will not exceed 3 acres per single and complete project. CCC Project No.: 09-0044-F2. Type of Application: U.S.A.C.E. permit application #SWG-2008-01152 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Davis Petroleum Corporation; Location: The project is located in Galveston Bay, State Tract (ST) 310, approximately 2 miles east of San Leon, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Texas City, Texas. Approximate Latitude/Longitude Coordinates in NAD 83: 29.4862 N, -94.8803 W. Project Description: The applicant proposes to drill Texas ST 310 Well No. 1 which includes the installation and maintenance of a well platform, production platform and flowline from well to production platform. Approximately 1,267 cubic yards of fill (gravel, crushed concrete or rock) would be placed under the drilling rig for stabilization. A 6-inch diameter sales pipeline would be installed from the production platform southeast approximately 4,109 feet to a tie-in point on a permitted well in ST 329 (DA Permit 23974). Approximately 2,500 cubic yards of material would be displaced by jetting and/or trenching during the installation of the pipeline from Stations 0+00 to 13+90 and Stations 30+08 to 41+09. The applicant proposes to directional drill from Stations 13+90 to 30+08 to avoid potential oyster reefs. CCC Project No.: 09-0045-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00104 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Vernor Material and Equipment Company; Location: The project is located on Oyster Creek, at 3908 FM 523, in Oyster Creek, Brazoria County, Texas. The project can be located on the

U.S.G.S. quadrangle map entitled: Oyster Creek, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 273312; Northing: 3211471. Project Description: The applicant proposes to construct a commercial marina from an established borrow that has been in use since before 1995. The borrow area is approximately 39.50 acres in size. The applicant proposes to construct the main marina structures in the dry after excavation is complete. The boat slip structures and all platforms would be constructed of wood and permanently attached to the borrow basin floor. Once this construction is complete the applicant would flood the marina by pulling the plug between the borrow area and Oyster Creek. The resulting marina would be at creek floor elevation of approximately 6 feet below sea level. CCC Project No.: 09-0046-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00696 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: John T. Cabaniss; Location: The project is at 120 Front Street, Rockport (Lamar Peninsula) and is located in Aransas Bay, northwest of Goose Island, in Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: St Charles Bay, Texas. Approximate UTM Coordinates in NAD 27 (meters), Zone 14, are as follows for each of the following: Dredge area - Easting: 696911 & Northing: 3113656; Texas Parks and Wildlife Department (TPWD) Placement Area - Easting: 696640 & Northing: 313335. Project Description: The applicant proposes to maintenance dredge his basin and pier-end area to a depth of -5.0 feet below bottom or -6.0 feet mean sea level. The preferred method is hydraulic dredging with material placed in an existing TPWD placement area authorized under DA Permit 23307. Mechanical excavation is an alternate method and which case dredged material is to be placed on the applicant's upland property. Maintenance dredging in the basin area has been previously conducted under DA Permit 16622(01). DA permit application SWG-2008-00775 contains associated access channel segments and is being processed concurrently with this application. CCC Project No.: 09-0049-F1. Type of Application: U.S.A.C.E. permit application #SWG-1994-00982 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Robert Nelson, Jr.; Location: The project is off of 118 Front Street, Rockport (Lamar Peninsula) and is located in Aransas Bay, northwest of Goose Island, in Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: St Charles Bay, Texas. Approximate UTM Coordinates in NAD 27 (meters), Zone 14, are as follows for each of the following: Dredge area - Easting: 696876 & Northing: 3113878; Texas Parks and Wildlife Department (TPWD) Placement Area - Easting: 696640 & Northing: 313335. Project Description: The applicant proposes to maintenance dredge his basin and access channel to a depth of -4.0 mean high water. The preferred method is hydraulic dredging with material placed in an existing TPWD placement area authorized under DA Permit 23307. Mechanical excavation is an alternate method and which case dredged material is to be placed on the applicant's upland property. The dimensions of the access channel measure 20 feet wide by 315 feet long, and the basin area measures approximately 28 feet by 36 feet. DA permit application SWG-2008-00775 contains associated access channel segments and is being processed concurrently with this application. CCC Project No.: 09-0050-F1. Type of Application: U.S.A.C.E. permit application #SWG-2005-00739 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: J. Sullivan, S. Carleton, R. Nelson, J. Cabaniss, T. Ultz, K. Kraven, and D. Dickson; Location: The project is located in Aransas Bay, south of Lamar Peninsula and northwest of Goose Island, in Aransas County, Texas. The project can be located on the U.S.G.S.

quadrangle map entitled: St Charles Bay, Texas. Approximate UTM Coordinates in NAD 27 (meters), Zone 14, are as follows for the center point of each channel: Channel No. 1 - Easting: 696876 & Northing: 3113631; Channel No. 2 - Easting: 697084 & Northing: 3113288; Channel No. 3 - Easting: 697277 & Northing: 3113138; Channel No. 4 - Easting: 697420 & Northing: 3113082. Project Description: The applicants propose to maintenance dredge unmarked channel areas and dredge new channels, all for use by recreational navigation. Channels 1a/1c and 2a are old existing channels, while the remaining proposed channels are unmarked routes used for access. The dimensions of the channels are shown on sheet 5. Two of the proposed channels will access two existing basin basins that are also proposed for dredging, and are being published under Public Notices SWG-2005-00739 by Robert Nelson and SWG-1994-00982 (reference 16622(01)) by John Cabaniss. CCC Project No.: 09-0051-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00775 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: EOG Resources, Inc.; Location: The project is located within State Tracts (ST's) 723 and 706 in Nueces Bay, approximately 2 miles north of the Chemical Turning Basin and Navigation Boulevard in Corpus Christi, Nueces County, Texas. Access in the bay is from Rincon Channel, turn west into the Phillips Channel and then proceed west for 3 miles, then turn north into the proposed access channel and proceed north approximately 0.8 mile to the proposed well pad site. The project can be located on the U.S.G.S. quadrangle map entitled: Corpus Christi, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Work basin: Easting: 653950; Northing: 3081500. Beginning of access channel Easting: 654100; Northing: 3080150. Project Description: The applicant proposes to hydraulically dredge an access channel in ST's 723 and 706, and dredge a work basin in ST 706 to drill the proposed ST TR 692 No.1 Well and install associated structures. The Phillips Channel is proposed to be maintenance dredged under permit application SWG-2007-01543 and would serve as access to the proposed dredge area for this permit. Approximately 40,000 cubic yards of material would be dredged to form the access channel and basin, and the material would be pumped to either the Port of Corpus Christi Authority Placement Area 1 or 2. CCC Project No.: 09-0053-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-01020 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200806426

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: December 10, 2008

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Comptroller of Public Accounts

The one percent local sales and use tax will become effective January 1, 2009 in the cities listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Burke (Angelina Co)	2003070	.010000	.077500
Dorchester (Grayson Co)	2091171	.010000	.072500

TRD-200806374
 Martin Cherry
 General Counsel
 Comptroller of Public Accounts
 Filed: December 4, 2008

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 19, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 19, 2009**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: AK/HA Manufacturing, LLC; DOCKET NUMBER: 2008-1153-AIR-E; IDENTIFIER: RN100214238; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: septic tank manufacturing; RULE VIOLATED: 30 Texas Administrative Code (TAC) §§116.115(c), 122.143(4), and 122.145(2)(A) and (B), Air Permit Number 39565, Special Condition (SC) Number 13, Federal Operating Permit (FOP) Number O-02163, General Conditions, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a semiannual deviation report; 30 TAC §113.990 and §122.143(4), 40

Code of Federal Regulations (CFR) §63.4520(a)(1)(i) and (ii), FOP Number O-02163, SC Number 1E, and THSC, §382.085(b), by failing to accurately submit and report two semiannual compliance certifications for maximum achievable control technology (MACT) standards required for surface coating of plastic parts and products; and 30 TAC §113.1060 and §122.143(4), 40 CFR §63.5910(a), (b)(1) and (3), FOP Number O-02163, SC Number 1D, and THSC, §382.085(b), by failing to accurately submit and report three semiannual compliance certifications for MACT standards required for reinforced plastic composites production; PENALTY: \$10,050; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: A. K. Interests-Hunterwood, L.P.; DOCKET NUMBER: 2008-0562-MWD-E; IDENTIFIER: RN102916814; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(17) and §319.7(d) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11066001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monthly discharge monitoring reports; and 30 TAC §305.125(17) and TPDES Permit Number 11066001, Sludge Provisions, by failing to timely submit the annual sludge report; PENALTY: \$2,834; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Alumax Mill Products, Inc.; DOCKET NUMBER: 2008-0380-AIR-E; IDENTIFIER: RN100215250; LOCATION: Texarkana, Bowie County; TYPE OF FACILITY: aluminum production plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), FOP Number O-1413, Special Terms and Conditions Number 8, Air Permit Numbers 9476 and PSD-TX-886, SC Number 1, and THSC, §382.085(b), by failing to comply with the permitted volatile organic compound emission limit; PENALTY: \$46,350; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3434, (903) 535-5100.

(4) COMPANY: City of Austin; DOCKET NUMBER: 2008-1789-PST-E; IDENTIFIER: RN103153987; LOCATION: Austin, Travis County; TYPE OF FACILITY: fire station with fleet refueling; RULE VIOLATED: 30 TAC §334.8(c), by failing to submit initial/renewal underground storage tank (UST) registration and self-certification form; PENALTY: \$875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(5) COMPANY: David Montanez dba David Montanez Calf Farm; DOCKET NUMBER: 2008-0732-AGR-E; IDENTIFIER: RN105006829; LOCATION: Erath County; TYPE OF FACILITY: calf farm; RULE VIOLATED: 30 TAC §321.47(d)(3), by failing to provide certification from a licensed Texas professional engineer that the design and construction of all retention control structures are in accordance with the technical standards developed by the Natural

Resources Conservation Service; and 30 TAC §321.33(d), by failing to obtain authorization to expand an existing animal feeding operation; PENALTY: \$3,150; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2008-1298-AIR-E; IDENTIFIER: RN100216035; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: industrial organic chemicals plant; RULE VIOLATED: 30 TAC §101.201(a) and §122.143(4), FOP Number O-01961, General Terms and Conditions (GTC) and SC Number 2F, and THSC, §382.085(b), by failing to notify the TCEQ regional office within the required 24 hours of a reportable emissions event; and 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), FOP Number O-01961, GTC and SC Number 16, Air Permit Number 4351, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions of oxides of nitrogen; PENALTY: \$6,656; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: City of Elkhart; DOCKET NUMBER: 2008-1639-MWD-E; IDENTIFIER: RN102844610; LOCATION: Anderson County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010735001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, and the Code, §26.121(a)(1), by failing to comply with permit effluent limits for dissolved oxygen, total suspended solids, and flow; PENALTY: \$8,720; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: El Paso Independent School District; DOCKET NUMBER: 2008-1491-AIR-E; IDENTIFIER: RN103102869 and RN105523354; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: fuel dispensing stations; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by failing to comply with the maximum Reid vapor pressure requirement of seven pounds per square inch absolute; PENALTY: \$2,440; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(9) COMPANY: Fort Worth Crushed Stone, L.C.; DOCKET NUMBER: 2008-1081-WQ-E; IDENTIFIER: RN102737780; LOCATION: Cresson, Hood County; TYPE OF FACILITY: mining and stone crushing operation; RULE VIOLATED: 30 TAC §281.25(a)(4), TPDES General Permit Number TXR05L416, Part III, Section A(5)(g) and (h), and 40 CFR §122.26(c), by failing to perform periodic inspections; 30 TAC §281.25(a)(4), TPDES General Permit Number TXR05L416, Part III, Section A(7), and 40 CFR §122.26(c), by failing to perform an annual comprehensive site compliance evaluation; and 30 TAC §281.25(a)(4), TPDES General Permit Number TXR05L416, Part III, Section A(1)(a)(I), and 40 CFR §122.26(c), by failing to identify and describe vehicle tracking of sediment as a potential pollutant source; PENALTY: \$5,631; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Victor R. Galvan; DOCKET NUMBER: 2008-1584-LII-E; IDENTIFIER: RN103699880; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: landscape irrigation business; RULE VIOLATED: 30 TAC §344.96, by failing to present the customer of a new irrigation system a written statement of guarantees for materials and labor furnished in the installation of the irrigation system; and 30 TAC §344.94(a) and (b), by failing to provide a written licensed irrigator's agreement to install an irrigation

system; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: Greif Packaging LLC; DOCKET NUMBER: 2008-1416-AIR-E; IDENTIFIER: RN102079662; LOCATION: La Porte, Harris County; TYPE OF FACILITY: drum manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), FOP Number O-02441, GTC, and THSC, §382.085(b), by failing to submit a Title V annual compliance certification; PENALTY: \$3,250; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Gulf Coast Waste Disposal Authority; DOCKET NUMBER: 2008-1115-AIR-E; IDENTIFIER: RN100219500; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), New Source Review Permit Number 52107, SC Number 1, and THSC, §382.085(b), by failing to maintain permitted emission limits; PENALTY: \$6,950; Supplemental Environmental Project offset amount of \$5,560 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Image Homes LTD; DOCKET NUMBER: 2008-1798-WQ-E; IDENTIFIER: RN105635056; LOCATION: Bexar County; TYPE OF FACILITY: home builder; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: Dwight Ball dba Lazy Acres Mobile Home Park; DOCKET NUMBER: 2008-0961-PWS-E; IDENTIFIER: RN102708153; LOCATION: Baytown, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the consumer confidence report (CCR) to each bill paying customer and by failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the water system and that the information in the CCR is correct and consistent with compliance monitoring data; PENALTY: \$1,293; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: METRO SUPPLIERS, INCORPORATED dba Austin Texaco; DOCKET NUMBER: 2008-1435-PST-E; IDENTIFIER: RN101490043; LOCATION: Austin, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (B) and (5)(B)(ii), by failing to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; 30 TAC §115.222(3) and THSC, §382.085(b), by failing to comply with vapor control requirements; and 30 TAC §115.222(6) and THSC, §382.085(b), by failing to ensure that each vapor balance system vent line is equipped with a pressure-vacuum relief valve; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(16) COMPANY: Red River Biodiesel LTD; DOCKET NUMBER: 2008-1791-WQ-E; IDENTIFIER: RN105186548; LOCATION:

New Boston, Bowie County; TYPE OF FACILITY: chemical and chemical preparation; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(17) COMPANY: SR Denton 2181 LLC; DOCKET NUMBER: 2008-1797-WQ-E; IDENTIFIER: RN105626204; LOCATION: Denton, Denton County; TYPE OF FACILITY: drug and proprietary stores; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: The Goodyear Tire & Rubber Company; DOCKET NUMBER: 2008-1541-AIR-E; IDENTIFIER: RN100870898; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.715(a), Flexible Permit Number 6618, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(c) and THSC, §382.085(b), by failing to submit the final notification for Incident Number 112880; PENALTY: \$6,422; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: The Grove Water Supply Corporation; DOCKET NUMBER: 2008-1297-PWS-E; IDENTIFIER: RN101216620; LOCATION: Coryell County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(n)(2), by failing to maintain an up-to-date distribution map; 30 TAC §290.44(d)(1), by failing to properly install an air release device in the distribution system; 30 TAC §290.43(e), by failing to provide an intruder-resistant fence; 30 TAC §290.43(c)(4), by failing to provide a properly calibrated pressure indicator for the water system's standpipe; 30 TAC §290.46(u), by failing to plug abandoned Well Number 1 with cement or to test it every five years to ensure that it is in a non-deteriorated condition; 30 TAC §290.46(f)(2) and (3)(A)(iv), (B)(iii), (D)(ii), and (E)(iv), by failing to keep on file and make available for commission review water system records; 30 TAC §290.42(l), by failing to compile and maintain a thorough plant operations manual for operator review and reference; 30 TAC §290.46(q)(1), by failing to issue a boil water notification; and 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a chloramine residual of 0.5 milligrams per liter throughout the distribution system; PENALTY: \$2,265; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200806404

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 9, 2008



Enforcement Orders

A default order was entered regarding Joey Nguyen dba Stop and Shop, Docket No. 2005-1128-PST-E on November 20, 2008 assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding P Johnston Ventures Inc., Docket No. 2005-1141-MSW-E on November 20, 2008 assessing \$7,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Oloko, Staff Attorney at (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mohamed Ahmed Al Bataineh dba Harvest Food Store, Docket No. 2005-1241-PST-E on November 20, 2008 assessing \$1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Arnoldo Perez dba Perez Fuel Stop, Docket No. 2005-1601-PST-E on November 20, 2008 assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0060, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Chemical LP and Shell Oil Company, Docket No. 2006-0328-MLM-E on November 20, 2008 assessing \$346,931 in administrative penalties with \$172,872 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Carol Bailey dba C & T Quinque Cleaners, Docket No. 2006-1146-DCL-E on November 20, 2008 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A & L Partners, LLC dba Hurst Food Mart, Docket No. 2006-1844-PST-E on November 20, 2008 assessing \$5,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Oakwood, Docket No. 2007-0447-MWD-E on November 20, 2008 assessing \$15,402 in administrative penalties with \$3,080 deferred.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Javier R. Martinez, Docket No. 2007-0936-LII-E on November 20, 2008 assessing \$625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0600, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Herman Hinson and Mary Hinson, Docket No. 2007-1093-MSW-E on November 20, 2008 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding William M. James, Docket No. 2007-1744-PST-E on November 20, 2008 assessing \$6,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fox Tree & Landscape Nursery, Inc. dba Mother Earth Landscape Materials, Docket No. 2007-1841-MLM-E on November 20, 2008 assessing \$16,721 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding John Hunt, Docket No. 2007-1888-LII-E on November 21, 2008 assessing \$267 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Port Recycling LP, Docket No. 2008-0008-AIR-E on November 20, 2008 assessing \$900 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Viron International Corporation, Docket No. 2008-0122-AIR-E on November 20, 2008 assessing \$15,750 in administrative penalties with \$3,150 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (512) 239-1460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Xklen Corporation, Docket No. 2008-0233-IHW-E on November 20, 2008 assessing \$13,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Allina Business, Inc. Five Star Food Mart, Docket No. 2008-0320-PST-E on November 20, 2008 assessing \$13,791 in administrative penalties with \$9,438 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Bellevue, Docket No. 2008-0352-MWD-E on November 20, 2008 assessing \$20,100 in administrative penalties with \$4,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Top Gun Gunite Company-GP, LLC, Docket No. 2008-0381-AIR-E on November 21, 2008 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert Rotter, Docket No. 2008-0400-EAQ-E on November 20, 2008 assessing \$13,260 in administrative penalties with \$2,652 deferred.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Manuel D. Perez, Docket No. 2008-0406-PST-E on November 20, 2008 assessing \$2,625 in administrative penalties with \$525 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Premcor Refining Group Inc., Docket No. 2008-0435-AIR-E on November 20, 2008 assessing \$54,688 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Port Recycling LP, Docket No. 2008-0465-AIR-E on November 21, 2008 assessing \$61,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kendall County Water Control and Improvement District No. 1, Docket No. 2008-0523-MWD-E on November 20, 2008 assessing \$6,960 in administrative penalties with \$1,392 deferred.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Walnut Springs, Docket No. 2008-0548-MWD-E on November 20, 2008 assessing \$1,250 in administrative penalties with \$250 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Penske Truck Leasing Co., L.P., Docket No. 2008-0570-PST-E on November 20, 2008 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (512) 239-1460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Groesbeck, Docket No. 2008-0612-MWD-E on November 20, 2008 assessing \$6,800 in administrative penalties with \$1,360 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Oil Company and Shell Chemical LP, Docket No. 2008-0635-AIR-E on November 20, 2008 assessing \$43,970 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding U.S. Department of the Army Corpus Christi Army Depot, Docket No. 2008-0636-AIR-E on November 20, 2008 assessing \$2,425 in administrative penalties with \$485 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2008-0641-AIR-E on November 21, 2008 assessing \$20,695 in administrative penalties with \$4,139 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ben Gregory, Docket No. 2008-0659-MSW-E on November 20, 2008 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John Deguire dba Deguire Auto Salvage Yard, Docket No. 2008-0668-MLM-E on November 20, 2008 assessing \$4,650 in administrative penalties with \$930 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Youngmi Hwang, Docket No. 2008-0682-PST-E on November 20, 2008 assessing \$16,650 in administrative penalties with \$3,330 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Burkburnett, Docket No. 2008-0689-MWD-E on November 20, 2008 assessing \$23,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Chemical LP and Equilon Enterprises LLC, Docket No. 2008-0701-IWD-E on November 20, 2008 assessing \$4,830 in administrative penalties with \$966 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Weatherford 202, LLP, Docket No. 2008-0703-WQ-E on November 20, 2008 assessing \$2,850 in administrative penalties with \$570 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Micobe, Inc., Docket No. 2008-0704-WQ-E on November 21, 2008 assessing \$2,100 in administrative penalties with \$420 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jon Stowater and James Pool dba S&P Dairy, Docket No. 2008-0728-AGR-E on November 20, 2008 assessing \$11,445 in administrative penalties with \$2,289 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Huntsville, Docket No. 2008-0740-MWD-E on November 21, 2008 assessing \$8,675 in administrative penalties with \$1,735 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Coolidge, Docket No. 2008-0764-PWS-E on November 20, 2008 assessing \$3,201 in administrative penalties with \$640 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Keffer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sherwin Alumina, L.P., Docket No. 2008-0766-AIR-E on November 20, 2008 assessing \$23,200 in administrative penalties with \$4,640 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Smith & Coffman, Ltd. dba Running W Truck Stop, Docket No. 2008-0768-IWD-E on November 21, 2008 assessing \$11,503 in administrative penalties with \$2,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2008-0781-AIR-E on November 20, 2008 assessing \$16,450 in administrative penalties with \$3,290 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rhodia, Inc., Docket No. 2008-0817-AIR-E on November 20, 2008 assessing \$7,564 in administrative penalties with \$1,512 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Windthorst, Docket No. 2008-0825-MWD-E on November 20, 2008 assessing \$6,000 in administrative penalties with \$1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Northwest Harris County Municipal Utility District No. 20, Docket No. 2008-0841-MWD-E on November 20, 2008 assessing \$9,525 in administrative penalties with \$1,905 deferred.

Information concerning any aspect of this order may be obtained by contacting Mark Oliver, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Utilities, Inc., Docket No. 2008-0842-MWD-E on November 20, 2008 assessing \$5,850 in administrative penalties with \$1,170 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jefferson County Water Control and Improvement District 10, Docket No. 2008-0857-PWS-E on November 20, 2008 assessing \$550 in administrative penalties with \$110 deferred.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nash Trucking & Construction, Ltd., Docket No. 2008-0889-WQ-E on November 20, 2008 assessing \$9,368 in administrative penalties with \$1,873 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2008-0893-AIR-E on November 20, 2008 assessing \$9,375 in administrative penalties with \$1,875 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cynthia Ann Moretti dba Cynthia's Kitchen, Docket No. 2008-0898-PWS-E on November 21, 2008 assessing \$3,295 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Magellan Pipeline Terminals, L.P., Docket No. 2008-0906-AIR-E on November 20, 2008 assessing \$2,450 in administrative penalties with \$490 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2008-0916-AIR-E on November 20, 2008 assessing \$7,425 in administrative penalties with \$1,485 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOTAL PETROCHEMICALS USA, INC., Docket No. 2008-0944-AIR-E on November 20, 2008 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zion Lutheran Church of Mission Valley, Texas, Docket No. 2008-0987-PWS-E on November 21, 2008 assessing \$325 in administrative penalties with \$65 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cliff Lewis Custom Homes, LLC, Docket No. 2008-0996-WQ-E on November 21, 2008 assessing \$800 in administrative penalties with \$160 deferred.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COWTOWN REDI MIX, INC., Docket No. 2008-1000-MSW-E on November 20, 2008 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hartmut Mueller dba Hofbrau RV Park, Docket No. 2008-1007-PWS-E on November 20, 2008 assessing \$600 in administrative penalties with \$120 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Keene, Docket No. 2008-1014-MWD-E on November 21, 2008 assessing \$5,280 in administrative penalties with \$1,056 deferred.

Information concerning any aspect of this order may be obtained by contacting Mark Oliver, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Maurice Rosas, Docket No. 2008-1049-MSW-E on November 20, 2008 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Ross Fife, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Explorer Pipeline Company, Docket No. 2008-1073-AIR-E on November 20, 2008 assessing \$2,850 in administrative penalties with \$570 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chicken House Flea Market, Inc., Docket No. 2008-1079-PWS-E on November 20, 2008 assessing \$2,056 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHERA CORPORATION dba Dairy Way Food Mart, Docket No. 2008-1174-PST-E on November 21, 2008 assessing \$3,721 in administrative penalties with \$744 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order and corrective action was entered regarding Michael Eugene French, Docket No. 2006-2022-MSW-E on November 13, 2008 assessing \$1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Samy Retail Services Inc. dba Stop & Go 10, Docket No. 2008-1357-PST-E on November 20, 2008 assessing \$1,750 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Billy Jones, Docket No. 2008-1335-WOC-E on November 20, 2008 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Jimmy L. Rodriguez, Docket No. 2008-1330-WOC-E on November 20, 2008 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Rhonda C. Vanover, Docket No. 2008-1332-WOC-E on November 20, 2008 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding City of Dallas Parks and Recreation Department, Docket No. 2008-1338-WQ-E on November 20, 2008 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding WM Group LP dba R&W Sand and Gravel, Docket No. 2008-1336-WQ-E on November 20, 2008 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Range Resources Corporation, Docket No. 2008-1339-WR-E on November 20, 2008 assessing \$350 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200806423

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: December 10, 2008



Notice of Water Quality Applications

The following notices were issued during the period of November 19, 2008 through November 25, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITY OF CLUTE has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010044001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility is located approximately 800 feet east of the intersection of Lake Jackson Road and State Highway 288 on the north side of the Missouri Pacific Railroad in the City of Clute in Brazoria County, Texas.

CITY OF FLOYDADA has applied for a renewal of Permit No. WQ0010170001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day via surface irrigation of 128 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located 0.5 mile south of U.S. Highway 70 and approximately 1.5 miles east of Farm-to-Market Road 1958 in Floyd County, Texas.

CITY OF GRANGER has applied for a renewal of TPDES Permit No. WQ0010891001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 1300 feet south of Farm-to-Market Road 971 and 1 mile east of State Highway 95 in Williamson County, Texas.

CITY OF SPUR has applied for a renewal of Permit No. WQ0010289001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 295,000 gallons per day via evaporation and surface irrigation of 130 acres of non-public access land seeded with alfalfa. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located south of Seventh Street, approximately 1,600 feet east of Farm-to-Market Road 261 in Dickens County, Texas.

CITY PUBLIC SERVICE OF SAN ANTONIO which operates W.B. Tuttle Steam Electric Station, has applied for a renewal of TPDES Permit No. WQ0001516000, which authorizes the discharge of cooling tower blowdown and storm water at a daily average flow not to exceed 700,000 gallons per day via Outfall 001. The facility is located at 9911 Perrin-Beitel Road (the west side of FM 2252), approximately one mile north of Loop 410 on the north side of the City of San Antonio, Bexar County, Texas.

DOMESTIC PETROCHEMICAL LC which operates an organic chemical and petroleum processing facility, has applied for a renewal of TPDES Permit No. WQ0004116000, which authorizes the discharge of previously monitored effluent (treated process wastewater, utility wastewater, and contact storm water), treated cooling tower blowdown, and non-process area storm water on a flow variable basis via Outfall 001. The facility is located at 6655 West Bay Road, adjacent and east of Cedar Bayou, approximately 2.5 miles south of State Highway 146 at Cedar Bayou Bridge, and northeast of the City of Baytown, Chambers County, Texas.

EQUISTAR CHEMICALS LP which operates the La Porte Plant, which is a synthetic organic chemicals plant that manufactures ethy-

lene, propylene, and polyethylene, has applied for a renewal of TPDES Permit No. WQ0004013000, which authorizes the discharge of process wastewater, utility wastewater, treated domestic wastewater, hydrostatic test water, firewater, service water, potable water, construction storm water, demineralized water, steam condensate, de minimus spill cleanup water, and storm water at a daily average flow not to exceed 1,920,000 gallons per day via Outfall 001; process wastewater, utility wastewater, treated domestic wastewater, hydrostatic test water, firewater, service water, potable water, construction storm water, demineralized water, steam condensate, de minimus spill cleanup water, and storm water on an intermittent and flow variable basis via Outfall 003; treated process water, utility wastewater, treated domestic wastewater, hydrostatic test water, service water, demineralized water, de minimus spill cleanup water, steam condensate, and storm water at a daily average flow not to exceed 1,811,000 million gallons per day via Outfall 004; storm water, groundwater infiltration (continuous flow), raw water, fire water, wastewaters from the Decene Terminal, hydrostatic test water, firewater, potable water, demineralized water, steam condensate, and de minimus spill cleanup water on an intermittent and flow variable basis via Outfall 005; and storm water, raw water, fire water, hydrostatic test water, firewater, service water, potable water, construction storm water, demineralized water, steam condensate, and de minimus spill cleanup water on an intermittent and flow variable basis via Outfall 006. The facility is located at 1515 Miller Cutoff Road, approximately one-mile north of the intersection of Miller Cutoff Road and State Highway 225, Harris County, Texas.

GULF COAST MACHINE AND SUPPLY COMPANY which operates GULFCO, a forging and industrial machine shop, has applied for a major amendment to TPDES Permit No. WQ0001203000, to replace the daily average flow limit of not to exceed 300,000 gallons per day with an intermittent and flow variable limit via Outfall 001; reduce the monitoring frequency for chemical oxygen demand, total suspended solids, oil and grease, and pH from once per day to once per month at Outfall 001; increase the total suspended solids daily maximum effluent limit from 65 mg/l to 100 mg/l at Outfall 001; convert the daily average chemical oxygen demand effluent limit of 150 mg/l to a daily maximum total organic carbon effluent limit of 100 mg/l at Outfall 001; increase the daily maximum pH limit of 9.0 standard units to 10.0 standard units at Outfall 001; clarify the Outfall 001 location description; delete internal Outfall 101; move the monitoring location and reduce the monitoring frequency for total residual chlorine from five times per week to once per week; and revise the submission date for the monthly discharge monitoring report from the 20th to the 25th of the month. The current permit authorizes the discharge of process wastewater, previously monitored effluent (treated domestic wastewater via internal Outfall 101), and storm water at a daily maximum flow not to exceed 300,000 gallons per day via Outfall 001. The facility is located approximately 800 feet east of the intersection of Interstate Highway 10 and Smith Road, and seven (7) miles southwest of the City of Beaumont, Jefferson County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

JSW STEEL USA INC which operates the JSW Steel (USA) Inc Plant, a facility that manufactures carbon steel plate and carbon steel pipe by heating and rolling slabs into sheets and pipes, has applied for a major amendment to TPDES Permit No. WQ0001332000 to authorize removal of total cadmium effluent limitations and reporting requirements at Outfall 001 and removal of total chromium and total nickel effluent limitations at internal Outfall 201. The current permit to authorize the discharge of storm water runoff and previously monitored effluents (PMEs from internal Outfalls 101 and 201) on a flow variable basis

via Outfall 001; treated domestic wastewaters at a daily average flow not to exceed 96,000 gallons per day via Outfall 101; and treated cooling and descaling water from the plate mills, acid pickling rinse water, fume scrubber wastewater, lime passivation wastewater and washwater from the acid pickling operations, washwater from the carbon steel pipe operations, and cooling tower blowdown, at a daily average flow not to exceed 500,000 gallons per day via Outfall 201. The facility is located 5200 East McKinney Road, one-mile east of the intersection of Farm-to-Market Road 1405 and East McKinney Road, approximately five miles southeast of the City of Baytown, Chambers County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

PELICAN ISLAND STORAGE TERMINAL INC which operates the Galveston Terminal, a petroleum bulk storage terminal, has applied for a renewal of TPDES Permit No. WQ0002466000, which authorizes the discharge of storm water and boiler blowdown on an intermittent and flow variable basis via Outfall 001. The facility is located at 3801 GTI Boulevard, southwest of the intersection of Pelican Island Boulevard and Bradner Street on Pelican Island in the City of Galveston, Galveston County, Texas.

SALADO UTILITY INC has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014898001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility will be located approximately 6,560 feet northeast of the intersection of Interstate Highway 35 and Farm-to-Market Road 2268 in Bell County, Texas.

SHELL PIPELINE COMPANY LP which operates the Port Arthur Products Station, a petroleum products tank station, has applied for a renewal of TPDES Permit No. WQ0003530000, which authorizes the discharge of treated wastewater and storm water on an intermittent and flow variable basis via Outfall 001. The facility is located on Old West Port Arthur Road at the intersection of State Highway 73 and State Highway 82 in the City of Port Arthur, Jefferson County, Texas.

THE US ARMY CORPS OF ENGINEERS has applied for a renewal of Permit No. WQ0012255002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 7,100 gallons per day via evaporation ponds with 2.67 acres of surface area. The wastewater treatment facilities and disposal site are located at 500 Jim Hogg Road, in Jim Hogg Park which is located adjacent to the northeast side of Lake Georgetown, approximately 4.5 miles northwest of the intersection of Interstate Highway 35 and Farm-to-Market Road 2338, on the southwestern end of Park Road Number 5 in Williamson County, Texas. The disposal site is located in the drainage area of Lake Georgetown in Segment No. 1249 of the Brazos River Basin. No discharge of pollutants into water in the State is authorized by this permit.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200806421

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: December 10, 2008



Notice of Water Quality Applications

The following notices were issued during the period of November 25, 2008 through December 5, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

ALDINE COMMUNITY CARE CENTER INC has applied for a renewal of TPDES Permit No. WQ0010825001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 23,000 gallons per day. The facility is located at 10110 Airline Drive at the northeast corner of the intersection of Airline Drive and Aldine Mail Road in Harris County, Texas.

ALGONQUIN WATER RESOURCES OF TEXAS LLC has applied for a major amendment to Permit No. WQ0013849001 to authorize an increase in the daily average flow from 150,000 gallons per day to 200,000 gallons per day and to increase the acreage irrigated from 50 acres to 72 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 1,250 feet north of the intersection of State Highway 155 and Farm-to-Market Road 2661 in Smith County, Texas.

BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NO 29 has applied for a renewal of TPDES Permit No. WQ0014253001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located approximately 1,200 feet southwest of the intersection of County Road 405 and State Highway 288 in Brazoria County, Texas.

CITY OF CLEBURNE has applied for a renewal of TPDES Permit No. WQ0010006002 which authorizes the discharge of filter backwash water at a daily average flow not to exceed 50,000 gallons per day. The facility is located on County Road 1111, approximately two miles southwest of the City of Cleburne in Johnson County, Texas.

CITY OF CROSBYTON has applied for a renewal of Permit No. WQ0004533000, which authorizes the land application of sewage sludge for beneficial use. The current permit authorizes land application of sewage sludge for beneficial use on 40 acres. This permit will not authorize a discharge of pollutants into waters in the State. The land application site is located approximately 2 miles south of U.S. Highway 82 and 2 miles east of Farm-to-Market Road 651 in Crosby County, Texas.

CITY OF DE LEON has applied for a renewal of TPDES Permit No. WQ0010078001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 295,000 gallons per day. The facility is located approximately 1,000 feet south of State Highway 6 and 4,000 feet east of State Highway 16, east of the City of De Leon in Comanche County, Texas.

CITY OF JAYTON has applied for a renewal of Permit No. WQ0013698001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 101,500 gallons per day via surface irrigation of a minimum of 30 acres of non-public access pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 1,200 feet south of Farm-to-Market Road 1228 and approximately 7,500 feet west of the

intersection of Farm-to-Market Road 1228 and State Highway 70 in Kent County, Texas.

CITY OF SMYER has applied for a renewal of Permit No. WQ0012158001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day via surface irrigation of 74 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located southeast of Smyer, approximately 0.5 mile east of Farm-to-Market Road 168 just south of State Highway 114 in Hockley County, Texas.

LBC HOUSTON LP which operates LBC Houston Bayport Terminal, has applied for a major amendment to TPDES Permit No. WQ0002110000 to authorize the additional discharge of storm water, steam trap release, hydrostatic test water, fire fighting equipment test water and potable water on an intermittent and flow variable basis via new Outfall 002, and the addition of potable water to the discharge description at Outfall 001. The current permit authorizes the discharge of storm water, steam trap release, hydrostatic test water, and fire fighting equipment water on an intermittent and flow variable basis via Outfall 001. The facility is located 900 feet east of the intersection of Port Road and State Route 146, approximately 2.5 miles north of the City of Seabrook, Harris County, Texas.

LESLIE MAE FRAKES AND GREEN VALLEY DAIRY has applied for a Major Amendment of, and conversion to an individual permit, State Registration No. WQ0003241000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicants to expand an existing Dairy facility by increasing land application acreage from 206 acres to 306 acres. The maximum capacity of 500 head, of which 500 head are milking cows, will remain unchanged. The facility is located on the west side of County Road 386, approximately one mile north of the intersection of County Road 386 and U.S. Highway 377, said intersection is located approximately 1/2 mile southwest of Stephenville in Erath County, Texas.

MILLENNIUM PETROCHEMICALS INC which operates an acetic acid, vinyl acetate monomer, and poly-alpha olefin manufacturing facility, has applied for a major amendment to TPDES Permit No. WQ0000534000 to increase effluent limitations for chloroform at Outfall 001 and to authorize the discharge of storm water from the landfarm area via new Outfall 002 on an intermittent and flow variable basis. The current permit authorizes the discharge of treated process wastewater, utility wastewaters, sanitary wastewater, and storm water via Outfall 001 at a daily average flow not to exceed 900,000 gallons per day. The facility is located on Miller Cutoff Road, approximately 3/4 mile north of the intersection of Miller Cutoff Road and State Highway 225, Harris County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

NRG TEXAS POWER LLC which operates the S. R. Bertron Electric Generating Station, a steam electric generating station, has applied for a renewal of TPDES Permit No. WQ0001026000, which authorizes the discharge of once through cooling water and previously monitored effluents (low volume wastewater, metal cleaning wastes, and treated domestic wastewater) at a daily average flow not to exceed of 740,200,000 gallons per day via Outfall 001. The facility is located at 212 Miller Cutoff Road, approximately 2 miles northwest of the intersection of State Highway 225 and State Highway 134, and approximately 1.5 miles north of the intersection of State Highway 225 and Miller Cutoff Road, east of the City of Deer Park, Harris County, Texas.

NUSTAR TERMINALS OPERATIONS PARTNERSHIP LP which operates a bulk liquid storage terminal, has applied to amend Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002565000 to authorize the addition of waste streams of hydrostatic test water, potable water, steam condensate and air conditioner condensate. The permit authorizes the discharge of storm water associated with industrial activity on an intermittent and flow variable basis via Outfall 001. The facility is located at 159 Levee Road, approximately 2,200 feet east of the west end of the Industrial Ship Channel, in the City of Texas City, in Galveston County, Texas.

SUNOCO INC(R&M) which operates the Sunoco La Porte Plant, a polypropylene manufacturing plant, has applied for a renewal of TPDES Permit No. WQ0002107000, which authorizes the discharge of treated effluent consisting of process wastewater, domestic sewage, utility wastewater, process area storm water, and non-process area storm water at a daily average flow not to exceed 622,000 gallons per day via Outfall 001; non-process area storm water on an intermittent and flow variable basis via Outfall 002; and process area and non-process area storm water on an intermittent and flow variable basis via Outfall 003. The facility is located at 8811 Strang Road, approximately 1,000 feet east of the intersection of Strang Road and State Highway 225, and approximately 3.5 miles northwest of the City of La Porte, Harris County, Texas.

THE US ARMY CORPS OF ENGINEERS has applied to the for a renewal of Permit No. WQ0012255003, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 4,200 gallons per day via evaporation ponds with 1.9 acres of surface area. The facility and disposal site are located at 2100 Cedar Breaks Road, in Lake Georgetown Cedar Breaks Park, approximately 1.5 miles southwest of the intersection of Farm-to-Market Road 2338 and Cedar Breaks Road in Williamson County, Texas. The facility and disposal site are located in the drainage area of Lake Georgetown in Segment No. 1249 of the Brazos River Basin. No discharge of pollutants into water in the State is authorized by this permit.

TWO SISTERS DAIRY LLC has applied for a New Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004866000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate a new dairy cattle facility at a maximum capacity of 5,500 head, of which 4,000 head are milking cows. The facility is located on the west side of County Road 209 approximately four miles south of the intersection of County Road 209 and US Highway 67, said intersection is located seven miles east of Stephenville in Erath County, Texas.

US STEEL TUBULAR PRODUCTS INC which operates Bellville Operations Division, a low carbon-steel tubing and mechanical linepipe manufacturing plant, has applied for a major amendment to TPDES Permit No. WQ0003716000 to authorize the addition of a wastestream (equipment wash rack wash water) to Outfall 004 and increase the daily average dry weather flow to 7,000 gallons per day and daily maximum dry weather flow to 10,000 gallons per day via Outfall 004. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day of via Outfall 001 and cooling tower blowdown and storm water at a daily average dry weather flow not to exceed 6,300 gallons per day via Outfall 004. The facility is located approximately 3.0 miles southeast of the intersection of State Highway 36 and Farm-to-Market Road 2429 and adjacent to the intersection of State Highway 36 and Miller Road, approximately 5.2 miles southeast of the City of Bellville, Austin County, Texas.

US STEEL TUBULAR PRODUCTS INC which operates U.S. Steel Tubular Products, Inc.-Tubular Threading and Inspection Services Division, a facility for threading and inspecting tubular pipes for the oil

field industry, has applied for a major amendment to TPDES Permit No. WQ0004690000 to authorize the removal of the total residual chlorine limits at Outfall 301, to increase the total lead and total zinc limits at Outfall 301 to be consistent with current applicable water quality standards, to revise the frequency from quarterly to annually for revisions to the Storm Water Pollution Prevention Plan, to change the monitoring frequency of pH and flow from once per day to once per operating day excluding holidays, to authorize only the discharge of storm water and hydrostatic test water while removing all other waste streams at Outfalls 001, 002, 004, 005, and 006, and to include the discharge of water from the cleaning and cooling of pipe ends via Outfall 301. The current permit authorizes the discharge of storm water, hydrostatic test water, machinery wash water, and swedging water on an intermittent and flow variable basis via Outfalls 001 and 002, the discharge of storm water, hydrostatic test water, machinery wash water, swedging water and previously monitored effluent on an intermittent and flow variable basis at Outfall 003, and storm water, hydrostatic test water, maintenance wash water, and swedging water on an intermittent and flow variable basis via Outfalls 004, 005, and 006. The facility is located on East Mount Houston Road, approximately 0.25 miles west of Green Bayou, 2.5 miles west of East Beltway 8, and 8 miles north of Interstate Highway 10, Harris County, Texas.

WHITE RIVER MUNICIPAL WATER DISTRICT has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010621001, which authorizes the discharge of filter backwash water at a daily average flow not to exceed 90,000 gallons per day. The facility is located on the north side of Farm-to-Market Road 2794 approximately 6.5 miles east-southeast of the intersection of Farm-to-Market Road 2794 and farm-to-Market Road 651, approximately 16.5 miles south-southeast of the City of Crosbyton in Crosby County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200806422

LaDonna Castañuela
Chief Clerk

Texas Commission on Environmental Quality
Filed: December 10, 2008

Texas Facilities Commission

Request for Proposals #303-9-10404-A

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission, Department of Aging and Rehabilitative Services and Department of State Health Services, announces the issuance of Request for Proposals (RFP) #303-9-10404-A. TFC seeks a ten (10) year lease of approximately 42,071 sq. ft. of office space, 2,700 sq. ft of warehouse space and 6,000 sq. ft. of vehicle compound space for a total of 50,771 square feet in Lubbock, Lubbock County, Texas.

The deadline for questions is December 29, 2008 and the deadline for proposals is January 5, 2009 at 3:00 p.m. The anticipated award date is February 18, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=80155.

TRD-200806416

Kay Molina
General Counsel
Texas Facilities Commission
Filed: December 9, 2008

Texas Higher Education Coordinating Board

Request for Proposals: Application for Teacher Quality Grants Under the No Child Left Behind Act of 2002, Public Law 107-110

PURPOSE: The Texas Higher Education Coordinating Board (THECB), an agency of the State of Texas, is requesting proposals from qualified applicants as outlined in this document. This Request for Proposals (hereinafter referred to as RFP) is being advertised pursuant to the Texas Government Code, Chapters 2254 et seq (<http://tlo2.tlc.state.tx.us/statutes/gv.toc.htm>). Please read this entire RFP and submit your proposal in accordance with these instructions.

The purpose of this RFP is to solicit proposals from Qualified Applicants to accomplish the following projects:

1. Develop and implement professional development projects that provide content and pedagogy training for mathematics and sciences teachers who are not adequately prepared to teach the subjects they are required to teach.

The work covered in this proposal is related to the THECB's goal of improving college readiness for Texas students by improving the effectiveness of their teachers.

AWARD OF CONTRACT: Contract will be negotiated with an entity that is selected from among the Applicants that are determined through the evaluation process to have a successful Proposal. Submission of a Proposal confers no rights of Applicant to an award or to a subsequent Contract, if there is one. The issuance of this RFP does not guarantee that a Contract will ever be awarded. THECB reserves the right to amend the terms and provisions of the RFP, negotiate with Applicant, add, delete, or modify the Contract and/or the terms of Proposal submitted, extend the deadline for submission of Proposal, or withdraw the RFP entirely for any reason solely at THECB's discretion. An individual Proposal may be rejected if it fails to meet any requirement of this RFP. THECB may seek clarification from Applicant at any time, and failure to respond within a reasonable time frame is cause for rejection of a Proposal.

INQUIRIES: All inquiries shall be directed to Elizabeth Powers, Elizabeth.powers@theeb.state.tx.us or Josephine Hamilton, Josephine.hamilton@theeb.state.tx.us.

Applicant must not discuss a Proposal(s) with any other THECB employee unless authorized by one of the Points of Contact. Questions must be submitted in writing and received no later than Monday, January 19, 2009 at 5:00 p.m. C.S.T. All responses by THECB must be in writing in order to be binding. Any information deemed by THECB to be important and of general interest or which modify requirements shall be sent to all recipients of the RFP in the form of an addendum.

CLOSING DATE: January 26, 2009, 12 Noon, C.S.T.

TRD-200806424

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: December 10, 2008

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Texas Department of Insurance

Company Licensing

Application to change the name of UNITED HEALTHCARE OF TEXAS, INC. to UNITEDHEALTHCARE OF TEXAS, INC., a domestic life company. The home office is in Plano, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200806332
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: December 3, 2008

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Notice of Hearing

The Commissioner of Insurance will hold a public hearing under Docket No. 2702 at 9:30 a.m. on January 7, 2009, in Room 100 of the William P. Hobby, Jr., State Office Building, 333 Guadalupe Street in Austin, Texas, to consider the annual private passenger and commercial automobile insurance rate filing made by the Texas Automobile Insurance Plan Association (TAIPA) pursuant to the Insurance Code §2151.202. TAIPA was established by the legislature to make automobile bodily injury and property damage liability insurance required by the Texas Motor Vehicle Safety Responsibility Act available to eligible applicants.

The TAIPA private passenger and commercial automobile insurance rate filing is available for review during regular business hours in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Texas 78701. For further information, or to request a copy of the filing, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Petition No. A-1208-19).

Written comments, analyses, or other information related to the filing may be submitted to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104 prior to the hearing on January 7, 2009. An additional copy of the comments must be simultaneously submitted to J'ne Byckovski, Chief

Actuary, P.O. Box 149104, MC 105-5F, Austin, Texas 78714-9104. Pursuant to the Insurance Code §2151.206(a), interested persons may present written or oral comments related to the filing at the public hearing; and pursuant to the Insurance Code §2151.206(b), TAIPA, the public insurance counsel, and any other interested person or entity that has submitted proposed changes or actuarial analyses may ask questions of any person testifying at the hearing.

Pursuant to Insurance Code §2151.206(c), the hearing is not a contested case hearing under Chapter 2001 of the Government Code.

TRD-200806363
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: December 4, 2008

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Texas Lottery Commission

Instant Game Number 1162 "Cash Frenzy"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1162 is "CASH FRENZY". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1162 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1162.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$500, \$1,000 and \$50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1162 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000, \$5,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1162), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1162-0000001-001.

K. Pack - A pack of "CASH FRENZY" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CASH FRENZY" Instant Game No. 1162 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CASH FRENZY" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No more than four (4) matching non-winning prize symbols will appear on a ticket.

- C. No duplicate WINNING NUMBERS play symbols on a ticket.
- D. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.
- E. Non-winning prize symbols will never be the same as the winning prize symbol(s).
- F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 10 and \$10).
- G. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH FRENZY" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$50.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASH FRENZY" Instant Game prize of \$1,000, \$5,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH FRENZY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or

- 5. in default on a loan guaranteed under Chapter 57, Education Code.
- E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "CASH FRENZY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "CASH FRENZY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1162. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1162 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	560,000	10.71
\$10	600,000	10.00
\$15	200,000	30.00
\$20	120,000	50.00
\$50	80,000	75.00
\$100	16,300	368.10
\$1,000	195	30,769.23
\$5,000	15	400,000.00
\$50,000	6	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.81. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1162 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1162, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200806396
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: December 8, 2008



Instant Game Number 1169 "Crazy Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1169 is "CRAZY CASH". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1169 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1169.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, MONEY BAG SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100 and \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1169 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
MONEY BAG SYMBOL	BAG
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$100	ONE HUND
\$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00 or \$100.

H. High-Tier Prize - A prize of \$1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1169), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1169-0000001-001.

K. Pack - A pack of "CRAZY CASH" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last

page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CRAZY CASH" Instant Game No. 1169 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CRAZY CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to the WINNING NUMBER play symbol, the player wins the PRIZE shown for that number. If the player reveals a "MONEY BAG" play symbol, the player wins the PRIZE shown for that symbol instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the latex overprint on the front portion of the ticket;
 2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
 3. Each of the Play Symbols must be present in its entirety and be fully legible;
 4. Each of the Play Symbols must be printed in black ink except for dual image games;
 5. The ticket shall be intact;
 6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
 7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
 8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
 9. The ticket must not be counterfeit in whole or in part;
 10. The ticket must have been issued by the Texas Lottery in an authorized manner;
 11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
 12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
 13. The ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
 14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
 15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
 16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
 17. Each of the 11 (eleven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
 18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
 19. The ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's

discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.
- B. No duplicate non-winning prize symbols on a ticket.
- C. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.
- D. Non-winning prize symbols will never be the same as the winning prize symbol(s).
- E. The "MONEY BAG" (auto win) play symbol will never appear more than once on a ticket.
- F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).
- G. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "CRAZY CASH" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$40.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CRAZY CASH" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CRAZY CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
 2. delinquent in making child support payments administered or collected by the Attorney General;
 3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
 4. in default on a loan made under Chapter 52, Education Code; or
 5. in default on a loan guaranteed under Chapter 57, Education Code.
- E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "CRAZY CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "CRAZY CASH" Instant Game, the

Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 1169. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1169 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,209,600	8.33
\$2	705,600	14.29
\$4	252,000	40.00
\$5	67,200	150.00
\$10	67,200	150.00
\$20	29,400	342.86
\$40	16,380	615.38
\$100	840	12,000.00
\$1,000	84	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.29. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1169 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1169, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200806372
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: December 4, 2008



Instant Game Number 1174 "Super Cash Spectacular"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1174 is "SUPER CASH SPECTACULAR". The play style is "key number match with multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1174 shall be \$20.00 per ticket.

1.2 Definitions in Instant Game No. 1174.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, DOUBLE DOLLAR SYMBOL, 1X SYMBOL, 5X SYMBOL, \$20.00, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000 and \$ONE MILL SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1174 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
DOUBLE DOLLAR SYMBOL	DBL
1X SYMBOL	WINX1
5X SYMBOL	WINX5
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND

\$200	TWO HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$10,000	10 THOU
\$ONE MILL	ONE MIL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$5,000, \$10,000 or \$1,000,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1174), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 025 within each pack. The format will be: 1174-0000001-001.

K. Pack - A pack of "SUPER CASH SPECTACULAR" Instant Game tickets contains 025 tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 025 while the other fold will show the back of ticket 001 and front of 025.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SUPER CASH SPECTACULAR" Instant Game No. 1174 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SUPER CASH SPECTACULAR" Instant Game is determined once the latex on the ticket is scratched off to expose 56 (fifty-six) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "DOUBLE DOLLAR" play symbol, the player wins DOUBLE the PRIZE shown for that symbol. If a player reveals a "5X" play symbol in the BONUS BOX play area, the player wins 5 TIMES your total winnings. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 56 (fifty-six) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 56 (fifty-six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 56 (fifty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 56 (fifty-six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate WINNING NUMBERS play symbols on a ticket.

C. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

D. No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e. 20 and \$20).

E. Non-winning prize symbols will not match winning prize symbols on a ticket.

F. No more than five matching non-winning prize symbols on a ticket.

G. The "\$\$" (doubler) play symbol may only appear as dictated by the prize structure.

H. The "5X" (5 times multiplier) will appear on winning tickets only as dictated by the prize structure.

I. The "1X" (1 times multiplier) will appear on all winning tickets that do not utilize the "5X" (5 times multiplier) symbol as dictated by the prize structure.

J. The top prize will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "SUPER CASH SPECTACULAR" Instant Game prize of \$20.00, \$50.00, \$100, \$200, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$50.00, \$100, \$200 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SUPER CASH SPECTACULAR" Instant Game prize of \$1,000, \$5,000, \$10,000 or \$1,000,000, the claimant must sign the win-

ning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SUPER CASH SPECTACULAR" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "SUPER CASH SPECTACULAR" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "SUPER CASH SPECTACULAR" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the

back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,360,000 tickets in the Instant Game No. 1174. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1174 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$20	537,600	6.25
\$50	470,400	7.14
\$100	67,676	49.65
\$200	12,292	273.35
\$500	2,568	1,308.41
\$1,000	140	24,000.00
\$5,000	56	60,000.00
\$10,000	18	186,666.67
\$1,000,000	3	1,120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.08. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1174 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1174, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200806373
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: December 4, 2008

◆ ◆ ◆
 Instant Game Number 1179 "Diamonds & Gold"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1179 is "DIAMONDS & GOLD". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1179 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1179.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive ex-

cept for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, GOLD BAR SYMBOL, DIAMOND SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$200, \$2,000 and \$20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

Figure 1: GAME NO. 1179 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
GOLD BAR SYMBOL	GOLD
DIAMOND SYMBOL	DMND
\$2.00	TWOS\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$200	TWO HUND
\$2,000	TWO THOU
\$20,000	20 THOU

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$200.

H. High-Tier Prize - A prize of \$2,000 or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1179), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1179-0000001-001.

K. Pack - A pack of "DIAMONDS & GOLD" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "DIAMONDS & GOLD" Instant Game No. 1179 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "DIAMONDS & GOLD" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins the PRIZE shown for that number. If a player reveals a "gold bar" play symbol, the player wins the PRIZE shown for that symbol instantly. If the player reveals a "diamond" symbol, the player wins DOUBLE the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "DIAMOND" (doubler) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. The "GOLD BAR" (auto win) play symbol will never appear more than once on a ticket.

D. The "DIAMOND" (doubler) and the "GOLD BAR" (auto win) play symbols will never appear together on a ticket.

E. No more than two (2) matching non-winning prize symbols will appear on a ticket.

F. No duplicate WINNING NUMBERS play symbols on a ticket.

G. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

H. Non-winning prize symbols will never be the same as the winning prize symbol(s).

I. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).

J. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "DIAMONDS & GOLD" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$50.00 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "DIAMONDS & GOLD" Instant Game prize of \$2,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "DIAMONDS & GOLD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "DIAMONDS & GOLD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "DIAMONDS & GOLD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1179. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1179 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	643,200	12.50
\$4	739,680	10.87
\$5	96,480	83.33
\$10	112,560	71.43
\$20	48,240	166.67
\$50	41,875	192.00
\$200	6,499	1,237.11
\$2,000	40	201,100.00
\$20,000	8	1,005,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.76. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1179 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1179, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200806418
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: December 10, 2008

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North Central Texas Council of Governments

Consultant Proposal Request

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firm(s) to perform the University of North Texas (UNT)-Dallas Area Context Sensitive Transportation Study which will: 1) conduct a comprehensive area-wide review of transportation needs within the context of the UNT Campus Area Plan; 2) integrate existing roadway, trail, and transit plans in the UNT-Dallas Area, and; 3) develop specific context sensitive design standards for roadways, light rail, and trails within the area.

Due Date

Proposals must be received no later than 5 p.m., Central Daylight Time, on Friday, January 30, 2009, to Karla Weaver, Senior Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the RFP, contact Therese Bergeon, at (817) 695-9267.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200806415
 R. Michael Eastland
 Executive Director
 North Central Texas Council of Governments
 Filed: December 9, 2008

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North Texas Tollway Authority

Request for Qualifications

The North Texas Tollway Authority (NTTA) is issuing a Request for Qualifications (RFQ) from Design/Build firms (Respondents) and will receive sealed Statements of Qualifications (SOQ) from Respondents at 5900 W. Plano Pkwy. Suite 100, Plano, Texas 75093 before or at 4:00 p.m. on Friday, January 9, 2009 for the following project:

Project 02622-SH161-00-DB-PM. Design/Build of Phase 4 of the SH161 Toll Road which consists of design, construction, and management of design and construction of direct connector ramps, slip ramps and mainlanes from IH 20 interchange to north of IH 30 interchange, approximately 6.5 miles in length. The initial mainlane construction from IH 20 to IH 30 will consist of 2 general purpose lanes in each direction. Two mainlanes each way in the center median are planned in the future for this section. At the IH 20 interchange, the proposed improvements consist of constructing a three leg, four level interchange with 4 direct connector ramps. All of the direct connector ramps are proposed as 2 lanes. At the IH 30 interchange, the proposed improvements consist of a fully directional, five level interchange with 8 direct connector ramps. These direct connector ramps vary from 1 to 2 lanes. Three of the direct connector ramps are depressed underneath the frontage road intersection box.

RFQ packets will be available on Sunday, December 7, 2008. A Mandatory Pre-Qualification Submittal Meeting will be held at 5900 W. Plano Parkway, Suite 200, Plano, Texas 75093, on Friday, December 19, 2008 at 10:00 a.m. Contact Aruldass Amaladas at (214) 224-2449 or aamaladas@ntta.org for more information.

The packet includes the RFQ, Schematic Plans and Environmental Documents. All SOQs shall be submitted in a sealed envelope marked clearly with Respondent's name, Contact Person's name with return address, submittal date, contents labeled as 'SH 161 Toll Project' and 'Statement of Qualifications', with NTTA address as shown on the Notice to Respondents - Mandatory Pre-Qualification Submittal Meeting And Statement of Qualification Due Date. The SOQ must be delivered via hand delivery, courier, or mail. Faxed SOQs will not be accepted. Late SOQs will be returned unopened. All rights reserved.

RFQ documents may be viewed and downloaded online, at www.thomasrepro.com/dfs/ntta. Vendors wishing to view and download the above documents online must first register with Thomas Reprographics. A hard copy of the RFQ packet may also be purchased at area Thomas Reprographics locations. Hard copies of the RFQ packet may be viewed at the NTTA's main office, 5900 West Plano Parkway, Suite 800, Plano Texas 75093. Call Aruldass Amaladas at (214) 224-2449 to set-up an appointment. In order to do business with the NTTA, respondents must first register online under WORKING WITH US > Rules and Registration section of the NTTA's home page (<http://www.ntta.org>).

TRD-200806399
Tom Leatham
Procurements Manager
North Texas Tollway Authority
Filed: December 8, 2008

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Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transaction and Opportunity for Public Comment

Land Transaction - Lampasas and San Saba counties
Colorado Bend State Park

On January 22, 2009, the Texas Parks and Wildlife Commission (the Commission) will consider the exchange of a 30-foot wide, 0.25-mile

long road easement across a corner of Colorado Bend State Park, located in Lampasas and San Saba counties, for a conservation easement on approximately 1.5 miles of private property adjacent to and 750 feet back from the park boundary. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Public comment also may be submitted to Corky Kuhlmann, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, by email at corky.kuhlmann@tpwd.state.tx.us, or made in person at the meeting.

TRD-200806427
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: December 10, 2008

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Notice of Proposed Real Estate Transaction and Opportunity for Public Comment

Alazan Bayou Wildlife Management Area

On January 22, 2009, the Texas Parks and Wildlife Commission (the Commission) will consider the acquisition of a 486-acre tract adjacent to the Alazan Bayou Wildlife Management Area in Nacogdoches County. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Public comment also may be submitted to Corky Kuhlmann, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, by email at corky.kuhlmann@tpwd.state.tx.us, or made in person at the meeting.

TRD-200806428
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: December 10, 2008

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Public Utility Commission of Texas

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on December 3, 2008, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of RB3, LLC for a State-Issued Certificate of Franchise Authority, Project Number 36462 before the Public Utility Commission of Texas.

The requested CFA service area includes the municipalities and/or unincorporated areas of Abernathy, Anton, Castroville, Cherokee Water Co., Clifton, Coleman, Comanche, Crosbyton, Crowell, Eden, Eldorado, Freeport, Goliad, Hale Center, Haskell, Higgins, Hondo, Karnes City, Knox City, Lockney, Mason, Memphis, Muleshoe, Natalia, O'Donnell, Oyster Creek, Pleasanton, Ralls, Tahoka, and Tatum within the State of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll

free at 1-800-735-2989. All inquiries should reference Project Number 36462.

TRD-200806411
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 9, 2008

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Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on December 3, 2008, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Arklaoktex, LLC for a State-Issued Certificate of Franchise Authority, Project Number 36461 before the Public Utility Commission of Texas.

The requested CFA service area includes the municipalities and/or unincorporated areas of Bovina, Goodrich, Hart, Ladonia, Lubbock, Meadow, Murchison, Naples, New Deal, Ore, Point, Ropesville, Rule, Shallowater, Smyther, Stamford, Valley Mills, Waco Bay, and Wolfforth within the State of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36461.

TRD-200806412
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 9, 2008

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Notice of Application for Service Area Exception within Kerr County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 8, 2008, for an amendment to certificated service area for a service area exception within Kerr County, Texas.

Docket Style and Number: Application of Pedernales Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Kerr County. Docket Number 36466.

The Application: Pedernales Electric Cooperative, Inc. (PEC) filed an application for a service area boundary exception to allow PEC to provide service to a specific customer located within the certificated service area of Central Texas Electric Cooperative, Inc. (CTEC). CTEC has provided a letter of concurrence for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than January 6, 2009 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact

the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 36466.

TRD-200806431
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 10, 2008

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 3, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of TeleQuality Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 36460 before the Public Utility Commission of Texas.

Applicant intends to provide T1-Private Line.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 29, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36460.

TRD-200806410
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 9, 2008

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Notice of Application to Amend Certificate of Convenience and Necessity for a Proposed Transmission Line in Nacogdoches County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on December 9, 2008, to amend a certificate of convenience and necessity for a proposed transmission line in Nacogdoches County, Texas.

Docket Style and Number: Application of Deep East Texas Electric Cooperative, Inc. to Amend its Certificate of Convenience and Necessity for a Proposed Transmission Line in Nacogdoches County, Texas. Docket Number 36380.

The Application: The proposed project is designated as the Chireno to Etoile 138-kV Transmission Line Project. The proposed project will be located in southeastern Nacogdoches County crossing a small portion of the city limits of Chireno, Texas on the north side of the proposed routes to the north of Lake Sam Rayburn. Deep East Texas Electric Cooperative, Inc. (DETEC) stated that the proposed transmission line is needed to provide looped 138-kV transmission service to members of the cooperative. The miles of right-of-way for this project will be approximately 13 miles (preferred route). The estimated date to energize facilities is June 2010.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is January 23, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 36380.

TRD-200806432
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 10, 2008

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Railroad Commission of Texas

Announcement--Request for Qualifications

The Railroad Commission of Texas requests the qualifications for professional services from engineering firms with expertise in environmental assessments, remedial alternative analysis, feasibility studies, and remedial design. Selection of the engineering firms will be in accordance with the Professional Services Procurement Act (§§2254.001 et seq. of the Texas Government Code). The Commission shall have the sole authority to enter into any contracts.

Interested parties may receive a copy of a Request for Qualifications (RFQ) that describes the format and scope of services by: (1) contacting Jill Edwards, Site Remediation, in writing, by mail, e-mail, or fax (mail: Railroad Commission of Texas, Oil and Gas Division, Attention: Jill Edwards, P.O. Box 12967, Austin, Texas 78711; e-mail: jill.edwards@rrc.state.tx.us; fax: (512) 463-2388); or (2) on the Railroad Commission web page (www.rrc.state.tx.us, under *Environmental Services/Remediation/Environmental Support/State-Managed Cleanup Bid Opportunities/Request for Qualifications*). All Statements are to be submitted to the Railroad Commission of Texas in the required format by no later than 2:00 p.m., March 5, 2009, at the mailing address noted in Section 14.0 of the Request for Qualifications.

Issued in Austin, Texas, on December 10, 2008.

TRD-200806433
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: December 10, 2008

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Office of Rural Community Affairs

Disaster Recovery Action Plan

The Office of Rural Community Affairs (ORCA), in cooperation with the Texas Department of Housing and Community Affairs (TDHCA), is accepting public comments on the proposed Action Plan to govern \$1.3 billion in Community Development Block Grant Program Disaster Recovery supplemental funds, which come to Texas from the US Department of Housing and Urban Development (HUD). Comments on the distribution of funding for "necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing and economic revitalization in areas affected by hurricanes, floods, and other natural disasters occurring during 2008" are requested at this time. This funding will include communities impacted by Hurricanes Dolly and Ike in 2008.

In addition, local input regarding the overall revitalization needs of impacted areas from a broad perspective, including needs such as public facilities and infrastructure, housing, and economic development are requested. ORCA encourages your comments and participation.

Written comments should be submitted by mail, e-mail, or fax by January 5, 2009 to:

Oralia Cardenas, Director
Disaster Recovery Division
P.O. Box 12877
Austin, Texas 78711
Fax: (512) 936-6776

E-mail: ocardenas@orca.state.tx.us

Additional information regarding ORCA and a copy of the proposed Action Plan can be found on the web by visiting ORCA's web page: www.orca.state.tx.us.

For more information, please call Oralia Cardenas at (512) 936-7890 or Heather Lagrone at (512) 936-6727 or Toll Free at 800-544-2042.

TRD-200806425
Charles S. (Charlie) Stone
Executive Director
Office of Rural Community Affairs
Filed: December 10, 2008

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Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Architectural/Engineering Services

The County of Cameron, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional architectural/engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation architectural/engineering design services described below:

Airport Sponsor: Cameron County, Texas. TxDOT CSJ No. 09TBP-TISB. Scope: Provide architectural/engineering design services to construct new general aviation terminal building and associated parking and road improvements at the Port Isabel-Cameron County Airport.

The HUB Participation Goal for this project is 7%. TxDOT Project Manager is Stephanie Kleiber, P.E.

To assist in your proposal preparation the criteria, 5010 drawing, and most recent airport layout plan are available online at:

www.txdot.gov/avn/avninfo/notice/consult/index.htm

by selecting "Cameron County Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at:

www.txdot.gov/services/aviation/consultant.htm.

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional

pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than January 13, 2009, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The Consultant Selection Committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. Below is the criterion for evaluation of architectural/engineering proposals. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager at 1-800-68-PILOT at extension 4518. For technical questions, please contact Stephanie Kleiber, at 1-800-68-PILOT at extension 4524.

CRITERIA FOR EVALUATING ARCHITECT/ENGINEER PROPOSALS

The Sponsor Selection Committee will use the following criterion to evaluate architectural/engineering proposals:

1. Recent experience of the project team with comparable airport projects within the past five years. (20 points)

Does the proposal indicate that the project team has recent direct experience on other general aviation airports designing similar improvements to those proposed at this location? (Sources of information: Aviation Project Design Team Form, Recent Relevant Airport Experience Form, and possibly the Proposal Summary.)

2. Proposed technical approach (20 points)

Does the architect/engineer provide evidence of understanding of the project; and any unique architectural/engineering aspects associated with the proposed project and how to address them? (Sources of information: Proposed Technical Approach to Project, and possibly the Proposal Summary.)

3. Ability to meet schedules and deadlines (20 points)

Does the proposed design team have sufficient time to work on this project? Has the firm demonstrated an ability to meet design schedules in the past? (Sources of information: Aviation Project Design Team Form, Recent Relevant Airport Experience Form, and possibly the Proposal Summary.)

4. Project design schedule (20 points)

Reasonableness of proposed schedule (Sources of information: Project Design Schedule Form and possibly the Proposal Summary.)

5. Construction Management Experience (20 points)

The consultant will oversee the airport construction. Therefore, it is critical that the architect/engineer be involved in the day-to-day construction activities through a full-time resident project representative and periodic site visits. What evidence does the proposal provide as to the architect's/engineer's commitment to proactive and consistent representation during construction? (Source of information: Relevant Airport Experience form, proposed Technical Approach to Project, and possibly the Proposal Summary.)

TRD-200806419

Jack Ingram

Associate General Counsel

Texas Department of Transportation

Filed: December 10, 2008



Aviation Division - Request for Proposal for Aviation Engineering Services

The City of New Braunfels, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the New Braunfels Municipal Airport during the course of the next five years through multiple grants.

Current Project: City of New Braunfels. TxDOT CSJ No. 0915NBRNF. Scope: Phase I: Overlay and mark a portion of the northeast parking apron, Taxiways A, B, C, D, E, F, terminal apron, and Runway 13-31; overlay/relocate jog in Taxilane A to Taxiway A; improve drainage; regrade ditches; replace inlet grates. Phase II: Replace MIRLs on Runway 13-31; install MITLs Taxiway A; replace PAPI-4 on Runway 13; install signage, and relocate/replace lighting vault at the New Braunfels Municipal Airport.

The DBE/HUB goal for the current project is 12%. TxDOT Project Manager is Harry Lorton, P.E.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Construct Taxiway G from mid field Runway 17-35 to main terminal
2. Construct new Taxiway G from Apron to Runway 17/Taxiway E intersection
3. Overlay/reconstruct additional portions of Northeast Parking Apron
4. Reconstruct and Mark Runway 17-35
5. Rehabilitate and Mark Hangar Apron and Taxilane
6. Install abbreviated ALS
7. Install REIL Runway 31
8. Install PAPI-4 Runway 17-35

The City of New Braunfels reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at

www.txdot.gov/avn/avninfo/notice/consult/index.htm

by selecting "New Braunfels Municipal Airport". The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

www.txdot.gov/services/aviation/consultant.htm.

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format.

The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Seven completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than January 13, 2009, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at

<http://www.txdot.gov/services/aviation/consultant.htm>.

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Harry Lorton, Project Manager.

TRD-200806392

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: December 8, 2008



Notice of Request for Information - Concepts for New, Low Carbon Emitting, Freight Transportation Facilities

The Texas Department of Transportation (department) is seeking information that may assist in the development of facilities to move freight using low carbon emitting technologies and involving systems that

minimize negative environmental impacts. The department requests your ideas on the most efficient and credible technology and business model available to finance, develop, implement, and operate these facilities. This Request for Information (RFI) is issued solely to assist the department in its planning processes and for data collection purposes. It does not constitute a Request for Qualifications (RFQ), a Request for Proposals (RFP), or other solicitation document, nor does it represent an intention to issue an RFQ or RFP in the future. This RFI does not commit the department to contract for any supply or service whatsoever, nor will any response to this RFI be considered in the evaluation of any response to a solicitation document. The department will not pay for any information or administrative cost incurred in response to this RFI. Responses to this RFI are due by March 19, 2009.

Background. It appears that freight traffic will greatly expand in Texas. Texas ports are expanding their capabilities to handle greater numbers of containers. The expansion and reconstruction of the Panama Canal will likely bring greater freight traffic to the state. While the existing highway and rail systems have the capacity to absorb some of the anticipated growth, there are serious concerns that they will not adequately accommodate all future traffic. In urban areas, truck traffic contributes significantly to highway congestion, leading to lost time for drivers, increased energy consumption, and increased air emissions. Also, increased truck traffic requires ever-more costly repairs of the highway system.

Concept. The department seeks new solutions for the 21st century for short and mid-haul freight movements to provide an environmentally sensitive alternative to more trucks on the roadways. The department is interested in concepts which include coordinated efforts with the major Texas port-of-entry cities, such as Houston, Laredo, Corpus Christi, and Brownsville, which would connect them to major inland-port cities such as San Antonio, Austin, and Dallas-Fort Worth, as well as major manufacturing, warehousing, and distribution centers. The department is interested in facilities that would produce fewer carbon emissions, for example electric-powered facilities connected to lower-emission, or renewable, energy sources. The department is interested in facilities which avoid impacts to existing roadways, but the department is also interested in facilities that use right of way already owned by the department to the extent such facilities could still meet the other goals described here. The department is interested in facilities that could serve additional purposes during an emergency, such as emergency response, evacuation, and military transport. Finally, the department is also interested in concepts that include a pilot project in order to test new technologies and their likelihood of commercial success.

Some possible concepts include: (1) a roadway on which specially-outfitted trucks are powered by an embedded power source; or (2) a rail facility powered by electricity. Other possible concepts may focus on moving freight between specific economic activity centers.

Information Requested. The department requests that any interested person, including public or private entities, submit conceptual information on creating new freight transportation facilities. It would be most beneficial to the department if a given concept both includes engineering ideas, and explains how the department would implement them including: (1) legal authority for the implementation of the facility, to include whether current law authorizes the facility, or that the facility would require new authorizations; (2) the sources of financing to be used, including public or private sources; (3) a conceptual business model, explaining ownership and operation of the facility, and conceptual revenue and cost estimates; and (4) development ideas, explaining how the department should develop the facility from concept through construction and operation, including the individual steps the department should take to procure the facility. The department also requests an estimate of how the facility would affect carbon emissions.

The Next Steps. The department will review any conceptual ideas that are timely submitted. If the department determines that the best concept is both feasible and will benefit freight transportation, the environment, and the state in general, then the department may pursue developing it. As the next step, all persons who are interested in developing the selected concept would be requested to submit their proposal for a transportation facility that would implement the concept, including an explanation of purpose and need, preferred routes, environmental considerations, technology, financing, construction schedules, and reductions of carbon emissions (compared to truck and rail movements). How exactly the department would develop the concept depends on the particular concept, and the law that would apply. For example, the procedure may be different if the concept envisions the state leasing right of way, envisions developing a state rail facility under Transportation Code, Chapter 91, or envisions development under a comprehensive development agreement under Transportation Code, Chapters 91 and 223.

If the concept would have the department enter into a comprehensive development agreement, the department would conduct a two-step procurement process. The department would request that interested persons submit proof of their qualifications. The persons who are selected as qualified would then submit detailed proposals to develop the selected facility in accordance with the department's specifications. The department may pay stipends to the persons who are selected to submit detailed proposals, including stipends for proposals that meet certain thresholds for being feasible and practical. The department would select the proposal that shows the best value for the state, and enter into a development agreement with the proposer.

Confidentiality/Public Information Act. All written correspondence, exhibits, photographs, reports, other printed material, tapes, electronic disks, and other graphic and visual aids submitted to the department in response to this RFI are, upon their receipt by the department, the property of the State of Texas, may not be returned to the submitting parties, and are subject to the Public Information Act, Government Code, Chapter 522 (the "Act"). Respondents should familiarize themselves with the provisions of the Act. In no event shall the State of Texas, the department, or any of their agents, representatives, consultants, directors, officers, or employees be liable to a respondent for the disclosure of all or a portion of the information submitted in response to this RFI. Please be advised that the conceptual ideas will be public documents upon receipt by the department. You should not submit any trade secrets you wish to protect.

Deadline. The deadline to submit responses to this RFI is March 19, 2009. Responses that arrive after the deadline will not be reviewed.

If the department determines that there is a concept that is feasible and practical, the department may begin in Spring 2009 with a procurement process, with the goal of entering into a development agreement by Spring 2010. Responses to this RFI should be submitted to: Mark Tomlinson, P.E., Director, Texas Turnpike Authority Division, 125 East 11th Street, Austin, Texas 78701-2483.

Additional Information. You may contact Mr. Tomlinson at (512) 936-0903 for additional information.

TRD-200806420
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: December 10, 2008



Public Notice: Record of Decision (Grand Parkway Segment F-1, Harris County, Texas)

A Record of Decision (ROD) has been issued for the Final Environmental Impact Statement (FEIS) for Grand Parkway (State Highway 99) Segment F-1 from United States Highway 290 (US 290) to State Highway 249 (SH 249) in Harris County, Texas. Segment F-1, as proposed, is a four-lane, controlled access toll road with intermittent frontage roads. The approximate distance of Segment F-1 is 12 miles.

The ROD is available for viewing or copying at the Grand Parkway Association website,

www.grandpky.com;

at the Texas Department of Transportation's Houston District Office located at 7600 Washington Avenue, Houston, Texas; or at the offices of the Grand Parkway Association, located at 4544 Post Oak Place, Suite 222, Houston, Texas. For further information on Segment F-1, please contact David Gornet, P.E. at (713) 965-0871 or Pat Henry, P.E. at (713) 802-5241.

TRD-200806408
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 9, 2008



How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

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

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

Proposed Rules - sections proposed for adoption.

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

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

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

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

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

Review of Agency Rules - notices of state agency rules review.

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 33 (2008) is cited as follows: 33 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 "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 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.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version

through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the 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*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic 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 complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

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

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

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. 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).